

10-02-17

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) FMIA Docket No. 10-0219
Brown Packing Company, Inc.,)
Respondent) CONSENT DECISION and ORDER

This proceeding was instituted 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.), to withdraw Federal inspection services from Brown Packing Company, Inc., (hereinafter referred to as "Respondent"). This proceeding was commenced by a complaint filed on April 9, 2010 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).

For the purposes of this Consent Decision and Order, Respondent specifically admits that the Secretary has jurisdiction in this matter. Respondent neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and waives any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.). Respondent consents and agrees, 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. Respondent is now, and at all times material herein was, a corporation located at One Dutch Valley Drive, South Holland, Illinois 60473.
2. Respondent is now, and was at all times material herein, a recipient of Federal inspection services under Title 1 of the FMIA at its place of business in South Holland, Illinois, designated as official Establishment Number 167.
3. On August 15, 2002, Respondent was given its most current grant of Federal inspection services pursuant to the FMIA at the business establishment located at One Dutch Valley Drive, South Holland, Illinois, 60473.
4. John A. Oedzes is now, and was at all times material herein, the President of Respondent and is an individual responsibly connected thereto.
5. On February 11, 2010, in the United States District Court for the Eastern District of Wisconsin, Respondent was convicted of one felony count of conspiracy to defraud customers and competitors by wire and mail fraud in violation of 18 U.S.C. §§ 1349, 1341, and 1343.

Conclusion

Because the parties have agreed to the provisions set forth in the following Consent Decision and Order in disposition of this proceeding, the following Order will be issued.

Order

1. Federal inspection services under Title I of the FMIA are withdrawn from Respondent, its owners, including officers, directors, partners, successors, affiliates, and assigns, directly or indirectly through any corporate device, for a period of three (3) years beginning on the effective date of this Consent Decision and Order. However, the withdrawal of Federal meat inspection services for a three (3) year period shall be held in abeyance, and Federal meat inspection services shall be provided to the Respondent so long as all of the terms and conditions of this Consent Decision and Order set forth below, in addition to all other requirements of inspection services under the FMIA are met.

Compliance Provisions

2. Upon the effective date of this Order, and for the duration of this Order and subject to verification by FSIS, Respondent shall comply with the Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedure (SSOP) and Hazard Analysis and Critical Control Point (HACCP) regulatory requirements specified in Title 9 Code of Federal Regulations, Parts 416 and 417, as applicable.

3. Respondent shall, within thirty (30) calendar days from the effective date of this Order and subject to the verification of FSIS, develop and implement a compliance program to ensure that meat products do not become adulterated, contaminated or misbranded. This compliance program shall include, at a minimum, provisions to:

(a) ensure that all meat products are produced or processed in accordance with product specifications and formulations, as required by 9 C.F.R. § 318.6;

(b) ensure that all meat products produced, processed, and/or re-packed by Respondent do not have any undeclared substance of any kind and bear full and accurate labeling in accordance with 9 C.F.R. § 301.2;

(c) ensure recordkeeping of product formulations for meat products produced at Respondent in accordance with the requirements of 9 C.F.R. 318.6;

(d) ensure documentation of all findings, corrective actions taken, and preventive measures implemented, when any non-compliance are found; and

(e) ensure recall procedures are in place to effectively recall potentially adulterated or misbranded products produced or processed by Respondent when found within distribution channels.

Respondent shall submit its proposed food safety compliance program to the Director of Evaluation and Enforcement Division, OPEER, FSIS, USDA (hereinafter "Director, EED") for review and concurrence.

4. Respondent shall designate one full-time and one alternate employee to be responsible for oversight of all aspects of the compliance program. The designated employee or alternate shall have authority to hold up production, stop production, remove product from production, or take positive control of any products produced, processed, packed, or stored at the establishment which are, or believed to be, adulterated or misbranded, when facility sanitation, or production deficiencies

are observed. The designated employee or alternate shall be present at all times when operations requiring Federal inspection are conducted.

Residue Control Program

5. Within thirty days (30) calendar days of the effective date of this Order and subject to the verification of FSIS, Respondent shall:

(a) develop a written residue control program, including monitoring, verification, corrective and preventive actions, and recordkeeping, that it will implement and maintain on a daily and on-going basis, to ensure that livestock suspected of or having been treated with or exposed to any substance that may impart a biological residue are not slaughtered or processed for human consumption in accordance with the requirements of 9 C.F.R. § 309.16;

(b) address specific procedures within its residue control program, including the following: (i) receiving of animals; (ii) identification with lot number of animals for trace back to suppliers; (iii) monitoring, documenting and recordkeeping of findings; (iv) notification of violations to suppliers; and (v) corrective actions and preventive measures; and

(c) provide a copy of its written residue control program to the Director, EED for review.

