

Document: **NOPC-046-11 – Closure Letter to (b) (6), (b) (7)(C), (b) (7)(D) (re: Lehenbauer)**

Date: **12/6/2011**

Author: Jennifer Tucker

File Location: N:\Compliance & Enforcement\Complaints\FY 11\Open Cases\NOPC-046-11 Harry Lehenbauer, Inc

Remarks: Closure letter to (b) (6), (b) (7)(C), (b) (7)(D) combined with the Complaint Investigation Chronology Log documents history of case. As such, separate Case Closure Memorandum not created.

Final: ☐ Approved ☐ Further Editing Required

Deputy Administrator Initials: **Miles V. McEvoy**
Initials and Date

Remarks:

Return to: **Acting Director Jennifer Tucker**

(b) (6), (b) (7)(C), (b) (7)(D)

question regarding (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C)

Fri, Dec 17, 2010 at 7:44 AM

No worries—I have frustrating (b) (6), (b) (7)(C) too! Yes, he seems to be quite willing to lie.

When I first met him—a year ago in MO, he indicated that he was new to certification. Then later he told us he was (b) (6), (b) (7)(C), (b) (7)(D). He has called a number of times and we just told him to (b) (6), (b) (7)(C). We knew he was lying yesterday. I figure that if you tell me you did something that you did it. I know you take (b) (6), (b) (7)(C), (b) (7)(D) as seriously as I do.

Be well and try not to worry about him. You have done your job.

Happy Holidays! Think about things more pleasant than Dan.

Best,

At 07:42 AM 12/17/2010, you wrote:

Sorry if my frustration with him is showing. I'm glad to hear that he is getting a consistent message from us. The man will lie to me in one call about what he told me in the previous call.

Now it appears that he also lies about what I tell him. I am sure that he understands, but he won't let the facts get in the way of what he wants to do.

Thanks for keeping me updated.

(b) (6), (b) (7)(C), (b) (7)(D)

From: (b) (6), (b) (7)(C)

Sent: Friday, December 17, 2010 6:03 AM

To: (b) (6), (b) (7)(C), (b) (7)(D)

Subject: RE: question regarding (b) (6), (b) (7)(C), (b) (7)(D)

That's fine. I thought you would want to hear about the call. He indicated that he had not received anything from you and that in your conversation with him yesterday that you said everything was fine. I did not talk to him myself, but I overheard his conversation with (b) (6), (b) (7)(C). At the end of the conversation he talked about just (b) (6), (b) (7)(C), (b) (7)(D) and not bringing any of this up. (b) (6), (b) (7)(C) cautioned him that all (b) (6), (b) (7)(C) and told him that we cannot (b) (6), (b) (7)(C). I do not think that he grasps—or is willing to grasp—the seriousness of what he proposes.

It is good that (b) (6), (b) (7)(C), (b) (7)(D)

Thanks,

At 09:03 PM 12/16/2010, you wrote:

(b) (6), (b) (7)(C)

Is he telling you that he did not receive a (b) (6), (b) (7)(C), (b) (7)(D)
(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

I am glad to talk with you, but there is not much more to say about Dan.

Thanks,

(b) (6), (b) (7)(C), (b) (7)(D)

From: (b) (6), (b) (7)(C)

Sent: Thursday, December 16, 2010 5:10 PM

To: (b) (6), (b) (7)(C), (b) (7)(D)

Subject: RE: question regarding client status

Hello,

Dan has called and says that he did not receive anything about (b) (6), (b) (7)(C), (b) (7)(D) I think we should talk. I will call you.

At 09:38 AM 12/16/2010, you wrote:

(b) (6), (b) (7)(C)

Yes. He was sent a (b) (6), (b) (7)(C), (b) (7)(D) His
response was not (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

There are more complications and issues that were discovered after the (b) (6), (b) (7)(C), (b) (7)(D) was sent.

