

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)
Gaia's Breath Farm) **Administrator's Decision**
Jordanville, New York) **APL-077-19**
)
)

This Decision responds to an appeal (APL-077-19) of a Notice of Proposed Suspension issued to Gaia's Breath Farm (Gaia) 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)¹ and the U.S. Department of Agriculture organic regulations.²

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

¹ 7 U.S.C. 6501-6522

² 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 July 15, 2013, Gaia's certification for livestock, crops, wild crops, and handling was suspended. Gaia's crop certification was reinstated on July 8, 2015 under Stellar Certification Services (Stellar).
2. On June 13, 2018, Gaia's then-certifying agent Stellar Certification Services (Stellar) informed the NOP that it was surrendering its accreditation. NOP wrote Stellar on June 14, 2018, instructing it to notify all its certified operations of the surrender of accreditation and the need to find a new certifying agent.
3. On June 22, 2018, Stellar informed Gaia that it would no longer be providing NOP certification services and that Gaia needed to inform NOP within 60 days of the notice date whether Gaia would surrender its certification or apply to another certifying agent for certification.
4. On July 31, 2018, Stellar's surrender of its accreditation became effective.
5. On October 17, 2018, Gaia submitted an incomplete application for certification to USDA-accredited certifying agent NOFA-NY Certified Organic LLC (NOFA).
6. On March 29, 2019, NOFA issued a Notice of Noncompliance to Gaia for its failure to submit a complete certification application and applicable fees.
7. On April 29, 2019, NOFA issued a Notice of Denial of Certification to Gaia for its failure to submit a complete certification application and applicable fees.

8. On August 15, 2019, NOP issued Gaia a Notice of Noncompliance for its failure to inform NOP whether Gaia will surrender its certification or has applied for certification with a new certifier. NOP instructed Gaia to inform NOP of its decision within 14 days.
9. On September 17, 2019, Gaia reapplied to NOFA for certification.
10. On September 23, 2019, NOP issued Gaia a Notice of Proposed Suspension after finding that although Gaia had reiterated its choice to obtain certification from NOFA and had reapplied to NOFA, Gaia had still not submitted a complete application to NOFA. NOP cited to the organic regulations at 7 CFR §205.400, General requirements for certification.
11. On September 26, 2019, Gaia filed an Appeal.

DISCUSSION

The NOP issued a Notice of Proposed Suspension stating that Gaia violated the USDA organic regulations at 7 CFR §205.400 and 7 CFR §205.401 by not submitting a complete application for certification to a USDA-accredited certifying agent after Gaia's prior certifier surrendered its accreditation.

The organic regulations at 7 CFR §205.400 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 of this part; (b) Establish, implement, and update annually an organic production or handling system plan... (e) Submit the applicable fees charged by the certifying agent..."

The regulations at Section 205.401, Application for certification, requires that "A person seeking certification of a production or handling operation under this subpart must submit an

application for certification to a certifying agent.”

Specifically, NOP’s Accreditation Division states that Gaia’s former certifying agent, Stellar, informed Gaia that it was no longer going to be providing organic certification services and that Gaia must inform NOP of whether it wished to surrender its certification or apply for certification to a new certifier. However, while Gaia applied to a new certifier, NOFA, the application was not complete nor were certification fees paid, and NOFA issued a Denial of Certification. NOP subsequently issued a Notice of Noncompliance to Gaia after it failed to inform NOP of whether it would be surrendering its certification or applying for certification under a new certifier. Gaia informed NOP that it had reapplied to NOFA; however, after NOFA informed NOP that the application was still incomplete, NOP issued the Notice of Proposed Suspension.

In its Appeal, Gaia stated that whereas it had money available to pay its certification fees at the time its former certifier went ‘defunct,’ it then had added expenses due to needing to find a new certifier. Additionally, a fire destroyed its barn; and rebuilding and other expenses necessitated Gaia choosing between buying grain or paying its fees. Gaia states it has since sent its certification application and applicable fees to NOFA.

