

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 19 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: [Signature] DEP CLERK

KINGSLEY BROTHERS LLC,
KIMAN KINGSLEY, AND
DOVER DIXON HORNE, PLLC, their Attorneys PLAINTIFFS

VS. NO. 4:17-cv-400-JLH

This case assigned to District Judge Holmes
and to Magistrate Judge Harris

AGRICULTURAL MARKETING SERVICE,
UNITED STATES DEPARTMENT OF AGRICULTURE DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

Plaintiffs Kingsley Brothers LLC (“Kingsley Brothers”), Kiman Kingsley (“Kingsley”), by and through their attorneys DOVER DIXON HORNE, PLLC, and their attorneys, DOVER DIXON HORNE, PLLC, (“DDH”) (DDH and Kingsley collectively referred to herein as “Plaintiffs”) for their Complaint for Declaratory Judgment and for Injunctive Relief against the Agricultural Marketing Service of the United States Department of Agriculture (“AMS”) seeking to compel compliance and release of agency records improperly withheld from Plaintiffs by AMS under the Freedom of Information Act, 5 U.S.C. §552 state:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B) and 28 U.S.C. §1331.

2. Venue is proper in this district pursuant to 29 U.S.C. §1391(a) and 5 U.S.C. §552(a)(4)(B).

PARTIES

3. Plaintiff Kingsley Brothers is a limited liability company organized under the laws of the State of Missouri and having its principal place of business at 3388 Lawrence 1070, Miller, Missouri.

4. Plaintiff Kingsley is a resident of Lawrence County, Missouri. Kingsley is the managing member of Kingsley Brothers.

5. Plaintiff DDH is an Arkansas professional limited liability company with its principal place of business at Suite 3700, 425 West Capitol Avenue, Little Rock, Arkansas. DDH represents Kingsley Brothers and Kingsley in an administrative enforcement action brought by AMS under the National Organic Program, Organic Foods Production Act of 1990, 7 U.S.C. § 6501, et seq.

6. Defendant AMS is an agency of the United States Government and resides in this judicial district. Defendant AMS has possession, custody and control of records to which Plaintiffs seek access pursuant to the Freedom of Information Act, 5 U.S.C. §552 in this case.

STATEMENT OF FACTS

7. Kingsley Brothers is and has been for many years the operator of an organic farm certified as such by AMS under the National Organic Foods Production Act of 1990, 7 U.S.C. §6501, et. seq. and USDA regulations set forth at 7 C.F.R. Part 205.

8. By letter dated November 23, 2016, AMS proposed to revoke Kingsley Brothers' status as a certified organic farm ("Proposed Revocation Letter"). A copy of the AMS letter is attached hereto as Exhibit 1. According to AMS's letter, the revocation also would apply to Kingsley, although Kingsley is not a registered organic farm he is merely the managing member of such.

9. By letter dated December 19, 2016, Kingsley Brothers, Kingsley and Darlene Kingsley, Kingsley's spouse, administratively appealed AMS's November 23, 2016 proposed revocation of organic certification for Kingsley Brothers and Mr. and Mrs. Kingsley. A copy of the December 19, 2016 notice of appeal is attached hereto as Exhibit 2.

FOIA Request 2017-AMS-01169-F

10. By letter dated December 14, 2016, DDH, on behalf of Kingsley Brothers and Kingsley, requested from AMS additional information regarding the complaints that gave rise to AMS's proposed revocation including:

- a. The dates and times of the alleged spraying of prohibited substances on the Kingsley Brothers fields;
- b. The identification numbers of the aircraft that allegedly were involved;
- c. The persons who allegedly witnessed these events; and
- d. Any other details about the complaints.

A copy of this letter is attached hereto as Exhibit 3.

11. On December 14, 2016, DDH, on behalf of Kingsley Brothers and Kingsley, also sent a formal FOIA request to Defendant AMS seeking access to the following records:

- a. All records relating to complaints NOPC-306-16 and NOPC-459-16 to the Agricultural Marketing Service, U.S. Department of Agriculture;

- b. All records relating to the USDA's investigation of those complaints;
- c. All records relating to USDA's November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC, a copy of which is attached hereto as Exhibit A; and
- d. All other records relating to Kiman Kingsley, Darlene Kingsley and Kingsley Brothers LLC, including, without limitation, records relating to any other complaints to USDA not identified in paragraph 1 above.

Kingsley Brothers and Kingsley were the subject of AMS' complaints NOPC-306-16 and NOPC-459-16 referenced above. A copy of the December 4, 2016 formal FOIA request to AMS is attached hereto as Exhibit 4.

12. By letter dated January 3, 2017, AMS provided a "final response" to Kingsley Brothers' December 14, 2016 requests for information, which were identified by an AMS FOIA tracking number as FOIA Request 2017-AMS-01169-F. The January 3, 2017 response identified 31 pages of responsive records; however, USDA denied parts of the request and thus 13 pages of the responsive documents were partially redacted. USDA denied parts of Kingsley Brothers request under exemption (b)(6) of the FOIA for "personnel and medical and similar files" as a "clearly unwarranted invasion of personal privacy." USDA also denied parts of Kingsley Brothers request under exemption (b)(7) of the FOIA for "records of information compiled for law enforcement purposes" that (1) could reasonably be expected to interfere with law enforcement proceedings, (2) could reasonably be expected to constitute an unwarranted invasion of personal privacy, and (3) could reasonably be expected to disclose the identity of a confidential source. A copy of the January 3, 2017 letter is attached hereto as Exhibit 5, and a copy of the documents produced with the January 3, 2017 letter are attached hereto as Exhibit 5.

13. By letter dated January 27, 2017, DDH, on behalf of Kingsley Brothers and Kingsley, appealed AMS's decision to partially deny Kingsley Brothers and Kingsley's request

for information. A copy of Kingsley Brothers and Kingsley's appeal of FOIA Request 2017-AMS-01169-F is attached hereto as Exhibit 6.

14. To date, Defendant AMS has not made a determination on Kingsley Brothers and Kingsley's appeal of FOIA Request 2017-AMS-01169-F.

FOIA Request 2017-AMS-01450-F

15. By letter dated January 10, 2017, addressed to Mr. Rogers Simonds, Laboratory Chief, National Science Laboratories, DDH, on behalf of Kingsley Brothers and Kingsley, requested laboratory data packages related to laboratory reports that formed the basis for the November 23, 2016 Proposed Revocation Letter. A copy of the January 10, 2017 letter request is attached hereto as Exhibit 7.

16. By email from Jewell Little dated January 12, 2017, AMS informed DDH that the January 10, 2017 letter request would be treated as a formal request under the Freedom of Information Act, and provided an FOIA tracking number 2017-AMS-01450-F. A copy of the January 12, 2017 email is attached hereto as Exhibit 8.

17. By letter dated March 2, 2017, AMS provided a "final response" to Kingsley Brothers' January 10, 2017 request for information - AMS FOIA tracking number 2017-AMS-01450-F. AMS identified 424 pages of responsive records, but withheld all those records under exemption (b)(7)(A) of 5 U.S.C. §552 the FOIA, which exempts "records of information compiled for law enforcement purposes but only to the extent that the production of such law enforcement records . . . could reasonably be expected to interfere with law enforcement proceedings." A copy of the March 2, 2017 letter is attached hereto as Exhibit 9.

18. By letter dated April 14, 2017, DDH, on behalf of Kingsley Brothers and Kingsley, administratively appealed AMS's decision to deny Kingsley Brothers and Kingsley's request for information in FOIA Request No 2017-AMS-01450-F. A copy of Kingsley Brothers and Kingsley's appeal of FOIA Request 2017-AMS-01450-F is attached hereto as Exhibit 10.

19. To date, Defendant AMS has not made a determination on Kingsley Brothers and Kingsley's appeal of FOIA Request 2017-AMS-01450-F.

COUNT I

20. Plaintiffs reallege Paragraphs 1 through 19 above as if fully stated herein.

21. Plaintiffs timely administratively appealed AMS's decision on FOIA Request No. 2017-AMS-01169-F. Plaintiffs have exhausted their administrative remedies.

22. Pursuant to 5 U.S.C. §552(a)(6)(ii), AMS had twenty (20) days after receipt of Plaintiffs' administrative appeal of FOIA Request No 2017-AMS-01169-F to make a determination on the appeal.

23. More than twenty (20) days has elapsed since Plaintiffs' administrative appeal of FOIA Request No. 2017-AMS-01169-F.

24. AMS's duty to make a determination within twenty (20) days on Plaintiffs' appeal of FOIA Request No. 2017-AMS-01169-F is not discretionary.

25. AMS has not made a determination on Plaintiff's appeal of FOIA Request No. 2017-AMS-01169-F. AMS's failure to perform its non-discretionary duty to make a determination on Plaintiffs' appeal is ongoing and will continue until enjoined and restrained by this Court.

26. Plaintiffs timely administratively appealed AMS's decision on FOIA Request No. 2017-AMS-01450-F. Plaintiffs have exhausted their administrative remedies,

27. Pursuant to 5 U.S.C. §552(a)(6)(ii), AMS had twenty (20) days after receipt of Plaintiffs' administrative appeal of FOIA Request No 2017-AMS-01450-F to make a determination on the appeal.

28. More than twenty (20) days has elapsed since Plaintiffs' administrative appeal of FOIA Request No. 2017-AMS-01450-F.

29. AMS's duty to make a determination within twenty (20) days on Plaintiffs' appeal of FOIA Request No. 2017-AMS-01450-F is not discretionary.

30. AMS has not made a determination on Plaintiff's appeal of FOIA Request No. 2017-AMS-01450-F. AMS's failure to perform its non-discretionary duty to make a determination on Plaintiffs' appeal is ongoing and will continue until enjoined and restrained by this Court.

31. The Administrative Procedures Act, 5 U.S.C. §552(a)(4)(B) provides Plaintiffs with a cause of action to enjoin AMS from withholding agency records.

32. Plaintiffs are entitled to an order from the Court directing AMS to make a determination on Plaintiffs' appeals of FOIA Request No. 2017-01169-F and FOIA Request No. 2017-01450-F by a date certain.

COUNT II

33. Plaintiffs reallege Paragraphs 1 through 32 above as if fully stated herein.

34. AMS has failed to comply with the time limits for making a determination on Plaintiffs' appeals of FOIA Request No. 2017-AMS-01169-F and FOIA Request No. 2017-AM-11450-F.

35. As provided in 5 U.S.C. §552(a)(6)(C), Plaintiffs have exhausted their administrative remedies because AMS failed to make a determination on Plaintiffs' appeals of their FOIA requests within the time provided in 5 U.S.C. §552(6)(A).

36. As set forth in Exhibit 7, AMS has violated the FOIA by withholding and redacting records responsive to Plaintiffs' FOIA Request No. 2017-AMS-01169-F.

37. As set forth in Exhibit 10, AMS has violated the FOIA by withholding records responsive to Plaintiffs' FOIA Request No. 2017-AMS-01450-F.

38. The Administrative Procedures Act, 5 U.S.C. §552(a)(4)(B) provides Plaintiffs with a cause of action to enjoin AMS from withholding agency records.

39. Plaintiffs are entitled to an order enjoining AMS from withholding records that are responsive to FOIA Request No. 2017-AMS-01169-F and FOIA Request No. 2017-01450-6, and directing AMS to release the requested agency records that it has improperly withheld.

COUNT III

40. Plaintiffs reallege paragraphs 1-39 above as if fully stated herein.

41. In accordance with Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §2201, et seq., the Court should declare the rights, status, and other legal relations between Plaintiffs and AMS with respect to FOIA Request No. 2017-AMS-01169-F and FOIA Request No. 2017-01450-F, in particular the Plaintiffs' entitlement to the agency documents requested.


42. Plaintiffs respectfully request a declaratory judgment in order to settle and afford it relief from uncertainty and insecurity with respect to AMS's obligations pursuant to the FOIA, and in order to allow Kingsley Brothers and Kingsley to fully and timely respond to the Proposed Revocation Letter.

43. Plaintiffs further request that this Court order a speedy hearing pursuant to Rule 57 of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) declare AMS's failure to make a timely determination on Plaintiffs' appeal of FOIA Request No. 2017-AMS-01169-F to be unlawful;
- (b) declare AMS's failure to make a timely determination on Plaintiffs' appeal of FOIA Request No. 2017-AMS-01450-F to be unlawful;
- (c) enjoin AMS from continuing to withhold records responsive to FOIA Request no. 2017-AMS-01169-F;
- (d) enjoin AMS from continuing to withhold records responsive to FOIA Request no. 2017-AMS-01450-F;
- (e) grant judgment pursuant to Fed.R.Civ.Proc. 57 declaring AMS's obligation to produce to Plaintiffs the requested records in their entirety and make copies available to Plaintiffs;
- (f) grant Plaintiffs an award of attorneys fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E); and
- (g) grant Plaintiffs such other relief as the Court deems just and proper.

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Little Rock, Arkansas 72201
(501) 375-9151
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By: 
Mark H. Allison

ATTORNEYS FOR KINGSLEY BROTHERS,
LLC AND KIMAN KINGSLEY

EXHIBIT

1



1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, D.C. 20250-0268

PROPOSED REVOCATION OF CERTIFICATION

November 23, 2016

Via Registered Email

Mr. and Mrs. Kiman Kingsley
Kingsley Brothers LLC.
3388 Lawrence 1070 – 65707
Miller, Missouri
Email: Kk4north@millertel.net

Re: NOPC-305-16 and Kingsley Brothers LLC.

Dear Mr. and Mrs. Kingsley:

The U.S. Department of Agriculture National Organic Program (NOP) enforces the Organic Foods Production Act of 1990 (OFPA), as amended, and the corresponding organic regulations at 7 CFR Part 205. All agricultural products sold, labeled or represented as organic must be produced and handled in compliance with the USDA organic regulations.

The NOP received a complaint, alleging that Kingsley Brothers, LLC, (Kingsley) applied prohibited substances to its organic crops, in violation of the OFPA and the USDA organic regulations. Specifically, the complainants alleged that they had seen airplanes, owned by a different Kiman Kingsley entity, applying prohibited substances to Kingsley organic fields on multiple occasions. The complainants also provided dates of aerial applications, GPS coordinates and specified which pesticides, (ie; Mustang Max- Zeta Cypermethrin) they believed were being applied by Kingsley.

At the request of the NOP, Ecocert ICO LLC., Kingsley's accredited certifier, conducted an on-site unannounced inspection of Kingsley, on September 1-2, 2016. During the course of the inspection, Ecocert ICO inspectors collected soil and tissue samples from Kingsley fields: A, C-2, C-3 C-4, G and R-1, in accordance with information provided by the complainant. These samples were immediately forwarded to USDA's National Science Laboratory (NSL) in Gastonia, North Carolina, to be tested for pesticide residues.

The NSL testing results indicated plant tissue samples from field G contained significant levels (1.230 and 1.4 parts per million) of the prohibited substance, Zeta-Cypermethrin, at levels which exceed the EPA tolerances Cypermethrin in soybeans. Additionally the test results for fields A, C-2 and R-1, showed traces of the prohibited substance Atrazine.

Mr. and Mrs. Kiman Kingsley
Notice of Proposed Revocation
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Page 2

The USDA organic regulations at 7 CFR 205.105 require certified operations that produce products “to be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603.”

The proposed revocation is based on Kingsley’s willful use of prohibited substances in organic production, and its violation of USDA organic regulations at 7 CFR 205.105.

The NOP proposes to revoke the organic certification of Kingsley Brothers LLC, effective 30 days from receipt of this letter. If the NOP revokes Kingsley’s organic certification, you will be directed to cease and desist all sale and handling of products represented as organic, with the exception of product from the fields were samples taken and tested positive for prohibited substances.

Revocation would apply to both the physical operation, Kingsley and any responsibly connected persons, including yourselves, Kiman and Darleen Kingsley.

Pursuant to § 205.662(f)(2), a certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation, except that the Secretary of Agriculture may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

Under the regulations at 7 CFR 205.660, the NOP may initiate suspension or revocation proceedings against a certified operation when the Program Manager has reason to believe that a certified operation has violated or is not in compliance with the OFPA or the regulations in this part.

