

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
 )  
Triple T Organics LLC )  
 ) **Administrator's Decision**  
 ) **APL-037-23**  
Chatfield, Minnesota )  
 )

This Decision responds to an Appeal (APL-037-23) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Triple T Organics LLC (Triple) of Chatfield, Minnesota by USDA-accredited certifying agent Midwest Organic Services Association (MOSA). 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 such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680

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

<sup>2</sup> 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 October 1, 2014, MOSA certified Triple for crops and livestock.
2. On February 16, 2022, MOSA issued a Notice of Noncompliance to Triple for failure to pay all past due certification related fees.
3. On October 6, 2022, MOSA issued a Notice of Noncompliance to Triple for failure to pay all additional past due certification related fees.
4. On October 15, 2022, MOSA issued a Notice of Noncompliance to Triple for its failure to submit additional information requested by MOSA in its September 8, 2022 Pre-Decision Requirements letter.
5. On November 30, 2022, MOSA issued a Notice of Proposed Suspension to Triple after it failed to respond to the October 15, 2022 noncompliance notice.
6. On January 7, 2023, MOSA accepted Triple's mediation request.
7. On January 19, 2023, MOSA conducted mediation with Triple, and they reached a verbal agreement.
8. On March 16, 2023, MOSA issued a Notice of Mediation Failure after Triple failed to sign the mediated settlement agreement.
9. On March 16, 2023, MOSA also issued a Notice of Noncompliance to Triple for advertising uncertified products as organic.
10. On April 5, 2023, Triple filed an Appeal to the March 16, 2023 Notice of Mediation Failure which revived the November 30, 2022 Notice of Proposed Suspension.

11. On June 20, 2023, MOSA issued a Notice of Proposed Suspension regarding the Notice of Noncompliance issued March 16, 2023.
12. On July 13, 2023, MOSA accepted Triple’s request for mediation regarding the June 20, 2023 Notice of Proposed Suspension.
13. On August 21, 2023, MOSA issued a Notice of Noncompliance to Triple for recently incurred certification fees which hadn’t been paid.
14. On November 13, 2023, Triple entered into a Settlement Agreement with NOP for a global resolution of the prior proposed suspension notices and various noncompliances.
15. On January 19, 2024, NOP issued a Notice of Noncompliance and Request for Corrective Action to Triple after MOSA reported that Triple had breached the NOP Settlement Agreement by failing to pay its 4<sup>th</sup> quarter certification fees due December 31, 2023.
16. On May 15, 2024, NOP issued a Notice of Noncompliance and Request for Corrective Action to Triple after MOSA reported that Triple had breached the NOP Settlement Agreement by failing to submit its 2024 certification renewal application and fees; and maintain required records.
17. On May 30, 2024, NOP issued a Notice of Noncompliance and Request for Corrective Action to Triple after MOSA reported that Triple had breached the NOP Settlement Agreement by failing to have required records available at the MOSA inspection; not maintaining required records; and for deficiencies in records.

### **REGULATORY CITATIONS**

The USDA organic regulations at 7 C.F.R. §205.102, Use of the term, “organic,” states 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 regulations at 7 C.F.R. §205.103, Recordkeeping, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” (b) Such records must: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; ... (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.”

The regulations at 7 C.F.R. §205.201, Organic production and handling system plan, states that, “(a) The producer or handler of a production or handling operation ... must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent ... An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The regulations at 7 C.F.R. §205.204, Seeds and planting stock practice standard, state that, “(a) The producer must use organically grown seeds, annual seedlings, and planting stock”

except for specific circumstances. Operations also must maintain records documenting their seed searches if organically grown seeds aren't used under one of the noted exemptions.

The regulations at 7 C.F.R. §205.236, Origin of livestock, state that, “(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management ... (c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals and edible and nonedible animal products produced on the operation.”

The regulations at 7 C.F.R. §205.237, Livestock feed, state that, “(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and handled by operations certified to the NOP ...”

