



Steve Troxler
Commissioner

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

Donald H. Delozier
State Director

May 5, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ray Miller
Midway Salvage
2302 East Main Street
Albemarle NC 28163

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
OF THE NORTH CAROLINA COMPULSORY MEAT INSPECTION LAW G.S. § 106-549.23 AND
THE NORTH CAROLINA POULTRY PRODUCTS INSPECTION LAW G.S. § 106-549.56

Dear Mr. Ray Miller,

Pursuant to North Carolina General Statutes (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

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.

Midway Salvage
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Your attention to this matter is appreciated.

Sincerely,


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

DHD:aw

Attachments: Assessment Document

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

STATE OF NORTH CAROLINA
COUNTY OF STANLY

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

IN THE MATTER OF)

Midway Salvage)

FOR VIOLATIONS OF N.C. COMPULSORY)
MEAT INSPECTION LAW & N.C. POULTRY)
POULTRY PRODUCTS INSPECTION LAW)
G.S. § 106-549.23 & G.S. § 106-549.56)

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. On February 24, 2009, North Carolina Department of Agriculture & Consumer Services (NCDA & CS), Meat & Poultry Inspection Division (MPID) Food Compliance Officer Melanie Pollard, while posing as a member of the general public, purchased a package of frozen ground beef patties that appeared to be furthered processed (repackaged) in a clear plastic bag, a whole chicken packaged in a clear plastic bag and two beef steaks that were packaged in a vacuum sealed bag from Midway Salvage, a salvage retail business located at 2302 East Main Street, Albemarle, NC. The above mentioned misbranded meat and poultry products did not contain a USDA or NCDA mark of inspection or required labeling. Food Compliance Officer Pollard paid a total of \$13.00 cash for the above mentioned misbranded meat and poultry products.
- B. The misbranded meat & poultry products were photographed, identified, secured and transported to the NCDA & CS, Meat & Poultry Inspection Division, Raleigh Office, relevant to chain of custody proceedings on February 26, 2009.
- C. On March 17, 2009, while conducting a planned compliance review at Midway Salvage, 2302 East Main Street, Albemarle, NC, NCDA & CS, MPID Food Compliance Officer Percy Russell observed a total of 122 pounds (57 packages) of misbranded (no NCDA or USDA mark of inspection or required labeling) meat and poultry products, which included packages of bacon bits, beef steaks and chicken breast, being offered for sale to the general public. The misbranded meat and poultry products were NC Detained (Tag # 3161 & # 3446) and photographed by Food Compliance Officer Percy Russell.
- D. On March 17, 2009, Mr. Ray Miller, owner/operator of Midway Salvage, stated in a signed statement that he had processed, stored, offered for sale and sold misbranded meat and poultry products to the general public for approximately one month. Mr. Miller stated that he purchased meat and poultry products in boxes with the U.S.D.A. marks of inspection and further processed (repackaged) the meat and poultry products without the benefit of county, state or federal inspection.
- E. On March 17, 2009, Mr. Ray Miller, owner/operator of Midway Salvage, 2302 East Main Street, Albemarle, NC, stated in a signed statement that he was aware that the processing, storing, offering for sale and selling of misbranded meat and poultry products were violations of the North Carolina Compulsory Meat Inspection Law & the North Carolina Poultry Products Inspection Law.

- F. On June 6, 2001, Mr. Ray Miller, owner/operator of Midway Salvage, 2302 East Main Street, Albemarle, NC, was issued a violation for the processing, storing, offering for sale and selling of misbranded (no NCDA or USDA mark of inspection or required labeling) meat and poultry products to the general public. Mr. Ray Miller, owner/operator of Midway Salvage was issued a civil penalty assessment dated July 10, 2001 in the amount of \$750.00.
- G. On September 6, 2000, Mr. Ray Miller, owner/operator of Midway Salvage, 2302 East Main Street, Albemarle, NC, was issued a violation for the processing, storing, offering for sale and selling of misbranded (no NCDA or USDA mark of inspection or required labeling) meat and poultry products to the general public. A Letter of Warning (L.O.W) was issued to Midway Salvage by the North Carolina Attorney General's Office on October 12, 2000.
- H. Midway Salvage, 2302 East Main Street, Albemarle, NC, is not a county, state or federal inspected facility or location.

II. CONCLUSIONS OF LAW

- A. Midway Salvage was found to be processing, storing, offering for sale and selling misbranded (no NCDA or USDA mark of inspection or required labeling) meat and poultry products to the general public in violation of 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 G.S. § 106-549.35(c) and 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) 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 & G.S. § 106-549.56.

Accordingly Midway Salvage is assessed a civil penalty of:

\$3,000 for violating G.S. § 106-549.23 & \$3,000.00 for violating G.S. § 106-549.56
\$6,000 TOTAL AMOUNT ASSESSED.

May 5, 2009
Date

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



Steve Troxler
Commissioner

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

Donald H. Delozier
State Director

June 3, 2009

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RETURN RECEIPT REQUESTED

Mr. Ray Miller
Midway Salvage
2302 East Main Street
Albemarle NC 28163

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
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AND THE NORTH CAROLINA POULTRY PRODUCTS INSPECTION LAW G.S. § 106-
549.56

Dear Mr. Ray Miller,

This letter is in response to our conversation on June 3, 2009 to decrease your \$6000.00 civil penalty assessment.

The NCDA & CS, Meat and Poultry Inspection Division is willing to accept your offer to settle this case for a total amount of \$3000.00 provided two (2) separate payments in the amount of \$1500.00 each are received in our office on or before July 31, 2009.

Failure to submit the 2 separate payments in the amount of \$1500.00 each on or before July 31, 2009 will result in the original \$6000.00 penalty being due and payable immediately.

Sincerely,

Mr. Donald H. Delozier, Director

cc: Ms. Anne Brown, Special Deputy Attorney General
Percy Russell, Food Compliance Officer, NCDA&CS