

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Bionas Tarim Ltd., sti. ) **Administrator's Decision**  
Istanbul, Turkey ) **APL-009-20**  
)  
)

This Decision responds to an Appeal (APL-009-20) of a Notice of Noncompliance and Proposed Suspension issued to Bionas Tarim Ltd., sti. (Bionas) by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). 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 organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and handling operations pursuant to the USDA organic regulations (7 C.F.R. Part 205). Accreditation of certifying agents is done by the NOP, which also initiates compliance actions to enforce program requirements. Noncompliance procedures for certifying agents are set forth in §205.665 of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of the NOP may appeal such decision to the

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

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

AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. On May 9, 2019, the NOP issued a Notice of Suspension of Accreditation to Bionas' then-certifying agent Control Union Certifications – Turkey (CU-Turkey). NOP instructed CU-Turkey to cease all certification services in the countries where the CU-Turkey satellite office conducts said activities. NOP also instructed CU-Turkey to notify all its affected certified operations and applicants for certification that it will no longer provide USDA organic certification services as of May 9, 2019, and that all operations must inform NOP within 60 days of the notification date whether they have applied with a new certifier or are surrendering their certification.
2. On May 9, 2019, CU-Turkey wrote Bionas that it would no longer be providing NOP certification services and that Bionas needed to inform NOP within 60 days of the notice date whether Bionas would surrender its certification or apply to another certifying agent for certification.
3. On May 9, 2019, Bionas submitted an application for certification to USDA-accredited certifying agent Ekoagros located in Lithuania. Bionas subsequently informed NOP of the application to Ekoagros on July 8, 2019.
4. On September 27, 2019, Ekoagros denied Bionas' application for organic certification.
5. On October 23, 2019, NOP issued Bionas a Notice of Noncompliance and Proposed Suspension.
6. On November 22, 2019, Bionas filed an Appeal.

## DISCUSSION

The NOP issued a Notice of Noncompliance and Proposed Suspension to Bionas for its failure to comply with the organic regulations at 7 CFR §205.400. While Bionas previously informed NOP that it had applied to Ekoagros for certification, Ekoagros denied Bionas' application. NOP also cited to the organic regulations at 7 CFR §205.662.

The organic regulations at 7 CFR §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 of this part; (b) Establish, implement, and update annually an organic production or handling system plan... (e) Submit the applicable fees charged by the certifying agent..."

The regulations at 7 CFR §205.201, Organic production and handling system plan, states 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 system plan must 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;...(3) A description of the monitoring practices and procedures to be performed and maintained...; (4) A description of the recordkeeping system... ; (5) A description of the management practices...; (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations..."

The regulations at 7 CFR §205.401, Application for certification, state 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; the year(s) of application;...and a description of the actions taken by the applicant to correct the noncompliances noted in the notification, including evidence of such correction; and (d) Other information necessary to determine compliance with the Act and the regulations in this part.” The application will be reviewed by the certifying agent for completeness pursuant to 7 CFR §205.402.

Additionally, the regulations at 7 CFR §205.405, Denial of certification, state that, “When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification.”

The regulations at 7 CFR §205.501, General requirements for accreditation, state that “(a) A private or governmental entity accredited as a certifying agent under this subpart must:...(13) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500...(15) Submit to the Administrator a copy of: (i) Any notice of denial of certification...”

The regulations at 7 CFR §205.662, Noncompliance procedure for certified operations, state that, “...(c)...When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification.”

Specifically, NOP states that Bionas’ former certifying agent informed Bionas that it was no longer going to provide organic certification services and that Bionas must inform NOP of whether it wished to surrender its certification or apply for certification to a new certifier.

Bionas applied to a new certifier, Ekoagros; however, the application was denied. NOP subsequently issued a Notice of Noncompliance and Proposed Suspension to Bionas, stating that a notice of denial of certification is only issued when an operation has failed to sufficiently address a notification of noncompliance, or when the correction of a noncompliance is not possible. Since Ekoagros denied Bionas' application for certification, NOP stated that a combined Notice of Noncompliance and Proposed Suspension is justified.

