

FOOD Farmers

Federation Of Organic Dairy Farmers

Acting Secretary Chuck Conner
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

September 25, 2007

Dear Acting Secretary Conner,

The Federation of Organic Dairy Farmers (FOOD Farmers) is writing to protest the Consent Agreement M-005-06 between the USDA Agricultural Marketing Service (AMS) and Aurora Organic Dairy (AOD). FOOD Farmers is the umbrella organization for the Northeast Organic Dairy Producers Alliance (NODPA), the Midwest Organic Dairy Producers Association (MODPA), and the Western Organic Dairy Producers Alliance (WODPA) who represent organic dairy farmers across the country.

We are pleased that, on August 30th 2007, the USDA AMS National Organic Program (NOP) finally released information regarding the investigation of the complaint filed by The Cornucopia Institute on November 9th 2005. By conducting the investigation, releasing the results of that investigation dated March 7, 2007 and publishing the letter of proposed revocation dated April 16, 2007, the NOP has shown the transparency so necessary for continued consumer confidence in the program. We thank the staff of the NOP program for fulfilling the investigative requirements of the program and publishing the results of their work. We are severely disappointed that the result was a consent agreement that lacked logic, precedent and transparency.

Fourteen alleged “willful” violations of the regulations of the Organic Food Production Act of 1990 (OFPA) by Aurora Organic Dairy were described in the document “Violations by Aurora Dairy” dated March 7, 2007. Aurora Organic Dairy, with several milking operations, is the largest producer of organic milk in the US. The alleged violations, if true, were flagrant, major breaches of NOP regulations, including failing to provide pasture in the diet of milking cows, bringing cows into the herd that were not fully transitioned, feeding non-organic feed, and, as a routine practice, moving organic animals to conventional practices and then back to organic. It only takes one such proven violation for revocation of certification to be justified.

We are extremely disturbed by the Consent Agreement between USDA and AOD for many reasons. It does not bring closure to this situation. If Aurora is guilty of these alleged violations and is allowed to not only continue in operation but to continue with no sanction after having allegedly “willfully”, for over 3 ½ years since December 5, 2003, “sold, labeled, and represented milk as organically produced, when such milk was not produced and handled in accordance with National Organic Program regulations,” they should be de-certified and fined to the full extent. Given the “nature and extent” of the alleged violations which continued over 3 ½ years, any fine of AOD should be the maximum amount allowed by law and AOD should not be permitted to ship organic milk for five years, in accordance with section 205.662 of the NOP regulations on noncompliance. 205.662(g) states that “*In addition to suspension or revocation, any certified operations 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.” The regulation does not say “may” but rather it says “shall” which would indicate that fines are mandatory. If Aurora is not guilty of the alleged violations, they should be cleared of any violation and confidence in NOP’s ability to enforce the organic standards will be restored.

The Consent Agreement between USDA and Aurora sets an unacceptable precedent for the USDA organic seal, that alleged major, multiple violations occurring over several years time and affecting multiple operations are not met with certification revocation but can be negotiated away without penalty, complete remedy, or closure to benefit the confidence of the consumer in the program. This puts the whole organic industry at risk as it breaches the trust and faith in the ability of USDA to consistently and fairly require compliance with the NOP standards. The regulations are scale neutral and so should enforcement. Many smaller operations have been de-certified over the years for willful violations. The Consent Agreement can be seen as, or can be perceived as, a result of preferential treatment for a large-scale operation to be allowed to negotiate their way out of revocation which undermines confidence in the certification and enforcement process. No operation with this many alleged willful violations should have the opportunity to negotiate a consent agreement. If an investigation uncovers 14 willful violations of the NOP Regulations, the operation’s certification should be revoked.

