



State of Wisconsin  
Jim Doyle, Governor

EXHIBIT 1

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

February 4, 2004

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RE: In the Matter of Milk Producer License No. 85297 of Clearview Acres, LLC,  
Hayward, WI and In the Matter of Milk Producer License No. 14958 of Midvalleyvu  
Farms, Inc., Arkansaw, WI, Respondents. Docket Nos. 01-C-62, 01-C-96, and  
02-C-07.

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STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
2811 Agriculture Drive, P.O. Box 8911  
Madison, Wisconsin 53708-8911

<p>IN THE MATTER OF MILK PRODUCER LICENSE NUMBER 85297 OF CLEARVIEW ACRES, LLC, HAYWARD, WISCONSIN, AND MILK PRODUCER LICENSE NUMBER 14958 OF MIDVALLEYVU FARM, ARKANSAW, WISCONSIN,  RESPONDENTS.</p>	<p>DOCKET NOS. 01-C-62, 01-C-96, AND 02-C-07 DECISION</p>
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SUMMARY OF THE DECISION

The issues were set forth for hearing as follows:

a. What is the Department's interpretation of its decision and order on October 30, 2002 in the above captioned matter, specifically as to paragraph (4) of the order that states as follows:

(4) Under the long-standing interpretation of s. 97.24, Wis. Stats., the Respondents are free to devise valid agreements sharing ownership in their milk producer license under applicable law that may include allowing actual owners to take a share of the ungraded raw milk produced under the license.

b. What should be the order of the Department so that any party, affected by the ruling, may comply with the ruling and any applicable statutes and rules?

The Department orders that:

1. Investments in entities holding milk producer licenses must be for the purpose of holding a milk producer license, using milking animals to produce milk for sale or distribution in the public, human food chain. Disclosure agreements for this investment must include this as the purpose for the investment.
2. Investments in entities holding milk producer licenses may not be solely for the purpose of purchasing non-pasteurized milk or milk products.
3. The more limited the ownership in the milk producer license, the more the specific investment amount must be tied to the benefit amount received by the limited shareowner.

4. The shareowner may be required to share or assume the risk of losing their investment in the entity holding the milk producer license.
5. Disclosure agreements for investments must include the risks of ownership in the entity holding the milk producer license, including the investment risks and the risks of taking any product as a benefit of ownership, as specified in the decision.
6. Milk and milk product preparation, handling, storage and distribution amongst owners must be physically separate from any food preparation, handling, storage, distribution and sales to the public on the premises.

#### NATURE OF THE CASE

A Decision and Order was issued by the Wisconsin Department of Agriculture, Trade and Consumer Protection's ("Department") on October 30, 2002. On October 21, 2003, the Department's Division of Food Safety ("Division") issued cease and desist orders to both Clearview Acres, LLC, ("Respondent CVA") and Midvalleyvu Farm ("Respondent MVF"), along with Hayward Community Dairy LLC and Wayne and Janet Brunner. These orders dealt with several issues of licensing and what the Division believed was sales of raw milk, in violation of state statutes and the Department's order of October 30, 2002.

On October 28, 2003, the Division made a motion to Administrative Law Judge Cheryl Furstace Daniels ("ALJ") requesting a motion to clarify the Decision and Order of October 30, 2002. The ALJ, in granting a hearing on the motion, included as other interested parties, two additional persons holding milk producer licenses that may be affected by the decision, Dan and Paula Siegmann ("Siegmanns") and Grazing Acres ("Grazing Acres"). Also added as a party was the Wisconsin Department of Financial Institutions ("DFI") as the agency charged with overseeing equity offerings that may be filed by milk producers affected by this decision.

The ALJ conducted a hearing on the motion on November 25, 2003, in the Board Room of the Department's central office, 2811 Agriculture Drive, Madison, Wisconsin. Representing the Division was Attorney Teel D. Haas. Representing DFI was Attorney Randall E. Schumann. Representing Respondent CVA were Tim Wightman and Gleta Martin. Representing Respondent MVF were Wayne and Janet Brunner. Dan Siegmann represented himself. Representing Grazing Acres were Daniel and Vernon Hershberger.

The ALJ issued a proposed decision on December 18, 2003. Wayne and Janet Brunner on behalf of Midvalleyvu Farms filed objections on January 5, 2004. The ALJ gave the entire record to the Secretary on January 15, 2004.

Therefore, based upon the record in the matter, including the motion and exhibits submitted by the Division, the transcript of the hearing, the ALJ's proposed decision and the filed objections, the Department issues the following decision.

#### SUMMARY OF THE EVIDENCE

- A. Decision and Order issued October 30, 2002
- B. Attached to 10/28/03 Motion to Clarify Decision and Order
  - 1. 10/21/03 cease and desist letter from Division Administrator Steve Steinhoff to Clearview Acres LLC and Hayward Community Dairy LLC.
  - 2. 10/21/03 cease and desist letter from Division Administrator Steve Steinhoff to Wayne and Janet Brunner and Midvalleyvu Farms, Inc.
  - 3. 5/19/03 letter of exemption from DFI Division of Securities attorney Randall E. Schumann to Attorney Susan Sharp Miley, on behalf of Hayward Community Dairy LLC, with attached Order of Exemption.
  - 4. 5/19/03 fax transmittal from Attorney Miley to DFI with a copy of a Membership Certificate for Hayward Community Dairy LLC.
  - 5. 4/17/03 request for exemption letter from Attorney Miley to DFI Division of Securities Administrator Patricia Struck.

