

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

In the Matter of the Revocation of the Retail Food Handlers Licenses and Custom Processing Permits of Joseph Schatz d/b/a Schatz and Sons Meat Processors.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter was heard by Administrative Law Judge Jon L. Lunde commencing at 9:30 a.m. on April 16, 1997 at the offices of the Minnesota Department of Agriculture in St. Paul, Minnesota. The hearing was held pursuant to a Notice and Order for Hearing and Order to Show Cause dated February 13, 1997.

Paul A. Strandberg, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127 appeared on behalf of the Minnesota Department of Agriculture. Mark A. McDonough, McDonough, Wagner, Sherry, Shaeffer & Ho, Attorneys at Law, 14501 Granada Drive, Suite 200, Apple Valley, MN 55124, appeared on behalf of the Respondent, Joseph Schatz. The record closed on May 22, 1997 when the Department elected not to file a reply brief.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of the Minnesota Department of Agriculture shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Commissioner.

STATEMENT OF ISSUES

The issues in this case are whether the Respondent's retail food handlers licenses and custom processing permits should be suspended or revoked on the grounds, among other things, that he:

A. Operated two plants used for the manufacture, preparation, or production of food which were filthy, unclean or insanitary, in violation of Minn. Stat. § 31.161.

B. Failed to comply with orders issued by the Commissioner's agents requiring him to maintain his plants in a clean and sanitary condition, in violation of Minn. Stat. § 31.165.

C. Offered meat products for sale that had been slaughtered without the benefit of inspection by the United States Department of Agriculture, in violation of Minn. Stat. §§ 31.56 and 31A.10.

D. Accepted dead animals at his plants in violation of Minn. Stat. § 31.56.

E. Falsified mandatory records relating to his operations, in violation of Minn. Stat. § 31A.18.

F. Operated two custom exempt plants having sewage systems which were not approved by the Minnesota Pollution Control Agency in violation of Minn. Stat. § 31.175.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Joseph W. Schatz (Schatz or Respondent), d/b/a Schatz Brothers Meats, operates two custom exempt slaughtering plants in LeSueur County, Minnesota. One is located in Montgomery. It was purchased on October 1, 1979. The other is located in Kilkenny. It was purchased on June 1, 1993. The plants have retail food handlers licenses (Nos. 20010653 and 20016656) and permits (Nos. 936 and 1224) which enable them, among other things, to slaughter and process cattle and hogs for the animals' owners. The retail food handlers licenses only authorize the sale of meats which have been inspected by the United States Department of Agriculture (USDA). Together, the plants employ from five to ten persons other than family members.

2. The land, buildings and equipment used in the plants are the property of a corporation owned by Schatz and his wife. Schatz's sons, Brian and Lonnie, are or have been involved in his business operations^[1] as has his brother, Terrence (Ty) Schatz.

3. In a letter dated February 27, 1995, Schatz's attorney discussed the family's interests stating:

The Montgomery site is owned by Schatz Bros., Inc. and Joe Schatz and Tony Schatz (brothers) are shareholders of the corporation. While a third brother, Terrence, appears as an owner as well, his interest in the corporation is being eliminated. Joe's son, Lonnie, is in the process of becoming a shareholder in Schatz Bros., Inc. The Main Street Meats operation in New Prague, Minnesota, is owned by Tony. In addition, Joe and Lonnie are also doing business as Schatz & Sons in Kilkenny, Minnesota.

Ex. 49.

4. The sewage disposal systems of the two plants do not meet the requirements of LeSueur County or the Minnesota Pollution Control Agency (MPCA). Ex. 66. The Montgomery plant has two drainfields. One was installed in 1975 the other in 1983. It has only one septic tank which, because of its limited capacity and the high water table in the area, is inadequate for the plant's needs. The sewage disposal system at the Kilkenny plant was installed in 1975 under a permit requiring an approved system. Ex. 66. The Kilkenny system has two 1,000 gallon septic tanks with a sewage flow of 500 gallons per day. The system discharges treated effluent to a grassy dispersal basin. Id.

5. Roger Stelter is a senior food inspector for the Minnesota Department of Agriculture (Department). He has worked as a food inspector for the Department since

1987. Stelter is responsible for inspecting 20 custom processing (custom exempt) plants in five Minnesota counties including LeSueur County. Stelter makes routine quarterly inspections of these plants under contracts the Department has with the United States Department of Agriculture (USDA). Other inspections or visits are made on an as-needed basis.

6. The inspections Stelter makes cover the sanitation, facilities, equipment and records of a plant. During an inspection, the floors, walls, ceilings, equipment and meat products are examined. Stelter does not inspect meat to determine if it is fit for consumption, but he does examine meats to determine, among other things, that products from different species are not in contact and are appropriately identified, properly handled and appropriately dressed.

7. At the conclusion of an inspection, Stelter, like other food inspectors, prepares a written summary of the violations found during the inspection and the correction orders issued. An inspector's findings are explained to the operator and the operator is provided with a copy of the inspection report, which the operator must sign.

8. Since 1989, Stelter has had frequent contacts with Schatz. Schatz's operations are dirtier than any of the other plants he inspects, and Schatz's operations have been a constant problem for Stelter and the Department. Schatz's operations have generally been unsanitary, unauthorized, and in violation of laws and rules relating to his operation, record keeping, sewage system and other matters. For nearly all the plants Stelter inspects it is usually unnecessary for him to issue more than one correction order with respect to a violation. In Schatz's case, however, it was frequently necessary to issue a notice of violation three or more consecutive times. Some violations repeatedly recurred and some went uncorrected for years.

MONTGOMERY PLANT

9. On October 29, 1992, Stelter conducted a routine inspection of the Montgomery plant which covered its facilities, equipment and meat products. At the time of the inspection the following conditions existed:

- A. The blade lever assembly of hand saws in the processing and slaughter rooms contained old product buildup (3rd notice).
- B. The ceiling in the processing room contained a buildup of smoke and grease (3rd notice).
- C. Light shields in the processing room contained a buildup of grease(3rd notice).
- D. Walls in the processing and slaughter rooms contained a buildup of grease and old product (3rd notice).
- E. The smokehouse walls and ceiling contained flaking char (charcoal) (3rd notice).
- F. There was an accumulation of smoke and grease in the spice room where sausages are made (3rd notice).

G. The floor of the cure cooler^[2] was covered with dirty, greasy cardboard.

H. Light fixtures over the spice table were not equipped with light shields and end caps, and many other light shields in the plant were broken (2nd notice).

I. In the carcass cooler^[3] pork and beef were found in direct contact.

J. Current and accurate smoke/cook records had not been maintained. The last entry in those records was made October 13, 1992, and products had been cooked or smoked since that time (2nd notice).^[4]

K. Greywater^[5] had been pumped from the plant's septic tank directly into a drainage ditch behind the plant.

L. Custom products in the cure cooler were not identified with the words "Not for Sale"^[6].

Exhibit 1.

10. Previously, on January 27, 1992, Stelter had found almost all the conditions he found on October 29 and had ordered Respondent to correct them. Some of the insanitary conditions had existed for about one year.

11. Light Shields and end caps are necessary to protect meat products from glass particles caused by exploding bulbs. The equipment used must be kept clean of old product to prevent contamination by salmonella, for example, or the spread of trichina. The usual practice is to separately butcher meats of different species (beef, then pork, then chicken) and to thoroughly clean the equipment before changing to a different species.

12. The sanitary violations Stelter found on October 29 were deemed critical because they could result in adulterated or misbranded products which would reach, and have a detrimental effect on, consumers. The failure to mark custom product in the cure cooler with the notation "Not for Sale" and the failure to keep pork and beef separate were deemed unacceptable because they likely would result in an adulterated, mislabeled or misbranded product. That product would reach consumers and could have a detrimental effect on them.

13. The Montgomery plant had been expanded several times since it was constructed. In 1985, LeSueur County officials approved its septic system but noted that it might need a larger drainfield in the future. In 1989, when Stelter became responsible for inspecting the Montgomery plant, the septic tank was located under the spice room floor. Initially, Stelter accepted the county's letter as sufficient evidence of the system's adequacy. Later, however, when Stelter learned that greywater was being pumped from the septic tank into a drainage ditch near the rear of the plant, he asked the LeSueur County sanitarian, Dr. Will Wesley, to reevaluate the system. At that time, Wesley refused to approve the system for its current use. Wesley told Schatz to pump the septic tank and land-spread the contents. After this, Stelter began ordering Schatz to stop pumping greywater from the septic tank to the drainage ditch in the back of the plant.

14. On November 3, 1992, Stelter reinspected the Montgomery plant. Ex. 2. He found that Schatz had cleaned the smoke house and the hand saws, but none of the other violations found on October 29, 1992 had been corrected as ordered. For example:

- A. Pork and beef were still in contact in the carcass cooler due, primarily, to overcrowding.
- B. Greywater was still being pumped into the drainage ditch behind the plant.
- C. Smoke/cook records still were not current.
- D. Custom product was not identified as "Not for Sale".
- E. Except for the smoke house, no cleaning had been done, and no light shields had been installed.

Stelter ordered Schatz to comply with his order of October 29, 1992 within five days and provide for the disposal of wastewater sewage through an approved system by November 24, 1992. Stelter instructed Schatz to contact LeSueur County to obtain approval of his wastewater system and to obtain permits for sewage disposal.

15. Schatz told Stelter that his septic system was inoperable on November 3 due to a high water table and that he had been unable to land-spread the greywater due to the snow. He also attributed his failure to correct other deficiencies, as ordered, to the snow. Ex. 2.

