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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	FMIA Docket No. 10-0056
)	
Bushway Packing, Inc.,)	
Frank Perretta)	
Terry Rooney)	
John McCracken)	
)	
Respondents)	Consent Decision

This proceeding was instituted under the Federal Meat Inspection Act (FMIA), as amended (21 U.S.C. §§ 601 *et seq.*) and the applicable Rules of Practice (7 C.F.R. 1.130 *et seq.* and 9 C.F.R. § 500.1 *et seq.*) to indefinitely suspend Federal inspection services from Respondents. This proceeding was commenced by a complaint filed on December 8, 2009, by the Administrator, Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), who is responsible for the administration of Federal inspection services for meat and meat food products. This decision is entered pursuant to the consent decision provisions of the rules of practice applicable to this proceeding (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. Respondents and its owners, officers, directors, partners, successors, assigns, and affiliates waive any claim against complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) and waive any other action against USDA or its employees in connection with this proceeding and the facts and events that

gave rise to this proceeding. Respondents consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Bushway Packing, Inc., at all times material herein was a corporation located at 43 Pearl Street, Grand Isle, VT 05458. Bushway Packing, Inc.'s mailing address is P.O. Box 232, Grand Isle, VT 05458.
2. Bushway Packing, Inc. was and has been granted Federal inspection services, pursuant to the FMIA since February 3, 2009, at the above named establishment that was and has been designated as Official Establishment Number 571M.
3. Frank Perretta was at all times material herein was responsibly connected to Bushway Packing, Inc., in that Frank Perretta was a Partner and holder of ten percent or more voting stock in the corporation.
4. Terry Rooney is now and at all times material herein was responsibly connected to Bushway Packing, Inc., in that Terry Rooney was a Partner and holder of ten percent or more voting stock in the corporation.
5. John McCracken is now and at all times material herein was responsibly connected to Bushway Packing, Inc., in that John McCracken was a Partner and holder of ten percent or more voting stock in the corporation.
6. On May 12, 2009, the Food Safety and Inspection Service ("FSIS") issued a Notice suspending the assignment of inspectors at Respondents' facility because of an egregious act

involving the inhumane handling of livestock in violation of 9 C.F.R. 313.2 (d)(2). Respondents proposed corrective and preventive measures on May 13, 2009. On May 13, 2009, FSIS found the proposed corrective actions and preventive measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

7. On June 24, 2009, FSIS issued a Notice of Reinstatement of Suspension of the assignment of inspectors at Respondents' facility because FSIS determined that the establishment repeatedly failed to handle animals humanely, in violation of 9 C.F.R. 313.2 (a). Respondents' proposed corrective and preventive measures on June 25, 2009. On June 25, 2009, FSIS found the proposed corrective actions and preventive measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

8. On July 1, 2009, FSIS issued a Notice of Reinstatement of Suspension of the assignment of inspectors at Respondents' facility because FSIS determined that the establishment repeatedly failed to handle animals humanely, in violation of 9 C.F.R. 313.2 (d)(2). Respondents' proposed corrective and preventive measures on July 2, 2009. On July 2, 2009, FSIS found the proposed corrective actions and preventive measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

9. On October 30, 2009, FSIS issued a Notice of Reinstatement of Suspension of the assignment of inspectors at Respondents' facility because FSIS determined that the establishment

repeatedly failed to handle animals humanely, in violation of 9 C.F.R. 313.2 (b), (d)(1), (d)(2), and (d)(3). Respondents proposed corrective and preventive measures on November 5, 2009. On November 6, 2009, FSIS found that the proposal was inadequate and demonstrated an inability or unwillingness by Respondents to assure compliance with the humane slaughter and handling requirements.