The “Q&A on the Aurora Consent Agreement” provided by the NOP, states that NOP “can agree to the settlement of enforcement matters if they are deemed to be in the best interests of the program.” We find no legal justification in OFPA or in the NOP regulation to justify the USDA’s negotiation of the Consent Agreement. We do not agree with the stated reasoning that, because legal action will take many years, the Consent Agreement is in the “best interests of the program” for the following reasons:

- The Consent Agreement neither upholds the allegations against AOD nor dismisses them, but continues to fan the flames of controversy surrounding this operation.
- The Consent Agreement encourages the lodging of complaints to achieve enforcement of the standards further compounding the work overload of the under funded NOP program.
- Consumer advocacy groups will now bring pressure on AOD customers to purchase “real” organic milk from farms that are not subject to the complaints and investigations that surround AOD, further undermining consumer confidence in the NOP Organic Seal as the only arbitrator of organic certification.
- The lack of transparency in the reasoning behind the provisions of the Consent Agreement brings further confusion regarding pasture and replacement animals to certifiers, producers, and consumers.

The only section of the regulation where the USDA is granted the ability to “negotiate” with an operation that has been found to commit willful violations is section 205.662(f)(2), regarding the length of time that must elapse prior to being eligible to re-apply for organic certification.

The Consent Agreement does not address all the alleged violations and inconsistencies raised in the Violation by Aurora Organic Dairy document attached to the Notice of Proposed Revocation nor does it fully and fairly remedy all the ones it does address:

1. The fact that it is alleged that AOD brought cows into their Dublin, Texas herd in 2006 “before they completed the required one-year period of continuous organic management” was not addressed. Under the Consent Agreement, those cows are allowed to remain in the herd and produce organic milk. Thus, the Consent Agreement allows AOD to continue to **sell milk as organically certified from cows at the Dublin, TX operation that are allegedly non-organic according to NOP regulations and interpretations.**

2. The remedy sought for the multiple alleged egregious violations concerning replacement livestock for the Platteville operation (animals being moved back and forth between organic and conventional production, animals brought from a non-certified facility, and transitioned animals being brought into the Platteville operation when that practice was clearly disallowed by NOP regulation) does not begin to be addressed by the Consent Agreement. Being required to remove all 80/20 transitioned animals is **completely the opposite remedy** of what should be required. **Rather, it should be all the other animals, all those subsequent animals that are not organic from last third of gestation or were not animals transitioned under the 80/20 rule that were included in the original Organic Systems Plan, which should be removed from the herd.**¹ Thus, the Consent Agreement allows AOD to continue to sell milk as organically certified from cows at the Platteville, CO operation that are alleged to be non-organic according to NOP regulations and interpretations.

3. The metric that is used by the NOP for AOD to satisfy the necessary access to pasture is **not previously published by NOP in any guidance documents. It goes against every recommendation of the National Organic Standards Board.** In the opinion of practicing dairy farmers across the country, allowing 4 and 5 cows per acre pasture stocking rates is too high, especially in an arid area, to allow for significant intake of pasture. USDA provides no regulatory basis for allowing such high stocking rates in the Consent Agreement. We are concerned that the high stocking rates allowed by the ruling set a precedent that can be used by other dairy operations to justify minimal access to pasture with no quantitative consumption of pasture.

While this case shows that the current NOP regulations do require pasture for ruminants and do have standards for dairy replacement animals, now, more than ever, it is important for the USDA to swiftly move forward and publish rulemaking that will clarify the access to pasture rule and provide a technical correction to the rule governing organic dairy herd replacements. **There must be clear language and even enforcement. FOOD Farmers, some processors, and the majority of other organizations in the organic community have repeatedly asked the USDA NOP to adopt the following recommendations as part of their proposed rulemaking.**

Clarification of the access to Pasture standards

1. *Organic dairy livestock over 6 months of age must graze on pasture during the months of the year when pasture can provide edible forage.*
2. *The grazed feed must provide significant intake for all milking-age organic dairy cows. At a minimum, an average of 30% of the dry matter intake each year must come from grazed pasture during the region's growing season, which will be no less than 120 days per year.*²
3. *Temporary exemption from pasture may be allowed because of:*
 - i. *Conditions under which the health, safety, or well-being of the animal could be jeopardized, including to restore the health of an individual animal or to prevent the spread of disease from an infected animal to other animals.*
 - ii. *Short term inclement weather.*
 - iii. *Temporary conditions which pose a risk to soil and water quality.*
 - iv. *In no case will temporary confinement and exemption from this pasture standard be allowed as a continuous production system.*

