



CORNUCOPIA
I N S T I T U T E

October 15, 2015

NOP Compliance and Enforcement Branch
Attn: Mr. Matthew Michael
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Mail Stop 0268, Room 2648-S
Washington, D.C. 20250-0268

RE: Complaint concerning possible violation of the National Organic Program's regulatory standards by Global Organic Alliance

Dear Mr. Michael,

We were surprised that our formal complaint below, submitted in December 2014, was closed without the National Organic Program (NOP) conducting an investigation into our well-documented allegations of violations of federal organic standards.

While legally researching whether or not we had grounds to file a lawsuit challenging the NOP's lack of enforcement effort, we were surprised and dismayed to note that the procedures the NOP was following gave the National Organic Program itself discretion as to whether or not to investigate formal complaints submitted by members of the public.

Even though the NOP is currently operating in the "Age of Enforcement," in the words of Deputy Administrator Miles McEvoy, and despite Cornucopia's track record of bringing meritorious complaints forward, none of the 13 complaints was afforded even an investigation by the NOP, other than confirming with certifiers that these operations were in "good standing."

Our review of NOP procedures also determined that complaints brought against accredited certifiers would require a mandatory investigation by the NOP. Hence, we are re-filing the complaint below, and formally targeting the certifier.

In a thorough investigation, the NOP will be able to determine whether the certifier acted improperly in granting a certificate to an operation that is, allegedly, not properly providing pasture and/or outdoor access, sunshine, and fresh air and the opportunity for livestock to exhibit their natural instinctive behaviors (in addition to other organic management requirements). An investigation could also determine, if the certifier was

properly overseeing the operation but was intentionally deceived through an inaccurate Organic System Plan and/or subsequent subterfuge on the part of the operator.

Accordingly, we respectfully request that the USDA's National Organic Program formally investigate the certifier, **Global Organic Alliance (GOA)**, based on our allegation that **Kreher's Sunrise Farm** is not complying with the organic standards. Please use the evidence that we provided to you in December 2014 for documents supporting this complaint.

For the past 10 years we have observed systemic violations of the law at numerous industrial-scale livestock facilities representing themselves as "organic." Although we have documented these with site visits, photographs, satellite imagery, first-hand witness accounts, and other documentary evidence, in most cases either no enforcement action whatsoever was taken by the USDA or minor sanctions were imposed.

In some cases the National Organic Program failed to carry out any independent investigation and instead delegated this function to the operation's certifier (which could have been deceived, could have acted incompetently, or could have been a co-conspirator in the violations). We're asking that NOP staff directly conduct investigations associated with this complaint.

In an effort to document the current improprieties, The Cornucopia Institute, facilitated by the generosity of a number of our individual, major donors, hired a firm that specializes in agricultural and industrial aerial photography to document some of the alleged abuses.

We respectfully request that your office thoroughly investigate GOA for its certification of Kreher's Sunrise Farm facility located near Basom, New York.

The aerial photography images (contained on the computer discs forwarded to you via Federal Express and available in a lower resolution on our website) indicate the facility operates 10 large henhouses (and a bulk egg packing facility). Eight of these large buildings are at one location with two a short distance away.

We have cross-referenced filings with the state and the National Organic Program, and other publicly available information, and come up with the same location. We checked this information more than once because, if these are in fact buildings raising certified organic poultry, they can't be differentiated from a standard, conventional operation in any regard. There are no chickens outside, there is no fenced-off area that could contain them, there are no porches (substituting for legitimate outdoor access).

UPDATE: The photos delineated below were taken based on the information we had at the time from organic certification documents and other sources. It has since come to our attention that we, likely, have inadvertently photographed Kreher's conventional operation (although we cannot confirm whether or not some of the barns and photos on the discs we sent you contain organic birds — we request that you confirm whether or not those photographs were of any organic barns vis-à-vis your investigation — because none would seem to be remotely in compliance with the regulations).

We have replaced, in the *Flyover Gallery* on our website, the aerial photography with four satellite images taken on October 5, 2011, June 21, 2014 and July 4, 2014. No birds are visible in any of these four photographs.

The photographs on the disk were taken on September 23, 2014. According to state regulatory filings, between 136,000 and 210,000 organic birds are managed at this facility — none were visible outdoors, as federal law requires. It's possible this is a "split" operation because from all appearances this facility would hold far more birds.

The satellite images appear to be consistent with the number of organic birds Kreher's is permitted for.

Although there is grass between each building, it was neatly mowed with no evidence of birds having been outdoors and no fencing.

Furthermore, there appear to be no windows in the buildings. In addition to being deprived access to the outdoors these birds apparently are also deprived of "year-round access to direct sunshine" that federal organic regulations also require.

In written and oral communications with the National Organic Standards Board (NOSB), some egg producers have made it abundantly clear that offering outdoor access to their birds is incompatible with their present management systems and could potentially drive them from the organic industry.

The alleged violations at Kreher's appear to be representative of widespread abuses in the industry. Prior formal complaints from The Cornucopia Institute have been ignored, or dismissed, to date.

We also request that the USDA conduct surprise inspections of other industrial-scale organic egg facilities, the majority of which are managed by signatories to a letter submitted to the NOSB by the United Egg Producers (UEP) in opposition to granting outdoor access to laying hens. These include:

- Cal-Maine Foods
- Delta Egg Farms
- Dixie Egg Company
- Fassio Egg Farms
- Fort Recovery Equity, Inc.
- Kreher's Farm Fresh Eggs, LLC
- Nature Pure, LLC
- Oakdell Egg Farms
- Ritewood, Inc.
- R.W. Sauder, Inc.
- Herbruck's Poultry Ranch (Green Meadow Organics) in Saranac, Michigan

Outdoor Access in the Rule

Current organic standards state that organic livestock producers must “establish and maintain living conditions which accommodate the health and natural behavior of animals, including year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air and direct sunlight suitable to the species” (7 CFR 205.239 (a)(1)).

The final rule released in February 2010 also specifies that “total continuous confinement of any animal indoors is prohibited” (7 CFR 205.239(a)(1)).

We believe that meaningful outdoor access — at a bare minimum an area large enough for every bird to be outside at the same time, and covered with either vegetation and/or dirt — is necessary to accommodate the health and natural behavior of laying hens, as the rule states — and there must be meaningful egress so that the birds can access the outdoors.

Furthermore, widespread abuses are taking place, nationally, in pullet production, where birds are routinely and exclusively confined through 17 weeks of age.

Studies published in peer-reviewed, scientific journals and respected organic publications reveal that outdoor runs are necessary to accommodate the health and *natural behavior* of laying hens. As such, Cornucopia asserts that producers that provide only porches and fail to provide outdoor runs are in violation of the rule requiring affording organic livestock conditions that promote the “health and natural behavior of animals.”

The Importance of Outdoor Runs/Pasture for Organic Egg Laying Hens

When the organic standards were created, public input from the organic community made clear that stakeholders — consumers, farmers, marketers — expect organic animals to go outside. This is clear from the preamble to the final rule, published in 2002:

*Commenters were **virtually unanimous** that, except for the limited exceptions for temporary confinement, **all animals of all species must be afforded access to the outdoors**. Commenters also maintained that the outdoor area must accommodate natural livestock behavior, such as dust wallows for poultry (page 91) [emphasis added].*

*The NOSB recommended that the final rule state that all livestock shall have access to the outdoors. As a result of these comments, we have revised the final rule to establish that access to the outdoors is a **required** element for **all** organically raised livestock (page 91) [emphasis added].*

When the NOSB considered adopting this recommendation to clarify the intent of the rule, NOP staff member Richard Matthews told the Board members: “The preamble I think has always been pretty clear that the intent [of the rule] was that the birds go outside” (NOSB transcript, May 7, 2002, page 710).

And we would like to echo Mr. Matthews' comments by emphasizing that, while the regulations were being promulgated, organic stakeholders did not just advocate for livestock to have "access" to the outdoors. They assumed that the application of these rules would result in animals actually being outdoors!

Our attorneys tell us that every law has "meaning" and "intent."

Published studies by poultry scientists reveal that allowing chickens to exhibit their "natural behavior" — which the rule states is a requirement of organic livestock production — requires access to the outdoors. Natural chicken behavior that requires an outdoor run or pasture includes foraging and sunbathing. Moreover, outdoor runs promote the health of chickens by strengthening their bones.

Lower stress on the animals results in demonstrably lower feather pecking, injury and death of flock mates. These are the kinds of conditions that stakeholders assume exist under organic management.

Foraging

Producers who let their chickens outside notice that hens spend a lot of time foraging and pecking in the vegetation and the dirt; therefore, observation of laying hen behavior leads to the conclusion that foraging is a natural behavior. Research confirms this.ⁱ One particular study demonstrated that hens in outdoor runs spend 35.3% to 47.5% of their time foraging,ⁱⁱ suggesting that foraging is an instinctive and natural behavior.

