

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

Written Statement of Paul K. Henderson
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Introduction

I am Paul Henderson, CEO of Menu Foods Income Fund. The Subcommittee invited me today to discuss issues of food security and in particular the recent terrible situation involving pet food manufactured with contaminated Chinese wheat gluten supplied by ChemNutra Inc. to several pet food manufacturers, including Menu Foods.

Let me begin by noting that I am a pet owner, and many of our employees are pet owners. My dog eats food manufactured by Menu Foods. I understand, and our employees understand, the loss felt by pet owners as a result of pet food made with contaminated ingredients. We deeply sympathize with these pet owners. However, we cannot turn back the clock, so now we must analyze what happened and how it happened and consider the steps that the pet food industry and government agencies should take to try to prevent things like this from happening in the future.

Much has been said and written about these recent events, and a lot of it has been inaccurate. I appreciate the invitation to appear before the Subcommittee today to explain what actually occurred and to share my thoughts on the future of food safety in the pet food industry.

Background of Menu Foods

Menu Foods is the leading North American private-label/contract manufacturer of wet pet food products sold by supermarket retailers, mass merchandisers, pet specialty retailers and other retail and wholesale outlets. Menu Foods was formed in 1971 and went public in 2002, trading on the Toronto Stock Exchange.

Menu Foods was founded in Canada, but our U.S. operations are much larger than our Canadian operations. We have three manufacturing plants in the United States, which are located in Emporia, Kansas; Pennsauken, New Jersey and North Sioux City, South Dakota. Menu Foods employs more 700 workers in the United States, and the majority of our sales are in this country.

Menu is recognized in our industry as a quality leader. We are known as the manufacturer of choice in the private-label pet food industry by retailers that value quality in their products. In over 35 years of business, Menu had never had a food safety-related product recall until the recent tragic events involving the contaminated wheat gluten. Menu produced over 1.1 billion containers of pet food last year, so this is quite a record, and we were very proud of it. We hope we can restore our reputation, and we are working hard to do so.

Menu Foods' Products

Menu Foods manufactures two basic types of wet pet food: "loaf" products, which have a pate-like consistency, and "formed" products where formed, precooked pieces are put into the product. The formed products include "cuts & gravy," which resembles stew, and products that include flakes or slices. Menu Foods does not manufacture dry pet food.

The contaminated wheat gluten supplied by ChemNutra caused us to recall some of our products (primarily cuts & gravy products) manufactured at three plants from November 8, 2006 through March 6, 2007.

Wheat gluten is a natural vegetable protein extracted from wheat grains or flour and is a by-product of wheat starch. Only about 20% of the wheat gluten used by human food and pet food manufacturers in the US is produced in the US. Most of the wheat gluten is imported from Europe or Asia. Our United States plants buy wheat gluten from several suppliers around the globe. Wheat gluten is used by some pet food manufacturers, including Menu, as an ingredient in formed meat products. It is a source of protein and also has unique properties that help to hold together the chunks of meat. Wheat gluten is also used by manufacturers of human food products, mostly for baking.

The Problem: ChemNutra's Sale Of Contaminated Wheat Gluten

Wheat gluten has been in short supply, and in 2006 we decided we needed to add an additional source for this important ingredient. In November 2006, Menu Foods bought wheat gluten from ChemNutra for the first time. ChemNutra is a U.S. company, based in Las Vegas, that is an established supplier of ingredients to food, feed and pharma companies throughout the country. Although this was our first purchase of wheat gluten from ChemNutra, we had purchased other ingredients from ChemNutra in the past.

As part of our program to ensure high-quality ingredients, Menu Foods provided ChemNutra with a Material Specification stating Menu Food's requirements for wheat gluten. The Material Specification provided detailed instructions and requirements, including but not limited to: material source, material description, physical requirements, chemical requirements, rejection criteria, packaging/shipping/storage requirements, microbiological standards, grind/particle size standards, water storage standards, ingredient manufacturing requirements, labeling requirements, and key performance/functionality requirements. The Material Specification expressly prohibited foreign material contamination. Each shipment of wheat gluten Menu Foods received from ChemNutra was accompanied by a Certificate of Analysis representing that the wheat gluten complied with Menu Foods' Material Specification.

