

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)
The Ostrom Mushroom Company) **Administrator's Decision**
Dba Ostrom Mushroom Farms) **APL-023-18**
Olympia, Washington)

This Decision responds to an appeal (APL-023-18) of a Notice of Noncompliance and Proposed Suspension of National Organic Program certification issued to The Ostrom Mushroom Company, dba Ostrom Mushroom Farms of Olympia, Washington, by Oregon Tilth Certified Organic. 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. Oregon Tilth Certified Organic (OTCO) is an accredited certifying agent under the USDA organic regulations. The Ostrom Mushroom Company, dba Ostrom Mushroom Farms (Ostrom) of Olympia, Washington, is a handler certified under the USDA organic regulations. Joe Cosare is the plant manager of Ostrom.
2. On May 4, 2017, OTCO conducted an unannounced inspection of Ostrom, noting numerous areas of concern during the exit interview. Specifically, OTCO found the sanitation material used didn't match with Ostrom's statements in the Organic System Plan; and the production records couldn't confirm Ostrom's claim that the organic mushrooms were packed first thing in the morning after the equipment had been cleaned and sanitized the prior evening. Additionally, Ostrom discarded the original production records after entering the information into the computer database; and remaining original production records showed discrepancies with records in the database. The organic and conventional sales of shiitake and oyster mushrooms were not separated and identified in the database, and sales summaries were not available during the audit. The mass balance audit showed a discrepancy with more oyster mushrooms being sold than were produced; and a traceback audit was unsuccessful due to missing production records.
3. On June 1, 2017, OTCO issued a Notice of Noncompliance and Proposed Suspension, noting that many of the issues found in the May 4, 2017, inspection were also found in prior routine and unannounced inspections going back to 2014. OTCO subsequently agreed to mediation with Ostrom.
4. On July 13, 2017, OTCO and Ostrom entered into a Settlement Agreement, whereby Ostrom agreed to revise/develop a new system to more accurately track and report

organic production and sales; explain discrepancies found during the May 2017 audit; update its sanitation program; and explain how the company would maintain records for no less than 5 years. Ostrom agreed that OTCO would conduct a second inspection in 2017 at Ostrom's expense to verify sufficient implementation of the new measures.

5. On December 14, 2017, OTCO conducted the follow-up inspection and found several outstanding noncompliances.
6. On January 23, 2018, OTCO issued a Notice of Noncompliance and Proposed Suspension to Ostrom, for a proposed suspension of 30 days, citing several violations of the USDA organic regulations.
7. On January 31, 2018, Ostrom requested mediation, which OTCO denied in a February 11, 2018 letter.
8. On March 2, 2018, AMS received Ostrom's appeal to the proposed suspension.

DISCUSSION

The USDA organic regulations at 7 C.F.R. 205.103, Recordkeeping by certified operations, state that 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 organic. The records must fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; and be sufficient to demonstrate compliance with the Act and the regulations.

The organic regulations at § 205.272, Commingling and contact with prohibited substance prevention practice standard, require that an organic handler must implement measures

necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances.

OTCO proposed a suspension of Ostrom's organic certification which would prohibit the sale, labeling, or representation of its products as organic. Presenting the reasons for proposing a suspension, OTCO stated that mushrooms received from Ostrom's supplier (b) (4) were not identified as organic on the invoices or packaging, and Ostrom did not submit an organic certificate for (b) (4) as required by USDA organic regulations at § 205.103. OTCO stated that Ostrom told them that (b) (4) is not certified organic, but purchases organic mushrooms from (b) (4); however, the link between (b) (4) was not apparent in Ostrom's records. Further, OTCO found that oyster mushrooms from (b) (4) believed to be organic, were not identified as such in Ostrom's warehouse.

Secondly, OTCO stated that during the unannounced inspection of May 2017, the shipments and sales of organic product were not accurately recorded, with records showing more organic product sold than was produced. Such discrepancies had continued to date, and are violations of the USDA organic regulations at § 205.103. Specifically, although OTCO found Ostrom that had implemented improvements to its record-keeping system, OTCO found gaps remaining in the organic sales summary. Additionally, OTCO found a discrepancy, via an audit trail exercise, in Ostrom's packing records between product packed and that sold.