Regards,

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) - question regarding (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

From: (b) (6), (b) (7)(C)

Sent: Thursday, December 16, 2010 6:09 AM

To: (b) (6), (b) (7)(C), (b) (7)(D)

Subject: RE: question regarding (b) (6), (b) (7)(C), (b) (7)(D)

Hello and thank you for your prompt reply.

So that I may be sure, when you say he "was (b) (6), (b) (7)(C), (b) (7)(D) does this mean that he did receive

(b) (6), (b) (7)(C), (b) (7)(D)

Just checking status before I get back to him. A lot of these folks don't understand the process and I want to be sure.

Best,

At 07:40 PM 12/15/2010, you wrote:

Hi (b) (6), (b) (7)(C)

Dan was (b) (6), (b) (7)(C), (b) (7)(D)

Call me if you want more details.

(b) (6), (b) (7)(C), (b) (7)(D)

—Original Message—

From: (b) (6), (b) (7)(C)

Sent: Wednesday, December 15, 2010 3:12 PM

To: (b) (6), (b) (7)(C), (b) (7)(D)

Subject: question regarding (b) (6), (b) (7)(C), (b) (7)(D)

Hello, (b) (6), (b) (7)(C), (b) (7)(D)

I hope this message finds you well. I have a question regarding one of (b) (6), (b) (7)(C), (b) (7)(D) His name is Dan Lehenbauer. He is interested (b) (6), (b) (7)(C), (b) (7)(D) and I need to check on his status with you before entertaining the notion. What can you tell me about his status? The sooner we get an answer the better as I do not want to get into a mess if there is one.

Thank you in advance for your assistance!

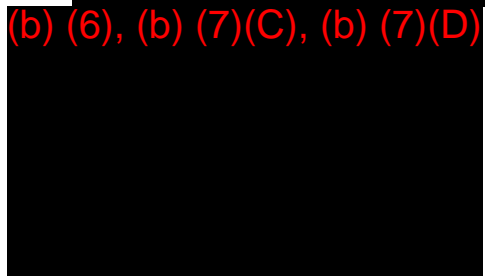
Be well and stay warm!

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C), (b) (7)(D)



Michael, Matthew - AMS

From: Bradley, Mark
Sent: Friday, December 17, 2010 8:44 AM
To: NOPCompliance
Subject: FW: Fraudulent Certificate
Attachments: Harry Lehenbauer-Fake Certificate-2010-12-15.pdf; Harry Lehenbauer-09-C-NOP.pdf

Importance: High

Kristin,
Please open a complaint file on this.
Thanks,
Mark

From: (b) (6), (b) (7)(C), (b) (7)(D)
Sent: Wednesday, December 15, 2010 2:52 PM
To: Bradley, Mark
Subject: Fraudulent Certificate
Importance: High

Hi Mark,

We were discussing our (b) (6), (b) (7)(C), (b) (7)(D) Dan Lehenbauer of Harry Lehenbauer, Inc. when we received a call from another of (b) (6), (b) (7)(C), (b) (7)(D) who had just purchased milo from Dan and was on his way home with it. (b) (6), (b) (7)(C) had been told by another buyer that he should watch out for Dan, so he called us to verify that (b) (6), (b) (7)(C), (b) (7)(D). Dan gave (b) (6), (b) (7)(C) a certificate with dates that were altered from the original.

I have attached the original and the fake certificate.

We had (b) (6), (b) (7)(C), (b) (7)(D) He submitted some information, but it was not sufficient and also included documents with dates that were not possible. There were many irregularities, so we had decided to (b) (6), (b) (7)(C), (b) (7)(D) was December 1st.

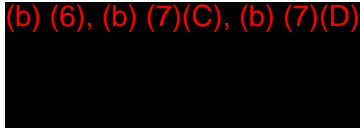
We are going ahead with the (b) (6), (b) (7)(C), (b) (7)(D) and submitting this new information to you as it is clearly a more serious violation.

Let me know if you want us to proceed differently.

