

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0653

In re: David Still and
Gloria Still,

Respondents

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), hereinafter referred to as the Act, and the regulations and standards (9 C.F.R. § 1.1 et seq.) issued pursuant to the Act, by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondent violated the Act. Copies of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon the Respondent on October 9, 2012 by certified mail.

Respondents failed to file an answer to the complaint within 20 days as required by Section 1.136 of the Rules of Practice (7 C.F.R. § 1.136.) and on November 16, 2012, the Hearing Clerk sent a letter to the Respondents notifying them that a timely answer had not been received.

As Respondents failed to file an answer within the time prescribed in the Rules of Practice, and the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. Respondents David Still and Gloria Still are individuals with a mailing address in Purdy, Missouri.
2. Respondents, at all times material hereto, had a license to operate as a Class A breeder as defined in the regulations 9 C.F.R. § 1.1. Respondents' license number under the Animal Welfare Act is 43-A-3753. The respondents acknowledged in writing on their application for license renewal that they received the regulations and standards contained in 9 C.F.R. Subpart A, Parts 1,2 and 3.
3. On July 22, 2011, APHIS inspected the Respondents' premises and found the following violations of the regulations and the standards specified below:
 - a. Respondents failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).
 - b. Housing facilities and areas used for storing animal food or bedding were not free of any accumulation of trash, waste material, junk, weeds, and other discarded materials (9 C.F.R. § 3.1(b));
 - c. The sheltered parts of sheltered housing facilities for dogs were not sufficiently cooled when necessary to protect the dogs from temperature or humidity extremes and to provide for their health and well-being since the ambient temperature was above 85°F (29.5°C) which affected at least 66 dogs (9 C.F.R. § 3.3(a));
 - d. The interior height of the primary enclosures for dogs was not at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position (9 C.F.R. § 3.6(c)(1)(iii); and

e. Dogs were not provided with potable water and watering receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.10).

4. On March 31, 2011, APHIS inspected the Respondents' premises and found the following violations the regulations and the standards specified below:

a. Respondents interfered with, threatened, abused (including verbal abuse), or harassed APHIS employees in the course of carrying out their duties including but not limited to telling APHIS employees to leave the respondents' premises and yelling at APHIS employees in willful violation of section 2.4 of the regulations (9 C.F.R. § 2.40).

b. Respondents failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

c. Respondents refused to permit APHIS employees to conduct a complete inspection of their animal facilities and records, in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126).

d. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

e. The supplies for dogs were not stored off the floor and away from the walls, to allow cleaning underneath and around the supplies (9 C.F.R. § 3.1(e)); and

f. The interior height of the primary enclosures for dogs was not at least 6 inches higher than the head of the tallest dog in the enclosure when it was in a normal standing position (9 C.F.R. § 3.6(c)(1)(iii)).

5. On August 17, 2010, APHIS inspected the respondents' facility and found the following

willful violations of the regulations and the standards specified below:

- a. Housing facilities and areas used for storing animal food or bedding were not free of any accumulation of trash, waste material, junk, weeds, and other discarded materials(9 C.F.R. § 3.1(b));
- b. Supplies of food and bedding were not stored in a manner that protects them from spoilage, contamination, and vermin infestation (9 C.F.R. § 3.1(e));
- c. Housing facilities were not equipped with disposal facilities and a drainage system that was constructed and operated to provide for animal waste and water to be rapidly eliminated (9 C.F.R 3.1(f));
- d. Dogs were not provided with potable water and watering receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.10);
- e. The premises including buildings and surrounding grounds, were not kept in good repair, and clean and free of trash, junk, waste, and discarded matter, and weeds, grasses and bushes were not controlled, in order to protect the animals from injury, and facilitate the required husbandry practices(9 C.F.R § 3.11(c)); and
- f. An effective program for the control of pests was not established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas(9 C.F.R § 3.11(d)).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondents willfully violated Sections 2.40 and 2.100(a) of the regulations (9 C.F.R. §2.40 and 2.100(a) and the standards specified and set forth above.

Order

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder, and in particular, shall cease and desist from :

a. Failing to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

b. Failing to maintain housing facilities and areas used for storing animal food or bedding free of any accumulation of trash, waste material, junk, weeds, and other discarded materials;

c. Failing to cool the sheltered parts of sheltered housing facilities for dogs sufficiently when necessary to protect the dogs from temperature or humidity extremes and to provide for their health and well-being;

d. Failing to house dogs in primary enclosures that are at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position;

e. Failing to provide dogs with potable water and to keep watering receptacles for dogs clean and sanitized;

f. Failing to permit APHIS employees to conduct a complete inspection of their animal facilities and records;

g. Failing to have housing facilities for dogs that are structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering;

h. Failing to maintain the premises including buildings and surrounding grounds, in

good repair, and clean and free of trash, junk, waste, and discarded matter, and weeds, grasses and bushes in order to protect the animals from injury, and facilitate the required husbandry practices;

i. Failing to have an effective program for the control of pests;

j. Failing to have supplies of food and bedding that are stored in a manner that protects them from spoilage, contamination, and vermin infestation; and

k. Failing to have housing facilities equipped with disposal facilities and a drainage system that was constructed and operated to provide for animal waste and water to be rapidly eliminated.

2. Respondents are jointly and severally assessed a civil penalty of \$4,300. The Respondents shall pay the civil penalty by a certified check or money order made payable to the Treasurer of United States and the check or money order shall include the notation "AWA Dkt. No.12-0653". The civil penalty shall be sent to Sharlene Deskins, USDA OGC, Mail Stop 1417, 1400 Independence Ave., S.W., Washington, D.C. 20250-1417.

3. Respondents' license is suspended for 30 days and continuing thereafter until the Respondents pay the civil penalty assessed in this decision and order and can established to APHIS that they are in compliance with the Act, regulations and standards.

4. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145. The provisions of this order shall become effective on the first day of the month after this decision becomes final.

Copies of this decision shall be served upon the parties.

May 22, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge