

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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OALJ/OHC

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In re:	)	
	)	
Smokehouse Bar-B-Que, Inc.,	)	FMIA Docket No. 05-0007
a/k/a Smokehouse Foods,	)	PPIA Docket No. 05-0007
R. Wayne Nobles	)	
	)	CONSENT DECISION AND
	)	ORDER
Respondents	)	

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. § 500.1 et seq.) to refuse to grant inspection services to Smokehouse Bar-B-Que, Inc. and to R. Wayne Nobles, by the filing of a Complaint in this case by the Acting Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), which is responsible for the administration of Federal Meat and Poultry inspection services. The complaint alleged that Respondents were unfit to engage in any business requiring inspection services under the Federal Meat Inspection Act ("FMIA"), as amended (21 U.S.C. § 601 et seq.), and under the Poultry Products Inspection Act ("PPIA"), as amended (21 U.S.C. § 451 et seq.) because of Respondent R. Wayne Noble's felony convictions.

The Parties have agreed that this administrative proceeding should be terminated by the execution of the Consent Decision and Order set forth below and have agreed to the following stipulations:

1. For the purpose of this Consent Decision and Order and the provisions of

this Consent Decision and Order only, Respondent admits the jurisdictional allegations of the above-mentioned notification and both parties waive:

(a) any further procedural steps in this proceeding;

(b) any requirement that the Consent Decision and Order in this proceeding contains findings and conclusions with respect to fact or law, as well as to reason or basis thereof; and

(c) all rights to seek further judicial review or to otherwise challenge or contest the validity of this Consent Decision and Order.

2. This Consent Decision and Order is for settlement purposes in this proceeding only, and does not otherwise constitute an admission or denial by the Respondents that they have violated any Federal regulation or statute.

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

#### Findings of Fact

1. Smokehouse Bar-B-Que, Inc., a/k/a Smokehouse Foods, respondent corporation, incorporated under the laws of the State of Georgia, is now an applicant for Federal Meat and Poultry Inspection services under the

FMIA and PPIA, and is located at 202 Nobles Road, Danville, Georgia, 31017.

2. Respondent R. Wayne Nobles, who resides at 178 Nobles Road, Danville, Georgia, 31017, is an applicant for Federal Meat and Poultry Inspection services under the FMIA and PPIA, and is Vice-President/Secretary of and a responsibly connected individual to Smokehouse Bar-B-Que, Inc..
3. On June 1, 2005, respondents submitted a revised application for Federal inspection services under the FMIA and PPIA.
4. On March 19, 2001, in the Superior Court of Clarke County, Georgia, Mr. R. Wayne Nobles was adjudicated guilty on thirteen (13) counts of Felony Theft by Taking (O.C.G.A. § 16-8-2) and one count of Felony Criminal Attempt (O.C.G.A. § 16-4-1), and was sentenced to a five year term of incarceration, to be followed by fifteen years on probation; additionally Respondent R. Wayne Nobles was ordered to pay \$286,435 in restitution, and was barred from employment with the University System of Georgia.

### Conclusion

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

## Order

Federal Meat Inspection services under the Federal Meat Inspection Act, and Federal Poultry Inspection services under the Poultry Products Inspection Act are denied to Respondents, Smokehouse Bar-B-Que, Inc., and Mr. R. Wayne Nobles, its owners, officers, directors, partners, successors, affiliates, or assigns, directly or through any corporate or other device, until December 31, 2008. This denial of inspection shall be held in abeyance, and inspection service shall be provided to Respondent Corporation and Mr. R. Wayne Nobles for so long as, in addition to all other requirements of the applicable FMIA and PPIA inspection regulations and statutes, the conditions set forth in paragraphs one through nine below are met. If any condition set forth in paragraphs 1 through 9 below is not met during the duration of this Order, then the sanctions specified in paragraph 10 below shall apply to Respondents.

1. Respondent corporation or any of its officers, 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 or misbranded meat or poultry products;
  - c. commit any felony or fraudulent criminal act;

- d. willingly make, or cause to be made, any false entry into any account, record, or memorandum kept by the 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 memorandums; or fail to keep such accounts, records or memoranda that fully and correctly disclose all transactions in Respondent Corporation's business;
- e. 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; and
- f. conduct any operations requiring Federal inspection outside the official hours of operation without first obtaining prior approval from FSIS.

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 such individual when that individual's conviction becomes known to Respondent Corporation, except that, the terms of this paragraph notwithstanding, Respondent Mr. R. Wayne Nobles may continue to hold the position of Vice President/Secretary of Respondent Corporation.