¹ Attachment A: Dairy Animal Acquisition under NOP regulations published October 2006

² For further information on how to measure dry matter intake from pasture go to <http://www.nodpa.com/FOODpastureMeasurement.pdf>

The measurement of the consumption of dry matter from grazed pasture will be calculated based on the daily dry matter intake from grazing averaged over the total time period grazed per year.

Organic Dairy Herd replacements

Once an operation has been certified for organic dairy production, all dairy replacement animals, including all young stock whether subsequently born on or brought onto the operation, shall be under organic management from the last third of gestation prior to the animal's birth.

We would also note the apparent conflict of interest between AOD and both their certifiers, which were quoted in an 8/29/2007 AOD Press Release.³

- “We currently certify Aurora Organic Dairy’s milk processing plant in Colorado and all of its Texas facilities,” said David Abney, vice president of the United States’ largest organic certifier, Quality Assurance International (QAI). “Aurora Organic Dairy has maintained an unbroken certification record with us, and all facilities certified by QAI meet every provision of the National Organic Program.”
- “Colorado is home to many of America’s finest organic farms and companies,” said the Honorable John Stulp, Colorado Commissioner of Agriculture. “We’re proud of the positive role companies like Aurora Organic Dairy have taken to build organic agriculture in our state, as well as the positive impact on our agricultural economy.”

Laudatory public statements made by a certifying agency about an operation certified by them has been perceived as showing the existence of an improper relationship between the agency and the certified operation and therefore does not allow for impartial, arms length review and judgment of AOD’s certified organic status by these certifiers. This is especially notable when AOD allegedly had 14 willful violations of the OFPA and 7 CFR Part 205 at the time of the Press Release, of which QAI and CDA must have been aware when they made their statements.

Given the long term nature of the numerous alleged violations, their gravity, and the fact that the Colorado Department of Agriculture (CDA) allegedly failed to understand and correctly interpret the NOP regulations over many years time and allegedly did not ensure and enforce AOD’s compliance with NOP regulations, FOOD Farmers request that the certification of Aurora Organic Dairy by CDA be declared null and void. CDA has failed to fulfill 205.620 Requirements of State organic programs which state that a “*State organic program must assume enforcement obligations in the State for the requirements of this part and any more restrictive requirements approved by the Secretary.*” FOOD Farmers request that AOD is immediately instructed to contract with a new certifier, other than CDA or QAI, to ensure ongoing certification by a certifier that understands the requirements that must be met by organic dairy farms. This again will restore the perceived lack of faith in the NOP Organic Seal and the USDA ability to monitor certification agencies.

FOOD Farmers call on the USDA to continue to enforce the Consent Agreement with AOD with monthly surprise visits to the AOD farms by NOP investigators, paid for by AOD. If there is one indication that the terms of the Consent Agreement “are not being reasonably complied with,” USDA must immediately follow through with the April 16th Proposed Revocation of Aurora Organic Dairy’s production and handling certification under the NOP.

If the alleged violations are true, the proper development of the organic milk supply has been severely impaired by Aurora's fraudulent practices. If the allegations are true, allowing Aurora Organic Dairy to

³ Attachment B: AOD press release on 8/29/07

continue uninterruptedly producing and selling organic milk, via discriminatory enforcement of the Rule, will continue to impede the true development of a regulation compliant organic milk supply. To do any less than follow through with the proposed revocation in the event of a non-compliance with the Consent Agreement, is to jeopardize the whole organic industry by sending the message that willful violations by organically certified operations who have influence and the financial ability to hire lawyers, will be tolerated.