Pursuant to § 205.681 of the USDA organic regulations, Kingsley has the right to file an appeal of this proposed action within 30 days of receipt of this letter. Appeals must be filed in writing to:

Administrator, USDA, AMS
c/o NOP Appeals Staff
1400 Independence Avenue, SW
Room 2095-S, STOP 0203
Washington, DC 20250


Mr. and Mrs. Kiman Kingsley
Notice of Proposed Revocation
NOPC 305-16 and Kingsley Brothers
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In addition to this proposed revocation, the NOP has determined that pursuant to section 205.105 of the regulations, the soy product from fields: A, C-2, R-1, and G, produced on these fields are no longer eligible for sale as organic. Additionally, the soy product on field G is also excluded from organic sale, pursuant to section 205.671, which states, "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."

Be advised that selling your products as "organic" from the fields identified above, may result in the issuance of a civil penalty of up to \$11,000 per violation.

If you have questions regarding this proposed action, please contact Judith Ragonesi at Judith.Ragonesi2@ams.usda.gov or (202) 284-5620.

Sincerely,


Miles V. McEyoy
Deputy Administrator
National Organic Program

cc: NOPACAAdverseActions@ams.usda.gov
Jessica Ervin- Deputy General Manager, email: jessica.ervin@ecocert.com
Jeff Evard - Certification Manager, email: Jeffry.evard@ecocert.com

EXHIBIT

2

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December 19, 2016

DARRELL D. DOVER (1933-2009)
PHILIP E. DIXON (1932-2005)

OF COUNSEL
GARLAND W. BINNS, JR.

= ALSO LICENSED IN TENNESSEE
+ ALSO LICENSED IN TEXAS
++ ALSO LICENSED IN DISTRICT COLUMBIA
+++ ALSO LICENSED IN GEORGIA
++++ ALSO LICENSED IN ILLINOIS

 MERITAS LAW FIRMS WORLDWIDE

**Via Overnight Federal Express and
Certified mail, return receipt requested
#7002 2410 0007 8408 6881**

Administrator, USDA, AMS
c/o NOP Appeals Staff
1400 Independence Avenue, SW
Room 2095-S, STOP 0203
Washington, DC 20250

In re: Kingsley Brothers LLC, NOPC-305-156; NOPC-459-16

Dear Administrator:

This firm, along with Bruce Copeland, Copeland and Brown, Joplin, Missouri represents Kingsley Brothers LLC in connection with the proposed revocation of Kingsley Brothers' National Organic Program certification contained in a letter dated November 23, 2016 from Miles V. McEvoy, Deputy Administrator, National Organic Program, to Mr. and Mrs. Kiman Kingsley. A copy of the November 23, 2016 letter is attached hereto as Exhibit A. Pursuant to 7 C.F.R. §§205.680 and 205.681, Kingsley Brothers LLC and Mr. and Mrs. Kingsley hereby appeal the proposed revocation of certification, as well as the other proposed determinations and actions in the November 23, 2016 letter. Kingsley Brothers LLC and the Kingsleys appeal the propose revocation and other action in the November 23, 2016 letter because they deny the allegations that Kingsley Brothers LLC or any entity or person affiliated with Kingsley Brothers LLC aerielly applied prohibited substances on their fields. Furthermore, based on the limited information provided by USDA to the Kingsleys, including in the November 23, 2016 letter, USDA has not satisfied the requirements of 7 U.S.C. §§6511(c) and 6519(c) and USDA's applicable regulations, including, without limitation 7 C.F.R. §§205.660 (b), 205.662, 205.663, and 205.670.

Pursuant to my discussion with Judith Ragonesi and other employees of the USDA - AMS staff on Tuesday, December 13, 2016, I requested additional details about the complaints received by USDA so that Kingsley Brothers LLC could properly respond to the November 23, 2016 letter. I was told that USDA could not release any additional information at this time. I was also told that a simple notice appealing the November 23, 2016 letter would be sufficient to initiate the appeal, and that Kingsley Brothers and the Kingsleys would receive a follow up letter from USDA within ten days instructing them about how and where to submit further information

Administrator, USDA, AMS
c/o NOP Appeals Staff
December 19, 2016
Page 2

in support of their appeal. A copy of my December 14, 2016 letter to Ms. Ragonesi confirming our discussion is attached as Exhibit B. I have also submitted information requests to the USDA pursuant to the federal Administrative Procedure Act to obtain further information about the complaints lodged against Kingsley Brothers LLC. Please be advised that if the USDA does not provide the requested information in a timely manner, Kingsley Brothers, LLC and the Kingsleys object to this failure as a denial of their rights to due process.

Kingsley Brothers and Mr. and Mrs. Kingsley reserve their rights under applicable law, including, without limitation, their rights under the federal Administrative Procedures Act and their rights under the Organic Foods Production Act and USDA's regulations thereunder to present evidence and have an opportunity to be heard in this matter.

Please let me know if you have any questions.

Sincerely,

Dover Dixon Horne PLLC



Mark H. Allison

MHA/njp
Enclosures

cc: via U.S. Mail:

Kingsley Brothers, LLC
Mr. Kiman Kingsley
Ms. Darlene Kingsley
Bruce Copeland, Esq.
Copeland and Brown
614 Pearl Street
Joplin, MO 64803

via overnight courier:

Administrator, USDA, AMS
c/o NOP Appeals Team
1400 Independence Avenue S.W.
Room 2648-S0., Stop 0268
Washington, DC 20250-02568



1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
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PROPOSED REVOCATION OF CERTIFICATION

November 23, 2016

Via Registered Email

Mr. and Mrs. Kiman Kingsley
Kingsley Brothers LLC.
3388 Lawrence 1070 – 65707
Miller, Missouri
Email: Kk4north@millertel.net

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The NOP received a complaint, alleging that Kingsley Brothers, LLC, (Kingsley) applied prohibited substances to its organic crops, in violation of the OFPA and the USDA organic regulations. Specifically, the complainants alleged that they had seen airplanes, owned by a different Kiman Kingsley entity, applying prohibited substances to Kingsley organic fields on multiple occasions. The complainants also provided dates of aerial applications, GPS coordinates and specified which pesticides, (ie; Mustang Max- Zeta Cypermethrin) they believed were being applied by Kingsley.

At the request of the NOP, Ecocert ICO LLC., Kingsley's accredited certifier, conducted an on-site unannounced inspection of Kingsley, on September 1-2, 2016. During the course of the inspection, Ecocert ICO inspectors collected soil and tissue samples from Kingsley fields: A, C-2, C-3 C-4, G and R-1, in accordance with information provided by the complainant. These samples were immediately forwarded to USDA's National Science Laboratory (NSL) in Gastonia, North Carolina, to be tested for pesticide residues.

The NSL testing results indicated plant tissue samples from field G contained significant levels (1.230 and 1.4 parts per million) of the prohibited substance, Zeta-Cypermethrin, at levels which exceed the EPA tolerances Cypermethrin in soybeans. Additionally the test results for fields A, C-2 and R-1, showed traces of the prohibited substance Atrazine.

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The USDA organic regulations at 7 CFR 205.105 require certified operations that produce products "to be sold or labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603."

The proposed revocation is based on Kingsley's willful use of prohibited substances in organic production, and its violation of USDA organic regulations at 7 CFR 205.105.

The NOP proposes to revoke the organic certification of Kingsley Brothers LLC, effective 30 days from receipt of this letter. If the NOP revokes Kingsley's organic certification, you will be directed to cease and desist all sale and handling of products represented as organic, with the exception of product from the fields where samples were taken and tested positive for prohibited substances.

Revocation would apply to both the physical operation, Kingsley and any responsibly connected persons, including yourselves, Kiman and Darleen Kingsley.

Pursuant to § 205.662(f)(2), a certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation, except that the Secretary of Agriculture may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

Under the regulations at 7 CFR 205.660, the NOP may initiate suspension or revocation proceedings against a certified operation when the Program Manager has reason to believe that a certified operation has violated or is not in compliance with the OFPA or the regulations in this part.

Pursuant to § 205.681 of the USDA organic regulations, Kingsley has the right to file an appeal of this proposed action within 30 days of receipt of this letter. Appeals must be filed in writing to:

Administrator, USDA, AMS
c/o NOP Appeals Staff
1400 Independence Avenue, SW
Room 2095-S, STOP 0203
Washington, DC 20250

EXHIBIT A

Exhibit 2.

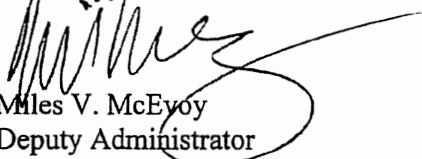
Mr. and Mrs. Kiman Kingsley
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In addition to this proposed revocation, the NOP has determined that pursuant to section 205.105 of the regulations, the soy product from fields: A, C-2, R-1, and G, produced on these fields are no longer eligible for sale as organic. Additionally, the soy product on field G is also excluded from organic sale, pursuant to section 205.671, which states, "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."

Be advised that selling your products as "organic" from the fields identified above, may result in the issuance of a civil penalty of up to \$11,000 per violation.

If you have questions regarding this proposed action, please contact Judith Ragonesi at Judith.Ragonesi2@ams.usda.gov or (202) 284-5620.

Sincerely,



Miles V. McEyoy
Deputy Administrator
National Organic Program

cc: NOPACAAverseActions@ams.usda.gov
Jessica Ervin- Deputy General Manager, email: jessica.ervin@ecocert.com
Jeff Evard - Certification Manager, email: Jeffry.evard@ecocert.com

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MICHAEL G. SMITH +
GARY B. ROBERTS

JAMES PAUL BEACHBOARD =
CAL McCASTLAIN
MARK H. ALLISON
RANDALL L. BYNUM++
MONTE D. ESTES
WILLIAM C. SIRD III
MATTHEW C. BOCH++++
TODD WOOTEN
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DARRELL D. DOVER (1959-2006)
PHILIP E. DIXON (1932-2006)

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= ALSO LICENSED IN TENNESSEE
+ ALSO LICENSED IN TEXAS
++ ALSO LICENSED IN DISTRICT COLUMBIA
+++ ALSO LICENSED IN GEORGIA
++++ ALSO LICENSED IN ILLINOIS

 HERRON LAW FIRMS WORLDWIDE

December 14, 2016

*Via email to Judith.Ragonesi2@ams.usda.gov
and by Federal Express: TRK#777955198117*

Ms. Judith Ragonesi
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, DC 20250-0268

Re: NOPC-305-16 and NOPC 459-16, Kingsley Brothers LLC

Dear Ms. Ragonesi:

This letter is to follow up on the telephone call yesterday morning between you, me, Kay Holmes, Tammy Wilburn, and Bruce Copeland. As I explained, Mr. Copeland and I represent Kingsley Brothers, LLC and Kiman and Darlene Kingsley in connection with the proposed revocation of certification set forth in the Agricultural Marketing Service's ("Service") November 23, 2016 letter to the Kingsleys.

As we discussed, Kingsley Brothers LLC and Mr. and Mrs. Kingsley intend to appeal the proposed revocation. As I understand it from our conversation yesterday, given the short amount of time involved for the Kingsleys to respond and the lack of details about the allegations in the November 23 letter, a simple statement that Kingsley Brothers LLC is appealing the Service's action will suffice to initiate the appeal and preserve their rights to submit further information in support of the appeal. I also understand that their notice of appeal must be received by the Service on or before Saturday, December 24, 2016, and that to ensure timely receipt of the appeal, it should be sent by overnight delivery or courier to the address contained in the November 23, 2016 letter. I also understand that upon receipt of the appeal, the Service will provide further instructions about how the Kingsleys can submit information in support of their appeal and the procedure for considering and deciding the appeal.

**Ms. Judith Ragonesi
Agricultural Marketing Service
United States Department of Agriculture
December 14, 2016
Page 2**

Mr. Copeland and I asked that the Service provide additional information about the details of the complaints that led to the Service's proposed decision, including, without limitation, the dates and time of the alleged spraying of prohibited substances on the Kingsley Brothers fields, the identification number of the aircraft that allegedly were involved, the persons who allegedly witnessed these events, and any other details about the complaints. Without such information, it will be very difficult for the Kingsleys to effectively respond to the allegations in the Service's November 23, 2016 letter. During our conversation, Ms. Holmes advised that the Service was not able to provide any details about the complaints at this time, other than as contained in the November 23, 2016 letter. However, she stated that she would consult with counsel to see whether any additional information could be released. Please be advised that if the Service does not provide the requested information in a timely manner, Kingsley Brothers, LLC and the Kingsleys object to this failure as a denial of their rights to due process. We also request that the Service provide the dates that both complaints were received by the Service, the exact GPS locations at which the samples were taken, the identity of the person who selected those sampling locations, chain of custody documents for the samples, field notes by the inspector, laboratory workpapers and QA/QC information relating to the samples, any other information that provides the basis for the proposed revocation, for example, studies or other technical information that the Service relied on to reach the conclusion that the Kingsleys or an entity affiliated with them sprayed their fields with prohibited substances, based on the test results referenced in the November 23, 2016 letter. I reiterate our request that this information be provided promptly so that the Kingsleys can prepare their response to the November 23, 2016 letter.

As explained yesterday, Kingsley Brothers LLC denies that it, or any related entity has applied prohibited substances to the Kingsley Brothers LLC fields, by aerial application or otherwise. Kingsley Brothers LLC has been certified under the NOP for many years, works hard to maintain its status as an organic farm, and has never had any issues or difficulties with maintaining that certification. It makes no sense that Kingsley Brothers would jeopardize their long held and valued organic certification. While we acknowledge the analytical results from the September 2016 sampling, we believe that there are other explanations for the reported levels of prohibited substances that appear in the laboratory reports, including the possibility that those substances were placed in the Kingsley Brothers fields by persons who wish to cause harm to the Kingsley Brothers business.

Kingsley Brothers LLC, and Mr. and Mrs. Kingsley stand ready to co-operate and assist the USDA, Kingsley Brothers' certifying agent Eco-Cert, the Missouri Department of Agriculture and other governmental authorities in the Service's further investigation of this matter. We look forward to working with the Service to resolve the issues raised in the November 23, 2016 letter, for example through mediation or other informal processes, and request that the proposed notice of revocation of certification be suspended or stayed pending completion of the Service's investigation.

EXHIBIT B

**Ms. Judith Ragonesi
Agricultural Marketing Service
United States Department of Agriculture
December 14, 2016
Page 3**

I appreciate the opportunity to speak with you yesterday. Please let me or Bruce Copeland know if you have any questions.

**Sincerely
DOVER DIXON HORNE PLLC**



Mark H. Allison

**cc: Mr. Kiman Kingsley
Bruce Copeland, Esq.**

EXHIBIT

3

DOVER DIXON HORNE PLLC

Attorneys at Law

ALLAN W. HORNE
CYRIL HOLLINGSWORTH
THOMAS S. STONE
STEVE L. RIGGS
MICHAEL O. PARKER
JOSEPH H. PURVIS
JOHN B. PEACE
WILLIAM DEAN OVERSTREET
MICHAEL G. SMITH +
GARY B. ROGERS

JAMES PAUL BEACHBOARD =
CAL McCASTLAIN
MARK H. ALLISON
RANDALL L. BYNUM++
MONTE D. ESTES
WILLIAM C. BIRD III
MATTHEW C. BOCH+++
TODD WOOTEN
CARL F. (TREV) COOPER III
BRIDGET H. NORTON+++
TJ LAWNON

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DARRELL D. DOVER (1933-2009)
PHILIP E. DIXON (1932-2005)

OF COUNSEL
GARLAND W. BINNS, JR.

= ALSO LICENSED IN TENNESSEE
+ ALSO LICENSED IN TEXAS
++ ALSO LICENSED IN DISTRICT COLUMBIA
+++ ALSO LICENSED IN GEORGIA
++++ ALSO LICENSED IN ILLINOIS

 MERITAS LAW FIRMS WORLDWIDE

December 14, 2016

*Via email to Judith.Ragonesi2@ams.usda.gov
and by Federal Express: TRK#777955198117*

Ms. Judith Ragonesi
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, DC 20250-0268

Re: NOPC-305-16 and NOPC 459-16, Kingsley Brothers LLC

Dear Ms. Ragonesi:

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As we discussed, Kingsley Brothers LLC and Mr. and Mrs. Kingsley intend to appeal the proposed revocation. As I understand it from our conversation yesterday, given the short amount of time involved for the Kingsleys to respond and the lack of details about the allegations in the November 23 letter, a simple statement that Kingsley Brothers LLC is appealing the Service's action will suffice to initiate the appeal and preserve their rights to submit further information in support of the appeal. I also understand that their notice of appeal must be received by the Service on or before Saturday, December 24, 2016, and that to ensure timely receipt of the appeal, it should be sent by overnight delivery or courier to the address contained in the November 23, 2016 letter. I also understand that upon receipt of the appeal, the Service will provide further instructions about how the Kingsleys can submit information in support of their appeal and the procedure for considering and deciding the appeal.

