



May 4, 2007

Dr. David Goldman, Acting Administrator  
Food Safety and Inspection Service  
United States Department of Agriculture  
Room 331-E, Jamie L. Whitten Building  
12<sup>th</sup> Street and Jefferson Drive SW  
Washington, DC 20250

Transmitted via facsimile: (202) 205-0158

Dear Dr. Goldman:

I am writing to ascertain why the Food Safety and Inspection Service failed to initiate recalls of pork and poultry products that were produced from animals that ate feed adulterated with melamine.

It has been very troubling to us that officials from both FSIS and the Food and Drug Administration have used tortured and contradictory logic to explain why product recalls were not announced. I call your attention to the transcripts of both the April 26 and May 1 press briefings at which FSIS and FDA officials participated. I have attached pertinent excerpts as points of reference (Appendices A and B).

It is clear to us that recalls should have been issued in both of these cases. The fact that Dr. Petersen stated in the April 26 press briefing (see Appendix A) that animals presented for slaughter that are suspected of eating adulterated feed would not receive the USDA mark of inspection indicates to us that FSIS considers pork and poultry processed from animals that have consumed that feed to be adulterated. If the agency will not accept animals prospectively for slaughter that were fed contaminated feed because it considers the meat and poultry products processed from those animals to be adulterated, then why is the meat and poultry from animals that were fed the contaminated feed already in the marketplace not considered to be adulterated? We believe that you have a statutory obligation to initiate recalls of these products under the Federal Meat Inspection Act and the Poultry Products Inspection Act.

As Food & Water Watch has already pointed out to you in an email on May 2, 2007, the course of action by FSIS in this situation contradicts the approach the agency took with beef processed in December 2003 from a cow that was eventually diagnosed with bovine spongiform encephalopathy (mad cow disease).

I call your attention to an interview that took place with USDA officials on December 29, 2003 on CNN (Appendix C). Again, Dr. Kenneth Petersen served as the FSIS spokesperson on that occurrence. Eerily, Dr. Petersen's comments about the safety of the beef that went into commerce in 2003 sound almost identical to what he has said recently about the safety of the melamine-contaminated pork and poultry.

In 2003, the agency – out of abundance of caution – recalled the potentially contaminated beef. In 2007, however, the agency has refused to take similar action in the current case of adulterated product entering into commerce. Instead, we have heard weak justifications that since humans do not eat chicken and pork morning, noon and night, they won't be exposed to high enough levels of melamine to necessitate a recall (Appendix B). The standard for taking adulterated food off the market should not be its popularity or how much of it consumers eat. The agency is obligated to act to get all adulterated food off the market, not just adulterated food eaten in large enough quantities to meet some theoretical calculation of risk.

These same weak arguments were repeated during the May 3 teleconference.

In all of the press briefings conducted thus far, we have not heard either FDA or FSIS officials state whether there are established tolerance levels for the amount of melamine to be in meat or poultry before it can be considered safe for human consumption, nor have we heard whether either agency has the ability to test for the melamine residue in meat and poultry.

We request your answers to the following questions regarding the current situation with the adulterated pork and chicken:

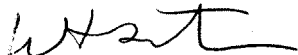
- 1) Why has the agency not used the “out of abundance of caution” standard to institute product recalls of the adulterated pork and poultry involved in the current situation?
- 2) It has come to light that USDA's Under Secretary for Food Safety Richard Raymond was visiting officials of Tyson Foods at company headquarters in Springdale, Arkansas on April 26, 2007 – the same day that FSIS and FDA were holding their first joint press briefing on the adulterated animal feed issue. On April 26, it was revealed that some 200 hogs fed melamine-contaminated feed were slaughtered and processed at the company's Madison, Nebraska plant. That meat entered the human food supply. Was a recall of those products ever discussed with company officials during Dr. Raymond's visit? If a recall was discussed, what are the details of those discussions? Did Tyson officials refuse to institute a recall of their adulterated products?
- 3) Which company or companies processed the adulterated poultry that went into commerce? Were recalls discussed with those companies? If so, what were the details of those discussions? Did those companies refuse to institute recalls of their adulterated products?
- 4) Has the FSIS recall committee been convened to discuss initiating recalls of product that has been adulterated in these two instances? If the committee has met, what justifications did the committee use not to proceed with recalls at this time?
- 5) What specific instructions have been issued to FSIS inspection personnel to address actions that they should take in the event that animals are presented for slaughter that are suspected of eating adulterated feed?

