

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Laurance Kriegel) **Administrator's Decision**
Bovina, Texas) **APL-031-18**
)

This Decision responds to an appeal (APL-031-18) of a Notice of Noncompliance and Denial of Certification issued to Laurance Kriegel of Bovina, Texas, by the Texas Department of Agriculture. 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 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.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. The Texas Department of Agriculture (TDA) is an accredited certifying agent under the USDA organic regulations.
2. On January 1, 2003, TDA initially issued an organic producer certificate to Laurance Kriegel (Kriegel).
3. On May 23, 2008, TDA issued a Notice of Noncompliance and Proposed Suspension to Kriegel for numerous recordkeeping noncompliances dating back to 2005, as well as production practice noncompliances.
4. On May 21, 2010, the AMS Administrator issued a Decision denying Kriegel's appeal to the May 23, 2008 Notice of Noncompliance and Proposed Suspension, finding that a preponderance of the evidence showed that Kriegel violated numerous provisions of the organic regulations. The Decision stated that Kriegel is suspended from organic certification "until the noncompliance issues are addressed."
5. On March 15, 2012, AMS and Kriegel signed a Consent Decision/Settlement Agreement, also signed by an Administrative Law Judge (ALJ), whereby Kriegel's certification was revoked for six months.
6. On February 8, 2013, Kriegel applied for organic certification from TDA for the 2013 crop year.
7. On April 2, 2013, TDA issued a Notice of Noncompliance and Denial of Certification finding that the noncompliances which resulted in the March 15, 2012 revocation of Kriegel's certification had not been corrected. TDA noted that the Consent Decision/Settlement Agreement didn't waive Kriegel's requirements to show evidence of

correcting the previously identified areas of noncompliance. Further, Kriegel hadn't made the appropriate fee payment with the application.

8. On May 6, 2013, Kriegel filed a Notice of Appeal to the March 15, 2012 Consent Decision/Settlement Agreement which he had signed.
9. On October 18, 2013, the AMS Administrator denied Kriegel's appeal of the April 2, 2013 TDA Notice of Noncompliance and Denial of Certification, finding that Kriegel still was not in full compliance with various portions of the organic regulations, and that said violations dated back to the Administrator's Decision of May 21, 2010. The Administrator denied Kriegel's request for organic certification.
10. On January 17, 2014, after Kriegel filed a hearing request on November 5, 2013 to the Administrator's Decision, the ALJ issued a Decision and Order Dismissing Petition for Appeal, denying Kriegel's petition for appeal.
11. On February 24, 2014, Kriegel applied for organic certification for the 2014 crop year.
12. On March 31, 2014, TDA issued a Notice of Noncompliance and Denial of Certification due to Kriegel's insufficient payment of an application fee, submission of an incomplete organic system plan, and lack of supporting documentation to support correction of the various noncompliances that resulted in the March 15, 2012 Consent Decision/Settlement Agreement and revocation of Kriegel's certification.
13. On May 15, 2014, Kriegel filed a petition in the 353rd Civil District Court of Travis County, Texas, Case No. D-1-GN-14-001443, contesting the TDA's July 7, 2008 Notice of Noncompliance and Denial of Certification, and subsequent adverse actions.

14. On July 2, 2014, TDA reissued the March 31, 2014 Notice of Noncompliance and Denial of Certification, based on AMS feedback that the initial notice lacked information on Kriegel's right to request mediation.
15. On July 29, 2014, Kriegel appealed the July 2, 2014 re-issued the Notice of Noncompliance and Denial of Certification.
16. On August 25, 2014, the AMS Administrator issued a Decision in response to Kriegel's July 29, 2014 appeal, finding that the noncompliances originally identified in the May 21, 2010 Administrator's Decision remained unresolved. The Administrator stated that Kriegel hadn't responded to the outstanding noncompliances in either his 2013 or 2014 application for organic certification. The Administrator rejected Kriegel's argument that the March 15, 2012 Consent Decision/Settlement Agreement negated his need to correct noncompliances in his 2008, 2009, 2010, 2011 and 2012 applications for organic certification. The Administrator denied Kriegel's request for organic certification. On September 8, 2014, Kriegel requested a hearing before the ALJ.
17. On January 8, 2015, AMS filed an Order to Show Cause with the ALJ, directing Kriegel to show cause why his application for organic certification shouldn't be denied.
18. On February 26, 2015, Kriegel filed an application for organic certification for the 2015 crop year.
19. On August 26, 2015, the ALJ issued a Decision and Order concluding that the TDA properly found Kriegel wasn't eligible to be certified under the Act and the organic regulations because Kriegel failed to provide information necessary to determine his eligibility for organic certification; and concluded the TDA properly found Kriegel ineligible for certification due to his failure to provide documentation of his compliance

with the regulations; concluded that the Administrator properly upheld the determinations of the TDA that Kriegel wasn't eligible for certification; and denied Kriegel's applications and requests for certification.

