

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE ADMINISTRATOR  
FOOD SAFETY AND INSPECTION SERVICE

*dtl: Jan. 14, 2005*

In re: )  
)  
S & N Halal Live Poultry, )  
Ms. Habiber Nahar, )  
Mr. Abubakar Siddique ) STIPULATION AND  
) CONSENT AGREEMENT  
Respondents )

This administrative action was instituted by the delivery of a Notice of Ineligibility on November 4, 2004, to S & N Halal Live Poultry, Ms. Habiber Nahar, and Mr. Abubakar Siddique (hereinafter "Respondents"), notifying the Respondents that they were no longer eligible for exemption privileges under the Poultry Products Inspection Act (PPIA) (21 U.S.C. section 451 et seq.). The Notice of Ineligibility was effective upon receipt, and resulted from Respondents' alleged failure to maintain its facility in a sanitary manner to ensure food safety and public health as required by Section 14 of the PPIA (21 U.S.C. Section 463) and 9 C.F.R. Parts 381 and 416.

The aforementioned action was instituted by the Food Safety and Inspection Service (FSIS), an agency of the United States Department of Agriculture (USDA), (hereinafter "Complainant") in accordance with the PPIA (21 U.S.C.

section 451 et seq.) and Part 381 of the Poultry Products Inspection Regulations (9 C.F.R. Section 381.10 et seq.), promulgated pursuant to the PPIA.

The Parties have agreed that this administrative proceeding should be terminated by the execution of the Stipulation and Consent Agreement set forth below and have agreed to the following stipulations:

1. For the purpose of this Stipulation and the provisions of this Consent Agreement only, Respondents admit the jurisdictional allegations of the above-mentioned notification and all parties waive:
  - (a) any further procedural steps in this proceeding;
  - (b) any requirement that the Stipulation and Consent Agreement in this proceeding contains findings and conclusions with respect to fact or law, as well as to reason or basis thereof; and
  - (c) all rights to seek further judicial review or to otherwise challenge or contest the validity of this Stipulation and Consent Agreement.
2. This Stipulation and Consent Agreement is for settlement purposes in this proceeding only, and does not otherwise constitute an admission or denial by the Respondents that they have violated any Federal regulation or statute.
3. Respondents waive any action against USDA under the Equal Access

to Justice Act of 1980 (5 U.S.C. section 504 et seq.) for fees or other expenses incurred in connection with this proceeding.

### **Findings of Fact**

1. S & N Halal Live Poultry is now and at all times material herein a proprietorship operating an exempt poultry facility at 102-09 B 44<sup>th</sup> Avenue, Corona, New York 11368.
2. S & N Halal Live Poultry, at all times material herein, was operating under a poultry exemption pursuant to the PPIA and applicable Federal Poultry Products Inspection Regulations.
3. Ms. Habiber Nahar, at all times material herein, is the owner of S & N Halal Live Poultry.
4. Mr. Abubakar Siddique, at all times material herein, is the plant manager of S & N Halal Live Poultry.
5. On February 19, 2004, March 3, 2004, June 11, 2004, June 28, 2004, August 6, 2004, August 10, 2004, and on other dates, Respondents allegedly violated the PPIA by failing to maintain the facility in a sanitary manner, in accordance with 9 C.F.R. Section 381.10 et seq.
6. On April 5, 2004 and June 29, 2004, FSIS issued letters of warning to

Respondents, warning them that they were operating its exempt poultry facility in an insanitary manner and in violation of the PPIA.

7. On September 21, 2004, FSIS issued a letter to Respondents, offering the Respondents an opportunity to explain why its poultry exemption privileges should not be withdrawn.
  
8. In a letter received on November 4, 2004, Respondents were notified that they were no longer eligible to conduct exempt poultry operations under the PPIA.

#### **Conclusion**

Inasmuch as the parties have agreed to the provisions set forth in the following Consent Agreement in disposition of this proceeding, such Agreement will be issued.

#### **Agreement**

Poultry slaughtering and processing exemption privileges granted under the Poultry Products Inspection Act (PPIA) (21 U.S.C. section 451 et seq.) and 9 C.F.R. Part 381.10 of the Poultry Products Inspection Regulations (9 C.F.R. Part 381.10) are terminated from S&N Halal Live Poultry, its owners, partners, successors, agents, affiliates, or assigns for a period of three (3) years. The termination of Respondents' poultry slaughtering and processing exemption privileges shall be held in abeyance and poultry slaughtering and processing

exemption privileges shall be provided to Respondents, pursuant to the PPIA (21 U.S.C. 451 et seq.), 9 C.F.R. Section 381.10, and the additional conditions set forth in this Agreement are met.

