

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Ray and Shirley Vanden Elzen) **Administrator's Decision**
Ranovael Dairy)
DePere, Wisconsin) **APL-020-18**
)
)

This Decision responds to an appeal (APL-020-18) of a Notice of Noncompliance and Notice of Proposed Suspension of National Organic Program certification issued to Ray and Shirley Vanden Elzen/Ranovael Dairy (Ranovael) of DePere, Wisconsin, by Nature's International Certification Services (NICS). 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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 November 19, 2017, NICS issued a Notice of Noncompliance and Notice of Proposed Suspension to Ranovael for failure to comply with a 2014 settlement agreement between NICS and Ranovael and for additional noncompliances.
2. On January 28, 2018, NICS rejected Ranovael's request for mediation.
3. On February 22, 2018, Ranovael submitted a timely appeal to NOP.
4. On April 23, 2019, Ranovael and USDA/AMS entered into a settlement agreement.
5. On July 29, 2019, NOP issued a Notice of Noncompliance and Request for Corrective Action to Ranovael for failing to comply with the April 23, 2019 settlement agreement.
6. On October 18, 2019, NOP notified Ranovael that it would begin the administrative process to suspend its certification due to continued noncompliance with the settlement agreement.

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 groups(s))." (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...and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part. (c) The certified operation must make such records available for inspection...”

The organic regulations at §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that, “To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603...”

The organic regulations at §205.237, Livestock feed, state that, “(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and handled...” Further, the regulations require that, “(c) During the grazing season, producers shall: (1) Provide not more than an average of 70 percent of a ruminant’s dry matter demand from dry matter fed... The section also states that producers shall “(2) Provide pasture of a sufficient quality and quantity to graze throughout the grazing season and to provide all ruminants under the organic system plan with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season.” Additionally, the regulations require that livestock producers “(1) Describe the total feed ration for each type and class of animal. The description must include (i) All feed produced on-farm; (ii) All feed purchased from off-farm sources; (iii) The percentage of each feed type, including pasture, in the total ration; and (iv) A list of all feed supplements and additives. (2) Document the amount of each type of feed actually fed to each

type and class of animal. (3) Document changes that are made to all rations throughout the year in response to seasonal grazing changes...”

The organic regulations at §205.238, Livestock health care practice standard, state that, “(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer synthetic medications: *Provided*, That, such medications are allowed under §205.603...”

The organic regulations at §205.239, Livestock living conditions, state that, “(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including:...

(2) For all ruminants, management on pasture and daily grazing throughout the grazing season(s) to meet the requirements of §205.237, except as provided in paragraphs (b), (c), and (d) of this section. (3) Appropriate clean, dry bedding...(c)The producer of an organic livestock operation may, in addition to the times permitted under § 205.239(b), temporarily deny a ruminant animal pasture or outdoor access under the following conditions:...(2) In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season....”

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:...“(f) Immediately notify the certifying agent concerning any:...“(2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.”

In November 2014, Ranovael and NICS entered into a settlement agreement to resolve a Notice of Proposed Suspension which was issued for inadequate pasture records, inability to verify compliance with pasture requirements, and lack of acceptable pasture conditions for

ruminants over 6 months of age. The settlement terms, which were to be in place for 3 years, required that Ranovael:

- Submit updated certification materials by April 1 each year;
- Provide auditable documentation for feed rations, including purchased feed and changes to rations on a quarterly basis; and
- Permit 5 unannounced inspections over 2-year period.

In November 2017, NICS issued a Notice of Noncompliance and Proposed Suspension to Ranovael for failure to comply with the terms of a 2014 settlement agreement. NICS also cited additional noncompliances based on the findings from inspections conducted in September 2016 and March 2017. Specifically,

- Missing records for various activities: buffer harvest equipment cleaning, organic seed search documentation, harvests, and field activity logs; organic certificates for purchased feeds; documentation of ration changes, health treatments, and temporary confinement. NICS noted that many of these records were not available at prior inspections.
- Input materials (livestock medical treatments, feed ingredients) that had not been disclosed to, or approved by, NICS. These included Quick Hit (zinc sulfate) and Scarlet Oil (parachlorometaxlenol) which contained prohibited ingredients.
- Failing to implement crop rotation practices in one field from 2012 to 2015.
- Providing livestock with an aloe vera feed supplement that contained nonorganic aloe vera.
- Using mineral mixes containing prohibited ingredients and subsequently failing to provide information on new mineral mixes.

