

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2003
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In Re:)
)
Lakeview Packing Company, Inc.,) FMIA Docket No. 03-0005
)
Respondent) CONSENT DECISION AND ORDER
)

These proceedings were initiated pursuant to the Rules of Practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes (7 C.F.R. § 1.130 et seq.) and the Supplemental Rules of Practice (9 C.F.R. § 500 et seq.) to withdraw inspection services from Lakeview Packing Company, Inc., by the filing of a complaint on August 6, 2003, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), which is responsible for the administration of Federal meat inspection services. That complaint alleged that Respondents were unfit to engage in any business requiring inspection under Title I of the Federal Meat Inspection Act, as amended (FMIA)(21 U.S.C. § 601 et seq.). The parties have now agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below and have agreed to the following stipulations:

1. For the purpose of this Consent Decision only, Respondent admits all the jurisdictional allegations of the complaint, and waives:
 - a. Any further procedural steps;

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b. Any requirement that the final decision in this proceeding contain any findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof; and

c. All rights to seek judicial review or to otherwise challenge or contest the validity of this decision.

2. This Consent Decision is for settlement in these proceedings only and does not otherwise constitute an admission or denial by Respondent that Respondents violated the regulations or statutes involved.

3. Respondent waives any action against the USDA under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

4. Respondent, its owners, officers, directors, partners, successors, assigns, and affiliates waive, in addition to the action waived in paragraph three above, any other action against USDA or its employees in connection with these proceedings.

Finding of Facts

(1) At all times material herein, Respondent Lakeview Packing Company, Inc. (Lakeview Packing), is a corporation organized and existing under the laws of North Carolina at Establishment 9166, RR1, Box 473, LaGrange, North Carolina 28551.

(2) Respondent Lakeview Packing is now, and was at all times material herein, a meat slaughter house and meat processing plant under federal meat inspection under Title 1 of the FMIA at its place of business in LaGrange, North Carolina 28551.

(3) On or about August 5, 2002, Lakeview Packing was convicted in the United States District Court for the Eastern District of North Carolina, on one (1) count of Conspiracy to Violate the Clean Water Act.

(4) Lakeview Packing was sentenced to five years of probation and ordered to pay a \$75,000 fine.

(5) From 1982 through August 1998, Lakeview Packing discharged hog slaughter/processing waste from the "kill floor" and raw human waste from the facility's bathrooms into the Contentnea Creek, a tributary of the Neuse River. This was accomplished by a series of underground pipes that by-passed the company's septic system.

Order

Inspection services under the FMIA are withdrawn from Respondent Lakeview Packing Company, Inc., its owners, officers, directors, partners, successors, affiliates, and assigns, directly or through any corporate device, beginning on the effective date of this Order. This withdrawal shall be held in abeyance and inspection services shall be provided to Respondent Lakeview Packing Company, Inc., for so long as, in addition to all other requirements of inspection, the conditions set forth below are met.

A. Respondent or any of its officers, partners, employees, agents, affiliates, or assigns shall not:

1. violate any section of the FMIA, PPIA, or EPIA; or State or local statutes involving the preparation, sale, transportation or attempted distribution of any adulterated or misbranded meat or poultry products;

2. willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by Respondent in compliance with applicable federal or state statutes or regulations; or willfully neglect or fail to make, or cause to be made, 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;

3. commit any felony or fraudulent criminal act; or

4. assault, intimidate, or interfere or threaten to assault, intimidate, or interfere with any program employee in the performance of his or her official duties under the FMIA, PPIA, or EPIA.

B. Respondent shall maintain a Sanitation Standard Operating Procedure (SSOP) and a Hazard Analysis and Critical Control Point (HACCP) system in compliance with regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416 and 417, respectively.

C. Respondent shall develop, implement, and maintain full, complete, and accurate written records of all business activities applicable to the FMIA, PPIA, EPIA, Packers and Stockyards Act, State and local laws. Such records may include, but are not limited to, bid solicitations, government contracts, product specification work sheets, SSOP and HACCP records. Respondent

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shall make these records available for review and/or copying upon request to any authorized representative of the Secretary.

D. Respondent shall implement and maintain an effective compliance program to ensure that all inspected meat products will be maintained in a manner to preclude product adulteration, contamination, or misbranding, and to ensure that all processed and inspected products are wholesome and do not contain any undeclared substances, including added water.

This compliance program, which may be incorporated into Respondent's HACCP or SSOP plan, shall include provisions to:

(1)(a) ensure that carcasses of livestock slaughtered are wholesome, free of any contamination, not adulterated, and bear legible marks of Federal inspection; (b) ensure that all meat products are processed in accordance with product specifications and formulations in accordance with the requirements of 9 CFR Part 318.6; (c) ensure that all meat products produced at Respondent's establishment do not have any undeclared substance of any kind, including added water; and (d) ensure appropriate record keeping of any irregularities involving adulterated, contaminated, and/or misbranded meat products at Respondent's establishment.

