



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	
)	
Richard Landrigan,)	OFPA Docket No. 18-0053
d/b/a Bonnie Blue Ranch and Grove,)	
)	
Respondent.)	

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Buren W. Kidd, Esq., and Lauren E. Becker, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a proceeding under the Organic Foods Production Act of 1990, as amended (7 U.S.C. §§ 6501-6522) ("OFPA"); the National Organic Program regulations (7 C.F.R. §§ 205.1-205.699) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) ("Rules of Practice").

The Administrator of the Agricultural Marketing Service ("Complainant") initiated this proceeding against Richard Landrigan, an individual doing business as Bonnie Blue Ranch and Grove ("Respondent"), by filing a complaint on June 22, 2018. The Complaint alleged that Respondent violated the OFPA and Regulations by applying fertilizer containing substances prohibited for use in organic crop production to his crops and by failing to notify the certifying agent of application of a prohibited substance. The Complaint requested an order (1) requiring Respondent to cease and desist violating the Regulations and (2) partially suspending Respondent's organic certification with respect to the portion of Respondent's operation that was

impacted by the application of prohibited substances.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On July 26, 2018, I issued an order directing the parties to show cause (“Show Cause Order”), not later than twenty days after that date, why default should not be entered against Respondent. On August 10, 2018, Complainant filed a proposed decision and order by reason of default (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”). Respondent failed to respond to the Show Cause Order² and has not filed any objections to Complainant’s Motion for Default.³

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on July 2, 2018. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer was due on or before July 23, 2018. Respondent has not filed an answer in this matter.

² The Show Cause Order was issued on July 26, 2018; therefore, the parties were required to respond on or before August 15, 2018. As of this date, Respondent has not filed a response.

³ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on August 20, 2018. Respondent had twenty days from the date of service to file objections to Complainant’s motion. 7 C.F.R. § 1.139, Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by September 10, 2018. Respondent has not filed any objections.

consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.⁴

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Richard Landrigan is an individual doing business as Bonnie Blue Ranch and Grove, whose mailing address is in [REDACTED]
2. Quality Certification Services ("QCS") is accredited by USDA as a certifying agent pursuant to the Regulations. QCS initially certified Respondent's blueberry, peach, and citrus crops on January 26, 2011.
3. On July 16, 2015, QCS conducted an annual onsite inspection of Respondent's operation and found that a fertilizer, Proforma 15-15-15, which contains substances prohibited for use in organic crop production, had been applied to forty-nine rows of Respondent's blueberry crops, a 9.92-acre portion of Respondent's operation.
4. On September 15, 2015, QCS issued Respondent a Notice of Noncompliance for failing to include a complete list of inputs used on Respondent's farm.⁵
5. On September 23, 2015, QCS issued Respondent a combined Notice of Noncompliance and Proposed Partial Suspension of a portion of Respondent's organic operation upon which the

⁴ 7 C.F.R. § 1.139; *see supra* note 5.

⁵ This noncompliance was corrected by Respondent and resolved by a Notice of Resolution sent to Respondent by QCS on October 28, 2016.

- prohibited substances had been applied, specifically Respondent's forty-nine rows (9.92 acres) of blueberry crops.
6. On October 22, 2015, Respondent filed a timely appeal with the AMS Administrator appealing the partial suspension of his land and petitioning for a reduced suspension period.
 7. On December 3, 2015, the AMS Administrator denied Respondent's appeal and upheld the three-year partial suspension of the portion of Respondent's organic operation upon which the prohibited substances had been applied, specifically Respondent's forty-nine rows (9.92 acres) of blueberry crops.
 8. On December 15, 2015, Respondent filed a timely request for a formal administrative hearing regarding the partial suspension of a portion of Respondent's organic operation upon which the prohibited substances had been applied, specifically Respondent's forty-nine rows (9.92 acres) of blueberry crops.
 9. On January 14, 2016, QCS conducted an onsite inspection of Respondent's operation and found that a fertilizer, 12-4-8 Harrell's PROfertilizer, which contains substances prohibited for use in organic crop production, had been applied to eighteen acres of Respondent's peach and citrus crops.
 10. On February 22, 2016, QCS issued Respondent a Notice of Noncompliance and Proposed Partial Suspension of an additional portion of Respondent's organic operation upon which the prohibited substances had been applied, specifically Respondent's eighteen acres of peach and citrus crops.
 11. On March 14, 2016, Respondent requested mediation with QCS on the February 22, 2016 Notice of Noncompliance and Proposed Partial Suspension.
 12. On March 21, 2016, QCS rejected Respondent's mediation request.

