

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: ) **Administrator's Decision**  
Buena Tierra ) **APL-020-15**

This Decision is in response to an appeal (APL-020-15) of a combined Notice of Noncompliance and Proposed Partial Suspension to a certified organic crop producer, Buena Tierra, by its United States Department of Agriculture (USDA) accredited certifying agent Texas Department of Agriculture (TDA). The operation was deemed not in compliance with the Organic Foods Production Act of 1990<sup>1</sup> and the USDA organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 CFR Part 205). Certifying agents also initiate compliance actions to enforce program requirements. Noncompliance procedures are described in §205.662, Noncompliance procedure for certified operations, of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator of the Agricultural Marketing Service (AMS), USDA, pursuant to §205.680, Adverse Action Appeal Process – General, and §205.681, Appeals, of the USDA organic regulations.

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

## **FINDINGS OF FACT**

1. TDA is USDA-accredited certifying agent, first accredited on April 29, 2002.
2. On May 8, 2015, TDA issued its client, Buena Tierra, a certified organic crop producer, a combined Notice of Noncompliance and Proposed Partial Suspension. The notice was issued because TDA identified that a micronutrient mix containing a prohibited substance had been applied to four (4) of Buena Tierra's fields. TDA also identified that the micronutrient mix was applied without a documented soil deficiency, which is a required precondition for applying micronutrients. These noncompliances were classified as non-correctable.
3. On June 8, 2015, the AMS Administrator received an appeal from Buena Tierra, which was accepted as timely.

## **DISCUSSION**

TDA has issued a combined Notice of Noncompliance and Proposed Partial Suspension to Buena Tierra, a certified organic crop producer. No products from the suspended portion of an operation can be sold, labeled, or represented as organic. The suspended fields will be eligible for certification three years after prohibited substance application.

In its May 8, 2015, Combined Notice of Noncompliance and Proposed Partial Suspension, TDA cited Buena Tierra for using a micronutrient (manganese) mix that contained a prohibited substance, calcium oxide, on four (4) fields of certified organic land. TDA also cited Buena Tierra for applying a micronutrient to certified organic land without a documented soil deficiency, a condition for using micronutrients. TDA listed the following regulatory violations:

§205.105(a), Allowed and prohibited substances... in organic production, and §205.601(j)(6)(ii), Synthetic substances allowed in organic production, as plant or soil amendments.

In its appeal, Buena Tierra admitted use of the manganese micronutrient mix on four of its fields; it also stated it used a boron micronutrient mix (b) (4) on the same four fields. It stated that it did not adequately check the product labels before applying the product to the fields; but acknowledged that each micronutrient mix included calcium oxide, prohibited for use in organic crop production, in the ingredient list of the manufacturer's Material Safety Data Sheet (MSDS).

Buena Tierra's appeal argued two points. First, it stated that another USDA-accredited certifying agent had indicated it would approve the micronutrient mixes with calcium oxide because the certifier believed the calcium oxide was an impurity, not an ingredient. Second, Buena Tierra argued that "a Supporting Documentation page from our '05 or '06 renewal... lists both (b) (4) B (boron) and Zn (zinc), so TDA has been aware of the fact that we used (b) (4) products since at least '06 and never made a comment until sending us the Proposed Suspension."

Buena Tierra did not submit evidence to support its claims. For example, no evidence was submitted to support the argument that calcium oxide in the mixes is an impurity rather than an independently added ingredient; and it did not submit any supporting documentation indicating that TDA had previously approved the substance. Buena Tierra did submit records for fields A, B, D, and F for 2012 and 2013 years, confirming the manganese micronutrient was applied.

Buena Tierra also provided soil analyses for fields proposed for suspension, in response to TDA citing a noncompliance for applying a micronutrient to organic land without a

documented soil deficiency; however, the soil nutrient information is not relevant, given the larger prohibited substance issue. If soil analyses showed that Buena Tierra adequately documented a soil deficiency before applying the micronutrient, the presence of a prohibited substance would still lead to the suspension.

### CONCLUSION

Though Buena Tierra submitted an argument to support its appeal, its argument is without merit, because the substance that was applied is prohibited under the USDA organic regulations. As a result of applying a prohibited substance, calcium oxide, four (4) of Buena Tierra's fields, A, B, D, and F, are not yet in full compliance with §205.105 and, therefore, §205.202(b), Land requirements.

### DECISION

The appeal is denied and TDA's combined Notice of Noncompliance and Proposed Partial Suspension is upheld. Buena Tierra's organic certification is partially suspended for fields A, B, D, and F for three (3) years from the date of substance application.

Attached to this formal Administrator's Decision denying Buena Tierra's appeal is a Request for Hearing form. Buena Tierra has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 9  
day of NOVEMBER, 2015.

  
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Rex A. Barnes  
Associate Administrator