

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Jorge Rolando Gonzalez Garza ) **Administrator's Decision**  
Zaragoza, Mexico ) **APL-025-20**  
)

This Decision responds to an appeal (APL-025-20) of a Notice of Denial of Certification of National Organic Program (NOP) certification issued to Jorge Rolando Gonzalez Garza (Garza) of Zaragoza, Mexico by BioAgriCert s.r.l. (BAC). 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 September 5, 2019, Garza applied for organic crop certification to BAC.
2. On October 8, 2019, BAC conducted an inspection of Garza’s operation.
3. On October 21, 2019, BAC issued a Notice of Noncompliance.
4. On November 7, 2019, BAC issued a Notice of Denial of Certification.
5. On November 23, 2019, Garza filed an Appeal.

### **DISCUSSION**

The USDA organic regulations at 7 CFR §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...”

Certifier BAC issued a Notice of Denial of Certification to Garza after two tests of a pecan sample taken at the October 8, 2019 inspection both revealed 1-Naphthol (Carbaryl Metabolite), a prohibited substance, in a level exceeding the EPA tolerance level.

Garza states it never used the cited substance or any chemical on its crops, that the application equipment is only used on organic crops, and that a third test failed to detect the substance cited by BAC.

On October 21, 2019, BAC issued a Notice of Noncompliance to Garza, stating that it had reviewed Garza's application for certification and Organic System Plan; however, testing of a pecan sample taken at the October 8, 2019 inspection of Garza's Rancho El Porvenir revealed the presence of 1-Naphthol (Carbaryl Metabolite) at 0.115 ppm (parts per million) which exceeds the EPA tolerance level. BAC presented the lab report from AgroLab of October 21, 2019, showing these results for Sample P-19-23136. On November 7, 2019, BAC issued a Notice of Denial of Certification stating that BAC's rebuttal of the noncompliance notice was not sufficient to enable organic certification. BAC repeated the findings of the first test of the pecan sample as stated in the Notice of Noncompliance. BAC also stated that the second test of the sample taken on October 8, 2019 from Garza's Rancho El Porvenir, again revealed the presence of 1-Naphthol (Carbaryl Metabolite). BAC submitted this second lab report from AgroLab, for Sample P-19-24767, dated November 5, 2019, which revealed the substance at 0.109 ppm, which BAC stated again exceeds the EPA tolerance level. The second test's results weren't issued until November 5, 2019, explaining why they weren't included in the prior Notice of Noncompliance. BAC also explained that the sample taken at the inspection was divided into 4 aliquots with 1 aliquot being used for the first test; a second aliquot being used for the second test; and a third aliquot being provided to Garza at the time of the sampling at the inspection. The inspector's Sampling Report shows the sample, a bag of pecans weighing between half a kilogram and a kilogram, was divided into 4 parts.

Garza stated that at the October 8, 2019 inspection BAC took 3 samples, keeping 2 which it had tested, and giving 1 sample to Garza. BAC explained it was 1 sample divided into 4 parts. Garza stated he asked BAC for the identity of a lab which could test the sample portion given to Garza. It was submitted to Groen Agro Control of International Foods Control. Garza stated the test of the third portion/aliquot didn't detect any of the cited substance and submitted the lab report of October 30, 2019, for the sample portion taken on October 8, 2019 from Rancho El Porvenir, which didn't detect 1-Naphthol. This third lab report shows testing for carbaryl and not 1-Naphthol; however, research shows that 1-Naphthol is a metabolite of carbaryl and naphthalene and is used as a pesticide.

Although, Garza's submitted lab report for the testing of the third portion of the sample didn't reveal the presence of 1-Naphthol, this doesn't negate the fact that BAC presented 2 lab reports from AgroLab from 2 other portions of the same sample taken from Garza's Rancho El Porvenir which revealed the presence of 1-Naphthol at 0.115 ppm and 0.109 ppm. The Environmental Protection Agency (EPA) has established tolerance levels for various chemicals, setting limits on the amount of the chemical allowed on an agricultural product. The EPA regulations at 40 CFR 180.169, "Carbaryl," state that the tolerance level for "the insecticide carbaryl, 1-naphthyl N-methyl-carbonate for nuts in tree group 14, except walnuts, is 0.1 ppm..." The EPA regulations at 40 CFR 180.41, Crop group tables, contains the Tree Nuts Group 14 list which includes pecans. Calculating for use in organic products, the 5% allowed threshold for pecans is 0.005 ppm. BAC's lab report for the first test found 1-Naphthol (Carbaryl Metabolite) at 0.115 ppm, and the lab report for the second test found the substance at 0.109 ppm, both exceeding the allowed threshold for organic products.

Garza states he never used the substance. However, although neither 1-Naphthol or the chemical name of Carbaryl Metabolite appear on his input list, Garza has been unable to rebut or offer any other reason for the presence of the substance on the two sample portions tested by BAC. Garza also claims that the substance isn't used in his geographical region; however, he provided no evidence to substantiate that belief. Garza stated, "We believe that we do not need to propose any corrective action for this case, since we are sure that no error was incurred, since the application equipment is only used for this crop..." and the entire area is organically managed.

## **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 totality of the evidence substantiates that Garza violated the organic regulations at 7 CFR §205.202, which require that land from which harvested organic crops are sold, labeled, or represented as organic must not have had prohibited substances applied to it for a period of 3 years immediately preceding the harvest. Garza also violated the organic regulations at 7 CFR §205.105 which state that synthetic substances and ingredients may not be used in organic crop production unless they are allowed per the National List. The substance 1-Naphthol/Carbaryl is not provided for in 7 CFR §205.601 and was found in levels exceeding 5% of the EPA threshold, which means the products must not be sold, labeled or represented as organic. Therefore, as cited by BAC, Garza's certification application was properly denied pursuant to 7 CFR §205.405(c)(1)(ii) which states a certifier is to issue a denial of certification if an operation's corrective actions or

rebuttal after issuance of a notice of noncompliance are not sufficient for the operation to qualify for certification.

### DECISION

The appeal is denied and the denial of Garza's application for organic crop certification is affirmed. Garza is denied certification, and his land and crops at Rancho El Porvenir are ineligible to be labeled as organic for 3 years. As the last date of application of the prohibited substance can't be determined, the 3-year period commenced on October 8, 2019, the date the sample was taken, and terminates on October 7, 2022. Attached to this formal Administrator's Decision denying Garza's appeal is a Request for Hearing form. Garza has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Garza waives the hearing, the Agricultural Marketing Service will direct NOP to affirm this Administrator's Decision which will become final. Garza remains uncertified through this period.

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

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service