

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)
Bernard Rainville) **Administrator's Decision**
Rainbow View Dairy) **APL-023-17**

This Decision is in response to an appeal (APL-023-17) of a Notice of Denial of Reinstatement issued by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP) to Rainbow View Dairy, located in Highgate Center, Vermont. The operation was deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the 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 §205.662. The Act authorizes the NOP to enforce the USDA organic regulations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision, such as a Denial of Reinstatement, may appeal such decision to the AMS Administrator pursuant to §205.680 of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. Vermont Organic Farmers, LLC (VOF) is a USDA-accredited certifying agent.
2. Rainbow View Dairy, located in Highgate Center, Vermont, was previously certified organic by VOF, and was suspended on July 29, 2015.
3. On July 4, 2012, VOF issued a Notice of Noncompliance to Rainbow View Dairy for confining animals and providing inadequate outdoor access.
4. On March 27, 2014, VOF issued a Notice of Noncompliance and Proposed Suspension to Rainbow View Dairy for failing to provide daily outdoor access to livestock.
5. On November 6, 2014, VOF and Rainbow View Dairy reached a Settlement Agreement with terms addressing noncompliances related to outdoor access.
6. On May 20, 2015, VOF issued a Notice of Proposed Suspension to Rainbow View Dairy for not providing outdoor access in accordance with the Settlement Agreement.
7. On July 29, 2015, VOF issued a Notice of Suspension. The Notice allowed Rainbow View Dairy to apply for reinstatement of certification after a 6 month suspension period.
8. On July 9, 2016, VOF inspected Rainbow View Dairy as part of the reinstatement process.
9. On August 1, 2016, VOF issued a Notice of Noncompliance because it could not confirm daily outdoor access and grazing throughout the grazing season. In addition, there were missing records and animals without bedding.
10. On August 10, 2016, Rainbow View Dairy requested reinstatement through the USDA.
11. On March 6, 2017, NOP issued a Notice of Denial of Reinstatement to Rainbow View Dairy based on a lack of evidence that all noncompliances had been corrected.
12. On April 3, 2017, Rainbow View Dairy submitted a timely appeal to AMS.

DISCUSSION

Rainbow View Dairy was suspended by VOF on July 29, 2015, after failing to come into compliance with the USDA organic regulations at §205.239(a)(1) (livestock living conditions). VOF has documented a history of noncompliance by Rainbow View Dairy related to outdoor access for livestock, and notified Rainbow View Dairy of these problems between 2012 and 2015. Noncompliances related to a lack of access to the outdoors, insufficient dry matter intake from grazing, animal welfare issues, and poor record keeping. VOF provided multiple opportunities for Rainbow View Dairy to come into compliance, including entering into a settlement agreement with terms that would bring them into compliance. These terms were not met, and VOF suspended the operation in July 2015.

VOF observed the noncompliances again at an inspection conducted to evaluate Rainbow View Dairy's request for reinstatement in 2016. Given these concerns, VOF did not support Rainbow View Dairy's request for reinstatement of certification. In reviewing the reinstatement request, the NOP confirmed that the operation has not yet demonstrated full compliance with the USDA organic regulations. As such, NOP denied the request for reinstatement.

In its appeal, Rainbow View Dairy does not rebut the noncompliances. Rather, it requests a variance from the requirement to provide year-round outdoor access to organic livestock. Rainbow View Dairy argues that keeping animals outdoors on frozen ground makes it impossible to comply with a Vermont Law (Act 64) which would leave Rainbow View Dairy liable for fines for runoff. (Act 64 safeguards groundwater, streams and rivers in Vermont from the harmful effects of environmental pollutants, including agricultural waste like manure).

In response to this appeal, AMS finds that Rainbow View Dairy has a recurring pattern of noncompliance, with systemic problems related to livestock practices. The USDA organic regulations require year-round outdoor access for livestock; yards or feeding pads may be used for access during the non-grazing season, e.g, in winter (§ 205.239(a)). Temporary variances from outdoor access and grazing requirements may be granted only for specific reasons related to natural disasters, weather-induced damages, or research (§ 205.290(a)). This appeal, however, requests a variance for typical winter conditions.

The USDA organic regulations also require that organic producers maintain or improve soil and water quality, and permit temporary confinement of livestock when there are risks to soil or water quality (§ 205.239(b)). When confinement for risks to soil and water quality exceeds a “temporary” timeframe, the operation needs to change practices to come into compliance. Rainbow View Dairy is not yet in full compliance with the USDA regulations.

Rainbow View Dairy may submit an additional request for reinstatement at any time. The request for reinstatement must include confirmation from a certifier that all noncompliances have been corrected.

CONCLUSION

The evidence indicates that the March 6, 2017 Denial of Reinstatement of Rainbow View Dairy was appropriate due to the outstanding noncompliances related to the USDA organic regulations §205.239(a)(1) (livestock living conditions).

DECISION

The appeal is denied and the NOP’s Denial of Reinstatement is upheld. Rainbow View Dairy remains suspended, and may not market, label, or represent its products as organic. Pursuant to §205.662(f)(1), Rainbow View Dairy may, at any time, request reinstatement to the

NOP. The USDA organic regulations §205.662(f)(1) states: “A certified operation whose certification has been suspended under this section may at any time, unless otherwise state in the notification of suspension, submit a request to the Secretary for reinstatement of its certification. The request 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 regulations in this part.”

Done at Washington, D.C., on this 25th
day of August, 2017.

A handwritten signature in black ink, appearing to read "Bruce Summers", written over a horizontal line.

Bruce Summers

Acting Administrator