

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:) **Administrator's Decision**
Vernon Yoder) **APL-035-15**

This Decision is in response to an appeal (APL-035-15) of a combined Notice of Noncompliance and Proposed Partial Suspension of a specific field issued to a certified crop operation, Vernon Yoder (Yoder), by its U.S. Department of Agriculture (USDA) accredited certifying agent OEFFA Certified Organic (OEFFA). 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),

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

pursuant to §205.680, Adverse Action Appeals Process – General, and §205.681, Appeals, of the USDA organic regulations.

FINDINGS OF FACT

1. OEFFA is an accredited certifying agent under the USDA organic regulations, first accredited on April 29, 2002.
2. On July 8, 2015, OEFFA issued Yoder a combined Notice of Noncompliance and Proposed Partial Suspension for a portion of his operation because OEFFA identified that a molasses product that contained substances prohibited in organic crop product was applied during an emergency replanting of his corn crop.
3. On August 6, 2015, Yoder requested mediation, which OEFFA rejected on August 21, 2015.
4. On September 18, 2015, AMS received an appeal from Yoder, which was accepted as timely.

DISCUSSION

OEFFA has issued a combined Notice of Noncompliance and Proposed Partial Suspension to Yoder for fifty-four (54) acres of field L70, due to the use of a molasses feed product during replanting, which 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 suspended fields will be eligible for certification three (3) years after prohibited substance application.

In its appeal, Yoder explained the circumstances behind an emergency replanting of a portion of his corn field. During the review of the field (b) (4)

who agreed the portion of the field should be replanted, Yoder discussed using a (b) (4) (b) (4) for an in-furrow application. The (b) (4) agreed using the (b) (4) (b) (4) would help with the replanting, and suggested Yoder add molasses as well. Yoder procured some molasses from a local livestock feed company and applied the product during replanting.

Yoder stated that the use of prohibited substances during his emergency replanting of a section of his corn field was accidental and unintentional; specifically, that he did not check the molasses product label to confirm it was free from prohibited substances. Yoder explains in his appeal that use of the molasses product was minimal; approximately three (3) ounces per acre was applied. As the application was unintentional and a minimal amount was applied to a portion of the land, Yoder requested the proposed partial suspension be reduced to one (1) year instead of three (3) years.

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

Though Yoder submitted documentation to support his appeal, the noncompliance leading to the Combined Notice of Noncompliance and Proposed Partial Suspension remains unresolved. As a result of applying a molasses product that contains substances prohibited for use in organic crop production, fifty-four (54) acres of field L70 is 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 OEFFA's combined Notice of Noncompliance and Proposed Partial Suspension is upheld. Vernon Yoder's organic certification is partially suspended for fifty-four (54) acres of field L70 for three (3) years from the date of substance application.

Attached to this formal Administrator's Decision denying Vernon Yoder's appeal is a Request for Hearing form. Vernon Yoder 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.



Rex A. Barnes
Associate Administrator