

August 19, 2020

NOP Compliance and Enforcement Branch
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 Sir, Madam,

For the past 20 years, systemic violations of the law have been observed at numerous industrial-scale livestock facilities representing themselves as “organic.” Although I 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 are now requesting that NOP bring in experts in organic livestock production to conduct investigations associated with this complaint.

When I was serving in my previous position as Executive Director and Senior Farm Policy Analyst at The Cornucopia Institute, we hired a firm that specializes in agricultural and industrial aerial photography to document some of the alleged abuses. This documentary evidence, illustrating the confinement of approximately 90% of its cattle in violation of law, was ignored, with former NOP director, Miles McAvoy, claiming that it merely represented “a moment in time.”

Subsequently, I partnered with the Washington Post in a more extended investigation documenting confinement practices at Natural Prairie.

Based on FOIA documents obtained, it appears that the USDA based its decision not to pursue enforcement action solely on prearranged visits by staff who might not have been qualified to conduct the investigations.

We respectfully request that your office thoroughly investigate the history of current and past potential illegalities at the Natural Prairie facility located near Channing, Texas. This operation is certified by the Texas Department of Agriculture (TDA).

We know through FOIA documents that you have already investigated the conduct of the TDA and found them in violation of multiple, fundamental requirements of accredited certifiers (including not conducting annual inspections, not conducting them during the growing/grazing

season, etc.). We respectfully request that, after years of delay, the TDA have their organic accreditation immediately revoked.

There are no statutes of limitations in terms of pursuing violations within the Organic Foods Production Act. And we encourage the department to look at all past and current alleged violations by Natural Prairie and TDA.

The aerial photography images previously submitted indicate worn-out pasture with many of the irrigated fields with nicer grass lacking fencing and waterers that would facilitate grazing.

The photographs indicate that the cattle had exhausted much of the currently available growth while certain fields were being retained to be cut as hay.

At the time, according to regulatory filings with the state of Texas, this dairy was currently managing 23,600 head of cattle on 5,741 acres (although it stretches the imagination that, even with three separate milking facilities, cows could walk far enough to access almost 6,000 acres). We understand they are managing substantially more cattle in 2020.

Past interviews with some of the owners and developers of the dairy indicate that the two milking parlors provided 818 and 500 acres, respectively, to the milking herds (for center pivots surrounding each facility). That would equate to 4.5 and 7.2 acres per cow. This far exceeds national averages for dairy organic producers without accounting for cutting hay on any of the same ground.

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 the majority of 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.

When the aerial photography was submitted, based on the panoramic views of this operation we counted 940 cows on pasture. Based on the regulatory permitting figure of 23,600 that would be approximately **4% of the herd**. Using the more conservative 8,500-milk cow figure, presented in the company's video, that would be about 11% of the productive herd (not counting any heifers or dry cows on the property).

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

OrganicEye requests that the NOP's Compliance and Enforcement Branch make a timely, full, and good faith effort in their investigation of these allegations **using personnel with experience in organic production agriculture and/or relevant academic credentials**.

In addition to the allegations of serious violations of the minimum requirements for pasture-based production for organic ruminants, two other serious incidents warrant investigation by the USDA.

In 2019 the National organic program investigated serious allegations of animal abuse at Natural Prairie based on video surveillance conducted by Animal Recovery Mission (ARM) (<https://animalrecoverymission.org/>). According to its Executive Director, the NOP failed to contact the organization to secure further evidence or interview firsthand witnesses. Instead, FOIA documents indicate the NOP depended on the TDA, while they were under sanction for malfeasance, and on conventional agribusiness industry auditors (with financial ties to Natural Prairie).

The video made public by ARM appears to illustrate grave violations of **§205.238** which clearly makes it incumbent upon organic livestock producers to provide a safe and healthy environment for their animals.

Again, because of the gravity of the situation, we respectfully request these investigations be reopened and adjudicated using qualified personnel with experience in organic production agriculture.

And finally, based on subchapter **§205.200** of the federal organic regulations, mandating that producers "must maintain or improve the natural resources of the operation," we request a full investigation of the findings of the Hoosier Environmental Council (<https://www.hecweb.org/>), that natural Prairie, in their operation in northern Indiana, filled in wetlands and ditches. The Hoosier Environmental Council alleges in lawsuits they have filed that this violates federal environmental provisions. We contend that the actions of Natural Prairie also violate §205.200.

If the NOP concurs with our analysis of the Hoosier Environmental Council's investigation and legal work, we hereby request a full investigation of Oregon Tilth as to how the certifier could have allowed Natural Prairie to destroy natural resources in an effort to build their massive dairies.

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.

Please note that OrganicEye is the investigative arm of Beyond Pesticides, promoting organics and integrity in America's food system for almost 40 years.

You may contact us at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Fato". The signature is stylized and written in a cursive-like font.

Mark Kastel
Director
OrganicEye
608-625-2042

Additional applicable provisions of the Federal regulations regarding some of the aforementioned:

§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 ($\frac{1}{5}$) 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.