

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
JK Organics LLC,)
) **Administrator’s Decision**
) **APL-028-23**
)
Thayer, Kansas)
)

This Decision responds to an Appeal (APL-028-23) of a Notice of Denial of Certification under the National Organic Program (NOP) issued to JK Organics LLC of Thayer, Kansas by Organic Crop Improvement Association (OCIA), 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 April 29, 2002, Ecocert S.A. (Ecocert) was accredited as a certifying agent by NOP; and subsequently acquired a certifier named Indiana Certified Organic on March 16, 2011, who subsequently changed its name to Ecocert ICO (ICO). Although ICO was owned by Ecocert S.A., it operated as an independently accredited agency. ICO notified NOP of its intention to surrender its accreditation effective January 31, 2021, which was subsequently extended to April 1, 2021. Ecocert S.A. offered its services to ICO's certified operations and became the new certifier of several of those operations. On October 3, 2022, Ecocert S.A. changed its name Ecocert S.A.S. It is referred to as Ecocert throughout.
2. On December 4, 2019, ICO certified Thayer Feed and Seed LLC for handling.
3. On March 31, 2021, after having conducted an inspection of Thayer Feed and Seed LLC on January 28, 2021, ICO issued a Notice of Noncompliance directed to Phil Lewis.
4. On March 31, 2021, ICO also issued a combined Notice of Noncompliance and Proposed Revocation directed to Phil Lewis, based on 23 noncompliances including the use of prohibited substances.
5. On March 31, 2021, Ecocert issued a Notice of Noncompliance and Denial of Certification to Thayer Feed and Seed LLC, after the operation had applied to Ecocert for certification upon learning ICO was surrendering accreditation.
6. On April 1, 2021, ICO surrendered its accreditation after an extension from January 31, 2021.

7. On July 16, 2021, NOP issued a Revocation Notice to Thayer Feed and Seed LLC and directed to Phil Lewis, after the operation neither filed an appeal nor requested mediation in response to ICO's proposed revocation.
8. On December 8, 2021, Clif Lewis, the son of Phil Lewis, applied to USDA accredited certifier OnMark Certification Services LLC (ONM) for certification under the name of Thayer Feed and Seed 2.
9. On March 21, 2022, ONM issued a Notification of Denial of Certification to Thayer Feed and Seed LLC directed to Mr. Lewis. The relationship between Thayer Feed and Seed 2 and Thayer Feed and Seed LLC is discussed below.
10. On December 19, 2022, Clif Lewis applied to USDA accredited certifier Organic Crop Improvement Association (OCIA) for certification under the name of JK Organics LLC, dba Feed Mill.
11. On February 2, 2023, OCIA issued a Notice of Denial of Certification to JK Organics LLC and directed to Clif Lewis.
12. On March 6, 2023, Clif Lewis submitted an Appeal on behalf of JK Organics LLC, stating he is manager of Thayer Feed and Seed.

CITATIONS

The USDA organic regulations at 7 C.F.R. §205.2, Terms defined, state that *responsibly connected* means, “Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.” The term *person* is defined as, “An individual, partnership, corporation, association, cooperative, or other entity.” The organic regulations at §205.662, Noncompliance

procedure for certified operations, state that, “(f) *Eligibility* ... (2) A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation ...”

The organic regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent ... An organic production or handling system plan must include: ... (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 in this part; ... (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.”

The organic regulations at §205.401, Application for certification, state that, “A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information: ... (c) The name(s) of any organic certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of noncompliance or denial of certification

issued to the applicant for certification; and a description of actions taken by the applicant to correct the noncompliances ...”

The organic regulations at §205.405, Denial of certification, state that, “(a) When the certifying agent has reason to believe, based on a review of the information ... that an applicant for certification is not able to comply or is not in compliance with the requirements of this part ... When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification ... (e) An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent ... When such applicant submits a new application to a certifying agent ... must include a copy of the notification of noncompliance or notice of denial of certification ...”

DISCUSSION

On December 4, 2019, USDA accredited certifier Ecocert ICO (ICO) certified Thayer Feed and Seed LLC, located at 101 E. Neosho, P.O. Box 117, Thayer, Kansas 66776, for the handling and processing of various organic products. On January 28, 2021, ICO conducted an inspection of Thayer Feed and Seed LLC, finding numerous noncompliances, and resulting in issuance of a Notice of Noncompliance on March 31, 2021. ICO also issued a combined Notice of Noncompliance and Proposed Revocation on March 31, 2021. The proposed revocation notice reiterated numerous noncompliances and called for a total revocation of the operation’s certification.

