

Nestlé USA



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BRAD ALFORD
CHAIRMAN AND
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May 29, 2008

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

The Honorable Bart T. Stupak
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: Second Response to May 8, 2008 Letter (Domestic Production)

Dear Chairman Dingell and Chairman Stupak:

This is a follow-up “rolling” response to your letter of May 8, 2008 in which you requested certain information relating to the safety of food sold in the United States. Our initial response provided information responsive to Question 1. This second response provides information relating to domestic production for Questions 2, 3, 5 and 6. For domestic production, we will provide information responsive to Question 4, and supplemental information, if any, responsive to Questions 2, 3, 5 and 6 by no later than June 5, 2008. For international production, we will provide initial information responsive to Questions 2-6 by no later than June 12, 2008 and supplemental information, if any, by no later than June 19, 2008.¹

Again, I want to assure you on behalf of Nestlé in the United States that we take your inquiry seriously, and that we will cooperate fully with the Committee. For Nestlé USA and its affiliated companies in the United States, consumer confidence and trust in our brands are critical to our business. We are committed to providing consumers with products of the highest quality and that comply with applicable laws and regulations.

As indicated in my letter of May 22, 2008, I am responding on behalf of the following Nestlé companies that currently distribute food products in the United States:

¹ This time frame to respond was agreed to by Committee senior investigative staff.

- Nestlé USA, Inc.² and Nestlé Prepared Foods Company³ and its wholly owned subsidiary Dreyer's Grand Ice Cream, Inc. ("Nestlé USA");
- Nestlé Waters North America Inc.⁴, an affiliate of Nestlé USA;
- Nespresso USA, Inc., an affiliate of Nestlé USA; and
- Nestlé Nutrition USA, an affiliate of Nestlé USA that includes Jenny Craig, Inc.⁵ and Nestlé HealthCare Nutrition, Inc. (formerly Novartis Nutrition Corporation).⁶

As noted previously, please note that as of December 31, 2007, Nestlé HealthCare Nutrition, Inc. and Gerber Products Company began operating Nestlé's medical nutrition and infant formula businesses, respectively, in the United States. We have included information for Nestlé's medical nutrition and infant formula businesses in this response for the relevant time period because those businesses were operated by Nestlé USA from January 1, 2000 – December 31, 2007. Gerber Products Company, currently part of Nestlé Nutrition USA, also received a letter from the Committee and has responded separately on behalf of its baby food business.

We again have not included information from Nestlé Purina PetCare Company that operates Nestlé's pet food business in the United States because it is our understanding that pet food is outside the scope of the Committee's request. In addition, please note that for companies acquired by Nestlé since January 1, 2000, information is provided as of the date of acquisition. Lastly, information relating to companies and facilities divested or closed since January 1, 2000 is also not included.

This second response provides information for the companies listed above that relates to domestic production and is responsive to Questions 2, 3, 5 and 6 of your letter.

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 which is a list of tests found to be positive for the presence of the specified microorganisms in finished products manufactured for distribution in the United States⁷ that exceed the highest limits acceptable to FDA or any State regulatory agency. Please note that our information for E. coli and Listeria is specific for E. coli O157:H7 and Listeria monocytogenes, respectively, because these are the pathogenic strains subject to FDA limits.

² Nestlé USA, Inc. includes the following business divisions: Beverage, Confections, Baking, Nestlé Professional, Emerging Markets, and PowerBar.

³ Nestlé Prepared Foods Company operates Nestlé's frozen and refrigerated businesses and includes acquisitions of Chef America, Inc. as of May 28, 2002, Dreyer's Grand Ice Cream, Inc. as of January 18, 2006, and Joseph's Pasta Company, LLC as of December 1, 2006.

⁴ Nestlé Waters North America Inc. operates Nestlé's bottled water business.

⁵ Jenny Craig, Inc. was acquired by Nestlé as of July 27, 2006.

⁶ Novartis Nutrition Corporation acquired by Nestlé as of July 1, 2007.

⁷ "United States" means 50 states and the District of Columbia.

- 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.**

Please refer to Attachment 3 which is a list of tests found to be positive for the presence of a chemical contaminant in finished products manufactured for distribution in the United States at levels that exceed the highest limit acceptable to FDA or any State regulatory authority. Please note that with regard to the "highest levels deemed acceptable", we have not included any information relating to threshold levels set by states that may trigger warnings on product labels because, in our view, these threshold levels relate to disclosure and do not represent amounts that are deemed unacceptable by the FDA or States.

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

Please refer to the Attachments for responses by individual question.

- 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.**

With regard to facility inspections, Nestlé policy permits entrance to our food production facilities by FDA investigators and state inspectors upon presentation of appropriate credentials. To the best of our knowledge, we are aware of no instances where entry to any Nestlé facility was denied.

Various laws and regulations govern the extent to which FDA investigators are authorized to have access to our company records. For example, our infant formula processing, complaint, and test data records are, by regulation, available to FDA. Similarly, our thermal processing records with respect to low acid and acidified foods are available to FDA if access is deemed necessary by the Agency. In the case of our meat and poultry products, FSIS inspectors have authority to review, among other records, microbiological and chemical testing data compiled in compliance with regulations. We can find no record of ever having denied an investigator or inspector access to authorized records in any of these cases.

With respect to other food products, except as provided for under emergency conditions under the Bioterrorism Act of 2002, FDA investigators are not authorized to have access to records other than shipping related records. As such, to help ensure uniformity in responding to Agency requests for non-authorized records concerning such other food products, our policy provides that any such requests should be denied at the facility level. The policy provides, however, that any denial of non-authorized records at the facility level

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will be reconsidered upon additional request by the Agency. These additional requests are evaluated and acted upon on a case-by-case basis.

This letter and the Attachments contain confidential business information and trade secrets of the Nestlé companies named in this letter. It is important that this information remain confidential because it includes non-public internal testing results. We understand that the Committee is not legally bound to afford confidential treatment to this submission, but that it will act responsibly with regard to confidentiality. Because of the sensitive nature of this information, in the event that you intend during the investigation of this matter to disclose the information to third parties or in any public forum, we request that we be given 72 hours notice.

Should the Committee require clarification of information in this, or subsequent, submissions, please contact Louise Hilsen (202-756-2491) or Molly Fogarty (202-756-2489) in the Nestlé Washington office.

Sincerely,



Brad Alford
Chairman & CEO

BA/lh

Enclosure

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

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