

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Laurance Kriegel ) **Administrator’s Decision**  
Bovina, Texas ) **APL-044-20**  
)

This Decision responds to an appeal (APL-044-20) of a Notice of Noncompliance and Denial of Certification issued to Laurance Kriegel (Kriegel) of Bovina, Texas, by USDA-accredited certifying agent the Texas Department of Agriculture (TDA). 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 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

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

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

## **FINDINGS OF FACT**

1. On January 1, 2003, TDA initially issued an organic producer certificate to Kriegel, which was renewed March 1, 2005.
2. On May 23, 2008, TDA issued a Notice of Noncompliance and Proposed Suspension to Kriegel for numerous recordkeeping noncompliances dating back to 2005, as well as production practice noncompliances.
3. On May 21, 2010, the AMS Administrator issued a Decision denying Kriegel's appeal to the May 23, 2008 Notice of Noncompliance and Proposed Suspension, finding that a preponderance of the evidence has shown that Kriegel violated numerous provisions of the organic regulations. The Decision stated that Kriegel is suspended from organic certification "until the noncompliance issues are addressed."
4. On March 15, 2012, AMS and Kriegel signed a Consent Decision/Settlement Agreement, also signed by an Administrative Law Judge (ALJ), whereby Kriegel's certification was revoked for six months.
5. On February 8, 2013, Kriegel applied for organic certification for the 2013 crop year.
6. On April 2, 2013, TDA issued a Notice of Noncompliance and Denial of Certification, finding that the noncompliances resulting in the March 15, 2012 revocation of Kriegel's certification had not been corrected.
7. On May 6, 2013, Kriegel filed a Notice of Appeal to the executed March 15, 2012 Consent Decision/Settlement Agreement.
8. On October 18, 2013, the AMS Administrator denied Kriegel's appeal of the April 2, 2013 Notice of Noncompliance and Denial of Certification, finding that Kriegel still wasn't in full compliance with various portions of the organic regulations.

9. On January 17, 2014, after Kriegel filed a hearing request on November 5, 2013 to the Administrator's Decision, the ALJ issued a Decision and Order Dismissing Petition for Appeal.
10. On February 24, 2014, Kriegel applied for organic certification for the 2014 crop year.
11. On March 31, 2014, TDA issued a Notice of Noncompliance and Denial of Certification due to Kriegel's insufficient payment of an application fee, submission of an incomplete organic system plan, and lack of supporting documentation to support correction of the noncompliances that resulted in the March 15, 2012 Consent Decision/Settlement Agreement and revocation of Kriegel's certification.
12. On July 2, 2014, TDA reissued the March 31, 2014 Notice of Noncompliance and Denial of Certification, based on AMS feedback that the initial notice lacked information on Kriegel's right to request mediation.
13. On July 29, 2014, Kriegel appealed the July 2, 2014 re-issued Notice of Noncompliance and Denial of Certification.
14. On August 25, 2014, the AMS Administrator issued a Decision in response to Kriegel's July 29, 2014 appeal, finding that the noncompliances originally identified in the May 21, 2010 Administrator's Decision remained unresolved.
15. On September 8, 2014, Kriegel requested a hearing before the ALJ regarding the August 25, 2014 Administrator's Decision.
16. On January 8, 2015, AMS filed an Order to Show Cause with the ALJ, directing Kriegel to show cause why his application for organic certification shouldn't be denied
17. On February 26, 2015, Kriegel filed an application for organic certification for the 2015 crop year.