Ms. Judith Ragonesi
Agricultural Marketing Service
United States Department of Agriculture
December 14, 2016
Page 2

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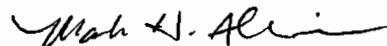
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Ms. Judith Ragonesi
Agricultural Marketing Service
United States Department of Agriculture
December 14, 2016
Page 3

I appreciate the opportunity to speak with you yesterday. Please let me or Bruce Copeland know if you have any questions.

Sincerely
DOVER DIXON HORNE PLLC

A handwritten signature in black ink, appearing to read "Mark H. Allison". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Mark H. Allison

cc: Mr. Kiman Kingsley
Bruce Copeland, Esq.

EXHIBIT

4

DOVER DIXON HORNE PLLC

Attorneys at Law

ALLAN W. HORNE
CYRIL HOLLINGSWORTH
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December 14, 2016

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++++ ALSO LICENSED IN ILLINOIS

 MERITAS LAW FIRMS WORLDWIDE

*Via electronic submission and
Via certified mail, return receipt requested
Trk#: 70023150000594536512*

Carl-Martin Ruiz
Director, Office of Adjudication/USDA
1400 Independence Avenue, SW
Washington, DC 20250-9410

RE: *FOIA Request concerning: Kingsley Brothers, LLC, NOPC-305-16 &
NOPC-459-16*

Dear Mr. Ruiz:

Pursuant to the Freedom of Information Act, please provide copies of the following records:

1. All records relating to complaints NOPC-305-16 and NOPC-459-16 to the Agricultural Marketing Service, U.S. Department of Agriculture;
2. All records relating to the USDA's investigation of those complaints;
3. All records relating to USDA's November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC, a copy of which is attached hereto as Exhibit A; and
4. All other records relating to Kiman Kingsley, Darlene Kingsley and Kingsley Brothers LLC, including, without limitation, records relating to any other complaints to USDA not identified in paragraph 1 above.

This firm represents Kingsley Brothers, LLC and Mr. and Mrs. Kingsley in connection with the above-referenced notice of proposed revocation of certification. Please supply the records without informing me of the cost if the fees do not exceed \$200.00, which I agree to pay.

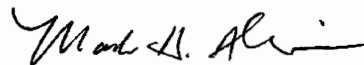
Carl-Martin Ruiz
Director, Office of Adjudication/USDA
1400 Independence Avenue, SW
Washington, DC 20250-9410
Page 2 of 2

We respectfully request expedited consideration due to the USDA's pending notice of proposed revocation of certification, so that Kingsley Brothers LLC and Mr. and Mrs. Kingsley can timely and properly respond to the allegations in the notice of revocation of certification.

If you deny any part of this request, please cite each specific exemption that you rely on to justify your refusal to release the information, identify the documents and matters claimed to be exempt, and notify me of appeal procedures available under the law. If you have any questions concerning this request, you may contact me at the following telephone number (501) 375-9151.

Best regards,

DOVER DIXON HORNE PLLC



Mark H. Allison

MHA/myc

cc: Kiman Kingsley
Bruce Copeland, Esq.

Enclosure



1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, D.C. 20250-0268

PROPOSED REVOCATION OF CERTIFICATION

November 23, 2016

Via Registered Email

Mr. and Mrs. Kiman Kingsley
Kingsley Brothers LLC.
3388 Lawrence 1070 – 65707
Miller, Missouri
Email: Kk4north@millertel.net

Re: NOPC-305-16 and Kingsley Brothers LLC.

Dear Mr. and Mrs. Kingsley:

The U.S. Department of Agriculture National Organic Program (NOP) enforces the Organic Foods Production Act of 1990 (OFPA), as amended, and the corresponding organic regulations at 7 CFR Part 205. All agricultural products sold, labeled or represented as organic must be produced and handled in compliance with the USDA organic regulations.

The NOP received a complaint, alleging that Kingsley Brothers, LLC, (Kingsley) applied prohibited substances to its organic crops, in violation of the OFPA and the USDA organic regulations. Specifically, the complainants alleged that they had seen airplanes, owned by a different Kiman Kingsley entity, applying prohibited substances to Kingsley organic fields on multiple occasions. The complainants also provided dates of aerial applications, GPS coordinates and specified which pesticides, (ie; Mustang Max- Zeta Cypermethrin) they believed were being applied by Kingsley.

At the request of the NOP, Ecocert ICO LLC., Kingsley's accredited certifier, conducted an on-site unannounced inspection of Kingsley, on September 1-2, 2016. During the course of the inspection, Ecocert ICO inspectors collected soil and tissue samples from Kingsley fields: A, C-2, C-3 C-4, G and R-1, in accordance with information provided by the complainant. These samples were immediately forwarded to USDA's National Science Laboratory (NSL) in Gastonia, North Carolina, to be tested for pesticide residues.

The NSL testing results indicated plant tissue samples from field G contained significant levels (1.230 and 1.4 parts per million) of the prohibited substance, Zeta-Cypermethrin, at levels which exceed the EPA tolerances Cypermethrin in soybeans. Additionally the test results for fields A, C-2 and R-1, showed traces of the prohibited substance Atrazine.



Mr. and Mrs. Kiman Kingsley
Notice of Proposed Revocation
NOPC 305-16 and Kingsley Brothers
Page 2

The USDA organic regulations at 7 CFR 205.105 require certified operations that produce products "to be sold or labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603."

The proposed revocation is based on Kingsley's willful use of prohibited substances in organic production, and its violation of USDA organic regulations at 7 CFR 205.105.

The NOP proposes to revoke the organic certification of Kingsley Brothers LLC, effective 30 days from receipt of this letter. If the NOP revokes Kingsley's organic certification, you will be directed to cease and desist all sale and handling of products represented as organic, with the exception of product from the fields were samples taken and tested positive for prohibited substances.

Revocation would apply to both the physical operation, Kingsley and any responsibly connected persons, including yourselves, Kiman and Darleen Kingsley.

Pursuant to § 205.662(f)(2), a certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation, except that the Secretary of Agriculture may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

Under the regulations at 7 CFR 205.660, the NOP may initiate suspension or revocation proceedings against a certified operation when the Program Manager has reason to believe that a certified operation has violated or is not in compliance with the OFPA or the regulations in this part.

Pursuant to § 205.681 of the USDA organic regulations, Kingsley has the right to file an appeal of this proposed action within 30 days of receipt of this letter. Appeals must be filed in writing to:

Administrator, USDA, AMS
c/o NOP Appeals Staff
1400 Independence Avenue, SW
Room 2095-S, STOP 0203
Washington, DC 20250

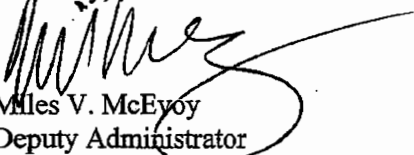
Mr. and Mrs. Kiman Kingsley
Notice of Proposed Revocation
NOPC 305-16 and Kingsley Brothers
Page 3

In addition to this proposed revocation, the NOP has determined that pursuant to section 205.105 of the regulations, the soy product from fields: A, C-2, R-1, and G, produced on these fields are no longer eligible for sale as organic. Additionally, the soy product on field G is also excluded from organic sale, pursuant to section 205.671, which states, "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."

Be advised that selling your products as "organic" from the fields identified above, may result in the issuance of a civil penalty of up to \$11,000 per violation.

If you have questions regarding this proposed action, please contact Judith Ragonesi at Judith.Ragonesi2@ams.usda.gov or (202) 284-5620.

Sincerely,



Miles V. McEyoy
Deputy Administrator
National Organic Program

cc: NOPACAAverseActions@ams.usda.gov
Jessica Ervin- Deputy General Manager, email: jessica.ervin@ecocert.com
Jeff Evard - Certification Manager, email: Jeffry.evard@ecocert.com

EXHIBIT

5



STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202

January 3, 2017

In reply, please refer to
2017-AMS-01169-F

Mark H. Allison
Dover Dixon Horne PLLC
Attorneys at Law
425 W. Capitol Ave. Ste. 3700
Little Rock, AR 72201-3465

Dear Mark H. Allison:

This is the final response the above referenced FOIA request which sought:

1. All records relating to complaints NOPC-305-16 and NOPC-459-16 to the Agricultural Marketing Service, U.S. Department of Agriculture;
2. All records relating to the USDA's investigation of those complaints;
3. All records relating to USDA's November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC
4. All other records related to Kiman Kingsley, Darlene Kingsley and Kingsley Brothers LLC, including, without limitation, records relating to any other complaints to USDA not identified in paragraph 1 above.

A search was conducted within the National Organic Program, Agricultural Marketing Service. The National Organic Program (NOP) is a regulatory program housed within the USDA Agricultural Marketing Service responsible for developing national standards for organically-produced agricultural products. These standards assure consumers that products with the USDA organic seal meet consistent, uniform standards.

This search resulted in the identification of 31 pages of responsive records. Within this record set, 13 pages were partially redacted pursuant to exemptions (b)(6), (b)(7)(c) and (b)(7)(d). The remaining pages are being released in full.

The following information provides the basis for our withholding under the applicable FOIA exemptions:

Exemption (b)(6) of the FOIA permits the government to withhold information regarding individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy" and where such privacy interests outweigh any public interest which would be advanced by the disclosure of their contact information. As a threshold matter, Exemption (b)(6) protects not only personnel files and medical files, but "similar" files, which are interpreted by courts to cover personal information pertaining to individuals. Within this record set, AMS is withholding the complainant's and inspector's names, the complainant's personal email address, and signatures.

Exemption (b)(7) of the FOIA protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records: (A)

could reasonably be expected to interfere with law enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of law; or (F) could reasonably be expected to endanger the life or physical safety of any individual. Within this record set, AMS is withholding the complainant's and inspector's names, other information identifying the complainant, and information submitted by the complainant. This information is protected from disclosure by subpart(s) (c) and (d). The information for items 1 to 3 is being withheld in its entirety pursuant to subpart (a) as these complaint investigations are still open.

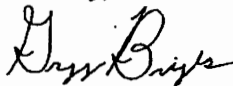
This concludes processing of your request. You may appeal this response within 90 days from the date of this letter. Any such appeal should be in writing and addressed to:

Administrator
Agricultural Marketing Service
1400 Independence Avenue SW, Stop 0201, Room 3071
Washington, D.C. 20250-0201.

If you decide to file an appeal, please provide specific reasons why you believe modification of the initial action is warranted. To facilitate processing your appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

You may also contact the Office of Government Information Services (OGIS). OGIS was created within the National Archives and Records Administration when the OPEN Government Act of 2007 amended the FOIA. OGIS provides mediation of FOIA disputes between appellants and Federal agencies. Participation in mediation does not affect your right to judicial review. Contact information for OGIS can be found at: <http://www.archives.gov/ogis/>.

Sincerely,



Gregory Bridges
FOIA Officer
USDA, Agricultural Marketing Service

09:23 AM 5/11/2010, Re: Fw: ?Organic?

To: [REDACTED]
From: Cissy Bowman <icollcceo@earthlink.net>
Subject: Re: Fw: ?Organic?
Cc:
Bcc:
Attached:

Thank you, [REDACTED]

(C) (b)
I want to assure you that we have begun our investigation and we will be doing residue tests on the fields in question, if those are in the Kingsley's Organic System Plan. If they are not claimed to be organic then we have no authority over them and will not do the testing.

Performing an investigation and doing residue tests is a complicated procedure and costly to us so it is very important that we know the location in question as exactly as possible, otherwise we are going to find nothing so if you can help us with a more detailed location that would be wonderful.

As I move forward into this investigation I am going to have questions and I hope you will help me answer them where and if you can. Please do not feel intimidated by my questions but in order to do my job I need as many details as possible. It seems as though [REDACTED] Please bear with me as I try to be as thorough as possible in this investigation.

In your first email you indicated that they had been investigated before. We have certified them since 2002 and have never had a complaint before nor have we done an investigation of them. Can you tell me when they were investigated? By whom? Were residue tests done?

Also, in our phone conversation you mentioned that there was a statement made that they were "in good" with the inspector. In the past 3 years they have had a different inspector each time and none of them have a personal or business relationship with the Kingsley's as far as I know. Accusations of a conflict of interest are taken very seriously in our business. I need to know if this is a part of your complaint. If so, I then have to investigate the inspector in question as well. Were you speaking of the 2009 inspection or an earlier one? In the last 3 years the inspectors were:

2007- [REDACTED]
2008- [REDACTED]
2009- [REDACTED]

Any additional info you can share with me will help me do my job. I also need to tell you that if for any reason you decide to withdraw your complaint you may do so. For instance, if you should find out that the fields in question are not claimed to be organic, then it is wise to halt this process before it becomes a federal case, or harmful to someone who is innocent.

Thank you again for your dedication to organics and we will work through this together to make sure everything is ok.

Best,

[REDACTED] 09:23 AM 5/11/2010, Re: Fw: ?Organic?

At 01:09 PM 4/30/2010, you wrote:

The article for the Joplin Globe was printed on 8-15-2008, the soybean field featured in the article was east of the hanger on CR 2040 directly behind grain bins. The article was Farming family takes to the skies. I believe the fields of corn that were just sprayed were done on the 14th and 15th of this month, location is the plots surrounding the main farm CR 2040. At the time the corn had just been planted don't believe any of the corn had popped thru quite yet. I am not aware if these fields are claimed under Organic and I am not sure how many and where the fields are that may or may not have been sprayed. If any additional information comes to light that might help, I will certainly get a hold of you again.

--- On Fri, 4/30/10, Cissy Bowman <icollcceo@earthlink.net> wrote:

From: Cissy Bowman <icollcceo@earthlink.net>
Subject: Re: Fw: ?Organic?
To: [REDACTED]
Date: Friday, April 30, 2010, 12:25 PM

Hello, [REDACTED]

First of all, your message is confidential.

Thank you for your message and for your concern for organic integrity. The National Organic Program was established to protect consumers from bogus claims and there is a process for addressing complaints.

We do currently certify the operation you name and we will be investigating this asap.

I want you to know, if our investigation of the situation should result in USDA being involved (which would happen at the time we notify them of a noncompliance), USDA may want to talk to you. It is up to you at that time if you want to be identified and to cooperate with them, however their being able to communicate with the complainant helps them take any adverse actions that they need to take.

There are several steps to such investigations and, according to the laws, even if we accuse someone of a noncompliance they do have the right to appeal so it takes a bit of time to get through these issues. Do you wish for me to report back to you or would you like to check in with us in a few weeks to see what we have found?

Thank you for your support of organics!

[REDACTED] 09:23 AM 5/11/2010, Re: Fw: ?Organic?

At 05:25 PM 4/29/2010, you wrote:

--- On Thu, 4/29/10, [REDACTED] wrote:

From: [REDACTED]
Subject: ?Organic?
To: icollcceo@earthlink.net
Date: Thursday, April 29, 2010, 9:23 PM

I first would like to state that I do wish for this information to remain confidential. Second, I am not fully aware if this party is still affiliated with your company, however if they are they are not practicing organics. I do know that they have been investigated in the past and somehow have passed. This party I am speaking of is the Kingsley Brothers Farm LLC in Miller, Missouri. [REDACTED]

[REDACTED]

be informed! Thank you for your time. Please, again I must request that this remain confidential.


Indiana Certified Organic LLC
Cissy Bowman, CEO
8364 S SR 39
317-539-4317 phone
317-539-2739 fax
317-902-6743 cell

Indiana Certified Organic LLC

Cissy Bowman, CEO

8364 S SR 39

317-539-4317 phone

 09:23 AM 5/11/2010, Re: Fw: ?Organic?

