

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
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)  
John L. Stoltzfus, ) **Administrator’s Decision**  
dba Riverside Farms )  
) **APL-048-22**  
Herndon, Kentucky )  
)  
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This Decision responds to an Appeal (APL-048-22) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to John L. Stoltzfus, dba Riverside Farms (Stoltzfus-Riverside) of Herndon, Kentucky by the Kentucky Department of Agriculture (KDA), a USDA accredited certifying agent. 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 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

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

<sup>2</sup> 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 4, 2015, Stoltzfus-Riverside was certified by KDA for crops and livestock, specifically poultry.
2. On September 1, 2021, after mediating a prior proposed suspension, KDA entered into a Settlement Agreement with Stoltzfus-Riverside whereby Stoltzfus-Riverside agreed to immediately submit the renewal fee; submit complete and accurate renewal materials by March 1<sup>st</sup> of each year along with fees; maintain complete records on crop and livestock inputs and seed used on the operation; maintain field activity records including seeding/planting dates, harvest information and other relevant information; and submit a compliant plan for conducting seed searches.
3. On October 12, 2021, after an inspection on July 7, 2021, KDA issued a Notice of Noncompliance citing to a failure to conduct a seed search for buckwheat; severe erosion in numerous areas and lack of crop rotation; an incomplete field activity log which was missing dates for certain activities; failure to update its maps and input list; and the failure to submit a statement regarding the animal bedding.
4. On January 5, 2022, KDA issued a Notice of Proposed Suspension after the operation failed to resolve the October 12, 2021 Notice of Noncompliance, despite being given three extensions in which to do so.
5. On January 31, 2022, KDA updated the terms of their prior Settlement Agreement with Stoltzfus-Riverside to require that the renewal materials, updated Organic System Plan (OSP), and fees be submitted by the set deadline, specifically in 2022 and 2023.

6. On March 28, 2022, after accepting Stoltzfus-Riverside's request for mediation regarding the January 5, 2022 Notice of Proposed Suspension, KDA and Stoltzfus-Riverside entered into another Settlement Agreement whereby Stoltzfus-Riverside agreed to submit a compliant plan for conducting seed searches; reseed specific areas of erosion; and maintain planting and field activity records including seeding/planting dates, harvest information and other relevant activities. These same terms were in the September 1, 2021 Settlement Agreement with KDA.
7. On March 28, 2022, KDA issued a Notice of Proposed Suspension citing to a breach of their September 2021 Settlement Agreement with Stoltzfus-Riverside. KDA cited to the operation's failure to submit the 2022 certification renewal documents by the agreed upon deadline.
8. On April 27, 2022, Stoltzfus-Riverside filed an Appeal to the March 28, 2022 Notice of Proposed Suspension.
9. On May 12, 2022, NOP and Stoltzfus-Riverside entered into a Settlement Agreement whereby Stoltzfus-Riverside agree to respond to KDA requests by the stated deadline, including documentation on crop and livestock inputs, and seed and seed search documentation; and submit its 2023 renewal documents and updated OSP and fees by the deadline.
10. On September 27, 2022, KDA issued a Notice of Noncompliance after noncompliances were found at the September 6, 2022 inspection. KDA stated that information on a seed coating wasn't available; the farm manager wasn't present for the inspection and Mr. Stoltzfus refused to sign the Exit Interview; and KDA was denied access to the chicken house.

11. On September 29, 2022, KDA issued a Notice of Proposed Suspension citing to noncompliances found at the inspection and also stating that Stoltzfus-Riverside had breached the March 28, 2022 Settlement Agreement with KDA. Specifically, KDA cited to a lack of seed search documentation and no reason being provided for choosing specific varieties, as well as a lack of seed tags and invoices. KDA also found the input application records, input list, and field history records were incomplete; and there were no records on cleaning a rented transplanter.
12. On November 9, 2022, Stoltzfus-Riverside filed an Appeal to the September 29, 2022 Notice of Proposed Suspension, after being granted an extension to do so.
13. On November 17, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action, after finding that KDA's contentions in their September 29, 2022 Notice of Proposed Suspension would also constitute a breach of the May 12, 2022 NOP-Stoltzfus-Riverside Settlement Agreement.
14. On January 10, 2023, based on a full review of the file, NOP withdrew the November 17, 2022 notice and accepted the November 9, 2022 Appeal.

