



CORNUCOPIA
I N S T I T U T E

July 20, 2006

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

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 Dublin, Texas. The Dublin facility has in excess of 3000 milk cows, plus dry cows and young stock. 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. At the conclusion of your investigation, we ask that you take 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 Aurora's Dublin Dairy by staff from The Cornucopia Institute as well as other reports we have received. Photographs, notes, and other evidence have been gathered by Institute staff in further support of this complaint. We are prepared to share this evidence with your investigator(s).

Specifically, if the allegations presented to us as testimony are proven to have merit, along with our own observations, we believe that Aurora's Organic Dairy Farm in Dublin, Texas, is violating the following NOP regulations:

1. Subpart C
§ 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.

The Cornucopia Institute has direct evidence, including photographs, indicating that Aurora's milk cows on the Dublin facility are not receiving access to pasture. During a visit by Cornucopia staff to the farm, none of the more than 3000 lactating herd were on pasture.

It must be noted that the farm's certifier, Quality Assurance International, has already issued a letter to the Aurora Organic Dairy (dated 1/21/05 and obtained by a Cornucopia FOIA request) asking that the company explain "how your current number of [redacted] animals on your current number of [redacted] acres meets the definition of pasture..." under the NOP's pasture definition.

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.*"

The visual appearance of the area set aside for pasture, as directly observed by Cornucopia staff, provided no physical evidence that any grazing had occurred during this growing season (variable heights of forage indicating grazing activity, cow pies, areas of degradation caused by animals seeking shade, congregating around a water source or other behavioral/ herding activity, entering or exiting pasture or moving to and from the milking facility).

All available pasture, contiguous to the milking facility, was of a uniform height and a length that was consistent with it not being grazed since the beginning of the growing season. A large percentage of contiguous pasture did not appear to have water available for grazing animals.

Not all of the land set aside for pasture appeared to have access to water and irrigation equipment. In that climate unirrigated pasture has a greatly diminished value as far as meeting the organic grazing requirements. 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.

Investigators should determine whether lack of irrigation is an impediment to providing cattle with proper access to pasture at this dairy facility. Siting an organic livestock facility in an arid region, where historic records indicate inadequate moisture for crop or pasture production, does not exempt a producer from the responsibilities for complying with organic standards on an ongoing basis. Exemptions allowing confinement due to environmental factors, including drought, are required to be "temporary."

Furthermore, in addition to the aforementioned provisions in the regulations requiring pasture for ruminants, the reciprocal of allowing temporary exemptions would logically conclude that when a producer does not qualify, vis-à-vis the exemptions, to confine his or her cattle that they are required to manage the ruminants so as to promote their natural behavior, on pasture.

2. Subpart B - Applicability **§ 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....

and, specifically,

Subpart C - Organic Production and Handling Requirements **§ 205.202 Land requirements.**

Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as "organic," must:

- (a) Have been managed in accordance with the provisions of §§ 205.203 through 205.206;
- (b) Have had no prohibited substances, as listed in § 205.105, applied to it for a period of 3 years immediately preceding harvest of the crop; and

The Cornucopia Institute has evidence from several interviews that a business and personal associate of the Dublin facility manager has sprayed prohibited substances (pesticides and herbicides) to fields providing feed for cows at the Dublin operation.

Testimony gathered by Cornucopia staff indicates that all fields were spot treated (sprayed) during 2004. The applicator, along with his chemical supplier, was fined in 2005 by the state of Texas for illegally applying restricted use agricultural materials without a license.

Also, numerous sources indicate that this same individual supplied conventional feed to the Aurora Dairy facility during the period of time that Aurora's cows would have been in transition. There is nothing in the public record to indicate that this facility is a "split" operation. Even if it is, auditing their procedures, given the other serious allegations being communicated at this time, would be warranted.

Furthermore, 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 Dublin Dairy Farm, and for use in its owned branded organic products, 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 non-organic ingredient in the product.

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.

Aurora Organic's Dublin, Texas facility has been certified by Quality Assurance International (phone: 858.792.3531). The USDA should fully examine guidance distributed by this certifier relating to the allegations contained in this complaint.

The Dublin facility's contact information is:

Aurora Dairy
3075 County Road 340
Dublin, TX 76446-5600
Phone: (254) 445-4499

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. Previous complaints filed by the Institute concerning multiple allegations of organic livestock management practices at Aurora's Colorado dairy operation remain, as we understand, the subject of an active and ongoing investigation.

The Cornucopia Institute formally requests that the USDA conduct a thorough and diligent investigation into the allegations we have detailed regarding Aurora's Dublin, Texas operation. This investigation should cover:

- ❖ whether or not Aurora Dairy's Texas facility is violating the provisions in the NOP regulatory standards that require ruminants (and dairy cattle) to have access to pasture as a component of their feed source and as an environmental protection option in terms of land stewardship
- ❖ whether or not the feed procured by Aurora for their dairy herd was produced in compliance with the agronomic practices set forth in the NOP regulatory standards
- ❖ whether or not conventional feed has ever been consumed on the Aurora facility by organic livestock
- ❖ whether or not any organic labeling violations have occurred should any of the above be shown to have merit

The evidence we have collected has been gathered from a number of knowledgeable individuals with backgrounds in production agriculture. We do not make these allegations frivolously – they are a serious matter. And while the Institute lacks specific investigative powers possessed by the USDA (the ability to take sworn testimony, access certification documents or subpoena relevant material), we expect the USDA to take these allegations seriously and conduct a meaningful investigation. Failure to do so 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