

April 7, 2004

To National Organic Standards Board (NOSB) Members:

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Re: Complaint Against Certified Operation and Certifier for Violation of Organic Foods Production Act and NOP Regulations

We are writing with respect to the above Complaint, filed with the U.S. Department of Agriculture on February 18, 2004. That Complaint raised the issue of Kim (Burton) Dietz's role in the interpretation of regulations and trade group policies relating to hydrosol water extracts. For the information of NOSB members, we are enclosing copies of minutes of meetings held by OTA's Personal Care Task Force on March 7, 2003; May 16, 2003; and September 5, 2003. Ms. Dietz has recently attempted to rewrite the record of the March 7, 2003 meeting in an effort to minimize her dual—and potentially conflicting-- roles with NOSB and Bayliss Ranch. Enclosed are copies of two letters, to this effect, from Ms. Dietz to the Task Force, one dated February 27, 2004 and a second one dated February 29, 2004.

In these letters, Ms. Dietz's primary goal is to have OTA rewrite the March 7 minutes to represent that Ms. Dietz at no point addressed the Task Force formally in her capacity as a member of the NOSB. In fact, we are informed by various attending Task Force members, that contrary to Ms. Dietz's February 27 letter, Ms. Dietz did speak at that March 7, 2003 meeting in part specifically in her capacity as a member of the NOSB. She was introduced to the meeting by OTA President and Task Force Chair Phil Margolis as an NOSB member who would be advising the Task Force in that capacity. Ms. Dietz did qualify that she was primarily attending the meeting as an individual, but she also explicitly and formally "put on" her NOSB hat a few times. Further, she did not reveal at that meeting, at any time, that she was in fact a paid consultant to Bayliss Ranch.

According to the recollections of those present at that March 2003 meeting, Ms. Dietz in part formally advised the Task Force specifically in her NOSB capacity, going so far as to gesture, physically, to indicate when she was "putting on" her "NOSB hat" at various points. At other times, including when discussing hydrosol water extracts and NOP regulations, Ms. Dietz stated she was speaking as an "individual" and "taking off" her "NOSB hat" and "putting on" her "individual hat." Ms. Dietz indicated she had been "working with" Bayliss Ranch on the hydrosol water extract issue, which OCA and other Task Force members understood to mean that Bayliss Ranch had made inquiries of Ms. Dietz about how NOP regulations treated hydrosol water extracts. Ms. Dietz speaking as an "individual" in any event addressed the Task Force with the same authority as she did as an NOSB member when instructing the Task Force about how to broadly approach and structure personal care standards for presentation to the NOP and NOSB. The March 7 minutes demonstrate how Ms. Dietz lectured and instructed the Task Force in her NOSB capacity at the beginning of the meeting:

Kim: National Organic Program is strapped in terms of resources to review materials. Look at materials differently than had been done with food. Look at allowed materials – get it as inclusive as possible. Look at labeling. Don't look to having NOP and NOSB do materials review. Personal Care standards would be new rule making.

Task Force members presumed Ms. Dietz as an “individual” was participating out of professional and personal interest and courtesy. As Ms. Dietz states in her attached Feb. 29th letter:

Today, my involvement in the standards development work of this committee is not one of “financial gain” but rather arises [out of] a long-term personal commitment to the OTA and the organic industry.... As many others have, I have devoted many hours to the unpaid work of this industry.

This was what OCA and other Task Force members believed to be the case. Ms. Dietz’s statement, at the time, that she was “working with” Bayliss Ranch implied only professional courtesy and not paid advocacy especially in light of Ms. Dietz’s instructions to the task force wearing her “NOSB hat” versus “individual hat.” Of course, the assertions of Ms. Dietz as a concerned “individual” who also happens to be an NOSB member who instructed the Task Force in that latter capacity carried much more weight than had she clearly stated she was being paid as a consultant and advocate. See the attached June 11, 2003 letter from OTA Task Force member Robin Block of Wyndmere Naturals to the OTA’s Task Force in this regard. The OTA’s minutes of the May 16 Austin meeting summarizes Ms. Dietz’s advocacy as follows:

She reported on the definition of hydrosol from the CTFA dictionary: An aqueous solution of the odiferous principles distilled from the flowers of (Latin name); it can also pertain to other portions, i.e. leaves, flowers, and other parts of the plant. She also quoted the Soil Association definition which she had just received.