16. On November 10, 1992, Stelter conducted a second reinspection of the Montgomery plant to determine if Schatz had complied with the orders issued on October 29 and November 3. At that time, Stelter found an accumulation of old product on the blades of the meat tenderizer and the ceilings and walls throughout the plant still had an accumulation of grease and char which required further cleaning. In other respects, no violative conditions were found. However, Stelter advised Schatz that the spice room still needed to be organized. Ex. 3. Schatz had not received approval of his wastewater system, but there was no evidence that greywater had been pumped into the drainage ditch. Therefore, Stelter found the plant's sewage and waste disposal plant acceptable.^[7]

17. On November 20, 1992, Kevin Elfering, a regulatory specialist for the Department, wrote to Schatz about the results of the October 29 and November 3 inspections. In his letter Elfering said that the Department was considering legal action against Schatz for the insanitary conditions at the plant but that it would provide him with an opportunity to present his views at a meeting with departmental staff. The meeting was held on December 8. At the meeting, Schatz agreed to take corrective action. First he agreed to immediately discontinue pumping greywater into the drainage ditch adjacent to the plant and only drain the system in accordance with MPCA guidelines. Second, Schatz agreed to modify his septic system by May 1, 1993 to eliminate the need for routine pumping. Third, Schatz agreed to contact a heating specialist to evaluate his smoke house ventilation system in order to eliminate the constant accumulation of grease and smoke in his plant. Schatz agreed to do this prior

to January 20, 1993. Finally, Schatz agreed to provide the Department with written assurances that the Montgomery plant would be maintained in a sanitary condition and that all equipment would be washed and sanitized at least once or more during each day's operation -- especially between species. Ex. 39.

18. On November 23, 1992 Stelter visited the Montgomery plant to obtain well water samples. At this time, he found evidence that Schatz had been pumping greywater into the drainage ditch behind the plant. Schatz admitted that he had pumped greywater into the drainage ditch the day before. Ex. 4.

19. On December 8, 1992 Schatz attended an administrative meeting at the Department's offices to discuss his repeated violations of governing statutes and rules. At that meeting Schatz was warned to stop pumping greywater from his septic tank into the drainage ditch adjacent to the plant. Ex. 48.

20. On January 11, 1993 Schatz wrote to the Department to follow up on the December 9 meeting. In his letter he indicated that he was sanitizing all equipment at least once a day and washing the ceilings and walls on a daily basis to remove accumulated smoke and grease.^[8] Schatz reported that he had installed a larger fan in the smokehouse hood which significantly reduced the buildup of smoke in the plant. In addition, Schatz stated that he had discontinued pumping greywater from the septic tank at the Montgomery facility into the drainage ditch east of the plant. He reported that he was temporarily pumping the septic tank contents into a "honeywagon" and hauling it to a drainage field for land-spreading. In the spring, he said that the septic system would be repaired or, if necessary, replaced. Ex. 40.

21. On January 19, 1993 Stelter conducted a routine inspection of the Montgomery plant. At that time he found the following conditions:

- A. The power band saw contained an accumulation of old product.
- B. The ceiling and walls throughout the plant contained an accumulation of smoke and grease.
- C. The walls and floors in the cure cooler contained an accumulation of old product.
- D. The spice room was unclean and disorganized.

Stelter ordered that these insanitary conditions be corrected.

22. During the January 19, 1993 inspection Schatz admitted that he had been pumping greywater into the drainage ditch behind the plant in violation of Stelter's prior orders and his agreement with the Department. Stelter again ordered Schatz to discontinue pumping into the ditch and to provide for a proper waste disposal system. Schatz told Stelter that he had ordered necessary repairs to his septic system and that they would be made as soon as the weather permitted. Stelter also ordered Schatz to provide protective shielding on the light fixtures in the plant or to use shatterproof bulbs, and he ordered Schatz to provide proper storage for all food products to prevent rodent damage. The latter order was issued because Schatz had stored some meats in an old van which sustained rodent damage. Schatz voluntarily destroyed eight pounds of that meat at that time. Ex. 5.

23. On January 28, 1993 Schatz met with Terry Bovee, the LeSueur County Zoning Administrator, to discuss the septic system at the Montgomery plant. Bovee advised Schatz that the county would not permit him to pump greywater into the drainage ditch. Bovee told Schatz that he should contract with someone to have the tank pumped on a regular basis and discussed methods for correcting the system. Bovee told Schatz that the county was willing to work with him and the Department to correct the problem by May 1, 1993.

24. Following Schatz's meeting with Bovee, Schatz met with Stelter to discuss that meeting and Schatz's plans to purchase another plant in Kilkenny, Minnesota. Schatz told Stelter that Bovee would not permit him to pump greywater into the drainage ditch. Schatz also said that he had hired a firm to regularly pump the septic tank at Montgomery. Ex. 6.

25. On May 26, 1993 Stelter conducted a routine inspection of the Montgomery plant. At the time of his inspection, Stelter found that a box of raw pork was sitting on top of fully cooked turkeys, the splitting saw had an accumulation of old product on the handguard, the walls and rail beams in the slaughter room contained an accumulation of old product, and the clean-up hose contained an accumulation of old product. Raw and cooked product must be kept separate to eliminate cross-contamination. Placing a box of raw meat on top of cooked turkeys created a health hazard because the bottom of the box is not a clean surface and blood and other fluids from the raw meat could leech or seep through the box and onto the turkeys. The failure to keep walls, ceilings and equipment free of grease, smoke and old product also creates insanitary conditions which could have an adverse effect upon consumers. Stelter ordered Schatz to correct the insanitary conditions and to maintain the facility and equipment in a clean and sanitary condition. Ex. 7.

26. On September 21, 1993 Stelter conducted another routine inspection of the Montgomery plant. At that time Stelter found an accumulation of old product in the hand saw and spice containers in the processing area and an accumulation of grease on the walls, ceiling and light shields in the processing room. Stelter ordered that these conditions be corrected.

27. On December 7, 1993 Stelter conducted a routine inspection of the Montgomery facility. At the time of the inspection he found the following:

- A. Trimmings and other custom meat products were not identified with the words "Not for Sale" and no smoke records were available.
- B. There was an accumulation of old product in the center shaft of the meat mixer.
- C. The outside perimeter of the plant had a buildup of trash and rubble.

Stelter ordered that these matters be corrected and reiterated that greywater must be land-spread and could not be discharged into the ditch behind the plant. In other respects, general plant sanitation was acceptable to Stelter, but he ordered Schatz to keep the plant's smoke records on site. No orders were issued with respect to light shields which allegedly were still on order. Ex. 10.

28. On March 8, 1994 Stelter conducted a routine inspection of the Montgomery plant. At the time of his inspection the following conditions existed:

- A. There was debris, trash and brush around the outside of the plant.
- B. Walls and ceilings in the processing area contained an accumulation of smoke and grease.
- C. The tines of a long handled cooker fork were found in contact with the floor.
- D. The bowl of the chopper was covered with rust.

Stelter ordered Schatz to correct these insanitary conditions. Ex. 14.

29. On May 9, 1994, Stelter conducted a routine inspection of the Montgomery plant. At the time of this inspection the only insanitary conditions Stelter found were an accumulation of old product on the wheel polishers of the band saw and in the bowl sweep of the silent cutter. Stelter also found, however, that light shields were missing over the processing area. Ex. 16. Stelter ordered Schatz to correct the violations.

30. On July 5, 1994, Stelter conducted a routine inspection of the Montgomery plant. At that time Stelter found an accumulation of old product and grease in the light shields throughout the plant, on cutting boards in the processing area and in the unloading wheel of the chopper. He also found dust and flaking paint on the overheads in the walk-in cooler, and light shields were missing in the processing areas. Stelter ordered Lonnie Schatz to correct these conditions. Ex. 17.

31. Since 1993, Schatz has been investigated by the Department and USDA officials at least twice. In 1993 and 1996 search warrants were issued to obtain records and his plants were, at least on one occasion, under surveillance. On December 16, 1994, a USDA official, Patrick J. Clerkin, wrote to Schatz about a report of the Inspector General indicating that Schatz was preparing meat products and selling nonfederally inspected meat to Main Street Meats in New Prague in noncompliance with the Federal Meat Inspection Act (21 USC § 601). USDA officials previously had spoken to Schatz about these matters on January 20, 1994. Clerkin advised Schatz that no legal action would be taken then but warned him that future violation reports could result in legal action. Ex. 47.

32. On December 20, 1994 Stelter conducted a routine inspection of the Montgomery plant. At the time of his inspection he found the following conditions:

- A. The cutting table tops and framework contained an accumulation of old product and stains.
- B. The band saw contained an accumulation of old product.
- C. There was an accumulation of smoke and grease on the walls and ceilings of the processing room.
- D. No light shields were provided in the processing area.

Stelter ordered Schatz to correct these insanitary conditions. This order was the third notice regarding two of the conditions and the second notice regarding a third. At the time of the inspection it was obvious that Schatz had continued to pump greywater from the septic tank into the drainage ditch. Stelter again ordered Schatz to discontinue that practice. Exs. 26 and 27. The septic system was under pressure and a greywater mist existed around the spice tables creating an insanitary condition.

33. On March 14, 1995 Stelter and a supervisory food inspector, Larry Kruger, conducted a routine inspection of the Montgomery plant. At the time of their inspection the following conditions existed:

- A. The lights over the processing area had no protective shielding.
- B. An employee was eating and drinking in the processing room during operations creating a risk of meat contamination from hepatitis and other food-borne diseases.
- C. There was no hand soap or towels at the hand sink in the prep room.
- D. The hose used for production was not of food grade.
- E. Ceiling and rails in the cooler were in need of resurfacing.
- F. There was a tear in the screen door to the spice room.
- G. There was a heavy accumulation of trash around the outside perimeter of the building.
- H. No smoke/cook records were available at the plant.
- I. Schatz did not have a letter of approval for the septic system.

