

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:

Valley Meat Packing Corp.,

Respondent

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17-0007
Docket No. _____ (FMIA)

Consent Decision and Order

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 withdraw federal inspection services from Valley Meat Packing Corp., hereafter referred to as Respondent. 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), which is responsible for the administration of Federal inspection services for meat. The parties have agreed that this proceeding should be terminated by entry of this Consent Decision and Order (Order) set forth below pursuant to the rules of practice applicable to this proceeding (7 C.F.R. § 1.138).

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 and waives oral hearing and further procedure. Respondent and its owners, officers, directors, partners, successors, assigns, and affiliates waive any claim against the 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 the proceeding. Respondent consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision, and that this decision is the final resolution of all facts and events that gave rise to this proceeding.

Findings of Fact

1. Respondent is now, and at all times material herein was, a livestock slaughter and processing plant that has a business and mailing address of 2812 Settle Road, Newark Valley, New York 13811.

2. At all times material herein Respondent was operating under a grant of Federal inspection issued on January 19, 2016, and was designated Official Establishment No. 4488.

3. On January 26, 2016, and June 7, 2016, FSIS issued Respondent Notices of Suspension, whereby FSIS withheld the marks of inspection and suspended the assignment of inspectors to respondent's facility, because FSIS inspectors observed instances of inhumane slaughter and plant personnel interfered with their ability to perform their official duties. Both suspensions of respondent's inspection services were subsequently held in abeyance following Respondent's submittal of acceptable corrective actions and preventive measures.

4. On July 21, 2016, the Philadelphia District Office (PDO) issued a Reinstatement of Suspension whereby FSIS withheld the marks of inspection and suspended the assignment of inspectors to the facility for an egregious inhumane slaughter event and an incident of intimidation or interference with FSIS program personnel while performing their duties.

Conclusion

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

Order

Federal meat inspection services for its meat products produced under its Hazard Analysis Critical Control Point (HACCP) systems for Red Meat Slaughter and Raw Intact Meat under Title I of the FMIA are withdrawn from Respondent, its owners, officers, directors, partners, successors, affiliates 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 withdrawal of inspection services shall be held in abeyance, and Federal meat inspection services shall be provided to Respondent for so long as the statutory and regulatory requirements for applicable inspection services are met and all terms and conditions of this Order set forth below are met and maintained.

Conditions

1. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall demonstrate compliance with all applicable FSIS statutory and regulatory requirements, including by not limited to the structural, physical, sanitary, and humane handling conditions at the establishment, under the FMIA (9 C.F.R. Parts 313, 416, and 417) and the Humane Methods of Slaughter Act (HMSA) (21 U.S.C. §§ 603 and 610 and 7 U.S.C. § 1901 et seq.).

2. Upon resumption of inspection services, Respondent shall implement and maintain compliance with statutory and regulatory requirements for sanitation, food safety programs, process controls, humane handling and slaughter, and all other applicable requirements

including, but not limited to Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOPs), Hazard Analysis and Critical Control Point (HACCP) systems, and Humane Slaughter of Livestock, 9 C.F.R. Parts 313, 416, and 417.

Humane Methods of Handling and Slaughter Initial Assessment and Review

3. 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 relative to compliance with statutory and regulatory requirements for humane handling and slaughter. The assessment shall be conducted by a qualified, independent third party. The assessment shall, at a minimum:

(a) address all regulatory noncompliance documented by FSIS at Respondent's facility, 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 Respondent's facility which resulted in inhumane slaughter and/or handling noncompliance;

(d) evaluate Respondent's slaughter practices in facilitating unconsciousness prior to shacking, hoisting, and dressing of livestock;

(e) evaluate Respondent's practices for movement of livestock to determine their effectiveness in minimizing animal excitement and discomfort;

(f) assess practices for handling disabled livestock to determine whether appropriate segregation procedures are in place; and

(g) include any recommendations by the third party, including structural changes or repairs, slaughter equipment maintenance, management changes, employee training, and new or revised humane handling methodologies or programs to evaluate compliance with all humane handling requirements per 9 C.F.R. Part 313.

4. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondent 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 of the unloading ramps, pens, pen floors, driveways, and ramps of the establishment, management changes, employee training, and new or revised humane handling methodologies or programs to evaluate compliance with all humane handling and slaughter.

