

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
J.A.M. Organics LLC) **Administrator’s Decision**
) **APL-021-22**
Lancaster, Kentucky)
)

This Decision responds to an Appeal (APL-021-22) of a Notice of Noncompliance and Denial of Certification under the National Organic Program (NOP) issued to J.A.M. Organics LLC (JAM) of Lancaster, Kentucky by the Kentucky Department of Agriculture (KDA), a USDA accredited certifying agent. 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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

FINDINGS OF FACT

1. On March 16, 2021, JAM applied for crop certification to KDA.
2. On November 10, 2021, KDA issued a Notice of Noncompliance and Denial of Certification.
3. On December 10, 2021, JAM filed an Appeal.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that, “To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603; (b) Nonsynthetic substances prohibited in §205.602 or §205.604 ...”

The organic regulations at §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must: ... (b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop ...” The organic regulations at §205.203, Soil fertility and crop nutrient management practice standard, state that, “(e) The producer must not use: (1) Any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic crop production; (2) Sewage sludge (biosolids) as defined in 40 CFR part 503 ...”

The organic regulations at §205.400, General requirements for certification, state that, “A

person seeking to receive or maintain organic certification under the regulations in this part must:

- (a) Comply with the Act and applicable organic production and handling regulations in this part;
- (b) Establish, implement, and update annually an organic production or handling system plan ...
- (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation ...”

JAM applied to KDA on March 16, 2021 for organic crop certification of its 3 fields totaling [REDACTED] acres, with Field 1 growing organic garlic, and Fields 2 and 3 being identified as cover crops. KDA conducted an inspection of JAM on June 19, 2021, and noted that JAM had just cultivated [REDACTED] acres of garlic, with another (b) (4) [REDACTED] of cover crop to be “cultivated as they grow.” KDA subsequently stated in the Inspection Report that there are [REDACTED] total acres which will be treated as organic, for future certification. However, only the delineated Fields 1, 2, and 3 were being considered for certification at the time of the inspection.

On the official Crop Inputs form, which is part of JAM’s application for certification, JAM stated it had used “Feni’s Fertilizer 5-2-0” but didn’t identify where the input had been used. However, a subsequent Crop Inputs List prepared and provided by JAM reported that “Feni’s Fertilizer 5-2-0,” manufactured by Louisville Green, was applied on May 1, 2020 to Field 1; on May 15, 2020 to Field 3; and September 1, 2020 to Fields 1 and 2. KDA’s “Crop First Review” document, dated May 15, 2021, prior to the inspection, noted the need to, “review Feni’s Organic 5-2-0 Fertilizer, not found in OMRI or PCO. ” This was reiterated under the Additional Information Needed section.

At the inspection itself, KDA noted under Crop Inputs section of the Inspection Report that JAM had applied “Feni Fertilizer 5-2-0 Louisville Green” on September 1, 2020. The

Inspection Report did not specifically identify the fields to which it had been applied, thereby not refuting JAM's Crop Input List prepared by JAM and submitted after its application. The inspector also obtained a copy of the product label which reads "Feni's Organic Fertilizer 5-2-0." The inspector also obtained a receipt for the fertilizer dated May 12, 2021 and showing the purchase of 8 units of "Feni Blend/Louisville Green Fertilizer 50 5-2-0." This indicates that JAM purchased additional units of the product after September 1, 2020, when the application was first documented. KDA stated in its Exit Interview that the operation needed to provide additional information about the fertilizer it had used. Under the Fertility Management section, the inspector noted "FENI's Organic fertilizer" but didn't state whether the input was approved for organic crops.

In doing its own research on the material, KDA found that the substance is not OMRI-listed. Based on JAM's prepared Crop Inputs List showing the input was applied to Fields 1, 2, and 3; a lack of information on the input; and the findings at the inspection, KDA issued a Notice of Noncompliance and Denial of Certification to JAM on November 10, 2021, stating it had "been unable to verify this product as compliant."