Dr. Goldman, if FSIS truly wants to become a public health agency, it must do so by putting the public's health above industry profits. The inaction of the agency in the current situation is very disturbing. While the gaping holes in the inspection procedures at the FDA have been the primary cause for animals destined for the human food supply being fed adulterated feed, FSIS has done nothing to protect the

public against adulterated food from entering the human food supply. You have clear statutory authority to take action to get this product off the market, whether by recommending a recall or seizing the product. The manner in which the agency has acted thus far is nothing short of scandalous.

I look forward to your reply. Should you have any questions about this letter, please feel free to contact me at (202) 797-6550.

Sincerely,



Wenonah Hauter  
Executive Director

cc: Senator Tom Harkin  
Senator Saxby Chambliss  
Senator Herb Kohl  
Senator Robert Bennett  
Representative Collin Peterson  
Representative Robert Goodlatte  
Representative Rosa DeLauro  
Representative Jack Kingston  
Secretary of Agriculture Mike Johanns  
Under Secretary for Food Safety Richard Raymond  
USDA Inspector General Phyllis Fong

## APPENDIX A

### April 26 Transcript

**DR. KEN PETERSON (sic) (FSIS, USDA):** Thank you. This is Dr. Peterson (sic), assistant administrator with FSIS. As you just heard, because the animal feed in question was adulterated, USDA cannot rule out the possibility that food produced from animals fed this product could also be adulterated. Therefore, should these animals be presented for slaughter, USDA cannot place the mark of inspection on any food that's produced from these animals, these swine. USDA is offering to compensate producers who euthanize swine that were fed the adulterated feed. USDA is authorized to use Section 32 funds to restore these farmers' purchasing power.

USDA is also offering the expertise and assistance of the Animal and Plant Health Inspection Service personnel in carrying out any depopulation activities to ensure that animals are euthanized and disposed of in accordance with federal, state and local laws.

**DR. PETERSON (sic):** The pork and pork products derived from these animals that were fed the adulterated feed will also be destroyed. In California and Utah pork from federally inspected plants is being retained at the federal plant under FSIS authority. In South Carolina, a state inspected plant is voluntarily holding swine that were fed the adulterated feed product. FSIS, FDA and state authorities are in the process of determining whether any meat from animals that were fed the adulterated product has entered commerce. If this has occurred, FSIS will work with states and industry to initiate any appropriate follow-up action.

**REPORTER:** Thank you. Can you clarify how many pork products have been consumed by humans, because some in California at least have been. And why the distinction between commercial food supply, and if people are asking have humans consumed this, what's the answer? And then what's the risk to the people who may have consumed product that came from where the pigs consumed some of this adulterated pet food?

**MODERATOR:** Who should answer that question?

**DR. PETERSON (sic):** Okay, this is Dr. Peterson (sic). I'll start with the food products. Speaking for federal plants, we're not aware, but we're investigating as I said whether any products from animals have gone into commerce. I need to kind of back up a little bit. As was mentioned by FDA, as far as we know today, and they are toward the end of this investigation as I understand it, about 6,000 hogs were potentially fed the feed. And we have no reason to believe there's anywhere near that number that even may have gone to slaughter plants. The national slaughter number for swine is over 100 million, so that's the context.

For the California situation, that I'm aware of, it doesn't involve a federal plant. It involves some either custom producers or state plants, and any of those products didn't as I understand it go into what we call commerce, meaning anybody can buy them. They went back to the individual farmer who bought that product, who brought that animal to the custom process facility. That's the information we have.

But as far as federal slaughter and any of these animals coming to federal slaughter plants, again we're not aware of products that have gone into commerce, but we're working with FDA to find any of these farms where the animals consumed the feed, and did any of those swine actually go to slaughter.

## APPENDIX B

### May 1 Transcript

**DR. KENNETH PETERSEN :** Okay, thank you, and good afternoon everybody. Well, as you just heard, Dr. Acheson walked through a couple of the factors regarding consumption for swine and poultry and because of those factors with the low percentage in their diet and low consumption on average by American consumers for pork and poultry, meaning it's not a major part of their diet, therefore we're not initiating any recall of these meat products associated with the animals at this time.

We do continue to work jointly with FDA at all levels regarding the investigation in both the rice gluten and now the wheat gluten, and our sense is that the investigation will lead to additional farms where contaminated feed may have been fed to either animals or poultry. But that will come as the data and investigation continues.

