



Steve Troxler
Commissioner

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

Donald H. Delozier
State Director

November 28, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jose Palafox
7154 Chrystal Crest Way Lot 9
Charlotte NC 28269

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
OF THE MEAT INSPECTION LAW
G.S. § 106-549.23 and 106-549.24

Dear Mr. Jose Palafox:

Pursuant to North Carolina General Statute (G.S.) 106-549.35(c) 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.

Mr. Jose Palafox
Page 2

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
Mr. 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:

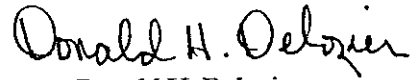
Mr. Ray Starling
North Carolina Department of Agriculture and Consumer Services
Process Agent and General Counsel
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

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.

Mr. Jose Palafox
Page 3

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink that reads "Donald H. Delozier". The signature is written in a cursive style with a large initial "D".

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

DHD:aw

Attachments: Assessment Document
CC: Ms. Anne J. Brown, Special Deputy Attorney General

IN THE MATTER OF)

Mr. Jose Palafox)

FOR VIOLATIONS OF N.C. COMPULSORY)
MEAT INSPECTION LAW AND POULTRY)
PRODUCTS INSPECTION LAW)
G.S. § 106-549.23 & 106-549.24)

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 (MPID) of the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

I. FINDINGS OF FACTS:

- A. On or about August 2, 2011, an anonymous complaint was received in the Raleigh Office alleging that Mr. Jose Palafox, 7154 Crystal Crest Way Lot 9, Charlotte, NC was selling misbranded/non-inspected meat products to the general public at the Barnyard Flea Market, 3856 Dallas High Shoals Road, Dallas, NC.
- B. On August 27, 2011, a Food Inspector with the North Carolina Department of Agriculture & Consumer Services (NCDA & CS), Meat and Poultry Division (MPID), while posing as a member of the general public, visited the Barnyard Flea Market and observed Mr. Palafox cooking pork skins at vendor booth A079.
- C. The NCDA & CS, MPID Food Inspector placed an order with an unidentified Hispanic female working at Mr. Palafox's vendor booth A079 for one pound of chorizo (Hispanic type pork sausage), one pound of cecina (salted beef) and one & a half pound of pork blood pudding. Mr. Palafox was observed cooking pork skins at the booth location at the time of the request for the above mentioned meat items.
- D. Due to the above listed items not being on public display for sale to the general public, the Hispanic female went to the back of a white dodge minivan located at vendor booth A079 and retrieved the order for the chorizo, cecina and pork blood pudding.
- E. The NCDA & CS, MPID Food Inspector paid a total of \$24.00 cash for the above mentioned meat products which were placed in three white plastic bags which contained no marks of inspection or required labeling.
- F. The misbranded/non-inspected meat products were transferred from the Food Inspector to NCDA & CS, MPID Food Compliance Officer Percy Russell ("FCO Russell"), relevant to chain of custody procedures.

- G. FCO Russell photographed and transported the misbranded/non-inspected meat products to the NCDA & CS, MPID office in Raleigh, NC, where they were secured under lock and key; relevant to chain of custody procedures.
- H. On September 29, 2011, NCDA & CS, MPID Food Compliance Officer Melanie Pollard ("FCO Pollard") and FCO Russell visited the Conover Flea Market located on West Conover Blvd., Conover NC to further investigate and interview Mr. Palafox in reference to his selling of misbranded/non-inspected meat products at the Barnyard Flea Market, 3856 Dallas High Shoals Highway, Dallas, NC on August 27, 2011.
- I. While conducting a review of Mr. Palafox's mobile food unit, FCO Russell and FCO Pollard observed a plastic lug of chorizo and a plastic lug of pork blood pudding which was consistent with the misbranded/non-inspected meat products sold to the NCDA & CS, MPID Food Inspector, who was posing as a member of the general public, on August 27, 2011 at Barnyard Flea Market, 3856 Dallas High Shoals Road, Dallas, NC.
- J. Mr. Palafox alleged that he purchased the pork from Restaurant Depot in Charlotte, NC but could not provide purchasing invoices or receipts for the pork used to process the two above mentioned meat items.
- K. In a signed statement dated September 29, 2011, Mr. Palafox stated that he had processed, stored, transported, offered for sale and sold misbranded/non-inspected meat products, which did not contain a NCDA or USDA mark of inspection or required labeling, to the general public for approximately two months at the Barnyard Flea Market, 3856 Dallas High Shoals Road, Dallas, NC.
- L. The misbranded/non-inspected meat products that Mr. Palafox processed, stored, transported, offered for sale and sold without the benefits of state (NCDA) or Federal (USDA) inspection were cecina (salted beef), chorizo (Mexican type pork sausage) and pork blood pudding.
- M. In a signed statement dated September 29, 2011, Mr. Palafox alleged that he processed the misbranded/non-inspected meat products in a mobile food unit which was parked at his residence.
- N. Mr. Palafox stated that he transported the misbranded/non-inspected meat products in a cooler to the Barnyard Flea Market in his personal vehicle which was a white dodge minivan.
- O. Mr. Palafox stated that he hid the misbranded meat products in his personal vehicle and took orders from his customers and then went to his personal vehicle to get the misbranded meat products which were placed in a plastic shopping bag for his customers.
- P. In a signed statement dated September 29, 2011, Mr. Palafox stated that he was aware that the transporting, processing, storing and offering for sale and selling of misbranded meat products to the general public was a violation of the North Carolina Compulsory Meat Inspection Law but still continued to process, store, transport, offer for sale and sell misbranded meat products to the general public.

Mr. Jose Palafox

Page 6

- Q. On September 29, 2011, Mr. Palafox was issued a cease and desist letter for the processing and selling of misbranded meat products.
- R. The NCDA&CS, MPID, had previously found Mr. Jose Palafox to be in violation of the North Carolina Compulsory Meat Inspection Law on February 23, 2011.
- S. On April 19, 2011, a Civil Penalty Assessment was issued to Mr. Jose Palafox in the amount of \$1,000.00 for the previous violation dated February 23, 2011.

II. CONCLUSIONS OF LAW

- A. Mr. Jose Palafox found to be processing, storing, transporting, offering for sale and selling misbranded/non-inspected (no mark of inspection or required labeling) meat products in violation of General Statutes 106-549.23 and 106-549.24 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).
- 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) in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of G.S. § 106-549.23 and G.S. §106-549.24.

Accordingly Mr. Jose Palafox, is assessed a civil penalty of:

\$5,000.00 for violating G.S. § 106-549.23 and G.S. §106-549.24
\$5,000.00 TOTAL AMOUNT ASSESSED.

NOV. 28, 2011
Date

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