The regulations at 7 C.F.R. §205.238, Livestock health care practice standard, state that, “(a) The producer must establish and maintain preventative livestock health care practices, including: ... (2) Provision of a feed ration sufficient to meet nutritional requirements ... (3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites ... “

The regulations at 7 C.F.R. §205.239, Livestock living conditions, state that, “(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including: ... (3) Appropriate clean, dry bedding... “

The regulations at 7 C.F.R. §205.240, Pasture practice standard, state that, “The producer of an organic livestock operation must, for all ruminant livestock on the operation, demonstrate through auditable records in the organic system plan, a functioning management plan for pasture

... (c) A pasture plan must be included in the producer's organic system plan, and be updated annually ... “

The 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 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; ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow ... the certifying agent access to such records during normal business hours for review ... (e) Submit the applicable fees charged by the certifying agent ...” Additionally, the 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 ... (3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

## **DISCUSSION**

Evidence substantiates that Triple was certified organic for crops and livestock on October 1, 2014, by MOSA. In the past few years, MOSA has issued numerous noncompliance notices to Triple for various violations of the organic regulations. On February 16, 2022, MOSA issued a Notice of Noncompliance to Triple for failing to pay its 2021 certification fees for which an installment plan had been established. This was reiterated in a MOSA letter of May 17, 2022,

in which MOSA noted that, in addition to the 2021 fees remaining unpaid, Triple also had failed to pay its 2022 fees and submit its 2022 annual update. Subsequently, on October 6, 2022, MOSA issued a Notice of Noncompliance citing to continued past due fees, as well as the failure to pay the 1<sup>st</sup> and 2<sup>nd</sup> quarter fees for 2022. On November 16, 2022, MOSA wrote Triple acknowledging that it had spoken to Triple about its financial difficulties and asked that Triple keep MOSA informed of its financial situation.

Concurrent with Triple's failure to pay certification fees, MOSA sent a Final Review Pre-Determination Requirements letter to Triple on September 8, 2022, requesting that it submit an updated Organic System Plan (OSP), with a deadline of September 29, 2022. MOSA also detailed other required records, including information on used inputs. After Triple failed to submit the requested documents by the deadline, MOSA issued a Notice of Noncompliance on October 15, 2022, reiterating the requests. MOSA stated that because Triple was requesting the addition of hogs to its certification, it needed to complete the Organic Livestock Production table, Livestock Purchases table, Livestock Housing and Outdoor Lots table, and Outdoor Access table in the OSP. Additionally, MOSA asked Triple to submit a plan for responding timely to MOSA requests in the future. MOSA set a new deadline of November 5, 2022 for submission of the requested documents. After Triple failed to adequately respond to the noncompliance notice, MOSA issued a Notice of Proposed Suspension on November 30, 2022.

On January 7, 2023, MOSA accepted Triple's mediation request, and on January 19, 2023, MOSA conducted mediation with Triple. The parties reached a verbal agreement, and MOSA sent a written Settlement Agreement detailing the agreed upon terms, including Triple providing all requested information from the prior September 8, 2022 Pre-Determination Requirements letter, all past due fees, the 2023 annual update and fees for the 1<sup>st</sup> quarter, and

further agreeing to respond timely to all future requests and timely pay all fees. However, on March 16, 2023, MOSA issued a Notice of Mediation Failure after Triple failed to sign the mediated settlement agreement. The notice detailed the numerous opportunities and extensions given to Triple to sign and return the agreement. MOSA stated in the rejection notice that a revision was made to the agreement at Triple's request, and on January 30, 2023, Triple stated it had received the agreement and would be signing it and returning it to MOSA. However, Triple subsequently stated it had lost its copy of the agreement. MOSA sent a new copy to Triple, but it hasn't signed and returned the agreement.

On April 5, 2023, Triple filed an Appeal to the March 16, 2023 Notice of Mediation Failure, which had revived the November 30, 2022 Notice of Proposed Suspension. Triple stated that it has had financial hardships over the past two years, and its owner has had medical issues, though it has continued making its installment payments to MOSA for past due fees. Triple didn't address the failure to provide information in its OSP on the hogs for which it was requesting certification.

Although the previously appealed November 30, 2022 Notice of Proposed Suspension didn't cite to a noncompliance regarding unpaid certification fees, NOP subsequently asked MOSA to address this matter, since Triple cited to installment payments in its Appeal, and the settlement agreement offered by MOSA also contained a term requiring payment of overdue fees. NOP learned through this communication of Triple's history of noncompliance regarding certification fee payments. The numerous notices issued by MOSA to Triple regarding failure to pay its certification fees on a timely basis are therefore included herein.

