

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	
Organic Acres/	)	
Joseph J. Graber	)	<b>Administrator's Decision</b>
Odon, Indiana	)	
	)	<b>APL-040-18</b>
	)	

This Decision responds to an appeal (APL-040-18) of a Notice of Noncompliance and Proposed Suspension of National Organic Program certification issued to Organic Acres/Joseph J. Graber of Odon, Indiana, by Quality Certification Services. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (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 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in § 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

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

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

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.

### **FINDINGS OF FACT**

1. Organic Acres/Joseph J. Graber (Organic Acres) is an organic operation initially certified for livestock and crops on April 24, 2006.
2. On June 16, 2016, Organic Acres submitted a renewal application for organic certification to Quality Certification Services (QCS), noting prior noncompliances and stating that their layer chicks were given outdoor access at eight weeks of age, weather permitting, and there were no changes in their planned inputs.
3. On November 3, 2016, QCS conducted an inspection of the Organic Acres operation. QCS issued a report on November 6, 2016, noting that the amount of outdoor access given to the chickens was not accurately stated in the Organic System Plan (OSP), layer chickens were not let outside until noon each day, and the March 4, 2016 flock had not yet ever been outside. The inspector stated that Organic Acres had already been informed that its policy of not granting chickens outside access until they start laying isn't consistent with organic regulations. The inspector noted that although Organic Acres subsequently had stated they would let the chickens out at twelve weeks, and then lowered it to eight weeks, this was not implemented. The inspector also noted that corn was grown in 2014, 2015, and 2016 in Field 8, with no cover crop in between those years, as well as several recordkeeping noncompliances.

4. On January 24, 2017, QCS issued a Notice of Noncompliance to Organic Acres, delineating several noncompliances in livestock living conditions; crop rotation; and recordkeeping in such areas of crop inputs, vegetable production, keeping seed tags, and granting outside access for chickens, all of which were previously noted in the report of the November 3, 2016 inspection. QCS also found that Organic Acres was using several crop inputs without informing QCS of the change to the OSP.
5. On February 24, 2017 and March 23, 2017, Organic Acres submitted responses to the Notice of Noncompliance, which QCS collectively refers to as a Corrective Action Plan. Organic Acres states that the poultry flock had daily outside access and they would keep track of this in the future. Organic Acres denied there hadn't been crop rotation in Field 8, stating corn was grown in 2015 and 2016; and mixed grass and wheat was sown on October 31, 2017. Lastly, Organic Acres stated the 'recordkeeping is a work in progress' and they are working to improve in this area, would maintain invoice seed tags, and would keep activity logs for the various areas lacking recordkeeping.
6. On April 6, 2017, QCS issued a Notice of Resolution finding that all the noncompliances noted on the January 24, 2017 notice had been resolved or rebutted.
7. On October 28, 2017 and November 1, 2017, Organic Acres submitted a Livestock Plan Renewal Form and a Grower Plan Renewal Form, noting on both that there were no changes to the OSP, but stating on the grower form that it was working with the inspector on changes to their inputs.
8. On July 12, 2018, QCS conducted a scheduled inspection of Organic Acres, for which an Inspection Report was issued July 26, 2018. The Exit Interview Form lists several noncompliances, including the use of inputs that do not appear on Organic Acres'

approved input list; and the lack of documentation regarding 2017 input applications, outdoor access for the chickens, feed mixing dates and amounts, and seed and planting stock searches. Most of these noncompliances are reoccurring since 2015.

9. On August 15, 2018, QCS issued a Notice of Noncompliance and Proposed Suspension, noting noncompliances including the failure to document the outdoor access and periods of confinement for the poultry flock; the failure to follow seeds and planting stock practice standards involving sweet potato slips and candy onions; and general requirements for certification, specifically the use of unapproved crop inputs.
10. On August 31, 2018, Organic Acres filed an Appeal to the Notice of Noncompliance and Proposed Suspension.

## **DISCUSSION**

The organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that a certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as organic. The records must fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; and be sufficient to demonstrate compliance with the Act and the regulations. Additionally, the certified operation must make the records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent.

The organic regulations at 7 C.F.R. §205.204, Seeds and planting stock practice standard, state that the producer must use organically grown seeds, annual seedlings, and planting stock,

except that nonorganically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available.

The organic regulations at 7 C.F.R. §205.400, General requirements for certification, state that a person seeking to receive or maintain organic certification under the organic regulations must immediately notify the certifying agent concerning any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations.

