

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	
	)	
Real McCoy Teas LLC	)	
Dbra Kombucha Town	)	
	)	<b>Administrator's Decision</b>
	)	<b>APL-068-24</b>
Bellingham, Washington	)	
	)	

This Decision responds to an Appeal (APL-068-24) of a Notice of Proposed Suspension of Certification under the National Organic Program (NOP) issued to Real McCoy Teas LLC, dba Kombucha Town (McCoy) of Bellingham, Washington by USDA accredited certifier SCS Global Services (SCS). 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. The NOP may also initiate compliance actions against operations and certifying agents to enforce program requirements.

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

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

Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent or the NOP 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.

### **FINDINGS OF FACT**

1. On October 13, 2020, SCS certified McCoy for handling.
2. On January 17, 2024, SCS issued a Notice of Noncompliance after McCoy failed to pay its overdue certification fees, despite a reminder.
3. On February 8, 2024, SCS issued a 2<sup>nd</sup> Notice of Noncompliance for McCoy's failure to pay the overdue fees.
4. On February 20, 2024, SCS issued a Notice of Proposed Suspension after McCoy's continued failure to pay the overdue fees.
5. On February 20, 2024, McCoy requested mediation, which was granted March 19, 2024.
6. On May 20, 2024, McCoy signed a Settlement Agreement with SCS, whereby McCoy agreed to pay overdue fees of \$4,360.00 within 30 days and pay all future invoiced fees by set deadlines. The agreement was subsequently revised to provide 2 additional weeks for McCoy to make the payment; the new due date was June 13, 2024.
7. On June 17, 2024, McCoy paid SCS the original overdue amount of \$4,360.00. SCS simultaneously issued a Notice of Proposed Suspension for breaching the prior Settlement Agreement, citing to the delayed payment and additional unpaid invoices.
8. On June 28, 2024, McCoy filed an Appeal.
9. On August 13, 2024, SCS issued a Notice of Noncompliance for additional overdue fees invoiced March 1, 2024, as well as mediation fees invoiced June 3, 2024.

10. On November 8, 2024, NOP and McCoy entered into a Settlement Agreement whereby McCoy agreed to pay all future fees by the set deadlines.
11. On February 13, 2025, SCS reported to NOP that McCoy was in breach of the Settlement Agreement as another invoice hadn't been paid by the February 5, 2025 deadline.
12. On February 14, 2025, NOP issued a Notice of Noncompliance and Request for Corrective Action to McCoy providing McCoy with 20 days to pay the overdue fees.
13. On March 19, 2025, NOP Extension with a Final Deadline of March 28, 2025, for McCoy to comply with the terms of the Settlement Agreement.
14. On March 31, 2025, SCS reported to NOP that McCoy still hadn't paid the overdue fees.

### **REGULATORY CITATIONS**

The USDA organic regulations at 7 C.F.R. §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 of this part ... (e) Submit the applicable fees charged by the certifying agent ...” The regulations at 7 C.F.R. §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees ...”

### **DISCUSSION**

Evidence substantiates that SCS certified McCoy organic for handling on October 13, 2020, specifically, beverage products. On January 11, 2024, SCS sent McCoy an email reminding the operation of the need to pay the overdue fees from Invoice 228382 for certification fees of \$4,360.00, issued October 30, 2023. On January 17, 2024, SCS issued a

Notice of Noncompliance stating that McCoy had still not paid its annual certification fees of \$4,360.00, invoiced on October 30, 2023, and which were due within 60 days of that date. On February 8, 2024, SCS issued a 2<sup>nd</sup> Notice of Noncompliance for McCoy's failure to pay the overdue fees. On February 14, 2024, McCoy emailed SCS asking for an extension in which to pay the overdue certification fees, which SCS did not grant. On February 20, 2024, after McCoy still hadn't paid the overdue fees of \$4,360.00 from Invoice 228382, and approximately one month after issuance of the initial noncompliance notice, SCS issued a Notice of Proposed Suspension.

On February 20, 2024, McCoy requested mediation to discuss payment terms; and mediation was accepted on March 19, 2024. McCoy and SCS entered into a Settlement Agreement, with McCoy signing May 20, 2024, and agreeing to pay Invoice 228382 for \$4,360.00, originally due December 30, 2023, by May 20, 2024, and also pay all future invoices within 30 days of their issuance by SCS. On May 30, 2024, the agreement was revised, providing McCoy until June 13, 2024 to pay the overdue Invoice 228382 for \$4,360.00, and all other owed invoices by June 13, 2024.