6. Draft Membership Certificate for Hayward Community Dairy LLC.
7. 3/17/03 letter of exemption from Attorney Schumann to Wayne and Janet Brunner, on behalf of Midvalleyvu Farms, Inc., with attached Order of Exemption
8. 3/11/03 fax transmittal from the Brunners to Attorney Schumann with a copy of a Membership Certificate for Midvalleyvu Farms.
9. 2/25/03 request for exemption letter from the Brunners to DFI Division of Securities Administrator Patricia Struck.

### RELEVANT STATUTES AND RULES

**S. 97.22 Milk producers. (1) DEFINITIONS.** In this section:

(a) "Dairy farm" means any place where one or more cows, sheep or goats are kept for the production of milk.

(f) "Milk producer" means any person who owns or operates a dairy farm, and sells or distributes milk produced on that dairy farm.

**S. 97.24(2) REQUIREMENTS FOR MILK AND FLUID MILK PRODUCTS:**

**GRADE A REQUIREMENT.** (a) No person may sell or distribute any milk unless that milk is produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(b) No person may sell or distribute any milk or fluid milk products which are not grade A milk or grade A milk products to consumers . . . Grade A milk and grade A milk products shall be effectively pasteurized, and shall be produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(d) This section does not prohibit:

2. Incidental sales of milk directly to consumers at the dairy farm where the milk is produced.

(3) **RULES.** The department, in consultation with the department of health and family services, shall issue rules governing the production, transportation, processing, pasteurization, handling, identity, sampling, examination, labeling and sale of milk and fluid milk products; the inspection of dairy herds, dairy farms and dairy plants; the issuing and revocation of permits to milk producers and milk haulers, and of licenses to dairy plants and milk distributors. Insofar as permitted by the laws of this state, such rules shall be in reasonable accord with the minimum standards and requirements for milk and fluid milk products currently recommended and published by the U.S. public health service as a milk ordinance and code, except that the requirements for bottling and sterilization of bottles in such standards shall not apply to milk sold by a producer, selling only milk produced by the producer on the producer's dairy farm under the producer's own milk house, which milk meets the requirements of grade A standards as set forth by the department of agriculture, trade and consumer protection, to a purchaser who has

provided his or her own container, which has been sanitized in a manner comparable to the sanitizing of the utensils used in the production of milk by the producer, if the purchaser is purchasing milk for his or her own consumption.

**ATCP 60.01(23)** "Person" means an individual, partnership, firm, association, corporation or any other business unit or entity.

**Ag 80.17 Applicability; enforcement.** (7) The exemption in s. 97.24(2)(c), Stats., for "incidental sales" of ungraded milk and cream to consumers at farms and dairy plants shall not apply to sales which are regularly made in the course of business or are preceded by any advertising, offer to or solicitation of members of the public, but shall include any sales to employees or persons shipping milk to the dairy plant.

**History:** Cr. Register, August 1967, No. 140, eff. 9-1-67; renum. from Ag 80.16 to be Ag 80.17, Register, May, 1970, No. 173, eff. 6-1-70; am.(1), (2) and (7), Register, July, 1973, No. 211, eff. 8-1-73; am. (1) to (3) and (5) to (7), Register, November 1980, No. 299, eff. 12-1-80; r. (5) and (6), Register, July, 1989, No. 403, eff. 8-1-89.

**Ag 80.15 Enforcement interpretation.** (3) The exemption in section 97.046(2)(c), Wis. Stats., for "incidental sales" of ungraded milk and cream to consumers at farms and dairy plants shall not include any sales which are regularly made in the course of business or are preceded by any advertising thereof, or offer to or solicitation of members of the public, but shall include any sales to employees or to persons shipping milk to the dairy plant.

**History:** Cr. Register, September, 1959, No. 45, eff. 10-1-59.

#### FINDINGS OF FACT

1. On October 30, 2002, the Department issued a decision and order in Docket Nos. 01-C-62, 01-C-96, AND 02-C-07.
2. In that decision, the Department's Conclusions of Law stated, in part:

"(7) The Division's interpretation of s. 97.24(2)(d)2., Wis. Stats., clearly allows regular distribution of ungraded raw milk to the "persons" shipping the milk and their employees. The person shipping milk includes the underlying owners, if the entity holding the milk producer license is a partnership, association, corporation, firm or any other legal business entity. However, I find the "cow-share" agreements or any similar instruments used by the Respondents do not place them outside the requirements of the statute.

(8) In these cases, there are no true indications of ownership of an individual cow that entitles the transaction to fall outside the statute's bounds. The "cow-share" owners have no control, in any meaningful sense, over the animal that they've "purchased" a share in. There is no regular way to trace the milk any shareholder receives to the individual cow in which they've purchased a share. The amount of money for the share is

nominal. In fact, the other amounts paid are directly tied to an amount of milk received, but not to the amounts of milk any individual cow produces or actual costs for "boarding" the cow, which is how the monies paid are characterized as paying for. What these shares really are more akin to is the direct marketing practice, known as community supported agriculture (CSA), where a person purchases a share of the "product" but is not an owner of the farm. Although CSAs may be utilized for all types of farm product sales, they are not permitted for the sale of ungraded raw milk, pursuant to s. 97.24, Wis. Stats.