Concurrent to MOSA's March 16, 2023 Notice of Mediation Failure, MOSA also issued a Notice of Noncompliance to Triple on March 16, 2023 for the advertising of uncertified



products as organic. MOSA stated that Triple advertised raw milk and packaged meat as organic on its website. MOSA also noted that Triple hadn't provided verification that the utilized slaughter facility is certified organic; and that milk is not listed on the livestock certificate of Jake's Organic Farm LLC (Jake's), owned by the son of Triple's owner and also certified by MOSA. MOSA also stated that Triple's certification doesn't cover sales or handling activities. NOP requested that MOSA and Triple address these matters to ascertain the status of the cited noncompliances.

On June 20, 2023, MOSA issued a Notice of Proposed Suspension to Triple after Triple failed to adequately address the March 16, 2023 Notice of Noncompliance. On July 13, 2023, MOSA accepted Triple's request for mediation regarding the June 20, 2023 proposed suspension. MOSA submitted a Settlement Agreement it allegedly entered into with Triple on August 2, 2023. However, the agreement was signed by an individual who had no authority to enter into an agreement for Triple, making the agreement invalid. In addition, on August 21, 2023, MOSA issued a Notice of Noncompliance to Triple for recently incurred certification fees which hadn't been paid.

Some of the cited noncompliances were resolved by the clarification of which operation, Triple or Jake's, had violated the organic regulations, as discussed below. NOP also found that the recordkeeping noncompliances and the failure to pay certification fees are correctable. Therefore, NOP offered Triple a Settlement Agreement with specific terms to address and resolve the cited noncompliances and its appeal. The offer was sent to Triple on August 9, 2023. After not receiving any response or acknowledgment by Triple, NOP sent an email reminder on August 17, 2023. NOP then spoke to the owner of Triple, on August 18, 2023, reviewing the agreement terms. NOP sent a revised offered Settlement Agreement to Triple on August 22,

2023, and another reminder, which was followed by a third and final revised Settlement Agreement being sent to Triple on October 11, 2023.

Subsequently on November 13, 2023, Triple entered into a Settlement Agreement with NOP for a global resolution of the prior proposed suspension notices and various noncompliances cited by MOSA. Specifically, Triple agreed to timely respond to all requests for documentation and information by its certifier; maintain all required records disclosing all activities and transactions of the operation; submit all additional documentation for the hog production within 60 days of the agreement execution; pay all overdue fees for the third quarter of 2023 within 60 days and pay the fourth quarter fees by the deadline; not represent, label, or sell, nor advertise on any website any products as organic which haven't been certified organic; and submit sales information for 2021 and 2022.

With respect to a separate noncompliance, NOP found that the advertising of nonorganic product as organic cited by MOSA was not done on a Triple website, as it does not have one. Rather, the cited advertising was done on the website of the operation, Jake's Organic Farm LLC (Jake's). MOSA, which also certifies Jake's, acknowledged this. Therefore, that allegation wasn't substantiated and there is no violation of the organic regulations at 7 C.F.R. §205.102, Use of the term, "organic." Triple also agreed it may only engage in activities and transactions for which it is certified, and that Triple and its owner are to be the only entities representing Triple.

However, two months after signing the NOP settlement agreement with NOP, MOSA reported to NOP on January 12, 2024, that Triple breached the agreement of November 13, 2023. Specifically, MOSA stated that Triple had failed to pay the 2023 4<sup>th</sup> quarter certification fees that were due December 31, 2023. NOP issued a Notice of Noncompliance and Request for

Corrective Action on January 19, 2024, stating that Triple had 20 days to pay the overdue 2023 4<sup>th</sup> quarter fees. Additionally, it was noted that inspection fees would be due shortly, and additional certification fees were accruing. NOP sent numerous reminder emails to Triple regarding the need to pay the overdue and additional accruing fees.

While the failure to pay certification fees continued, MOSA reported another breach of the Settlement Agreement on May 28, 2024. Specifically, MOSA stated that Triple failed to have numerous records available at the 2023 inspection held on December 28, 2023, which MOSA stated was delayed due to the NOP Appeals process. Noncompliances were found in regard to livestock feed, rations, and grazing records; livestock herd records; bedding; seed records; as well as incomplete sales records for 2023 and an incomplete 2023 Crop Summary Current Year Field Plan.

Therefore, on May 15, 2024, NOP issued another Notice of Noncompliance and Request for Corrective Action to Triple, providing Triple 30 days from receipt of the notice in which to submit a complete 2024 certification renewal application/update as well as pay all applicable fees. Triple was also to resolve noncompliances regarding the various records. It was confirmed that all 2023 fees had now been paid, but 2024 fees would be determined once records on Triple's 2023 gross organic sales were provided.

