

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Amos K. Stoltzfus) **Administrator's Decision**
Healthy Harvest) **APL-040-17**
)

This Decision responds to an appeal (APL-040-17) of a Notice of Noncompliance and Proposed Suspension of National Organic Program certification issued to Amos K. Stoltzfus dba Healthy Harvest of Parkesburg, Pennsylvania by Pro-Cert Organic Systems (Pro-Cert). The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (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 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

¹ 7 U.S.C. 6501-6524

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. Pro-Cert Organic Systems Ltd. (Pro-Cert) is an accredited certifying agent under the USDA organic regulations. Amos Stoltzfus, dba Healthy Harvest (Healthy Harvest), of Parkesburg, Pennsylvania, is certified under USDA organic regulations for crops and handling.
2. On May 17, 2017, Pro-Cert issued a Notice of Noncompliance and Proposed Suspension to Healthy Harvest for applying a prohibited substance to land intended for organic crops. Healthy Harvest requested mediation after receiving the Notice.
3. On June 28, 2017, as part of mediation, Pro-Cert offered a Settlement Agreement to Healthy Harvest that would limit the suspension to the areas where (b) (4) was applied. The agreement required Healthy Harvest to remove the land in Tunnels #1 and 2 from organic certification for a period for three years.
4. On August 2, 2017, the Appellant rejected the settlement agreement.
5. On September 14, 2017, the Appellant submitted an appeal to AMS.

DISCUSSION

Healthy Harvest applied (b) (4) a slug and snail suppressant which contains (b) (4) [REDACTED], in two locations (Tunnels #1 and 2) in December 2016. AMS confirmed that (b) (4) [REDACTED] is prohibited in organic production.

Upon the Healthy Harvest's request for mediation, Pro-Cert offered a settlement agreement to suspend only the areas where the (b) (4) [REDACTED] was applied. This would prohibit crops grown in these areas from being sold as organic for three years after the application of (b) (4) [REDACTED]

In the appeal, Healthy Harvest admitted to the use of (b) (4) in Tunnels #1 and 2 in December of 2016. Healthy Harvest acknowledged that using the product was a mistake and that the supplier informed Healthy Harvest that product was approved for use in organic production. Healthy Harvest requested to serve a reduced suspension of organic certification of two years or less.

CONCLUSION

As a result of the application of a prohibited substance, a portion of Healthy Harvest, Tunnels #1 and 2, are not in full compliance with: § 205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; § 205.202, Land requirements; and § 205.400, General requirements for certification. The USDA organic regulations require that any land which is intended to produce organic crops must have had no prohibited substances applied to it for 3 years immediately preceding the harvest of the crop (§ 205.202(b)).

DECISION

The appeal is denied and a partial suspension is warranted. A portion of Healthy Harvest, the area comprising Tunnels #1 and 2, is to be suspended for 3 years. Since [REDACTED] was reportedly applied on an unspecified date(s) in December of 2016, the affected land would be eligible for organic certification on December 31, 2019.

Attached to this formal Administrator's Decision denying Healthy Harvest's appeal is a Request for Hearing form. Healthy Harvest has thirty (30) days to request an administrative hearing.

If Healthy Harvest waives the hearing, the Agricultural Marketing Service will direct Pro-Cert to issue a Notice of Partial Suspension. After the 3-year suspension period, the

operation may, "...submit a request to the Secretary for reinstatement of its certification [of the Tunnel #1 and 2 area]. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part."

Done at Washington, D.C., on this 18th
day of January, 2018.



Bruce Summers
Acting Administrator
Agricultural Marketing Service