

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Beth Anne Wilson Webb,) **Administrator’s Decision**
Dba Moonstruck Organics)
)
Captain Cook, Hawaii) **APL-028-20**
)

This Decision responds to an appeal (APL-028-20) of a Notice of Noncompliance and Denial of Certification of National Organic Program (NOP) certification issued to Beth Anne Wilson Webb, dba Moonstruck Organics (Moonstruck) of Captain Cook, Hawaii by Oregon Tilth Certified Organic (OTCO), an USDA-accredited certifying agent. 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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.

FINDINGS OF FACT

1. On August 22, 2019, Moonstruck applied to OTCO for organic certification of its coffee crop.
2. On October 13, 2019, OTCO conducted an inspection of Moonstruck.
3. On December 10, 2019, OTCO issued a Notice of Noncompliance and Denial of Certification.
4. On January 6, 2020, OTCO denied Moonstruck’s request for mediation.
5. On February 4, 2020, Moonstruck filed an Appeal.

DISCUSSION

The USDA organic regulations at 7 CFR §205.103, Recordkeeping by certified operations, 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:...(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 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 specific synthetic substances on the National List which are allowed for use in organic crop production are identified at §205.601.

The organic regulations at §205.201, Organic production and handling system plan, state 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...; (2) A list of each substance to be used as a production or handling input...(3) A description of the monitoring practices and procedures to be performed and maintained...(4) A description of the recordkeeping system implemented to comply with the requirements...(5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances...”

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 §205.272, Commingling and contact with prohibited substance prevention practice standard, state that, “(a) The handler of an organic handling operation must

implement measures necessary to prevent commingling of organic and nonorganic products and protect organic products from contact with prohibited substances...”

Certifier OTCO issued a Notice of Noncompliance and Denial of Certification to applicant Moonstruck after an inspection revealed several noncompliances including the use of a fertilizer containing a prohibited substance.

Moonstruck acknowledged use of the fertilizer containing a prohibited substance but inquired into whether there was a “workaround” for the situation, stating it didn’t intentionally use a prohibited substance but had relied on the product’s label, which was not clear.

The evidence shows that Moonstruck applied for organic certification of its coffee crop to OTCO on August 22, 2019. OTCO conducted an inspection on October 13, 2019, at which numerous noncompliances were found, resulting in the issuance of the December 10, 2019 Notice of Noncompliance and Denial of Certification. Specifically, OTCO found that Moonstruck violated the organic regulations at 7 CFR §205.201 because its OSP didn’t list each input used by Moonstruck, the composition and source of the inputs, or the locations where the inputs would be used. The inputs observed during the inspection were provided in the inspection report and/or in photos. They included (b) (4)

[REDACTED]

[REDACTED]. The inspection report and the photos of the products’

bags show that the (b) (4) are all

OMRI certified. Moonstruck told the inspector that the (b) (4)

[REDACTED] were only used on Moonstruck’s personal garden and not the organic coffee crops.

OTCO was unable to confirm if the remaining observed inputs were compliant with organic regulations. As such, OTCO issued a Request for Information letter on November 19, 2019, asking for specific brand information on the (b) (4) which the inspector had found to be a blend of products approved for organic agriculture; and (b) (4). Moonstruck submitted replies to OTCO on November 26 and 27, 2019, including receipts for the (b) (4) products, a revised farm map, and a statement that the “higher nitrogen formula (b) (4)” were applied to coffee seedlings and “spread at a rate of 1 cup per seedling in the map areas showing dots” between the date of purchase, May 22, 2019 and May 30, 2019. However, while the (b) (4) which Moonstruck used on the mature coffee trees is OMRI certified, OTCO confirmed that the (b) (4) fertilizer used on the coffee tree seedlings contains urea, a substance prohibited in organic crop production. As the use of a prohibited substance is a violation of the organic regulations at 7 CFR §205.202(b) and is non-correctable, OTCO states it denied Moonstruck’s certification application.

OTCO also stated that Moonstruck violated the regulations at 7 CFR §205.201 in regard to its OSP not including the required description of practices and procedures to be performed and maintained; management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and additional information deemed necessary by OTCO. The organic regulations at 7 CFR §205.403(c) require that a certifier conduct an initial on-site inspection of an operation requesting certification to verify “the operation’s compliance or capability to comply with the Act and the regulations;” that

the OSP “accurately reflects the practices used or to be used;” and “that prohibited substances have not been and are not being applied to the operation ...”

OTCO’s inspection found that Moonstruck’s practices were inconsistent with multiple sections of the OSP. The OSP’s Materials List section only identifies (b) (4) of which are OMRI listed. However, these were (b) (4) the many products for which bags were found at the inspection as seen above. Further, the Land History section states that OMRI listed (b) (4) were applied August 1 – 3, 2019. However, the OMRI listed (b) (4) product is the (b) (4), applied to the mature trees, while Moonstruck was found to have applied (b) (4), containing prohibited substances, to the seedlings. Further, the inspector found bags of farm input products stored beneath a table set up for drying coffee to parchment, though Moonstruck stated those inputs were only used in the personal garden.

