



VIA HAND DELIVERY

May 22, 2008

Neil Harrison
Chairman, President, and CEO

Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigation
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Dingell and Chairman Stupak:

By letter dated May 8, 2008, you asked that we provide the Committee with information intended to assist you with your investigation of issues relating to the safety of the Nation's food supply. By way of background, Birds Eye Foods (the "Company"), incorporated in 1961, is a food company based in Rochester, New York. The Company has two primary segments in which it operates, including branded frozen and branded dry products. The vast majority of each of the segments' net sales is within the United States. In addition, all of the Company's processing facilities are within the United States. The Company markets its branded frozen vegetable products under the following names: Birds Eye, Birds Eye Steamfresh, Birds Eye Voila!, C&W, Freshlike and McKenzie's. In addition, the Company produces branded dry products, including fruit fillings and toppings (Comstock and Wilderness), chili and chili ingredients (Nalley and Brooks), salad dressings (Bernstein's and Nalley), and snacks (Tim's, Snyder of Berlin and Husman).

Our responses to the questions set forth in your letter are detailed below as well as on the attachments to this letter. **Please note that, except for the information on product recalls in paragraph 1 and Attachment 1 which is public information, the remaining information provided is confidential business information. We ask that you notify us in advance of its release or publication.**

1. A list of all food recalls and food safety alerts issued by your company. For each recall or safety alert, please provide the date of the recall or alert, the product and brand affected, and the reason for the recall or alert. If the food was affected by microbial or chemical contamination, please identify the contaminant.

Please refer to Attachment 1 for a list of all food recalls issued by the Company from January 1, 2000 to May 8, 2008. In each instance, the recall was voluntary and the Food and Drug Administration (FDA) was notified. The Company did not issue any food safety alerts independent of these recalls.

2. For each brand or kind of product, please list all instances when internal microbiological testing was found to be positive for the presence of *E. coli*, *Salmonella*, *Cyclospora cayetanensis*, *Cryptosporidium*, hepatitis A, *Clostridium botulinum*, or *Listeria* in excess of the highest limit acceptable to the Food and Drug Administration (FDA) or any State regulatory authority.

Please refer to Attachment 2 for a list of all instances when microbiological testing found finished products to be positive for the presence of *Salmonella* or *Listeria monocytogenes* in excess of the highest limit acceptable to the FDA or any State regulatory authority. Note that FDA has a zero tolerance for *Salmonella* in finished food. For *Listeria*, FDA has a zero tolerance for the pathogenic strain of *Listeria*, called *Listeria monocytogenes*. However, FDA considers the general species of *Listeria* to be an “indicator organism” not subject to any acceptable or unacceptable level, but which instead triggers additional sanitation steps within the plant and/or additional testing for the pathogenic strain. Accordingly, our report of *Listeria* test results are limited to positive findings of *Listeria monocytogenes*, the pathogenic strain.

With respect to the other pathogens, the Company does not test for the presence of pathogenic *E. coli*, *Cyclospora cayetanensis*, *Cryptosporidium*, hepatitis A, or *Clostridium botulinum*. The Company relies upon preventative measures following regulatory guidance provided by the FDA and, in the absence of specific regulatory guidance, advice offered by experts, such as the National Advisory Committee on Microbiological Criteria for Foods. These pathogens have not proven to be a concern for the products the Company sells because of product design (where pathogens cannot grow) and safe processing, such as high heat levels in processing or cooking, pursuant to FDA or United States Department of Agriculture (USDA) regulations. In addition, when the Company buys products such as meat, seafood, milk or poultry from a supplier which is regulated by the Food Safety and Inspection Service of the USDA or FDA, we rely upon the supplier’s Certificates of Analysis to certify that the applicable product tested negative for a pathogen.

With respect to the specific instances of positive tests set forth on Attachment 2, it is the Company's policy that finished food products testing positive for any type of pathogen are to be destroyed or reprocessed to ensure safety. In each of the instances set forth on Attachment 2, the applicable food product was handled in accordance with this policy. Accordingly, in each instance where *Listeria monocytogenes* was detected, the applicable food product was either destroyed or reprocessed. The product would not have been distributed to consumers unless it was reprocessed to destroy any pathogens. The FDA was not notified because the identified pathogen was eliminated prior to distribution.

3. For each brand or kind of product, please list the instances when internal testing was found to be positive for the presence of a chemical contaminant at levels in excess of the highest limit acceptable to FDA or any State regulatory authority.

The Company has had no instances when internal testing found products to be positive for the presence of a chemical contaminant at levels in excess of the highest limit established as acceptable by the FDA or any State regulatory authority.¹ Accordingly, the Company has had nothing to report to the FDA in this regard.

