UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:	)	
MCA Organics S.A. de C.V.	)	**Administrator's Decision**
Sonora, Mexico	)	**APL-027-18**
	)	

This Decision responds to an appeal (APL-027-18) of a Notice of Noncompliance and Proposed Suspension of National Organic Program certification issued to MCA Organics S.A. de C.V. of Sonora, Mexico, by Scientific Certification Systems Global Services. 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 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

[1] 7 U.S.C. 6501-6522
[2] 7 C.F.R. Part 205

FINDINGS OF FACT

1. Scientific Certification Systems Global Services (SCS), as well as Primus Labs, are both accredited certifying agents under the USDA organic regulations.
2. On March 17, 2017, Primus Labs issued MCA an organic certificate for fruit and vegetable crops, specifically black squash and yellow squash, grown at Campo Nuevo in Sonora, Mexico (Organic Certificate PLc-OR-324-1).
3. On June 29, 2017, Primus Labs issued MCA an organic certificate for crops and handling. MCA was certified for fruit and vegetable crops, specifically sweet mini peppers and zucchini squash, grown at the Emiliano Zapata (#1) ranch in Vizcaino, Baja California Sur, Mexico. MCA was certified for organic handling of sweet mini peppers and zucchini squash at Paseo Las Villas #28, Colonia Las Villas, Guaymas, Sonora, Mexico (Organic Certificate PLc-OR-324-2).
4. MCA applied to Primus Labs on September 11, 2017, for organic crop certification at Campo San Benito Mallas 8 and 9 in Vizcaino, Baja California Sur, Mexico, specifically for saladette tomatoes, which includes Roma tomatoes. However, after conducting an audit of the location on October 3, 2017, Primus Labs subsequently denied this MCA certification application on November 30, 2017.
5. On October 16, 2017, MCA applied to SCS for an organic certificate for crops, specifically Roma tomatoes grown at Campo San Benito Mallas 8 and 9, in Vizcaino, Baja California Sur, Mexico, the same location for which MCA had just applied for crop certification from Primus Labs.

6. On November 11, 2017, SCS issued MCA an organic certificate for crops, specifically Roma tomatoes, grown at Campo San Benito Mallas 8 and 9, in Vizcaino, Baja California Sur, Mexico (Organic Certificate SCS-703c-P0099-01).
7. On November 17, 2017, MCA applied to SCS for an organic certificate for the handling of Roma tomatoes at the Emiliano Zapata #2 packinghouse in Vizcaino, Baja California Sur, Mexico. Although SCS authorized the initial handling inspection of the Emiliano Zapata #2 packinghouse in November 2017, the actual inspection didn't take place until May 2018.
8. On November 30, 2017, Primus Labs issued MCA a Notice of Noncompliance and Denial of Certification in regard to MCA's application for organic crop certification at Campo San Benito Mallas 8 and 9 after finding that numerous prohibited substances had been applied to the Mallas 8 and 9 tomato crops on August 17, 2017 and October 3, 2017. Other noncompliances were also found.
9. On December 11, 2017, SCS received an inquiry from an organic supplier who questioned whether alleged organic Roma tomatoes it received from MCA were grown and handled pursuant to the organic regulations.
10. On December 19, 2017, SCS issued a Notice of Noncompliance to MCA, stating that MCA failed to respond to the inquiry asking MCA to substantiate that the Roma tomatoes in question were grown and handled in accordance with the organic regulations.
11. On January 3, 2018, SCS issued a Notice of Noncompliance and Proposed Suspension to MCA, stating that while MCA substantiated that the Roma tomatoes in question were organically-grown, MCA handled the organically-grown Roma tomatoes at an uncertified site.

12. On February 8, 2018, SCS denied MCA's February 3, 2018 request for mediation.
13. On March 25, 2018, MCA appealed the January 3, 2018 Notice of Noncompliance and Proposed Suspension.
14. On May 25, 2018, SCS conducted the handling inspection of the Emiliano Zapata #2 packinghouse where the Roma tomatoes in question had been packed. SCS is holding the decision on certification in abeyance pending the outcome of MCA's appeal to the Notice of Noncompliance and Proposed Suspension.

DISCUSSION

The USDA organic regulations at 7 C.F.R. 205.102, Use of the term, "organic," state that any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s)") must be: (a) Produced in accordance with the requirements specified in §205.101 or §§205.202 through 205.207 or §§205.236 through 205.240 and all other applicable requirements of part 205; and (b) Handled in accordance with the requirements specified in §205.101 or §§205.270 through 205.272 and all other applicable requirements of this part 205.

The term "handle" is defined at §205.2, Terms defined, as "to sell, process, or package agricultural products," and a "handling operation" is defined at "any operation or portion of an operation…that receives or otherwise acquires agricultural products and processes, packages, or stores such products."

