



**CORNUCOPIA**  
I N S T I T U T E

## Forward/Update 2008

Since this report's initial publication, The Cornucopia Institute has continued to engage in marketplace education, regulatory oversight, and requesting USDA enforcement on industrial-scale feedlots ("factory farms") masquerading as organic dairies.

Even though the USDA has continued to drag their feet on any modifications to the organic regulations, which would provide for clearer and easier enforcement of pasture regulations, we are proud to say that we have seen *some* enforcement action. It must also be noted that the National Organic Standards Board has recommended no fewer than five guidance/rulemaking recommendations to the USDA since 2000—none of them implemented—that could have resolved the pasture management issue.

### Vander Eyk

When the Cornucopia Institute filed their first legal complaints against industrial dairies in 2005, those complaints were, according to documents obtained through a freedom of information search, dismissed without any investigations. We are pleased to say that since refileing the complaints, the **Case Vander Eyk, Jr. dairy**—then the largest factory farm producing "organic" milk, a split operation with over 10,000 conventional and organic animals in Pixley, California—has lost their organic certification. For more information regarding Vander Eyk please use the search function at [www.cornucopia.org](http://www.cornucopia.org).

### Aurora

In the second enforcement action based on the Cornucopia complaints, the USDA found that Aurora Dairy, in the words of the USDA, "willfully" violated 14 different aspects of the federal organic standards.

Included in the findings of fact by the USDA investigative staff were Cornucopia's original allegations that cattle had been confined to a feed lot, in violation of the standards requiring grazing, and that they had brought thousands of illegal conventional animals onto their dairies. And, most poignantly, they repeated the term "willfully," when they found that Aurora had marketed milk, labeled as organic, that did not have the legal right to be identified as such.

Even though the federal organic regulations provide for fines of up to \$10,000 per incident, and that could apply to the thousands of organic cows brought onto their dairies, or the millions of cartons of illegally labeled milk, Aurora, a \$100 million business enterprise, was not fined one cent.

The career civil servants at the USDA recommended that Aurora's organic certification be revoked. But Bush administration officials running the USDA, after extensive consultations with Aurora's powerful Washington lobbyists and lawyers, converted the recommended penalty to a one-year probation that was scheduled to end in the fall of 2008 (no information has subsequently been released by the USDA—The Cornucopia Institute has pursued a request under the Freedom of Information Act seeking documentation).

At The Cornucopia Institute we like to say: "There is a higher authority in this country, in terms of organic integrity, than the USDA—and that's the organic consumer!"

Organic consumers in over 40 states have filed a total of 19 class-action consumer fraud lawsuits against Aurora and many of the major retailers selling Aurora's milk under their private-label brands (Wal-Mart, Safeway, Target, Costco, and more).

These lawsuits have now been consolidated in federal court in St. Louis and are currently being adjudicated. We are proud to have been a technical resource for many of the plaintiffs and law firms involved.

More comprehensive background information can be obtained by visiting the Aurora campaign page on the cornucopia website: <http://www.cornucopia.org/aurora-organic-factory-dairy>.

### **Dean Foods/Horizon**

Cornucopia's third 2005 complaint targeted Dean Foods and one of their 50 milk brands: Horizon. Years after our initial complaint, the USDA finally investigated one of the two corporate farms owned by Dean Foods, their Maryland "organic" dairy. The primary allegation was that they had an inadequate amount of pasture available for their cattle. And even though they had some pasture, they were not utilizing it.

Reports from Maryland-area residents, Dean employees, and even the farm's former veterinarian indicated that they actually had to mow the grass to control growth even though their stocking level of cows per acre was absurdly high.

Cornucopia also filed a complaint against the Dean Foods/Horizon factory dairy located in desert-like conditions in southern Idaho.

In the case of their Maryland dairy, Dean employed the same powerful Washington lawyer that had represented Aurora in the regulatory dealings with the USDA. The USDA worked through this attorney to make an appointment to view the dairy. Obviously, if your goal is to actually catch the perpetrator committing a crime you would not warn them in advance of your stake out. This gave Dean Foods every opportunity to put their cows out on grass before inspectors arrived. Big surprise, everything look good when they got there!

