

# Cornucopia, Allies Launch Suit Against Monsanto

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what they refer to as their 'technology,' can intimidate and run roughshod over family farmers in this country," said Kastel.



Monsanto's transgenic seed threatens organic crop integrity.

Jim Gerritsen, a family farmer in Maine who raises organic seed and is President of the Organic Seed Growers and Trade Association, called the filing of the lawsuit "Independence Day for America." Added Gerritsen: "We are putting Monsanto on notice. Americans have the right to choice in the marketplace—to decide what kind of food they will feed their families—and we are taking this action on their behalf to protect that right to choose."

The Public Patent Foundation is a not-for-profit legal services organization affiliated with the Benjamin N. Cardozo School of Law. They seek to protect freedom in the patent system by representing the public interest against undeserved patents and unsound patent policy. More information is available at [www.pubpat.org](http://www.pubpat.org). ■

—Will Fantle



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Facebook makes it easy to support Cornucopia.

—Elizabeth Wolf

# THE CULTIVATOR

News from The Cornucopia Institute  
Summer 2011

## Animal Welfare Standards Delayed National Organic Standards Board Postpones Action



Tens of thousands of birds are confined in this certified organic aviary in Sauk County, Wisconsin. Space per bird and outdoor access for laying hens were among the topics debated at the NOSB meeting.



This laying hen is free to pasture when it is not secure in its coop for the night (or being held by the farmer).

Action aimed at strengthening and clarifying animal welfare standards for organically managed livestock was deferred until the fall meeting of the National Organic Standards Board (NOSB). Proposals brought before the Board by its Livestock Committee at the April NOSB meeting in Seattle were withdrawn when the committee was unable to approve additional changes and modifications partially spurred

by Board questions and public comments at the meeting and from email correspondence sent to the NOSB.

The animal welfare issue has been under debate at the NOSB for several years as members of the Board and the public push for establishing organics as the *gold standard* in animal welfare. While the controversy swirling around pasturing and grazing of dairy cows and other ruminant

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# Farmers and Seed Producers Launch Preemptive Strike Against Monsanto

Lawsuit Would Prohibit Biotech Behemoth from Suing Growers for Inadvertent Contamination

**O**n March 30, the Public Patent Foundation (PUBPAT) filed a lawsuit challenging Monsanto's patents on genetically modified seed. The Cornucopia Institute is among the 83 family farmers, seed businesses, and organic agricultural organizations represented by PUBPAT in the lawsuit. The plaintiff organizations have over 270,000 members, including thousands of certified organic family farmers.

"This case asks whether Monsanto has the right to sue organic farmers for patent infringement if Monsanto's transgenic seed or pollen should land on their property," said Dan Ravicher, PUBPAT's Executive Director. "It seems quite perverse that an organic farmer contaminated by transgenic seed could be accused of patent infringement, but Monsanto has made such

PHOTO: WIKIMEDIA COMMONS



Organic soybean is one of the crops at risk for GE contamination.

accusations before and is notorious for having sued hundreds of farmers for patent infringement, so we had to act to protect the interests of our clients."

After Monsanto introduced genetically modified seed for canola, organic canola became virtually impossible to grow as a result of contamination. Organic corn, soybeans,

cotton, sugar beets, and alfalfa face a similar fate from Monsanto's sale of genetically modified seed for these crops as well.

PUBPAT seeks a determination that if organic farmers are ever contaminated by Monsanto's GE seeds, they need not fear being accused of patent infringement. Ravicher argues that Monsanto's patents on genetically modified seed are invalid because they don't meet the "usefulness" requirement of patent law.

"Family-scale farmers desperately need the judiciary branch of our government to balance the power Monsanto wields in the marketplace and through their legislative lobbyists," notes Cornucopia's Mark Kastel. "Farmers have saved seeds since the beginning of agriculture. It is outrageous that one corporate entity, through the trespass of  
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## THE CORNUCOPIA INSTITUTE PROFILE

# Dynamos in Organic Ag Tapped for Board and Policy Advisory Panel



Cornucopia's board and staff held their annual meeting in March in Minneapolis. (1st row): Helen Kees, Mark Kastel, Goldie Caughlan, Amanda Love, Will Fantle; (2nd row): Dave Minar, Steve Sprinkel, William Heart, and Roger Featherstone

**Judith McGeary** also joined the Panel. She is an attorney, farmer, and activist who founded the Farm and Ranch Freedom Alliance in 2006 and was recently appointed to the USDA Secretary's Advisory Committee on Animal Health.

"We want to take this opportunity to publicly thank retiring board member **Anne Lazor** for her many years of service," said Board President Steve Sprinkel. "Thought to be the second certified organic farmers in the U.S. in the mid-1980s, the Lazors are renowned for their generosity in helping mentor other farmers in the Northeast, and around the country.