10. Frank Perretta is no longer a stockholder in Bushway Packing, Inc.

11. On January 22, 2010, Champlain Valley Meats, Inc. became incorporated in the state of Vermont. Champlain Valley Meats, Inc. is a successor corporation to Bushway Packing, Inc. with Mr. Terry Rooney and Mr. John McCracken as the sole shareholders of the corporation. Champlain Valley Meats is a corporation located at 43 Pearl Street, Grand Isle, VT 05458 with a mailing address of P.O. Box 232, Grand Isle, VT 05458. On February 2, 2010, the corporation formally applied for inspection services under the FMIA.

12. Respondents have agreed to voluntarily withdraw its grant of inspection services under the FMIA for Bushway Packing, Inc. Respondents have also agreed to destroy all marks, labels, devices, and brands associated with Bushway Packing, Inc., Establishment Number 571M, in the presence of an FSIS inspection official.

Conclusion

The parties having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, this decision will be issued.

Order

1. Federal inspection services under the FMIA are suspended from Respondents and its

owners, officers, directors, partners, successors, affiliates and assigns, directly or through any business or other device beginning on the effective date of this Order. Thus, inspection services under the FMIA are suspended from Champlain Valley Meats, Inc., as a successor corporation of Bushway Packing, Inc., and its owners, officers, directors, partners, successors, affiliates and assigns, directly or through any business or other device beginning on the effective date of this Order. Provided, however, said suspension of inspection services shall be held in abeyance, and inspection services shall be provided to Respondents for so long as the conditions set forth below, in addition to all other requirements of inspection, are met. This Order shall remain in effect for a period of five (5) years, with the exception of provision 2 below which shall remain in effect for so long as Respondents receive inspection services under the FMIA.

Corporate Requirements

2. Bushway Packing, Inc. and its successor Champlain Valley Meats shall have no financial, operational or employment relationship with Frank Perretta for so long as the corporation receives inspection services under the FMIA.

3. Prior to the inauguration of inspection services, and subject to verification by FSIS, Respondents shall appoint or hire a Humane Handling and Slaughtering Lead and one alternate who shall be responsible for the implementation, coordination, monitoring, recordkeeping, review and maintenance of the Respondents' Humane Handling and Slaughtering Program as described in paragraphs 9 thru of 15 this Order.

4. Respondents may name a new Humane Handling and Slaughtering Lead or their

alternates only upon written request to, and subject to the written concurrence of, the Director, EED.

5. Prior to the inauguration of inspection services as Champlain Valley Meats, and subject to review and verification by FSIS, Respondents shall demonstrate compliance with FSIS statutory and regulatory requirements, including, but not limited to, 9 C.F.R. Parts 313, 416, and 417. Such review shall include an examination of Respondents' Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP), and Hazard Analysis and Critical Control Points (HACCP) programs, as well as process controls, and sampling and testing programs.

6. Prior to the inauguration of inspection services, FSIS shall conduct an examination of the structural, physical and sanitary conditions at the establishment, and assess whether such conditions at the establishment comply with statutory and regulatory requirements.

Initial Assessment and Review

7. Prior to the inauguration of inspection services, Respondents shall provide the Director, EED with an assessment conducted by an independent third-party auditor of their prior operations and prior Notices of Suspension related to humane handling and slaughter violations. To the extent possible, such assessment should:

- a. include a summary of noncompliance findings;
- b. provide an analysis of the problems at Respondent's facility which resulted in inhumane handling noncompliance;
- c. evaluate Respondent's practices for movement of livestock to determine its

effectiveness in minimizing animal excitement and discomfort;

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

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

f. evaluate whether electric prods or other instruments were effectively used;

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.

