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INDEPENDENT

February 17, 2004

The Honorable Ann M. Veneman
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Madam Secretary:

We are writing with new information about the cow found to have Bovine Spongiform Encephalopathy (BSE), commonly known as mad cow disease, in Washington State in December 2003. Senior U.S. Department of Agriculture (USDA) officials have repeatedly asserted that the BSE-infected cow was tested because it was a "downer." We have now learned, however, that the co-manager of the slaughter plant and two other eyewitnesses state that the cow stood and walked on the day of slaughter. If this information is true, it could have serious implications for both the adequacy of the national BSE surveillance system and the credibility of the USDA.

In responding to the first case of mad cow disease in the United States, USDA officials have emphasized that the USDA's BSE surveillance program protected the public. This response was based on the assertion that the BSE-infected cow could not walk, because the surveillance program is designed to sample only downer cows and cows with symptoms of central nervous system disease. You have said that the discovery of the cow was "a result of our aggressive surveillance program" and "a clear indication that our surveillance and detection program is working."

According to three individuals who actually observed the BSE-infected cow the day it was slaughtered, however, the cow was not a downer. Contrary to USDA's assertions, the cow appears to have been tested only because USDA had an agreement to accept samples from nondowner cattle slaughtered at the Washington plant.

We have reviewed (1) an affidavit from Thomas A. Ellestad, the co-manager of Vern's Moses Lake Meats, Incorporated, which is the small facility where the BSE-infected cow was slaughtered; (2) a declaration from Randy Hull, the hauler who took the cow to slaughter; (3) the testimony of David Louthan, the employee of Vern's Moses Lake Meats who says he killed the cow; (4) a USDA purchase order for samples from Vern's Moses Lake Meats; and (5) other

related documents. These materials were provided to us by the Government Accountability Project (GAP), a nonprofit organization that works with whistleblowers.

According to this information:

- **Three eyewitnesses say that the BSE-infected cow was not a downer.** Hauler Randy Hull states that the cow walked onto the hauling trailer at the farm the day of the slaughter. Plant co-manager Thomas Ellestad reports that after arriving at his facility lying down, the cow stood up. Mr. Ellestad states, "the BSE-infected cow was not a downer" and "efforts to portray our plant as a 'downer' plant could be considered a smokescreen." Plant employee David Louthan, who recalls that he killed the cow, said, "That was a walking cow."

- **The BSE-infected cow was not tested because it was a downer cow.** Vern's Moses Lake Meats had a special contract with USDA under which USDA paid the slaughterhouse to collect brain samples for testing from up to 1,000 cows regardless of whether the cows were healthy, injured, or diseased. According to Mr. Ellestad, his slaughterhouse did not test the cow as a downer.

- **USDA had information stating that the BSE-infected cow was not a downer.** On January 6, 2004, Mr. Ellestad faxed a handwritten letter to USDA's Boulder District office regarding his observations. Mr. Ellestad's fax disputed the assertion that the BSE-infected cow was sampled because it was a downer. The fax stated, "the brain stem sample was not taken because this animal was non-ambulatory." USDA has not released this information to Congress or the public.

If the aforementioned is true, the information received from GAP could have major ramifications. The information challenges a key principle guiding USDA's surveillance program for BSE, which is that all infected cattle in the United States will either be downer cows or show symptoms of central nervous system disease. If the new information is accurate, USDA's surveillance program may need to be significantly expanded.

The new information also raises questions about USDA's credibility. Above all, the American people need to have confidence in what USDA reports about the safety of the food supply. Contradictions between the new information and USDA's statements can undermine that confidence. These contradictions require thorough investigation and explanation.

Background

On December 23, 2003, USDA announced that the first case of mad cow disease had been discovered in the United States.[1] The affected cow was a Holstein dairy cow that had been slaughtered on December 9, 2003, at a small facility in eastern Washington, Vern's Moses Lake Meats. BSE is a disorder of cattle that has been linked to the debilitating neurological condition in humans known as variant Creutzfeldt-Jakob Disease.

