

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:) **Administrator's Decision**
I.J. and Erin Paquin) **APL-003-18**
Paquin Family Farm)
Cabot, Vermont)

This Decision responds to an appeal (APL-003-18) of a Notice of Proposed Suspension of National Organic Program certification issued to I.J. and Erin Paquin, doing business as Paquin Family Farm of Cabot, Vermont, by Vermont Organic Famers (VOF), LLC. 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 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.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. VOF is an accredited certifying agent under the USDA organic regulations. I.J. and Erin Paquin are the operators of Paquin Family Farm of Cabot, Vermont, which is certified under USDA organic regulations for crops and livestock, specifically dairy cows for milk, animal replacement, and slaughter stock (Exhibit 1).
2. On January 16, 2017, VOF conducted an unannounced inspection of Paquin Family Farm to verify outdoor access for all dairy animals (Exhibit 2). VOF returned on February 14, 2017, to conduct an additional unannounced inspection and included a consulting veterinarian to observe the condition of the livestock (Exhibit 3).
3. On March 7, 2017, VOF issued Paquin Family Farm a Notice of Noncompliance citing four noncompliances covering livestock feed, healthcare and living conditions for the dairy herd, and pasture management (Exhibit 4).
4. On April 6, 2017, Paquin Family Farm rebutted the noncompliance findings, stating that they provide outdoor access for calves over six months of age and adequate feed rations for all animals (Exhibit 5). VOF determined that Paquin Family Farm's response did not resolve the noncompliances.
5. On May 31, 2017, VOF issued a Notice of Proposed Suspension to Paquin Family Farm citing the same noncompliances as the March 7, 2017 Notice of Noncompliance (Exhibit 6).
6. On September 14, 2017, Paquin's Family Farm and VOF engaged in mediation to work towards a settlement agreement.
7. On September 19, 2017, after the parties did not reach an agreement, VOF terminated the mediation (Exhibit 7).

8. On October 16, 2017, AMS received an appeal from Paquin Family Farm (Exhibit 8).

DISCUSSION

VOF has proposed to suspend Paquin Family Farm's organic certification. The effect of suspension would prohibit all sale, labeling, or representation of its products as organic. The proposed suspension is based on evidence that was gathered during the unannounced inspections of Paquin Family Farm on January 16 and February 14, 2017. The inspector and veterinarian observed the premises and animals at Paquin Family Farm and described the following conditions.

- Milk Cows (b) animals): The animals had poor hygiene with manure caked up to their hips; the sand bedding was not maintained and had pits holding manure and urine; the free stall barn was dark with minimal natural light and the free stall dividers were in disrepair; and there was no evidence of use of an outdoor access area.
- Dry cows and bred heifers (b) animals): The animals were dry; however, hygiene was also poor; and there was no bedding in the stalls.
- Young stock (less than 6 months) and heifers (6 months to breeding) (b) animals): The young heifers were overcrowded on a concrete platform without room to lie down; the doors were sealed with plastic, preventing outdoor access; there was no bedding; the animals had manure and urine scald leading to hair loss; the feeding protocol described to the veterinarian was inadequate, as evidenced by low milk volume fed and calves receiving less than 1 pound/head/day of a feed ration intended for cows, not growing animals. The veterinarian observed stunting of animals and

concluded they had compromised immune status. The inspector found records of eleven (11) animal deaths in the month prior to the February 14, 2017 inspection.

In his February 14, 2017 Veterinarian Assessment, the veterinarian concluded that the overall health of cows and young stock was adequate, but the status of calves raised concerns. The veterinarian rated the animal hygiene at greater than four, using a scale of 1 to 4 (1 is clean, 4 is dirty). In addition, the veterinarian noted that the provision of clean, dry, comfortable conditions and adequate nutrition was lacking, and that significant training and inputs would be necessary to achieve an average standard of care, and consultation with a dairy nutritionist could improve the health of the animals.

As a result of the above observations, insufficient responses from Paquin Family Farm to the Notice of Noncompliance, and a failed mediation attempt, VOF proposed to suspend Paquin Family Farm for several violations of the USDA organic regulations. The violations are explained below.

First, the USDA organic regulations require producers to maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, stage of life, climate and the environment (§ 205.239(a)). The regulations provide limited exceptions for temporary confinement or shelter of livestock (§ 205.239(b)), for example, for inclement weather or risks to the health, safety or well-being of the animal. The regulations also provide limited exceptions for temporarily denying a ruminant animal pasture or outdoor access (§ 205.239(c)), for example, newborn dairy cattle up to six months of age.

