



CORNUCOPIA
I N S T I T U T E

11/10/05

TO: Eileen Broomell, Office of Compliance, National Organic Program
RE: Complaint concerning multiple violations of the National Organic Programs regulatory standards by the Aurora Organic Dairy Farm in Colorado

Dear Ms. Broomell,

The Cornucopia Institute is filing this complaint with your office concerning possible multiple violations of National Organic Program (NOP) regulatory standards governing ruminants (dairy cows) by the Aurora Organic Dairy Farm located near Platteville, Colorado. We are asking that you fully investigate this complaint to determine whether violations of the Organic Foods Production Act have occurred, are occurring, or will occur, and if so to undertake all warranted enforcement actions to bring this dairy into compliance with NOP rules in a timely fashion or to decertify and fine the operators if appropriate.

The factual support for this complaint is based upon a site visit to the principal dairy cow replacement supplier ("heifer ranch") for the Aurora Dairy by staff from The Cornucopia Institute. Photographs, notes, and direct interviews (documented with video and audio recordings and from before, during, and after the visit) with the owner and operators of the replacement heifer operation were gathered by Institute staff. We are prepared to share this evidence with your investigator(s).

Specifically, we believe that the Aurora Organic Dairy Farm is knowingly violating the following NOP regulations.

1. Subpart B - Applicability
§ 205.100 What has to be certified.

(a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

The Aurora Organic Dairy Farm has obtained hundreds of replacement milking cows from a farming operation that has not been certified organic. Mr. Steven T. Wells is a farmer who has had a contractual relationship with the Aurora Dairy utilizing his farm as the location, and supplying labor and management, for the raising of Aurora's replacement milking cows. Mr. Wells has stated to Institute staff that his farm has never been certified as an organic farm producing livestock. A separate corporate entity operates on Mr. Wells's farm and specializes in the contract raising of young calves, both conventional and organic, including hundreds of animals transported there from Aurora dairy.

Certification, as defined by the national organic regulations, means "*a crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.*"

Mr. Wells's contact information is:

Steven T. Wells
32010 County Road 63
Gill, CO 80624-9314
970-371-4699 (cell)
970-356-4671 (home)

2. Subpart C - Organic Production and Handling Requirements
§ 205.236 Origin of livestock.

(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching....

(2) Dairy animals. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic....

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may be not sold, labeled, or represented as organically produced....

The newly acquired replacement dairy animals supplied to the Aurora Farm do not meet the requirements of this regulation, according to the statement by Mr. Wells that his farm has not been certified to produce organic livestock. Furthermore, pursuant to

the regulation excerpted above, calves and dry cows that have been transported from the Aurora dairy farm to the Wells farm, as part of Aurora's management strategy, would be prohibited from being rotated back into organic milk production.

3. **Subpart E – Certification**

§ 205.400 General requirements for certification.

A person seeking to receive or maintain organic certification under the regulations in this part must:

- (a) Comply with the Act and applicable organic production and handling regulations of this part;
- (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in § 205.200;
- (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in § 205.403;
- (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program's governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in § 205.104;

and

§ 205.403 On-site inspections.

- (a) On-site inspections. (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

and

Subpart B - Applicability

§ 205.103 Recordkeeping by certified operations.

- (a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))."

(b) Such records must:

- (1) Be adapted to the particular business that the certified operation is conducting;
- (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited;
- (3) Be maintained for not less than 5 years beyond their creation; and
- (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.

(c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent.

Based upon the statements from Mr. Wells, he has never filed an organic system plan, as defined by the national organic regulations as a *“plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.”*

Mr. Wells states that his dairy cow replacement operation has never received, to his knowledge, an onsite inspection from a certification agent. Inspection, as defined by the national organic regulations, is the *“act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.”*

Even if Aurora Dairy escorted an inspector to the Wells farming operation, how could a judicious inspection take place without examining the records of the operator or interviewing him? This is a split operation, with thousands of replacement dairy animals at many stages of maturity. Of all the organic livestock facilities in the country, none would warrant, based on its size, scope, and complexity of operation, closer management scrutiny.

Furthermore, Mr. Wells states that the records he has maintained related to the management of Aurora's livestock in his care have never been scrutinized by inspectors or Aurora. Such records, as defined by the national organic regulations, shall include any *“information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.”*

The verification of these records and the management plan need to include the operations of the farm charged with raising the replacement animals in accordance with national organic regulations. The operation in question comprises two separate corporate entities, supplying both labor and management, raising replacement animals for Aurora. This is far from the common scenario of an organic farmer renting a pasture from a neighbor where she/he locates some animals but continues to supply

direct management and supervision. This matter is further compounded by the purchase of the replacement animals at auctions prior to their placement on the Wells farm and the fact that we are told the animals are not owned by Mr. Wells or Aurora Dairy, but rather by a third-party investor (auction yard operator).

