

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
 )  
E.L. Blood & Son, Inc., ) FMIA Docket No. **21-J-0034**  
 )  
Respondent. ) Consent Decision and Order

REC'D - USDA/OALJ/OHC  
2021 MAY 7 PM 2:55

This proceeding was instituted under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601 *et seq.*) and the applicable rules of practice (7 C.F.R. § 1.130 *et seq.*, 9 C.F.R. § 500.1 *et seq.*) to suspend indefinitely and permanently withdraw Federal inspection services from E.L. Blood & Son, Inc. (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), alleging that Respondent has not provided assurances to FSIS that all slaughtering and handling of livestock will be conducted humanely, as required under 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 issuance of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the Uniform Rules of Practice (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 in the Complaint initiating this action, waives oral hearing and further procedure, and waives any rights to seek judicial review or otherwise challenge or contest the validity of this Consent Decision and Order, including waiving any challenges to the Administrative Law

Judge's authority to enter this Consent Decision and Order under the Administrative Procedure Act and the Constitution of the United States. Respondent waives any action under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) and waives any other action against USDA or any USDA employee in connection with this proceeding and the facts and events that gave rise to this proceeding. Respondent agrees to the issuance of this Consent Decision and Order.

Complainant agrees to the issuance of this Consent Decision and Order.

### **Findings of Fact**

1. Respondent E.L. Blood & Son, Inc., DBA Blood Farm, is a Massachusetts corporation operating a very small, livestock slaughter and meat and poultry processing establishment located at 94 W. Main Street, West Groton, Massachusetts 01472.

2. On or about January 5, 1976, Respondent received a grant of federal inspection for livestock slaughter operations and was designated Official Establishment No. 6354. Respondent's grant of inspection has been updated in subsequent years to add inspection services for meat and poultry processing and to reflect changes in ownership and management.

3. (b) (6) is identified as the President and holder of at least 10% of Respondent's voting stock in Respondent's most recent application to update its grant of inspection dated March 20, 2018.

4. (b) (6) is identified as the Treasurer/Secretary of Respondent in Respondent's most recent application to update its grant of inspection dated March 20, 2018. Ms. Blood also currently serves as Respondent's Hazard Analysis and Critical Control Point (HACCP) Coordinator.

5. (b) (6) and (b) (6) are identified as serving on Respondent's Board of Directors in Respondent's most recent application to update its grant of inspection dated March 20, 2018.

6. FSIS has suspended federal inspection services for the livestock slaughter process at Respondent's establishment on seven different occasions since January 1, 2017, following violations of the humane handling and slaughter requirements under the FMIA, HMSA and 9 C.F.R. Part 313. Most recently, FSIS suspended slaughter inspection services on September 29, 2020, following an egregious incident of inhumane handling involving ineffective stunning of a lamb.

7. Federal inspection services for livestock slaughter remain suspended as of the filing of the Complaint initiating this action. Respondent continues to operate under federal inspection for meat and poultry processing. Respondent also conducts custom slaughter and processing for livestock owners that is exempt from mandatory federal inspection under the FMIA (21 U.S.C § 623).

### **Conclusion**

8. Respondent having admitted jurisdiction and the Findings of Facts herein, and the parties having agreed to entry of this Consent Decision and Order, the Consent Decision and Order will be issued.

### **Order**

9. Federal inspection services for livestock slaughter under the FMIA are suspended indefinitely and permanently withdrawn from Respondent and its owners, officers, directors, partners, affiliates, successors, and assigns, directly or indirectly or through any business or other device, beginning on the effective date of this Consent Decision and Order. Provided, however,

that the indefinite suspension and permanent withdrawal of inspection services shall be held in abeyance, and inspection services shall be provided to Respondent pursuant to a conditional grant of inspection for so long as Respondent complies with the terms and conditions set forth in this Consent Decision and Order, as well as all other statutory and regulatory requirements for federal inspection.

**Conditions To Be Met Prior o Resumption of Inspection Services for Livestock Slaughter**

10. Respondent will not resume slaughter operations under federal inspection until Respondent demonstrates that all requirements in paragraphs 11 through 30 of this Consent Decision and Order have been met.