The OSP also didn’t describe the process of (b) (4), or how the organic integrity of the beans is protected during the (b) (4). Further, (b) (4).
(b) (4), though the OSP didn’t describe this process. Further, as the inspector noted, the OSP only describes the (b) (4) is shared with many other items; there are non-food items on shelves near organic coffee; the tarp for drying coffee beans outside was stored on the shelf; and a container of motor oil was seen in close proximity to the bag of coffee beans. The inspector took pictures of these problems and described them in the inspection report. The

inspection report also cites to recordkeeping noncompliances, including the lack of sales records showing the date, product, and quantity sold.

Lastly, while the OSP states there is no risk of drift from neighbors, there is a conventional coffee farm on one side and land to the south, west, and half of the north boundary is not under organic management. Moonstruck reported that the buffer zone around the boundary was harvested and sold in the (b) (4) stage as nonorganic, resulting in Moonstruck's operation being a (b) (4) and necessitating the completion of OSP sections on (b) (4), which hadn't been done. As OTCO stated, these findings also substantiate a violation of the regulations at 7 CFR §205.272 which require the implementation of measures necessary to prevent the commingling of organic and nonorganic products. Additionally, as Moonstruck's OSP doesn't fully address such measures, OTCO cited a violation of the regulations at 7 CFR §205.103 which require the maintenance of records that demonstrate compliance by fully disclosing all activities and transactions in sufficient detail as to be readily understood and audited.

Moonstruck didn't address the OSP deficiencies, failure to follow the OSP, buffer zone, commingling, or recordkeeping noncompliances in the Appeal, though those noncompliances would have been correctable. Moonstruck only addressed the violation involving the use of a fertilizer containing a prohibited substance, which is not correctable. Moonstruck stated in a February 5, 2020 email to NOP that it only used (b) (4) of the (b) (4) in a formula which was spread around the (b) (4) coffee seedlings which are interspersed with mature coffee trees in the (b) (4) orchard with the seedlings being a minimum of (b) (4) away from the mature trees.

However, in its November 27, 2019 email to OTCO in response to the November 19, 2019 Request for Information, Moonstruck stated that it had spread the product “at a rate of [REDACTED].” The (b) (4) represents (b) (4), yet there are (b) (4) seedlings, therefore, the rate of application is more accurately (b) (4) per seedling unless more than (b) (4) was actually used. The revised Farm Map provided to OTCO by Moonstruck shows the area including both mature trees and seedlings where the product was spread, which encompasses about half of the total farmland. However, while Moonstruck states that the affected area is (b) (4), the inspection report states the entire farm is only (b) (4); therefore, the affected area appears to be less than (b) (4) resulting in the mature trees and seedlings being more ‘denser.’

Further, a (b) (4) representative confirmed the (b) (4) contains about 10% urea, and stated it also contains ammonium nitrate and ammonium sulfate, and therefore, not OMRI listed. Furthermore, Moonstruck admitted using the (b) (4) on the coffee seedlings.

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, the evidence substantiates that Moonstruck violated the organic regulations at 7 CFR §205.105 and 7 CFR §205.202, which state that any field or farm parcel from which organic crops are harvested can't have had any prohibited substance applied within 3 years immediately preceding the harvest; and the land has to be organically managed without the use of synthetic substances

unless the substance is specifically allowed. Moonstruck admitted to applying a prohibited substance, excluding the fields for organic production.

The evidence also substantiates that Moonstruck violated the organic regulations at 7 CFR §205.201; 7 CFR §205.272; and 7 CFR §205.103, by not submitting a complete OSP; not identifying all inputs; not identifying management practices and physical barriers to prevent the contact of organic production and handling operations with prohibited substances; drying coffee beans under conditions that may result in contamination of the coffee beans with non-organic substances; and not maintaining records that fully disclose all activities and transactions in sufficient detail so as to be auditable and demonstrate compliance with the organic regulations. While these noncompliances are correctable, the violation of the regulations regarding the use of a prohibited substance makes a correction of these noncompliances irrelevant at this time.

DECISION

The appeal is denied and the Notice of Noncompliance and Denial of Certification is affirmed. Moonstruck is denied certification and is ineligible for organic certification of the farmland to which the prohibited substance was applied, for 3-years from the date of the last application of the prohibited substance, which was May 30, 2019. Moonstruck may not sell, label, or represent product as organic unless and until it is certified.

Attached to this formal Administrator's Decision denying Moonstruck's Appeal is a Request for Hearing form. Moonstruck has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Moonstruck waives the hearing, this Administrator's Decision denying Moonstruck certification will become final.

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

**BRUCE
SUMMERS**

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Date: 2020.06.07 22:46:15 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service