18. On August 26, 2015, the ALJ issued a Decision and Order concluding that the TDA properly found Kriegel wasn't eligible to be certified under the Act and the organic regulations because Kriegel failed to provide information necessary to determine his eligibility for organic certification; and concluded the TDA properly found Kriegel ineligible for certification due to his failure to provide documentation of his compliance with the regulations. Additionally, the ALJ concluded that the Administrator properly upheld the determinations of the TDA that Kriegel wasn't eligible for certification; and denied Kriegel's applications and requests for certification.
19. On September 11, 2015, Kriegel filed a Notice of Appeal of the ALJ Decision
20. On October 7, 2015, the 353<sup>rd</sup> Civil District Court of Travis County, Texas issued an Order granting defendant TDA's motion to dismiss case D-1-GN-14-001443 filed by Kriegel in that Court based on a lack of jurisdiction.
21. On October 29, 2015, the Judicial Officer (JO) issued a Decision and Order stating that the ALJ's August 26, 2015 findings of fact are fully supported by the documentary evidence, and there is nothing in the record compelling reversal of the ALJ's findings of fact. The JO adopted the ALJ's Decision and Order as the final order in this proceeding.
22. On November 20, 2015, Kriegel filed a Motion for Reconsideration of the JO's Decision and Order.
23. On December 15, 2015, the JO issued an Order Denying Petition to Reconsider based on Kriegel's motion being untimely filed.
24. On December 18, 2015, TDA issued a Notice of Noncompliance stating that Kriegel failed to submit sufficient documentation with the February 26, 2015 application addressing noncompliances as well as not paying the appropriate fee.

25. On January 22, 2016, TDA issued a Notice of Noncompliance acknowledging that they had misapplied a partial fee payment by Kriegel of \$1,365 but stating that he still owed \$500 for his most recent organic certification application.
26. On March 8, 2016, TDA issued a Notice of Denial of Certification for crop year 2015 after not receiving a response from Kriegel to the December 18, 2015 Notice of Noncompliance by the January 18, 2016 deadline.
27. On January 27, 2017, Kriegel filed an application for organic certification for the 2017 crop year stating he is not requesting certification by the USDA, but rather only certification by the Texas organic certification program.
28. On February 28, 2017, TDA wrote Kriegel stating that his 2017 application for certification as an organic crop producer had been rejected and that TDA wouldn't accept any future applications for organic certification from him, due to a "lack of administrative ability" as required in 7 CFR 205.501(a)(19). TDA stated it has issued numerous notices informing Kriegel of the need to provide evidentiary documentation that his operation has resolved the areas of noncompliance that led to the revocation of his organic certification on March 15, 2012, and that the appropriate fee payment is a requirement of the certification process. TDA stated Kriegel has continued to submit applications that contain no evidence of the actions taken to resolve the areas of noncompliance and only a partial fee payment. TDA also addressed Kriegel's statement that he wants to be certified organic to the Texas Organic Standard, rather than the USDA standard. TDA correctly noted that doing so is not statutorily authorized, as TDA is a USDA accredited certifying agent. Conducting such action would jeopardize TDA's accreditation as well as the organic certification of nearly 200 operations that TDA has certified.

29. On March 9, 2017, Kriegel filed, in the 353<sup>rd</sup> District Court of Travis County, Texas, a Motion to Add the 2017 Texas Organic Certificate Application to that case, although the Texas court had dismissed that case on October 7, 2015.
30. On March 6, 2018, Kriegel filed an application for organic certification for the 2018 crop year. As with his 2017 application, Kriegel was not seeking certification by the USDA, rather only by Texas, and he crossed out information on the application forms regarding NOP regulations and fees, as well as a line in the signature block, whereby the applicant certifies that it is in compliance with Title 7 of the Code of Federal Regulations, the USDA organic regulations.
31. On April 9, 2018, TDA issued a Notice of Noncompliance and Denial of Certification, denying Kriegel organic certification for crop year 2018.
32. On April 24, 2018, AMS received Kriegel's Appeal as well as a copy of Kriegel's "Motion to Add the 2018 Organic Application dated March 2, 2018 to the 2014 TDA Noncompliance Decision before the Court." This motion was filed in the 353<sup>rd</sup> Civil District Court of Travis County, Texas, though the case in that court was dismissed October 7, 2015.
33. On October 16, 2018, the AMS Administrator issued a Decision denying Kriegel's Appeal and upholding TDA's Notice of Noncompliance and Denial of Certification, stating that Kriegel has continually failed to address noncompliances dating back to at least 2008 and has not submitted an acceptable application for organic certification.
34. On October 31, 2018, Kriegel requested an administrative hearing before an ALJ, which the NOP acknowledged on November 5, 2018.

