

DFA’s Conspiracy to Control Northeast Producers Dates Back 20 Years

by **Pete Hardin**

The “Final Solution” now being posed by Dairy Farmers of America to possibly kill off many independent dairy producers in the Northeast dates back 20 years, at least.

In May 1997, the “Dairy Producer” insert that appeared in various regional farm magazines carried an article titled, “Fluid Image.” That article profiled the growth intentions of Mid-America Dairymen, Inc. – DFA’s predecessor cooperative. That article appeared in regional farm magazines, such as *American Agriculturist* (in the Northeast) and *Wisconsin Agriculturist*.

That article from 20 years ago depicted Mid-Am as ready to grow beyond its historic bounds in Mid-western and Central States. An intended strategy for that growth was through joint venture partnerships with fluid milk processors, which involved shared ownership of fluid milk processing businesses.

That 1997 article focused on the Northeast region of the country. Carl Bauman, Mid-Am’s board president at that time, was quoted as saying: “There are 61 dairy co-ops registered in the state of New York. How effective can 61 co-ops be?” In truth, Bauman didn’t know diddly squat about the New York dairy cooperative scene. He was merely serving as a mouthpiece for DFA’s brazen CEO at that time, Gary Hanman.

In 1997, Bauman may or may not have known about the dirty dealings that Mid-Am was hatching with its soon-to-be, primary joint venture partner — Suiza Foods. Mid-Am became Dairy Farmers of America (DFA) in late 1997 through the merger of four dairy cooperatives. DFA became, and remains, the nation’s largest dairy producers’ co-operative.

In late 2001, Suiza Foods merged with Dean Foods – a highly questionable marriage of the nation’s two largest fluid processors. The Dean Foods name stuck. Allegations of anti-competitive behaviors soon followed.

DFA and Dean Foods have a highly documented history of anti-competitive conspiracies. Both firms were defendants in separate, privately-

DFA & DMS Threaten to Terminate Northeast Independent Producers

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Summary of DFA/DMS’ Dirty Dealings

Dairy Farmers of America (DFA) and its regional subsidiary, Dairy Marketing Services, LLC (DMS), are aiming to wipe out independent producers in the Northeast who ship milk to DMS.

The end-goal of DFA/DMS seems to be to wipe out independent producers’ markets so that DFA/DMS may assess marketing losses across-the-board in the tumultuous Northeast. But those 900 (or so) remaining independent dairy farmers on which DFA/DMS has declared “open season” aren’t the only quarry DFA/DMS are seeking to put away.

DMS is coercing, or has coerced, local dairy cooperatives’ boards of directors with milk marketing contracts to agree to DMS assessing unlimited “re-blends” (i.e., marketing losses) against their members’ milk checks. Sources report that DMS threatened those local co-ops’ directors with loss of milk marketing contracts within 30 days for co-ops that didn’t comply with DMS’ dictates.

Here’s a recent list of recent dirty dealings concocted by DFA/DMS:

- In 2016’s fourth quarter, sources report that the DFA/DMS threat to terminate markets within 30 days if individual co-op boards marketing milk through DMS did not agree to the unlimited reblends extracted from their members’ milk checks. That was reported on page 1 of the December 2016 issue of *The Milkweed*.

- In early January 2017, DFA requested that the market administrator of the Northeast federal milk order relinquish pooling rules for producers for the period April 1 to September 30, 2017. That de-pooling request would allow DFA/DMS (and other marketers) to sell milk to manufacturing plants without any federal oversight. “De-pooled” status

settled anti-trust lawsuits – in the Southeast and the Northeast. Common complaints from plaintiffs in both those anti-trust lawsuits focused on defendants’ eliminating Class I (fluid) markets for regional dairy producers, and underpaying producers for milk marketed by defendants DFA and DMS.

DFA settled the Southeast case for \$140 million, plus an additional \$16 million in possible future add-ons. Dean Foods settled the Southeast case for \$140 million. In both instances, specific details of those settlements were not available.

In the Northeast antitrust lawsuit, defendant Dean Foods settled out-of-court for \$30 million. Defendants DFA/DMS settled for \$50 million. Payouts to class members (dairy farmers) in the DFA/DMS settlement are being delayed by two factors. First, certain class representatives have appealed the presiding judge’s decision accepting the settlement. Second, plaintiffs’ lawyers are squabbling over the amount of and division of fees awarded to them.