"We also wish to thank **Michael Herron** for his board service," Sprinkel said. Herron, a political scientist at Dartmouth College, and a charter Cornucopia board member, stepped down, at least temporarily, as he and his family moved to Europe for a year-long teaching assignment.

"We also want to especially note the passing, this past February, of one of our founding board members, **Bill Welsh**," said Sprinkel. "Bill, a true giant in organic agriculture, was one of the founders of the CROPP/Organic Valley cooperative and its meat business. He also served on the National Organic Standards Board. We will truly miss Bill's advice and counsel and, most importantly, his wit, warmth, and friendship." ■

—Mark A. Kastel

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**Mark Kastel**, *Codirector & Director of the Organic Integrity Project*

**Will Fantle**, *Codirector & Director of Research*

**Charlotte Vallaeys**, *Director of Farm & Food Policy*

**Lynn Buske**, *Administrator & Research Associate*

**Gayle Nielsen**, *Membership Coordinator*

**Elizabeth Wolf**, *Development Director*

**Celeste Gibson**, *Fiscal Manager*

**Jim Munsch**, *GE Alfalfa Lawsuit Representative*

### THE CULTIVATOR

**Elizabeth Wolf**, *Editor*  
*Special thanks to Nancy Zucker, Kat Schleuter, Aaron Hraba, and BJ Birkel*

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**T**he Cornucopia Institute announced the appointment of several nationally prominent leaders to its Board of Directors and Policy Advisory Panel. The new members were welcomed at Cornucopia's annual meeting in March, held in Minneapolis.

The new Board members include **Kevin Engelbert**, the owner/operator of Engelbert Farms in Nichols, New York, the first certified organic dairy farm in the U.S., and past member of the National Organic Standards Board; **Dave Minar**, a third-generation Minnesota dairy farmer named, with wife Florence, 2007 Farmers of the Year by Midwest Organic and Sustainable Education Service (MOSES); and **Amanda Love**, a.k.a. "The Barefoot Cook," a Certified Healing Food Specialist, Natural Foods Chef, Nutrition Educator, and Weston A.

Price Foundation Conference Chef, residing in Austin, Texas.

The new Policy Advisory Panel includes **Francis Thicke**, Ph.D., owner/operator of an organic dairy near Fairfield, Iowa, who has served in many leadership positions including for the USDA-Extension Service, the Iowa Environmental Protection Commission, the Iowa Food Policy Council, the USDA State Technical Committee, and the Organic Farming Research Foundation Board.

Also tapped for the Policy Advisory Panel, **Michael James** is a longtime community organizer and founder of the legendary Heartland Café in Chicago, a wholesome foods eatery and community center. James won a state Stewardship Alliance "Golden Beet" award for bringing local food to communities in Illinois.

# Who Is Mischa Popoff?

Canadian Author Reignites Attack on Organics by Corporate Agribusiness

When The Cornucopia Institute officially launched in April 2004, one of its primary issue areas was what it referred to as “*The Corporate Attack on Organic Agriculture*.” At the time, Cornucopia’s focus was on the father and son team of Dennis and Alex Avery at the ultra-conservative Hudson Institute’s campaign to discredit organics.

Now, in 2011, after seven years of successfully exposing the genesis of Hudson’s ire, and greatly diminishing its effectiveness, a new generation of “Trojan horse” naysayers has emerged.

The latest attacks come from Mischa Popoff, a Canadian who purports to be an advocate for organics and is publicizing his self-published book entitled *Is It Organic?* The author misses few opportunities to impugn the integrity of the organic label,

or USDA oversight, while simultaneously defending biotechnology and the industrial agriculture system that organics seeks to replace.

Like the Averys, Popoff is a conservative ideologue, a global warming denier, an

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*Popoff is a global warming denier, an ardent critic of hybrid automobiles, and claims the organic industry is a “socialist movement.”*

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ardent critic of hybrid automobiles, and has suggested that the American mortgage crisis that precipitated the financial meltdown was caused by “overregulation.” His book is subtitled: *The Inside Story of Who Destroyed the Organic Industry, Turned It into a Socialist*

*Movement and Made Million\$ in the Process, and a Comprehensive History of Farming, Warfare and Western Civilization from 1645 to the Present.*

Popoff acted as an organic inspector a number of years ago. He now challenges the propriety of organic accreditation and third-party certification by suggesting, echoing the Averys at Hudson, that “[t]here is currently little proof of actual cleanliness, nutrition and fair play in the global organic industry.” Popoff’s unsubstantiated claim is that 80% to 90% of organic food in North America is fraudulent and imported.

