



Mr. Randy Rivera
Director for Agriculture Commodity Programs
Texas Department of Agriculture
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Dear Mr. Rivera:

The Western Organic Dairy Producers Alliance (WODPA) is writing today to express its concerns regarding the Animal Recovery Mission (ARM) video of Natural Prairie and the Texas Department of Agriculture's outstanding National Organic Program non-compliances. There are 3 parts to this letter as follows:

1. Animal Recovery Mission video of Natural Prairie
2. TDA Consent Agreement with the Agricultural Marketing Service
3. Conclusion

WODPA is the ONLY organic dairy organization working specifically for organic dairymen in the Western United States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming). WODPA is a nonprofit Mutual Benefit Corporation. Our mission is to preserve, protect, and insure the sustainability and integrity of organic dairy farming across the west. We represent over 285 organic dairy farm families throughout the Western United States. Organic dairy production in the western states accounts for over half of the Nation's milking cows and milk production. Accordingly, the issues addressed in this letter are of vital interest to WODPA.

Animal Recovery Mission video of Natural Prairie

If you have not seen the Animal Recovery Mission video of Natural Prairie it can be viewed at www.animalrecoverymission.org. Access the video by clicking on **Operations** and then under **Factory Farm Division**, clicking on **Operation Natural Prairie** and scrolling down to **Undercover Footage**. We also recommend that you read the full report which is on the Operation Natural Prairie page and can be accessed by clicking on **Read the Full Report**.

Consumers will find this video to be horrifying. At the end the narrator says "This is your organic dairy" and "Go Dairy Free Today!" This will further undermine consumer confidence in the USDA organic seal!

A few observations from the AMR video and Summary of Investigation:

1. The calf hutches do not appear to comply with the NOP regulations. Bedding and size (designed to allow for comfort behaviors and opportunity to exercise) § 205.239(a)(4)(i).
What is TDA’s Organic Certification Program and its inspectors doing to assure complete compliance with § 205.239(a)(4)(i)?
2. One must ask, why are the animals in the shelter and not out on pasture or otherwise outdoors? Video shows nice weather and at one point green grass near the facility. Further, the investigation summary includes the following statements:
 - a. “At Natural Prairie Dairy cows are removed from their holding barns every eight hours to be milked, day and night”
 - b. “Natural Prairie Dairy cows well enough and willing to graze, only did so for about an hour a day during the grazing months.”
 - c. “...stocking levels at Natural Prairie were as high as 7.2 cows per acre.”
 - d. “Cows at Natural Prairie Dairy live in squalid, overcrowded and unsanitary conditions. If a cow isn’t being milked, they spend their lives in illegally overcrowded feces-ridden barns, with insufficient stalls for each cow, they are forced to lay in feces-ridden cement, causing foot rot and infections to untreated open wounds and scars.”

NOTE: There is no physical way a dairy animal can ingest 30 percent of its dry matter intake in one hour on pasture. Further, it is impossible for any dairy anywhere to provide 30 percent of every animal’s dry matter intake at a stocking density of 7.2 animals per acre. Under the best of conditions it is nearly impossible to provide 30 percent dry matter intake per acre at a stocking rate of 3 animals per acre in a desert location.

What is TDA’s Organic Certification Program and its inspectors doing to assure complete compliance with § 205.240 Pasture practice standard?

Section 205.240 reads as follows:

“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); §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.

(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.”

What is TDA's Organic Certification Program and its inspectors doing to assure complete compliance with § 205.239 Livestock living conditions?

Section 205.239 reads as follows:

§ 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:

(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.

(3) Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in §205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP.

(4) Shelter designed to allow for:

(i) Natural maintenance, comfort behaviors, and opportunity to exercise;

(ii) Temperature level, ventilation, and air circulation suitable to the species; and

(iii) Reduction of potential for livestock injury;

(5) The use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.

(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;*

(3) In the case of fiber bearing animals, for short periods for shearing; and

(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.

(e) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.

What is TDA's Organic Certification Program and its inspectors doing to assure complete compliance with § 205.237 paragraphs (c) and (d)?

Paragraphs (c) and (d) read as follows:

(c) During the grazing season, producers shall:

(1) Provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed (dry matter fed does not include dry matter grazed from residual forage or vegetation rooted in pasture). **This shall be calculated as an average over the entire grazing season for each type and class of animal.** Ruminant animals must be grazed throughout the entire grazing season

for the geographical region, which shall be not less than 120 days per calendar year. Due to weather, season, and/or climate, the grazing season may or may not be continuous. **Note: This does not mean a producer may grow annual crops for grazing, in the absence of perennial pasture, and declare a break in the grazing season while the producer grows another annual crop.**

(2) Provide pasture of a sufficient quality and quantity to graze throughout the grazing season and to provide all ruminants under the organic system plan with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season: *Except, That,*

(i) Ruminant animals denied pasture in accordance with §205.239(b)(1) through (8), and §205.239(c)(1) through (3), shall be provided with an average of not less than 30 percent of their dry matter intake from grazing throughout the periods that they are on pasture during the grazing season;

(ii) Breeding bulls shall be exempt from the 30 percent dry matter intake from grazing requirement of this section and management on pasture requirement of §205.239(c)(2); *Provided, That,* any animal maintained under this exemption shall not be sold, labeled, used, or represented as organic slaughter stock.