In the case of their 8000-head Idaho dairy, according to Freedom of Information Act documents obtained by The Cornucopia Institute, the USDA has never investigated the allegations against Dean Foods.

These three examples illustrate a few important points:

1. In two of three cases the initial complaints to the USDA, when adjudicated, found Cornucopia's allegations to be meritorious. Even though the agency's enforcement arm is understaffed, regulators should have taken Cornucopia's subsequent complaints seriously and handled them in a timely manner.
2. Regardless of the advantages of having the USDA accept recommendations from the National Organic Standards Board, tightening up regulatory language on pasture, the current federal standards are entirely enforceable. The violations confirmed by the USDA, at Vander Eyk and Aurora, clearly illustrate this point.
3. For whatever reason, it appears that the powerful agribusiness giant Dean Foods, with annual revenues of approximately \$11 billion, has received favorable treatment from the USDA and has dodged regulatory enforcement. It is unknown what impact the millions of dollars they have spent on lobbyists and on contributions to federally elected candidates might have had in this controversy.

The Cornucopia Institute has formally requested that the [Inspector General](#) at the USDA investigate the favorable treatment that Dean Foods has received.

## Other Regulatory/Enforcement Activity

### Fall 2007

The Cornucopia Institute filed a legal complaint alleging that **Aurora Dairy's** new "model" pasture operation, **High Meadows** in Colorado, was violating federal standards. Cornucopia alleged that they had created the "illusion" of grazing but failed to provide adequate acreage or acceptable pasture quality that met the legal definitions. Neighbors in the area also complained about grotesque impacts to their quality of life including massive fly infestations (photo gallery available at [www.cornucopia.org](http://www.cornucopia.org)). The dairy faced sanctions from local environmental regulators and had been operating under extra scrutiny. Real organic dairies are an asset to their communities. Factory farms are a tremendous environmental hazard whether or not their cows eat organic feed.

The USDA failed to investigate these allegations, instead, they suggested that they would wrap these complaints into their existing oversight pursuant to Aurora's probationary period.

### May 2008

The Cornucopia Institute filed a formal legal complaint with the USDA alleging inadequate pasturing at one of the many industrial-scale dairies supplying Dean Foods' Horizon brand. The **Fagundes Brothers dairy**, in the San Joaquin Valley of California, was found to be milking 3000 cows without adequate access to pasture. The farm operator, Fred Fagundes, was quoted in the press as saying that they would start grazing their animals in May. But other dairies in the area began grazing during the 2008 growing season in March.

The Fagundes dairy was harvesting stored crops for their cattle, off the same fields they referred to as "pasture," instead of grazing their animals. The mandate for pasturing organic ruminants is not subject to the whims of the operator. If the dairy does not have adequate acreage available to both pasture animals and produce stored crops, they should either be decertified or forced to reduce the size of the herd.

The USDA closed its investigation, without interviewing Cornucopia staff, who visited the farm, or securing any of the other evidence collected.

### **June 2008**

The USDA announced they would suspend, for two years, the organic certification of **Promiseland** livestock, operated by Antonio Zeman, with facilities in Missouri and Nebraska. Improprieties concerning Promiseland, an outfit that has a capacity of 22,000 head of beef cattle and dairy replacements, was a by-product of the USDA's investigation of Aurora dairy and the allegations Cornucopia presented concerning illegal conventional cattle.

Promiseland, the supplier to many of the largest industrial dairies in addition to Aurora, refused to open their records to USDA inspectors, in violation of the law. Their two-year suspension was another softening of penalties recommended by the career civil servants at the USDA. Before they were overruled by the political appointees running the Department, their intention was to permanently revoke Promiseland's right to engage in organic commerce.

### **July 2008**

The Cornucopia Institute confirmed in early 2008 that the CROPP Cooperative/Organic Valley had been purchasing milk from a giant industrial dairy in Texas, Natural Prairie. The operation, with a capacity of 7200 milk cows and approximately 10,000 total animals, had actually intended to grow to over 10,000 milking cows with an expansion slated for June 2008 (the expansion has been delayed until 2009). This is the largest single industrial dairy now operating in the United States representing themselves as organic. The dairy, in desert-like conditions, similar to factory farms owned by Dean Foods and Aurora, had stocking rates as high as 7.1 cows per acre.