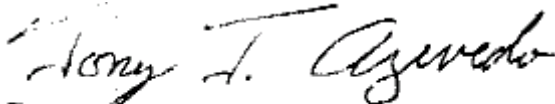
The continued health and growth of organic farming, handling, processing, and retailing rests upon the credibility of the National Organic Program system. The Consent Agreement between USDA and Aurora Organic Dairy has no transparency and the "Q and A" posted on the NOP website compounds the confusion and lack of logic rather than explaining the reasons for reaching the agreement. The strength of the Organic seal and the financial sustainability of family farms rely on the ability of the NOP to enforce the organic standards universally and unequivocally. This Consent Agreement does not do that and leaves a situation that is open to many interpretations by producers and certifiers further aggravating controversy and disillusionment within the National Organic Program.

Sincerely



Steve Morrison
President

Steve Morrison, President, Northeast Organic Dairy Producers Alliance



Tony Azavedo, President, Western Organic Dairy Producers Alliance



Darlene Coehoorn, President, Midwest Organic Dairy Producers Association

cc Bruce Knight, Under Secretary for Marketing and Regulatory Programs, USDA AMS
Barbara Robinson, Deputy Administrator, Transportation and Marketing Programs
Mark Bradley, Associate Deputy Administrator, NOP program

For further information, clarification or to receive a formal reply please contact Ed Maltby, NODPA Executive Director, 30 Keets Rd, Deerfield, MA 01342. Tel: 413-772-0444. Fax: 866-554-9483
Email: ednodpa@comcast.net

Attachment A: USDA Dairy animal Acquisition under the NOP regulations published October 2006
Attachment B: AOD press release on 8/29/07



Dairy Animal Acquisition under the NOP Regulations

Purpose

This document is for use by National Organic Program (NOP) producers and certifying agents in determining what classes of dairy animals are appropriate for acquisition under the NOP regulations. These guidelines only clarify existing NOP regulations and will be updated as the regulations are revised.

If You:	Then You May Acquire the Following Class(es) of Dairy Animals:
Were certified organic prior to October 21, 2002.	1. Conventional (Note: Conversion using the 80-20 exemption must be complete by June 9, 2007);* 2. Converted feeding 100% organic feed;** 3. Converted under 80-20;** 4. Organic from last 3 rd of gestation;** 5. Born of an organic mother;**
Were certified organic after October 21, 2002, and fed 100% organic feed during conversion.	1. Conventional (Note: Conversion using the 80-20 exemption must be complete by June 9, 2007);* 2. Converted feeding 100% organic feed;** 3. Converted under 80-20; ** 4. Organic from last 3 rd of gestation;** 5. Born of an organic mother. **
Were certified organic after October 21, 2002, and converted using the 80-20 feed exemption.	Organic from last 3 rd of gestation.**
Are currently in transition to organic and feeding 100% organic feed during the 12-month dairy animal conversion period.	None. You must complete certification before adding animals from off your farm to your herd. Any organic animal that leaves a certified operation loses its organic status when it enters a non-certified operation.
Are currently in transition to organic and converting using the 80-20 feed exemption during the 12-month dairy animal conversion period.	None. You must complete certification before adding animals from off your farm to your herd. Any organic animal that leaves a certified operation loses its organic status when it enters a non-certified operation.
Are currently in transition to organic and feeding crops and forage from land, in your organic systems plan, that is in the third year of organic management during the 12-month dairy animal conversion period.	None. You must complete certification before adding animals from off your farm to your herd. Any organic animal that leaves a certified operation loses its organic status when it enters a non-certified operation.
Are a new dairy, certified, with no dairy animals	1. Conventional (Note: Conversion using the 80-20 exemption must be complete by June 9, 2007);* 2. Converted feeding 100% organic feed;** 3. Converted under 80-20;** 4. Organic from last 3 rd of gestation;** 5. Born of an organic mother.**

*Milk from these animals eligible to be labeled as organic after 12 months of continuous organic management.