34. In order to correct these conditions and bring the plant into compliance Stelter and Kruger issued an order requiring Schatz to obtain a letter of approval from the county for its sewer system by April 1, 1995 and to maintain current cook/smoke records on the premises. Schatz was also ordered to provide protective light shields on all lights over exposed product areas; discontinue eating or drinking in the prep rooms; provide and use proper hair restraints when working in the food preparation area; provide hand soap and single use towels at the hand wash sink in the preparation room; provide a food grade hose and back-flow preventor on a faucet used to fill food and meat containers in the prep room; repair the hole in the screen door to the spice room; provide a tool to enable disassembly of the globe slicer for daily cleaning and sanitization; and remove all weeds, trash, scrap lumber, scrap metal and other junk from the north, south and east sides of the plant. Schatz was also ordered to apply for a permit to smoke fish at the plant and to cease smoking fish at the plant until the necessary permit was obtained. Some of the fish at the plant was being stored at room temperature and Schatz was ordered to maintain all meat, fish and poultry at 40 degrees Fahrenheit at all times. Finally, Schatz was ordered to place the overhead rails in the walk-in cooler in a clean and sanitary condition by removing the buildup of peeling paint, and to place the ceiling of the walk-in cooler in a smooth, nonporous and easily cleanable condition. Ex. 28

35. On April 5, 1995, while monitoring the Montgomery plant, Stelter observed greywater being pumped into the drainage ditch behind the plant. Ex. 31. Stelter was monitoring the plant in preparation for an administrative meeting scheduled the following day. At that meeting, Schatz was asked if he was still pumping greywater into the drainage ditch. Schatz said: "No -- not since last December when you caught me."

36. On April 19, 1995, Elfering wrote to Schatz's lawyer, Richard Lea. The letter summarized the violations discussed at the April 6 meeting and the corrective action Schatz had to take. Schatz was told he had to have the sewage systems of both plants approved by June 1, 1995. Also, due to the Department's concerns about Schatz's slaughter records and the quality of the meat he sold, he was cautioned to keep proper records. Elfering also stated that the licenses of both plants would be withheld until all pending orders were satisfied. Ex. 50.

37. On May 2, 1995, Lea wrote to Elfering. In his letter Lea stated that Schatz had obtained a professional engineer to inspect the sewage systems and make recommendations for new systems which would be installed by June 1, 1995. Meanwhile, Lea stated that Schatz would pump the Montgomery septic tank biweekly.^[9] Lea also stated that proper custom slaughter records would be maintained, that dead animals would not be accepted at the plant, and that customers would be notified if any of their animals were "bum". Ex. 52.^[10]

38. Following the meeting of April 6, 1995, Schatz investigated ways to solve the plants' sewage systems. He considered adding new holding tanks to the plants, rebuilding the Kilkenny plant as a federal facility, and hooking up the Montgomery plant to the City of Montgomery's sewer system. On May 23, 1995, Lea wrote Elfering and asked for an extension of time to obtain approval of the sewage systems to September 1. Ex. 55. On May 30 Elfering granted an extension to July 1, 1995 on conditions that Schatz never met. Exs. 56 and 57.

39. On June 27, 1995 Stelter and Kruger made a routine inspection of the Montgomery plant. At the time of this inspection there was an accumulation of old product and water scale on the blades of the high-speed cutter and the band saw; an accumulation of trash and weeds around the outside of the plant, no food-grade supply hoses for the cooker and the stuffer, and no access to hand sinks in the plant. In addition, the front door of the plant was not closed at the time of the inspection, cook records were not maintained for all products containing pork, and the investigators were unable to identify the owners of custom products (head cheese) produced at the plant. Ex. 33.

40. At the conclusion of the June 27th inspection, a number of orders were issued to correct insanitary conditions found during the inspection and to bring the plant into compliance with applicable statutes and rules. Schatz also was ordered to provide a quality assurance date for prepackaged foods having a shelf life of 90 days or less which were offered for sale at the plant.

41. During the inspection, Schatz discussed the processing and sale of dog food. He was advised to provide Stelter with a detailed plan for the sale of dog food before engaging in any dog food operations in association with any plant licensed by the Department's food inspection division. Schatz was told to contact the Department's

agronomy division regarding the requirements applicable to the processing and sale of dog food prior to starting any dog food business. Ex. 33. Schatz was also ordered to provide a proper candling light and maintain all required records relating to egg sales. To assist him, a poultry fact sheet and a pamphlet on egg grading was left with Schatz. Ex. 33.

42. On September 29, 1995 Stelter made a routine inspection of the Montgomery plant. At that time, most of Schatz's operations (except sausage making) allegedly had been transferred to the Kilkenny plant. Stelter found an accumulation of old product and water scale build-up on the blades of the high-speed cutter and in the upper blade wheel compartment of the power band saw, and trash, weeds and other unnecessary items around the outside of the premises. He ordered that Schatz correct these conditions. Stelter also discovered that bear sausage containing pork had been smoked at the plant but no records were maintained at the plant for those operations. Stelter issued a third notice order requiring Schatz to maintain smoke records at the plant. Schatz still did not have a letter of approval for the septic system at the Montgomery plant but no correction orders were issued by Stelter at that time. Ex. 35.

43. On December 27, 1995 Stelter conducted a routine inspection of the Montgomery plant. At the time of the inspection there were a number of insanitary conditions. There was an accumulation of old product on the high-speed cutter, band saw, spice containers, freezer floor, stuffing table and the walls and ceilings in all areas of the plant. There was rust on cooler rails and loose, flaking material on track doors. The cutting boards were broken and uncleanable, and no hand towels were available. Stelter also found trash, weeds and unrelated items around the areas adjacent to the outside walls of the plant. Custom product in the walk-in cooler was not identified as "Not for Sale" and there was no feed grade hose on the supply line to the stuffer. In addition, the water certification for the plant was not current and there was no letter of approval for the sewage system on file. Ex. 71. Stelter issued an order requiring that all the conditions be corrected. For three of the items, the orders constituted a third consecutive notice of violation. Ex. 71.

44. On March 28, 1996 Stelter and Kruger made a routine inspection of the Montgomery plant. They discovered an accumulation of grease and old product on the floors, walls and ceilings throughout the facility and an accumulation of old product on the cooling and freezer floors and on processing equipment. The hand washing and equipment sinks were dirty. Schatz still did not have a letter approving the sewage system at the plant. At the time of the inspection no processing or slaughtering was taking place. The facility allegedly had not been used since February 1996. Consequently the inspectors ordered Schatz to contact them for a start-up inspection prior to using the plant for slaughtering animals or processing meat. Ex. 80.

KILKENNY PLANT

45. On January 28, 1993 Schatz discussed his proposed purchase of the Nusbaum Locker in Kilkenny, Minnesota with Stelter during a tour of the facility. At that time, Stelter discussed the requirements for licensure. At the end of the tour, Stelter issued an order requiring Schatz to apply for a retail food handlers license and custom permit prior to the start of business at the Kilkenny plant if Schatz decided to buy it. Ex.

6. Schatz subsequently purchased the Kilkenny plant and on September 21, 1993 Stelter made a prelicense inspection of the plant. Schatz had purchased and begun operating the facility on June 1, 1993 without having applied for any licenses or permit from the Department in violation of Stelter's prior order. Stelter ordered Schatz to apply for a retail food handlers license within 10 days and gave Schatz a partially completed application form. The custom processing and slaughtering permit was issued on September 28, 1993. Ex. 42.

46. During Stelter's September 21 inspection of the Kilkenny plant the following insanitary conditions existed:

- A. An accumulation of old product on the ceiling in the inedible^[11] room.
- B. An accumulation of old product in the blade lever assembly of a hand saw.
- C. An accumulation of old product in the guard of the grinder.
- D. A cooked ham was cut with a saw used for raw meat.
- E. Meat from different species was commingled in the cooler.

Stelter ordered that these items be corrected at once. He also ordered Schatz to eliminate weeds, debris and junk on the outside of the plant to deter insects and rodents and to discontinue storing food equipment in a restroom in the plant until the toilet was removed and the room was sanitized. At the time of Stelter's inspection, the plant did not have proper light shields on lights in the cut, slice and wrap area. Stelter ordered installation of shields by October 12, 1993. Ex. 9.

47. During the September 21st inspection, Schatz told Stelter that an engineering firm had drawn up a septic system plan based on consultations with the Minnesota Pollution Control Agency and that the plan would be submitted to LeSueur County Zoning Administrator for approval in October. Stelter told Schatz that a license was contingent upon approval of his sewage system. Id.

48. On December 7, 1993 Stelter conducted a routine inspection of the Kilkenny plant. He found spiderwebs on the overheads in the spice room and dead flies in the light shields in the slaughter room. In addition, there was an accumulation of manure and spiderwebs on the walls of the holding pen and old product and blood on the carcass cooler door as well as flaking char in the smoke house. He ordered that these items be corrected. During this inspection Stelter also found custom ground beef which was not marked "Not for Sale", and found uncovered barrels of inedibles outside the plant. Stelter ordered Lonnie Schatz to cover the barrels to keep rats and vermin out and to store them in an inverted position when empty. In addition, he ordered Lonnie Schatz to provide water at 180° Fahrenheit for tool sterilization during slaughter operations, provide a potable water source for processing and slaughtering operations, and place covers on the inside corners of the freezer door and wall junctures. Ex. 11. It was necessary to issue an order regarding a potable water source because a water sample drawn on September 21, 1993 was positive for coliform bacteria. Ex. 11.

49. On December 15, 1993 Stelter conducted a reinspection of the Kilkenny plant to determine compliance with orders issued on December 7th requiring correction by December 8, 1993. At the time of the reinspection Stelter found the following:

- A. Dead insects in the light shields in the slaughter area.
- B. An accumulation of manure and spiderwebs in the holding area.
- C. An accumulation of old product on the cooler door, in the smokehouse, and in the smokehouse entry.
- D. Brush and trash around the outside areas of the plant.
- E. Custom meat carcasses not identified as "Not for Sale".
- F. No water at 180° Fahrenheit was available for tool sterilization during slaughter operations.

Stelter ordered, for the second time, that these matters be corrected. Ex. 12.

