

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Stuart Newcomer) **Administrator’s Decision**
)
)
Seville, Ohio) **APL-025-22**
)
)

This Decision responds to an Appeal (APL-025-22) of a Notice of Proposed Suspension of National Organic Program (NOP) certification issued to Stuart Newcomer (Newcomer) of Seville, Ohio by USDA-accredited certifying agent, Global Organic Alliance (GOA). 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On September 27, 2016, Newcomer was certified organic for crops, specifically yellow corn.
2. On December 28, 2017, GOA issued a Notice of Noncompliance.
3. On February 12, 2018, GOA issued a Notice of Proposed Suspension.
4. On March 7, 2018, Newcomer filed an Appeal and Case APL-025-18 was opened.
5. On August 1, 2018, GOA issued a Notice of Noncompliance.
6. On August 14, 2018, NOP and Newcomer entered into a Settlement Agreement for Case APL-025-18.
7. On August 24, 2018, GOA issued a Notice of Proposed Suspension.
8. On September 24, 2018, Newcomer filed an Appeal to the August 24, 2018 Notice of Proposed Suspension and Case APL-044-18 was opened.
9. On October 9, 2018, NOP issued a Notice of Noncompliance and Request for Corrective Action to Newcomer after GOA reported a breach of the NOP August 14, 2018 Settlement Agreement.
10. On April 1, 2019, NOP and Newcomer entered into a 2nd Settlement Agreement for Case APL-044-18.
11. On December 15, 2021, GOA issued a Notice of Noncompliance.
12. On January 20, 2022, GOA issued a Notice of Proposed Suspension.
13. On January 25, 2022, GOA rejected Newcomer's mediation request.
14. On February 9, 2022, Newcomer filed an Appeal which is the current case, APL-025-22.

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 ... (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 ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103 ... (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.”

On December 15, 2021, GOA issued a Notice of Noncompliance to Newcomer, stating that several noncompliances were found at the October 4, 2021 inspection, and also noting that Newcomer’s 2021 Organic System Plan (OSP) was incomplete, and a statement was needed regarding chicken manure used on the Sandy 1 Field. At the inspection, GOA also noted that harvest and sales records were not available for 2020 and 2021, as well as seed records and missing lot numbers. Newcomer’s records, which are generally hand-written notes in a small notebook, were found to insufficient in numerous areas of the operation. On January 10, 2022, Newcomer submitted a reply to the noncompliance notice, stating there weren’t any crop sales in 2021 as the 2021 crop hadn’t yet been sold; submitted sales documents for the 2020 corn; said the soybeans are awaiting sale; and identified the supplier of the chicken manure. However, GOA found the reply insufficient and issued a Notice of Proposed Suspension on January 20, 2022 reiterating the missing records, incomplete OSP, and lack of a statement on the manure. GOA subsequently GOA rejected Newcomer’s mediation request on January 25, 2022.

Newcomer filed an Appeal on February 9, 2022, stating the 2020 crop wasn't sold until 2021, so wasn't in the 2020 records but would try to find some financial documents, and said he gave GOA the sales record for selling 2020 corn to (b) (4); stated the 2021 OSP is the same as the 2020; and the Sandy 1 Field isn't organic (though GOA said Newcomer had put it on the OSP and it was certified). However, the noncompliances are recordkeeping matters and are, hence, correctable. Therefore, NOP offered a Settlement Agreement to Newcomer on June 29, 2022. The proposed agreement included a number of terms to bring Newcomer into compliance, such as responding to all certifier requests on time; taking specific steps to improve the recordkeeping system; maintaining and having records available at inspections; and completing timely OSP updates.

Per the letter sent with the offered settlement, Newcomer was given 15 days to consider and return the signed agreement if he wished to enter into the Settlement Agreement with NOP. After Newcomer failed to respond to the NOP settlement offer, NOP emailed a reminder to Newcomer on July 12, 2022. On August 3, 2022, NOP again emailed Newcomer, and extended the deadline in which to return the signed agreement to August 8, 2022. A last reminder was sent to Newcomer on August 9, 2022. However, Newcomer has failed to respond to any of NOP's communications. Therefore, NOP finds that Newcomer has rejected NOP's good faith offer to resolve the January 20, 2022 Notice of Proposed Suspension issued by GOA.

Newcomer has had a history of recordkeeping and other noncompliances since prior to its certification on September 27, 2016. GOA and NOP have provided Newcomer multiple opportunities to come into and remain in compliance with the organic regulations. On August 19, 2016, GOA conducted the initial inspection of Newcomer for potential organic certification as a producer of yellow corn. The 2016 Crop Inspection Report noted the lack of recordkeeping

is a concern, and Newcomer needed to set up records/logs. However, on September 27, 2016, Newcomer was certified organic for crops, specifically yellow corn, despite the Certification Assessment noting noncompliances and stating that harvest, storage, transportation, and sales records must be maintained and readily accessible.

On November 4, 2017, GOA issued a Request for Additional Information to Newcomer, stating that field activity, harvest, transportation and sales records were not available at the August 19, 2016 inspection and the lack of records remains unresolved. Subsequently, on November 15, 2017, Newcomer resubmitted his Organic Farm Plan which has an original date of April 11, 2016, and second date of July 14, 2016. Newcomer also added the date of November 15, 2017 to the signature line after the notations for April 11, 2016 and July 14, 2016. At the top of the first page of the Plan, handwritten notes state, “Procedures done before 2016 corn harvest. SN 11/15/17.” This is an example of Newcomer’s re-using documents, and only changing the dates, further discussed below.

