

# Yale Law Office, LP

## ATTORNEYS AT LAW

---

Benjamin F. Yale\*  
Kristine H. Reed†  
Ryan K. Miltner\*

527 North Westminster Street  
P.O. Box 100  
Waynesfield, Ohio 45896-0100  
(419) 568-5751  
Fax: (419) 568-6413  
Website: [www.yalelawoffice.com](http://www.yalelawoffice.com)

\*also admitted in New Mexico and Texas

†also admitted in Indiana

\*also admitted in Michigan

February 16, 2005

The Honorable Mike Johanns  
Secretary, United States Department of Agriculture  
1400 Pennsylvania Ave., SW  
Washington, DC 20250

**Re: *Milk in the Arizona Las-Vegas and Pacific Northwest Marketing Areas,***  
***Docket No. AO-368-A32; AO-271-A37; DA-03-04***

Dear Mr. Secretary:

This letter is submitted on behalf of Mallorie's Dairy, Smith Brothers Farms, Edaleen Dairy, and Sarah Farms. These organizations are producer-handlers who produce more than 3 million pounds of milk per month and, therefore, their status is the subject of the above referenced rulemaking proceeding.

As counsel for these producer-handlers, we have become increasingly concerned about the integrity of this hearing process. Since December of 2004, we have received repeated statements from individuals, primarily from the State of California, who claim that they already know the result of this hearing from persons within USDA. Specifically, these people have stated, without equivocation, that the Department will impose a "hard" three million pound cap on producer-handlers, and the decision will be implemented on an expedited basis without opportunity for comment.

At first, we viewed the statements as "guesses" or "wishful thinking." These repeated assertions, however, come from individuals whose position in the industry is such that their comments are usually based in fact and should be taken seriously.

If these statements are not true, then future events will expose their falsity. If true, however, these statements strongly suggest that someone within the Department violated the prohibition on *ex parte* communication. See 7 C.F.R. § 900.16(a). If so, there has been a serious interference with the rule making process.



The Honorable Mike Johanns  
February 16, 2005

Page 2 of 3

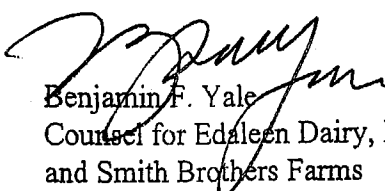
The rule making process in Federal Milk Marketing Order proceedings must be impartial and free of the taint of any personal bias or prejudice concerning any interested party. It is critical to the rule making process that the Department and all those involved as officials in the hearing remain free from even the appearance of impropriety. The recent rash of rumors and other innuendo regarding a predetermined outcome based upon political expediency and "backroom" deals does little to foster public confidence in a fair and impartial process within the Department. Rather, these recent events call into question the reliability of the entire structure of the Federal Milk Marketing Order system.

In addition, we have obtained a copy of a February 11, 2005 letter from National Milk Producers Federation and International Dairy Foods Association directed to you and copied to others in the Department. The letter, as it suggests that the evidence presented at the hearing proves or disproves any matter at issue and as it demands action by the Department, constitutes *ex parte* communication in violation of 7 C.F.R. § 900.16 (b). The attempt by NMPF and IDFA to argue the evidence before the Department and influence the speed of the decision making process is patently improper. It also raises the question as to whether there have been other, less public, efforts to influence the Department in this process.

Our decades long experience with the Department has shown its staff to be nothing less than professional people of integrity. Thus these recent events not only concern us but surprise us. However, given the serious business risks facing our clients in this hearing, we felt it necessary to bring this to your attention so that the integrity of this process can be guaranteed in appearance and reality. Furthermore, as the Department is aware, a competitive retail dairy market will react to statements that significant regulatory changes are imminent. Indeed, such statements can have the effect of influencing current pricing in the dairy industry.

On behalf of our clients, we ask that the Department immediately commence an investigation to assure all hearing participants that the process itself is free from improper communication. We are simultaneously directing a request under the Freedom of Information Act to the USDA FOIA Officer because we intent to employ every tool at our disposal to ensure that this hearing is conducted fairly and without improper influence.

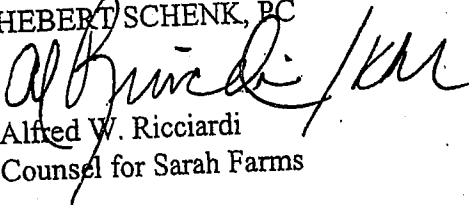
Sincerely yours,  
YALE LAW OFFICE, LP

  
Benjamin F. Yale  
Counsel for Edaleen Dairy, Mallorie's Dairy  
and Smith Brothers Farms

The Honorable Mike Johanns  
February 16, 2005

Page 3 of 3

HEBERTSCHENK, PC

  
Alfred W. Ricciardi  
Counsel for Sarah Farms

cc: Undersecretary William T. Hawks  
Office of the AMS Director  
Deputy Administrator Dana Coale  
Sharlene Deskins, Esq.  
Marvin Beshore, Esq.  
Charles English, Esq.  
Northwest Dairy Association  
United Dairymen of Arizona  
Elvin Hollon, DFA  
Roger Cryan, NMPF  
Constance Tipton, IDFA