317-539-2739 fax

317-902-6743 cell

www.indianacertifiedorganic.com

LABORATORY REPORT



COLUMBIA
FOOD LABORATORIES, INC.

36740 E Historic Columbia River Hwy.
PO Box 353
Corbett, Oregon 97019

quality analytical services for the food industry

Invoice # : 26963
Report Date : Tuesday, July 13, 2010
Account # : 380440

Cissy Bowman
Indiana Certified Organics LLC
8364 S SR 39
Clayton IN 46118

Date Received : 6/30/2010

Job Number : B01061

Sample ID : Kingsley-A Matrix : Corn Leaves
Lab No. : 001 Test Code : P090 Test Name : Atrazine

Analyte	Result	Units	Note
Atrazine	ND	mg/kg	MDL: 0.05 mg/kg

Sample ID : Kingsley-B Matrix : Corn Leaves
Lab No. : 002 Test Code : P090 Test Name : Atrazine

Analyte	Result	Units	Note
Atrazine	ND	mg/kg	

Sample ID : Kingsley-F Matrix : Corn Leaves
Lab No. : 003 Test Code : P090 Test Name : Atrazine

Analyte	Result	Units	Note
Atrazine	ND	mg/kg	

Sample ID : Kingsley-JM Matrix : Corn Leaves
Lab No. : 004 Test Code : P090 Test Name : Atrazine

Analyte	Result	Units	Note
Atrazine	ND	mg/kg	

ND = None Detected MDL = Method Detection Limit

kj

Lee Goin
Colin Campbell Lee Goin
Laboratory Directors

Invoice



Columbia Food Laboratories, Inc.
 PO Box 353
 Corbett, OR 97019
 Phone (503)695-2287 Fax (503)695-5187
 www.columbiafoodlab.com

DATE	INVOICE #
7/13/2010	26963

BILL TO: [REDACTED]

380440
 Indiana Certified Organics
 8364 S SR 39
 Clayton IN 46118

P.O. NUMBER	TERMS	PROJECT
	Paid in full	B01061

QUANTITY	DESCRIPTION	RATE	AMOUNT
4	P090 Atrazine	135.00	540.00

Paid by VISA
 XXXX XXXX XXXX 1924 exp 04/12
 Auth # 04735C

Thank you for your business.

TOTAL \$540.00

Exhibit 5

X-x: TimeOut
Date: Thu, 01 Jul 2010 16:14:33 -0700
From: [REDACTED]@columbiafoodlab.com
User-Agent: Thunderbird 2.0.0.24 (Windows/20100228)
To: Indiana Certified Organic <icolc@earthlink.net>
Subject: SAMPLES RECEIVED
X-ELNK-Received-Info: spv=0;
X-ELNK-AV: 0
X-ELNK-Info: sbv=0; sbrc=.0; sbf=00; sbw=000;
X-Antivirus: avast! (VPS 100702-0, 07/02/2010), Inbound message
X-Antivirus-Status: Clean

*Kingsley residues
test*

COLUMBIA FOOD LABORATORIES, Inc
PO Box 353
CORBETT, OR 97016
888 209-0994

Submitting Company: Indiana Certified Organics LLC

Samples received : 06/30/10

Job Number: B01061

Client ID:
001: Kingsley - AA Corn Leaves
002: Kingsley - BA Corn Leaves
003: Kingsley - FA Corn Leaves
004: Kingsley - JMA Corn Leaves

*Samples collected by
[REDACTED] on site
inspection 6-29-10
shipped priority overnight*

Tests to be performed:
Atrazine

Scheduled to be completed by : 07/15/10

Estimated project cost: \$540.00

Thank you,
[REDACTED]
Administrative Assistant
Columbia Food Laboratories, Inc
[REDACTED]
[REDACTED]@columbiafoodlab.com

- CONFIDENTIALITY NOTICE & DISCLAIMER ---

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residue test letter.wps
Page 1



Indiana Certified Organic, LLC

8364 S SR 39, Clayton, IN 46118, tel: 317-539-4317 fax: 317-539-2739
icollc@earthlink.net
www.indianacertifiedorganic.com

7/19/2010

file
COPY

Applicant:Kiman Kingsley
3388 Lawrence 1070
Miller, MO 65707
Phone#: 417-452-3831
Certification type: Crops

Dear Kiman Kingsley,

As you know, a sample of your corn was taken during your recent inspection for the purpose of residue testing. Samples from 4 fields were taken and tested for residue of Atrazine. This was a result of a complaint that we received therefore we took samples and had them tested.

I have attached the results of the tests, which indicate that there is no detectable level of Atrazine in the tissues of the plant. This process was by [redacted] during your inspection under:
(7)(C) (b)

§ 205.670 Inspection and testing of agricultural product to be sold or labeled "organic."

- (a) All agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be made accessible by certified organic production or handling operations for examination by the Administrator, the applicable State organic program's governing State official, or the certifying agent.
- (b) The Administrator, applicable State organic program's governing State official, or the certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the applicable State organic program's governing State official or the certifying agent at the official's or certifying agent's own expense.
- (c) The preharvest or postharvest tissue test sample collection pursuant to paragraph (b) of this section must be performed by an inspector representing the Administrator, applicable State organic program's governing State official, or certifying agent. Sample integrity must be maintained throughout the chain of custody, and residue testing must be performed in an accredited laboratory. Chemical analysis must be made in accordance with the methods described in the most current edition of the *Official Methods of Analysis of the AOAC International* or other current applicable validated methodology determining the presence of contaminants in agricultural products.
- (d) Results of all analyses and tests performed under this section:
 - (1) Must be promptly provided to the Administrator; *Except*, That, where a State organic program exists, all test results and analyses shall be provided to the State organic program's governing State official by the applicable certifying party that requested testing; and
 - (2) Will be available for public access, unless the testing is part of an ongoing compliance investigation.
- (e) If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, the certifying agent must promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

Document Status: FINAL

icollc@earthlink.net

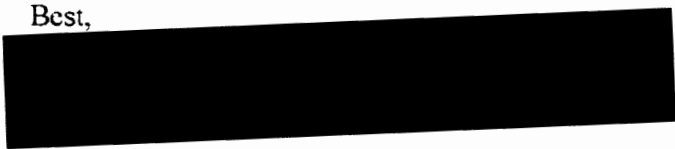
Indiana Certified Organic, LLC.
8364 S SR 39, Clayton, IN 46118
tel: 317-539-4317 | fax: 317-539-2739

residue test letter.wps
Page 2

We have attempted to contact the complainant via phone and email with our results as well and the phone line is reported to be disconnected. We have no response from our email nor do we have their mailing address so we have not been able to report our findings to them. At this time we consider the complaint to be resolved. We will be doing some future testing of your soil and harvested crop as a followup. This testing will cost you no fees and we will inform you as to when they will occur.

Thank you for choosing ICO! Let us know if you have any questions.

Best,



Cecilia A Bowman ("Cissy"), CEO

Cc: National Organic Program

Document Status: FINAL

icollic@earthlink.net

Indiana Certified Organic, LLC.
8364 S SR 39, Clayton, IN 46118
tel: 317-539-4317 | fax: 317-539-2739

Exhibit 5

Schurkamp, Lynnea - AMS

From: Colson, Thomas - AMS
Sent: Monday, April 14, 2014 3:56 PM
To: Ragonese, Judith - AMS
Subject: Automatic reply: NOPC 092-13 and OIG Complaint: PS-0530-0640 (AMS Compliance N-008-13)

I am currently out the office but will return on 4/15/14. If you need immediate assistance please contact Leon Reynolds at 202-720-2374 or Dave Trykowski at 202-720-2400.



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

CASE CLOSURE MEMORANDUM

TO: Matthew Michael
Director
NOP Compliance & Enforcement Division

FROM: Sasha Strohm
Agricultural Marketing Specialist
NOP Compliance & Enforcement Division (C&E)

SUBJECT: NOPC-092-13 Kingsley Brothers

CERTIFYING AGENTS INVOLVED: Ecocert ICO

COMPLAINANT: Anonymous via OIG Hotline

ALLEGED VIOLATION:

- Kiman Kingsley sprayed and spread fertilizer on wheat that he sold as organic, in violation of the USDA organic regulations.

SUMMARY:

- April 10, 2013: The National Organic Program (NOP) C&E Division received a complaint via the OIG Hotline alleging that Kiman Kingsley (Kingsley) sprayed and spread fertilizer on wheat that he then sold as organic, in violation of the USDA organic regulations. (Exhibit 1) Kingsley owns Kingsley Brothers LLC, which is certified by Ecocert ICO.
- June 4, 2013: This complaint was referred to Ecocert ICO for investigation. (Exhibit 2)
- June 24, 2013: Dave DeCou (DeCou) from Ecocert ICO responded, attaching documents from a similar complaint filed against Kingsley Brothers in 2010, in which residue testing was conducted, but no prohibited substances were found. It was later determined that the complainant [REDACTED] Ecocert ICO asked whether the current complaint was related to the 2010 complaint. (Exhibit 3) DeCou also noted that Kingsley also owns a conventional aerial spray operation, which he uses on occasion to apply organic seeds or organic inputs to his organic fields, but properly cleans out the equipment prior to doing so. Further, the complainant's reference to "wheat that he sold as organic," had to imply that the complaint was about the 2012 wheat crop, as the 2013 wheat harvest had not yet occurred at the time the complaint was filed.
- July 1, 2013: DeCou was informed that the complainant had filed the complaint anonymously via the OIG Hotline, so there were no more details regarding the complaint, but that the complainant stated that Sheriff Delay at the Lawrence County Sheriff's

Department had additional information about Kingsley. DeCou noted that their investigation would take longer than 30 days.

- July 15, 2013: George Kalogridis from Ecocert ICO responded, stating that he had spoken with Detective Madewell at the Lawrence County Sheriff's Department, who reported they had no information about Kingsley concerning crops or any other issues. (Exhibit 4) Without additional information, Ecocert ICO was unable to pursue any further investigation in this case.

ACTION REQUESTED: This complaint is recommended for closure. The complaint does not contain enough information for Ecocert ICO to conduct a proper investigation. It indirectly references a 2012 wheat crop, which is no longer in existence and therefore cannot be tested for pesticide residue, and although the complainant provided the name and phone number of a Sheriff who was presumed to have additional information on this case, that Sheriff's office stated they have no additional information.

Complaint Investigation Chronology Log

Case #: NOPC-092-13

Subject: Kingsley Brothers

Compliance Specialist: Sasha Strohm

Date	Activity
4/10/13	Rec'd complaint from OIG hotline. An anonymous complainant alleged that Mr. Kingsley sprayed and spread fertilizer on wheat he sold as organic. The complainant alleged that Sheriff Delay, Lawrence County Sheriff's Department [(417) 466-2131] has additional information about Mr. Kingsley. Kiman Kingsley, 3388 Lawrence 1070, Miller, Missouri
5/21/13	Kingsley Brothers is certified by Ecocert for wheat, etc.
6/4/13	Complaint referred to Ecocert for investigation. Response due 7/19/13.
6/24/13	Response from Ecocert ICO. Ecocert ICO received a similar complaint about Kingsley Brothers in 2010. The fields were tested for pesticides but the records showed no application thereof. Subsequently the complainant [REDACTED] DeCou asked whether this complainant was related to the 2010 complainant, and whether the crop in question is from 2012? By the time the complaint was received in April 2013, the 2013 crop had not yet been harvested and "sold" as alleged by the complainant. The 2012 crop is however no longer in existence and therefore can't be tested.
7/1/13	Email to DeCou stating the complainant was anonymous through OIG and therefore we cannot tell if it's related.
7/3/13	Email from DeCou stating investigation will take longer than 30 days.
7/11/13	Email to OIG with update re status of investigation.
7/15/13	Email from Ecocert stating they spoke with the Lawrence County Sheriff's Department. They had no information concerning Mr. Kingsley and crop or other issues. Ecocert cannot complete any further investigation without more specific information.



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

VIA EMAIL

Mr. Dave DeCou
Ecocert ICO, LLC
70 East Main Street
Suite B
Greenwood, Indiana 46143
dave.decou@ecocert.com

Re: NOPC-092-13 Kingsley Brothers

Dear Mr. DeCou:

The U.S. Department of Agriculture National Organic Program (NOP) has concluded its investigation of a complaint filed against your client, Kingsley Brothers, on April 10, 2013. The complaint alleged that Kingsley Brothers sprayed and applied fertilizer to wheat that was then sold as organic. The complaint was referred to Ecocert ICO for further investigation.

In response, you stated that there is no information available regarding the actions alleged in the complaint, and Ecocert ICO therefore cannot continue its investigation. This investigation is now closed.

Thank you for your cooperation during the investigation of this complaint.

Sincerely,

Matthew Michael
Director, Compliance & Enforcement Division
National Organic Program

cc: Director, Accreditation & International Activities Division



1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, D.C. 20250-0268

April 14, 2014

Mr. Thomas J. Colson
Chief of Investigations
AMS Compliance, Safety and Security Division
Email: Thomas.Colson@ams.usda.gov

VIA EMAIL

Re: NOPC-092-13 and Kingsley Brothers LLC.

Dear Mr. Colson:

The U.S. Department of Agriculture, National Organic Program (NOP) has concluded its review of the hotline complaint from the Office of Inspector General (OIG) that was forwarded by the Compliance, Safety and Security Division to this office on April 10, 2013. The complainant, who wishes to remain anonymous, alleges that Kiman Kingsley owner of Kingsley Brothers LLC, sprayed and spread fertilizer on wheat that was sold as organic, in violation of the USDA organic regulations.

Kingsley Brothers LLC, is certified by Ecocert ICO. Ecocert ICO, at the request of the NOP, conducted an investigation. The certifier was unable to substantiate the allegations due to the limited amount of information provided by the complainant. The Lawrence County Sheriff's Department, whose information was included in the complaint, was contacted and had no additional information. This case is hereby closed.

Should you have any questions regarding this matter, you may contact Judith Ragonesi, Compliance & Enforcement, at (202) 205-5712 or Judith.ragonesi2@ams.usda.gov

Sincerely,

A handwritten signature in cursive script that reads "for Matthew Michael". The signature is written in dark ink and is positioned to the left of the typed name.

Matthew Michael
Director, Compliance & Enforcement Division
National Organic Program

cc: Jeffrey Sotosky, AMS Compliance, Safety and Security Division

Schurkamp, Lynnea - AMS

From: Michael, Matthew - AMS
Sent: Wednesday, April 10, 2013 8:29 AM
To: Thornblad, Kristin - AMS
Subject: FW: OIG Hotline Complaint
Attachments: N-008-13 NOP C&E Referral.pdf

Matthew Michael
Director, Compliance and Enforcement Division
USDA National Organic Program
1400 Independence Ave SW; Room 2959
Washington, DC 20250-0268
Phone: (202) 260-8657
matthew.michael@ams.usda.gov

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From: Colson, Thomas - AMS
Sent: Wednesday, April 10, 2013 8:28 AM
To: Michael, Matthew - AMS
Subject: OIG Hotline Complaint

Matt,
Please find attached another hotline complaint for your resolution. Thx - Tom

Thomas Colson
Chief
AMS Compliance Branch
202-690-4867



1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, D.C. 20250-0268

VIA EMAIL

Mr. Dave DeCou
Ecocert ICO, LLC
70 East Main Street
Suite B
Greenwood, Indiana 46143
dave.decou@ecocert.com

Re: NOPC-092-13 Kingsley Brothers

Dear Mr. DeCou:

The U.S. Department of Agriculture, National Organic Program (NOP) received a complaint alleging that Kingsley Brothers LLC, which is certified by Ecocert, violated the USDA organic regulations at 7 CFR Part 205 by spraying pesticides on, and applying fertilizer to, wheat that was then sold as organic.

The NOP requests that you investigate this allegation within 30 days of receiving this letter. Within 45 days of receiving this letter, please notify the NOP of your findings and of any notices of noncompliance or proposed adverse actions that you issued as a result of the investigation. At that time, assuming no additional action is needed, the NOP will inform the complainant of your investigation's outcome. Also, if your investigation will take more than 30 days from the receipt of this letter, please inform the NOP.

