

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Pilot S.A. – Hacienda Pilot ) **Administrator’s Decision**  
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)  
Colimes, Ecuador ) **APL-055-21**  
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This Decision responds to an Appeal (APL-055-21) of a Notice of Noncompliance and Proposed Revocation of Certification to the National Organic Program (NOP) issued to Pilot S.A. – Hacienda Pilot (Pilot Farm) of Colimes, Ecuador by USDA-accredited certifying agent, Certification of Environmental Standards GmbH (CERES). 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 (USDA) organic regulations.<sup>2</sup>

**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

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

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

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.

### **FINDINGS OF FACT**

1. On March 19, 2021, CERES issued a Notice of Noncompliance.
2. On August 20, 2021, CERES issued a Notice of Noncompliance and Proposed Revocation for Pilot Farm’s entire operation.
3. On August 23, 2021, Pilot Farm filed an Appeal.

### **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 ...”

The organic regulations at §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that, “To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603 ...”

The organic regulations at §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,”

must: ... (b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop ...”

The organic regulations at §205.300, Use of the term, “organic,” state that, “(a) The term, “organic,” may only be used on labels and in labeling of raw or processed agricultural products ... that have been produced and handled in accordance with the regulations in this part...”

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 of 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; (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in §205.403; ... (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation ...”

CERES stated that an inspection of Pilot Farm, and testing of samples, revealed the presence of several prohibited substances. In its response to an initial Noncompliance and in its Appeal, Pilot Farm denies that it applied prohibited substances and stated in its Appeal it has taken corrective action to ensure future samples will not contain prohibited substances.

The evidence substantiates that Pilot Farm has been certified by CERES for crops, specifically mango, since August 29, 2005. The Pilot Farm has 4 Lots totaling [REDACTED] hectares. Pilot Farm’s certification initially included the scope of handling; however, this scope was subsequently separated and certified separately; it is not part of this appeal. The Pilot S.A.

handling certification applies to fruit produced at the Pilot Farm and 3 other farms. CERES also issued certification to Pilot S.A. for crops, with the 4 farms together under 1 certificate – Pilot Farm which is the Appellant in this case, (b) (4), (b) (4), and (b) (4) on August 29, 2005. Therefore, the mangoes produced by Pilot Farm are certified under the Pilot S.A. – Hacienda Pilot certificate as well as the ‘overarching’ Pilot S.A. crop certificate. This case specifically addresses the Pilot S.A. – Hacienda Pilot certification.

On November 25-26, 2020, CERES conducted an inspection of Pilot Farm and found numerous noncompliances. CERES issued a Notice of Noncompliance on March 19, 2021, which was sent to Pilot Farm along with a spreadsheet detailing each noncompliance and noting if the noncompliance had been corrected/resolved. Pilot Farm was given until July 7, 2021 to correct each remaining noncompliance. Specific to the current adverse action, CERES found that Pilot Farm used pesticides with unknown or unallowed inerts; and that Pilot Farm’s land had been subject to pesticide drift. The spreadsheet noted that a corrective action plan had been submitted for the first noncompliance, and the second was partially resolved. Other noncompliances cited include burning crop residues; product flow figures that didn’t match; an insufficient organic fertilization plan; possibly polluted irrigation water; missing or incomplete records; and an incomplete Organic Management Plan and Plot List.

On July 19, 2021, CERES conducted an unannounced inspection of Pilot Farm’s operation, at which time samples were taken of the mango crop, including fruit, leaves, and soil from Lots 1 and 2. The Inspection Report describes the sampling, and CERES also presented numerous Sample Labels for the samples from various parts of the Lots. The inspector had been instructed to take these samples because a bag of Atta Kill, the commercial brand of sulfluramid,

a prohibited substance, had previously been seen by CERES on Lot 2. Analysis/testing of the samples revealed the presence of several prohibited substances, not including sulfluramid.

CERES presented the laboratory reports of Eurofins, all dated August 12, 2021. The report for the leaves sample from the Centro 1 plot shows a finding of Dimethoate at 0.47 mg/kg; Diethyltoluamide at 0.31 mg/kg; and Omethoate at 0.041 mg/kg. The report for the soil sample from the Centro 2 Lot 2 shows a finding of Cypermethrin at 0.26 mg/kg; Dimethoate at 0.39 mg/kg; Diethyltoluamide at 0.69 mg/kg; and Omethoate at 0.063 mg/kg. The report for the fruit sample from Lindero Norte Lot 1 shows a finding of Dimethoate at 0.46 mg/kg; Propiconazole at 0.60 mg/kg; Diethyltoluamide at 0.041 mg/kg; and Omethoate at 0.021 mg/kg. The report for the leaves sample from Lindero Sur Lot 1 shows a finding of Dimethoate at 0.066 mg/kg; Diethyltoluamide at 0.057 mg/kg; and Omethoate at 0.015 mg/kg. Diethyltoluamide is a synthetic chemical commonly known as DEET and is a personal insect repellent. It is not allowed for use in organic crop production.