VOF stated that not all animals at Paquin Family Farm aged six months and older have daily outdoor access in the winter months. This was based on: 1) a finding from the Paquin Family Farm annual inspection on June 27, 2016, that the operation was unwilling to provide outdoor access and/or pasture for animals that turned 6 months of age during the late fall or winter (Exhibit 9); 2) inspector and veterinarian observations that milk cows and younger heifers were confined to the barn on both unannounced inspections in January and February 2017; and 3) that the outdoor areas for these animals showed no signs of use on the dates of the unannounced inspections in 2017.

Second, the USDA organic regulations require that a producer establish and maintain preventive livestock healthcare practices, including the provision of a feed ration that is sufficient to meet nutritional requirements of the animal, appropriate housing, and pasture and sanitation practices to minimize the occurrence and spread of diseases and parasites (§ 205.238(a)(2) and (3)). VOF concluded that Paquin Family Farm had inadequate feeding protocols for the younger heifers and calves based upon low milk volume fed, a nearly empty feed bunk during the afternoon of the February 2017 inspection, animals that were “significantly stunted,” and 11 calf deaths between October 28, 2016 and December 29, 2016.

Third, the USDA organic regulations require that organic livestock producers provide clean, dry bedding (§ 205.239(a)(2)). VOF documented that at the June 2016 annual inspection and the two unannounced inspections in 2017, that bedding for all animal groups was inadequate and resulted in manure caking and hair loss on animals, and burns from contact with urine.

Finally, the USDA organic regulations require that producers maintain shelter to allow for natural maintenance, comfort behaviors, and opportunity to exercise; temperature level, ventilation, and air circulation suitable to the species; and reduction of potential for livestock

injury (§ 205.239(a)(4)). VOF cited the 2017 unannounced inspection findings that barns had no natural light and minimal artificial light, the free stalls for milk cows were too narrow and many railings were broken, and the tie stall barn for heifers was “severely overcrowded,” with animals standing over each other and competing for food.

The appeal from Paquin Family Farm addresses the allegations leading to the proposed suspension and asserts that the VOF inspector and consulting veterinarian unfairly represented and evaluated their operation. In response to the allegations described in the March 7, 2017 Notice of Noncompliance, Paquin Family Farm asserts that all calves over 6 months old were now being let outside and their protocols were updated to include daily documentation of whether cows went out, for how long, and an explanation if they were not outside. The appeal included a calendar showing whether milk cows and heifers were outside each day, for how long and an explanation if they were kept indoors (Exhibit 9, Appendix B). They explained that previously, calves were not turned out at six months of age was due to safety concerns from strong winter winds and icy conditions in their unique micro-climate. Further, Paquin Family Farm stated that dry cows and heifers had outdoor access and milk cows are always outside except in inclement weather. They referred to “significant inclement weather” on the day of each unannounced inspection and mentioned glare ice.

In response to the second allegation, that the feeding protocols are inadequate for young heifers and calves, Paquin Family Farm refutes that their feeding protocol is inadequate. They were critical of the veterinarian that accompanied the inspector, because he had only been to their farm once and provided no guidance on what should be fed to the animals. Paquin Family Farm included a note, dated May 9, 2017, from their veterinarian, Dr. Emily Comstock (Exhibit 9, Appendix C). In this letter, Dr. Comstock stated that she would be working with Paquin

Family Farm's milk handler and feed representatives to help support and bring current information to the Paquin Family Farm. Dr. Comstock stated that on her visit to Paquin Family Farm on March 30, 2017, the young stock were a little thin and she recommended increasing the rations. Dr. Comstock further described that on a visit to Paquin Family Farm on April 25, 2017, she noted that that the animals appeared healthy and the young stock were in better body condition. Paquin Family Farm's appeal included a milk feeding protocol chart which shows that calves start weaning at (b) (4) at that time (Exhibit 9, Appendix D).

Paquin Family Farm also argued that the findings of 11 calf deaths over a 2 month period and significant stunting and compromised immune status were "patently false." Paquin Family Farm stated that the only 2 of the 11 animals that died were calves and the 11 deaths spanned 4.5 months. They attributed the deaths to calving difficulties (4), pneumonia (2), vaccine injury (2), mastitis (1), unknown swollen throat, and coyote attack (1) (Exhibit 9, Appendix E).

In response to the third allegation, that bedding for all animals was inadequate, Paquin Family Farm described the insufficient bedding as a fluke because they were waiting for both a load of sawdust and a load sand at the same time. They indicated that bedding has never been raised as a concern and that they provide fresh sawdust for the heifers and calves, and new sand twice per week in the stalls.