The organic regulations at § 205.662, Noncompliance procedure for certified operations, state that any certified operation that knowingly sells or labels a product as organic, except in accordance with the Act, has violated the Act.

The organic regulations at §205.401, Application for certification, states that a person seeking certification of a production or handling operation must submit an application to a certifying agent, and said application must include the name of any other organic certifying agent to which application was previously made, the year of application, the outcome of the application, and a description of the actions taken by the applicant to correct any noncompliances noted in a notice of noncompliance issued by the other certifying agent.

SCS proposed a suspension of MCA's organic certification which would prohibit the sale, labeling, or representation of its products as organic. Presenting the reasons for proposing a suspension, SCS stated that MCA Roma tomatoes certified as organically grown under a SCS-issued organic certificate were handled by MCA at an uncertified site and labeled as organic. Specifically, Roma tomatoes grown at Campo San Benito Mallas 8 and 9 in Vizcaino, Baja California Sur, Mexico, for which MCA has an organic crop certificate, were then packed at MCA's Emiliano Zapata #2 packinghouse in Vizcaino, Baja California Sur, Mexico from December 1, 2017 to January 3, 2018, despite this location not being certified for organic handling. MCA had applied for the organic handling certification of Roma tomatoes at the Emiliano Zapata #2 packinghouse, but SCS hadn't yet inspected the location and had not granted certification for this location; and when SCS subsequently conducted the handling inspection on May 25, 2018, during the pendency of the appeal, SCS found that MCA had handled Roma tomatoes at the uncertified location for a longer period of time - from November 29, 2017 to January 12, 2018.

SCS had received an inquiry from an organic supplier who questioned whether alleged organic Roma tomatoes it received from MCA were grown and handled pursuant to the organic regulations. Specifically, Organically Grown Company emailed SCS on December 11, 2017,

stating it had received Roma tomatoes from MCA and wanted to verify that the product was actually organic. Organically Grown Company attached to its email a picture of the side of a box of the Roma tomatoes which has the USDA organic label and also a label stating the Roma tomatoes are organic and were grown and packed by MCA. MCA responded to SCS's follow-up inquiry and it was substantiated that the Roma tomatoes were organically grown, but MCA didn't address whether the Roma tomatoes were organically handled, resulting in a Notice of Noncompliance and subsequent Notice of Noncompliance and Proposed Suspension finding that MCA handled organically-grown Roma tomatoes at an uncertified site.

In the appeal, MCA acknowledged packing the organically-grown Roma tomatoes from Campo San Benito Mallas 8 and 9 at the Emiliano Zapata #2 packinghouse, though it is not certified for organic handling, but states they ceased this practice as of January 12, 2018. MCA also states that the Emiliano Zapata #2 packinghouse has followed Good Manufacturing Practices since at least August 2017, and took special care not to jeopardize the organic integrity of product handled there. Additionally, MCA states that Primus Labs issued them an organic handling certificate for Emiliano Zapata #1, and they had applied for an organic handling certificate from SCS for Emiliano Zapata #2, but SCS has continually rescheduled the handling inspection for the #2 packinghouse.

The appeal admits fault, acknowledging that the organically grown Roma tomatoes were packed at an uncertified site, but then attempts to excuse this violation of the Act and organic regulations. SCS had issued MCA an organic crop certificate for Roma tomatoes grown at Campo San Benito Mallas 8 and 9, and MCA had applied to SCS on November 17, 2017, for the organic handling of the Roma tomatoes at the Emiliano Zapata #2 packinghouse. However, no organic handling certificate has yet been issued to MCA for the Zapata #2 packinghouse by SCS

or any certifier, or for the packing of Roma tomatoes at any location. SCS subsequently conducted a handling inspection at the Zapata #2 packinghouse on May 25, 2018, after several delays, but has still not issued an organic handling certificate for that location. Further, any organic handling certificate issued now for the Zapata #2 packinghouse wouldn't apply retroactively to the organic Roma tomatoes handled there from November 29, 2017 to January 12, 2018. Further, although SCS didn't conduct the handling inspection of the Zapata #2 packinghouse for over six months after MCA applied for handling certification at that site, the delay doesn't excuse MCA's handling of organically-grown Roma tomatoes at the uncertified site.

As to MCA claims that the Emiliano Zapata #1 packinghouse has been certified by Primus Labs for organic handling, it is actually the Paseo Las Villas #28 location that has been certified by Primus Labs for organic handling, and then only for sweet mini peppers and zucchini squash. The Zapata #1 location was certified by Primus Labs for the organic growing of sweet mini peppers and zucchini squash. Primus Labs had also issued another organic certificate to MCA, but it only applies to crops – specifically, yellow and black squash – grown at Campo Nuevo.

