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Agency of Agriculture Food & Markets

December 17, 2021

AFFM Docket Number: 2021-09-10 DY

Larson Farm LLC
Cynthia and Richard Larson
661 South Street
Wells, VT 05774

On December 13, 2021, a hearing was held by phone and video conference due to COVID 19 restrictions by the Agency of Agriculture, Food and Markets on the following issue:

The Dairy Section of the Agency of Agriculture, Food and Markets (the Agency) charges Larson Farm LLC, Cynthia and Richard Larson (Farm), with violating Vermont's laws and regulations governing Dairy Operations, 6 V.S.A. Chapter 152 by failing to provide notice to the Agency that a farm stand would be selling its unpasteurized (raw) milk.

The following are the findings of fact, rationale and conclusion, and order from that hearing held on December 13, 2021.

Finding of Fact:

This matter is before me Director of Administrative Services IV, Diane Bothfeld, under delegated authority of Secretary Tebbetts pursuant to 6 V.S.A. §1(a)(1) and 3 V.S.A. §253(e), to consider the merits of the Food Safety Consumer Protection Division's *Notice of Violation of 6 VSA Chapter 152 -The Farm violated Vermont's laws and regulations governing Dairy Operations, 6 V.S.A. Chapter 152 by failing to provide notice to the Agency that a farm stand would be selling its unpasteurized (raw) milk.* The *Notice*, alleging violations of 6 VSA Chapter 152 - (5) five days, is incorporated by reference (Exhibit #2).

The merits were heard December 13, 2021, by phone and video conference due to restriction from COVID 19 by the Agency of Agriculture, Food and Markets. Dairy Farm owner and operator, Richard Larson took part by video conference. Bothfeld determined that Mr. Larson had all documents as provided by Dairy Section Chief Flory. Dairy Farm Specialist I, Andrew Seward and Dairy Section Chief E.B. Flory testified for the Division. The section submitted documentary evidence without objection.

The following findings are supported by the testimony and evidence adduced at the hearing on this matter conducted on December 13, 2021.



Larson Farm LLC is owned operated by Cynthia and Richard Larson in Wells, Vermont. The farm includes milking cows, dairy processing governed by the Pasteurized Milk Ordinance and 6 V.S.A Chapter 151 and unpasteurized (raw) milk as a Tier 2 producer governed by 6 V.S.A. Chapter 152. Mr. Larson is working to expand his processing business by expanding distribution of dairy products governed by the Pasteurized Milk Ordinance and 6 V.S.A Chapter 151 and unpasteurized (raw) milk governed by 6 V.S.A. Chapter 152. The farm and processing are managed by Mr. Larson with several employees.

On August 11, 2021, Dairy Farm Specialist I Seward was made aware that the Plew Farm Stand in Mount Holly was selling unpasteurized (raw) milk. On August 12, 2021, Seward informed Dairy Section Chief Flory of this sale and Flory dispatched Seward to the Plew Farm Stand to inspect this claim. Seward documented unpasteurized (raw) milk in the refrigerated storage cooler being offered for sale that was labeled as being produced by the Larson Farms LLC 661 South Street Wells, VT 05774 (Exhibit #1). Seward interviewed the Farm Stand operator who stated that the stand had been selling unpasteurized (raw) milk from Larson Farms LCC for 18 months.

On August 13, 2021, Flory sent a Stop Sale Notice via email and certified mail to the Larson Farm LLC informing the Farm of its non-compliance with 6 V.S.A. Chapter 152. 6 V.S.A. Chapter 152 § 2778 requires Tier II producers selling unpasteurized (raw) milk at a CSA or farm stand to provide notice to the Agency of Agriculture, Food and Markets that a CSA or farm stand will be selling the unpasteurized (raw) milk. This statutory provision went into effect on July 1, 2021. There was not a statutory provision allowing for such sale prior to July 1, 2021.

Mr. Larson responded to the e-mail by stating that he had meant to notify the Agency of the resale of the unpasteurized (raw) milk but had been busy haying (Exhibit #3). On August 13, 2021, Flory emailed Mr. Larson to inform him that the Larson Farm LLC must register with the Agency the farm stand's contact name, address, and hours of operation. Richard Larson emailed this information to Flory, but it took until August 16, 2021, for all information to be acceptable and final.

Flory provided information to all Tier Two unpasteurized (raw) milk producers of the change in the law that took place on July 1, 2021, including the requirement to notify the Dairy Section if unpasteurized (raw) milk would be resold by a CSA or a farm stand. The change was approved by the Vermont Legislature in the 2021 session and Mr. Larson testified to the need for this change to the House Agriculture and Forestry and Senate Agriculture Committees of the Vermont Legislature.

