

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

March 12, 2003

The Honorable Ann M. Veneman  
Secretary of Agriculture  
Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20520

Dear Madam Secretary:

New information reveals that managers at the ConAgra Beef Company knew of 33 positive tests for the pathogen *E. coli* O157:H7 late last spring, but apparently did not take legally required steps to end the life-threatening contamination before Americans fell seriously ill. That ConAgra officials would behave in this apparently reckless manner raises serious questions of corporate responsibility. And that ConAgra was not required to inform USDA immediately of these test results reveals a gaping loophole in our nation's food safety laws.

In June and July 2002, at least 20 Americans across several states developed infections with *E. coli* O157:H7 linked to contaminated meat produced by the ConAgra facility in Greeley, Colorado. After an initial recall of 354,200 pounds of beef at the end of June, ConAgra eventually recalled 19 million pounds of beef in July, then the second-largest recall ever. The recall covered meat produced at the plant from April 12 to June 29.<sup>1</sup> In a series of letters over the last six months, members of Congress have raised serious questions about whether the company acted appropriately and whether USDA responded quickly enough to protect the public health.<sup>2</sup> Newly released documents shed light on both of these questions.

On January 27, Under Secretary for Food Safety Dr. Elsa A. Murano responded to our letters by providing additional information about the ConAgra recall.<sup>3</sup> The new information included copies of all the noncompliance reports filed by USDA food inspectors at the Greeley facility from 2000 to 2002 and a copy of the Notice of Intended Enforcement sent by USDA to ConAgra Beef Company on July 18, 2002. We appreciate the completeness of Under Secretary

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<sup>1</sup>USDA, *Colorado Firm Recalls Beef Trim and Ground Beef Products of Possible E. Coli O157:H7* (July 19, 2002).

<sup>2</sup>Letter from Rep. Henry A. Waxman, Rep. Rosa L. DeLauro, Rep. Marcy Kaptur, and Sen. Richard J. Durbin to Secretary of Agriculture Ann M. Veneman (July 26, 2002); Letter from Rep. Henry A. Waxman, Rep. Rosa L. DeLauro, Rep. Marcy Kaptur, and Sen. Richard J. Durbin to Secretary of Agriculture Ann M. Veneman (Sept. 12, 2002); Letter from Rep. Henry A. Waxman, Rep. Rosa L. DeLauro, Rep. Marcy Kaptur, and Sen. Richard J. Durbin to Secretary of Agriculture Ann M. Veneman (Dec. 19, 2002).

<sup>3</sup>Letter from Under Secretary for Food Safety Elsa A. Murano to Rep. Henry A. Waxman (Jan. 27, 2003).

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Murano's response. These documents reveal what appears to be a shocking disregard on the part of ConAgra for the safety of the American public.

USDA officials reviewed ConAgra's own health and safety records in the middle of July 2002, after the outbreak of human illness had already been linked to the plant.<sup>4</sup> According to the Notice of Intended Enforcement we received, this review apparently uncovered several critical facts. USDA found that for weeks prior to the first recall, ConAgra officials knew of *E. coli* O157:H7 contamination at the facility but did not take legally required steps to protect the public. USDA wrote:

Specifically, during the weeks of May 20, 2002 through May 31, 2002; June 3, 2002, and June 7, 2002; June 10, 2002 and June 14, 2002; June 17, 2002 and June 21, 2002; and June 24, 2002 and June 29, 2002, the establishment received 33 positive *E. Coli* O157:H7 on trim meat materials produced at Establishment 969 [the Greeley facility].<sup>5</sup>

According to USDA, ConAgra's response to the 33 positive tests failed to meet legal requirements. First, contrary to federal regulation, the company did not "perform a review to determine the acceptability of the affected product for distribution."<sup>6</sup> Second, ConAgra did not, as required, "take action, when necessary, with respect to the affected product to ensure that no product that is injurious to health or otherwise adulterated . . . enters commerce after receiving results of these laboratory samples."<sup>7</sup> Third, the company did not reassess its Hazard Analysis and Critical Control Point (HACCP) plan in light of the contamination. In fact, USDA found that after each positive test, the company answered three key questions in the same way:

How severe is the food safety risk regarding sickness or injury? Answer High.  
What is likelihood of occurrence based on past history and future potential? Answer Low.

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<sup>4</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); Letter from Under Secretary for Food Safety Elsa A. Murano to Rep. Henry A. Waxman (Sept. 5, 2002).

<sup>5</sup>Letter from USDA District Manager Ronald K. Jones to Mr. Warren Mirtsching, Vice President of ConAgra Beef Company (July 18, 2002) (emphasis added).

<sup>6</sup>*Id.* The regulation referred to is 9 CFR 417.3(b)(2).

<sup>7</sup>*Id.* The regulation referred to is 9 CFR 417.3(b)(3).

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Does the program need to be revised? Answer No.<sup>8</sup>

USDA did find that ConAgra made some changes to its safety procedures, including changes to its procedures for hot water pasteurization and treatment of cattle. According to USDA, however, ConAgra did not assure that these measures actually controlled the *E. coli* O157:H7 hazard or include them in standard safety procedures.

