

S.207

Introduced by Senators Choate and Kittell

Referred to Committee on Agriculture

Date: January 5, 2010

Subject: Agriculture; supervision, inspection and licensing of dairy operations;
preincubation count; milk sampling

Statement of purpose: This bill proposes to require the agency of agriculture,
food and markets to adopt rules regulating the handling of milk samples, and to
clarify that the preincubation count of milk cannot serve as a basis for rejecting
a milk supply.

*An act relating to preliminary incubation testing of milk; raw milk quality
study and report; and unlawful cutting of trees.*

~~An act relating to handling of milk samples~~

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 6 V.S.A. § 2816 is added to read:~~

~~§ 2816. PRELIMINARY INCUBATION TESTING; REJECTION OF
SUPPLY~~

~~(a) A handler or processor shall not reject the milk supply of a producer
based solely on a preliminary incubation (PI) count.~~

~~(b) If a test of a milk sample indicates a PI count greater than 50,000
colony forming units per milliliter, the handler or processor shall, as soon as~~

practicable, compare the results to the standard plate count (SPC) of a fresh,
unincubated sample from the same supply.

(c) A handler or processor shall not reject the milk supply of a producer on
the basis of the PI count, as compared to the SPC of the sample pursuant to
subsection (b) of this section, unless the comparison demonstrates a PI count
that is at least four times greater than the SPC of the compared sample.

Sec. 2. 6 V.S.A. § 2817 is added to read:

§ 2817. REGULATIONS FOR SAFE HANDLING OF MILK SAMPLES

The secretary shall adopt regulations governing the transport and transfer of
milk to be tested as a basis for payment or determination of quality for dairy
products in order to limit the potential for error due to contamination or failure
to maintain an appropriate temperature.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

Sec. 1. FINDINGS

*(a) The preliminary incubation (PI) count of raw milk is one means of
testing and detecting hygiene inadequacies during farm production that may
not be apparent with a standard plate count (SPC) alone.*

*(b) Although the information gained from a PI count test may be valuable
for detecting potential sanitation problems and as a quality indicator, the test
is often not repeatable, even with identical samples. Therefore, the PI count
should be evaluated in conjunction with other quality and sanitation
indicators, including the SPC count.*

*(c) The PI count of milk is not required by the pasteurized milk ordinance
or any Vermont regulation governing milk safety and sanitation. Nonetheless,
at least one milk processor that purchases Vermont milk has used the PI count
as the sole basis for denying the shipment of milk.*

(d) Vermont law provides that a handler doing business in this state who has a contract with a producer for the purchase of dairy products shall not refuse to purchase dairy products from the producer except for violations of the sanitary regulations or standards applicable to the market in which the dairy product is sold or marketed.

(e) The purpose of this act is to establish that the PI count of cows' milk cannot serve as the sole basis for rejecting a milk supply.

Sec. 2. 6 V.S.A. § 2816 is added to read:

§ 2816. PRELIMINARY INCUBATION TESTING; REJECTION OF SUPPLY

A handler shall not reject the milk supply of a producer based solely on a preliminary incubation count.

Sec. 3. MEETING OR INFORMATION CONCERNING PI COUNTS

The secretary of agriculture, food and markets, or his or her designee shall:

(1) convene a meeting of dairy handlers that purchase Vermont cows' milk to discuss the advisability of using preliminary incubation counts as a basis for producer premium payments or differentials; or, alternatively

(2) deliver relevant information to dairy handlers that purchase Vermont cows' milk concerning the advisability of using preliminary incubation counts as a basis for producer premium payments or differentials.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

Sec. 3. REPORT ON RAW MILK QUALITY PROBLEMS

(a) By September 30, 2010, the agency of agriculture, food and markets shall study raw milk quality problems, including PI count and the handling of raw milk samples.

(b) On or before January 15, 2011, the agency shall report to the house and senate committees on agriculture the extent to which milk quality problems, including PI count, exist in Vermont's milk supply and advise the committees regarding potential regulatory and legislative solutions to address these problems.

Sec. 4. 13 V.S.A. §§ 3601–3604 are added to read:

§ 3601. DEFINITIONS

As used in this chapter:

(1) "Diameter breast height" or "DBH" means the diameter of a standing tree at four and one-half feet from the ground.

(2) "Harvest" means the cutting, felling, or removal of timber.

