

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:  
A Greener World  
Terrebonne, Oregon

**Administrator's Decision**  
**APL-050-19**

This Decision responds to an Appeal ( APL-050-19) of a Notice of Noncompliance-Denial of Accreditation issued to A Greener World (AGW) by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). 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 organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and handling operations pursuant to the USDA organic regulations (7 C.F.R. Part 205). Accreditation of certifying agents is done by the NOP, which also initiates compliance actions to enforce program requirements. Noncompliance procedures for certifying agents are set forth in §205.665 of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of the NOP may appeal such decision to the

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

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

AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. On November 30, 2017, AGW submitted its Application for Accreditation along with numerous documents to NOP.
2. On March 26, 2019, NOP issued a Notice of Noncompliance/Denial of Accreditation to AGW, accompanied by a Noncompliance Report.
3. On April 25, 2019, AGW filed an Appeal.

### **DISCUSSION**

The NOP issued a Notice of Noncompliance/Denial of Accreditation to AGW, stating that NOP determined that AGW is noncompliant with the USDA organic regulations at 7 CFR Part 205.

The organic regulations at 7 CFR §205.501, General requirements for accreditation, state that, “(a) A private or governmental entity accredited as a certifying agent under this subpart must:... 2) Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart; (3) Carry out the provisions of the Act and the regulations in this part, including the provisions of §§205.402 through 205.406 and §205.670...”

Specifically, NOP states that on November 30, 2017, AGW submitted to NOP an application for accreditation along with a voluminous amount of documentation to support the application. This documentation included AGW’s Policies and Procedures in reviewing applications of operations for organic certification; a certification application; auditing forms;

inspection procedures; document control procedures; certification decision policies; an appeal policy; fee schedule; sample collection protocol; resumes and qualifications of AGW staff and contractors; and performance review procedures for staff and contractors. AGW stated it has 8 certification staff members and contract inspectors. AGW also stated that in addition to seeking accreditation as a certifying agent for NOP's organic program, it also was seeking accreditation/approval for its own Certified Organic Program, which places an emphasis on animal welfare.

On March 26, 2019, NOP issued a Notice of Noncompliance/Denial of Accreditation to AGW, stating that the document adequacy review resulted in 3 noncompliances, covering a range of findings and raising significant questions regarding AGW's qualifications for NOP accreditation. NOP determined that AGW's application for accreditation didn't demonstrate that it has the expertise and ability to fully comply with and implement the USDA organic certification program. Specifically, citing to the Noncompliance/Assessment Report, NOP stated that it only accredits entities to conduct certification activities under 7 CFR Part 205, and doesn't accredit or approve alternate certification programs like that conducted by AGW. Secondly, NOP stated that a review of the resumes of AGW's personnel failed to reveal any expertise in the USDA organic certification of production or handling operations. Lastly, citing to numerous organic regulations, NOP stated that AGW's application documentation doesn't demonstrate an ability to fully comply with and implement the USDA organic certification program.

In its Appeal, AGW first stated that the Noncompliance Report cited in the March 26, 2019 adverse action notice incorrectly states that an on-site audit of its operation had been conducted. AGW states no such audit was ever conducted. AGW also states that NOP's documentation adequacy review had taken 481 days, from its application of November 30, 2017

to issuance of the Notice of Noncompliance/Denial of Accreditation on March 26, 2019. AGW contends this violates NOP's own policy when reviewing accreditation applications.

Specifically, NOP 2000 Instruction – Accreditation Policies and Procedures, last updated September 12, 2018, states that the documentation adequacy review stage lasts 0 – 3 months. Under Section 4.4. of the Instruction, it states that, “For initial applicants, the auditor will complete the review and submit a report for review within 90 days of receipt of the application package.” Further, AGW states it wasn't notified by NOP of any noncompliances during the review period and wasn't given an opportunity to present corrective actions before NOP denied the accreditation application.

First, the review of AGW's application for accreditation and the record from NOP's Accreditation Division shows that the documentation adequacy review process started upon AGW's application on November 30, 2017. NOP subsequently issued a denial of accreditation to AGW on March 26, 2019. However, the 481 days between AGW's application and the issuance of the denial notice doesn't constitute the 'documentation adequacy review stage.' NOP had completed that stage of review – the preliminary review of AGW's application and documentation - in January 2018, within 3 months of AGW's application, and found that AGW's application was incomplete. The Preliminary Review Assessment Checklist identifies numerous noncompliances and inadequacies of AGW's application.

NOP emailed AGW on January 5, 2018, stating that the submitted documentation appeared to be limited to Animal Welfare and Non-GMO standards and certification, instead of documentation of standards and certification following the USDA organic regulations. AGW replied on January 8, 2018 that it has a standards and policy manual, which it would submit. On January 9, 2018, NOP emailed AGW, stating that all documents and forms that will be used for

certification services proposed by AGW must be submitted for review with the accreditation application. NOP stated that this includes all templates/forms for Organic System Plans, inspection reports, and adverse action procedures along with the Standards and Policy Manual of Appellant. AGW subsequently submitted numerous documents to NOP on January 16, 2018. On March 26, 2018, NOP completed the Audit Plan and Cost Estimate for the upcoming desk audit.

