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14 November 2002

Mr. Michael Marquis
Acting FOIA Officer
USDA, APHIS, LPA, FOIA
4700 River Road, Unit 50
Riverdale, MD 20737-1232
CC: Via Fax (301) 734-5941

A. FREEDOM OF INFORMATION ACT REQUEST

In accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and pursuant to the United States Department of Agriculture (USDA) implementing regulations, 7 C.F.R. Part 1, the Center for Food Safety (CFS), requests a copy of the following documents, or access to them for inspection or duplication, that are in the possession of the USDA, Animal Plant and Health Inspection Service.

1. The entire file, updated as to the date of your response to this request, containing all information concerning USDA, APHIS investigations and inspection of all field testing of genetically engineered crop varieties conducted by ProdiGene, Inc. This should include, but not be limited to, all documents, correspondence, reports, letters, memoranda and all other data, discussing or in anyway addressing all USDA investigations and actions regarding the following USDA actions:

(A). The USDA quarantining of 500,000 bushels of soybeans in Nebraska because of the presence of material from genetically engineered corn varieties developed by ProdiGene, Inc.; and

(B). The USDA actions of ordering 155 acres of ProdiGene and other corn in Iowa to be pulled up and incinerated as reported to have occurred in September of 2002.

In regard to the two above mentioned incidents, this response should also include, but not be limited to, the specific identity of the corn varieties, the name of the drug or chemical being grown in these genetically engineered corn varieties, the exact location of the

incidents, all records of transport, shipment and/or destruction of the crops involved, and all contingency plans filed or otherwise provided by USDA and/or ProdiGene, Inc.

2. In regard to the two above mentioned incidents, requesters also seek the entire file, updated as to the date of your response to this request, containing all correspondence between USDA, APHIS employees and, including but not limited to, ProdiGene, Inc., the Biotechnology Industry Organization, the Grocers Manufacturers Association, and the National Food Processors Association. This should include, but not be limited to, all documents, correspondence, reports, letters, memoranda and all other data, discussing or in anyway addressing all USDA investigations and actions regarding the following USDA actions

As mandated under FOIA, this request encompasses documents in the broadest sense of the term. This includes, but is not limited to, all memoranda, letters, correspondence, notes, petitions, records of conversations (phone, person-to-person, electronic mail, and other), meeting records, and other data. This material is requested regardless of the recording media used, be it manually recorded or mechanical.

If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under Vaughn v. Rosen, 484 F.2d 820(D.C. Cir. 1973).

B. EXPEDITED STATUS REQUEST

This request is a matter of great concern to the Center for Food Safety, and your prompt and complete report would be appreciated. At a minimum, and as required by 5 U.S.C. § 552(a)(6)(A)(I), an agency response is expected within twenty days of the date of receipt of this request. However, pursuant to 7 C.F.R. § 1.9, the Center for Food Safety requests that this FOIA request be placed in the expedited processing track. The material requested should be classified in this track because the incidents involve reasonably could be expected to pose threats to the human health of the public, and an urgency to inform the public.

More specifically, circumstances in which lack of expedited treatment could reasonably expected to poses imminent threats to individuals physical safety require use of the expedited track. 7 C.F.R. § 1.9(b)(1). In this case, the food supply has been potentially contaminated with experimental pharmaceutical products including gp120 (an experimental AIDS vaccine), aprotinin (a blood clotting pharmaceutical, TGEV (an animal hepatitis vaccine) and/or avidin (an industrial enzyme). The appearance of these materials in the human food supply could cause unknown threats to human physical safety. Disclosure of the material will assist in the public's ability to be informed about this threat and to take any steps necessary to avoid coming in contact with these materials via the food supply.

Additionally, the urgency to inform the public about actual government activities is also an important factor in placing a request in the expedited tracking category. 7 C.F.R. § 1.9(b)(2) As USDA regulations state: "‘Urgency’ contemplates that the information has a particular value that will be lost if not disseminated quickly. *Ordinarily this means a breaking news story of general public interest.*" Id.

(Emphasis added). Clearly, the material requested in this request involves a breaking news story. National media have reported on the two incidents mentioned in this request on both November 13 and 14, 2002. These media stories have garnered significant public interest in the facts of the situation and the government's involvement in these cases. CFS and other interested non-profit organizations have received numerous calls from the public and media seeking further details on the events concerning ProdiGene, Inc. Expedited release of the material will assist the public in understanding the immediate situation and full facts surrounding this breaking news story.

C. FEE WAIVER JUSTIFICATION

Pursuant to USDA implementing regulations, the Center for Food Safety (CFS) seeks a waiver for all fees accompanying this FOIA request for the following reasons:

The records requested contain data that relates to ongoing United States Government sponsored food safety oversight programs. These records would reveal to the public the relationship between private corporations and the United States government that is not readily available to the public. Additionally, materials received from this request would explain reasoning used by the USDA during its decisionmaking process and actions designed to protect the public health.

The CFS is a 501(c)3 non-profit organization which provides information to the public concerning the social, environmental, economic, political and ethical concerns raised by the implementation of current food technologies and technical systems. In addition, the CFS publishes information concerning recent developments in the health field and provides the general public with information concerning all aspects of new food technologies. Therefore, the data that will be supplied by this FOIA request is necessary to this organizational function.

Furthermore, the response to our request will give the public substantial, new information concerning the functions undertaken by the USDA. The use of this information will help the CFS, a non-profit organization, further its function as a disseminator of information on recent health care issues.

Finally, in no way will this information be used in any commercial practices. The request for this information does not relate to use for business, trade or profit.

In the past, CFS has received fee waivers for the search and release of materials similar in nature to those contained in this request.

Inasmuch as the CFS is making this inquiry in the course of carrying out its education and other charitable public interest activities, we request that charges for searching and duplicating be waived. CFS has been granted fee waivers by the USDA for fulfillment of numerous FOIA requests similar to this matter. Should there be any difficulty with the fee waiver please contact the CFS by phone and do not delay processing or answering this request as CFS agrees to pay appropriate fees should a fee waiver not be granted. Additionally, CFS will provide any and all additional material requested by the agency to support its request for a fee waiver.

Thank you for your immediate attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Mendelson, III", with a long horizontal flourish extending to the right.

Joseph Mendelson, III
Legal Director