

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PPIA Docket No. 05-0001
) FMIA Docket No. 05-0001
Kirkland's Custom Meats)
and Slaughter, Inc.,)
)Default Decision and Order
Respondent)

This is an administrative proceeding to indefinitely withdraw inspection services from Kirkland's Custom Meats and Slaughter, Inc., pursuant to Sections 8 and 21 of the FMIA (21 U.S.C. §§ 608, 621) and Sections 7 and 18 of the PPIA (21 U.S.C. §§ 456, 467(b)) and in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 et seq. and Part 500 of Title 9 of the Code of Federal Regulations (9 C.F.R. Part 500).

This proceeding was instituted by a complaint filed on November 2, 2004 by the Administrator of the Food Safety and Inspection Service, United States Department of Agriculture. The complaint alleged the following:

I.

On June 9, 2004, the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture, issued to respondent a Notice of Suspension to suspend federal inspection services and withhold the marks of inspection at respondent's establishment for the following reasons:

(a) Respondent failed to operate and maintain its facility

in a manner sufficient to prevent the creation of insanitary conditions and to ensure that the products were not adulterated, as required by Part 416 of Title 9 of the Code of Federal Regulations (9 C.F.R. Part 416). Inspectors observed gross insanitary conditions throughout the facility and in the surrounding area, including but not limited to rodent droppings, live and dead insects, dried blood and product residue present on pans, trays, tubs and barrels, and holes in the walls, doors and ceilings of the facility.

(b) Respondent failed to maintain Sanitation Standard Operating Procedures (SSOPs) in accordance with Part 416 of Title 9 of the Code of Federal Regulations (9 C.F.R. Part 416).

(c) Respondent failed to maintain Hazard Analysis Critical Control Point (HACCP) plans in accordance with Part 417 of Title 9 of the Code of Federal Regulations (9 C.F.R. Part 417).

(d) Respondent failed to complete *E. coli* performance standards testing and failed to maintain performance standards records in violation of 9 C.F.R. § 310.25(a)(2)(v)(A) and 9 C.F.R. § 310.25(a)(4).

(e) Respondent's action in response to the Notice of Suspension failed to adequately address or correct the violations identified in the Notice.

II.

Since 2001, FSIS inspectors have documented numerous instances of non-compliance with USDA regulatory requirements at respondent's establishment as follows:

(a) On August 13, 2001, FSIS issued a Notice of Intended Enforcement (NOIE) Action letter to respondent for its repeated failure to separate federally-inspected and custom-exempt (i.e., not for sale) product in its facility and for having meat product adulterated by fecal matter. On August 22, 2001, respondent submitted a letter to FSIS outlining corrective actions implemented to correct the problems. On September 7, 2001, FSIS issued a Notice of Warning withdrawing the NOIE after verifying that respondent had effectively implemented the corrective actions.

(b) On August 19, 2002, FSIS issued an NOIE to respondent for its failure to meet regulatory requirements in 9 C.F.R. Parts 416 and 417. On August 28, 2002, respondent submitted a response to FSIS that included revised SSOP and HACCP plans for the facility. On November 20, 2002, FSIS issued a Letter of Information to respondent after verifying that respondent had implemented the corrective actions outlined in respondent's response, and did not pursue further regulatory action.

(c) On July 29, 2003, FSIS issued a 30 day reassessment letter to respondent, stating that respondent's SSOP and HACCP

plans were inadequate and violated regulatory requirements of 9 C.F.R. Parts 416 and 417. On September 9, 2003, FSIS conducted a reassessment and respondent had implemented the corrective actions to meet the regulatory requirements of 9 C.F.R. Parts 416 and 417.

The respondent failed to file an answer to the complaint within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136 of the Rules of Practice (7 C.F.R. § 136(c) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. The failure to file an answer also constitutes a waiver of hearing pursuant to 7 C.F.R. § 1.139. Accordingly, the material allegations in the complaint are adopted and set forth herein as Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Kirkland's Custom Meats and Slaughter, Inc., respondent herein, is a corporation organized and existing under the laws of Florida, operating as a very small meat and poultry slaughter and processing facility located at 1101 Bullsbay Highway, Jacksonville, Florida 32220.

2. Respondent Kirkland's Custom Meats and Slaughter, Inc., has been granted inspection services under the FMIA and PPIA

under Establishment number 11156/P-11156.

Conclusion

Respondent failed to maintain sanitary conditions or operate in a manner sufficient to prevent adulteration of meat and meat food products, as required by Title I of the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601 et seq.) and poultry and poultry products, as required by the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.) and the regulations promulgated thereunder, and as alleged in sections I and II. By reasons of the facts contained in the Findings of Facts, respondent is unfit to engage in any business requiring inspection under the FMIA and PPIA.

Order

Inspection services to Kirkland's Custom Meats and Slaughter, Inc., under the FMIA and PPIA are hereby indefinitely withdrawn.

Done at Washington, D.C., this
31st day of May, 2005

Marc R. Hillson
Administrative Law Judge