

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Asili Natural Oils Ltd.) **Administrator's Decision**
) **APL-063-23**
Kigali, Rwanda)
)

This Decision responds to an Appeal (APL-063-23) of a Notice of Denial of Certification under the National Organic Program (NOP) issued to Asili Natural Oils Ltd. (Asili) of Kigali, Rwanda by Control Union Certifications (CUC), a USDA accredited certifying agent. 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 or about January 17, 2023, Asili applied to certifier CUC for crop certification of 513 farms within the grower group as well as handling/processing certification.
2. On March 31 – April 5, 2023, CUC conducted an inspection of Asili, including the four production units among which the 513 farms are distributed and the handling/processing facility.
3. On May 16, 2023, CUC issued a Notice of Noncompliance to Asili citing to the finding of prohibited substances on crop and processed product samples.
4. On August 16, 2023, CUC issued a Notice of Denial of Certification to Asili, stating that it failed to ensure that its products are free of prohibited substances.
5. On September 14, 2023, Asili filed an Appeal.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §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; (b) Nonsynthetic substances prohibited in §205.602 or §205.604 ...”

The organic regulations at §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,”

must: ... (b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop ...”

The organic regulations at §205.272, Commingling and contact with prohibited substance prevention practice standard, state that, “(a) The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances. (b) The following are prohibited for use in the handling of any organically produced agricultural product or ingredient labeled in accordance with subpart D of this part: (1) Packaging materials, and storage containers, or bins that contain a synthetic fungicide preservative or fumigant; (2) The use or reuse of any bag or container that has been in contact with any substance in such a manner as to compromise the organic integrity of any organically produced product or ingredient placed in those containers, unless such reusable bag or container has been thoroughly cleaned and poses no risk of contact of the organically produced product or ingredient with the substance used.”

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 in this part; (b) Establish, implement, and update annually an organic production or handling system plan ... (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation ...”

DISCUSSION

Asili is a grower group of 513 farms/farmers, distributed over 4 production units in Kigali, Rwanda, which grow moringa plants, from which moringa seeds are obtained. The

Kayonza and Kirehe production units are comprised of 386 farms/farmers with 99.907 hectares, and whose harvest period is October – March. The Bugesera and Kamonyi production units are comprised of 127 farms/farmers with 66.219 hectares, and whose harvest period is November – February. Additionally, Asili maintains the Ndera handling/processing facility which processes moringa seeds into moringa oil year-round. Asili has both organic and conventional production and processing.

CUC conducted an inspection from March 31, 2023 through April 5, 2023, covering all four production units, collecting moringa seed samples from each unit, and collecting a sample of processed moringa oil at the processing facility. The testing of the combined moringa seed samples from the Kayonza and Kirehe production units revealed the presence of Chlorpyrifos at 0.011 mg/kg and Diazinon at 0.04 mg/kg on the moringa seeds, as seen on the TLR Laboratory report of April 17, 2023. The sampling form shows the samples were taken from OMVO KH0132; OMVO KH0001; and OMVO KH0031 units, which correspond to the laboratory report and the identification of the Kayonza and Kirehe production units in the Inspection Report; Non-Conformity Report; Incident Report; and Production Organic System Plan. The tested sample of processed moringa oil from the Ndera processing unit revealed the presence of Pirimiphos-methyl at 0.21 mg/kg as seen on the TLR Laboratory analysis report of April 18, 2023, which notes the sample from Lot M031053323 and Batch 1443. The Lot and Batch numbers also correspond with those on the Inspection Report and other documents noted above as well as the Handling Organic System Plan. Chlorpyrifos, Diazinon, and Pirimiphos do not have an EPA (Environmental Protection Agency) tolerance level, and therefore, can't be used in organic production or processing/handling.

Based on these findings, CUC issued a Notice of Noncompliance to Asili on May 16, 2023; the Notice also states that it must implement measures to prevent the commingling of the operation's organic and non-organic products and protect organic products from contact with prohibited substances. CUC subsequently issued a Notice of Denial of Certification stating that Asili had failed to ensure its products were free from prohibited substances, citing to the findings of prohibited substances on moringa seeds and processed moringa oil.