Thanks,

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)



CERTIFICATE OF COMPLIANCE**OneCert
Certified Organic**

Daniel Lehenbauer
Harry Lehenbauer Inc.
dba Diamond D Organics
2051 State Rd. M
Kingdom City, MO 65262
United States



OneCert has inspected and verified that the above named operation is in compliance with the
USDA National Organic Program
(Organic Food Product Act of 1990 and 7 CFR Part 205)

Type of operation:
Crops

Certified products:

Organic Products	Category
Soybeans	100% Organic
Sorghum	100% Organic
Sweet Corn	100% Organic
Warm Season Grasses	100% Organic
Alfalfa	100% Organic
Wheat	100% Organic

This certificate is valid until certification is surrendered, suspended, or revoked. An updated organic management plan and on-site inspection are required annually.

Effective Date: **19 June 2009**

Last Annual Inspection Date: **12 June 2009**

 6-19-09

This document belongs to **OneCert** and must be returned upon request. Only the original is a valid document. Photocopies or faxed copies are not valid instruments.

OneCert, Inc.

2601 B Street, #1 - Lincoln, NE 68502 USA
Phone: (402) 420-6080 - Fax: (888) 475-6044
Email: info@onecert.net - Website: www.onecert.net

OneCert Info

From: U.S._Postal_Service_ [U.S._Postal_Service@usps.com]
Sent: Friday, December 17, 2010 7:54 PM
To: info@onecert.com
Subject: USPS Shipment Info for 9405 5036 9930 0439 2712 23

Follow Up Flag: Follow up
Flag Status: Flagged

This is a post-only message. Please do not respond.

SAMUEL WELSCH has requested that you receive a Track & Confirm update, as shown below.

Track & Confirm e-mail update information provided by the U.S. Postal Service.

Label Number: 9405 5036 9930 0439 2712 23

Service Type: Priority Mail Delivery Confirmation

Shipment Activity	Location	Date & Time
Delivered	COLUMBIA MO 65203	12/17/10 4:34pm
Out for Delivery	COLUMBIA MO 65203	12/17/10 8:47am
Sorting Complete	COLUMBIA MO 65203	12/17/10 8:37am
Arrival at Post Office	COLUMBIA MO 65203	12/17/10 6:49am
Processed through Sort Facility	KANSAS CITY KS 66106	12/16/10 8:46pm
Electronic Shipping Info Received		12/15/10

Reminder: Track & Confirm by email

Date of email request: 12/15/10

Future activity will continue to be emailed for up to 2 weeks from the Date of Request shown above. If you need to initiate the Track & Confirm by email process again at the end of the 2 weeks, please do so at the USPS Track & Confirm web site at

<http://www.usps.com/shipping/trackandconfirm.htm>

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>

Missouri Department of Agriculture

Seller Information

Dan Lehenbauer

Columbia, MISSOURI

573-234-3785

eagleorganics@yahoo.com

Farmer, Producer

Hay Information

Hay Type: Alfalfa

Bale Type: Large Square

Bale Weight: 900 bs

Number of Bales: 400 bales

Lab Analysis: CP: 19%, RFV: 175%

County and State located in: Boone, MISSOURI

Additional Notes: Certified Organic, also have 900 bales of baleage.

(X-012 (30 Mar 2009))

Certificate Number: ONE-556-090619-C-NOP

CERTIFICATE OF COMPLIANCE***OneCert***
Certified Organic

Daniel Lehenbauer
Harry Lehenbauer Inc.
dba Diamond D Organics
2051 State Rd. M
Kingdom City, MO 65262
United States



OneCert has inspected and verified that the above named operation is in compliance with the
USDA National Organic Program
(Organic Food Product Act of 1990 and 7 CFR Part 205)

Type of operation:
Crops

Certified products:

Organic Products	Category
Soybeans	100% Organic
Sorghum	100% Organic
Sweet Corn	100% Organic
Warm Season Grasses	100% Organic
Alfalfa	100% Organic
Wheat	100% Organic

This certificate is valid until certification is surrendered, suspended, or revoked. An updated organic management plan and on-site inspection are required annually.