In its Appeal, Bionas stated that it applied to Ekoagros for certification through A-Cert/Ecogen, paid its certification fees, and an audit was conducted by Ekoagros on May 30, 2019. Bionas states that it subsequently cancelled its application with Ekoagros and requested a refund. Bionas didn't address the grounds for Ekoagros' denial of certification to the USDA's NOP organic standard, stating that it wasn't informed of the reasons for the denial, and instead discussed its prior problems with CU-Turkey's certification services.

The evidence substantiates that per the directions of NOP, former certifying agent CU-Turkey gave notice to Bionas on May 9, 2019 that it would no longer be providing certification services and that Bionas needed to inform NOP of whether it would be surrendering its certification or obtaining certification from a new certifier. Bionas applied to a new USDA-accredited certifying agent, Ekoagros, on May 9, 2019. Bionas states it applied to Ekoagros through A-Cert and Ecogen. Research shows that while Ekoagros is a USDA-accredited certifying agent, neither A-Cert nor Ecogen are USDA-accredited certifying agents. A-Cert is accredited to certify operations to European Union (EU) standards; and Ecogen is accredited to certify operations to Turkey's standards.

Ekoagros was contacted during the appeal review and states that it never had any direct contact with Bionas, and Bionas states that it never had any contact with Ekoagros. All contact

was through A-Cert. Ekoagros states that Bionas' Application to Certify Organic Production for NOP standards, which was received May 23, 2019, was incomplete. The application on an Ekoagros form, requesting handling certification, identifies an Organic System Plan (OSP) and legal documents as being attached. Ekoagros states that it contacted A-Cert and asked that full/additional information be provided so that Ekoagros could process the application; however, A-Cert never provided any additional information.

Ekoagros submitted the May 23, 2019 email it received from A-Cert with Bionas' application. Further, Ekoagros submitted a contract between Ekoagros and A-Cert whereby A-Cert would refer applicant operations to Ekoagros. Bionas claimed during the pendency of the appeal that it didn't know why it received a denial notice from Ekoagros when Bionas didn't have a contract with Ekoagros, but rather had applied for NOP certification to A-Cert. Bionas also submitted the May 10, 2019 offer it received from A-Cert for certification services. However, Bionas stated in its Appeal that it had applied to Ekoagros through A-Cert, and Bionas submitted an Ekoagros application form requesting NOP certification. Bionas also informed NOP that it had applied to Ekoagros for certification as NOP stated in its adverse action notice to Bionas. Ekoagros also submitted another email it sent to A-Cert on June 14, 2019 regarding Bionas' application, including a request for A-Cert to pay the fees needed for Ekoagros to begin the review of Bionas' application and OSP. A-Cert had issued an invoice to Bionas on May 28, 2019, which Bionas had paid.

Ecogen states that Bionas contacted them since they are also a Turkish organization, and asked Ecogen to help Bionas reach out to a certifying agent with EU and NOP services. Ecogen contacted A-Cert, which in turn, contacted Ekoagros on Bionas' behalf. Ecogen states it is aware that Bionas had problems with A-Cert and tried to help Bionas understand its non-conformities

cited by A-Cert. However, Ecogen states that on July 24, 2019 and July 25, 2019, it received emails from Bionas, also addressed to A-Cert, stating that it didn't want to continue forward and wanted to cease the certification process with Ecogen and A-Cert; Bionas also demanded a refund of certification fees. Bionas identifies Ecogen and A-Cert interchangeably, and Ecogen confirmed a partnership with A-Cert. Bionas also confirmed it terminated the relationship/services with Ecogen and A-Cert.

The information provided by Ecogen aligns with that provided by Ekoagros. Ekoagros states that it didn't receive information and documentation requested of Bionas through A-Cert. Although Ecogen states it offered to help Bionas work with A-Cert, Bionas instead ended their relationship and the certification process with Ecogen and A-Cert on July 24, 2019 and received a refund of the fees on August 8, 2019. Ekoagros subsequently issued the denial of certification notice to Bionas on September 27, 2019 citing A-Cert's failure to respond to Ekoagros' requests for information and documentation needed for the certification application.

