

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
)
Agroproductores Organicos)
El Vallecito SPR de RL) **Administrator's Decision**
) **APL-043-23**
Baja California Sur, Mexico)
)

This Decision responds to an Appeal (APL-043-23) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Agroproductores Organicos El Vallecito SPR de RL (Vallecito) of Baja California Sur, Mexico by Oregon Tilth Certified Organic (OTCO), 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 19, 2010, Vallecito was certified organic for crops by OTCO.
2. On December 2, 2022, OTCO issued a Notice of Noncompliance to Vallecito.
3. On January 17, 2023, OTCO issued a Notice of Proposed Suspension.
4. On March 16, 2023, OTCO granted Vallecito’s February 15, 2023 mediation request.
5. On April 4, 2023, OTCO issued a Notice of Mediation Failure.
6. On May 3, 2023, Vallecito filed an Appeal.
7. On May 19, 2023, USDA/AMS entered into a Settlement Agreement with Vallecito.
8. On July 5, 2023, OTCO reported to NOP that Vallecito had breached the May 19, 2023 Settlement Agreement.
9. On July 5, 2023, NOP issued a Notice of Noncompliance and Request for Corrective Action to Vallecito.

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 under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations in this part; ... (e) Submit the applicable fees charged by the certifying agent...” Additionally, the organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees...”

Certifier OTCO issued a Notice of Noncompliance on December 2, 2022, stating that Vallecito had failed to pay its certification-related fees by the deadline. OTCO subsequently issued a Notice of Proposed Suspension on January 17, 2023, due to Vallecito's continued failure to pay its overdue certification-related fees despite numerous attempts by OTCO to collect the fees. On March 16, 2023, OTCO granted Vallecito's mediation request. However, on April 4, 2023, OTCO issued a Notice of Mediation Failure, after Vallecito again failed to pay the certification-related fees, after OTCO had extended the deadline.

Vallecito filed an Appeal on May 3, 2023, stating that they had now paid the overdue certification-related fees. NOP confirmed this with OTCO. However, OTCO stated that another Invoice is also overdue, specifically, Invoice 2148 for 26,699.72 MXN, which was originally due on February 19, 2023. Although Vallecito had violated the organic regulations at 7 C.F.R. §205.400 and 7 C.F.R. §205.406 by not submitting certification-related fees by the deadline and another Invoice remained unpaid, NOP offered Vallecito a Settlement Agreement, as the unpaid fees which were the subject of the prior adverse actions had been paid. Pursuant to the NOP Settlement Agreement, executed on May 19, 2023, Vallecito agreed to pay the overdue Invoice 2148 for 26,699.72 MXN within 45 days of execution of the Settlement Agreement.

On June 20, 2023, OTCO emailed NOP that it hadn't received the agreed upon payment from Vallecito, which instead surrendered its certification. As the deadline for making the payment hadn't yet been reached, no action was taken at that time. NOP sent a reminder email to Vallecito on July 3, 2023, with no response. After the allowed 45 days for payment from execution of the Settlement Agreement had passed, NOP issued a Notice of Noncompliance and Request for Corrective Action on July 5, 2023, after confirming with OTCO that it still hadn't received the monies. NOP stated in its notice to Vallecito that OTCO had reported a breach of

the Settlement Agreement and gave Vallecito 20 days from receipt of the notice to comply with the terms of the Settlement Agreement and make the agreed-upon payment to OTCO. NOP told Vallecito that operations can't circumvent adverse action by surrendering certification, and that Vallecito is still responsible for paying the certification-related fees owed to OTCO. OTCO confirmed on July 26, 2023 that Vallecito hadn't made the agreed upon payment.

Vallecito agreed, per Term 4C of the May 19, 2023 Settlement Agreement to pay the overdue 26,699.72 MXN representing certification fees noted on Invoice 2148 from OTCO and originally due February 19, 2023. Further, the Settlement Agreement in Term 4E states that, "Vallecito agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing administrative action against Vallecito." Clause 3D of the Settlement Agreement states that, "Vallecito withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above." Paragraph 2 states, "USDA, AMS agrees not to issue a formal Administrator's Decision charging Vallecito with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement." A closure letter sent to Vallecito on May 19, 2023 with the executed agreement also stated that, "... failure to abide by the terms of the agreement shall automatically void the Settlement Agreement and USDA, and AMS may pursue an administrative hearing process."

CONCLUSION

Evidence substantiates that Vallecito has violated the organic regulations at 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by failing to pay the applicable certification-related fees. Vallecito has breached its May 19, 2023 Settlement Agreement with NOP. Although Vallecito

surrendered its certification, it may not circumvent its requirements under the Settlement Agreement and regulations. Therefore, the January 17, 2023 Notice of Proposed Suspension is revived. Vallecito can't remain certified at this time.

DECISION

Vallecito's May 3, 2023 Appeal of the January 17, 2023 Notice of Proposed Suspension is denied, and Vallecito's certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Vallecito may apply for reinstatement at any time after it has made full payment of all delinquent certification-related fees to OTCO. The request for reinstatement must be accompanied by evidence demonstrating that said full payment has been made, and that Vallecito is also in compliance with all other organic regulations. While under suspension, Vallecito may not sell, label, or represent any products as organic.

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

Done at Washington, D.C., on this 2nd
day of August, 2023.

**BRUCE
SUMMERS**

Bruce Summers
Administrator
Agricultural Marketing Service

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