Our Material Specifications adhere to the standards of the Codex Alimentarius, which is a collection of internationally recognized standards for food developed under the aegis of the United Nations Food and Agriculture Organization and World Health Organization. There is no FDA standard for human grade wheat gluten, but Menu intends that all wheat gluten we use should be suitable for use in human foods.

ChemNutra promised Menu Foods that it could deliver high-quality wheat gluten that satisfied the requirements set forth in the Material Specification. Menu Foods relied on ChemNutra's promises. Unfortunately, we now know that ChemNutra provided Menu Foods and other pet food manufacturers with a product that was contaminated with melamine. Needless to say, following this incident, we no longer do business with ChemNutra.

Menu Acted Aggressively to Identify and Address the Problem

A lot of speculation has taken place concerning Menu Foods' activities leading up to the recall. Statements have been made in the media and in public forums and even by some of the participants in the supply chain of the contaminated wheat gluten. Much of the speculation and some of these statements have been inaccurate. A summary of the major events leading up to the recall appears below:

February 22, February 28, and March 5, 2007

The first complaints Menu received that we now believe were related to the contaminated wheat gluten were on February 22 and 28. On those dates, Menu received calls from customers on our consumer response line (a toll-free number on the label or pouch of many of the private-label products we produce). Each call reported the illness of a cat. As part of Menu's follow-up, we contacted the veterinarians who treated the cats. The treating veterinarians indicated that both cats had access to various contaminants and could have gotten into something they should not have, such as antifreeze.¹ These cats were also noted as having been strays at some point in their lives. A third call (about March 5) was received from a consumer reporting a cat death. Menu Foods did not receive information from a veterinarian with this report.

Tuesday, March 6, 2007

On March 6 and 7, Menu learned of two additional cases of cat illness. Neither of these reports have resulted in cat deaths to Menu's knowledge.

A company Menu Foods retained to perform routine, quarterly palatability studies/taste tests reported that cats involved in one of the studies became sick and died.² The panel consisted of twenty cats. Three had died (two of the three were euthanized), and six were

¹ Many pets die every day, and some die from antifreeze poisoning. Euromonitor International reports that there are approximately 82.2 million cats in the United States. Using an estimated life expectancy of 18 years, this would mean that approximately 12,500 cats die every day in the United States. Dr. Ron Hines, a veterinarian, estimates that 10,000 dogs and cats die of antifreeze poisoning each year in the United States.

² Pet food manufacturers, including Menu, regularly perform taste tests where food manufactured by one company is compared to food from another company. Since cats and dogs cannot tell us which food they like better, the only way to tell whether we are making a product the animals like is to feed it to them. These tests are not intended in any way to injure or endanger the participating animals, and Menu's tests are conducted in facilities that meet accepted standards for humane treatment of the animals.

sick. All of the cats were 10 years old or older. The animals were being simultaneously fed a product manufactured by Menu Foods and products manufactured by other companies. The cats had been involved in taste tests for another pet food company the previous week. The company performing the palatability studies told Menu Foods that it also notified the “other company” of the health issues. Because the cats were exposed to several kinds of food, the source of the problem was unknown. There were at least six possibilities:

- Menu’s food used in this taste test.
- The competitor’s food against which Menu was conducting the taste test.
- The food of the company that used this same panel of cats for a taste test before Menu’s taste test.
- The competitor’s food against which the previous company was feeding.
- A hazard within the testing facility.
- An animal illness of an infectious nature.

The company performing the palatability studies reported no problems with a second panel of twenty cats who were eating the same variety of food as the first panel. Both foods had been produced by Menu at the same time, leading Menu to believe that its food was not the source of the problem.