In addition, staff at The Cornucopia Institute suspects that, based on the statements of managers at the Wells farm, and review of their records, some of the replacement cows might very well have been managed so as to enter Aurora's milking operation after being under continuous organic management for *less* than one year.

4. If it is determined that the replacement milking cows managed by Mr. Wells *are* in fact coming from a legitimate certified organic farm, The Cornucopia Institute asserts that these ruminants were *not* being managed organically. Specifically, we ask for an investigation into compliance with the following portions of the national organic 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

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;

Mr. Wells states that replacement heifers and dry cows were on pasture for no more than two weeks (out of a period of over a year) before delivery to Aurora and were otherwise confined to a feedlot on the Wells farm. The only time they were placed on pasture, temporarily, was when management at Aurora asked that they be pastured due to potential inspection concerns or prominence of the pasture controversy in the national media.

The Cornucopia Institute contends that climatic conditions—such as an arid climate, which makes pasture impractical or not cost-effective—cannot be used to justify noncompliance with the pasture rule. We have photographic and video evidence supplementing the confinement conditions verified by Mr. Wells and other managers on his farm.

Pasture is defined by the national organic regulations as “*land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water, and vegetative resources.*”

5. Ownership and management of the Aurora Organic Dairy Farm includes individuals who were present at the beginning of the development of national organic standards. One individual actually served on the National Organic Standards Board. This background and the relationship of Aurora to high-profile investors (Charlesbank/Harvard University), coupled with third-party certification oversight, helped sway a skeptical Mr. Wells into working with the Aurora management team. He has willingly and candidly provided much of the information used in making this formal complaint. His personal investigation, after initial reading of news accounts led him to question Aurora's management practices, led him to contact The Cornucopia Institute and was the genesis of this complaint.

Should the USDA’s investigation of this complaint determine that all or a portion of the milk herd at Aurora Farm does not pass *the organic test*, the Cornucopia Institute requests that the USDA investigate whether or not milk coming from the farm meets the following definition of the term organic, as used in this portion of the national organic regulations:

Subpart B
§ 205.102 Use of the term, "organic."

Any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be:

- (a) Produced in accordance with the requirements specified in § 205.101 or §§ 205.202 through 205.207 or §§ 205.236 through 205.239 and all other applicable requirements of part 205....

6. The Cornucopia Institute requests that the USDA investigate whether or not the organic label may be used in the private label dairy products produced from milk at the Aurora Organic Dairy Farm if it is found to not meet the following criteria stated in the national organic regulations:

Subpart D - Labels, Labeling, and Market Information
§ 205.300 Use of the term, "organic."

(a) The term, "organic," may only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the regulations in this part. The term, "organic," may not be used in a product name to modify a nonorganic ingredient in the product.

7. The Cornucopia Institute requests that the USDA investigate the applicability of this national organic regulation, should it be deemed appropriate:

Subpart B - Applicability
§ 205.100 What has to be certified

(c) Any operation that:

- (1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$10,000 per violation.
- (2) Makes a false statement under the Act to the Secretary, a governing State official, or an accredited certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

The Aurora Organic Dairy Farm has been certified by the Colorado Department of Agriculture's Division of Plant Industry (phone: 303-239-4149). The Department should fully examine guidance distributed by this certifier relating to the allegations contained in this complaint. Given the fact that other highly qualified and experienced certifiers, in many cases inspecting and reviewing hundreds of organic livestock facilities, and that the State of Colorado has virtually no background in working with organic livestock operations, an audit should be conducted to determine their qualification to certify what is probably the largest organic dairy operation in the country, managing a herd of approximately 6000 animals.

The Aurora Organic Dairy Farm's contact information from their most recent certification form is:

Dr. Juan Velez
7388 State Highway 66
Platteville, CO 80651
970-535-4626

970-535-4589 – Fax
juan.velez@auroradairy.com

The Cornucopia Institute requests that the USDA's Office of Compliance make a timely, full, and good faith effort in their investigation of these allegations. A previous complaint filed earlier this year by the Institute was dismissed by the Office *without*, according to documents that were obtained by the Institute pursuant to a Freedom of Information Act request, so much as a farm site visit, examination of farm records, consultation with the certifying agencies, or a request made to staff at the Institute for background information supporting the merits of its complaint.

Because of this, we also formally request that you reopen our complaint filed earlier this year, Case Number NOP-019-05, and also fully investigate all allegations it contains.

A similar lack of investigative action toward this complaint is unacceptable. In fact, such an action will only encourage future scofflaws and corner cutting by organic operators, and it will make a mockery of the federal organic regulations that are so diligently observed by the vast majority of participants in the nation's organic agriculture and food sector.

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
Director of Research
715-839-7731