11. Prior to the resumption of inspection services, Respondent will submit to the District Manager, FSIS, Office of Field Operations, Philadelphia District Office (District Manager), an updated Application for Federal Inspection (FSIS Form 5200-2). The application shall provide all required information, including, but not limited to, applicant information, establishment information, types of operations (identifying all HACCP categories and associated products intended to be slaughtered, processed, and otherwise produced), and responsible persons information (identifying name, title, contact, any prior convictions, and other required information) for all management officials required by this Consent Decision and Order and for all other partners, officers, directors, holders or owners of 10 percent or more of Respondent's voting stock, and employees in a managerial or executive capacity. After resumption of inspection services, Respondent shall submit an updated Application for Federal Inspection to the District Manager within fifteen (15) calendar days to reflect any changes to the required information.

12. Prior to resumption of inspection services, Respondent will provide to the Chief, Enforcement Operations Branch, Office of Investigation, Enforcement, and Audit (EOB Chief) a written outline of the establishment's management structure, including the names of the management personnel, their assigned roles, and their specific duties and responsibilities. Respondent will provide written notice to the EOB Chief of any changes in management personnel within 15 calendar days of such changes.

*Humane Handling Coordinator*

13. Prior to resumption of inspection services, Respondent will hire a full-time humane handling coordinator and designate an alternate. The humane handling coordinator must have at least two years of experience in the management of livestock slaughter at a federally inspected establishment. The humane handling coordinator and designated alternate must have taken training in humane handling and slaughter from an independent third-party organization.

14. Prior to resumption of inspection services, Respondent will provide in writing to the EOB Chief, for review and concurrence, the names of the humane handling coordinator and designated alternate and documentation of their education and work experience.

15. The humane handling coordinator will be responsible for the overall implementation, coordination, monitoring, documentation, recordkeeping, evaluation, and maintenance of the Respondent's Humane Handling and Slaughter Program established under paragraphs 25 through 27 of this Consent Decision and Order. The designated alternate will act in the humane handling coordinator position for no more than five (5) days per month.

16. The humane handling coordinator, or the designated alternate, must be present during all handling and slaughter of livestock subject to federal inspection.

17. Within fifteen (15) calendar days of the humane handling coordinator vacating their assigned role, Respondent will assign a replacement humane handling coordinator who meets the qualifications described herein and submit their name and documentation of their education and work experience to the EOB Chief for concurrence. Respondent may submit a request to the EOB Chief for an extension of time under this paragraph if Respondent is unable to fill the role within the allotted time. If the designated alternate is chosen as the new humane handling coordinator, Respondent will designate a new alternate and submit their name and documentation of their qualifications to the EOB Chief for concurrence.

*Initial Assessment*

18. Prior to resumption of inspection services, Respondent will contract a qualified, independent third-party to conduct an initial assessment of Respondent's facility, operations, practices, and controls for humane slaughter and handling. The qualified, independent third-party must be certified by the Professional Animal Auditor Certification Organization, Inc. (PAACO) or have equivalent certification, subject to verification by FSIS. Respondent must submit to the EOB Chief, for concurrence, the name and credentials of the independent third-party prior to the initial assessment.

19. The initial assessment will, at a minimum:

a. list and provide an analysis of all incidents, since January 1, 2017, of regulatory noncompliance with humane handling requirements at Respondent's facility documented by FSIS in Noncompliance Records (NR), Notices of Suspension, or as otherwise documented by FSIS;

b. analyze Respondent's past livestock handling and stunning practices and describe how those practices and/or other factors contributed to the regulatory violations described in subparagraph (a); and

c. recommend corrective actions and preventive measures for adoption by Respondent that will prevent the recurrence of noncompliance. These corrective actions shall include, but are not limited to, any structural changes or repairs, management changes, employee training, and new humane handling methodologies or programs.

20. Respondent will prepare a written response to the initial assessment. Respondent's written response will include, at a minimum:

a. a description of the corrective actions taken in response to the assessment recommendations; and

b. documentation demonstrating the implementation of the corrective actions, including invoices and photographs of facilities and equipment, and/or any other relevant supporting documents that prove corrective actions were taken.

21. Prior to resumption of inspection services, Respondent will submit a copy of the initial assessment and Respondent's written response to the EOB Chief for review and concurrence.

*Physical Condition of Facilities and Humane Handling and Slaughter Equipment*

22. Prior to resumption of inspection services, Respondent will provide the EOB Chief with documentation demonstrating that all stunning devices, restraining equipment, and any other equipment used in livestock handling and slaughter have been tested for functionality and, as applicable, have received service from the manufacturing company or otherwise in accordance with the manufacturer's guidelines.