20. On September 11, 2015, Kriegel filed a Notice of Appeal of the ALJ Decision.
21. On October 7, 2015, the 353rd Civil District Court of Travis County, Texas issued an Order granting defendant TDA's motion to dismiss case D-1-GN-14-001443 filed by Kriegel in that Court based on a lack of jurisdiction. The Texas state court found it didn't have jurisdiction in the matter of Kriegel's denial of certification under the federal Act. A copy of this Order was sent by the Court to Kriegel.
22. On October 29, 2015, the Judicial Officer (JO) issued a Decision and Order stating that the ALJ's August 26, 2015 findings of fact are fully supported by the documentary evidence, and there is nothing in the record compelling reversal of the ALJ's findings of fact. The JO adopted the ALJ's Decision and Order as the final order in this proceeding. The JO stated that Kriegel has the right to obtain judicial review of the Decision and Order in the United States District Court for the district in which Kriegel is located.
23. On November 20, 2015, Kriegel filed a Motion for Reconsideration of the JO's Decision and Order.
24. On December 15, 2015, the JO issued an Order Denying Petition to Reconsider based on Kriegel's motion being untimely filed.
25. On December 18, 2015, TDA issued a Notice of Noncompliance stating that Kriegel failed to submit sufficient documentation with the February 26, 2015 application addressing noncompliances as well as not making the appropriate fee payment.

26. On January 22, 2016, TDA issued a Notice of Noncompliance acknowledging that they had misapplied a partial fee payment by Kriegel of \$1,365.00, but stating that he still owed \$500.00 for his most recent organic certification application. Kriegel was given until February 12, 2016 to reply.
27. On March 8, 2016, TDA issued a Notice of Denial of Certification for crop year 2015 after not receiving a response from Kriegel to the December 18, 2015 Notice of Noncompliance by the January 18, 2016 deadline.
28. On January 27, 2017, Kriegel filed an application for organic certification for the 2017 crop year stating he is not requesting certification by the USDA, but rather only certification by the Texas organic certification program.
29. On February 28, 2017, TDA wrote Kriegel stating that his 2017 application for certification as an organic crop producer has been rejected and that TDA won't accept any future applications for organic certification from him, due to a lack of administrative ability as required in 7 CFR 205.501(a)(19). TDA stated it has issued numerous notices informing Kriegel of the need to provide evidentiary documentation that his operation has resolved the areas of noncompliance that led to the revocation of his organic certification on March 15, 2012, and that the appropriate fee payment is a requirement of the certification process. TDA stated Kriegel has continued to submit applications that contain no evidence of the actions taken to resolve the areas of noncompliance and only a partial fee payment. TDA also addressed Kriegel's statement that he wants to be certified organic to the Texas Organic Standard, rather than the USDA standard. TDA correctly noted that doing so is not statutorily authorized, as TDA is a USDA accredited certifying

agent. Conducting such action would jeopardize TDA's accreditation as well as the organic certification of nearly 200 operations that TDA has certified.

30. On March 9, 2017, Kriegel filed, in the 353rd District Court of Travis County, Texas, a Motion to Add the 2017 Texas Organic Certificate Application to this Present Proceeding contending that TDA's February 28, 2017 letter is unconstitutional, although the Texas court dismissed Kriegel's case on October 7, 2015.
31. On March 6, 2018, Kriegel filed an application for organic certification for the 2018 crop year. As with his 2017 application, Kriegel was not seeking certification by the USDA, rather only by Texas, and he crossed out information on the application forms regarding NOP regulations and fees, as well as a line in the signature block, whereby the applicant certifies that it is in compliance with Title 7 of the Code of Federal Regulations, the USDA organic regulations.
32. On April 9, 2018, TDA issued a Notice of Noncompliance and Denial of Certification, denying Kriegel organic certification for crop year 2018.
33. On April 24, 2018, AMS received Kriegel's Appeal as well as a copy of Kriegel's "Motion to Add the 2018 Organic Application dated March 2, 2018 to the 2014 TDA Noncompliance Decision before the Court." This motion was filed in the 353rd Civil District Court of Travis County, Texas, though the case in that court was dismissed October 7, 2015.

DISCUSSION

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 must comply

with the Act and applicable organic production and handling regulations...(e) submit the applicable fees charged by the certifying agent.

