

Liability for Milk Cleanliness — Tanker Truck Transportation of Milk

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(June 2001)*

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Introduction

The dairy industry is Pennsylvania's largest, and one of the most important agricultural industries. Dairy farms across the state produce many tons of raw milk each day, and this milk obviously needs some way to get to market and eventually our kitchen tables. Milk, however, is a very delicate commodity that if improperly handled, can spoil quickly, and potentially lead to sickness among consumers. Because of this, the processing, handling and transportation of milk is regulated by statutory law in the state of Pennsylvania. The purpose of this article is to explore Pennsylvania law regarding the transportation of milk from a farm to a processing center in a milk tanker truck. Of particular concern is who bears the legal liability if otherwise clean milk (free of bacteria) is pumped into a tanker truck and then tests high for bacteria after being loaded into the truck?

The testing of milk before and after the milk is loaded into a tanker truck is controlled by statute in Pennsylvania. Note that the statute sets the minimum requirements for milk sanitation and testing, and individual contracts between dairy farmers and tanker truck operators may contain more specific requirements regarding milk testing and responsibility for spoiled milk at the various stages of milk processing and transportation.

Chapter 59 of Title 7 of the Pennsylvania Code is titled, "Milk Sanitation." The *Law* is quite long and it is imperative that farmers know it well. The following definitions are relevant to the topic of this article:

Definitions

1. **Acceptable Milk** — Milk that qualified under § 59.502 as to sight and odor, and that is classified No. 1 or No. 2 for sediment content and No. 1 or No. 2 for bacteria estimate.
2. **Approved Sampler** — A person certified by the Department to obtain samples of milk or milk products for analysis by a Pennsylvania approved laboratory.
3. **Bulk Milk Pick-Up Tanker** — A vehicle, including the truck,

tank, and those appurtenances necessary for its use, used by a milk hauler to transport bulk raw milk for pasteurization or for manufacturing purposes from a dairy farm to a transfer station, receiving station, or milk plant.

4. Bulk Tank Unit — A specified group of dairy farms from which milk for pasteurization or for manufacturing purposes is collected by a milk tank truck.
5. Cleaned In Place — The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation.
6. Dairy Farm — Any place where cows or goats are kept and from which a part or all of the milk is sold.
7. Department — The Pennsylvania Department of Agriculture.
8. Designated Inspector — A Pennsylvania approved inspector who has been certified to inspect dairy farms on which milk is produced for an interstate milk shipper.
9. Milk Distributor — Any person who offers for sale any milk or milk product.
10. Milk Producer — Any person who operates a dairy farm.
11. Milk Tank Truck — A bulk milk pick-up tanker or a milk transport truck.
12. Milk Transport Tank — A vehicle including the truck and tank used by a milk hauler to transport bulk shipments of milk from a transfer station, receiving station, or milk plant to another transfer station, receiving station, or milk plant.
13. Permit Holder — A person holding a permit issued by the Department to sell milk or milk products.
14. Transfer Station — Any place where milk or milk products are transferred directly from one milk tank truck to another.
15. Weigher/Sampler — A bulk milk pick-up driver or a milk plant person certified by the Department to take samples of producers' milk for chemical and bacteriological analysis.

§ 59.32 — Sampling and Examination

This section of the *Milk Sanitation Law* sets forth the requirements for milk sampling and examination, and contains relevant subparts with regard to tanker truck transport of milk. To begin, the section mandates that the testing required by the section shall be the responsibility of the permit holder. Part (c) of the section says that it shall be the responsibility of the weigher/sampler (the bulk milk tank truck driver) to collect a sample of milk from each farm storage tank prior to transferring the milk from the storage tank into the tanker truck. The samples that are collected must be delivered to a milk plant, receiving station, transfer station, laboratory or other location approved by the

Department. Therefore, there should be an official milk sample taken from the dairy farmer's milk storage tank before any milk is transferred to a potentially dirty tanker truck. This sample should be available for proof that the farmer's milk was clean and free of bacteria before the milk was transferred into the truck.