The Environmental Protection Agency (EPA) tolerance level for Cypermethrin is 0.70 mg/kg, putting the 5% allowed in organic production at 0.035 mg/kg. As such, the level found in the soil sample exceeds the allowed limit. There is no EPA tolerance level for Dimethoate, Propiconazole, or Omethoate. Therefore, they are prohibited in organic production at any level.

As a result of the finding of prohibited substances not being correctable, and also believing that Pilot Farm applied prohibited substances to the crops, and hence willingly violated the organic regulations, CERES issued a combined Notice of Noncompliance and Proposed Revocation of Pilot Farm's certification in its entirety.

The organic regulations at 7 C.F.R. §205.662(c) state that, "...When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or

revocation of certification may be combined in one notification.” Additionally, section (d) of 7 C.F.R. §205.662, provides that a certifier which has reason to believe that a certified operation has willfully violated the Act or regulation, shall send the certified operation a notification of proposed suspension or revocation, applicable to the noncompliance.

CERES had issued a Notice of Noncompliance regarding the use of prohibited or unknown inputs, without a satisfactory response from Pilot Farms. CERES also confirmed the usage of prohibited substances through the lab reports. As such, CERES characterized Pilot Farm’s actions as willful. This is supported by CERES’ spreadsheet of noncompliances on August 20, 2021, from the July 2021 inspection, citing to Pilot Farm’s use of chemical pesticides as shown by the laboratory analysis of samples taken. At the time, CERES noted that the fruit from the affected Lots 1 and 2, could only be sold as conventional mangoes. CERES also noted that Pilot Farm’s mangoes came into contact with pollutants, specifically DEET, in the post-harvest process, though this was not addressed in the Notice of Noncompliance and Proposed Revocation.

After issuance of the March 19, 2021 Notice of Noncompliance, Pilot Farm wrote CERES on June 3, 2021, and again on June 26, 2021, stating it has never used the prohibited input Atta Kill, as alleged by the inspector, and blaming a neighboring farm for leaving the opened bag in Lot 2. In its Appeal, Pilot Farm reiterates its denial regarding the use of prohibited substances and disputes the above cited findings of the Eurofins laboratory. Pilot Farm noted that the inspector who took the samples may have had the Diethyltoluamide/DEET substance on his/her skin or clothes since it’s an insect repellent. Further, the Pilot Farm representative keeps chemicals in his vehicle and had warned the inspector not to get close to them, suggesting that the inspector contaminated the samples when in the vehicle. However, if

the inspector contaminated the samples by coming into contact with chemicals in Pilot Farm's representative's car, the representative could have also caused such contamination in the course of daily operations. Pilot Farm also disputes the finding of Cypermethrin in samples, stating that if it had applied the substance to crops, it would have been found in all samples. However, Cypermethrin wouldn't necessarily be used on all crops as alleged by Pilot Farm.

The Inspection Report of July 19, 2021 and supporting photograph from CERES also substantiated that an opened bag of Atta Kill had previously been seen in Lot 2. Atta Kill is a brand of sulfluramid, which is a synthetic substance not approved for use in organic production. As stated above, Pilot Farm specifically stated in letters to CERES, that it has never used the prohibited input Atta Kill, as alleged by the inspector, and blamed a neighboring farm for leaving the opened bag in Lot 2. A translated portion of the Inspection Report notes that Pilot Farm's staff denied the use of prohibited substances and stated that the bag of Atta Kill was in an area of Lot 2 which is transitioning to organic production. PFOS didn't appear in the lab results for the samples, however, the fact that a bag of the product was found on Pilot Farm's Lot 2 is troubling.

Pilot Farm acknowledges that it was warned about the possible application of/contamination by prohibited substances in September 2019, almost 2 years prior to the July 2021 inspection at which samples showed prohibited substance residues. Pilot Farm states it immediately revised its procedures so that future samples wouldn't contain any trace of prohibited substances. However, AMS notes that if appropriate effective corrective actions had been taken, the July 2021 samples wouldn't have shown residues. Pilot Farm submitted invoices for additional inputs, which are allegedly OMRI listed and/or confirmed by CERES or other certifiers as being allowed in organic production. However, even if Pilot Farm used these allowed inputs, it doesn't mean they didn't also use prohibited substances.