Lastly, OTCO found that Ostrom had changed its food contact surface sanitation materials but hadn't notified OTCO or submitted the change for approval. This represents a failure to report a change that could impact compliance as required by USDA organic regulations at § 205.272. Specifically, OTCO found that Ostrom had changed their food contact surface

sanitation materials to include the cleaner, (b) (4) without OTCO approval or notification.

The record in this case shows that OTCO found numerous problems during the unannounced inspection in May 2017, leading to the June 1, 2017 Notice of Noncompliance and Proposed Suspension. After mediation, OTCO and Ostrom entered into a Settlement Agreement on July 13, 2017, whereby Ostrom agreed to revise or develop a new system in order to more accurately track and report organic production and sales, as well provide a description of how all records will be maintained for no less than 5 year, including paper reduction records and how these records will be easily auditable during inspection. Ostrom agreed to provide an updated Form H8 Recordkeeping Practices to OTCO. Ostrom also agreed to update their sanitation program with the changes noted in the H5 Sanitation and Water Practices form, and submit the updated plan to OTCO prior to implementation for approval. It was also agreed that OTCO would conduct a second inspection during 2017, at Ostrom's expense, to verify the noted measures were implemented and are sufficient. Ostrom agreed to provide an adequate response to the noted issues within 30 days of the Settlement Agreement execution.

At the December 2017 inspection, OTCO acknowledged that Ostrom made improvements to their recordkeeping procedures, and submitted recordkeeping and sanitation forms; however, the inspection showed continued problems in the same areas and additional deficiencies in recordkeeping. Finding that Ostrom had failed to sufficiently address all noncompliances, OTCO issued a Notice of Noncompliance and Proposed Suspension on January 23, 2018, and denied Ostrom's request for mediation citing the repeated issues for which corrective actions weren't taken.

In the appeal, Ostrom states that the issues with their purchase agreement with (b) (4) not identifying the mushrooms as organic; and the failure to notify OTCO of their use of (b) (4) sanitizer, were due to oversights which have now been corrected. Ostrom stated that it only purchases organic shiitake and organic oyster mushrooms which it then labels and sells as organic, or which it sells as conventional without the organic labeling. Ostrom stated that they were unaware that their purchase agreement with (b) (4) had to specify organic mushrooms, but they corrected their paperwork and now utilize a new supplier checklist to avoid these issues in the future. Ostrom submitted the organic certificate for (b) (4) which reportedly supplies (b) (4)

Ostrom also stated in the appeal that the discrepancies between production and sales records; and the failure to distinguish between conventional and organic mushrooms in their sales systems, were due to limitations of their database, for which compensating measures have been instituted. Ostrom stated that the purchase and shipment of organic shiitake and organic oyster mushrooms are entered into their database; and although their sales document system and the manual log do not completely align, all the shiitake and oyster mushrooms in physical inventory are organic. Ostrom stated that English is a second language for many of its 40 employees, which creates problems with the manual log; however, the database is correct regardless if it doesn't synch with the manual log. Also, Ostrom stated that although there wasn't a separate designation in the sales system to differentiate organic from conventional SKUs, they haven't purchased conventional shiitake or oyster mushrooms, and can now track conventional organic mushrooms separately in the sales system. Ostrom also stated the organic mushrooms are separated on the warehouse floor, and are packed first in the morning. Ostrom

stated they have now listed sanitizer (b) (4) in the OSP, and had merely neglected to tell OTCO.

The appeal essentially admits fault, with Ostrom stating that the deficiencies in their purchase agreement with (b) (4) and the failure to notify OTCO of their use of (b) (4) sanitizer were due to oversights; and that discrepancies between production and sales records, and the failure to distinguish between conventional and organic mushrooms in their sales systems, were due to database limitations. Subsequent to filing the appeal, Ostrom stated they had revised their tracking log for organics received and packed, and submitted a new Organic Tracking Log. Ostrom explained that the minor discrepancies seen on the Log between pounds in customer orders and pounds used from inventory is the usual 'overfill' that accompanies both incoming cases of mushrooms and out-going filled orders. Ostrom stated that all suppliers allow some overfill to account for shrinkage of product during transportation and a reasonable holding period; and the discrepancy is accounted for in the Loss, Shrink and Overfill reporting at the end of each month.