To reassure the public about the safety of the meat supply, USDA and meat industry officials immediately responded that the discovery of the BSE-infected cow proved that USDA's efforts to monitor mad cow disease were protecting consumers. At a press conference on December 23, 2003, announcing the discovery of the infected cow, you stated, "The presumptive positive today is a result of our aggressive surveillance program. This is a clear indication that our surveillance and detection program is working."[2] The following day, you appeared on *Fox and Friends*:

> *Host Mike Jerrick*: I guess a real positive person would say that if you want to put some kind of positive spin on this thing, is it [*sic*] that the system does work. The piece of meat was discovered.
>
> *Secretary Veneman*: Absolutely.[3]

This message of reassurance was based on a key assertion: that the BSE-infected cow was tested because it was a downer. Appearing on the *Today Show* on December 24, 2003, you told Katie Couric:

> The cow had difficulty standing on its own, which is why it was a downer cow. My understanding … is that this cow had given birth, and that it had not been able to get up since then.[4]

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[1]U.S. Department of Agriculture, *Transcript of News Conference with Agriculture Secretary Ann M. Veneman on BSE* (Dec. 23, 2003) (online at http://www.usda.gov/Newsroom/0433.03.html).

[2]*Id.*

[3]U.S. Department of Agriculture, *Agriculture Secretary Ann M. Veneman on Fox and Friends* (Dec. 24, 2003) (online at http://www.usda.gov/Newsroom/0440.03.html).

[4]U.S. Department of Agriculture, *Agriculture Secretary Ann M. Veneman's Interview on the Today Show* (Dec. 24, 2003) (online at http://www.usda.gov/Newsroom/0438.03.html).

Following the announcement of the discovery of the BSE-infected cow, USDA stated repeatedly that the cow was a downer. USDA officials making this statement included USDA Chief Veterinarian Dr. Ron DeHaven[5] and Dr. Kenneth Petersen of the Food Safety Inspection Service (FSIS).[6] In a January 2004 briefing for the Committee on Government Reform's (Committee) staff, USDA officials reiterated that the cow had not walked since giving birth.[7]

USDA's surveillance program is designed to sample only downer cows and cattle with symptoms of central nervous system disease. There is universal agreement that the BSE-infected cow did not have central nervous system symptoms. If the cow was also not a downer, then under USDA's surveillance program, there would have been no reason for the cow to be tested for BSE.

New Information about the BSE-Infected Cow

According to information the Committee has received from GAP, those who transported the BSE-infected cow and observed it at the slaughter facility deny that the cow was a downer. This is the consistent account of three eyewitnesses who saw the cow on the day it was slaughtered. These three eyewitnesses are Tom Ellestad, the co-manager of Vern's Moses Lake Meats, the plant where the cow was slaughtered; Randy Hull, the hauler who took the cow to slaughter; and David Louthan, the employee who recalls he killed the cow.

GAP provided Mr. Ellestad's 18-page affidavit to the Committee. Mr. Ellestad has operated Vern's Moses Lake Meats with his brother since 1988. In his affidavit, Mr. Ellestad states that for business and humanitarian reasons, he implemented a policy of not accepting nonambulatory cattle in February 2003.[8] The policy required anyone hauling cattle to Vern's Moses Lake Meats to sign a written declaration that he or she would deliver to the slaughterhouse only cattle that walked onto the hauling trailer under their own power.[9]

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[5]U.S. Department of Agriculture, *Transcript of Technical Briefing and Webcast with U.S. Government Officials on BSE Case* (Dec. 27, 2003) ("our surveillance has focused on, especially animals exhibiting central nervous system disorder and those animals that were, that are nonambulatory, and all three of the animals that were tested that day at Moses Lake were nonambulatory as I understand the reports that we've received").

[6]U.S. Department of Agriculture, *Transcript of Technical Briefing and Webcast with U.S. Government Officials on BSE Case* (Dec. 26, 2003) (online at http://www.usda.gov/Newsroom/0443.03.html).

[7]USDA Briefing for Government Reform Committee staff (Jan. 13, 2004).

[8]Affidavit of Thomas A. Ellestad, 3 (Feb. 9, 2004).

[9]*Id.* at 3.