Note that you are authorized to investigate complaints of noncompliance under the regulations at § 205.661(a). Further, you are required to have procedures for investigating certified operation noncompliance under the regulations at § 205.504(b)(2). However, we realize that there may be some investigations with which you need assistance and you may refer the investigation back to the NOP for one or more of the following reasons:

- You lack the resources or the specialized expertise needed to adequately investigate the complaint;
- You believe a civil penalty may be warranted for the knowing sale or labeling of agricultural products in violation of the USDA organic regulations;
- You believe the complaint warrants a criminal investigation; or
- For some other reason, you cannot carry out or complete the investigation.

Mr. DeCou
Re: NOPC-092-13 Kingsley Brothers
Page 2

Should you have any questions regarding this matter, please contact Sasha Strohm in the Compliance & Enforcement Division at (202) 260-8209 or sasha.strohm@ams.usda.gov.

Sincerely,

Matthew Michael
Director, Compliance & Enforcement Division
National Organic Program

cc: Director, Accreditation and International Activities Division

Schurkamp, Lynnea - AMS

From: Thornblad, Kristin - AMS
Sent: Thursday, April 10, 2014 3:21 PM
To: Ragonesi, Judith - AMS
Subject: FW: 90 day update
Attachments: Case Closure Memo - Kingsley Brothers.docx; Chron - Kingsley Brothers.docx; Referral to Ecocert.pdf

From: Michael, Matthew - AMS
Sent: Thursday, April 10, 2014 3:03 PM
To: Thornblad, Kristin - AMS
Subject: FW: 90 day update

Matthew Michael
Director, Compliance and Enforcement Division
USDA National Organic Program
1400 Independence Ave SW; Room 2959
Washington, DC 20250-0268
Phone: (202) 260-8657
matthew.michael@ams.usda.gov

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From: Sotosky, Jeffrey - AMS
Sent: Thursday, April 10, 2014 7:25 AM
To: Michael, Matthew - AMS
Subject: FW: 90 day update

Matthew,

Could we get an official closeout letter from you to Tom regarding this matter? Then I can draft our OIG letter and submit this for closure. Thanks.

*Jeffrey Sotosky
Compliance Officer
AMS Compliance Branch
Phone: 202-720-3308
Cell: 202-450-0752*



ECOCERT ICO LLC
70 E. Main Street Suite B.
Greenwood, IN 46143.
Tel: (317) 865-9700 - Fax: (317) 865-9707
Email: info.ecocertico@ecocert.com
Web-site: www.ecocertico.com



June 24, 2013

Sasha Strohm
Marketing Specialist
USDA National Organic Program
1400 Independence Avenue SW
Room 2648-S
Washington, DC 20250

Ms. Strohm,

We received your complaint NOPC-092-13, referencing the Kingsley Brothers.

In 2010 we received a similar complaint on the operations of the Kingsley Brothers; See Attached

An inspector was sent to their farm unannounced, there the inspector took leaf samples and sent them to a lab for testing. The lab reported that no prohibited substances were found.

Subsequently we discovered that the [REDACTED]

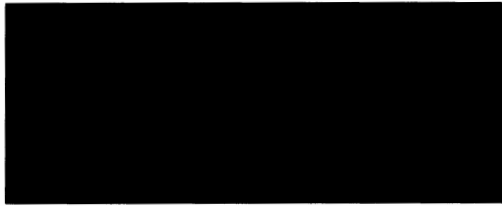
It should be noted that Kiman Kingsley operates a conventional aerial Ag spray operation and at times will fly his organic seed and organic inputs, after proper clean-out, onto his organic fields.

We would like to know if the current complaint is from or associated with the 2010 complainant before we spend additional time and money on this issue.

Additionally the complaint as provided to us indicates that the crop (wheat) in question was from 2012 and sold in 2012. We understand this because the complaint described states that the "wheat was then sold as organic", and given that at the time of the expected harvest for 2013 had not yet occurred in Missouri. No testing of the actual crop will likely be feasible. Can you confirm this, please.

Thank you for your unders

David DeCou
Certification Manager



residue test letter.wps
Page 1



Indiana Certified Organic, LLC

8364 S SR 39, Clayton, IN 46118, tel: 317-539-4317 fax: 317-539-2739
icollc@earthlink.net
www.indianacertifiedorganic.com

7/19/2010

fill
COPY

Applicant:Kiman Kingsley
3388 Lawrence 1070
Miller, MO 65707
Phone#: 417-452-3831
Certification type: Crops

Dear Kiman Kingsley,

As you know, a sample of your corn was taken during your recent inspection for the purpose of residue testing. Samples from 4 fields were taken and tested for residue of Atrazine. This was a result of a complaint that we received therefore we took samples and had them tested.

I have attached the results of the tests, which indicate that there is no detectable level of Atrazine in the tissues of the plant. This process was by [REDACTED] during your inspection under:

§ 205.670 Inspection and testing of agricultural product to be sold or labeled "organic."

- (a) All agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be made accessible by certified organic production or handling operations for examination by the Administrator, the applicable State organic program's governing State official, or the certifying agent.
- (b) The Administrator, applicable State organic program's governing State official, or the certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the applicable State organic program's governing State official or the certifying agent at the official's or certifying agent's own expense.
- (c) The preharvest or postharvest tissue test sample collection pursuant to paragraph (b) of this section must be performed by an inspector representing the Administrator, applicable State organic program's governing State official, or certifying agent. Sample integrity must be maintained throughout the chain of custody, and residue testing must be performed in an accredited laboratory. Chemical analysis must be made in accordance with the methods described in the most current edition of the *Official Methods of Analysis of the AOAC International* or other current applicable validated methodology determining the presence of contaminants in agricultural products.
- (d) Results of all analyses and tests performed under this section:
 - (1) Must be promptly provided to the Administrator; *Except*, That, where a State organic program exists, all test results and analyses shall be provided to the State organic program's governing State official by the applicable certifying party that requested testing; and
 - (2) Will be available for public access, unless the testing is part of an ongoing compliance investigation.
- (e) If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, the certifying agent must promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

Document Status: FINAL

icollc@earthlink.net

Indiana Certified Organic, LLC.
8364 S SR 39, Clayton, IN 46118
tel: 317-539-4317 | fax: 317-539-2739

residue test letter.wps
Page 2

We have attempted to contact the complainant via phone and email with our results as well and the phone line is reported to be disconnected. We have no response from our email nor do we have their mailing address so we have not been able to report our findings to them. At this time we consider the complaint to be resolved. We will be doing some future testing of your soil and harvested crop as a followup. This testing will cost you no fees and we will inform you as to when they will occur.

Thank you for choosing ICO! Let us know if you have any questions.

Best



Cecilia A Bowman ("Cissy"), CEO

Cc: National Organic Program

Document Status: FINAL

icollc@earthlink.net

Indiana Certified Organic, LLC.
8364 S SR 39, Clayton, IN 46118
tel: 317-539-4317 | fax: 317-539-2739


Exhibit 5



1400 Independence Avenue, SW.
Room 2095-S, STOP 0203
Washington, DC 20250-0203

April 9, 2013

TO: Matthew Michael
Director
NOP Compliance and Enforcement Division

FROM: Thomas J. Colson 
Branch Chief
AMS Compliance Branch

SUBJECT: Office of Inspector General (OIG) Hotline Complaint PS-0530-0640, Kiman Kingsley, 3388 Lawrence 1070, Miller, Missouri (Lawrence County) - Fraud (N-008-13)

On April 9, 2013, the AMS Compliance Branch received the above referenced Hotline in which an anonymous complainant alleged that Mr. Kingsley had sprayed and spread fertilizer on wheat that he sold as organic. The complainant alleged that Sheriff Delay, Lawrence County Sheriff's Department, (417)-466-2131, had additional information about Mr. Kingsley.

This information is provided for your review and resolution. Please provide us with brief updates regarding the progress of your investigation at least every 90 days, so that we can report the status of the complaint to the OIG as they require.

Public Law 95-452, sec. 7, prohibits the unwarranted disclosure of the complainant's identity or the taking of reprisal action against the complainant. In those instances where the complainant is anonymous or wishes to remain confidential, no attempts should be made to discover the identity of the complainant. The complaint should be provided or discussed only with those who need to resolve the issues. The typed complaint should not be provided to the subject; however, you may discuss with the subject all relevant issues to completely resolve the complaint.

If you have any questions, please contact me at (202)-690-4867 or AMS Compliance Officer Jeffrey Sotosky at (202)-720-3308.

Schurkamp, Lynnea - AMS

From: DE COU Dave <dave.decou@ecocert.com>
Sent: Monday, June 24, 2013 8:15 PM
To: Strohm, Sasha - AMS
Cc: MOREL Vincent; KALOGRIDIS George
Subject: NOPC-092-13 Kingsley Brother
Attachments: 2010 Complaint emails.pdf; 2010 Lab Tests.pdf; Kingsley Complaint.pdf; kingsley followup 2010.pdf

Sasha

Please see the letter attached, "Kingsley Complaint". We have some questions and information which may affect your view of the current complaint. The rest of the documents are supporting information from a previous complaint.

Dave



David DeCOU
Certification Manager
ECOCERT ICO LLC, 70 East Main Street, Ste. B
Greenwood, Indiana 46143
Toll Free: 888-337-8246 Office: 317-865-9700,
Fax: 317-865-9707, Cell: (541) 460-3979 (Oregon)
<mailto:dave.decou@ecocert.com> / www.ecocertico.com

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Schurkamp, Lynnea - AMS

From: Colson, Thomas - AMS
Sent: Tuesday, April 15, 2014 7:50 AM
To: Ragonesi, Judith - AMS
Cc: Sotosky, Jeffrey - AMS
Subject: RE: NOPC 092-13 and OIG Complaint: PS-0530-0640 (AMS Compliance N-008-13)

Thx Judith. Have a great day! - Tom

From: Ragonesi, Judith - AMS
Sent: Monday, April 14, 2014 3:56 PM
To: Colson, Thomas - AMS
Cc: Sotosky, Jeffrey - AMS
Subject: NOPC 092-13 and OIG Complaint: PS-0530-0640 (AMS Compliance N-008-13)

Dear Mr. Colson:

Attached for your review is a notice of closure for the OIG Complaint PS-0530-0640 and AMS Compliance N-008-13. Should you have any questions please feel free to contact me.

Regards,

Judith

Judith A. Ragonesi
Agricultural Marketing Specialist
USDA/AMS/National Organic Program
1400 Independence Avenue S.W.
Washington, D.C. 20250
Phone: (202) 205-5711

From: Michael, Matthew - AMS
Sent: Thursday, April 10, 2014 4:01 PM
To: Sotosky, Jeffrey - AMS
Cc: Thornblad, Kristin - AMS; Ragonesi, Judith - AMS
Subject: RE: 90 day update

Hi Jeff:

I'm out tomorrow and next week. Judy Ragonesi will be acting for me and will get you the official memo.

Thanks.

Matthew Michael
Director, Compliance and Enforcement Division
USDA National Organic Program

1400 Independence Ave SW; Room 2959
Washington, DC 20250-0268
Phone: (202) 260-8657
matthew.michael@ams.usda.gov

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From: Sotosky, Jeffrey - AMS
Sent: Thursday, April 10, 2014 7:25 AM
To: Michael, Matthew - AMS
Subject: FW: 90 day update

Matthew,

Could we get an official closeout letter from you to Tom regarding this matter? Then I can draft our OIG letter and submit this for closure. Thanks.

*Jeffrey Sotosky
Compliance Officer
AMS Compliance Branch
Phone: 202-720-3308
Cell: 202-450-0752*

From: Thornblad, Kristin - AMS
Sent: Wednesday, April 09, 2014 3:47 PM
To: Sotosky, Jeffrey - AMS
Subject: RE: 90 day update

Hi Jeff—

It appears that this matter has been closed since last year. Please see attached our records. Of course, I'd be happy to research additional information and explanation. I'm not certain about the circumstances of the delay in reporting the closure.

Thank you.
Kristin

From: Sotosky, Jeffrey - AMS
Sent: Wednesday, April 09, 2014 3:00 PM
To: Thornblad, Kristin - AMS
Subject: 90 day update

Kristin,

Just looking for an update on N-008-13 (Kiman Kingsley). Thanks.

Jeffrey Sotosky
Compliance Officer
AMS Compliance Branch
Phone: 202-720-3308
Cell: 202-450-0752



1400 Independence Avenue, S.W.
Room 2648-S, STOP 0268
Washington, D.C. 20250-0268

VIA EMAIL

JUN 4 2013

Mr. Dave DeCou
Ecocert ICO, LLC
70 East Main Street
Suite B
Greenwood, Indiana 46143
dave.decou@ecocert.com

Re: NOPC-092-13 Kingsley Brothers

Dear Mr. DeCou:

The U.S. Department of Agriculture, National Organic Program (NOP) received a complaint alleging that Kingsley Brothers LLC, which is certified by Ecocert, violated the USDA organic regulations at 7 CFR Part 205 by spraying pesticides on, and applying fertilizer to, wheat that was then sold as organic.

The NOP requests that you investigate this allegation within 30 days of receiving this letter. Within 45 days of receiving this letter, please notify the NOP of your findings and of any notices of noncompliance or proposed adverse actions that you issued as a result of the investigation. At that time, assuming no additional action is needed, the NOP will inform the complainant of your investigation's outcome. Also, if your investigation will take more than 30 days from the receipt of this letter, please inform the NOP.

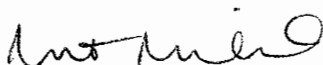
Note that you are authorized to investigate complaints of noncompliance under the regulations at § 205.661(a). Further, you are required to have procedures for investigating certified operation noncompliance under the regulations at § 205.504(b)(2). However, we realize that there may be some investigations with which you need assistance and you may refer the investigation back to the NOP for one or more of the following reasons:

- You lack the resources or the specialized expertise needed to adequately investigate the complaint;
- You believe a civil penalty may be warranted for the knowing sale or labeling of agricultural products in violation of the USDA organic regulations;
- You believe the complaint warrants a criminal investigation; or
- For some other reason, you cannot carry out or complete the investigation.

Mr. DeCou
Re: NOPC-092-13 Kingsley Brothers
Page 2

Should you have any questions regarding this matter, please contact Sasha Strohm in the Compliance & Enforcement Division at (202) 260-8209 or sasha.strohm@ams.usda.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Michael".

Matthew Michael
Director, Compliance & Enforcement Division
National Organic Program

cc: Director, Accreditation and International Activities Division

EXHIBIT

6

DOVER DIXON HORNE PLLC

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+++ ALSO LICENSED IN GEORGIA
++++ ALSO LICENSED IN ILLINOIS

January 27, 2017

 MERITAS LAW FIRMS WORLDWIDE

EMAIL: AMS.FOIA@ams.usda.gov

FEDERAL EXPRESS TRK #: 778295726402
VIA CERTIFIED US MAIL/
RETURN RECEIPT REQUESTED
TRK #: 70023150000594536550

Administrator
USDA, Agricultural Marketing Service
1400 Independence Avenue, SW
Stop 0201, Room 3071
Washington, D.C. 20250-0201

FEDERAL EXPRESS TRK #: 778295775488
VIA CERTIFIED US MAIL/
RETURN RECEIPT REQUESTED
TRK #: 70023150000594536567

Mr. Gregory Bridges
FOIA Officer
USDA, Agricultural Marketing Service
1400 Independence Avenue, SW
South Building, Room 3943
Stop 0202
Washington, DC 20250-0273

Re: Freedom of Information Appeal – Records Relating to NOPC-305-16, NOPC-459-16 and USDA’s November 23, 2016 Proposed Revocation of Certification for Kingsley Brothers LLC (FOIA Request No. 2017-AMS-01169-F)

Dear Sir or Madam:

This firm represents Mr. Kiman Kingsley, Ms. Darlene Kingsley and Kingsley Brothers, LLC (collectively herein the “Kingsleys”) in connection with the U.S. Department of Agriculture (“USDA”) Agricultural Marketing Service’s (“AMS”) November 23, 2016 letter proposing to revoke Kingsley Brothers LLC’s certification under the National Organic Program (“NOP”). The

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Kingsleys, through counsel, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), hereby appeal the decision of AMS to withhold and redact records related to complaints NOPC-305-16 and NOPC-459-16, including all records relating to AMS’ November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC (“AMS Records”).