35. On February 5, 2020, Kriegel filed an application with TDA for organic certification for the 2020 crop year.
36. On February 11, 2020, TDA issued a Notice of Noncompliance and Denial of Certification, denying Kriegel organic certification for crop year 2020.
37. On April 14, 2020, Kriegel filed an Appeal entitled “Plaintiff’s Response to TDA’s 2020 Combined Notice of Noncompliance and Denial of Certification received February 18, 2020.” NOP accepted the appeal.

## **DISCUSSION**

The USDA organic regulations at 7 C.F.R. 205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification...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.....(e) Submit the applicable fees charged by the certifying agent...”

The organic regulations at §205.401, Application for certification, states that a person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information: (a) An organic production or handling system plan, as required in §205.200...(c) The name(s) of any organic certifying agent(s) to which application has previously been made...a copy of any notification of noncompliance or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the noncompliances noted in the notification of noncompliance, including evidence of such

correction; and (d) Other information necessary to determine compliance with the Act and the regulations in this part.

The organic regulations at §205.405, Denial of certification, provide that when a certifying agent has reason to believe, based on a review of the information that an applicant for certification is not able to comply or is not in compliance with the requirements, the certifying agent may deny the application for certification.

TDA stated in regard to Kriegel's 2020 organic certification application, that Kriegel didn't submit an organic system plan and didn't describe any actions taken, or submit evidence of actions taken, to correct the noncompliances identified in the May 23, 2008 Notice of Noncompliance and Proposed Suspension which had led to a March 15, 2012 Consent Decision/Settlement Agreement. The Consent Decision/Settlement Agreement whereby Kriegel's organic certification was revoked for six months, doesn't absolve him of correcting noncompliances dating back to 2008. TDA also stated that Kriegel struck out a statement on the Application for Organic Certification that states the applicant hasn't produced or handled any product sold or labeled as organic except in accordance with the organic regulations. TDA considered the striking of the statement as a declaration by Kriegel that he had sold or labeled product as organic without being certified. TDA addressed Kriegel's contention that TDA's actions have caused other certifiers not to accept Kriegel's 2005 organic certification for the 2015-16 wheat crop, by stating that pursuant to the March 15, 2012 agreement, Kriegel's certification was revoked and, hence, wouldn't be valid for the 2015-16 crop. Lastly, as Kriegel claims his operation is ■ acres, the minimum certification fee is \$1900, not the \$35 which Kriegel claims to have submitted.



Kriegel contends in the Appeal that the March 15, 2012 consent decision isn't relevant to his 2020 organic application, and it didn't order him to take corrective action on any noncompliances. Kriegel alleges that TDA violated its fiduciary duty to him, slandered him, and has been negligent and uncooperative. Further, he claimed the USDA has failed to correct TDA's errors. Kriegel contends that the local USDA/FSA (Farm Services Agency) office in Parmer County, Texas has already determined that his field is certified organic. Kriegel states that TDA's organic program "can stand alone" and there is "no need" for NOP organic certification. Kriegel states that TDA's application for organic certification is unlawful and TDA is 'imposing' its form on applicants in violation of Texas statute. Kriegel contends its 2005 certification is still valid, and there is a proceeding currently in the Travis County, Texas District Court. Kriegel also requests monetary relief for damages suffered due to TDA's failure to make a timely decision on certification for 2015 – 2020, along with attorney fees.

