

SHIELDING THE GIANT:

USDA's "Don't Look, Don't Know" Policy for Beef Inspection

This investigative report, as part of an ongoing series on corporate and government accountability, was researched and written by GAP Legal Director, Tom Devine.

EXECUTIVE SUMMARY

Last June and July, almost a decade after the Jack in the Box *E. coli* food poisoning tragedy,ⁱ Americans learned it is still dangerous, if not fatal, to rely on the U.S. Department of Agriculture's (USDA) seal of wholesomeness. The ConAgra Food Corporation, then one of four giant firms dominating the beef packing industry,ⁱⁱ recalled over 19 million pounds of ground beef and related trim from the previous three months after laboratory tests confirmed *E. coli* O157:H7, the same food poisoning germ that killed and hospitalized so many.ⁱⁱⁱ It was the third largest recall in history. USDA's Food Safety and Inspection Service (FSIS) announced in a press release that no contaminated meat entered commerce, but the Centers for Disease Control linked a food poisoning death and at least 35 illnesses to the tainted beef during the first month after the recall.

What went wrong? These outbreaks are no longer supposed to occur, since 1996 when USDA instituted a new Hazard Analysis Critical Control Point (HACCP) system to modernize food safety for the 21st century. USDA trumpeted HACCP as a way to prevent contamination by placing responsibility on industry for its products, and by laboratory tests to detect invisible microbial contamination such as *E. coli*.

The Government Accountability Project (GAP) has just completed the first phase of an investigation since March to find the answer. The catalyst for the investigation was John Munsell, owner of the family business Montana Quality Foods, Inc. Mr. Munsell charged that USDA tried to harass him out of business for blowing the whistle on USDA's failure to act on evidence that ConAgra was shipping *E. coli* contaminated ground beef. He knew from experience. In January 2002, some six months before the recall of ConAgra product produced in April-July, ConAgra shipped him *E. coli* contaminated coarse ground beef produced the previous August. When he pressed the government to learn the full extent of and stop ConAgra's commerce in *E. coli* beef, the bureaucracy blamed him for receiving the ground beef already vouched for as wholesome through USDA's Seal of Approval. FSIS proceeded to make him rewrite his HACCP plan fourteen times, and for four months suspended his privileges to grind his own beef products. As a result, he only could grind coarse ground beef supplied by large packers like ConAgra that had shipped the contaminated product to him in January.

USDA aggressively enforced a "do not look, do not tell" noninterference policy with the giant firm. This allowed the agency to remain officially ignorant of facts that could create a conflict with ConAgra, or expose the government's own Seal of Approval as wholesome on tainted ConAgra beef. But it meant the government was sealing a cover up. It left the public ignorant of and vulnerable to ongoing shipments of government-

approved, tainted meat. This occurred while USDA was using HACCP to place Montana Quality Foods under tighter surveillance than any other plant in the beef industry.

GAP's investigation to date has reviewed thousands of pages of documentary evidence, and produced affidavits and interviews with whistleblowers from industry, and throughout USDA's organizational chain of command from the front lines to agency management.^{iv} The investigation is intensifying and will continue. These preliminary findings are released, however, because a year after the recall our government has not told us what happened. We have received disturbing reports that an investigation by USDA's Office of Inspector General (OIG) has targeted the whistleblowers, rather than government and corporate officials responsible for the public health hazard. Sources have further disclosed that FSIS, which should be the institutional target of any investigation, has editorial input into the report. Agency offices that should be OIG targets instead are working in partnership with the Inspector General's staff. GAP is disclosing the whistleblowers' evidence now, because they do not have confidence their voices will be heard through the Inspector General. Our preliminary findings are listed below

1) Public exposure to *E. coli* O157:H7 began two years before the 2002 recall.

ConAgra's recall only protected consumers from the tip, while covering up a toxic iceberg. Based on Mr. Munsell's confirmed test results, ConAgra had been shipping *E. coli* contaminated beef since at least August 30, 2001, but the recall only covered 28 selected days of ground beef production between April 11-July 11, 2002, and 34 days for trim -- less than half of production during the recall period. The time frame for the recall period itself is only three months out of at least 10 1/2 months of vulnerability to tainted beef shipments, based on the August 30 tainted meat sent to Mr. Munsell. Conservatively extrapolating for the year, in terms of volume and time, the 19 million pounds recalled may be only a sixth of more than 120 million pounds produced^v without government enforcement action or stepped up oversight from August 30, 2001-July 11, 2002 -- all after USDA was on notice that the ConAgra HACCP system was allowing *E. coli* contaminated ground beef with USDA's seal of wholesomeness into commerce

Further, Mr. Munsell's ordeal may account for less than half the time frame that USDA knew the public was vulnerable. Starting in late summer 2000, FSIS repeatedly discovered that ConAgra had been receiving products returned from its customers as *E. coli* O157:H7 positive. Each time the agency allowed the tainted beef to be cooked and reentered into commerce, without warning the public or imposing systematic corrective action. The USDA did not require ConAgra to recall all other product produced on the same day as the *E. coli* O157:H7 contaminated returned product, even though the same processing equipment produced all of the product for the entire day. This significantly increased the odds that the rest of the product was likewise contaminated. Overall, the government's noninterference may have shielded over 90% of ConAgra ground beef over a two year period after USDA was on notice that the public was in danger.

2) USDA's records system is designed to avoid knowing the source of tainted beef. A year after the Sarbanes Oxley law strengthened enforcement teeth for the corporate duty to maintain and disclose accurate, complete accounting records to protect

America's financial markets, USDA is not enforcing the HACCP rules for industry's duty to maintain accurate, complete public health records to protect America's consumers. The lack of records severely hinders the ability to traceback products when recalls are necessary. To illustrate, as of July 31, 2002, ConAgra only had retrieved some 36,000 pounds out of 354,000 recalled on June 30, and 215,000 out of the 19 million recalled on July 19. USDA has set the pace in passive resistance to traceback of contaminated products to the source of public health threats. Its paperwork for government *E. coli* tests did not even have a line to fill in the origin of product sent for laboratory testing. It made a record of where the tainted beef was found, but skipped where it came from.

3) ConAgra slickly took advantage of the government's noninterference policy. The premise of the policy was not to duplicate the company's own *E. coli* program. But ConAgra's testing program was for the benefit of ConAgra, not the public. First, the company only provided results for firms that paid extra to receive "Pathogen free products." Any corporate customer relying on USDA's seal of approval without paying extra remained in the dark, even if receiving products likely contaminated by the same grinding process and equipment that produced the confirmed laboratory test results.

Equally disingenuous, when ConAgra received a preliminary "potential positive" finding that meat was about to flunk, it regularly canceled completion of the testing process by sending it to a chili factory to be cooked until the food poisoning germs are killed. This had three implications: a) Consumers risk eating cooked feces when they buy canned chili. b) ConAgra also was regularly short circuiting corrective action to learn the cause and full extent of any food poisoning threat that would have been exposed by the preliminary warning, had the company not canceled the test process. c) ConAgra could report there had not been any "confirmed" positive test results for extended periods, because it called off completion of the tests when failure was imminent.