Effective Date: 19 June 2010

Last Annual Inspection Date: 18 November 2010

Emily J. Lehenbauer 6-19-10

This document belongs to **OneCert** and must be returned upon request. Only the original is a valid document. Photocopies or faxed copies are not valid instruments.

OneCert, Inc.

2601 B Street, #1 - Lincoln, NE 68502 USA
Phone: (402) 420-6080 - Fax: (888) 475-6044
Email: info@onecert.net - Website: www.onecert.net

OneCert[®], Inc.

427 N. 33rd Street - Lincoln, NE 68503 USA
Phone: (402) 420-6080 Fax: (888) 475-6044
Email: info@onecert.com Web site: www.onecert.com

December 15, 2010

Dan Lehenbauer
Harry Lehenbauer, Inc.
dba Diamond D Organics/Eagle Organics
1630 W Boris
Columbus, MO 65203

Harry Lehenbauer Inc.
2051 State Rd. M
Kingdom City, MO 65262

Subject: SUSPENSION

Dear Dan,

This letter is to notify you that as of today, December 15, 2010, you have been suspended as an organic operator from the National Organic Program pursuant to §205.662(e) of the National Organic Standards.

Our records show that the Notice of Proposed Suspension was sent on October 29, 2010 and that it was delivered on November 1, 2010. The information you submitted in response was insufficient to address the noncompliance.

The Notice of Proposed Suspension notified you that according to the National Organic Standards §205.681(c) "Appeals": "An appeal of a noncompliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator..."

We received confirmation from the USDA that they did not receive an appeal from you in the required time frame. Therefore, you and Harry Lehenbauer, Inc. are suspended as a certified National Organic Program operation effective today, December 15, 2010. The suspension is for three years.

You may no longer sell, label, or represent your product(s) as organic. Please be aware that per 205.100(c) "Any operation that: (1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$11,000 per violation. (2) Makes a false statement under the Act to the Secretary, a governing State official, or an accredited certifying agent shall be subject to the provision of section 1001 of title 18, United States Code."

Section §205.662(f)(1) of the National Organic Standards state: "A certified operation whose certification has been suspended under this section may at any time, unless otherwise stated in

the notification of suspension, submit a request to the Secretary [of Agriculture] 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.”

Reinstatement for certification must be requested from the USDA Secretary of Agriculture, and will only be considered for certification if the noncompliance has been corrected and your operation has undergone an inspection to verify that your operation is in full compliance and capable of remaining in compliance.

You may submit a request for reinstatement of certification to the Secretary [of Agriculture] after December 15, 2013.

If you have questions regarding this letter, please contact me.

Sincerely,

(b) (6)

OneCert, Inc.

cc: National Organic Program Appeals Team

NOPACAAverseActions@ams.usda.gov

Enclosure:

Reinstating Suspended Organic Operations

Michael, Matthew - AMS

From: Sam Welsch <sam@onecert.com>
Sent: Friday, April 29, 2011 10:20 AM
To: Thornblad, Kristin
Subject: Lehenbauer suspension
Attachments: Harry Lehenbauer-Suspension-20101215.pdf; Harry Lehenbauer-10-C-Suspension Delivery Confirmation.pdf; Harry Lehenbauer-11-MDA -MO hay directory 20110318.pdf; Missouri Hay Directory.pdf; Harry Lehenbauer-11-Info submitted 20110322.pdf

Let me know if you need more information.

--

Sam Welsch, President
OneCert, Inc.
427 N 33rd St
Lincoln, NE 68503
402-420-6080
www.onecert.com

Missouri Department of Agriculture

Seller Information

Dan Lehenbauer
Columbia, MISSOURI
573-234-3785
eagleorganics@yahoo.com
Farmer, Producer

Hay Information

Hay Type: Alfalfa
Bale Type: Large Square
Bale Weight: 900 bs
Number of Bales: 400 bales
Lab Analysis: CP: 19%, RFV: 175%
County and State located in: Boone, MISSOURI
Additional Notes: Certified Organic, also have 900 bales of baleage.

Complaint Investigation Chronology Log

Case #: NOPC-046-11

Subject: Dan Lehenbauer/Harry Lehenbauer, Inc.

