



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 CCOF Certification Services, LLC

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, **CCOF Certification Services, LLC**, based on our allegation that **Chino Valley Ranches** 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 CCOF Certification Services, LLC for its certification of Chino Valley Ranches facility located near Idalou, Texas.

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 24 large henhouses (and a bulk egg packing facility). There are an additional six livestock barns on the property (likely housing pullet production).

The photographs were taken on May 17, 2014. According to state regulatory filings, 540,000 birds are managed at this facility — none were visible outdoors, as federal law requires.

We will forward additional satellite images taken on two separate days (September 30, 2014 and November 20, 2014). Neither of these additional images show any chickens outdoors.

The space between each building was fenced, and there appeared to be a concrete strip running along each building. It's possible that even with this unnatural environment Chino Valley considered this narrow little space the "outdoors." However, there were no birds in either the dirt area between the buildings or in the concrete strip along the side of each structure.

It was a comfortable 82° with low humidity, and no precipitation, on the date the aerial photography was taken. There were no birds visible either in direct sunlight or in the strip of shade that, given the trajectory of the sun, was visible along the full length of about half of the 24 henhouses.

In public and private dialogue the general manager of Chino Valley, Mr. David Will, came up with various explanations as to why there were no birds visible the day the aerial photography was taken. After The Cornucopia Institute published one of the aerial photographs in the fall issue of its quarterly newsletter, *The Cultivator*, Mr. Will contacted Cornucopia's Senior Farm Policy Analyst, Mark Kastel, asking for the specific date the photograph was taken.

During that initial contact Mr. Will suggested that this facility was likely photographed on a weekend as, he stated, different management was in place. Although the precise schedule of the overflights was determined by the contractor, it happens that the photographs were taken on a Saturday.

It should be emphasized that there is no exemption to the outdoor access requirement in the federal organic regulations based on the day of the week.

Later, Mr. Will told a reporter with the Washington Post that the photographs appeared to be taken midday, when his facility was in direct sunlight, and that the chickens were likely indoors for that reason.

Close examination of the high resolution photographs we have forwarded to you will indicate at least half of the buildings, due to an overhang and the angle of the sun, provided a strip of shade the length of each building.

There are no birds visible in sunshine or shade.

After visiting scores of organic egg production facilities in the U.S., Cornucopia staff has never observed a house, with its doors open, where zero birds were outside regardless of weather conditions.

Mr. Will later emailed the Washington Post copies of documents indicating his birds were outside on the date our photographs were taken and his own photographs, from December, illustrating his birds outdoors.

This aptly demonstrates why the NOP requirement for unannounced inspections is so important. The credibility of the organic label cannot solely be dependent upon the examination of paperwork, created by an operator, and the observations of an inspector visiting on a prearranged date and time.

All visits to farms by Cornucopia staff or, in this case, by aerial photography are done on an unannounced basis.

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. If the six smaller houses were indeed for raising pullets none of them were visible, outdoors, either.

If the smallest concrete strips along sides of the Idalou facility are intended to be used for “outdoor” access, they also do not provide the ability to choose to go outside to all birds — their outdoor areas are simply too small to allow but a minute percentage of birds to be “outdoors” at the same time (even if we were going to concur that a porch was outdoors). Because no exit doors were visibly open during the aerial photography it’s hard to determine if birds had access to enough doors, in each building, allowing for sufficient access to the outdoors for the majority of the birds. These conditions are consistent with many other CAFOs; these producers are actively *discouraging* the birds from going outside by providing both no incentive and little opportunity to do so.

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.”

If municipal building standards call for an exit, on the second floor of the building, you can make the assumption that a staircase is required, not just a door that would force those exiting to drop to the ground.

Hence, the minimal, profoundly cynical space provided, for tens of thousands of birds, the size of maybe three infant playpens, does not meet the intent of the law.

This facility discourages birds from actually going outside by providing inhospitable conditions, lack of feed, water and shade, inadequate size and number of doors, doors structured so birds cannot be assured that there are no avian predators present before exiting, and young pullets being continually confined, in violation of the law, for as many as 20 weeks prior to being afforded any access to the outdoors (at that point they are unfamiliar and afraid of the outdoors and are much less likely to exit a building).

Likewise, 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 packing, 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

Some Specific Alleged Violations of the Organic Standards

Henhouses used by the producer named in this complaint share two common features with other industrial-scale operators, which we allege violate the national organic standards for outdoor access.

Not all birds have access to the outdoors — outdoor area is too small — and/or birds are regularly prevented from any outdoor access.

The outdoor space, at the bare minimum, should be as large as the indoor space (with the woefully inadequate conventional industry standard of 1.20 feet per bird — adopted by many of the larger organic producers). In this country what is likely the largest name-brand egg distributor, Organic Valley, requires its member-producers to provide 5 ft.² per bird. A competitor, Egg Innovations, is outfitting their newest buildings with 10 ft.². European standards require 43 ft.² and a few individual marketers in the U.S. require as much as 140 ft.² or more.

Deputy Administrator McEvoy's policy memo, stating not all animals have to be outdoors at the same time, is misdirected. Precedent, in the form of the current regulations for ruminants, relating to access to pasture, stipulates that when pasture is unavailable/temporarily not required, and the animals are in an outdoor area, that the space provided has to accommodate 100% of the herd. We should expect nothing less, in terms of humane animal husbandry, when outdoor space is required for poultry or other species. At a very minimum, 100% of the flock should be accommodated.

It should be noted that if a producer afforded space for just 100% of the birds they would likely be violating a number of other tenets in the organic standards requiring sustainable stewardship, and competent environmental management, of the land, water and soil. In Europe, to qualify for organic certification, each bird has to be provided with 43 ft.² of space outdoors. And in the EU this scale has proved to be economically viable with a greater market penetration for organic eggs than is experienced in the U.S.

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.

Furthermore, the erroneous decision made by the National Organic Program, during the Bush administration, by an official who would later go to work for the industry, was not supported at the time by the regulations nor is it supported today. 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.

The USDA allowing porches and minute outdoor spaces has been viewed as a precedent by some certifiers, it does not hold the weight of the law and can easily be reversed by the current USDA administration if it respects both the organic standards and the principles on which the organic standards were founded.

This is clearly true because of documented abuses in the way that past NOP management handled incidents such the allowance of illegal synthetic substances in organic infant formula. In this case the current USDA administration recognized that the impropriety could not be left unchallenged by the current management at the USDA and reversed the prior decision.

We believe that an investigation of CCOF Certification Services, LLC is warranted to determine their compliance with administration of certification standards, particularly as it applies to the Chino Valley Ranches.

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

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.

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- ^{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).