Mr. Ellestad observed the BSE-infected cow upon its arrival at Vern's Moses Lake Meats on December 9, 2003, the day the cow was slaughtered.[10] According to Mr. Ellestad, the cow was lying down with several other cattle in the hauling trailer upon arrival.[11]

However, Mr. Ellestad stated that after arrival, the cows stood up. According to Mr. Ellestad, "I am certain that I saw all four cows in question stand."[12] He also observed that the "Holstein that was positive for BSE had been among the four lying down upon arrival that all eventually stood to their feet."[13] He concluded, "The BSE-positive cow was not a 'downer.'"[14]

Mr. Ellestad's affidavit also provides additional evidence disputing the assertion that the BSE-infected cow had not walked since giving birth several days before slaughter. Mr. Ellestad recounts a January 19, 2004, conversation with a Washington State official involved in USDA's BSE surveillance program. The official spoke with the cow's former owner and later came to visit Vern's Moses Lake Meats. Mr. Ellestad states:

> The official informed all present that he had been present at meetings where the . . . owner advised the USDA and other government officials that the BSE-positive cow had given birth on November 29 and that the cow went through the milking shed for 3 or 4 days, which would have required that she be walking — there would be no other way for her to go through the milking shed.[15]

Mr. Ellestad's account of this conversation is confirmed by Rick Parks, a GAP investigator, who was also present at the meeting with the official. According to a contemporaneous "investigative memo" written by Mr. Parks on the day of the conversation, the Washington State official stated that "two herdsmen . . . confirmed to government officials that the BSE positive Holstein walked onto the trailer when she was picked up the day of December 9, 2003."[16]

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[10] *Id.* at 7.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 1.

[15] *Id.* at 5.

[16] Rick Parks, Investigator, Government Accountability Project, *Investigative Memo* (Jan. 19, 2004).

The Committee has also received a declaration from Randy Hull, the hauler who carried the BSE-infected cow to Vern's Moses Lake Meats on December 9, 2003.[17] Mr. Hull's account is consistent with Mr. Ellestad's. As a hauler for Vern's Moses Lake Meats, Mr. Hull was required to sign a written declaration committing that he would bring no downer cows to the slaughterhouse.[18] Mr. Hull signed this declaration on February 18, 2003. The declaration states: "in order to comply with Verns Meats policy on humane handling of livestock, I agree that I will not haul livestock to them to slaughter that have been loaded as 'downers' (loaded on the trailer by mechanical means)."[19]

In his declaration, Mr. Hull recalls the cattle he transported on December 9, 2003, from Sunny Dene Dairy where the BSE-infected cow had resided. Mr. Hull states:

> On December 9, 2003, I loaded three Holstein Cows at the Sunny Dene Dairy for transport to Vern's Moses Lake Meats. . . . <u>The animals each walked onto my trailer</u>.[20]

David Louthan, an employee at Vern's Moses Lake Meats, recalls that he killed the BSE-infected cow. Testifying before the Washington State legislature on February 3, 2004, Mr. Louthan stated, "That was a walking cow."[21]

On December 9, 2003, a USDA veterinarian at Vern's Moses Lake Meats completed paperwork stating the BSE-infected cow was a downer.[22] Mr. Ellestad's affidavit addresses the veterinarian's paperwork. According to Mr. Ellestad, the veterinarian on site came outside to the hauling trailer, noted in his paperwork which cows were lying down, and went back inside the facility.[23] Subsequently, Mr. Ellestad says, the cattle stood up.[24]

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[17]Written declaration from Randy Hull to Vern's Moses Lake Meats, Inc. (Feb. 18, 2003).

[18]Affidavit of Thomas A. Ellestad, 3 (Feb. 9, 2004).

[19]Written declaration from Randy Hull to Vern's Moses Lake Meats, Inc. (Feb. 18, 2003).

[20]Statement of Randy Hull (Jan. 21, 2004) (emphasis added).

[21]David Louthan, Testimony before Agriculture Committee, Washington State Senate (Feb. 3, 2004)(online at http://www.tvw.org/search/siteSearch.cfm?keywords=Senate%20Agriculture&Date=2004&CFID=326753&CFTOKEN=87282027).

[22]U.S. Department of Agriculture, *U.S.D.A. Ante Mortem/Post Mortem Findings at Establishment #9318* (Dec. 9, 2003).

[23]Affidavit of Thomas A. Ellestad, 6 (Feb. 9, 2004).

New Information about Testing at Vern's Moses Lake Meats

The new information from GAP also provides evidence that the BSE-infected cow was not tested as a downer. As previously stated, USDA's policy is to test only downers and cattle with central nervous system symptoms for mad cow disease. Mr. Ellestad's affidavit explains that Vern's Moses Lake Meats did not select cows for sampling based on these standards.

