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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	}	FMIA Docket No. 16-0017
Mountainair Heritage Meat Processing, Inc.	}	
	}	Amended Consent Decision and Order
Respondent	}	

This proceeding was instituted under Title I of 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., 9 C.F.R. § 500.1 et seq.) to indefinitely suspend Federal inspection services under Title I of the FMIA from Mountainair Heritage Meat Processing Inc. This proceeding was commenced by a complaint filed by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), alleging that Respondent has not provided assurances to FSIS that all slaughtering and handling of livestock will be conducted humanely, as required under Section 3(b) of the FMIA (21 U.S.C. § 603(b)), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. § 1901 et. seq.), and the regulations promulgated thereunder (9 C.F.R. Part 313). The parties agreed that this proceeding should be terminated by entry of the Consent Decision and Order dated November 5, 2015, pursuant to the Consent Decision provisions of the Rules of Practice (7 C.F.R. § 1.138). The parties have agreed to modify the Consent Decision and Order dated November 5, 2015, as set forth below.

Respondent admits the findings of fact, as set forth herein, and 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 Consent decision and Order.

Findings of Fact

1. Respondent Mountainair Heritage Meat Processing, Inc. (hereinafter respondent), is now, and at all times material herein was, a very small, multiple species livestock slaughter and processing plant that is located at 6368 Highway 55, Mountainair, New Mexico 87036, and has a mailing address of HC 75, Box 95, Mountainair, New Mexico 87036.

2. Respondent received a grant of federal inspection services for slaughter and raw-intact and non-intact processing on October 9, 2007, and was designated Official Establishment No. M34427.[1]

3. On October 7, 2015, FSIS suspended the assignment of inspectors to cover slaughter of animals at Respondent's establishment following an egregious inhumane event involving the ineffective use of a captive bolt device.

4. The Consent Decision's provisions were applicable for 3 years from the date the Respondent's Federal Inspection services resumed on November 9, 2015.

5. On March 16, 2016, the Food Safety and Inspection Service suspended the

[1] Respondent also conducts said slaughter and processing under custom exemption and produces pet food under inspection services provided by the U.S. Food and Drug Administration.

assignment of inspectors to Respondent's slaughter operations due to the observation of egregious inhumane treatment of an animal.

6. On April 21, 2016, the Food Safety and Inspection Service reinstated the suspension of the Respondent's slaughter operations due to the observation of another inhumane treatment of an animal.

7. On April 25, 2016, the Food Safety and Inspection Service issued a written Show of Cause letter to provide the opportunity to the Respondent to present their views on FSIS intent to summary withdraw Respondent's inspection services. Respondent provided responses to the Show of Cause letter including request to continue operating under an amended Consent Decision.

8. On _____, the Chief Administrative Law Judge, pursuant to the joint request of the parties, issued an Order to amend the provisions of the Consent Decision.

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

Federal inspection services under Title I of the FMIA are suspended indefinitely from Respondent and its officers, directors, partners, affiliates, successors and assigns, directly or indirectly through any business or other device, for a period of three (3) years beginning on the effective date of this Order. Provided, however, said indefinite suspension of inspection services shall be held in abeyance, and inspection services shall be provided to Respondent under Title I of the FMIA for so long as the conditions set forth below, in addition to all other requirements of inspection, are met.

Company Requirements

1. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall demonstrate that the structural, physical, and sanitary conditions at the establishment comply with applicable statutory and regulatory requirements under the FMIA and the HMSA.

2. Prior to resumption of inspection services, Respondent shall provide FSIS with a written outline of the establishment management structure, including the names of the management personnel designated to assigned roles and the specific duties and responsibilities associated with the role. Respondent shall immediately notify and provide in writing to FSIS any changes in management personnel and/or the associated duties and responsibilities.

3. Prior to resumption of inspection services, Respondent shall hire or appoint a Humane Handling and Slaughtering Lead, as well as one alternate Lead, who shall be responsible for the implementation, coordination, monitoring, recordkeeping, review and maintenance of the Respondent's Humane Handling and Slaughtering Program established under paragraphs 9 through 12 of this Order.

4. Respondent shall identify to the Director, Enforcement and Litigation Division (ELD), the employees who are hired or appointed to serve as its Humane Handling and Slaughter Lead and Alternate Lead. Any changes to the designated Lead and/or Alternate must first be notified to and approved by the Director.