The review of the Appeal substantiates that per the directions of NOP, former certifying agent Stellar gave notice to Gaia on June 22, 2018 that it would no longer be providing certification services and that Gaia needed to inform NOP of whether it would be surrendering its certification or obtaining certification from a new certifier. The surrender of Stellar’s accreditation became effective July 31, 2018. Gaia has yet to obtain certification from a new certifier; however, NOP has displayed patience with Gaia.

Gaia applied to a new USDA-accredited certifying agent, NOFA, on October 17, 2018 for certification for all scopes – crops, wild crops, livestock, and handling. The 2018 Organic System Plan (OSP) was checked as being an application for crops, wild crops, and livestock certification, while a separate 2018 Organic System Plan – Handling/On Farm Processing was checked as being an application for handling certification. The ‘application packet’ also included an Applicant Affirmation; crop harvest records; inputs/materials form; animal identification lists; crop plans; seed commercial availability information; and animal structure maps, along with numerous other documents. Although Gaia’s application was for all 4 scopes, NOFA informed Gaia in an October 30, 2018 email that its certification for livestock, wild crops, and handling had been suspended and those scopes would need to be reinstated by NOP prior to certification. However, because Gaia didn’t apply for reinstatement of the 3 scopes, NOFA’s processing of Gaia’s application actually only applied to crop certification.

Gaia’s application was subsequently denied on April 29, 2019 due to not being complete and Gaia’s failure to pay its certification fees. NOFA also stated in the denial letter that Gaia had failed to reply to their February 6 and 19, 2019 emails identifying the documentation still needed for Gaia’s application. Specifically, NOFA’s February 6, 2019 emails to Gaia stated that Gaia still needed to submit an Inspection Visit Appointment Form; a signed Applicant Affirmation; certified New Field History and Affirmation forms; correctly labeled field maps; information on inputs/materials identified by Appellant; and a Poultry OSP Addendum. NOFA’s email of February 19, 2019 to Gaia acknowledged receipt of the Inspection Visit Appointment Form and New Field History and Affirmation forms but stated that the other documentation was either incomplete or not submitted.

Therefore, on March 29, 2019, NOFA issued a Notice of Noncompliance to Gaia for failing to submit a complete application, failing to respond to NOFA's email requests, and failing to pay certification fees. NOFA gave Gaia until April 19, 2019 to provide a written rebuttal or correct all noncompliances and warned Gaia that failure to do so could result in issuance of a denial of their certification application. The Notice of Denial of Certification was issued on April 29, 2019.

NOP emailed Gaia on June 4, 2019, stating that it had been informed by NOFA of their denial of Gaia's application for certification. NOP inquired whether Gaia wished to continue with organic certification and if had reapplied for certification. After not receiving a reply to its email, NOP emailed Gaia on August 13, 2019, again inquiring into Gaia's intentions. After not receiving a response to its second email or proof that Gaia had submitted a new application for certification, NOP issued an August 15, 2019 Notice of Noncompliance providing Gaia with still more time - 14 days - in which to inform NOP of its decision to either surrender its certification or apply for certification. Gaia responded to NOP on August 21, 2019 stating that it would be submitting a complete application to NOFA 'shortly.' Subsequently, on September 19, 2019, Gaia emailed NOP that it had submitted a complete application to NOFA along with the certification fees.

