

U.S. DEPARTMENT OF AGRICULTURE

SECRETARY OF AGRICULTURE

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In Re:)
)
Michael D. Pyle and)
Nor-Am Cold Storage, Inc., d/b/a)
Provisions Packing,)
)
Respondents.)

FMIA Docket No. 05-0006

STIPULATION and
CONSENT DECISION and
ORDER

This is a proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA"), the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451 et seq.) ("PPIA"), and the applicable Rules of Practice (7 C.F.R. §§ 1.130 et seq. and 9 C.F.R. §§ 500.1 et seq.) to refuse to provide inspection services to Nor-Am Cold Storage, Inc., d/b/a Provisions Packing, and Mr. Michael D. Pyle, hereinafter referred to jointly as Respondents. This proceeding was commenced by a complaint filed on June 17, 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 only, Respondents admit all jurisdictional allegations of the complaint and waive:
 - (a) Any further procedural steps except as specified herein;
 - (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 basis 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 is for settlement purposes in this proceeding only and does not otherwise constitute an admission or denial by Respondents that the regulations or statutes involved herein were violated.
3. Respondents waive 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 Respondents in connection with this proceeding.

Findings of Fact

1. Respondent Corporation Nor-Am Cold Storage, Inc., d/b/a Provisions Packing, is a business that wishes to engage in the processing of meat and meat products at its

place of business located at 700 Prospect Street SW, Le Mars, Iowa 51031.

2. On or about April 11, 2005, Respondent Corporation submitted an "Application for Federal Meat, Poultry, or Import Inspection" requesting federal inspection services under the FMIA, at its place of business in Le Mars, Iowa.

3. Respondent Michael D. Pyle is an individual who is one of the Directors of Respondent Corporation Nor-Am Cold Storage, Inc., d/b/a Provisions Packing, and is responsibly connected to Respondent Corporation in a managerial or executive capacity.

4. On or about January 3, 2001, in the United States District Court for the Northern District of Iowa, respondent Michael D. Pyle pled guilty to one felony count under 49 U.S.C. § 522(a), Falsifying Report or Records to Secretary of Transportation.

Conclusion

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

Order

Federal Meat Inspection Services under Title 1 of the FMIA, and Federal Poultry Inspection Services under the PPIA are denied to Respondent Corporation Nor-Am Cold Storage, Inc., d/b/a Provisions Packing, its owners, officers, directors, partners, successors, affiliates, or assigns, directly or through any corporate or other device, for a period of two (2) years beginning on the effective date of this Consent Decision and Order. This denial of inspection shall be held in abeyance, and inspection shall be provided to Respondent Corporation for so long as the conditions set forth below, in addition to all other requirements of applicable inspection regulations and statutes, are met.

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

A. violate any section of the FMIA, PPIA, or the regulations promulgated under these Acts;

B. violate any State or local statutes involving the preparation, sale, transportation 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. willfully make, or cause to be made, any false entry in any account, record, or memoranda kept by Respondent Corporation 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 Corporation's business;

E. conduct any operation requiring Federal inspection outside the official hours of operation without obtaining prior written approval from FSIS; or

F. assault, intimidate, threaten 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 or PPIA.

2. Respondent Corporation 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 distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. Respondent Corporation shall immediately terminate its connection with any individual who has been so convicted when that individual's conviction becomes known to Respondent Corporation, except that, the terms of this paragraph notwithstanding, Respondent Michael D. Pyle may continue to hold a position as a Director on the Board of Directors of Respondent Corporation.

3. Respondent Corporation shall maintain a Sanitation Standard Operating Procedure (SSOP) and a Hazard Analysis and Critical Control Point (HACCP) system (ensuring that no adulterated or misbranded product is produced or shipped) in compliance with regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416 and 417, respectively.

4. Respondents shall maintain full, complete and accurate written records of all business activities applicable to the FMIA, PPIA, the regulations promulgated thereunder, and State and local laws. Such records may include, but are not limited to, bid solicitations, government contracts, product specification worksheets, and SSOP and HACCP records. Respondents shall make these records available for review and/or copying to any authorized representative of the Secretary upon request.

5. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of (a) Respondent Corporation's establishment, product or business records or (b) Respondent's compliance with the FMIA, PPIA, and the regulations promulgated there under, or (c) Respondents' compliance with this Consent Decision and Order.

6. Respondent Corporation shall provide an annual report to the Director, Evaluation and Enforcement Division, FSIS, regarding its 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, within ten (10) days of the end of the annual time period.

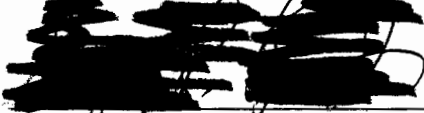
7. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Administrator, or his or her designee, that one or more conditions set forth in paragraphs 1 through 6 of this Consent Decision and Order have been violated. It is acknowledged that Respondents 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.

8. Nothing in this Consent Decision and 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 appropriate administrative action under the

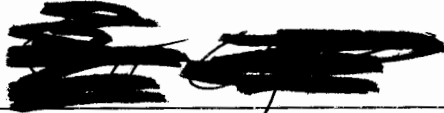
applicable FMIA, PPIA, and the regulations promulgated thereunder.

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

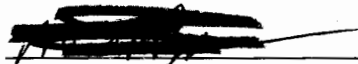
This Consent Decision and Order shall become effective upon issuance by the Administrative Law Judge.



GREGORY R. BRANDT,
Nor-Am Cold Storage, Inc., d/b/a Provisions
Packing



SCOTT C. SAFIAN
Director
Evaluation and Enforcement Division
Office of Program Evaluation,
Enforcement and Review
Food Safety and Inspection Service, USDA



MICHAEL D. PYLE
for himself and for Nor-Am Cold Storage, Inc.,
d/b/a Provisions Packing



Thomas N. Bolick, ESQ.
Attorney for Complainant
Office of General Counsel, USDA

Issued this ^{28th} ~~20th~~ day of June 2005 at Washington, D.C.


ADMINISTRATIVE LAW JUDGE