MOSA subsequently reported to NOP on May 28, 2024, that Triple continues to have overdue certification fees, and has failed to meet multiple payment plans set up by MOSA; and therefore, no additional payment plans would be offered. Although Triple stated in a May 27, 2024 email to NOP that it submitted the renewal documentation and would pay the overdue fees, NOP issued another Notice of Noncompliance and Request for Corrective Action to Triple on May 30, 2024. NOP cited to the failure to have required records available at inspection, not

maintaining required records, and deficiencies in records. NOP gave Triple 45 days to resolve all the cited noncompliances and breaches of the NOP Settlement Agreement.

However, despite numerous communications with Triple, it has still failed to submit all required documentation, pay overdue fees, and resolve all cited breaches of the NOP Settlement Agreement. Specific allegations were detailed to Triple in an email of June 5, 2024; Triple's responses were referred to MOSA for review on July 16, 2024, July 24, 2024, and August 1, 2024. On August 6, 2024, MOSA submitted to NOP a detailed analysis of Triple's responses, which were insufficient to address and resolve the cited noncompliances. Although Triple submitted some of the requested documents, other documents have still not been submitted or are incomplete; and Triple failed to address the requests for written plans on how it would meet the specific requirements in the future. There are also still overdue certification fees. On June 7, 2024, MOSA wrote Triple stating that due to Triple's failure to meet payment plans in the past, MOSA will not accept or offer any additional quarterly payments or payment plans.

In addition to the various requirements set forth in the NOP Settlement Agreement of November 13, 2023, the agreement also stated in Term 4L that, "Triple agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing administrative action against Triple." Clause 3F of the Settlement Agreement states that, "Triple withdraws its appeal and waives further appeal rights in this matter. 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 Triple with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement." A closure letter sent to Triple on November 13, 2023 with the executed agreement also stated that, "... failure to abide by the

terms of the agreement shall automatically void the Settlement Agreement and USDA, and AMS may pursue an administrative hearing process.”

## **CONCLUSION**

The evidence substantiates that Triple violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification; as well as 7 C.F.R. §205.204, Seeds and planting stock practice standard; 7 C.F.R. §205.236, Origin of livestock; 7 C.F.R. §205.237, Livestock feed; 7 C.F.R. §205.238, Livestock health care practice standard; 7 C.F.R. §205.239, Livestock living conditions; and 7 C.F.R. §205.240, Pasture practice standard, as they relate to recordkeeping requirements. Specifically, Triple has failed to submit all required documentation/information regarding activities, crops, and livestock on its operation; has failed to submit requested plans on how it will comply with numerous provisions of the organic regulations; and has failed to timely submit to its certifier all certification fees, despite several prior notices and correspondence from MOSA, as well as installment plans to assist Triple. NOP attempted to resolve the numerous noncompliances by entering into a Settlement Agreement with Triple requiring Triple to maintain and submit numerous specific records; submit its renewal materials on a timely basis; and pay its overdue certification fees, as well as pay future fees on a timely basis. However, certifier MOSA notified NOP that Triple breached numerous terms of the Settlement Agreement, resulting in NOP issuing three separate Notices of Noncompliance and Requests for Corrective Action to Triple. MOSA and NOP have been very patient with Triple, providing Triple many opportunities to come into and remain in compliance with the organic regulations. In addition to formal adverse

actions being issued to Triple, MOSA and NOP also corresponded with Triple on numerous occasions to inform Triple of specifics on documentation needed, and how it could come into compliance. However, Triple has breached the NOP Settlement Agreement, noncompliances remain unresolved, and therefore Triple can't remain certified.

### DECISION

Triple's April 5, 2023 Appeal of the November 30, 2022 Notice of Proposed Suspended is denied. The crop and livestock certification of Triple is suspended. Pursuant to the organic regulations at 7 C.F.R. §205.665(g)(1), Triple may apply for reinstatement of its certification upon submission of all required documentation substantiating its compliance with the organic regulations, full payment of all past due certification fees, and substantiating that it is capable of remaining in compliance with the organic regulations.

Additionally, attached to this formal Administrator's Decision denying Triple's Appeal is a Request for Hearing form. Should Triple wish to appeal this matter further, Triple has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 20th  
day of August, 2024.

**BRUCE SUMMERS** Digitally signed by BRUCE SUMMERS  
Date: 2024.08.20 14:58:45 -04'00'

Bruce Summers  
Administrator  
Agricultural Marketing Service