

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Fusion Organic, S.P.R. de R.L. de C.V.,)	OFPA Docket No. 19-0008
d/b/a Fusion Organic of Jalisco, Mexico,)	
)	
Respondent.)	Consent Decision
)	and Order

This proceeding was instituted under the Organic Foods Production Act of 1990, as amended, 7 U.S.C. §§ 6501-6522 (OFPA), alleging that the Respondent, Fusion Organic, S.P.R. de R.L. de C.V., d.b.a. Fusion Organic of Jalisco, Mexico, willfully violated the National Organic Program Regulations issued thereunder, 7 C.F.R. §§ 205.1-205.699 (NOP Regulations). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The Respondent admits the jurisdictional allegations as set forth herein and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations of the complaint, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding, and for such purposes only, to the entry of this decision.

The Complainant agrees to the entry of this decision.

Conclusions

1. Respondent is a Mexican open capital limited liability agricultural cooperative, doing business as Fusion Organic of Jalisco, Mexico, whose mailing address is Av. Zapotlanejo 1010, Colonia Bellavista, Zapotlanejo, Jalisco, Mexico 45430.
2. Certificadora Mexicana de Productos y Procesos Ecologicos SC (Certimex) is accredited by USDA as a certifying agent pursuant to the USDA organic regulations. Certimex certified the Respondent for sorghum, cucumber, and bean crops on September 9, 2011.
3. On May 5, 2016 Certimex conducted an unannounced inspection of Respondent's operation. At that time, the inspector collected cucumber leaf samples for pesticide residue analysis.
4. On May 9, 2016, the analysis report confirmed detection of the pesticide acetamiprid at 0.126 mg/kg, a level exceeding five percent of the U.S. Environmental Protection Agency (EPA) tolerance for the commodity.¹ Acetamiprid is prohibited for use in organic production under the USDA organic regulations.

¹ When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced. The Administrator, the applicable State organic program's government State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance. 7 C.F.R. § 205.671.

5. On May 25, 2016, Certimex issued a Notice of Noncompliance to the Respondent, citing a violation of 7 CFR § 205.202(b) for the prohibited substance use application to the land. The Notice further informed the Respondent that, under § 205.671, the cucumber must be excluded from sale as organic.

6. On June 9, 2016, Certimex conducted a follow-up inspection to investigate the source of the residue. The inspector collected additional cucumber leaf samples from areas within and outside the area that the Respondent's representative stated had flooded.

7. On June 15, 2016, the analysis reports of sample sets from both within and outside the reported flood water area showed traces of acetamiprid.

8. On June 21, 2016, Certimex issued a combined Notice of Noncompliance and Proposed Suspension to the Respondent, proposing to suspend a portion of the Respondent's operation affected by the prohibited substance residue.

9. On June 26, 2016, Certimex issued a Notice of Proposed Suspension to the Respondent, citing the use and application of the prohibited substance on certified organic cucumber plants.

10. On June 23, 2016, Certimex filed a Request for Mediation.

11. On July 1, 2016, Certimex issued a letter rejecting the Respondent's request for mediation.

12. On July 8, 2016, the Respondent filed a timely appeal of the June 21, 2016 combined Notice of Noncompliance and Proposed Suspension and June 26, 2016 Notice of Proposed Suspension.

13. On August 17, 2017, the AMS Administrator issued a decision denying the Respondent's appeal and affirming the partial suspension for three years from the date of the inspection when the prohibited substance was detected, May 5, 2016.

14. On August 31, 2017, the Respondent filed a timely request for a hearing before an Administrative Law Judge.

The Respondent having admitted the jurisdictional facts only, and the parties having agreed to the entry of this decision, such decision will be entered.

Order


1. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the OFPA and the NOP Regulations issued thereunder.


2. Respondent agrees to pay for two unannounced inspections by the certifier in 2019 and 2020, respectively. These inspections shall include, 1) sample collection for residue testing, and 2) evaluation of barriers to prevent contamination from adjacent land. Respondent shall pay the costs associated with these unannounced inspections in addition to Respondent's scheduled annual inspections in 2019 and 2020.

3. Respondent is assessed a civil penalty of \$5,000.00.

The provisions of this order shall become effective upon issuance.


Copies of this decision shall be served upon the parties.


Fusion Organic, S.A.R. de R.L. de C.V.
d.b.a Fusion Organic
Respondent


Buren W. Kidd
Attorney for Complainant

Done at Washington, D.C.

this 8th day of April, 2019


Administrative Law Judge

Chief

Channing D. Strother