Popoff takes particular aim at The Cornucopia Institute in his book *Is It Organic?* He claims that Cornucopia has partnered with, and receives funding from, Organic Valley and philanthropist George Soros. Both claims are untrue.

*Is It Organic?* is riddled with similar falsehoods. For an exposé of Mischa Popoff’s inaccuracies, visit <http://tinyurl.com/43asg4t>. ■

—Mark A. Kastel

## Cornucopia Launches Intern Program, Welcomes Development Director

Administrator and Research Associate Lynn Buske took it as a fortuitous sign when she heard from her alma mater, Luther College, about its alumni internship program. Luther College is in Decorah, Iowa, a strong organic rural community, and Cornucopia’s staff, with an ever-growing workload, needed the help of bright, talented students. This spring Cornucopia brought on two Luther College seniors, Kate Campbell and Collin Thompson, to provide research and project assistance during the spring semester.

Kate Campbell studies management and Spanish at Luther and has traveled to Chile, Costa Rica, Italy, France, and Norway. She is one of the leaders of a Luther student-led nonprofit, I-impact Now, which strives to develop farmer cooperatives using sustainable agriculture practices in Ethiopia.

Collin Thompson studies biology and environmental studies at Luther, where he leads the outdoor recreation program. He has worked on production farms, CSAs, family and organic farms, food coops, and will soon join Decorah Urban Gardens as an assistant mentor.

Cornucopia’s initial experiment with an internship program proved so successful that the nonprofit will continue seeking interns each season, from various places including Luther College. To inquire about the program, contact Lynn Buske at [cultivate@cornucopia.org](mailto:cultivate@cornucopia.org).

This month Cornucopia also welcomes Elizabeth Wolf as its new development director. Elizabeth recently returned to the Heartland after 20 years in Santa Fe and Albuquerque, where she built a successful consultancy in communications, marketing, and fundraising. Prior to joining Cornucopia, she coordinated a USDA Community Food Project and aided nonprofits in organizational and revenue development. A fourth-generation Nebraskan, Elizabeth’s great-grandparents and grandparents were crop and dairy farmers. Elizabeth and her husband, farm author Steven McFadden, make their home in Lincoln, Nebraska. ■



Elizabeth Wolf

—Lynn Buske

## New USDA Rule on Beef & Lamb Maintains Organic Integrity

Ruminants Must Have Access to Pasture During Grazing Season

The USDA’s long-awaited “pasture rule,” published in February 2010, requires that all organically raised ruminants obtain at least one-third of their feed from pasture. The final rule, however, contained an exemption for beef cattle. While stating that beef cattle must be “maintained on pasture” during the grazing season, the animals are exempt from obtaining any of their feed from pasture for four months before slaughter, or one-fifth of their lives (whichever is shorter).

Officials at the National Organic Program (NOP) requested public comment regarding this exemption. To gain a clearer understanding of organic beef production practices, Cornucopia researchers surveyed organic beef producers around the country. We found that 83% of surveyed beef producers raise their animals exclusively or primarily on pasture until slaughter, and did not need an exemption from pasture grazing for their animals. The remaining 17% of organic beef producers, which include many who operate family-scale farms, do finish their cattle on high-grain rations and needed an exemption to stay in business. Many of these producers, however, felt that the exemption as written was not adequate—they requested that the provision to maintain the animals on pasture be entirely deleted, allowing full confinement in feedlots.

Grass-based organic farmers and ranchers, as well as many organic consumers, have long been critical of producers who confine ruminant animals to feedlots—a production system that they contend does not match the founding principles and the spirit of organics, especially since ruminants, such as dairy cows and beef cattle, have evolved to graze on pasture.



A cow grazes contentedly at Arnold Farm in Truxton, New York. Cornucopia found that 83% of surveyed organic beef producers raise their animals primarily or exclusively on pasture until slaughter.

Confining beef cattle to feedlots, where they are “fattened” on a diet consisting mostly of grain, speeds up the animal’s growth—thereby reducing the time needed to reach market weight. The practice of “fattening” on grain also changes the taste and quality of the meat to make it similar to conventional, corn-fed meat that American consumers know so well.

The USDA announced on May 10 that the final rule will remain unchanged—beef cattle *must be given access to pasture during grazing season*, but they are not required to obtain any set minimum percentage of their feed from pasture.

According to the USDA, the agency received approximately 500 individual comments and 14,000 public form letters. Many of these supported the transparent, three-tiered labeling system that Cornu-

copia had proposed, which would inform consumers whether the animals were finished on grass, grain, or a combination. Despite overwhelming public support for this proposal, the USDA stated that it would not be “practical” to develop a new labeling scheme. Instead, producers wishing to acquire a “grass-fed” label from the USDA’s Agricultural Marketing Service may do so on their own, the NOP stated.

