

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
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)
Carolina Blueberry Group LLC,) **Administrator’s Decision**
dba Brick Rooks)
) **APL-028-24**
Garland, North Carolina)
)
)

This Decision responds to an Appeal (APL-028-24) of a Notice of Noncompliance and Proposed Suspension of a Portion of the Operation under the National Organic Program (NOP) issued to Carolina Blueberry Group LLC, dba Brick Rooks (CBG) of Garland, North Carolina by Quality Certification Services (QCS), a 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 believe they are adversely affected by a noncompliance decision of a certifying agent may appeal

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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 April 14, 2022, CBG was certified for crops by QCS.
2. On March 22, 2023, QCS conducted an inspection of CBG, at which time it was discovered that CBG had applied non-organic synthetic gypsum to a portion of its organic crops.
3. On October 24, 2023, QCS issued a Notice of Noncompliance and Proposed Suspension of a Portion of the Operation to CBG.
4. On November 30, 2023, QCS accepted CBG’s November 22, 2023 mediation request.
5. On January 10, 2024, QCS issued a Notice of Unsuccessful Mediation.
6. On February 2, 2024, CBG filed an Appeal.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §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: (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 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; (b) Nonsynthetic substances prohibited in §205.602 or §205.604 ...”

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 ... intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” 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 system plan must meet the requirements set forth in this section for organic production or handling. 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; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable; ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; (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; and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations...”

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 §205.203, Soil fertility and crop nutrient management practice standard, state that, “(c) The producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances...”

The organic regulations at §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 in this part;
- (b) Establish, implement, and update annually an organic production or handling system plan ...
- (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation ...”

The regulations at §205.406, Continuation of certification, states, 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 ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

DISCUSSION

CBG was certified organic for crops by QCS on April 14, 2022, and produces blueberries. On March 22, 2023, certifier QCS conducted an inspection of the operation and discovered that CBG had applied prohibited non-organic synthetic gypsum to 391.43 acres of its 1500 acres of certified crops. Specifically, CBG applied (b) (4) brand gypsum, from suppliers (b) (4) and (b) (4) to the 391.43 acres. Application Logs show the applications occurred on February 28, 2022 to March 4, 2022; July 20, 2022 to July 22, 2022; August 16, 2022 to August 19, 2022; and November 30, 2022 to December 5, 2022. QCS also viewed Inventory Charts and receipts from the suppliers showing the amounts of (b) (4) purchased. Additionally, QCS found that the (b) (4) purchased from (b) (4) and (b) (4), as well as Dolomite Lime purchased from (b) (4) which is allowed in organic production, weren't on CBG's Organic System Plan (OSP) and weren't submitted for approval to QCS prior to their application.

Based on the application of prohibited non-organic synthetic gypsum to 391.43 acres of the certified crops, QCS issued a Notice of Noncompliance and Proposed Suspension of a Portion of the Operation to CBG on October 24, 2023, seeking to remove the affected 391.43 affected acres from certification. QCS stated that as the noncompliance isn't correctable, a combined notice was warranted. AMS finds the issuance of the combined notice is in accordance with the organic regulations at 7 C.F.R. §205.662(c) as the application of a prohibited substance to organic crops isn't correctable.

CBG requested mediation on November 22, 2023, which QCS accepted on November 30, 2023. QCS subsequently issued a Notice of Unsuccessful Mediation on January 10, 2024, after a settlement could not be reached.

CBG filed an Appeal on February 2, 2024, stating that over the past 6 years, they have spent over (b) (4) to control insects, specifically plum curculio affecting their blueberry crops, using every organic pesticide to no effect. Further, after finding that beneficial insects were destroyed in the process, CBG consulted with professional who recommended implementing a 'biological farming plan' to attack the pests by improving the health of the soil through increased fertilization. Therefore, CBG purchased and applied the gypsum products identified above to the certified crops. CBG claims it wasn't aware that certified organic gypsum products were available; and that the gypsum wasn't applied during the fruiting or harvesting periods. CBG submitted Inventory and Application logs, which match with those submitted by QCS. CBG also presented information on the plum curculio pest, and research by the Southern Company on the agricultural use of gypsum in the Southeast United States. Despite this information, the efficacy or benefits of using gypsum isn't disputed, rather it's the use of a non-organic, synthetic gypsum applied to organic crops which is at issue. Further, although CBG presented a quote it received from (b) (4) for the purchase of organic gypsum in February 2024, this doesn't negate the prior use of prohibited gypsum.

