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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

| | | |
|----------------------|---|----------------------------|
| In re: |) | |
| |) | |
| |) | |
| E & L Meats |) | |
| and |) | FMIA Docket No. 09-0151 |
| Ernest H. Ward, Jr., |) | |
| |) | |
| |) | |
| Respondents. |) | Consent Decision and Order |
| |) | |

This is a proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA") and the applicable rules of practice (7 C.F.R. §§ 1.130 et seq. and 9 C.F.R. §§ 500.1 et seq.), to withdraw Federal inspection services from E & L Meats and Ernest H. Ward, Jr., hereinafter referred to as Respondents. This proceeding was commenced by a complaint filed on July 15, 2009, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the rules of practice (7 C.F.R. § 1.138).

Respondents admit the allegations in the Complaint and specifically admit that the Secretary has jurisdiction in this matter. Respondents waive oral hearing and further procedure, and waive any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.), and waive any other action against the USDA and its employees in connection with the facts and events that gave rise to these proceedings. Respondents consent

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and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. At all times material herein, Respondent E & L Meats is a business organized and existing under the laws of New York, at Establishment 34085, with a mailing address of 7945 State Highway 28, Richfield Springs, New York 13439.

2. Respondent E & L Meats is now, and was at all times material herein, a meat slaughter house and meat processing plant under federal meat inspection under section 401 of the FMIA at its place of business in Richfield Springs, New York.

3. Respondent Ernest H. Ward, Jr. is an individual with a mailing address of 7945 State Highway 28, Richfield Springs, New York 13439.

4. Respondent Ernest H. Ward, Jr. is now, and was at all times material herein, owner and partner of, and is responsibly connected to, Respondent E & L Meats.

5. On or about November 14, 2007, Ernest H. Ward, Jr. was convicted in the Otsego County Court of the State of New York of one (1) count of Petit Larceny, a misdemeanor, for unlawfully failing to pay for butcher hogs sold for slaughter, in violation of Section 155.25 of the New York Penal Law.

6. On or about June 21, 2007, Ernest H. Ward, Jr. was convicted in the Otsego County Court of the State of New York of two (2) counts of Petit larceny, a misdemeanor, for unlawfully

failing to pay for beef cattle sold for slaughter, in violation of Section 155.25 of the New York Penal Law.

7. On or about November 30, 2004, Ernest H. Ward, Jr. was convicted in the Herkimer County Court of the State of New York of one (1) count of Driving While Intoxicated, a class E felony.

8. On or about October 28, 1994, Ernest H. Ward, Jr. was convicted in the Herkimer County Court of the State of New York of one (1) count of Aggravated Unlicensed Operation in the 1st degree, a felony.

9. On or about May 4, 1990, Ernest H. Ward, Jr. was convicted in the Otsego County Court of the State of New York of one (1) count of Attempted Burglary 2nd, a class D felony.

10. In June, 2007 through August, 2007, E & L Meats failed to comply with the Generic *Escherichia coli* (*E. coli*) regulatory requirements by failing to conduct any *E. coli* testing, as required under the FMIA and the regulations promulgated thereunder.

11. On or about December 18, 2007, through January 3, 2008, FSIS performed a Food Safety Assessment of Respondent E & L Meats to determine Respondent's compliance with food safety requirements. Based upon the assessment, on January 4, 2008, Respondents were issued a Notice of Intended Enforcement Action (NOIE), due to the failure of Respondents to comply with the regulatory requirements of Sanitation Performance Standards, Sanitation Standard Operating Procedures, Generic *E. coli* requirements, and Hazard Analysis Critical Control Point requirements, required under the FMIA and the regulations promulgated thereunder. On July 9, 2008, a Letter of Warning was issued advising that failure to comply with the requirements of the FMIA and regulations could lead to further enforcement action.