Although Menu Foods did not then believe that its food was the source of the problem, out of an abundance of caution we stepped up our investigation. Our records showed that wheat gluten from ChemNutra was one of several ingredients common to the foods consumed in the cat illnesses and deaths referenced above and the product used in the palatability studies. As a precautionary measure, Menu Foods stopped using wheat gluten from ChemNutra.

Friday, March 9, 2007

The company that performed the palatability studies reported that four additional cats (also of an advanced age) from the first palatability study were euthanized and nine were sick. The company also reported that two cats in the second study of twenty cats were euthanized, one of which was over 16 years old. Like the first study, the cats in the second study had eaten several products.

By this time, Menu Foods’ investigative team had traced the raw materials common to the reported incidents and identified wheat gluten, plasma, glycine, taurine, digest, caramel color and salt. Laboratories commissioned by Menu Foods to perform tests began testing the products consumed by the animals in the palatability studies and consumer complaints to try to identify any problems. At Menu’s direction, they began tests for minerals, heavy metals, antifreeze, vitamin D, fluorine and mold toxins, and for commercial sterility. These tests take several days to complete, but when we received the results, they showed nothing wrong.

Meijer, a grocery store chain in the Midwest, relayed that a customer reported pet health problems. Menu Foods began trying to get in touch with the customer to determine what product was involved so it could be tested.

Monday, March 12, 2007

The company that performed the palatability studies reported that independent tests conducted on the pet foods used in these studies (for heavy metals, antifreeze, pesticides and insecticides) were negative. Menu Foods requested its own pesticide/insecticide tests.

Menu continued to try to reach the consumer involved in the report from Meijer.

Tuesday, March 13, 2007

Menu Foods received results from the tests conducted at Cornell University on the product used in the palatability studies. Cornell University did not find any pesticides, insecticides or toxins. Menu requested that Cornell test for heavy metal and mycotoxin in samples of wheat gluten.

The Iams Company contacted Menu to report renal issues in cats that consumed Iams flaked salmon. Iams explained that it had received telephone calls from three consumers: one involved death of a cat for renal failure, one involved vomiting within fifteen minutes of consumption, and one cat refused to eat the food.

Wednesday, March 14, 2007

Menu reached the consumer involved in the report from Meijer's and learned that the animal consumed product manufactured in October 2006 -- before Menu Foods began receiving wheat gluten from ChemNutra. The consumer agreed to send Menu the remaining food for testing. The consumer did not know the cause of death. After the recall was announced, Menu received the food from this customer. Testing showed that it did not contain melamine.

Menu and Iams shared with each other the information that each had obtained to that point.

Menu received the results of tests performed on the ChemNutra wheat gluten for antifreeze, which were negative. Menu decided to begin testing for intentionally added toxins.

Cornell University tested the product involved in the palatability studies for intentionally added toxins, but the tests came out negative. Menu continued to perform a broader series of tests on the wheat gluten from ChemNutra.

The company that performed the palatability studies forwarded tissue samples from a deceased animal to Cornell University to perform tests in an attempt to discover whether a toxin killed the animal.

At 8:30 p.m., Iams told Menu Foods that it intended to recall cat food manufactured by Menu Foods in Emporia, Kansas from December 17, 2006 through March 14, 2007.

Thursday, March 15, 2007

On the morning of March 15, 2007, Menu Foods received a call from the owner of five indoor dogs. She reported feeding her dogs Menu-produced product. Thereafter, one of her dogs had died of renal failure, and the other four were ill. Shortly thereafter, Menu was notified by a testing facility that several dogs involved in a taste test had experienced a drop in food consumption similar to the cats in the taste tests described above and were ill and vomiting. These were the first reports of which Menu was aware of dogs being adversely affected by pet food manufactured by Menu.

On the afternoon of March 15, 2007, Menu Foods notified the FDA of its decision to recall products manufactured with wheat gluten obtained from ChemNutra from December 3, 2006 through March 6, 2007. The recall included both dog and cat food. Menu Foods announced the recall the following morning. We chose December 3, 2006 as the start of the recall because the food in the first consumer complaint was produced during that week. Although we did not know whether the recalled product contained a contaminant or what the contaminant was, we recalled products produced with the ChemNutra wheat gluten while we and others continued to investigate the source of the problem.