50. At the time of the December 15th inspection, Stelter found that fish was being cleaned outside the Kilkenny plant by the inedible barrels. Because this was not proper or sanitary, Stelter ordered that it be immediately discontinued. Stelter also ordered Schatz to apply for a current fish processing permit by December 30, 1993. Stelter also ordered Schatz to provide proper light shields over the retail slice/wrap area on or before January 5, 1994. Ex. 12.

51. On December 27, 1993, the Department sent a certified letter to Schatz insisting that he correct all second notice orders issued by Stelter on December 15. The letter pertained to the insanitary condition of the cooler door, which contained an accumulation of blood and old product; providing water at 180° Fahrenheit for use during slaughter operations to sterilize tools; and the failure to mark all custom product as "Not for Sale" at all stages of production. Ex. 41. By letter dated January 11, 1994, Schatz reported that he had cleaned the cooler door and had obtained a sterilizer formerly used at the Montgomery plant. Schatz said that no further slaughtering would be done at the Montgomery plant. He also stated that in order to properly identify custom product as "Not for Sale" he had implemented a procedure for stamping carcasses when they entered the cooler area and had purchased tape and packages containing the words "Not for Sale" which would be used for all custom processing. Ex. 43.

52. On January 25, 1994 Stelter conducted a routine inspection of the Kilkenny plant. At the time of his inspection the following conditions existed:

- A. The tool sterilizer required to produce water at 180° Fahrenheit during slaughter operations was plugged in but was not functioning properly.
- B. There was no separation between raw and cooked meats in the carcass cooler where blood was found in packaged meats.
- C. Hog heads, skin and beef trim in the freezer were not marked "Not for Sale". (NFS).

D. The dry storage and smoke house areas were cluttered and dirty.

Stelter ordered that these conditions be corrected by January 30 or sooner. Ex. 13.

53. On April 26, 1994, Stelter conducted a routine inspection of the Kilkenny plant. At the time of his inspection he found the following conditions:

A. The sterilizer designed to provide water at 180° Fahrenheit to clean tools used during slaughtering operations was not operational and was covered with mold and old product.

B. The hoist and saw control switch contained an accumulation of old product.

C. The hand sink in the slaughtering area had an accumulation of rust.

D. Inedible product consisting of dog food trim was not marked as "Inedible" and custom meat products in the freezer were not identified as "Not for Sale".

Stelter ordered Lonnie Schatz to eliminate these conditions. Ex. 15.

54. On August 9, 1994 Stelter conducted a routine inspection of the Kilkenny plant. At the time of his inspection the following conditions existed:

A. A sterilizer to provide water at 180° Fahrenheit for tool sterilization during slaughtering operations was not available contrary to Stelter's prior order.

B. There was an accumulation of old product in the splitting saw and the blades and blade cover of the tenderizer.

C. The rails and doors of the smoke house contained flaking char.

D. Pallets in the carcass cooler were covered with blood and grease.

E. Meat equipment and trays were being stored in the restrooms contrary to Stelter's prior order.

Stelter ordered that all of these conditions be corrected.

55. By certified letter dated August 22, 1994, Stanley Stokesbary, the department's food division supervisor, wrote to Schatz regarding the August 9th inspection. In that letter Stokesbary stated that Schatz must provide 180° Fahrenheit water for food sterilization during slaughter operations. The Department demanded compliance within ten days and notice in writing by September 4th of the action taken to correct the violation. Ex. 44. The record does not show if Schatz responded.

56. On October 26, 1994 Stelter conducted another quarterly inspection of the Kilkenny plant. At the time of his inspection the following conditions existed:

A. There was a heavy accumulation of flaking char in the smoke house (2nd notice).

- B. There was an accumulation of old product on the blades and shaft of the meat tenderizer (2nd notice).
- C. There was an accumulation of trash and debris around the east and north sides of the plant.
- D. Many boxes and packages of meat in the plant were not identified as "Not for Sale" (2nd notice).
- E. Dog food trim was not marked as "Inedible".

Stelter ordered Lonnie Schatz to correct all of these conditions and to identify dog food trim as inedible. Three of his orders had been previously issued. In addition to the conditions already discussed, during the course of his inspection Stelter observed animals being slaughtered (throats cut) without being stunned. Stelter ordered Lonnie Schatz to provide for the humane slaughter of all livestock processed by stunning the animals prior to the time their throats are cut. On several occasions Stelter observed animals at Kilkenny which were not stunned prior to slaughter. Ex. 19.

57. During the October 26 inspection Schatz was slaughtering six hogs. When Stelter asked him about them, Schatz falsely stated that he was slaughtering the hogs for their owners.

58. On October 31, 1994 Stelter made an inspection of the Kilkenny plant to place an embargo on any and all unidentified meat and meat products at the plant. At that time, he issued an Embargo Notice covering approximately 3,500 pounds of beef and pork in a hard frozen state found in boxes, bags and trays in the walk-in freezer at the plant. Schatz agreed to hold the embargoed meat until released by the Commissioner or a court. Ex. 20. The meat covered by the embargo was not marked "Not for Sale" and did not carry the mark of USDA inspection. Id.

59. At the time of the October 31 inspection, Lonnie Schatz falsely told Stelter the veal and the pork chops were a federal product (USDA inspected). Schatz falsely said the unidentified pork and beef neck bones were a federal product and that the pork trim was custom product. Schatz said the unidentified beef and pork trim and commingled heads were intended for jiternice (liver sausage) and other types of sausage and that unidentified back fat was intended for use in deer sausage. Ex. 21. Schatz produced a wholesale meat receipt from Frank Klein and Son for the unidentified veal. The receipt showed, among other things, that Schatz had purchased 186.6 pounds of veal. Ex. 22, 23. That entry was fraudulent. Schatz had falsely altered the receipt to show the veal purchase. Schatz subsequently admitted that he had falsified the receipt in order to mislead the Department.

60. On or about October 7, 1994, Schatz sold to Ted Miller two hogs he had purchased, slaughtered and butchered. The hogs had not been inspected by USDA before or after Schatz purchased them for resale. Ex. 25.

61. By certified letter dated November 7, 1994, Stokesbary wrote to Schatz regarding the inspection conducted on October 26, 1994. In that letter he demanded correction of the second notice orders issued on October 26, 1994, which required Schatz to clean the smokehouse and the tenderizer, identify all custom product

as "Not for Sale", and identify dog food trim as "inedible". Ex. 45. By letter dated November 17, 1994 Schatz reported that the smoke house and tenderizer had been cleaned and were being maintained in a clean condition and that the other requirements demanded by the Department in its November 17, 1994 letter had been corrected. Ex. 46.

62. On December 7, 1994 Stelter visited the Kilkenny plant to ascertain the disposition of the six hogs allegedly slaughtered for their owners on October 26, 1994. When Stelter told Schatz that the persons Schatz identified as the owners denied they were the owners, Schatz admitted that the names of the owners of the six hogs which he provided to Stelter on October 31st were false and that the hogs actually belonged to someone else. However, Schatz was unable to produce a record of the alleged owners of the six hogs. Ex. 25.

63. On March 6, 1995 the Department notified Schatz by registered mail of a meeting with the Commissioner to discuss Schatz's continued noncompliance with governing statutes and rules and the greywater Schatz was continuing to discharge into the drainage ditch adjacent to his plant. Ex. 48.

64. On March 15, 1995 Stelter and Kruger conducted a routine inspection of the Kilkenny plant. At the time of the inspection there was an accumulation of trash around the exterior of the plant, large cracks in the floor of the cutting room, hair and foreign matter on four carcasses in the carcass cooler, cobwebs on the ceiling in the processing area, inedible meats which were not denatured.^[12] Moreover, no letter of sewer system approval was provided by Lonnie Schatz, who signed the inspection report as manager. Ex. 29.

65. In order to address the deficiencies found, Kruger and Stelter issued an order requiring Schatz to provide a letter of sewer approval from the county, eliminate the buildup of trash around the plant, repair the floor cracks in the cutting room, remove spiderwebs in the cutting room, maintain separate cook/smoke records for meats smoked or cooked at the Kilkenny plant, provide and use an approved denaturant for all inedibles, and provide hand soap at the hand wash stand in the kill room. Ex. 29.

66. Kruger and Stelter conducted an inspection at the Kilkenny plant on May 11, 1995. This was a comprehensive inspection and covered several important areas. First, at this time, Schatz released approximately 3400 pounds of unidentified beef and pork which had been embargoed on October 31, 1994. Approximately 150 pounds of the meat was released to Schatz for his own use -- not for resale -- and the remainder was voluntarily destroyed and denatured.

67. At the time of the inspection the plant's sewage system still had not been approved and was inadequate. No letter was on file for the sewage system and there was no water certificate. Schatz was ordered to provide a letter approving the sewage system from "the local agency having jurisdiction." by June 1, 1995, which was the date agreed to in meetings between Schatz and representatives of the Department. Ex. 32.

68. On May 11th a number of insanitary conditions existed. There was an accumulation of trash on the north and west sides of the plant, the floor in the cutting room had deep cracks; hand wash sinks in the slaughter room were inoperable; there

was an accumulation of old product and mold on cutting boards, the reservoir of the stuffer, and the tenderizer; and there was an accumulation of flies in the light shield in the slaughter room. Schatz was issued a second notice to eliminate the remainder of the trash on the outside of the plant, which included brush, trash, lumber and metal. He was also ordered, for a second time, to repair cracks in the floor of the cutting room and repair and clean the overhead light in the ceiling of the kill room. Also, he was ordered to repair the two hand wash sinks in the kill room so that warm and cold running water would be available, make warm and cold running water available without using hand operated controls, and provide hand soap and single service hand towels. Finally, he was ordered to clean up accumulations of old product and mold on the five cutting boards and the frame-work in the cutting room as well as the water reservoir on the stuffer and the tenderizer. Ex. 32.

69. Schatz was also ordered to establish and follow a correct wash-rinse sanitization procedure each time he switched from processing federal to custom product, from butchering pork to beef, and from processing raw to cooked product. A handout containing chemical dishwashing procedures was explained to and left with Schatz at the conclusion of the inspection. Schatz was also ordered to maintain accurate custom slaughtering records which would include the name and address of the customer, the date of the service rendered and the species involved. In addition Schatz was ordered to discontinue the sale of maple syrup from unlicensed sources and to discontinue the sale of unlabeled, undated, ungraded and uncanded eggs. Schatz was told that the owner of the eggs could contact Mr. Kruger for an explanation of the legal requirements applicable to the sale of eggs. Id.

70. On September 27, 1995, Stelter made a routine inspection of the Kilkenny plant. He found that there was still an accumulation of trash, weeds and brush around the outside of the plant and the cracks in the floor of the cutting room still had not been repaired. Schatz was unable to provide a letter of approval on his sewage system for the facility, did not have current and accurate slaughtering records, or current and accurate smoke/cook records for products containing pork. The last smoke/cook record was made on August 14, 1995. Stelter also found luggers of custom meat trim which were not identified as "'Not for Sale,'" and unlabeled, undated, ungraded and uncanded eggs were available for sale. Stelter issued second and third notices for the correction of these violations.

71. At the conclusion of his inspection Stelter ordered Schatz to provide a detailed plan for any dog food operations, take steps to assure that all poultry meat products are cooked to a minimum internal temperature of 165° Fahrenheit, to discontinue any and all catering operations from the plant or the Montgomery plant because neither had any National Sanitation Foundation (NSF) support facilities or equipment to meet the requirements for catering food service. Ex. 34.

72. Schatz sold uninspected meat from animals he raised or obtained from the Zumbrota Livestock Auction Market, Stankey Livestock, and other sources. In making hamburger and sausage, he admitted or the record shows that he mixed uninspected meat, meat products and blood with meat that had been inspected or given to Schatz for custom processing. Also, he admitted commingling the custom meat products of different owners. The amount of beef and pork products he sold far

exceeded the amount of USDA beef and pork he purchased. Ex. 98. Schatz admitted that his kill records were replete with false entries. Many of the hogs which Schatz purchased to slaughter, process and sell were identified by false names such as Reba McIntyre, Joe Dumas, Lyle Alzado, Tony Llama, and Pete Rose. Ex. 104. Other hogs apparently of poorer quality were falsely marked as custom hogs (i.e., "Not for Sale").

73. On November 28, 1995 Stelter and Kruger conducted a routine inspection of the Kilkenny plant. At that time, custom slaughter records were incomplete, water at 180° Fahrenheit was unavailable during slaughter operations occurring at the time of the inspection, no hand soap and single use towels were provided at the hand sinks in the slaughter and processing areas, the men's room was dirty, and an accumulation of old product was found in the hog scalding and on the splitting saw. Also, a freezer door in the plant was not rodent proof and spiderwebs were found in the spice room. Custom product in the freezer was not identified as "Not for Sale", the plant's potable water certificate was not current, and the septic system still had not been approved.

74. Stelter ordered Schatz to correct all the noncomplying conditions found during the November 28th inspection. Similar orders had been issued many times before. The order requiring a letter of approval for the sewage system was the fourth consecutive order given to Schatz. The order requiring Schatz to identify custom product as "Not for Sale" was the third consecutive notice given to him regarding that requirement. The order that Schatz provide current and accurate slaughter records was the third consecutive notice of that violation.

75. Slaughter records at Kilkenny were incomplete and inconsistent with USDA records on November 28. USDA reported to the Department that a rendering company received 39 beef hides, 49 hog hides and 2 calf hides from the Kilkenny plant in October. Slaughter records at Kilkenny showed that 33 hogs and 36 beef were sold to the rendering company that month, resulting in a shortage of 16 hogs and 3 beef for the month of October. Records at the Kilkenny plant also showed that Schatz slaughtered a steer he owned on October 3, 1995. Schatz stated that he sold the steer to two individuals who each purchased half. However there were no records verifying the alleged sale. Schatz was advised again to keep current slaughter records showing the name and address of each customer, the date and type of service provided (slaughtering or processing) and the species of the animal. *Id.* This was the third notice of violation relating to slaughter records at the Kilkenny plant. Ex. 67.

76. During the period from November 1992 to March 1995, Schatz routinely deboned hog and beef carcasses at the Kilkenny plant. Some of the animals came from the Zumbrota Auction Livestock Market. Others were delivered to the plant by Stankey Livestock. Schatz told his butchers, like Bernard Hinderscheid, to put fictitious names on the carcasses to deceive Departmental inspectors. Some meat products available for sale were marked falsely as "Not for Sale". These meat products were not USDA inspected.

77. Most of the deboned carcasses were used in making hamburger or sausages (and wieners) at the Montgomery plant. Brian Schatz frequently made the sausage. Ex. 72. Some of the deboned beef was sold at retail at the Montgomery plant or mixed with the meat of animals brought into the plant for butchering by the farmers

who owned them. Some of the sausage and wieners produced in the Montgomery plant were sold at retail at the Kilkenny plant. Ex. 68, 72, 73. Sausage and wieners were also sold at Main Street Meats in New Prague. Exs. 49 and 72.

78. The Kilkenny plant received USDA inspected hams and pork bellies which were processed further for resale at Main Street Meats in New Prague. Hams would be resmoked and repackaged and bellies were processed into bacon and repackaged for sale. Ex. 68, 70, 73.

79. From November 5, 1992 through March 29, 1995, Schatz regularly sold and delivered meat and meat products to customers in the Twin Cities and other places. One customer alone bought 200 to 300 pounds of beef from Schatz each week consisting of hamburger and prime cuts. Ex. 73. Many of these meat products came from animals purchased at the Zumbrota Livestock Auction Market or from area farmers and were not USDA inspected. Ex. 73.

80. Schatz made other retail meat sales. Some of the meat was not USDA inspected. For example:

A. In 1996 Schatz sold meat products to Mark Sand, d/b/a Von Hanson's in Chaska, Minnesota. Sand purchased sausage products from Schatz -- blood and liver sausage. Ex. 89.

B. During the two-year period ending August 22, 1995, Schatz sold blood sausage, liver sausage, braunschweiger and head cheese to Ken Thesen, d/b/a Ken's Fresh Meats, in Eden Prairie, Minnesota. Ex. 60.

C. During the nine-month period from 1995 to May 24, 1996, Schatz sold Italian sausage to Earl's Pizza in St. Paul, Minnesota. Ex. 82.

Schatz made other meat sales which included meats which were not USDA inspected.

They included sales to Mama Maria's Restaurant, the County Line Restaurant, employee's, and others, such as David Eckblad. Ex. 100.

81. It is very unusual for custom exempt operators to purchase cattle or hogs from livestock markets. However, between May 8, 1995 and June 17, 1995, Schatz or his brother Ty purchased 21 head of cattle and 25 hogs from the Zumbrota Livestock Auction Market. Many of them were lame or had other problems; they were thin, limping or weak and some had ruptures. Ex. 75. Schatz told Elfering that he bought "junk" and sold "merchandise." Complaints have been filed with the Department regarding the quality of Schatz's meat products.

82. Between January 3, 1994 and February 28, 1996, Ty Schatz purchased 209 head of cattle and 4 hogs and sows from the Zumbrota Livestock Auction Market. Ex. 76. Many, if not most, of these animals were purchased for Schatz and were delivered to the Kilkenny plant for processing. Ex. 73. Many of the animals were sold "as is" and had problems including cuts, long toes, eye cancers, swellings, bad feet and lumps. Two were not able to cross the scale and were brought into the yard by the head. Id.

83. Between January 1, 1994 and February 28, 1996, Schatz purchased 42 hogs, sows and boars from the Zumbrota Livestock Auction Market. Ex. 77. Many of

these animals were defective. Five had abscesses or ruptures and five were lame. Ex. 77.

84. Schatz was not authorized to cater hog roasts because he did not have facilities meeting National Sanitation Foundation (NSF) standards or their equivalent.^[13] Nonetheless, for the past 18 years he stated he has catered hog roasts, and he has had printed materials advertising his catering business. Ex. 106. Schatz regularly has been engaged in the catering business at his Montgomery and Kilkenny plants. He catered hog roasts, beefburger dinners, steak dinners, and roast beef, roast pork and chicken or ham dinners. Ex. 61. In addition to meat, Schatz provided potato salad, rolls, beans, sauerkraut and coleslaw. Ex. 83. The hogs used frequently were not USDA inspected. Instead, they appeared in his slaughter records.

85. Schatz catered a hog roast for the LeSueur County Sheriff's Department in 1994 and 1995. For his catering service, Schatz was paid on a per-plate basis. He was not asked to slaughter or process a live hog and the sponsor did not purchase a live hog for the roast or ask Schatz to purchase a live hog for the sponsor's use. Ex. 61. In June 1995 Schatz sold a fully cooked and ready to eat hog to Kay Van Every for a barbecue at her home at a total cost of \$280.50. Van Every did not have the hog custom processed and never asked or agreed to buy a live hog from Schatz. Ex. 62. The hog Schatz prepared for Van Every was purchased at the Zumbrota Livestock Auction Market; it was not USDA inspected. Ex. 62. About the same time, Schatz catered a whole hog dinner for Marsha Topka at a per-plate charge of \$6.00. Topka did not ask Schatz to buy a live hog or to have a hog custom processed. Schatz catered the event; the hog used was not USDA inspected. Ex. 64, 70. In June 1995, Schatz catered a whole hog dinner for Margaret Adams under the same terms as Topka's. Ex. 65. Schatz had catered a hog roast for Adams before. On June 18, 1995 Schatz catered a whole hog roast for Therese Kahout-Amel at a per plate cost of approximately \$6.50. Kahout-Amel did not ask Schatz to purchase a live hog for the event and she didn't provide the hog Schatz served. Ex. 69. Schatz obtained the hog from the Zumbrota Livestock Auction Market; it was not USDA inspected. Ex. 83.