### **REGULATORY CITATIONS**

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that, "(a) 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 "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s)). (b) Such records must: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and

transactions of the certified operation in sufficient detail as to be readily understood and audited; ... (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part ...”

The regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable; (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented; (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations...”

The organic regulations at §205.203, Soil fertility and crop nutrient management practice standard, state that, “(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion. (b) The producer must manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials. (c) The producer must manage

plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients ... (d) A producer may manage crop nutrients and soil fertility to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients ...”

The organic regulations at §205.204, Seeds and planting stock practice standard, state that, “(1) 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 ... (2) Nonorganically produced seeds and planting stock that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available ...”

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 in this part;
- (b) Establish, implement, and update annually an organic production or handling system plan ...
- (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent ...
- (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow ... access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part ...
- (e) Submit the applicable fees charged by the certifying agent; ... ”

The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees and submit

the following information, as applicable to the certifying agent: (1) An updated organic production or handling system plan ... (2) Any additions to or deletions from the information ... (3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

## DISCUSSION

Stoltzfus-Riverside became certified for (various) crops and livestock, specifically poultry, on August 4, 2015. The operation is primarily an egg production facility with approximately (b) (4) hens housed in one building. All (b) (4) acres of the farm are certified organic, with only a small portion being used to grow field vegetables and a portion being pasture and hay for non-organic animals. The operation has a contract with (b) (4) to manage poultry/chickens owned by (b) (4) and produce and then provide the resultant organic pasture-raised eggs to (b) (4) for subsequent sale. (b) (4) was certified organic by (b) (4). Due to the contractual relationship, (b) (4) Regional Manager assists Stoltzfus-Riverside in the administrative portions of its organic certification and is an authorized representative for Stoltzfus-Riverside.

Evidence substantiates that Stoltzfus-Riverside has experienced problems coming into, and remaining in, compliance with the organic regulations. These repetitive noncompliances include the failure to submit its annual certification renewal documents, updated OSP, and certification fees by the set deadline; and the failure to maintain a compliant seed search process and adequate seed search documentation, as well as seed invoices and tags. Further, Stoltzfus-

Riverside has failed to maintain complete records on crop and livestock inputs, input application records, and planting and field activity records including planting/seeding and harvest dates.

These noncompliances have resulted in KDA issuing adverse action notices to Stoltzfus-Riverside, and the parties entering into Settlement Agreements on September 1, 2021 and March 28, 2022 in an effort to give Stoltzfus-Riverside the opportunity to come into, and remain in, compliance. Further, a Notice of Proposed Suspension issued on March 28, 2022, was appealed by Stoltzfus-Riverside and resulted in a Settlement Agreement between NOP and Stoltzfus-Riverside on May 12, 2022.

Pursuant to its March 28, 2022 Settlement Agreement with KDA, Stoltzfus-Riverside agreed to submit a compliant plan for conducting seed searches; reseed specific areas of erosion; and maintain planting and field activity records including seeding/planting dates, harvest information and other relevant activities. Pursuant to the May 12, 2022 Settlement Agreement with NOP, Stoltzfus-Riverside agreed to respond to KDA requests by the stated deadline, including documentation on crop and livestock inputs, and seed and seed search documentation; and submit its 2023 renewal documents and updated OSP and fees by the deadline.

However, at the September 6, 2022 inspection, KDA noted the same noncompliances cited in prior adverse actions, and the subject of the settlements. KDA also found additional noncompliances including that the fields weren't properly marked on maps, farm production information wasn't recorded, and there was no documentation on buffer crops or the cleaning of a rented transplanter. While the inspector was able to conduct a successful mass balance exercise, he noted improvement was needed, as there were not Bills of Lading for all harvest trucks, no seed procurement documents, no lot numbers noted, and most information was gathered on the day of the inspection from memory, rather than being maintained



contemporaneously as activities occurred. The Inspection Report also notes that there were no written manure application documents, and the operation needed a soil test to verify the need for micronutrients. Further, the inspector stated that the livestock feed audit failed; and the operation lacked records and information in such areas as animal health protocols. Lastly, (b) (4) representative wasn't available at the inspection, and Mr. Stoltzfus denied the inspector access to the 'layer house,' stating that the previous inspector scared the flock resulting in (b) (4) chickens dying, and Mr. Stoltzfus refused to sign the Exit Interview.