Concurrently, ICO informed Thayer Feed and Seed LLC that it would be surrendering its accreditation. The operation had applied to USDA accredited certifier Ecocert SA, now Ecocert

SAS (Ecocert) for certification. However, on March 31, 2021, Ecocert issued a Notice of Noncompliance and Denial of Certification to Thayer Feed and Seed LLC. The operation didn't request mediation, nor did it file an Appeal to the denial of certification by Ecocert. Thayer Feed and Seed LLC also didn't request mediation or file an Appeal to the March 31, 2021 proposed revocation by ICO. Therefore, on July 16, 2021, NOP issued a Revocation Notice to the operation, directed to Phil Lewis, the contact for the operation. NOP issued the notice because ICO had surrendered its accreditation effective April 1, 2021.

Subsequently, on December 8, 2021, Clif Lewis, the son of Phil Lewis, applied to USDA accredited certifier OnMark Certification Services LLC (ONM) for certification under the name of Thayer Feed and Seed 2. Phil Lewis had died on August 4, 2021. The address for Thayer Feed and Seed 2 is seen on the application as 101 Neosho Ave., P.O. Box 117, Thayer, Kansas 66776, with an email address of thayerfeed@gmail.com. The telephone number is 620-839-5256, and organic activities are defined as, "cleaning, custom mixing and grinding feed, grain, seeds." Clif Lewis is identified on the application as the main contact person.

On March 21, 2022, ONM issued a Notification of Denial of Certification to Thayer Feed and Seed LLC. ONM stated in the denial notice that, "Following a review of your OSP and Notices issued by Ecocert, we have determined the following, leading to the Denial of your application. It was observed Thayer Feed and Seed LLC at 101 Neosho Ave. Thayer KS 66776 appears in the OID (Organic Integrity Database) as a Revoked operation and is not eligible for certification at this time. This Revocation is not correctable until the date specified in your Notice of Revocation, generally 5 years." Although Clif Lewis submitted the application to ONM using the name Thayer Feed and Seed 2, the certifier issued the denial notice to Thayer Feed and Seed LLC. However, as discussed above, they have the same address and telephone

number, and as seen below, they are the same operation. ONM also stated in an email to NOP on March 9, 2023, that it had found Thayer Feed and Seed, LLC; Thayer Feed and Seed 2; and JK Organics LLC are “connected responsible parties ...”

On December 19, 2022, Clif Lewis applied to USDA accredited certifier Organic Crop Improvement Association (OCIA) for certification under the name of JK Organics LLC, dba Feed Mill. The address for the operation on the OCIA application is 101 E. Neosho Avenue, P.O. Box 117, Thayer, Kansas 66776, with an email address of thayerfeed@gmail.com. The telephone number is 620-839-5256. Clif Lewis is identified on the application as the Manager, and stated in the Appeal that JK Organics LLC cleans and purchases seed, as well as sells grain for area farmers. Subsequently, on February 2, 2023, OCIA issued a Notice of Denial of Certification to JK Organics LLC and directed to Clif Lewis, stating that documentation filed with the Kansas Secretary of State shows that Thayer Feed and Seed LLC and Thayer Feed 2 LLC are previous business entity names for JK Organics LLC. OCIA stated that Thayer Feed and Seed LLC is “a revoked operation” and further, Thayer Feed and Seed LLC had been denied certification by ONM, which hadn’t been disclosed to OCIA. OCIA concluded that as a revoked operation, JK Organics LLC isn’t eligible for certification until the revocation period has passed.

Clif Lewis filed an Appeal on March 6, 2023, on behalf of JK Organics LLC, stating that he assumed the position of Manager of Thayer Feed and Seed LLC when his father, Phil Lewis, died. Clif Lewis further stated that he finished settling his father’s estate in October 2022, and he changed the name of Thayer Feed and Seed LLC to JK Organics LLC “to make it mine.” Clif Lewis states he “had nothing to do with Thayer Feed & Seed” and that when he applied to ONM for certification, the operation had new management and employees.

