



EXHIBIT 6
DATE 2-11-15
HB 399

Dana Gunders's
Blog
How
Montana's
Sell-by
Date Sends

Good Milk Down the Drain



Posted October 31, 2013 in [Health and the Environment](#), [Living Sustainably](#), [Solving Global Warming](#), [U.S. Law and Policy](#)

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Last month, we released a report called [The Dating Game](#) with Harvard Food Law and Policy Clinic, in which we examined the laws behind those dates you see on your food. In addition to the primary finding—that most Americans are confusing those dates to be about food's safety, when in fact they are indicators of freshness or peak quality—we also found a patchwork of piecemeal state laws that have popped up in the absence of any federal regulation on the topic.

One example of the arbitrary nature of some of these state laws is being challenged in Montana, soon to be heard in the Montana Supreme Court. It's a fascinating case that, in my humble opinion, demonstrates how ridiculous these laws can be.

First, the rule: Grade A milk sold in Montana must be labeled with a "sell-by" date 12 days after the date of pasteurization, and retail sellers of grade A milk must remove that milk from their shelves upon expiration of the 12-day "sell-by" date. These rules combined are referred to as the "12-day rule." Compare this with other states, such as Pennsylvania that requires a date 17 days from pasteurization, California which requires a processor-decided date when product is normally (but not required to be) removed from the shelf, and Texas which has no requirements at all.

The case at hand was brought by an out-of-state distributor challenging the legitimacy of such a short timeframe for a variety of reasons, including that the 12-day rule put them at a disadvantage to milk produced in Montana. After hearing 1,180 pages of testimony, the Hearing Examiner strongly recommended the rule be changed. Yet, the ultimate decision falls to the Board of Livestock, who chose to ignore all recommendations and maintain the status quo. The case, heard in 2010-2011, is now being appealed.

While I really want to paste the [entire 24-page decision](#) by the Hearing Examiner in here, I'll spare you and just choose a handful of highlights and thoughtful conclusions that can be instructive more broadly than this particular case:

Milk dates are not about safety. The decision notes early, as a fact not contested by any party that, "the pasteurization process for milk is so effective in terms of eliminating harmful organisms that milk will become unpalatable in terms of taste and smell before it will cause harm in terms of human safety." Therefore, consumers' safety is simply not a factor in the debate about milk dating.

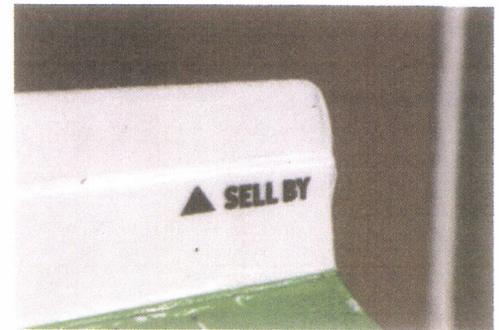
Arbitrary timelines do not accommodate technological improvements. "As a result of improvements in production and processing that have occurred since 1980 [when the original rule was made], a shelf life of 21 days is now the going standard for the American and Canadian milk processing industry." And the decision later points out that "the 12-day rule effectively prohibits sellers of milk from selling milk products for 43% of the time (9 of the 21 days) during which milk is fresh and of good quality." A good reminder that laws around food dating should consider how innovation could impact the effectiveness of rule.

Shortened timeframes lead to loss. "One retailer, who owns only two stores in Montana, estimated that his cost of good wasted as a result of the 12-day rule is \$5,000 to \$10,000 per year." The Montana Food Distributors Association estimates there are about 1200 stores selling milk in Montana. If there were \$5-10k in losses for every two stores, that would be \$6-12 million in lost milk, just from this rule. And that's to say nothing of the resources lost if you consider what goes into producing milk (for instance, [about 144 gallons of water are required to produce one gallon of milk](#) — more than a 25 minute shower). Lesson? This law is leading to unnecessary waste of perfectly good, nutritious milk.

"Sell by" dates are inappropriate. In line with one of the recommendations in our Dating Game report, the decision states "the sell-by date not only fails to provide consumers with accurate information about product freshness, it misleads some consumers into believing that milk freshness is limited to the expiration of the sell-by date when in fact milk freshness extends far beyond that date and continues to be extended by milk processing improvements." Later, he concludes that "a 'sell-by' label is ambiguous at best and misleading at worst. For these reasons, continued use of a "sell-by" date is, in the hearing examiner's opinion, an inappropriate tool for the regulation of milk freshness." The decision notes that in deciding to have a sell-by date, it is assumed consumers know the shelf life of milk after that date, but in fact that was shown not to be true.