5. Prior to resumption of inspection services, Respondent shall implement recommendations by the firm or third party based on the initial assessment, including structural changes or repairs, management changes, employee training, and new or revised humane handling methodologies to maintain compliance with all humane handling requirements under 9 C.F.R. Part 313. Respondent shall incorporate these methods or programs into the firm's program, as required by paragraphs 6 – 11 of this order.

Humane Methods of Handling and Slaughter Program

6. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondent shall prepare a written Humane Handling and Slaughter Program, which shall address specific humane slaughtering and handling procedures, including monitoring and recordkeeping to ensure compliance with 9 C.F.R. Part 313 and the Humane Methods of

Slaughter Act 7 U.S.C. 1901 et seq. The Respondent's written Humane Handling and Slaughter Program shall at minimum, address specific humane handling procedures to ensure:

- (a) slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering;
- (b) timely unloading of livestock from trucks with minimum excitement;
- (c) humane handling of livestock by company officials, employees, etc.;
- (d) that the movement of livestock is done with minimum of excitement and discomfort to the animal;
- (e) that non-ambulatory disabled animals are not dragged;
- (f) that the movement of non-ambulatory disabled animals is only done with suitable equipment to minimize suffering;
- (g) that procedures are identified and implemented to ensure that suspect and disabled animals will be segregated; and
- (h) monitoring, verification, corrective and preventive actions, recordkeeping, and reassessments that it will implement and maintain on a daily and ongoing basis, to ensure that livestock are treated in a humane manner prior to slaughter.

Company Humane Handling and Slaughter Action Plan

7. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent shall develop and submit for review and concurrence by the Director, Enforcement and Litigation Division (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; and

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

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

(a) implement the Action Plan, as provided in paragraph 7 of 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.

9. Respondent shall, prior to resumption of inspection services, hire or appoint a Humane Handling and Slaughtering Lead, as well as one alternate Lead, subject to ELD concurrence, who shall be responsible for the implementation, coordination, monitoring, recordkeeping, review and maintenance of Respondent's Humane Handling and Slaughter Program established under this Order. Any change to the Lead or alternate shall only be made with prior written concurrence from the Director, ELD.

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

11. Respondent shall document and maintain a 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.

Non-intimidation and Interference Policy and Action Plan

12. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondent shall develop a written company Policy and Action Plan to address measures that will be taken by plant management, before the resumption of inspection services and on a daily and ongoing basis during operations, to ensure that respondent and its officers, employees, or agents do not intimidate, interfere with, assault, impede, or threaten FSIS personnel in or account of the performance of their duties.

13. The company's written Policy and Action Plan shall, at a minimum include:

(a) a statement of Respondent's commitment to ensure the safety of and non-interference with FSIS personnel;

(b) written policy and guidelines prohibiting assaults, threats of assault, intimidation or interference with FSIS personnel;

(c) preventive measures and assurances to be taken by plant management to preclude any acts of intimidation or assault of, or interference with, FSIS personnel;

(d) corrective actions to be implemented by plant management if instances of intimidation, assault, or interference are reported;

(e) disciplinary actions and sanctions against individuals involved in reported incidents;
and

(f) training for all current and future managers and employees in the company Policy and Action Plan.

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

(a) implement the company Policy and Action Plan, as provided in paragraphs 12 and 13 above;

(b) ensure that the company Policy is permanently displayed in a prominent location; and

(c) require strict adherence to the company Policy and Action Plan on the part of all current and future managers and employees and take and document corrective action, including disciplinary action, when necessary.

Management and Employee Training

15. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent 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 of the FMIA and HMSA (21 U.S.C. §§ 603 and 610 and 7 U.S.C. § 1901 et seq.), and the regulations promulgated thereunder (9 C.F.R. § 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. § 313; and

(ii) management personnel working in the livestock slaughter areas are trained in adequate livestock hoisting, shackling, sticking and bleeding procedures and the regulations in 9 C.F.R. § 313;

(b) training by a qualified, independent third party, 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; and

(ii) employees working in the livestock slaughter areas are trained in adequate livestock hoisting, shackling, sticking and bleeding procedures and the regulations in 9 C.F.R. § 313.