A timeline submitted by AGW shows that NOP's Accreditation Manager subsequently stated on August 16, 2018 that the review was complete and the finalized report would be forwarded on within the next week. Although not done within a week, the NOP Accreditation Manager subsequently drafted a compliance report in October 2018. This report was finalized in February 2019. A conference call was then held between the NOP Accreditation Manager and AGW on February 25, 2019, at which time NOP informed AGW of the inadequacies of its accreditation application.

In a February 28, 2019 email, NOP gave AGW the option of either withdrawing its application and reapplying at a future date; or receiving a Noncompliance Report and Notice of Denial of Accreditation. AGW replied in a March 1, 2019 email that after consultation with its executive team, it chose to receive a Noncompliance Report and Notice of Denial. NOP issued a Notice of Noncompliance/Denial of Accreditation to AGW on March 26, 2019, accompanied by the March 11, 2019 Noncompliance Report. As AGW states, NOP acknowledges the Noncompliance Report incorrectly notes an on-site audit was conducted. There was not an on-site audit of AGW. AGW also stated that NOP took 481 days from receiving its application to the denial of accreditation. However, while NOP acknowledges that this is a long time, the

organic regulations do not require that a final accreditation decision be made within any specific timeframe.

AGW also contends that contrary to provisions in the organic regulations, it was not given an opportunity to present corrective actions to any noncompliances. The organic regulations at 7 CFR §205.507, which AGW cites, state that:

“(a) If the Program Manager has reason to believe, based on a review of the information specified in §§205.503 through 205.505 or after a site evaluation...that an applicant for accreditation is not able to comply or is not in compliance with the requirements of the Act and the regulations in this part, the Program Manager shall provide a written notification of noncompliance to the applicant. Such notification shall provide: (1) A description of each noncompliance; (2) The facts upon which the notification is based; and (3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) When each noncompliance has been resolved, the Program Manager will send the applicant a written notification of noncompliance resolution and proceed with further processing of the application.

(c) If an applicant fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, fails to file a rebuttal of the notification of noncompliance by the date specified, or is unsuccessful in its rebuttal, the Program Manager will provide the applicant with written notification of accreditation denial.”

NOP acknowledges that it didn't issue a separate notice of noncompliance to AGW enabling it to correct the noncompliances, prior to NOP issuing a combined Notice of Noncompliance/Denial of Accreditation. However, on February 28, 2019, NOP did inform

AGW that the application was inadequate and provided the option of either withdrawing its application and reapplying; or receiving a Noncompliance Report and Notice of Denial of Accreditation. AGW chose the latter option. A Noncompliance Report is not a separate notice of noncompliance, but rather is used to document noncompliances noted in adverse action notices.

Further, NOP cited numerous noncompliances when finding that AGW was unable to fully comply with and implement the USDA organic certification program. Specifically, NOP found that AGW's policy of only accepting certification applications from family farms violated the organic regulations at 7 CFR §205.501(19)(a); AGW's templates for certification-related forms were incomplete; AGW's material sampling and testing policies didn't comply with the regulations at §205.670; AGW's recordkeeping policy didn't comply with the regulations at §205.103; and AGW's policy of allowing uncertifiable products to be labeled and represented as organic didn't comply with the regulations at §§205.100 and 205.303. Further, NOP found that AGW's fee schedule was not compliant with §205.640; the adverse action process wasn't compliant with §§205.660, 205.662, and 205.663; the appeals process wasn't compliant with §§205.680 and 205.681; the onsite inspection process wasn't complaint with §205.403; and the policy on making certification decisions wasn't compliant with §§205.405 and 205.406.

AGW stated in its Appeal that it removed the family farm requirement for certification applicants; removed all templates since they're not required under the regulations; and revised all cited policies to comply with the cited regulations. AGW submitted its Certification and Policy Manual which it updated in April 2019, after NOP's adverse action notification. AGW also submitted a Corrective Actions document which addresses the cited noncompliances point by point and sets forth the corrective action which AGW took for each. AGW also addressed NOP's

contention that the resumes of AGW's personnel didn't document the needed expertise in USDA organic certification of production and handling, by submitting updated resumes of its personnel. However, these actions were taken after receiving the denial of accreditation notice, and despite being reviewed by the Accreditation Team, it was determined that they do not resolve the numerous cited noncompliances.

### **CONCLUSION**

The evidence substantiates that AGW has failed to meet the requirements of the organic regulations at 7 CFR §205.501, General requirements for accreditation. AGW has failed to demonstrate the ability to fully comply with the requirements for accreditation and/or carry out the provisions of the Act and the organic regulations, including the provisions of §§205.402 through 205.406 and §205.670. AGW's noncompliances are extensive; touch on various areas of a certifier's duties; and go to the core of an entity being able to provide certification services and comply with the organic regulations.

### **DECISION**

AGW's Appeal is denied and the NOP-issued Notice of Noncompliance/Denial of Accreditation is affirmed. AGW is denied accreditation as a USDA-accredited certifying agent. However, pursuant to 7 CFR §205.507(c), AGW may apply for accreditation again at any time.



Attached to this formal Administrator's Decision is a Request for Hearing form. AGW has thirty days to request an administrative hearing before an Administrative Law Judge. If AGW does not request a hearing in that period, this Decision will be implemented, and the denial of AGW's accreditation application will become final.

Done at Washington, D.C., on this \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service