6. Respondent shall make all records relative to its residue control program, including supporting information or other decision making documents, available to FSIS personnel for review and/or copying immediately upon such request.

Humane Handling and Slaughter

7. Respondent shall ensure that any calves, sheep or goats slaughtered or handled in connection with slaughter at their facility comply with the Humane Methods of Slaughter Act (HMSA) of August 27, 1958 (7 U.S.C. §§ 1901-1906), 9 C.F.R. Part 313, and any Federal, state, or local laws regarding the humane treatment of animals.

Ethics Training

8. Within ninety (90) days of the effective date of this Order, all individuals responsibly connected to Respondent shall participate in and successfully complete a training program or educational course encompassing ethical business practices. Prior to participating in this course, Respondent shall submit a detailed description of the proposed training course for concurrence by the Director, EED. Respondent shall maintain for the duration of this Order records documenting the completion of such training and shall make these records available upon request to any authorized representative of the Secretary.

Corporate Code of Conduct and Ethics

9. Within sixty days (60) calendar days of the effective date of this Order and subject to verification by FSIS, Respondent shall develop and submit for review and concurrence by the Director, EED, a 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 the 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 Respondent's commitment to comply with all applicable Federal and State food safety and other laws in the conduct of their business;
- (c) guidelines for Respondent's employees to follow with respect to food safety and ethics issues; and
- (d) acceptable corrective and preventive assurances to preclude any acts of intimidation or assault of, or interference with, USDA program employees.

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

Recordkeeping Provisions

10. Respondent shall record and maintain complete and accurate written records of (a) all records required to be maintained by the FMIA and the regulations; (b) all records required to be maintained under applicable Federal, State, and local statutes; and (c) all SPS, SSOP, HACCP, and other systems, plans and records required by the FMIA, the regulations or this Order.

11. Respondent shall immediately notify FSIS program personnel of any changes or modifications to its SSOP, HACCP or other systems, programs, or plans required by regulation or by this Order, and all associated recordkeeping forms.

12. Respondent shall make all records regarding its federally inspected establishment or other regulated business or business activities at said establishment available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Corporate Reporting to FSIS

13. Respondent shall prepare a report identifying Respondent's compliance with all the terms and conditions of this Order and FSIS statutory and regulatory requirements. The report shall provide information on any relevant compliance issues. The report shall be submitted to the Director, EED, on a quarterly basis, with the first report to be submitted within 90 calendar days from the effective date of this Order and every 90 calendar days thereafter.

General Provisions

14. Respondent and any of Respondent's partners, employees, agents or affiliates shall not:

- (a) violate any section of the FMIA, or regulations promulgated thereunder, any state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated, non inspected, misbranded or deceptively packaged meat, or meat food products;
- (b) commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or extortion;
- (c) willfully make or cause to be made any false entry into any accounts, records, or memoranda kept by Respondent in compliance

with Federal, State or local statutes or regulations; neglect or fail to make full, true, and correct entries in such accounts, records or memoranda; or fail to keep such accounts, records, or memoranda, that fully and correctly disclose all transactions in Respondent's business;

(d) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA, or regulations promulgated thereunder; or

(e) conduct any operation requiring Federal inspection outside Respondent's official hours of operations without first submitting a written request to, and receiving written approval from FSIS.

15. Respondent 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, Respondent shall immediately terminate its connection with such individual when that individual's conviction becomes known to Respondent.

Enforcement Provisions

16. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Director, EED, or his or her designee, that one or more conditions set forth in paragraphs 1 through 15 of this Order have been violated. It is acknowledged that Respondent retains the right to request a hearing pursuant to the rules of practice, 9 C.F.R. Part 500, concerning any

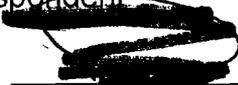
violation alleged as the basis for a summary withdrawal of inspection services. This does not affect complainant's right to suspend official operations in accordance with Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any such violation to the Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, EPIA and the regulations promulgated there under.

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

18. The provisions of this Order shall be applicable for a period of three (3) years from the effective date of this Order.

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

Brown Packing Company, Inc.,
Respondent

BY: 
Mr. John A Oedzes
President, Brown Packing Company, Inc.


Mr. Robert G. Hibbert
K&L Gates LLP
Attorney for Respondent


Mr. Scott C. Safian
Director, Evaluation &
Enforcement Division
Food Safety & Inspection Service
United States Department of
Agriculture

[Redacted signature]

Ms. Carlyne S. Coekrum
Attorney for Complainant
Office of General Counsel
United States Department of
Agriculture

Issued this 12th day of April 2010
in Washington, D.C.

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Administrative Law Judge