Producers need to be in full compliance with the rule, including the provision on giving access to pasture for beef cattle, by June 17, 2011. The USDA also clearly stated that beef producers who do not give access to pasture during the finishing period have been, and will continue to be, in violation of the organic standards which have always required access to pasture for ruminants. ■

—Charlotte Vallaey

## “Organic” Signage Misleads Consumers and Retailers

### Cornucopia Requests NOSB to Address Marketplace Misrepresentation



Conventional Golden Temple granola mislabeled as organic

An investigation by The Cornucopia Institute found that stores in several states carried “organic” signs on shelves of non-organic breakfast cereal, and bulk bins containing non-organic granola but display “organic” bin labels.

One specific company, Golden Temple, was responsible for widespread, national labeling problems, Cornucopia’s research found. The company manufactures bulk granola under their trade name and packaged products under the Peace Cereal brand.

Similar problems with mislabeled “organic” signage and advertisements of conventional Silk soymilk had previously been traced to the same cause: the manufacturers changed their products’ ingredients from organic to conventional without changing the product’s important and defining barcode. Thus, many retailers were unaware of the change from organic to conventional and continued to label these products as before. Silk is manufactured and distributed by the WhiteWave division of the dairy giant Dean Foods.

To prevent future problems with mislabeling of conventional or “natural” food as organic, and to protect consumers from false in-store signage, The Cornucopia Institute filed a formal request in March with the National Organic Standards Board. The NOSB is the expert panel that advises the Secretary of Agriculture on organic rulemaking.

Cornucopia is requesting a rule change to require food manufacturers to change their barcode, the Universal Product Code (UPC), whenever there is a change in the product’s organic status and, additionally, to formally notify their customers.

Unsolicited reports of the mislabeled bulk bins triggered Cornucopia’s investigation. When Cornucopia staff members visited stores in the Midwest and the East Coast, they also found numerous instances of Peace Cereal mislabeled as “organic.” The cereal has been conventional for the past three years. Non-organic Peace Cereal was identified as “organic” even in certified organic retail stores. And Cornucopia found the product listed as organic in at least one West Coast distributor’s catalog.

“Our investigation revealed that the vast majority of retailers were horrified when they learned that they had mislabeled these products in their stores and unknowingly misled their customers,” stated Charlotte Vallaeys, Cornucopia’s Director of Farm and Food Policy. “It became clear to us that the problem lies not with the retailers, but with the food manufacturers who fail to change their product’s barcode,” Vallaeys added.

Three Rivers Co-op in Fort Wayne, Indiana, for example, found out about Golden Temple’s ingredient change from a representative of another company, reported management staff member Rosemary Mausser.

Mausser made sure the bulk bin labels in the store were updated immediately, but noted that the nearly three-year time lag could have been prevented easily.

“The employees who unload the incoming boxes and fill up the bulk bins at 2 o’clock in the morning cannot be expected to inspect every box to make sure the organic status hasn’t changed,” Mausser said. “It only seems reasonable that manufacturers should let us know, and a change in the barcode or order number would help serve as a heads-up that something about the product is different.”

Since action by the National Organic Standards Board and a rule change could potentially take years, Cornucopia took additional action to ensure that consumers are protected from mislabeled bulk granola. A follow-up investigation by Cornucopia staff and volunteers revealed that more than a dozen retailers continue to mislabel, even after receiving the press release and individual letters from Cornucopia.

At this point, Cornucopia filed a formal legal complaint with the National Organic Program, identifying the retailers and supplying the USDA with photographic evidence of the labeling violations. Cornucopia is requesting a thorough investigation and immediate enforcement action against those retailers.

“These retailers certainly cannot claim that they were unaware of the problem, as it appears they are now intentionally not taking corrective action in order to mislead their customers,” said Vallaeys. “This kind of profiteering from the good name of the organic label, without being organic, has to stop.” ■

—Will Fantle

## USDA Approves GE Alfalfa Just in Time for Spring Planting

### Cornucopia Joins Lawsuit to Reverse Decision

On January 27, USDA Secretary Tom Vilsack announced the complete deregulation of Monsanto’s controversial Roundup Ready Alfalfa. The decision swung the barn door wide open to spring planting of the genetically engineered (GE) crop. The biotech industry heavily pressured Vilsack and the Obama administration for its approval.

Full deregulation was one of three options identified in the USDA’s Final Environmental Impact Statement (FEIS) on Roundup Ready Alfalfa, released in December. The USDA had been forced to conduct the analysis under court order, after the Center for Food Safety, farmers, and their advocates like The Cornucopia Institute sued the USDA for failing to conduct a thorough assessment of the impacts of GE alfalfa.