Kim’s interpretation of regulatory background of hydrosols: FDA has a definition of a processing aid or incidental ingredient under which steam, including distillation, is covered. She referred to 21 CFR L.2.2. It is her opinion that steam condensate in hydrosol production falls under that definition. The use of steam is only for its technical effects; it does not significantly increase the concentration of the product.

The INCI name is one name, and added water is not a part of it. This is in distinction to floral waters, in what water is listed separately. See the NOP website “Q and A” entry of May 3. The Soil Association distinguishes between floral waters and hydrosols.

She advocated using both definitions of hydrosols; the Soil Association’s is more in layman’s terms, the other is more technical. There is already a standard of identity; a lab has validated that the constituents of a plant are found in the hydrosol in the same percentage as in the plant.

Ms. Dietz did not clearly disclose her consulting relationship with and paid advocacy for Bayliss Ranch’s hydrosol water extracts until soon after the May 16, 2003

meeting. The OTA's leadership inserted a statement before the summary of Ms. Dietz's comments above in the May 16 minutes that misrepresents that Ms. Dietz had in fact clearly stated her paid advocacy for Bayliss Ranch's hydrosol water extracts at the meeting: "Kim Burton stated that she was speaking only as an individual consulting with Bayliss Ranch." However, Ms. Dietz herself points out in the attached letter Feb. 27th that this is inaccurate:

May 16, 2003: OTA PCTF meeting. I introduced myself summarizing my "Various hats" in the industry and told this group I was not there representing NOSB, USDA, or Smuckers. I said I was there as an individual to participate in the discussions of the NOP rules by the group, and to share my experience with the regulations. Prior to the hydrosol discussion I said I was working with Bayliss Ranch. The minutes incorrectly state "as a consultant" however I said "working with".

Ms. Dietz did indirectly and subsequently directly disclose she was a paid consultant and advocate via the Task Force's list serve soon after the May 16 meeting, and also clearly stated she was a paid consultant at the September 5 meeting.

Also for NOSB members' review, enclosed are the miscellaneous addendums submitted to the NOP in regards to the Complaint. The Complaint, sent directly to you by the OCA (<http://www.organicconsumers.org/bodycare/nop/nopcomplaint.PDF>), substantively addresses Ms. Dietz's misrepresentations of relevant NOP and FDA regulations regarding hydrosol water extracts on behalf of her client, Bayliss Ranch.

Sincerely yours,

Joseph E. Sandler
Counsel for
Organic Consumers Association

Primary Enclosures:

Minutes of OTA Personal Care Task Force Meeting, March 7, 2003
Minutes of OTA Personal Care Task Force Meeting, May 16, 2003
Minutes of OTA Personal Care Task Force Meeting, September 5, 2003
Letter from Kim Dietz to OTA Personal Care Task Force, February 27, 2004
Letter from Kim Dietz to OTA Personal Care Task Force, February 29, 2004
Letter from Robin Block to OTA Personal Care Task Force, June 11, 2003

Secondary Enclosures (Addendums to Complaint):

Initial OCA Letter to USDA NOP, February 20, 2004
Letter from Gay Timmons and OCA's Response, February 27, 2004
OCA Letter to USDA NOP re: March 6 OTA Task Force Vote, March 11, 2004
Avalon's CEO Mark Egide's Letter to OCA and OCA's Response, March 24, 2004

Update of Last Name Changes and Spellings within Complaint, March 29, 2004
OCA Letter to USDA NOP re: Text of March 6 OTA Task Force Motions, April 7, 2004

cc: (with primary but not secondary enclosures):
Eileen Broomell, Compliance Officer, USDA NOP
William Friedman, Esq., Counsel for Bayliss Ranch
CEO--Quality Assurance International*

*QAI was recently purchased by the company NSF International.
See: http://www.qai-inc.com/pdfs/QAI_acquisition.pdf