

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	Administrator's Decision
John Z. Stoltzfus)	APL-022-15
Orangeville, Pennsylvania)	

This Decision is in response to an appeal (APL-022-15) of a combined Notice of Noncompliance and Proposed Suspension issued to a certified crop operation, John Z. Stoltzfus (Stoltzfus), by its U.S. Department of Agriculture (USDA) accredited certifying agent, Global Organic Alliance (GOA). The operation was deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the USDA organic regulations.²

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), United States Department of Agriculture (USDA), pursuant to §205.680, Adverse Action Appeals Process – General, and §205.681, Appeals, of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. John Z. Stoltzfus is a certified organic operation under the USDA organic regulations, located in Orangeville, Pennsylvania.
2. GOA is an accredited certifying agent under the USDA organic regulations, first accredited on April 29, 2002.
3. On May 6, 2015, GOA issued Stoltzfus a combined Notice of Noncompliance and Proposed Suspension for a portion of its operation because GOA identified that a fertilizer containing substances prohibited for use in organic crop production had been applied to seven (7) (b) (4) total acres of field #8.
4. On June 23, 2015, AMS received an appeal from Stoltzfus and accepted it as timely.

DISCUSSION

GOA has issued a combined Notice of Noncompliance and Proposed Suspension to Stoltzfus for seven (7) (b) (4) total acres of field #8, due to an application of a fertilizer product to pastureland; the product contains substances prohibited for use in organic crop production. The effect of a suspension for this action means that no products from the suspended portion of the operation can be sold, labeled, or represented as organic. The portion of the suspended field will be eligible for certification three (3) years after the date of prohibited substance application.

In his appeal, Stoltzfus does not deny a fertilizer that contains substances prohibited for use in organic crop production was applied to seven (7) acres of his main pasture field #8. Stoltzfus explained that his longtime livestock product supplier, (b) (4)

(b) (4) delivered the wrong formula of fertilizer to his farm, which was not identified until the fertilizer was applied to his a portion of his land.

During application, Stoltzfus noticed the color of the fertilizer looked different. At that time, Stoltzfus stopped applying the fertilizer and contacted (b) (4) to discuss the discrepancy.

(b) (4) acknowledged it mistakenly loaded a different formula of the same fertilizer that Stoltzfus ordered onto the delivery truck; Stoltzfus ordered (b) (4) which is approved as an organic crop input. Instead, he received (b) (4) fertilizer, which contains ammonium sulfate, ammonium phosphate, and urea, all prohibited substances for use in organic crop production. The only difference in the labeling between the two products is the notation of "REG" next to the (b) (4) name. Because of his long history with (b) (4) and his ordering of the same fertilizer product for years, which was approved through Stoltzfus' Organic System Plan and certifying agent, Stoltzfus admitted he did not closely review the fertilizer's label before until he applied it to a portion of his pasture field.

(b) (4) contacted Stoltzfus' certifying agent, GOA, to explain the delivery mix-up, which is how GOA was notified of the prohibited substance application. GOA requested additional information from Stoltzfus about the fertilizer that was applied, the ingredients within the fertilizer, and the date and location of application. Based on Stoltzfus' response, GOA issued a combined Notice of Noncompliance and Proposed Suspension for a portion of field #8 where Stoltzfus had applied the fertilizer.

The USDA organic regulations are clear regarding the use of prohibited substances on crop land. Any use of prohibited substance, regardless of the reason, source, or hardship endured, declassifies land of its "organic" status and requires a transition period for three years preceding the harvest of a crop intending to be sold, labeled, or represented as "organic."

CONCLUSION

Stoltzfus submitted documentation to support his appeal, including a letter of support from its fertilizer supplier, (b) (4); however, the noncompliance leading to the combined Notice of Noncompliance and Proposed [Partial] Suspension remains unresolved. As a result of applying a fertilizer product that contains substances prohibited for use in organic crop production, seven (7) acres (b) (4) total in field #8 are not yet in full compliance with §205.105, Allowed and prohibited substances..., and, therefore, §205.202(b), Land requirements.

DECISION

The appeal is denied and GOA's combined Notice of Noncompliance and Proposed Suspension is upheld. John Z. Stoltzfus' organic certification is partially suspended for seven (7) acres of field #8 for three (3) years from the date of substance application.

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

Done at Washington, D.C., on this 22
day of DECEMBER, 2015.



Rex A. Barnes

Associate Administrator