(d) Ruminant livestock producers shall:

(1) Describe the total feed ration for each type and class of animal. The description must include:

(i) All feed produced on-farm;

(ii) All feed purchased from off-farm sources;

(iii) The percentage of each feed type, including pasture, in the total ration; and

(iv) A list of all feed supplements and additives.

(2) Document the amount of each type of feed actually fed to each type and class of animal.

(3) Document changes that are made to all rations throughout the year in response to seasonal grazing changes.

(4) Provide the method for calculating dry matter demand and dry matter intake.

3. Left to die? What are they doing to restore an animal to health, as required by NOP regulation?

ARM's investigation summary includes the following paragraph:

“The investigator did not witness cows with flesh wounds, eye gashes and/or leg injuries receiving medical attention, nor was any such treatment captured by the camera worn by the investigator. On a daily basis, cows with infected eyes, infected udders, cuts and scrapes, limping and too weak to walk were seen untreated and in declining health in the holding barns. A gun shot was a regular and accepted form of euthanasia for both cows and calves and did not result in instant death causing animals to suffer for hours before death. The investigator only witnessed veterinary care given to cows with issues that would impact milk production, such [as] mastitis, lameness and post-calving.”

What is TDA's Organic Certification Program and its inspectors doing to assure complete compliance with § 205.238(c)(7)?

Section 205.238 Livestock health care practice standard, paragraph (c) provides that “The producer of an organic livestock operation **must not:**

(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and shall not be sold, labeled, or represented as organically produced.”

Identical language is found in the second proposed rule which was published on March 13, 2000. That proposed rule within its preamble gives a clear explanation of the intent of this provision at 65 FR 13548 in item 12 which reads:

(12) Treatment of Sick or Injured Animals. In this proposal, any animal that is to be sold, labeled, or represented as organic may not be treated with a prohibited animal drug, including antibiotics, synthetic substances that are not allowed, or nonsynthetic substances that are prohibited. Any substance used as an animal drug in organic livestock production must be approved by FDA or registered by EPA and must be administered in compliance with the Federal Food, Drug, and Cosmetic Act. **This proposal simultaneously requires that sick or injured animals must be treated with the appropriate animal medicine regardless of whether organic status is lost as a result of doing so.** This requirement has been added in response to an NOSB recommendation. **Thousands of comments expressed concern that organic livestock would suffer unduly if producers were not required to provide treatment, especially to save the life of a critically ill animal, rather**

than risk the suffering or death of the animal simply to maintain its organic status. If the treatment required under this proposal includes the use of a prohibited substance, the animal and any product derived from it must be diverted to the nonorganic market.

4. Use of a squidgy to push liquid manure, in the situation depicted in the video, does not appear to be an effective method to provide safe walking conditions. The NOP regulations, at with § 205.239(a)(4)(iii), require, **“Shelter designed to allow for:” “(iii) Reduction of potential for livestock injury.”** The conditions depicted look like a fall waiting to happen.

What is TDA’s Organic Certification Program and its inspectors doing to assure complete compliance with § 205.239(a)(4)(iii)?

TDA Consent Agreement with the Agricultural Marketing Service

The following is from the National Organic Program website:

8/15/2019: Texas Department of Agriculture – Austin, Texas

The Texas Department of Agriculture (TDA) agreed to: (1) resolve outstanding noncompliances generated during NOP’s August 2018 livestock-focused site visit; (2) have livestock inspectors and reviewers complete an additional 8 hours livestock training by the end of 2019 in addition to training already done; (3) conduct at least one unannounced inspection of each of its livestock operations by the end of April 2020; (4) confirm inspectors have the knowledge and experience needed to inspect assigned operations; (5) conduct a program review of its livestock scope, and provide NOP the report and corrective actions; (6) not accept new livestock clients until NOP approves; and (7) undergo an NOP compliance review by the end of April. This agreement is in response to noncompliances identified with TDA’s organic livestock program.

Conclusion

WODPA has been and remains very concerned about the quality of organic dairy certification provided by the Texas Department of Agriculture (TDA). This concern has been proven warranted in light of the Settlement Agreement between TDA and the Agricultural Marketing Service (AMS), and the ARM allegations against Natural Prairie.

We were going to recommend that TDA initiate a task force comprised of any and all State government entities having regulatory authority over the operation of dairy farms (organic and conventional). The purpose being to investigate the validity of all allegations made by ARM.

However, WODPA believes that there is a unresolvable conflict of interest. That being the long term relationship between TDA and Mr. Donald De jong as Co-owner/Chief Executive Officer of Natural Prairie and member of the Texas Organic Agricultural Industry Advisory Board. We note that Mr. De jong was appointed to the first board on or about April 15, 2008, and appointed at least one more time on or about April 6, 2016.

Per H.B. No. 2345, Sec. 50C.005. Staff. "The board is administratively attached to the department. The department shall provide the board with the staff necessary to carry out its duties under this chapter." Thus, we question whether TDA can conduct an impartial investigation of its client.

Accordingly, we ask that you formally ask the USDA to refer this matter to its Office of Inspector General for investigation.

Best Regards,

Ward Burroughs
President

cc: Jennifer Tucker, NOP
Sid Miller, TDA
Jason Fearneyhough, TDA
Philip Wright, TDA
John Cornyn, U. S. Senate
Ted Cruz, U.S. Senate