

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
)
Steve Miller,) **Administrator’s Decision**
Dba Jubilee Meadows)
Mt. Gilead, Ohio) **APL-065-19**
)
)

This Decision responds to an appeal (APL-065-19) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Steve Miller, dba Jubilee Meadows Farm LLC (Miller) by Quality Certification Services (QCS), 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 November 12, 2008, Miller was certified organic in crops and livestock by QCS.
2. On August 10, 2016, QCS issued a Notice of Proposed Suspension to Miller for failure to submit the 2016 annual certification renewal application and applicable fees by the annual certification date of June 11, 2016.
3. On March 22, 2017, QCS and Miller entered into a Settlement Agreement to resolve the August 10, 2016 Notice of Proposed Suspension. Miller agreed to reply to all QCS requests by the stated deadline, and to submit the annual certification renewal application and all applicable fees by the annual certification anniversary date. The Settlement Agreement acknowledged that the application and fees which had been due June 11, 2016 had subsequently been submitted.
4. On September 20, 2017, QCS issued a Notice of Proposed Suspension to Miller for failure to submit the 2017 annual certification renewal application and applicable fees by the annual certification date of June 11, 2017.
5. On November 6, 2017, QCS and Miller entered into a Settlement Agreement to resolve the September 20, 2017 Notice of Proposed Suspension. Miller agreed to reply to all QCS requests by the stated deadline, and to submit the annual certification renewal application and all applicable fees by the annual certification anniversary date. The Settlement Agreement acknowledged that the application and fees which had been due June 11, 2017 had been subsequently submitted.

6. On November 1, 2018, QCS issued a Notice of Proposed Suspension to Miller for failure to submit the 2018 annual certification renewal application and applicable fees by the annual certification date of June 11, 2018.
7. On November 27, 2018, Miller requested mediation of the November 1, 2018 Notice of Proposed Suspension, which QCS denied on November 29, 2018.
8. On December 31, 2018, Miller filed an Appeal with NOP. The appeal was deemed timely.
9. On January 17, 2019, QCS, not aware that Miller had filed an appeal, issued a Notice of Suspension to Miller. QCS also refunded the 2018 renewal fee paid by Miller.
10. On February 11, 2019, upon instruction from NOP, QCS issued a Notice of Rescission of the Notice of Suspension.
11. On March 7, 2019, NOP and Miller entered into a Settlement Agreement whereby Miller agreed to submit the annual certification renewal application and all applicable fees by the annual certification anniversary date for 2019 and 2020; and to reply to all QCS requests by the stated deadline.
12. On June 13, 2019, QCS issued a Notice of Proposed Suspension stating that Miller didn't submit the 2019 annual certification renewal application and applicable fees by the June 11, 2019 certification anniversary date, thereby breaching the March 7, 2019 Settlement Agreement.
13. On July 11, 2019, Miller filed an Appeal.
14. On January 16, 2020, NOP and Miller entered into another Settlement Agreement, whereby Miller agreed to submit a complete annual certification renewal application and applicable fees to QCS for 2020 and 2021 by the annual renewal date of June 11th of the applicable year.

15. On July 14, 2020, QCS informed NOP that Miller had breached the January 16, 2020 Settlement Agreement by failing to submit the 2020 certification renewal application and applicable fees by the June 11, 2020 deadline despite several reminders by QCS.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §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 that is submitted to an accredited certifying agent as provided for in § 205.200; ... (e) Submit the applicable fees charged by the certifying agent...” Additionally, the organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees and 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;...(2) Any additions to or deletions from the information required pursuant to §205.401(b);...(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part...”

QCS issued a Notice of Proposed Suspension on June 13, 2019, citing to Miller’s failure to submit the 2019 annual certification renewal application and applicable fees by the June 11,

2019 deadline, which had been agreed upon in a March 7, 2019 Settlement Agreement between NOP and Miller.

Miller stated in an Appeal of July 11, 2019, that it had attempted to submit the 2019 certification materials and fees by the June 11, 2019 anniversary date deadline, but experienced problems with its fax equipment and telephoned QCS which confirmed that, ‘Something just came through.’ Miller stated there was also confusion on whether the certification fees could be paid by credit card and via online. Miller stated the 2019 materials and fees would have been timely submitted but for these problems.

