



FARM & RANCH
FREEDOM ALLIANCE

Department of State Health Services Improperly Targeting Raw Milk Farmers & Consumers

Raw milk in Texas is a highly regulated product. Texas farmers are used to navigating the extensive regulations, including how their animals are cared for, sanitary conditions for milking, regular inspections, frequent testing, and more. But now they face a new problem: aggressive tactics by the Department of State Health Services (DSHS) that threaten their business for no valid health or safety reason.

This spring and summer, DSHS participated in three unannounced inspections (twice calling in law enforcement) as customers – not farmers – legally met the couriers that they had hired to pick up their raw milk orders. This harassment of Texas consumers and businesses reflects an improper change in DSHS policies. Here's why:

In December 2013, a DSHS manager sent the following email to a raw milk customer:

"It is **not** a violation of state regulations for a dairy customer to purchase raw milk from a farmer at the farm for themselves **and for others** as you indicate you are doing for your COOP (and other members may do for you). It also is not a violation of state regulations for you to **deliver that milk to other COOP members** or to have them pick it up from you. ... As long as the dairy is not delivering raw milk to you, then the dairy is not in violation of their state permit." [Emphasis ours.]

The email was shared with legislators and members of the public as the official agency interpretation of its regulations.

The email is clear: While raw milk farmers cannot deliver their own products under current regulations, their customers retain their normal legal rights and can cooperate with each other to obtain their milk.

Nothing has changed, legally or in the public health realm, since this email. Yet the Department has launched aggressive attacks on group arrangements simply because some officials don't want customers to have reasonable access to this legal product.

Approximately three quarters of a million Texans drink raw milk, yet there has not been even one illness attributed to raw milk since the December 2013 email. And only six illnesses have been reported in the entire past 20 years in this state.

When angry raw milk consumers contacted their elected officials, DSHS sent an email to legislators who inquired about this issue, essentially claiming that there was no change in its policies and that the farmers and consumers were at fault. Let's look at their statement compared to the facts:

DSHS EMAIL TO LEGISLATORS JULY 2016

"Historically, the Department has accepted reasonable deviations from the regulatory requirements that raw milk be purchased on-site at the dairy of production."

THE REST OF THE STORY

This implies that such group arrangements are a violation of the law that the agency chose to overlook. But that's not what the agency stated in December 2013. Again, it stated, "It is not a violation of state regulations ... to purchase raw milk from a farmer at the farm for themselves and for others..." and "As long as the dairy is not delivering raw milk to you, then the dairy is not in violation of their state permit."

Group arrangements are not a "reasonable deviation" – they are a completely legal exercise of the customers' rights and comply with the regulation.

DSHS EMAIL TO LEGISLATORS JULY 2016

"A new practice has emerged that diverges from this small-scale scenario. This includes:

- Consumers declaring one individual their 'agent' for the purposes of purchasing raw milk.
- Large-scale distributions of raw milk into the city for customers."

THE REST OF THE STORY

The practice of designating an agent to act on one's behalf goes back at least two centuries in common law. Individuals can designate someone as their agent to sign a multi-million dollar contract, pick up prescription medicines, or do ANYTHING else that the individual could legally do. The right to designate an agent to act for someone does not disappear simply because raw milk is involved.

The scale or location of the customers is irrelevant. Does the agency contend raw milk is safe when sold to a small number of people in rural areas, but dangerous when sold to more people in urban areas? Not only is this contention illogical, but it is contradicted by the extremely few illnesses that have occurred (6 in 20 years, in the entire state).

Moreover, calling this "large-scale" is misleading. The dairy that the agency has harassed has 50 cows and sold approximately 60,000 gallons of milk in 2015. Compare that to an average conventional dairy, which has over 900 cows and sells about 1,870,000 gallons per year.

"DSHS and local health departments do respond to complaints within their jurisdiction."

This sounds reasonable – except that the agency officials have stated in meetings that the complaints were filed by competitors. No customer has filed a complaint, nor has there even been an allegation that anyone has become sick. Rather, DSHS appears to be eager to help certain businesses harass raw milk farmers. This is a misuse of agency funds and resources.

Strangely, at least one complaint was filed by a "Daniel McCreary" – the same name as a retired DSHS manager of the Milk Division. We are attempting to find out how he became involved in filing complaints against the dairy.

"DSHS does accompany local health departments on complaint-based investigations, on request, and this is common practice."

Again, this sounds reasonable – except that documents show that DSHS was in fact the instigator of all three raids, with DSHS having requested the local health departments' assistance, rather than the reverse. In one of the raids, a DSHS manager forwarded the complaint to a local health department and stated that DSHS "inspectors would like to partner with you and go out with your staff." He also described the group distribution as the result of a "rogue group of dairy farmers" and failed to inform the local health department that he knew first-hand the customers, not the farmer, had hired the courier – a fact that ultimately influenced the local officials to not pursue the case.

Moreover, involving law enforcement is NOT common practice. The only reason to do so here was to harass and intimidate – a tactic made even more egregious by the fact that it was aimed at the customers, rather than the business that the agency claims has violated the regulations.

"DSHS will draft guidance to ensure that dairies, local health departments, and the Department all have a common understanding of the situation."

The Department and the dairies DID have a common understanding – based on the Department's clear statement in 2013. There has been no change to the law or regulations, nor any health-related incident, to justify overturning the previous guidance by the agency.