

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	Administrator's Decision
Bonnie Blue Ranch and Grove)	APL-001-16

This Decision is in response to an appeal (APL-001-16) of a combined Notice of Noncompliance and Proposed Partial Suspension issued to a certified crop operation, Bonnie Blue Ranch and Grove (Bonnie Blue), 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. QCS is an accredited certifying agent under the USDA organic regulations, first accredited on April 29, 2002.
2. On September 23, 2015, QCS issued Bonnie Blue a combined Notice of Noncompliance and Proposed Partial Suspension for a portion of its operation, because QCS identified that a fertilizer containing substances prohibited for use in organic crop production had been applied to forty-nine (49) out of (b) (4) rows of its organic blueberry crop. QCS calculated the area of the forty-nine (49) rows to be 9.92 acres.
3. On October 22, 2015, AMS received an appeal from Bonnie Blue, which was accepted as timely.

DISCUSSION

QCS has issued a combined Notice of Noncompliance and Proposed Partial Suspension to Bonnie Blue for forty-nine (49) rows, or 9.92 acres, of its organic blueberry block, due to an application of a fertilizer product to blueberry plants in the ground; the product contains substances prohibited for use in organic crop production. The prohibited substance application was identified at Bonnie Blue's annual on-site inspection. 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.

In its appeal, Bonnie Blue does not deny a fertilizer that contains substances prohibited for use in organic crop production was applied to forty-nine (49) rows of its organic blueberry plant crop. Bonnie Blue was unaware the fertilizer had been applied until it was discovered at its on-site inspection. Based on the product applied, the last date of application for that product on its farm, and (b) (4) Bonnie Blue concluded that the product must have been mistakenly applied by an employee no longer working at the farm. Bonnie Blue further concluded this was an error because the fertilizer with prohibited substances is used only for nursery plants, not in-ground. Bonnie Blue offered to remove the fertilizer from the in-ground plants, but was informed by QCS that correction of the noncompliance was not possible because the fertilizer had already been applied to the land.

Bonnie Blue argues that the acreage for the affected portion of its organic blueberry crop is not 9.92 acres, as QCS cited in its combined Notice of Noncompliance and Proposed Partial Suspension. Rather, Bonnie Blue contends the size of the affected portion is 6.8 acres, based on satellite photo data.

In an email to the National Organic Program, QCS explained how it calculated the acreage of forty-nine (49) rows of blueberry plants: “The acreage that the prohibited substance was applied to was [sic] determined by the conditions that 49 contaminated rows were (b) (4) wide and (b) (4) long. Our Certification Coordinator multiplied 49 [rows] by (b) (4) [row width] to obtain (b) (4) [total width]. (b) (4) [total width] was multiplied by (b) (4) [row length] to obtain (b) (4) sq. ft. [total area]. (b) (4) sq. ft. [total area] divided by (b) (4) [number of sq. ft. in an acre] results in 9.92 acres.” QCS stated that the area of individual rows, (b) (4), was confirmed by the inspector. AMS concurs that the 9.92 acreage indicated in QCS’ combined Notice of Noncompliance and Proposed Partial Suspension is appropriate.

Bonnie Blue's appeal also requests that the three year suspension proposed be reduced to one year, based on §205.204(a)(4) in the USDA organic regulations, Seeds and planting stock, which allows crop from non-organic planting stock to be sold as organic after one year of organic management. Bonnie Blue states the prohibited substance that was added to the blueberry plants in the ground is a typical fertilizer used in nursery planting stock. Bonnie Blue contends it should be able to organically manage the affected rows of blueberry plants for one year only, rather than a three year suspension.

In Bonnie Blue's case, the fertilizer with prohibited substances was found to be applied to organic blueberry plants in the ground; therefore, the land itself was treated with a prohibited substance. Because of this, the rule allowance of organic management of non-organic planting stock for one year before sale as "organic" does not apply.

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

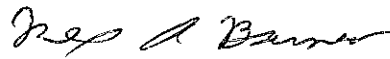
Though Bonnie Blue submitted documentation to support its appeal, the noncompliance leading to the combined Notice of Noncompliance and Proposed Partial Suspension remains unresolved. As a result of applying a fertilizer product that contains substances prohibited for use in organic crop production, forty-nine (49) rows of its blueberry crop, 9.92 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. Bonnie Blue Ranch and Grove's organic certification is partially suspended for forty-nine (49) rows, 9.92 acres, of its blueberry block for three (3) years from the date of substance application.

Attached to this formal Administrator's Decision denying Bonnie Blue Ranch and Grove's appeal is a Request for Hearing form. Bonnie Blue Ranch and Grove has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 13
day of DECEMBER, 2015.



Rex A. Barnes

Associate Administrator