Gaia's additional 'application packet' submitted to NOFA on September 17, 2019, included numerous documents, including a New Field History and Affirmation Form; an equipment cleaning log; crop sales records; and information on seeds and seed treatments. Gaia didn't submit a new OSP and therefore, NOFA was unsure for what scopes the new application was applying, however, the subsequent lists of missing documentation pointed to all scopes. However, as noted above, Gaia was not eligible for the wild crops, livestock, and handling

certifications which had been suspended and not reinstated. NOFA emailed NOP on September 20, 2019, stating that Gaia's 're-application' was still incomplete, but that Gaia stated it would submit the remaining documentation by September 22, 2019. On September 23 2019, NOFA emailed NOP that Gaia had still not submitted the needed documentation, and identified the missing documentation: OSP for crops (since an update is needed for the OSP submitted a year prior); OSP contact information; signed and dated Applicant Affirmation form; New Field History and New Field Affirmation form; Inputs/Materials Intended for Use form; Seeds and Seed Treatments form; Maps; Animal List; and Animal Medication/Health Care Info form. NOFA continued to consider Gaia's interest in obtaining certification for all 4 scopes.

After receiving confirmation from NOFA that Gaia had still not submitted a complete application for certification, NOP issued the September 23, 2019 Notice of Proposed Suspension stating that Gaia had not provided NOP the required certification information pursuant to the organic regulations at 7 CFR §205.400. After issuance by NOP of the notice, NOFA informed NOP on September 25, 2019, that while Gaia had just submitted some documentation, there were still many outstanding items. Specifically, Gaia had submitted the New Field History and New Field Affirmation Form, as well as the Seeds and Seed Treatments Form. However, other items identified on September 23, 2019 were still missing. Further, the information submitted by Gaia on September 25, 2019, resulted in NOFA identifying an Organic System Plan for Wild Crops as also being needed. NOFA has confirmed that Gaia has since paid the required certification fees and submitted the animal identification information and maps. However, to date, Gaia has yet to submit all required and requested documentation. NOFA stated that there is not yet sufficient documentation in the reapplication to be able to grant certification to Gaia. NOFA submitted to

NOP a list of the still outstanding documentation which includes additional documentation due to the need to provide updates to the initial October 17, 2018 application.

CONCLUSION

The evidence substantiates that Gaia has violated the organic regulations at 7 CFR §205.400 and 7 CFR §205.401. The organic regulations at 7 CFR §205.400 require that a person seeking to receive or maintain organic certification must: “(a) Comply with the Act (Organic Foods Production Act) and applicable organic production and handling regulations of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent...(e) Submit the applicable fees charged by the certifying agent...” Pursuant to the regulations at 7 CFR §205.401, a person seeking certification of a production or handling operation must submit an application for certification to a certifying agent, including an organic production or handling system plan and “other information necessary to determine compliance with the Act and the regulations...” The application will be reviewed by the certifying agent for completeness pursuant to 7 CFR §205.402. Gaia’s applications of October 17, 2018 and September 17, 2019 to NOFA for organic certification were not complete. NOFA informed Gaia of the documentation/items missing from its applications on several occasions. Further, NOP corresponded with Gaia prior to issuance of the August 15, 2019 Notice of Noncompliance and the September 23, 2019 Notice of Proposed Suspension. Gaia, to this date, has not submitted a complete application for certification to NOFA despite its claim in the Appeal that it has done so, though it has paid the applicable certification fees. Additionally, it is noted that some of the missing documentation,

i.e. the Organic System Plans and information on Inputs/Materials Intended for Use, are central and crucial for any operation wishing to be certified organic.

DECISION

The Appeal is denied and the Notice of Proposed Suspension is affirmed. Gaia's certification for crops is hereby suspended. Further, by extension, NOFA's denial of organic certification, upon which the proposed suspension is based, is also affirmed. Gaia's certification for wild crops, livestock, and handling, remains suspended. However, Gaia may reapply for certification of any or all scopes at any time pursuant to 7 CFR § 205.405(e).

Attached to this formal Administrator's Decision is a Request for Hearing form. Gaia has thirty days to request an administrative hearing before an Administrative Law Judge. If Gaia does not request a hearing in that period, this Decision will be implemented, and Gaia's crop certification will be suspended.

Done at Washington, D.C., on this 7th
day of February, 2020.



Bruce Summers
Administrator
Agricultural Marketing Service