### **Conditions**

1. Effective upon the execution of this Stipulation and Consent Agreement, and for the duration of this Agreement, Respondents shall only conduct business operations under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451. et seq.) and Part 381.10 of the Poultry Products Inspection Regulations (9 C.F.R. Part 381.10 (d)).

2. Prior to reinstatement of eligibility to operate as an exempt retail poultry slaughtering and processing facility, (a) Respondents shall have established effective food safety control systems (**Attachment 1**) in place to ensure sanitary conditions and prevent product contamination and/or adulteration, and (b) Respondents' facility shall receive a rating of "acceptable" in every category of an Exempt Establishment Review. Future reviews will be conducted at a frequency specified by FSIS.

### **Sanitation Performance Standards**

3. Respondents shall have developed written procedures for sanitation performance standards (hereinafter "SPS") and shall implement the procedures upon resumption of its retail poultry slaughtering and processing exemption eligibility. Respondents shall operate and maintain its premises, facilities,

equipment and outside premises in a manner sufficient to prevent the creation of insanitary conditions and practices, and to preclude harborage and breeding of pests. Respondents shall comply with the requirements of SPS regulations 9 C.F.R. Sections 381.10 and 416.1 to 416.6 and ensure the poultry prepared, packed, and stored are not contaminated or adulterated.

4. Prior to resumption of its retail poultry slaughtering and processing exemption eligibility, Respondents shall make facility repairs and/or improvements necessary to ensure sanitary conditions, as required by 9 C.F.R. Sections 381.10 and 416.1 to 416.6, including but not limited to:

- a) repairing or replacing walls, floors, ceilings, doors, windows, other outside openings, to prevent the entrance of vermin, such as flies and rodents;
- b) repairing or replacing walls, floors, and ceilings to ensure they are built of durable materials impervious to moisture and capable of being cleaned and sanitized as necessary to prevent adulteration of product or creation of insanitary conditions;
- c) repairing and replacing overhead structures, including ceilings, ventilation ducts, etc., to remove the presence of product residue, grime, mold, rust, and flaking paint; and
- d) installing ventilation adequate to control vapors and condensation to the extent necessary to prevent adulteration of product and the creation of insanitary conditions.

5. Respondents shall have developed written pest control procedures **(Attachment 1)** consistent with the requirements of 9 C.F.R. Section 416.2 (a) and (b), and shall implement said procedures for in-plant and outside premises to ensure sanitary conditions, prevent conditions that may adulterate product, and prevent the harborage and breeding of pests on the grounds and within the establishment. Respondents shall (a) implement written pest control procedures; (b) monitor daily in-plant premises (bait stations and/or traps) for rodent activity; (c) document findings; and (d) take appropriate corrective and preventive actions.

6. Respondents shall establish a pest management program, implemented and maintained by an independent pest control service, to prevent the harborage and breeding of pests on the grounds and within the facility consistent with 9 C.F.R. Section 416.2 (a) and (b). Respondents shall assure that (a) the pest control service reviews and services Respondents' facility and grounds on a least monthly frequency; (b) written reports are provided by the pest control service to Respondents detailing its findings and recommendations of its review; (c) report recommendations are implemented in a timely fashion; and (d) its pest management program and servicing firm's written findings, recommendations, and reports are made available to FSIS personnel for review and for copying immediately upon request.

7. Respondents shall monitor the soundness of its facility and structure to ensure a sanitary facility and compliance with 9 C.F.R. Sections 381.10 and

416.1 to 416.6. Respondents shall document findings and corrective actions to address structural and/or mechanical repairs and/or improvements to its facility under a "Planned Improvement Program" (PIP) form (**Attachment 2**) to ensure its facility, including, its structures, rooms, and compartments are of sound construction and kept in good repair. Respondents shall make these PIP records available to FSIS for review and/or copying immediately upon request.

### **Sanitation Standard Operating Procedures (SSOP)**

8. Respondents shall have developed a written SSOP (Attachment) consistent with regulatory requirements specified in 9 C.F.R. Part 416. Respondents shall implement and maintain its written SSOP consistent with regulatory requirements specified in 9 C.F.R. Part 416.

### **Access and Examination**

9. Respondents shall, upon verbal notice by any FSIS or New York Department of Agriculture and Markets' representative, afford such representative access to all areas of its places of business, including basement storage areas, an opportunity to examine the facilities, inventory of poultry, and records thereof, and to review and/or copy all such records.