(9) The Respondents do, however, have a legal venue for legitimately working with those persons who wish to obtain ungraded raw milk for their use. The Division's statutory interpretation clearly allows *owners* of the entity holding the milk producer license to obtain ungraded raw milk for their personal use. Nothing that was concluded as to the "cow-share" agreements failing as a vehicle for ownership would apply to buying an equity share in the entity holding the milk producer license. However, this finding implicitly requires that any such equity offerings or sales comply with the applicable securities laws, administered by the Wisconsin Department of Financial Institution's Division of Securities. While each Respondent (and any other milk producers contemplating such a venture) would have to make its own judgment as to the feasibility and desirability of entering into such agreements, what is clear is that a properly drafted agreement should satisfy the interpretation behind s. 97.24(2)(d)2., Wis. Stats. From a public health standpoint, the Legislature has decided that general sales of ungraded raw milk are prohibited. However, in interpreting the statute, the Department recognizes an exception for those persons willing to take on the responsibilities of owning a milk producer license. A holder of a milk producer license may want to make a legitimate agreement to share those responsibilities. If the potential purchaser understands the benefits and risks through full disclosure, as required under applicable statutes, then all are in a position to make the informed choice to obtain their milk in its ungraded raw form." Decision at page 13

3. The order of the department in that case stated, in part:

"(3) The Respondents' current "cow-share" agreements with any members of the public are not legal ownership agreements that place the transactions outside the requirements of s. 97.24, Wis. Stats. The Respondents, and any other persons similarly situated, have ten days, following their receipt of this order, to cease and desist any practices for the regular delivery of ungraded raw milk in any manner inconsistent with this order and the requirements of s. 97.24, Wis. Stats., as interpreted by this decision.

(4) Under the long-standing interpretation of s. 97.24, Wis. Stats., the Respondents are free to devise valid agreements sharing ownership in their milk producer license under applicable law that may include allowing actual owners to take a share of the ungraded raw milk produced under the license." Decision at page 14

4. The Decision and Order in the case was not appealed and remains in effect to this date.

5. Following the receipt of the decision and order, Respondents CVA and MVF began the process of complying with the decision.
6. Under s. 97. 22, Wis. Stats., a milk producer is a person (an individual or a group of individuals in some combination entity) that has cows, sheep or goats, uses equipment to milk those animals, and sells or distributes the milk through a dairy plant, milk distributor, or milk contractor.
7. In order to hold a milk producer license, a person must have a relationship with, often referred to as being a patron of, a dairy plant, milk distributor, or milk contractor. If an owner of one or more milking animals produces milk for the owner's use only, that production and use is not regulated by the Department. (Tr. Pp. 78)
8. At the hearing, Respondents did not contest the Division's contention that the milk producer license and the means to produce milk (cows, sheep or goats; equipment to milk those animals; and a relationship with a dairy plant, milk distributor or milk contractor) must be owned or leased by the same individuals or entity. All Respondents stated that they had taken steps to comply with this part of the Division's cease and desist order. (Tr. Pp. 14-20)

--Clearview Acres, LLC

9. Respondent CVA is engaged in the business of milk production and operates a dairy farm located at 11682 West Tiger Cat Road, Hayward, Wisconsin. Owner Gleta Martin and Manager Tim Wightman operate Clearview Acres.
10. Respondent CVA is a 233-acre organic-based dairy farm, including an on-farm organic store, known as Gleta's Place, and an on-farm, licensed, commercial bakery, producing bakery products for a local clientele. (Tr. Pp. 37)
11. The dairy farm currently has 28 cows and Respondent CVA sells approximately 95% of its milk to Associated Milk Producers, Inc., (AMPI) in Turtle Lake, Wisconsin. (Tr. Pp. 37)
12. Following the October, 2002 decision, Respondent CVA began working with an attorney to set up a company that would register with DFI Division of Securities to sell shares to allow a shareholder to obtain raw milk from Respondent CVA. (Tr. Pp. 37-38)
13. Respondent CVA, as part of its application to DFI, requested and received an exemption, minimizing the need to file certain documents with DFI. Respondent CVA then went forward and began offering sales in Hayward Community Dairy, LLC, a holding company for a milk producer permit. The actual milk production, however, was handled by Clearview Acres LLC, which did not have a milk producer license. (Tr. Pp. 38-39)



14. For \$50 per membership interest, a person could become a member of Hayward Community Dairy LLC. For that fee, a person had the right to purchase raw milk from Hayward Community Dairy, at a suggested price of \$2.50 per gallon, on days when the milk was available to members, which were days opposite of those when milk was shipped to AMPI. Sales were only limited by the amount on hand in the bulk tank when owners came to purchase the milk. (Tr. Pp. 41-43)
15. A membership interest in Hayward Community Dairy LLC had the following purpose and definition:

*"The purpose of this Membership Interest is to allow ownership of the milk producer license #88308 currently owned by Hayward Community Dairy LLC located in Hayward, Wisconsin, as stated in Wisconsin Statute 97.24(2)(d)2., which allows regular distribution of ungraded raw milk to the 'persons' shipping the milk, their family members and their employees. The person shipping milk includes the underlying owners, if the entity holding the milk producer license is a partnership, association, corporation, firm or any other legal business entity.*

Ownership of the Membership Interest at a purchase price of \$50.00 (*Membership Interest limited to one Membership Interest per person or family*) allows for the purchase of any and all products produced or provided for its owners under the milk producer license; which includes, but is not limited to, unpasteurized milk, raw cheese & Kefir made from unprocessed milk.

All dairy products purchased by Membership Interest Owner/Owners from Hayward Community Dairy LLC are for the sole use of the Owner/Owners of the Membership Interests only and may not be resold to non-Membership Interest Owner/Owners in adherence to Wisconsin Statutes 97.24(2)(d)2. & 97.20(2)(e)1.

