

January 28, 2010

Mary Porretta, Petitions Manager
Office of Policy and Program Development
USDA-Food Safety and Inspection Service
1400 Independence Avenue, SW
Room 350-E Jamie Whitten Building
Washington, DC 20250

THIRD NOTICE

RE: Petition Number 09-03: Petition for an Interpretive Rule Declaring all enterohemorrhagic Shiga Toxin-producing Serotypes of *Escherichia coli* (*E. coli*), including Non-O157 Serotypes, to be Adulterants Within the Meaning of 21 U.S.C. § 601(m)(1)

Dear Ms. Porretta:

I am writing for a third and final time to request an update on the status of the review of the above-referenced petition. Please let me know whether the Office has decided to grant the petition's request for expedited review, pursuant to 9 CFR 392.8. If the Office has decided not to grant expedited review, please notify me of this in writing, along with a statement of the facts and reasons supporting the decision. Plainly, if the decision on expedited review is not itself made in a reasonably prompt fashion, the purpose behind expedited review is defeated.

Since receiving a receipt confirmation letter from the Office of Policy and Program Development on November 4, 2009, I have sent two follow-up letters requesting updates on the status of the petition review. I have yet to receive a response letter from the Office of Policy and Program Development, and this is deeply concerning given the serious public health risks involved.

Specifically, non-O157:H7 Shiga toxin-producing *E. coli* affects the lives of many of consumers, causing an estimated 36,700 illnesses, 1,100 hospitalizations, and 30 deaths annually. That means that in the time that you have failed to respond to my follow-up requests, approximately 9,175 illnesses and 7 deaths may have occurred due to non-O157:H7 *E. coli* infections. From any perspective, this is unacceptable.

As a matter of federal regulation, FSIS has a duty to prioritize matters that are "intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products." 9 CFR 392.8. For this reason, I must receive a response from the agency regarding the status of the petition no later than March 1, 2010. If, on that date, I have not heard from the agency, I will file a lawsuit against the agency for failure to meet its duty under federal law.

I regret having to make the foregoing demand, but the Agency's failure to respond leaves me no other choice.

Very truly yours,



William Marler, Esq., on behalf of:

Marler Clark LLP, PS
Outbreak, Inc.
The Family of June Dunning
Megan Richards
Shiloh Johnson