

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED  
2011 JUL -7 P 3:42  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

E-filing

*C10-428 CRB*

PETER TOWNSLEY

DEFENDANT(S).

## SUPERSEDING INDICTMENT

18 U.S.C. § 1326 - Mail Fraud Conspiracy  
18 U.S.C. § 1341 - Mail Fraud  
18 U.S.C. § 2 - Aiding & Abetting

A true bill.

*[Signature]*

Foreman

Filed in open court this 7 day of

July, 2011  
*[Signature]*

**Brenda Tolbert**

NO PROCESS clerk

Bail, \$ 7711

*[Signature]*

**María Elena James**  
United States Chief Magistrate Judge

AO 257 (Rev. 6/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**

BY:  COMPLAINT  INFORMATION  INDICTMENT

SUPERSEDING

**OFFENSE CHARGED**

18 U.S.C. § 1326 - Mail Fraud Conspiracy  
18 U.S.C. § 1341 - Mail Fraud  
18 U.S.C. § 2 - Aiding & Abetting

- Petty
- Minor
- Misdemeanor
- Felony

**E-filing**

**PENALTY:** Mail Fraud Conspiracy: Maximum Prison Term 5 Years; \$250,000 fine; 3 year term of supervised release  
Mail Fraud: Maximum Prison Term 20 Years; \$250,000 fine; 3 year term of supervised release  
Special Assessment: \$100 per count

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

**DEFENDANT - U.S.**

**PETER TOWNSLEY**

DISTRICT COURT NUMBER  
CR 10-0428 CRB

FILED  
2011 JUL - 7 P 3  
RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

FBI & USDA

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a re prosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY  DEFENSE

SHOW  
DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE  
CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person  
Furnishing Information on this form MELINDA HAAG

U.S. Attorney  Other U.S. Agency

Name of Assistant U.S.  
Attorney (if assigned) Susan Badger

**DEFENDANT**

**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

1)  If not detained give date any prior summons was served on above charges

2)  Is a Fugitive

3)  Is on Bail or Release from (show District)

NDCA - San Francisco

**IS IN CUSTODY**

4)  On this charge

5)  On another conviction

Federal  State

6)  Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed?  Yes  No

If "Yes" give date filed

**DATE OF ARREST**

Month/Day/Year

Or... if Arresting Agency & Warrant were not

**DATE TRANSFERRED TO U.S. CUSTODY**

Month/Day/Year

This report amends AO 257 previously submitted

**ADDITIONAL INFORMATION OR COMMENTS**

**PROCESS:**

SUMMONS  NO PROCESS\*  WARRANT

Bail Amount: \_\_\_\_\_

If Summons, complete following:

Arraignment  Initial Appearance

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address: \_\_\_\_\_

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

FILED  
2011 JUL -7 P 3:43  
RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 MELINDA HAAG (CABN 132612)  
2 United States Attorney

3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA E-filing  
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 v. )  
14 PETER TOWNSLEY, )  
15 Defendant. )  
16  
17

No.: CR 10 0428 CRB  
VIOLATIONS:  
18 U.S.C. § 1349 – Mail Fraud Conspiracy  
18 U.S.C. § 1341 – Mail Fraud  
18 U.S.C. § 2 – Aiding & Abetting  
SAN FRANCISCO VENUE

18 SUPERSEDING INDICTMENT

19 The Grand Jury charges:

20 BACKGROUND AND LEGAL FRAMEWORK

21 At all times relevant to this Indictment:

22  
23 1. The defendant, PETER TOWNSLEY, was the founder and president of  
24 California Liquid Fertilizer (“CLF”), a company that sold products represented to be  
25 “organic” fertilizers to farmers throughout California.

26 2. CLF first maintained an office and manufacturing facility in  
27  
28

1 Salinas, California, and in 1999 moved to Gonzales, California, both of which are in the  
2 Northern District of California.

3 3. In 1990, Congress enacted the Organic Foods Production Act of 1990,  
4 (“OFPA”), 7 U.S.C. § 6501 et seq., to establish national standards governing the  
5 production and marketing of certain agricultural products as “organic.” As a result of the  
6 OFPA, the United States Department of Agriculture (“USDA”) established the National  
7 Organic Program (“NOP”) and accompanying regulations, hereafter referred to as the  
8 NOP regulations. 7 C.F.R. Part 205. The NOP regulations went into effect on April 21,  
9 2001.