Asili filed an Appeal on September 14, 2023, stating that after being informed of the findings of prohibited substances, it conducted an internal investigation of all production units, harvest packaging, the processing/handling facility, storage, and transportation of harvested moringa seeds and the processed moringa oil. Asili presented its Non-Compliance Investigation and Corrective Action report stating that its investigation found that some of the growers/farmers were using harvesting and postharvest equipment, including bags into which the harvested moringa seeds were placed and stored, when the equipment and bags had been used for non-organic crops. Asili acknowledged this could cause cross contamination of organic products with prohibited substances. Asili stated that it had decided to sell the lot of contaminated moringa oil as conventional, and the remaining oil from which the affected lot was taken would also be used for conventional product. Asili also stated that its internal inspectors as well as the individual farmers/growers were receiving intensive training on organic farming and internal controls, submitting pictures of farmers/growers at said training.

Asili stated that CUC didn't consider its corrective actions; didn't follow proper audit procedures, though a second audit was conducted; didn't consider that the tested samples from the Bugesera and Kamonyi productions units were negative for prohibited substances; and that CUC didn't inform Asili of the results of second samples of moringa seeds taken of the

production units in question and processed moringa oil. However, CUC acknowledged that testing of samples of moringa seed from the Bugesera and Kamonyi production units didn't reveal any prohibited substances; and submitted the TLR Laboratory report for the combined sample.

Further, CUC stated that Asili representatives visited the CUC office in Rwanda, bringing documentation, so that CUC could complete the mass balance and traceability exercises. However, contrary to Asili's assertions, CUC didn't conduct a second inspection or take a second set of samplings, the results of which Asili had alleged were withheld. CUC also submitted to NOP various documents from Asili, including the Internal Control Systems Manual, a Flow Chart, an Input Attestation, information on the Ndera processing unit, and an Internal Inspection Checklist. As CUC submitted these documents, it would appear that CUC had considered them when making the determination not to grant organic certification to Asili.

Further, the Incident Report sent to Asili on May 9, 2023 shows other noncompliances beyond the finding of prohibited substances on moringa seed and moringa oil. CUC cited to post harvest cross contamination from conventional product, and also stated that individual growers/farmers had been storing harvested moringa seed at their homes, and as acknowledged by Asili, individual growers/farmers weren't using the organic-specific bags provided by CUC for harvesting, and instead were using bags as well as equipment used for conventional product. CUC stated that Asili must distribute new harvest bags to the individual growers/farmers and ensure that moringa seed be delivered to the collection center immediately after being harvested. Finally, Asili's Processing OSP states that equipment isn't 'purged' prior to being used for organic production and processing; this also reflects a violation of the standards.

CONCLUSION

Evidence substantiates that Asili has violated the organic regulations at 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.272, Commingling and contact with prohibited substance prevention practice standard; and 7 C.F.R. §205.400, General requirements for certification. Prohibited substances were found in sampled moringa seed from the Kirehe and Kayonza production units, as well as processed moringa oil. An inspection by CUC also revealed that some farmers/growers in the grower group were using equipment and bags for harvested moringa seed that had previously been used for conventional product. Some farmers/growers were also found to be storing harvested moringa seed in their homes. It is acknowledged that no prohibited substances were found on samples taken from the Bugesera and Kamonyi production units; and Asili has stated that it is taking corrective actions, including providing new bags to farmers/growers for organic moringa seed, and transporting harvested moringa seed immediately to the collection center. However, the cited findings constitute violations of the organic regulations, and show that training of growers/farmers on the organic regulations is needed to ensure that all growers/farmers are compliant with the regulations. Although Asili has taken corrective actions, the full implementation of those actions and compliance of all growers/farmers must be substantiated by CUC. Therefore, Asili may not be certified organic under NOP standards at this time.

DECISION

Asili's September 14, 2023 Appeal of the August 16, 2023 Notice of Denial of Certification is denied. Asili is denied organic certification. However, pursuant to 7 C.F.R. §205.405(e), Asili may apply for certification again at any time with any certifying agent, though

the new application must substantiate that Asili has corrected all the cited noncompliances. This requires that Asili demonstrate that the moringa seeds and processed moringa oil are free of prohibited substances, with the certifier conducting additional sampling and testing of the moringa seeds and processed moringa oil. As Asili is a grower group of 513 growers/farmers, with 386 growers/farmers being within the Kayonza and Kirehe production units, Asili should be able to determine the actual source of prohibited substances beyond just pointing to two production units with 386 growers/farmers.

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

Done at Washington, D.C., on this 30th
day of November, 2023.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service