4) USDA engaged in persistent, ugly retaliation against anyone who attempted to expose the ongoing cover up, whether the whistleblower is government or corporate, employee or small business. While corporate workers have state of the art free speech rights created in Sarbanes Oxley, small businesses are excluded. As a result of the harassment, Mr. Munsell has been forced to sell his business. Further, the Whistleblower Protection Act for government workers is bankrupt, and the agency has taken advantage by purging its top HACCP talent. It appears they are being systematically replaced with staff too green to catch disintegrating food safety standards, let alone protest.

5) The regulatory double standard is a microcosm why the integrity of HACCP is at risk. The ConAgra-USDA cover up sustains a pattern of using HACCP as a vehicle to obstruct its staff from enforcing food safety laws at big business, while bullying small businesses such as family firms.

6) The ConAgra-Munsell scandal perpetuates a longstanding USDA pattern to blame the messenger and scapegoat victims, rather than stand behind its seal of wholesomeness. In the 1980's and 90's, USDA blamed sickened consumers for failing to adequately protect themselves against food stamped wholesome by the government. The

“scapegoat syndrome” is intensifying. In a 2001 Listeria outbreak, the agency blamed the inspector whose reports of violations kept getting overruled, because he did not blow the whistle sooner on his superiors. Last year USDA blamed Mr. Munsell for receiving contaminated ConAgra beef stamped wholesome by USDA. It is overdue for the government to start taking responsibility again for USDA’s Seal of Approval.

ABOUT THE GOVERNMENT ACCOUNTABILITY PROJECT

The Government Accountability Project protects the public interest and promotes government and corporate accountability by advancing occupational free speech, empowering citizen activists and defending whistleblowers -- those employees who exercise free speech rights to challenge betrayals of the public trust. GAP also advises public agencies and legislative bodies about management policies and practices that help government deal more effectively with substantive information and concerns, while protecting the jobs and identities of those who provide this critical information. GAP has led campaigns to pass and strengthen the Whistleblower Protection Act for government workers, and last year led the successful outside campaign for passage of whistleblower rights in the Sarbanes Oxley corporate accountability law.

This report was produced as part of a campaign to restore accountability for corporate abuses of power that betray the public trust. Check GAP’s website, www.whistleblower.org, for more activities in the corporate accountability campaign.

THE MEGA-REG: HAZARD ANALYSIS CRITICAL CONTROL POINT

In 1996, the Clinton Administration finalized the HACCP (Hazard Analysis Critical Control Point) rule, which overhauled enforcement of federally inspected meat and poultry slaughtering and processing establishments. A primary change under HACCP was a shift in government and industry roles based upon the premise that introduction of microbial testing would strengthen meat inspection by making it more science-based. Under HACCP, plant managers must analyze their production system for likely hazards, then identify critical control points where hazards are likely to occur. Plant employees must then control and monitor the plant’s process at these points. With this new system, USDA turned over many inspection tasks traditionally performed by federal inspectors to plant employees. Government inspectors, once the backbone of product safety efforts, now are primarily relegated to oversight and auditing roles.

A cornerstone for HACCP is corporate maintenance of records to verify compliance with its commitments, plus all necessary commercial records to trace back products if unsafe food enters commerce.^{vi} As William Smith, FSIS Deputy Administrator for Field Operations, testified at December 11, 2002 congressional hearings, “[There must be an emphasis throughout the production and distribution chain on maintaining the records that are necessary to identify, trace and retrieve from commerce, any ground beef products that may pose a public health problem.” (emphasis added)

Working as advertised, the HACCP regulation would reinforce traditional food safety law enforcement through corporations taking responsibility to produce clean products, not just to get them past USDA inspectors. Laboratory tests would catch invisible food poisoning pathogens. A system of permanent corporate records would allow traceback of contaminated products if something went wrong.

Whistleblowers from FSIS and industry alike have charged, however, double levels of regulatory schizophrenia between -- 1) HACCP on paper and in reality, and 2) HACCP as it is enforced at giant packing houses, compared to small businesses. The silent public policy premise is that the mission of FSIS inspectors and veterinarians no longer is to enforce the law on a routine basis. It is to be on call as passive experts for advisory guidance when asked, available to intervene if and when a company's system breaks down. As one agency expert summarized,

[U]nder HACCP the plant was responsible for everything. The Agency was there to monitor only.... As long as the agency could not be blamed or held liable for a plant's action, Agency Management position was to let the plant do whatever it wanted.... "Let the system work" was the ubiquitous response to most questions [at agency HACCP training programs].... We were there to monitor the plant's HACCP program. We could not require them to address specific concerns of hazards, because that would be "command and control" and outside the authority of our role under HACCP.

This philosophy has been taken to recklessly surreal extremes, such as instructing inspectors not to say or do anything when they see contaminated products, as long as they're confident the company will not miss it.

Having institutionalized a passive presence, the agency has retreated further in food safety oversight of slaughter operations through staff cutbacks while line speeds were increasing. To fill the line inspector gap, the agency has drafted its HACCP monitoring inspectors and even veterinarians -- the same officials who should engage in HACCP oversight to assess whether the system could produce clean products at the faster speeds. The agency does not keep track of the food safety tasks missed in the process. Completing a food safety double whammy, those officials have been stripped of authority to write Noncompliance Reports (NR's) for HACCP violations while they work the line.

For consumers, strike three is that HACCP has been administered in an arbitrary manner. This has allowed the agency to cancel or dilute basic food safety standards for products and practices like sanitation control. Examples include the following:

- Hot water sprays whose temperature was supposed to be checked at the carcass surface could be verified 20 feet away.
- Pest controls no longer had to be documented.
- Companies could dilute ingredients in their sprays of fecal contamination.

- Plants no longer had to treat *Listeria* as a hazard requiring a Critical Control Point.

At the same time HACCP creates regulatory "flexibility" to excuse plants from basic food safety functions, the same looseness permits USDA to use it as a weapon for retaliation against vulnerable" very small"^{vii} meat and poultry processors. While a few giants dominate industry production, most firms are small or family businesses. As a whistleblower illustrated, "Depending on the whims of agency management, some days we would enforce a speed limit of 55 miles per hour. The next day the speed limit would be ten miles per hour." The government's comparative treatment of ConAgra and Montana Quality Foods illustrates the potential for gross regulatory double standards through arbitrary judgment calls and abuse of power.

A STUDY IN CONTRASTS

ConAgra coarse ground beef received by MQF in January 2002 was a preview that should have served as a warning to prevent the needless death and illnesses from ground beef processed in the spring and summer. Like the products recalled in July, laboratory tests confirmed it was contaminated with *E. coli* O157:H7. However, the government only forced Mr. Munsell to recall some 270 pounds of coarse ground beef from large packers that MQF further ground at his plant in January. It declined to interfere with ConAgra even after February laboratory tests confirmed three more positive samples of *E. coli* O157:H7 contaminated beef, although all samples were isolated to product produced at ConAgra on August 30 2001. FSIS let ConAgra continue to produce and ship contaminated food uninterrupted for over six more months after learning that it had failed the primary criterion to flunk a company's HACCP plan -- shipping contaminated meat in commerce.^{viii} The anatomy of the regulatory double standard is summarized below. A comparative timeline is enclosed as an appendix.

