



Mark Bradley
NOP Compliance and Enforcement
USDA, Agricultural Marketing Service
1400 Independence Avenue, S.W.
Mail Stop 0268
Washington, D.C. 20250

April 13, 2011

Dear Mr. Bradley,

The Cornucopia Institute is filing this formal legal complaint with your office, as per the enforcement process outlined under federal law, concerning a possible violation of the National Organic Program's regulatory standards by Herbruck's Poultry Ranch's organic egg production facility in Saranac, Michigan.

Similar to the legal complaint we filed on September 27th, 2010 against other industrial-scale egg producers, we allege that the henhouses used by Herbruck's Poultry Ranch violate the national organic standards for outdoor access.

Herbruck's Poultry Ranch raises millions of conventional laying hens, the majority of which are caged. They also raise at least 340,000 organic laying hens at a single facility in Michigan, which according to the company **does not have access to the outdoors beyond a winter garden or enclosed porch.**

We have photographic evidence that we can share with your investigators that clearly illustrates the impossibility of offering meaningful outdoor access at this operation.

While industrial-scale egg producers, including management at Herbruck's, argue that the organic regulations currently allow porches as outdoor access, we disagree, and believe that these producers are in violation of the organic standards.

Current organic standards state that organic livestock producers must "establish and maintain living conditions which accommodate the health and natural behavior of animals, **including year-round access for all animals to the outdoors**, shade, shelter, exercise areas, fresh air and direct sunlight suitable to the species" (7 CFR 205.239 (a)(1)) (emphasis added).

We do not believe that enclosed porches—that are inaccessible to the majority of the birds—meet either the letter or the intent of the organic rule. And although there is no definition for the term "outdoors" in the NOP standards, we believe that any legally recognizable definition of the term would preclude porches, even if they could accommodate 100% of the flock.

Cornucopia's interpretation of the rule is consistent with the NOSB's clarification of the rule for organic poultry producers, and that was passed by a 12-1 Board vote at their May 2002 meeting. The Board specifically clarified to the organic community that:

1. *Organically managed poultry must have access to the outdoors. Organic livestock facilities shall give poultry **the ability to choose** to be in the housing or outside in the open air and direct sunshine. The producer's organic system plan shall illustrate how the producer will **maximize and encourage access to the outdoors (emphasis added)**.*
2. ***Bare surfaces other than soil (e.g. metal, concrete, wood) do not meet the intent of the National Organic Standards (emphasis added).***
3. *The producer of organically managed poultry may, when justified in the organic system plan, provide temporary confinement because of:*
 - a. *Inclement weather;*
 - b. *The stage of production (i.e. sufficient feathering to prevent health problems caused by outside exposure);*
 - c. *Conditions under which the health, safety, or well being of the poultry could be jeopardized;*
 - d. *Risk to soil or water quality.*

The porches provided by Herbruck's are too small to accommodate more than a very small percentage of their birds at the same time—so even if enclosed porches were considered adequate "outdoor access," only a small percentage of the birds are granted outdoor access due to the size of the porches. Not all birds can utilize the porches simultaneously. We therefore believe Herbruck's Poultry Ranch is in violation of 7 CFR 205.239 (a)(1).

Even if Herbruck's Poultry Ranch provides porches with sawdust or other materials to prevent them from being "bare," this is not enough to meet the intent of the 2002 NOSB guidance or the current organic standards. The 2002 NOSB recommendation clearly states that outside access must consist of soil—simply covering a concrete or wooden porch with sawdust or litter does not meet the intent of the rule. In a recent statement the NOP has concurred with this position/interpretation.

And again, since the standards require accommodating the natural behavior of the birds, it is unlikely that a sterile substrate would adequately provide chickens the opportunity to exhibit their instinctual foraging behavior.

And because these structures have a roof, depending on the angle of the sun, for most of the day these animals would not have access to "direct sunshine," as required by law.

Since their facilities offer porches that are too small to allow all birds to go outside at the same time, and exit doors are inaccessible to the majority of the birds, Herbruck's Poultry Ranch does not provide the ability to choose to go outside to all birds. In other words, these producers are actively *discouraging* the birds from going outside by providing no incentive and little opportunity to do so.

Furthermore, we have learned from operators that large confinement facilities, that depend on mechanical ventilation, and utilize small pop-holes, are creating an environment that makes it highly unlikely that any significant population of birds will actually choose to go outdoors (or even out to a porch area). Because of the negative air pressure created by giant fans, birds have to brave gale force winds in order to exit. Most are unlikely to do so.

Nobody forced Herbruck's to become certified organic. Unlike most other federal rules, abiding by organic standards is completely voluntary. When Herbruck's Poultry Ranch (which is a major producer of conventional eggs, including caged) decided to enter the organic market, they assumed the responsibility to their customers and to the organic community as a whole to understand the organic standards, including their intent. If they choose to look for loopholes in the rules, it is a gamble they willingly took and must be prepared for the consequences.

It was clear that the prior erroneous interpretation of the standards, by the former USDA administration, was never fully accepted by the organic community and is in conflict with the current regulations and NOSB recommendations. The risk of the controversial Country Hen decision being reversed was ever present. Herbruck's Poultry Ranch and others in the industry made their investment decisions with the full knowledge of this.

We formally request that the Department investigate Herbruck's Poultry Ranch for violating the organic standards, and then ask you to please keep The Cornucopia Institute apprised of the status of and progress of your investigation into this complaint.

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,

A handwritten signature in black ink that reads "Will Fantle". The signature is written in a cursive, flowing style.

Will Fantle
Research Director
The Cornucopia Institute