The Owner/Owners of the Membership Interest fully understand the health warnings and risks of consuming non-pasteurized dairy products, as issued by the *State of Wisconsin Department of Trade and Consumer Protection* and the *United States Department of Health and Human Services*, which consider raw milk unfit for human consumption and a health risk, with the greatest risk in young children, the elderly and those whose immune system has been compromised.

The Owner/Owners of this Membership Interest fully understand that as a Membership Interest Owner, you will be directly responsible for the safety of the dairy products you receive from Hayward Community Dairy LLC which relieves the *State of Wisconsin Department of Trade and Consumer Protection* and the *United States Department of Health and Human Services* of any responsibility for regulation of these Dairy Products.

The Owner/Owners of this Membership Interest fully understand that (1) Hayward Community Dairy LLC has no assets other than the milk producer

license; (2) This Membership Interest does not allow or provide for any voting rights, common interest or dividends, nor does this Membership Interest entitle the Owner/Owners to any profits, losses or assets of Clearview Acres dairy operation; (3) and this Membership Interest is not transferable and the Hayward Community Dairy LLC will not repurchase a Membership Interest if an Owner wishes to terminate membership.

The sole purpose of this Membership Interest is to allow the holder to purchase non-pasteurized dairy products from the Hayward Community Dairy LLC.

The Owner/Owners of this Membership Interest fully understand that the transferability of this Membership Interest is prohibited." (#4 attachment to Motion)

16. Sometime after the Division issued its cease and desist letter to Respondent CVA, it requested that the Division discontinue the milk producer license to Hayward Community Dairy LLC and reissue a milk producer license to Respondent CVA. This was done so beginning November 1, 2003. At the time the cease and desist letter was issued, Hayward Community Dairy LLC had 49 members. (Tr. Pp. 43-44)

--Midvalleyvu Farms--

17. Respondent Midvalleyvu Farms, Inc. ("Respondent MVF") is engaged in the business of milk production and operates a dairy farm located at W8481 County Road Z, Arkansaw, Wisconsin.

18. Respondent MVF has approximately 500 acres it rents and owns milking equipment and some buildings. There is a retail store on site. (Tr. Pp. 50)

19. The dairy farm has 80 milking cows and sells approximately 98% of its milk to Organic Choice LLC. (Tr. Pp. 50)

20. Following the October, 2002 decision, Respondent MVF began working to register with DFI Division of Securities to sell shares to allow a shareholder to obtain raw milk from Respondent MVF. (Tr. Pp. 51-52)

21. Respondent MVF, as part of its application to DFI, requested and received an exemption, minimizing the need to file certain documents with DFI. (Tr. Pp. 52)

22. Respondent MVF then went forward and began offering shares in itself as a holding company for a milk producer permit. The actual milk production, however, was handled by Wayne and Janet Brunner, who did not have a milk producer license. (Tr. Pp. 52)

23. For \$10 per membership interest, a person could become a member of Midvalleyvu Farms, Inc. For that fee, a person had the right to purchase raw milk every day from Midvalleyvu Farms, Inc., at a suggested price of \$3.75 per gallon. Sales were only limited by the amount on hand in the bulk tank when owners came to purchase the milk. In addition, if requests were made for raw milk products, including butter, yogurt & Kefir, either the Brunners or other owners would make up a product and have it for sale. Both raw milk and raw milk products were stored in a refrigerator located in a retail store with sales to the public. A sign on the refrigerator indicated that these products were for members only. (Tr. Pp. 53-56)

24. A membership interest in Midvalleyvu Farms, Inc. had the following purpose and definition:

*"The purpose of this share is to allow ownership of the milk producer license #14958 currently owned by Midvalleyvu Farms, Inc., located in Arkansas, Wisconsin, as stated in Wisconsin Statute 97.24(2)(d)2., which clearly allows regular distribution of ungraded raw milk to the "persons" shipping the milk and their employees. The person shipping milk includes the underlying owners, if the entity holding the milk producer license is a partnership, association, corporation, firm or any other legal business entity.*

*Ownership of this share at a purchase price of \$10.00 (share ownership limited to one share per person or family) exclusively allows for the purchase of any and all products produced or provided for its owners under the milk producer license; which includes, but is not limited to, non-pasteurized milk, cream, butter or buttermilk.*

*All Dairy products produced or provided on the farm will be available for sale to corporation share owner/owners only.*

*The Owner/Owners of this share fully understands the health warnings and risks of consuming non-pasteurized dairy products, as issued by the State of Wisconsin Department of Trade and Consumer Protection and the United States Department of Health and Human Services.*

*The Owner/Owners of this share fully understand that as a share owner, you will be directly responsible for the safety of the dairy products you receive from Midvalleyvu Farms, Inc., which relieves the State of Wisconsin Department of Trade and Consumer Protection and the United States Department of Health and Human Services of any responsibility for regulation of these Dairy Products.*

*The Owner/Owners of this share fully understand that (1) Midvalleyvu Farms, Inc., has no assets other than the milk producer license; (2) This share does not allow or provide for any voting rights, common interest or dividends, nor does this share entitle the owner/owners to any profits, losses or assets of the family*

farming operation of Midvalleyvu Farms. The sole purpose of this share is to allow the purchase of non-pasteurized dairy products.

