

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
ROI Urban Farms, LLC)
) **Administrator’s Decision**
Detroit, Michigan) **APL-015-20**
)

This Decision responds to an appeal (APL-015-20) of a Notice of Denial of Certification under the National Organic Program (NOP) issued to ROI Urban Farms, LLC (ROI) of Detroit, Michigan by OneCert, Inc. (OneCert). 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On May 26, 2016, ROI, then located at 17501 Hamilton Road, Detroit, Michigan, became certified organic by Stellar Certification Services, Inc. (Stellar) for crops.
2. On June 14, 2018, NOP accepted Stellar’s surrender of accreditation as a USDA-accredited certifying agent, effective July 31, 2018. On June 22, 2018, Stellar notified all its certified operations, including ROI, that the operations would need to notify NOP within 60 days of their decision to either surrender certification or apply with a new certifier.
3. On August 15, 2019, NOP issued a Notice of Noncompliance to ROI for its failure to notify NOP whether it will surrender its certification or seek a new certifier.
4. On September 6, 2019, ROI applied to OneCert for certification.
5. On October 11, 2019, OneCert conducted an inspection of ROI.
6. On October 21, 2019, OneCert issued a Notice of Noncompliance to ROI.
7. On November 11, 2019, OneCert issued a Notice of Denial of Certification.
8. On December 9, 2019, ROI submitted an Appeal.

DISCUSSION

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:...(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 §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must: (a) Have been managed in accordance with the provisions of §§205.203 through 205.206; (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; and (c) Have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.”

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;...(f) Immediately notify the certifying agent concerning any:...(2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.”

The organic regulations at §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

documentation: ... (d) Other information necessary to determine compliance with the Act and the regulations in this part.”

Certifier OneCert contends that ROI failed to resolve 4 noncompliances set forth in the October 21, 2019 Notice of Noncompliance. ROI submitted responses to the notice; however, OneCert found the responses weren't sufficient to resolve the issues. A summary of the 4 areas of noncompliance is presented here; a more detailed analysis follows.

First, OneCert found that ROI violated the organic regulations by failing to notify them of changes in the operation, namely, that ROI relocated from the site certified by Stellar to a different site. ROI rebutted stating that certification is issued to the farmer and not the property. OneCert responded that while farmers/operations can add new land to their certification, the certifier has to be notified and the new land has to be inspected and certified.

Second, OneCert found that ROI violated the regulations by failing to provide documentation to verify that no prohibited substances had been applied to the land within the prior 3 years. OneCert found that an affidavit from ROI in which the prior owner stated that no chemicals had been applied to the property was not sufficient. OneCert also stated it needed to know more about the manure used by ROI. ROI responded with information about where the horses were housed, which OneCert found not to be true.

Third, regarding recordkeeping deficiencies, OneCert stated that a video recording of the October 11, 2019 inspection and many photos of farm activities that ROI submitted, in the absence of other production records, are not records that ‘could be readily understood and audited.’ Further, while ROI referenced records previously submitted to Stellar, these records were not provided to the inspector.

Fourth, OneCert also found that ROI violated the organic regulations by failing to establish a buffer zone and failed to describe practices or barriers necessary to prevent contamination by prohibited substances. OneCert found that ROI's rebuttal didn't resolve the noncompliance. The map of the residential lot provided by ROI, dated December 14, 2017, didn't show any buffer between the plants grown on the lot and adjacent property, and two sides of the lot are streets with plants growing up to the curb. OneCert also dismissed ROI's argument that the inspector improperly requested documentation/information during the inspection and stated that the inspector may collect said information onsite.

Having found that ROI's response to the Notice of Noncompliance was not sufficient to address or resolve the noncompliances, OneCert issued the Notice of Denial of Certification on November 11, 2019.

ROI contends in its Appeal and in a prior Response to the October 21, 2019 Notice of Noncompliance that OneCert's decision to deny its application for certification was reached "without due process," because ROI never received a notice of what additional materials were needed and didn't receive an inspection because the inspector left after only 1 hour at the site. ROI states that it has never been denied certification, and the lack of "proper sharing of files by Stellar to the new agency (OneCert) is a source of at least some of the issues of concerns outlined here." Further, ROI states that OneCert had a 'predetermined' decision to deny certification and that ROI has removed all organic claims from its website and products since receiving the denial of certification notice. The specifics of ROI's rebuttal and responses to the allegations of noncompliance are discussed below.