The organic regulations at §205.401, Application for certification, states that a person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information: (a) An organic production or handling system plan, as required in §205.200; (b) The name of the person completing the application; the applicant's business name, address, and telephone number; and, when the applicant is a corporation, the name, address, and telephone number of the person authorized to act on the applicant's behalf; (c) The name(s) of any organic certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of noncompliance or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the noncompliances noted in the notification of noncompliance, including evidence of such correction; and (d) Other information necessary to determine compliance with the Act and the regulations in this part.

The organic regulations at §205.405, Denial of certification, provide that when a certifying agent has reason to believe, based on a review of the information that an applicant for certification is not able to comply or is not in compliance with the requirements, the certifying agent may deny the application for certification.

TDA denied organic certification to Kriegel for 2018, whereby he would be prohibited from selling, labeling, or representing his products as organic. Presenting the reasons for the denial of certification, TDA stated that Kriegel only submitted payment of \$35.00 with the application for certification as an organic crop producer on March 5, 2018, but a review of the

application found that the total cost of organic certification for Kriegel's operation is \$1,900.00. TDA stated that this includes a \$400.00 nonrefundable application fee and a \$1,500.00 crop producer certification fee. Further, TDA found after reviewing Kriegel's organic system plan that it didn't contain a description of the actions taken, nor evidence of any actions taken, to correct the areas of noncompliance identified in the May 23, 2008 Combined Notice of Noncompliance and Proposed Suspension that had resulted in a Consent Decision/Settlement Agreement on March 15, 2012. TDA contends that the settlement agreement doesn't absolve Kriegel of correcting noncompliances dating back to a May 23, 2008 Notice of Noncompliance and Proposed Suspension. TDA found that Kriegel's continued noncompliances and failure to provide a description of the actions taken to correct those areas of noncompliance is a willful noncompliance. Lastly, addressing Kriegel's statement that their actions have caused other certifying agents not to accept his 2005 organic certificate for the 2015 and 2016 wheat crop, TDA states that attempting to use a previously revoked certification is also a willful noncompliance.

In the appeal, Kriegel contends that the March 15, 2012 Consent Decision/Settlement Agreement isn't relevant to his 2018 organic application, and it didn't order him to take corrective action on any noncompliances. Kriegel alleges that TDA violated its fiduciary duty to him, was biased, and violated his civil rights; and that AMS hasn't corrected TDA's errors. Kriegel further contends that the local USDA/FSA (Farm Services Agency) office approved his 2018 organic status for wheat and that TDA decided otherwise. Kriegel also states that the USDA decided to sue the local FSA office on his behalf. Addressing TDA's claim that he didn't pay the correct fee with his application, Kriegel states the fee information is not self-explanatory and he didn't apply for USDA organic certification, but rather only certification by TDA and,

hence, doesn't have to pay the USDA fees. Kriegel also states he appealed each noncompliance notice since 2008, and requests that his organic applications for 2014, 2015, 2016, 2017, and 2018 be approved and he be granted certification for those years. (It is noted that Kriegel didn't actually apply for organic certification in 2016). Kriegel also requests monetary relief for damages suffered when he couldn't sell his 2015 crop as organic, and for alleged libelous statements by TDA.

The appeal fails to address any of the noncompliances, some dating back to 2008, and instead, only attempts to make excuses and blame TDA. The appeal also makes claims over which AMS has no jurisdiction. While Kriegel was certified for organic crops by TDA in 2003, Kriegel has been unable to maintain compliance with the organic regulations since at least 2008 and continuing through to his 2018 application for certification.

The initial Notice of Noncompliance and Proposed Suspension issued by TDA on May 23, 2008 was upheld by the AMS Administrator on May 21, 2010. While the resulting Consent Decision/Settlement Agreement of March 15, 2012, which was signed by Kriegel, did not specifically state that Kriegel must take corrective action on all noncompliances found by TDA since 2008, Kriegel did agree that he would not violate the Act and the NOP regulations. Further the AMS Administrator in an August 25, 2014 Decision found that Kriegel's argument that the March 15, 2012 Consent Decision/Settlement Agreement negates his need to correct any prior noncompliances was without merit. The ALJ and the JO both upheld the Administrator's Decision on August 26, 2015 and October 29, 2015, respectively (In re: Kriegel, Inc. & Laurance Kriegel, Docket Nos. 15-0050, 15-0051 (Aug. 26, 2015), and In re: Kriegel, Inc. & Laurance Kriegel, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015)). The JO denied Kriegel's petition for reconsideration on December 15, 2015 (In re: Kriegel, Inc. & Laurance Kriegel, Docket Nos. 15-

0050, 15-0051 (Dec. 15, 2015). Therefore, res judicata applies to the matter of Kriegel's allegation that the 2012 Consent Decision/Settlement Agreement absolves him of needing to correct prior noncompliances and he is precluded from appealing that matter further. However, in each year subsequent to the 2012 Consent Decision that Kriegel applied for organic certification, TDA continued to find noncompliances, some of which dated back to 2005. Kriegel has had several years to bring his operation into compliance and correct all prior noncompliances, yet he has failed to do so.