The Owner/Owners of this share fully understand that the transferability of this share is restricted. Midvalleyvu Farms, Inc. holds the exclusive buy-back right to repurchase this share of stock at the same price paid by the owner/owners should they decide to sell their share." (#8 attachment to Motion)

25. Sometime after the Division issued its cease and desist letter to Respondent MVF, it worked with the Division to issue a milk producer license to Respondent MVF and Wayne and Janet Brunner, individually. This was done so beginning November 1, 2003. At the time the cease and desist letter was issued, Respondent MVF had approximately 100 members. (Tr. Pp. 50)

#### CONCLUSIONS OF LAW

1. The department is responsible for the administration and enforcement of ch. 97, Stats., (Food Regulation) and Ch. ATCP 60, Wis. Adm. Code (Dairy Farms). The department has jurisdiction over the subject matter of these proceedings and over the parties under ch. 227, Stats., and ch. ATCP 1, Wis. Adm. Code.
2. In interpreting the Decision and Order of October 30, 2002, in this matter, the use of the phrase "valid agreements sharing ownership in their milk producer license" means that the all owners must share, in some manner, the rights and responsibilities of having a milk producer license. A milk producer license is granted to someone for the purpose of producing milk, from cows, sheep or goats, which will be sold or distributed into the public, human food chain. Under current law, the license (and therefore, any ownership interest) may not be used solely for the purpose of allowing purchase of non-pasteurized milk and/or milk products.
3. The share ownership devised by Respondents following the October 30, 2002 decision and order do not meet the requirements set down by the Department. As with the "cow-share" agreements, what these shares really are more akin to are those utilized in the direct marketing practice, known as community supported agriculture (CSA), where a person purchases a share of the "product" but is not a true owner in the entity holding the milk producer license. Although CSAs may be utilized for all types of farm product sales, they are not permitted for the sale of ungraded raw milk, pursuant to s. 97.24, Wis. Stats. These shares are even more problematic, since the nominal purchase price accesses the shareowner only to the right to further purchases of product, on an as-produced basis. This appears to have even fewer ties to ownership in the milk producer license than did the failed "cow-share" agreements.
4. The Department does agree with the Respondents that ownership may be a limited one. However, the more limited the ownership, the more that the amount paid in must be tied to a specific benefit that has a relationship to the amount paid. In this

case, a general owner who is clearly tied to the reason for having a milk producer license by their capital and labor input, sales of milk and profits from producing the milk obviously may take as much milk from their own tank as they believe prudent. As the ownership interest becomes more limited by the amount allowed for investment and few, if any, ties to the input, management, sales and profits of the business of milk production, the more that investment amount must be tied to an amount of benefit (i.e. raw milk or raw milk product) taken by the investor.

5. The fact that an investor may lose their investment under the agreement, although being granted a predetermined benefit, does not make such an agreement invalid. Owners of any business take risks that they will lose their business investment, in whole or part, because of any number of factors within or not within their control. Risks may be mitigated through any number of actions, but risk cannot be eliminated. If the potential shareowner understands the benefits and risks through full disclosure, as required under applicable statutes, they are free to make their choice to invest.
6. The disclosure statement must make clear that the ownership interest is in the entity holding a milk producer license and ownership is tied to the reason for having the license, i.e. having milking animals and equipment to produce milk for sale. Therefore, future disclosure statements may not include any statement limiting the purpose of the share to purchasing non-pasteurized milk or milk products.
7. Respondent CVA's disclosure statement concerning the risks of consuming non-pasteurized milk and milk products, although broad and not detailed, is a fair disclosure and may be utilized in future disclosure statements.
8. The Department concluded in its October 30, 2002 decision that the prohibition of "incidental sales" of unpasteurized milk on a dairy farm in s. 97.24(2)(d)2., Wis. Stats., does not apply to the owners of the milk producer license on that dairy farm. That is the only conclusion reached limiting the Department's regulatory responsibilities. No conclusions were reached as to the regulatory authority of any other government agency. Therefore, future disclosure statements may not include a statement of any type purporting to "relieve" the Department or any other governmental agency of any responsibility for regulating any part of milk or milk product production, handling, storage, distribution, or sale.
9. Ownership interests must be distinct from any customer relationships on the premises of the milk producer license holder. Therefore, all milk and milk product preparation, handling, storage and distribution amongst owners must be physically separate from any food preparation, handling, storage, distribution and sales to the public on the premises.

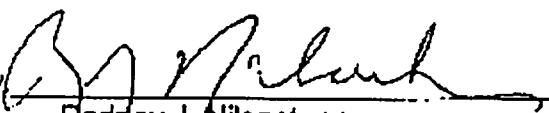
ORDER

NOW, THEREFORE, IT IS ORDERED, pursuant to ch. 227, Stats., that:

1. Investments in entities holding milk producer licenses must be for the purpose of holding a milk producer license, using milking animals to produce milk for sale or distribution in the public, human food chain. Disclosure agreements for this investment must include this as the purpose for the investment.
2. Investments in entities holding milk producer licenses may not be for solely for the purpose of purchasing non-pasteurized milk or milk products.
3. The more limited the ownership in the milk producer license, the more the specific investment amount must be tied to the benefit amount received by the limited shareowner.
4. The shareowner may be required to share or assume the risk of losing their investment in the entity holding the milk producer license.
5. Disclosure agreements for investments must include the risks of ownership in the entity holding the milk producer license, including the investment risks and the risks of taking any product as a benefit of ownership, as specified in the decision.
6. Milk and milk product preparation, handling, storage and distribution amongst owners must be physically separate from any food preparation, handling, storage, distribution and sales to the public on the premises.

