UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	FMIA Docket No. 04-0004
	)	PPIA Docket No. 04-0004
Academy Packing Company, Inc.,	)	
	)	
Respondent	)	STIPULATION AND
	)	CONSENT 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 *et seq.*) to withdraw Federal Inspection services from Academy Packing Company, Inc. This proceeding was commenced by a complaint filed on January 16, 2004, 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 meat inspection and poultry product inspection services. The parties have agreed that this proceeding should be terminated by entry of this Consent Decision 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, Respondent admits all jurisdictional allegations of the complaint and waives:

(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 bases 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 in any way constitute an admission by Respondent that the regulations or statutes involved herein were

violated.

3. Respondent waives 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 Respondent in connection with this proceeding.

Findings of Fact

1. Academy Packing Company, Inc., Respondent, is now and was at all times material herein, an entity incorporated in the State of Michigan, which engages in the fabrication of meat, meat food products, poultry and poultry products in its processing establishment, Establishment # 2559/P-2559, located at 2881 Wyoming Avenue, Dearborn, Michigan 48120-1599.

2. On March 31, 2003, in the United States District Court for the Eastern District of Michigan, Respondent was sentenced on one misdemeanor count of preparing adulterated meat, contrary to and in violation of section 10(a) of the FMIA (21 U.S.C. § 10(a)), and one misdemeanor count of selling and transporting adulterated meat, contrary to and in violation of section 10(c) of the FMIA (21 U.S.C. § 10(c)).

Conclusion

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

Order

1. Federal Meat Inspection Services under Title 1 of the FMIA, and Federal Poultry Inspection Services under the PPIA are withdrawn from Respondent, its owners, officers, directors, partners, affiliates, and successors, establishment number 02559/P-02559, directly or through any corporate or other device, for a period of five (5) years, beginning on the effective date of this Order. The

withdrawal of inspection shall be held in abeyance, and inspection shall be provided to Respondent, for so long as the conditions set forth below, in addition to all other requirements of inspection are met.

2. Respondent, by and through any of its officers, directors, partners, employees, agents or affiliates, shall not:

(a) violate the FMIA, the PPIA, or the regulations promulgated under these Acts;

(b) violate any State or local statute or regulation involving the preparation, sale, transportation, distribution 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) make or cause to be made, any false entry into any accounts, records, or memorandums kept by the Respondents;

(e) assault, threaten, intimidate, or interfere with any FSIS employee in the performance of his or her official duties; and

(f) conduct any operations requiring Federal inspection outside the official hours of operation without obtaining prior written approval from FSIS.

3. Respondent 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, uninspected, or deceptively packaged food, or based upon fraud in connection with transactions in food. Respondent shall immediately terminate its connection with any such individual when that individual's conviction becomes known to Respondent.

4. Respondent shall maintain a Sanitation Standard Operating Procedure (SSOP) and a Hazard

Analysis and Critical Control Point (HACCP) system (ensuring that no adulterated product is produced or shipped) in compliance with regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416 and 417, respectively.

5. Respondent shall implement and maintain an effective compliance program to ensure that all inspected meat and/or poultry products do not become adulterated, contaminated or misbranded. On or before the expiration of thirty (30) calendar days from the issuance of this Order, Respondent shall develop and submit to the Director, Evaluation and Enforcement Division (EED), Office of Program Evaluation, Enforcement and Review (OPEER), Food Safety and Inspection Service (FSIS), (hereinafter "Director"), or his or her designee, prior to implementation, Respondent's proposed compliance program for review. This compliance program, which may be incorporated into Respondent's HACCP or SSOP plan, shall include provisions for:

(a) ensuring that all meat and/or poultry products are processed according with Respondent's product specifications and formulations, and in accordance with the requirements of 9 C.F.R. Part 318.6;

(b) ensuring that all meat and/or poultry products produced at Respondent's establishment do not have any undeclared substance of any kind; and are correctly labeled, bearing full and accurate labeling in accordance with the requirements of 9 C.F.R. Part 301.2; and

(c) ensuring appropriate record keeping of product formulations for meat and/or poultry products produced at Respondent's establishment in accordance with the requirements of 9 C.F.R Part 318.6.

6. Respondent shall designate an employee or employees to be responsible at all times during production for overseeing all aspects of the compliance program. Such employee or employees shall

have full authority to hold up production, stop production, remove product from production, or take positive control of any products manufactured or stored at the facility which are, or are believed to be adulterated or misbranded. The parties shall make every effort to ensure that Respondent's compliance program is reviewed and implemented in an expeditious manner.

7. Respondent shall maintain full, complete and accurate written records of all business activities applicable to the FMIA, PPIA, Egg Products Inspection Act (EPIA), 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. Respondent shall make these records available upon request to any authorized representative of the Secretary.

8. Within thirty (30) days of the effective date of this Order, Respondent shall effectively implement and have on file, a corporate code or policy statement of conduct and compliance and ethics in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Respondent. The Corporate Code shall include:

(a) a statement of corporate policy addressing business ethics and public trust;

(b) a statement of Respondent's commitment to comply with all applicable laws and regulations in the conduct of its business;

(c) guidelines for Respondent's employees to follow with respect to food safety and ethics issues; and

(d) shall provide acceptable corrective and preventive assurances to preclude any acts of assault, intimidation, or interference of any program employee.

Such Corporate Code shall be reviewed by the Director, prior to implementation. The Corporate Code shall be permanently displayed in a prominent location in Respondent's

establishment. The Corporate Code shall be discussed with all current and future employees.

9. Within thirty (30) days of the effective date of this Order, Mitchell D. Polk shall participate in a training program encompassing ethical business practices which has received prior approval of the Director. Respondent shall maintain records documenting the completion of such training for the duration of this Stipulation and Consent Decision and shall have those records available upon request by an authorized representative of the Secretary.

10. Respondent shall prepare, each year, a report summarizing Respondent's compliance with each paragraph of this Stipulation and Consent Order. Each report shall be provided to the Director on the anniversary date of this Order.

11. The provisions set forth in paragraphs 1-10 of this Order shall be applicable for a five-year (5) period commencing with the effective date of this Order.

12. 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 10 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 concerning any violation alleged as the basis for a summary withdrawal of inspection services.

13. Nothing in this Stipulation and Consent 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 FMIA, PPIA, EPIA, and the applicable regulations promulgated thereunder.

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

15. This Order will expire five (5) years from the date of issuance.

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

[redacted]

MITCHELL D. POLK,
for himself and for
Respondent

[redacted]

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

[redacted]

Attorney for Respondent Corporation

[redacted]

THOMAS BOLICK
Attorney for Complainant

Issued this 12th day of April 2004, in Washington, D.C.

[redacted]

ADMINISTRATIVE LAW JUDGE