

**STATE OF FLORIDA, DEPARTMENT OF  
AGRICULTURE AND CONSUMER SERVICES**

**FLORIDA DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES,**

Petitioner,

v.

**PENN DUTCH FOOD CENTER II, INC.**

**3201 North State Road 7**

**Margate, FL 33063**

Respondent.

**Agency Clerk Filing No.: B20234**

**IMMEDIATE FINAL ORDER**

THIS CAUSE, arising pursuant to Chapter 500, Florida Statutes, came before the Commissioner of Agriculture for consideration and final agency action. The Commissioner of Agriculture, as head of the Department of Agriculture and Consumer Services, has jurisdiction over this subject matter and the parties.

**I. FINDINGS OF FACT**

1. Respondent owns and operates a food establishment within the meaning defined in Section 500.03(1)(p), Florida Statutes.
2. Respondent's food establishment is located at 3201 North State Road 7, Margate, Florida 33063 ("Margate store").
3. On September 9, 2019, the Florida Department of Agriculture and Consumer Services ("Department"), Division of Food Safety, collected 110 environmental samples in various areas of the Margate store.
4. On September 16, 2019, the Department's food laboratory found that thirteen (13) of the 110 environmental samples collected from Respondent's Margate store confirmed positive for

*Listeria monocytogenes*. (Composite Exh. A). The positive samples were from the following areas within the establishment: Deli – two floor drains; Deli Slicing Room – dolly wheels and the floor drain at the center of the room; Special Cuts Room – center floor drain; Seafood Display – black plastic tray used for tuna and a black plastic tray used for seabass; Seafood Cutting Area – north seafood cutting board; Ready Cooler – wheels of a dolly; Tray Wash Hallway – Scale; Chicken Production Room – floor and bolt under the propped trash can; and the Future Room – old deli dustpan (collectively, “*Listeria monocytogenes* positive areas”).

5. On September 16, 2019, the Department conducted an inspection at Respondent’s Margate store and issued a “Re-Inspection Required” summary citing a violation of Section 500.10(1)(f), Florida Statutes, relating to food that: *“has been produced, prepared, packed, transported, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;”* as evidenced by environmental samples found positive for *Listeria monocytogenes*. (Exh. B)
6. On September 16, 2019, Stop Use Orders were issued in conjunction with the inspection. The areas and or items/equipment that were placed under Stop Use Orders within Respondent’s Margate store are:
  - a. All wheeled dollies;
  - b. Black Plastic Trays;
  - c. North Seafood Cutting Board;
  - d. Pallet Scale in the Tray Wash Hallway;
  - e. Deli Dust Pan;
  - f. Deli;
  - g. Deli Slicing Room;

- h. Special Cuts Room;
  - i. Seafood Department – Display and Cutting Areas;
  - j. Fish Cooler;
  - k. Seafood and Deli Hallway;
  - l. Ready Cooler;
  - m. Tray Wash Hallway;
  - n. Chicken Production Room;
  - o. and the Future Room.
7. On September 18, 2019, the Department conducted a Focused Visit at Respondent’s Margate store to check on the Stop Use Orders that were issued on September 16, 2019. The Department observed that Stop Use Orders for *Listeria monocytogenes* positive areas had been broken. (Composite Exh. C).
8. On September 18, 2019, the Department notified Respondent that the Stop Use Orders remain in effect. (Exh. D).
9. On September 18, 2019, Respondent stated, via its Facebook page that, “Until Further Notice our Margate Location will be open every day from 9 am – 5 pm.”
10. Moving equipment, products and people in and out of the *Listeria monocytogenes* positive areas increases the potential for the spread of *Listeria monocytogenes* and exposes Respondent’s customers and employees to a pathogenic bacteria capable of creating a significant health risk.
11. Listeriosis is a serious infection usually caused by eating food contaminated with the bacterium *Listeria monocytogenes*. An estimated 1,600 people get listeriosis each year, and about 260 die. The infection is most likely to sicken pregnant women and their newborns,

adults aged 65 or older, and people with weakened immune systems. Most people with invasive listeriosis require hospital care, and about one in five people with the infection die. When listeriosis occurs during pregnancy, it can cause miscarriage, stillbirth, or newborn death. Listeriosis during pregnancy results in fetal loss in about 20% and newborn death in about 3% of cases.<sup>1</sup>

12. The Director of the Division of Food Safety, Dr. Matthew Curran, has determined that the continued operation of the Margate store presents an immediate danger to the public health, safety, and welfare.

### **III. CONCLUSIONS OF LAW**

1. Section 570.50, Florida Statutes, mandates that the Department conduct general inspections related to food and food products processed, held, or offered for sale in this state; and to that end, to enforce those functions, powers, and duties assigned in Chapters 500, 501, 502, 531, 583, 585, 586, 597, and 601, Florida Statutes.
2. Section 500.121(7), Florida Statutes, authorizes the Department to issue an immediate final order to close a food establishment if the division director determines that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
3. Upon such determination, the Department shall issue an immediate final order directing the owner or operator of the food establishment to cease operation and close the food establishment. The Department shall serve the order upon the owner, operator, or agent thereof of the food establishment. The Department may attach a closed-for-operation sign to the food establishment while the order remains in place.

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<sup>1</sup> *Listeria (Listeriosis)*, Centers for Disease Control and Prevention, [www.cdc.gov/listeria](http://www.cdc.gov/listeria) (last visited Sept. 19, 2019)

4. The movement of any product, people, and/or equipment out of the *Listeria monocytogenes* positive areas can spread to other areas of the establishment, or to food products, and likewise, using or moving equipment found from *Listeria monocytogenes* positive areas risks spreading the pathogen to other areas of the establishment, to food products, or to the public.
5. In accordance with Section 500.121(7)(a), the Director of the Division of Food Safety, Dr. Matthew Curran, has determined that the continued operation of the Margate store presents an immediate danger to the public health, safety, and welfare.

Upon consideration of the foregoing, a review of the record, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED:**

1. Respondent's failure to comply with the Department's Stop Use Orders for the presence of *Listeria monocytogenes* presents an imminent threat to the public health, safety, and welfare of the public.
2. Respondent's continued operation after violation of the Department's Stop Use Orders for the presence of *Listeria monocytogenes* presents an imminent threat to the public health, safety, and welfare and requires immediate closure.
3. Respondent shall cease operation and close its Margate store until such time that Respondent has met the applicable requirements to resume operations enclosed with this Immediate Final Order.
4. The Department shall post a closed-for-operation sign to Respondent's Margate food store while this order remains in place.

Done and Ordered this 19<sup>th</sup> day of September, 2019.

Nicole Fried, Commissioner of Agriculture

Nicole Fried  
Nicole Fried, Commissioner

Florida Department of Agriculture and Consumer Services

Rendered this 19<sup>th</sup> day of September, 2019.

[Signature]  
Agency Clerk

**NOTICE OF RIGHTS**

This is an Immediate Final Order issued pursuant to Sections 120.569(2)(n) and 500.121, Florida Statutes, and is appealable or enjoinable from the date rendered. Any party to these proceedings adversely affected by this Immediate Final Order is entitled to seek judicial review of this Immediate Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, H-4, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

Enclosures:

- Exhibits A through D.
- Requirements to Resume Operations.

Copies to: Steve Weinberg – Registered Agent and Chris Fisher – Counsel