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12. On or about September 23, 2008, FSIS issued to Respondents a non-compliance report due to the continued failure to comply with regulatory requirements for *E. coli* testing. On September 30, 2008, Respondents were issued a second NOIE based on evidence that Respondent E & L Meats failed to perform *E. coli* Biotype 1 sampling, as required by the FMIA and the regulations promulgated thereunder. On March 5, 2009, a Letter of Warning was issued, advising that failure to comply with the requirements of the FMIA and regulations could lead to further enforcement action.

Conclusion

The Respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, this decision will be entered.

Order

Federal meat inspection services under the FMIA are withdrawn from Respondent Ernest H. Ward, Jr., and Respondent E & L Meats, including its owners, officers, directors, partners, affiliates, successors and assigns, directly or through any business or other device, for a period of three (3) years beginning on the effective date of this order; Provided, however, the withdrawal of inspection services shall be held in abeyance, and conditional Federal inspection services shall continue to be provided to Respondents for so long as the conditions set forth herein below, in addition to all other statutory and regulatory requirements for applicable inspection services, are met:

1. Respondent Ernest H. Ward, Jr., and Respondent E & L Meats, or any other responsibly connected individual, or any of its owners, officers, directors, partners, employees, agents, affiliates, successors, and assigns shall not:

(a) violate any section of the FMIA, the Poultry Products Inspection Act (PPIA) or regulations promulgated there under, or state or local statute involving the slaughter, preparation, sale, transportation, or attempted distribution of any adulterated or misbranded meat or poultry product;

(b) commit any felony or fraudulent criminal act, or any other criminal act involving the sale and distribution of unwholesome, adulterated or misbranded products;

(c) willfully make or cause to be made any false entry into any accounts records, or memoranda kept by Respondents in compliance with Federal or State statutes or regulations; fail to make true and correct entries in such accounts, records or memoranda; or fail to keep such accounts that fully disclose all transactions in Respondents' business;

(d) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA of PPIA.

2. Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal, state, or territorial court, of any felony, or more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by state and federal law, Respondents shall immediately terminate their connection with such individual when that individual's conviction becomes known to Respondents.

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3. Respondents shall implement and maintain Sanitation Standard Operating Procedures (SSOP) and a Hazard Analysis and Critical Control Point (HAACP) system in accordance with regulatory requirements specified in Title 9, Code of Federal Regulations, Part 416 and 417, respectively.

4. Within thirty (30) calendar days from the issuance of this Order, Respondents shall develop an effective written generic *Escherichia coli* Biotype 1 (*E. coli*) sampling program based upon production volume to include written specimen collection procedures and frequencies, records of test results, recordkeeping, and all other regulatory requirements as identified in 9 C.F.R. § 310.25.

5. Respondents shall maintain full, complete and accurate written records of all business activities applicable to the FMIA and the PPIA, including but not limited to SSOP and HAACP records, and will make these records available for review and copying upon request of any authorized representative of the Secretary of Agriculture of the United States (Secretary).

6. Within ninety (90) calendar days from the issuance of this Order, Respondent Ernest H. Ward, Jr. shall participate in and successfully complete a training program or educational course in the application of the seven HACCP principles as identified in 9 C.F.R. § 417.7(b). Respondents shall maintain for the duration of the Order records documenting the completion of such training and shall make these records available upon request to any authorized representative of the Secretary.

7. Within ninety (90) calendar days from the issuance of this Order, Respondent Ernest H. Ward, Jr. shall participate in and successfully complete a training program or educational course encompassing ethical business practices that has received prior concurrence from the

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Director, Evaluation and Enforcement Division (EED) of OPEER, FSIS (hereinafter, the Director). Respondents shall maintain for the duration of the Order records documenting the completion of such training and shall make these records available upon request to any authorized representative of the Secretary.

8. Within sixty (60) calendar days from the issuance of this Order, Respondents shall develop and submit for review and concurrence of the Director, a business code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices ("Business Code") applicable to all business entities and individuals within or employed by Respondent. The Business Code, at minimum, shall include:

- (a) a statement of company policy addressing business ethics and the public trust;
- (b) a statement of Respondents' commitment to comply with all applicable Federal and state food safety and other laws in the conduct of their business;
- (c) guidelines for Respondents' employees to follow with respect to food safety and ethics issues; and
- (d) assurances to preclude any acts of intimidation, assault, or interference of USDA program employees.

