



CORNUCOPIA
I N S T I T U T E

February 11, 2014

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

Dear Mr. Michael:

This new legal complaint is an update to the complaint (attached below) from 2006 that was never properly adjudicated by the National Organic Program.

We respectfully request, once again, that your office thoroughly investigate the history of past illegalities at the former Horizon dairy located near Paul, Idaho.

In addition, new intelligence has come to our attention from employees at the operation that was recently sold to private investors. They have shared with us that throughout 2013 the dairy, which previously was milking twice a day and putting cows out between each milking, had been shifted to milking three times a day and confining cattle between two of the three milkings.

Furthermore, they reported that fresh, high producing cows were being milked four times a day and entirely confined until their production dropped off.

As you know, there are provisions for the "temporary" confinement of cattle, primarily due to health or environmental factors, as detailed in §205.238 and §205.239. However, confining cattle in order to increase milk production, or because the size of the milk herd (currently 2,400) requires walking too far to access fresh pasture, would not be among the enumerated legal exemptions from requiring "access to the outdoors/access to pasture."

A statute of limitations is not incorporated into the federal organic standards. Based on freedom of information documents previously obtained by The Cornucopia Institute, it does not appear that NOP investigators ever visited the Dean/WhiteWave operation in Idaho despite our multiple requests to have them fully scrutinized.

We respectfully request investigators thoroughly review all records and interview relevant personnel based on this and prior complaints.

If you contact our office we will attempt to facilitate confidential interviews of staff to substantiate our current allegations. However, the current practices in question should be fully documented in their Organic Systems Plan and could be subject to confirmation by other farm personnel.

The Cornucopia Institute requests that the NOP's Compliance and Enforcement Branch make a timely, full, and good faith effort in their investigation of these allegations. In fact, failure to take such action will only encourage future scofflaws and corner cutting by organic operators, and 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.

What follows is a copy of the complaint filed with the NOP in 2006 regarding our allegations of organic violations at the Paul, ID dairy then owned by Dean Foods. A similar lack of investigative action toward this complaint is unacceptable.

You may contact us at your convenience.

Sincerely,



Will Fantle, Codirector
715-839-7731

August 9, 2006

TO: Eileen Broomell, NOP Compliance, USDA

RE: Complaint concerning multiple violations of the National Organic Program's regulatory standards by the Horizon Organic Dairies (Dean Foods/WhiteWave) in Paul, ID, and Kennedyville, MD

Dear Ms. Broomell,

The Cornucopia Institute is filing this formal complaint with your office concerning possible violations of National Organic Program (NOP) regulatory standards governing ruminants (dairy cows) by two organic dairy facilities operated by the Dean Foods Corporation (Horizon/WhiteWave) and located near Paul, Idaho, and Kennedyville, Maryland. We are asking that you fully investigate this complaint to determine whether violations of NOP regulatory standards have occurred, are occurring, or will occur.

We are willing to share with your investigators all of the factual evidence we have directly gathered from our site visit to the Idaho facility and the evidence provided to us by numerous other sources on both operations. At the conclusion of your investigation, we ask that you take all warranted enforcement actions to bring both of these dairy operations

into compliance with NOP rules in a timely fashion or to decertify and/or fine the operators, if appropriate.

If the allegations we have gathered are proven to have merit, we believe that there is a reasonable basis to conclude that Dean/Horizon's Idaho and Maryland organic dairies are 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.

Regarding the Paul, Idaho, operation, The Cornucopia Institute contends that Horizon’s drylot facility—located in an arid climate averaging 10 inches of rain annually—does not provide sufficient pasture for their lactating herd numbering approximately 4000–4500 head, as well as the approximately 4000 heifers and dry cows also located at this site. Earlier this year, in an attempt to upgrade the extremely limited pasture available on the farm, Horizon officials planted oats on which to allegedly pasture milk cows—with a stocking rate of approximately 7 cows per acre. Cattle were then paraded outside of their drylot facility on several occasions to show visiting VIP members of the organic community and reporters that the milk herd had access to pasture.

