



Food Freedom Under Attack in Minnesota

by Pete Kennedy, Esq. | June 23, 2010

For the past month, the Minnesota Department of Agriculture (MDA) has been working to erode the freedom of the state's residents to obtain the food of their choice from the source of their choice, particularly raw milk. Through various enforcement actions taken since the last week in May, MDA has created a chilling effect on the exercise of basic rights by consumers to purchase the foods they believe best for the health of their families. Likewise, MDA's actions have shown little regard for rights of farmers guaranteed by the Minnesota Constitution to sell the products of the farm direct to consumers.

MDA's first enforcement action occurred on May 26 when officials from MDA and the Minnesota Department of Health (MDH) along with the Sibley County Sheriff and eight armed deputies set foot on the farm of Mike and Diana Hartmann to execute a criminal search warrant. The officials were at the farm for more than six hours and embargoed (i.e., ordered the Hartmanns not to sell existing inventory) thousands of dollars in meat and dairy products as well as ordering the Hartmanns to discontinue the sales of any product whose production, processing or sale was not in compliance with applicable law, including an order that the Hartmanns cease delivering raw milk and that they only make occasional on-farm sales to consumers.

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The reason MDA and MDH obtained the search warrant was that the agencies suspected raw milk produced at the Hartmanns' farm was responsible for three cases of illness from *E. coli* O157:H7. When the officials were at the farm, they collected samples of various dairy products as well as fecal samples from the farm animals for testing. According to an MDH press release issued the same day the warrant was executed, the department was investigating a cluster of four *E. coli* O157:H7 illnesses that all have the same DNA fingerprint, with three of the four cases reporting a link to raw milk from the Hartmann farm. A subsequent MDH press release issued on June 3 stated, the "strong epidemiological link [to Hartmann Dairy] is now reinforced by the laboratory confirmation that the specific strain of *E. coli* O157:H7 found in the ill patients has also been found in multiple animals and at multiple sites on the Hartmann Farm." In a press release issued shortly afterwards on behalf of the Hartmanns, it was pointed out that MDH had not found the matching strain of *E. coli* O157:H7 in any of the food samples tested.

On June 16, MDA officials raided the Hartmann farm a second time. By this date, MDA had concluded that eight people had become ill consuming the milk produced at the Hartmann farm. This time the officials not only embargoed additional meat and dairy products but also issued the Hartmanns an order requiring them to stop the sale of all food products except eggs and poultry processed at a state-inspected plant. The officials also ordered the Hartmanns to keep records on the "quantity and use date" of any of the embargoed food they removed for their personal consumption. Overall, the agency issued the Hartmanns twenty-six (26) orders for the farmers to comply with, including one for the farm to register with the FDA as a 'food facility' per the federal Bioterrorism Act. When the agents left the farm, they took financial and processing records as well as the Hartmanns' computer hard drives.

The day before the second Hartmann raid, officials from MDA and the Minneapolis Health Department paid a visit to the Traditional Food Warehouse (TFW), a store featuring foods made by local small-scale producers that is open only to members of a private buying club. After being in the

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store for about one and a half hours, the officials who were accompanied by a city policeman went to the store manager and informed him that either he could close the store on his own or the officials would do it for him. Before the manager closed the door, one of the buying club members reminded him that he had the right not to answer any questions the officials asked him. One official asked to see the member's I.D.; when she refused, the official asked the policeman to request her I.D. When the policeman asked for her I.D., she declined and left the store. At that point, the MDA official in charge of the group asked another agency official present to take pictures of the member and her car as well as taking down her license plate number.

There had never been a complaint filed against the warehouse nor had there ever been any allegation that food purchased at the warehouse had made someone sick.

After the patrons had all left the store, the officials conducted an inspection and wound up embargoing every single food product in the store. MDA left an inspection report with one of TFW's owners which contained an order prohibiting the store owner from reopening until a license had been obtained from the Minneapolis Department of Health. The question for MDA is: why did the agency have to resort to this type of enforcement action and treat TFW like it was a criminal enterprise? TFW had made no secret about its existence; since it opened in September 2008, the *Minneapolis Star-Tribune* has run two major stories on the warehouse. It is not possible for MDA to have been unaware of it. There had never been a complaint filed against the warehouse nor had there ever been any allegation that food purchased at the warehouse had made someone sick. MDA could have made its position on the licensing issue known to the TFW owners without having to embargo every food product in the warehouse.

As uncalled for as was the MDA enforcement action against the Traditional Foods Warehouse, it pales in comparison to the action the department took against a family whose private residence in the Twin Cities area MDA discovered was being used as a distribution point for products from the Hartmann farm. When MDA officials raided the Hartmanns' on May 26, they obtained a list of drop sites for the distribution of the farm's products that led them to obtain a criminal search warrant against the family.

