

September 27, 2008

Dear Governor Schwarzenegger,

So that there can be no further confusion on the topic, let me first, as an owner and President of Claravale Dairy, state our position on the bills in question. 1) We are absolutely and unmitigatedly opposed to the recently enacted coliform standard for fresh milk (bill 1735). This standard was enacted with no supporting research on its appropriateness. This standard will not and has not increased public safety, and will eventually result in the failure of our dairy. 2) We are absolutely and unmitigatedly in support of bill 201. This bill establishes appropriately stricter regulations for fresh milk that will increase public safety and product quality in a way which allows small farmstead producers to remain in business.

A very frustrating aspect of this entire process has been the regular misrepresentation of our position and our test results by the CDFA and the propensity of people to believe the CDFA's statements of our position over our own position statements. In the past they have stated that we were in favor of the coliform regulation when in fact we never have been. They have stated that we were in compliance with the coliform regulation before it was enforced when we never were. They state that we are easily complying with the regulation now when we are not.

For the reasons stated above, and others detailed below, I believe that the CDFA is being disingenuous on this topic. Their introduction of bill 1735 and their opposition to bill 201 has nothing to do with public safety but rather is an attempt to outlaw fresh milk in California. At any rate, you cannot trust the CDFA to give an accurate account of our position on the laws or on our test results.

Since the enactment of the coliform bill we have regularly been a single failed test away from having our milk degraded and losing our dairy and our home. To the CDFA, being on the verge of failure and disaster is the same as being in compliance. Here is their rationale (with the tests exaggerated a bit for clarity): If the regulation is that you have to fail 999 tests out of a thousand to be degraded and you have only failed 998 tests then you are still in compliance. If you are the CDFA, and not only don't care if fresh milk is available but would rather see it go away entirely, then everything is fine. If you are a producer or consumer of fresh milk, then of course the position is untenable. Eventually that last test is going to show up over the level and the dairy will be out of business. The coliform standard for fresh milk is a three out of five test. This is why the CDFA can say that we are in compliance with the regulation while we are regularly failing the tests. Since the beginning of the enforcement of the coliform standard we have periodically been on the verge of a degrade, failing two out of four tests. Again, eventually we are going to fail three out of five tests and we will be out of business. As I sit here and write this we are once again on a two out of four notice on our nonfat milk. Sometime in the next week the inspector is coming for the next sample. If we fail it, our milk will be degraded and we will go into a negative cash flow. We are a small business with a small profit margin, no reserves, and a lot of debt since we just built a new facility. Just being degraded for a couple of milkings each month will be enough to put us in a downward

spiral. For us, it is not just the loss of profit we are talking about. If we dump milk we still have all of the expenses of feeding and milking the cows and bottling the milk. In addition, there is the expense of dumping the milk. At present, we have no facilities or methodologies for dealing with thousands of gallons of waste milk. All that I can think of doing with it is putting it in a big pond and I doubt that the county would let us do that.

I expect that the point at which we go out of business will be this winter. Bacterial counts on all dairies go up in the winter time. If we are on the verge of failure now, then we will fail in the winter.

There is another aspect to this that should not be overlooked. The CDFA has a vested interest in our being able to comply with this regulation. Reputations are at stake. Careers are at stake. Power and money are at stake. The fact that they try to force us into the poster child position for the coliform standard when we really don't fit makes me nervous. If we are able to comply with the standard, then they were right and are heroes. If we fail, then they were wrong and royally screwed up. I don't think that there is any way that the CDFA is going to allow us to fail to meet this new coliform regulation while bill 201 is still in play. The CDFA has already demonstrated a willingness to bend the truth. They have already outright lied to the legislature and the public about bill 1735 in order to get it passed in the first place. It's a question of where they draw the line on factual misrepresentation.

Once the alternate legislation (bill 201) is defeated, the CDFA can simply wait for us to fail, or they can speed things up simply by sampling at the store rather than the farm which the law allows them to do. Even at relatively low temperature, bacteria multiply. Bacterial levels are a matter of time as much as anything else. If the milk barely passes at the dairy it will not pass at the store. The milk is in sealed containers so it is no less sanitary than at the dairy; no dirtier; no more of a health threat. It simply has more harmless coliform bacteria and will not conform to the standard. This is the method that officials used to destroy Alta Dena dairy, a major raw milk producer in L.A.

One of the reasons that I think that the purpose of the coliform regulation is to eliminate fresh milk, and that the CDFA expects us to fail, is that they keep telling me what I can do when that happens. Here are a few of their suggestions: I can sell in bulk to other processors; I can pasteurize; I can make other products (e.g. cheese); I can heat the milk to just below pasteurization and lie to our customers by telling them that it is still raw; I can build a state of the art "Berkeley Farms" style plant which will be cleaner. There are a lot of things wrong with this situation. Here are three of them: 1) we don't want to do other things. We believe in consuming high quality, fresh and natural, honest foods, that are ethically produced and that is what we supply to our customers. We do not agree with conventional dairying and we do not want to be a part of it. Fresh milk is legal in California and we should be allowed to produce it without burdensome and unnecessary restrictive regulations from the state. 2) No we can't do these other things even if we wanted to. We are a small isolated dairy. We can't sell milk to other processors. Even if we could, we wouldn't get enough for it to stay in business. We just spent every cent we have plus a lot more to build a new fluid milk plant. We do not have the \$500,000 to \$1,000,000 it would take to rebuild our facility to produce other products. We certainly do not have the millions to billions it would take to build a plant like Berkeley Farms.