Menu Foods Responds By Voluntarily Recalling Potentially Affected Product

Some people have suggested that Menu acted too slowly and should have contacted the FDA sooner. On the contrary, we acted quickly and took appropriate steps under the circumstances.

Let me put this situation in context. Menu produces over 1.1 billion containers of pet food each year – nearly 100 million containers each month. As of March 15, 2007, Menu had directly received six reports from consumers of possible problems with its pet food – many of which appeared to be something other than pet food, in several cases confirmed by opinions of the animals' veterinarians. One of Menu's customers, Iams, had received, and eventually passed on to Menu, three complaints involving animal health issues. Both Menu and Iams had received complaints of a refusal to eat the food, which often happens when an owner changes to a different food or for other reasons completely unrelated to food quality. And the taste testing facility reported several deaths and illnesses, but nothing that indicated it was caused by Menu's food. Menu had conducted tests for all industry-recognized causes of problems with pet food, and these tests revealed no problems. In fact, it took the FDA, prestigious research organizations and several commercial laboratories many more days to identify melamine in ChemNutra wheat gluten as the source of the problem.

Based on this information, any pet food manufacturer could well have decided to continue to try to find the problem, but not to contact the FDA or begin a product recall. Indeed, based on what was known at the time, there might well have turned out to be no problem with the food, and announcing a recall could have only resulted in an unnecessary panic among pet owners. And, the only indication we had of any issues with dog food was only hours old and as yet completely uninvestigated. However, Menu placed the interests of pets and pet owners first, so, like our good customer Iams, we decided that, notwithstanding the lack of scientific evidence, we should notify the FDA and begin a voluntary, precautionary recall.

On March 16, 2007, Menu Foods voluntarily recalled pet food manufactured with wheat gluten obtained from ChemNutra, Inc. from December 3, 2006 through March 6, 2007. The FDA initiated an investigation of Menu Foods' formed meat products that same day. Menu Foods gave the FDA its full cooperation and continues to cooperate fully with the FDA.

On March 24, 2007, in order to expedite the recall and satisfy concerns by the FDA, Menu Foods initiated a market withdrawal that included all production dates of the impacted products during the recall period. This change made it easier for retailers to get the identified products off their shelves and reduced the risk that a store clerk would mistakenly leave a recalled product on the shelf because he or she misread the date code on the product.

On Friday, March 30, the FDA announced that researchers at Cornell University located melamine in the finished product that was the subject of the recall. Researchers also located melamine in samples of wheat gluten Menu Foods purchased from ChemNutra, Inc., which has stated that it imported the wheat gluten from Xuzhou Anying Biologic Technology Development Co. Ltd. ("Xuzhou Anying") in China. Melamine was not found in wheat gluten Menu Foods obtained from other suppliers. Melamine is a chemical contaminant, not a microbial contaminant. According to the FDA, it is "very unusual" to find melamine in wheat gluten.

On April 3, 2007, ChemNutra issued a press release announcing a recall of all wheat gluten it imported from Xuzhou Anying. ChemNutra admitted that melamine "should absolutely not have been in wheat gluten." Four other pet food manufacturers obtained contaminated wheat gluten from ChemNutra and initiated recalls: Hill's Pet Nutrition, Del Monte Pet Products, Nestle Purina PetCare Company, and Sunshine Mills Company.

On April 5 and April 10, Menu Foods expanded its recall to additional products manufactured with ChemNutra wheat gluten. On April 5, Menu Foods expanded the recall to include products manufactured with ChemNutra wheat gluten from the first date of manufacture (November 8, 2006) through December 2, 2006. (The previous recall included the period spanning from December 3, 2006 through March 6, 2007.) At the time of the initial recall on March 16, 2007, Menu Foods was not aware of any complaints or reports of health problems relating to food manufactured from November 8th to December 2nd.