Part (d) of the section mandates that at least monthly, one sample of milk must be taken from a producer (dairy farmer) by an approved sampler. If the farmer's milk storage tanks are clean and his milk is free of bacteria, these test samples should validate this. The record of these tests should provide further evidence that a particular dairy farmer's milk is clean in the event that a farmer is held liable or accused of producing "contaminated" milk because the bacteria levels tested high after the milk had entered the tanker truck for transport. In addition to part (d)'s requirement of monthly tests to be obtained from the dairy farmer, monthly tests are also required to be conducted at the milk plant after the milk is received from the tanker truck deliveries. If the milk tests positive for an unacceptable level of bacteria at this point, and the tests conducted at the dairy farm previously did not, this should be proof positive that the tanker truck, or some other handler is responsible for the contaminated milk and should, therefore, be liable.

It is true that oftentimes a tanker truck may pick up milk from more than one farm before ultimately arriving at the processing plant. This results in what the statute terms "commingled milk." Once milk from several different farms is mixed, it will obviously be impossible to tell the source of the bacteria should the milk later test within the unacceptable range for bacteria. However, it seems that the sampling requirements that the statute mandates should hold as evidence of the cleanliness of milk from a particular dairy farm. The only statutory problem that might possibly arise with regard to the liability of a particular dairy farmer is the duration between testing. The statute mandates monthly testing, and this may not be frequent enough testing to assure that no bacteria growth has occurred on a particular farm in the interim. The only solution to this might be for individual dairy farmers to go above and beyond the statutory requirement and test milk on his or her own more frequently. This may create added costs for the farmer, but it would save the costs of being found legally liable for maintaining a "dirty" milking operation, which could ultimately lead to action under the punitive clause of the *Milk Sanitation Law*.

Duties of Milk Handlers

The *Milk Sanitation Law* includes a myriad of requirements that must be followed for anyone that handles milk. Dairy farmers are required to use sterile equipment, clean equipment at mandated intervals, to have hand washing facilities available, to store equipment in sanitary and sterile ways, and to maintain clean milking parlors and areas for the cows to eat and sleep. By following the strict mandates of the *Sanitation Law*, dairy farmers can help to insure that their ultimate product will be as clean and free of bacteria as is possible.

The *Milk Sanitation Law* also contains many stipulations that milk transporters must follow. § 59.120 is titled, "Vehicles" and includes the following:

- Vehicles used to transport milk shall meet the following requirements:
 1. Vehicles used to transport milk from the dairy farm to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing and **contamination**.
 2. Vehicles shall have bodies with solid enclosures and tight, solid doors.
 3. Vehicles shall be kept clean, inside and out,
 4. No substance capable of **contaminating** the milk shall be transported with the milk.

§ 59.212 furthers these requirements by stipulating that all milk tank trucks be thoroughly cleaned and sanitized at least once each day of use. In addition, this section mandates that whenever a milk tank truck has been cleaned and sanitized, there must be a tag attached to the manhole lid and under the dust cover showing the tank identity, date, time, place and signature of the employee or contract operator doing the work. The tag must be removed at the location where the tank truck is next washed and sanitized, and is kept on file for at least 15 days for review by the Department. This clearly would help a concerned dairy farmer track down a suspect tanker truck if he or she thinks that truck is responsible for contaminating the milk. § 59.212 continues with specifics regarding the bacteria counts acceptable after washing milk tanks has occurred. The section is very detailed and includes scientific charts that plot time, temperature, concentration of NaOH and bacteria levels.

§ 59.303 continues the requirements placed on milk haulers by mandating that no milk hauler or distributor shall transfer milk or milk products from one container or milk tank truck to another on the street in any vehicle or in any place except a milk plant, receiving station, or milk house especially used for that purpose. Further, milk tank truck drivers are prohibited from dipping or lading the milk when it is on the truck.

Conclusion

In conclusion, there seem to be enough statutory mandates in the *Milk Sanitation Law* to protect dairy farmers from facing liability for producing and selling contaminated milk. If the testing mandates found in the *Law* are being followed in Pennsylvania, farmers should have enough proof on file to prove to the Department of Agriculture that they are operating clean dairy farms. In sort, dairy farmers should take all steps possible to insure the safety and sanitation of the milk they produce. If a dairy farmer knows that he is operating a clean farming business, and his test results are consistently within the statutory allowances for bacteria, any later testing of the milk that turns out unacceptable must be the fault of either the tanker truck or some other handler in the chain of milk processing, and compliance with the *Milk Sanitation Law* should go far in insulating a dairy farmer from being found liable for producing a bad product.

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