

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Melvin D. Miller) **Administrator's Decision**
Millersburg, Ohio) **APL-037-18**
)

This Decision responds to an appeal (APL-037-18) of a Notice of Noncompliance and Proposed Suspension for a Portion of Your Operation of National Organic Program certification issued to Melvin D. Miller of Millersburg, Ohio by the Quality Certification Services. A portion of this 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 § 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 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. Quality Certification Services (QCS) is an accredited certifying agent under the USDA organic regulations. Melvin D. Miller (Miller) of Millersburg, Ohio, is an organic operation certified for crops and livestock under the USDA organic regulations.
2. On March 20, 2018, Miller submitted a renewal application to QCS and on May 1, 2018, QCS conducted an inspection of the Miller operation without any noncompliances noted.
3. On May 18, 2018, Miller informed QCS that on May 16, 2018, he accidentally sowed non-GMO treated corn seed in portions of Fields S-1 and S-2 of the Home Farm parcel after his seed dealer mistakenly mixed the treated corn in with Miller's seed order.
4. On June 7, 2018, QCS confirmed in a follow-up inspection that approximately 3 acres of Fields S-1 and S-2 were sown with corn seed treated with Cruisermaxx Corn 250 Vibrance, which contains prohibited synthetic substances.
5. On June 18, 2018, QCS issued a Notice of Noncompliance and Proposed Suspension for a Portion of Your Operation citing violations of the organic regulations regarding the use of prohibited substances, and proposing a suspension of the affected 3 acres of Fields S-1 and S-2 for 3 years.
6. On July 11, 2018, AMS received Miller's Appeal.

DISCUSSION

The organic regulations at 7 C.F.R. 205.202(b), Land Requirements, state that any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as "organic," must not have had any 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 7 C.F.R. 205.105(a), 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 synthetic substances and ingredients, except as provided in §205.601 or §205.603.

On June 18, 2018, QCS proposed a suspension of a portion of Miller’s operations, specifically 3 identified acres in Fields S-1 and S-2 of Miller’s Home Farm parcel. Presenting the reasons for proposing the suspension of that portion of Miller’s operation, QCS stated that on May 16, 2018, a bag of non-GMO treated corn seed was accidentally sown into the identified acreage, due to Miller’s seed dealer mistakenly mixing in the treated seed with Miller’s seed order.

QCS’s follow-up inspection of Miller’s land on June 7, 2018, confirmed the sowing of corn seed treated with CruiserMaxx Corn 250 Vibrance by Syngenta, and the specific acreage affected as 3 acres in Fields S-1 and S-2 of the Home Farm parcel. A map of Miller’s land was obtained with the affected acreage and rows marked. The label from the CruiserMaxx Corn 250 Vibrance shows that the seed treatment contains thiamethoxam insecticide and fludioxonil, mefenioxam, azoxystrobin, thiabendazole and sedaxane fungicides, all of which are synthetic and are prohibited in organic production because they are not listed in §205.601 of the organic regulations, which identifies synthetic substances allowed for use in organic crop production. Therefore, QCS found that the affected 3 acres are to be suspended for 3 years after May 16, 2018, when the treated corn was sown. The 3 acres comprise 2.17% of Miller’s (b) (4) total acres.

Miller stated in the Appeal that he is aware that the organic regulations require that the affected acreage be taken out of organic production for 3 years. However, he requested that

since this was a mistake on the part of his seed dealer, that the acreage not be suspended, or that the suspension period at least be reduced by 1 or 2 years. Miller submitted a statement from his seed dealer, (b) (4) admitting that it mistakenly mixed a bag of treated seed in with Miller's seed order.

The evidence shows that Miller sowed treated corn seed in 3 acres of Fields S-1 and S-2 of his Home Farm parcel, on May 16, 2018, and self-reported this error to QCS almost immediately. Miller's seed dealer admitted mistakenly mixing treated seed with Miller's order, with the treated seed accounting for 1 of the 5 bags of seed purchased by Miller. QCS, in a follow-up inspection, confirmed the affected acreage. Miller and QCS confirmed that the seed was treated with CruiserMaxx Corn 250 Vibrance, and it was discovered that the treatment contains several synthetic and prohibited substances under the organic regulations.

It is unfortunate that Miller mistakenly sowed treated corn seed due to an error by his seed dealer, and Miller is commended for his honesty in self-reporting this. It is also noted that the May 1, 2018 inspection of Miller's operation didn't find any noncompliances and the inspector noted, "This is a very well managed farm, with participation from all family members. The land is well kept and nourished and the animals are healthy and productive." However, a review of prior Administrator Decisions involving similar situations whereby seed treated with prohibited substances was accidentally sown, show a strict application of the 3-year suspension on the affected land. Nevertheless, the product used to treat the seeds in this case, Cruisermaxx Corn 250 Vibrance by Syngenta, was reviewed by a materials expert to determine if the 3-year suspension is necessary in this case as the corn grown from the treated seed has been harvested and sold to a conventional farmer. The Cruisermaxx Corn 250 Vibrance by Syngenta contains thiamethoxam insecticide, fludioxonil, mefenioxam, azoxystrobin, thiabendazole, and sedaxane

fungicides. These materials were found to be highly toxic and highly persistent in soil in which seed treated with these substances are sown. Therefore, the 3-year suspension is not only in accordance with the organic regulations and NOP precedence, but has been shown to be necessary in this case.

CONCLUSION

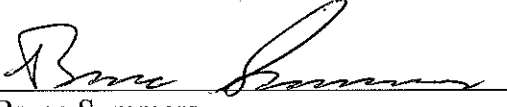
Miller's sowing of corn seed treated with a product which contains several synthetic and prohibited substances, although done in error, constitutes a violation of the organic regulations at 7 C.F.R. 205.202(b) and 7 C.F.R. 205.105(a).

DECISION

The appeal is denied. The affected 3 acres of Miller's Fields S-1 and S-2 of the Home Farm parcel are to be suspended for 3 years from the date the treated seed was sown. Barring the interim use of seed treated with, or any product containing, prohibited substances, the affected 3 acres will be eligible for organic certification on May 16, 2021. Attached to this formal Administrator's Decision denying Miller's appeal is a Request for Hearing form. Miller has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Miller waives the hearing, the Agricultural Marketing Service will direct QCS to issue a Notice of Suspension for a Portion of Miller's Operation, specifically the identified 3 acres in Fields S-1 and S-2 of the Home Farm parcel.

Done at Washington, D.C., on this 29th
day of October, 2018.


Bruce Summers
Administrator
Agricultural Marketing Service