ROI alleges that when it was notified of the need to find a new certifier due to Stellar's surrender of its accreditation, it was 'steered' to OneCert and that OneCert and another company,

Demeter, which is not a USDA certifier, colluded against ROI. However, ROI could have chosen to apply to any accredited certifier and decided to apply to OneCert.

OneCert alleges that ROI violated the organic regulations at 7 CFR §205.400(f)(2) by failing to notify OneCert of changes in its operation that may affect compliance. Specifically, OneCert states that ROI had relocated from the address at which Stellar had certified Appellant, which was 17501 Hamilton Road, Detroit, Michigan. However, ROI's Application for Certification to OneCert listed the new address, at 17180 Pontchartrain Blvd., Detroit, Michigan. Since ROI purchased the Pontchartrain property on October 18, 2017, and didn't apply to OneCert until September 6, 2019, AMS notes that ROI appropriately provided its current address at the time it applied to OneCert. As such, as a new applicant, ROI does not appear to have violated the regulations by applying under a new address.

OneCert also alleges that ROI violated the organic regulations at 7 CFR §205.202(b) by failing to provide documentation required to verify that no prohibited substances had been used on the Pontchartrain property in the 3 prior years. ROI contended that OneCert should grant certification for the Pontchartrain address, because of its previous certification with Stellar. However, while a previous Stellar report documented the Pontchartrain property purchase, it noted that ROI did not have a 36-month land history for the property. The certificate issued by Stellar doesn't list the Pontchartrain Blvd. property. The property was purchased on October 18, 2017, within 3 years of ROI's application to OneCert on September 6, 2019; as such, OneCert was correct to require ROI to complete a Prior Land Use Affidavit (PLUA). ROI submitted this PLUA on September 6, 2019. ROI stated it couldn't present a PLUA or other affidavit completed by the prior owner, as she died after selling the Pontchartrain property to ROI. ROI instead submitted a self-attestation as an affidavit, stating it had previously asked the prior owner if she

had ever applied any prohibited substances to her property or used a lawn treatment service like Chem-Lawn, and she had replied that she hadn't used any such products or service. OneCert deemed ROI's affidavit as insufficient to demonstrate that no prohibited substances had been applied to the property in the last 3 years.

ROI also stated in the PLUA that it had managed the land since 2009. However, there is no evidence of land management by ROI before it purchased the property in 2017 and Detroit property records indicate it had been previously owned by a different family. ROI stated that after it purchased the property in 2017, it did extensive landscaping work on the property. ROI provided many photos and information on the work done. OneCert's October 21, 2019 Notice of Noncompliance acknowledges that ROI informed it of the work done on the property. However, said work does not demonstrate that no prohibited substances existed or were used.

ROI's PLUA as noted above, also states that horse manure is used as fertilizer on the Pontchartrain property. Manure is also listed in ROI's October 28, 2019 Organic System Plan (OSP) under Crop Material Inputs. OneCert stated in the Notice of Denial that ROI needed to add the manure to the material input form and required an Off-Farm Manure form. ROI argued that the manure is not an 'off-farm' input and stated in an October 23, 2019 letter to OneCert that, "The animals are housed in the center of the farm and are critical to the fertility of the farm..." However, the evidence shows that ROI doesn't manage or have any control over the horses, and they are not housed on ROI's property, but rather in Palmer Park, a public park in Detroit.

The location of the horses in Palmer Park also elevated a separate concern about ROI's organic certification application. OneCert contends that ROI made "exaggerated claims" about its land, falsely stating it owned or managed land that is actually Palmer Park for agricultural

purposes. Maps that ROI provided OneCert include the entire Palmer Park. Further, ROI's presentation of its farm maps and its discussion about the horses with the inspector communicated that ROI was applying for organic certification of Palmer Park, and not just the Pontchartrain property. The PLUA completed by ROI on September 6, 2019 lists the Pontchartrain property as being 296 total acres, with 4.5 acres cropped. However, a real estate listing shows the Pontchartrain property is only 0.44 acres. The OneCert Inspection Report – Crops from the October 11, 2019 inspection states there are 4.5 organic acres in production. OneCert's claim that ROI misrepresented the scope of the land it managed was supported by records held by ROI's former certifier, Stellar, which identified ROI's property as being 290+ acres. However, ROI's Hamilton Road address, which was certified by Stellar, was only 0.61 acres. The website for Palmer Park shows that the public park is 296 acres, the same acreage claimed in ROI's recent PLUA.