Citing to the findings at the inspection and a breach of its Settlement Agreement of March 28, 2022 with Stoltzfus-Riverside, KDA issued a Notice of Proposed Suspension on September 29, 2022. Specifically, KDA cited to a lack of seed search documentation on butternut squash and no reason being provided for choosing specific varieties, as well as a lack of seed tags and invoices. KDA also stated that the input application records, input list, and field history records were incomplete; and there were no records on cleaning a rented transplanter.

NOP had entered into a Settlement Agreement with Stoltzfus-Riverside on May 12, 2022, and the terms also required the submission of documentation on crop and livestock inputs, as well as seed and seed search documentation. As such, NOP determined that KDA's findings could also constitute a possible breach of the NOP Settlement Agreement. Therefore, NOP issued a Notice of Noncompliance and Request for Corrective Action to the operation on November 17, 2022, requiring Stoltzfus-Riverside to submit the missing documentation. After a full review of the file, NOP subsequently withdrew its notice and accepted Stoltzfus-Riverside's Appeal of the September 29, 2022 Notice of Proposed Suspension.

(b) (4) stated in the Appeal that it filed on behalf of Stoltzfus-Riverside that farmers often "struggle with the administrative recordkeeping requirements" and the organic integrity of

Stoltzfus-Riverside's operation wasn't affected by the recordkeeping noncompliances. However, the failure to maintain records on the application of inputs, soil tests to document the need for soil supplements, records on animal feed and animal health protocols, seed search documentation and seed invoices and tags, and cleaning records for rented equipment, can potentially affect the organic integrity of the operation. These records and other types of records document the activities of the operation and act to verify that the organic regulations are being followed. Without the required and needed records, and diligent recordkeeping by the operation, the certifier can't determine the regulations were followed and hence, can't verify the organic integrity of the operation and its products.

Addressing these recordkeeping noncompliances, Stoltzfus-Riverside submitted with its Appeal a Response to the Exit Interview. Stoltzfus-Riverside stated it had contacted the supplier of the butternut squash seed to obtain a seed tag; and had already submitted on September 8, 2022, two days after the inspection, the water quality test, the soil analysis, and the invoice and Livestock Bedding Verification for the wood shavings used as bedding. Stoltzfus-Riverside stated that it addressed the inspector's concerns, and most of the OSP and field history updates were made in April 2022 when the annual renewal application was submitted, and then were submitted again on September 8, 2022. The operation also referenced the Manure Application Log, and the Cleaning Records for the rented transplanter as being submitted. Stoltzfus-Riverside stated that after submitting the required documents to KDA on September 8, 2022, it sent a follow-up email on September 13, 2022, asking if any further documentation was needed. KDA responded on September 15, 2022, that they would review the materials. However, subsequently on September 29, 2022, KDA issued the Notice of Proposed Suspension. Stoltzfus-Riverside submitted the September 2022 email exchanges with KDA, as well as the

invoice and Livestock Bedding Verification forms cited above; a water analysis of April 29, 2021; two manure analysis reports of October 15, 2021, and manure application logs; and numerous soil analysis report for soil from various areas of the farm, all dated October 15, 2021. Stoltzfus-Riverside also submitted a field map, field history, and field activity log; as well as an inputs list, equipment cleaning log, and seed search information and the invoice and packet for the butternut squash, showing the USDA organic seal. Additional documentation was later submitted to NOP addressing the red clover seed, which is OMRI listed, and other concerns noted by KDA in the Inspection Report and/or Exit Interview.

NOP asked KDA about the documentation submitted by Stoltzfus-Riverside as support for the Appeal. KDA stated that the crop management plan was insufficient, as a crop rotation plan, and the field activity log only has details for the chicken pasture and doesn't include all production areas. The input list only has one variety of non-organic seed, for which the coating is allowed but the seed itself isn't certified; and seed sources identified by the operation don't, or rarely, offer organic seed. KDA noted that while the 2021 manure logs were submitted, there wasn't a question regarding 2021. KDA stated it needs the 2022 documentation, which the inspector noted Mr. Stoltzfus was filling in at the inspection, putting its accuracy into question. KDA also stated that Stoltzfus-Riverside applied a significant amount of manure to various parts of the operation, but while the OSP states the manure is 'on-farm,' KDA contends there isn't enough livestock 'on-farm' to generate such a high amount of manure. KDA stated that the equipment cleaning log doesn't show any cleaning performed around the dates the rented transplanter equipment was used according to the May 2022 activity calendar. KDA concluded that the documentation submitted by Stoltzfus-Riverside doesn't adequately resolve any of the

cited noncompliances. KDA acknowledged that the 2023 renewal application was submitted by the March 1, 2023 deadline.