Based on a review of various scientific studies on the topic, one scientist concluded: "Depending on their quality, outdoor runs have a much higher number and diversity of stimuli than any indoor housing environment can provide Especially exploratory and foraging behavior is stimulated by such a rich environment. The diversity of plant species present in an outdoor run may elicit pecking, scratching, tearing, biting and harvesting of seeds."ⁱⁱⁱ

Again, research suggests that a chicken's ability to peck for insects and peck in the grass and the dirt on pasture may prevent her from pecking at flock mates. One researcher suggests feather pecking may be a redirection of ground pecking, which is a normal behavior of foraging and exploration in chickens.^{iv}

Natural sunlight

Pasture-based producers notice that chickens like to sunbathe. Research supports that hens exhibit sunbathing behavior only under real sunlight, not under artificial light indoors.^v Therefore, they would need a real outdoor run with adequate access to the outdoors to exhibit this natural behavior.

Bone health

Exercise is important for chicken health, especially bone health,^{vi} and studies show that birds in housing systems that promote physical activity, such as outdoor runs, have less osteoporosis.^{vii} Weak bones lead to fractures caused during the laying period or during depopulation, and are a serious welfare issue.^{viii} When comparing different systems currently used by organic producers, one study showed that aviaries without real access

to an outdoor run, used by many industrial-scale organic producers, produces more bone fractures in hens than free-range systems that are popular with medium- and small-scale organic farmers.^{ix}

Another study showed that lack of exercise contributed to the problem of weak bones more than did calcium depletion — as with humans, chickens need exercise in addition to calcium supplements to prevent fractures.^x

Conclusion

Some certified organic CAFO operators argue that the existing rule is vague, and especially that the intent of the rule is unclear. We disagree. The rule clearly states that outdoor access is required for organically produced livestock — the amount of space offer does not constitute legitimate outdoor access.

Operators who invested in facilities that were inconsistent with the letter of the law have no basis to complain about economic hardship if the USDA, now, judiciously applies the regulations to these scofflaws.

On the contrary, the farm operators who truly have a legal basis to complain are those that are complying with the spirit and letter of the law, affording their animals true access to the outdoors, and being placed at a competitive disadvantage by these giant agribusinesses that are not doing so.

Producers also have access to the preamble to the final rule, published in 2002, which clearly states that the organic community, at the time of the rule's writing, supports full access to the outdoors for all livestock, including poultry (the basis for the "intent" of the reasons).

Furthermore, the regulations make it clear that animals need to be afforded the ability to display their "natural behavior." Even if adequate space was provided, the use of concrete and many other materials clearly restricts the natural pecking behavior of the birds.

No producer is forced to become organic. Unlike most other federal rules, abiding by organic standards is completely voluntary. Producers wishing to become organic have a responsibility to their customers and to the organic community as a whole to understand the organic standards, including their intent. If they choose to look for loopholes in the rules, it is a gamble they willingly took and must be prepared for the consequences.

We believe that an investigation of GOA is warranted to determine their compliance with administration of certification standards, particularly as it applies to Kreher's Sunrise Farm.

Please keep The Cornucopia Institute apprised of the status and progress of your investigation into this complaint.

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,



Will Fantle
Research Director
The Cornucopia Institute

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- ⁱ Cooper, J.J. and M.J. Albentosa (2003) Behavioural priorities of laying hens. *Avian and Poultry Biology Reviews* 14: 127-149.
- ⁱⁱ Folsch, D.W. and K. Vestergaard (1981) Das Verhalten von Tieren. *Tierhaltung Band 12*, Basel, Birkhäuser Verlag.
- ⁱⁱⁱ Knierim, U. (2006) Animal welfare aspects of outdoor runs for laying hens: a review. *NJAS* 54-2. Pages 133-145.
- ^{iv} Blokhuis, H.J. (1986). Feather pecking in poultry: its relation with ground pecking. *Applied Animal Behaviour Science* 16: 63-67.
- ^v Huber (1987).
- ^{vi} Whitehead C.C. (2004) Overview of bone biology in the egg-laying hen. *Poultry Science* 83: 193-199.
- ^{vii} Webster (2004) and Fleming (1994).
- ^{viii} Knowles, T.G. and L.J. Wilkins (1998) The problem of broken bones during the handling of laying hens—a review. *Poultry Science* 77: 1978-1802.
- ^{ix} Gregory, N.G., L.J. Wilkins, S.D. Elperuma, A.J. Ballantyne and N.D. Overfield (1990) Broken bones in chickens. 3. Effect of husbandry system and stunning methods in end of lay hens. *The Veterinary Record* 132: 127-129.
- ^x Leyendecker (2005).