AMS finds that CBG applied a prohibited substance to 391.43 acres of its 1500 certified acres and acknowledged this fact at the inspection and through its records. CBG's Inventory Logs, receipts from (b) (4) and (b) (4), and Application Logs show the purchase and application of the (b) (4) brand gypsum. The use of the prohibited gypsum is also noted in the QCS Inspection Report of March 22, 2023 and the Exit Interview of the same date, also referencing the Inventory Logs, receipts, and Application logs. Additionally, as stated by QCS in its adverse action notice, CBG hadn't submitted the (b) (4) and Dolomite Lime inputs for approval to QCS prior to use. QCS stated in the Exit Interview that there are also other inputs

used by CBG in 2022 which weren't on CBG's input list nor were they submitted for approval by QCS prior to use. In addition to the (b) (4) gypsum and Dolomite Lime, CBG also used (b) (4) Manganese and (b) (4) without approval. While the (b) (4) product is OMRI listed, and some (b) (4) Manganese are OMRI listed, some have restrictions on their use on NOP certified organic crops. However, regardless of whether the input is allowed or not, CBG failed to include them on the OSP or seek approval from QCS prior to their use.

Further, AMS questions CBG's statement that it wasn't aware that certified organic gypsum products were available. A simple internet search for 'organic gypsum' resulted in a list of organic gypsum products, at least one of which has the OMRI designation on the front of the bag. However, CBG acknowledged using the (b) (4) brand of gypsum, which is a form of gypsum not listed on the National List per 7 C.F.R. §205.601, as a synthetic substance allowed for use in organic crop production. There are 3 main sources of agricultural gypsum – mined natural gypsum, recycled gypsum, and gypsum obtained from a flue gas desulfurization process at electric power plants which can result in metal contamination of the gypsum. Documentation from (b) (4) shows their gypsum was obtained from (b) (4) and contains metal 'pollutants.' It was this gypsum that CBG acknowledged using.

CONCLUSION

AMS finds the evidence substantiates that CBG has violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.203, Soil fertility and crop nutrient management practice standard; 7 C.F.R.

§205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. CBG acknowledged that it applied non-organic synthetic gypsum, a prohibited substance, not on the National List, to 391.43 acres of its certified 1500 acres of crops. The application of the (b) (4) brand gypsum violated the requirement that no prohibited substances be used on organic crops, and that organic producers must manage plant and animal materials to maintain or improve soil organic matter content without contaminating crops and soil with heavy metals or residues of prohibited substances. Further, CBG applied inputs to its organic crops without having identified those inputs on its OSP or requesting and receiving approval by QCS prior to their use. Although CBG maintained inventory and application logs of inputs, an important part of required recordkeeping is the identification of planned inputs in an operation's OSP, and the approval by the operation's certifier prior to using the identified inputs. AMS finds that the 391.43 acres to which the synthetic gypsum was applied may not remain certified.

DECISION

CBG's February 2, 2024 Appeal of the October 24, 2023 Notice of Noncompliance and Proposed Suspension of a Portion of the Operation is denied. The 391.43 acres to which the prohibited substance was applied are suspended for 3 years and removed from CBG's organic certificate and are not eligible for reinstatement to the organic certificate for 3 years from the last application of the prohibited substance which was December 5, 2022. Pursuant to 7 C.F.R. §205.202, the affected 391.43 acres are not eligible for reinstatement to CBG's certificate until December 4, 2025. The remaining 1108.57 acres are unaffected by this decision and remain certified.

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

Done at Washington, D.C., on this 27th
day of March, 2024.

BRUCE
SUMMERS

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Bruce Summers
Administrator
Agricultural Marketing Service