Compliance Specialist: Kristin Thornblad

Date	Activity
12/17/10	Complaint received by C&E Division.
1/6/11	Complaint assigned to Compliance Specialist.
1/12/11	Telephone call between Compliance Specialist KT and Complainant (b) (6), (b) (7)(C), (b) (7)(D) that operation's representative falsified a USDA organic certificate by altering date of certification validation. (b) (6), (b) (7)(C), (b) (7)(D) evidence regarding the falsification.
1/24/11	Case management meeting with C&E Division Director Mark Bradley (MB) and KT. Per MB, complaint facts may not be appropriate for publication of alleged falsified certificate. Operation is not a foreign operation unavailable for NOP communication or direct enforcement. (b) (6), (b) (7)(C), (b) (7)(D) next C&E actions are to await additional information (b) (6), (b) (7)(C), (b) (7)(D)
4/29/11	Telephone conversation between KT (b) (6), (b) (7)(C), (b) (7)(D) for complaint status (b) (6), (b) (7)(C), (b) (7)(D) to provide additional information regarding the alleged falsified certificate. (b) (6), (b) (7)(C), (b) (7)(D) who purported to have additional information regarding the matter. However, (b) (6), (b) (7)(C), (b) (7)(D)
4/29/11	Case management meeting with MB and KT. Per MB, case may be appropriate for closure with no enforcement action, due to lack of evidence of use of falsified certificate.



1400 Independence Avenue, S.W.
Room 2646-S, STOP 0268
Washington, D.C. 20250-0268

VIA EMAIL

(b) (6), (b) (7)(C), (b) (7)(D)

Re: NOPC-046-11 Harry Lehenbauer, Inc.

Dear (b) (6), (b) (7)(C), (b) (7)(D)

The U.S. Department of Agriculture, National Organic Program (NOP) has concluded its investigation of a complaint filed against Harry Lehenbauer, Inc. (Lehenbauer). Lehenbauer was previously certified with OneCert, Inc.; the operation was suspended in December 2010. In your complaint, you alleged that a representative of Harry Lehenbauer, Inc. had provided a third party with a falsified organic certificate that listed (b) (6), (b) (7)(C), (b) (7)(D) and falsified dates.

Your initial complaint message included (b) (6), (b) (7)(C), (b) (7)(D) The complaint did not include evidence as to who had generated the certificate, or that it had been provided as part of a transaction. In a phone call about the complaint on January 12, 2011, you indicated that you were working with unidentified sources that may have evidence related to the falsification.

On April 29, 2011, on a follow-up phone call with an NOP specialist, you indicated that you had not been able to locate additional information regarding the alleged falsified certificate. You indicated that you had talked with an individual earlier in the year that may have additional information regarding the matter; however, this lead had not come to fruition.

No further evidence has been revealed in this case, and there is no indication that a transaction using the certificate has occurred. As such, given this case history, we are closing the case. If additional evidence emerges related to this case in the future, please send it to us, and we will reopen the case for further investigation.

Sincerely,

Miles V. McEvoy
Deputy Administrator
National Organic Program

cc: Director, Accreditation & International Activities Division

From: AMS - NOPCompliance
To: (b) (6), (b) (7)(C), (b) (7)(D)
Subject: Notice of Complaint Resolution (NOPC-046-11)
Date: Friday, December 09, 2011 8:29:00 AM
Attachments: [Notice to Complt Case Closure \(NOPC-046-11\).pdf](#)

(b) (6), (b) (7)(C), (b) (7)(D)

Please see attached.

Thank you.



1400 Independence Avenue, S.W.
Room 2646-S, STOP 0268
Washington, D.C. 20250-0268

VIA EMAIL

(b) (6), (b) (7)(C), (b) (7)(D)

DEC 08 2011

Re: NOPC-046-11 Harry Lehenbauer, Inc.