13. On April 18, 2016, Respondent filed a timely appeal with the AMS Administrator appealing the partial suspension of the additional portion of Respondent's organic operation upon which the prohibited substances had been applied, specifically Respondent's eighteen acres of peach and citrus crops.
14. On September 8, 2016, the AMS Administrator denied Respondent's appeal and upheld the three-year partial suspension of the additional portion of Respondent's organic operation upon which the prohibited substances had been applied, specifically the eighteen acres of Respondent's peach and citrus crops.
15. On September 16, 2016, Respondent filed a timely request for a formal administrative hearing.
16. On March 9, 2016, Crop Production Services, Mulberry, Florida, delivered Microstart60 3-2-3 fertilizer to Respondent. This fertilizer was included on the organic system plan that QCS had approved.
17. Between March 14, 2016 and March 28, 2016, the Microstart60 3-2-3 fertilizer was applied to nearly all of Respondent's organic peach and organic blueberry fields. Respondent observed the presence of a granular fertilizer after the application.
18. On April 4, 2016, Respondent submitted samples of the unidentified granular fertilizer to a testing laboratory. The results, reported on April 21, 2016, showed the presence of urea nitrogen in the samples. Urea nitrogen was not included in the guaranteed analysis for the Microstart60 3-2-3 fertilizer.
19. On December 2, 2016, Respondent self-reported the application of the prohibited substance in a letter to QCS. Respondent's letter stated that the chicken manure mistakenly contained a

commercial fertilizer mix and was applied to all but ten rows of organic peaches that had not been transplanted and sixty-seven out of seventy rows of organic blueberries.

20. On January 3, 2017, QCS issued a Notice of Noncompliance to Respondent for failing to immediately notify the certifying agent of the application of a prohibited substance; QCS also issued a Notice of Noncompliance and Proposed Partial Suspension of an additional portion of Respondent's organic operation upon which the prohibited substances had been applied, specifically Respondent's eighteen acres of peach fields and 14.35 acres of the organic blueberry fields.⁶

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On July 16, 2015, QCS inspected Respondent's operation and observed that a prohibited substance had been applied to forty-nine rows of Respondent's blueberry crops in violation of 7 C.F.R. §§ 205.105 and 205.202(b).
3. On January 14, 2016, QCS inspected Respondent's operation and observed that a prohibited substance had been applied to eighteen acres of peach and citrus crops in violation of 7 C.F.R. §§ 205.105 and 205.202(b).
4. Between March 14, 2016 and March 28, 2016, Respondent applied a prohibited substance to its organic peach fields and organic blueberry fields in violation of 7 C.F.R. §§ 205.105 and 205.202(b).

⁶ The 14.35 acres of organic blueberry fields to which a prohibited substance was applied on January 23, 2017 overlap with the 9.92 acres of organic blueberry fields to which a prohibited substance was applied on July 16, 2015.

5. Between April 21, 2016 and December 2, 2016, Respondent failed to notify the certifying agent of the application of a prohibited substance in violation of 7 C.F.R. § 205.400(f)(1).
6. The following Order is authorized by OFPA and warranted under the circumstances.

ORDER

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating OFPA and the Regulations issued thereunder.
2. Respondent's organic certification is partially suspended with respect to the portion of Respondent's operation that was impacted by the application of prohibited substances: 9.92 acres of blueberry plants; three (3) acres of citrus plants; and fifteen (15) acres of peach plants. The period of suspension shall be three (3) years from the effective date of this Order, in accordance with § 205.202(b) of the Regulations.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 11th day of September 2018


Channing D. Strother
Acting Chief Administrative Law Judge

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