



Steve Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Meat and Poultry Inspection Division

Donald H. Delozier
State Director

June 21, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Pedro Hernandez
Ms. Zenaida Hernandez
1945 Dilling Farm Road
Charlotte, NC 28214

Mr. Felicito Hernandez
624 Trailing Rock Road
Charlotte, NC 28214

**RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
OF THE MEAT INSPECTION LAW AND POULTRY PRODUCTS INSPECTION LAW
G.S. § 106-549.17, 106-549.23, 106-549.53, 106-549.56 and 106-403.**

Dear Mr. Pedro Hernandez, Ms. Zenaida Hernandez, Mr. Felicito Hernandez,

Pursuant to North Carolina General Statute (G.S.) 106-549.35(c) and (G.S.) 106-549.59(a1) this letter is notice of a civil penalty by the North Carolina Department of Agriculture and Consumer Services, Meat and Poultry Inspection Division (NCDA&CS). The civil penalty assessment document is attached.

Within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing in the Office of Administrative Hearings appealing the penalty assessment.

Pursuant to G.S. §150B-22, informal settlement negotiations may be initiated at any time. To negotiate a settlement of this assessment, present your offer to Mr. Donald H. Delozier, Director, Meat & Poultry Inspection Division, who may be contacted by telephone at (919) 733-4136. Settlement offers do not extend the 60 day deadline for payment or filing of a contested case petition.

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Additional information about your options is provided below:

-PAYMENT-

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Donald H. Delozier, Director
Meat & Poultry Inspection Division
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

-APPEAL-

If you file a contested case petition, it must be in writing and in the form prescribed by G.S. § 150B-23. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-1001

Any questions about filing a petition may be directed to the Clerk of OAH by telephone (919) 733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

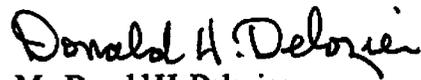
Mr. Ray Starling
North Carolina Department of Agriculture and Consumer Services
Process Agent and General Counsel
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

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Your attention to this matter is appreciated.

Sincerely,



Mr. Donald H. Delozier
Director, Meat & Poultry Inspection Division

DHD:aw

Attachments: Assessment Document

CC: Mr. Barry Bloch, Assistant Attorney General
Mr. Ray Starling, General Counsel

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE & CONSUMER SERVICES
MEAT & POULTRY INSPECTION DIVISION

IN THE MATTER OF)

Mr. Pedro Hernandez)
Ms. Zenaida Hernandez)
Mr. Felicito Hernandez)

FOR VIOLATIONS OF THE N.C. COMPULSORY)
MEAT INSPECTION LAW AND N.C. POULTRY)
POULTRY PRODUCTS LAW)
G.S. § 106-549.17, 106-549.23, 106-549.53)
106-549.56 & 106-403)

NOTICE OF VIOLATIONS
AND ASSESSMENT OF
CIVIL PENALTY

Acting pursuant to North Carolina General Statute (G.S.) § 106-549.35(c) and (G.S.) § 106-549.59(a1) Mr. Donald H. Delozier, Director, Meat and Poultry Inspection Division of North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

I. FINDINGS OF FACTS:

- A. This investigation is a result of anonymous information received on or about July 12, 2011 alleging that there was a non-inspected slaughter/processing operation being conducted at 1945 Dilling Farm Road, Charlotte, NC.
- B. On July 23, 2011, North Carolina Department of Agriculture & Consumer Services (NCDA & CS), Meat and Poultry Division (MPID), Food Compliance Officer Percy Russell (hereinafter, FCO Russell, respectively), conducted surveillance at the property of Mr. Pedro Hernandez and Ms. Zenaida Hernandez (hereinafter, Mr. Pedro and Ms. Zenaida) located at 1945 Dilling Farm Road, Charlotte, NC and observed vehicles entering and exiting the property location of the alleged non-inspected slaughter and processing facility.
- C. On August 27, 2011, NCDA & CS, MPID Food Inspector Jose Romero, while posing as a member of the general public, went to 1945 Dilling Farm Road, Charlotte, NC and purchased two (2) pounds of pork ribs, one (1) pound of stew beef, six (6) pounds of pork lungs, a pork heart, a pork liver, a beef kidney and one slaughtered and processed chicken. NCDA & CS, MPID Food Inspector Jose Romero paid a total of \$59.00 cash for the non-inspected/misbranded and/or adulterated meat and poultry products which were packaged in five white plastic bags containing no NCDA or USDA marks of inspection or required labeling.
- D. The non-inspected/misbranded and/or adulterated meat and poultry products were transferred from NCDA & CS, MPID Food Inspector Jose Romero to FCO Percy Russell relevant to chain of custody proceedings.
- E. Upon taking custody of the non-inspected/misbranded and/or adulterated meat and poultry products, FCO Russell examined and photographed the contents.