After Ranovael submitted its appeal in February 2018, NICS conducted inspections of Ranovael in March 2018 (scheduled) and September 2018 (unannounced). Some information collected at these inspections addressed several noncompliances. The appellant provided some certificates for livestock feed ingredients, obtained non-GMO and untreated seed confirmation for winter wheat, and corrected crop rotation practices. In addition, NICS was able to verify the compliance of custom mineral mixes and the eligibility of 3 fields to be included in the organic system plan (OSP). However, the balance of noncompliances were not resolved. NICS found continued recordkeeping issues and failure to demonstrate compliance with the 30% DMI from pasture requirement. Therefore, NICS issued a Notice of Noncompliance and Proposed Suspension.

In its appeal, Ranovael argues that it understood that their farm was in compliance based on an inspection from a former NICS staff member (██████████). Ranovael commented that they had created a new, improved pasture based on the advice of ██████████ who was pleased with the outcome. After ██████████ passed away, Ranovael stated that NICS informed them that the farm would need to be re-inspected as ██████████'s inspection notes were lost. Ranovael stated that there were 2 inspectors who went back and forth from 2014 to 2016 and there were many discrepancies in their inspection reports. Ranovael did not identify any specific discrepancies.

In its appeal, Ranovael claims that most of the missing records cited in the 2017 Notice were available for the 2016 inspection. Specifically, Ranovael claims that buffer equipment is air pressure cleaned and those cleaning logs are kept with the equipment; all organic certificates were copied and available for inspection; temporary confinement is only when the cow is giving birth; any changes to feed rations will be recorded on the calendar and big changes submitted to NICS; and all health care treatments follow an SOP which is kept in a box in the barn. For the

medical treatments which had not been approved by NICS, Ranovael states that they were unaware that one (Quick Hit) was being used on the farm and that the Scarlet Oil was never used. Ranovael also stated that they changed the mineral mix and the aloe-vera feed supplement and notified NICS. They also explain that all cows are on pasture 8-9 hours/day, 120 days/year. Ranovael included documents to support their appeal: a record showing 6 buffer harvest dates and amounts in 2016; feed labels for aloe pellets and 2 mineral mixes; records showing the status of individual cows (dry, fresh, pregnant, etc) for one week in December 2017; grazing season ration records for May through early November 2017 – one sheet per animal group; and a batch sheet for cows for July 2016.

Ranovael entered a settlement agreement with USDA/AMS on April 23, 2019, to resolve the outstanding noncompliances from the November 2017 Notice of Noncompliance and Notice of Proposed Suspension. Per the terms of that agreement, Ranovael agreed to provide feed ration, feeding records and grazing records quarterly to NICS. The due dates for the quarterly submissions were set out in the settlement agreement as follows: July 15, 2019 (records from April – June 2019); October 15, 2019 (records from July – September 2019); January 15, 2020 (records from October – December 2019) and April 15, 2020 (records from January – March 2020). As part of the settlement, Ranovael also agreed to submit complete and auditable feed ration, feeding and grazing records to NICS within 15 days of the end of the grazing seasons in 2020 and 2021 to show that the livestock are meeting the 30% DMI from pasture requirement. In addition, Ranovael also agreed to 1 unannounced inspection each year in 2019, 2020 and 2021; and to obtain approval for any crop or livestock inputs prior to use.

On July 23, 2019, NICS informed the NOP that Ranovael had not submitted the records that were due on July 15, 2019. On July 29, 2019, the NOP issued a Notice of Noncompliance

and Request for Corrective Action warning Ranovael of the missed deadline and providing an additional 30 days to submit the records.

On July 31 and August 1, 2019, NICS conducted an unannounced inspection of Ranovael Dairy. The inspectors noted continued recordkeeping issues, specifically: crop yields were not recorded (corn and forage sorghum); an organic seed search was not documented for all crops; receipts for all purchased inputs were not available; the feeding records (total mixed ration) could not be audited; no records of which animals were treated by a veterinarian; no crop storage records; hospital pen confinement was not documented; some feed supplier certificates were not available for inspection; and 2018 organic and nonorganic milk sales were not available. The inspection also found compliance issues with requirements for livestock living conditions: 6- and 7-month-old heifers were not provided pasture; four groups of animals were not bedded as planned; and on one day in July for which the inspectors audited feed records, the ration sheets showed that only 2 of 11 groups of animals met the 30% DMI on that day when the animals were reportedly on pasture. In addition, the inspectors found new inputs, which had not been approved and observed a prohibited product, ParlorPal, on site. Inspectors concluded that there was “little to no improvement to correct previously identified noncompliant practices or deficiencies in recordkeeping.”