“We are really struggling with this issue,” said Deputy USDA Secretary Kathleen Merigan in December to a USDA-convened meeting of selected industry stakeholders in Washington, D.C. Both she and Vilsack declared their desire for collaboration among all sectors of agriculture as they outlined a path forward that they called “coexistence.”

In making their final decision, USDA officials rejected banning the genetically engineered version of the perennial crop that is so important as forage for the livestock industry. And they also rejected a third option, one of limited regulation with bans on the planting of GE alfalfa seeds in specific seed growing regions of the country to attempt to limit the contamination of alfalfa seed stock by the drift of foreign DNA from Monsanto’s crop.

Attorneys for the Center for Food Safety (CFS) and Earthjustice quickly filed a lawsuit challenging the USDA’s decision,

arguing that the unrestricted approval of genetically engineered, Roundup Ready Alfalfa was unlawful. In addition to Cornucopia, other plaintiffs in the lawsuit include Beyond Pesticides, California Farmers Union, Dakota Resources Council, Geertson Seed Farms, National Family Farm Coalition, Northeast Organic Dairy Producers Alliance, Sierra Club, Trask Family Seeds, and Western Organization of Resource Councils.

“We are an organic, grass-fed beef operation relying on alfalfa in pasture mix and for winter feed,” said Jim Munsch, an organic beef farmer from Coon Valley, Wisconsin and Cornucopia’s point person on the lawsuit. “GE alfalfa means contamination of all alfalfa seeds within a few years.” Munsch noted they are now weighing their options, including “giving up organic production at great revenue loss or finding another forage at great cost increase.”

Even the prospect of limited regulation raised howls of protest from the biotech industry, their lobbyists, and supporters in Congress. Although more than 200,000 public comments were received by the USDA and the White House opposing deregulation of GE alfalfa, in the end it didn’t outweigh biotech’s raw political power.

GE alfalfa is substantively different than GE varieties of corn and soybeans grown by many farmers. It is a perennial, meaning that the plant’s vital seeds are subject to transport by animals, water, farm equipment, hay bales, or other mechanisms and will spring to life in their new environments. Resistant to the popular herbicide Roundup, they will be much more difficult to eradicate. And with a pollination radius of approximately five miles, bees and other insects will likely carry Monsanto’s patented



DNA past fence rows and onto neighboring fields, contaminating crops raised for forage and seed.

Independent alfalfa seed growers have been among the most outspoken opponents of GE alfalfa. Chuck Noble raises alfalfa on his western South Dakota land, taking hay the first year and then seeds the following year. He estimates that as much as half of U.S. alfalfa seed production comes from independents like himself. “Coexistence,” says Noble, “is not possible without wrecking the conventional alfalfa and seed industry and causing further monopoly.”

Nearly 20 million acres of land across the U.S. are in alfalfa production, making it the fourth most widely grown crop. More than 80% of it is grown without any herbicide usage. “To allow GE alfalfa to be grown for a small number of people who want to plant into their weed patches is poor reasoning,” Noble says.

The legal challenge of the USDA’s deregulation decision will be held in U.S. federal court serving Northern California. Judge Samuel Conti will preside over the case. Not surprisingly, Monsanto has moved to intervene in the case in support of the USDA’s decision. ■

—Will Fantle

## Cornucopia Prevails in Court

### USDA Drops Appeal in Raw Almond Case

The USDA has decided to drop its fight against the right of farmers to legally challenge its controversial raw almond pasteurization mandate. The decision was made in May and came after a panel of federal Appeals Court judges strongly affirmed in December the “legal standing” of almond growers to challenge the pasteurization rule.

Cornucopia has been coordinating the legal effort for a group of California almond farmers who have been fighting the requirement to gas their raw almonds with a toxic fumigant or treat the nuts with steam heat prior to sale to U.S. consumers. “We are proud to have helped protect the fundamental right of farmers to seek justice in the court system,” says Cornucopia Codirector Will Fantle.

Attorney John Vetne, who is formally representing the almond growers, has asked the federal Justice Department lawyers (representing USDA) to now examine “whether justice is served by litigating the merits of what the USDA has advanced as a food safety rule.” Vetne notes that the USDA’s Agricultural Marketing Service, under

whose oversight the rule was developed, has repeatedly admitted that they do not have food safety regulatory authority.

The USDA and the Almond Board of California imposed the treatment scheme in September 2007 to minimize the risk of salmonella contamination outbreaks like those that had occurred in 2001 and 2004. USDA investigators were never able to determine how salmonella bacteria (associated with feces) somehow contaminated the raw almonds that caused the food illnesses, but they were able to trace back one of the outbreaks, in part, to the country’s largest “factory farm,” growing almonds and pistachios on over 9,000 acres.