On April 10, 2007, Menu Foods expanded the recall to include certain products manufactured at its plant in Canada after discovering through the ongoing investigation that the Canadian plant received a quarter of a load of the contaminated wheat gluten from the Menu Foods plant in

Emporia, Kansas. The wheat gluten that was transferred between plants was subsequently used in production at the Streetsville plant during December 2006 and January 2007.

Menu Foods is no longer purchasing any ingredients from ChemNutra and has taken steps to assure that none of the products that contain wheat gluten from ChemNutra are sold. The FDA is blocking all imports of wheat gluten from Xuzhou Anying.

Menu's investigation has revealed a possible motive for the presence of melamine in ChemNutra's wheat gluten. Menu Foods' Material Specification for wheat gluten contains a chemical requirement that the wheat gluten contain no less than 75% protein. This is a typical specification for wheat gluten for both human and animal food. In the human food and pet food industry, protein levels are customarily estimated by determining the quantity of nitrogen in a product.³ Melamine has a high concentration of nitrogen and, as a result, the inclusion of melamine into the wheat gluten would make substandard wheat gluten appear to meet industry standards for protein content.

Menu Is Dedicated To Providing Safe, High-Quality Products To Its Customers

The foundation of Menu's business is providing quality, nutritious food for pets. We have been doing so for over 35 years. The safety of our products and the confidence of pet owners and our customers are our highest priorities.

Menu Foods monitors for spoilage and has thorough quality control procedures. As is common industry practice, Menu Foods tests the wheat gluten it uses for vomitoxin caused by mold growth. This mold toxin is the only contaminant in recent history that has been associated with a pet food recall involving wheat used in dry pet food. Menu tests every load of wheat gluten it receives for vomitoxin using an approved test performed by trained personnel. Menu Foods did not detect melamine during its quality assurance testing because accepted screening procedures do not detect melamine. Melamine is not something that had ever been heard of before in connection with wheat gluten. To our knowledge, no pet food or human food manufacturer tested wheat gluten for melamine prior to this incident.

Some people have noted that Menu's Emporia plant had not been inspected by the FDA. That is true, but not surprising given Menu's excellent performance record and reputation and the FDA's limited resources. However, additional plant inspections would not have prevented the problem in this instance -- contaminated wheat gluten purchased from ChemNutra.

Moreover, Menu's plants are subject to significant internal and external inspection and review. Menu has its own quality control systems, which have been reviewed and approved by our customers, including global companies with substantial experience in quality control. In addition to Menu's internal systems, all of our facilities are routinely audited by outside experts. Menu engages the American Institute of Baking to audit food safety and sanitation. These inspections are conducted at least annually, and Menu has consistently scored in the "excellent" and

³ In testing, crude protein is used as a key indicator of usable amino acids available in the pet food as a source of nutrition. The amount of usable amino acids in the pet food is estimated by determining the quantity of nitrogen in the product and multiplying that figure by an accepted constant.

“superior” range. Menu Foods’ United States plants are inspected annually by the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS). Menu Foods’ plant in Canada is inspected annually by the Canadian equivalent to APHIS, the Canadian Food Inspection Agency (CFIA). Menu Foods is also inspected by the European Food Safety Inspection Service, which is widely respected for HACCP (Hazard Analysis and Critical Control Point) and food safety concerns. Menu’s Pennsauken plant has been inspected by the FDA. Finally, Menu is inspected by multiple global pet food producers with known high quality standards as a condition of manufacturing pet food for them.

To ensure that we are producing the highest quality products, we have taken the following additional steps in response to the situation:

- First, like other pet food manufacturers, we have stopped purchasing wheat gluten from ChemNutra. In fact, we have stopped buying any ingredient from ChemNutra.
- We now test wheat gluten for melamine. Consistent with our desire for continuous quality improvement, we have extended melamine testing to rice protein and corn gluten meal.
- We will conduct additional tests of wheat gluten and other ingredients in the future to make it more difficult for a supplier to sell us substandard product.
- We will implement more rigorous testing and supervision for new suppliers.
- We continue to monitor developments in the industry and will update these measures as necessary to ensure the continued safety of our products.
- We are an active member of the Pet Food Institute and an active participant in its review of pet food safety issues. We will implement recommendations of the PFI review as appropriate for our business.
- We will work with the FDA and other regulatory authorities and Congress to develop additional measures to protect against future occurrences of this type.

