

Judge refuses to dismiss USDA organic lawsuit

Case centers on change in synthetic substance policy

By MATEUSZ PERKOWSKI
Capital Press

A federal judge has rejected the USDA's request to dismiss a lawsuit alleging the agency unlawfully changed how synthetic substances are evaluated for organic production.

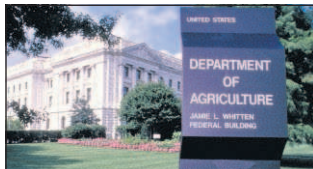
Last year, a group of 14 organic and environmental organizations filed the lawsuit against USDA, arguing the agency has effectively made it harder to remove synthetics from the list of substances approved for organic farming.

The USDA claimed the organizations lacked the legal standing to file the lawsuit, but U.S. District Judge Haywood Gilliam Jr. in San Francisco has disagreed with that argument and is allowing the litigation to proceed.

Gilliam ruled that it's plausible the plaintiffs will be harmed by the USDA's policy change, which they say has allowed more than 20 synthetic substances to continue being used in organic agriculture.

The dispute centers on USDA's decision in 2013 to change the five-year "sunset process" for synthetic substances approved for organic farming.

Previously, synthetics were automatically eliminated from the list unless two-thirds of the 15-member National Organic Standards Board



Courtesy USDA

The Jamie L. Whitten, Federal Building, U.S. Department of Agriculture in Washington, D.C. A federal judge has rejected the USDA's request to dismiss a lawsuit alleging the agency unlawfully changed how synthetic substances are evaluated for organic production.

agreed they should stay on it.

Under the new policy, such substances automatically remained on the list unless two-thirds of the NOSB voted to remove them. Effectively, a synthetic could stay on the list even if a majority of up to nine board members voted to remove it.

"This gets at the heart of decision-making at the National Organic Standards Board," said Will Fantle, co-founder of the Cornucopia Institute, a nonprofit organic industry watchdog.

Instead of allowing products to "sunset," as intended by law, the USDA basically keeps them in the "land of the midnight sun," Fantle said.

The plaintiffs say that consumers who pay more for organic food are harmed by the policy because they expect these crops to be produced with a minimal amount of synthetic substances.

Farmers are also hurt by the change because it undermines the integrity of the organic label, their complaint said.

Synthetic products were also intended to sunset to stimulate the creation of new organic replacements, said Fantle.

Beer companies were once allowed to brew with conventional hops, but the sunset of that input allowed for the growth of the organic hop industry, he said.

In 2015, the judge dismissed the plaintiffs' original lawsuit because they only claimed to suffer future injury from the policy and they didn't identify specific substances affected by the change.

In an amended complaint, the plaintiffs said that aqueous potassium silicate — a fungicide and insecticide — has remained on the list even though less than two-thirds of NOSB voted in favor of keeping it.

Under the previous policy, the chemical would have been eliminated from the list. The plaintiffs also identified 20 other synthetics that faced a similar situation.

"Specifics have been added to it," said Fantle.

Gilliam's latest ruling, which allows the revised lawsuit to proceed, is the second legal victory won by critics of USDA organic policies this year.

In June, U.S. District Judge Jacqueline Scott Corley, also of San Francisco, held that USDA unlawfully allowed plants treated with pesticides to be used in organic compost.

Both of these controversial USDA decisions were made under Miles McEvoy, administrator of the agency's National Organic Program, who has been criticized by some organic groups for bowing to corporate pressure.

A spokesman for USDA said the agency doesn't comment on litigation but said the revised sunset policy "would help protect organic farmers and consumers" and had "increased public engagement and transparency."

"USDA strongly supports organic agriculture, and is committed to establishing a level playing field that protects all organic farms and businesses," he said in an email.



Matthew Weaver/Capital Press

Taylor Keeton, program specialist, calculates the falling number for a wheat sample Aug. 9 in the Spokane Valley office of the Washington State Department of Agriculture. Crop insurance officials have denied a request to not discount production because of low falling numbers.

RMA denies wheat growers falling number assistance

WAWG weighs long-term solutions without short-term relief for farmers

By MATTHEW WEAVER
Capital Press

SPOKANE — The USDA Risk Management Agency has denied Northwest wheat farmers' request for help with low falling numbers.

Grain elevators use the Hagberg-Perten falling number test to measure starch damage due to sprouting. A low falling number indicates a high level of alpha amylase, an enzyme that degrades starch and diminishes the quality of wheat.

Wheat with a falling number below 300 typically is discounted. Rain and temperature fluctuations are the primary cause of the damage.

A low falling number will reduce a farmer's actual production history when signing up for crop insurance, even if no insurance claim has been filed for falling number, according to the Washington Association of Wheat Growers.

A farmer's production history is averaged over 10 years and used to determine future crop insurance guarantees.

If actual production is discounted to reflect a low falling

number, the 10-year average will drop and the amount of a crop eligible for insurance coverage will shrink.

The industry sent a letter seeking relief from RMA Administrator Brandon Willis, signed by 36 organizations, with follow-up letters from the Washington State Department of Agriculture, Idaho State Department of Agriculture and from six U.S. senators and six House members.

Roughly 25 to 30 percent of the wheat crop in Washington and Idaho is impacted, said Stacey Satterlee, executive director of the Idaho Grain Producers Association.

As of Sept. 13, 42 percent of soft white wheat samples had a falling number of 300 or lower, as did 43 percent of club wheat, 20 percent of hard red winter wheat and 10 percent of hard red wheat, according to WAWG.

In Idaho, the impact is primarily felt in Idaho, Nez Perce and Lewis counties, Satterlee said. Some Oregon farmers have been affected, but not to the extent of the other two states, said Oregon Wheat CEO Blake Rowe.

"It's very disappointing, obviously, that we couldn't help our farmers in this situation that they're in with record low prices," said Michelle Hennings, executive director of WAWG. "There's a part of

this procedure that's inconsistent throughout the states."

RMA told the farmers the falling number problem is similar to quality problems in commodities such as cotton and corn.

"One of the reasonings was, 'If I do this for you, I'll have to do it for everyone else,'" Hennings said.

"I'm not very optimistic that we're going to get any short-term relief," said Fairfield, Wash., farmer Marci Green, secretary-treasurer of WAWG.

Green said her farm hasn't had falling numbers as low as some, but she still doesn't know the extent of the cost.

"We don't know how much wheat we have that has falling number issue because it's in home storage," Green said.

Hennings said WAWG will review the policy with RMA regional director Ben Thiel.

It would take a year and a half to two years to change the policy, Hennings said.

"This is the time (farmers) need the assistance," she said.

The average break-even price for farmers is \$6.80 per bushel, Hennings said. If prices are around \$4 per bushel now, she said, some farmers with falling numbers could have \$2 per bushel wheat. Some new or beginning farmers are poised to go out of business as a result, she said.

Green said the industry needs to look at how crop insurance handles falling number issues in the long-term.

"What would maybe be more accurate would be having the adjustment to price, because when we're having crop insurance, we're guaranteeing a yield of this many bushels at this much of a price," she said. "When we deliver our crop to the elevator ... they don't say, 'We're going to take half of your bushels away.' They say, 'You still have the same number of bushels and we're going to lower the price we're going to pay you.'"

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