10 4. The OFPA and NOP regulations established national regulations that  
11 controlled, among other things, the production, certification, and labeling of agricultural  
12 products that were to be marketed as “organic.” The NOP regulations provided that any  
13 agricultural product that was sold, labeled, or represented as “100 percent organic,”  
14 “organic,” or “made with organic [specified ingredients or food group(s)],” must be  
15 produced and handled in accordance with the NOP regulations. 7 C.F.R. § 205.102. The  
16 NOP regulations specifically regulated what materials a grower of “organic” products  
17 was permitted to use, and was prohibited from using, in the production process, including  
18 materials such as fertilizers that were applied to the soil. Such materials were listed in the  
19 NOP regulations in “The National List of Allowed and Prohibited Substances,” also  
20 known as “the National List.” 7 C.F.R. §§ 205.600 - 205.607.

21 5. After the enactment of the NOP regulations, a grower who wished  
22 to market its agricultural products as “organic,” was required to have the growing  
23 operation certified as complying with the NOP regulations. Such certifications were  
24 conducted on a regular basis by USDA-accredited certifying agents, also known as  
25 certifiers. Certifiers such as California Certified Organic Foundation (“CCOF”) were  
26 accredited by the USDA through a strict application process. A grower seeking to receive  
27

1 or maintain “organic” certification was required to, among other things, fully comply with  
2 the NOP regulations pertaining to production; maintain records of and disclose each  
3 material used in the production process, including fertilizers applied to the soil; and  
4 permit certifiers to conduct on-site inspections with complete access to production  
5 operations.

6 6. It took a minimum of three years for a farm to become certified as  
7 complying with NOP regulations because the land on which the product was being grown  
8 was required to be free of substances prohibited by the National List for at least three  
9 years.

10 7. The California Department of Food & Agriculture (“CDFA”) was  
11 responsible for licensing and registering distributors and manufacturers of fertilizer  
12 materials in California. The CDFa required all fertilizer material to be appropriately and  
13 accurately labeled. On February 6, 2004, the USDA approved California’s State Organic  
14 Program under the NOP, thereby permitting the state, through the CDFa, to administer  
15 and enforce NOP regulations.

16 8. The Organic Materials Review Institute (“OMRI”) was a non-profit  
17 organization that provided independent review of materials and processes to determine  
18 their suitability for use in the production, processing, and handling of “organic” products.  
19 A manufacturer of materials designed to be used by growers in “organic” production,  
20 such as a fertilizer manufacturer, could apply to OMRI to have OMRI review the  
21 product’s formulation in order to assure growers that the product complied with standards  
22 for “organic” production. After enactment of the NOP regulations, OMRI reviewed such  
23 products and their ingredients in order to determine whether they complied with the  
24 National List. If OMRI determined that the product and its formulation fully complied  
25 with the National List, and thus NOP regulations, it would place the product on its  
26  
27

1 approved Brand Name Products List. The manufacturer was thereafter permitted to  
2 market the product as "OMRI Listed" and include OMRI's trademarked seal on the  
3 product's label. Growers who sought to become certified to market their products as  
4 "organic" would rely on OMRI listing to ensure that the products they were using  
5 complied with the NOP regulations. In determining whether to certify a grower as  
6 complying with NOP regulations, a certifier such as CCOF could check to see if a  
7 product, such as a fertilizer, used by a grower was listed as approved by OMRI.  
8

9 9. To have a product such as a fertilizer placed on OMRI's list of approved  
10 Brand Name Products, a manufacturer such as CLF was required to submit an application  
11 to OMRI fully disclosing all the ingredients in the product and the manner in which it was  
12 manufactured or produced. Once a product was approved by OMRI, the manufacturer of  
13 the product was required to renew its application every year in order to maintain the  
14 OMRI listing. In doing so, the manufacturer was required to disclose and certify, among  
15 other things, whether anything had changed in the formulation of the product. OMRI also  
16 required that when a manufacturer reformulated an OMRI Listed product (adding or  
17 removing any ingredients or processes), the changes had to be reported to OMRI  
18 immediately.

