

April 24, 2014

TO: USDA Secretary Tom Vilsack

FR: Former National Organic Standards Board Chairmen Jim Riddle, Jeff Moyer and Barry Flamm

RE: Usurpation of NOSB powers by the USDA

Dear Secretary Vilsack:

As former past chairs of the National Organic Standards Board (NOSB), we are writing to you to express our grave concerns regarding recent changes unilaterally enacted by the USDA's National Organic Program that significantly erode the authority, independence and input of the NOSB.

This is a radical shift away from the collaborative governance of the organic industry that Congress had clearly intended and pioneering organic farming advocates demanded before they threw their support behind the Organic Foods Production Act of 1990.

In particular, we are voicing objections to the following recent actions:

- Deputy Administrator Miles McEvoy's arbitrary announcement on September 13, 2013 dramatically changes the approval process for synthetic and non-organic materials allowed on the National List for use in organic food and agriculture. The changes to the "sunset provision" were made without any consultation with the NOSB (a deviation in precedent and required by law) or with organic stakeholders and the public. The changes reverse years of accepted procedure employed by the NOSB to evaluate these materials as well as the policy for doing so that was publicly crafted, developed with organic stakeholder input, and effectively used by the NOSB to make decisions since its adoption in 2005.

The Organic Foods Production Act (OFPA) of 1990 clearly gives the NOSB the power to evaluate and determine what materials are appropriate for inclusion on the National List, stating that "the National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List developed by the National Organic Standards Board."

The "sunset provision" in OFPA declares: "No exemption or prohibition contained in the National List shall be valid unless the **National Organic Standards Board** has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition" [emphasis added]. You will see that the law does not say

that a subcommittee of the NOSB makes such determinations during their private, non-public meetings.

- Further, we are distressed by the apparent determination of the NOP management that they have the authority to micromanage NOSB work plans and agendas and to co-chair the meetings of the NOSB. The NOSB was established by Congress to "assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this title." Allowing and permitting the management of the NOP to co-chair meetings of the NOSB intrudes on the independence and erodes the authority of the NOSB to provide meaningful input to the Secretary on matters of importance to organic food and agriculture.
- Lastly, the disbanding of the NOSB's Policy Development Subcommittee was again done in an arbitrary, unilateral and disrespectful manner by the management of the NOP with no public discussion or consultation. This committee carefully and seriously charted a path of practices employed by the NOSB that was crafted in public and adopted with input from all NOSB members and organic stakeholders (and approved by the USDA/NOP in the past). Its policies guided the actions and activities of the NOSB. The disbanding of this committee, while perhaps not a direct violation of OFPA, sets a bad precedent and facilitates the grabbing of authority from the NOSB by NOP management.

There are other specific violations of OFPA which could lead to a court challenge and other violations of the will of Congress that, if not outright illegal, are a grave insult to the current and past volunteers who served on the National Organic Standards Board and the thousands of organic stakeholders who have, earnestly, participated in the public process to develop standards, materials and procedures for the NOSB.

We appeal to you, Mr. Secretary, for your intervention in this matter and request that you move to suspend the policies and practices enacted by Deputy Administrator Miles McEvoy that are based upon his September 13, 2013 memorandum to the National Organic Standards Board.

We know that staff and officers of a number of highly qualified NGOs would be willing to meet with you and your staff in reevaluating recent announcements by the NOP that have materially damaged the credibility of the USDA organic seal.

Sincerely,

Jim Riddle, NOSB board chair, 2005
Jeff Moyer, NOSB board chair, 2009
Barry Flamm, NOSB board chair 2012