23. Prior to resumption of inspection services, Respondent will provide the EOB Chief with documentation demonstrating that all facilities, structures, and areas in which live animals are held have received evaluation and repair as needed to meet the requirements of 9 C.F.R. § 313.1.

24. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent will demonstrate that the structural and physical conditions of the establishment comply with the FMIA, HMSA, and the regulations under 9 C.F.R. Part 313.

*Humane Handling and Slaughter Program*

25. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent will develop a written Humane Handling and Slaughter Program to ensure that any slaughter of livestock and any handling of livestock in connection with slaughter at Respondent's establishment complies with the FMIA, HMSA, and 9 C.F.R. Part 313.

26. Respondent's written humane handling procedures will, at a minimum:
- a. detail procedures for the construction, maintenance, and monitoring of pens, driveways, ramps, and stunning areas so that: (i) they are kept in good repair, (ii) they are free from sharp or protruding objects; (iii) the floors of livestock pens, driveways, and ramps are constructed and maintained in a manner to provide slip resistant surfaces; and (iv) the facilities are monitored and preventive actions are taken in a timely manner to prevent pain and injury to any animal;
  - b. identify procedures to be implemented and monitored by Respondent for the unloading, driving, and holding of livestock that will prevent or minimize discomfort, stress, and excitement;



c. identify the implements and aids to be used by employees during the unloading and driving of animals and the acceptable procedures and limitations for the use of the implements and aids to be implemented and monitored;

d. address procedures to be implemented and monitored to ensure: (i) that pen structures are appropriate to the size of the animals to avoid overcrowding; (ii) that livestock are placed in holding pens that provide functioning watering systems, and systems are monitored as frequently as necessary to ensure continuous access to potable water at all times and at all ambient temperatures; and (iii) that all animals that are held overnight are provided adequate quantities of formula or feed, appropriate for the species and age of the animal, and clean potable water at all times;

e. address procedures to be implemented and monitored for the arrival and unloading of animals into holding areas;

f. address procedures to be implemented and monitored to ensure that suspect, ambulatory disabled, and non-ambulatory disabled animals will be immediately identified, segregated into separate and distinct holding areas, and handled using humane methods;

g. address procedures to be implemented and monitored for the prompt administration, monitoring, and documentation of animal euthanasia to ensure minimal animal suffering;

h. ensure that the monitoring and documentation of all handling procedures are conducted on a daily and on-going basis, or as applicable, to ensure that livestock are treated in a humane manner prior to slaughter; and

i. ensure that corrective actions are implemented and recorded in a timely manner to prevent recurrence of noncompliance.

27. Respondent's written humane slaughter procedures will, at a minimum:
- a. identify the systems and procedures, which will account for variations in animal size and strength, for the restraint of animals prior to the application of a stun that are appropriate for each species and ensure that animal movement is limited to allow accurate and effective stunning and slaughter procedures in a manner that minimizes pain and excitement;
  - b. identify specific stunning devices and projectiles that will provide adequate force to ensure animals are unconscious after a single application. Stunning devices and projectiles must be appropriate for the type, size, and age of the animal to be stunned;
  - c. identify the anatomical locations for the placement of the stunning device, per species and per stunning method, to ensure that animals will be rendered immediately unconscious and remain unconscious throughout shackling, hoisting, sticking, and bleeding;
  - d. address procedures to be implemented and monitored that ensure all backup devices, parts, and projectiles are readily accessible to the stunning employee(s);
  - e. address procedures to be implemented and monitored that ensure storage and maintenance of all stunning equipment, parts, and projectiles, including backup equipment, are done under appropriate conditions;
  - f. address procedures to be implemented and monitored for assessing signs of consciousness in each animal after the application of a stun and throughout shackling, hoisting, sticking, and bleeding;
  - g. address the specific actions to be taken by employees in the event of an ineffective stun or a return to consciousness after the application of a stun;
  - h. address procedures to be implemented and monitored for the daily maintenance and testing of all slaughter equipment, including restraint devices and primary and

backup stunning devices. Daily maintenance and equipment testing procedures must be recorded every slaughter day;

i. address procedures for routine service of slaughter equipment, including restraint devices and primary and backup stunning devices, to ensure that equipment is kept in good repair. The frequency of service will be per the manufacturer's recommendations or other supporting documentation. Records of equipment service will be maintained with the written program and be available for review by inspection personnel;

j. ensure that the monitoring and documentation of all slaughter procedures are conducted on a daily and on-going basis, or as applicable; and

k. ensure that corrective actions are implemented and recorded in a timely manner.