The evidence substantiates that Miller was delinquent in submitting the annual certification renewal application and applicable fees for 4 consecutive years - 2016, 2017, 2018, and 2019. This is despite Miller and QCS entering into 2 prior Settlement Agreements; and Miller and NOP entering into a Settlement Agreement on March 7, 2019. All the agreements required Miller to submit the annual certification renewal application and applicable fees by the yearly anniversary date of June 11th of each year. Further, around the time of the March 7, 2019 settlement with NOP, Miller stated in a February 9, 2019 email to NOP that it had set aside funds to ensure that the next annual application and fees are submitted in a timely manner.

However, while QCS states it didn’t receive the 2019 application and fees on the June 11, 2019 anniversary date, Miller faxed the OLP (Organic Livestock Plan) Application to QCS on June 11, 2019. This application also notes that ‘associated organic’ applications are being submitted for ‘grower (crops)’ and livestock. On June 11, 2019, Miller also submitted additional materials, including land applications, affidavits, and a land map. QCS acknowledged that Miller subsequently submitted the OGP (Organic Grower Plan) on June 13, 2019, which corresponds with Miller’s statement that he submitted the OGP on that date after receiving the

Notice of Proposed Suspension. The submission also included an Organic Grower Plan Renewal Form noting the removal of the (b) (6) and the addition of the (b) (6) to Miller's certification. QCS states the Additional Lands Application wasn't complete until a final submission of materials on November 12, 2019. Therefore, the renewal application was not complete on the deadline date of June 11, 2019. However, Miller appeared to have made a good faith effort to submit the 2019 renewal application on the deadline date.

Further, while the 2019 certification fees weren't paid until June 13, 2019, Miller states it had attempted to submit the fees on the anniversary date of June 11, 2019 and had inquired into paying the \$1,070 fee via credit card over the phone but QCS didn't return his phone call to confirm the amount. QCS acknowledged the fees were subsequently paid online on June 13, 2019 but argues that Miller pays the same 'flat rate dairy' every year inferring that there shouldn't have been any question on the amount due. However, it is reasonable to want to confirm the amount before making payment and the fees were paid within 2 days of the deadline.

Therefore, although Miller didn't comply with the specific terms of the March 7, 2019 Settlement Agreement with NOP, NOP offered Miller another Settlement Agreement to allow it to come into compliance. Pursuant to the subsequent January 16, 2020 Settlement Agreement with NOP, Miller agreed to submit a complete annual certification renewal application and applicable fees for 2020 and 2021 by the annual renewal date of June 11th of the applicable year and reply to all QCS requests in a timely manner. Further, the Agreement required that if the annual certification renewal application was not complete upon initial submission, Miller was to submit the application to QCS in time to allow for QCS to review the application, correspond with Miller on any missing materials, and for Miller to submit any additionally-needed materials by the deadline. Miller specifically agreed to "take appropriate steps in advance of the deadline

date to ensure timely submission of all needed materials by the deadline.” Miller was informed that a future delinquency in submitting the renewal application and fees may result in suspension of its certification.

However, Miller breached this NOP Settlement Agreement by failing to submit the 2020 annual certification renewal application and applicable fees by June 11, 2020 to QCS. QCS informed NOP on July 14, 2020 of Miller’s failure to submit the 2020 application and fees by June 11, 2020. Although Miller subsequently submitted its renewal application to QCS, which wrote Miller on August 7, 2020 stating that Miller’s certification was renewed, Miller had missed the deadline set in the NOP Settlement Agreement. QCS acknowledged that while it changed the anniversary date of its certified operations, it abided by the Settlement Agreement, which gave Miller until June 11, 2020 to submit the 2020 renewal application and fees. QCS reported the breach to NOP on July 14, 2020. NOP wrote Miller on July 23, 2020, stating that QCS informed NOP that Miller had failed to submit the renewal application and fees for 2020 by the June 11, 2020, which had been agreed upon in Miller’s January 16, 2020 Settlement Agreement with NOP. NOP informed Miller that given its continued noncompliance, NOP was beginning an administrative process to suspend Miller’s organic certification.