In response to the fourth allegation that heifers were overcrowded in the barn, milk cows were in narrow stalls with broken rails and that all barns had inadequate lighting, Paquin Family Farm acknowledged that the "barn" needs renovation and is working to obtain funding and technical assistance to address the barn. They reported that they have removed stalls and removed broken boards, loose wire, and broken gates from the freestall barn. Paquin Family

Farm disputed that there is an overcrowding among the heifers and stated that the tie stall is meant to keep the heifers hip-to-hip. They further stated that they always limit one animal per stall and that each heifer can reach their own food and water source.

AMS finds that the information provided in the appeal does not mitigate the allegations that led to the proposed suspension of organic certification. The conditions observed during the onsite inspections demonstrate that practices at Paquin Family Farm are not consistent with the organic regulations at §§ 205.238(a)(2)–(3); 205.239(a)(3); and 205.239(a)(1), which require: (1) a sufficient feed ration to all livestock, (2) appropriate housing conditions and sanitation practices, (3) appropriate clean dry bedding, and (4) year-round access for all animals to the outdoors, exercise areas and direct sunlight.

The inspection found that the feeding protocol for calves described during the inspection was not adequate, at less than 1 pound/head/day of ground feed for cows. In addition, the Paquin Family Farm organic system plan indicated that before weaning calves receive one-half pound of grain and one pound after weaning. Industry guidance for feeding and weaning calves recommends feeding calf starter until the animal consumes at least 2 pounds and up to 4 to 5 pounds daily for 3 consecutive day.^{3 4} While Paquin Family Farm stated that they increased the ration for the young stock, they provided information only on the milk fed and did not explain whether there were any changes to the amount or type of feed, or how these feed rations change

³ A Guide to Feeding and Weaning Healthy and Productive Dairy Calves, Bovine Alliance on Management and Nutrition. 2003, Revised 2017. Available at: https://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/bamn/BAMN17_GuideFeeding.pdf

⁴ Dairy 2014, Dairy Cattle Management Practices in the United States, 2014. February 2016, Report 1. U.S. Department of Agriculture, National Animal Health Monitoring System. Available at: https://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairy14/Dairy14_dr_PartI.pdf

at and after weaning. These omissions demonstrate that Paquin Family Farm does not have an adequate plan to provide a sufficient feed ration to this group of animals.

Further, Paquin Family Farm's argument that the bedding conditions were an anomaly is not credible. Inadequate bedding and the resulting physical effects on the livestock, including manure caking and hair loss, were observed during three separate inspections spanning eight months (June 27, 2016, January 16, 2017, and February 14, 2017). Paquin Family Farm's appeal failed to address how their health care and sanitation practices would be corrected to bring them into compliance and did not state whether they were implementing any measures to care for the animals already affected.

The eleven deaths among the Paquin Family Farm herd is higher than industry averages. According to the National Animal Health Monitoring System, the percentage of cows in small herds (30-99 cows) that died in the year 2013 was 4.9 percent.⁵ In the appeal letter, Paquin Family Farm reported 58 milking cows and 10 dry cows, and 7 cow deaths in a 4.5 month time span. However, the information provided as an appendix to the appeal shows that the 11 animal deaths occurred from October 16, 2016 to December 29, 2016. The cow death rate at for the Paquin Family Farm, based on the number and time of deaths as reported by the operation, was 9.3 percent for the period October 16, 2016 to December 29, 2016. This does not include the deaths of 2 heifers and 2 calves within that 2.5 month time frame. Paquin Family Farms appeal did not provide any corrective actions to reduce the number of deaths in the future.

⁵ Ibid.

CONCLUSION

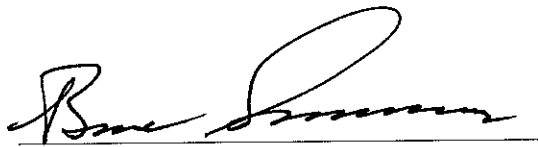
The evidence indicates that the May 31, 2017, Notice of Proposed Suspension to Paquin's Family Farm, was appropriate due to the failure to maintain compliance with the requirements for the health care, feeding and living conditions for organic livestock.

DECISION

The appeal is denied and VOF's Notice of Proposed Suspension is upheld. Paquin Family Farm's organic certification, including both crops and livestock, is to be suspended. Attached to this formal Administrator's Decision denying Paquin's Family Farm's appeal is a Request for Hearing form. Paquin's Family Farm has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Paquin's Family Farm waives the hearing, the Agricultural Marketing Service will direct VOF to issue a Notice of Suspension of the entire operation. Once suspended, the operation may, "...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 18th
day of June, 2018.



Bruce Summers
Administrator
Agricultural Marketing Service