The Company performs annual pesticide testing through outside testing laboratories on domestic vegetable crops. No pesticide testing conducted on domestic products has produced results above government tolerances. With respect to pesticide testing on imported vegetable crops, please see our response to Section 4. Regarding non-pesticide chemical contaminants, the Company would initiate a testing program for particular contaminant(s) in particular product(s) if there were a demonstrated reason to do so, such as if the FDA were to issue a food safety alert identifying contaminant-related concerns for products sold by the Company.

4. For products imported into the United States for handling or processing by any facility operated by your firm, please list the instances when internal or outside laboratory testing was positive for the presence of either a chemical or microbiological contaminant in excess of FDA or State regulatory limits.

Please see Attachment 3 for a list of instances when internal or outside laboratory testing found products, imported for handling or processing, positive for the presence of either a chemical or microbiological contaminant in excess of FDA or State regulatory limits for products imported into the United States for handling or processing at any facility operated by the Company. With respect to whether the FDA was notified of the positive test results set forth on Attachment 3, please refer to the Attachment.

¹ This response does not include state levels tied only to consumer information disclosure requirements.

With respect to chemical contaminants, the Company's import protection program has historically relied upon FDA import controls and inspections for food. No imported food has been accepted by the Company unless that food was permitted to enter the U.S. by the FDA. Beginning in 2005, the Company initiated an increasingly rigorous pesticide compliance program for imported foods. The Company now requires 100% import compliance verification. The pesticide compliance program was initiated in response to increasing public concerns about the safety of imported foods. The Company specifies to suppliers acceptable US based testing laboratories that may be used for testing.

With respect to microbiological contaminants, the Company does not test for the presence of these contaminants on products imported into the United States. However, in instances in which the Company has identified a food safety concern for ingredients used in its products, the Company has required suppliers of those ingredients to test for the applicable contaminant and certify to the Company that the ingredient at issue is free of contaminants. All imported frozen produce is processed with heat which eliminates pathogens and is then kept frozen for food safety and quality purposes. In addition, the Company has numerous food safety policies in effect for its production facilities, including its non-US suppliers' facilities. All of the Company's suppliers, regardless of their location, are held to the same rigorous food safety standards and good manufacturing practices that we adopt in our own US manufacturing facilities. The Company conducts on-site inspections to qualify its non-US suppliers and to assess the potential risk for contaminants exceeding FDA or EPA limits. Non-US suppliers are required to comply with frequent quality and safety verifications and audits. Further, with respect to imports from Mexico, our single major supplier operates a facility that was previously owned by the Company, using the rigorous US safety standards and manufacturing practices established by the Company when it owned the facility. Through prequalification of suppliers, on-site inspections and ongoing quality and safety audits, the Company verifies that our non-US suppliers operate clean facilities and follow good manufacturing practices and food safety standards.

5. For each of the above items, please specify whether FDA was notified, and if not, why not.

The answer to this question is included in each of our responses to the above items as applicable.

6. Please supply a list of all instances where FDA or any State regulatory authority was denied entrance to any facility, foreign or domestic, or denied access to any records regarding microbiological or chemical testing performed on products processed at the facility. This request encompasses denials of initial requests for entry or any such testing record regardless of whether the plant or its records were to be made available for inspection at a later date.

Please see Attachment 4 for a list of all known instances where the FDA or any State regulatory authority was denied entrance to any facility, foreign or domestic, or denied access to any records regarding microbiological or chemical testing performed on products processed at the facility. The Company complies with all applicable laws and regulations with respect to access by inspectors to both facilities and records. Accordingly, the Company allows entrance to our facilities to both FDA and State regulatory authorities. Inspectors have virtually unlimited authority to inspect the physical premises, to observe operations, and to examine finished and unfinished materials, containers and labeling. Under Company policy, requests for any type of records access must be in writing. In the event that the requested record is required to be provided pursuant to applicable law or regulation, the Company would provide access to the record. Requests for access to business records not required to be provided by applicable law or regulation are considered on a case by case basis.

We hope that this letter provides information useful to the Committee in its investigation into the safety of the Nation's food supply. Food safety is the Company's highest priority and we employ preventative food safety programs to ensure that our products are safe and wholesome. If I can answer any questions or be of further assistance, please feel free to contact me.

Sincerely,



Neil Harrison
Chairman, President and
CEO

Attachments

cc: The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce

The Honorable John M. Shimkus
Ranking Member
Subcommittee on Oversight and Investigations