By letter dated December 14, 2016, the Kingsleys informally sought information from AMS in order to properly respond to the proposed revocation. A copy of the Kingsleys’ informal request is attached as Exhibit A.

By letter dated December 14, 2016, addressed to Mr. Carl-Martin Ruiz, Director, Office of Adjudication/USDA, the Kingsleys, through FOIA, requested copies of the following records:

1. All records relating to complaints NOPC-305-16 and NOPC-459-16 to the Agricultural Marketing Service, U.S. Department of Agriculture;
2. All records relating to the USDA’s investigation of those complaints;
3. All records relating to USDA’s November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC; and
4. All other records relating to Kiman Kingsley, Darlene Kingsley and Kingsley Brothers LLC, including, without limitation, records relating to any other complaints to USDA not identified in paragraph 1 above.

A copy of the Kingsleys’ FOIA request is attached as Exhibit B.

By email dated December 22, 2016, Jewell Little, Senior FOIA Analyst, USDA/AMS, informed the Kingsleys’ counsel that AMS received the Kingsleys’ FOIA request and assigned it tracking number 2017-AMS-01169-F. A copy of Senior Analyst Little’s email is attached as Exhibit C.

By letter dated January 3, 2017, Gregory Bridges, FOIA Officer, USDA/AMS, informed the Kingsleys’ counsel that AMS was releasing some responsive records in full, releasing some records partially redacted and withholding some records entirely. Specifically, Mr. Bridges’ letter stated that within the responsive record set, AMS withheld the complainant’s and inspector’s names, the complainant’s personal email address and signature, other information identifying the complainant, and information submitted by the complainant pursuant to exemptions provided in 5 U.S.C. § 552(b)(6), (b)(7)(C) and (b)(7)(D). Mr. Bridges further stated that within the responsive record set, AMS withheld entirely the records requested for items 1-3 of the Kingsleys’ request pursuant to exemption 5 U.S.C. § 552(b)(7)(A) as “these complaint investigations are still open.” A copy of Mr. Bridges’ letter is attached as Exhibit D.

The Kingsleys hereby appeal AMS’ determination to withhold the AMS Records requested by the Kingsleys that were withheld or redacted pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(A), (b)(7)(C) and (b)(7)(D).

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Background

Kingsley Brothers LLC is a certified organic farm operated by Kiman and Darlene Kingsley, with NOP ID Number 9579011700. Their original NOP certification date was June 28, 2002, and they have remained certified continually since that time. The Kingsleys are certified for production and sale of organic corn, soybeans, winter wheat, and grass and currently have over 2,800 certified acres in production. Their certifying agent is EcoCert ICO, LLC, whose USDA ID number is 90117. Since 2002 the Kingsleys have operated a successful organic farm operation under the National Organic Program, both in practice and financially. The Kingsleys have never been fined, penalized or sanctioned under the NOP program in the almost fifteen years they have been operating as a successful organic producer.

AMS's November 23, 2016 letter (Exhibit E) proposes to revoke the Kingsleys NOP certification based on a complaint(s) received by NOP alleging that the Kingsleys aerially applied prohibited substances to its organic crops, in violation of the Organic Food Production Act of 1990 ("OFPA") and the USDA organic regulations. The USDA letter further alleges that analytical testing of the samples collected by USDA and the Kingsleys certifying agent, EcoCert ICO LLC, showed that two (2) soybean tissue samples contained levels of the prohibited substance zeta-cypermethrin, and soil test results for three (3) fields showed traces of the prohibited substance Atrazine.

Kingsley Brothers LLC, Kiman Kingsley and Darlene Kingsley deny the allegations contained in AMS's November 23, 2016 letter; specifically, they deny that the Kingsleys, or an affiliated entity or person, aerially applied prohibited substances to the Kingsleys fields.

The Kingsleys appealed AMS' proposed revocation by letter dated December 19, 2016 (Exhibit F), which was acknowledged by letter from AMS dated December 29, 2016. (Exhibit G). Pursuant to an email from Dr. Jennifer Tucker, AMS, dated December 30, 2016, the Kingsleys were given until January 31, 2017 to provide documentation and other materials in support of their appeal. (Exhibit H).

The Kingsleys sought additional information from AMS, both informally and through the federal Freedom of Information Act, in order to properly respond to the proposed revocation and support their appeal. See Exhibit A and B, and letter to Roger Simonds at the USDA National Science Laboratory dated January 10, 2017 requesting the data packages supporting the analytical testing of the samples obtained by the USDA from the Kingsleys' farm fields. (Exhibit I).

The Kingsleys object to USDA's failure to provide the requested information in a timely manner. The Kingsleys' ability to adequately respond to the proposed revocation potentially impacts the Kingsleys certification under the National Organic Program. This certification is a valuable right that is protected by law. While the alleged violations are limited to certain fields, AMS's proposed action – to revoke the Kingsleys NOP certification – potentially affects the Kingsleys entire operation. Consequently, USDA's failure to timely provide the requested information in order to protect that right violates the Kingsleys' right to due process, irrespective

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of the provisions of the federal Freedom of Information Act. Consequently, USDA should have provided the requested information to the Kingsleys instead of invoking the exemptions and exceptions of the Freedom of Information Act as an improper shield. USDA's failure to provide the requested information has adversely affected the Kingsleys' ability to properly respond to the proposed revocation.

AMS Records Relating to Kingsleys' Requests Are Not Exempt From Disclosure Under FOIA

AMS has relied upon four (4) FOIA exemptions to justify its decision to withhold or redact records requested by the Kingsleys; Exemption 6, 7(A), 7(C) and 7(D). See Exhibit D. AMS bears the burden of *demonstrating* that the claimed exemption applies. 5 U.S.C.S. § 552(a)(4)(B).

As you know, the underlying congressional objective in enacting FOIA was to facilitate access to and broad disclosure of government records. *FBI v. Abramson*, 456 U.S. 615, 621 (1982). See also *Department of Air Force v. Rose*, 425 U.S. 352, 360 (1976) (FOIA reflects "a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language"). It is well-settled law that the FOIA exemptions are to be narrowly construed with all doubts resolved in favor of disclosure. *Abramson*, 456 U.S. at 630, *Department of the Air Force*, 425 U.S. at 361. The agency resisting disclosure bears the burden of establishing the exempt status of the requested material, 5 U.S.C. § 552(a)(4)(B), and is required to present a detailed justification for nondisclosure in order to carry its burden.

As is abundantly clear from review of the statutory language of FOIA and the relevant case law, the exemptions cited by AMS do not justify AMS' redacted and complete denial of access to the requested agency records.

1. Exemption (b)(7)(A).

AMS withheld entirely the records that pertain to Kingsleys' items 1-3 of its FOIA request pursuant to exemption 7(A), which provides that disclosure of "records or information compiled for law enforcement purposes" is not required to the extent that production of such material "could reasonably be expected to interfere with law enforcement proceedings." 5 U.S.C. § 552(b)(7)(A).

First, in the Eighth Circuit, where the Kingsleys live and operate Kingsley Farms LLC, the court has stated that to sustain the agency's burden of showing documents were properly withheld under exemption 7(A) the government had to establish that the records were investigatory records compiled for law enforcement purposes and that production would interfere with pending enforcement proceedings. *In re Dep't of Justice*, 999 F.2d 1302, 1307 (8th Cir. 1993). "To satisfy its burden with regard to Exemption 7(A), the government must define functional categories of documents; it must conduct a document-by-document review to assign documents to proper categories; and *it must explain to the court how the release of each category*

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would interfere with enforcement proceedings.” Id. at 1309-10 (Emphasis added). The classification should be clear enough to permit a court to ascertain how each category of documents, if disclosed, would interfere with the investigation. Id. at 1310. Schiller v. N.L.R. B., 296 U.S. App. D.C. 84, 964 F.2d 1205, 1209 (D.C. Cir. 1992) (the agency owes the requester its reasons so that its claims of exemption can be fairly tested).

AMS failed to provide sufficient, if any, information to demonstrate how the records withheld from the Kingsleys FOIA request were compiled for law enforcement purposes and how such records would interfere with an investigation. AMS merely states in its January 3, 2017 FOIA determination letter (Exhibit D) that “information for items 1 to 3 is being withheld in its entirety pursuant to subpart (a) as these complaint investigations are still open.” AMS’ justification must include more than “barren assertions” that a document is exempt. *Madel v. United States DOJ*, 784 F.3d 448, 452 (8th Cir. 2015), *Missouri Coal. for Env’t Found. v. U.S. Army Corps of Eng’rs*, 542 F.3d 1204, 1210 (8th Cir. 2008) (boilerplate or conclusory affidavits, standing alone, are insufficient to show that no genuine issue of fact exists as to the applicability of a FOIA exemption).

Second, one of the primary purposes of exemption 7 was “to prevent harm (to) the Government’s case in court ... by not allowing litigants earlier or greater access to agency investigatory files than they would otherwise have....” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224, 98 S. Ct. 2311, 2317, 57 L. Ed. 2d 159 (1978). However, once enforcement proceedings are instituted the party who is the target of the enforcement proceedings will be able to obtain access to such exempt information as is discoverable through the normal pre-trial discovery channels. Moreover, once enforcement proceedings are either concluded or abandoned, exemption 7(A) will no longer apply to prevent disclosure. *Id.* at 235, see also *Barney v. IRS*, 618 F.2d 1268, 1273-74 (8th Cir. 1980).

AMS relied on exemption 7(A) claiming “these complaint investigations are still open,” however in its November 23, 2016 proposed revocation letter, AMS states that “[t]he NOP proposes to revoke the organic certification of Kingsley Brothers LLC, effective 30 days from receipt of this letter.” Clearly AMS conducted an investigation and determined to take action against the Kingsleys; a decision made by AMS that negatively and substantially impacts the Kingsleys and that the Kingsleys have appealed pursuant to applicable laws and regulations. The Kingsleys must presume, therefore, that AMS’ investigation is complete and that a decision was made to revoke the Kingsley’s NOP certification, therefore, exemption 7(A) is not applicable.

2. Exemptions (b)(6), (b)(7)(C) and (b)(7)(D).

AMS’ January 3, 2017 FOIA determination letter (Exhibit D) states that “[w]ithin this record set, 13 pages were partially redacted pursuant to exemptions (b)(6), (b)(7)(c), and (b)(7)(d).” The letter also states “AMS is withholding the complainant’s and inspector’s name, the complainant’s personal email address, and signatures.” The letter further states that “[w]ithin this record set [exemption 7], AMS is withholding the complainant’s and inspector’s names, other information identifying the complainant, and information submitted by the complainant. This

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information is protected from disclosure by subpart(s) (c) and (d).” All three exemptions claimed by AMS address withholding of personal information, particularly informants and agents.

5 U.S.C. § 552(b)(6) permits withholding of personnel and medical files and similar files the disclosure of which would constitute a *clearly unwarranted* invasion of personal privacy. The threat to privacy must be tangible, not just a possibility. *Rose v. Department of the Air Force*, 495 F.2d 261 (2d Cir. 1974) (“Exemption 6 was directed at threats to privacy interests more palpable than mere possibilities.”). The limitation of a “clearly unwarranted invasion of personal privacy” requires a balance between the protection of an individual's right of privacy and the preservation of the public's right to Government information by excluding those kinds of files the disclosure of which might harm the individual. *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372, 96 S. Ct. 1592, 1604 (1976). AMS fails to demonstrate how or even if disclosure would constitute a clear and tangible harm or invasion of personal privacy. The AMS Records cannot be exempted pursuant to 5 U.S.C. § 552(b)(6) and must be disclosed because the privacy interest is de minimis and the exemption applies only to “clearly unwarranted” invasions of personal privacy.

5 U.S.C. § 552(b)(7)(C) permits withholding of investigatory records the production of which would constitute an unwarranted invasion of personal privacy. This exemption permits nondisclosure of the type of highly personal data normally found in a personnel file. *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 780, 103 L. Ed. 2d 774, 109 S. Ct. 1468 (1989). Law enforcement officers who work on criminal investigations, and individuals who provide information to the law enforcement authorities, have a privacy interest and their identities have traditionally been protected from disclosure by Exemption 7(C). *Davis v. Dep't of Justice*, 296 U.S. App. D.C. 405, 968 F.2d 1276, 1281 (D.C. Cir. 1992). Further, private citizens who may be mentioned in investigatory files, suspects, witnesses, and informants enjoy a privacy interest. *Piper v. United States DOJ*, 374 F. Supp. 2d 73, 79 (D.D.C. 2005). The personal privacy interests and the public interest in disclosure under exemption 7(C) are the same as those at issue in an exemption 6 case. *Iowa Citizens for Cmty. Improvement v. USDA*, 256 F. Supp. 2d 946, 953 (S.D. Iowa 2002).

5 U.S.C. § 552(b)(7)(D) permits withholding information in investigatory files if production would disclose the identity of a confidential source. In order to establish that an individual who provides information to an agency is a confidential source, the agency must show that the information was given either under an express promise of confidentiality or in circumstances under which such an assurance could be reasonably inferred. *Wayland v. NLRB*, 627 F. Supp. 1473, 1475 (M.D. Tenn. 1986). AMS did not offer evidence of an expressed guarantee of confidentiality. To the extent that any records are withheld after this appeal, the Kingsleys request evidence that such express confidentiality was guaranteed. *Dipietro v. Executive Office for U.S. Attorneys*, 357 F. Supp. 2d 177 (D.D.C. 2004).

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All three exemptions, (b)(6), (b)(7)(C) and (b)(7)(D), address invasion of privacy issues of individuals' "identities" and "personal information" contained in agency records. Privacy interests apply to information in government files about a particular individual from which the identity of the individual can be discerned. *United States Dept. of State v Washington Post Co.*, 456 US 595, 102 S Ct 1957 (1982). The disclosure of names, addresses, telephone numbers, e-mail addresses, GPS coordinates, and financial statuses are the type of records that may implicate privacy interests. *Am. Farm Bureau Fed'n v. United States EPA*, 836 F.3d 963, 971 (8th Cir. 2016).

While it may be reasonable, under certain circumstances, to withhold certain agency records in order to shield citizens' private information from disclosure, AMS took this shield a step further. AMS' January 3, 2017 FOIA determination letter (Exhibit D) states that "AMS is withholding the complainant's and inspector's names, other information identifying the complainant, and *information submitted by the complainant.*" (Emphasis added) Clearly, AMS is not only withholding personal information that must be balanced with public interest, but AMS is also withholding other "information submitted by the complainant." AMS' decision to shield other information submitted by the complainant is neither the purpose of nor permitted by exemptions (b)(6), (b)(7)(C) or (b)(7)(D). These three exemptions are limited to personal files, privacy and identity of the complainant or inspector, and AMS should not have withheld other information submitted by the complainant under the shield of these exemptions.

Furthermore, if the agency determines that there is a privacy interest in the requested information, the agency must then balance the privacy interest of the individual against the public interest in disclosure to determine whether the exemption applies. *Am. Farm Bureau Fed'n v. United States EPA*, 836 F.3d 963, 970 (8th Cir. 2016). When weighing public interest in favor of disclosure, the relevant public interest in the balance is the extent to which disclosure would contribute to public understanding of the operations or activities of the government. *United States Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495, 114 S. Ct. 1006, 1012 (1994). In other words, disclosure is favored for information that sheds light on an agency's performance of its statutory duties. *Id.*

AMS failed to properly balance the relevant public interest. Certification under the National Organic Program is a right that is protected by law. The NOP is a regulatory program housed within AMS, which is responsible for developing and enforcing national standards for organically produced agricultural products. However, USDA and the AMS also have a duty to promote interstate commerce in organic foods. Complaints NOPC-305-16 and NOPC-459-16 were investigated by AMS under its statutory duty. The Kingsleys as certified operators under NOP have a right to agency records that shed light on AMS' performance of its duty to investigate these complaints, to promote interstate commerce in organic foods, and to understand AMS' activities surrounding these investigations.