Currently there are six states involved with the swine part of the investigation. That's California, Kansas, New York, North Carolina, South Carolina, and Utah, and then as you heard Indiana is the primary state of interest regarding poultry that were fed the contaminated feed. And I think we'll stop there and turn it back to the moderator.

**OPERATOR:** Thank you. Marian Falco with CNN may ask a question.

**REPORTER:** Hi. Do you know how many people may have consumed chicken products? You're saying that pork and chicken is not a big part of the American diet, but I bet there are plenty of folks out there who would disagree with that. And also can you clarify what the Chinese say they do or don't do with melamine, because there have been conflicting reports. They say they don't put it in pet products; it appears that obviously they do. So what do you have to clarify on that end?

**MODERATOR:** Dr. Acheson?

**DR. ACHESON:** Let me first try to clarify what I meant by the 'don't form a large part of the diet.' I did not mean to imply for that there are not a large number of American consumers eating pork and poultry. That is not what I meant. The contrast to draw here is with a pet who frequently will consume the same sort of food 100 percent. But if you have a contaminated product and it's 100 percent of the pet food, that's a very different scenario from a human consumer in which chicken or pork is just essentially the meat on the side of the plate with the two veggies. That's what I was implying is that poultry typically is not an exclusive nutrient in the human diet.

I'll pass the rest of it, I think, over to Dr. Petersen.

**DR. PETERSEN:** Could you repeat the second?

**REPORTER:** The question I had was: how many people may have eaten some of these chicken products? Your press release yesterday was very vague. It was processed. But how much? How many people may have consumed this? You told us about 350 hogs in California and Kansas and Utah, but how many chickens are we talking about? How many people might be out there?

**DR. PETERSEN:** Okay. Well, we have, of course, have to remember we haven't found any evidence to indicate consumption of this is unsafe. Yesterday when we identified the farms of interest, so now we're looking at the farms, and then what was determined was the poultry were fed this feed several months ago. And so, given the short lifespan of chickens when they grow out, those have already gone into the food chain and so we would need to look at what individual plants they may have gone to.

But given those other consumption factors that Dr. Acheson has indicated, that's not a feature of our investigation today. It's trying to find how many people consume chicken from these individual farms. As he indicated, chicken of course is an important part of the American diet; it's not necessarily something that people are going to eat every day and on an ongoing basis. So because we don't see any health issue because of the consumption factors, how many people could have eaten infected chicken – or, not infected, but the chicken that consumed the contaminated feed or even pork that was consumed -- is not the feature of our investigation today.

**OPERATOR:** Rick Weiss with The Washington Post.

**REPORTER:** Hi, thank you. Rick Weiss from The Post... But my question is: is your investigation going along the lines that

there may be chickens still alive, broilers still alive, that may have been fed this feed within the last few months? And if so, what can you tell us about how many may be in play here? And I want to be clear, if there are some still alive, even though you don't think there's any health risk from eating them, are you not required by law to order them held or to make sure that they are depopulated since they must be deemed adulterated since they ate adulterated food?

**DR. PETERSEN:** It's Dr. Petersen. Well, the chickens, broiler numbers are what I suggested, so approximately 2.5 to 3 million, and indications are they were fed back in February, and so the typical lifespan of a young chicken these days is about 42, 43 days before they come to market. So they would have been slaughtered sometime of course thereafter, and already gone through distribution channels. So likely they were slaughtered sometime in March.

**REPORTER:** But this food was still circulating in March. So how do you know there weren't any chickens fed the stuff in March and are still alive?

**DR. PETERSEN:** Okay, that's part of the investigation that of course has been ongoing as FDA went to the individual pet food manufacturers. Then we determined where if anyplace the scraps have been, and this is to date the chicken feed mill is the only one that's been identified. And then that went to multiple farms. Then on the -- you talk about holding animals, the same principles we discussed the other day for swine whereas if there were swine on farms and the same with poultry that were known to have been fed the contaminated feed, then we would not be in a position to apply the market inspection to those animals. Therefore the same depopulation discussion we had with the section 32 funds would be applicable to the poultry. And so at this point the poultry that are still alive, that we have reason to believe consumed the feed, are the approximately 100,000 heavy fowl.