The evidence substantiates that while Kriegel was certified for organic crops by TDA in 2003, which was renewed March 1, 2005, Kriegel has been unable to maintain compliance with the organic regulations since at least 2008 and continuing through to his 2020 application for certification. The initial Notice of Noncompliance and Proposed Suspension issued by TDA on May 23, 2008 was upheld by the AMS Administrator on May 21, 2010. While the resulting Consent Decision/Settlement Agreement of March 15, 2012 and signed by Kriegel, didn't specifically state that Kriegel must take corrective action on all noncompliances found by TDA since 2008, Kriegel agreed he would not violate the Act and the NOP regulations. Further the AMS Administrator in an August 25, 2014 Decision found that Kriegel's argument that the March 15, 2012 Consent Decision negates his need to correct any prior noncompliances was without merit. The ALJ and the JO upheld the Administrator's Decision on August 26, 2015 and

October 29, 2015, respectively (In re: Kriegel, Inc. & Laurance Kriegel, Docket Nos. 15-0050, 15-0051 (Aug. 26, 2015), and In re: Kriegel, Inc. & Laurance Kriegel, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015)). The JO denied Kriegel's petition for reconsideration on December 15, 2015 (In re: Kriegel, Inc. & Laurance Kriegel, Docket Nos. 15-0050, 15-0051 (Dec. 15, 2015)). Therefore, res judicata applies to the matter of Kriegel's allegation that the 2012 Decision absolves him of needing to correct prior noncompliances and he is precluded from appealing that matter further. However, each year subsequent to the 2012 Consent Decision that Kriegel applied for organic certification, TDA has continued to find noncompliances some of which date back to 2005. Kriegel has had several years to bring his operation into compliance and correct all prior noncompliances, yet he has failed to do so. Therefore, Kriegel's failure in its February 5, 2020 application to describe actions taken, or provide evidence of actions taken, to correct the noncompliances identified in the May 23, 2008 adverse action notice, is cause for denial of Kriegel's application for certification. Further, contrary to Kriegel's contention, its 2005 organic certificate is not valid, as the certificate was revoked in the March 15, 2012 Consent Decision/Settlement Agreement.

Additionally, on Kriegel's February 5, 2020 application for organic certification for 2020, Kriegel struck out the statement in Section J – Signature that it “hasn't produced or handled any agricultural product sold or labeled as organically produced except in accordance with Title 7, U.S. Code of Federal Regulations.” TDA considered this action as a declaration that Kriegel has produced, sold, or labeled products as organic which weren't produced in accordance with the Act or organic regulations. TDA's ROR-600 Application for Organic Certification is a legitimate application form approved by the Texas Department of Agriculture, Agriculture and Consumer Protection Division, and applicants can't pick and choose which statements contained

therein are agreeable or not. As an applicant is applying for certification, it is important to confirm that the applicant hasn't been selling, labeling, or representing products as organic when not certified.

Further, TDA found that Kriegel didn't submit the ROR-607 Producer Organic System Plan form or any documentation addressing the noncompliances. The organic regulations at 7 CFR 205.401 state that an application for certification must include an organic production or handling system plan. This requirement is mandatory and the regulations at 7 CFR 205.201 set forth the requirements for the plan. Failure to submit such a plan which contains all required information is a basis for denial of certification. It is noted TDA states it didn't receive the certification fees for Kriegel's 2020 application. Kriegel submitted a check to TDA for \$35 which was endorsed by TDA, though it is noted that it was received and endorsed the same day that TDA issued the Notice of Noncompliance and Denial of Certification. Nevertheless, this is not sufficient for Kriegel's application. Kriegel's operation is (b) (4) acres as identified on the certification application. TDA's fee schedule, which is found within the application, states, "If your operation has more than 50 acres under organic management, the minimum fee for organic crop production is \$1500 and you have a baseline of 5 production inputs." Therefore, TDA states and evidence shows that Kriegel's minimum fee is \$1900, not \$35.

