



BEYOND PESTICIDES

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September 17, 2018

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Re. MS: Contaminated Inputs; Fracking Water

These comments to the National Organic Standards Board (NOSB) on its Fall 2018 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers, and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

Continue work on contaminated inputs.

It is important for the NOSB to maintain a focus on the problem of contaminated inputs, which threatens the quality of organic products and soil on organic farms. However, the NOSB last addressed the issue in a report in Spring 2015. The report offered an approach for addressing this complex issue through examining feedstocks and pathways. We support the approach in that report.

In the intervening three years, the NOSB has not made progress, but another source of contamination has risen in importance –use of water contaminated by oil and gas production.

Address the use of contaminated water in organic production.

PCC Natural Markets brought this to the attention of the NOSB at the Fall 2015 meeting, saying:

PCC Natural Markets recently has had to field shoppers' concerns about the use of hydraulic fracturing (fracking) waste water (called "produced water" by industry) in organic crop systems. We sell an organic raisin brand, Sunview, recently called out by Mother Jones magazine for using fracking waste water.

We do not know if there's a health risk in foods produced with water containing a number of toxic compounds. We have no satisfactory answers to address retailer and

customer worries. Further investigation and followup is necessary. We ask NOSB and NOP to act quickly and sincerely to preserve consumer trust in organic certification.

PCC cited results of testing of water in Kern County, California, which found high concentrations of oil, acetone, and methylene chloride in untreated and treated water. The concentration of methylene chloride in treated water was 5-11 times the maximum contaminant level (MCL) under the Safe Drinking Water Act. PCC also reported on water supplied by Chevron, which contained benzene at concentrations above the MCL, as well as xylene.

At the same meeting and again in Fall 2016, the Ohio Ecological Food and Farm Association (OEFFA) raised the issue of impacts of hydraulic fracture (“fracking”), injection wells, and pipelines on organic farmers. OEFFA has played a leadership role in developing a model Agricultural Impact Mitigation Plan to assist organic farmers in protecting organic farms from the impacts of oil and gas exploration and production. OEFFA has also asked the NOSB to clarify that “fracking wastewater containing prohibited substances cannot be used as irrigation water in organic systems.” Clarity with oil companies and state departments of agriculture around organic requirements is necessary to ensure that agreements protect organic growers.

The Organic Foods Production Act requires (§6504(2)):

To be sold or labeled as an organically produced agricultural product under this chapter, an agricultural product shall —(2) except as otherwise provided in this chapter and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products;

The NOP regulations at §205.203 require organic producers to add organic materials, while avoiding contamination with substances prohibited in organic production:

§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. . .

Drought in western states has encouraged growers to look at water resources that they might not have considered in the past. The contamination of wastewater from oil and gas production raises another set of very serious issues beyond the other sources of contamination that the Crops Subcommittee considered in formulating its plan of attack on contaminated

inputs in organic production. However, the proposed plan can and should be applied to this contaminated wastewater issue:

- (1) Identify sources of concern and contaminants of concern in those sources,
- (2) Ask whether currently prescribed treatment methods are adequate to remove the contaminants,
- (3) If not, identify other treatment or avoidance methods, and finally,
- (4) Test for remaining contaminants.

The underlying premise is that organic growers will take whatever steps are necessary to avoid adding prohibited substances through programs of irrigation and building soil fertility. However, the pressures are immense –especially the need for water, for which treatment technologies of a scale necessary for agriculture may be very expensive– so, the NOSB and NOP must take a firm stance on the need to abide by the requirements cited above.

Western farmers, in particular, are both the beneficiaries and the victims of unsustainable water policies. Farmers in parts of California (especially) that are naturally dry for much of the year have the benefits of a huge publicly-funded system of water transfers and storage. This system is provided at the expense of biodiversity in other places –particularly salmon and the ecosystem that they support and that supports them. That is one reason the system is unsustainable. Another is that it has created an agriculture that is dependent on wholesale imports of one of its most basic resources –water. Another is that irrigation agriculture has proven repeatedly to be almost always unsustainable. It is tragic to watch that system collapse and take down with it the farmers reliant on it, but it is in no way consistent with organic principles to support the dependency (in an economic sense) by allowing the use of heavily contaminated water that threatens the integrity of organic produce, the organic label, and the land.

Therefore, the plan to address contaminated inputs in organic production is more urgent than ever. The problem of contaminated water resources only adds to the problems already identified –including antibiotics in manure, pesticides in lawn wastes, and others. We urge the NOSB to devote resources to furthering the plan and its implementation, including the development of a discussion document on water contaminated by oil and gas production.

Natural disasters need to be addressed.

The contamination of air, water, and soil resulting from the floods brought on by recent hurricanes has yet to be thoroughly evaluated, but there is no doubt that it will exact a heavy toll on organic farmers. Although contamination from floods is undoubtedly unavoidable, organic farmers who are affected by them should benefit from the NOSB's consideration of contaminated inputs.

In this world where consumers seek out organic products as an alternative to those containing residues of toxic chemicals, as well as to promote healthy and sustainable land care, the NOSB's approach to contamination should go beyond regulation under statutes other than

the Organic Foods Production Act. One outcome of the NOSB examination of contaminated inputs should be the recommendation of regulations that will protect organic consumers and producers. However, the approach that the Crops Subcommittee outlined –including identifying feedstocks, pathways, and possible mitigation—should also be used to help those who face unavoidable contamination through natural disasters or the failure of neighbors to prevent the movement of toxic or genetically engineered materials from their property.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Terry Shistar, Ph.D.
Board of Directors