According to Mr. Ellestad, his slaughterhouse was initially asked to participate in USDA's BSE surveillance program around June 2003.[25] USDA offered ten dollars for every sample taken from downer cattle up to a total of 1,000 samples.[26] Mr. Ellestad states that as he understood the offer, "it meant that every downer would be tested but no ambulatory cattle would be tested."[27] Due to Vern's Moses Lake Meats policy against slaughtering downer cattle, Mr. Ellestad declined to participate in the testing program.

Mr. Ellestad's affidavit states that USDA made several more overtures to Vern's Moses Lake Meats for samples, and all were rejected.[28] USDA officials then explained that "they were having real difficulty getting plants to sample and that they were having difficulty getting the number of brain stem samples that they were expected to get."[29] Mr. Ellestad states that USDA eventually changed its offer. Mr. Ellestad recalls:

> USDA was so needful of getting samples, that <u>they backed away from the requirement that tested animals be downers</u> and eventually, a modified contract was offered to us.[30]

Mr. Ellestad provided the Committee with a copy of the purchase order from USDA for the cattle samples.[31] This purchase order makes no mention of sampling downer cattle. The

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[24] *Id.* at 9.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* (emphasis added).

[31] U.S. Department of Agriculture, *Purchase Order for BSE Surveillance* (Oct. 6, 2003).

purchase order does state: "for each animal from which a BSE surveillance sample is collected, Vern's will be reimbursed $10.00."[32]

From October to December 2003, Vern's Moses Lake Meats provided USDA with more than 250 samples for BSE testing.[33] The slaughterhouse chose which samples to provide to USDA.[34] According to Mr. Ellestad, he chose to sample cattle that were stunned outside the plant and hoisted inside.[35] While some of the cattle included those that had been injured in transit, others were cattle without any evident health problems.[36] According to Mr. Ellestad:

> A review of the VMO's [Veterinary Medical Officers's] records at our plant, along with our kill records, will confirm that we took samples on ambulatory cattle. USDA was aware and they never objected. . . . [W]e performed a BSE Sample on these unquestionably ambulatory animals. These animals exhibited absolutely no outward appearance of BSE or Central Nervous System (CNS) symptoms.[37]

In his affidavit, Mr. Ellestad states that it was only this modified agreement with USDA that led him to collect a sample from the BSE-infected cow. Mr. Ellestad writes:

> If I had signed the USDA's first proposal for testing downers only, we would not have felt that it was in keeping with our contract to test the cow that came to my plant on Dec. 9th because our staff did see that she was ambulatory.[38]

After the identification of the BSE-infected cow, Mr. Ellestad asked for permission to expand testing to all cattle of breeding age.[39] On December 29, 2003, the USDA halted the

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[32] *Id.*

[33] Affidavit of Thomas A. Ellestad, 11 (Feb. 9, 2004).

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* at 10.

[39] Letter from Tom Ellestad to Agriculture Department (Dec. 26, 2003).

testing program entirely at the plant.[40] Mr. Ellestad later objected to characterization of his plant as a "'downer' plant," saying such a description "could be considered a smokescreen."[41]

Implications for BSE Surveillance

If the information we have received is true, a key premise of the USDA BSE testing program is subverted. It is self-evident that if the only BSE-infected cow to be discovered in the United States was able to walk and had no symptoms of central nervous system disease, USDA should not assume that all infected cattle will be either downer cows or cows that exhibit symptoms of central nervous system disease.[42]

On December 30, 2003, you asked independent experts to evaluate the Department's response to the discovery of the BSE-infected cow. The committee you created, the Subcommittee on the United States' Response to the Detection of a Case of Bovine Spongiform Encephalopathy (Subcommittee), was a USDA advisory body comprised of foreign experts. You stated, "It is important that USDA seek credible, objective scientists from countries that have had experience with BSE in implementing the most effective response possible."[43]

This month, the Subcommittee released its report. The report advised that "the surveillance programme in the USA must be significantly extended in order to measure the magnitude of the problem."[44] It specifically recommended that all downer cows over 30 months be tested for mad cow disease and that the United States strongly consider random sampling among healthy cattle.[45] We believe USDA should either follow the recommendations of these

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[40]Affidavit of Thomas A. Ellestad, 18 (Feb. 9, 2004).

