

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Dean D. Pahl Organic Farms) **Administrator’s Decision**
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)
Sycamore, Ohio) **APL-063-21**
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)

This Decision responds to an Appeal (APL-063-21) of a Notice of Proposed Suspension of certification to the National Organic Program (NOP) issued to Dean D. Pahl Organic Farms (Pahl) of Sycamore, Ohio by USDA-accredited certifying agent, Global Organic Alliance (GOA). 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 August 9, 2021, GOA issued a Notice of Noncompliance.
2. On September 7, 2021, GOA issued a Notice of Proposed Suspension of Pahl’s crop certification.
3. On September 27, 2021, Pahl 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 ...”

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 ...”

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 of this part; ... (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 ...” The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must ... submit the following information, as applicable, to the certifying agent: ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

The evidence substantiates that Pahl has been certified for crops since June 12, 2012. Pahl’s total acreage is (b) (4) acres, divided into HBF – Fields 1, 2, and 3 of (b) (4) acres; RPF – Fields 4 and 5 of (b) (4) acres; RPF 6 – Field 6 of (b) (4) acres; and RPF 7 – Field 7 of (b) (4) acres, along with buffers. All the fields are planted with organic soybeans, except Field 6, which is organic grass used by Pahl to feed its (b) (4); the organic grass isn’t sold. GOA stated that Pahl’s 2021 Field History shows that lime was applied to all the fields, except Field 6, on May 20, 2021. The document shows that Pahl applied 3 tons of lime each to HBF – Fields 1, 2, and 3; RPF – Fields 4 and 5; and RFP 7 – Field 7. This was discovered at the June 16, 2021 inspection, at which the inspector asked Pahl to submit information on the lime used.

GOA issued a Request for Additional Information on July 12, 2021 after not receiving the information. Pahl submitted an approval issued on November 13, 2020, by the Ohio Environmental Protection Agency (EPA), for the use of cement kiln dust (CKD) as an agricultural soil amendment. GOA stated that CKD is a synthetic substance not on the National

List and is prohibited for use in organic crop production. Therefore, GOA issued a Notice of Noncompliance on August 9, 2021.

Pahl submitted a response to the Notice of Noncompliance on August 26, 2021, stating that it had contacted a local lime service and specifically stated that it was an organic operation. Pahl questioned why the lime service wouldn't know that the product in question wasn't approved for organic use, though Pahl admits that he did not do my homework." On September 7, 2021, GOA issued a Notice of Proposed Suspension, stating it received the Ohio EPA approval for CKD, but the substance isn't allowed in organic production, and that Pahl had relied on an outside operation without doing due diligence on the material review.

Pahl filed an Appeal on September 27, 2021, stating that an agronomist had recommended it apply lime to the operations' lands to enhance the soil, and reiterated that it contacted a local lime service, informing the service that Pahl is an organic operation. Pahl states it wasn't aware of any problem until after it had already applied the lime substance.

The organic regulations at 7 C.F.R. §205.203 state that an organic producer may manage crop nutrients and soil fertility by applying a crop nutrient or soil amendment included on the National List of synthetic substances allowed for use in organic crop production. The organic regulations at 7 C.F.R. § 205.601(j) identify the synthetic substances that are allowed to be used as soil amendments in organic crop production. However, CKD contains synthetics substances that are not among those allowed substances. It is unfortunate that Pahl relied on another entity as to whether the CKD is allowable for organic crop production but does not change that a prohibited substance was applied.

CONCLUSION

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. The evidence substantiates that Pahl 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; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. Pahl applied an unapproved synthetic substance, CKD, not found on the National List, to all its organic soybean fields. Therefore, Pahl may not remain certified at this time.

DECISION

Pahl's September 27, 2021 Appeal is denied, and the September 7, 2021 Notice of Proposed Suspension is affirmed. Pahl's organic crop certification is to be suspended. Pahl's fields to which the prohibited substance was applied are ineligible for organic certification for 3 years from the date of application of the substance, May 20, 2021. Therefore, Pahl may request reinstatement of its certification for those fields after May 19, 2024.

Attached to this formal Administrator's Decision denying Pahl's Appeal is a Request for Hearing form. Pahl has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Pahl waives the hearing, this Administrator's Decision suspending Pahl's organic certification will become final.

Done at Washington, D.C., on this _____
day of _____, 2022.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service