Two days prior to issuing the Notice of Proposed Suspension, KDA had issued a Notice of Noncompliance on September 27, 2022, also based on findings at the inspection. KDA stated that it was unable to successfully conduct mass balance and traceback exercises; information on a seed coating wasn't available; the farm manager wasn't present for the inspection; and Mr. Stoltzfus refused to sign the Exit Interview and denied the inspector access to the chicken house. Stoltzfus-Riverside also addressed these allegations in its Appeal and subsequent submissions, submitting seed documents, as noted above. Addressing KDA's statement that the (b) (4) representative was not at the inspection, though she had been notified of the inspection date, Stoltzfus-Riverside stated in a Corrective Action Statement that she was unavailable due to an unannounced FDA audit and hopes that a re-inspection is possible. It was also acknowledged that Mr. Stoltzfus refused to sign the Exit Interview form, stating he didn't feel the statements made thereon were correct nor reflected how the operation is [run]. The (b) (4) representative stated that as she wasn't at the inspection, she couldn't address the allegation of denial of access to the chicken house.

(b) (4) also stated that if the certification of Stoltzfus-Riverside is suspended, it would detrimentally affect the business of (b) (4) due to the contract between the parties. However, NOP determines whether an operation has violated the organic regulations based on the actions or inactions of the certified operation itself and can't consider contractual relationships which the certified operation may have with another entity. Each entity is responsible for its own actions. Lastly, it is noted that Stoltzfus-Riverside stated that it had applied to USDA accredited certifier Pennsylvania Certified Organic (PCO) in July 2022, but had agreed to delay the inspection until

2023, as it had already paid the fees to KDA. NOP contacted PCO on April 7, 2023 and was informed that PCO hasn't yet scheduled an inspection. PCO stated that it is waiting for the noncompliances cited by KDA to be resolved and the operation to "have a clean slate and (be) in good standing." Therefore, the operation remains certified by KDA.

## CONCLUSION

Evidence substantiates that Stoltzfus-Riverside violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.203, Soil fertility and crop nutrient management practice standard; 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. §205.406, Continuation of certification. Stoltzfus-Riverside failed to complete various sections of its OSP and maintain required records including records on inputs and the application thereof, soil tests to document the need for soil nutrient supplements, records on animal feed and animal health protocols, and cleaning records for rented equipment. Stoltzfus-Riverside also repeatedly failed to maintain planting and field activity records including planting/seeding and harvest dates; and seed search documentation and seed invoices and tags. Additionally, the operation has failed to submit its certification renewal documents with an updated OSP and certification fees by set deadlines on more than one occasion, though the recent renewal documentation was submitted by the deadline.

Certifier KDA entered into two Settlement Agreements with Stoltzfus-Riverside to give the operation the opportunity to come into, and remain in, compliance. However, the same noncompliances, identified in prior adverse actions, and covered in terms of the agreements,

have been found on numerous occasions and were found again by KDA during the September 2022 inspection. Therefore, even though Stoltzfus-Riverside submitted a large amount of documentation to support its Appeal, the operation has failed to maintain and make available the required records, and in some cases failed to record activities contemporaneously with their occurrence. Due to this history of noncompliances, Stoltzfus-Riverside may not remain certified at this time.

### DECISION

The November 9, 2022 Appeal of Stoltzfus-Riverside of the September 29, 2022 Notice of Proposed Suspension is denied. Stoltzfus-Riverside's crop and livestock certification is suspended. However, pursuant to 7 C.F.R. §205.662(f), Stoltzfus-Riverside may apply for reinstatement of its certification at any time and with any certifying agent, though the reinstatement request must be accompanied by evidence demonstrating that each noncompliance cited by KDA is resolved and that the operation is capable of remaining in compliance.

Additionally, attached to this formal Administrator's Decision denying Stoltzfus-Riverside's Appeal is a Request for Hearing form. Should it wish to further appeal this decision, Stoltzfus-Riverside has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 8<sup>th</sup> day of \_\_\_\_\_, 2023.

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Date: 2023.05.08 21:10:34 -04'00'

Bruce Summers  
Administrator  
Agricultural Marketing Service

