

BEFORE THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

<p>Farm to Consumer Legal Defense Fund, <i>et al</i>,</p> <p>Plaintiffs,</p> <p>V</p> <p>U.S. Department of Agriculture</p> <p>and</p> <p>Michigan Department of Agriculture Director Don Koivisto,</p> <p>Defendants.</p>	<p>Case No. 1:08-cv-01546-RMC</p>
--	-----------------------------------

**DIRECTOR KOIVISTO'S OPPOSITION TO PLAINTIFFS'
MOTION TO SUPPLEMENT THE ADMINISTRATIVE RECORD**

Michael A. Cox
Attorney General

James E. Riley (P23992)
First Assistant
rileyje@michigan.gov

Danielle Allison-Yokom (P70950)
Assistant Attorney General
allisonyokomd@michigan.gov

Attorneys for Defendant Don Koivisto,
Director of Michigan Department
of Agriculture
Environment, Natural Resources,
and Agriculture Division
525 West Ottawa Street
6th Floor Williams Building
Lansing, MI 48913
(517) 373-7540

Dated: May 12, 2009

It is Defendant Director Koivisto's understanding that the United States Department of Agriculture (USDA) compiled a two part administrative record. The first part of the administrative record relates to its issuance of the July 2007 final rule and the second part of the administrative record relates to the agreements between the USDA and the Michigan Department of Agriculture (MDA) regarding the TB eradication program. These records were compiled and filed with the court in response to Plaintiffs' claims that the USDA violated the Administrative Procedures Act (APA).

I. MDA's Opposition to Plaintiffs' Motion to Supplement the USDA's Administrative Record.

Defendant Director Koivisto adopts and incorporates by reference the USDA's Opposition to Plaintiffs' Motion to Supplement the Administrative Record.

II. There is no administrative record of actions taken by Defendant Director Koivisto or the MDA to Supplement.

Defendant Director Koivisto has not filed an administrative record with the Court. Unlike their claims against the USDA, Plaintiffs have not alleged that Director Koivisto has violated the APA nor is the APA applicable to state governments.¹ Moreover, there is no requirement that Director Koivisto file an administrative record based on the claims Plaintiffs have filed against him. Michigan's Revised Judicature Act provides the process by which orders of a Michigan agency may be challenged:

An appeal shall lie from any **order**, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court.²

¹ *Kurst Env'tl. Educ. & Prot., Inc. v EPA*, 475 F.3d 1291, 1298 (D.C. Cir. 2007).

² MICH. COMP. LAWS § 600.631 (emphasis added).

Under the Michigan Court Rules, appeals of an agency order must be taken within 21 days of entry of the order appealed from.³ Had Plaintiffs properly challenged the March 2007 Order, Director Koivisto would have, in accordance with the Michigan Court Rules, filed the administrative record of the agency decision including "all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency or officer."⁴

Conclusion

For these reasons, and the reasons set forth in the USDA's Opposition to Plaintiffs' Motion to Supplement the Administrative Record, the Court should deny Plaintiffs' Motion for Leave to File Supplement to the Administrative Record.

Respectfully submitted,

Michael A. Cox
Attorney General

/s/ James E. Riley

James E. Riley (P23992)
First Assistant
rileyje@michigan.gov

/s/ Danielle Allison-Yokom

Danielle Allison-Yokom (P70950)
Assistant Attorney General
allisonyokomd@michigan.gov

Attorneys for Defendant Don Koivisto,
Director of Michigan Department
of Agriculture

Environment, Natural Resources,
and Agriculture Division
525 West Ottawa Street
6th Floor Williams Building
Lansing, MI 48913
(517) 373-7540

Dated: May 12, 2009

If: farm to consumer defense/2008-3021908b/MDA's Opposition to Pl's Motion to Sup Rec

³ MICH. CT. R. 7.104 and 7.101.

⁴ MICH. CT. R. 7.210(A)(2)