Dated this 4<sup>th</sup> day of February, 2004.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Rodney J. Nilsestuen  
Secretary



CALUMET COUNTY PLANNING DEPARTMENT  
206 COURT STREET  
CHILTON, WI 53014-1198

EXHIBIT 2

CHILTON: (920) 849-1442  
APPLETON/SHERWOOD: (920) 989-2700 EXT. 442

FAX: (920) 849-1481  
WEBSITE: [www.co.calumet.wi.us](http://www.co.calumet.wi.us)

April 21, 2005

Wayne and Kay Craig  
N600 Plymouth Trail  
New Holstein, WI 53061

Dear Mr. & Mrs. Craig:

The purpose of this letter is to formally advise you that on March 22, 2005, the Planning and Zoning Committee approved your Conditional Use Permit with the following conditions:

- A. If it is determined that water service and wastewater disposal will not be a condition, then a letter should be submitted from the State stating specifically that this type of operation is exempt from these requirements. (Note that I have received your letter concerning this condition and the Inspector's policy on writing a letter to this effect.)
- B. That the business remain a "members only" type of store. If business would expand such that it would be open to the general public, that request should come back to the Planning and Zoning Committee as an amendment to the applicant's conditional use request.
- C. The items listed for sale remain consistent with the information submitted by the petitioner, i.e. their own organically grown and process beef, pork, chicken and turkey, along with other organic foods not locally available and other locally organically raised produce and bulk or organic foodstuffs.
- D. 90% of product for sale must be produced on the farm. This 90% is based on the value of the product.
- E. Lamb can also be added to list of items permissible for sale.
- F. The size of the retail area, parking, number of people working and a limit on days of operation were not part of the conditions.

Please contact this office for the issuance of the actual permit. A \$25.00 fee will be required. Call ahead if you are coming to the office, otherwise it can be handled through the mail.

Feel free to call should you have further questions in this regard.

Sincerely,

Leonard Vaness  
Code Administrator

LV/rjf



EXHIBIT 3

**State of Wisconsin**  
*Department of Financial Institutions*

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

December 15, 2005

Kay & Wayne Craig  
N600 Plymouth Trail  
New Holstein, WI 53061

Re: Grassway Organics Farm Store, LLC/  
Request for Order of Exemption (File No. 496217-06)

Dear Mr. and Mrs. Craig:


The Division has received and reviewed materials submitted relating to your prior request for issuance by the Division Administrator of an Order of Exemption under section 551.23(18) of the Wisconsin Uniform Securities Law to allow the offer and sale of Secondary Membership Interests in Grassway Organics Farm Store, LLC ("LLC") to persons in Wisconsin to enable them--as membership interest holders and, therefore, owners of the LLC--to purchase unpasteurized dairy products under the Wisconsin Milk Producer License #191666-D2 currently owned by the LLC.

As you are aware, this type of Exemption Order treatment has been used by the Division with respect to several prior filings by farming operations looking to sell unpasteurized milk to purchasers under the Orders, and our Division has worked with representatives from the Wisconsin Department of Agriculture in developing this Exemption Order process and procedure.

However, as referenced in my telephone voicemail message to you today, because the Certificate that has been filed describing the terms and conditions of the LLC's Shares to be offered/sold, together with important disclosures that need to be provided thereon to purchasers, uses terminology that relates to stock in a corporation rather than membership interests in a limited liability company, I am attaching a copy of the Certificate containing hand-edited revisions that need to be made to have the Certificate read accurately. Upon the Division's receipt of the revised Certificate containing the necessary revisions, the Staff will be in a position to recommend to the Administrator that an Exemption Order be issued.

Feel free to call me at (608) 266-3414 with any questions, particularly as you make the revisions to the Certificate referenced above.

Very truly yours,

  
Randall E. Schumann  
Legal Counsel for the Division

cc: Securities Administrator Patricia D. Struck  
Mr. Steven B. Steinhoff, DATCP

*Division of Securities*

Mail: PO Box 1768 Madison, WI 53701-1768

Voice: (608) 266-1064

Fax: (608) 264-7979

Courier: 345 W. Washington Ave. 4<sup>th</sup> Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: [www.wdfi.org](http://www.wdfi.org)





Form 0-5 (Exemption Order)  
Rev. 7/96

File No. 496217-06

**State of Wisconsin  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Securities**

**ORDER OF EXEMPTION**

Issued pursuant to section 551.23(18) of the Wisconsin Statutes

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**Issuer:** Grassway Organics Farm Store, LLC  
N600 Plymouth Trail  
New Holstein, WI 53061

**Applicant:** Issuer

**Securities:** Secondary LLC Membership Interests

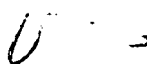
**Effective Date:** January 5, 2006

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- (1) This Order permits the offer and sale to persons in this state by the Issuer of single shares of its Secondary Nonvoting LLC Membership Interests at \$10 per Interest (with ownership limited to one Interest per person/family) to enable each person-- as an Interest holder and, therefore, as an owner of the LLC-- to purchase non-pasteurized dairy products under the Wisconsin Milk Producer License #191666-D2 currently owned by the LLC.
- (2) All offers and sales shall be made pursuant to the terms and conditions as set forth on the Membership Interest Certificate providing disclosures to purchasers, as filed with the Division, and as may be amended.
- (3) This Order shall remain in effect for a period of two (2) years from the date hereof, unless sooner extended, revoked or amended by further Order of the Division.

EXEMPTION HEREBY ORDERED as of the above effective date, pursuant to the provisions of Chapter 551 of the Wisconsin Statutes, and subject to the conditions set forth herein.