Compounding ConAgra's failure to respond adequately to the 33 positive *E. coli* O157:H7 tests was the company's apparent failure to turn the results over to USDA for nearly two months.<sup>9</sup> Early notification of the *E. coli* O157:H7 findings could have made an enormous difference in the course of the outbreak and might have prevented some of the illnesses that occurred. Dates of the onset of illness ranged from June 14 to July 15, weeks after the initial contamination was known to ConAgra.<sup>10</sup>

In May, USDA officials may have missed two opportunities to recognize the severity of the contamination at ConAgra because the Department did not know of ConAgra's testing results. In mid-May, USDA investigated positive *E. coli* O157:H7 results from a grinding facility that obtained meat from the Greeley plant.<sup>11</sup> At the time, however, USDA was unable to trace the problem back to ConAgra. USDA inspectors at the Greeley facility were also documenting noncompliance with safety standards. For example, on May 29, 2002, a USDA inspector signed a noncompliance record citing ConAgra for leaving scrap meat overnight on all three conveyers.<sup>12</sup> This finding suggested that the facility was not adequately cleaned between shifts, a serious and ongoing hazard if the belts were contaminated with *E. coli* O157:H7. Without knowledge of the positive tests, however, USDA officials were apparently unable to put two and two together. Leaving aside the separate question of whether USDA's efforts to protect

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<sup>8</sup>*Id.* The regulation referred to is 9 CFR 417.3(b)(4).

<sup>9</sup>USDA officials have repeatedly stated that Department officials first reviewed the company's own safety records in mid-July 2002. On Friday, February 21, 2003, Congressional staff contacted Swift & Company (formerly ConAgra Beef Company) and asked whether ConAgra had actually notified USDA of its own positive *E. coli* O157:H7 results when the testing was done. The company official did not answer and did not respond to a followup phone call.

<sup>10</sup>*Id.*

<sup>11</sup>USDA, *Chronology of FSIS Sampling and Actions in ConAgra (est. 969) and Galligan's Wholesale Meat Co (Est. 6475)* (Sept. 5, 2002).

<sup>12</sup>USDA, Noncompliance Record 00028-02, Establishment 969 (May 2002).

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the public in this case were sufficient, ConAgra's actions appear to have had troubling consequences.

Because it appears that ConAgra's failure to follow the law or notify USDA immediately may have directly contributed to serious illness, we urge USDA to fully investigate the company's conduct and consider seeking criminal penalties against the company and any officials who acted recklessly. We also urge you to continue close oversight of this large production facility, now run by Swift & Company. Aggressive actions by USDA would send a strong message to other food companies about the importance of following the law.

Beyond an apparent failure of corporate responsibility, ConAgra's 33 positive tests also expose a gaping loophole in existing food safety law: the company was not required to turn over the positive results immediately to USDA. Current USDA policy is to hope companies will act responsibly and share important health and safety data with food safety regulators. But this voluntary approach appears grossly inadequate to protect the public health.

In the wake of the ConAgra recall, USDA has taken a number of steps to improve oversight of meat production. The agency issued new guidance on *E. coli* O157:H7,<sup>13</sup> which ends exemptions to government-run random testing and encourages additional company testing at critical control points. However, random tests by USDA are few and far between. Even if the President's request for additional testing is granted, meat production facilities will not be tested by USDA on a regular basis.<sup>14</sup> Moreover, when USDA finds a positive result on random testing, the agency no longer requires 15 consecutive negative samples.

Additionally, while USDA is now reviewing HACCP plans of beef slaughter establishments,<sup>15</sup> the agency still is not requiring that these plans include verification testing for *E. coli* O157:H7. This allows companies to perform any testing for this pathogen outside of the HACCP structure, with no obligation to turn positive results over to USDA.

In the aftermath of the ConAgra outbreak and other challenges to the safety of our nation's food supply, we believe Congress should give clear direction to the agency to (1) require

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<sup>13</sup>USDA, *USDA Strengthens Food Safety Policies* (Sept. 24, 2002).

<sup>14</sup>The President has proposed approximately doubling the number of random tests. Approximately 5,500 tests were performed at approximately 1,700 federally inspected plants in 2001. USDA, *Microbiological Results of Raw Ground Beef Products Analyzed for Escherichia coli O157:H7* (online at: <http://www.fsis.usda.gov/OPHS/ecoltest/tables1.htm>).

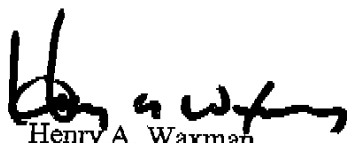
<sup>15</sup>USDA, *Statement of Dr. Garry L. McKee, Administrator, Food Safety And Inspection Service* (Feb. 7, 2003).


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USDA to set industry performance standards for pathogens like *E. coli* O157:H7; (2) require companies to turn over all pathogen testing results immediately to USDA; and (3) require companies to deliver the positive samples to USDA for DNA fingerprinting, allowing matches with cases of human illness. These steps are urgently needed to protect Americans from future outbreaks of foodborne disease. We ask that you join us in support of these provisions.

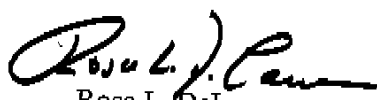
Thank you for your consideration of this request. We would appreciate a reply by March 21, 2003.

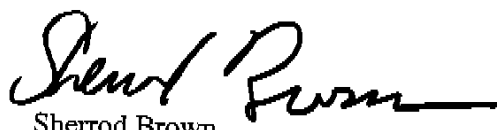
Sincerely,

  
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  
Affairs  
U.S. Senate

  
Rosa L. DeLauro  
Member  
Subcommittee on Agriculture,  
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Drug Administration, and  
Related Agencies  
Committee on Appropriations  
U.S. House of Representatives

  
Sherrod Brown  
Ranking Minority Member  
Subcommittee on Health  
Committee on Energy and Commerce  
U.S. House of Representatives