(2)(a) recall potentially adulterated or misbranded product produced or processed in Respondent's establishment and found within distribution channels; (b) notify the on-site USDA inspector of any known potential adulteration or misbranding problems or of any deviations or deficiencies that would cause work stoppage, and the corrective action(s) taken during a daily review; and (c) implement and document immediate corrective action(s) for all deviations or deficiencies recorded on a Noncompliance Record, (including documenting the acknowledgment

of the deviation or deficiency, the cause of the deviation or deficiency, what steps were taken to remedy the deviation or deficiency, and what steps will be taken to prevent recurrences); and

3) include provisions to ensure compliance with 9 C.F.R. 416.2 (e), (f) and (g) of the regulations under the Federal Meat Inspection Act (21 U.S.C. §§ 602 et. seq.).

E. Respondent shall, on or before the expiration of thirty (30) calendar days from the issuance of this Order, designate one full-time and one alternate person to review all aspects of the compliance program on a daily basis. All daily reviews conducted by the designee or alternate shall be recorded, including, but not limited to, the date and time, findings, initials of the designee or alternate, and corrective action(s) taken. The designee or alternate shall 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 believed to be, adulterated or misbranded, when facility sanitation, or production deficiencies are noted.

F. Respondents shall, on or before the expiration of sixty (60) calendar days from the issuance of this Order, submit to the Director, Evaluation and Enforcement Division, Office of Program Review Evaluation and Enforcement (hereinafter "Director") of FSIS, USDA, or his or her designee, Respondent's proposed compliance program for review. The parties shall make every effort to ensure that Respondent's compliance program is reviewed and implemented in an expeditious manner.

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G. Respondents, or any of its officers, partners, employees, agents, affiliates, or assigns shall not violate the North Carolina Clean Water Act of 1967, (N.C. Gen. Stat. §§ 143-211 to 143-215.9), the Federal Clean Water Act, as amended, (33 U.S.C. § 1251 et seq.), and Respondent shall dispose of human waste and slaughterhouse wastewater (animal wastes/blood/water), semi-solids and solids (animal entrails, bones, fat, hide, horns, etc.) in accordance with Federal, State and local laws and regulations. Further, Respondent agrees to maintain slaughterhouse wastewater collection equipment and apparatus (pumps, holding tanks, wastewater lines, hoses, etc.) and modernize said equipment and apparatus contingent with any increase in volume of slaughterhouse waste.

H. Respondent (a) shall not knowingly hire or add any new individual who has been convicted, in any Federal or State court, of (i) any felony; or (ii) more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food; or (iii) fraud in connection with transaction in food; and (b) shall immediately terminate its connection with any such individual when that individual's conviction becomes known to Respondent.

I. Within sixty (60) days of the effective date of this Order, Respondent shall effectively implement and have on file, a corporate code or policy statement of conduct and compliance and ethics in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Respondent. The Corporate Code shall include:

- (1) a statement of corporate policy addressing business ethics and public trust;

(2) a statement of Respondent's commitment to comply with all applicable laws and regulations in the conduct of its business;

(3) guidelines for Respondent's employees to follow with respect to food safety and ethics issues; and

(4) shall provide acceptable corrective and preventative assurances to preclude any acts of assault, intimidation, or interference of any program employee.

Such Corporate Code shall be submitted to the Director. The Corporate Code shall be permanently displayed in a prominent location in Respondent's establishment. The Corporate Code shall be discussed with all current and future employees.

J. Within one hundred and eighty (180) days of the effective date of this Order, all responsibly connected individuals shall participate in a training program encompassing ethical business practices which has received the prior approval of the Director.

Respondent shall maintain records documenting the completion of such training and shall have those records available upon request by an authorized representative of the Secretary.

K. Respondents shall provide an annual report to the Director regarding Respondent's compliance with Consent Decision and a final report the day before the Consent Decision terminates.

L. Withdrawal of inspection:

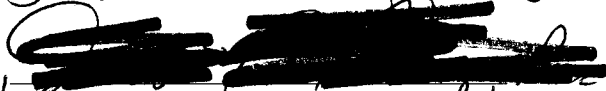
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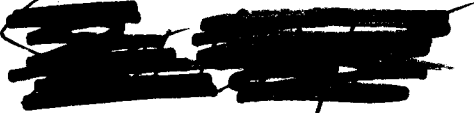
The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Administrator, or his or her designee, that one or more conditions set forth in paragraphs A through K of this Order have been violated. It is acknowledged that Respondent retain the right to request an expedited hearing pursuant to the Rules of Practice concerning any violation alleged as the basis for a summary withdrawal of inspection services.

M. Nothing in this Consent Decision and Order shall preclude the referral of any violation of this Consent Decision and Order to any agency for possible criminal, civil, or administrative proceedings.

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

This Consent Decision and Order shall become effective upon issuance by the Administrative Law Judge, and shall expire on August 5, 2007.

Lakeview Packing Co. Inc.
by 
Lakeview Packing Company, Inc.
Respondent



Scott C. Safian, Director
Complainant
Evaluation and Enforcement Division
Office of Program Evaluation, Enforcement
and Review
Food Safety and Inspection Service
United States Department of Agriculture

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Margaret A. Burns, Esquire
Attorney for Complaint
United States Department of Agriculture
Office of the General Counsel
1400 Independence Ave., SW
Washington, D.C. 20250-1400

Issued this 5th day of May, 2004
at Washington, D.C.

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ADMINISTRATIVE LAW JUDGE
Administrative Law Judge

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