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Segregable Records

Assuming the records requested by the Kingsleys are found exempt under a specific subsection of 5 U.S.C. § 552(b), AMS still has a duty to provide segregable portions of the exempt records. 5 U.S.C. § 552(b) provides in part:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

An agency may not automatically withhold an entire document when some information is exempt, but rather must provide "[a]ny reasonably segregable portion." *Madel v. United States DOJ*, 784 F.3d 448, 453 (8th Cir. 2015), quoting *Missouri Coal. for Env't Found. v. U.S. Army Corps of Eng'rs*, 542 F.3d 1204, 1209 (8th Cir. 2008). Each document consists of "discrete units of information," all of which must fall within a statutory exemption in order for the entire document to be withheld. *Missouri Coal.*, 542 F.3d at 1211, quoting *Billington v. U.S. Dep't of Justice*, 233 F.3d 581, 586 (D.C.Cir.2000). The agency has the burden to show that exempt portions are not segregable from non-exempt portions. *Madel* at 453.

In response to the Kingsleys' FOIA request, AMS failed to disclose segregable portions of the alleged exempt documents or even demonstrate whether portions of alleged exempt documents are segregable or not.

Conclusion

The Kingsleys hereby appeal AMS' determination to withhold the AMS Records requested by the Kingsleys that were withheld or redacted pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(A), (b)(7)(C) and (b)(7)(D).

For the reasons set forth above, AMS should order disclosure of the requested AMS Records in the interest of avoiding unnecessary litigation. In the event that any portions of the requested records are withheld or deleted, AMS at a minimum should specifically identify any portions withheld, provide an index or similar statement of the scope of the material withheld, and specify the exemptions upon which the denial on appeal is based.

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January 27, 2017

Pursuant to the requirements of FOIA, we request a response to this appeal within twenty (20) working days. In light of the proposed revocation of Kingsleys' NOP certification, and the already significant delay in receiving the requested materials I urge you to contact me by telephone if you have any questions or if I can facilitate your review, or the expeditious release of the requested records, in any way.

Sincerely,

DOVER DIXON HORNE, PLLC

A handwritten signature in black ink, appearing to read "T. J. Lawhon", with a horizontal line extending to the right.

Thane J. Lawhon

Enclosures

cc: Mr. Kiman Kingsley
Bruce Copeland, Esq.
Mark Allison, Esq.

EXHIBIT

7

DOVER DIXON HORNE PLLC

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+ ALSO LICENSED IN TEXAS
++ ALSO LICENSED IN DISTRICT COLUMBIA
+++ ALSO LICENSED IN GEORGIA
++++ ALSO LICENSED IN ILLINOIS

 MERITAS LAW FIRMS WORLDWIDE

January 10, 2017

Via Electronic Mail (Roger.Simonds@ams.usda.gov)
and Regular U.S. Mail

Roger Simonds
Laboratory Chief
National Science Laboratories
801 Summit Crossing Place, Suite B
Gastonia, NC 28054

Re: Kingsley Brothers, LLC

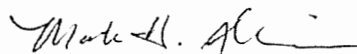
Dear Mr. Simonds:

This letter is to follow up on our phone call earlier this afternoon. I, along with Bruce Copeland of Joplin, Missouri represent Kingsley Brothers, LLC. I understand that you previously provided copies to Mr. Copeland of laboratory analytical test reports for samples taken at the Kingsley Brothers, LLC farm on or about September 1, 2016. The referenced lab reports are AP01200 through AP01217 and copies are attached hereto. As I understand it, there is a laboratory data package that accompanies each of these analytical reports. The purpose of this letter is to formally request copies of these data packages and any other laboratory records and work papers relating to these analytical test reports. I request that you provide these records and documents promptly. Please let me know if there are any costs associated with providing this information.

I appreciate your cooperation and assistance. Please let me know if you have any questions.

Sincerely,

DOVER DIXON HORNE PLLC



Mark H. Allison

MHA/njp
Enclosures

Exhibit 7

Roger Simonds
January 10, 2017
Page 2

cc (w/enclosures):

Bruce Copeland, Esq.
Copeland and Brown
614 Pearl Street
Joplin, MO 64803

Mr. Kiman Kingsley
Kingsley Brothers, LLC



UNITED STATES DEPARTMENT OF AGRICULTURE
 AGRICULTURAL MARKETING SERVICE
 SCIENCE & TECHNOLOGY PROGRAMS
 LABORATORY APPROVAL AND TESTING DIVISION

National Science Laboratories
 801 Summit Crossing Place, Suite B
 Gastonia, NC 28054
 Phone: (704) 867-3873
 Fax: (855) 296-1230

<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-A, Sample 1A	<i>Laboratory ID:</i>	AP01200
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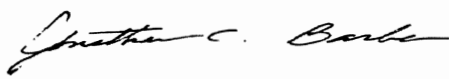
Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypemethrin	N.D.	500			

LOD - Limit of Detection. N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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 Fax: (855) 296-1230

<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

Applicant Sample ID: **Field-A, Sample 1B** *Laboratory ID:* **AP01201**

Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soil
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-A, Sample #1	<i>Laboratory ID:</i>	AP01202
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Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	BQL	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

Original Report
Laboratory ID: **AP01203**

Applicant Sample ID: **Field-C2, Sample 1A**

Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<p><i>Applicant Identifier:</i> Judith Ragonesi Compliance & Enforcement Division USDA, AMS, National Organic Program 1400 Independence Ave SW Washington, DC 25050</p>	<p><i>Sample Description:</i> Soy Tissue <i>Date Received:</i> 09/07/2016 <i>Date Completed:</i> 10/24/2016 <i>Date Issued:</i> 12/05/2016 P.O. # Method: MET-104</p>
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REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-C2, Sample 1B	<i>Laboratory ID:</i>	AP01204
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	Result	LOD		Result	LOD
Analyte	PPB	PPB	Analyte	PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soil
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-C2, Sample #1	<i>Laboratory ID:</i>	AP01205
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Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	BQL	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection. N.A. - Not Analyzed. N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

Applicant Sample ID: Field-C3, Sample 1A *Original Report*
Laboratory ID: AP01206

Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	P.O. #	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

Applicant Sample ID: Field-C3, Sample 1B *Laboratory ID:* AP01207

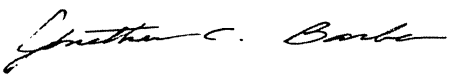
Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soil
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

Applicant Sample ID: **Field-C3, Sample #1** *Original Report*
Laboratory ID: **AP01208**

Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Applicant Identifier: Judith Ragonesi Compliance & Enforcement Division USDA, AMS, National Organic Program 1400 Independence Ave SW Washington, DC 25050	Sample Description: Soy Tissue Date Received: 09/07/2016 Date Completed: 10/24/2016 Date Issued: 12/05/2016 P.O. # Method: MET-104
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REPORT OF ANALYTICAL TEST RESULTS

Applicant Sample ID: <u>Field-C4, Sample 1A</u>	Original Report Laboratory ID: <u>AP01209</u>
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Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypemethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	P.O. #	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

				Original Report	
<i>Applicant Sample ID:</i>		Field-C4, Sample 1B		<i>Laboratory ID:</i> AP01210	
Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Signature of Approving Official: 
 Jonathan C. Barber, Laboratory Supervisor



UNITED STATES DEPARTMENT OF AGRICULTURE
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 LABORATORY APPROVAL AND TESTING DIVISION

National Science Laboratories
 801 Summit Crossing Place, Suite B
 Gastonia, NC 28054
 Phone: (704) 867-3873
 Fax: (855) 296-1230

<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soil
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	P.O. #	
Washington, DC 25050	Method:	MET-104

REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	<u>Field-C4, Sample #1</u>	<i>Laboratory ID:</i>	<u>AP01211</u>
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Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Signature of Approving Official: 
 Jonathan C. Barber, Laboratory Supervisor



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 Fax: (855) 296-1230

<p><i>Applicant Identifier:</i> Judith Ragonesi Compliance & Enforcement Division USDA, AMS, National Organic Program 1400 Independence Ave SW Washington, DC 25050</p>	<p><i>Sample Description:</i> Soy Tissue <i>Date Received:</i> 09/07/2016 <i>Date Completed:</i> 10/24/2016 <i>Date Issued:</i> 12/05/2016 P.O. # Method: MET-104</p>
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REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	<u>Field-G, Sample 1A</u>	<i>Laboratory ID:</i>	<u>AP01212</u>
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Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	1230	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Signature of Approving Official: 
 Jonathan C. Barber, Laboratory Supervisor



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 Gastonia, NC 28054
 Phone: (704) 867-3873
 Fax: (855) 296-1230

<i>Applicant Identifier:</i> Judith Ragonesi Compliance & Enforcement Division USDA, AMS, National Organic Program 1400 Independence Ave SW Washington, DC 25050	<i>Sample Description:</i> Soy Tissue <i>Date Received:</i> 09/07/2016 <i>Date Completed:</i> 10/24/2016 <i>Date Issued:</i> 12/05/2016 <i>P.O. #</i> <i>Method:</i> MET-104
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REPORT OF ANALYTICAL TEST RESULTS

Applicant Sample ID: Field-G, Sample 1B *Laboratory ID:* AP01213 *Original Report*

Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	1400	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Signature of Approving Official:
 Jonathan C. Barber, Laboratory Supervisor



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 Phone: (704) 867-3873
 Fax: (855) 296-1230

<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soil
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-G, Sample #1	<i>Laboratory ID:</i>	AP01214
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Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	N.D.	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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 Jonathan C. Barber, Laboratory Supervisor



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 Fax: (855) 296-1230

<p><i>Applicant Identifier:</i> Judith Ragonesi Compliance & Enforcement Division USDA, AMS, National Organic Program 1400 Independence Ave SW Washington, DC 25050</p>	<p><i>Sample Description:</i> Soy Tissue <i>Date Received:</i> 09/07/2016 <i>Date Completed:</i> 10/24/2016 <i>Date Issued:</i> 12/05/2016 P.O. # Method: MET-104</p>
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REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	<u>Field-R1, Sample 1A</u>	<i>Laboratory ID:</i>	<u>AP01215</u>
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Analyte	Result PPB	LOD PPB	Analyte	Result PPB	LOD PPB
Atrazine	BQL	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection. N.A. - Not Analyzed. N.D. - Not Detected.

Comment:

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Signature of Approving Official: 
 Jonathan C. Barber, Laboratory Supervisor



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 Fax: (855) 296-1230

<i>Applicant Identifier:</i>	<i>Sample Description:</i>	Soy Tissue
Judith Ragonesi	<i>Date Received:</i>	09/07/2016
Compliance & Enforcement Division	<i>Date Completed:</i>	10/24/2016
USDA, AMS, National Organic Program	<i>Date Issued:</i>	12/05/2016
1400 Independence Ave SW	<i>P.O. #</i>	
Washington, DC 25050	<i>Method:</i>	MET-104

REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-R1, Sample 1B	<i>Laboratory ID:</i>	AP01216
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Analyte	Result	LOD	Analyte	Result	LOD
	PPB	PPB		PPB	PPB
Atrazine	BQL	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Signature of Approving Official: 

 Jonathan C. Barber, Laboratory Supervisor



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<p><i>Applicant Identifier:</i> Judith Ragonesi Compliance & Enforcement Division USDA, AMS, National Organic Program 1400 Independence Ave SW Washington, DC 25050</p>	<p><i>Sample Description:</i> Soil <i>Date Received:</i> 09/07/2016 <i>Date Completed:</i> 10/24/2016 <i>Date Issued:</i> 12/05/2016 P.O. # Method: MET-104</p>
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REPORT OF ANALYTICAL TEST RESULTS

<i>Applicant Sample ID:</i>	Field-R1, Sample #1	<i>Laboratory ID:</i>	AP01217
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	Result	LOD		Result	LOD
Analyte	PPB	PPB	Analyte	PPB	PPB
Atrazine	BQL	50			
Bentazon	N.D.	100			
Flumioxazin	N.D.	200			
Imazethapyr	N.D.	50			
Lactofen	N.D.	250			
Thifensulfuron methyl	N.D.	50			
Zeta cypermethrin	N.D.	500			

LOD - Limit of Detection, N.A. - Not Analyzed, N.D. - Not Detected.

Comment:

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Signature of Approving Official: 
 Jonathan C. Barber, Laboratory Supervisor

EXHIBIT

8

Mark Allison

From: Little, Jewell - AMS <Jewell.Little@ams.usda.gov>
Sent: January 12, 2017 2:19 PM
To: Mark Allison
Subject: Freedom of Information Act #2017-AMS-01450-F
Attachments: Request-Allison.pdf

Dear Mr. Allison,

This email confirms receipt of your FOIA request (see attached). Your request was received on **January 12, 2017** and assigned tracking number **2017-AMS-01450-F**.

The FOIA regulation 5 U.S.C. § 552(a)(6)(A)(i) requires USDA to make a determination in response to a FOIA request within 20 business days from its date of receipt. In unusual circumstances, the Federal agency time limit may be extended by 10 business days as stated in 5 U.S.C. § 552(a)(6)(B).

Please contact me if you have any questions.

Jewell Little

Senior FOIA Analyst
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

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EXHIBIT

9



STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202

March 2, 2017

In reply, please refer to
2016-AMS-01450-F

Mark H. Allison
Dover Dixon Horne PLLC
425 W. Capitol Ave
Ste 3700
Little Rock, AR 72201
mallison@ddh-ar.com

Dear Mr. Allison:

This is the final response the above referenced FOIA request which sought copies of data packages and any other laboratory records and work papers relating to lab reports AP01200 through AP01217 of samples taken at Kingsley Brothers, LLC farm on or about September 1, 2016.

A search was conducted within the Laboratory and Testing Division of AMS's Science and Technology Program. This office provides lab testing and approval services to facilitate domestic and international marketing of food and agricultural commodities. This search resulted in the identification of 424 pages of responsive records. These pages are being withheld pursuant to exemption (b)(7) (5 U.S.C. §552 (b)(7)).

Exemption (b)(7) of the FOIA protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records: (A) could reasonably be expected to interfere with law enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of law; or (F) could reasonably be expected to endanger the life or physical safety of any individual. The record set is being withheld because it is a part of an open investigation that is currently being conducted by the Enforcement Division of AMS's National Organic Program. This office investigates possible violations of the Organic Foods Protection Act. Disclosure of these records could result in interference in the processing of this investigation.

This information is protected from disclosure by subpart (A).

This concludes processing of your request. You may appeal this response within 45 days from the date of this letter. Any such appeal should be in writing and addressed to:

Administrator
Agricultural Marketing Service
1400 Independence Avenue SW, Stop 0201, Room 3071
Washington, D.C. 20250-0201.

If you decide to file an appeal, please provide specific reasons why you believe modification of the initial action is warranted. To facilitate processing your appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

Sincerely,



Gregory Bridges
FOIA Officer
USDA, Agricultural Marketing Service

EXHIBIT

10

DOVER DIXON HORNE PLLC

Attorneys at Law

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MICHAEL O. PARKER
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JOHN B. PEACE
WILLIAM DEAN OVERSTREET
MICHAEL G. SMITH +
GARY B. ROGERS

JAMES PAUL BEACHBOARD =
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MARK H. ALLISON
RANDALL L. BYNUM++
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WILLIAM C. BIRD III
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OF COUNSEL
GARLAND W. BINNS, JR.