- F. FCO Russell examined the meat pieces and saw no NCDA or USDA marks of inspection and several signs of adulteration which included feces on the pork meat and one pork lung that is considered unfit for human food.
- G. FCO Russell examined the chicken and observed no NCDA or USDA mark of inspection and several signs of adulteration which included the viscera still attached to the carcass.
- H. FCO Russell transferred the above mentioned misbranded/non-inspected and/or adulterated meat and poultry products directly to the MPID Raleigh Compliance Office, following the Division chain of custody proceedings.
- I. On October 14, 2011, NCDA & CS, MPID Food Compliance Officers Melanie Pollard (hereinafter, FCO Pollard, respectively), Daniel Moody, Jr. (hereinafter, FCO Moody, respectively) and FCO Russell, along with members of the Charlotte/Mecklenburg Police Department, executed a search warrant of the property owned by Mr. Pedro Hernandez and Ms. Zenaida Hernandez, 1945 Dilling Farm Road, Charlotte, NC, on behalf of the North Carolina Department of Agriculture and Consumer Services to investigate the slaughtering, processing and selling of misbranded, non-inspected and adulterated meat and poultry products to the general public.
- J. During the announcement of the execution of the search warrant, the son of the property owners, Mr. Felicito Hernandez, 624 Trailing Rock Dr., Charlotte, NC, stated that he was in charge of the non-inspected slaughtering and processing operation.
- K. Upon entering the property, FCO's Russell, Moody and Pollard observed, photographed and videotaped the wooden buildings on the property and the live animals which consisted of: twelve (12) sheep, forty-five (45) goats, eleven (11) cattle, sixty-six (66) hogs and eighty (80) chickens.
- L. On the property, there was an open-sided roof structure that contained a slaughter area. This slaughter area contained a stainless steel table, a white metal bathtub with a propane tank and burner system attached to it. The bath tub was being used as a scald vat for pigs.
- M. There was a holding pen directly attached to the slaughter area that contained three pigs which appeared to be waiting to be slaughtered.
- N. Attached to the slaughter area was a wooden building (20 ft x 20 ft., tan in color) which was being used for processing the slaughtered animals and storing the non-inspected meat and poultry products which were being offered for sale and sold to the general public. Inside the processing room there was one commercial cooler with three glass doors, four household type chest freezers and one household refrigerator/freezer which all contained non-inspected/misbranded and/or adulterated packaged meat (goat, sheep, pork and beef) products which were being stored and offered for sale to the public.

- O. FCO's Russell, Moody and Pollard estimated that 940 pounds (85 packages) of non-inspected/misbranded (no NCDA or USDA mark of inspection or required labeling) and/or adulterated meat products were observed and NC Detained (Tag # 4110-4115) and photographed.
- P. FCO's Russell, Moody and Pollard examined the NC Detained non-inspected/misbranded and/or adulterated meat products and observed various packages of the goat, sheep, beef and pork that contained fecal material directly on the meat.
- Q. Food Compliance Officers Russell, Moody and Pollard observed and photographed Mr. Felicito Hernandez voluntarily destroy the estimated 940 pounds of the NC Detained meat products.
- R. Inside the processing room was a meat band saw, a one compartment stainless steel sink with a water hose attached, ten plastic containers, several scales, one scalding water tank for processing chickens, a wood cutting block, a wood table, several knives and a metal cone used for slaughtering chickens.
- S. During the search conducted by FCO's Russell, Moody and Pollard they observed Mr. Felicito Hernandez slaughtering and processing chickens for the general public.
- T. Numerous unsanitary conditions and practices were observed by FCO's Russell, Moody and Pollard which led to the direct adulteration of the slaughtered/processed animals. These unsanitary conditions and practices included but were not limited to:
- a. the band saw contained meat particles from previous day(s) use;
 - b. blood, bones, hooves and horns were observed lying around the area from previous day(s) slaughter/processing activities;
 - c. the equipment, tables and buildings showed no signs of routine cleaning or sanitizing;
 - d. the processing table located next to the kill floor had a white cutting board on the top which was discolored and deeply scored with knife marks;
 - e. the stainless steel processing table located next to the kill floor had a buildup of dried blood residues and hair, from the previous day(s) slaughter, on the surface area;
 - f. no hot water source was observed in the building;
 - g. no device to sanitize knives was observed in the building;
 - h. the scald vat was a converted bathtub and had a buildup (black unidentified substance and hair) on the surface area from previous day(s) use;
 - i. a bag containing Kevlar gloves had heavy buildups (dirt, grime and meat particles) on the
 - j. surface area from previous day(s) use and;
 - k. knives used for processing had buildup (dried blood residue and hair) on the surface area from the previous day(s) use.