A. Montana Quality Foods

John Munsell is a soft spoken, slow speaking lanky six foot 57 year old grandfather of two and, since 1971, President of Montana Quality Foods in Miles City, Montana. His father founded the firm in 1946. MQF is classified as a Very Small Plant, with annual sales less than \$2.5 million. Although it has a slaughtering operation for approximately 15 head of cattle per week, the firm performs further processing on beef primarily obtained in boxes from giant packing houses. MQF also purchases coarse ground beef in "chubs," ten pound sleeves packed with coarse ground beef for refined processing. The ground beef from suppliers arrives USDA inspected and approved with the government seal vouching for wholesomeness.

Munsell takes deep pride in the quality of his products, and had earned a spotless food safety track record until January 2002. FSIS consistently accepted his plant's HACCP plans, and his record for testing of beef slaughtered or processed on site was perfect for three years. He spent hours staring at pictures of his two grandchildren before making the decision to risk everything by publicly standing up to USDA and ConAgra.

In August 2001 Munsell attended a HACCP “Next Steps” training program to upgrade his mastery of the new system. Afterwards, he discussed with FSIS field officials modifying his HACCP plan to perform mid-shift cleanups following the collection of samples for lab analysis, and subsequently to ship products into commerce produced after the cleanup. The practical effect would have meant withholding product from commerce until laboratory tests arrived. sample beef from large suppliers by lots. Field staff told him to contact the agency's District Office (DO) with his idea, which he did in a September 1 letter. He did not receive a letter back until February 2002,^{ix} when the DO told him to contact local officials-- completing the bureaucratic circle. By that time, however, Munsell had blown the whistle about ConAgra contaminated product to the USDA and was fighting for his corporate life.

Munsell's world began to cave in when a USDA Relief Inspector sampled ground beef for *E. coli*_O157:H7. The results came back positive, but the inspector told Munsell not to worry, because he had confirmed the product being was from a large packer. Unfortunately, the meat already had been shipped into commerce consistent with MQF's HACCP plan, because it had arrived as USDA-approved. MQF had to recall 270 pounds, and Munsell set about trying to find out what had happened.

Instead of answers, FSIS issued Noncompliance Reports citing him for violations of food safety laws and ordered him to take 15 consecutive samples to ensure the flow of contaminated beef had stopped. In February 2002, the Inspector In Charge at MQF took five of the required 15 additional samples, and 3 of the 5 were positive. No product was released into commerce. MQF had retained it all pending the sample test results. All three positives originated from coarse ground beef supplied by ConAgra with the same date of production. FSIS again blamed Munsell for receiving the coarse ground beef shipments it had previously inspected and passed at ConAgra as wholesome. A nightmare ensued that lasted until July 3. For four months FSIS suspended MQF from grinding any product other than coarse ground beef supplied by the large packers into ground beef ready for sale, which significantly diminished his sales and threatened bankruptcy. The agency required him to reassess and resubmit his HACCP plan 14 times before approving it. Summarized below are patterns of agency action illustrating abuses of power that endangered consumers.

1. Exercising the freedom to warn

Mr. Munsell actively exercised his constitutional free speech rights, both to confront USDA about what went wrong, and then to blow the whistle when the bureaucracy covered up the source for the contaminated ground beef – ConAgra. He was being held responsible, on grounds that the contamination may have been dirty beef from his own plant that was mixed in with clean ConAgra product. Munsell said he did not mix the two together. The Relief Inspector performing the sample confirmed Munsell's innocence to the Compliance Officer sent to investigate. But USDA steadfastly presumed him guilty in the absence of proof for his innocence. On January 28 USDA's recall committee ordered him to reassess his HACCP plan (previously approved in 2000 and

2001), implement corrective action and then take samples for 15 days in a row. Munsell asked what corrective action was possible for a large packer's shipment of *E. coli* contaminated food. The recall committee suggested asking the big packers.

On January 30, Munsell challenged USDA's Compliance Officer to take a sample for laboratory testing of unopened containers of ground beef just received from ConAgra. That way there would be no possibility the source of any positive *E. coli* results came from MQF beef, instead of ConAgra's. The Compliance Officer was unimpressed and rejected the suggestion. He explained that the ConAgra beef couldn't be contaminated, because the government already had approved it as wholesome. The FSIS Circuit Supervisor later confirmed to Munsell that the Compliance Officer had contacted the FSIS District Office and requested permission to sample the chubs of coarse ground beef. The District Office denied permission, expressing fear that ConAgra "would sue" them."

On February 5 he pressed FSIS to confirm in writing that the agency had not responded to his September 1, 2001 proposal for a procedure that would have prevented the contaminated beef from entering commerce when it was received in January. FSIS refused, on orders from its District Office. Mr. Munsell observed that the media would be interested in those kinds of games.

Since he was getting nowhere with the bureaucracy, on February 7 and 8, Mr. Munsell sought help from Montana's congressional delegation. The offices of Senators Max Baucus and Representative Denny Rehberg immediately communicated their concern to the FSIS District Manager Dr. Nathaniel Clark. Munsell continued to communicate regularly with the Montana delegation throughout the upcoming ordeal.

On February 22 Munsell asked another USDA official, a Relief Inspector filling in for the IIC (Inspector In Charge), to sample ConAgra ground beef directly from the package, so there would be no question about the source of any confirmed contamination. Again FSIS refused, this time explaining that would create the appearance of "conspiring" against a large packer.

On February 25 Mr. Munsell did not mince words in an email to Dr. Clark, warning that a potentially devastating problem could be threatening consumers at that moment, with large amounts of contaminated ConAgra beef at dozens of unsuspecting plants. He warned that inaction could lead to serious illness or death. If that occurred while they were passive, Munsell told Clark, they should both share a cell in Alcatraz. When Clark did not reply, the next day Mr. Munsell sent another message warning that the threat could be greater than the Jack-in-the-Box tragedy. Again, Dr. Clark did not respond, although on February 28 he informed Munsell that his emails had been forwarded to the Enforcement and Legislative Affairs Offices in D.C. That day in responding to NR's blaming him for the contamination, Munsell emphasized that the dirty beef had been received as USDA inspected and approved.

2. The bureaucratic hammer

While dissenting against USDA's avoidance of ConAgra responsibility, Mr. Munsell went out of his way to cooperate with FSIS on how to upgrade food safety at his plant. During the cycle of 14 reassessments for his HACCP plan, Mr. Munsell repeatedly sought guidance from the Inspector in Charge, Multi In Plant Performance System Supervisor (MIPPS Supervisor), Circuit Supervisor and higher level Technical Service Center staff, Compliance Officers, and even the District Office. He consistently accepted their recommendations, to the point of taking verbatim notes from conference calls with the District Office and then institutionalizing all their views in his reassessed HACCP plan. In one case four agency Veterinary Medical Officers and the Inspector in Charge worked with him to develop an acceptable plan. On two separate reassessments, agency CSO's (Consumer Safety Officers), the agency's recognized experts on HACCP plans and reassessments, worked closely with Munsell. He worked with a HACCP expert, a recently retired FSIS District Manager, provided by an industry trade association to produce a reassessment that FSIS would accept. He offered to take whatever measures FSIS instructed and responded to directions with an unqualified, "I'll do it," which he did.