On August 7, 2019, Ranovael submitted feed ration records to NICS. These were dated April 1, 2019 and covered One Group April 1, 2019 and May 21, 2019; Milking Pen May 7, 2019; Heifers Pen 10, April 6, 2019, Heifers Pen 10 Pasture, May 22, 2019; Heifers D-E, April 2, 2019; Heifers D-E, May 2019; Pen 5 Pasture, April 8, 2019; and Pen 5 Pasture, June 2, 2019. The submission did not include the feeding/total mixed ration (TMR) records or grazing records

which were required to be submitted per the 2019 Settlement Agreement in order to demonstrate compliance with the grazing requirements.

On September 5, 2019, [REDACTED], Ranovael's dairy nutritional consultant notified NICS of ration changes. He provided ration sheets, all dated September 5, 2019, for the following groups: Dry Cows Pasture, Heifers Pasture Pen 10, Heifers Pens D-E, Pasture Milking, and Pasture Pen 5.

On October 10, 2019, Ranovael submitted to NICS feed ration records dated October 9, 2019 for the Pasture Pen Milking, Pasture Pen 5, Dry Cows Pasture, Heifers Pen 11-D-E pasture, and Heifers Pen 10.

On October 18, 2019, NICS informed NOP that Ranovael had missed the October 15, 2019 deadline to submit the complete feed ration, feeding records and grazing records to cover the July through September 2019 period. NICS indicated that Ranovael had only submitted ration records, but not feeding or grazing records.

On October 18, 2019, NOP issued a letter informing Ranovael that it had failed to submit the complete records that were due on July 15, 2019 and October 15, 2019. In the letter, the NOP also indicated that it would proceed with an administrative process to suspend Ranovael's certification.

On October 29, 2019, NICS notified NOP that it had received a faxed letter from Shirley Vanden Elzen. The fax included a copy of the October 18, 2019 NOP letter and copies of calendar pages from July – September which contain handwritten notations about whether or not there was pasture each day. In the letter, Shirley Vanden Elzen states that the calendar pages had been faxed to NICS after the feed rations were sent to NICS. NICS provided excerpts from the fax activity log from October 4 – October 29, 2019, as evidence that they had not received a

prior fax during that timeframe from that number, which NICS confirmed as Ranovael's fax number.

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, Ranovael has shown systemic and repeated violations of the organic regulations at 7 C.F.R. §205.103; 7 C.F.R. §205.105; 7 C.F.R. §205.237; 7 C.F.R. §205.238; 7 C.F.R. §205.239; and 7 C.F.R. §205.400.

The record shows that Ranovael Dairy has systemic recordkeeping issues and does not document, and therefore cannot demonstrate, compliance for its livestock production. In addition, there are other recurring noncompliant practices, such as no records of harvest amounts, use of inputs that have not been approved by the certifier, unclean bedding for some animals and no pasture access for 6- and 7-month-old animals. Some issues date back to 2014 and have not been fully resolved despite two settlement agreements and multiple opportunities to comply. Ranovael has attempted to submit records to correct the noncompliances, but the records provided are incomplete. With respect to providing clean bedding and pasture access, Ranovael has indicated that its employees are responsible for those tasks. That statement merely highlights the inadequate oversight and does not excuse the noncompliances with those provisions. As the operator, Ranovael is responsible for ensuring that its employees are using compliant practices.

In 2019, Ranovael signed a settlement agreement indicating it would provide feed rations, feeding records and grazing records on a quarterly basis to NOP. At the time of this Decision, two quarterly deadlines have passed. At this time, Ranovael has provided to NICS only feed

ration records for the second quarter (due July 15, 2019) and feed ration and grazing records for the third quarter (due October 15, 2019). It is not clear, based on the records, whether these cover all animal groups because in 2 separate submissions, different groups were identified on the ration sheets. Further, Ranovael has not submitted feeding ration records or grazing records for the second quarter. In addition, Ranovael agreed to provide records of any treatment administered to livestock, identifying the treatment, animal(s) treated and date of treatment. During the inspections of March 2018 and July 31-August 1, 2019, inspectors could not identify per the records which animals had received veterinary treatments. Finally, Ranovael also agreed to obtain certifier approval for any materials used in livestock or crop production prior to use. At the most recent inspection on July 31-August 1, 2019 the inspectors noted several unapproved materials in use and/or on site. These included a prohibited livestock material.

DECISION

The appeal is denied and Ranovael's organic certification for crops and livestock is to be suspended. Attached to this formal Administrator's Decision denying Ranovael's appeal is a Request for Hearing form. Ranovael has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Ranovael waives the hearing, the Agricultural Marketing Service will direct NICS to issue a Notice of Suspension for Ranovael's crops and livestock certification. At any time after suspension, Ranovael may, "...submit a request to the Secretary for reinstatement of its crops and livestock 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 9th
day of December, 2019.

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

Bruce Summers
Administrator
Agricultural Marketing Service