Finally, we have filed suit against ChemNutra. ChemNutra sold us contaminated wheat gluten that did not meet our specifications and did not conform to the promises of quality that ChemNutra made to us. ChemNutra’s actions have caused tremendous injury to the public and to Menu.

Suggestions for Improving Food Safety Protections

Before concluding, let me share some thoughts on improvements that governments might make in the food safety protection system, based on Menu’s experience and my observations of the system as a whole.

First, we should recognize the extent to which opening global markets for U.S. products has also opened the U.S. market to foreign products, which, as in Menu’s case, are not always in compliance with accepted standards. It is difficult for manufacturers to inspect each supplier. The government, on the other hand, is in a better position to inspect and certify foreign suppliers of food products or ingredients in order for them to be permitted to sell their products into the U.S. Menu’s plants and processes are inspected and approved for compliance with European standards and regulations as a condition of being able to export our products to Europe. These

inspections are performed by APHIS in the U.S. and CFIA in Canada under an arrangement with the EU, no doubt because of the confidence the EU has in APHIS and CFIA. Perhaps, in order to sell their products in the U.S., foreign suppliers should be required to submit to inspection and certification by a U.S. agency or some other party accredited by the U.S. government.

Second, government agencies could increase their inspections of imported products at the border. These inspections might not have identified the contamination in the wheat gluten from ChemNutra, because melamine was not recognized as a potential contaminant at the time, but we think in many cases problems could be detected at the border. Of course, now that we know about melamine, government agencies can also test for it at the border, and perhaps prevent future incidents involving that substance.

Third, government agencies might increase plant inspections in the U.S. We do not believe this would have prevented the melamine problem, but there may be other more conventional hazards that might be detected through on-site inspection.

We believe that the focus of inspections outside the U.S. might be based on the principle of reciprocity. Trading partners that have equivalent regulation to the U.S. might be allowed to import products based on inspection and certification by local authorities in which the U.S. government has confidence. Suppliers in other countries might be inspected directly by U.S. agencies. Plant inspections in the U.S. might be conducted on the basis of the risks of the business being conducted at the plant. For example, good manufacturing processes, sanitation practices and inspections are important controls in meat processing plants, because of the risks associated with uncooked meat. By contrast, in human and pet food operations where products are heat treated to sterilize them, the risks are different and may warrant a different approach.

Fourth, because understanding relevant risks is so important, government could invest in development of better risk assessment processes. For example, central to the current pet food recall is the procedure that uses nitrogen testing to estimate protein content. It is possible that someone may have used melamine, which is rich in nitrogen, to pass off inferior product. The nitrogen test was not designed to deter cheaters but rather to estimate protein. What other rapid tests are used throughout the food chain to estimate quality? Is there a risk that these tests can be abused, as appears to have been the case with wheat gluten? If so, could mechanisms or processes be developed to identify and address that risk?

Finally, government might research or fund research of new technologies for fast, accurate and affordable detection of contaminants in food ingredients. One of the difficulties in the investigation of the wheat gluten situation was that there was no established protocol for testing for melamine. So, the researchers first had to develop a testing method before they could even check for its presence. Even more valuable might be a method for rapid, accurate and cost-effective determination of the presence of any contaminant in an ingredient or in finished product.

Conclusion

Sometimes even well respected manufacturers, like Menu, suffer problems caused by others. We are working with the FDA and with our customers to resume our business of providing nutritious, high-quality pet food for animals throughout North America. We take pride in our products, and we also take responsibility for them. We intend to do everything in our power to make things right for our customers and to prevent this type of situation from ever occurring again.