It did not matter. The FSIS District Office rejected reassessment after reassessment, in some cases the same day they were turned in and once, before it was received. The pattern of rejections reflected a constantly shifting pattern of arbitrary requirements. To illustrate, on March 8 Mr. Munsell made eight changes to his plan, as dictated by the District Office. On March 11 the DO found them inadequate and offered 13 more requirements and "ideas" for Mr. Munsell to consider when he tried again.

After a while the reasons to reject his proposals became contradictory, such as whether to provide separate or joint Hazard Analyses for trim from different sources. In other cases the agency contradicted its own policies. It required MQF to institute a Critical Control Point sampling incoming coarse ground beef for *E. coli* O157:H7 contamination for MQF's receiving point of entry. However, existing agency policy was that a CCP at receiving would violate the law. FSIS had ordered its inspection staff to ensure those CCP's were removed from the various plants and their HACCP plans.

It appeared the agency was attempting to humiliate Mr. Munsell. Despite his spotless record before the positive *E. coli* samples incident in February of government-approved ConAgra beef, the District Office announced that all MQF's ground beef production was an "Imminent Public Health Risk." Between February 27 and July 3, 2002 the agency imposed the following unique prerequisites on MQF:

* On March 12 the agency agreed to let MQF grind only coarse ground beef from large packers—but only if MQF sampled each incoming shipment of coarse ground beef for *E. coli* O157:H7 before it was further ground. MQF could not grind trim from their own kill nor could they grind the trim produced by cutting up boxed beef already federally inspected and certified as wholesome from the large packers. To Munsell's knowledge this requirement was not imposed on any other plant in the nation.^x

* Munsell had to prepare assessments and hazard analyses from the premise that trim from his own kill was a source of *E. coli* O157:H7. This requirement contradicted the official agency position that *E. coli* O157:H7 pathogens in trim did not constitute adulteration and did not impose this requirement on other plants to Munsell's knowledge.

* MQF had to prepare assessments and hazard analyses treating trim from federally inspected and approved trim in boxed beef from the large packers as a source of *E. coli* O157:H7. This requirement contradicted the official agency position that *E. coli* O157:H7 pathogens in trim did not constitute adulteration. Until September 2002 USDA did not impose this requirement on other plants, to Munsell's knowledge.

* The District Manager had demanded that MQF list temperature in both storage areas as a Critical Control Point.

After the recall at ConAgra was announced, John Munsell was advised by the District Office that the reassessment would be deemed "acceptable" with one more condition. John Munsell had to sign a statement certifying, as he hand wrote across the bottom of the plan, "This is what I want to do", and fax the cover page to the District Office. The 14th reassessment was then "accepted" immediately on July 3, 2002.

3. USDA v. USDA

The agency's treatment of Mr. Munsell reflected a sharp disagreement between its inspectors and veterinarians in the field, compared to the authoritative managers in the District and Washington, D.C. offices.^{xi} The split began immediately, as the Inspector who took the first positive sample advised Mr. Munsell not to worry about being held liable for the large packers' contaminated product, but was overruled by his superiors.

It continued as the agency rejected the next IIC's findings, including his eyewitness personal confirmation that MQF was operating with cleaned equipment and had not mixed any of its beef in with the ConAgra product that tested positive in February. Blaming Mr. Munsell for those test results was the agency's basis to justify 14 HACCP reassessments and then issue a notice of intent to shut down operations, and then issue a Notice of Suspension. The District Office took the latter two actions without first telling the IIC. Under normal agency rules the IIC is the official to make that enforcement decision, but in this case he had to learn of the action from Mr. Munsell.

Consistently the agency's inspectors and vets protested that agency management was avoiding the real public health threat. As early as February one FSIS expert issued communications protesting --

that all the attention is being directed at Establishment #7679 [MQF], while the source plant [ConAgra] may be conducting business as usual. I would hope that someone, somewhere is looking into the likelihood that there is other contaminated product out in distribution and which poses an immediate threat to

consumers. It would be a shame if an unsuspecting consumer got sick, or even worse, because we failed to take appropriate measures to prevent it....The chances are pretty good that ConAgra is the source and there's probably more of this 'suspect' product out in distribution circulating like a ticking time bomb. That same day the District Office announced its intent to suspend its inspectors from the grinding operation at MQF.

On March 1 the IIC and his supervisor (MIPPS Supervisor Burden) wrote to the District Office,

Establishment 7679 (MQF) has properly responded to the issues outlined in the NOIE and has, to my knowledge, implemented corrective and preventative actions, which meet regulatory compliance and reasonable industry standards. Review of the three consecutive E-Coli: O157:H7 failures strongly suggest a common source of the contaminant—coarse ground product of a single identified lot received from Establishment 969 (Con Agra, Greeley Colorado). I recommend acceptance of Est. 7679 response and implemented measures, and suggest a follow-up investigation of the source of the product considering the serious public health implications of other possible E-Coli: O157:H7 adulterated product from the same production lot.

The next day a fifth FSIS official corroborated these findings: “The evidence that I could get out of all this sure seems to implicate Con Agra. I am very concerned about the rest of this product, which is probably sitting in storage somewhere....[I]t sounds like it's time to change the system and go after the REAL culprit.” (emphasis in original) At 11:56 AM on March 4 USDA's District Enforcement Operations office in Washington D.C. put an exclamation point on this warning: “We could have an outbreak going on related to the supplier plant.”

At 3:45 the same day the District Office notified MQF that its operations were suspended.

On March 8 the District Office rejected the recommendations of a sixth official, the Circuit Supervisor, to accept MQF's latest overhaul of its program. On April 23 MQF tried again. This time the Circuit Supervisor's judgment was reinforced by recommendations from six FSIS experts, including Inspection, Veterinary and Consumer Safety Staffs, all who had assisted Munsell on the document.

The District Office rejected it the next day.

Later that month the District Office rejected a proposed MQF sampling plan backed by the Circuit Supervisor. The DO reminded Munsell that his company “must provide scientific proof that [its] sampling protocol was statistically valid.” The DO then dictated that Munsell implement a sampling plan concocted by the District Office that would require Munsell to hold all beef trim from his own operations for a month until each of four District Office required samples came back negative. This approach would

make it impossible for MQF to make ground beef from its own operations. He sought a scientific opinion from the head of a USDA certified lab, who replied, “There is no scientific proof for such a sampling program.... There is simply no existing statistical scientific data which addresses either the recommended frequency of sampling mandated by the District Office [n]or the length of time such sampling would cover.” Munsell reported the opinion of the head of the USDA certified lab to the DO. The DO did not budge.

In May a frustrated MIPPS Supervisor and Veterinary Medical Officer reminded agency officials at the FSIS Technical Services Center (TSC) that

an important part of my job ... is to follow up on information such as this in order to possibly avoid any disastrous consequences of other shipments from the same lot of the same supplier, as there may be significant potential for adulterated product to reach other destinations. Therefore, I would very much like to know the standard protocol we as field VMOs and inspectors are expected to follow in providing such information to our superiors in FSIS, as this would be imperative to following up on a possible O157:H7 contaminations at the suppliers. This seems only prudent considering the enormous public health implications.”