### **Establishment Management and Personnel**

10. Respondents shall, prior to the resumption of its retail poultry slaughtering and processing exemption privileges, designate and notify the FSIS District Manager, Albany District Office, in writing, identifying one full-time person and



one alternate who shall be responsible for overall implementation, coordination, monitoring, recordkeeping, review and maintenance of the facility's SPS, SSOP, PIP programs and compliance with 9 C.F.R. Sections 381.10, 416.1 to 416.6, and the requirements of this Agreement. Said designee(s) shall be present whenever establishment exempt reviews are conducted, whenever retail poultry slaughtering and processing exemption operations are being conducted, and Respondents may not conduct any retail poultry slaughtering and processing exemption operations in the absence of said designee(s). Respondents may name a new designated official(s) upon written notification to the Albany District Manager.

### **Training and Education**

11. Respondents shall, within five (5) days from the effective date of this Agreement, develop, implement, and maintain written training programs for managers and all employees including newly hired employees, in food safety control systems and regulatory requirements of 9 C.F.R. Sections 381.10 and 416.1 to 416.6 and its SPS, SSOP, and PIP. Respondents shall maintain the training and educational program records and make them available to FSIS personnel for review and/or copying immediately upon request.

### **Recordkeeping**

12. Respondents shall indefinitely document and maintain complete and accurate written records of (a) all records required by the PPIA and the regulations promulgated thereunder, including bills of sale, invoices, bills of

lading, and receiving and shipping papers for all poultry purchased, and (b) all records of its SPS, SSOP, PIP, Pest Control Programs or required by the Agreement. Respondent shall make all such records available to FSIS personnel for review and/or copying immediately upon request.

13. Respondents agree to comply with all the regulatory requirements specified under 9 C.F.R. 381.10 (d) (2) (i) through (iii), for a retail poultry slaughterer and processor and indefinitely document and maintain, complete, accurate, and legible records of daily live poultry purchases, and its daily sales of poultry. Such records shall separately show each sale to household consumers, and each sale to wholesale accounts, namely, hotels, restaurants and institutions (HRI); the date of the transaction, quantity (number of carcasses), including the pounds of poultry sold for each such sale, and, if a wholesale (HRI) transaction, the name and full address of each consignee. Respondents' records shall include a line entry in the respective ledger indicating each days cumulative total sales value for both poultry sales to household consumers, and to other than household consumers (HRI). All such records shall be maintained indefinitely.

### **General Provisions**

14. Respondents shall not (a) commit any felony or fraudulent act; (b) violate any section of the FMIA, PPIA, Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product; (c) assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere

with any representative or designee of the Secretary of Agriculture.

15. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of Respondents' (a) facility, product, inventory or business records, (b) compliance with the PPIA, the regulations issued under the PPIA, or (c) compliance with the requirements in this Agreement.

### **Enforcement Provisions**

16. The Administrator, FSIS, may summarily terminate Respondents' retail poultry exemption privileges upon a determination by the Director, Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review, FSIS, that Respondents have failed to comply with any requirement of this Agreement and/or statutory and regulatory poultry exemption requirements. Respondents retain the right to request an expedited hearing pursuant to the Adopted Rules of Practice (Attachment), concerning any violation alleged as the basis for a summary withdrawal of exemption privileges.

### **Miscellaneous Provisions**

17. Nothing in this Agreement shall preclude (a) any future regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

18. If any provision of this Agreement is declared invalid, such declaration shall not affect the validity of any other provisions herein.

19. The provisions of this Agreement shall become effective when signed by all parties and upon issuance by the Administrator, FSIS, and shall remain in effect

until January <sup>14</sup> ~~1~~ <sup>th</sup> 2008.

A.S. <sup>1/13</sup> <sup>5:4</sup>

*Habiber Nahar*  
Ms. Habiber Nahar for  
S&N Halal Live Poultry

*Scott C. Safian*  
Scott C. Safian, Director  
Evaluation and Enforcement  
Division, OPEER, FSIS, USDA

*Habiber Nahar*  
Ms. Habiber Nahar  
Owner, S & N Halal Live Poultry

*Krishna Ramaraju*  
Krishna Ramaraju, Esq.  
U.S.D.A., Office of the General Counsel

*Abubakar Siddique*  
Mr. Abubakar Siddique, Plant Mgr.  
S&N Halal Live Poultry

Issued this 14 day of January, 2005\_\_

*Barbara J. Masters*  
Dr. Barbara J. Masters  
Acting Administrator  
Food Safety and Inspection Service