Kriegel also alleges that he didn't apply for USDA organic certification, but rather only applied for certification by TDA. Specifically, he wishes to only be certified to Texas organic standards and, hence, states he doesn't need to pay the USDA portion of the application fees. However, TDA is an accredited certifying agent of the USDA and is authorized to conduct certification activities on behalf of the USDA. TDA originally received accreditation on April 29, 2002. Although the Application for Organic Certification identifies the Texas Department of Agriculture in the heading and has the seal of Texas on it, it is an application for USDA organic certification and contains several references to NOP, cites NOP regulations, and includes the NOP fee schedule. The State of Texas does not have an organic certification program that is independent from the USDA NOP. Kriegel's Organic Certificate issued effective January 1, 2003 states, "This certifies that the person listed below is an ORGANIC PRODUCER under the provisions of Texas Agricultural Code Chapter 18 and the National Organic Program, 7 CFR Part 205." Therefore, when Kriegel applies for organic certification, he is responsible for any USDA-imposed application fees, despite his statements that he isn't applying for NOP certification.

Kriegel alleges that the “local USDA FSA (Farm Service Agency)” approved organic status for his 2018 wheat crop. However, while the FSA administers the USDA Organic Certification Cost Share Program to provide financial assistance to organic producers and handlers, FSA does not have the authority to deny or grant organic certification under the Act and NOP regulations. Only AMS has this authority. Also contrary to Kriegel’s statement, NOP is not aware of the USDA filing legal suit against Kriegel’s local FSA office on his behalf. NOP is not able to address Kriegel’s claim that FSA hasn’t paid him the correct benefits under the Organic Certification Cost Share Program; Kriegel must pursue that matter with FSA.

Also, Kriegel submitted to NOP, simultaneously with his Appeal, a copy of his “Motion to Add the 2018 Organic Application dated March 2, 2018 to the 2014 TDA Noncompliance Decision before the Court.” This motion was filed in the 353rd Civil District Court of Travis County, Texas, however, the case in that court was dismissed October 7, 2015 for a lack of jurisdiction.

While Kriegel also alleges that he has appealed all adverse actions since 2008 but has received no response, the lengthy detailed summary of facts above show otherwise. Kriegel has availed himself of the administrative process and the AMS Administrator, ALJ, and JO have issued decisions on his appeals. Kriegel states that his rights to receive organic certification have been violated; however, Kriegel doesn’t have a ‘right’ to organic certification. Rather, like any other operation that wishes to receive organic certification, Kriegel needs to meet the requirements set forth in the Act and NOP regulations. Kriegel also alleges that TDA has violated its fiduciary duty to him and that his civil rights have been violated. Kriegel has requested \$50,000.00 in damages as he states he was unable to sell his 2015 wheat crop as organic; and \$2,000,000.00 in damages as compensation for TDA’s alleged libelous remarks in

denying him organic certification. However, the NOP and administrative appeals process is not the proper forum to adjudicate these claims, rather they must be pursued in the U.S. federal court system.

Kriegel has consistently failed since 2008 to correct noncompliances found by TDA, despite his numerous organic certification applications since that time. Rather than correct the noncompliances, Kriegel has argued that he is not required to correct noncompliances that occurred prior to the March 2012 Consent Decision/Settlement Agreement, despite the decisions of the Administrator, ALJ and JO to the contrary. Kriegel also has made numerous other allegations which are either not relevant to the issue of his 2018 organic certification application and denial, are incorrect, or are not before a proper forum.

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, Kriegel has continually failed to address noncompliances dating back to at least 2008, and has not submitted an acceptable application for organic certification, which is to include a description of the actions taken to correct the noncompliances and evidence of such correction, and hasn't submitted the applicable fees charged by TDA. Kriegel is not in compliance with the organic regulations, and is ineligible for organic certification.

DECISION

The appeal is denied and TDA's Notice of Noncompliance and Denial of Certification is upheld. Attached to this formal Administrator's Decision denying Kriegel's appeal is a Request

for Hearing form. Kriegel has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Pursuant to 7 C.F.R. 205.405(d), Kriegel may apply for certification again at any time. Any application 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 organic regulations.

Done at Washington, D.C., on this 16th
day of October, 2018.



Bruce Summers
Administrator
Agricultural Marketing Service