



Steve Troxler
Commissioner

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

W. Alan Wade
State Director

July 8, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gregory Hamm
Chef Ham Inc. dba P.G. Werth's Restaurant & Market
504 Forrest Drive
Sanford, North Carolina 27330

**RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
OF THE MEAT AND POULTRY INSPECTION LAWS
G.S. § 106-549.23 and G.S. § 106-549.56**

Dear: Mr. Gregory Hamm

Pursuant to North Carolina General Statutes (G.S.) § 106-549.35(c) and § 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 Hearing 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. W. Alan Wade, Director, Meat & Poultry Inspection Division, who may be contacted by telephone at (919) 707-3180. Settlement offers do not extend the 60 day deadline for payment or filing of a contested case petition.

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. W. Alan Wade, 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:

Ms. Tina Hlabse
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. Gregory Ham
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Your attention to this matter is appreciated.

Sincerely,

W. Alan Wade

Mr. W. Alan Wade
Director, Meat & Poultry Inspection Division

WAW:cp

Attachments: Assessment Document
CC: Joe Reardon, Assistant Commissioner
Tina Hlabse, General Counsel
Chris McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF LEE

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

IN THE MATTER OF)
)
Chef Hamm Inc. dba P.G. Werth's Restaurant & Market)
)
FOR VIOLATIONS OF N.C. COMPULSORY)
MEAT AND POULTRY INSPECTION LAWS)
G.S. § 106-549.23 and G.S. § 106-549.56)

NOTICE OF VIOLATIONS
AND ASSESSMENT OF
CIVIL PENALTY

Acting pursuant to North Carolina General Statutes (G.S.) § 106-549.35(c) and § 106-549.59(a1), Mr. W. Alan Wade, 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 May 19, 2016 NCDA&CS, MPID Food Compliance Officer Daniel Moody Jr. (hereinafter, CO Moody), visited Café De Los Muertos, 300-50 West Hargett Street, Raleigh, North Carolina to perform a Random Compliance Review.
- B. CO Moody spoke with Mr. Mac Cady, who identified himself as the owner/operator of Café De Los Muertos.
- C. CO Moody inspected the chicken salad, sausage burritos and quiches with sausage that were being offered for sale to the general public at Café De Los Muertos. CO Moody discovered that those meat and poultry products being offered for sale were not bearing the U.S.D.A. or N.C.D.A. marks of inspection.
- D. On May 19, 2016, CO Moody detained and photographed approximately fifteen (15) pounds of misbranded chicken salad, sausage burritos and quiches with sausage.
- E. Mr. Mac Cady owner/operator of Café De Los Muertos stated the aforementioned misbranded meat and poultry products were purchased from P.G. Werth's Restaurant and Market, 927 West Morgan Street, Raleigh, North Carolina, and he in-turn offered them for sale and sold them to the general public.
- F. On May 19, 2016, CO Moody visited Chef Hamm, Inc. dba P.G. Werth's Restaurant & Market, 927 West Morgan Street, Raleigh, North Carolina, and interviewed Mr. Gregory Hamm, who identified himself as the owner/operator of P.G. Werth's Restaurant and Market.

- G. In a signed statement dated May 19, 2016 Mr. Gregory Hamm stated that he had contacted the North Carolina Department of Agriculture, Meat and Poultry Inspection Division in 2009 to discuss with them about obtaining NCDA Meat and Poultry inspection but decided to continue operating under County Health Inspection.
- H. Mr. Hamm stated in his signed statement that he had a large number of chicken salad labels printed with the NCDA mark of inspection. Mr. Hamm further stated that he in-turn applied the labels, which were bearing the fraudulent NCDA mark of inspection (P-319), to containers of chicken salad that were produced without the benefit of State Meat and Poultry Inspection.
- I. On May 19, 2016 CO Moody observed clear plastic containers of chicken salad at P.G. Werth's Restaurant & Market, 927 West Morgan Street, Raleigh, North Carolina that contained a fraudulent NCDA (State) mark of inspection (P-319), being offered for sale to the general public, in a refrigerated showcase in their retail market area.
- J. Mr. Gregory Hamm further stated in his signed statement that he would no longer place the NCDA mark of inspection on any meat and poultry products sold by his restaurants or markets.
- K. On May 24, 2016, while posing as a member of the general public, Food Compliance Officer Marvin Lackman (hereinafter, CO Lackman), entered Café 121, Sanford, North Carolina, owned by Mr. Hamm, and asked the hostess if Café 121 sold chicken salad to go. The hostess stated Café 121 did sell chicken salad and directed him to the refrigerated glass display case where there were approximately ten (10) containers of chicken salad, containing the fraudulent NCDA Mark of Inspection (P-319), being offered for sale.
- L. On May 24, 2016, a seven (7) ounce container of fraudulently labeled chicken salad was purchased by CO Lackman for a purchase price of \$7.75 plus \$0.54 sales tax for a total of \$8.29.
- M. The container of fraudulently labeled chicken salad (weighing 7 ounces) was photographed, secured and transported to NCDA&CS, Meat and Poultry Inspection Division, Raleigh Office.

II. CONCLUSIONS OF LAW

A. Mr. Gregory Hamm was found to be processing, storing, transporting, offering for sale and selling misbranded and fraudulently labeled meat and poultry products to the general public in violation of N.C. General Statute §106-549.23, and §106-549.56 and may be assessed a civil penalty of up to five thousand (\$5,000.00) dollars per violation under General Statutes §106-549.35(c) and §106-549.59(a1).

B. The Commissioner of Agriculture, pursuant to General Statute §106-549.35 (c), has the authority to assess civil penalties in this matter. The authority has been delegated to Mr. W. Alan Wade, Director, Meat and Poultry Inspection Division by the Commissioner of Agriculture pursuant to General Statute § 143B-10(a).

III. DECISION

A. As required by General Statute § 106-549.35 (c) and § 106-549.59(a1) in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of General Statutes § 106-549.23 and § 106-549.56.

Accordingly, Mr. Gregory Hamm is assessed a civil penalty of:

- \$ 1,000.00 for violating 106-549.23 – (Prohibited Sale of Misbranded Meat)
- \$ 1,000.00 for violating 106-549.56 – (Prohibited Sale of Misbranded Poultry)
- \$ 1,500.00 for violating 106-549.56 – (Fraudulently Applying the N.C.D.A. Mark of Inspection)

\$3,500.00 TOTAL AMOUNT ASSESSED.

July 8, 2016
Date

W. Alan Wade
W. Alan Wade
Meat and Poultry Inspection Division