

Testimony of Alec Dewey

Offered on Behalf of the Pennsylvania Association of Milk Dealers Regarding

July 2, 2018 Hearing Pertaining To The Possible Amendment to 7 PA Code 143.31

Hello. My name is Alec Dewey. I'm here on behalf of our family's business, Harrisburg Dairies, Inc. located right here in Harrisburg, PA.

I'd like to start by congratulating our two new board members Carol Hardbarger and Rob Barley. Thank-you for taking on these important leadership roles in our industry. We very much look forward to working with you both.

Harrisburg Dairies was founded by my great grandfather and his business partner in 1931 when raw milk and door to door delivery was the norm. In my 17 year career, I've held nearly every position our company offers to learn our business from the ground up, from every perspective. Today, my father serves as President with me as his General Manager.

We process, package, and deliver fluid milk from our 33 independent, local dairy farms. We consider them our business partners, friends and, in some cases, even family.

Our product is sold in 13 states from Connecticut to Mississippi. We serve all customer types including private label retail chains, like Whole Foods, large distributors, healthcare systems, food service companies and major public school systems, including those in New York City and Washington DC.

Our issue today is that of Producer Termination. In the last 87 years, along with our farm partners, we've weathered many storms and adapted to ever-changing times. While we remain open to change, the proposed increase from 28 to 90 days would negatively affect not just our company and others like it, but our entire group of farm producers.

A longer termination period is counterintuitive to our current business arrangements. Many of our customer agreements are non-contractual. For example: a school district can switch to a different dairy mid-school year if they choose to do so. Furthermore, most summer breaks for public schools systems are less than 90 days. Beyond that, our retail and distributor customers can go out of business, or switch vendors, with less than a week's notice.

In those situations, just making it through the current 28 days carrying any amount of surplus raw milk puts a tremendous burden on our company. Adding 62 days to that timeline, especially if it occurred during the summer months when our volume is typically the lowest, could be enough to jeopardize the health/future of our company.

Looking ahead, as the growth opportunities in our industry shifts toward higher volume, lower margin customers, that only amplifies the risk, shrinks the margin for error, and maximizes the damage caused by carrying excess surplus milk.

In our estimation, it takes approximately 4-6 tanker loads of sold milk to recover the losses of 1 dumped tanker of surplus milk. At that rate, if our company was in the unfortunate position of having 1 surplus load of milk per day for an extra 62 days, it would require the processing and sale of an additional 250-350 loads of milk to recover from that. I can say, for certain, that our company would simply not be able to survive that scenario.

Submitted on June 27, 2018

As recently as a few years ago, our company was in almost that exact situation where, due to a major customer going out of business heading into the summer months, we had a significant amount of surplus milk on our hands. At one point, we dumped as many as 12-14 loads of milk per month before we could adjust our milk supply and replace the lost sales. As I sit here today, I can honestly say that our company is still recovering from that time. Had we been forced to carry that amount of surplus for 90 days, that would surely have been the end of our 87-year family business.

That said, my purpose here today is not to campaign for pity for The Processor. As I mentioned before, we've weathered many storms over 87 years with our farm producers at our sides supporting us, and we expect to weather many more. The point to be made here, in my opinion, is that the health and future of our valued farm producers, *as a group*, is directly tied to the health and future of their market or processor.

My apologies for being rhetorical, but if we make a change to the Producer Termination requirement, in the interest of benefiting and protecting our farmers, that burdens and weakens their market, have we truly helped them?

While there is a hardship provision within the proposal, I hesitate to say that I view it as being helpful or effective in any of the scenarios I described previously. When a company like ours is struck with an unforeseen scenario of surplus milk, each additional day can make a tremendous difference. Every additional day added to a surplus situation while requesting and waiting for a hearing to justify a hardship, only makes the hardship worse and puts our remaining farmers at greater risk.

We have never had contracts with our farmers and we do not wish to. Nor can we be sure that our farmers would be willing to change generations of operating based on a handshake. But, for plants that have or are able to enter into contracts with their producers, as well as cooperatives, for a shorter notice period, the regulation should allow for that as it allows for contracts between producers and their coops. Although that might be a way to minimize the negative consequences of the proposed regulation, it could change the way we do business and could put some of our current farms at risk as it would be more efficient to switch to a more flexible milk supply.

Furthermore, we also do not tell our farmers how to run their businesses. We don't limit what they can produce. When they have opportunities to grow or expand, we support them. We simply ask them to be consistent and communicate their intentions, but we don't put caps on their production. The proposed termination requirement change would force us to forget about that trusting and respectful relationship that has existed for generations, and bring about a situation where we're forced to micro-manage each farms ability to grow or operate in order to protect ourselves from unwanted surplus.

Another reason not to change the current regulation revealed itself recently. When a number of Lancaster farmers were laid off by another processor earlier this year, we were able to pick up nine farms. I can sincerely say that we would have been unlikely to have taken on that risk if we were subject to a 90 day notice requirement.

In the end, over 87 years, we've relied heavily on that trust and respect with our farmers to get us through the highs and lows of our industry. In our opinion, adding unnecessary or excessive requirements or limitations such as the one proposed here today only weakens that relationship and erodes that trust and respect in a time when we need it more than ever.