3. Respondents shall develop, implement and maintain food safety systems

to comply with all requirements identified in Title 9, Code of Federal Regulations (CFR), including, but not limited to:

- a. Sanitation Performance Standards (SPS) in accordance with 9 CFR 416.1 - 416.6, to ensure that the facility, equipment, and outside premises are maintained in a manner sufficient to prevent the creation of insanitary conditions.
- b. Sanitation Standard Operating Procedure (SSOP) in accordance to 9 CFR 416.11 - 416.16, to ensure the regulatory requirements for the maintenance of sanitary conditions, and the production and distribution of safe, wholesome, not adulterated products and properly labeled products in commerce are met.
- c. Hazard Analysis and Critical Control Point (HACCP) in accordance with 9 CFR Part 417, procedures for systematic prevention of biological, chemical, and physical hazards in the food production through science-based process control systems.
- d. Control of *Listeria monocytogenes* (*Lm*) in post-lethality exposed ready-to-eat (RTE) products in accordance with 9 CFR Part 430, to prevent *Lm* microbiological contamination of RTE products that are exposed to the environment after they have undergone a lethality treatment.

4. Prior to the effective date of this Order, Respondent shall notify the Director, Evaluation and Enforcement Division (Director, EED) and shall designate in writing, one full-time person and one alternate who shall be

Full time Bobby L. Nobles  
Alternate R. Wayne Nobles

responsible for overall implementation, coordination, monitoring, recordkeeping, review and maintenance of the facility's food safety and sanitation programs and the requirements of this Order. The designee shall be present on the official premise, at all times when the facility is in operation, and any change in the designees must be submitted to and approved by Director, EED.

5. Respondents shall maintain full, complete and accurate written records of all business activities applicable to the FMIA, PPIA, 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. Respondent shall make these records available for review and copying upon request of any authorized representative of the Secretary.

6. Within sixty (60) days of the effective date of this Order, Respondents shall develop and effectively implement and have on file, an ethics code or policy statement of conduct and compliance and ethics in business practices (hereinafter "Ethics Code ") applicable to all business entities and individuals within or employed by Respondent.

The Ethics Code shall include:

- a. statement of business policy addressing business ethics and public trust;
- b. statement of Respondents' commitment to comply with all applicable laws and regulations in the conduct of its business;
- c. guidelines for Respondents' employees to follow with respect to food safety and ethics issues; and shall provide acceptable corrective and preventive assurances to preclude any acts of assault, intimidation, or interference on any USDA employee.

Such proposed Ethics Code shall be submitted to and reviewed by the Director, EED. The Ethics Code shall be permanently displayed in a prominent location in Respondent's establishment. The Ethics Code shall be discussed with all current and future employees.

7. Within one hundred and eighty (180) days of the effective date of this Order, Mr. R. Wayne Nobles shall participate in and successfully complete a training program encompassing ethical business practices which has received the prior approval of the Director. Respondents shall maintain records documenting the completion of such training of Mr. R. Wayne Nobles and shall have the records available upon request by an authorized representative of the Secretary for the duration of this Order.

8. Respondent Corporation shall prepare, each year, a report summarizing Respondent's compliance with this Order. Each report shall be provided to the Director within ten (10) days of the end of the annual time period.

9. 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) Respondents' compliance with the FMIA, PPIA, and the regulations promulgated there under, or (c) Respondents' compliance with this order.

10. 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 1-9 of this Order have been violated. The sanction for any violation of paragraphs 1-9 shall be the

five (5) year withdrawal and denial of federal meat and poultry inspection services from Respondent Smokehouse Bar-B-Que, Inc.'s establishment. 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.

11. 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 appropriate administrative action under the applicable FMIA, PPIA, and the regulations promulgated thereunder.

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

This Order shall become effective upon, (a) issuance by the Administrative Law Judge, and (b) the date the conditional grant of inspection is issued to Smokehouse Bar-B-Que, Inc. by the FSIS Atlanta District Office.

This order shall expire on December 31, 2008.

[Redacted signature]

Bobby L. Nobles, President/Treasurer  
for Smokehouse Bar-B-Que, Inc.

[Redacted signature]

R. Wayne Nobles for himself and  
as Vice-President/Secretary for  
Smokehouse Bar-B-Que, Inc.

[Redacted signature]

Scott C. Safian

Director  
Evaluation and Enforcement Division  
Office of Program Evaluation,  
Enforcement and Review  
Food Safety and Inspection Service  
United States Department of Agriculture

[Redacted signature]

Krishna Ramaraju, Esq.

Attorney for Complainant  
Office of the General Counsel  
United States Department of  
Agriculture

Issued this 8<sup>th</sup> day of August 2005  
at Washington, D.C.

[Redacted signature]

**PETER M. DAVENPORT**  
ADMINISTRATIVE LAW JUDGE