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September 17, 2002

Mr. David E. Carter
Chair, National Organic Standards Board
The Radisson Barceló Hotel
2121 P Street N.W.
Washington, D.C. 20037

Re: Review of Activated Charcoal for Processing
Scheduled for Board's Session on Thursday, September 19

Dear Mr. Carter:

I represent Colorado Sweet Gold LLC, of Johnstown, Colorado. Colorado Sweet Gold operates a corn processing plant that is currently certified for organic production by Quality Assurance International. While organic corn processing plants have been operating in Europe for some time, Colorado Sweet Gold is the first organic corn processing plant in North America. Activated charcoal and ion exchange are essential filtering technologies in organic corn processing in Europe, and Colorado Sweet Gold has intended to use them in the United States in founding a domestic industry that will use corn from U.S. growers.

Our purpose in writing to you is to urge that the National Organic Standards Board take no action on the petition for activated charcoal for processing. Our objections are threefold.

First, our main objection to having this petition go forward is that this petition does not concern a substance that is being used as an ingredient. In organic processing, the OFPA prohibits the adding of "any synthetic ingredient during the processing or postharvest handling of the product." 7 U.S.C. § 6510(a)(1). Activated charcoal is not an ingredient, but is material used in a filtering technology. Therefore, in developing the National List, the Board may not treat activated charcoal as if it were an ingredient in processing. On the National List, the Final Rule, Section 205.605, sets forth a list of substances that "may be used as ingredients in or on processed products...." Since activated charcoal is not an ingredient, it would not belong on this list.

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The Board would have the authority to make a recommendation to the Secretary concerning activated charcoal as a technology, since the Secretary is obligated to "consult with" the Board in developing organic standards. 7 U.S.C. § 6503(c). However, the Board does not have authority to review activated charcoal to determine whether or not it belongs on the National List, because for this to occur, activated charcoal would have to be an ingredient. This is why we believe it is improper for a process, filtering by activated charcoal, to come before the Board in a National List petition.

Second, we are concerned that having a National List petition for activated charcoal before the Board has unfairly called into question the suitability of activated charcoal as a filtering technology for organic processing. The organic community, both firms and certifiers, has always considered activated charcoal as a suitable filtering process. As the TAP review for activated charcoal for processing notes, at page 5, both the Codex and the EU regulations approve activated charcoal without any specific conditions. The reason that the TAP review could not find activated charcoal listed by any of the U.S. certifiers is that up to this time it has not been considered as a questionable processing technology either in the European or the U.S. organic community.

If any questions have recently arisen over the acceptability of activated charcoal and other filtering processes long used in organic processing, they were not triggered by the National Organic Program Final Rule. Rather, they have been inspired by the proposal issued last December 5 by the Processing Committee of the Board of "Guidelines for Determining Whether a Processing Technology Shall Be Reviewed by the NOSB." These guidelines singled out ion exchange and ultraviolet light as examples of technologies that would be subject to review, while indicating that these were only examples and other technologies might also be subject to review.

These guidelines were only in the form of a proposal, and the Board has not announced any further action on them. Thus left in limbo, the document of December 5 has led to concern and confusion among organic processors. The Organic Trade Association's Manufacturing, Processing, Packaging and Labeling Subcommittee met on March 10, 2002, and discussed this proposal in detail, but could not reach a consensus. Since the comment period closed on March 15, 2002, no new version of the guidelines has surfaced. This situation has cast a cloud of uncertainty over these technologies that has been hindering processors that have intended to use them. The submission of a National List petition for activated charcoal only adds to this confusion, and casts activated charcoal in a questionable status that it does not deserve.

Our third objection is that the Board has not followed proper procedures in addressing the activated charcoal for processing petition. As just noted, the Processing Committee issued proposed guidelines for the review of technologies on December 5, 2001, but so far the Board has not followed up by adopting any policy on the review of technologies. We were surprised

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when the Board listed the petition for activated charcoal for processing for this meeting, because we had assumed that the Board would not be reviewing any technology, especially by way of a National List petition, until it had adopted some specific policy on the review of technologies.

In conclusion, nine months after the Processing Committee issued its proposed guidelines of December 5, 2001, the Board has not yet adopted any policy for review of technologies. The Board has a very full workload of materials reviews and other pressing matters without turning to the subject of which technologies should be reviewed. In any event, as noted under our first objection, above, the review of activated charcoal does not fall within the scope of the National List.

Colorado Sweet Gold LLC therefore requests that the Board:

1. Recognize that the review of activated charcoal and other substances that are not ingredients does not fall under the Board's authority to develop the National List, and therefore,
2. Take no action on the pending petition for activated charcoal for processing, and defer any other review of activated charcoal for processing, at least until it has adopted a policy for the review of technologies that (a) is consistent with the OFPA and (b) has been developed with full input from the organic community.

Thank you for your consideration of these views.

Sincerely yours,

Richard D. Siegel

RDS:la

cc: Owusu A. Bandele, Board Member
Kim M. Burton, Board Member
Goldie E. Caughlan, Secretary and Board Member
Ann L. Cooper, Board Member
Rebecca J. Goldberg, Board Member
Dennis L. Holbrook, Board Member
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