Protecting 'Pink Slime' Whistleblowers

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By KRYSTAL GABERT, Editor, *Food Manufacturing*

In early March, former USDA scientist Gerald Zirnstein made big news when he came out swinging at the beef industry. He revealed that 70 percent of all ground beef purchased in stores contains what he has dubbed "pink slime," fatty beef trimmings that are liquefied before the protein is extracted and treated with ammonia to make it safe for human consumption.

Zirstein jumped into television interviews last month, during which he demonstrated how he grinds his own beef now, refusing to buy anything containing "pink slime." The consumer media picked up the story and ran with it, and soon the words "pink slime" were on everybody's tongue. But what people were really talking about, specifically, were products primarily made by Beef Products Inc. (BPI), the manufacturers of "pink slime."

And Zirnstein is far from the first to shed light on the use of these products. The Food Integrity Campaign (FIC) hosted Kit Foshee, an industry whistleblower and former employee of BPI, at a whistleblower panel at its 2011 conference. Video of the panel can be found on the FIC website and YouTube under the title "FIC Conference 2011: Employee Rights & the FSMA (Panel 2) [1]". Foshee claims he was fired in 2001 for refusing to toe the company line on the safety of ammonia-treated beef (the details of his wrongful termination suit are sealed). New Food Safety Modernization Act (FSMA) protections may have provided Foshee greater employment protections.

In December 2009, well after Foshee's time at BPI had come to an end, the *New York Times* published a front-page story [2]calling into question the safety of the not-yet-christened "pink slime." The article focused not on the gross-out factor that might accompany the now-ubiquitous images of "pink slime," but rather on the food safety dangers that the product purportedly presents.

The fatty scraps used to make "lean beef trimmings," the moniker that BPI prefers to "pink slime," are exceptionally susceptible to E. coli and salmonella contamination, which is why they have historically been relegated to use in cooking oil and pet food. But, according to the *Times*, the USDA had such confidence in BPI's ammonia treatment method that it exempted the facility from the agency's standard testing requirements. When it was revealed that schools, which have testing standards of their own, had returned dozens of positive results for E. coli and salmonella in BPI products, the USDA revoked BPI's testing and recall exemptions.

According to the Times, the initial difference in testing standards arose because, "The department accepted the company’s own study as evidence that the treatment was effective. School lunch officials, who had some doubts about its effectiveness, required that Beef Products meat be tested, as they do all beef used by the program."

BPI's founder and owner refused to speak to the *Times* for that 2009 story, and the company had been fairly tight-lipped in the opening days of the latest kerfuffle surrounding its products. On March 12, the company released a statement to the press [3] indicating that they "use a natural compound — called ammonium hydroxide, which is widely used in the processing of numerous foods, such as baked goods, cheeses, gelatins, chocolate, caramels, and puddings — to slightly increase the pH level in beef and improve its safety." The statement goes on to list various food safety experts who support the use of BPI's products.

Which brings us back to Foshee. His 2011 talk at the FIC conference had some unlikely attendees — attorneys from BPI. Foshee is bound by a sealed non-disclosure agreement, and he asserted during the panel that he believed the attorneys were present to try to catch him revealing proprietary information they could use to "persecute" him in ways he predicted would be overly punitive. Foshee's talk, instead, stuck to publicly available data provided by BPI to make his case against "pink slime," weaving a narrative that appears to prove misleading statements, and perhaps even falsified tests, on the part of BPI.

But the world today is different for potential whistleblowers in the food industry. Section 402 of the FSMA states that companies across the supply chain cannot "discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment" for revealing "any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act." Employees are even protected if they "objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act."

The FSMA gives food processing employees more autonomy for assessing food safety standards. As food manufacturers continue to build their food safety and HACCP programs, they'd be wise to listen to the concerns of their employees, because if they don't, the employees may well take those concerns elsewhere.

What's your take? Please feel free to leave a comment below or email krystal.gabert@advantagemedia.com *[4].*

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