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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	FMIA Docket No. 15-0066 15-0067
Lemay and Sons Beef Co. and Richard Lemay	
Respondents	Consent Decision and Order

This proceeding was instituted under Title 1 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 1 of the FMIA from Lemay and Sons Beef Co., and Mr. Richard Lemay, hereinafter referred to jointly as Respondents. 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 Respondents have not provided assurances to FSIS that all slaughtering and handling of livestock will be conducted humanely, as required under Section 3 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 have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the Consent Decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

Respondents admit the findings of fact, as set forth herein, and specifically admit that the Secretary has jurisdiction in this matter. Respondents neither admit nor deny the remaining allegations and waive oral hearing and further procedure, and waive any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. section 504 et seq.). Respondents consent and agree, 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. Lemay and Sons Beef Co., at all times material herein, was an individual organization owned by Richard Lemay operating as a federally inspected meat slaughtering and processing facility under the FMIA at a facility located at 126 Daniel Plummer Road, Goffstown, New Hampshire, 03045.

2. Lemay and Sons Beef Co. and Richard Lemay also conduct poultry processing operations, under a grant of inspection issued by FSIS under the Poultry Products Inspection Act (PPIA) and conduct exempt custom slaughter and processing operations which are exempt from federal inspection under the FMIA at the above named establishment and facility. The Respondent Lemay and Sons Beef Co. was and has been designated as Official Establishment Number 9542/P-9542

3. Respondent Richard Lemay is identified as President and Owner of Lemay and Sons Beef Co.

4. On February 8, 2011, FSIS issued a Notice of Suspension of the assignment of inspectors under the FMIA at Respondents' facility due to incident of harassment, intimidation,

and interference by one of Respondents' employees against FSIS inspection personnel while performing inspection duties at Respondents' establishment.

5. On August 16, 2011, FSIS issued a Notice suspending the assignment of inspectors under the FMIA for livestock slaughter operations to Respondents' facility because of an act involving the inhumane slaughter of livestock in violation of 9 C.F.R. 313.2(f) and 313.30(a)(1). Respondents' submitted to FSIS proposed corrective and preventative measures on August 17, 2011. On August 18, 2011, FSIS found that the proposed corrective actions and preventative measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

6. On October 27, 2011, FSIS issued a Notice of Reinstatement of Suspension of the assignment of inspectors under the FMIA for livestock slaughter operations at Respondents' facility because FSIS determined that the establishment again failed to slaughter animals humanely, resulting in an egregious act, in violation of 9 C.F.R. 313.15(b)(1)(iii), 313.16(a)(1)&(3), and 313.16(b)(1)(iv). Respondents' submitted to FSIS proposed corrective and preventative measures on October 28, October 31, and November 1, 2011. On November 1, 2011, FSIS found the proposed corrective actions and preventative measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

7. On November 28, 2012, FSIS issued a Notice of Suspension of the assignment of inspectors under the FMIA for livestock slaughter operations at Respondents' facility because of an egregious act involving the inhumane slaughter of livestock in violation of 9 C.F.R. 313.15(a)(1) and (3). Respondents' submitted to FSIS proposed corrective and preventative measures on November 28 and 30, 2012. On November 30, 2012, FSIS found the proposed

corrective actions and preventative measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

8. On July 8, 2014, FSIS issued a Notice of Intended Enforcement under the FMIA because of an egregious act involving the inhumane slaughter of livestock in violation of 9 C.F.R. 313.3(a)(1) and 313.30(a)(3), and (4). Respondents' submitted to FSIS proposed corrective and preventative measures on July 11 and 14, 2014. On July 17, 2014, FSIS found the proposed corrective actions and preventative measures were appropriate to meet regulatory requirements, thus, FSIS deferred further enforcement action, pending verification of the proposed actions.

9. On December 3, 2014, FSIS suspended the assignment of inspectors for livestock slaughter operations at Respondents' facility because of egregious act involving the inhumane handling of livestock in violation of 9 C.F.R. 313.15(a)(1) and (3) on that date. On December 4, 2014, FSIS issued a Notice of Suspension to Respondents due to Respondents' repetitive violations of humane slaughter regulations.

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 Respondents and, its owners, officers, directors, partners, affiliates, successors and assigns, directly or 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 Respondents 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, Respondents' shall demonstrate that the structural, physical, and sanitary conditions at the establishment comply with applicable statutory and regulatory requirements under the FMIA and the Humane Methods of Slaughter Act (HMSA).

2. Prior to resumption of inspection services, Respondents' 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 Respondents' Humane Handling and Slaughtering Programs established under this Order.

3. Respondents shall name the Humane Handling and Slaughtering Lead and alternate, including any change to the named Lead or alternate, only upon written request to, and subject to the written concurrence of, the Director, Enforcement and Litigation Division (ELD).

4. Upon resumption of inspection services, Respondents' shall implement and 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), and a Hazard Analysis and Critical Control Point (HACCP), 9 C.F.R. Parts 313, 416, and 417.

