



Steve Troxler
Commissioner

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

Donald H. Delozier
State Director

April 19, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jose Palafox
171 Privette Road
Matthews, NC 28105

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.

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,

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

DHD:aw

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

STATE OF NORTH CAROLINA
COUNTY OF UNION

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

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 December 20, 2010, NCDA & CS, MPID, Food Compliance Officer Melanie Pollard (“FCO Pollard”) visited the Wilkes Flea Market, 106 Armory Road, North Wilkesboro, NC.
- B. FCO Pollard spoke with an individual, who identified herself as an employee of Mr. Jose Palafox.
- C. FCO Pollard inspected the goods being offered for sale to the general public at the Wilkes Flea Market and discovered that some of the meat products being offered for sale lacked required labeling, rendering them misbranded, and the meat products bore a USDA mark of inspection for which Mr. Palafox lacked required authority to use, rendering the meat products fraudulently labeled.
- D. FCO Pollard surveyed all of the inventory of meat products on hand and found:
 - a) misbranded and/or fraudulently labeled cooked pork skins; and
 - b) misbranded and/or fraudulently labeled seasoned pork.
- E. FCO Pollard NC detained and photographed three (3) containers, weighing approximately 30 lbs. of the above referenced meat products, comprising the entire inventory on hand of such meat products being offered for sale.
- F. FCO Pollard observed one large plexiglass container of cooked pork skins, one small plastic container of seasoned pork and one small container of cooked pork skins being offered for sale to the general public.
- G. The employee (who would not supply her name) of Mr. Palafox alleged that the labels containing the USDA mark of inspection (Est. # 9826) were removed from their original containers and placed on the above mentioned containers.

- H. The employee of Mr. Palafox allowed her customers to choose the amount of meat products they wanted and in turn she placed the requested amount in a plastic bag.
- I. On December 20, 2010, FCO Pollard issued Mr. Jose Palafox an on-site cease and desist order prohibiting the sale of misbranded meat products.
- J. In a signed statement dated February 23, 2011, Mr. Palafox stated that the cease and desist letter that FCO Pollard issued him on December 20, 2010 was delivered to him by one of his employees that was operating his booth at the Wilkes Flea Market, 106 Armory Road, North Wilkesboro NC.
- K. On December 20, 2010, FCO Pollard interviewed Mr. Palafox by phone concerning the above mentioned violations, due to Mr. Palafox stating he was out of town and he could not meet with FCO Pollard.
- L. On February 19, 2011, NCDA & CS, MPID, Food Compliance Officer Percy Russell ("FCO Russell") visited the Sweet Union Flea Market, 4420 Highway 74 W, Monroe, NC.
- M. FCO Russell spoke with an individual, who identified himself as Mr. Jose Palafox.
- N. FCO Russell inspected the goods being offered for sale to the general public by Mr. Jose Palafox at the Sweet Union Flea Market and discovered the meat products being offered for sale lacked required labeling, rendering them misbranded, and the meat products bore a USDA mark of inspection for which Mr. Palafox lacked required authority to use, rendering the meat products fraudulently labeled.
- O. FCO Russell surveyed all of the inventory of meat products on hand and found:
 - a) misbranded and/or fraudulently labeled chicharrones (cooked pork skins); and
 - b) misbranded and/or fraudulently labeled chicharron prensado (seasoned pork).
- P. FCO Russell NC detained and photographed three (3) containers, weighing approximately 40 lbs. of the above referenced meat products, comprising the entire inventory on hand of such meat products being offered for sale by Mr. Palafox.
- Q. In a signed statement dated February 19, 2011, Mr. Palafox stated that he processed, transported, stored, offered for sale and sold misbranded meat products to the general public for approximately two months at the Sweet Union Flea Market, 4420 Highway 74 W, Monroe, NC.
- R. Mr. Palafox alleged that he purchased the cooked pork skins and seasoned pork from El Puerquito de Oro, Inc., 31 Bergen Street, Passaic, NJ, in boxes with the USDA marks of inspection.
- S. Mr. Palafox provided invoices for the above mentioned meat products however FCO Russell could not determine whether the invoices supported the product in question.

- T. Mr. Palafox stated he placed the chicharrones in a plastic lug and a plexiglass case and the chicharron prensado in a cake container and in turn offered the meat products for sale at the Sweet Union Flea Market.
- U. Mr. Palafox stated that he pulled the official USDA inspection legends off the original boxes and placed them on the plexiglass case.
- V. Mr. Palafox packaged the amount of misbranded meat products that his customers requested into a plastic bag.
- W. The plastic bags of meat products that Mr. Palafox was selling to his customers did not contain a NCDA or USDA mark of inspection or required labeling.
- X. On February 19, 2011, FCO Russell issued Mr. Jose Palafox an on-site cease and desist order prohibiting the sale of misbranded meat products.
- Y. Mr. Jose Palafox does not operate under county, state or federal inspection.

II. CONCLUSIONS OF LAW

- A. Mr. Jose Palafox found to be processing, storing, offering for sale and selling misbranded (no required labeling) and/or fraudulently labeled (unauthorized usage of USDA mark of inspection) 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).

Mr. Jose Palafox

Page 6

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:

\$1,000.00 for violating G.S. § 106-549.23 and G.S. §106-549.24

\$1,000.00 TOTAL AMOUNT ASSESSED.

April 19, 2011
Date

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