(3) "Harvest unit" means the area of land from which timber will be harvested or the area of land on which timber stand improvement will occur.

(4) "Harvester" means a person, firm, company, corporation, or other legal entity that harvests timber.

(5) "Landowner" means the person, firm, company, corporation, or other legal entity that owns or controls the land or owns or controls the right to harvest timber on the land.

(6) "Landowner's agent" means a person, firm, company, corporation, or other legal entity representing the landowner in a timber sale, timber harvest, or land management.

(7) "Stump diameter" means the diameter of a tree stump remaining after cutting, felling, or destruction.

§ 3602. UNLAWFUL CUTTING OF TREES

(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed:

(1) if the tree is no more than six inches in stump diameter or DBH, not more than \$25.00;

(2) if the tree is more than six inches and not more than ten inches in stump diameter or DBH, not more than \$50.00;

(3) if the tree is more than 10 inches and not more than 14 inches in stump diameter or DBH, not more than \$150.00;

(4) if the tree is more than 14 inches and not more than 18 inches in stump diameter or DBH, not more than \$500.00;

(5) if the tree is more than 18 inches and not more than 22 inches in stump diameter or DBH, not more than \$1,000.00;

(6) if the tree is greater than 22 inches in stump diameter or DBH, not more than \$1,500.00.

(b) In calculating the diameter and number of trees cut, felled, or destroyed under this section, a law enforcement officer may rely on a written damage assessment completed by a professional arborist or forester.

§ 3603. MARKING HARVEST UNITS

A landowner who authorizes timber harvesting or who in fact harvests timber shall clearly and accurately mark with flagging or other temporary and visible means the harvest unit. Each mark of a harvest unit shall be visible from the next and shall not exceed 100 feet apart. The marking of a harvest unit shall be completed prior to commencement of a timber harvest. If a violation as described in section 3602 of this title occurs due to the failure of a landowner to mark a harvest unit, the landowner who failed to mark a harvest unit in accordance with the requirements of this subsection shall be assessed a civil penalty of not less than \$250.00 and not more than \$1,000.00.

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following is exempt from the requirements of sections 3602, 3603, and 3606 of this title:

(1) the agency of transportation conducting brush removal on state highways or agency-maintained trails;

(2) a municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904;

(3) a utility conducting vegetation maintenance within the boundaries of the utility's established right-of-way;

(4) a harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision;

(5) a railroad conducting vegetation maintenance or brush removal in the railroad right-of-way;

(6) a licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.

Sec. 5. 13 V.S.A. § 3606 is amended to read:

§ 3606. TREBLE DAMAGES FOR CONVERSION OF TREES OR DEFACING MARKS ON LOGS

If a person cuts down, destroys, or carries away any tree or trees placed or growing for any use or purpose whatsoever, or timber, wood, or underwood standing, lying, or growing belonging to another person, without leave from the owner of such trees, timber, wood, or underwood, or cuts out, alters, or defaces the mark of a log or other valuable timber, in a river or other place, the party injured may recover of such person, in an action on this statute, treble damages ~~in an action on this statute~~ or for each tree the same amount that would be assessed as a civil penalty under section 3602 of this title,

whichever is greater. However, if it appears on trial that the defendant acted through mistake, or had good reason to believe that the trees, timber, wood, or underwood belonged to him or her, or that he or she had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs. For purposes of this section, "damages" shall include any damage caused to the land or improvements thereon as a result of a person cutting, felling, destroying to the point of no value, substantially reducing the potential value, or carrying away a tree, timber, wood, or underwood without the consent of the owner of the property on which the tree stands. If a person cuts down, destroys, or carries away a tree or trees placed or growing for any use or purpose whatsoever or timber, wood, or underwood standing, lying, or growing belonging to another person due to the failure of the landowner or the landowner's agent to mark the harvest unit properly, as required under section 3603 of this title, a cause of action for damages may be brought against the landowner.

Sec. 6. 4 V.S.A. § 1102(b) is amended to read:

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(18) Violations of 23 V.S.A. § 3327(d), relating to obeying a law enforcement officer while operating a vessel.

(19) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 1 and 3 shall take effect upon passage.

(b) Sec. 2 of this act shall take effect on July 1, 2011.

(c) Secs. 4 (unlawful cutting of trees), 5 (damages for unlawful cutting of trees), and 6 (judicial bureau offenses) of this act shall take effect July 1, 2010.