

**Congress of the United States**  
**Washington, DC 20515**

March 28, 2003

Mr. John Simons  
President and CEO  
Swift & Company  
1770 Promontory Circle  
Greeley, CO 80634

Dear Mr. Simons:

On March 12, members of Congress wrote to USDA Secretary Ann M. Veneman about 33 positive test results for potentially lethal *E. coli* O157:H7 bacteria that were known to ConAgra Beef Company between May 20 and June 29, 2002.<sup>1</sup> Because this string of positive test results began several weeks prior to the outbreak of human illness, understanding how company and USDA officials responded is of paramount public interest.

In press reports, Swift & Company officials have contested the letter's statement that ConAgra apparently did not turn the 33 results over to USDA immediately. For example, Swift & Company spokesman Jim Herlihy told the *New York Times*, "Any internal test results that may indicate a potential positive for *E. coli* O157:H7 are documented and made available to the USDA."<sup>2</sup>

The statement in the letter was based upon information from USDA, including the following:

- At the time of the recall on July 19, 2002, USDA Secretary Ann M. Veneman indicated that the Department reviewed company records in mid-July, after human illnesses had already occurred.<sup>3</sup>

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<sup>1</sup>Letter from Reps. Henry A. Waxman, Rosa L. DeLauro, Marcy Kaptur, Sherrod Brown and Sen. Richard J. Durbin to Secretary of Agriculture Ann M. Veneman (Mar.12, 2002).

<sup>2</sup>*U.S. Is Urged to Investigate Beef Company over Tainting*, New York Times (Mar. 13, 2003).

<sup>3</sup>Secretary of Agriculture Ann M. Veneman, *Transcript of Press Conference with Secretary of Agriculture Ann M. Veneman and Undersecretary for Food Safety Elsa Murano Regarding the ConAgra Beef Company Recall* (July 19, 2002).

- On July 26, several members of Congress asked USDA:

[D]id ConAgra check for *E. coli* O157:H7 in any meat produced between April 12 and July 11? . . . If any such testing was positive, how soon after receiving the results did ConAgra notify USDA of the presence of *E. coli* O157:H7?<sup>4</sup>

In her response, Undersecretary for Food Safety Elsa Murano wrote that the USDA review of “production practices, plant records, and completed laboratory analyses” at the Greeley facility occurred in mid-July.<sup>5</sup>

- In a comprehensive letter dated January 27 to members of Congress about the ConAgra recall, Undersecretary Murano indicated a food safety inspection team arrived at the plant on July 15 and made no mention of any prior USDA knowledge of positive results.<sup>6</sup>
- Several weeks prior to the March 12 letter, congressional staff specifically asked USDA whether ConAgra shared its positive results before to the outbreak. The Department failed to provide any indication or evidence ConAgra had done so.

On February 21, 2003, several weeks before the March 12 letter was sent, congressional staff called Swift & Company and asked whether ConAgra had turned over its positive *E. coli* O157:H7 results to USDA at the time the testing was done. The official contacted was, in fact, Mr. Herlihy. Although Mr. Herlihy indicated he would respond, neither he nor anyone else from Swift & Company called back or returned a subsequent message.

In light of Mr. Herlihy’s comments to the news media, including the *New York Times*, we would like to give Swift & Company another opportunity to explain ConAgra’s handling of these and any other positive test results. We are interested in the following information:

- The process by which ConAgra made positive results available to USDA in the spring of 2002.
- For each of the 33 positive tests referenced in the July 18 Notice of Intended Enforcement: (1) the date of the test; (2) the date the positive result was known to

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<sup>4</sup>Letter from Reps. Henry A. Waxman, Rosa L. DeLauro, Marcy Kaptur, and Sen. Richard J. Durbin to Secretary of Agriculture Ann M. Veneman (July 26, 2002).

<sup>5</sup>Letter from Under Secretary for Food Safety Elsa A. Murano to Rep. Henry A. Waxman (Sept. 5, 2002).

<sup>6</sup>Letter from Under Secretary for Food Safety Elsa A. Murano to Rep. Henry A. Waxman (Jan. 27, 2003).

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ConAgra; (3) the date the information was shared with USDA; (4) the title of USDA personnel made aware of the positive result; and (5) USDA's response to the positive result, if known.

- For any other positive *E. coli* O157:H7 results in company testing of the Greeley facility between January 1, 2002 and July 19, 2002 (the recall date): (1) the date of the test; (2) the date the positive result was known to ConAgra; (3) the date the information was shared with USDA; (4) the title of USDA personnel made aware of the positive result; and (5) USDA's response to the positive result, if known.

We are also interested in current Swift & Company policy on notifying USDA of positive results on company testing. Finally, we would like to understand whether the company believes it has a legal obligation to turn over such results to USDA, particularly if the testing is not conducted as part of its Hazard Analysis and Critical Control Point plan.

Thank you for your cooperation in this matter. We request a reply by April 18, 2003. Please contact Dr. Joshua Sharfstein on Rep. Waxman's staff at (202) 225-5420 with any questions.

Sincerely,



Henry A. Waxman  
Ranking Minority Member  
Committee on Government  
Reform  
U.S. House of Representatives



Marcy Kaptur  
Ranking Minority Member  
Subcommittee on Agriculture,  
Rural Development, Food and  
Drug Administration, and  
Related Agencies  
Committee on Appropriations  
U.S. House of Representatives



Richard J. Durbin  
Ranking Minority Member  
Subcommittee on Oversight  
of Government Management,  
Restructuring, and the  
District of Columbia  
Committee on Governmental  
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Rosa L. DeLauro  
Member  
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Committee on Appropriations  
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Sherrod Brown  
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Committee on Energy  
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Diana DeGette  
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Subcommittee on Health  
Committee on Energy  
and Commerce  
U.S. House of Representatives