**Milk from these animals is immediately eligible to be labeled as organic.

Approval

Mark A. Bradley

Mark A. Bradley
Associate Deputy Administrator
National Organic Program

USDA Dismisses Complaints Against Aurora Organic Dairy Organic Leader Accelerates Transformation Plan for Platteville, Colo., Organic Dairy

BOULDER, Colo. (August 29, 2007) – Aurora Organic Dairy, a leading provider of high-quality organic milk and butter, today announced that the U.S. Department of Agriculture has dismissed the complaints against the company, following an extensive review.

Under the agreement with USDA, the company will amend the farm plan for its Platteville, Colo., location to reflect the company's existing transformation plans, and inform USDA of its progress. The agreement also affirmed the validity of each of Aurora Organic Dairy's current certifications under the National Organic Program.

"We are very pleased with both the dismissal and the valuable input from USDA. This result allows us to accelerate the transformation of our Platteville organic dairy farm," said Mark Retzloff, president and chief organic officer of Aurora Organic Dairy. "Through cooperation with the USDA at all levels, we will remain focused on our mission of making high-quality organic milk and butter more affordable and available for American families."

Aurora Organic Dairy also confirmed the outline of its re-development plan for the Platteville dairy facility, which is now underway. The company's plan for the Platteville farm includes a substantial increase in the amount of organic pasture acreage, to approximately 400 acres, and a significant decrease in the size of the farm's organic dairy herd, to about 1,250 milking cows. About three-fourths of the farm's existing buildings and paddocks are being razed and converted to pasture. In addition, all incoming and replacement animals will be organically-born. The Platteville facility also will become a focal point for Aurora Organic's ongoing research and teaching relationships with leading universities and institutions, with increased support from the company for organic dairy research and education.

"When Aurora Organic Dairy was established in 2003, we began work at the Platteville farm with a vision of bringing organic dairying to Colorado through organic conversion of an existing dairy," said Dr. Juan Velez, M.V., M.S., D.A.C.T., large-animal veterinarian and vice president of farm operations for Aurora Organic Dairy. "Our long-term goal is an organic farming system that exceeds NOP requirements with innovative, pasture-based farms where all incoming animals are organic-born." Dr. Velez added, "We share a vision with many in the organic dairy community that farms should raise their own organic animals from birth."

"Colorado is home to many of America's finest organic farms and companies," said the Honorable John Stulp, Colorado Commissioner of Agriculture. "We're proud of the positive role companies like Aurora Organic Dairy have taken to build organic agriculture in our state, as well as the positive impact on our agricultural economy." The Colorado Department of Agriculture is the organic certifier for Aurora Organic Dairy's Colorado farms.

"We currently certify Aurora Organic Dairy's milk processing plant in Colorado and all of its Texas facilities," said David Abney, vice president of the United States' largest organic certifier, Quality Assurance International. "Aurora Organic Dairy has maintained an unbroken certification record with us, and all facilities certified by QAI meet every provision of the National Organic Program."

"I am personally committed to the principles and success of organic agriculture and to the conversion of land to organic practices," said Retzloff. "In addition to our pasture-based farm programs, we are actively involved in the research and promotion of sustainable organic systems with leading institutions and universities. We look forward to sharing more about these initiatives with the organic community in the near future."

About Aurora Organic Dairy

Aurora Organic Dairy's mission is making high-quality organic milk and butter more affordable and available for American families. The company is a leading producer of private-label and store-brand organic milk and butter. The organic production company includes headquarters offices in Boulder, Colo., and an organic dairy farm and on-farm organic dairy processing plant near Platteville, Colo. A second organic dairy near Dublin, Texas, comprises 2,800 acres of pasture, croplands, and milking facilities. A third organic farm, High Plains Organic Dairy, near Kersey, Colo., began organic milk production in fall 2006. Aurora Organic Dairy's newest organic dairy farm, Coldwater West, near Stratford, Texas, began organic milk production in summer 2007. For more information, visit www.auroraorganic.com.