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INTERNAL DEPT. OF AG EMAILS RAISE QUESTIONS ABOUT MOTIVATION IN FARMER BROWN CASE
Lawsuit against Dan Brown and Gravelwood Farm a "test case"

Information obtained through a Freedom of Access Act (FOAA) request raises new questions about the Maine Department of Agriculture's motivation behind the lawsuit against farmer Dan Brown of East Blue Hill. An inspector's report detailing Brown's sales at a Blue Hill farmers market on June 10, 2011 was emailed to Quality Assurance and Regulation Director Hal Prince on June 14, 2011, with the message "Sounds like we have our first test case."

The summons Brown received nearly five months later on November 9 charges him with three counts: selling milk without a distributor's license; selling unpasteurized milk without proper labeling; and operating a retail food establishment without a license.

The sales that Dan Brown was engaged in on June 10 are covered under Blue Hill's Local Food & Community Self-Governance Ordinance passed April 2, 2011 nearly unanimously at town meeting. Under the ordinance, direct sales of food within the town are not required to be state or federally licensed, as long as the exchange is between the producer and the customer for personal use. The ordinance also exempts bake sales, benefit suppers, and other traditional community events where food is shared, exchanged, or sold. Since March, 2011, six Maine towns have passed a Local Food & Community Self-Governance Ordinance.

The "test case" email was written nearly six weeks before samples were taken of three dairy products sold at Brown's farmstand that the Department claims to be the motivation for the legal action taken against his farm last November. The time line of internal departmental communications suggest that the dairy tests were sought to justify the lawsuit, which critics have said is a direct challenge to the Local Food & Community Self-Governance Ordinance. (See "Time Line of a Lawsuit" below)

According to public statements by Department of Agriculture officials, the case has nothing to do the ordinance. Agriculture Commissioner Walt Whitcomb, who is listed as a plaintiff in the suit against Brown, is quoted in at least two media sources downplaying the connection between the case and the ordinance.

In a November 17, 2011, article in the Blue Hill-based Weekly Packet Commissioner Whitcomb is asked about the case: "Discussions with Mr. Brown have been going on for some years," he said at the time. "So to suggest that there is some kind of conspiracy is absolutely not the truth."

In a February, 2012, article in Acres USA, Commissioner Whitcomb states unequivocally that the Brown case is not a test case. When asked to respond to the assertion by Brown's attorney Gary Cox that the suit is in fact a 'test case for the rights of small producers and the autonomy of municipalities to decide local food policy', Whitcomb is quoted as saying that is 'nonsense'.

"The case against Dan Brown was building long before the ordinances", said Whitcomb. "It's coincidental."

In a December 2, 2011, Bangor Daily News op-ed QAR Director Hal Prince wrote that the department believed "the products sold by Mr. Brown pose a significant health risk to consumers," citing the results of his dairy tests. This was the only time a test was done on Brown's dairy products. According to Department procedure licensed dairies can have two out of four failed test results before a letter is sent from the Department of Agriculture notifying the farm. Three out of five failed tests could result in enforcement action.

The June 14 "test case" email, however, indicates that Brown's enforcement action began well before the sole dairy test.

"If I'm a dairy distributor as accused," says Brown, "why am I being held to a different standard?"

"And why did the Department say this was a 'test case' before they even took anything from my farm?" asks Brown.

Documents in the FOAA request indicate that other ordinance-protected farms and food producers are also on the Department's radar. "It appears there are more unlicensed sales of meat and dairy in the Blue Hill area," reports Joe Brooker, Inspection Analyst, to Prince on December 6, 2011. "How should we proceed given the sensitivity in the media/press?" To date, no other ordinance-protected farms or food producers have been subject to enforcement or legal action.