ROI provided no evidence to the inspector or NOP that the City of Detroit allows ROI to use the park for agricultural production. The City of Detroit, Parks and Recreation Department confirmed to AMS that ROI and its owner do not have an easement from the City of Detroit to use Palmer Park for any purpose and have no rights to conduct agricultural activities in the park. However, OneCert verified that ROI's representative took the inspector to Palmer Park during the inspection.

ROI's claim that the size of its owned and/or managed property is 296 acres, when that land is really a Detroit public park was false and misleading. Additionally, ROI's statement that the horse stables are in the center of ROI's property, when they are located in Palmer Park several streets north-east of ROI's property, is also false and misleading. ROI also submitted photos to NOP and OneCert of what it described as the 'farm meadow' and 'farm life' showing

large areas of land, the horse stables, and horse lot; these are not consistent with what could fit in the 0.44 acre Pontchartrain property.

The organic regulations at 7 CFR §205.405(g) states, "...if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposely misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(ii) of this section without first issuing a notification of noncompliance." However, OneCert did take the added step of first issuing a Notice of Noncompliance, prior to the Notice of Denial of Certification. This provided ROI the opportunity to try to address the discrepancies, along with other noncompliances. ROI did not do so in its response.

OneCert also alleged in the Notice of Denial of Certification and prior Notice of Noncompliance that ROI violated the organic regulations at 7 CFR §205.202(c) by failing to establish a buffer zone around its crops and describe the practices or barriers used to prevent contamination of the crops. OneCert stated that photos of the Pontchartrain property show the crops are grown along the street without any physical barriers to prevent prohibited substances in the surrounding area from contaminating the crops and soil. Maps submitted by ROI didn't describe buffer zones and the OSP didn't address the prevention of contamination. OneCert stated that ROI's contention that the City of Detroit doesn't apply any chemicals to its streets from which the crops would need protection, doesn't resolve the matter. ROI also failed to provide any details on adjacent land use.

Research shows that the Pontchartrain property is on a corner lot and surrounded by single-family residences, apartment buildings, and an empty asphalt lot. Crops cover nearly the entirety of the Pontchartrain property and extend to the curb on Pontchartrain Blvd. and Merton

Avenue; and to the side and back of the property. Palmer Park is further up the street. The organic regulations at 7 CFR §205.202 require buffer zones to prevent the unintended application of a prohibited substance to the crop. There is a defined boundary of the property, which is the yard of the corner property running to the 2 streets. During the pendency of the Appeal, ROI stated that it had put a “silt fence protective barrier” along the street boundaries. However, a review of photographs provided by RIO show this is a short, temporary barrier that doesn’t provide an effective barrier against substances. Based on the evidence available, OneCert correctly determined that ROI doesn’t have sufficient buffer zones around its crops.

Next, OneCert alleges that ROI’s recordkeeping is also noncompliant, as the records are not able to be readily understood or audited as required by the organic regulations at 7 CFR §205.103(b)(2). OneCert states that ROI provided it with 1300 photos as production records but didn’t submit any written records. ROI also presented to OneCert a 27-page log of landscaping work done on the property; however, there were no detailed records. OneCert wrote ROI on October 7, 2019, prior to the inspection, approving the OSP, but listing some items that would need to be addressed, as well as reminders on recordkeeping requirements. ROI complains that it was only given 17 hours prior to the inspection to prepare a large volume of materials; however, ROI itself requested that the inspection be moved up from October 16 or 17, 2019, to October 11, 2019.

In separate communication, ROI noted that the OneCert inspector left the inspection after about only 45 minutes. ROI also states that the inspector viewed a large .pdf file containing documents done throughout the year, but then the inspector claimed the logbook was missing, and the inspector didn’t take with him a thumb drive full of documents prepared by ROI. ROI noted that Stellar accepted these records; however, that fact is not relevant to this case, as the

question of the appeal is whether OneCert was correct in its assessment of ROI's compliance status.

