

**In re: TAQUERIA LA MICHOACANA.
P.Q. Docket No. 99-0038.
Decision and Order filed May 26, 2000.**

James D. Holt, for Complainant.
Respondent, Pro se.
Decision and Order issued by James W. Hunt, Chief Administrative Law Judge.

The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture [herein Complainant], instituted this administrative proceeding under the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-167), the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj) [herein the Acts], the regulations promulgated thereunder (7 C.F.R. §§ 301.11(b), 319.56-2ff), and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statues (7 C.F.R. §§ 1.130-1.151) [herein the Rules of Practice], by filing a Complaint on April 29, 1999.

The Complaint alleged that on January 22, 1999, Taqueria La Michoacana [herein Respondent] violated the Acts by moving 5 boxes of Mexican Hass avocados from Chicago, Illinois to Muscatine, Iowa, because such movement is prohibited. Federal Regulations provide that no person shall move any plant or plant part from a quarantined State into or through any State not quarantined with respect to that plant or plant part. 7 C.F.R. § 301.11. Federal Regulations prohibit the distribution of Mexican Hass avocados outside of the following States: Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin. 7 C.F.R. § 319.56-2ff(a)(3). The movement of each box of Mexican Hass avocados outside of the States quarantined for Mexican Hass avocados is a separate violation of the Acts. Pursuant to section 163 of the Plant Quarantine Act, the Complainant is authorized to assess a civil penalty of \$1,000 for each violation of the Act. 7 U.S.C. § 163. Therefore the maximum civil penalty which could be assessed in these proceedings is \$5,000.

The Hearing Clerk, Office of Administrative Law Judges, [herein Hearing Clerk] mailed the Complaint to Respondent by certified mail on April 30, 1999. On June 15, 1999, the Hearing Clerk notified Respondent that their answer to the Complaint had not been received within the required time. 7 C.F.R. § 1.136(a). Respondent has not filed an answer to date.

Pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), failure to deny or otherwise respond to the allegations in the Complaint constitutes, for the purposes of this proceeding, an admission of the allegations. By this failure to file a timely answer, Respondent has admitted the allegations of the Complaint.

Accordingly, the material allegations alleged in the Complaint are adopted and

set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.139.

Finding of Fact

1. The mailing address of Taqueria La Michoacana is 813 Oregon Street, Muscatine, Iowa 52761.
2. On January 22, 1999, Taqueria La Michoacana, respondent, moved 15 boxes of Mexican Hass avocados from Chicago, Illinois to Muscatine, Iowa.

Conclusion

It is a well established policy that "the sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose." *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476 (1991).

The success or failure of the programs designed to protect America's agriculture by the prevention, control and eradication of plant pests is dependent upon the compliance of individuals such as the Respondent. Without the adherence of these individuals to Federal Regulations concerned with the prevention of the spread of plant pests, the risk of the undetected spread of plant pests is greatly increased. The imposition of sanctions in cases such as this are extremely important in the prevention of the spreading of plant pests. The sanctions must be substantial enough to be meaningful. This is important not only to insure that a particular Respondent will not again violate the regulations, but that the sanction will also deter others in similar situations. These proceedings address five violations of the Acts. A single violation of the Acts could cause losses of billions of dollars and eradication expenses of tens of millions of dollars. This suggests the need for a severe sanction to serve as an effective deterrent to violations.

Complainant believes that compliance and deterrence can now be achieved only with the imposition of the \$500 civil penalty requested. Complainant's recommendation "as to the appropriate sanction is entitled to great weight, in view of the experience gained by the [Complainant] during [his] day-to-day supervision of the regulated industry." *In re: S.S. Farms Linn County, Inc. et al.*, 50 Agric. Dec. 476 (1991).

Complainant also seeks as a primary goal the deterrence of other persons similarly situated to the respondent. *In re: Indiana Slaughtering Co.*, 35 Agric. Dec. 1822, 1831 (1976). "The civil penalties imposed by the Secretary for violations of his quarantine regulations should be sufficiently large to serve as an

effective deterrent not only to the respondent but also to other potential violators." *In re Kaplinsky*, 47 Agric. Dec. 629 (1988). Furthermore, "if the person cannot pay the penalty imposed, arrangements can be made to pay the civil penalty over a period of time." *Id.* at 633.

Under USDA's sanction policy "great weight is given to the recommendation of the officials charge with the responsibility for administering the regulatory program." *In re Spencer Livestock Commission Co.*, 46 Agric. Dec. 268, 447, *aff'd*, 841 F.2d 1451 (9th Cir. 1988). "In order to achieve the congressional purpose and to prevent the importation into the United States of items that could be disastrous to the United States agricultural community, it is necessary to take a hard-nosed approach and hold violators responsible for any violation irrespective of lack of evil motive or intent to violate the quarantine laws." *In re Capistrano*, 45 Agric. Dec. 2196, 2198 (1986). *Accord, In re Vallata*, 45 Agric. Dec. 1421 (1986).

Therefore, by reason of the facts contained in the Findings of Fact above, I find that the Respondent has violated the Acts and the regulations (7 C.F.R. §§ 301.11(b), 319.56-2ff).

Therefore, the following Order is issued.

Order

Taqueria La Michoacana is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
Butler Square West, 5th Floor
100 North Sixth Street
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This Decision and Order became final July 7, 2000.-Editor]
