

PA Milk Marketing Board
Carol A. Hardbarger

The Hidden Cost of Breaking the Law

There are laws that seemingly have no consequences to anyone when they are violated, e.g. driving five miles over the legal speed limit. However, some laws when violated can cause harm to individuals and communities.

Take for instance, the part of the Pennsylvania Milk Marketing Law that requires that all milk sold in the commonwealth must be sold at PA minimum prices by area and type of milk. No waivers or exemptions are made for milk sold as part of a federal commodity-buying program. Since January, board staff have been dealing with instances of below minimum bids by several companies for sales to USDA for The Emergency Food Assistance Program (TEFAP).

TEFAP is a program operated by USDA that purchases large quantities of fluid milk and other agricultural products from various producers and processors. Deliveries are made to state distributing agencies across the country including in the commonwealth. The amount allocated to each state depends on numbers of people unemployed as well as the numbers of persons living below the poverty level.

In Pennsylvania, TEFAP is administered by the PA Department of Agriculture.

Board staff became aware of bidding violations when a complaint was filed by a vendor that had bid at minimum prices but lost an award to a processor that bid below minimum. Upon investigation, we issued a citation and warning, and immediately sent out a bulletin that reinforced the stipulations of the law.

Within a month, and a new award cycle—contracts are awarded quarterly—there was another violation by another processor. That processor was asked to withdraw the bids, which it did, and was told that the PA contracts would be rebid and awarded to others. The specific contracts covered in this cycle were for the period April through June of 2021.

On the surface it may appear as if the violation only affected the underbidding vendor, and only that vendor suffered consequences of its actions. That, unfortunately, was not the case. By USDA regulations, there were no contracts for April, meaning that only May and June would be rebid and awarded, and no TEFAP milk deliveries would be made to the relevant area food banks in April.

To put this into perspective, the Central PA Area Food Bank distributes food to local food pantries in 27 counties and serves over 200,000 individuals each month; individuals and families are served by the food bank through food purchased by USDA, some of which is TEFAP funding. (Note that TEFAP is not the only source of funding for food bank donations or purchases.)

Our board chair, PDA personnel, and others received phone calls and email messages from food bank officials who were understandably upset that they would not receive any fluid milk deliveries for the month of April with the potential to leave thousands of individuals and families without wholesome dairy products including fluid milk, butter and cheese.

Fortunately, I was able to contact the PA Association of Milk Dealers (PAMD) and one of its member dairies located in the central region was able to donate a truckload of milk, one-half to each of the two distribution sites run by the area food bank. This donation, which was very much appreciated by the board and staff, ensured that at least some of those individuals and families that depend on local outlets for much of their nutrition would not go without milk for a month.

After breathing a sigh of relief—we felt certain we would not have to deal with this issue in the near future—we learned recently that additional violations occurred as part of the July through September 2021 contract awards and we would once again have to be involved. We asked the vendor to withdraw the bids and the potential for the food bank to miss at least a month's milk delivery (maybe multiple months) is a very real possibility.

Neither board members nor staff enjoy being in this situation, but also know that the only way to combat this problem and be certain that awards are made fairly to bidders under our state law is to monitor and regulate the process. PA processors have the right to bid on the TEFAP contracts, all are required to bid at PA minimum, and USDA should have a policy in place to assure that the awards are fair and non-biased in any way.

When our Milk Marketing Law is broken, there are situations in which the consequences can be severe and harm those who are most vulnerable. The situation with the TEFAP awards is one example.

PMMB is always available to respond to questions and concerns. I can be reached at 717-210-8244 or by email at chardbarge@pa.gov.