Initial Assessment and Review

5. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondents shall conduct an assessment of its facility, operations, practices, and controls relative to compliance with statutory and regulatory requirements for humane slaughter and handling. The assessment shall be conducted by a qualified, independent third-party. The assessment shall address, at a minimum, the following:

a. all regulatory noncompliance's documented by FSIS at Respondents' facility, including in noncompliance records, Notices of Intended Enforcement, Notices of Suspension, or otherwise documented;

b. include a summary of noncompliance findings;

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

d. evaluate Respondents' practices for movement of livestock to determine its effectiveness in minimizing animal excitement and discomfort;

e. assess practices for handling disabled livestock to determine whether appropriate segregation procedures are in place;

f. assess practices for animal euthanasia to determine whether procedures are in place to minimize animal suffering;

g. identify where any livestock stunning problems occurred;

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

i. include any recommendations by any third party, including structural changes or repairs, management changes, employee training; new humane handling methodologies or programs.

6. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondents' shall provide FSIS with a copy of the written assessment report, analysis, findings, and any corrective actions taken as a result of the initial assessment discussed above, including but not limited to any changes to structural conditions to the unloading ramps, pens, pen floors, driveways and ramps of the establishment.

Humane Handling and Slaughter Program

7. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents' shall develop a written Humane Handling and Slaughter Program to ensure any livestock slaughtered or handled in connection with slaughter at Respondents' establishment comply with the FMIA, the Humane Methods of Slaughter Act and 9 C.F.R. Part 313.

Humane Handling

8. Respondents' written Humane Handling Program, shall at a minimum, address specific humane handling procedures to ensure:

a. timely unloading of livestock from trucks with minimum excitement;

b. humane handling of livestock by company officials, employees, etc.;

c. the adequate construction and maintenance of pens, driveways and ramps, including but not limited to: (i) they are in good repair, (ii) they are free from sharp or protruding objects; and (iii) that floors of livestock pens provide slip resistant surfaces;

d. that the movement of livestock is done with minimum of excitement and discomfort to the animal;

e. that holding procedures address space limitation and appropriate structures in pens to ensure: (i) that floors and pens are designed to prevent pain and injury to the animals; (ii) that pens are free of loose boards or openings to prevent pain or injury to the animal; (iii) that pen structures are appropriate to size of animals to avoid overcrowding; (iv) that animals have adequate space to lie down and not trample on each other; (v) that livestock are placed in holding pens that provide functioning watering systems and animals can access to the water trough; (vi) that all animals that are held overnight are provided appropriate quantities of formula, feed and clean potable water at all times;

f. that disabled animals are not dragged;

g. that the movement of disabled animals is only done while unconscious and with suitable equipment to minimize suffering;

h. that procedures are identified and implemented to ensure that suspect and disabled animals will be segregated;

i. that procedures are in place for administration, monitoring and documentation of animal euthanasia to ensure minimal animal suffering; and

j. monitoring, verification, corrective and preventative actions, and recordkeeping that it will implement and maintain on a daily and on-going basis, to ensure that livestock are treated in a humane manner prior to slaughter.

Humane Slaughter

9. Respondents' written Humane Slaughter Program shall also address specific humane slaughtering procedures to ensure:

a. that stunning areas are constructed in a manner that limits the movement of animals;

b. proper restraining, stunning and monitoring of each individual animal prior to beginning of the slaughter process to ensure that each individual animal is rendered unconscious and insensible to pain before hoisting, shackling, sticking and bleeding;

c. that animals are stunned and become unconscious after a single blow or gunshot or by electrical stunning;

d. monitoring of animals to ensure that stunning is done at a place in which they immediately become unconscious and they remain unconscious after stunning throughout shackling, sticking and bleeding;

e. use of captive bolt, gunshot, electrical stunning and force is consistent with type of animals, size and age among others;

f. slaughter equipment used to render livestock insensible to pain and induce death due to slaughter is maintained and kept in good repair; and

g. administration, monitoring, and documentation of animal euthanasia is proper to minimize animal suffering.

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

Company Action Plan with Respect to Humane Handling and Slaughter Program

11. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents' shall develop and submit for review and concurrence by the Director, ELD, a written action plan to address 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;

d. corrective actions to be implemented by plant management if instances are reported.

12. Upon resumption of inspection services, and subject to verification by FSIS, Respondents' shall:

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

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

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

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

13. Respondents' shall document and maintain written record of the implementation of the company policy and action plan for the duration of the Order, and make these records available to FSIS personnel for review and/or copying immediately upon request by FSIS.