MCA claims that the Emiliano Zapata #2 packinghouse has utilized Good Manufacturing Practices since at least August 2017, and took care not to jeopardize the organic integrity of product handled there. It is acknowledged that Good Manufacturing Practices are regulations promulgated by the U.S. Food and Drug Administration to help guarantee that various products intended for human consumption and use are safe and effective. However, even if, assuming arguendo, MCA's Emiliano Zapata #2 packinghouse utilizes Good Manufacturing Practices,

those standards are separate and apart from the specific requirements found in the organic regulations and do not negate MCA's required compliance with the organic regulations.

Although MCA handled organic Roma tomatoes at an uncertified packinghouse, SCS proposed suspending MCA's organic crop certificate for Roma tomatoes as MCA doesn't have an organic handling certificate for Roma tomatoes. It is not relevant that the Roma tomatoes were organically grown, as MCA's actions in effect negated the organic nature of the Roma tomatoes. This situation is comparable to the case of In re: Michael Tierney, dba Birchwood Farms, 73 Agric. Dec. 512 (Oct. 9, 2014), in which organically-raised livestock was slaughtered in an uncertified non-organic facility and then the meat was labelled as organic, thereby violating the organic regulations. The USDA Administrative Law Judge (ALJ) in Tierney ruled that the supplying of and placing of organic labels on product at an uncertified slaughterhouse circumvented the NOP regulations and this "overt circumvention of the regulations...lulled consumers to believe that the meat bearing the USDA label was organic." Tierney was ordered to cease and desist from violating the organic regulations and its organic certification was revoked. The Judicial Officer affirmed the ALJ Tierney decision (73 Agric. Dec. 578 (Dec. 29, 2014)).

A separate issue was also discovered during the review of MCA's appeal and documentation from SCS and Primus Labs. MCA applied to Primus Labs for organic crop certification for the Roma tomatoes grown at Campo San Benito Mallas 8 and 9, and Primus Labs conducted an audit of this location on October 3, 2017. MCA stated that Primus Labs was taking too long to issue the applied-for organic crop certificate and, therefore, MCA also applied on October 16, 2017, to SCS for an organic certificate for the Roma tomatoes grown at that same location. On November 11, 2017, SCS issued MCA an organic certificate for the Roma

tomatoes grown at Campo San Benito Mallas 8 and 9. However, on November 30, 2017, Primus Labs issued a Notice of Noncompliance and Denial of Certification for the Roma tomatoes grown at that location. Primus Labs stated in its notice that numerous prohibited substances had been applied to the crops on August 17, 2017 and October 3, 2017; and also found that there was a lack of information on the seeds planted in the parcels, no training records for workers, and no independent pipeline for organic water management. Primus Labs submitted the pesticide lab reports for MCA's San Benito Mallas 8 and 9 to the NOP. MCA stated that it didn't inform Primus Labs that it was applying to SCS, and didn't tell SCS of the pending Primus Labs application, as required for applicants for certification under the USDA organic regulations.

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.

MCA violated the organic regulations by having organically-grown Roma tomatoes handled at a location which was not certified for organic handling, and then labeling, representing and selling the Roma tomatoes as organic. As with the Tierney case cited above, MCA's actions circumvented the NOP organic regulations and also ran counter to the purpose of the organic certification of the Roma tomato crop. MCA's acknowledged actions violate the organic regulations at §205.102, Use of the term "organic" by selling, labeling and representing as organic Roma tomatoes which weren't handled in accordance with the organic regulations, and further violate the Act pursuant to §205.662. Additionally, MCA violated the organic regulations at §205.401 by submitting organic certification applications to certifiers Primus Labs and SCS for the same Roma tomatoes grown on the same property at Campo San Benito Mallas

8 and 9, without informing either certifier that it had submitted an application to the other certifier, with the result that certifier SCS granted organic certification while certifier Primus Labs denied certification.

DECISION

The appeal is denied and MCA Organics S.A. de C.V.'s organic crop certification for Roma tomatoes grown at Campo San Benito Mallas 8 and 9 is to be suspended. Attached to this formal Administrator's Decision denying MCA's appeal is a Request for Hearing form. MCA has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If MCA waives the hearing, the Agricultural Marketing Service will direct SCS to issue a Notice of Suspension. At any time after suspension, MCA may, "...submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part." Specifically, MCA must demonstrate that it has not handled organically-grown Roma tomatoes at an uncertified site, and has put in place measures to prevent the handling of organic product at uncertified sites. Further, MCA must address the Primus Labs' finding that it used prohibited substances at Campo San Benito Mallas 8 and 9, and any request for reinstatement must include verification that the Campo San Benito Mallas 8 and 9 operation is not using prohibited substances.

Done at Washington, D.C., on this 27th day of July, 2018.

Bruce Summers
Administrator
Agricultural Marketing Service