



November 1, 2016

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: Hydroponics Legal Complaint

Dear Mr. Michael:

The Cornucopia Institute is filing this formal complaint with your office requesting an investigation into the organic certification of hydroponic operations in the U.S. that appear to conflict with the statutory language of the Organic Foods Production Act (OFPA) of 1990 and current federal regulations governing organic food production.

Specifically, we are requesting that the NOP Compliance and Enforcement Branch investigate the organic certification granted to the following two entities for the sale of their hydroponically raised produce. We respectfully request that the certifiers involved be investigated as well. Please consider this request a separate complaint against the certifiers. If you would like us to file that as a separate document, please let us know.

In addition, we understand, based on statistics released from the NOSB Hydroponic Task Force, that the NOP has knowledge of over 100 other existing certified hydroponic and container growers. After the following entities are scrutinized, the balance should be investigated as well:

Wholesum Harvest Family Farms
2811 N Palenque Ave.
Nogales, AZ 85621
(520) 281-9233
Certified by CCOF

Driscoll's
255 Westridge Dr.
Watsonville, CA 95077-5045
831-763-4266
Certified by QAI

According to:

OFPA SEC. 2114. [7 U.S.C. 6513] ORGANIC PLAN.

(b) CROP PRODUCTION FARM PLAN.—

(1) SOIL FERTILITY.—An organic plan shall contain provisions designed to foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring.

and

(g) LIMITATION ON CONTENT OF PLAN.—An organic plan shall not include any production or handling practices that are inconsistent with this title.

It is clear that soil fertility and its management are fundamental to the vision of organic agriculture as detailed in OFPA. Furthermore, it is clear that crop production practices that do not include this fundamental precept are "inconsistent" with crops allowed to be certified as organic by the USDA's National Organic Program.

The federal standards for organic regulation provide additional detail to OFPA's language.

These details are included in:

§205.203 Soil fertility and crop nutrient management practice standard.

(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion.

(b) The producer must manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials.

(c) The producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances....

and

§205.205 Crop rotation practice standard.

The producer must implement a crop rotation including but not limited to sod, cover crops, green manure crops, and catch crops that provide the following functions that are applicable to the operation:

(a) Maintain or improve soil organic matter content;

The certified organic produce from both Driscoll's and Wholesum Harvest appear to fail to meet the crop production requirements as specified in both OFPA and the USDA's organic standards as noted above.

Driscoll's raspberry and blueberry hydroponic container systems utilize peat moss. The mining of peat moss actually robs organic matter from the soil, rather than improving soil organic matter as required by §205.205.

Crop fertility in container systems depends primarily on added synthetic soluble nutrients, such as micronized fish and hydrolyzed soy delivered through water, rather than the fertility coming primarily from the organic content of the soil as required in OFPA §6513. Currently, these hydrolyzed soy fertilizers are being used illegally. Not only are conventional, potentially GMO soybeans being used to make the fertilizers, the process of hydrolysis includes boiling at high temperatures in synthetic acids for hours, a process which should be reviewed by the NOSB for whether or not it meets OFPA criteria.

Likewise, Wholesum Harvest utilizes coconut coir for a container substrate, also lacking nutrients. Both OFPA and the NOP final rule describe organic agricultural production as much more than substituting approved fertilizers for non-approved fertilizers, the equivalent of what "organic" hydroponic techniques have done with conventional hydroponics.

It is the listed purpose of OFPA §6501 that organically produced products meet a consistent standard. No language exists in either OFPA or the Final Rule that outlines provisions or requirements for soilless hydroponic systems. In contrast, clear language exists to justify the prohibition of hydroponics in organic given the fact that it is impossible to meet the minimum standards of managing soil fertility through increasing organic matter.

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.

With a thorough investigation, the NOP will be able to determine whether the certifier acted improperly in granting a certificate for the production of hydroponic crops. As the certifier for each of the operations identified in this complaint could have been deceived, could have acted incompetently, or could have been a co-conspirator in the alleged violations, we ask that NOP staff directly conduct investigations associated with this complaint (both against the operators and certifiers).

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