The vet explained, however, that the District Office

[r]efuse[s] to even entertain the possibility that the product could have been contaminated at point of origin....They refuse to allow those of us in the field to make any decision regarding this matter. Most unsettling is the absolute unwillingness to look at all the possibilities of where the positive O157:H7 originated, and whether there is/was other adulterated product of a possible failure at the originating plant. We are supposed to be ... working in the public interest of food safety, are we not? [W]hy are those of us in the field being hassled for trying to get to the truth instead of being allowed to solve this problem and move forward?

4. Evidence of retaliation against Montana Quality Foods

While the arbitrary nature of USDA actions against Mr. Munsell imply a hidden agenda, a focused examination leaves no doubt: USDA was on a vendetta to force Mr. Munsell out of business, because he made waves that the bureaucracy was acting as a buffer for unsafe food produced by a giant packer. Responding to Munsell’s September 1 proposal, District Office chief Dr. Clark accused Munsell of trying to “trap” the agency, ignoring that Munsell prepared the letter at the suggestion of an agency circuit supervisor. Four days after Munsell’s February 7-8 disclosures to Congress, an agency official warned that going to Congress would “rise up to bite [him] worse than [he] had already been bitten.”

The threats were not bluffs. The District Office made its structural preparations for the attack on Mr. Munsell. One prerequisite was circumventing agency policy that it was the Inspector in Charge's authority to make decisions whether inspection should be withheld and production stopped. On February 23, 2002, before any of the samples taken on February 19, 20 and 21 were confirmed positive, FSIS District Manager Dr. Clark contacted District Enforcement Operations (DEO) office in Washington DC and inquired into the protocol for withholding inspection at MQF. On February 23 and February 26 the DEO emphatically reaffirmed the IIC's authority.

On February 26 the District Office contacted the IIC at MQF. The DO directed him to amend and reissue the NR's written the previous day. Instead of being a single violation for three samples that came in positive, the record indicated three repetitive failures of the HACCP plan, based on each of the three positive *E. coli* O157:H7 samples, *even though they all came from the same ConAgra shipment*. The IIC was at another plant performing inspection duties and was instructed to promptly return to MQF, write the NR's and copy Mr. Munsell. The IIC did as he was instructed, amending and reissuing the NR's even though he did not believe the samples constituted repetitive positives, and faxed the amended NR's to the DO between 5:30 PM and 6:00 PM. By creating a contrived record of "repetitive" violations through this maneuver, Dr. Clark empowered himself to trump the IIC's authority for an enforcement action.

Most telling is the time correlation between whistleblowing by Mr. Munsell, government inspectors and vets, compared with the agency's actions against MQF.

* On February 23, the day after Mr. Munsell's second challenge for an IIC to sample ConAgra beef straight from the wrapper, Dr. Clark began making plans to withhold inspection from MQF, thereby shutting down his grinding operation. To his chagrin, as described above he learned from DC Officials that it was the duty of the IIC to withhold inspection. The DO could issue Suspension Orders. Dr. Clark requested clarification of this policy and issued instructions to his staff that the DO would make enforcement decisions in his district.

* On February 25 and 26, Mr. Munsell warned the DO that it was risking an outbreak worse than Jack in the Box, and they should share a cell in Alcatraz if they remained passive. * On February 25 the District Office ordered the IIC to issue Six Noncompliance Reports for the 3 positive *E. coli* O157:H7 samples.

* Dr. Clark was not passive. On February 26 he received the clarification he sought and immediately ordered the IIC to rewrite and reissue the NR's as repetitive violations of the HACCP plan, empowering the DO to take regulatory action against MQF. The DO issued a Notice of Intended Enforcement dated February 26.

* Dr. Clark dispatched a Compliance team to investigate the positive samples at MQF. The compliance team arrived in Miles City the evening of February 26 but did not go to the plant until the morning of February 27. Dr. Clark did not wait for them to investigate and report on conditions at MQF before he acted. On the morning of February

27, before the compliance team issued its report, the DO faxed a copy of the just-issued Notice of Intended Enforcement Action to MQF. The IIC was unaware of the NOIE being issued until Munsell showed the faxed copy to the IIC upon his arrival at the plant. This was the same day a supervisory field vet fruitlessly urged the agency to stop letting the source of contaminated E.coli ground beef conduct business as usual.

* From March 1-3, Senator Conrad Burns, two FSIS vets, including the MIPPS Supervisor, and a consumer safety officer all challenged the District Office's handling of the dispute, and agency personnel reaffirmed the need to go after the "REAL culprit." On March 4 agency management issued a Notice of Suspension against MQF.

5. Deceiving Congress

FSIS leadership engaged in crude deception to sustain its campaign against Mr. Munsell. In congressional briefings and testimony, Mr. Smith submitted crudely false or misleading information that established bad faith beyond a reasonable doubt. For example, Mr. Smith justified the agency action against Mr. Munsell by falsely asserting –

*MQF continued to ship product after it tested positive. This was patently false. On February 21 USDA notified Mr. Munsell of the first "presumptive positive" sample result. From that point on, MQF stopped all further grinding or shipping ground beef – period. Production did not resume until March 12, when the company was restricted to processing coarse ground beef from the large packers.

*Too much time had passed between the date the Coarse Ground Beef was produced (August 30, 2001) and the dates the samples were taken for an effective traceback to be performed, making a recall impossible. This assertion bypasses ConAgra violation of the rule to retain records, and USDA's failure to ask for them in a timely manner, the two real reasons why traceback did not occur. Munsell's records show that he received the contaminated product between January 30 and February 15 from the ConAgra distributor in Billings, Montana. The source of product evidence was provided to Compliance Officer Hansen on February 27, yet the agency did not notify ConAgra of the contaminated product in commerce until March 8. The agency did not dispatch a Compliance Officer to ConAgra until March 12th to seek all of the records on August 30, 2001 production, *after the agency had shut down MQF over the same shipment.* In reality, the agency chose the "don't look, don't know" approach to minimize food poisoning threats from its own regulatory breakdown.

* Action against MQF was mandatory, because of three consecutive E. coli results in February. But as confirmed by the FSIS Inspector in Charge, all of that beef came from ConAgra, against which the agency took no action at the time.

* There was a consensus of agreement among agency personnel for the actions against MQF. To the contrary, at least six field experts disagreed sharply.

In some instances the deception was so far fetched that it flunked the laugh test. In May the Montana congressional delegation persisted in its oversight of the dispute by having staff meet with USDA Undersecretary Dr. Elsa Murano. She committed credibility suicide by reassuring them that all Mr. Munsell's concerns had been satisfactorily resolved.

B. ConAgra Foods, Inc.

On June 30, ConAgra recalled 354,200 pounds of contaminated ground beef that had tested positive for *E. coli* O157:H7, representing a day's production. On July 19 the firm expanded its recall, adding some 19 million pounds of contaminated ground beef and trimmings, covering 26 production days from April 21-July 11, 2002. In response to press accounts criticizing the company for delays retrieving the tainted meat, it blamed USDA for not providing more timely notice of the need to act. A more careful review, however, makes clear that for nearly two years both FSIS and ConAgra had been avoiding with conviction the early, late and continuous warnings of inevitable disaster.

1. Track record

The ConAgra operation has had a long, controversial past. In the 1980's its performance in the Streamlined Inspection System -- Cattle pilot program generated so much filth on food that critics dubbed it the Streamlined Infection System, and Congress canceled funding for the experiment in 1990. ConAgra experienced a product recall in 1997. In January 1999 Japan notified ConAgra that its shipments to that country of steaks and other products higher grade than ground beef had been confirmed as positive for *E. coli* O157:H7.

For the prior year there were early warnings that could have prevented the August 2001 contamination in product that Mr. Munsell received the following January. From August until September 18, 2000 five Noncompliance Reports had been issued for Zero Tolerance (of fecal contamination) violations. A neat dress rehearsal occurred in the fall of 2000, when inspectors discovered that customers were returning product to ConAgra, because it had tested positive for *E. coli* in company tests the purchasers had paid extra to make conditions of sale. Although the firm took no actions to check the full extent of tainted beef in commerce, the FSIS District Office told its field staff not to issue a Noncompliance Report, order a HACCP reassessment or "interfere in any way," because ConAgra was handling matters exactly as USDA wanted. The returned products shared the same equipment (conveyors, grinders, etc.) as the product produced for the rest of the day. ConAgra did not recall any tainted beef processed at the same time and sold to customers who had not paid extra.

As a result, the pattern of violations persisted. Between January 29, 2001 and February, there were three NR's for Zero Tolerance violations, two for pre-operational sanitation violations and another for excessive line speeds -- 395 and 396.5 carcasses per hour("cph"). In May the 396 cph pace continued, with three NR's for product on the floor, and two for Zero Tolerance. More significant, a customer again returned ground beef that

tested positive for *E. coli* O157:H7, this time 10,000 pounds had been sold to a customer in Alabama. In June customers returned another 10 combos totaling 18,000 pounds of ground beef that tested positive for *E. coli*. In July the problems intensified, as customers returned 200,000 pounds of beef after lab tests showed it was positive for *E. coli* O157:H7. FSIS inspectors also issued 16 NR's for violations ranging from Zero Tolerance to overflowing toilets that spread filth to the floors where plant workers could track the human waste on floors where product was repetitively dropped and picked up without being condemned. The agency issued orders to the inspection staff to not condemn product dropped on the floor, because the inspector could not prove the meat fell on a pathogen.

In August 2001, the same month the contaminated August 30 product was produced, the plant had another half dozen Zero Tolerance failures. Perhaps most telling, between May and September 1, ConAgra's own sampling program produced 15 positive *E. coli* test results. In September, there were ten more Zero Tolerance NR's, and more customers returning shipments of *E. coli* ground beef. December produced another five Zero Tolerance NR's, with three more in January 2002. To illustrate the food safety standards, inspectors issued one NR after an employee picked meat off the floor and deposited it into the tub for packaging without any effort to clean off the filth. In December 2001 there were five Zero Tolerance NR's and a kill floor contamination rate of 23.9%, reflecting a slaughter line speed of 399.5 carcasses per hour.

Overall, between January and May 9, 2002 ConAgra's plant received 12 NR's for Zero Tolerance, and another 9 for sanitation violations. The recall was no surprise to anyone. ConAgra's internal tests had revealed *E. coli* positives for production on April 12, 18 and 30th. The surprise is that it took so long for disaster to strike.

2. "Letting the system work": Stay out of the way

It also should not be a surprise why the ConAgra plant was steadily producing tainted beef: FSIS management pursued an aggressive policy of non-avoidance by preventing site inspection and veterinary staff from holding the company accountable. The agency remained loyal to its "do nothing" policy after discovering the product returns a year earlier. In August 2001 the Circuit Supervisor did just that, declining to even discuss field staff's recommendation for enforcement action after 16 July NR's for fecal or sanitation violations, 200,000 pounds of returned product and 15 positive *E. coli* findings from ConAgra's own tests from May-August.

USDA was not passive about gutting food safety standards, however. To illustrate the pattern of HACCP implementation at ConAgra, the agency ordered field staff --

- not to perform *E. coli* O157:H7 tests on ground beef because the company was in compliance with Directive 10010.1 and was performing their own sampling.
- not to classify *E. coli* O157:H7 on beef trim as an "adulterant" violating wholesome meat laws.^{xii}

- to allow 16 square inches of fecal contamination on carcasses entering the pre-evisceration cabinet spray system, even though the inspectors protested the spray would not truly eliminate the fecal matter rather, would simply spread the fecal matter over the entire carcass and make the contamination virtually invisible to the human eye.^{xiii}
- not to condemn product dropped on the floor because they could not “prove” the product fell on a pathogen.^{xiv}
- not to interfere with shipment of products, after ConAgra received a "dirty meat" letter from customers and before corrective action.
- to accept a one percent positive rate for *E. coli* O157:H7 as “baseline” and acceptable, which meant that at ConAgra “Zero Tolerance” for fecal contamination meant 8,000 pounds of government-approved *E. coli* beef daily.

In general, FSIS management was diluting long-established food safety requirements to conform with ConAgra's HACCP rules in the examples listed above, reflecting a dangerous dimension of the program's "flexibility." The most fundamental ConAgra policy should have been grounds per se to crack down: the company did not conduct *E. coli* tests unless customers contracted for "pathogen free testing and certification." Even if positive *E. coli* tests came in for customers requesting proof, ConAgra did not check if tainted meat from the same production cycle went out elsewhere. That meant the normal standard for ConAgra beef was "hope for the best." Nonetheless, the latter was approved as USDA wholesome.

3. Dropping the ball on beef shipped to Montana Quality Foods

The contrast between USDA's treatment of ConAgra and MQF is striking.^{xv} The agency's first significant action occurred on March 8, after determining ConAgra no longer had any meat in storage from August 30 production. The agency asked the company to see if any beef was at its distributors, or if they knew where it had been sent. By that time, FSIS already had prohibited Montana Quality Foods -- the customer victimized by ConAgra's product -- from grinding its own products, and had rejected Mr. Munsell's fourth HACCP reassessment. Although for a few days there was further effort to find the beef, on March 12 the matter was removed from the field inspection and veterinarian staff. A compliance officer picked up all the relevant remaining records on August 30 production, and left. Those responsible for food safety law enforcement on site were out of the loop from that point on. FSIS largely persevered in its policy "not to interfere in any way."^{xvi} This made inevitable the continued violations and 19 million pounds of contamination that struck consumers later in the summer.

4. Off the hook: ghost accountability for the recall

The roots of the recall initially were a striking case of déjà vu with Mr. Munsell's ordeal, indicating that the MQF nightmare was not isolated. In May, the compliance officer who had gone to Gallagan's, a corporate customer for ConAgra's ground beef and trim, refused to believe the owner's statement that only ConAgra coarse ground beef had

been processed when FSIS took the sample that resulted in a positive. Instead, FSIS issued an NR to Gallagans for positive *E. coli* O157:H7 and subjected the company to 15 straight laboratory tests. On June 12 positive samples began coming in from meat shipped to Gallagan's, which eventually would trigger the recall. On June 24, however, after repeated positive test results, a compliance officer intervened to sample unopened chubs of coarse ground beef from ConAgra. The sample results were positive.

