CORNUCOPIA
INSTITUTE

December 10, 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:

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 the history of past potential illegalities at the Hilltop Dairy located near Earth, Texas. This operation is certified by the Texas Department of Agriculture. State records indicate that this facility is owned and operated by Brian Boehning and is also known as the Boehning Dairy.

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 worn-out pasture with many of the irrigated fields with some grass lacking fencing and waterers that would facilitate grazing. Many of the fields appear to have been mechanically harvested. Even though it is early in the season, due to an exceedingly high stocking level and mechanical harvesting, there appears to be little usable pasture accessible to the milking herd.

Given that these photographs were taken on May 17, 2014, it would seem to indicate that the cattle had exhausted the currently available growth while certain fields were being retained to be cut as

hay.

According to filings with the state of Texas, this dairy is currently managing 2,280 head of cattle on a mere 240 acres. Although some of these are young stock, without harvesting any forage off of these acres, that would equate to an overall stocking level of 9.5 cows per acre (a much higher effective rate depending how much of the growth was harvested for hay on an annual basis).

Even if you just took the number of cows being milked (1,800 based on state permits), and not including any older heifers or dry cows, that would still be an effective stocking rate of 7.5 cows per acre.

No cows (zero) were visible, out on pasture, in any of the photographs that included much more than the 240 acres the dairy specified as managing as part of this CAFO. The high temperature on the date these photos were taken, May 17, 2014, was 77°F.

In fields where there is evidence of cows, they appeared to be grossly overgrazed and/or not irrigated (in an environment where lack of irrigation would mean no grass at this time of year). Please see photo 207089-03. Much of this land lacks fencing and there were no visible waterers, making grazing unlikely in the environment. There were plenty of physical signs that the fields had been mowed for stored hay.

This contrasts with the data gathered from a Cornucopia Institute organic dairy producer study, in 2005, indicating the average available pasture for organic dairy cattle, across the country, was approximately one cow per acre.

There is a record of a wastewater permit enforcement action taken by the state of Texas in August 2014. We don't know if that has been adjudicated or if an investigation is still pending.

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 herd requires walking too far to access fresh pasture, or because of the need to produce stored feed, would not be among the enumerated legal exemptions from requiring "access to the outdoors/access to pasture."

Furthermore, keeping cattle confined in feedlots, for the majority of their lives, does not meet the requirement in the standards to accommodate the health and natural instinctive behaviors of the animals.

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

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.

The USDA enjoys some investigative tools and access that The Cornucopia Institute does not have in further evaluating whether this facility is operating legally. Examining the operation, and their Organic Systems Plan (OSP), should be able to confirm how many of the "pasture" acres are

managed with irrigation (in this climate unirrigated pasture would have a very short window for providing a material contribution to the dry matter intake required to maintain organic dairy cattle). Importantly, investigators should be able to review history for the last few years to determine what percentage of annual growth was cut as stored feed versus provided as pasture for livestock.

Investigators should be able to ascertain how much milk is produced by each animal on the farm. Relatively high production would indicate that intensively grazing the cattle would be unlikely. (Although we haven't seen hard data it seems that most organic dairy producers have a rolling herd average from 13,000 to 18,000 pounds, with those managing on 100% grass below that. Production well above 20,000 pounds would be atypical for organic dairy producers complying with the regulations.)

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, Codirector
715-839-7731

§205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive livestock health care practices, including:

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;

§205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and **natural behavior** of animals, including [emphasis added]:

(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with §§205.239(b) and (c). Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed simultaneously without crowding and without

competition for food. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.

(2) For all ruminants, management on pasture and **daily grazing throughout the grazing season**(s) to meet the requirements of §205.237, except as provided for in paragraphs (b), (c), and (d) of this section [emphasis added].

(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:

(1) Inclement weather;
(2) The animal's stage of life: Except, that lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this regulation;
(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized;
(4) Risk to soil or water quality;
(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);
(6) Sorting or shipping animals and livestock sales: *Provided,* that, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;
(7) Breeding: Except, that, bred animals shall not be denied access to the outdoors and, once bred, ruminants shall not be denied access to pasture during the grazing season; or
(8) 4-H, Future Farmers of America and other youth projects, for no more than one week prior to a fair or other demonstration, through the event and up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event.

(c) The producer of an organic livestock operation may, in addition to the times permitted under §205.239(b), temporarily deny a ruminant animal pasture or outdoor access under the following conditions:

(1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;
(2) In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: *Provided,* That, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;

(4) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.

(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location: Except, that, yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to

provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed simultaneously without crowding and without competition for food. The finishing period shall not exceed one-fifth (⅕) of the animal's total life or 120 days, whichever is shorter.

§205.240 Pasture practice standard.

The producer of an organic livestock operation must, for all ruminant livestock on the operation, demonstrate through auditable records in the organic system plan, a functioning management plan for pasture.

(a) Pasture must be managed as a crop in full compliance with §§205.202, 205.203(d) and (e), 205.204, and 205.206(b) through (f). Land used for the production of annual crops for ruminant grazing must be managed in full compliance with §§205.202 through 205.206. Irrigation shall be used, as needed, to promote pasture growth when the operation has irrigation available for use on pasture.

(b) Producers must provide pasture in compliance with §205.239(a)(2) and manage pasture to comply with the requirements of: §205.237(c)(2), to annually provide a **minimum of 30 percent of a ruminant's dry matter intake (DMI), on average, over the course of the grazing season(s)** [emphasis added]; §205.238(a)(3), to minimize the occurrence and spread of diseases and parasites; and §205.239(e) to refrain from putting soil or water quality at risk.

(c) A pasture plan must be included in the producer's organic system plan, and be updated annually in accordance with §205.406(a). The producer may resubmit the previous year's pasture plan when no change has occurred in the plan. The pasture plan may consist of a pasture/rangeland plan developed in cooperation with a Federal, State, or local conservation office: *Provided,* that, the submitted plan addresses all of the requirements of §205.240(c)(1) through (8). When a change to an approved pasture plan is contemplated, which may affect the operation's compliance with the Act or the regulations in this part, the producer shall seek the certifying agent's agreement on the change prior to implementation. The pasture plan shall include a description of the:

(1) Types of pasture provided to ensure that the feed requirements of §205.237 are being met.
(2) Cultural and management practices to be used to ensure pasture of a sufficient quality and quantity is available to graze throughout the grazing season and to provide all ruminants under the organic system plan, except exempted classes identified in §205.239(c)(1) through (3), **with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season** [emphasis added].
(3) Grazing season for the livestock operation's regional location.
(4) Location and size of pastures, including maps giving each pasture its own identification.
(5) The types of grazing methods to be used in the pasture system.
(6) Location and types of fences, except for temporary fences, and the location and source of shade and the location and source of water.
(7) Soil fertility and seeding systems.
(8) Erosion control and protection of natural wetlands and riparian areas practices.