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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

Tank's Meat Inc. and
Eric and Kurt Amstutz

Docket Nos.
(FMIA/PPIA)

16-0087
16-0088
16-0089

Respondents

Consent Decision and Order

This proceeding was instituted under Title I of 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. §§ 500.1 et seq.) to refuse Federal inspection services to Respondent Tank's Meat Inc. and Eric and Kurt Amstutz, herein referred jointly as Respondents. This proceeding was commenced by a complaint filed 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 poultry 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 jurisdictional allegations of the complaint. Respondents neither admit nor deny the remaining allegations and waive oral hearing and further proceedings. Respondents, and the owners, officers, directors, partners, successors, assigns, and affiliates of Respondents, waive any claim against complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. section 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.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Tank's Meat, Inc., Respondent corporation, is and at all times material herein was, a small establishment licensed through the Ohio Department of Agriculture and operating a Raw Intact and Raw Non-Intact HACCP plan under the license number of ODA Est. #76 located at 3355 State Route 51, South Elmore, Ohio, 43416.

2. Respondents Eric and Kurt Amstutz, are and at all times material herein were, officers of and responsibly connected individuals to Tank's Meat, Inc.

3. On or about August 31, 2015, Eric and Kurt Amstutz submitted an application for Federal Meat and Poultry Inspection, showing both Eric and Kurt Amstutz as Principal/Sole owner and holder of 10% or more voting stock in the corporation.

4. On July 22, 2014, in the Ottawa County Municipal Court, State of Ohio, respondents pled No Contest and were sentenced on 3 misdemeanors related to the offering for sale meat products that had not been inspected, in violation of sections 918.01 to 918.11 of the Ohio Revised Code (M-4) and judgment was entered on said date.

Conclusion

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

Order

Federal meat and poultry inspection services under Title I of the FMIA and the PPIA are refused to Respondent Company, its owners, officers, directors, partners, affiliates, successors and assigns, directly or through any corporate or other device, for a period of two (2) years, beginning on the effective date of this Order; Provided, however, said refusal of inspection services shall be held in abeyance, and meat and poultry inspection services shall be provided to Respondents, pursuant to a conditional grant of inspection, for so long as the statutory and regulatory requirements for applicable inspection services and all terms and conditions of this Order set forth below, are met and maintained:

Establishment Management and Personnel

1. Prior to the effective date of this Order, and subject to verification by FSIS, Respondents shall appoint or hire, with concurrence of the Enforcement and Litigation Division (hereafter "ELD") Director, and individual (other than Eric and Kurt Amstutz) to the position of Corporate Ethics and Compliance Officer (hereinafter "CECO"). The CECO will be responsible, along with the Corporate President, for ensuring compliance with the Order. Any changes to the CECO shall be made with the concurrence of the ELD Director. The CECO shall have the responsibility for: (a) supervising and monitoring Respondent compliance with this Order; (b) implementation the Ethics Training and Standards of Conduct Policy and Program under paragraph 5 of the Order; (c) assuring that all employees are trained in food safety principles and ethics in accordance with this Order; (d) assuring that Respondents maintain at their facility those records and reports required by this Order; and (e) reporting to FSIS on Respondent Company's compliance with the Order.

Food Safety and Compliance Provisions

2. Prior to the effective date of this Order, and subject to verification by FSIS, Respondents shall meet all applicable requirements for inspection service as provided for by 9 C.F.R. Part 304 and demonstrate compliance with statutory and regulatory requirements, including, but not limited to, 9 C.F.R. Parts 305, 307, 381, 416, 417, and 418, upon a review and examination of (a) Respondent's written sanitation plans, hazard analysis, process controls, and any other plans or documents required by FSIS regulations or by this Order; and (b) the physical and sanitary conditions of Respondent's establishment.

3. Upon the effective date of this Order, and for the duration of this Order, subject to verification by FSIS, Respondents shall comply with the Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP), Hazard Analysis and Critical Control Point (HAACP), specified in Title 9 Code of Federal Regulations, Part 416, and 417, as applicable.

Food Defense Provision

4. Prior to the effective date of this Order, continuing thereafter for the period of this Order, and subject to verification by FSIS, Respondents shall develop, write, implement, test, assess and maintain a written, functional food defense plan. The food defense plan shall consist of control measures or standard operating procedures Respondents will apply to prevent intentional product tampering or adulteration, and contact information to be used by Respondents in emergency situations or if product is tampered with or intentionally adulterated. The food safety defense plan shall address, as applicable, water systems, processing and/or manufacturing, product recall, product storage areas, shipping and receiving, facility security, and employee identification and security.

Ethics Training and Standards of Conduct Policy and Program

5. Within ninety (90) calendar days of the issuance of a conditional grant of inspection, Respondents shall participate in and successfully complete a training program(s) or educational course(s) encompassing ethical business practices and compliance with applicable State and Federal statutes and meat and poultry regulations. Prior to participating in this course, Respondents shall submit a detailed description of the proposed training course(s) for concurrence by the Director, ELD, or designee. Respondents shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request to any FSIS program personnel.