86. On March 28, 1996 Stelter and Kruger conducted a routine inspection of the Kilkenny plant. At the time of the inspection they found that the hand sink in the processing area was inaccessible and no single use towels or hand soap was available. Two rolling meat tubs in the processing area were badly cracked and uncleanable, and there was an accumulation of dust on the fan guards over the processing table. Furthermore, the outside door to the freezer was not tight fitting and rodent proof. Schatz was ordered to correct these conditions and was also ordered, for the fifth consecutive time to obtain a letter of approval for the septic system. At that time, Schatz produced copies of his 1995 and 1996 slaughter records which were current to date. Ex. 81.

87. In 1996, a search warrant was issued in order to obtain Schatz's business records. No documents pertaining to Schatz's retail accounts were found at either plant. Stelter suspected that Schatz had secreted them elsewhere. However, Stelter found an invoice relating to Schatz's business with Mama Maria's, a restaurant with which Schatz had previously done a substantial amount of business. Stelter asked Schatz to make a photocopy of the invoice. Schatz took it to his copy machine, fiddled

with the machine for a while, and then announced that it didn't work. When Stelter asked Schatz for the invoice, Schatz said he didn't know what Stelter was talking about.

88. By certified letter dated May 31, 1996 the Department gave Schatz written notice that his retail food handling license for the Montgomery plant (No. 20010653) and the Kilkenny plant (No. 20016656) were being placed on "hold" under Minn. Stat. § 28A.07, and that it was considering revocation of his custom processing permits (Nos. 936 and 1224). Exs. 83 and 84. The letter stated that its action was being taken to reevaluate Schatz's fitness for licensing.

89. On June 25, 1996, Stelter's superiors, Stanley Stokesbary and Kevin Elfering conducted a routine inspection of the Kilkenny plant. At the time of the inspection the plant was in an insanitary condition. The insanitary conditions which existed at that time were as follows:

- A. The cook tank contained old, dirty water.
- B. Smokehouse dollies had an accumulation of old product and grease.
- C. The hand wash sinks had an accumulation of old product and grease.
- D. The thermoplastic cutting board in the slaughter and cutting rooms had an accumulation of old product and mold.
- E. The meat rollers had an accumulation of old product.
- F. The push button control on the chain hoist had an accumulation of old product.
- G. The splitting saw contained an accumulation of old product.
- H. The bacon hooks contained an accumulation of old product.
- I. The door going into the slaughter room was rusty and contained an accumulation of grease.
- J. The jaccard tenderizer had an accumulation of old product and rust.
- K. The meat band saw contained an accumulation of old product and had a sour smell.
- L. The stainless steel wrapping table had an accumulation of old product and grease.
- M. Both meat slicers contained an accumulation of old product on the blades.
- N. The carcass splitting saw had an oil leak.
- O. The tool sterilizer was not in operation during slaughtering operations in effect at the time of the inspection.
- P. The throat on the Hollimatic patty machine contained loose flaking glue.

Q. Tall grass, junk and old equipment were noted around the outside of the building.

R. Hand soap and single use towels were not provided at the hand wash sinks.

S. A rusty portable table was found in the walk-in cooler.

T. Clean processing equipment was being stored on the floor.

In addition to the insanitary conditions found during the time of the inspection and which Schatz was ordered to correct, the inspectors found custom trim in the plant which did not contain the words "Not for Sale". In addition, at the time of the inspection a hog which had not been stunned was being slaughtered. Correction orders were also issued for these violations. Ex. 85 and 86.

90. Following the June 25, 1996 inspection at the Kilkenny plant, the Department notified Schatz that his food handler's licenses and his custom exempt processing permits were being revoked. Notice was sent on June 2, 1996 by certified mail. See Notice and Order for Hearing and Order to Show Cause. On July 2, 1996, Schatz appealed those actions and requested a contested case hearing. Ex. 87 and 88. The Department acknowledge receipt of Schatz's appeal and advised him he could continue operating the plants until his appeal was resolved.

91. On September 17, 1996 Kruger and Elfering conducted a quarterly inspection of the Kilkenny plant. At the time of the inspection the following insanitary conditions existed:

A. Clean meat processing equipment was stored on the floor of the slaughter room.

B. The motor housing on the splitting saw contained an oil leak.

C. There was standing water in the tool sterilizer in the slaughter room.

D. The cutting board and table framework in the slaughter room contained an accumulation of old meat scraps and rust.

E. The trolleys and hooks in the slaughter room were rusty.

F. The hand wash sinks in the slaughter and processing rooms contained old meat scraps.

G. The brass "Not for Sale" stamp contained ink and soil.

H. A pail of oil in the slaughter room was covered with mold.

I. The sausage cookers contained an accumulation of dirt.

J. The hand saws in the slaughter and processing rooms contained an accumulation of meat product.

K. The jaccard tenderizer in the processing room was rusty and had an accumulation of old product.

- L. The utensil scabbard in the processing room contained an accumulation of old meat.
- M. The cutting boards and the table framework in the processing room contained an accumulation of mold and old product.
- N. No soap or single use towels were available at the hand sinks.
- O. The hand wash sink drain in the processing room was leaking.
- P. Personal articles including cups, food, and pop cans were stored on the processing table.
- Q. Old equipment and tall weeds were found around the exterior of the building.

The inspectors ordered correction of these insanitary conditions.

92. At the time of the September 17, 1996 inspection the inspectors also found beef carcasses and trimmings which were not identified as "Not for Sale." In addition, the plant did not have a current potable water certificate and no letter of sewer acceptability. Moreover, inedible product barrels were stored in close proximity to carcasses in the chill cooler and inedible product destined for animal food was stored in the walk-in cooler and had been there for four months. Ex. 90.

93. On November 22, 1996 Kruger and Elfering made a routine quarterly USDA inspection of the Kilkenny plant. At the time of the inspection the following insanitary conditions existed:

- A. Hog carcasses in the walk-in cooler contained hair and fecal material.
- B. Clean processing equipment (a grinder pan) was stored on the slaughter room floor.
- C. Carcass cradles in the slaughter room had an accumulation of old product.
- D. Rags, coffee cups and equipment were stored in the hand wash sinks.
- E. No soap or single use towels were available at the hand sinks.
- F. The cutting boards and table framework in the processing room had an accumulation of old meat.
- G. A beef skull and horns were stored in the carcass cooler.
- H. The table in the slaughter room had an accumulation of old product and water.
- I. Edible products and inedible products were not adequately segregated from potential contamination.
- J. Ropes used on the overhead track rails were uncleanable.

K. The meat tenderizer in the processing room had an accumulation of old product.

L. Rusty carcass hooks, trolleys, liver trees, and sawblades were stored in the slaughter room.

At the time of the inspection bowls containing inedible product were touching carcasses and nonedible viscera destined for animal food was not decharacterized. Also Schatz did not have a current water potability certificate and no letter of sewage acceptability. Ex. 92. Schatz was ordered to correct all the violations.

94. On March 28, 1997 Kruger and Elfering conducted a routine inspection of the Kilkenny plant. At that time they found the following insanitary conditions:

A. Moldy meat product and salt brine were stored in the walk-in carcass cooler.

B. Containers of meat in the carcass cooler were stored on the floor.

C. Floor drains in the slaughter room did not have covers.

D. Soap and single use towels were not available for the hand sink in the slaughter room.

E. Light fixtures in the slaughter room were not covered with shields.

95. At the time of the inspection the plant's smoke/cook records were not current. The last entry in those records was made on February 8, 1997. The "Not for Sale" brand contained an accumulation of grease and ink. Also, carp, shrimp and other fish species were being smoked, but Schatz did not have an approved fish processing permit, and Schatz did not have a letter of sewer acceptability from the local agency regulating sewage systems. Ex. 93.

96. During the March 28 inspection, the investigators discussed Schatz's newspaper ads which stated that he had "U.S. choice custom slaughtered beef and whole or one-half hogs for sale." The investigators informed him that whenever live animals are purchased the transaction must occur between the person who raised the animal and the customer. They also informed him that he cannot use USDA grade designations on custom processed meat and cannot sell noninspected meat products or meats derived from custom processing. Id.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Agriculture and the Administrative Law Judge are authorized to consider the charges against the Respondent in this proceeding under Minn. Stat. §§ 14.50, 28A.04, 28A.13, and 31.101 (1996).

2. The Commissioner is authorized to suspend, revoke, or limit any license or permit issued by the Department for any violation of law or rule relating to the manufacturing, processing, distribution, handling, and sale of food under Minn. Stat. § 28A.13 (1996).

3. The Respondent received timely and proper notice of the charges against him and of the time and place of the hearing and this matter is, therefore, properly before the Administrative Law Judge.

4. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

5. Under Minn. R. 1400.7300, subp. 5 the Department has the burden of proof to establish, by a preponderance of the evidence, that the Respondent committed the violations of law and rule alleged.

6. Conditions in the Respondent's plant were frequently and routinely in a filthy, unclean or insanitary condition in violation of Minn. Stat. § 31.161 (1996).

7. Respondent frequently and routinely failed to correct violations ordered by the Department's inspectors in violation of Minn. Stat. § 31.53 and 31.165 (1996).

8. Respondent sold meat and meat products which had not been inspected by the USDA and which were not exempt from USDA inspection in violation of Minn. Stat. §§ 31.56, 31A.02, subd. 5 and 31A.10 (1996) and 21 U.S.C. §§ 603 (b) and 610 (b) (1996).

9. Respondent failed to shoot or stun pigs before they were slaughtered in violation of Minn. Stat. § 31.59 (1996) and 21 U.S.C. 603.