Dear (b) (6), (b) (7)(C), (b) (7)(D)

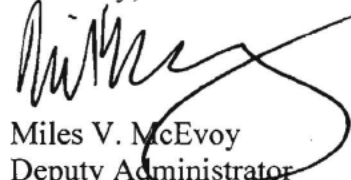
The U.S. Department of Agriculture, National Organic Program (NOP) has concluded its investigation of a complaint filed against Harry Lehenbauer, Inc. (Lehenbauer). Lehenbauer was previously certified with OneCert, Inc.; the operation was suspended in December 2010. In your complaint, you alleged that a representative of Harry Lehenbauer, Inc. had provided a third party with a falsified organic certificate that listed (b) (6), (b) (7)(C), (b) (7)(D) and falsified dates.

Your initial complaint message included (b) (6), (b) (7)(C), (b) (7)(D). The complaint did not include evidence as to who had generated the certificate, or that it had been provided as part of a transaction. In a phone call about the complaint on January 12, 2011, you indicated that you were working with unidentified sources that may have evidence related to the falsification.

On April 29, 2011, on a follow-up phone call with an NOP specialist, you indicated that you had not been able to locate additional information regarding the alleged falsified certificate. You indicated that you had talked with an individual earlier in the year that may have additional information regarding the matter; however, this lead had not come to fruition.

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Sincerely,



Miles V. McEvoy
Deputy Administrator
National Organic Program

cc: Director, Accreditation & International Activities Division

Michael, Matthew - AMS

From: (b) (6), (b) (7)(C), (b) (7)(D)
Sent: Friday, December 09, 2011 10:28 AM
To: AMS - NOPCompliance; McEvoy, Miles - AMS
Subject: Re: Notice of Complaint Resolution (NOPC-046-11)
Attachments: (b) (6), (b) (7)(C), (b) (7)(D) re Dan Lehenbauer.pdf

Dear Miles,

I just read the complaint resolution letter for this case. It includes the statement, "The complaint did not include evidence as to who had generated the certificate, or that it had been provided as part of a transaction." However, on December 15, 2010, I sent an email to Mark Bradley to initiate this complaint. In the first paragraph of that email, I provided evidence about who generated the certificate (Dan Lehenbauer) and that it was used as part of a transaction (sale of milo to (b) (6), (b) (7)(C)).

"We were discussing our (b) (6), (b) (7)(C), (b) (7)(D) Dan Lehenbauer of Harry Lehenbauer, Inc. when we received a call from another of (b) (6), (b) (7)(C), (b) (7)(D) who had just purchased milo from Dan and was on his way home with it. (b) (6), (b) (7)(C), (b) (7)(D) had been told by another buyer that he should watch out for Dan, so he called us to verify that (b) (6), (b) (7)(C), (b) (7)(D). Dan gave (b) (6), (b) (7)(C) a certificate with dates that were altered from the original."

Subsequent to submitting the initial complaint, I received additional information from other sources regarding Dan's use of other copies of this fraudulent certificate in actual or attempted sales. That additional information may not have been as clearly documented and may have obscured the fact that you had received clear evidence of the use of a fraudulent certificate as part of a transaction with my initial complaint.

I am not writing to request any additional sanctions in this case, but I would like to have your resolution letter corrected to reflect the evidence that was submitted. I want to establish a clear record of fraudulent activity on the part of Dan Lehenbauer that will be considered if he (b) (6), (b) (7)(C), (b) (7)(D) in the future. It is also possible that he may lie about this suspension when (b) (6), (b) (7)(C), (b) (7)(D). For example, I am attaching a copy of a (b) (6), (b) (7)(C), (b) (7)(D) about what Dan had told them in attempting (b) (6), (b) (7)(C), (b) (7)(D).

Sincerely,

(b) (6), (b) (7)(C), (b) (7)(D)

On Fri, Dec 9, 2011 at 7:29 AM, AMS - NOPCompliance <NOPCompliance@ams.usda.gov> wrote:

(b) (6), (b) (7)(C), (b) (7)(D)

Please see attached.

Thank you.

|

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(b) (6), (b) (7)(C), (b) (7)(D)

