



CORNUCOPIA
I N S T I T U T E

August 31, 2009

**TO: Dr. Ruihong Guo, Branch Chief
National Organic Program — Compliance and Enforcement
United States Department of Agriculture**

**RE: Complaint concerning violations of the National Organic Program's
regulatory standards by the Aurora High Plains organic dairy**

Dear Dr. Guo –

The Cornucopia Institute is filing this formal complaint with your office concerning possible violations of National Organic Program (NOP) regulatory standards by the Aurora Organic Dairy. The alleged violations concern management of an estimated 3000-4200 ruminants (dairy cows) at the Aurora Organic Dairy's High Plains facility.

We are willing to share with your investigators the factual evidence we have gathered, including photographs and interviews with dairy industry professionals who have visited the facility. At the conclusion of your investigation, we ask that you take all warranted enforcement actions to bring this operation into compliance with NOP rules in a timely fashion or to decertify and/or fine the operators, if appropriate.

The operation of this facility, and violations of federal standards, has placed ethical family farmers and marketplace competitors at a decisive competitive disadvantage.

In addition, given the Aurora Organic Dairy's history of "willful" violations of organic regulations, as detailed by the Compliance division's investigation (Case No. M-005-06), we believe it is prudent to investigate all other facilities operated by Aurora – as the company, in their own words, describes the High Plains as a "pioneering green-fields model for organic dairies."

It would be reasonable to expect that this business enterprise be decertified, preventing it from engaging in any organic commerce if additional serious breaches of the standards are confirmed.

The Cornucopia Institute filed a similar complaint, spotlighting this specific Aurora facility, in September, 2007. We were informed at the time, by then AMS Administrator Lloyd Day, that the complaint, concerning High Plains, would be incorporated into the probation that Aurora Dairy was operating under, pursuant to a consent agreement signed with the Department. Based

on freedom of information documents, obtained by The Cornucopia Institute, no scrutiny of this facility ever took place and the allegations we communicated in 2007 were never investigated.

If the allegations Cornucopia gathered in 2007, and has supplemented with additional evidence collected this year, are proven to have merit, there is a reasonable basis to conclude that Aurora's High Plains organic dairy is violating the following provisions of the NOP regulations:

Subpart C

§ 205.237 Livestock feed.

- (a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, **including pasture** and forage, that are organically produced and, if applicable, organically handled ... (emphasis added)

and

§ 205.238 Livestock health care practice standard

- (a) The producer must establish and maintain preventive livestock health care practices, including:
 - (3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;
 - (4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;

and

§ 205.239 Livestock living conditions.

- (a) The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including:
 - (1) Access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment;
 - (2) Access to pasture for ruminants;
- (b) The producer of an organic livestock operation may provide temporary confinement for an animal because of:
 - (1) Inclement weather;
 - (2) The animal's stage of production;
 - (3) Conditions under which the health, safety, or well being of the animal could be jeopardized; or
 - (4) Risk to soil or water quality.

Evidence gathered by The Cornucopia Institute indicates that the majority of acreage dedicated to pasture was planted and seeded with triticale, an annual forage crop, in the fall of 2006. By late spring 2007, it had matured and was heading out. Once triticale matures, it will no longer produce edible green forage. There was no apparent underseeding below the triticale. An

Aurora representative reportedly told dairy industry professionals that they “didn’t know” if they were going to plant any permanent pasture.

In 2009 we were informed by local observers that Aurora still had not planted any meaningful amount of perennial crops (maybe 10% of available land had been seeded alfalfa) which would be suitable to maintain season-long access to pasture for their ruminants. A crop rotation of annuals (triticale or sorghum and millet) was being planted as a spring and late summer crop. Once the initial crop was exhausted the ground was prepared and seeded with millet. This left no pasture available for Aurora's milk cows, annually, for a period of 4-6 weeks in the middle of the summer grazing season.

The regulations clearly call for cows to have access to pasture. It is the responsibility of the operator to have enough land available, and suitable crops planted for the climate, to provide continuous access to pasture throughout the period of time pasture crops can be grown in their locality. If other crops, cultivated for storage, are provided irrigation it would be reasonable to expect that pasture could not be denied irrigation as an excuse for their being unavailable. It is our understanding that the pasture acreage accessible to the Aurora's cows is indeed irrigated.

NOP regulations require an Organic Systems Management plan. Critical requirements that are set forth, include:

§ 205.201 Organic production and handling system plan.

(a) The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include:

- (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed;

NOP regulations also proscribe soil fertility and management practices:

§ 205.203 Soil fertility and crop nutrient management practice standard.

(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion.