Cornucopia staff presented their concerns about the giant dairy to Organic Valley management, suggesting that it was a betrayal of the values that Organic Valley represented (promoting family farmers, who actually produced the milk and own and control the cooperative—the giant dairy is not a co-op member). Management was unreceptive to the concerns, calling this operation a "model pasture dairy" and "a family farm, albeit a large one." They called the situation "temporary," although the purchasing of milk had already occurred for 14 months. Their stated motivation was to make up for a milk shortage caused by the loss of some of their family farms in Texas that had gone out of business.

There is a happy ending to this story. After Cornucopia advised a handful of the cooperative's most experienced veteran dairy farmers, and who serve on the farmer-owned cooperative's Dairy Executive Committee (an elected body that advises the CROPP board of Directors on policy), the cooperative's management decided to discontinue its relationship with this giant dairy.

Tony Azevedo, a longtime California organic dairy farmer and CROPP/Organic Valley member as well as the president of the Western Organic Dairy Producers Alliance, described the outcome by saying, “This incident should be very reassuring to our many loyal Organic Valley customers. Unlike most business we are not strictly governed by the bottom line.”

As long as the dairy farmers are in charge, no matter how large the \$500 million business becomes, it is Cornucopia's contention that consumers should feel comfortable trusting the Organic Valley label.

### **October 2008**

Cornucopia updated, along with this report, its **organic dairy scorecard**. When it was first published it listed 68 organic brands. The new iteration includes almost 110 brand name and private-label marketers of milk, cheese, butter, yogurt, and ice cream. It is intended to empower consumers and wholesale buyers so they can make discerning marketplace decisions. Over 85% of the namebrand products are from companies that rate highly in the study, so consumers in all areas of the country are assured access to organic dairy products of the highest integrity.

Along with this update, Cornucopia has filed two new legal complaints with the USDA concerning owners of industrial dairy operations that market their own milk.

**Rockview Farms** of Downey California, which operates a dairy milking thousands of cows near Amargosa Valley, Nevada ( just northwest of Las Vegas), is allegedly operating a feedlot dairy with inadequate pasture and questionable segregation between conventional and organic cows. They market their milk under the Good Heart label. Rockview also operates a heifer Ranch in Modesto, California, where the majority of cattle are confined to a feedlot (water from the sewage treatment plant at the city of Modesto is used for irrigation at this facility).

**Shamrock Farms** of Phoenix, Arizona, operates an 11,000-head dairy 54 miles south of Phoenix. Like other desert operations, the majority of cattle are confined to feed lots and buildings.

### **Conclusion**

The Cornucopia Institute contends that the dramatic growth in number and operation of these massive industrial-scale confinement livestock facilities is placing legitimate, ethical family farmers at a competitive disadvantage. It appears that these factory farms are failing to subscribe to the letter and spirit of the organic law.

The tens of thousands of animals being milked in the confinement facilities have flooded the organic fluid milk market and depressed prices due at the farmgate to family-scale organic dairies. The factory farm organic dairies, with their high production, feed-intensive practices, have created further market pressures by cornering organic feed supplies and significantly driving up prices. Family-scale dairies use feed to supplement their broad pasture practices and to supplement commodities raised on the farm; the shortages of available feed, and price inflation, have added significant pressure to their bottom lines.

Lastly, many consumers who purchase organic dairy products believe they are getting a nutritionally superior food. But the animal husbandry practices employed on the confinement feedlot dairies minimize grazing, thus reducing the beneficial fatty acids, antioxidants, and vitamins that are believed to fight cancer and heart disease.

The enforcement track record at the USDA has been an abdication of its responsibilities. They have been charged by Congress with protecting the interests of the consumer, the integrity of the organic label, and the hard-working family farmers whose livelihoods depend on organics. On this count, they are failing.

Mark Alan Kastel