However, AMS finds that JK Organics LLC is responsibly connected to Thayer Feed & Seed LLC, whose certification was revoked on July 16, 2021. JK Organics LLC is a corporation and hence, a person as defined under the USDA organic regulations at 7 C.F.R. §205.2. Further, JK Organics LLC meets the definition of ‘responsibly connected,’ as it is not only a ‘holder’ or ‘owner’ of 10 percent of Thayer Feed & Seed LLC but is actually the same entity as Thayer Feed & Seed LLC, with only the name being changed by Clif Lewis after his father had died and he became Manager of the operation.

Further, as seen above, and on the applications submitted to OCIA, as well as ONM, JK Organics LLC and Thayer Feed & Seed LLC share the same address, email address, and telephone number. The business database of the Kansas Secretary of State shows that JK Organics LLC was formed on December 18, 2018 by Clif Lewis, and lists the previous business names as Thayer Feed and Seed LLC as well as Thayer Feed 2 LLC. Clif Lewis also filed a Name Change Amendment on December 2, 2022, changing the name from the “old business entity” of Thayer Feed and Seed, Inc. to JK Organics LLC. Annual reports filed on April 15, 2021 and June 18, 2020 for JK Organics LLC are actually documents for Thayer Feed and Seed with Phil Lewis listed as an official contact and a shareholder. In addition to having the same address, email address, and telephone number, as well as documentation showing JK Organics LLC is the new name for Thayer Feed and Seed LLC, documentation obtained from the Kansas Secretary of State, and third party search sites, also show a core group of individuals, in addition to Phil Lewis, who have been involved in the operation over the years.

AMS finds that JK Organics LLC is also responsibly connected to Thayer Feed 2, LLC, which is seen as a second prior name for JK Organics LLC on documents from the Kansas Secretary of State. As seen above, Clif Lewis submitted the application for certification to ONM

under the name Thayer Feed and Seed 2, though ONM determined that Thayer Feed and Seed 2 is responsibly connected to Thayer Feed and Seed LLC. A letter with JK Organics LLC noted at the top, and mailed to a customer on February 27, 2023, also states that “Thayer Feed and Seed LLC will be changing to JK Organics LLC.” The envelope has a return address of Thayer Feed & Seed 2 LLC. Further, although there is no filing with the Kansas Secretary of State for a Thayer Feed and Seed 2, there are several other filings with similar names. Articles of Incorporation filed with the Kansas Secretary of State show that Thayer Feed 2, LLC was formed on December 18, 2018 by Phil Lewis. Additionally, Articles of Incorporation were filed on October 9, 2007 for Thayer Feed LLC, and on August 18, 2008 for Thayer Seed LLC, though both filings have since been ‘forfeited’ for failure to timely file reports with Kansas. All of the filings with the Kansas Secretary of State under the above names show the same address of 101 E. Neosho, P.O. Box 117, Thayer, Kansas 66776. Finally, Thayer Feed LLC had been certified organic for handling by ICO on September 28, 2016, but surrendered its certification on December 12, 2019 stating that Thayer Feed LLC merged with Thayer Feed and Seed LLC.

Clif Lewis stated in the Appeal that he had “nothing to do with Thayer Feed and Seed...” However, it is irrelevant whether Clif Lewis was involved in the management of Thayer Feed & Seed LLC, as it is JK Organics LLC which is responsibly connected to the Thayer operation as discussed above. Clif Lewis also claims he learned that Thayer Feed and Seed LLC wasn’t certified on May 5, 2021. However, NOP’s Accreditation Division emailed (b) (6) at thayerfeed@gmail.com on July 20, 2021, stating that the revocation of Thayer Feed and Seed means that a person responsibly connected with Thayer Feed and Seed will also not be able to receive organic certification for a 5 year period. (b) (6) asked, “It seems like we cannot re-apply for 5 years, is that correct?” The Accreditation representative further stated that,

“Responsibly connected means any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.” However, despite this information being provided to the operation by NOP, Clif Lewis applied to ONM on December 8, 2021 under the name Thayer Feed and Seed 2, acknowledging on the application that the operation had applied for certification to Ecocert and had previously received notifications “of noncompliance or denials of certification.” As discussed above, Thayer Feed and Seed LLC had received a notice of noncompliance from ICO as well as a Notice of Noncompliance and Proposed Revocation on March 31, 2021, and its certification had been revoked July 16, 2021.