Ostrom's newly submitted Organic Tracking Log was sent to OTCO; AMS asked OTCO to determine if this addressed any of the noncompliances cited as the basis for the January 23, 2018 Notice of Noncompliance and Proposed Suspension. OTCO replied that the new log is for March 2018, and doesn't address or change any of the noncompliances noted on January 23, 2018. OTCO noted that the log may have been provided to show Ostrom is making steps in their recordkeeping procedures, but without having an inspector conduct audit trail exercises, it is not possible to tell if the log is enough to accurately track the usage/sales of mushrooms. Further, OTCO stated that Ostrom's recordkeeping problems are long-standing and would require more than a slightly revamped production log to satisfy recordkeeping noncompliances.

Therefore, while Ostrom has made improvements to its recordkeeping system, as previously acknowledged by OTCO, and completed a Recordkeeping Practices form, a traceback audit still showed a discrepancy between product packed and product sold, and a newly submitted Organic Tracking Log doesn't address the recordkeeping noncompliances. Further, Ostrom's sales document system and the manual log still do not completely align, which Ostrom attributes to English being a second language for many of its 40 employees. It is not sufficient, as Ostrom states, that the database is correct if it doesn't align with the manual log.

Additionally, although Ostrom submitted the organic certificate for (b) (4) as well as a receipt for a recent purchase by (b) (4) of organic mushrooms from (b) (4) Ostrom's records don't clearly show the relationship between (b) (4). Also, Ostrom hasn't documented its claim that the organic product is packed first in the morning after the prior evening's cleaning and sanitation of the area; and oyster mushrooms in (b) (4) boxes, assumed to be organic, weren't identified or labeled as organic. Lastly, although Ostrom completed a Sanitation & Water Practices Form, and updated its OSP to show that the change from quarternary ammonium sanitizer to Sanidate 5.0, OTCO then found that the OSP didn't describe how (b) (4) food contact surface cleaner was being used.

Ostrom has failed to completely resolve the still outstanding noncompliances, despite some improvements in recordkeeping and the submission of additional documentation. OTCO has worked to help Ostrom come into compliance, conducting mediation which resulted in a Settlement Agreement, conducting a follow-up inspection, and requesting additional documentation and explanations. However, Ostrom has been unable to fully come into compliance and adequately address all the noncompliances raised by OTCO. The record shows a pattern of OTCO finding a problem, and Ostrom correcting the problem, though not always

completely, only for OTCO to discover another problem. Further, Ostrom was subject to the terms of the July 13, 2017 Settlement Agreement when OTCO found repeated and new problems in their December 2017 inspection, which was to verify that corrective actions had been taken in various areas of noncompliance.

CONCLUSION

The availability of complete and coherent records for certifiers and inspectors is a basic requirement for organic certification and is essential to oversight. Failure to maintain or make available necessary documents precludes a certifier from verifying that practices throughout the handling cycle comply with the USDA organic regulations.

Appellant has shown systemic and repeated violations of the organic regulations. Due to the absence of essential information in the records concerning its handling practices and use of sanitizers, Ostrom cannot demonstrate compliance with the recordkeeping (§ 205.103), and sanitation (§ 205.272) standards to maintain organic certification.

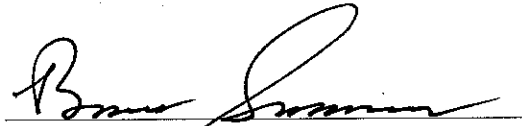
DECISION

The appeal is denied and The Ostrom Mushroom Company, dba Ostrom Mushroom Farms, is to be suspended. Attached to this formal Administrator's Decision denying Ostrom's appeal is a Request for Hearing form. Ostrom has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Ostrom waives the hearing, the Agricultural Marketing Service will direct OTCO to issue a Notice of Suspension. At any time after suspension, Ostrom 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 18th
day of June, 2018.

A handwritten signature in black ink, appearing to read "Bruce Summers", written over a horizontal line.

Bruce Summers
Administrator
Agricultural Marketing Service