On August 15, 2018, QCS proposed a suspension of Organic Acres' organic certification, which would prohibit the sale, labeling, or representation of its products as organic. Presenting the reasons for proposing a suspension, QCS stated that Organic Acres has displayed a repeated, systemic inability to comply with the organic regulations. Organic Acres had submitted proof subsequent to the January 24, 2017 Notice of Noncompliance that three of the four noted crop inputs found during the November 3, 2016 inspection had been approved by QCS prior to their usage. However, during the July 12, 2018 inspection, five new inputs were found for which QCS had not been notified or granted approval, and Organic Acres still failed to document input application dates and rates. The inspector also found that although the poultry flock was being given adequate outdoor access, Organic Acres failed to document the time outdoors and time of confinement. Organic Acres also failed to document poultry mortality, egg production, and poultry feed mixing dates and amounts fed to the poultry. Additionally, Organic Acres did not conduct commercial availability searches for the sweet potato slips or candy onions, both of which QCS states are on Organic Acres' certificate. QCS found that Organic Acres' Corrective Action Plan, composed of the responses of February 24, 2017 and March 23, 2017, was not effective in ensuring Organic Acres' ongoing compliance with the organic regulations.

Organic Acres, in its appeal, agreed they had not documented crop input application dates and rate, and had used crop inputs prior to their approval by QCS, but states that all inputs are compliant. Organic Acres agreed they had not documented poultry feed mixing dates and the amounts fed to the flock but states the poultry flock are outdoors free-range as weather permits after they are old enough to produce eggs, otherwise they wouldn't come back inside. Organic Acres also agreed they do not document poultry mortality, stating the chickens are prey to hawks and other wildlife when outdoors and it is impossible to keep track of all of them, but that egg production is documented. Regarding the failure to conduct commercial availability searches, Organic Acres stated the sweet potato slips are for personal use only, and that they have been growing candy onions for 15 years and they are unavailable from their suppliers. Organic Acres stated they are "very willing" to try and "do much better" in complying with the recordkeeping requirements but have had serious family medical issues and a death lately. Organic Acres also noted communication problems since they do not have a computer, fax, internet access, or email account.

Although Organic Acres stated a willingness to improve on its compliance with the organic regulations, some of the noncompliances stated in the August 15, 2018 Notice of Noncompliance and Proposed Suspension are 'repeat offenses' which date back to 2015 and for which Organic Acres already received a Notice of Noncompliance on January 24, 2017. These repeat offenses include not documenting the outdoor access of the poultry flock; the failure to record crop inputs; the failure to keep seed tags; and the failure to conduct commercial availability searches. Further, Organic Acres previously submitted a Corrective Action Plan to resolve these noncompliances, but failed to resolve some of them, and additional noncompliances have occurred.

QCS erred in stating in the January 24, 2017 Notice of Noncompliance that Organic Acres used crop inputs without informing QCS and receiving approval because QCS had already approved the cited crop inputs in letters of July 26, 2016 and September 21, 2016 to Organic Acres. Organic Acres then noted on its November 1, 2017 Organic Grower Plan Renewal Form that it was talking to the inspector regarding changes in crop inputs. However, QCS found five new crop inputs at the July 12, 2018 inspection, specifically, molasses; Ag Custom Blend by L&M; Perlite; Vermiculite; and Feather Meal. Organic Acres acknowledged using these inputs prior to approval by QCS, and also acknowledged it hadn't documented crop input application dates and rates as noted by the inspector. QCS subsequently approved the inputs found during the July 12, 2018 inspection, but that does not negate Organic Acres' use of said products prior to their approval.

Further, despite QCS informing Organic Acres of its recordkeeping obligations, Organic Acres acknowledged it had not documented poultry feed mixing dates and amounts fed, or poultry mortality information. Organic Acres has approximately 2,000 chickens, and although it may be difficult to track all of them to determine a mortality rate due to the chickens being preyed upon while outdoors, this is required under the organic regulations. Egg production must also be clearly and accurately documented. Organic Acres stated in its Corrective Action Plan that recordkeeping was a 'work in progress' and it would continue to work on improvement. However, over a year later at the July 2018 inspection, the inspector again noted several records which were still not being maintained by Organic Acres.

Further, while Organic Acres has presented reasons for limiting the outdoor access for the chickens until they are able to lay, they shouldn't be denied all access and their outdoor access and confinement periods must be documented. Organic Acres stated in its June 16, 2016

renewal application that the layer chickens have outdoor access once they are eight weeks of age and weather permitting. The inspector noted in the inspection report of November 6, 2016, that Organic Acres had (b) (4) poultry, of which 800 had just arrived in the prior month. However, while the poultry were healthy and well-fed, the inspector noted they were not given adequate access to the outdoors. The layer chickens were not let outside until noon, and the March 4, 2016 flock had never been given outdoor access in the eight months since arriving at Organic Acres. The inspector noted in the July 26, 2018 inspection report that the poultry flock, now estimated at (b) (4) were now receiving adequate access to outdoor space; however, Organic Acres was not documenting this access. QCS stated during the pendency of the appeal that it would accept an OSP from Organic Acres that set forth their procedures regarding outside access for the chickens, "as weather permits" and once they've reached laying age, if the term "as weather permits" was defined and if the age limitations dictating outdoor access comply with the organic regulations. QCS also stated Organic Acres must demonstrate its implementation of these procedures/decisions.

