

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:) **Administrator's Decision**
Seeds of Love Nursery) **APL-007-16**
Lithia, Florida)

This Decision is in response to an appeal (APL-007-16) of a combined Notice of Noncompliance and Proposed Partial Suspension issued to a certified crop operation, Seeds of Love Nursery (Seeds of Love), by its U.S. Department of Agriculture (USDA) accredited certifying agent Quality Certification Services (QCS). 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. Seeds of Love is an organic crop producer, certified under the USDA organic regulations, located in Lithia, Florida.
2. QCS is an accredited certifying agent under the USDA organic regulations, first accredited on April 29, 2002.
3. On December 22, 2015, QCS issued Seeds of Love a combined Notice of Noncompliance and Proposed Partial Suspension for a portion of its operation, because QCS identified that a soil amendment containing substances prohibited for use in organic crop production had been applied to three (3) acres of its organic blueberry crop, specifically fields (b) (4)
4. On January 12, 2016, AMS received an appeal from Seeds of Love, which was accepted as timely.

DISCUSSION

QCS has issued a combined Notice of Noncompliance and Proposed Partial Suspension to Seeds of Love for three (3) acres of its organic blueberry crop in fields (b) (4) because it applied a soil amendment that contains substances prohibited for use in organic crop production. The prohibited substance application was identified at Seeds of Love's annual on-site inspection. After the inspection, QCS reviewed the soil amendment and confirmed the composition with the input's manufacturer; as a result, QCS issued its combined Notice of Noncompliance and Proposed Partial Suspension.

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 the date of prohibited substance application, which QCS indicated occurred on October 20, 2015.

In its appeal, Seeds of Love does not deny a soil amendment that contains substances prohibited for use in organic crop production was applied to three (3) acres of fields (b) (4) of its organic blueberry plant crop. Seeds of Love indicated applying the product was a mistake, as the label of the product was not properly reviewed after delivery from the manufacturer and before the substance was applied to land. Seeds of Love argued a three-year suspension of these three acres would cause a hardship on the operation, considering that the substance was applied minimally and soil tests could show the prohibited substances were no longer present in the soil. Seeds of Love requested the NOP consider a decreased suspension penalty, or imposing a monetary fine, instead of the full three-year suspension penalty that QCS proposed in its combined Notice of Noncompliance and Proposed Partial Suspension.

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 before the harvest of a crop intending to be sold, labeled, or represented as “organic.”

CONCLUSION

Though Seeds of Love submitted a response to support its appeal, the noncompliance leading to the combined Notice of Noncompliance and Proposed Partial Suspension remains unresolved. As a result of applying a soil amendment product that contains substances prohibited

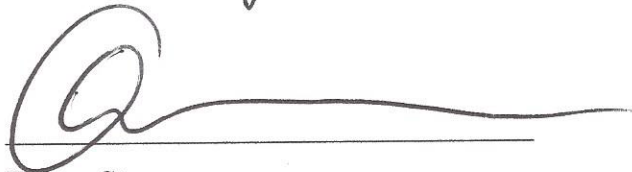
for use in organic crop production, fields (b) (4) of its blueberry crop, three (3) acres, is not yet in full compliance with §205.105, Allowed and prohibited substances..., and, therefore, §205.202(b), Land requirements.

DECISION

The appeal is denied and QCS' combined Notice of Noncompliance and Proposed Partial Suspension is upheld. Seeds of Love Nursery's organic certification is partially suspended for fields (b) (4) three (3) acres, of its blueberry block for three (3) years from the date of substance application, which QCS identified as October 20, 2015.

Attached to this formal Administrator's Decision denying Seeds of Love Nursery's appeal is a Request for Hearing form. Seeds of Love Nursery has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 11th
day of may, 2016.



Elanor Starmer
Administrator