Mr. Larson testified that he understood the requirements of 6 V.S.A. Chapter 152 § 2778 that requires Tier II producers selling unpasteurized (raw) milk at a CSA or farm stand to provide notice to the Agency of Agriculture, Food and Markets that a CSA or farm stand will be selling the farm's unpasteurized (raw) milk. He acknowledged that he had failed to provide that notice due to haying requirements on his farm keeping him out of his office. Mr. Larson was adamant that Plew Farm Stand began selling unpasteurized (raw) milk in July of 2021 and not before. The individual owner of the Farm Stand – Pati Plew purchased raw milk from Mr. Larson prior to July 2021, but Mr. Larson assumed it was for her individual consumption and not for resale. He disputes the statement that Plew Farm Stand had been selling unpasteurized (raw) milk from Larson Farm LLC for 18 months. If the resale of unpasteurized (raw) milk from Larson Farms LLC was occurring at the Plew Farm Stand prior to July 2021, it was without his knowledge. Mr.

Larson testified that Plew Farm Stand purchases yogurt and fluid milk governed by 6 V.S.A. Chapter 151 and 6 ½ gallons unpasteurized (raw) milk governed by 6 V.S.A. Chapter 152 in the total dollar amount of \$150 per week.

Mr. Larson is working to grow the distribution of his products from Larson Farm LLC. He has a steady work force and was proud to support people in his community during the COVID 19 pandemic – many told him that his farm “fed them” when consumers were concerned to go to grocery stores during the pandemic. Mr. Larson feels that he complied with the majority of the requirements of 6 V.S.A. Chapter 152 except for the notification to the Agency of Agriculture, Food and Markets Dairy Section. As required, he provided the Plew Farm Stand with a sign stating the concerns of unpasteurized (raw) milk, required the farm stand to document sales and contact lists for people who purchased the product. These two lists are collected weekly by Mr. Larson. Mr. Larson admits he did not notify the Agency of Agriculture, Food and Markets Dairy Section as required and requests leniency from the proposed penalty.

Rationale and Conclusions

The Agency of Agriculture, Food and Markets documented violations of 6 VSA Chapter 152 by failing to provide notice to the Agency that a farm stand would be selling its unpasteurized (raw) milk. The Notice, alleging violations of 6 VSA Chapter 152 lack of notification for a period of (5) five days August 8 through August 13, 2021.

Violation Five (5) day sale of unpasteurized (raw) milk.

Based on the credible evidence and finding of fact provided by the Agency of Agriculture, Food and Markets Dairy Division, I conclude that the farm was out of compliance with 6 V.S.A. Chapter 152. 6 V.S.A. Chapter 152 § 2778 requires Tier II producers selling unpasteurized (raw) milk at a CSA or farm stand to provide notice to the Agency of Agriculture, Food and Markets that a CSA or farm stand will be selling the unpasteurized (raw) milk.

An Administrative Penalty of \$1,000 per day that is a violation of 6 V.S.A. Chapter 152. 6 V.S.A. Chapter 152 § 2778 requires Tier II producers selling unpasteurized (raw) milk at a CSA or farm stand to provide notice to the Agency of Agriculture, Food and Markets that a CSA or farm stand will be selling the unpasteurized (raw) milk, totaling \$5,000 is imposed.

Final Order

Violation Five (5) day sale of unpasteurized (raw) milk.

The farm failed to be in substantial compliance with 6 V.S.A. Chapter 152 § 2778 which requires Tier II producers selling unpasteurized (raw) milk at a CSA or farm stand to provide notice to the Agency of Agriculture, Food and Markets that a CSA or farm stand will be selling the unpasteurized (raw) milk. The farm failed to notify the Agency of Agriculture, Food and Markets properly for a period of 5 days.

The Agency determined the severity of the penalty due to the failure to notify as well as the claim by Plew Farm Stand that milk from Larson Farm LLC had been marketed at the Farm Stand for a period of 18 months. This claim is in dispute by Mr. Larson and the validity of this

claim was not verified further by either party. Mr. Larson admits knowledge of the requirement to notify the Agency of Agriculture, Food and Markets of sale of unpasteurized (raw) milk at a CSA or farm stand and his failure to do so promptly. **\$2,500 of this penalty will be suspended.**

A monetary penalty of \$2,500 is imposed. Mr. Larson is growing his business and must provide greater compliance with regulatory requirements of the State to maintain the ability to access markets. The requirements are to protect consumers and need greater attention from Mr. Larson. If Mr. Larson and or Larson Farms LLC, fail to notify the Agency of Agriculture Food and Markets, Dairy Section of any other CSA and or Farm Stands where the sale of unpasteurized (raw) milk from Larson Farms LLC occurs for the period of January 1, 2022 through December 31, 2022, a hearing will be initiated, and the suspended penalty will be reinstated, and any additional penalties will be heard.

A monetary penalty of \$2,500 is imposed at this time.

So Ordered: DATE: December 17, 2021.

Diane Bothfeld, Director of Administrative Services IV

Appeal Rights

6 V.S.A. § 15. Administrative penalties (e) Any party aggrieved by a final decision of the secretary may appeal de novo to the superior court within 30 days of the final decision of the secretary. The secretary may enforce a final administrative penalty by filing a civil collection action in any district or superior court.