Regarding seeds and planting stock practice standards, specifically, the failure to conduct commercial availability searches for planting stock, Organic Acres states the sweet potato slips are for personal use only, and it has grown candy onions for fifteen years propagating from its own existing plants. Organic Acres stated at the July 12, 2018 inspection that it was unable to find candy onions in prior years' searches and therefore, did not attempt a search in 2017. However, QCS states that Organic Acres did not tell it that the sweet potatoes and candy onions were only for personal use, and these two products are on Organic Acres' organic certificate.

Candy onions are not listed specifically on the certificate, but onions are listed. QCS explained that it doesn't list the specific varieties of a commodity on the organic certificate.



Therefore, the candy onions would be included under the certificate, and if the candy onions are to be sold or represented as organic by Organic Acres, a commercial availability search for organic seed or planting stock must be conducted. It is noted Organic Acres stated during the inspection that it has planted Expression Onions which hopefully will replace the candy onions.

The organic certificate also does not list sweet potatoes, though it lists potatoes. However, sweet potatoes would not be included under the listing of potatoes because sweet potatoes are in a different plant family and not just a variety of potato. Therefore, the organic certificate does not cover sweet potatoes. However, while Organic Acres claims the sweet potatoes are for personal use only, QCS states Organic Acres told the inspector that it had sold sweet potatoes as organic. Further, the Crop Inspection Checklist contained within the July 26, 2018 Inspection Report, under the "Land Seeking Certification" section, asks for all crops for which certification is requested, and the inspector wrote, "OGP (Organic Grower Plan) indicates 'full line of vegetables.' In addition to crops listed on Organic Certificate, Mr. Graber is raising Blackberries, Cabbage, Asparagus, Sweet Potatoes, Zucchini and Kale." QCS cited Organic Acres for failing to conduct a commercial availability search for sweet potato planting stock, but Organic Acres is also selling and representing sweet potatoes as organic though sweet potatoes are not listed on the organic certificate. If the sweet potatoes are to be added to Organic Acres' certificate, Organic Acres is to comply with the organic regulations at 7 C.F.R. §205.102, Use of the term, "organic," which state that any agricultural product that is sold, labeled, or represented as organic must be produced and handled in accordance with the requirements set forth in the organic regulations. Further, for crops listed on an organic certificate, the operation must use organic seeds or planting stock when commercially available. Therefore, searches must be

conducted to ascertain whether the seeds or planting stock in question are commercially available before an operation can use a nonorganic form.

Organic Acres stated that it has experienced problems complying with the regulations due to illness and death in the family, as well as communication issues due to a lack of technology such as email and internet access. However, while we are sympathetic to such hardships, Organic Acres must comply with the Act and the organic regulations. The noncompliances have also been ongoing and Organic Acres has had a few years to come into compliance.

### **CONCLUSION**

Organic Acres has shown systemic and repeated violations of the organic regulations. QCS has worked to help Organic Acres come into compliance, having issued a prior Notice of Noncompliance and subsequently accepting Organic Acres' Corrective Action Plan. However, Organic Acres has failed to comply with its own plan and has acknowledged the continuing recordkeeping deficiencies as well as the use of inputs prior to their approval by QCS. Organic Acres has been unable to fully come into compliance and adequately address all the noncompliances raised by QCS. Therefore, Organic Acres is found to be in violation of the Act and the USDA organic regulations, specifically the provisions at 7 C.F.R. §205.103, Recordkeeping; 7 C.F.R. §205.204, Seeds and planting stock practice standard; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.102, Use of the term, "organic."

## DECISION

The appeal is denied and Organic Acres is to be suspended. Attached to this formal Administrator's Decision denying Organic Acres' appeal is a Request for Hearing form. Organic Acres has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Organic Acres waives the hearing, the Agricultural Marketing Service will direct QCS to issue a Notice of Suspension. At any time after suspension, Organic Acres may, "...submit a request to the Secretary for reinstatement of its certification. 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 14<sup>th</sup>  
day of February, 2019.



Bruce Summers  
Administrator  
Agricultural Marketing Service