Further, after being denied certification by ONM, the operation through Clif Lewis continued to pursue certification, and applied under the name of JK Organics LLC to OCIA on December 19, 2022. As discussed above, the operation is the same operation as Thayer Feed and Seed LLC which had been revoked. On the OCIA application, Clif Lewis failed to disclose that JK Organics LLC is the same operation as Thayer Feed and Seed LLC which was revoked, as he marked “N/A” when answering questions about whether JK Organics LLC previously applied for organic certification; if the operation was previously certified by another certifier; and if it was currently suspended.

During the review of the appeal, it was discovered that the Thayer Feed and Seed LLC also continued to engage in organic transactions after being revoked under the name of Sek See Clean Inc. This was revealed when a certified handling customer of Thayer Feed and Seed LLC appealed a Notice of Noncompliance and Proposed Suspension, which had cited to the use of an uncertified sub-contractor to clean, bag, and label seed/grain. The customer’s certifier pointed to an Invoice of October 19, 2022 from Sek See Clean Inc. which charged the certified handler

(b) (4) for the cleaning and bagging of (b) (4) bushels of wheat. The Invoice shows the address of Sek See Clean as 101 E. Neosho, P.O. Box 117, Thayer, Kansas 66776, with an email address of thayerfeed@gmail.com, and states, “Please make Checks payable to Thayer Feed.” As seen on a February 27, 2019 filing with the Kansas Secretary of State, Thayer Feed 2 changed its name to Thayer Feed and Seed LLC. Thayer Feed and Seed LLC also appears on a Sales Report of the certified handling customer for June 12, 2022 through December 12, 2022.

Documentation obtained from the Kansas Secretary of State shows that Clif Lewis formed Sek See Clean Inc. on September 3, 1997, and an Annual Report filed on September 27, 2022, for the tax year ending 2020, lists Phil Lewis as the President, and Clif Lewis as the Secretary. Further, the filed Annual Report’s Question 11 asks if the corporation holds more than 50% equity ownership in any other business entity on file with the Kansas Secretary of State. Filings after the August 4, 2021 death of Phil Lewis answer “no” to that question. However, Phil Lewis filed an Annual Report on March 5, 2020, responding, “Thayer Feed and Seed LLC” to the question. The prior filing on May 29, 2019 also provides the same answer. Although no adverse action has been issued against Sek See Clean Inc., this finding further shows the involvement of Phil Lewis and Clif Lewis in various named entities over the years.

CONCLUSION

Evidence substantiates that JK Organics LLC is responsibly connected to the revoked Thayer Feed and Seed LLC; and therefore, is not eligible for organic certification during the 5-year revocation period, which commenced July 16, 2021 and doesn’t terminate until July 15, 2026. Further, evidence substantiates that JK Organics LLC has violated the organic regulations at 7 C.F.R. §205.201, 7 C.F.R. §205.400, and 7 C.F.R. §205.401, by submitting an application

for certification to a USDA accredited certifier without disclosing that JK Organics LLC is responsibly connected to the revoked Thayer Feed and Seed LLC; was formerly known as Thayer Feed and Seed, LLC and Thayer Feed 2; and that Thayer Feed and Seed LLC had been denied certification by another USDA accredited certifier due to the 5 year revocation period still being in effect. Additionally, evidence substantiates that the revoked Thayer Feed and Seed LLC continues to engage in organic transactions in violation of 7 C.F.R. §205.100, What has to be certified. Therefore, OCIA was justified pursuant to 7 C.F.R. §205.405 in denying certification to JK Organics LLC, which is responsibly connected to the revoked Thayer Feed and Seed LLC; and the revocation of the certification of Thayer Feed and Seed LLC, and all those responsibly connected to Thayer Feed and Seed LLC remains in effect until July 15, 2026.

DECISION

The March 6, 2023 Appeal of JK Organics LLC is denied. The February 2, 2023 Notice of Denial of Certification is affirmed. JK Organics LLC is denied organic certification as applied for with OCIA. Pursuant to 7 C.F.R. §205.662(f)(2), as responsibly connected to the revoked Thayer Feed and Seed LLC, JK Organics LLC isn't eligible for certification until July 15, 2026. As JK Organics LLC isn't certified organic, it may not handle any organic products, including the cleaning, bagging, and labelling of organic seed/grain.

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

Done at Washington, D.C., on this 9th
day of November, 2023.

**BRUCE
SUMMERS**

Bruce Summers
Administrator
Agricultural Marketing Service

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