#### *Establishment Management and Personnel Training*

28. Prior to resumption of inspection services, and subject to verification by FSIS, Respondent will ensure:

a. training for Respondent's management, supervisors, and for employees working in the live animal areas, in all aspects of Respondent's Humane Handling and Slaughter Program, as well as the humane handling and slaughtering requirements set forth in the HMSA (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). This training will be conducted under the direction of the humane handling coordinator and will ensure, at a minimum, that management and supervisory personnel, as well as the humane handling coordinator and designated alternate, are trained and qualified in: (i) livestock handling practices; (ii) restraint and stunning; (iii) signs of consciousness and unconsciousness; and (iv) the regulations in 9 C.F.R. Part 313.

b. additional training for employees conducting stunning procedures to ensure that those employees are trained in all aspects of Respondent's Humane Handling and Slaughter Program, as well as humane handling and slaughtering requirements set forth in the HMSA (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). This training will be conducted under the direction of the humane handling coordinator and will ensure, at a minimum, that employees are trained and qualified in: (i) the selection of the appropriate stunning device and projectile for each animal class, size, and type; (ii) the routine testing and monitoring of restraining and stunning equipment, including back-up devices, to ensure functionality; and (iii) actions to take in the event of an ineffective stun or a return to consciousness; and

c. completion and understanding of all training described in subparagraphs (a) and (b), measured by satisfactory test scores or other means of objectively measuring knowledge gained from recipients of the training.

29. Prior to resumption of inspection services, Respondent will submit to the EOB Chief, for review and concurrence, a copy of all training and educational program materials, including training records, test results, and any other materials and records for the training described in paragraph 28.

30. Respondent will make all training and education materials, training records, test results, and other materials and records of the initial training of employees and management personnel available to FSIS personnel for review and/or copying upon request by FSIS, in a timeframe consistent with FSIS requirements.

**Conditions to be Met Upon Resumption of Inspection Services**

*Humane Handling and Slaughter Program*

31. 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 Consent Decision and Order.

32. Respondent shall document and maintain a written record of the implementation, monitoring and maintenance of its Humane Handling and Slaughter Program for the duration of this Consent Decision and Order and make these records available to FSIS personnel for review and/or copying upon request by FSIS, in a timeframe consistent with FSIS requirements.

*Reassessment of the Humane Handling and Slaughter Program*

33. Upon resumption of inspection services, and subject to verification by FSIS, Respondent will ensure that the humane handling coordinator will reassess the Humane Handling and Slaughter Program to determine the program's effectiveness in complying with this Consent Decision and Order and statutory and regulatory requirements. This reassessment will be conducted and documented by the humane handling coordinator on a continual basis but at least every ninety (90) days from the effective date of this Consent Decision and Order.

34. Each reassessment will include, at a minimum:

a. an evaluation of all records associated with program implementation generated during the ninety (90) day period;

b. a summary of any failures to implement the Humane Handling and Slaughter Program, NRs documented for 9 C.F.R. Part 313 violations, and any actions taken by FSIS under 9 C.F.R. § 500.3(b) during the ninety (90) day period;

c. a summary of any corrective actions taken as a result of any program deviations, NRs, and FSIS actions during the ninety (90) day period;

d. an assessment of the adequacy of the program and its effectiveness in maintaining compliance with the Consent Decision and Order and statutory and regulatory requirements; and

e. a summary of any actions taken as a result of the reassessment, including changes to the written program, personnel, facilities, or equipment.

35. Upon resumption of inspection services, Respondent will submit records of each reassessment to the EOB Chief, for review, within fifteen (15) calendar days after the reassessment is conducted.

#### *Third-Party Audits*

36. Upon resumption of inspection services, and subject to verification by FSIS, Respondent shall cause to be made, by an independent third-party who is Professional Animal Auditor Certification Organization, Inc. (PAACO) or equivalently certified, written audits of Respondent's effective implementation, monitoring, and maintenance of the Humane Handling and Slaughter Program required by this Consent Decision and Order. If the independent third-party is not PAACO certified, Respondent must submit to the EOB Chief, for review and concurrence, the name and credentials of the independent third-party.

37. The third-party audits shall be conducted at least as frequently as follows: the first third-party audit shall be conducted within one hundred eighty (180) calendar days from the resumption of inspection services for slaughter; and subsequent audits shall be conducted annually thereafter for the duration of this Consent Decision and Order.