- U. On the south side grounds of the property, FCO's Pollard and Moody observed approximately five acres of land where it appeared holes had been dug to dispose of dead animals and offal (internal organs, heads and bones) generated by the non-inspected slaughter and processing facility.
- V. FCO's Pollard and Moody observed one partially decomposed dead calf in one of the holes and one partially decomposed, dead calf covered with maggots was also observed on the south side of the grounds.
- W. On October 14, 2011, Mr. Felicito Hernandez was issued on-site cease and desist letters for the selling of non-inspected/misbranded and/or adulterated meat and poultry products.
- X. On October 14, 2011, Mr. Felicito Hernandez stated verbally that he had been slaughtering, processing and selling meat and poultry products to the general public for three years.
- Y. Three ledger books were seized from inside the non-inspected slaughter/processing facility which contained the names and/or telephone numbers of customers and daily dollar amounts for sales.

II. CONCLUSIONS OF LAW

- A. Mr. Pedro Hernandez, Ms. Zenaida Hernandez and Mr. Felicito Hernandez are found to be slaughtering, processing, storing, offering for sale and selling non-inspected/misbranded and/or adulterated meat and poultry products to the general public and improperly disposing of dead domesticated animals in violation of General Statutes 106-549.17, 106-549.23, 106-549.53, 106-549.56 and 106-403 and may be assessed a civil penalty of up to five thousand (\$5,000.00) dollars per violation under G.S. §106-549.35(c) and under G.S. §106-549.59 (a1).
- B. The Commissioner of Agriculture, pursuant to G.S. §106-549.35(c) and G.S. §106-549.59 (a1) has the authority to assess civil penalties in this matter. The authority has been delegated to Mr. Donald H. Delozier, Director, Meat and Poultry Inspection Division by the Commissioner of Agriculture pursuant to G.S. §143B-10(a).

III. DECISION

As required by G.S. §106-549.35(c) and G.S. §106-549.59 (a1) and in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of G.S. § 106-549.17, 106-549.23, 106-549.53, 106-549.56 and 106-403.

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Accordingly Mr. Pedro Hernandez, Ms. Zenaida Hernandez and Mr. Felicito Hernandez are assessed a civil penalty of:

\$20,000.00 for violating G.S. §106-549.23(3)a – (Misbranded Meat)
\$14,000.00 for violating G.S. §106-549.23(3)b – (Not Inspected/Meat)
\$15,000.00 for violating G.S. §106-549.23(3)a – (Adulterated Meat)
\$3,000.00 for violating G.S. §106-549.56(2)a – (Adulterated Poultry)
\$4,000.00 for violating G.S. §106-549.23(1) – (Prohibited Slaughter)
\$2,000.00 for violating G.S. §106-549.53(a) – (Inspection before Slaughter/poultry)
\$2,000.00 for violating G.S. §106-549.56(2)a – (Misbranded Poultry)
\$2,000.00 for violating G.S. §106-549.56(2)b – (Not Inspected/Poultry)
\$4,000.00 for violating G.S. §106-549.17a – (Inspection before Slaughter/meat)
\$2,000.00 for violating 106-403 – (Disposition of Dead Domesticated Animals)

\$68,000.00 for violating G.S. §106-549.17, 106-549.23, 106-549.53, 106-549.56 and 106-403.
\$68,000.00 TOTAL AMOUNT ASSESSED.

Date June 21, 2012

Donald H. Delozier
Mr. Donald H. Delozier, Director
Meat and Poultry Inspection Division