JAM stated in its December 10, 2021 Appeal that clerical errors resulted in its prepared Crop Inputs List incorrectly stating that Feni's Fertilizer 5-2-0 had been applied to Fields 2 and 3. In the appeal, JAM stated the fertilizer was only applied to Field 1 – the garlic field, but not the Fields with only cover crops – Fields 2 and 3 – as there was no need to use a fertilizer on those fields. Field 2 had winter wheat and clover, while Field 3 had soybeans, winter wheat, and clover. JAM submitted a revised Crop Inputs List showing the fertilizer being applied to Field 1 on May 1, 2020; September 1, 2020; and November 9, 2021. JAM stated that, "We accept the

fact that we purchased USDA Certified Garlic from a producer in Washington State and used a noncompliant fertilizer to grow it.”

KDA stated it doesn't believe there was a clerical error regarding which fields are affected; however, also stated that it doesn't believe that JAM knew the fertilizer wasn't allowed. AMS also notes that while this “clerical error” was raised in the appeal, there was no apparent mention of it at the inspection itself when the inspector was verifying material use.

As to the substance itself, KDA was unable to verify that the fertilizer was organic-compliant and found that it isn't OMRI-listed. Both JAM's prepared Crop Input List, submitted after its application, and the receipt for the Feni's Organic Fertilizer 5-2-0 collected at the inspection refer to Louisville Green. Louisville Green is a Louisville, Kentucky based product sold as fertilizer, and is made from sewage sludge. The Louisville and Jefferson County Metropolitan Sewer District (MSD) website states that, “MSD produces an organic-based soil amendment called Louisville Green. It is created from the biosolids removed from wastewater as it undergoes treatment in our five Wastewater Quality Treatment Centers before we return it to local waterways.” The brochure for the Louisville Green products attached to their website specifically states, “Not approved for organic farming.” As such, the best evidence shows that the Louisville Green was included in the manufacturing of the Feni's Organic Fertilizer, and that KDA's determination that is not allowed in organic crop production was correct.

The evidence substantiates that while there are some discrepancies on which acres the material was used, JAM used a non-compliant, unapproved input on its land. Further, the lack of consistency across the records raises concerns about JAM's ability to maintain a compliant recordkeeping system. JAM's Application for certification included the Crop Inputs List which identifies the Feni's Organic Fertilizer 5-2-0 as an input, but doesn't specify where it was used.

JAM's Organic System Plan (OSP) noted that 'fertilizer' was applied to Field 1 in 2020 and planned for 2021; however, doesn't identify any inputs used on Fields 2 and 3 for 2020 or planned for 2021. A subsequently submitted Crop Inputs List prepared by JAM, however, lists that Feni's Fertilizer 5-2-0 was used on all three fields. While this may have been an error that was later corrected, given that the error was not raised at the inspection, and only during the appeal, this raises concerns about JAM's recordkeeping practices.

CONCLUSION

Evidence substantiates that JAM violated the organic regulations at 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.203, Soil fertility and crop nutrient management practice standard; and 7 C.F.R. §205.400, General requirements for certification. Certified organic operations are required to carefully evaluate materials, to ensure that any products used on fields are allowed in organic production. Further, accurate recordkeeping and communication with the inspector and certifier are essential for demonstrating compliance with the USDA organic regulations. Records are a key component of an operation's organic control system. JAM did not accurately evaluate the organic status of a fertilizer used on its land, and acknowledged in its appeal that its records were not accurate.

JAM may reapply for organic certification once it has improved its ability to evaluate materials and has implemented a compliant recordkeeping system. However, JAM applied an unapproved non-compliant fertilizer to at least one of its fields, making that field ineligible for organic certification. JAM may apply for certification of its Fields 2 and 3 pursuant to 7 C.F.R. §205.405(e), but given JAM's own records to the contrary, must definitively demonstrate that no

prohibited substances have been applied to those fields within the past 3 years for those specific fields to be certified.

DECISION

JAM's December 10, 2021 Appeal of the November 10, 2021 Notice of Noncompliance and Denial of Certification is denied. JAM's Field 1 is ineligible for organic certification until November 8, 2024, which is 3 years after the last application of the prohibited fertilizer. However, JAM may reapply for certification of its Fields 2 and 3 at any time pursuant to 7 C.F.R. §205.405(e), but given JAM's own records to the contrary, must definitively demonstrate that no prohibited substances have been applied to those fields within the past 3 years.

Additionally, attached to this formal Administrator's Decision denying JAM's Appeal is a Request for Hearing form. JAM has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 5th
day of September, 2022.

BRUCE SUMMERS
Bruce Summers
Administrator
Agricultural Marketing Service

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