

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
)  
)  
Opus Frozen Goods S )  
de R.L. de C.V. )  
) **Administrator's Decision**  
) **APL-060-23**  
)  
Jacona de Plancarte, Michoacan )  
Mexico )  
)

This Decision responds to an Appeal (APL-060-23) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Opus Frozen Goods S de R.L. de C.V. (Opus) of Jacona de Plancarte, Michoacan, Mexico by Oregon Tilth Certified Organic (OTCO), a USDA accredited certifying agent. 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. Persons subject to the Act who

---

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

<sup>2</sup> 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. Opus was certified organic for handling on January 23, 2019.
2. On December 13, 2022, OTCO issued a Notice of Noncompliance to Opus for failure to pay overdue certification-related fees.
3. On April 4, 2023, OTCO issued a Notice of Proposed Suspension to Opus for the continued failure to pay overdue certification-related fees.
4. On May 2, 2023, Opus requested mediation, which OTCO accepted. OTCO then offered Opus a settlement agreement and a payment plan by which Opus would pay the overdue fees over a 5 month period.
5. On August 1, 2023, OTCO issued a Notice of Unsuccessful Mediation after Opus failed to sign and return the offered settlement.
6. On August 16, 2023, Opus filed an Appeal.

### **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 under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations in this part; ... (e) Submit the applicable fees charged by the certifying

agent...” Additionally, the organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees...”

On January 23, 2019, OTCO certified Opus for handling. On August 4, 2022, OTCO issued Invoice 2025 to Opus for certification-related fees, specifically inspection fees, in the amount of 42,230.44 MXN, with a due date of October 3, 2022. After Opus failed to make the required payment, OTCO sent Opus a Notice of Noncompliance on December 13, 2022, requiring payment of the overdue fees within 21 days or Opus could contact OTCO to set up a payment plan. After Opus had still not paid the overdue fees, OTCO issued a Notice of Proposed Suspension on April 4, 2023, also stating that OTCO had been unable to reach Opus and Opus hadn’t contacted OTCO regarding the fees. It is noted that OTCO had also subsequently issued Invoice 2299/2224 on March 3, 2023, for fees in the amount of 29,667.00 MXN, and due by May 2, 2023. Further, OTCO subsequently issued Invoice 2326/2248 on April 5, 2023, for fees in the amount of 40,535.69 MXN and due by June 4, 2023. Therefore, the total amount of certification fees owed by Opus to OTCO was 112,433.13 MXN.

On May 2, 2023, Opus requested mediation, which OTCO accepted. OTCO then offered Opus a settlement agreement and a payment plan, by which Opus would pay the total overdue amount of 112,433.13 MXN over a period of 5 months. OTCO signed the agreement and sent it to Opus on June 26, 2023. However, after Opus failed to sign and return the offered settlement/payment plan, OTCO issued a Notice of Unsuccessful Mediation on August 1, 2023.

Opus filed an Appeal with NOP on August 16, 2023, stating that it has had financial problems over the past 2 years, and was trying to close orders to generate cash. NOP confirmed with OTCO that the overdue amount was still 112,433.13 MXN from the above cited 3 Invoices.

Because the failure to pay these overdue fees was the only noncompliance cited by OTCO, NOP emailed Opus on October 26, 2023 to inquire into Opus' ability to pay the overdue fees, whether with one lump sum or through a payment plan. Opus responded via email on October 27, 2023, and stated that it currently had no cash flow, and asked if it could start making payments in January 2024. NOP replied that Opus needed to make some payment in November, even if it was a small payment, in order to show good faith. Opus didn't reply to NOP, and a reminder email was sent to Opus on November 2, 2023. Opus replied to that email on November 3, 2023, stating that they were looking for a way to make a payment, which would be made before the end of November 2023.

Therefore, NOP offered Opus a Settlement Agreement on November 14, 2023, which provided for a payment plan. Specifically, with consideration for Opus' financial issues, the agreement requires a payment of 18,500.00 MXN by December 31, 2023, with the remaining 93,933.13 MXN due by March 31, 2024. Opus would also be required to pay the 2024 fees by the certifier's deadline. The settlement offer was sent to Opus at the same email address from which Opus had previously communicated with NOP; however, Opus didn't respond to the offered settlement. NOP sent a reminder to Opus on November 29, 2023, noting that normally operations are given 15 days in which to accept an offered settlement; however, Opus didn't respond to the reminder email. A last chance email was sent to Opus on December 5, 2023, setting a final deadline of December 7, 2023 by which to accept the settlement offer and return the signed agreement. However, Opus again failed to respond to NOP.

On December 20, 2023, OTCO confirmed that Opus hasn't made any payment of the overdue fees or contacted OTCO. OTCO and NOP have provided every opportunity for Opus to

come into compliance. However, Opus hasn't accepted NOP's settlement offer, nor made any payment to OTCO for the 3 overdue invoices in the amount of 112,433.13.

### **CONCLUSION**

Evidence substantiates that Opus has violated the organic regulations at 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by failing to pay its overdue certification-related fees now totaling 112,433.13 MXN, despite many opportunities to respond and multiple offers for payment plans. Opus is not in compliance with the USDA organic regulations and can't remain certified at this time.

### **DECISION**

Opus' August 16, 2023 Appeal of the April 4, 2023 Notice of Proposed Suspension is denied, and Opus' certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Opus may apply for reinstatement at any time after it has made full payment of all delinquent certification-related fees to OTCO. The request for reinstatement must be accompanied by evidence demonstrating that said full payment has been made, and that Opus is also in compliance with all other organic regulations. While under suspension, Opus may not produce, handle, sell, label, or represent any products as organic.

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

Done at Washington, D.C., on this 6th  
day of January, 2024.

**BRUCE SUMMERS** Digitally signed by BRUCE  
SUMMERS  
Date: 2024.01.06 14:27:03 -05'00'

---

Bruce Summers  
Administrator  
Agricultural Marketing Service