19 10. Both before and after enactment of the NOP regulations and the National  
20 List, ammonium chloride and ammonium sulfate were materials that were not permitted  
21 to be used in the production of agricultural products to be marketed as "organic."

#### 22 SCHEME TO DEFRAUD

23 11. Beginning at a time unknown to the grand jury, but no later than April  
24 2000, and continuing through in or about December 2006, in the Northern District of  
25 California and elsewhere, the defendant,

26 PETER TOWNSLEY,

27  
28 SUPERSEDING INDICTMENT (TOWNSLEY)  
CR 10 0428 CRB

1 and others known and unknown to the grand jury, did engage in a material scheme to  
2 defraud OMRI, certifiers including CCOF, and customers such as growers, including  
3 growers of products to be marketed as "organic," and to obtain money and property from  
4 customers by means of materially false and fraudulent pretenses, representations, and  
5 promises, and by material omissions, and did use the mails and cause the mails to be used  
6 to carry out and attempt to carry out essential parts of the scheme.  
7

8 12. In November and December 1998, TOWNSLEY signed and submitted  
9 applications to OMRI to have a CLF product called "Biolizer XN" reviewed and  
10 approved for OMRI listing as an allowed brand name product. TOWNSLEY provided  
11 information about, among other things, the ingredients and manufacturing process for  
12 Biolizer XN. TOWNSLEY's final application on behalf of CLF stated that Biolizer XN  
13 was a liquid fertilizer composed of ocean-going fish and fish byproducts, feathermeal,  
14 and water. In reliance on TOWNSLEY'S representations about Biolizer XN, in February  
15 1999, OMRI approved Biolizer XN as allowed for use in "organic" production. CLF then  
16 began marketing Biolizer XN as a fertilizer that was approved by OMRI for use in  
17 "organic" production.

18 13. As part of his scheme to defraud, in approximately April 2000,  
19 TOWNSLEY knowingly changed and caused to be changed the ingredients in Biolizer  
20 XN without notifying OMRI. After this time, instead of using OMRI-approved fish and  
21 fish byproducts, feathermeal, and water, TOWNSLEY and others affiliated with CLF  
22 substituted ingredients that did not comply with OMRI's standards for substances allowed  
23 in "organic" agricultural production and were prohibited under the National List.  
24 TOWNSLEY and others affiliated with CLF changed the formulation of Biolizer XN in  
25 part because the fish and feathermeal were not well suited for drip irrigation (a manner in  
26 which growers can apply fertilizer to the soil), and because the fish and feathermeal  
27 ingredients did not provide the amount of nitrogen that customers were seeking. Despite

1 knowing that the new formulations had not been approved by OMRI, TOWNSLEY  
2 continued to sell Biolizer XN as a product approved by OMRI until December 2006.

3 14. As a further part of his scheme to defraud, from approximately August 2000  
4 through July 2006, TOWNSLEY submitted annual renewal applications to OMRI that  
5 falsely stated that the information previously submitted to OMRI regarding Biolizer XN  
6 had not changed. At no time after obtaining the initial approval from OMRI in 1999 did  
7 TOWNSLEY inform OMRI of the change in ingredients or submit a new application to  
8 OMRI for the reformulated product. Nor did TOWNSLEY inform OMRI that he had  
9 substituted ingredients prohibited under the NOP regulations.  
10

11 15. From August 2000 through December 2006, based on TOWNSLEY's  
12 material misrepresentations and omissions, OMRI kept Biolizer XN on its allowed Brand  
13 Name Products List and permitted CLF to use the "OMRI Listed" seal in connection with  
14 CLF's marketing of Biolizer XN.