Establishment Management and Personnel Training

14. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents' shall cause to be made:

a. training by a qualified, independent third-party, for management in all aspects of the humane handling and slaughtering requirements (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)., to include, at a minimum, procedures to ensure that (i) management personnel working in receiving and pen areas are trained in adequate livestock handling practices and the regulations in 9 C.F.R. Part 313; (ii) management personnel working in the livestock stun areas are trained in adequate livestock stunning, hoisting, shackling, sticking and bleeding procedures and the regulations in 9 C.F.R. Part 313;

b. training for all employees to ensure that employees are trained in all aspects humane handling and slaughtering requirements, to include, at a minimum, procedures to ensure that (i) employees working in receiving and pen areas are trained in adequate livestock handling practices and the regulations in 9 C.F.R. 313; (ii) employees working in the livestock stun areas are trained in adequate livestock stunning, hoisting, shackling, sticking and bleeding procedures and the regulations in 9 C.F.R. Part 313;

15. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents' shall:

a. provide the FSIS, for the Director of ELD's review and concurrence, a copy of all training program(s), training and education materials, training records, test results, and any other materials and records for the training described in paragraph 14 of this Order;

b. ensure that all employees and management personnel are trained in accordance with the requirements of paragraph 14 of this Order;

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

a. train and educate any new employee, consistent with the requirements paragraph 14 of this Order, within thirty (30) calendar days of their employment; and

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

17. Respondents' 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 available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Third Party Audits

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

a. Respondent's effective implementation, monitoring, and maintenance of its Humane Handling and Slaughtering Practices or Programs;

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

19. 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 the Order.

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

a. any modifications to its Humane Handling and Slaughtering Practices or Programs, and any other programs reviewed by the auditor;

b. any corrective actions implemented;

c. any other actions implemented or planned in response, and

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

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

Non-Intimidation and Interference Standards of Conduct Policy and Program

22. Within thirty (30) days of the effective date of this Order, Respondents' shall develop and submit for review and concurrence by the Director, ELD to include, at a minimum:

(a) a written policy to address measures that Respondents', its mangers, and employees will take, on a daily and on-going basis, to ensure that Respondents' managers, and employees do not assault, resist, impede, intimidate, or interfere with FSIS personnel in the conduct of or because of carrying out duties under the FMIA;

(b) include in the policy: (i) a statement of respondents' commitment to ensure the safety of and non-intimidation and non-interference with FSIS personnel; (ii) written guidelines prohibiting assaults, threats of assaults, intimidation, resistance, or interference with FSIS personnel; (iii) a statement of Respondents' commitment to maintain a safe work environment where mutual respect and the ability to work together productively are supported and precludes any acts of assault, threats of assault, intimidation, resistance, or interference; (iv) a statement of Respondents' commitment to promote communications and exchanges between Respondents' managers, and employees and FSIS personnel that are professional, respectful, business like, non-threatening, and non-offensive in gender or ethnicity; (v) corrective actions, preventative

measures, and assurances to be taken by Respondents' owners or managers to preclude any acts of assaults, threats of assaults, intimidation, resistance, or interference with FSIS personnel.

23. The Non-Intimidation and Interference Standards of Conduct Policy and Program shall be discussed with all current and future managers, and employees, and shall be posted, discussed, or made available to all for discussion, understanding, and adherence to the policy and program.

Company Reporting

24. Respondents' shall prepare a report identifying Respondents' compliance with all terms and conditions of this Order and FSIS statutory and regulatory requirements. This report shall provide information on any relevant compliance issues. The report shall be submitted to the Director ELD, for the first year, on a quarterly basis, with the first report to be submitted within 90 calendar days from the effective date of this Order and every 90 calendar days thereafter. During the remaining period of this Order, the reports shall be prepared and submitted to the Director, ELD, on an annual basis.

Recordkeeping

25. Respondent's shall record and maintain full, complete and accurate written records of (a) all records required by the FMIA or the regulations promulgated thereunder, (b) all applicable State or local statues, and (c) all records of its Humane Handling and Slaughtering Practices and all those records otherwise required by this Order. Respondents' shall make all such records available to FSIS representatives, for review and/or copying immediately upon request.

26. Respondent's shall notify the FSIS Philadelphia District Manager and/or designees of any changes or modifications to its Humane Handling and Slaughtering Practices or Programs, or

other programs or plans, and all associated recordkeeping forms as required, by regulation or this Order.

General

27. Respondent's shall not:

a. be convicted of any felony or fraudulent act;

b. commit any felony or criminal act under the FMIA;

c. violate any section of the FMIA, PPIA, Federal, State, or local statue or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product;

d. assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA, PPIA, or regulations promulgated thereunder; or

e. conduct any operation requiring Federal inspection outside Respondents official hours of operations without first submitting a written request to, and receiving written approval from, FSIS Philadelphia District Office.

28. Respondents 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, and 417 as applicable.

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

Enforcement Provisions

30. 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 29 of this Order have been violated. It is acknowledged that Respondents' retain 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.

31. 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, PPIA, and the regulations promulgated there under.

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

33. 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 resumes inspection services.

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

[redacted]

Richard Lemay, Owner, President
Lemay and Sons Beef Co.

[redacted]

Rick D. Herndon
Attorney for Complainant
United States Department of Agriculture
Office of the General Counsel

[redacted]

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

Issued this 6th day of February 2015

in Washington, D.C.

[redacted]

ADMINISTRATIVE LAW JUDGE
JANICE K. BULLARD