This is the classic disconnect between business and government. They simply do not understand the consequences of their actions. Nor do they really care. For them there is no problem. All we have to do is pull another \$500,000 to several million dollars out of our ass and abandon our morals and ethics and everything will be all right. It works for them, why wouldn't it work for us? In the state bureaucracy, success is determined by how much money you can spend. In business it is determined by how much you generate for yourself and others. 3) It is not appropriate for the state to try to make business decisions for me. Given that they have never run a dairy or a business, it is absurd.

Even though the coliform regulation, according to experts in the field, will do nothing to increase public safety, I can understand why politicians, for appearances, do not want to oppose it. What I can not begin to conceive is how the CDFA and politicians, who regularly express their concern for public safety, can oppose legislation (bill 201) which would impose stricter standards which would actually significantly increase public safety and ensure a high quality product as well. HASAP programs are the current standard in food safety. Experts in the field, including experts within the CDFA, regard bill 201 as being more effective in assuring public safety than the coliform regulation. Many conventional dairy plants already have HASAP programs in place. The reason that the CDFA is so opposed to the HASAP approach with respect to fresh milk is that they are afraid that it will actually work. That it will allow fresh milk producers to stay in business while assuring the safety of the public. This is the problem. The CDFA is so obsessed with the outlawing of raw milk that they are actually putting the public at greater danger by opposing more effective legislation.

The thing about the coliform standard which I find most telling is that there was absolutely no research done by the CDFA (by their own admission) on what reasonable or safe levels of coliforms are or whether coliform bacteria were even appropriate indicators of public safety. They simply lifted the standard from other regulations where the test was designed to deal with things other than human safety. Experts in the field state that coliforms are not dangerous but beneficial. That they are in no way associated with pathenogenic bacteria, and that they are not useful as a measure of food safety. The coliform standard does not contribute at all to public safety but merely makes fresh milk more difficult to produce. A classic example of a governmental regulation which does nothing but make it harder and more expensive for business to operate. The other week we were on the verge of having our milk degraded because one of our samples had 12 coliform per milliliter rather than 9. Milk with 12 coliform/ml is going to be among the cleanest milk in the state. With bill 1735 we have the absurd situation that the highest quality, freshest, cleanest milk in the state, which is proven to be free of pathogens (because it is also specifically tested for pathogens) will be dumped because of an arbitrary regulation which has nothing to do with public safety.

Some time ago, the State of California decreed that fresh milk had to have a warning label on the bottle informing people of the health risks from pathogens associated with fresh milk. Every bottle of our milk carries this label even though no one has ever contracted these pathogens from our milk. This was supposed to put an end to the controversy around fresh milk because everyone would be fully informed of the dangers. The CDFA had done its duty; the public was informed of the dangers. (Interestingly, foods from which people regularly contract these pathogens (meat, fish, eggs, produce)

are not required to carry this label.) No one buys fresh milk accidentally. Our customers are fully aware of what they are doing. They seek the product out on purpose. Our customers are well informed and typically know more about fresh milk than the CDFA. This is a freedom of choice issue. We want to sell it. Informed people want to buy it. There is really no legitimate place for government intervention in the transaction.

The trend in foods these days is toward local, fresh, and natural. This is why people buy our milk. People want farmstead milk. Our customers do not want factory milk. Fresh, farmstead milk is legal in California. Obviously the CDFA oversteps its bounds if it devises regulations that make the production of farmstead milk impossible. Regulations concerning fresh milk must protect the public safety while allowing for farm production. Bill 1735 definitely does not fulfill this requirement. Bill 201 allows for farmstead production while actually having stricter pathogen and product quality standards. It is better for consumers as well as producers. It is a much better bill and one that fully addresses the stated concerns of the CDFA.

I hear concern about what the role of the CDFA will be if bill 201 passes. What will be their authority? Here are my thoughts on that. 1) With respect to fresh milk the CDFA has lost all trust. There is no doubt in my mind that they have a personal antagonism against fresh milk and want to outlaw it in the state. The devious and underhanded way that they got bill 1735 passed, the misrepresentation of the facts concerning our dairy, the inability of the coliform standard to perform the stated task, their opposition to bill 201; all of this points to an ulterior motive. I don't trust them to regulate the fresh milk industry and neither do our customers. 2) The CDFA knows astoundingly little about fresh milk and they do not want to learn. The CDFA believes that fresh milk is dangerous and that no one should drink it. They think that anyone who would drink it is crazy. The atmosphere in the department today is such that if anyone voices the opinion that people have a right to drink fresh milk their career is basically over. Fresh milk is legal in California. The CDFA doesn't think it should be. How can they possibly effectively regulate it? 3) Even with bill 201 the CDFA will have authority over 99.999% of the dairy industry. I don't think having less control over fresh milk will make much of a difference.

Sincerely,
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