

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
Asociacion de Produccion)	Administrator’s Decision
Artesanal Guayusa Ecologica –)	
Asoguay)	
)	
Puya Pastaza, Ecuador)	APL-018-21
)	

This Decision responds to an Appeal (APL-018-21) of two Notices of Proposed Suspension of National Organic Program (NOP) certification issued to Asociacion de Produccion Artesanal Guayusa Ecologica – Asoguay (Asoguay) of Puya Pastaza, Ecuador by USDA-accredited certifying agent, Kiwa BCS Oko-Garantie GmbH (BCS). The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (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 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. Persons subject to the Act who

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

believe they are adversely affected by a noncompliance decision of a certifying agent 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 September 21, 2019, Asoguay was certified organic for crops by BCS.
2. On April 17, 2020, BCS issued a Notice of Proposed Suspension regarding several noncompliances noted at the prior May 2019 inspection.
3. On July 29, 2020, BCS and Asoguay entered into a Settlement Agreement to resolve the April 17, 2020 Notice of Proposed Suspension.
4. On December 10, 2020, BCS issued a Notice of Noncompliance for Asoguay's failure to submit its annual update for certification.
5. On January 15, 2021, BCS issued a Notice of Proposed Suspension after Asoguay failed to successfully resolve the December 10, 2020 Notice of Noncompliance.
6. On February 3, 2021, BCS issued a Notice of Denial of Mediation to Asoguay's February 2, 2021 request for mediation regarding the January 15, 2021 Notice of Proposed Suspension.
7. On February 4, 2021, BCS issued a Notice of Proposed Suspension stating that Asoguay had breached the July 29, 2020 Settlement Agreement.
8. On March 3, 2021, Asoguay filed an Appeal which was deemed an Appeal as to both adverse actions.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” The regulation further states, “(b) Such records must: ... (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.” The regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent... plan must include: ... (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used ... (3) A description of the monitoring practices and procedures to be performed and maintained ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; (5) A description of the management practices and physical barriers established to prevent ... contact of organic production and handling operations and products with prohibited substances; and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §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;
- (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.200; ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the ... certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in §205.103; ... ”

The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must “... submit the following information, as applicable, to the certifying agent: (1) An updated organic production or handling system plan which includes: (i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year’s organic system plan during the previous year; ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

Asoguay was certified organic for crops on September 21, 2019. BCS stated that Asoguay breached its Settlement Agreement with BCS by failing to maintain and adequately update required records, including its Organic System Plan (OSP), maps, contracts with producers, and producer inspection records. Additionally, Asoguay failed to timely submit its annual update for certification by its anniversary date. Asoguay stated it wanted to appeal BCS’ adverse action but didn’t present any information or documentation to support the Appeal.

The evidence shows that on May 6 – 9, 2019, BCS conducted an inspection of Asoguay which produces, and markets guayusa products. Subsequently, on September 21, 2019, BCS certified Asoguay for organic crop production. A May 7, 2021 Evaluation Report on the 2019 inspection indicates that BCS found that Asoguay received product from [REDACTED] producers/suppliers of organic guayusa who had previously been in the grower group of Runa Tarpuna, now known as AMI Runa Ecuador LLC. AMI Runa Ecuador LLC has been certified by BCS for crops and handling since August 15, 2011.

At the May 2019 inspection of Asoguay, BCS found that the contracts between Asoguay and the producers didn't indicate all required commitments; and BCS hadn't provided adequate specific training to the producers on organic processes. Asoguay also hadn't ensured separation of organic and conventional products for producers who still were producing conventional products. Asoguay's OSP lacked sufficient detail on its operation; overview maps didn't show the locations of all [REDACTED] producers; and maps/sketches of production units were incomplete. Additionally, internal inspectors hadn't submitted written statements indicating whether they had any conflicts of interest, and internal inspection reports were missing necessary information, including the total acreage of each producer, the last usage of prohibited substances on the land, and information on conventional production of each producer. BCS issued a Notice of Noncompliance, and a subsequent Notice of Proposed Suspension on April 17, 2020 after Asoguay failed to resolve the noncompliances. BCS accepted Asoguay's request for mediation, and the parties entered into a Settlement Agreement on July 29, 2020.

In the BCS-Asoguay Settlement Agreement, BCS acknowledged that Asoguay had fully resolved some of the outstanding noncompliances since issuance of the Notice of Proposed Suspension. These included the noncompliances regarding insufficient overview maps

identifying the locations of all [REDACTED] producers; the determination of separation measures of producers with organic and conventional production; and the lack of conflict of interest statements from internal inspectors. However, the agreement noted that the other noncompliances had not been fully resolved. As such, BCS set a deadline of September 30, 2020 for their resolution. Specifically, Asoguay was to submit detailed sketches of productive units; provide missing detail in its OSP regarding producers; establish cleaning procedures and records for facilities, vehicles, and equipment; amend its contracts with producers to detail obligations of the parties; provide training to producers on organic regulations, as well as training to internal inspectors, including how to complete internal inspection reports; and add missing information to internal inspection reports.