5. Prior to resumption of inspection services, Respondent shall designate and identify to FSIS the primary and backup employees who are responsible for the stunning of animals. Respondent shall immediately notify and provide in writing to FSIS any changes to the designated primary and backup employees.

6. Upon resumption of inspection services, Respondent shall maintain compliance with statutory and regulatory requirements for sanitation, food safety programs, process controls, humane slaughter and handling, and all other applicable requirements, including, but not limited to Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP), a Hazard Analysis and Critical Control Point (HACCP) program, and a written recall program, 9 C.F.R. Parts 313, 416, 417 and 418.

Initial Assessment and Review

7. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondent shall conduct an assessment of its facility, operations, practices, and controls to determine its degree of compliance with statutory and regulatory requirements for humane slaughter and handling. The assessment shall, at a minimum:

a. address all incidents of regulatory noncompliance of the humane handling requirements documented by FSIS at Respondent's facility in noncompliance records, Notices of Intended Enforcement, Notices of Suspension, or as otherwise documented;

b. include a summary of noncompliance findings;

c. provide an analysis of the problems at Respondent's facility which resulted in inhumane slaughter and/or handling noncompliance;

d. identify where any livestock stunning problems occurred;

e. assess the stunning methods used and their effectiveness in rendering animals unconscious and insensible to pain by a single blow; and

f. include any recommendations, including structural changes or repairs, management changes, employee training, and new humane handling methodologies or programs.

8. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondent shall provide FSIS with a copy of its written assessment report, analysis, and findings, as well as documentation showing any corrective actions taken as a result of the initial assessment discussed above, including but not limited to any changes to structural conditions of the unloading ramps, pens, pen floors, driveways, stunning areas, and other live animal areas.

Humane Handling and Slaughter Program

9. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall develop a written Humane Handling and Slaughter Program to ensure that any slaughter of livestock or any handling of livestock in connection with slaughter at Respondent's establishment complies with the FMIA, HMSA, and 9 C.F.R. Part 313.

Humane Handling

10. Respondent's written Humane Handling Program shall at a minimum:

a. address procedures that ensure the adequate construction and maintenance of pens, driveways, ramps, and stunning areas so that: (i) they are in good repair, (ii) they are free from sharp or protruding objects; (iii) the floors of livestock pens, driveways, and ramps are constructed and maintained in a manner to provide slip resistant surfaces; and (iv) the facilities are monitored and preventative actions are taken in a timely manner to prevent pain and injury to any animal.

b. identify the specific areas and situations in which animals may experience excessive discomfort, stress, and excitement and the behavioral patterns indicating that animals are experiencing excessive stress loads.

c. address procedures that will be implemented and monitored to prevent or minimize discomfort, stress, and excitement during the unloading, holding, and driving of animals by employees or for any other situation in which animals may experience stress.

d. address procedures that are implemented and monitored to ensure: (i) that floors and pens are designed to prevent pain and injury to the animals; (ii) that pen structures are appropriate to the size of the animals to avoid overcrowding; (iii) that livestock are placed in holding pens that provide functioning watering systems and systems are monitored as frequently as necessary to ensure continuous access to potable water at all times and at all ambient temperatures; and (iv) that all animals that are held overnight are provided appropriate quantities of formula or feed and clean potable water at all times;

e. identify and implement procedures to ensure that suspect and non-ambulatory disabled animals will be identified, segregated, and handled using humane methods;

f. identify and implement procedures for the administration, monitoring, and documentation of animal euthanasia to ensure minimal animal suffering; and

g. ensure that monitoring, verification, corrective and preventative actions, and recordkeeping will be implemented and maintained on a daily and on-going basis, to ensure that livestock are treated in a humane manner prior to slaughter.

Humane Slaughter

11. Respondent's written Humane Slaughter Program shall also:

a. address the construction of stunning areas to ensure that such areas limit the movement of animals and allow accurate and effective stunning;

b. identify the systems and procedures for restraint for each species type prior to the application of the stun;

c. address the implementation of monitoring procedures to ensure that restraint is applied in a manner to limit animal movement and prevent excessive stress and vocalization;

d. identify specific stunning devices and projectiles that will provide an adequate force to ensure animals are stunned and become unconscious after a single application and are consistent with the type, size, and age of the animal to be stunned;

e. identify the anatomical locations for the placement of the stun per species and per stunning method to ensure that animals will be rendered immediately unconscious and remain unconscious throughout shackling, hoisting, sticking, and bleeding.