Thank you for your time and the opportunity to speak before you today.

Testimony of Todd Rutter
Offered on Behalf of the Pennsylvania Association of Milk Dealers Regarding
July 2, 2018 Hearing Pertaining To The Possible Amendment to
7 PA Code 143.31

Good morning,

I am Todd Rutter, President of Rutter's Dairy in York, Pa. Rutter's employee 125 people and last year we purchased over 10 million pounds of milk from PA farmers. We sell our products in PA, NJ, MD, WV, and DE. I am here today representing the PA Milk Dealers Association.

I fully understand the pressure on everyone to find the magic silver bullet that will solve our current over supply issue in the PA milk industry. But I'm not sure I can see the effect changing the 28 day notification period will have on curbing production volumes.

Up to this point, for better or worse, the 28 day notification period has really been used only when milk sales have eroded beyond our ability to market the surplus in order to control one's incoming raw milk supply to better fit the needs of the plant. Basically, a supply management tool.

We currently don't really have any other method to help us align the supply with our sales. I know I have used it in the past, most recently in 2016, for this exact reason. I am not aware of plants just randomly sending out 28 day termination notifications to their farmers for something to do. We work too hard to get the best farmers with the best quality milk to be our suppliers to just randomly let them go. Those of us that ship out of state also have to work really hard with our farms to be able to pass the FDA IMS inspections. It would be interesting to find out the exact number of PA farms that go through an IMS inspection versus those that do not. Since we have such a small number of farms in our BTU, almost all of them get inspected every time. This takes a lot of work and effort on both our parts.

As much as I talked to our farmers in 2015 and 2016 about holding their production flat, the numbers kept increasing month over month. They would tell my field man they were unwilling to cut back production and they hoped that if someone had to be let go it wouldn't be them.

The big difference back then was that the Co-Op's were eager to take the farms and they had a new market within 10 days of getting the notifications. I am not blaming the Co-Ops for the current situation. I guess the rest of us didn't ever think that there would come a day when the Co-Ops would not take on new farms.

It's not getting any better just yet. Year to date through May, my farms are 1.4% ahead of last year same time period and we have one less farm. If a farm has to go out of business and that farm sells their cows to other farms who then milk them we are not decreasing the overall milk supply.

The surplus problem at the fluid plant stems from increasing production per farm. Whether that is more milk per cow or more cows on the farm, if sales are flat or decreasing more incoming milk will create an oversupply issue. I get the farm economics, Farmer thinks I need to produce more milk when the price is low to get the same gross amount in my check each month. This combination is compounded when there is the loss of a significant customer or many small customers and often that is what makes termination of a few farmers to balance the plant and the market for the majority of farmers necessary.

Submitted on June 27, 2018

This is where the practical challenges arise in changing the 28 day notification period. Our customers, and I define customers as retailers, schools, school food service companies, state buyers, federal buyers, and everyone else, rarely give us more than an average of 21 days notification.

Most schools and school food service companies give 30 days' max notifications. Rutter's generally doesn't hear from our schools until the first week in August when schools start the second or third week in August. Retailers generally give about 14 to 21 days' notice of their intentions. In this very tough environment, we've made deliveries to customers on Friday and go back Monday to find them closed and out of business. Even the PA State milk bids are only awarded 14 days in advance of starting or ending.

If the 28 day notification is the only practical option we have for balancing our independent milk supply against demand and it is changed to 90 days and PA can't mandate how much notice our customers give to us, this could create an oversupply issue for an additional 62 days. If there were adequate balancing opportunities for this surplus milk it might not be such a difficult burden.

In a time when milk sales were increasing, I agree most plants could absorb the extra volume from a lost customer or they would gain a new customer to offset it and the 90 days would have been no big deal. But we are not in those times and milk sales are projected to be under continued pressure. So we as businesses need more flexibility not less.

The hardship provision in the proposed regulation 143.31 (c) is over burdensome and too arbitrary. Can the Board really schedule a hearing and all parties be ready for a hearing in less than 90 days? If this is the only way to shorten the notice period, it would need to be more defined as a few concrete accounting items established that are the parameters. And then it should allow the Board staff to make the decision immediately if distress is indeed proven in one of more of these things. If a Dealer is in financial straits, time is of the essence for all concerned parties. And if the situation is that severe, it won't matter what your regulation states anyway. Business needs less governmental red tape not more and in my opinion in this case the 90 day rule puts producers at more risk than less risk.

I also think a dealer should have a right to waive the 90 days if they so choose when a producer gives them notice to make it effective at a sooner agreed upon date. If a farmer wants to leave me and I'd be happier if they left, why wait 90 days to make both parties happy?

I also think that the proposed section 143.31 (d) should be amended to include contracts between producers and Dealers as well as cooperatives, but I urge the Board to understand that such a revision would not be a cure all.

I think PA citizens truly enjoy driving around the commonwealth and seeing small to medium large farms dotting the countryside. I do not think PA citizens are ready to drive around and see 5-10,000 cow feed lots instead. With its farms and plants spread out all over the State, PA dairy is very well positioned to be able to capitalize on the Fresh and Local wave that is helping consumers make their purchasing decisions.

Thank you for your time today.