McCoy failed to pay the \$4,360.00 for Invoice 228382 by the extended due date of June 13, 2024, but did make full payment on June 17, 2024. However, on that same day, June 17, 2024, SCS issued a Notice of Settlement Agreement Termination and Proposed Suspension, stating that McCoy hadn't made the agreed upon payment of \$4,360.00 by the set deadline; and payment for all other outstanding invoices hadn't been received by June 13, 2024, as agreed to in the Settlement Agreement. The other invoices are Invoice 244627 for \$1,159.04, issued March 1, 2024, and originally due March 31, 2024; and Invoice 260061 for \$1,000.00, issued June 3, 2024, and originally due July 3, 2024, with a revised payment due date of June 13, 2024, per the

McCoy-SCS Settlement Agreement. On June 14, 2024, SCS had sent McCoy a reminder about the payments.

On June 28, 2024, McCoy filed an Appeal, stating that the operation was experiencing financial difficulties. On August 13, 2024, SCS issued another Notice of Noncompliance citing to McCoy's failure to pay Invoices 260061 and 244627, discussed above, by the June 13, 2024, extended deadline. However, those two Invoices were subsequently paid. Therefore, NOP offered McCoy a Settlement Agreement whereby McCoy agreed to pay all future fees by the set deadlines, including the \$5,900.00 for 2024 certification fees, which had been invoiced and were due on November 10, 2024, if McCoy chose to continue organic certification. The NOP-McCoy Settlement Agreement was executed November 8, 2024.

However, on February 13, 2025, SCS reported to NOP that McCoy hadn't paid the 2024 certification fees which had initially been due November 10, 2024, and therefore, was in breach of the Settlement Agreement. The fees were re-invoiced on January 6, 2025, Invoice 274037, for \$4,400.00, after reduction of the \$1,500.00 inspection deposit. Therefore, on February 14, 2025, NOP issued a Notice of Noncompliance and Request for Corrective Action to McCoy providing McCoy with 20 days to pay the overdue fees of \$4,400.00. On February 20, 2025, McCoy contacted NOP to inquire about a payment plan; SCS communicated to NOP its opposition to a payment plan, as McCoy has failed to abide by such plans in the past. However, on March 19, 2025, NOP provided an extension with a final deadline of March 28, 2025, for McCoy to pay the overdue \$4,400.00 in fees, and comply with the terms of the Settlement Agreement. On March 31, 2025, SCS reported to NOP that McCoy has still failed to pay the overdue fees.

Therefore, AMS finds that McCoy has breached its Settlement Agreement of November 8, 2024 with NOP. NOP entered into the agreement in good faith, providing McCoy an opportunity to retain its organic certification, despite McCoy not complying with the terms of its prior settlement agreement with SCS. McCoy has failed to pay its certification-related fees by set deadlines, as it had agreed to do when it signed the Settlement Agreement with NOP. The NOP Settlement Agreement states that, “McCoy agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing administrative action against McCoy.” Clause 3D of the Settlement Agreement states that, “McCoy withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above.” Paragraph 2 states, “USDA, AMS agrees not to issue a formal Administrator’s Decision charging McCoy with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement.” A closure letter sent to McCoy on November 8, 2024, with the executed agreement also stated that, “... failure to abide by the terms of the agreement shall automatically void the Settlement Agreement and USDA, AMS may pursue an administrative hearing process.” AMS finds that McCoy has breached its Settlement Agreement with NOP.

## **CONCLUSION**

The evidence substantiates that McCoy violated the organic regulations at 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. McCoy has displayed a history of failing to pay its certification fees by set deadlines, and despite adverse action notices issued by its certifier; having entered into Settlement Agreements with its certifier SCS, as well as NOP; and the issuance of a Notice of

Noncompliance and Request for Corrective Action issued by NOP, McCoy has still failed to pay all certification-related fees by set deadlines. Therefore, pursuant to the terms of the Settlement Agreement, McCoy may not remain certified.

### **DECISION**

McCoy's June 28, 2024 Appeal of the June 17, 2024 Notice of Proposed Suspension is denied. The organic certification of McCoy is suspended. Pursuant to the organic regulations at 7 C.F.R. §205.665(g)(1), McCoy may apply for reinstatement of its certification upon payment of all past due certification-related fees and a demonstration of the ability to pay future fees by set deadlines.

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

Done at Washington, D.C., on this 14th  
day of April, 2025.

**BRUCE**  
**SUMMERS**  
Bruce Summers  
Administrator  
Agricultural Marketing Service

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