

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:) FMIA Docket No. 05-0003
) PPIA Docket No. 05-0004
 Werling and Sons, Inc.,)
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 Respondent.) STIPULATION and
) CONSENT DECISION and ORDER

This is a proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. section 601 et seq.) ("FMIA"), and the Poultry Products Inspection Act, as amended (21 U.S.C. section 451 et seq.) ("PPIA") and the applicable Rules of Practice (7 C.F.R. section 1.130 et seq. and 7 C.F.R. section 500.1 et seq.), to withdraw Federal inspection services from Werling and Sons, Inc., hereinafter referred to as Respondent. This proceeding was commenced by a complaint filed on May 11, 2005, 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 inspection services for both meat and poultry. The parties have 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 Stipulation and the provisions of this Consent Decision and Order only, Respondent and those responsibly-connected individuals (i) who are named in the Order and (ii) whose signatures are affixed to the Order admit all jurisdictional allegations of the complaint and waive:

- (a) Any further procedural steps except as specified herein;

 1

- (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 Stipulation and Consent Decision and Order is for settlement purposes in this proceeding only and does not otherwise constitute an admission or denial by Respondent that the regulations or statutes involved herein were violated.

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

Findings of Fact

1. Respondent Werling and Sons, Inc., is now, and at all times material herein was, a corporation existing under the laws of Ohio that operates a meat and poultry slaughter/processing plant at its establishment identified as Est. 21332/P-21332 and located at 100 South Plum Street, Burkettsville, Ohio 45310.

2. On November 6, 2000, Respondent was issued a Federal Grant of Inspection for Federal inspection services under the FMIA and PPIA at its place of business in Burkettsville, Ohio.

3. Mr. Edward Werling is now, and at all times material herein was, Respondent's President and an individual responsibly connected to Respondent.

 2

4. Mr. Joseph Werling is now, and at all times material herein was, Respondent's Plant Manager and an individual responsibly connected to Respondent.

5. On November 4, 2004, in the County Court of Darke County, Ohio, Mr. Joseph Werling pled no contest to, and was convicted of, two misdemeanors of the fourth degree for misbranded food, contrary to and in violation of Section 3715.60(E)(1) of the Ohio Revised Code.

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. Inspection services under Title I of the FMIA and under the PPIA are withdrawn from Respondent, its owners, officers, directors, partners, affiliates, and successors, directly or through any corporate device for a period of three (3) years. This withdrawal of inspection shall be held in abeyance and a conditional grant of inspection shall be provided to Respondent for so long as the conditions set forth below, in addition to all other requirements of inspection, are met.

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

- a) violate the FMIA, the PPIA, or the regulations promulgated under these Acts;
- b) violate any State or local statute or regulation involving the preparation, sale,

- b) violate any State or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated, uninspected or misbranded meat, meat food product, poultry, or poultry product;
- c) commit any felony or fraudulent criminal act;
- d) make or cause to be made, any false entry into any accounts, records, or memorandums kept by the Respondent;
- e) assault, intimidate, interfere with, or threaten to assault, intimidate, or interfere with any program employee in the performance of his or her official duties under the FMIA or PPIA;
- f) conduct any operation requiring Federal inspection outside the official hours of operation without obtaining prior written approval from FSIS.

3. Within one hundred and eighty days (180) of the effective date of this Consent Decision and Order, Mr. Joseph Werling, Plant Manager, and Mr. John Werling, Assistant Plant Manager, shall participate in a training program or educational course encompassing ethical business practices which has received the prior approval of the Director, Evaluation and Enforcement Division (EED) of FSIS, OPEER. Respondent shall maintain for the duration of the Order records documenting the completion of such training by these responsibly connected individuals and shall make these records available to an authorized representative of the Secretary upon request.

 4

4. Respondent (a) shall not knowingly hire or add any new individual who has been convicted, in any Federal or State court, of any felony or more than one misdemeanor based upon the acquiring, handling, or distribution of unwholesome, mislabeled or deceptively packaged food, or 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.

5. On or before the expiration of sixty (60) calendar days from the issuance of this Order, Respondent 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 provisions ensuring that:

- (a) carcasses of slaughtered livestock are wholesome, free of any contamination, and not adulterated, and bear legible marks of Federal inspection in accordance with the FMIA, PPIA, and all applicable regulations;
- (b) all meat and/or poultry products are processed in accordance with product specifications and formulations in accordance with the requirements of 9 C.F.R. § 318.6;
- (c) all meat and/or poultry products produced at Respondent's establishment do not have any undeclared substance of any kind and are correctly labeled, bearing full and accurate labeling in accordance with the requirements of 9 C.F.R. § 301.2; and;

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- (d) appropriate record keeping of product formulations for meat and/or poultry products produced at Respondent Establishment in accordance with the requirements of 9 C.F.R. § 318.6.
- (e) Respondent shall develop and submit its proposed compliance program to the Director, EED, or his or her designee for review.
- (f) Respondent shall designate an employee or employees to be responsible at all times during production for overseeing all aspects of the compliance program. Said employee or employees 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 parties shall make every effort to ensure that Respondent's compliance program is reviewed and implemented in an expeditious manner.

6. Within sixty (60) days of the effective date of this Consent Decision and Order, Respondent shall effectively develop and implement a corporate code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Respondent.

(a) The Corporate Code, at minimum, shall include:

- (i) a statement of company policy addressing business ethics and the public trust;

(ii) a statement of Respondent's commitment to comply with all applicable Federal and State food safety and other laws and regulations in the conduct of its business;

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

(iv) assurances to preclude any acts of intimidation, assault, or interference of USDA program employees.

(b) The Corporate Code shall be submitted to the Director, EED and permanently displayed in a prominent location in Respondent's establishment and shall be discussed with all current and new employees.

7. Respondent shall satisfactorily meet and comply with all the requirements identified in 9 C.F.R. Part 416, including, but not limited to, having Sanitation Standard Operations Procedures (SSOP); ensuring that the official establishment is operated and maintained in a manner sufficient to ensure sanitary conditions; and implementing and validating its Hazard Analysis and Critical Control Point (HACCP) system in accordance with the requirements of 9 C.F.R. Part 417. Respondent shall maintain complete and accurate written records of all business activities applicable to the FMIA and PPIA and the regulations promulgated thereunder, including SSOP and HACCP systems records, and make all such records available to FSIS upon any request for review and/or copying.

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

9. Respondent shall provide an annual report to the Director, EED, regarding Respondent's compliance with the terms and conditions of this Consent Decision and Order, and FSIS statutory and regulatory requirements, including 9 C.F.R. Parts 416 and 417.

10. The provisions set forth in paragraphs 1 through 9 of this Order shall be effective for a period of three (3) years.


11. 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 1 through 9 of this Order have been violated. It is acknowledged that Respondent retains 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.


12. 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.

 8


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


Edward J. Werling, President
for WERLING AND SONS, Inc.
Respondent

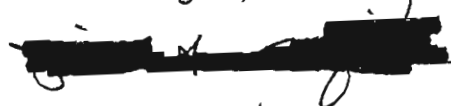

Scott C. Safian
Director, Evaluation and
Enforcement Division, OPEER, FSIS
For the Complainant


Joseph Werling, Plant Manager
WERLING AND SONS, Inc.


Thomas N. Bolick
Attorney for Complainant
Office of the General Counsel


John Werling, Assistant Plant Manager
WERLING AND SONS, Inc.

Issued this 9 day of September, 2005
at Washington, D.C.


Jill S. Clifton
Administrative Law Judge