15 16. As a further part of his scheme to defraud, TOWNSLEY continued  
16 to market and sell CLF's Biolizer XN fertilizer as a product that was approved and listed  
17 by OMRI. The Biolizer XN labels continued to bear the "OMRI Listed" seal. Even after  
18 eliminating the OMRI-approved ingredients from the formulation of Biolizer XN, CLF  
19 continued to represent that Biolizer XN was derived from "ocean going fish and  
20 hydrolized feathermeal" or from "seafood byproducts, plant extracts, and hydrolyzed  
21 feathermeal." At no time did the labels or other information publicly disseminated by  
22 CLF about Biolizer XN disclose the use of ingredients in Biolizer XN that were  
23 prohibited for use in "organic" agricultural production under the NOP regulations. From  
24 May 2000 through in or about December 2006, TOWNSLEY marketed and sold  
25 approximately \$6 million worth of Biolizer XN knowing that OMRI had not approved the  
26 formulation being marketed, the product did not contain fish or feathermeal, and the  
27

1 product contained materials that did not comply with standards and regulations for  
2 “organic” agricultural production.

3 COUNT ONE: 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud

4 17. Paragraphs 1 through 16 of this Indictment are hereby re-alleged and  
5 incorporated by reference as if set forth in full herein.

6 18. From at least in or about April 2000 through in or about December 2006,  
7 both dates being approximate and inclusive, in the Northern District of California and  
8 elsewhere, the defendant,

9 PETER TOWNSLEY,

10 together with others, did knowingly and intentionally conspire to devise a material  
11 scheme and artifice to defraud, and to obtain money and property by means of materially  
12 false and fraudulent pretenses, representations and promises, and by material omissions,  
13 and for the purpose of executing such scheme and artifice, did use the mails and  
14 knowingly cause the mails to be used, in violation of Title 18, United States Code,  
15 Section 1349.

16 Certain Acts in Furtherance of the Conspiracy

17 19. As part of the conspiracy and to carry out its objects, the defendant PETER  
18 TOWNSLEY, together with others known and unknown to the grand jury, committed and  
19 caused to be committed the following acts, among others, in the Northern District of  
20 California and elsewhere:

21 a. In or about April 2000, TOWNSLEY and others who worked for CLF  
22 changed the ingredients for the manufacture of Biolizer XN from fish and feathermeal to  
23 a product that contained ammonium chloride.

24 b. On or about August 18, 2000, TOWNSLEY submitted by mail an annual  
25 renewal form for Biolizer XN to OMRI, which he signed and dated July 30, 2000, and  
26 which stated the following certification: “The Information above and attached is correct  
27

28 SUPERSEDING INDICTMENT (TOWNSLEY)  
CR 10 0428 CRB

.1 to the best of my knowledge, and the information already submitted to OMRI regarding  
2 the products listed above has not changed. I agree to abide by all policies in the most  
3 current version of the OMRI Operating Manual.”

4 c. In or about June 2001, TOWNSLEY and others who worked for CLF  
5 again changed the ingredients for the manufacture of Biolizer XN, thereby substituting  
6 one product that contained a prohibited ingredient for another product that contained a  
7 prohibited ingredient. The new ingredient was ammonium sulfate – a chemical  
8 compound that is a by-product from the production of lysine and is commonly used in  
9 fertilizers in conventional, non-“organic” farming.

10 d. From approximately May 2001 through December 2006, CLF produced  
11 Biolizer XN without using fish or feathermeal as ingredients, but instead using a material  
12 containing ammonium sulfate.

13 e. From approximately May 2001 through December 2006, TOWNSLEY  
14 marketed and sold Biolizer XN as “100% Natural Organic Fertilizer,” derived from fish  
15 and feathermeal, and OMRI approved for use in “organic” production.

16 f. On or about August 7, 2001, TOWNSLEY submitted by mail an annual  
17 renewal form for Biolizer XN to OMRI, which he signed and dated July 24, 2001.  
18 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
19 had not changed.

20 g. On or about September 6, 2002, TOWNSLEY submitted by mail an  
21 annual renewal form for Biolizer XN to OMRI, which he signed and dated August 30,  
22 2002. TOWNSLEY falsely certified that the information previously submitted for  
23 Biolizer XN had not changed.

24 h. On or about September 8, 2003, TOWNSLEY submitted by mail an  
25 annual renewal form for Biolizer XN to OMRI, which he signed and dated August 30,  
26

.1 2003. TOWNSLEY falsely certified that the information previously submitted for  
2 Biolizer XN had not changed.

3 i. On or about March 5, 2004, TOWNSLEY submitted by mail an annual  
4 renewal form for Biolizer XN to OMRI, which he signed and dated February 11, 2004.  
5 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
6 had not changed.

