

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)	
Richard Landrigan,)	Administrator's Decision
Bonnie Blue Ranch and Grove,)	APL-018-17
Brandon, Florida)	
)	

This Decision responds to an appeal (APL-018-17) of a combined Notice of Noncompliance and Proposed Partial Suspension of National Organic Program certification issued to Richard Landrigan, Bonnie Blue Ranch, LLC, doing business as Bonnie Blue Ranch and Grove of Brandon, Florida, by Quality Certification Services (QCS). The operation was deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the USDA organic regulations.²

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 CFR Part 205). Certifying agents also initiate compliance actions to enforce program requirements. Noncompliance procedures are described in §205.662, Noncompliance procedure for certified operations, of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator of the Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA),

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

pursuant to §205.680, Adverse Action Appeals Process -General, and §205.681, Appeals, of the USDA organic regulations.

FINDINGS OF FACT

1. QCS is an accredited certifying agent under the USDA organic regulations, first accredited on April 29, 2002. Richard Landrigan is the operator of Bonnie Blue Ranch, LLC, dba Bonnie Blue Ranch and Grove (Bonnie Blue) of Brandon, FL, which is certified under the USDA organic regulations for crop production. The physical location of the crop production operation is Wimauma, FL.
2. On September 23, 2015, QCS issued Bonnie Blue a combined Notice of Noncompliance and Proposed Partial Suspension for a portion of its operation, because QCS identified that a fertilizer containing substances prohibited for use in organic crop production had been applied to a portion of its organic blueberry crop.
3. On December 3, 2015, the Administrator rendered a Decision denying the appeal filed by Bonnie Blue. Bonnie Blue subsequently requested a Hearing before an Administrative Law Judge; this proceeding is pending.
4. On February 22, 2016, QCS issued Bonnie Blue a combined Notice of Noncompliance and Proposed Partial Suspension for a portion of its operation including peach and citrus crops due to the application of a fertilizer that contained a prohibited substance. Bonnie Blue subsequently appealed this Notice.
5. On September 8, 2016, the Administrator rendered a Decision denying the appeal filed by Bonnie Blue, due to the application of a prohibited substance. Bonnie Blue subsequently requested a Hearing before an Administrative Law Judge; this proceeding is pending.

6. On March 9, 2016, Crop Production Services, Mulberry, FL, delivered (b) (4) fertilizer to Bonnie Blue. This fertilizer was included on the organic system plan which QCS had approved.
7. Between March 14, 2016 and March 28, 2016, this fertilizer was applied to nearly all of the organic peach and organic blueberry fields at Bonnie Blue. According to Bonnie Blue, after the rainstorms washed away the upper layer of chicken manure, the operator observed the presence of a granular fertilizer.
8. On April 4, 2016, Bonnie Blue submitted samples of the unidentified fertilizer to a testing laboratory. The results, reported on April 21, 2016, showed the presence of urea in the samples. Urea nitrogen was not included in the guaranteed analysis for the (b) (4) fertilizer.
9. Following the laboratory findings, Bonnie Blue initiated its own investigation and self-reported the incident to QCS via a letter dated December 2, 2016. The letter explains that Bonnie Blue understood that Crop Production Services would apply "organic" chicken manure and discovered after the application that the manure mistakenly contained a commercial fertilizer mix. The letter stated that the contaminated chicken manure was applied to all but 10 rows of organic peaches which had not been transplanted and 67 out of 70 rows of organic blueberries.
10. On January 23, 2017, QCS issued a Notice of Noncompliance to Bonnie Blue. This notice stated that Bonnie Blue was not in compliance with § 205.400(f), because it did not immediately notify the certifying agent of the application of a prohibited substance. QCS stated that it was not notified that Bonnie Blue was aware of an application of a prohibited substance to its fields until eight (8) months later.

11. On January 23, 2017, QCS issued Bonnie Blue a Notice of Noncompliance and Proposed Partial Suspension for three years for a portion of the operation. The notice cited noncompliance with § 205.202(b), which requires that organic crops must come from land which has not been applied with any prohibited substance for 3 years immediately preceding harvest. This notice stated that a fertilizer containing substances prohibited for use in organic crop production had been applied to all but 10 rows of the organic peach fields ((b) acres total) and all but 3 rows of the organic blueberry fields ((b) acres total) of Bonnie Blue between March 14, 2016 and March 28, 2016. The notice also explains that Crop Production Services confirmed to QCS that the truck load for the delivery to a conventional farmer immediately preceding delivery to Bonnie Blue on March 9, 2016, contained a fertilizer with polymer coated urea, which is prohibited in organic production.
12. On February 22, 2017, AMS received an appeal from Bonnie Blue, which was accepted as timely. In the appeal, Bonnie Blue explains that it is not at fault for the incident that resulted in the application of a prohibited substance and that the operation has implemented corrective actions by moving to a different chicken manure supplier that uses different application techniques to better detect visually whether the manure contains a tainted ingredient.

DISCUSSION

QCS has issued a combined Notice of Noncompliance and Proposed Partial Suspension to Bonnie Blue for (b) (4) acres of its organic blueberry fields and (b) acres of its organic peach fields due to an application of prohibited substance that was confirmed through laboratory analysis. The substance, urea, is prohibited in organic crop production and was not disclosed as

an ingredient in the fertilizer that Bonnie Blue had purchased. The record shows that the compliant fertilizer was mistakenly contaminated in the delivery truck and that the contamination was not known until after the fertilizer was applied.

The effect of a suspension for this incident means that no products from the suspended portion of the operation can be sold, labeled, or represented as organic. The suspended fields will be eligible for certification three (3) years after the date of prohibited substance application.

In its appeal, Bonnie Blue does not deny that a prohibited substance was applied to a portion of its peach and blueberry fields, but claims the contamination was accidental and beyond its control. Bonnie Blue does not explain why it did not immediately notify QCS that a prohibited substance was applied to its fields, but waited nearly eight months after confirming the application to do so. The USDA organic regulations in section 205.202(b), are clear regarding the use of prohibited substances on land from which harvested crops are intended to be sold, labeled or represented as organic. Any use of prohibited substance, regardless of the reason, source, or hardship endured, declassifies land of its "organic" status and requires a transition period for three years preceding the harvest of a crop intending to be sold, labeled, or represented as "organic." Section 205.105 of the USDA organic regulations requires that organic products must be produced and handled without the use of prohibited substances. In addition, section 205.400(f)(1) of the USDA organic regulations requires that certified operations immediately notify the certifying agent of any application of a prohibited substance. The fact that the application of a prohibited substance is accidental does not relieve the certified operation of the obligation to immediately report this to the certifying agent.

CONCLUSION

As a result of the application of a prohibited substance, a portion of the Bonnie Blue operation, (b) (4) acres of organic blueberry fields and (b) (4) acres of its organic peach fields, are not in full compliance with: §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; §205.202, Land requirements; and § 205.400, General requirements for certification.

DECISION

The appeal is denied and QCS' Notice of Noncompliance and Proposed Partial Suspension is upheld. The organic certification for a portion of the Bonnie Blue operation, (b) (4) acres of its organic blueberry fields and (b) (4) acres of its organic peach fields, is suspended for three (3) years from the date of substance application. Since the application of the contaminated fertilizer reportedly occurred between March 14, 2016 and March 28, 2016, the affected land would be eligible for certification on March 28, 2019.

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

If Bonnie Blue waives the hearing, the Agricultural Marketing Service will direct QCS to issue a Notice of Suspension. After the 3-year 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 25th
day of April, 2017.



Bruce Summers
Acting Administrator