Pilot Farm also submitted its internal Field Investigation Report of September 13, 2021, stating that a possible reason for the contamination of its crops could be the use of prohibited substances by neighboring farms. Pilot Farm stated it spoke with its neighbors and requested that they spray their inputs in the opposite direction from Pilot Farm's land. Pilot Farm also states it has added extra buffers to its land and submitted a revised map showing neighboring land and the buffers. However, these actions don't negate the findings of prohibited substances.

Pilot Farm stated that it took samples on September 6, 2021, of mango fruit from Centro Lot 1 and Norte Lindero Lot 1, and of leaves from Centro Lot 1 and Centro Lot 2. Pilot Farm submitted the AgroLab reports showing that no prohibited substances were detected in any of the samples. However, this doesn't negate CERES' findings, as the samples were collected by the operation itself.

Pilot Farm also submitted laboratory reports for the testing of samples taken on September 30, 2019, almost 2 years prior to the inspection of July 2021. Instead of supporting Pilot Farm's case, however, these reports show the presence of Propiconazole at 1.6 mg/kg; 2.1 mg/kg; 0.57 mg/kg; 9.9 mg/kg; and 1.4 mg/kg in the samples taken from various plots. Propiconazole is prohibited at any level in agricultural production. These lab reports, submitted by Pilot Farm, also show other prohibited substances at unallowed levels in areas of Pilot Farm's certified land approximately 1 ½ years prior to the July 2021 inspection, and in areas adjacent to organic production plots as seen on a map of Pilot Farm's land. As stated above, Pilot Farm acknowledged that it was told in September 2019 of the possible application of/contamination by prohibited substances and these lab results support CERES' findings and conclusions.



## 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. The evidence substantiates that Pilot Farm violated the organic regulations at 7 C.F.R. §205.102, Use of the term, “organic;” 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.300, Use of the term, “organic;” and 7 C.F.R. §205.400, General requirements for certification.

Several samples of soil and mango leaves taken from certified Lots 1 and 2 at the July 19, 2021 inspection revealed the presence of numerous prohibited substances in levels exceeding the EPA tolerance levels for organic products. Additionally, an opened bag of Atta Kill, the commercial brand of a prohibited substance was found in Lot 2 of Pilot Farm’s land. Pilot Farm acknowledged that it had already been told by CERES in September 2019 of the possible application of/contamination by prohibited substances on its mango crops. The testing of mango shells and leaves, in September 2019, revealed the presence of prohibited substances in samples from certified land. CERES had also found at the November 2020 inspection that Pilot Farm had used pesticides with unknown or unallowed inerts, and that Pilot Farm’s land had been subjected to pesticide drift. Further, the explanations offered by Pilot Farm for the presence of prohibited substances on sampled mango leaves and soil are implausible. Pilot Farm has not demonstrated an ability to comply with the regulations. The finding of prohibited substances, despite the certifier’s previous warning, demonstrates that Pilot Farm has willingly violated the organic regulations. Pilot Farm may not remain certified.

## DECISION

Pilot Farm's August 23, 2021 Appeal is denied, and the August 20, 2021 Notice of Noncompliance and Proposed Revocation of certification is affirmed. Pilot Farm's organic certification is to be revoked for a period of 5 years. Although the samples which revealed the presence of prohibited substances were only taken from Lots 1 and 2, and the Pilot Farm has 4 Lots, the crop certification of Pilot S.A. – Hacienda Pilot is to be revoked in its entirety due to the seriousness and repeated nature of the noncompliances. Further, while the separate crop certification of Pilot S.A. covering the Pilot Farm and 3 other farms wasn't identified in the adverse action, the certification for mangoes from the Pilot Farm included in the Pilot S.A. crop certificate is to be excised out and also revoked for 5 years. Failure to do so would make a revocation of the Pilot Farm certificate ineffective and moot. Additionally, while the handling certification of Pilot S.A. which covers the handling of fruit from the 4 farms wasn't identified in the adverse action, no fruit from the Pilot Farm is to be handled under the Pilot S.A. handling certificate while the certification of Pilot Farm is revoked. Pilot Farm is ineligible for certification until 5 years after the revocation date

Attached to this formal Administrator's Decision denying Pilot Farm's Appeal is a Request for Hearing form. Pilot Farm has thirty (30) days to request an administrative hearing

before an Administrative Law Judge. If Pilot Farm waives the hearing, this Administrator's Decision revoking Pilot Farm's organic certification will become final.

Done at Washington, D.C., on this \_\_\_\_\_  
day of \_\_\_\_\_, 2022.

**BRUCE**  
**SUMMERS**  
Bruce Summers  
Administrator  
Agricultural Marketing Service

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