The warrant stated,

. . . the Court finds probable cause exists for the issuance of a search warrant upon the following grounds:

1. The possession of, particularly the sale or distribution of raw, unpasteurized milk or milk products and the packaging or sale of other food products at a home, the property above-described constitutes a crime;
2. The property above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.

The Court further finds that probable cause exists to believe that the above-described property and things are at the above-described premises.

On June 10 two MDA officials, two city government officials and three plain clothes policemen descended on the family's residence. Here is the wife's account of the seven entering her home to execute the warrant:



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A friend of our family's daughter was married Wednesday night, June 9th. We got to bed late and decided the boys could sleep in the next morning; we have three boys at home right now, ages 20, 17, and 14. My husband and I, at about 7:15 a.m., received a call from our 4th son who lives out of town. At 7:30 a.m., we went down to our sunroom or sanctuary, as we call it, to pray for the events of the day. I proceeded to go back upstairs about 10 minutes to 8:00 to take a shower.

My husband, I was told later, met the seven unexpected visitors outside. This woke up our youngest son. He came into my bathroom to tell me that people were here from the State. It must have been just a few minutes after 8 a.m. when I heard heavy footsteps coming up the stairway and down the hall. With hair dripping wet, I threw on some clothes and was met at my bedroom door by my husband and two or three large men (these were plain clothes officers from the city police department.) They allowed me to towel dry my hair, watching all the while. The other officers went into my children's bedrooms, waking them, telling them to get downstairs into the kitchen.

One of my sons asked if he could put on a shirt and one of the police officers responded, "Just get down to the kitchen." I walked downstairs and saw four people peering into my refrigerator (three women and one man: all of whom I had never seen before). My husband explained who they were – the visitors took it from there and quickly introduced themselves. Two from the Ag department; John gave me his card the girl didn't have one. Two from the city--names were rattled off so fast and only Lynn had a card. I believe one police officer told me his name and that he was the person in charge; but I never received the other officers' names. They were in our home for over two hours.

The only thing the family did for the Hartmanns was to let someone from the farm park at their home so friends could conveniently stop by to pick up farm products. The family neither handled money for the Hartmanns nor distributed any of their products. Nothing produced by the Hartmanns was kept in the family's refrigerators or freezers other than products for their own use. The only other thing the family did for the food pick-up at their house was to buy food products at bulk discounts that they redistributed to their friends. All products picked up at the residence were pre-ordered.

Before executing the search warrant, MDA had sent an official to interview four neighbors of the family who pick up food at the drop-site. One neighbor who was interviewed called the wife and said she feared for her.

When the officials were conducting the search, they asked the family to give them product from the Hartmann farm that the department would test for *E. coli* O157: H7. The family felt it had no choice and gave them a container of raw milk and a pound of hamburger. The officials offered to pay for the food but the family refused to accept any money.

While the search was taking place, the wife repeatedly asked the officials if she were doing something wrong. Their response was that it was wrong to let the Hartmanns use their driveway to distribute their products. This was the "crime" that convinced a judge to issue a warrant so government officials could violate the sanctity and privacy of a home.

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The official who has been the driving force behind these recent enforcement actions is John Mitterholzer, whose title is Food Standards Compliance Officer in the Dairy and Food Inspection Division of MDA. Mitterholzer was the official who was in charge of the “inspection” at the Traditional Foods Warehouse and the search of the private residence. He is a long-time nemesis of the Hartmanns. Mitterholzer led an enforcement action against the Hartmanns that turned into a case that went all the way up to the Minnesota Supreme Court in 2005.

The Minnesota State Constitution has a provision which states, “any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.” Until the Hartmann case, the MDA had interpreted this provision to cover only the sale of produce. The Supreme Court disagreed and held that the Hartmanns could sell meat from animals raised on their farm. Moreover, the Court ruled that “the language of the provision extends its protection to all products; the only limitation is that the farm or garden must be occupied and cultivated by the seller.” In attempting to crack down on the off-farm distribution of raw milk, MDA is relying on a statute in the state dairy code which provides that raw milk and cream can only be “occasionally secured or purchased for personal use by any consumer at the place or farm where the milk is produced.” The statute, however, is written from the standpoint of the consumer, not the farmer. The provision in the state constitution has no limitation on how much can be sold nor on where the sales can take place.

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It is crucial that the constitutional provision be upheld. The farms of most raw milk producers are fifty to a hundred miles away from the Twin Cities. Their sales would suffer significantly if raw milk could not be delivered in the Minneapolis-St. Paul area. MDA should respect the right of farmers and consumers to enter into agreements on the distribution and delivery of raw milk and other farm products. The agency has used the *E. coli* outbreak blamed on the Hartmann farm as a pretext to carry out heavy-handed enforcement tactics that have created a climate of fear among raw milk producers and consumers. MDA has been treating people who are upstanding citizens in their community like common criminals. Even as this article was being written, another farm was raided. MDA’s inquisition needs to end.