Staff from The Cornucopia Institute also visited the Idaho facility in June, 2006. A portion of the milking herd was rotated at that time onto the oats from their “winter quarters” to demonstrate the facility’s pasturing regime. However, the oats, at the time of this visit, were approximately 2.5 feet tall and had headed-out /gone-to-seed. This direct visual evidence contradicts the claims of regular pasturing by the dairy herd on the oat field. Furthermore, even if the field of oats was intended to regularly pasture the herd during the period of our staff’s visit, the material was not palatable at this stage of growth and is indigestible for dairy cattle. This fails the standard established under NOP regulation § **205.239. Terms defined:**

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

Furthermore, since our visit to the Idaho facility and according to our Idaho-based sources and photographic evidence, the oats have been mechanically harvested, leaving stubble and virtually no pasture accessible to the milking herd. Staff from The Cornucopia Institute also observed no watering facilities providing needed water to animals out on the available pasture—something that would be a necessity for organic operations seeking to humanely manage their dairy herd while truly meeting the pasture standard. The Cornucopia Institute contends that certified organic farms cannot operate without access to pasture for their animals.

The Horizon operation manages a total of approximately 7800 acres. This acreage was described as “desert country” by the farm’s general manager in 2001. Feed for lactating cows, which are milked three times a day, is reportedly delivered to the herd’s “winter quarters” by truck.

The Cornucopia Institute recognizes that certified organic dairy operations can remove cows from pasture for temporary considerations based on weather, environmental, or health considerations, as noted above in § **205.239**. The Cornucopia Institute contends, however, that geographic or climatic conditions—which make pasture impractical or not cost-effective—cannot be used to justify year-round noncompliance with the pasture rule.

Horizon’s Kennedyville, Maryland, organic dairy milks approximately 500 head. Based on expert testimony from a number of sources with intimate, first-hand familiarity with this operation, only token pasturing, at best, is occurring at the dairy. Cattle have been prevented from accessing pasture during this growing season despite the presence of

excellent pasturing conditions. These conditions include ideal and lush pasture quality on the farm's fields and weather perfect for grazing with cloudy skies and temperatures in the 65–70 degree range. We have additional photographic evidence documenting this condition.

NOP regulations, according to § 205.239(b), are very precise and clear, stating when animals can be legally confined on a temporary basis. Neither the weather nor pasture conditions on the Horizon-operated Maryland farm met the weather and/or pasture standards permitting the temporary confinement of the facility's milking herd.

Evidence gathered by The Cornucopia Institute from eye-witnesses to the Maryland operation have testified that the facility's pasture was mowed (brush-hogged) on a number of occasions, rather than harvested for its nutritive feed value. This was done because the pasture crop had reached maturity and had not yet been grazed down by cattle.

Furthermore, The Cornucopia Institute requests that the USDA investigate whether or not the organic label may be used in the branded dairy products produced by Dean Foods/Horizon Organics (and made from milk at both of the Dean/Horizon operated organic dairies) 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.

Both of Dean's Horizon organic dairies appear to have been certified by Quality Assurance International, Inc. (QAI). QAI may be contacted at 858-792-3531.

Contact information for the Idaho Horizon Organic Dairy is:

Horizon Organic Dairy
2589 E 500 S
Paul, ID 83347-5019
208-438-8450 (p)

Contact information for the Maryland Horizon Organic Dairy is:

Horizon Organic Dairy
11471 Augustine Herman Highway
Kennedyville, MD 21645
(410) 348-5472

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

Lastly, pursuant to **Subpart C** and the following provision:

§ 205.680 General

- (a) Persons subject to the Act who believe they are adversely affected by a noncompliance decision of the National Organic Program's Program Manager may appeal such decision to the Administrator.

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 on February 16, 2005 by the Institute (Case Number NOP-039-05 and concerning livestock management practices at the above-named Idaho facility) was closed 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.

A similar lack of investigative action toward this complaint is unacceptable. The evidence we have collected has been gathered from a number of knowledgeable individuals with backgrounds in livestock agriculture, and the first-hand knowledge of Institute staff. We do not convey 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.

In fact, failure to take such action will only encourage future scofflaws and corner cutting by organic operators, and 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,

A handwritten signature in black ink that reads "Will Fantle". The signature is written in a cursive style with a large, stylized "W" and "F".

Will Fantle
Director of Research
715-839-7731
wfantle@cornucopia.org