However, Quill's End Farm in Penobscot has been threatened with enforcement action for selling milk without a

milk distributor's license. The Retbergs were instrumental in the drafting and passage of the Local Food & Community Self-Governance Ordinance and have been public in their criticism of the Department's handling of the Brown case. The FOAA request reveals an extensive file on Quill's End Farm in Penobscot and other ordinance-protected farms in the Blue Hill area.

Penobscot is one of the six Maine towns to have a Local Food & Community Self-Governance Ordinance.

More information about the Department's surveillance of ordinance-protected farms will be forthcoming.

TIMELINE OF A LAWSUIT

April 2, 2011 – Blue Hill, Maine becomes the third Maine town to pass a Local Food & Community Self-Governance Ordinance. Others are Sedgwick and Penobscot, all in Hancock County.

April 6, 2011 – Blue Hill Selectmen receive a letter from Agriculture Commissioner Walt Whitcomb stating the Local Food & Community Self-Governance Ordinance is pre-empted by state law, citing conflict with state food licensing and inspection laws which are “intended to protect public health by regulating safe food handling practices.”

May 21, 2011 – Trenton (Hancock County) passes Local Food & Community Self-Governance Ordinance.

June 10, 2011 – QAR inspector John Morris visits Dan Brown's table at a Blue Hill farmers market, informing him he is required to have licenses for the products he is selling. Brown informs Morris he is operating under Blue Hill's Local Food & Community Self-Governance Ordinance.

June 14, 2011 – Morris files his inspection report, citing Brown for selling unlicensed dairy products at the farmers market and prepared foods at his East Blue Hill farmstand. The report is copied to QAR Program Manager Steve Giguere, who then forwards the report to QAR Director Hal Prince with the message, “Sounds like we have our first test case.” Prince responds by asking, “John didn't think this noteworthy enough to give you a call?”

July 26, 2011 – QAR inspector John Morris removes four dairy samples from Gravelwood Farm's farmstand on the East Blue Hill Road. Samples include one butter, one cheese, one milk in a plastic container, and one milk in glass reserved for Brown's weekly customer pick-up. Morris' records show the samples were removed from the farmstand at 2:09pm on July 26 and received at the Milk Quality Laboratory in Augusta the following morning at 10:30am. No record of payment is recorded and Brown had no notice that samples were being taken from his farm.

August 10, 2011 - Email from QAR Director Hal Prince: "Is there a story to accompany the pictures, we are going to be under the microscope just like these samples when the Legislature comes back in session. It would be really nice to have this tied up in a pretty little presentation with pictures and captions."

November 8, 2011 – Hope (Waldo County) becomes fifth Maine town to pass a Local Food & Community Self-Governance Ordinance.

November 9, 2011 – Dan Brown of East Blue Hill sued by the State of Maine and Maine Department of Agriculture. The State is seeking an injunction to stop Brown from selling any food and threatens fines of up to \$500 for each unlicensed item, totaling approximately \$40,000. He is cited on three counts – selling milk without a distributor's license; selling unpasteurized milk without proper labeling; and operating a retail food establishment without a license.

November 17, 2011 – “While the rhetoric pulls at the heartstrings” of many people, Whitcomb said, he is not sure people fully understand the circumstances surrounding this case. “Discussions with Mr. Brown have been going on for some years,” he said. “So to suggest that there is some kind of conspiracy is absolutely not the truth.” [Commissioner Walt Whitcomb quoted in *Weekly Packet*.](#)

November 18, 2011 – Nearly 200 supporters gather at the Blue Hill Town Hall for a “[We Are All Farmer Brown](#)” rally.

December 2, 2011 – QAR Director Hal Prince: "We believe the products sold by Mr. Brown pose a significant health risk to consumers." [Bangor Daily News Op-ed](#)

February, 2012 – “[The timing of the suit] is very coincidental. The case against Dan Brown began long before the ordinances were passed.” [Commissioner Walt Whitcomb, *Acres USA*](#)

February 1, 2012 – Dan Brown files answer to the State's complaint with counter claims.