

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	<b>Administrator's Decision</b>
Devan Green	)	<b>APL-004-17</b>
Green's Organics	)	
Conrad, Iowa	)	

This Decision responds to an appeal (APL-004-17) of a Notice of Proposed Suspension of National Organic Program certification issued to Devan Green, doing business as Green's Organics of Conrad, Iowa, by the Iowa Department of Agriculture and Land Stewardship (IDALS). 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 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.

---

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

<sup>2</sup> 7 C.F.R. Part 205

## **FINDINGS OF FACT**

1. IDALS is an accredited certifying agent under the USDA organic regulations. Devan Green is the operator of Green's Organics of Conrad, Iowa, which is certified under USDA organic regulations for crops and livestock.
2. On August 31, 2016, IDALS issued Green's Organics a Notice of Noncompliance, citing a violation of §205.239(a) (Livestock living conditions). Because of the nature of the violations (a lack of drinking water for animals), IDALS set a response deadline of September 9, 2016.
3. On September 14, 2016, IDALS sent a Notice of Proposed Suspension with a proposed effective date of October 1, 2016, as it had received no response from Green's Organics.
4. On October 10, 2016, AMS received an appeal from Green's Organics, which it acknowledged on October 11, 2016.

## **DISCUSSION**

IDALS has proposed suspending Green's Organics organic certification. The effect of suspension would prohibit all sale, labeling, or representation of its products as organic. On August 26, 2016, IDALS conducted an unannounced inspection of Green's Organics; the inspection was initiated because of a third-party complaint expressing concern about livestock living conditions and animal welfare at the operation. The IDALS inspection findings noted:

“The primary concern ... was that none of the pigs on the farm had access to water. Operator reported that the trough hadn't been filled for 2-3 days. Operator turned on the water hydrant to fill the water trough without cleaning out the existing 2-3 inch layer of mud/manure inside. The inspector reported that every pig in the pen ran to the trough, fighting to get water. Some pigs even jumped inside of the trough to get a drink. It was evident that these pigs hadn't had water for quite some time. Several photos were taken to document these observations as well.”

Based on the inspection findings, on August 31, 2016, IDALS sent Green's Organics a Notice of Noncompliance requiring immediate resolution, which was to include verification of repairs to waterers, photos that ensured that livestock had continuous access to water, and a written plan. The deadline for a response was set as September 9, 2016. IDALS did not receive a response to this Notice of Noncompliance, so on September 14, 2016, IDALS sent the Operator a Notice of Proposed Suspension, with a proposed effective date of October 17, 2016. Green's Organics appealed this Notice.

In its appeal, Green's Organics disputes the Notice of Noncompliance, stating that the inspector was dressed improperly (i.e. did not have a biosecurity suit or disposable boot covers) and that the inspector did not see the automatic waterer in the north sow paddock. The appellant offered an Action Plan related to the Market Hog Pen, the Breeding Pen, and the North Sow Lot. No photographs or other verifying documentation was provided,

There are two issues involved in this appeal. The first issue relates to the initial noncompliance related to livestock living conditions. The second issue relates to the Green's Organics lack of responsiveness to its certifier.

For the first issue, despite the explanation provided in its appeal response, Green's Organics has not fully complied with the requirements included in the August 31, 2016 Notice of Noncompliance: it has not provided verification or evidence that the waterers were repaired, and it has not provided the photographic evidence that livestock have continuous access to water. While the appeal did include a description of steps that Green's Organics was implementing, it did not argue most the findings in the Notice.

For the second issue, Green's Organics never responded to the August 31, 2016 Notice of Noncompliance, and IDALS has not heard from Green's Organics since issuing that Notice. In

March 2017, with the NOP's support, IDALS sent Green's Organics a proposed settlement agreement to resolve the Notice of Proposed Suspension, if there was clear evidence that the violations related to livestock living conditions were corrected. IDALS also sent Green's Organics its certification renewal package for 2017. On April 20, 2017, all mailed correspondence was returned undelivered and unopened with a written record of delivery attempts by the post office. As of June 23, 2017, IDALS had still received no response from Green's Organics.

### **CONCLUSION**

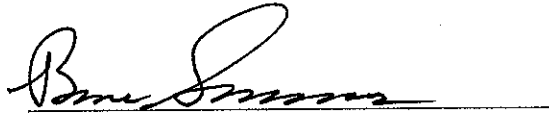
The evidence indicates that the September 14, 2016, Notice of Proposed Suspension to Green's Organics was appropriate due to the nature of the violation and the lack of response to the Notice of Noncompliance.

### **DECISION**

The appeal is denied and IDALS Notice of Proposed Suspension is upheld. Green's Organics full organic certification, including both crops and livestock, is to be suspended. Attached to this formal Administrator's Decision denying Green's Organics' appeal is a Request for Hearing form. Green's Organics has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Green's Organics waives the hearing, the Agricultural Marketing Service will direct IDALS to issue a Notice of Suspension of the entire operation. The operation 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 17<sup>th</sup>  
day of July, 2017.



Bruce Summers  
Acting Administrator  
Agricultural Marketing Service