During the long-running Southeast dairy antitrust litigation, documents cited in the court proceedings revealed that in 1997 and 1998 Mid-Am’s Gary Hanman and Suiza Foods CEO Gregg Engle\$ had a written agreements stipulating that in cases where Suiza Foods, or a joint venture involving both Mid-Am (later DFA) and Suiza (later Dean Foods) acquired a fluid processing business, the following scenario would play out:

- Mid-Am (later DFA) would take control of supplying farm milk to the processing business at prices lower than those paid for raw milk by Suiza Foods/Dean Foods competitors.

- And producers supplying milk to those plants would be ultimately compelled to join DFA, or lose their access to sell milk to those plants.

The roots of DFA/Dean Foods antitrust violations were fertilized.

Gary Hanman’s own damning words!

By 2000, DFA’s CEO/President Gary Hanman was so full of anti-competitive bravado that he dis-

tributed an audio tape to the co-op’s field staff, in which Hanman bragged about plans to force independent Northeast dairy farmers shipping to a DFA-Suiza Foods fluid milk processing joint venture into DFA membership. (The audio tape was provided to *The Milkweed* by a former DFA fieldman. The transcript was published in the December 2000 issue.) Here are Hanman’s exact words derived from a September 18, 2000 speech to employees at DFA’s headquarters:

“We’ve got some stress going on in New York and in New England. One of our joint ventures is in the country trying to maintain a non-member milk supply that they’ve had. And yet our leadership up there says, “I thought we had an understanding that ... these producers would become DFA members.

“... (W)e’ve pretty much got the rest of it where the milk supply is coming from DFA members, but we haven’t integrated fully the milk supply function for these affiliates, primarily Suiza and affiliates, there in the Northeast and the Mid-East Council.

“We will get that done, given time. This fall is probably not the time to put pressure on this membership. But we will get that done over time ... plus the oversight of Justice today, which is very, very significant ... And we do have a lot of government oversight over what we ... and our joint ventures are doing. Just because of our size. And so, what we could do as an individual co-op, a small cooperative, we cannot do as DFA, the size that we are today.”

In Hanman’s own, brazen words, the DFA leader admitted:

- The co-op had struck a deal with joint venture partner Suiza Foods to force independent dairy producers into joining DFA.

- Prevailing oversight by the United States Department of Justice at that time was “very, very significant” ... but Hanman promised “We will get that done over time.”

- “Over time” ... through a series of deals, DFA

request for suspending pooling rules during April through September 2017.)

- DFA/DMS didn’t miss a beat in their next move – mailing out letters to Northeast independent dairy producers shipping milk to DMS within a day or two of Priebus’ “no new federal rules” directive. Those letters offered producers three dire options:

A) Seek another milk market.

B) Join a DMS-affiliated cooperative (so that DFA could assess unlimited “re-blends” against their milk checks, or

C) Take their chances as independent producers shipping to DMS effective April 1, 2017, for which DFA’s letter promised “the best possible price subject to the prevailing marketing conditions.” (No mention was made in this letter of the explicit threat, contained in the January 12, 2017 letter to the Northeast milk marketing administrator, that up to 900 independent producers’ markets might be terminated.)

Important to realize: Northeast federal milk order rules specify that handlers (including cooperatives) must pay the monthly “Statistical Uniform Price” to independent producers. The phrase “independent producer” refers to a dairy farmer who belongs to no milk marketing cooperative.

With all the marketing losses threatening to pile up in the Northeast, DFA is trying to avoid the specter of paying independent producers a better monthly milk price than what cooperative members will receive — those whose milk is marketed by DFA/DMS.

In the January 12, 2017 letter to Rasmussen, DFA threatened to terminate markets of untold hundreds of independent producers selling their milk to DMS. Ironically, DFA/DMS were all part of a conspiracy, stretching back nearly 20 years, to eliminate independent producers’ access to Class I (fluid) milk markets. (See related story.)

grew to control milk supplies going to virtually all the major Northeast fluid milk processors: Garelick Farms, HP Hood, and Farmland Dairies. But the more control that DFA gained over the region’s overall milk supply and fluid milk processors, the greater and greater the marketing deductions taken from farmers’ milk checks rose. In addition to controlling milk supplies for the region’s largest fluid milk processors, DFA also had either exclusive, or near-exclusive farm milk supply contracts with many of the region’s biggest cheese and yogurt plants – Leprino Foods, Great Lakes Cheese, Chobani Yogurt and Fage Yogurt.