Family-scale growers have argued that the onerous and expensive mandated treatment regime is not legally justifiable and may only protect giant industrial-scale growers, who have less control over the quality of their nuts. Furthermore, many have questioned the logic exempting foreign-grown almonds from required pasteurization. Due to consumer opposition to the treatment requirement, imports have

has filed a formal petition with the National Organic Program for permission, after the fact, to add its DHA additive to organic foods. And despite the clear indication that the product is not approved for use in organics, Dean Foods rolled out additional new Horizon milk products containing the controversial additive.

“The last thing we expected was to see a marketer actually introduce a new product with these unapproved synthetic substances,” said Vallaey. “With this move, Dean Foods seems to be stating that they do not care about organic integrity, and couldn’t care less about complying with the organic law.”

One other organic dairy processor,

displaced raw domestic nuts in many major markets and retail locations across the U.S. This regulatory loophole has been financially crushing for a number of California raw almond producers.

Tens of thousands of consumers expressed their discontent with the raw almond treatment rule in comments to the USDA. Organic and raw foods enthusiasts were particularly incensed that the nuts, despite being processed with propylene oxide (identified as a carcinogen by the federal EPA) or steam heat, were still allowed to be labeled as “raw.” Many believe that essential nutrients in food can be destroyed by heat, radiation, and toxic chemicals. ■

—Will Fantle

### Food Safety Action Needed

Big Ag reps in the leafy greens industry have convinced the USDA to support a proposal for a “food safety” marketing agreement, which would allow them to write “one-size-fits-all” rules for the entire leafy greens farming community. Tell the USDA that you oppose this proposal. Comments are due by July 28. Find a complete action alert at [www.cornucopia.org](http://www.cornucopia.org).

Stremick’s, is also adding Martek’s DHA algal oil to their organic products.

The vast majority of organic dairy products on market shelves adhere to the organic standards, which prohibit synthetic pesticides, genetically engineered and modified organisms, antibiotics, artificial growth hormones, and synthetic additives such as Martek’s DHA. For example, Organic Valley and Stonyfield Farm use DHA derived from fish oil, a source that has been approved by the National Organic Program.

The Dairy Scorecard on Cornucopia’s website, [www.cornucopia.org](http://www.cornucopia.org), ranks over 115 organic producers, from a rave “5 cows” to a big fat zero for the ethically deficient. ■

—Will Fantle

## Animal Welfare

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livestock was finally resolved with a strong new rule issued by the USDA’s National Organic Program last year, many other animal welfare concerns remain.

Most recently, controversy erupted over the regulatory requirement for outdoor access for laying hens and other poultry. Cornucopia’s latest report, *Scrambled Eggs*, investigated abuses occurring at giant organic industrial-scale egg laying operations where tens of thousands of birds are mostly confined inside buildings. These operations stand in stark contrast to many family-scale farms, profiled in Cornucopia’s report, that are producing eggs with their birds seasonally outdoors as most organic consumers expect.

The Livestock Committee’s ill-fated proposal called for an outdoor space requirement of two square feet per bird for layers, and one square foot per bird for broilers. Cornucopia, in its formal comments, called this “woefully inadequate.”

The proposal represented a rollback from 2009 when the Livestock Committee then suggested three square feet per bird of outdoor space for both layers and broilers. Extensive lobbying from giant operators, including the United Egg Producers, helped weaken that plan. The Livestock Committee’s current proposal falls short of the requirement of five square feet per bird that the nation’s largest name-brand producer, Organic Valley, expects of its certified egg producers. European organic standards are even more spacious, requiring 43 square feet per bird outside.

“If commercial-scale producers at Organic Valley, with 1,500 to 15,000 hens, can provide five square feet of outdoor space, all commercial organic producers should be able to fulfill such a requirement,” notes Cornucopia’s Charlotte Vallaey, Director of Farm and Food Policy.



Cornucopia is also on record supporting a phase-in period of up to three years for this requirement should farmers need to transition more land around their hen-houses to organic.

Several family-scale egg producers spoke at the NOSB meeting, making clear that the requirement for outdoor access truly means hens can be outdoors. Tony Dryak, from Wisconsin and a farmer for 37 years, called the poultry proposal a “work in progress.” He said the standards for poultry until now have been “wholly inadequate.” Ann Schwartz, a Washington state farmer and member of Tilth Producers, said their nearly 600 organic farmers “strongly support increased outdoor space requirements for poultry, hogs, and all ruminant classes of livestock.”

Representatives from large industrial-scale operations, including Country Hen, Herbruck’s Poultry Ranch, and Sunrise Farm, were present at the NOSB meeting. They continued to speak against outdoor access requirements.

