

## Sarah Farms' Lawsuit: MREA Violated U.S. Constitution

By Pete Hardin

On September 21, 2006, Hein and Ellen Hettinga – owners of Sarah Farms – filed a lawsuit versus the federal government. The Hettingas claim that a federal law passed last spring – the Milk Regulatory Equity Act (MREA) – violated the U.S. Constitution's prohibition against "Bills of Attainder" by singling out their large producer-handler dairy operation in Arizona.

Certainly, comments on the floor of the U.S. House of Representatives by the bill's sponsors focused solely on Sarah Farms as the MREA target.

On April 11, 2006, President Bush signed the MREA – a federal law that changed dairy regulations:

1) Producer-handlers' monthly Class I (fluid) milk sales exceeding 3,000,000 lbs. would be regulated by USDA's milk orders. Previously, the producer-handlers had been unregulated. (Producer-handlers are firms that both operate dairy farms and process milk from those farms in self-owned milk plants.)

2) The entire state of Nevada was entirely exempted from USDA milk order regulation. (Previously, Clark County, Nevada, was exempt from milk order oversight.)

U.S. House passed MREA, 285-128, in a rules-suspending frenzy late on March 28, 2006. MREA's passage capped several years' efforts by dairy cooperatives and competing processors to hamstring Sarah Farms – one of the nation's largest producer-handlers – based in Yuma, Arizona. Sarah Farms built a large market share of the fluid milk market in the Phoenix market – perhaps as high as 25% – before MREA.

Hein Hettinga immigrated to the U.S. from the Netherlands in 1949. He started trimming dairy cattle feet, and has become one of the nation's biggest dairy producers. Today, Hettinga owns dairy operations milking thousands of cows in Arizona and California.

Sarah Farms' business model – processing milk from its own dairy cows in its own fluid milk plants and selling that milk to local retailers – is a pinnacle of dairy efficiency. Sarah Farms was simply too efficient for competitors, who counterattacked politically via the MREA.

Within a few days after President Bush inked MREA, Dean Foods was trucking packaged milk from its new milk plant in Las Vegas, Nevada into the Phoenix market, swiping business from Sarah Farms. Dean Foods now uses the Las Vegas plant's deregulated status to pirate packaged milk sales in Arizona from Sarah Farms.

How Sarah Farms' previously legal, highly-profitable, competitive advantages were stripped and compromised by MREA's politics is a shocking story.

### **MREA: unconstitutional "Bill of Attainder"**

Hein Hettinga didn't achieve his status in dairy by not returning fire when ambushed. Sarah Farms' attorney, Al Ricciardi, is challenging MREA as unconstitutional. MREA's frenzied sponsors overlooked a key concept: the U.S. Constitution's ban on "Bills of Attainder."

Simply explained, a Bill of Attainder is a law directed against a single individual or sole corporation. Article F, paragraph 9, clause 3 of the United States Constitution states that, "[n]o bill of attainder or ex post facto law shall be passed."

As the U.S. Constitution was being drafted, the framers sought to avoid potential vindictive acts against individuals. Such protections stemmed from concerns dating back in English law to edicts against citizens who had incurred the king's wrath. Such cases are rare.

On Thursday, September 21, 2006, attorneys for Sarah Farms filed a Complaint for Declaratory and Injunctive Relief in the U.S. District Court for the District of Columbia.

This lawsuit seeks to have federal courts to declare Section 2(a) of MREA is an unconstitutional Bill of Attainder.

Section 2(a) of MREA denies plaintiffs due process of law. The House of Representatives passed its version of MREA, amid rules suspensions, in the evening of March 28, 2006. Opening arguments in a lawsuit by Sarah Farms against USDA restrictions on producer-handlers were scheduled for the morning of March 29, 2006, in federal court in Lubbock, Texas. The presiding federal judge in that case accepted government attorneys' logic that the legal matter should not continue, because of Congress's action the previous evening.

Plaintiffs also claim that mandatory statutory punishments upon their business violated their right of due process.

And Section 2(a) of the MREA thus violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

MREA denies the plaintiffs' Constitutional guarantees of equal protection. In summary, plaintiffs Hein and Ellen Hettinga seek to overturn MREA Section 2(a), as well as recover their costs and legal fees in this legal action.