NOP attempted to obtain information from A-Cert regarding Bionas' application and the contacts to A-Cert from Ekoagros requesting information and documentation for Bionas' application. However, despite several attempts, A-Cert, which is not a USDA-accredited certifying agent, didn't respond. However, although Bionas claimed it didn't have a contract with A-Cert, Bionas submitted the offer for certification services which it received from A-Cert, as well as an invoice from A-Cert for said services, and proof that Bionas paid A-Cert the certification fees. Bionas also submitted an A-Cert Certification Agreement, though the agreement is not signed by either party. The A-Cert Certification Agreement states that both parties agreed to "do everything reasonably necessary to give full effect to this Certification Agreement." However, Ekoagros states that A-Cert didn't respond to its requests for

information and documentation for Bionas's application. Further, although Bionas applied to Ekoagros through Ecogen/A-Cert and stated in its termination email to Ecogen and A-Cert that there were communication problems with A-Cert, Bionas chose to apply/work through A-Cert which it had contacted through Ecogen. Bionas could have applied directly to Ekoagros but chose not to do so. Bionas could also have contacted NOP for possible USDA-accredited certifying agents.

During the pendency of the Appeal, Bionas informed NOP that it had applied for NOP certification to Letis S.A. (Letis), which is a USDA-accredited certifying agent. NOP sent inquiries to Letis regarding Bionas' application; and Letis replied that although it had been contacted by Bionas, it did not file a formal application. Bionas didn't inform Letis of the denial of certification issued by Ekoagros or the adverse action issued by NOP. However, Bionas told NOP that it would wait to apply to Letis until the Appeal is complete. This was conveyed to Letis.

In conclusion, Ekoagros properly denied Bionas' certification application, because its application was incomplete. Bionas failed to provide requested information and documentation to Ekoagros. Any breakdown in communication between the various entities and lack of cooperation in pursuing Bionas' application for certification is not the fault of Ekoagros nor NOP.

Ekoagros found Bionas didn't qualify for certification due to its failure to comply with the organic regulations at 7 CFR §205.400; 7 CFR §205.401; and 7 CFR §205.201. Ekoagros' Notice of Denial of Certification presented the grounds upon which the denial was based. Specifically, Ekoagros stated that Bionas "does not demonstrate the minimum conditions required to comply with subsection C – Organic production and handling requirements – of the



NOP regulations,” as there is a lack of required information in the application. The notification also stated, “Your submitted organic system plan of handling (OSP) does not comply with the requirements of §205.201(a) of the NOP regulation. You submitted an unclear and inaccurate Organic System Plan.” As provided for in the organic regulations at 7 CFR §205.405, Ekoagros issued a denial of certification

Subsequently, NOP found that Bionas was still not compliant with the regulations and due to Ekoagros’ denial of certification to Bionas, properly issued the Notice of Noncompliance and Proposed Suspension to Bionas. NOP’s notice effectively confirmed the certification decision of Ekoagros pursuant to 7 CFR §205.501. Further, since correction of the noncompliances cited by Ekoagros was not possible at that point, Bionas couldn’t remain certified. Hence, NOP issued a combined Notice of Noncompliance and Proposed Suspension.

### **CONCLUSION**

The evidence substantiates that Bionas violated the organic regulations at 7 CFR §205.201; Organic production and handling system plan; 7 CFR §205.400, General requirements for certification; and 7 CFR §205.401, Application for certification, by failing to submit a complete application for certification to the certifying agent, Ekoagros, to which it submitted its certification application and requested information and documentation. Ekoagros properly denied Bionas’ application, issuing a Notice of Denial of Certification pursuant to 7 CFR §205.405. NOP, in turn, properly issued a Notice of Noncompliance and Proposed Suspension pursuant to 7 CFR §205.501 and 7 CFR §205.662.

## DECISION

Bionas' Appeal is denied and the NOP-issued Notice of Noncompliance and Proposed Suspension is affirmed. Bionas' organic certification is suspended. However, pursuant to the regulations at 7 CFR §205.662(f)(1), Bionas may apply for reinstatement at any time by submitting a request to the Secretary, accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the regulations. Attached to this formal Administrator's Decision is a Request for Hearing form. Bionas has thirty days to request an administrative hearing before an Administrative Law Judge. If Bionas does not request a hearing in that period, this Decision will be implemented, and the suspension of Bionas' certification will become final.

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

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service