**REPORTER:** Yes. I want to ask you about your decision on the recall. You seem to be suggesting that it's too late to do a recall because of the life cycle of the poultry. But why not let consumers decide whether they want to consume that food? And name the companies and the farms where the chickens came from. I mean, a lot of people freeze chicken, a lot of stores freeze chicken.

**DR. PETERSEN:** Dr. Petersen. Well, again, I mean it's more than just the shelf life of poultry or swine as Dr. Acheson suggested. When you look at what's the potential exposure and at best it seems extremely low -- again, for the factors that he mentioned. This -- the wheat gluten or the rice gluten, were just small components of the pet food, so we start with that as being a small component. Then the way swine and poultry are raised today, these are pretty sophisticated operations where they have very defined rations and so the pet food byproducts that went into the rations were just a very small component. He mentions 5 percent, so it's a small part of the pet food. Then it's a small part of the feed, and it was -- if anything, indications are it was fed for a very brief period of time.

And then you look at the frequency of people consuming pork or chicken. So all those things together, along with no evidence of any harm associated with people from eating processed pork or chicken, we made a decision, and we think it's the appropriate decision in concert with FDA, that no recall is being issued at this time.

## APPENDIX C

### Mad Cow Spreads

Aired December 29, 2003 - 07:04 ET

BILL HEMMER, CNN ANCHOR: Four states have been added to the government recall of five tons of beef prompted by mad cow disease. The meat was processed at a plant in the state of Washington, where a single Holstein cow found to have that deadly infection. Eight states and the U.S. territory of Guam are now part of the recall. Elaine Quijano reports now this morning for us.

(BEGIN VIDEOTAPE) ELAINE QUIJANO, CNN CORRESPONDENT (voice-over): USDA officials believe some of the meat from a cow infected with mad cow disease wound up in Alaska, Hawaii, Idaho, Montana and the U.S. territory of Guam in addition to the four states originally on the recall list: Washington, Oregon, California and Nevada. Officials continue to insist the risk to consumers is low, because the parts known to carry the disease, including the brain and spinal cord, were removed before processing.

DR. KENNETH PETERSON (sic), AGRICULTURE DEPARTMENT VETERINARIAN: The recalled beef presents an essentially zero risk to American consumers.

QUIJANO (on camera): So far, USDA officials have not definitively pinpointed where the infected cow came from, but their preliminary information tracks it to Alberta, Canada, where it was imported to the U.S., along with a herd of 73 others more than two years ago. (voice-over): But Canadian officials say it's still too early to talk about any definite links.

DR. BRIAN EVANS, CANADIAN FOOD INSPECTION AGENCY: Based on our understanding of the information compiled to date, it would be premature to draw such conclusions at this time.

QUIJANO: The USDA says ear tags were used to track the cow, and officials are in the process of trying to conduct DNA tests to confirm its origin. The mad cow scare has prompted at least one lawmaker to call for better tracking of the nation's beef supply. In a statement, Senator Chuck Schumer said U.S. officials were caught unprepared. Said Schumer: "How much more of a wake-up call could we possibly need? We need a comprehensive way to track tainted meat and to pull it off the shelves." USDA officials say they are looking at other tracking methods, including using electronic microchips on animals. But they say with hundreds of millions of animals in the nation's food supply, any change to the current system would be a huge undertaking. Elaine Quijano, CNN, Washington. (END VIDEOTAPE)

HEMMER: So, then the question persists: How safe is the beef we're eating? Chief veterinarian for the U.S. Department of Agriculture Dr. Ron DeHaven is our guest here on AMERICAN MORNING. Doctor, good morning to you.

DR. RON DEHAVEN, CHIEF VETERINARIAN, U.S. DEPT. OF AGRICULTURE: Good morning, Bill. Thank you for having me.

HEMMER: It's my pleasure. We consistently hear that there is no risk to consumers. If that's the case, why is there so much concern and attention given to this story?

DEHAVEN: Well, the department actions thus far have been taken out of an abundance of caution. We have, in fact, initiated a recall of that beef. But as the science would suggest and as international standards based on that science suggest, meat is one of the commodities that can safely be traded, even from a country with a moderate to high prevalence of the disease. Based on the program that we've had in place in the United States for over 10 years, we know at worst the prevalence of the disease in this country is very minimal.

HEMMER: So, you're saying we're all just being a bit cautious then. Is that right?

DEHAVEN: We are operating out of an abundance of caution, indeed.