

The End of Organic (as we know it)
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Blue Fruit Farm

The fundamental concepts of organic farming have always been, “Feed the Soil, not the Plant,” and “Healthy Soil leads to Healthy Crops, Healthy Animals, Healthy People, and a Healthy Planet.” Now, those concepts have been turned on their head, with a recent Appeals Court ruling that you don’t even need soil for growing terrestrial crops, in order to be certified organic in the United States.

Will the 9th Circuit Court’s September 2022 ruling, which stated, “no part of the statute [Organic Foods Production Act] clearly precludes organic certification of crops grown hydroponically,” mean the end of organic farming, as we know it? Maybe. Maybe not.

If the ruling is allowed to stand, it will mean that crops grown using hydroponic methods can officially be certified as “organic,” as has been done by a handful of renegade certification agencies for a number of years. Consumers will continue to be deceived when they buy organic products, thinking that such products were grown in healthy soil, using methods that “foster cycling of resources, promote ecological balance, and conserve biodiversity,” as required by the legal definition of “*organic production*.”

It will also mean that authentic organic farmers, who produce crops in healthy soil, who protect and enhance the biological diversity of their operations, and who use green manures, cover crops, crop rotations and compost to recycle nutrients, will continue to compete with hydroponic operations that use inputs “approved for organic use,” but do not comply with the soil building, crop rotation, and ecological requirements of the Organic Foods Production Act (OFPA) and the National Organic Regulations (7 CFR 205).

The Court’s ruling directly contradicts a stated purpose of the OFPA, which is “to assure consumers that organically produced products meet a consistent standard.” Consumers who purchase “organic” blueberries, blackberries, raspberries, tomatoes, peppers, cucumbers and leafy greens will have no way of knowing if those products were produced by operations that comply with all requirements of OFPA and 7 CFR 205, or if those products were produced by hydroponic operations that only use “approved inputs” in their nutrient solutions.

In its ruling, the Court stated, “the statute imposes three requirements for organic crops—a restriction on synthetic chemicals, 7 U.S.C. § 6504(1); a prohibition on growing organic crops “on land to which any prohibited substances . . . have been applied,” *id.* § 6504(2); and a requirement that organic products “be produced and handled in compliance with an organic plan,” *id.* § 6504(3).”

The OFPA requirements for an organic crop production plan, at 6513(b)(1), state, “An organic plan shall contain provisions designed to foster soil fertility, primarily through the management

of the organic content of the soil through proper tillage, crop rotation, and manuring.”
(emphasis added.)

The Court stated, “USDA’s decision [to allow “organic” hydroponic] interpreted that provision to mean that *if* crops are grown in soil, their producers must take measures to preserve that soil’s “fertility” and “organic content.” (emphasis not added.)

That interpretation is not supported by the OFPA, which contains no language that allows for organic crop production plans which do not address soil fertility. The word “if” is not used in the plain language of section 6513(b), which establishes the requirements for organic crop production plans.

In addition, the Court failed to address the fact that USDA has issued no rules or regulations to guide the organic certification of hydroponic operations. In fact, there is no language in the OFPA or 7 CFR 205 that supports organic certification of hydroponic systems.

The Court went further, stating that the USDA’s “interpretation is consistent with the OFPA, which provides that “[i]f a production or handling practice is not prohibited or otherwise restricted under this chapter, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program.” 7 U.S.C. § 6512.”

That interpretation is extremely dangerous, and could open the door to all sorts of technologies, systems, and practices, such as genetic engineering and food irradiation, which are not explicitly prohibited by the OFPA, from being approved for organic use, if the regulatory prohibition on such practices is challenged in court.

There is a silver lining on this issue, however – the National Organic Standards Board (NOSB), which is charged by the OFPA with providing advice to USDA regarding implementation of the organic law and with making “consistency” determinations, clearly stated, in April 2010, by a decisive 12-1 vote, that, “Hydroponics, the production of plants in nutrient rich solutions or moist inert material, or aeroponics, a variation in which plant roots are suspended in air and continually misted with nutrient solution, have their place in production agriculture, but certainly cannot be classified as certified organic growing methods due to their exclusion of the soil-plant ecology intrinsic to organic farming systems and USDA/NOP regulations governing them.”

This is a clear indication that USDA’s statutory advisory board has ruled that hydroponic production is not consistent with organic certification. This important fact was ignored by the Court.

Likewise, the Court failed to mention that the NOSB, in establishing the “Principles of Organic Production and Handling” by a 15-0 vote in October 2001, stated, “Organic agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles, and soil biological activity.” The “Principles” go on to state, at point 1.2, “An organic production system is designed to optimize soil biological activity.”

The Court ignored the General requirement section of 7 CFR 205.200, which states, “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 comply with the applicable provisions of this subpart. Production practices implemented in accordance with this subpart must maintain or improve the natural resources of the operation, including soil and water quality.”

7 CFR 205.2 defines the “*Natural resources of the operation*” as “the physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.” Hydroponic operations do not comply with this provision, since the crops are produced in isolation from soil and natural resources.

The Court even ignored the definition of “*organic production*” at 7 CFR 205.2, which requires that organic production systems integrate “cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.”

There is no way that hydroponic operations comply with the soil fertility requirements of the OFPA 6513(b)(1); the natural resource requirements of 7 CFR 205.200; the definition of “organic production” in 7 CFR Part 205.2; or are consistent with organic certification, as ruled by the NOSB.

To protect organic farming, as we know it, what can be done? There are a number of viable options:

1. Partial Appeal – Parties who filed the original suit can challenge the substantive portions of the Court’s ruling, due to the omissions, misinterpretations, and misrepresentations it contains.
2. New Suit – A new lawsuit, based on the USDA’s failure to enforce the law and rule as written, could be filed by certified organic growers who follow all requirements, yet are forced to compete with hydroponic operations that only have to comply with “approved input” rules.
3. New Suit - A new lawsuit could be filed by consumers, based on the USDA’s failure to enforce the law and rule as written, and for its failure to follow the second purpose of the OFPA “to assure consumers that organically produced products meet a consistent standard.”
4. Economic Pressure – Expose the corporations, including Driscoll’s, Wholesum Harvest, Eden Green, Superior Fresh and others, which sell hydroponic products as “organic.”

5. International Pressure – No other countries, including our major trading partners, allow hydroponic products to be labeled “organic” and most explicitly prohibit it. Pressure can be brought to bear to exclude hydroponic products, ingredients, and formulated products, certified as “organic” under the USDA, from accessing foreign markets, and reciprocity agreements can be amended.
6. Support local and regional organic producers – Buy from local and regional organic growers who follow all OFPA and regulatory requirements. Plant organic gardens and orchards.
7. Support the Real Organic Project and Rodale’s Regenerative Organic Certification, both of which highlight operations that fully comply with all requirements of OFPA and 7 CFR 205, including those which require soil building, crop rotation, protection of biodiversity, and natural resource management.
8. Amend the Law – As a Big Plan B, amend the OFPA to make it clear that hydroponics, genetic engineering and food irradiation are not allowed in organic. Period.

While the USDA would like us to believe that this is a “settled issue,” it will not be settled until the USDA enforces the soil fertility provisions of 6513(b)(1) and uses its accreditation program to stop certification of hydroponic operations as “organic.”

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