10. Respondent sold meat derived from custom processing in violation of Minn. Stat. § 31A.02, subd. 5 (1996).

11. Respondent regularly failed to maintain and make available to the Department records which fully and correctly disclosed all transactions involved in his businesses in violation of Minn. Stat. § 31A.18, subd. 1 (1996) and 9 C.F.R. § 303.1 (b) (3) (1996).

12. Respondent failed to maintain his buildings, storage and supply areas in a sanitary condition in violation of Minn. R. 1545.0970 and 1545.1030 (1995).

13. Respondent frequently failed to have hot water at a temperature not less than 180° Fahrenheit available for sanitation purposes in violation of Minn. R. 1545.1200 (1995).

14. Respondent did not keep the plant's premises free of refuse, waste materials, and other sources of objectionable odors and conditions in violation of Minn. R. 1545.1590 (1995).

15. Respondent generally did not keep the rooms, compartments and other parts of his plants where meat products were handled and kept in a clean and sanitary condition in violation of Minn. R. 1545.1600 (1995).

16. Respondent routinely failed to keep equipment and utensils used for preparing and handling meat products in a clean and sanitary condition and in good repair in violation of Minn. R. 1545.1710 (1995).

17. Respondent failed on many occasions to keep his operations and procedures involving the preparation, storing or handling of meat products in accord with clean and sanitary methods in violation of Minn. R. 1545.1840 (1995).

18. Respondent did not conduct his plant operations in a manner resulting in sanitary processing and proper inspection in violation of Minn. R. 1545.1930 (1995).

19. Respondent smoked fish for resale without obtaining a permit from the Commissioner in violation of Minn. R. 1545.3140 (1995).

20. Schatz did not properly mark custom products with the words "Not for Sale" as required by 21 U.S.C. § 623(a) and 9 C.F.R. §§ 303.1(a) (2) (iii) and 1316.16 (1996).

21. On two occasions Respondent accepted dead animals into his facility in violation of Minn. Stat. § 31.56 (1996).

22. Respondent frequently failed to have accessible hand-washing equipment with soap and sanitary towels in violation of Minn. R. 1545.0920 and 1545.1240 (1995).

23. Respondent failed to repair cracks in the floor of the Kilkenny plant even after orders to do so in violation of Minn. R. 1545.1070 (1995).

24. Respondent failed to comply with repeated orders that he remove rubble, trash and brush on the outside of his plants to protect against rodents and vermin in violation of Minn. Rs. 1545.1590 and 1547.0076.

25. Respondent offered for sale meat and meat products that had been slaughtered without the benefit of USDA inspection in violation of Minn. Stat. §§ 31.56 and 31A.10 and 21 U.S.C. § 610.

26. Disciplinary action against the licenses and permits of the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner take disciplinary action against Respondent's licenses and permits.

Dated this 3rd day of June, 1997

/s/

JON L. LUNDE

Administrative Law Judge

Reported: Taped: four tapes

MEMORANDUM

The Respondent's most egregious violations involve the sale of cattle and hogs. Respondent sold beef and pork that was not federally inspected and commingled that meat with the meat of custom processed animals and meat that was USDA inspected.

The State's policy regarding meat and meat food products is set forth in Minn. Stat. § 31A.01 which states, in part, as follows:

Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, unadulterated, and properly marked, labeled and packaged. Unwholesome, adulterated, or misbranded meat or meat food products injure the public welfare, destroy markets for wholesome, unadulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products and injury to consumers. Unwholesome, adulterated, misbranded, or deceptively packaged articles can be sold at lower prices and compete unfairly with wholesome, unadulterated, and properly labeled and packaged articles, to the detriment of consumers and the general public. *

* *

In the sale of food, the policy in this state is to seek and maintain uniformity with the federal government with respect to the regulation and control of the manufacture, distribution and sale of food. Minn. Stat. § 31.002 (1996). Under the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq., all cattle, swine and other animals must be examined and inspected before slaughter. 21 U.S.C. § 603. However, federal law contains an exemption. It does not apply to the following:

[T]he slaughtering by any person of animals of his own raising, and the preparation by him and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor to the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees; nor to the custom preparation by any person, firm, or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of cattle, sheep, swine, or goats of his own raising, or from game animals, delivered by the owner thereof for such custom preparation, and transportation in commerce of such custom prepared articles, exclusively for use in the household of such owner, by him and members of his household and his nonpaying guests and employees. . . .

21 U.S.C. § 623 (a). Minn. Stat. § 31A.15 contains the same exemption for custom slaughtered animals for sale in intrastate commerce in Minnesota.

The Respondent has custom processing permits for his plants. They authorize him to slaughter, dress and process animals for their owners. However, Respondent is prohibited from selling, offering for sale, or having possession with intent to sell of any meat derived from custom processing. Minn. Stat. § 31A.02, subd. 5 (1996). Also, all custom prepared meat products must be plainly marked "Not for Sale" at all stages of processing and production. 9 C.F.R. §§ 303.1(a) (2) (iii) and 316.16 (1996).

From and after 1993 Schatz regularly purchased hogs and cattle from livestock markets and elsewhere, then butchered and sold the meat without USDA inspection, mixed it with the meat of custom processed animals, or mixed it with USDA inspected meat. He sold uninspected meat from animals he purchased to various institutional clients and to customers and employees. He also used the meat of hogs for pig roasts. His sale of uninspected meat was on a relatively large scale as is evinced by the amount of meat that was embargoed in 1994 and the number of cattle and hogs the record shows were purchased from local livestock markets. Schatz admitted commingling uninspected meat he purchased with the meat that was custom processed for owners, using the blood of inspected animals to make sausage, and mixing uninspected meat with custom hamburger. He also slaughtered hogs he owned and sold the meat without USDA inspection. His actions violated Minn. Stat. §§ 31A.02, subd. 5, 31A.10 and 31.56 (1995), the policies set forth in section 31A.01 (1995), and 21 U.S.C. § 603.

The Respondent knowingly and deliberately attempted to conceal the sale of uninspected meat by failing to maintain records of his activities, destroying evidence of his activities, fabricating names of nonexistent owners, and advising employees to falsely label meat as "Not for Sale". It appears from the record that Respondent did anything he could to make sales of uninspected meat in complete disregard of governing laws and rules and the public health. Schatz admitted to most of these violations but attempted to minimize the extent of his illegal activities. His testimony on this and other contested issues cannot be credited. Throughout his dealings with the Department Schatz has been untruthful, and at the hearing his answers were vague, qualified, inconsistent and wholly unpersuasive.

The Respondent failed to maintain records fully and correctly disclosing all transactions involved in his businesses in violation of Minn. Stat. § 31A.18 (1996). The statute states:

The following classes of persons shall keep records that will fully and correctly disclose all transactions involved in their businesses; and all persons subject to the requirement shall, at all reasonable times, upon notice by a duly authorized representative of the commissioner afford the representative and any duly authorized representative of the Secretary of Agriculture of the United States accompanied by a representative of the commissioner access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all business

records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

- (a) Any persons who engage, for intrastate commerce, in the business of slaughtering animals or preparing, freezing, packaging, or labeling carcasses, or parts of products of carcasses, of animals, for use as human food or animal food. . . .

Respondent failed to maintain slaughter records showing the name and address of each customer, the date and type of service provided, and the species of animal involved in spite of numerous orders, warnings and instructions in violation of Minn. Stat. § 31A.18, subd. 1 and 9 C.F.R. § 303.1 (b) (3) (1996). He also failed to maintain current smoke records showing that processed pork had been heated to a minimum of 144° Fahrenheit to kill trichinae parasites, and he falsified records relating to the true ownership and source of animals he purchased, slaughtered and sold. When Stelter did find evidence of commercial sales to a restaurant (Mama Maria's), Schatz went so far as to destroy the evidence of his ongoing sales.

Schatz was also in violation of Minn. Stat. § 31.161 and other statutes pertaining to the insanitary conditions. Section 31.161 states, in part, as follows:

No person, firm, or corporation shall operate any . . . packing or slaughterhouse . . . or any place where any fruit or food products are manufactured, packed, stored, deposited, collected, prepared, produced, or served for the purpose of sale or profit, or sold for any purpose whatsoever, if the same is in a filthy, unclean, or unsanitary condition, or is permitted to be in a filthy, unclean, or insanitary condition.

Respondent consistently violated this statute and other related statutes relating to sanitary conditions at both his plants during the last eight years. The premises of the plants routinely were covered with an accumulation of grease, smoke, flaking char, cobwebs and old product; coolers where meat were stored were overcrowded, unorganized, and dirty; and areas around the plant were littered with trash, junk and rubble, creating a habitat for insects, rodents and vermin. The Respondent's operations and equipment also created sanitation risks. On many occasions -- especially at the Kilkenny plant -- Respondent did not have a supply of water at 180° Fahrenheit for cleaning the facilities and equipment during slaughtering and dressing operations as required under Minn. R. 1545.1200, (1995). Also, Respondent repeatedly failed to have sinks with hot and cold water and soap and towels available for employee use as required by Minn. Rs. 1545.1230, 1545.1240, 1545.1260, 1547.0069, 1547.0070 and 1547.0071 (1995). Schatz failed, after repeated warnings, to repair cracks in the floors at the Kilkenny plant, to replace light shields and end caps, to obtain food grade hoses for operations, and to take other corrective actions. The general insanitary conditions at the plant did not improve over time and Schatz did not even take the simple step of adopting cleaning schedules. His operations show a persistent pattern of deliberate noncompliance and a complete disregard for the public welfare and the wholesomeness of the meat and meat products he handled.

Schatz regularly ignored orders given to him by Stelter to stop curing and selling fish without appropriate permits, to abstain from engaging in dog food operations before drafting a plan and consulting with the Department's agronomy division, and to obtain state and county approval of his sewage systems. Minn. Stat. § 31.175, which pertains to water, plumbing and sewage, states as follows:

A person who is required by statutes administered by the Department of Agriculture, or by rules adopted pursuant to those statutes, to provide a suitable water supply, or plumbing or sewage disposal system, may not engage in the business of manufacturing, processing, selling, handling, or storing food at wholesale or retail unless his water supply is satisfactory under plumbing codes adopted by the department of health and his sewage disposal system satisfies the rules of the pollution control agency.