NY farmers’ historic distrust of big co-ops

Hard to explain to folks without a long sense of history of the Northeast dairy industry, but a significant number of independent dairy farmers in that region wanted remain as independent producers, because of the cooperatives’ historic record of expensive financial failures. In the early 1970s, Dairylea Co-op deducted tens of millions of dollars from members to make up for years of money-losing performance that had been carried on the books. Dairylea’s deducts continued through the 1970s, 1980s, and much of the 1990s. Dairylea merged with DFA in 2014. Deducts against members’ milk checks for marketing losses continue to the present.

And then there was NEDCO – a federation of local co-ops that spectacularly went bust in spring 1985. Many hundreds of dairy farmers lost their milk checks and equities in the NEDCO failure. NEDCO’s leaders drank too many Rob Roys at the Tack Room in the old Hotel Syracuse. (In March 1985, *The Milkweed* editor correctly predicted the exact week in late may NEDCO would fail during an interview with a Syracuse television station.)

No wonder that many Northeast dairy farmers didn’t trust big co-ops – they’ve seen too many financial failures and marketing loss deductions.

Sweeping smaller co-ops under DMS’ control

DMS was formed in fall 1999, a joint venture between DFA and Dairylea Cooperative. In summer 1999, a New Jersey-based Italian cheese company – Concord Marketing – had gone bankrupt, stiffing Dairylea with about \$7 million in unpaid raw milk obligations. In its bankruptcy filing, Concord Marketing declared zero assets. Dairylea’s marketing manager, Diane Nosal, had continued selling raw milk to Concord Marketing, despite warnings from

other dairy co-op marketing personnel that Concord was ready to financially implode. (Nosal’s son worked at Concord Marketing.) That \$7 million hole in Dairylea’s cash flow was equal to half of the co-op’s equity declared in the 3/31/99 financial audit. Dairylea needed to quickly form DMS with DFA to spread out marketing risks (and perhaps gain more competent marketing personnel).

DMS soon became the combined marketing tool for DFA/Dairylea, overseeing those co-ops’ raw milk sales, transportation, testing, quality control, check-writing, etc. But the clear intent was to expand DMS to handle non-members’ (i.e., independent producers’) milk. So when Suiza Foods/Dean Foods started buying up Northeast fluid milk processing businesses in wholesale lots, the producers selling milk to those plants had their milk marketings shifted to DMS.

“We’ve got some stress going on in New York and in New England. One of our joint ventures is in the country trying to maintain a non-member milk supply that they’ve had. And yet our leadership up there says, “I thought we had an understanding that ... these producers would become DFA members. ...

“We will get that done, given time. This fall is probably not the time to put pressure on this membership. But we will get that done over time ... plus the oversight of Justice today, which is very, very significant ... And we do have a lot of government oversight over what we ... and our joint ventures are doing.”

— Gary Hanman, Sept. 18, 2000

DMS was DFA. That fact became clear in fall 2001, when New Hampshire’s Department of Agriculture sought a security bond from DMS to cover several dozen state dairy farmers under that state’s milk check security program. But the check to NH’s Agriculture Department for securing DMS’ milk purchases was written by Dairy Farmers of America. When commissioner Steven Taylor asked for more details about the relationship between DMS and DFA, he was informed in writing by DMS official Brad Keating that: “In terms of the Garelick independents from a technical/legal standpoint, Dairy

Key Language from the January 19, 2017 DMS Letter to Independent Producers

by **Pete Hardin**

On January 19, 2017, Dairy Marketing Services, LLC (DMS) issued a terse, threatening letter to perhaps as many as 900 independent producers whose milk is marketed by DMS in the Northeast federal milk order. Simply put: DMS’ President and Chief Executive Officer – Brad Keating – stated that heavy milk production and changes in demand leave imbalances in the region’s supply/demand during certain months of the year.