OneCert acknowledges that the inspector left the inspection after about 1 hour, stating that ROI was argumentative, and the inspector already had evidence of several noncompliances. The October 11, 2019 Inspection Report confirms that the inspector was on-site for only 1 hour; the report is incomplete. The inspector, however, noted missing records and information, the lack of a detailed map, and the lack of information on what crop is planted where. The inspector wrote a lengthy comment at the end of the report, noting that ROI did not provide clear answers to several questions. The inspector states he ended the inspection as he felt he wouldn't be able to collect the necessary information to supply a complete report to OneCert.

In communication to AMS, ROI reported frustration at being asked to present documentation and information that it believes had already been supplied to its previous certifier. However, when ROI applied for certification to OneCert, it was a new application to a new certifier. Consistent with 7 CFR §205.401, OneCert had every right to request the documentation and information prior to and at the time of the inspection. Further, 7 CFR §205.402 requires a certifier to review an application for completeness and conduct an inspection to verify the operation's compliance or capability to comply. While ROI submitted over a thousand photos to OneCert at the inspection, photos are not 'auditable' and without GPS data, which OneCert requested, OneCert could not use them to verify exactly what the photos represent. Additionally, photos do not substantiate the ingredients of the soil, seed searches, inputs, and organic practices.

In its communications with AMS, ROI also raised concerns regarding the relationship between the company Demeter, which does biodynamic certification inspections, and OneCert, as the inspector was inspecting to both standards. However, Demeter is not a USDA-accredited

certifying agent, and OneCert's certification decisions are independent, despite any relationship between the two entities. An inspector conducting a joint inspection doesn't substantiate collusion between the 2 entities.

Lastly, ROI states it removed all organic references from its website and product labeling; and the website doesn't have the USDA organic seal, nor does it state its products are organically managed and grown. However, it does state that, "We test grow Demeter certified Biodynamic/Organic produce for our family, neighbors, community, select restaurants...in and around Metro Detroit." Pursuant to the organic regulations at 7 CFR §205.100(c), ROI may not sell, label, or represent its produce as being organic except in accordance with the Act and organic regulations. ROI isn't certified organic. Although ROI's website explains that "The Demeter Biodynamic Farm Standard is a comprehensive organic farming method..." ROI may not make organic claims and must remove the term 'organic' from its website.

In conclusion, there is substantial evidence that ROI violated the organic regulations. ROI violated 7 CFR §205.202(b), by failing to provide sufficient evidence of the land use history of the property at 17180 Pontchartrain Blvd., Detroit and failing to substantiate that prohibited substances hadn't been used on the property in the 3 prior years. ROI also violated the organic regulations at 7 CFR §205.202(c), by failing to establish a sufficient buffer zone around its crops; violated 7 CFR §205.103(b)(2), by its failure to maintain production and other records that are readily understandable and auditable; and violated 7 CFR §205.401, by failing to submit to OneCert with its application for certification and at the inspection all records which OneCert deemed necessary to ensure ROI's ability to comply with the organic regulations.

Additionally, evidence substantiates that ROI willfully and knowingly provided false and misleading information, and made materially false, fictitious, and fraudulent statements to

OneCert in an attempt to obtain organic certification for the 296-acre Palmer Park, which is owned by the City of Detroit. ROI claimed in documentation and in statements made to OneCert that the property is 296 acres and requested certification for this “one field” property. ROI has continued to contend it either owns or manages property in Palmer Park; however, ROI doesn’t own or manage any portion of Palmer Park.

CONCLUSION

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, ROI violated the Act and the organic regulations at 7 CFR §205.103; 7 CFR §205.202; and 7 CFR §205.401. Additionally, ROI willfully and knowingly provided false and misleading information to OneCert and made materially false statements in an attempt to obtain organic certification in violation of the organic regulations at 7 CFR §205.100(c)(2). Due to these violations, ROI can’t be granted certification.

DECISION

The Appeal is denied and the Notice of Denial of Certification is upheld. ROI is denied certification under the USDA/AMS/National Organic Program. Pursuant to 7 CFR §205.405(e), ROI may reapply for certification at any time, but will be required to provide evidence that ROI can meet all requirements for certification. Attached to this formal Administrator’s Decision

denying ROI's Appeal is a Request for Hearing form. ROI has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

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

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
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