### **Timeline of actions against Sarah Farms**

Sarah Farms' complaint offers a cogent, time-line analysis of events, supporting the contention that MREA selectively targeted the Hettigas. Reining in producer-handler exemptions under the FMMO program was a goal of certain major cooperatives and fluid processors for nearly a decade. In 1998, USDA Secretary Dan Glickman reported to Congress on actions reviewing the federal milk order system dictated by the 1996 farm bill. Specifically referring to producer-handlers' exemption, Glickman stated: "The 1996 Farm Bill, unlike previous legislation, did not amend the AMAA and was silent on continuing to preserve the exemption of producer-handlers from regulation. However, past legislative history is replete with the specific intent of Congress to exempt producer-handlers from regulation."

In June 2002, Dairy Farmers of America (and other groups) requested USDA to hold a hearing, in an attempt to include Sarah Farms in the pricing/pooling rules of the Arizona-Las Vegas milk order (Order #131).

Starting in 2003, California congressman Devin Nunes sponsored initial legislation to rein in producer-handlers. Arizona Senator Jon Kyl (R) sponsored similar bills that evolved to MREA.

On December 16, 2005, the U.S. Senate passed its version of MREA. Senator Harry Reid (D-Nevada, the Senate's Democratic leader) championed the bill on the floor, after a provision exempting Nevada from FMMO oversight was added to bring Reid on board. (Dean Foods had recently completed a big fluid milk plant in Nevada.) The measure – S. 2120 – passed by unanimous consent among the handful of senators present.

On February 24, 2006 ... almost four years after the initial request ... USDA adopted final rules for the Arizona-Las Vegas and Pacific Northwest (#124) milk orders, limiting producer-handlers to a maximum of three million lbs. of unregulated milk each month. That rule was set to become law on April 1, 2006.

On March 14, 2006, attorneys for Sarah Farms filed a lawsuit in U.S. District Court for the Northern District of Texas (Lubbock Division), challenging the legality of USDA's rules setting the three million pound per month limit on producer-handlers. Sarah Farms' attorneys claimed that USDA lacked authority for that determination; that USDA had changed prior interpre-

tation that it lacked statutory authority for such regulation; and that USDA's determination of a minimal (two to four cents per cwt.) economic impact analysis was faulty.

Preliminary arguments on Sarah Farms' lawsuit against USDA's changing rules governing producer-handlers were scheduled for the morning of March 29, 2006. But on the evening of March 28, 2006, Congress suspended its rules and passed HR 4015 – the Milk Equity Regulatory Act of 2005 – amid a flurry of irrelevant political niceties.

### ***Congressional Record* spotlights HR 4015 focus on Sarah Farms**

Floor debate in the House of Representatives is recorded and reported in the *Congressional Record*. Excerpts from the debate on the House floor during the proceedings involving HR 4015 contain specific quotes from legislators acknowledging that bill was designed to ensnare Sarah Farms and to cut off Sarah Farms' legal case against USDA being heard the next day in Lubbock, Texas.

Clearly, HR 4015 directly targeted Sarah Farms, the only producer handler in federal order #131.

On March 29, 2006, in federal court in Lubbock, Texas, only twelve hours after the House passed HR 4015, the government attorney handling asked the judge to dismiss the proceedings because the law passed twelve hours earlier in Washington, D.C. mooted the plaintiffs' claims. The judge thus acted, denying Sarah Farms' day in court to explain the merits of its complaint seeking to overturn USDA's administrative changes levied against producer-handlers.

President Bush signed the MREA on April 11, 2006 – the law controlling producer-handlers went into effect on May 1, 2006.

Suddenly, Sarah Farms found all monthly fluid milk sales regulated by USDA. And Dean Foods promptly began bumping Sarah Farms' packaged milk from some customers in northwest Arizona, using Class 1 product from Nevada. That's the background that has brought Sarah Farms' complaint to the U.S. District Court for the District of Columbia. Constitutional challenges against Bills of Attainder are a rare section of federal law. If MREA is any example, the U.S. Constitution's framers' wisdom against what modern football referees would penalize as "piling on."