8. Prior to the inauguration of inspection services, and subject to verification by FSIS, Respondents shall provide FSIS with 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

9. Prior to the inauguration 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

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

- a. adequate truck spacing for livestock being transported to the facility;
- b. timely unloading of livestock from trucks with minimum excitement;
- c. humane handling of livestock by trucking company officials, employees, etc.;
- d. 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;
- e. that the movement of livestock is done with a minimum of excitement and discomfort to the animal and at a reasonable pace;
- f. that electrical prods will not be used to drive livestock;
- g. that any alternative devices used to drive livestock are used as little as possible and with a minimum of excitement and discomfort to the animal;
- h. 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 proportionate 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;
- i. that all animals that are held overnight are provided appropriate quantities of

formula, feed and clean potable water at all times;

j. that disabled animals are not dragged;

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

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

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

n. monitoring, verification, corrective and preventive 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

11. 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 the 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;

d. monitoring of animals to ensure that stunning is done at a pace in which they

immediately become unconscious and they remain unconscious after stunning throughout shackling, sticking and bleeding;

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

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

12. Upon the inauguration 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.

Corporate Action Plan with Respect to Humane Handling and Slaughter Program

13. Prior to the inauguration of inspection services, and subject to verification by FSIS, Respondents shall develop and submit for review and concurrence by the Director, EED, 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;

g. disciplinary actions and sanctions against individuals involved in reported incidents; and,

14. Upon the inauguration 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;
- c. 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
- d. take and document corrective action, including disciplinary action, when necessary.

15. Respondent shall document and maintain written records 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 such request by FSIS.

Establishment Management and Personnel Training

16. Prior to the inauguration 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 humane handling and slaughtering requirements, 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. Part 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;

17. Prior to the inauguration of inspection services, and subject to verification by FSIS, Respondents shall:

a. provide to FSIS, for the Director of EED'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 16 of this Order;

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

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

a. train and educate any new employee, consistent with the requirements paragraph 16 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.

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

Third Party Audits

20. Upon the inauguration 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.

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 inauguration of inspection services;
- b. the second audit shall be conducted within ninety (90) calendar days from the inauguration of inspection services; and
- c. subsequent audits shall be conducted every 180 calendar days thereafter for the duration of the Order.

22. Respondents 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 Respondents to not implement any audit recommendation.

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

Corporate Reporting to FSIS

24. Respondents shall prepare a report identifying Respondents' compliance with all terms and conditions of this Order and FSIS statutory and regulatory requirements. The report shall provide information on any relevant compliance issues. The report shall be submitted to the Director EED, 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, EED, on an annual basis.

Recordkeeping

25. Respondents 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 statutes, 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. Respondents shall notify the FSIS Albany 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. Respondents 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 statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product;
- d. assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere with any representative or designee of the Secretary of Agriculture; or
- e. conduct any operations requiring federal inspection outside the official hours of operation without first obtaining prior written approval from FSIS.

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 Respondent's compliance with the FMIA, PPIA or this Order.

Enforcement

30. The Administrator, FSIS, may summarily withdraw Federal inspection services from Respondents upon a determination by the Director, Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review, FSIS, that one or more conditions set forth in paragraphs 1 thru 29 this Order have been violated. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the USDA rules of practice concerning any violation alleged as the basis for the withdrawal of inspection services. Nothing contained in these provisions prevents the right of Respondents to appeal the decision of an FSIS employee to his/her immediate supervisor pursuant to 9 C. F. R. §§ 306.5.

31. Nothing in this Order shall preclude any regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to the referral of any matter to any agency for possible criminal or civil proceedings. The provisions of this Order shall become effective when signed by the USDA Administrative Law Judge.

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

33. The provisions of this Consent Decision Order shall remain in effect for a period of five (5) years from the date of issuance by an Administrative Law Judge, with the exception of provision 2 which shall remain in effect for so long as Respondents receive inspection services.

BUSHWAY PACKING, INC. and CHAMPLAIN VALLEY MEATS

BY:

[REDACTED]
John McCracken

[REDACTED]
Scott C. Safian
Director, Evaluation & Enforcement Division
Food Safety and Inspection Service
U.S. Department of Agriculture

[REDACTED]
Terry Rooney

[REDACTED]
Carlynn S. Cockrum
Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel

[REDACTED]
Peter F. Langrock
Attorney for Respondents

Issued this 22 March day of , 2010
at Washington, D.C.

[REDACTED]
Administrative Law Judge

Jill S. Clifton