On December 28, 2017, GOA issued a Notice of Noncompliance, stating that while they had requested specific records from Newcomer, he had merely put dates in the various sections of the Organic Farm Plan and described the practices and procedures. GOA reiterated the various records that need to be maintained. Subsequently, on February 1, 2018, GOA received from Newcomer a copy of some desk flip-calendar pages with notes, i.e. “June 6 planted Gourley organic beans,” and a Straight Bill of Lading of October 24, 2017 showing the shipping of soybeans from Newcomer, but not showing the receiver/buyer and the Contract/Ticket Summary of (b) (4) dated October 25, 2017 didn’t match with the Straight Bill of Lading.

Therefore, on February 12, 2018, GOA issued a Notice of Proposed Suspension stating that recordkeeping noncompliances hadn’t been resolved. On March 7, 2018, Newcomer filed

an Appeal and Case APL-025-18 was opened. As the recordkeeping noncompliances were correctable, NOP entered into a Settlement Agreement with Newcomer on August 14, 2018, whereby Newcomer agreed to maintain and submit, within 60 days of execution of the Agreement, field activity, harvest, transportation, sales, cleaning and lot description records to GOA. Newcomer also agreed to submit to GOA all records for the corn grown and harvested in 2016, and the soybeans grown and harvested in 2017. Newcomer also agreed to undergo an unannounced inspection within the following year. As discussed below, Newcomer subsequently breached this agreement.

Concurrently, GOA issued Notice of Noncompliance on August 1, 2018, stating that Newcomer had failed to submit an updated OSP and supporting documentation, as well as certification fees, for the 2018 renewal of his certification. GOA noted that these materials and the fee were due April 17, 2018; and reminders had already been sent to Newcomer on June 4, 2018 and July 16, 2018, with no response from Newcomer. Newcomer was instructed to submit the documentation and fees by August 15, 2018 or surrender his organic certification. On August 24, 2018, GOA issued a Notice of Proposed Suspension after not receiving any response to the August 1, 2018 Notice of Noncompliance.

On September 24, 2018, Newcomer filed an Appeal to the August 24, 2018 Notice of Proposed Suspension. The Appeal is the same letter which Newcomer sent as an Appeal to the February 12, 2018 Notice of Proposed Suspension. Upon receipt of the new Appeal, Case APL-044-18 was opened. Newcomer submitted numerous documents with the appeal letter. These documents were sent to GOA, which confirmed they were responsive to the Notice of Noncompliance and Notice of Proposed Suspension regarding Newcomer's failure to submit 2018 renewal documentation.

However, on October 2, 2018, Newcomer submitted his response to the documentation requirements set forth in the August 14, 2018 Settlement Agreement with NOP. The response is the same letter which Newcomer sent as an Appeal to the February 12, 2018 Notice of Proposed Suspension, and the same letter which he sent as an Appeal to the August 24, 2018 Notice of Proposed Suspension. GOA determined the documentation didn't meet the requirements in the NOP Settlement Agreement and reported a breach of the agreement. Therefore, on October 9, 2018, NOP issued a Notice of Noncompliance and Request for Corrective Action to Newcomer for his failure to submit the documentation for the production, sale and harvest of the 2016 and 2017 corn and soybeans respectively, as required under the Settlement Agreement, and which he had agreed to submit to GOA within 60 days of execution of the Settlement Agreement.

Nevertheless, on April 1, 2019, NOP and Newcomer entered into a 2nd Settlement Agreement in regard to case APL-044-18, as the recordkeeping noncompliances were correctable and in the hopes that Newcomer would come into compliance and abide by the prior agreement. The settlement acknowledged that Newcomer had resolved the August 24, 2018 Notice of Proposed Suspension, but he breached the August 14, 2018 Settlement Agreement. Per the April 1, 2019 agreement, Newcomer agreed to pay a reduced civil penalty of \$500 for the failure to maintain sufficient documentation on the corn and soybean shipments in 2016 and 2017; agreed to maintain and submit when requested all required records to GOA; and agreed to undergo an unannounced inspection, the scope of which would be determined by GOA, as Newcomer had displayed an inability to have required records available at inspection. GOA didn't report a breach of the April 1, 2019 Settlement Agreement. However, as discussed above, Newcomer was found at the October 4, 2021 inspection to have again failed to maintain required and sufficient records of the activities and transactions of its organic operation. This resulted in the

current Notice of Noncompliance of December 15, 2021 and the Notice of Proposed Suspension of January 20, 2022, which Newcomer appealed.

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 Newcomer 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, Newcomer's 2021 OSP was incomplete; he failed to submit a statement regarding chicken manure used on the Sandy 1 Field; harvest and sales records were not available for 2020 and 2021, nor were seed records and seed search documentation; and in general, recordkeeping was found to be deficient in numerous areas of the operation.

NOP made a good faith effort to resolve the pending proposed suspension and offered Newcomer a Settlement Agreement to resolve the recordkeeping noncompliances. However, Newcomer failed to respond to NOP's offer despite numerous reminder/follow up contacts by NOP. Records are a key component of an operation's organic control system. Having a compliant recordkeeping system, maintaining records that comply with that system, and effectively communicating with the certifier are essential for demonstrating compliance with the USDA organic regulations. Due to Newcomer's failure to accept the NOP's attempts to resolve

this case, and Newcomer's history of recordkeeping noncompliances, and inability to remain in compliance, AMS finds that Newcomer can't remain certified.

DECISION

Newcomer's February 9, 2022 Appeal is denied, and the January 20, 2022 Notice of Proposed Suspension is affirmed. Newcomer's organic certification is to be suspended. However, pursuant to the organic regulations at 7 C.F.R. §205.662(f), Newcomer may request reinstatement of its certification at any time, though is required to submit documentation showing the correction of all cited noncompliances.

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

Done at Washington, D.C., on this 6th
day of September, 2022.

BRUCE SUMMERS

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Bruce Summers
Administrator
Agricultural Marketing Service