38. Respondent shall prepare, for each third-party 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 any other programs reviewed by the auditor;
- b. any corrective actions or any other actions implemented or planned in response to the audit findings and recommendations; and
- c. supportable information and reasoning for any decision by Respondent to not implement any audit recommendation.

39. Respondent shall submit a copy of each third-party audit, a copy of Respondent's written response, and any other documents related to the audit to the EOB Chief within thirty (30) calendar days after each audit is completed.

40. For the purposes of paragraphs 36 through 39, an independent third-party shall be a person, entity, or corporation free from bias and without a relationship with Respondent that could give rise to a conflict of interest. Specifically, the person, entity or corporation conducting the audit shall not be a current or former owner, officer, director, employee, affiliate, representative, or agent of Respondent. If the EOB Chief has good cause to believe that a third-party audit was conducted by a person or entity currently or formerly affiliated with Respondent, or by a person or entity with a bias or a conflict of interest, any audit conducted by that person or entity shall be deemed disqualified for the purposes of complying with this Consent Decision and Order.

#### *Ongoing Training*

41. Upon the resumption of inspection services, and subject to verification by FSIS, Respondent will:

a. train and educate any new manager, supervisor, and employee working in live animal areas prior to starting their work duties, consistent with the requirements of paragraph 28 of this Consent Decision and Order; and

b. conduct annual training for all employees, current and new, working in live animal areas consistent with the requirements of this Consent Decision and Order.

42. Respondent will 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 and management personnel available to FSIS personnel for review and/or copying upon request by FSIS, in a timeframe consistent with FSIS requirements.

#### *Recordkeeping*

43. Respondent will keep and maintain full, complete and accurate copies of (a) all written records required by the FMIA, the regulations promulgated thereunder, and all applicable state or local statutes, (b) written records of all of its practices under its Humane Handling and Slaughtering Program, and (c) all other written records required by this Consent Decision and Order. Respondent will make all such records available to FSIS representatives for review and/or copying upon request, in a timeframe consistent with FSIS requirements.

44. Respondent will notify the EOB Chief of any changes or modifications to Respondent's Humane Handling and Slaughter Program, including changes and modifications to all related recordkeeping forms.

#### **General Provisions**

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



a. violate any section of the FMIA, PPIA, the regulations promulgated thereunder, or any federal, state, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated, non-inspected, misbranded or deceptively packaged meat or poultry 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 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 the Respondent in compliance with federal, state or local statutes or regulations or this Consent Decision and Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; or fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in the Respondent's business; or

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

46. Respondent will 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), Sanitary Standard Operating Procedures (SSOP), HACCP, and all other requirements as specified in 9 C.F.R. Parts 310, 313, 416, 417, and 418 as applicable.

47. Respondent will fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of Respondent's compliance with this Consent Decision and Order.

#### **Enforcement Provisions**

48. The FSIS Administrator will have the right to summarily withdraw slaughter inspection services upon a determination by the EOB Chief, or his or her designee, that one or more conditions set forth in this Consent Decision and Order have been violated. It is acknowledged that Respondent retains the right to request an expedited hearing pursuant to the applicable 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 the applicable Rules of Practice.

49. Nothing in this Consent Decision and Order will preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings or preclude FSIS from taking administrative action under the FMIA, PPIA, and the regulations promulgated thereunder.


#### **Miscellaneous Provisions**

50. If any provision of this Consent Decision and Order is declared invalid, such declaration will not affect the validity of any other provision herein.


51. This Consent Decision and Order will become effective upon issuance by the Administrative Law Judge.

52. This Consent Decision and Order will remain in effect for three (3) years from the date of issuance by the Administrative Law Judge.

Copies of this Consent Decision and Order shall be served upon the parties.

  
E.L. Blood & Son, Inc.  
By: Richard Blood, Sr., President P

  
Robert Hibbert  
Attorney for Respondent P

  
Scott Safian, Chief  
Enforcement Operations Branch P  
Food Safety and Inspection Service P

  
Tracy McGowan  
Attorney for Complainant P

Issued this 7<sup>th</sup> ~~th~~ day of May, 2021 P

CHANNING STROTHER Digitally signed by CHANNING STROTHER  
Date: 2021.05.07 14:41:09 -04'00'  
CHIEFP ADMINISTRATIVE LAW JUDGE P