Seattle-based PCC Natural Markets brought a strong contingent of consumers and store representatives to the meeting to testify in favor of stronger organic standards. This included two teenage girls who described their chicken raising practices and how they have observed that

being outdoors makes the birds healthy and happier. Many audience members responded with applause.

Another Livestock Committee proposal dealt with space requirements for organic growing pigs. But their proposal would not even allow a growing pig to turn around in its bedded space or have access to the outdoors! In its testimony, Cornucopia compared this plan to five other animal welfare standards used for growing pigs. The Livestock Committee’s proposal ranked dead last, even behind the National Pork Board’s standard, the one used by industrial-scale conventional producers.

In framing the animal welfare debate the NOSB’s Livestock Committee wrote: “Ultimately, [we] would like the organic seal to be the gold standard, indicating the most nutritious food produced in the safest and most humane manner.”

“The animal welfare proposal we saw at this meeting was clearly not ready for prime time,” observed Cornucopia’s Mark Kastel. “Organic farmers and consumers are going to have to keep pressuring the NOSB if we truly want to see improvements and the organic seal actually become the gold standard in animal welfare.” ■

—Will Fantle

## NOSB Acts on Nutrient Policy

### Deluge of Public Comments Influences Board's Decision

At its April meeting the National Organic Standards Board (NOSB) approved a list of minerals and vitamins for use in organic foods that does not include Martek Bioscience Corporation's controversial DHA oil. The NOSB reaffirmed the current standard which states that organic foods may be fortified with nutrients found in the Food and Drug Administration's (FDA) official fortification policy (as found in federal regulations, 21 CFR 104.20). For example, Vitamin D, which is commonly added to milk, is on this list, and is therefore allowed in organic foods.

Days before the NOSB meeting, the FDA publicly clarified that ingredients like Martek's DHA oil are not "essential nutrients" and do not fall under the FDA fortification policy.

The NOSB decision came after USDA Deputy Secretary Kathleen Merrigan made a plea for action. Dr. Merrigan told the board that they needed to ensure that common

minerals and vitamins remain approved for use in organic foods. Merrigan pointed out that failing to act would lead to the removal of important nutrient ingredients, such as Vitamin A and D from organic milk.

Since the publication of its infant formula report, *Replacing Mother: Imitating Human Breast Milk in the Laboratory*, Cornucopia has been working to unravel the corrupt process that led to Martek's algal oil in some organic products. The work is compelling given the discovery of numerous instances of diarrhea and vomiting in newborns given formula with the ingredient.

In April 2010, the National Organic Program acknowledged that it had wrongly allowed the ingredient. But in 2011, the Handling Committee of the NOSB proposed a new recommendation that sought to expand the allowance for ingredients by permitting the use of *any* nutrient ingredient allowed by the FDA, including those that have *never been tested for safety or efficacy*.

## USDA Seeks NOSB Board Nominations

The U.S. Department of Agriculture announced this spring that it seeks nominations to fill five imminent vacancies on the National Organic Standards Board (NOSB). Appointees will serve a five-year term beginning January 24, 2012. Vacancies for the 15-member organic advisory board need to be filled for an organic producer, organic handler, consumer/public interest representative, scientist, and environmentalist. The positions are designated to represent various sectors of the organic industry or have expertise in the fields of toxicology, ecology, or biochemistry.

Widespread abuse during the Bush and Obama administrations led to corporate agribusiness representatives being appointed to positions that were earmarked for farmers or consumer advocates. Because of this we are appealing to USDA Secretary Tom Vilsack to respect the will of Congress and to make the nomination process public so that the very best candidates can be appointed. The NOSB is responsible for developing and recommending to the USDA Secretary a proposed National List of Allowed and Prohibited Substances and advising the Secretary on organic regulations. For application guidelines visit [www.regulations.gov](http://www.regulations.gov) and search for AMS-NOP-11-0006-0001. Nominations must be postmarked by July 17. For more information, contact [katherine.benham@ams.usda.gov](mailto:katherine.benham@ams.usda.gov).

Several Handling Committee members work for large corporations with varying levels of interest in organics; some have openly supported the use of Martek's oil even though it has never had the technical review required for synthetic ingredients. The committee's resolution expressed a desire for the "maximum freedom of choice for organic consumers."

That sentiment, says Cornucopia's Charlotte Vallaey, Director of Farm and Food Policy, is at odds with the views of most organic consumers who "pay a price premium precisely because they desire products that are free from unapproved novel ingredients, whether they be non-organically produced agricultural products or synthetics."

When the Handling Committee recommendation was made public before the meeting, a deluge of public comments swamped the NOSB, spurred, in large part, by an action alert from Cornucopia. More than 2,000 people chimed in, nearly all expressing opposition to the resolution. It was the largest volume of public comments ever received by the NOSB on a single agenda item, and it led the Handling Committee to withdraw its proposal.