For this reason, we recommend that sell-by information be hidden from the consumer and replaced by a date that is in fact meant to communicate directly with the consumer—such as a "best-by" date. (Putting a "best-by" date beside the "sell-by" date is currently prohibited in Montana.)

Consumers' right to know is subverted. Finally, he boils it down to giving consumers the appropriate information to make their own decisions. "In the hearing examiner's judgment, consumers ought to be allowed to know the actual shelf life of milk they purchase; they ought to be allowed to compare the actual shelf lives of milk from different processors; and they ought to be allowed to decide within the time period of milk's actual shelf life just how fresh they want their milk to be and how long



they need their milk to last after they buy it. The 12-day rule provides none of these opportunities for the consumer.... This is a regulatory approach inconsistent with the purpose of affording consumers information about, and reasonable protection against, poor quality milk.”

Given all of this, the question still remains, why would the Board of Livestock ignore the strong, clear recommendations of the Hearing Examiner, and given the arguments, do they have the right to do that? We will see what the Montana Supreme Court has to say about it all.

In the end, however, this just points out the additional challenges and unnecessary energy that's going into state laws when, in fact, a standard federal system that takes consumers' health and well-being into account would make the most sense.

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March 17, 2014

Honorable Senator Bruce Tutvedt, Chairman
Economic Affairs Interim Committee
P.O. Box 207706
Helena, Montana 59620

Dear Senator Tutvedt:

I wish to provide comments to you regarding the on going issue of milk dating in Montana and the request by Coremark International before your committee.

As a long time resident of Montana and one who has been involved with retail grocery operations for many years I would like to add my support to any proposal under consideration that would allow for milk sold in Montana to have longer dates.

As a retailer, the current short date cycle effects my bottom line in that I often throw away milk that is out of date, by the Montana standard, yet will have another 9 selling days on it by the standard of adjoining states. This creates an artificial market for Montana's dairy producers by creating a situation where perfectly good fluid milk is being thrown away; where in other states that same product is sold with longer dates.

I know for a fact from speaking to truckers who come through my store that Darigold Farms, for example, is shipping bulk milk and milk products out of state. If our farmers are so flush they can export our milk, and in Washington state even sell it lower than the Montana price, how is that helping Montana's consumer.

I believe all of us as Montanans want to see our agricultural industry thrive; I know for many parts of the state agriculture is the life blood of many communities, however if the milk industry is creating such a huge amount of product they are exporting to surrounding states, and dating the product with longer dates, do we really need this antiquated method of milk dating.

Finally, let me add that for many of us in the convenience store business, Coremark is our only source for milk and dairy products. Darigold no longer has a route in West Yellowstone and Meadowgold will not service small accounts like mine. We are left with only this one option for milk products.

I believe that dairy farmers are fearful of anything that changes their current situation but it would seem that based on what I have observed in the milk industry, they'll be ok.

Please give serious consideration to extending the dates on milk in Montana and give small retailers a chance to cut their losses on milk sales.

Thank you for allow my input.

Sincerely,

Ken Davis, Mgr

Murdo, Patricia

Subject:

FW: milk dating

From: Ron May

Sent: Tuesday, March 25, 2014 8:27 AM

To: Murdo, Patricia

Subject: milk dating

Concerning milk dates,

I am a life long Montanan, rancher, retailer, father and grandfather. I find it almost unbelievable that The Department of livestock has shown a complete disregard to the citizens of Montana for their own gain. This dating has nothing to do with the quality on milk. It is about control of the market. I have used and sold milk for over 30 years. Montana has always been 25% higher on its prices due to the greed of the Department of livestock and the control that Meadowgold has over the state. As everyone knows the 12 day code was setup to keep out of state distributors out of the state. Montanans have paid the cost. Its time for a change, its time to hold the parties involved in this accountable. Someone should be taking a close look at the department of livestock. They are clearly not looking out for the best interest for the people of Montana.

Meadowgold has stated over and over the last three years that their milk is good for 12 days. I believe that they should be held to that, both in their instate distribution and their out of state distribution.

Other milk companies have already shown that their milk is safe for 21 days so they should be able to date out to 21 days.

Lets let the consumer decide what they want. Why in the world would we let an industry as selfserving as the department of livestock steal from Montanans.

Thank you
Ron May