[41]*Id.* at 15.

[42]Animal and Plant Health Inspection Service, *Bovine Spongiform Encephalopathy (BSE): Surveillance (2003)* (online at http://www.aphis.usda.gov/lpa/issues/bse/bse-surveillance.html) ("An assumption is made that the . . . potential cases of BSE would all be found in the high-risk cattle population").

[43]U.S. Department of Agriculture, *Agriculture Secretary Ann M. Veneman Announcing Additional Protection Measures to Guard against BSE* (Dec. 30, 2003) (online at http://www.usda.gov/Newsroom/0450.03.html).

[44]Subcommittee on the United States' Response to the Detection of a Case of Bovine Spongiform Encephalopathy, Foreign Animal and Poultry Disease Advisory Committee, *Report on Measures Relating to Bovine Spongiform Encephalopathy (BSE) in the United States* (Feb. 2004).

[45]*Id.*

independent experts and expand mad cow testing substantially or provide a compelling reason for not doing so.

Need for Further Investigation

In a handwritten letter faxed on January 6, 2004, to an Enforcement, Investigation and Analysis Officer in USDA's Boulder District office, Mr. Ellestad stated that "the brain stem sample was not taken because this animal was non-ambulatory."[46] USDA has not released to Congress or the public the contents of Mr. Ellestad's fax. As the oversight committee over all federal agencies, it is the Committee's responsibility to ensure a complete and thorough investigation of these claims. If it is confirmed the BSE-infected cow was not a downer, public confidence in USDA may suffer. Confidence in the food supply requires that the public be able to rely on the statements of USDA officials.

It is critically important that the contradictions between USDA's statements and the information that we received from GAP be thoroughly investigated by Congress. We therefore ask that you provide us with the following documentation:

1. Any and all documents in USDA's possession regarding BSE sampling at Vern's Moses Lake Meats in 2003, including, but not limited to:

    a. Animal and Plant Health Inspection Service's (APHIS) documentation of all BSE surveillance samples collected at Vern's Moses Lake Meats, including the ID number of each cow sampled; and

    b. the corresponding FSIS Field Operations Daily Disposition Record for each cow that was sampled.

2. Any and all documents in USDA's possession regarding the condition of the BSE-infected cow while at the dairy farm where the cow lived prior to being sent for slaughter; and

3. Any and all documents in USDA's possession regarding the BSE surveillance sampling or testing of ambulatory cattle, including, but not limited to:

    a. a copy of a standard USDA APHIS Veterinary Services' BSE Surveillance Program Purchase Order (Purchase Order) that is disseminated to slaughterhouses that participate in USDA's BSE surveillance program. The

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[46]Letter from Thomas A. Ellestad, Co-Manager/Secretary, *Vern's Moses Lake Meats, Inc.*, to an Enforcement, Investigation and Analysis Officer, *USDA Boulder District office* (January 6, 2004).

Purchase Order you provide should include the standard language contained in the Description section of a standard Purchase Order; and

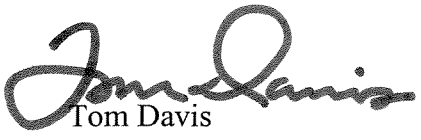
b. a copy of the Purchase Order provided to Vern's Moses Lake Meats by USDA APHIS Veterinary Services for participation in USDA's BSE surveillance program.

In addition, we ask that you make available for interviews with our staff the USDA officials who are familiar with the operations at Vern's Moses Lake Meats.

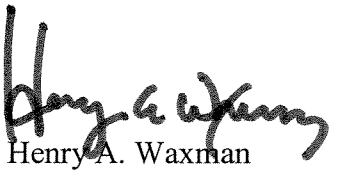
Conclusion

The contradictions between the evidence the Committee has received and the statements of USDA regarding the BSE-infected cow require your prompt attention. We respectfully request that you reply to the matters raised in this letter by March 2, 2004. If you should have any additional questions, please contact Anne Marie Turner of the majority staff at (202) 225-5074 or Josh Sharfstein of the minority staff at (202) 225-5420.

Sincerely,



Tom Davis
Chairman



Henry A. Waxman
Ranking Minority Member

Enclosures