Miller replied in a July 28, 2020 email to NOP that it had previously informed QCS that it was switching certifying agents from QCS to OEFFA (Ohio Ecological Food and Farm Association) and had applied to OEFFA for certification and paid all relevant fees on May 18, 2020. OEFFA confirmed Miller’s application and fee payment of May 18, 2020; and OEFFA has since certified the operation while this appeal is pending. However, QCS states that Miller didn’t inform it of the planned switch to OEFFA until June 24, 2020. This is after the June 11, 2020 deadline for Miller submitting its 2020 renewal application and fees to QCS. Miller also

stated that having previously informed QCS of the planned change in certifiers, QCS wasn't expecting Miller to submit a renewal application.

However, QCS sent several reminder emails to Miller about its renewal application. Furthermore and regardless of when Miller notified QCS of its planned certifier change, not only did Miller agree to that deadline in the January 16, 2020 Settlement Agreement with NOP, Miller also agreed that it would "take appropriate steps in advance of the deadline date to ensure timely submission of all needed materials by the deadline." Miller can't now circumvent the requirements of the Settlement Agreement by stating that it applied a few weeks previously to another certifier. Miller knew the QCS deadline and could have applied to the other certifier earlier, allowing time to obtain certification with another certifier prior to June 11, 2020, at which time he could have surrendered the QCS certification.

Regardless of when Miller informed QCS of its intent to switch certifiers, Miller is obligated to remain in full compliance with QCS until Miller surrenders its QCS certification. However, Miller again showed an inability to comply with the organic regulations and executed agreements, and breached the January 16, 2020 Settlement Agreement with NOP.

Clause 3D of the January 16, 2020 Settlement Agreement states that, "Miller withdraws his appeal and waives further appeal rights in this matter. This clause refers to Miller's July 11, 2019 Appeal of QCS's June 13, 2019 Notice of Proposed Suspension. The January 16, 2020 Settlement Agreement further states, "Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above." Paragraph 2 states, "USDA, AMS agrees not to issue a formal Administrator's Decision charging Miller with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement." Additionally, Clause 4D states that, "Miller agrees that the failure to abide by the

terms of the paragraphs (A-C) immediately above shall result in USDA, AMS' possibly pursuing an administrative hearing process against Miller." The paragraphs referenced included Miller's agreement to submit the 2020 renewal certification application and relevant fees by June 11, 2020. A letter was also sent to Miller on January 16, 2020, with the fully executed Settlement Agreement, stating that "failure to abide by the terms of the agreement shall automatically void the settlement agreement and USDA, AMS may pursue an administrative hearing process." As Miller has not abided by the terms of the Settlement Agreement, the agreement is voided. The June 13, 2019 Notice of Proposed Suspension is 'revived,' and this Administrator's Decision is hereby issued.

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, Miller has been unable to comply with the organic regulations at 7 C.F.R. §205.400 and 7 C.F.R. §205.406, failing to submit its renewal certification application and relevant fees, year after year, despite being given multiple chances by QCS and NOP which entered into 2 Settlement Agreements each with Miller. However, Miller has breached each of these agreements including the most recent January 16, 2020 Settlement Agreement with NOP. Therefore, Miller can't remain certified at this time.

DECISION

Miller's July 11, 2019 Appeal of the June 13, 2019 Notice of Proposed Suspension is denied, and Miller's certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Miller may apply for reinstatement at any time though any outstanding certification-related fees owed to QCS must be paid before reinstatement of Miller's certification will be granted. Miller must also be in compliance with all other organic regulations. While under suspension, Miller may not sell, label, or represent any products as organic. Additionally, attached to this formal Administrator's Decision denying Miller's Appeal is a Request for Hearing form. Miller has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 9th
day of October, 2020.

**BRUCE
SUMMERS**

 Digitally signed by BRUCE
SUMMERS
Date: 2020.10.09 08:19:44 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service