Asoguay's certification renewal anniversary was September 30, 2020. However, Asoguay failed to submit its annual update and renewal application documentation. After still not receiving these materials, BCS issued a Notice of Noncompliance on December 10, 2020. Subsequently, BCS issued a Notice of Proposed Suspension on January 15, 2021, for Asoguay's failure to successfully resolve the prior Notice of Noncompliance. On February 2, 2021, Asoguay requested mediation in response to the January 15, 2021 Notice of Proposed Suspension, which BCS denied on February 3, 2021.

Concurrently, BCS issued a Notice of Proposed Suspension on February 4, 2021, stating that Asoguay had breached the July 29, 2020 Settlement Agreement. After NOP inquired, BCS stated that the noncompliances noted in the Settlement Agreement remained unresolved; as such, Asoguay had breached the agreement. BCS noted that a 2020 inspection wasn't conducted due to Asoguay's failure to submit its annual update documentation. Asoguay's failure to submit an

updated OSP prevented BCS from verifying that corrective actions had been taken. As such, the settlement had been breached.

On March 3, 2021, Asoguay filed an Appeal, stating that Asoguay was appealing the mediation denial. The appeal provided no detail, no other information on the noncompliances, and no rebuttal. Given that the Appeal was timely to both Notices of Proposed Suspension, the Appeal was deemed an Appeal to both the January 15, 2021 Notice of Proposed Suspension, and the February 4, 2021 Notice of Proposed Suspension.

NOP had already sent an acknowledgment to Asoguay for the first appeal, and subsequently notified Asoguay that the Appeal was deemed an Appeal to both BCS notices. Asoguay did not respond with any information or documentation to NOP to support its Appeal. The acknowledgment letter of March 8, 2021 stated that Asoguay had 45 days to submit any support for the Appeal. After not receiving anything from Asoguay, NOP wrote Asoguay on April 29, 2021, again asking Asoguay if it was going to submit anything to support its Appeal. NOP has never received a response.

The evidence substantiates that Asoguay failed to comply with all the terms of its July 29, 2020 Settlement Agreement with BCS by the deadline of September 30, 2020 and failed to submit its annual update documentation for the renewal of its certification. This resulted in the concurrent adverse actions by BCS. However, despite the fact that Asoguay failed to submit anything in support of its Appeal, NOP considered the noncompliances to be correctable.

Therefore, in a good faith effort to resolve the case, NOP offered Asoguay a Settlement Agreement as a last opportunity to come into compliance with the organic regulations prior to being suspended. The Settlement Agreement provided that Asoguay would agree to respond to all requests by its certifier for documentation and information by the deadline set by the certifier,

unless Asoguay promptly contacts its certifier and the parties agree to an extension of the deadline. Per the agreement, Asoguay also would agree to, within specified time frames, correct the other specific noncompliances that had led to the original Settlement Agreement with BCS. Again, the goal was to give the operation a final chance to come into compliance and avoid suspension.

The proposed NOP Settlement Agreement was sent to Asoguay on June 3, 2021; the cover letter sent with the agreement told Asoguay that it had 15 days to consider the offered agreement and return the signed agreement to NOP. After not receiving any reply or acknowledgment of the Settlement Agreement offer, and the end of the 15 days approaching, NOP followed up with Asoguay on June 14, 2021 to remind Asoguay of the offer. Again, Asoguay didn't reply or acknowledge the settlement offer. A last reminder was sent to Asoguay on June 21, 2021; however, Asoguay didn't reply or return the signed Settlement Agreement.

CONCLUSION

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, the evidence substantiates that Asoguay violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. Specifically, Asoguay failed to maintain and adequately update required records, including its OSP, maps, contracts with producers, and producer inspection records. Additionally, Asoguay failed to timely submit its annual update for certification by its

anniversary date, thereby preventing BCS from conducting the 2020 inspection. Asoguay also breached its Settlement Agreement with its certifier. Further, attempts to resolve the adverse actions issued by BCS through a Settlement Agreement with AMS/NOP were unsuccessful.

DECISION

Asoguay's March 3, 2021 Appeal is denied, and both the January 15, 2021 Notice of Proposed Suspension, as well as the February 4, 2021 Notice of Proposed Suspension, both issued by BCS, are affirmed. Asoguay's organic certification is to be suspended.

Attached to this formal Administrator's Decision denying Asoguay's Appeal is a Request for Hearing form. Asoguay has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Asoguay waives the hearing, this Administrator's Decision suspending Asoguay's certification will become final.

Done at Washington, D.C., on this 5th
day of July _____, 2021.

BRUCE SUMMERS

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Bruce Summers
Administrator
Agricultural Marketing Service