f. address procedures to ensure that backup devices, parts, and projectiles are readily accessible to the employee performing stunning;

g. address the specific actions to be taken by employees in the event of an ineffective stun;

h. address procedures to ensure that the storage and maintenance of all stunning equipment, parts, and projectiles, including backup equipment, are done under appropriate conditions;

i. address procedures to ensure that slaughter equipment used to render

livestock unconscious and insensible to pain receives appropriate service and is kept in good repair per the manufacturer's recommendations or other supporting documentation;

j. address procedures to ensure that the function and maintenance of slaughter equipment, including stunning devices, projectiles, and all backup equipment, are monitored and recorded every slaughter day and that corrective and preventative actions are taken as necessary to prevent pain and injury to animals; and

k. address the ongoing reassessment of all activities related to animal restraint and stunning to ensure that the systems and procedures in place are continually effective and prevent the inhumane slaughter of animals.

12. Upon resumption of inspection services, and subject to verification by FSIS, Respondent shall implement and maintain, on a daily basis, a Humane Handling and Slaughter Program, as provided in this Order.

Company Action Plan with Respect to Humane Handling and Slaughter Program

13. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall develop and submit to the Director, ELD, for his/her review and concurrence, a written action plan setting forth the measures taken by plant management to implement and ensure compliance with its Humane Handling and Slaughter Program. The written action plan shall, at a minimum, include:

a. a statement of Respondent's commitment to ensure the welfare of livestock handled in connection with slaughter;

b. written guidelines prohibiting any acts of inhumane handling and slaughter or animal cruelty;

c. preventive measures and assurances to be taken by plant management to preclude any acts of inhumane handling and slaughter or animal cruelty; and

d. corrective actions to be implemented by plant management if instances of inhumane handling and slaughter or animal cruelty are reported.

14. Upon resumption of inspection services, and subject to verification by FSIS, Respondent shall:

a. implement the action plan, as provided in this Order;

b. ensure that the action plan is permanently displayed in a prominent location;

c. require strict adherence to Respondent's Humane Handling and Slaughter Program and action plan on the part of all current and future managers and employees; and

d. take and document corrective action, including disciplinary action, when necessary.

15. Respondent shall document and maintain written records of the implementation of its policy and action plan for the duration of this Order and make these records available to FSIS personnel for review and/or copying immediately upon request by FSIS.

Establishment Management and Personnel Training

16. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall cause to be made:

a. training for Respondent's management in all aspects of the humane handling and slaughtering requirements set forth in the HMSA (7 U.S.C. § 1901 et. seq.), the FMIA (21 U.S.C. §§ 603 and 610), and the regulations promulgated thereunder (9 C.F.R. Part 313). This training shall be conducted by a qualified, independent third party and shall ensure, at a minimum, that management personnel are trained and qualified in (i) adequate livestock

handling and slaughter practices and the regulations in 9 C.F.R. Part 313; (ii) livestock behavior patterns and signs of discomfort, stress, and excitement; (iii) the restraining systems and devices that limit the movement of animals prior to the stun; and (iv) livestock stunning techniques that ensure the animals are rendered immediately unconscious and remain unconscious throughout shackling, hoisting, sticking, and bleeding.

b. training for all of Respondent's employees to ensure that said employees are trained in all aspects humane handling and slaughtering requirements set forth in the HMSA (7 U.S.C. § 1901 et. seq.), the FMIA (21 U.S.C. §§ 603 and 610), and the regulations promulgated thereunder (9 C.F.R. Part 313). This training shall be conducted by a qualified, independent third party and ensure, at a minimum, that employees are trained and qualified in (i) adequate livestock handling and slaughter practices and the regulations in 9 C.F.R. Part 313; (ii) livestock behavior patterns and signs of discomfort, stress, and excitement; (iii) the restraining systems and devices that limit the movement of animals prior to the stun; and (iv) livestock stunning techniques that ensure the animals are rendered immediately unconscious and remain unconscious throughout shackling, hoisting, sticking, and bleeding.

c. additional training for the Respondent's appointed primary and backup stunning employees to ensure that said employees are trained and experienced in the restraint and stunning of animals in accordance with the HMSA (7 U.S.C. § 1901 et. seq.), the FMIA (21 U.S.C. §§ 603 and 610), and the regulations promulgated thereunder (9 C.F.R. Part 313) and as specified in the Respondent's written humane slaughter procedures. This training shall be conducted by a qualified, independent third party and ensure, at a minimum, that employees are trained and qualified in (i) the selection of the appropriate stunning device and projectile for each species or animal type; (ii) the anatomical location for the stun placement for the specific species

or animal type and the accurate delivery of the stun (iii) the monitoring of the restraining and stunning equipment to ensure functionality; and (iv) the signs of unconsciousness after the successful application of a stun and signs indicating a return to consciousness.

17. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall:

a. submit to the Director, ELD, for his/her review and concurrence, a copy of all training and educational program materials, including training records, test results, and any other materials and records for the training described in paragraph 16 of this Order; and

b. ensure that all of Respondent's employees and management personnel are trained in accordance with the requirements of paragraph 16 of this Order.

18. Upon the resumption of inspection services, and subject to verification by FSIS, Respondent shall:

a. train and educate any new employee, consistent with the requirements paragraph 16 of this Order, prior to the employee handling and slaughtering animals; and

b. conduct semi-annual training for all employees, current and new, consistent with the requirements of this Order.

19. Respondent shall make all training and education materials, training records, test results, and other materials and records of the initial and annual training of current and new employees and management personnel available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Third Party Audits

20. Upon resumption of inspection services, and subject to verification by FSIS, Respondent shall cause to be made, by a qualified, independent third party, written audits of:

a. Respondent's effective implementation, monitoring, and maintenance of the Humane Handling and Slaughtering Program required by paragraphs 9 through 12 of this Order; and

b. any findings and recommendations of the independent third party.

21. The audits shall be conducted at least as frequently as follows:

a. the first audit shall be conducted within thirty (30) calendar days from the resumption of inspection services; and

b. subsequent audits shall be conducted every 180 calendar days thereafter for the duration of this Order.

22. Respondent shall prepare, for each audit conducted, a written response to the audit findings and recommendations. Respondent's written response shall identify:

a. any modifications to the Humane Handling and Slaughtering Program, and any other programs reviewed by the auditor;

b. any corrective actions implemented in response to the audit findings and recommendations;

c. any other actions implemented or planned in response to the audit findings and recommendations, and

d. supportable information for any decision by Respondent to not implement any audit recommendation.

23. Respondent shall submit a copy of each third party audit, a copy of Respondent's written response, or other documents related to the audit to the Director, ELD within thirty (30) calendar days after each audit is completed.

Recordkeeping

24. Respondent shall keep and maintain full, complete and accurate copies of (a) all written records required by the FMIA, the regulations promulgated thereunder, and all applicable State or local statutes, (b) written records of all of its practices under its Humane Handling and Slaughtering Program, and (c) all other written records required by this Order. Respondent shall make all such records available to FSIS representatives for review and/or copying immediately upon request.

25. Respondent shall notify the Director, ELD, of any changes or modifications to Respondent's Humane Handling and Slaughtering Program, including changes and modifications to all related record keeping forms.

General

26. Respondent shall not:

a. violate any section of the FMIA, the regulations promulgated thereunder, or any Federal, State, or local statue or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat product;

b. commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

c. willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by the Respondent in compliance with Federal, State or local statutes

or regulations or this Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; and fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in the 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, the FSIS Dallas District Office.

27. Respondent shall comply with SPS, SSOP, HACCP, *E. coli,* and Humane Methods of Slaughter regulatory requirements specified in 9 C.F.R. Parts 310, 313, 416, 417, and 418 as applicable.

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

Enforcement Provisions

29. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Director, ELD, or his or her designee, that one or more conditions set forth in paragraphs 1 through 28 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, 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 operations in accordance with Rules of Practice, 9 C.F.R. Part 500.

30. Nothing in this Order shall preclude the referral of any violation of law to the

U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA and the regulations promulgated there under.

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

32. This Order shall be considered issued on the date that an Administrative Law Judge signs it but shall become effective on the date that Respondent's inspection services resume.

33. This Order shall expire three (3) years from the date on which the Respondent's Federal inspection services resume.

[redacted]

Timothy Willms, Owner,
Mountainair Heritage Meat
Processing, Inc.

for [redacted]

Scott C. Safian, Director
Enforcement and Litigation Division
Food Safety and Inspection Service
U.S. Department of Agriculture

[redacted]

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

Issued this 10th day of May 2016

in Washington, D.C.

[redacted]

ADMINISTRATIVE LAW JUDGE
JANICE K. BULLARD