16. For the purposes of paragraph 15 the independent third party conducting the training shall not be a current or former officer, director, employee, affiliate, representative, or agent of Respondent.

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

(a) provide the Director, ELD, for 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 15 of this Order; and

(b) ensure that all employees and management personnel are trained in accordance with the requirements of paragraph 15 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 15 of this Order, within thirty (30) calendar days of his or her 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.

Company Reporting

20. Within 90 calendar days of resumption of inspection services, Respondent shall prepare a report identifying Respondent's 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.

Third Party Audit Provisions

21. Upon resumption of inspection services, and subject to verification by FSIS, Respondent shall cause to be made, by an independent third party who is certified by the Professional Animal Auditor Certification Organization (PAACO), written audits of:

(a) Respondent's effective implementation, monitoring, and maintenance of the Humane Methods of Handling and Slaughter Program required by paragraphs 6 through 8 of this Order;

and

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

22. 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.

23. 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 Slaughter Program and to the company's Policy and Action Plan, 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 and reasoning for any decision by Respondent to not implement any audit recommendation.

24. 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.

25. For the purposes of paragraphs 21 through 24, an independent third party shall be a person, entity, or corporation free from bias and absent from a conflict of interest with the Respondent. Specifically, the person, entity, or corporation conducting an audit (a) shall not be a current or former officer, director, employee, affiliate, contractor, representative, or agent of Respondent and (b) shall serve the Respondent only in the limited capacity of executing the audit duties detailed in paragraphs 21 through 24. If the Director, ELD, has good cause to believe that an audit was conducted by a person, entity, or corporation otherwise employed by or affiliated

with Respondent or with a present bias or a conflict of interest, any written audit and report of the audit shall be deemed disqualified for the purposes of complying with this Order.

Recordkeeping

26. Upon resumption of inspection services, the Respondent 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 Slaughter Practices and all those records

otherwise required by this Order. Respondent shall make all such records available to FSIS representatives, for review and/or copying immediately upon request.

27. Respondent shall notify FSIS of any changes or modifications to its Humane Handling and Slaughter Practices or Programs, or other programs or plans, and all associated recordkeeping forms as required, by regulation or this Order.

General Provisions

28. Respondent and any of its owners, officers, directors, partners, employees, agents, successors, affiliates, or assigns shall not:

- (a) violate any section of the FMIA or regulations promulgated thereunder, and any State or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated, non-inspected, misbranded or deceptively packaged meat, or food products;
- (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 the 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 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 Respondent's business;

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

(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 FSIS.

29. Respondent shall fully and completely cooperate with any FSIS inquiry into or investigation, review, or examination of its compliance with the FMIA or this Order.

Enforcement Provisions

30. The Administrator, FSIS, may summarily withdraw the grant of federal inspection from Respondent upon a determination by the Director, ELD, that Respondent has committed an act in violation of, or has otherwise failed to comply with, any requirement of this Order, including all parts of 9 C.F.R. Part 313. The withdrawal of Respondent's grant of federal inspection services under the FMIA shall become effective immediately, without further proceeding, upon FSIS's service of a Notice of Summary Withdrawal to Respondent. Respondent shall retain the right, after any summary withdrawal of Respondent's grant of federal inspection, to request an expedited hearing, pursuant to the applicable rules of practice (7 C.F.R. §1, Subpart H and 9 C.F.R. § 500), to contest the Agency's withdrawal of Respondent's grant of federal inspection

services. Such request for an expedited hearing must be submitted within twenty (20) calendar days of FSIS' service of a Notice of Summary Withdrawal. Failure to submit a request for an expedited hearing within this twenty (20) day period shall be construed as a waiver of Respondent's right to request a hearing to contest the withdrawal.

Miscellaneous Provisions


31. Nothing in this Order shall preclude (a) any future criminal, civil, regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to any action under the FSIS Rules of Practice (9 C.F.R. § 500), or (b) the referral of any matter to any agency for possible criminal, civil, or administrative procedure.


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 become effective upon issuance by the Administrative Law Judge. The provisions of this Order shall be applicable for a period of three (3) years from the date of resumption of operations.


Mohamed Munassar, President
For Valley Meat Packing Corp.


Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel


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


John Rodriguez
Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel

Issued this 31st day of Oct 2016
at Washington, D.C.



CAW, Administrative Law Judge