[SEAL]

  
**PATRICIA D. STRUCK**  
Administrator  
Division of Securities



State of Wisconsin  
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

January 5, 2006

Kay & Wayne Craig  
N600 Plymouth Trail  
New Holstein, WI 53061

Re: Grassway Organics Farm Store, LLC/  
Order of Exemption (File No. 496217-06)

Dear Mr. and Mrs. Craig:

The Division received on December 27, 2005, a revised LLC Membership Certificate containing disclosure modifications per the Division Staff's letter (with attachment) of December 15, 2005. The revised materials relate to your prior request for issuance by the Division Administrator of an Order of Exemption under section 551.23(18) of the Wisconsin Uniform Securities Law to allow the offer and sale of Secondary Membership Interests in Grassway Organics Farm Store, LLC ("LLC") to persons in Wisconsin to enable them--as membership interest holders and, therefore, owners of the LLC--to purchase non-pasteurized dairy products under the Wisconsin Milk Producer License #191666-D2 currently owned by the LLC.

The revised information submitted provides that: (1) the purchase price of each Secondary Membership Interest is \$10, transferability is prohibited, and Shares have no voting rights; and (2) each purchaser of a Secondary Membership Interest is informed and will understand by means of the Certificate disclosures that the sole asset of the LLC is the Milk Producer License, that the Interest does not allow or provide for dividends, and that the Interest does not entitle an owner/owners to any profits, losses or assets of the family farming operation for the LLC.

On the basis of the information submitted, the Division Staff has recommended issuance of an Order of Exemption in this matter relating to the LLC's Secondary Membership Interests. The Administrator has determined to issue such an Order, and a duplicate, executed original is enclosed. Please note the terms and conditions as set forth in the Order, including its two-year duration (unless sooner extended, revoked or amended by further Order of the Division). Any request for extension of the Order of Exemption for an additional two-year period will necessitate a new filing with this Division, accompanied by revised disclosure materials (which filing must be submitted prior to expiration of the attached Order).

As a final matter, and pursuant to our telephone discussion today, the following language change to the second bullet disclosure (which the Staff had recommended and hand-edited on the Certificate for inclusion) still needs to be made -- namely, that ownership is limited to one Interest per person or family. Please forward to the undersigned, a revised version of the Certificate containing that final edit for our files.

*Division of Securities*

Mail: PO Box 1768 Madison, WI 53701-1768  
Voice: (608) 266-1064


Fax: (608) 264-7979

Courier: 345 W. Washington Ave. 4<sup>th</sup> Floor Madison, WI 53703  
TTY: (608) 266-8818

Internet: [www.wdfi.org](http://www.wdfi.org)

I believe that the file in this matter is complete, although if you have comments or questions regarding the above, my direct dial telephone number is (608) 266-3414.

Sincerely,

  
Randall E. Schumann

Legal Counsel for the Division

cc: Securities Administrator Patricia D. Struck  
Mr. Steven B. Steinhoff, DATCP



State of Wisconsin  
Jim Doyle, Governor

EXHIBIT 5

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

March 20, 2007

Grassway Organics Farm Store LLC.  
Attn: Wayne and Kay Craig  
N600 Plymouth Trail  
New Holstein, WI 53061

**WARNING LETTER**  
**Delivery by Certified Mail**

Dear Mr. and Mrs. Craig:

I am writing today to clarify the Department's requirements for sales of Fluid Milk and Milk Products in your licensed retail food establishment.

Retail Food Establishments are licensed and regulated by this Department pursuant to s. 97.30 (2) of the Wisconsin Statutes. Retail Food Establishment construction and operations standards are established in Chapter ATCP 75 and the ATCP 75 Appendix (WI Food Code) of the Wisconsin Administrative Code. Selling raw milk in a licensed retail food establishment is a violation of s. ATCP 75 Appendix section 3-201.13 which states:

***3-201.13 Fluid Milk and Milk Products: Fluid milk and milk products shall be obtained from sources that comply with GRADE A STANDARDS as specified in ch. ATCP 80 of Wisconsin Administrative Code.***

Fluid milk and milk products sold or used as food ingredients in a licensed retail food establishment must originate from a licensed Grade A dairy plant.

Under administrative orders issued by the department on October 30, 2002, and February 4, 2004, owners in a valid agreement sharing ownership in a milk producer license may receive distributions of raw milk. However, raw milk distributions to owners cannot occur in a retail food store licensed by this Department.

Please comply with this letter to avoid further enforcement action.

You may contact me directly, should you have any questions

Sincerely,

Jackie Owens  
Field Services Director  
Division of Food Safety  
(608) 224-4734

cc: Steve Steinhoff, Division Administrator; Tom Leitzke, Director of Food Safety and Inspection;  
Michelle McGuire, Legal Counsel

*Agriculture generates \$51.5 billion for Wisconsin*

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov



Grassway Organics Farm Store, LLC  
Kay & Wayne Craig, Proprietors  
N600 Plymouth Trail  
New Holstein, WI 53061  
920-894-4201

EXHIBIT 6

March 23, 2007

Jackie Owens  
Field Services Director  
Division of Food Safety  
2811 Agriculture Drive  
PO Box 8911  
Madison, WI 83708-8911

Dear Ms. Owens

We are writing to you in response to your letter dated March 20, 2007.

Raw milk distributions do not occur in our retail store. We accompany our Member Interest Owners to the milk house and assist them in filling their own containers directly from the bulk tank. The Members then take their containers directly to their vehicle. This procedure complies with Wisconsin Statute 97.24(2)(d) and 97.24(3).

Sincerely,

Kay & Wayne Craig

Cc: Derek McDermott, attorney

EXHIBIT 7

DATCP Docket No. 05-R-04  
Rules Clearinghouse No. 07-006

Final Draft  
September 14, 2007

**PROPOSED ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING AND REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the  
2 following order to repeal ATCP 60.07(4)(a)(note), 60.11(4)(L), 60.21 and (note), 80.44(4) and  
3 (5), to renumber ATCP 60.245(2)(e) to (g), to renumber and amend ATCP 80.16(3), to amend  
4 60.01(4), (9)(b), (15)(b)3., (15)(b)9., (19), (20), (21) and (29)(b), 60.02(7)(c), (7)(d)4. and 8.,  
5 60.06(5) and (9)(c), 60.07(4)(a) and (4)(c), 60.08(6)(a)5. and (b)2., 60.10(1), (1)(note), (4), (6)(a)  
6 and (7), 60.11(2)(e)(note), (4)(g) and (4)(j), 60.12(1), (2) and (6), 60.13(1), (2) and (6), 60.14(2),  
7 (3) and (4), 60.15(4), 60.16, 60.17(3)(b), 60.18(1), (3), (5) and (5)(b), 60.19(6)(b), (6)(d) and  
8 (10)(b) and (note), 60.20(1), (2), (3), (4), (6), (6)(b) and (6)(c), 60.245(3), 60.27(1)(b) and (4)(b),  
9 60.275(1)(note), 60.31(4), 77.01(4m), 77.02(intro.), 77.20(2)(b)2., (2)(c)2., (2)(c)3. and (note),  
10 77.23(3)(d) and (f), 77.24(2), (5)(e), 77.30(2)(b) and (2)(c), 77.32(2), 77.34(2), 80.01(19) and  
11 (26), 80.04(2)(a), 80.08(4)(a), (8)(b), (d)(intro.), (d)4., (8m)(a)(intro.), (a)1., (b)4., and (b)8.,  
12 80.12(1)(a)(note), 80.14(2)(b), 80.16(2)(i), 80.70(7)(c), 80.22(7)(title), (a) and (b) and (8)(note),  
13 80.24(4), 80.24(5)(note), 80.26(1)(a)(note) and (1)(b), 80.32(1)(a) and (b), (5), 80.34(2)(c)3. and  
14 (note), (4)(b)2., (5)(d) and (note), (6)(c) and (note), (7)(c) and (note), and (8) and (note), 80.40(1)  
15 and (2), 80.41(3)(intro.), 80.44(2) Table 2, and (2m)(intro.), 80.46, 80.48 and (note),  
16 80.49(2)(b)(note), 80.50(1), (2)(b) to (e) and (g), (3)(b), (c) and (e) to (h), 80.52(2), (2)(note) and  
17 (6), 80.54(1)(j) and (2), 80.62(1)(b), (1)(c)(note), (1)(d) and (1)(d)(note), 80.62(3)(a) and (b),  
18 82.01(3), 82.02(1)(b), (2)(intro.), (2)(c) and (7), 82.04(1)(a) and (1)(b), 82.06(1) and (1)(note),  
19 82.10(2)(intro.), (a), (c), (d) and (f) and (6)(c), 82.12(2)(title), (intro.) and (b), 82.14(3) to repeal  
20 and recreate ATCP 60.01(16), 60.06(1), (8)(note), 60.08(5) and (6)(a)4., 60.11(2)(c)2., (4)(h) and

1 (4)(k), 60.22 and (note), 60.245(4), 69.01, 69.02, 77.02(1) and (3), 77.03(1) and (2)(c), 77.23(1),  
2 80.12(7), 80.16(2)(i)(note), 80.24(3), 80.32(1)(note), 80.34(2)(d) and (3)(d), 80.49(2),  
3 80.52(6)(b)3., 80.62(2), 82.01(5), 82.08, 82.12(1) and to create ATCP 60.01(17m) and (19m),  
4 (23m) and (23r), 60.06(1m) and (note), 60.08(7) and (notes), 60.11(2m) and (4)(hm),  
5 60.12(6)(note), 60.17(2m), 60.19(12), 60.235, 60.245(1)(g) and (2)(g), 60.27(1)(c) and (4)(c),  
6 60.275(1)(a)4. and (4), 69.01(note), 77.03(1)(a)(note) and (2)(c)(note), 77.30(2)(c)(note),  
7 77.32(note), 80.01(21m), (23m), (27m), (33g) and (33j), 80.08(8)(g), 80.16(3)(b), 80.20(3)(c),  
8 80.24(3m), 80.41(2)(g) to (i), 80.41(4) to (9) and (note), 80.42(note), 80.46(note), 80.50(4),  
9 80.52(6)(d), 80.54(1)(n) and (o), 80.62(2)(note) and (3)(c), Subchapter VII of ch. ATCP 80,  
10 82.01(1m) and (7m), 82.02(2)(e), (7)(d), (d)(note) and (e), 82.12(2m) relating to safe production,  
11 processing, distribution and sale of milk and dairy products.

12

**Analysis Prepared by the Department of  
Agriculture, Trade and Consumer Protection**

This rule updates current rules related to safe production, processing, distribution and sale of milk and dairy products. This rule affects dairy farms, dairy plants, milk haulers, milk testing laboratories, buttermakers, cheesemakers and others. Among other things, this rule:

- Brings Wisconsin rules into conformity with the Interstate Pasteurized Milk Ordinance ("PMO"). Milk and fluid milk products must be produced in compliance with the PMO, in order for Wisconsin to be able to ship those products in interstate commerce.
- Updates current rules to accommodate new dairy industry technology and practices.
- Clarifies current statutory prohibitions against the sale of raw milk to consumers, consistent with administrative law judge decisions.
- Clarifies some rule provisions, so they will be easier to read and understand.