Another preview occurred on June 7, from 18,000 pounds of contaminated ground beef that Mountain City Meats returned to ConAgra. FSIS maintained consistency by not letting this development interrupt ConAgra production.

Even after the initial recall, FSIS did everything possible so that ConAgra would remain in control, permitting the company to pick lots that would be sampled, and lot size when FSIS mandated the 15 sample regimen on ConAgra.

FSIS quickly acted to give ConAgra space. On August 20 the NOIE was lifted, and business as usual resumed. In September there was a new Zero Tolerance NR for the kill floor. Rodents were in the locker and roaches in the meat. Another sample tested positive in September, part of a pattern of 26 positives between July 29 and October 1.

On November 15, FSIS suspended ConAgra operations, because there had been 19 Zero Tolerance NR's since August 20. The suspension largely was completed while the plant was shut down anyway for maintenance, however. The FSIS District Manager explained to inspectors that the agency enforcement actions were "really a big political game," and added that "[w]e all need to play the game." It wasn't a game to the food poisoning victims. Not surprisingly, four more Zero Tolerance violations were issued later in the month for feces in four separate trim combos.

RETALIATION AGAINST GOVERNMENT WHISTLEBLOWERS

FSIS smashed anyone who challenged its efforts to protect ConAgra from accountability, not just Mr. Munsell. After Mr. Smith took charge of the Munsell dispute from Washington, every official was moved off the job who blew the whistle internally on harassment of MQF, or who sought accountability from ConAgra. The harassment victims ranged from inspectors to supervisory vets. In some instances the agency simply isolated them from the case. Numerous whistleblowers have reported that the Inspector General staff's primary interest was to attack the critics, while discouraging or only grudgingly accepting evidence of agency misconduct to shield ConAgra. Agency management forced some of the agency's most seasoned veterinarians out of the government through steady harassment.

This treatment is consistent with a wide ranging phenomenon since new Labor Management chief William Milton purged the long time career staff of that office, who had earned respect over the years even from critics for objective, constructive resolution in retaliation cases. Leaders from professional organizations and unions alike now express no expectation of fair play within the agency personnel system, claiming that the merit system has been replaced with a reign of terror at FSIS.

RECOMMENDATIONS

USDA's and ConAgra's changes since the recall largely have been limited to windowdressing. A serious, sustained effort by ConAgra, USDA and Congress is necessary to end the broken record syndrome of needless food poisoning tragedies coming from USDA collusion with giant packers. Suggestions based on this preliminary report are listed below:

I. ConAgra should --

1. fully disclose what it knew and when about the full scope of meat shipments from production on days when company or government laboratory tests came back positive for *E. coli* O157:H7 or any other illegal contamination.
2. commit to only selling wholesome beef products, instead of limiting its commitment to compliance with USDA's legal standards.
3. Inform all affected customers of USDA-approved shipments when laboratory tests reveal positive test results for illegal adulterants, instead of just those who pay extra.
4. maintain necessary records so that any products later found not to be wholesome can be traced back for two years, as required by law.
5. institute a state of the art whistleblower protection program and hotline.

2) USDA should --

1. develop for independent peer review a consistent enforcement program that ends the regulatory double standard between large and small or very small facilities.
2. end its tradition of blaming the messengers among its inspectors and veterinarians, and begin to assume management responsibility for recurring HACCP breakdowns.
3. support passage of amendments pending for the Whistleblower Protection Act, as a structural solution to harassment of agency staff, and institute a program of outside mediation to resolve reprisal allegations associated with the ConAgra-MQF controversy.
4. implement and enforce scientifically credible, peer reviewed programs for sampling and traceback, including enforcement of agency and corporate record systems that disclose the origin for tested products and all other material information.
5. request that the Office of Inspector General expand its investigation to cover the additional issues raised in this report, such as failure to act on evidence since the summer of 2000 that ConAgra had been shipping tainted meat and not alerting all customers who relied on USDA's Seal of Approval.

6. apologize to Mr. Munsell, honor him with a public service award for his courage defending the public against food poisoning threats, and offer him compensation for losses due to holding him accountable for misconduct by USDA and ConAgra.

C. Congress should --

- request a GAO investigation and audit of the MQF-ConAgra disparate treatment.
- extend the Sarbanes Oxley whistleblower protections to small business suffering harassment due to whistleblowing disclosures.
- extend jurisdiction for a private attorney general action, modeled after the False Claims Act, to food poisoning victims

The composite lesson learned is fundamental: Secrecy enforced by repression is a food safety hazard. In the absence of safe reliable channels for full disclosure, Americans will have to live with deadly food poisoning threats.

ⁱ Four children died and 500 consumers were hospitalized in the outbreak, from eating hamburgers made from ground beef approved as wholesome by USDA.

ⁱⁱ On September 19, 2002 Swift Foods Company purchased ConAgra.

ⁱⁱⁱ On June 30 ConAgra recalled 354,000 pounds of ground beef produced the previous May 31. On July 19 ConAgra recalled some 19 million more pounds of ground beef and trim, from 26 days of production out of a three month period from April 11-July 11, 2002.

^{iv} Due to the prospect of almost certain harassment without any viable legal rights, the whistleblowers are anonymous until proceedings are instituted for them to bear witness in a formal record. They will brief good faith congressional investigators after receiving reassurances such as confidentiality protection.

^v ConAgra produced roughly 800,000 pounds of ground beef and trim daily.

^{vi} 9 CFR 320

^{vii} Under USDA regulations, "very small" plants are facilities with annual sales less than \$2.5 million, or fewer than ten employees.

^{viii} 9 CFR 417.6.

^{ix} If FSIS had acted on and accepted Munsell's plan, tainted ground beef he received from ConAgra in January would not have been shipped until laboratory tests gave the meat a clean bill of health. A tortured debate later ensued about punishing Munsell for not implementing the proposal until FSIS approved it. At first the agency insisted it had responded verbally, but later conceded the relevant official may have "forgot."

^x In June USDA rescinded the restriction, after warnings that it was illegal.

^{xi} After Mr. Munsell went to Congress with his concerns, Deputy Administrator William Smith took personal charge of the controversy.

^{xii} This decision was reversed after the outbreak and recall.

^{xiii} After the recall, ConAgra voluntarily reduced levels to two square inches or less.

^{xiv} The enforcement loophole was particularly strategic, since between December 11, 2000 and December 31, 2001 over 10% of NR's issued were for product falling on the floor. Between January 2-June 6, 2002 there were 6 out of 35 NR's, or 17%, were for product picked off the floor.

^{xv} A chart is attached comparing the two firms' food safety track record, and USDA's respective enforcement actions.

^{xvi} Field staff were allowed to take another laboratory sample, because there had been six more NR's for Zero Tolerance failures in six weeks, between January 22 and March 5, 2002.