= ALSO LICENSED IN TENNESSEE
+ ALSO LICENSED IN TEXAS
++ ALSO LICENSED IN DISTRICT COLUMBIA
+++ ALSO LICENSED IN GEORGIA
++++ ALSO LICENSED IN ILLINOIS

April 14, 2017

 MERITAS LAW FIRMS WORLDWIDE

EMAIL: AMS.FOIA@AMS.USDA.GOV

**FEDERAL EXPRESS TRK #: 778901812735
CERTIFIED US MAIL/RETURN RECEIPT REQUESTED
TRK #: 70023150000594536628**

Administrator
USDA, Agricultural Marketing Service
1400 Independence Avenue, SW
Stop 0201, Room 3071
Washington, D.C. 20250-0201

**FEDERAL EXPRESS TRK #: 778901875523
CERTIFIED US MAIL/RETURN RECEIPT REQUESTED
TRK #: 70023150000594536635**

Mr. Gregory Bridges
FOIA Officer
USDA, Agricultural Marketing Service
1400 Independence Avenue, SW
South Building, Room 3943
Stop 0202
Washington, DC 20250-0273

Re: Freedom of Information Appeal – Records Relating to NOPC-305-16, NOPC-459-16 and USDA’s November 23, 2016 Proposed Revocation of Certification for Kingsley Brothers LLC (FOIA Request No. 2017-AMS-01450-F)

Dear Sir or Madam:

This firm represents Mr. Kiman Kingsley, Ms. Darlene Kingsley and Kingsley Brothers, LLC (collectively herein the “Kingsleys”) in connection with the U.S. Department of Agriculture (“USDA”) Agricultural Marketing Service’s (“AMS”) November 23, 2016 letter proposing to revoke Kingsley Brothers LLC’s certification under the National Organic Program (“NOP”). The Kingsleys, through counsel, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), hereby appeal the decision of AMS to withhold data packages and other laboratory records and work papers relating to lab reports AP01200 through AP01217 of samples taken at

Exhibit 10

USDA/AMS Administrator, and
Mr. Gregory Bridges
April 14, 2017

Kingsley Brothers, LLC farm on or about September 1, 2016, all said records are related to complaints NOPC-305-16 and NOPC-459-16, and AMS' November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC ("AMS Records"). The lab test reports AP01200 through AP01217 were previously disclosed to the Kingsleys, and the request that is the subject of this FOIA appeal simply sought copies of the laboratory work papers and data compiled during those tests – data that is necessary to validate the test results that have already been disclosed by USDA.

By letter dated December 14, 2016, the Kingsleys informally sought information from AMS in order to properly respond to the proposed revocation. A copy of the Kingsleys' informal request is attached as Exhibit A.

By letter dated December 14, 2016, addressed to Mr. Carl-Martin Ruiz, Director, Office of Adjudication/USDA, the Kingsleys, through FOIA, requested copies of all records relating to complaints NOPC-305-16 and NOPC-459-16 to the Agricultural Marketing Service, U.S. Department of Agriculture, and all records relating to USDA's November 23, 2016 proposed revocation of certification for Kingsley Brothers LLC. This request was assigned FOIA tracking number 2017-AMS-01169-F. A copy of the Kingsleys' FOIA request is attached as Exhibit B.

By letter dated January 10, 2017, addressed to Mr. Roger Simonds, Laboratory Chief, National Science Laboratories, the Kingsleys formally sought laboratory data packages related to laboratory reports AP01200 through AP01217 and other laboratory records and work papers relating said test reports. A copy of the Kingsleys' formal request is attached as Exhibit C.

By email dated January 12, 2017, addressed to Mr. Mark Allison, Mr. Roger Simonds informed the Kingsley's counsel that Mr. Allison's January 10, 2017 letter requesting certain laboratory records would be treated as a formal FOIA request by AMS. This request was assigned FOIA tracking number 2017-AMS-01450-F. A copy of email dated January 12, 2017 is attached as Exhibit D.

By email dated January 12, 2017, Jewell Little, Senior FOIA Analyst, USDA/AMS, informed the Kingsleys' counsel that AMS received the Kingsleys' FOIA request made to Mr. Simonds and assigned it tracking number 2017-AMS-01450-F. A copy of Senior Analyst Little's email is attached as Exhibit E.

By letter dated March 2, 2017, Gregory Bridges, FOIA Officer, USDA/AMS, informed the Kingsleys' counsel that AMS was withholding all responsive records entirely in FOIA Request 2017-AMS-01450-F. Specifically, Mr. Bridges' letter stated that within the responsive record set, AMS withheld 424 pages of responsive records because the record set is part of an open investigation that is currently being conducted by the Enforcement Division of AMS' National Organic Program and the records are protected from disclosure pursuant to exemptions provided in 5 U.S.C. § 552(b)(7)(A). A copy of Mr. Bridges' letter is attached as Exhibit F.

USDA/AMS Administrator, and
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The Kingsleys hereby appeal AMS' determination to withhold the AMS Records requested by the Kingsleys that were withheld in FOIA Request 2017-AMS-01450-F pursuant to 5 U.S.C. § 552(b)(7)(A).

Background

Kingsley Brothers LLC is a certified organic farm operated by Kiman and Darlene Kingsley, with NOP ID Number 9579011700. Their original NOP certification date was June 28, 2002, and they have remained certified continually since that time. The Kingsleys are certified for production and sale of organic corn, soybeans, winter wheat, and grass and currently have over 2,800 certified acres in production. Their certifying agent is EcoCert ICO, LLC, whose USDA ID number is 90117. Since 2002 the Kingsleys have operated a successful organic farm operation under the National Organic Program, both in practice and financially. The Kingsleys have never been fined, penalized or sanctioned under the NOP program in the almost fifteen years they have been operating as a successful organic producer.

AMS's November 23, 2016 letter (Exhibit G) proposes to revoke the Kingsleys NOP certification based on a complaint(s) received by NOP alleging that the Kingsleys aerielly applied prohibited substances to its organic crops, in violation of the Organic Food Production Act of 1990 ("OFPA") and the USDA organic regulations. The USDA letter further alleges that analytical testing of the samples collected by USDA and the Kingsleys certifying agent, EcoCert ICO LLC, showed that two (2) soybean tissue samples contained levels of the prohibited substance zeta-cypermethrin, and soil test results for three (3) fields showed traces of the prohibited substance Atrazine.

Kingsley Brothers LLC, Kiman Kingsley and Darlene Kingsley deny the allegations contained in AMS's November 23, 2016 letter; specifically, they deny that the Kingsleys, or an affiliated entity or person, aerielly applied prohibited substances to the Kingsleys fields.

The Kingsleys appealed AMS' proposed revocation by letter dated December 19, 2016 (Exhibit H), which was acknowledged by letter from AMS dated December 29, 2016 (Exhibit I). Pursuant to an email from Dr. Jennifer Tucker, AMS, dated December 30, 2016, the Kingsleys were given until January 31, 2017 to provide documentation and other materials in support of their appeal. (Exhibit J).

The Kingsleys sought additional information from AMS, both informally and through the federal Freedom of Information Act, in order to properly respond to the proposed revocation and support their appeal. See Exhibit A, B and C.

The Kingsleys object to USDA's failure to provide the requested information in a timely manner. The Kingsleys' ability to adequately respond to the proposed revocation potentially impacts the Kingsleys certification under the National Organic Program. This certification is a valuable right that is protected by law. While the alleged violations are limited to certain fields, AMS's proposed action – to revoke the Kingsleys NOP certification – potentially affects the

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Kingsleys entire operation. Consequently, USDA's failure to timely provide the requested information in order to protect that right violates the Kingsleys' right to due process, irrespective of the provisions of the federal Freedom of Information Act. Consequently, USDA should have provided the requested information to the Kingsleys instead of invoking the exemptions and exceptions of the Freedom of Information Act as an improper shield. USDA's failure to provide the requested information has adversely affected the Kingsleys' ability to properly respond to the proposed revocation.

AMS Records Relating to Kingsleys' Requests Are Not Exempt From Disclosure Under FOIA

AMS has relied upon one (1) FOIA exemption to justify its decision to withhold records requested by the Kingsleys; Exemption 7(A). See Exhibit E. AMS bears the burden of *demonstrating* that the claimed exemption applies. 5 U.S.C.S. § 552(a)(4)(B).

As you know, the underlying congressional objective in enacting FOIA was to facilitate access to and broad disclosure of government records. *FBI v. Abramson*, 456 U.S. 615, 621 (1982). *See also Department of Air Force v. Rose*, 425 U.S. 352, 360 (1976) (FOIA reflects "a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language"). It is well-settled law that the FOIA exemptions are to be narrowly construed with all doubts resolved in favor of disclosure. *Abramson*, 456 U.S. at 630, *Department of the Air Force*, 425 U.S. at 361. The agency resisting disclosure bears the burden of establishing the exempt status of the requested material, 5 U.S.C. § 552(a)(4)(B), and is required to present a detailed justification for nondisclosure in order to carry its burden.

As is abundantly clear from review of the statutory language of FOIA and the relevant case law, the exemption cited by AMS does not justify AMS' complete denial of access to the requested agency records.

1. Exemption (b)(7)(A).

AMS withheld entirely the records that pertain to Kingsleys' FOIA request for laboratory data packages, records and work papers pursuant to exemption 7(A), which provides that disclosure of "records or information compiled for law enforcement purposes" is not required to the extent that production of such material "could reasonably be expected to interfere with law enforcement proceedings." 5 U.S.C. § 552(b)(7)(A).

First, in the Eighth Circuit, where the Kingsleys live and operate Kingsley Farms LLC, the court has stated that to sustain the agency's burden of showing documents were properly withheld under exemption 7(A) the government had to establish that the records were investigatory records compiled for law enforcement purposes and that production would interfere with pending enforcement proceedings. *In re Dep't of Justice*, 999 F.2d 1302, 1307 (8th Cir. 1993). "To satisfy its burden with regard to Exemption 7(A), the government must define functional categories of documents; it must conduct a document-by-document review to assign

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documents to proper categories; and *it must explain to the court how the release of each category would interfere with enforcement proceedings.*" *Id.* at 1309-10 (Emphasis added). The classification should be clear enough to permit a court to ascertain how each category of documents, if disclosed, would interfere with the investigation. *Id.* at 1310. *Schiller v. N.L.R. B.*, 296 U.S. App. D.C. 84, 964 F.2d 1205, 1209 (D.C. Cir. 1992) (the agency owes the requester its reasons so that its claims of exemption can be fairly tested).

AMS failed to provide sufficient, if any, information to demonstrate how the laboratory records withheld from the Kingsleys FOIA request were compiled for law enforcement purposes and how such records would interfere with an investigation. AMS merely states in its March 2, 2017 FOIA determination letter (Exhibit E) that "[t]he record set is being withheld because it is a part of an open investigation that is currently being conducted ... [d]isclosure of these records could result in interference in the processing of this investigation." (Emphasis added). AMS' justification must include more than "barren assertions" that a document is exempt. *Madel v. United States DOJ*, 784 F.3d 448, 452 (8th Cir. 2015), *Missouri Coal. for Env't Found. v. U.S. Army Corps of Eng'rs*, 542 F.3d 1204, 1210 (8th Cir. 2008) (boilerplate or conclusory affidavits, standing alone, are insufficient to show that no genuine issue of fact exists as to the applicability of a FOIA exemption).

After the Kingsleys appealed the AMS proposed revocation on Dec. 19, 2016 (Ex. G), AMS specifically invited the Kingsleys to provide "any additional information" that supported their appeal of AMS's revocation decision. As a result, the Kingsleys on Jan. 30, 2017 submitted a twenty-five page statement and thirty (30) exhibits in AMS Appeal Docket APL-012-017. This submission included a report by Dr. Gus Lorenz, Ph.D., a copy of which is attached hereto as Exhibit K. In Dr. Lorenz's report he states:

In developing the opinions outlined in this report, the documents that I have reviewed include, but are not limited to: The proposed revocation of certification sent by USDA to Mr. and Mrs. Kingsley, laboratory reports of analytical test results of plant tissue and soil samples collected at the Kingsley farms and analyzed at the National Science Laboratories . . . I have also requested the USDA labs full Level IV data package in order to conduct my own independent quality assurance/quality control data validation review. However, at the time I prepared my report, I have not yet received this information. I intend to supplement this report after I receive this information.

USDA through its AMS laboratory had already disclosed the laboratory test result reports themselves, and the Kingsley's FOIA request simply seeks factual information necessary to validate those test results. USDA has not explained how release of the validation data would interfere with an investigation when the test results themselves have already been disclosed. Furthermore, USDA/AMS itself invited the Kingsleys to submit information in support of their appeal; thus the Kingsleys' information is necessary to complete USDA's enforcement investigation. However, the Kingsleys were unable to submit a complete response - as explained in Dr. Lorenz's report - because USDA/AMS refused to provide the laboratory data packages

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and supporting documents. USDA/AMS's failure to provide the requested documents to the Kingsleys itself constitutes interference since USDA/AMS's investigation/appeal cannot be completed until the Kingsleys and their expert have had the opportunity to review and submit comments on the AMS laboratory quality control procedures and other matters relating to the validity and accuracy of the laboratory tests that form the basis of USDA/AMS's proposed revocation. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 235, 98 S. Ct. 2311, 2323 (1978) (where an agency fails to demonstrate that the documents sought would jeopardize any future law enforcement proceedings exemption 7 (A) would not provide protection to the agency's decision to withhold documents).

Second, one of the primary purposes of exemption 7 was "to prevent harm (to) the Government's case in court ... by not allowing litigants earlier or greater access to agency investigatory files than they would otherwise have...." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224, 98 S. Ct. 2311, 2317, 57 L. Ed. 2d 159 (1978). However, once enforcement proceedings are instituted the party who is the target of the enforcement proceedings will be able to obtain access to such exempt information as is discoverable through the normal pre-trial discovery channels. Moreover, once enforcement proceedings are either concluded or abandoned, exemption 7(A) will no longer apply to prevent disclosure. *Id.* at 235, see also *Barney v. IRS*, 618 F.2d 1268, 1273-74 (8th Cir. 1980).

AMS relied on exemption 7(A) claiming "an open investigation is currently being conducted," however in its November 23, 2016 proposed revocation letter, AMS states that "[t]he NOP proposes to revoke the organic certification of Kingsley Brothers LLC, effective 30 days from receipt of this letter." Clearly AMS conducted an investigation and determined to take action against the Kingsleys; a decision made by AMS that negatively and substantially impacts the Kingsleys and that the Kingsleys have appealed pursuant to applicable laws and regulations. Indeed, USDA has opened a separate docket for the Kingsleys appeal, APL-012-17 in which AMS's proposed notice of revocation "will be reviewed and decided by persons not involved with the action being appealed." (Ex. H). This docket is separate from the investigations that USDA/AMS conducted in NOPC-305-156 and NOPC-459-16 which the Kingsleys appealed. (Ex. G). The Kingsleys must presume, therefore, that AMS' investigation is complete and that a decision was made to revoke the Kingsley's NOP certification, therefore, exemption 7(A) is not applicable.

Segregable Records

Assuming the records requested by the Kingsleys are found exempt under a specific subsection of 5 U.S.C. § 552(b), AMS still has a duty to provide segregable portions of the exempt records. 5 U.S.C. § 552(b) provides in part:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record,

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unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

An agency may not automatically withhold an entire document when some information is exempt, but rather must provide "[a]ny reasonably segregable portion." *Madel v. United States DOJ*, 784 F.3d 448, 453 (8th Cir. 2015), quoting *Missouri Coal. for Env't Found. v. U.S. Army Corps of Eng'rs*, 542 F.3d 1204, 1209 (8th Cir. 2008). Each document consists of "discrete units of information," all of which must fall within a statutory exemption in order for the entire document to be withheld. *Missouri Coal.*, 542 F.3d at 1211, quoting *Billington v. U.S. Dep't of Justice*, 233 F.3d 581, 586 (D.C.Cir.2000). The agency has the burden to show that exempt portions are not segregable from non-exempt portions. *Madel* at 453.

In response to the Kingsleys' FOIA request, AMS failed to disclose segregable portions of the alleged exempt documents or even demonstrate whether portions of alleged exempt documents are segregable or not.

Conclusion

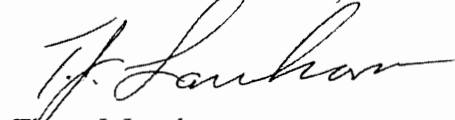
The Kingsleys hereby appeal AMS' determination to withhold the AMS Records requested by the Kingsleys that were entirely withheld pursuant to 5 U.S.C. § 552(b)(7)(A).

For the reasons set forth above, AMS should order disclosure of the requested AMS Records in the interest of avoiding unnecessary litigation. In the event that any portions of the requested records are withheld, AMS at a minimum should specifically identify any portions withheld, provide an index or similar statement of the scope of the material withheld, and specify the exemptions upon which the denial on appeal is based.

Pursuant to the requirements of FOIA, we request a response to this appeal within twenty (20) working days. In light of the proposed revocation of Kingsleys' NOP certification, and the already significant delay in receiving the requested materials I urge you to contact me by telephone if you have any questions or if I can facilitate your review, or the expeditious release of the requested records, in any way.

Sincerely,

DOVER DIXON HORNE, PLLC



Thane J. Lawhon

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Enclosures

cc: Mr. Kiman Kingsley
Bruce Copeland, Esq.
Mark Allison, Esq.