



United States
Department of
Agriculture

Agricultural
Marketing
Service

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**National Organic Program
Appeal Decisions
October 2002 – January 2006**

The following items describe those appeals filed under the National Organic Program (NOP) for which the Administrator of the Agricultural Marketing Service has issued a ruling. This includes 6 decisions denying the appeals and 1 decision sustaining the appeal. All appeals cited below involve certification issues and there have been no appeal rulings regarding accreditation at this time. Please note that this does not account for all appeals which have been filed, there is no ruling on merits of appeals which are dismissed or closed.

1. **SUMMARY:** A proposed suspension of certification was issued to a dairy operation for outstanding fees and failure to submit an updated farm plan. The operation appealed, arguing that it should not have to fulfill these requirements as it was in the process of obtaining certification through another agent.

RULING: The appeal was denied. The decision clarified that an operator remains obligated to a certifying agent until that certificate is surrendered regardless of whether certification through a second certifying agent is obtained. In failing to surrender its certificate, this operation was required to remit any fees past due and submit an updated farm plan.

ADDENDUM: This case did not proceed to litigation phase as the agent and appellant reached a settlement agreement which was approved by the NOP. The agent consented to lift the proposed suspension if the appellant: 1) surrendered the certificate; 2) verified that no product was sold bearing the agent's seal after a certain date; and 3) confirmed the effective date of certification issued by the other agent.. As the appellant's response was satisfactory to demonstrate that the fees paid covered the time period during which the certification was utilized, the agent lifted the suspension and waived all fees.

2. **SUMMARY:** A crop operation was denied certification for the use of treated seed in 2002, approximately 2 years prior to the application for certification. The seeds were treated with a fungicide containing prohibited substances. The operation filed an appeal, requesting an exception to allow the crop harvested in 2004 to be certified organic. The appellant cited mitigating factors including: 1) receiving erroneous information from the certifying agent in 2002 as to whether the use of treated seed would present a problem for future organic certification; 2) ordering and planting the seed prior to the enactment of NOP regulations when the use of treated seed was not a prohibited material according to the certifying

agent's standards; and 3) the minimal quantity and quick breakdown of the seed treatment product.

RULING: The appeal was denied and the crop harvested in 2004 was not permitted to be sold, labeled or marketed as organic. Seed treated with a prohibited substance is regulated as a prohibited under the NOP. Therefore, an organic crop may not be harvested from the affected land area for a period of three years preceding the date on which treated seeds were planted. In addition, misinformation from a certifying agent does not justify exemption from compliance with the NOP regulations.

3. **SUMMARY:** A dairy operation received a proposed revocation for the use of a synthetic hormone among certified livestock and deficient herd health records which prevented a determination of the extent of administration. The violation was alleged to be willful as an inspector found the hormone on the premises after the operator stated that the material had been destroyed. Additional information obtained during the appeal review indicated that other prohibited materials had been used among the certified herd. The operator's appeal affirmed the inspector's finding, pledged to spend more time reading the regulations, increase the transparency of the operation and not mislead inspectors regarding any practices of the operation.

RULING: The appeal was denied in support of the agent's proposed revocation and finding of willful violation. The operation was found in violation of §205.238(1) by representing as organic, animals and edible products derived from animals, that were treated with synthetic substances which do not fall under the National List of Allowed and Prohibited Substances – Synthetic Substances Allowed for Use in Organic Livestock Production; and §205.103(b)(2) in failing to fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited. As herd health records were inadequate to trace the administration of these treatments to individual cattle, the entire herd and milk produced by these animals was determined to be noncompliant with NOP regulations. Offering, post-hoc, to reform livestock management practices did not justify leniency in weighing penalties for violations committed with the knowledge that the activity is forbidden.

4. **SUMMARY:** A crop operation received a proposed suspension for the use of corn seed that was treated with prohibited substances. The operator documented an unsuccessful search for organic or untreated products and readily admitted to planting the treated seed. He claimed that at the time the seed order was placed, his certifying agent permitted the use of treated seed when organic or untreated seed was unavailable. The appeal pleaded that the corn crop produced from the treated seed be certified organic and the land, to which the seed was applied, not be suspended.

RULING: The appeal was denied. Although the certifying agent's organic standards were previously inconsistent with the NOP regarding use of treated seed, an accurate version was issued and available before the corn crop was planted. Lack of knowledge of the regulatory requirements does not justify an exemption from compliance. Furthermore, when a discrepancy exists NOP regulations preempt any issuances by a certifying agent which are represented as organic standards.

5. **SUMMARY:** A crop operation received a proposed suspension for the application of a prohibited substance. The appellant participated in a voluntary county sponsored pest treatment program in which one of 2 treatment products was approved for use in certified organic systems. After the application, pesticide use reports and samples indicated that the wrong treatment was mistakenly applied to the fruit trees. The appellant's counsel (1) argued that the Emergency Pest and Disease Treatment provisions (§205.672) are applicable to this case and his client should retain certification and be exempt from consequences that otherwise follow the application of a prohibited substance and (2) submitted lab results showing no detectable residue levels of the treatment product that was applied.

RULING: The appeal was denied. Whether or not the application of the pest treatment was deliberate or unintentional, the organic integrity of the crop was compromised and may not be represented as organic. Emergency Pest and Disease Treatment provisions, effected via mandatory applications, are irrelevant as the appellant's participation was voluntary. Even under such an exemption a noncompliant crop may not be sold, marketed or labeled as organic. Furthermore, the 3 year period during which land must be free of prohibited substances, restricts the application not the residual activity of the substance.

6. **SUMMARY:** A processor received a proposed suspension for the use of a prohibited defoamer in making cheese. The certifying agent determined that this violation was the result of a miscommunication and not a willful act. As an appeal, the appellant submitted a plan of corrective actions to prevent future incidents.

OUTCOME: Given the concerted effort exhibited by the appellant to come into full compliance, the agent was asked to review the appeal and determine whether they were satisfied that the corrective actions would be sufficient to maintain certification. The operator confirmed that the noncompliant products were not sold, labeled or marketed as organic and the Agency concurred with the certifying agent's decision that corrections were adequate. The appeal was dismissed after the agent rescinded the proposed suspension and no ruling was issued.

7. **SUMMARY:** A proposed suspension was issued to a crop operation because the producer was unavailable and/or did not allow an inspection. Based on a complaint concerning this certified operation the agent ordered an unannounced inspection. The inspector's 2 attempts to gain access to the property were unsuccessful. The appellant provided a detailed description of his whereabouts to suggest he was not on the premises at the times the inspector was present and was not willfully evading inspection. While these appeal proceedings were open, a scheduled inspection was completed and no compliance issues were reported.

RULING: The appeal was sustained. The decision affirmed that the ability of agents to conduct unannounced inspections is an important and necessary tool to ensure compliance. Due to conflicting testimonies of the operator and inspector, and that an inspection was subsequently conducted, there was no compelling cause to pursue a suspension. There was no comment on the merits of the inspection findings, and the operator was warned that this decision did not foreclose the potential of future disciplinary action for repeated noncompliance with the accessibility requirements of the regulations.