Kriegel alleges that the "local USDA FSA (Farm Service Agency)" approved organic status for his 2020 crop. Kriegel submitted to TDA the FSA Farm Summary which he signed January 31, 2020. However, while the FSA administers the USDA Organic Certification Cost Share Program to provide financial assistance to organic producers and handlers, FSA does not have the authority to deny or grant organic certification under the Act and NOP regulations. Only AMS has this authority and the FSA Farm Summary makes no mention of organic

certification. Further, Kriegel has previously stated that the USDA filed legal suit against Kriegel's local FSA office on his behalf; however, this is not true.

Kriegel also alleges that TDA's organic program "can stand alone" and has the authority to deem an operation organic without NOP which Kriegel refers to as a '3<sup>rd</sup> party.' However, pursuant to the Act, the Secretary of the USDA establishes an organic certification program, which is implemented through certifying agents. TDA is an accredited certifying agent of the USDA and, hence, is authorized to conduct certification activities on behalf of the USDA. The State of Texas does not have an organic certification program that is independent from the USDA NOP and its organic regulations.

Further, although the Application for Organic Certification identifies TDA in the heading and has the seal of Texas on it, it is an application for USDA organic certification and contains several references to NOP, cites NOP regulations, and includes the NOP fee schedule. Kriegel struck through clauses in the application referring to NOP; however, this act doesn't constitute a removal of NOP from Kriegel's certification process. TDA's ROR-600 form/Application is not 'unlawful' as alleged by Kriegel. Further, Kriegel's Organic Certificate issued effective January 1, 2003, which was renewed March 1, 2005, states, "This certifies that the person listed below is an ORGANIC PRODUCER under the provisions of Texas Agricultural Code Chapter 18 and the National Organic Program, 7 CFR Part 205." Therefore, when Kriegel applies for organic certification, he is applying for NOP organic certification.

Kriegel also alleges that TDA violated its fiduciary duty to him by denying his 2015 application for certification. TDA has no fiduciary duty to Kriegel. TDA is a USDA certifying agent whose duty is to administer the National Organic Program. Further, Kriegel doesn't have a 'right' to organic certification as he has alleged previously. Rather, like any other operation

that wishes to receive organic certification, Kriegel needs to meet the requirements set forth in the Act and organic regulations.

Kriegel has also requested [REDACTED] in damages for being unable to sell his 2015 - 2020 crops as organic; and for legal fees. However, the NOP and administrative appeals process is not the proper forum to adjudicate these claims, rather they must be pursued in the U.S. federal court system. Lastly, Kriegel stated in the Appeal that there is currently a case regarding his organic certification application pending in the Travis County, Texas District Court. However, Case No. D-1-GN-14-001443, Kriegel vs. TDA, was dismissed by the court on October 7, 2015.

Kriegel has consistently failed since 2008 to correct noncompliances found by TDA, despite his numerous organic certification applications since that time. Rather than correct the noncompliances, Kriegel has argued that he is not required to correct noncompliances that occurred prior to the March 2012 Consent Decision/Settlement Agreement, despite the decisions of the Administrator, ALJ and JO to the contrary. Kriegel also has made numerous other allegations which are either not relevant to the issue of his 2020 organic certification application and denial, are incorrect, or are not before a proper forum.

## **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. However, Kriegel has continually failed to address noncompliances dating back to at least 2008, and has not submitted an acceptable application for organic certification, which is to include a description of the actions taken to correct the noncompliances and evidence of such correction,

and hasn't submitted the applicable fees charged by TDA. Kriegel is not in compliance with the organic regulations and is ineligible for organic certification.


### DECISION

The Appeal is denied and TDA's February 11, 2020 Notice of Noncompliance and Denial of Certification is upheld. Kriegel's application for certification for the 2020 crop year is denied. Attached to this formal Administrator's Decision denying Kriegel's Appeal is a Request for Hearing form. Kriegel has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Pursuant to 7 C.F.R. 205.405(d), Kriegel may apply for certification again at any time. Any application 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 organic regulations.

Done at Washington, D.C., on this 22nd  
day of September, 2020.

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service