6. Within sixty (60) calendar days of the issuance of a conditional grant of inspection, Respondents shall develop and submit for review by the Director, ELD, employee Standards of Conduct Policy and Program to include, at a minimum:

(i) a statement of Respondents Company's commitment and of its officers, managers, and employees to comply with all applicable Federal and State food safety and other laws in the conduct of their business; (ii) a statement of Respondent's commitment to maintain a safe work environment where mutual respect and the ability to work together productively is supported and precludes any acts of assault, threats of assault, intimidation, resistance, or interference; (iii) a statement of Respondent Company's commitment to promote communications and exchanges between Respondent Company's officers, managers, and employees and FSIS personnel that are professional, respectful, business like, non-threatening, and non-offensive in gender or ethnicity; (iv) guidelines for Respondents Company's officials, managers, and employees to follow with respect to food safety and ethics issues; and (v) measures for Respondents Company's officers, managers, and employees to report alleged violations of food safety, compliance, or ethics

issues, or violations of company policies, to Respondent Company's officers or managers, without fear of reprisal and for Respondent Company to document and address reported allegations.

7. The Standards of Conduct Policy and Programs shall be permanently displayed in a prominent location in Respondent Company's federal establishment and shall be provided to and discussed with all current and future officers, managers, and employees, and shall require written acknowledgement by each individual of receipt, discussion, understanding, and adherence to the policy and program.

Record Keeping Provisions

8. Respondents shall record and maintain complete and accurate written records of (a) all records required to be maintained by the FMIA, PPIA, and implementing regulations; and (b) all records required by this Order.

9. Respondents shall make all records regarding its federally inspected establishments or other regulated business or business activities at said establishments available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Implementation

10. Respondents shall implement the company policies and programs required by this Order, require strict adherence to the company policies and programs on the part of all current and future officers, managers, and employees, and take and document corrective action, including disciplinary action, when necessary.

General Provisions

11. Respondents and any of the Respondent's company's, partners, employees, agents or affiliates, and its officers, managers, and responsibly connected officials shall not:

(a) criminally violate any section of the FMIA, PPIA, or regulations promulgated thereunder, any state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated, non inspected, misbranded or deceptively packaged meat, poultry, egg products or other foods 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 integrity needed for the conduct of operations affecting public health; or

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

(d) conduct any operations requiring Federal inspection outside Respondent Company's official hours of operations without first submitting a written request to, and receiving written approval from, FSIS Chicago District Office.

12. For positions which would make an individual responsibly connected to Respondents Company as defined by 21 U.S.C. 467(a) and 671, Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal, state, or territorial court, of any felony, or of more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by State and Federal law, Respondents shall

immediately terminate their connection with any such individual when that individual's conviction becomes known to Respondents.

13. Respondents shall fully and completely cooperate with any FSIS or USDA investigation, inquiry, review, or examination of Respondent's compliance with the FMIA, PPIA, or with the terms of this Order.

Enforcement Provisions

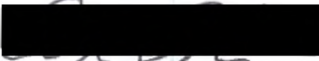
14. The Administrator, FSIS, shall have the right to summarily withdraw inspection services from Respondents upon a determination by the Director, E.I.D. or his or her designee, that one or more conditions set forth in paragraphs 1 through 13 of this Order have been violated. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the 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 Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, and the regulations promulgated thereunder.

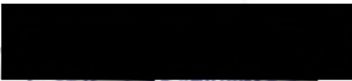
15. The Administrator, FSIS shall have the right to summarily withdraw inspection services upon any felony conviction of Respondents, newly assigned plant managers, alternates or corporate officers, or upon any two misdemeanors involving the sale and distribution unwholesome, adulterated, or misbranded products, based upon any violations of law occurring prior to, or subsequent to the effective date of this Order.

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


17. This Order shall be considered issued on the date that an Administrative Law Judge signs it but shall become effective on the date that the conditional grant of Federal inspection services is issued to Respondents.

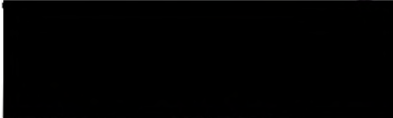
18. This Order shall expire two (2) years from the date on which the conditional grant of Federal inspection services is issued to Respondents.

BY: 
Eric Amstutz, President


Kurt Amstutz, Vice President


Shawn Stevens, Attorney for Respondents


for Scott C. Saffran, Director
Evaluation and Enforcement Division
Food Safety and Inspection Service
U.S. Department of Agriculture


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

Issued this 29 day of MAR 2016

at Washington, D.C.


Administrative Law Judge

Jill S. Clifton