Shielding the Giant: The USDA’s “Don’t Look, Don’t Know” Policy for Beef Inspection

ConAgra-----Montana Quality Foods
Key Events Timeline
1998- 2002

	<u>ConAgra</u>	<u>Montana Quality Foods</u>
1998-2000	<p>On average, ConAgra slaughters 5000 head of cattle per day and produces approximately 440,000 pounds of trim and 360,000 pounds of ground beef per day. Trim is small pieces cut from the carcass during processing of carcasses. Trim is processed into ground beef or sold to small processors for grinding into finished ground beef.</p> <p>Hazard Analysis and Critical Control Point Program (HACCP) Implemented by ConAgra in 1/98.</p> <p>ConAgra exempted from FSIS O157:H7 sampling procedures due to Directive 10010.1. This directive limited the FSIS ability to perform pathogen samples at the large plants. In general, very small processors could not comply with this directive due to the high costs of compliance.</p> <p>Between Jan 1999 and March 2002, only 4 FSIS samples are performed at ConAgra.</p> <p>Dec 98-7/02 ConAgra tests for O157:H7 only in product destined for customers requesting pathogen free certifications.</p> <p>8/00- Japan’s Ministry of Health and Welfare notifies ConAgra via US Agricultural Attache of second incident of positive E.coli O157:H7 non-ground product being shipped to Japan. USDA had approved all product involved as “Wholesome”</p> <p>8/00-FSIS staff learns ConAgra receiving returned ground product and trim due to positive <i>E. coli</i> O157:H7 testing of ConAgra product. FSIS Inspection staff reports discovery to FSIS Management and are advised to do nothing.</p> <p>10/00-According to frontline inspection staff, the USDA rejected scientific evidence that beef processed at ConAgra plant is positive for <i>E. coli</i> O157:H7.</p>	<p>On average, MQF slaughters a total of 18 head of cattle per week and produces at most 750 pounds of ground beef per day. (A total of 950 head of cattle slaughtered per year/ 195,000 pounds of ground beef produced per year)</p> <p>HACCP implemented 1/2000</p> <p>MQF sampled by FSIS monthly for O157:H7</p> <p>During a 3 year period ending Jan 2002, MQF never had a positive E.Coli sample.</p>

January 2001	<p>From 12/11/00 to 12/31/01: approx 103 NR's (Noncompliance Reports) are issued:</p> <p>45 NR's for Zero Tolerance failures—(Zero tolerance is milk, ingesta [stomach contents] or fecal matter contamination of beef product)</p> <p>11 NR's for Operational sanitation 3 NR's for pre-operational sanitation 2 NR's for excessive line speeds 2 NR's for Facilities problems (bathrooms overflowing, etc.)</p>	<p>Jan 1 2001 to Dec 31 2001 8 NR's are issued to MQF; none are for Zero Tolerance failures.</p> <p>3 for minor operational sanitation practices. 1 for weeds in back of building. 2 for pre-operational sanitation. 1 for dust on a fan.</p>
May 2001	<p>Line speed timed on 5/2/01 at 396 carcasses per hour, higher than allowed.</p> <p>10,000 pounds of coarse ground beef returned. Product was from kill dates of 5/23; 5/24 and 5/25/01. Product was positive for <i>E. coli</i> O157:H7.</p>	
June 2001	<p>Approximately 20,000 pounds of product returned to ConAgra for positive <i>E. coli</i> O157:H7. One customer returned 2000 pounds of 10000 pounds received because of positive <i>E. coli</i> O157:H7—the other 8000 pounds had already been ground and shipped into commerce.</p>	
July 2001	<p>Approximately 200,000 pounds of <i>E. coli</i> O157:H7 product returned to ConAgra.</p>	
August 2001	<p>Based on volume of returned product, Conagra positive samples and NR's issued, an e-mail request is sent to FSIS District Management regarding the issuance of an NOIE to ConAgra. NOIE is Notice of Intended Enforcement, first step in shutting down a plant. FSIS Circuit Supervisor does not visit plant until August 23, 2001. NOIE not issued</p>	
May 2001-August 2001	<p>During this time frame, ConAgra had experienced fifteen (15) positive <i>E. coli</i> samples from their own sampling.</p>	

<p>January 2002- November 2002</p>	<p>From 1/2/02 until 6/6/02, FSIS issued 35 NR's to ConAgra, 13 for failures in the Zero Tolerance.</p> <p>March 7—ConAgra is informed that the positive O157:H7 problem at Montana Quality Foods is due to ConAgra coarse ground beef.</p> <p>On June 12 positive samples began coming in from meat shipped to Gallagans another small processor in Denver, which eventually would trigger the recall. On June 24, however, after repeated positive test results, FSIS sent two unopened chubs of coarse ground beef from ConAgra to FSIS lab for sampling, the samples were reported positive on June 29, 2002.</p> <p>June 30—ConAgra announces first recall of 354,200 pounds of ground beef.</p> <p>July 2--NR 4-2002-1752 is issued to ConAgra by FSIS Inspection Staff requiring ConAgra to reassess their Ground Beef HACCP plan.</p> <p>July 11—ConAgra begins O157:H7 sampling of all combos of trim. ConAgra sample results showed positive on 41 lots of trim from May 20 until July 6.</p> <p>July 18—NOIE issued for 33 positive samples for O157:H7 performed by ConAgra from May 20 through June 29.</p> <p>July 19—ConAgra announces expanded recall, approximately 19 million pounds of trim and ground beef recalled for 28 days of ground beef production between April 12 and June 29; and, 34 days of trim production between April 12 and July 11.</p> <p>From July 25 until November 15, 20 NR's are issued for Zero Tolerance Failures.</p> <p>From July 29 to Oct 1, ConAgra experienced 26 positive O157:H7 samples of 3590 samples taken. (.7% positive rate) According to frontline inspection staff, the USDA advised the inspection staff that a positive rate of 1% is considered "baseline." 1 % of the daily ground beef and trim production at ConAgra would equal 8000 pounds of <i>E. coli</i> contaminated product allowed by the USDA to enter commerce.</p> <p>August 20—Notice of Deferral is issued to ConAgra placing the NOIE in abeyance.</p> <p>September 28—According to frontline inspection staff, FSIS District Manager decides .01% to .1 % of Zero Tolerance Failures is "perfectly acceptable."</p> <p>November 15—Notice of Suspension is issued for 19 Zero Tolerance failures NR's since Notice of Deferral issued.</p> <p>November 22—Notice of Suspension placed in abeyance.</p>	<p>Jan 28 FSIS announces publicly a recall of approximately 270 pounds of MQF ground beef for ground beef produced on Jan 23.</p> <p>From Jan 1 02 to July 4 02 8 NR's are issued to MQF</p> <p>NOIE issued dated Feb 26 2002 for multiple positive samples on Feb 19, 20 and 21.</p> <p>Between Jan 28 and July 3 2002, MQF submits 14 HACCP reassessments—the last 4 prepared by recently retired FSIS District Manager. The first 13 are rejected as inadequate FSIS District Manager.</p> <p>FSIS Issues Order of Suspension dated March 4 2002.</p> <p>MQF classified as an "Imminent Threat to public health" by FSIS District Manager.</p> <p>MQF ordered to sample all incoming coarse ground beef from large packers for <i>E. coli</i> contamination. According to numerous agency sources, MQF was only plant in the country required to perform such sampling.</p>
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