Keating’s 1/19/17 letter to those independent producers stated, in part:

“As an independent producer marketing your milk through Dairy Marketing Services LLC you may be aware that with current Federal Order regulations, you cannot be paid less than the blend price announced by the market administrator for milk that is pooled on the Order. As such, there is no mechanism in place to account for the lost revenue and increased cost of securing a home for your milk in the marketplace.

“In an effort to create fairness and treat both cooperative members and independents in an equitable manner, we will have to make some adjustments to your price effective with April 2017 milk deliveries. In order to account for the lost revenues and market balancing of your milk, we will de-pool portions, or all, of your milk supplies. The de-pooled milk will not qualify for the Federal Order I blend price and will be subject to the returns we can

Farmers of America is purchasing the milk from Garelick independent farms. That is why we had the bond furnished by Dairy Farmers of America.”

DMS was, and is, DFA.

“How efficient???”

Milk volumes in New York State have been growing steadily for years. About five years ago, DFA convinced New York governor Andrew Cuomo to promote state-funded incentives to “grow” New York’s milk supply to supply the then-burgeoning yogurt plants ... just at the time when statewide yogurt output started declining. (Cuomo’s chief-of-staff, Larry Schwartz, was the brother-in-law of Dairylea CEO Greg Wickham.) DFA has been finding financing to help large New York dairy operations to expand, without apparent need for regional milk needs.

For the past two springs, the Northeast market administrator had countenanced the “dumping” of tens of millions of pounds of farm milk. The milk supply was too big for the region’s transportation and processing plants’ capacity to handle. But DFA – the major buyer of farm milk in the region – has sent out no signals to dairy farmers to ease up on production. (In the Northeast, both the Upstate-Niagara milk co-op and Land O’Lakes have instituted “base programs” that penalized farmers for milk sales over pre-determined volumes.) In fact, DFA has assisted numerous New York State dairies in finding financing to expand milk production in recent years.

Further, despite all its control of farm milk supplies, DFA has not made commensurate investments in dairy processing plants in the Northeast. In truth, DFA has operated in the Northeast “on the cheap.” DFA owns three relatively small fluid plants (in Pennsylvania, Connecticut and Maine); two aged milk powder plants (in Pennsylvania), plus a former Kraft manufacturing plant in New York. That’s all – for the region’s biggest milk marketer. DFA is a partner, with a group of mega-dairies, in a cheese plant project in western New York. That deal offers little for DFA’s “average” members. Profits from DFA’s “non-member” joint ventures and subsidiaries are not shared with the membership. Some estimate that DFA has over 200 joint ventures and subsidiaries. Where’s all the money going???

No dealing with Northeast’s “spring flush”

Never, in the past 30 years, has any marketer addressed solutions to one of the region’s biggest milk marketing problems – heavy seasonal production in the spring months. Why? Disrupted milk marketing conditions force dairy farmers into cooperative membership, and provide incentives to processors to turn over their producer milk supplies to those same cooperatives.

In conclusion, DFA/DMS have used extortion and coercion to gain their predominant position controlling farm milk in the Northeast. But that extortion and coercion have not been backed up by any commensurate investment in dairy processing facilities. DFA’s \$72 million investment in the former Quaker-Muller yogurt plant near Batavia has resulted in the plant still sitting empty. As noted last month in *The Milkweed*, DFA has failed during the past year to inform the Genesee County Economic Development Commission of plans to restore that facility to active processing. Local officials have stripped DFA of any tax incentives and the co-op is assessed full value for property taxes, with a similar levy for school taxes that’s pending on September 1, 2017.

The Northeast dairy marketing situation is coming to an ugly boil. DFA will either force farmers to accept unlimited marketing assessments, or else terminate the milk markets of producers who refuse to join DFA or DMS-member cooperatives. (Remember: local dairy co-ops with DMS contracts have already been coerced into agreeing to unlimited milk marketing assessments taken from their members’ milk checks by DMS.)

Spurred on by big expansions of dairy farms in central, northern and western New York State, DFA’s management can see a ruinous tidal wave of milk coming in spring 2017. Solution? Re-blend marketing losses from farmers’ milk checks, and threaten to put hundreds of independent dairy farmers out of business.

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