7 j. On or about August 9, 2004, TOWNSLEY submitted by mail an annual  
8 renewal form for Biolizer XN to OMRI, which he signed and dated August 2, 2004.  
9 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
10 had not changed.

11 k. On or about July 1, 2005, CLF purchased approximately 190,000 pounds  
12 of a conventional liquid fertilizer that contained ammonium sulfate from a company  
13 located in Illinois.

14 l. On or about July 22, 2005, TOWNSLEY submitted by mail an annual  
15 renewal form for Biolizer XN to OMRI, which he signed and dated July 18, 2005.  
16 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
17 had not changed.

18 m. On or about August 10, 2005, TOWNSLEY submitted by mail a letter  
19 to OMRI that included a current label for Biolizer XN, which stated that the product was  
20 "derived from ocean going fish and hydrolyzed feathermeal" and "is listed by the Organic  
21 Materials Review Institute (OMRI) for use in organic production."

22 n. On or about July 21, 2006, TOWNSLEY submitted by mail an annual  
23 renewal form for Biolizer XN to OMRI, which he signed and dated June 29, 2006.  
24 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
25 had not changed.  
26

1 o. On or about July 22, 2006, CLF purchased approximately 190,000  
2 pounds of a conventional liquid fertilizer that contained ammonium sulfate from a  
3 company located in Illinois.

4 p. On or about August 18, 2006, CLF mailed an invoice to Customer A, a  
5 grower engaged in "organic" agricultural production in Salinas, California, for the  
6 purchase of a bulk shipment of Biolizer XN.

7 q. On or about August 23, 2006, CLF mailed an invoice to Customer A, a  
8 grower engaged in "organic" agricultural production in Salinas, California, for the  
9 purchase of a bulk shipment of Biolizer XN.

10 r. On or about September 7, 2006, CLF mailed an invoice to Customer A, a  
11 grower engaged in "organic" agricultural production in Salinas, California, for the  
12 purchase of a bulk shipment of Biolizer XN.

13 s. On or about October 24, 2006, CLF mailed an invoice to Customer B, a  
14 supplier located in Fresno, California, who provided fertilizers to growers engaged in  
15 "organic" agricultural production, for the purchase of a bulk shipment of Biolizer XN.

16 COUNTS TWO THROUGH EIGHT: 18 U.S.C. § 1341 – Mail Fraud

17 20. The allegations set forth in paragraphs 1 through 16 of this Indictment are  
18 hereby re-alleged and incorporated herein by reference as if set forth in full herein.

19 21. On or about the dates set forth below, in the Northern District of California  
20 and elsewhere, to execute the scheme and artifice defraud set forth above, the defendant,

21 **PETER TOWNSLEY,**

22 did knowingly cause to be deposited in post offices and authorized depositories the  
23 below-listed mail matter to be delivered by the United States Postal Service and private  
24 and commercial interstate carriers:  
25

26 ///

27  
28 SUPERSEDING INDICTMENT (TOWNSLEY)  
CR 10 0428 CRB

Count	Approximate Date of Mailing	Mailed From	Mailed To	Item Description
2	July 22, 2005	Gonzales, CA	Eugene, OR	OMRI Annual Renewal Form
3	August 10, 2005	Gonzales, CA	Eugene, OR	Letter from Townsley to OMRI with current Biolizer XN label
4	July 21, 2006	Gonzales, CA	Eugene, OR	OMRI Annual Renewal Form
5	August 18, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to Customer A for Biolizer XN
6	August 23, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to Customer A for Biolizer XN
7	September 7, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to Customer A for Biolizer XN
8	October 24, 2006	Gonzales, CA	Fresno, CA	Invoice from CLF to Customer B for Biolizer XN

All in violation of Title 18, United States Code, Section 1341.

DATE:

*July 7, 2011*

A TRUE BILL.

*[Signature]*  
FOREPERSON

MELINDA HAAG  
United States Attorney

*[Signature]*

MIRANDA KANE  
Chief, Criminal Division

(Approved as to form:

*SSB*  
AUSA BADGER

SUPERSEDING INDICTMENT (TOWNSLEY)  
CR 10 0428 CRB