It's been over a year since the National Organic Program made clear that Martek's synthetic DHA was not allowed for use in organics, but the program has yet to issue a clear timetable and guidance for removal of the problematic ingredients. Program Director Miles McEvoy told the NOSB on April 29 that they have a draft guidance "pretty much ready to be published." He said that a final guidance would likely not be out before the fall NOSB meeting.

Meanwhile, the Hain Celestial Group and Dean Foods introduced new products containing the unapproved ingredient (see story on page 7). And Martek has applied for approval of its DHA oil, a matter that is on the agenda of the fall NOSB meeting. ■

—Will Fantle

## Organic Milk Bottler Challenged

### Cornucopia Files Complaint over Horizon's Illegal Synthetic DHA

In February The Cornucopia Institute filed a formal legal complaint alleging that a newly introduced product, by the giant dairy conglomerate Dean Foods, includes a synthetic nutritional oil that is prohibited in organics. The product, *Horizon Fat-Free Milk Plus DHA Omega-3*, bears the USDA organic seal despite a public statement by the USDA in 2010 that the proprietary DHA oil is not legal in organic production.

In April Cornucopia followed up with a formal request to the Federal Trade Commission (FTC), asking for an investigation into Dean Foods' advertisements for its Horizon milk. The request alleges that the nation's largest dairy conglomerate is committing consumer fraud in misrepresenting the nutritional benefits of its products.

This year the dairy giant launched a nationwide marketing campaign that focuses on purported benefits to children's brain development from drinking milk with added DHA oil, which is highly processed from fermented algae. The algal oil, developed by Monsanto, is manufactured and marketed by Martek Biosciences Corporation.

According to The Cornucopia Institute's legal complaint, there is no credible scientific evidence—only industry-backed research—to support Dean Foods' marketing claims that Martek's proprietary DHA oil "supports brain health."

In fact, Martek's DHA oils, widely used in infant formula (including organic brands), have been linked to serious infant illness. (See sidebar at right.)

DHA is an omega-3 fatty acid. Omega-3s occur naturally in foods such as fish, flax

seeds, nuts, and grass-fed meat. But Martek produces its patented DHA additives from microalgae species that have never previously been part of the human diet, and that are fermented in a medium including corn syrup that is likely genetically engineered (GE), explained Cornucopia's Charlotte Vallaey, Director of Farm and Food Policy.

"Companies like Martek don't like consumers to know that these additives are often chemically extracted and treated with harsh chemicals, deodorized, and bleached," Vallaey added. "There's a reason why so many consumers are turning to organic foods—to avoid these kinds of novel substances that masquerade as food."

The Cornucopia Institute has charged that food processors adding Martek's algal oils to organic foods are in violation of the Organic Food Production Act and USDA organic standards, which prohibit unapproved non-organically produced ingredients, including GE, in organic foods.

Under current organic standards, food processors may add essential nutrients to organic foods if they are covered under the Food and Drug Administration's official fortification rule. Synthetic DHA is not, a fact that was reaffirmed by a formal statement by the Food and Drug Administration prior to the National Organic Standards Board's April 2011 meeting.

Under the Bush Administration, the USDA had informally allowed the additives in organic foods after a backroom deal with corporate lobbyists, according to documents Cornucopia obtained through the Freedom of Information Act.

However, after numerous appeals by The



## Martek Corp. DHA: Makes Babies Sick?

Megan Golden of King of Prussia, Pennsylvania, watched her newborn son suffer from serious vomiting and gastrointestinal illness from the day he was born and given formula with DHA. At age nine weeks, she switched to formula without these additives. The baby's symptoms vanished.

"By the next day, my son was a completely different infant," Golden recalled. "He was comfortable, not as agitated, and the throwing up had stopped. His gas pains went away. His stools became normal. And he could finally relax enough to sleep," said the thankful mother.

Hundreds of reports have been filed with the Food and Drug Administration (FDA) from parents who noticed that their infants experienced serious diarrhea, vomiting, and other gastrointestinal problems when consuming infant formula with Martek's algal DHA and fungal ARA oils. Severe diarrhea and vomiting are potentially fatal in infants. Some scientists believe these reports are just the tip of the iceberg.

Formula companies and Martek Biosciences Corporation have failed to perform adequate post-market surveillance to ensure the safety of their DHA algal oils, despite a clear request from the FDA that additional safety studies be shared with the public.

For a video and summary of the overwhelming scientific literature questioning the efficacy and safety of Martek's nutritional oils, visit [www.cornucopia.org](http://www.cornucopia.org).