§ 205.205 Crop rotation practice standard. The producer must implement a crop rotation including but not limited to sod, cover crops, green manure crops, and catch crops that provide the following functions that are applicable to the operation:

- (a) Maintain or improve soil organic matter content;
- (c) Manage deficient or excess plant nutrients; and

It is questionable that planting triticale, sorghum or millet, in the local climate, is a sustainable organic farming practice for pasture forage as the land and soil must be cultivated and/or sowed every year. Perennial grass/pasture mixes creates a more solid sod structure, reduce water and wind erosion and offers more resources for beneficial soil building organisms.

Much of the triticale at the High Plains pasture was brown, when inspected in 2007, and would soon burn out in the coming 100° heat. Certainly before July 2007 that would have left most of the fields that were designated as "pasture" devoid of vegetation that would meet the legal definition in the NOP standards. The situation in 2009 is reported to be very similar.

Pasture is defined in the NOP regulations as:

Land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water, and vegetative resources.

In 2007 the acreage dedicated to pasture at the High Plains facility was observed to be devoid of "cow lanes," that are indicative of the movement by thousands of dairy cows along regular paths, and cow pies in the pasture. There also was no observed evidence of irregular and scattered heights of vegetation created by the rotational grazing behavior of ruminants. Finally, no more than a few dozen of a dairy herd estimated in excess of 3000-4000 animals were observed on any portion of the pasture during an observational visit.

Furthermore, an estimated stocking level of 6-7.5 cows per acre, or more, would make meaningful grazing, even if appropriate crops were available, a dubious proposition. What makes this scenario even worse is the evidence, in some photographs, that forage from these same fields, that are being considered as "pasture," had been harvested/bailed for stored feed. And, to illustrate insufficient availability of legitimate pasture, bale feeders were observed and photographed out in the "pasture." Feeding ruminants stored feed out in the field does not constitute meeting the regulatory requirement for pasturing your animals.

Contact information for Aurora corporate headquarters is:

Aurora Organic Dairy
1401 Walnut Street, Suite 500
Boulder, CO 80302-5332
303-938-5825

The High Plains Dairy contact information is:

Cockroft Dairy Farm, LLP
27906 Weld County Road 388
Kersey CO 80644
970- 353-3299

It is our understanding that this dairy operation is certified by the State of Colorado's Department of Agriculture. We would encourage the Department to reopen an investigation into their

qualification to continue as an agent under the NOP's accreditation program. Just as in 2007, when the Department proposed suspending Colorado's authority to certify organic livestock facilities, the continuing noncompliances at High Plains warrants a reevaluation of their accreditation.

Contact information for the Colorado Department of Agriculture:

Colorado Department of Agriculture
Division of Plant Industry
700 Kipling St., Suite 4000
Lakewood, CO 80215-8000
Contact: Mitch Yergert
Phone: 303-239-4138
E-mail: Mitchell.Yergert@ag.state.co.us

Finally, Cornucopia requests that the Department evaluate and assess the responsibility of certifier Quality Assurance International (QAI) and its role in the organic dairy supply chain. QAI is certainly aware that Aurora and its practices have been under review and modification due to previous investigations. This situation should demand additional scrutiny on the part of QAI certifiers to ensure that the product (milk) they are certifying indeed complies with the regulatory requirements of federal organic law.

Contact information for Quality Assurance International:

Quality Assurance International
9191 Towne Centre Dr., Ste. 510
San Diego, CA 92122
Contact: Joe Smillie
858-792-3531
Fax: 858-792-8665
E-mail: qai@qai-inc.com

If the Compliance Office determines that the State of Colorado's Department of Agriculture and/or QAI willfully violated the regulations, Cornucopia urges the NOP to take appropriate action as specified in the regulation:

7 CFR 205.665 Noncompliance procedure for certifying agents.

(d) *Willful violations.* Notwithstanding paragraph (a) of this section, if the Program Manager has reason to believe that a certifying agent has willfully violated the Act or regulations in this part, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent.

We would like to emphasize that the Organic Foods Production Act of 1990 clearly charges the USDA with the responsibility to determine whether certifying agents are "qualified" to carry out their functions under the law.

Please keep The Cornucopia Institute apprised of the status and progress of your investigation into this formal complaint. We will willingly share any additional information and documents that we possess that may aid this effort. We take this matter very seriously. Farmers who have made the difficult conversion to organics and consumers who are paying premium prices for organic foods rely upon the USDA and its approved certifying agents to uniformly and fairly enforce the nation's organic law.

It should be noted that nothing in this formal complaint shall be interpreted as a waiver of our right to appeal under the Adverse Action Appeals Process cited above.

You may contact us at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Will Fantle". The signature is written in a cursive, slightly slanted style.

Will Fantle
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