

October 15, 2004

The Honorable Ann Veneman  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

Dear Secretary Veneman:

Thank you very much for attending the annual National Association of State Departments of Agriculture (NASDA) meeting in St. Paul, MN on September 29, 2004. The meeting benefited from your participation. We appreciate your commitment to a partnership with NASDA members and your long-term support of the NASDA organization.

NASDA members also appreciate your efforts and assistance in implementing the National Organic Program (NOP) within the Agriculture Marketing Service Agency of USDA. An important aspect of the National Organic Standards (NOS) was discussed at our annual meeting—that of the effect that unintended traces of biotech crops identified in certified organic crops has on a grower's organic certification. We understand the federal policy that the rule conveys to be that unintended traces will not necessarily affect a grower's certification. We also recognize that the agency's website does mention this issue in this context in both the Preamble and the Frequently Asked Questions (FAQs).

Be that as it may, our members are experiencing greater than ever levels of confusion among producers, local governments and consumers when dealing with this issue. Our members are, in fact, increasingly finding that—what we believe to be an erroneous interpretation of the NOP—is being used to justify positions in favor of prohibiting biotech crops at state and local levels. This interpretation is frequently being portrayed as national policy, i. e., that grower certification will be affected if unintended traces are found in an organic grower's crop. This confusion is evidenced by references on organic websites, in the media and in conversations with organic producers and as a driver of some state and local legislative efforts to restrict biotechnology.

At our winter meeting this year, NASDA adopted a policy statement in support of organic agriculture. As part of that statement, NASDA called for full and consistent implementation and enforcement of NOP production and handling standards, efforts to increase the economic growth of the organic industry with marketing assistance, increasing activity in organic research and education and collecting statistics on organic production and market growth. We strongly support organic agriculture and know that we must help to find ways for producers to coexist. In that light, we know we also must portray the tenets and the intent of the national program accurately.

As you know, NASDA members are often called upon to provide guidance on how federal agricultural policy affects state issues. It is important for NASDA members to be armed with all the facts—and substantiation of those facts—to adequately respond. As a result, we request written clarification on the following:

- Official testimony by organic growers before state legislative agriculture committees regarding "genetic drift" has caused confusion with state legislators about what "drift" means to the status of organic crops covered under the NOP. If a producer adheres to all aspects of the NOP, including never utilizing biotech-derived seeds, but a certifying agent tests and detects the presence of biotech-derived material in his/her crop, is that crop's status determined to be no longer "certified organic?" What in the NOP supports this conclusion?

- Since the FAQ section of the NOP website states that "The presence of a detectable residue of a product of excluded methods [e. g., GM products] alone does not necessarily constitute a violation...", can you elaborate on the following:

- a. If the organic producer is found to have insufficient buffers or barriers in place to prevent the unintended application of a product of genetic modification to the crop or contact with a product of genetic modification applied to adjoining land, would that threaten the farm's certification or use of the particular field for production of organic crops?

- b. If an organic producer or handler is found not to have implemented measures necessary to prevent the commingling of organic and non-organic products and protect organic products from contact with genetically modified products, would that threaten the producer or handler's certification?

- State legislative testimony, media articles and dialogue in the grower community suggest that organic farms have lost their certification due to the presence of biotech crop material in their organic crop. NASS's 2002 statistics show there were nearly 12,000 certified organic farms in the United States. Has a certified organic operation that refrains from intentional use of biotech seeds ever lost certification for the inadvertent

presence of biotech material in its crop? If so, it would be helpful to know how many and what were the circumstances?

- Organic growers have made claims to legislators and agriculture policy leaders that they will lose buyers of their organic crop if there is any biotech-derived material in their crop. Some food producers have chosen to avoid ingredients that have come from biotech improved crops. Their food labels may state the product is "GM, GE, or GMO-free" 1. Are these marketing claims a part of the Organic Standards? It would also be helpful if you could confirm the role of a marketing order of this kind, e. g., that the order is intended to control the activities of those who voluntarily opt in to the program in contrast to a traditional regulatory program that sets standards that all growers must adhere to, regardless of the type of growers they may be. Can a marketing order be used to control the production activities of other growers who do not choose to participate in the program?

- There is widespread use of the term "contamination" as it pertains to the inadvertent presence of biotech material in an organic crop. While "contamination" is not defined in the act or in the agency's rules, it is used several times in the Standards. Is there a working definition of "contamination" within the NOP? Are all products of genetic modification, the use of which in any aspect of organic production or handling is prohibited, considered "prohibited substances" as defined in the National Organic Standards? In addition, what actions, if any, are authorized and/or required when organic crops or products are found to contain unintended/inadvertent genetically modified hybrids or any other genetically modified substances?

As you know, NASDA members support and promote all methods and segments of agriculture and our goal is to ensure that farmers—whether they choose to plant biotech, conventional or organic crops—are successful in meeting market demand. Because both organic and biotech crop production are steadily increasing, we believe that continued confusion surrounding biotech crops and the NOP unnecessarily pits grower against grower. We believe your prompt response to these questions will aid us to focus on the value of peaceful coexistence between and among producers. Clarification of these issues will be helpful to state and local agriculture officials, accredited organic certifying agents, locally elected officials, farmers in our respective states and consumers who often call upon us to answer questions regarding the effects of the National Organic Program in our localities. In addition, we are willing to work with you in order to identify the best ways to clarify these issues and disseminate the information.

Sincerely,

Original/signed/sent on letterhead

Gus Douglass  
Commissioner  
West Virginia Department of Agriculture  
Chair  
NASDA's Animal and Plant Industries Committee

cc: Bill Hawks, Undersecretary, Marketing and Regulatory Programs  
A.J. Yates, Administrator, Agricultural Marketing Service