

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:	)	
Sol J. Stoltzfus, Jr.	)	<b>Administrator's Decision</b>
Certification #: 2215	)	<b>APL-002-17</b>
Parkensburg, PA 19365	)	
	)	

This Decision responds to an appeal (APL-002-17) of a Notice of Proposed Suspension of National Organic Program certification issued to Sol J. Stoltzfus, Jr., of Parkensburg, Pennsylvania by Ohio Ecological Food and Farm Association (OEFFA). 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 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

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

<sup>2</sup> 7 C.F.R. Part 205

## FINDINGS OF FACT

1. OEFFA is an accredited certifying agent under the USDA organic regulations. Sol J. Stoltzfus, Jr., of Parkesburg, Pennsylvania, is certified under USDA organic regulations for crops and livestock.
2. On May 8, 2014, OEFFA issued Sol J. Stoltzfus, Jr., a Notice of Noncompliance regarding commingling (storage areas not identified/labeled) and recordkeeping issues (adequate organic seed search, equipment clean-out records, documentation that livestock bedding was not treated) found on an annual inspection performed on April 4, 2014. On May 20, 2014, OEFFA notified Sol J. Stoltzfus, Jr., that the noncompliances were resolved pending verification that the corrective practices were implemented at the next inspection.
3. On June 2, 2014, following an inspection of additional land to be included in the producer's organic system plan, OEFFA issued an additional noncompliance to Sol J. Stoltzfus, Jr., for failure to comply with crop rotation practice standards on that land.
4. On July 22, 2014, OEFFA issued Sol J. Stoltzfus, Jr. a revised organic certificate that covered the operation inspected on May 8, and the new land that was inspected on June 2. The one noncompliance identified on June 2, was listed as resolved, pending inspector verification that crop rotation practices were implemented at the next inspection.
5. On October 23, 2015, following the annual inspection performed on July 18, 2015, and August 30, 2015, OEFFA issued a Notice of Proposed Suspension to Sol J. Stoltzfus, Jr. The inspector reported that the recordkeeping noncompliance identified on May 8, 2014 was not adequately addressed. The inspector also identified two new noncompliances regarding an inadequate search for organic seeds and use of a livestock supplement

containing prohibited substances. OEFFA issued a Proposed Settlement Agreement to Sol J. Stoltzfus, Jr., to mediate the issues.

6. On November 19, 2015, Sol J. Stoltzfus, Jr., returned the signed settlement agreement and the items requested in it. The terms of the settlement agreement required that Sol J. Stoltzfus, Jr., provide a detailed plan to maintain and improve the following records: equipment cleaning, organic seed search, inputs, seed status, outdoor access/confinement of livestock. OEFFA provided template forms for the operation to use to maintain the required records.
7. On November 25, 2015 OEFFA issued a Notice of Noncompliance to Sol J. Stoltzfus, Jr., for the use of a livestock feed ingredient that contained a prohibited substance.
8. On December 17, 2015 OEFFA issued a letter to Sol J. Stoltzfus, Jr., describing the status of all noncompliances. OEFFA stated that these were either resolved or resolution pending inspector verification of corrective actions and that terms of the settlement agreement were implemented.
9. On September 21, 2016, following an annual inspection performed on August 16, 2016, OEFFA issued Sol J. Stoltzfus Jr., a Notice of Termination of Mediation and notified him of the right to file an appeal. OEFFA cited findings in the inspection report which indicated that the operation had not complied with the settlement agreement terms. Most notably, the operation did not have certain records (e.g., equipment cleaning, missing seed tags, seed status) available during the inspection. On September 21, 2016, OEFFA also issued a separate Notice of Noncompliance citing eight new noncompliances: crop rotation, livestock living conditions, livestock feed (2), recordkeeping (2), livestock health care, and requirements for what portion of an operation has to be certified.

10. On October 14, 2016, AMS received an appeal from Sol J. Stoltzfus, Jr.

### **DISCUSSION**

On October 23, 2015, OEFFA proposed a suspension of Sol J. Stoltzfus, Jr.'s organic certification for a period of 30 days. The effect of suspension would prohibit all sale, labeling or representation of its products as organic.

Between May 2014 and October 2016, Sol J. Stoltzfus, Jr., received five Notices of Noncompliance and one Notice of Proposed Suspension for failing to maintain full compliance with the USDA organic regulations. The record indicates that Mr. Stoltzfus has been cited repeatedly for the same noncompliances related to recordkeeping. Documents also show clear written communication to Mr. Stoltzfus about the noncompliances identified, and what corrective actions he needed to take. The certifier made it clear that any corrective actions would need to be verifiable during the next annual inspection. Finally, the certifier attempted to work with the Mr. Stoltzfus via mediation. As part of the October 2015 settlement agreement signed by OEFFA and the producer, OEFFA provided the producer with guidance and sample recordkeeping templates that could be used to comply with the recordkeeping requirement. However, despite multiple opportunities and resources to correct these noncompliances, Mr. Stoltzfus has not succeeded. Annual inspections also repeatedly found noncompliances in various new areas as well.

In a very brief appeal letter, Mr. Stoltzfus states the proposed suspension due to the absence of records is not warranted because "we had two different calendars marked for clean out documentation and the inspector missed the clean out documentation." The producer also stated that he does, in fact, have receipts for sudan grass, wheat, corn, alfalfa, alfamate mix, and crimson clover which state that the seeds are not GMO and are untreated. Other noncompliances

were not addressed. No further justification was provided for the repeated noncompliance issues, or additional reasoning given for why the proposed suspension is unjustified.

### **CONCLUSION**

The operation of Sol J. Stoltzfus, Jr., has shown systemic and repeated noncompliance with the USDA organic regulations regarding recordkeeping practices. The USDA organic regulations require that producers maintain clear and thorough records concerning the production, harvesting, and handling of agricultural products. Records must be adequate to demonstrate compliance with the organic standards, and must be available during inspection. (§205.103). Under the National Organic Program, an operation's records are an essential component for verifying its compliance with the USDA organic regulations. In addition to repeated issues with recordkeeping, which are the basis for this decision, four consecutive inspections since 2014 have identified various other noncompliances related to crop rotation, prohibited substances, seeds and planting stock, and livestock production practices. Despite Mr. Stoltzfus consistently responding to certifier notices, as he did by submitting a timely appeal, the evidence shows that it is unlikely that another opportunity to implement corrective actions would bring the operation into compliance. The operation shows a clear pattern of noncompliance and inability to fulfill a settlement agreement to resolve this case.

### **DECISION**

The appeal is denied and OEFFA's Notice of Proposed Suspension is upheld. Sol J. Stoltzfus, Jr., is to be suspended.

Attached to this formal Administrator's Decision denying Sol J. Stoltzfus, Jr.'s appeal is a Request for Hearing form. Sol J. Stoltzfus, Jr., has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Sol J. Stoltzfus, Jr., waives the hearing, the Agricultural Marketing Service will direct OEFFA to issue a Notice of Suspension. The suspension will be effective for 30 days from the date of the hearing waiver. After the 30-day suspension period, the operation may, "...submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part."

Done at Washington, D.C., on this 8<sup>th</sup>  
day of June, 2017.



Bruce Summers  
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Acting Administrator  
Agricultural Marketing Service