The Business Code shall be permanently displayed in a prominent location in Respondents' establishment, and shall be discussed with all current and new employees.

9. Within sixty (60) calendar days from the effective date of this Order, Respondents shall implement and maintain an effective compliance program to ensure that all inspected meat and/or poultry products do not become adulterated, contaminated or misbranded. This compliance program shall include, at a minimum, provisions to ensure that:

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(a) all meat and/or poultry products are processed in accordance with product specifications and formulations in 9 C.F.R. § 318.6;

(b) all meat and/or poultry products produced at Respondent do not have any undeclared substance of any kind, are correctly labeled, and bear full and accurate labeling in accordance with the requirements of 9 C.F.R. § 301.2; and

(c) record keeping of product formulations for meat and/or poultry products produced are in accordance with the requirements of 9 C.F.R. §§ 318.6 and 381.118.

Respondents shall submit their proposed compliance program to the Director for review and concurrence. Respondents shall designate an employee and an alternate to be responsible for oversight of all aspects of the compliance program at all times during production. Such employee or alternate shall have full authority to hold up production, stop production, remove product from production, or take positive control of any products manufactured or stored at the facility which are or are believed to be adulterated or misbranded. The designated employee or alternate must be present at all times when operations requiring Federal inspection are conducted. The parties shall make every effort to ensure that Respondents' compliance program is reviewed and implemented in an expeditious manner.

10. Respondents shall fully and completely cooperate with any FSIS investigation inquiry, review, or examination of Respondents' compliance with the FMIA, PPIA or this Order.

11. Respondents shall provide a written report annually to the Director regarding Respondents' compliance with all terms and conditions of this Order, and FSIS statutory and regulatory requirements, including 9 C.F.R. Parts 310.25, 416 and 417.

12. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Director or his or her designee, that one or more conditions set forth in this Order in paragraphs one (1) through ten (10) have been violated, for a period of three (3) years beginning on the effective date of this Order.

13. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon any felony conviction of either Respondent, or upon any two misdemeanors involving the sale and distribution of unwholesome, adulterated or misbranded products, based upon any violations of law occurring prior to, or subsequent to, the effective date of this Order, for a period of ten (10) years beginning on the effective date of this Order.

14. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the rules of practice, 9 C.F.R. Part 500, concerning any violation alleged as the basis for a withdrawal of inspection services. This does not affect complainant's right to suspend official operations in accordance with Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any violation of law to the Department of Justice for possible criminal or civil proceedings, or preclude the Administrator, FSIS, from taking other appropriate administrative action under the FMIA, PPIA, or the regulations promulgated there under, including administrative action in response to any subsequent convictions by Respondent based upon any violations of law occurring prior to, or subsequent to, the effective date of this Order.

15. The provisions in paragraphs 1 - 12 set forth in this Order shall be applicable for a period of three years, commencing on the date of issuance of this Order.

17. The provisions in paragraph 13 set forth in this Order shall be applicable for a period of ten years, commencing on the date of issuance of this Order.

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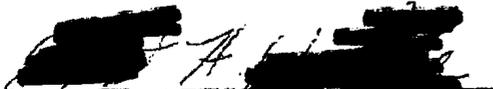
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18. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

19. This Order shall become effective upon issuance by the Administrative Law Judge.


Ernest H. Ward, Jr., Owner
For himself and for E & L Meats.


Scott C. Safian, Director
Evaluation and Enforcement Division
Office of Program Evaluation,
Enforcement and Review


Margaret A. Burns Rath
Attorney for Complainant
United States Department of Agriculture
Office of the General Counsel
(202) 720-2510

Issued this 14th day of Oct 2009
in Washington, D.C.


ADMINISTRATIVE LAW JUDGE