The Montgomery and Kilkenny plants are required to obtain State Disposal System (SDS) and National Pollutant Discharge Elimination System (NPDES) permits from the Minnesota Pollution Control Agency and LeSueur County. Those permits are required for individual sewage treatment systems serving establishments or facilities licensed or regulated by the state of Minnesota and for new or existing systems which discharge to the ground surface. Minn. R. 7080.0030, subps. 1 A and B and 4 (1995). Individual sewage treatment systems which require MPCA approval must also comply with county ordinances. Minn. R. 7080.0030, subp. 4 (1995).

The Respondent's plants have not been approved by the Minnesota Pollution Control Agency or LeSueur County. Since at least 1990, departmental inspectors have told Schatz to obtain required permits. He has repeatedly promised to obtain permits but has failed to do so. He is, therefore, in noncompliance with section 31.175.

The Department has established the violations charged in the hearing notice. However, two additional issues must be addressed. One relates to the issues involved in this proceeding and the other to the disciplinary action the Commissioner should take.

The stated charges against Respondent relate to the insanitary condition of his buildings, facilities and operations; the slaughter, processing, and sale of meat which was not federally inspected; the failure to maintain required records; and the failure to obtain permits for the plants' sewage systems. The issues in this case are not, however, limited to the charges stated in the hearing notice. Other violations were discussed at the hearing. Evidence relating to other charges was received without objection from the Respondent who, in fact, testified about many of them. The additional violations also were cited in the Department's brief without objection from Respondent.

Agencies should strive to draft hearing notices which contain a complete statement of charges and a specification of facts on which each charge is based. However, the failure to plead all charges is not fatal when the other party consents to try issues which were not pleaded. Consent is implied when a party fails to object to evidence outside the issues raised in the pleadings or presents his own evidence on those issues. Matter of Thomas Casey, SR., PA, 540 N.W.2d 854, 858 (Minn. Ct. App. 1996) citing Roberge v. Cambridge Coop Creamery Co., 243 Minn. 230, 234, 67

N.W.2d 400, 403 (1954), review granted on other grounds, 543 N.W.2d 96 (Minn. 1996). Respondent consented to try issues not pleaded which are addressed in the Conclusions of this report. They include sanitation issues relating to the cleanliness of facilities and equipment, the failure to have water at 180° Fahrenheit available for cleaning equipment and facilities during slaughtering and processing, the absence of sinks with hot and cold running water, soap and towels for employees to use, and failing to mark custom product with the words ““Not for Sale”.” In addition, it was alleged at the hearing that Schatz slaughtered animals without stunning them. This issue was not stated in the hearing notice but was also tried by consent.

Under Minn. Stat. § 28A.13 the Commissioner of Agriculture may suspend, revoke or limit a license or permit issued under Minn. Stat. § 28A.04 when any provision of law relating to the manufacturing, processing, distribution, handling and sale of food, or regulation issued by the Commissioner, has been violated. The traditional practice in contested case proceedings is for the Administrative Law Judge to make only a recommendation for or against disciplinary action and not to specify the action that should be taken.

In this case, the Administrative Law Judge has recommended that disciplinary action be taken. Firm action is required because of the number, significance and recurrence of the violations which were established. Respondent has shown contempt for the orders issued by Departmental investigators by ignoring repeated orders to correct sanitary violations, to obtain approval of his sewage systems, to properly mark custom products, and to abstain from the sale of nonfederally inspected meat and meat products. He has engaged in a consistent pattern of violations and shown little interest in improving his operations. He has failed to maintain records of his operations and has deliberately lied to Departmental agents, destroyed evidence and fabricated documents. He has persistently sold nonfederally inspected meat products in large volume. Some of the meat came from animals in poor physical condition. His actions have been inconsistent with the public interest in maintaining the health and welfare of consumers for purposes of Minn. Stat. § 31A.01. In addition Schatz mislead purchasers of his meat products who believed that the meat they purchased had been federally inspected.

Respondent argues that he is the victim of overly zealous enforcement, that his violations have been minimal, and that the violations were immediately addressed unless parts were unavailable or he lacked the funds necessary for corrective action. These assertions are not supported by any credible evidence. There is no evidence that Respondent was treated any differently than other custom exempt operators. They were all inspected at least quarterly. Furthermore, to the extent that Respondent's operations were more closely scrutinized, the attention given him resulted from his unusually dirty operations, the number and variety of his violations, and his failure to take corrective action. The assertion that Respondent's violations were minimal is patently untrue, and there is no credible evidence that Respondent lacked funds to take corrective action. Even if necessary changes to his sewage systems involved a financial burden, that burden does not excuse noncompliance, and financial factors had little to do with most of the Respondent's violations.

Respondent also argued that whatever “bending of the rules have occurred have been minimal and undoubtedly exist on an industry wide basis. There is larceny in everyone’s heart and Mr. Schatz is no exception.” This is an appalling proposition. There is no evidence that the sale of nonfederally inspected meat is occurring on an industry-wide basis. On the contrary, Respondent’s sales appear to have been unique. The record shows that it is highly unusual for custom exempt operators to purchase animals from livestock markets, and there is no evidence whatsoever that other custom exempt operators conducted their businesses like Schatz. His alleged greed -- or the greed of others -- does not justify his illegal activities.

Respondent argued that his sanitation violations were “nit picky.” Many of these violations, viewed alone and in isolation, were not significant. However, the number, variety and persistence of Respondent’s violations constituted a significant departure from governing standards which affected the wholesomeness of the meat products he sold and jeopardized public health and welfare.

State laws and rules applicable to Respondent’s plants contain abundant sanitary provisions. The general requirement mandating a clean and sanitary operation (in section 31.161) is supplemented by a plethora of rules. See, e.g., Minn. R. § 1545.0970 (buildings); Minn. R. 1545.0900 (rooms, compartments and receptacles for edible products); Minn. R. 1545.1590 (premises); Minn. R. 1545.1600 (rooms and compartments); Minn. R. 1545.1620 (windows, doors and light fixtures); Minn. R. 1545.1660 (killing, roughing and pinning room). Most of the Department’s rules directly or indirectly address sanitation. They are designed to prevent contamination, maintain wholesomeness, protect consumers, and protect markets. These important objectives are not inconsequential or “nit-picky”. The occasional violation may be de minimus. In Respondent’s case, however, the violations were substantial. The evidence supports a reasonable inference that Respondent’s facilities, equipment and operation were, on a day-to-day basis, insanitary.

In determining what corrective action should be taken, the Commissioner should consider the Respondent’s blatant prevarications, the deliberate steps he took to conceal his illegal meat sales, and his utter and complete indifference to governing statutes and rules as well as his total disregard for the health of consumers. Respondent lied to investigators, falsified documents, and took steps to conceal his illegal sale of uninspected and improperly commingled meat products. Schatz totally disregarded laws forbidding the sales of uninspected meat, improperly handled custom product and ignored sanitation rules. In virtually every aspect of his operations he departed from governing standards. Contrary to Stelter’s orders, Schatz failed to obtain licenses and permits for the Kilkenny plant before beginning operations, failed to obtain a permit for smoking fish, failed to consult with the Department before starting dog food operations. He also catered food without obtaining a license, failed to properly grade and candle eggs, and sold maple syrup from an unlicensed source. He slaughtered hogs in an inhumane fashion and accepted dead hogs into his facility. He has evinced complete indifference to governing laws and rules. Strong disciplinary action is in the public interest.

At the hearing, Schatz attributed some of his illegal behavior to a drinking problem he allegedly had in the past. He stated that he stopped drinking several years

ago and now tries to attend one AA meeting each month. His uncorroborated, self-serving testimony on this issue has not been credited because he is not a credible witness. If he previously had a problem, one would expect some improvement in his operations. However, the record shows a continuing pattern of violations. In deciding what action is appropriate, therefore, his alleged drinking problem should be ignored.

J.L.L.

^[1] Lonnie held himself out as the manager of the Kilkenny plant and as a partner of Schatz and Sons. Exs. 11 and 18.

^[2] The cure cooler is used only for cooked meats or meats being cured.

^[3] The carcass cooler is used for the storage of raw meats.

^[4] These records are required to verify that pork has been cooked to a minimum of 144° Fahrenheit so that the trichina parasites in the meat are killed.

^[5] Greywater is the liquid waste in the plant's septic tank. See Minn. R. 7080.0020, subp. 18 (1995).

^[6] A custom exempt operator can slaughter and process animals for the animal's owner. The meat must be returned to the owner. It cannot be sold. Hence, custom exempt meats must be identified as "Not for Sale" at all stages of processing and production.

^[7] Greywater can only be emptied into the drainage ditch or land-spread with a special permit. Minn. R. 7080.0050 (1995).

^[8] At the hearing, Schatz stated that he didn't have a good cleaning schedule until 1996.

^[9] Schatz had the septic tank at the Montgomery plant pumped bimonthly between September 14, 1994 and April 12, 1995. Ex. 51. There is no evidence that he pumped the septic tank after that.

^[10] Schatz admitted accepting dead animals on two occasions.

^[11] Inedible material is that part of an animal unfit for human consumption. It includes offal, glands (lungs, kidneys and spleen) and hides.

^[12] Denaturing is the process used to identify inedible product. Ashes may be mixed with inedibles, they may be bleached, or they may be dyed with a color that will show up if mixed with meat.

^[13] NSF standards apply to equipment and facilities of food and beverage service establishments defined in Minn. Stat. § 157.15 and Minn. R. 4625.2401, subp. 15. See Minn. R. 4625.2401, subp. 24 and 4625.3701 (1995).