

ORIGINAL



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 14-0134
)
Greer Gardens, Inc.,)
)
Respondent) CONSENT DECISION

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701 et seq.) (“Act”) by a Complaint filed by the Administrator of the Animal and Plant Health Inspection Service (“Complainant”), alleging that Greer Gardens, Inc. (“Respondent”) violated the Act and regulations promulgated thereunder (7 C.F.R. §§ 301.92 - 301.92-12, Subpart-*Phytophthora Ramorum*). The Complainant and the Respondent have agreed that this proceeding should be terminated by entry of this Consent Decision, and have agreed to the following stipulations:

1. For the purpose of this stipulation, and the provisions of this Consent Decision only, the Respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the Complaint, admits to the Findings of Fact set forth below, and waives:

(a) Any further procedure;

(b) Any requirement that the final decision in the proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof; and

(c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision.

2. The Respondent also stipulates and agrees that the United States Department of

Agriculture is the “prevailing party” in this proceeding and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.) for the fees and other expenses incurred by the Respondent in connection with this proceeding.

Findings of Fact

1. Greer Gardens, Inc., hereinafter referred to as the Respondent, is a corporation with a mailing address of 1280 Goodpasture Island Road, Eugene, Oregon 97401.

2. Respondent is a nursery which, at all times relevant to the Complaint, was subject to Federal Orders DA-2011-10 and DA-2012-53 and to the regulations contained at 7 C.F.R. §§ 301.92 - 301.92-12 (Subpart–*Phytophthora Ramorum*), and shipped interstate from Eugene, Oregon:

- (a) species of the genera *Rhododendron* to Springfield, Missouri, on or about May 20, 2013;
- (b) species of the genera *Rhododendron* to Johnstown, Pennsylvania, on or about May 6, 2013;
- (c) species of the genera *Rhododendron* to Chadds Ford, Pennsylvania, on or about April 9, 2013;
- (d) species of the genera *Pieris* and *Rhododendron* to Charlotte, North Carolina, on or about April 8, 2013;
- (e) species of the genera *Rhododendron* to Guilford, Connecticut, on or about April 2, 2011;
- (f) plants to Hiwassee, Virginia, on or about June 4, 2013;

- (g) plants to Newark, Delaware, on or about June 4, 2013;
- (h) plants to Linden, Michigan, on or about June 4, 2013;
- (i) plants to Burr Ridge, Illinois, on or about June 4, 2013;
- (j) plants to Chicago, Illinois, on or about June 4, 2013;
- (k) plants to Walterboro, South Carolina, on or about June 3, 2013;
- (l) plants to Rutherford College, North Carolina, on or about June 3, 2013;
- (m) plants to Kalamazoo, Michigan, on or about June 3, 2013;
- (n) plants to Browns Mills, New Jersey, on or about June 3, 2013;
- (o) plants to Teaneck, New Jersey, on or about June 3, 2013;
- (p) plants to East Boothbay, Maine, on or about June 3, 2013;
- (q) plants to Greenwich, Connecticut, on or about May 29, 2013;
- (r) plants to Ann Arbor, Michigan, on or about May 29, 2013;
- (s) plants to Elgin, South Carolina, on or about May 29, 2013;
- (t) plants to Smithtown, New York, on or about May 29, 2013; and
- (u) plants to Unionville, Connecticut, on or about May 29, 2013.

Conclusion

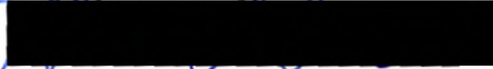
The Respondent has admitted the jurisdictional facts and has agreed to the provisions set forth in the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

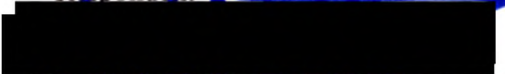
ORDER


The Respondent is assessed a civil penalty of ten thousand seven hundred fifty dollars (\$10,750). The civil penalty shall be paid in six consecutive monthly installments. The first five

monthly installments shall be in the amount of two thousand dollars (\$2,000) each, and the sixth and remaining monthly installment shall be in the amount of seven hundred fifty dollars (\$750). If the Respondent is late in making any payment, then all remaining payments become immediately due and payable in full. Additionally, in the event of termination of Respondent's business, including, but not limited to, its sale, transfer, merger, closure or dissolution, all remaining payments become due and payable in full prior to termination. Payment must be received by the fifteenth (15th) of every month, beginning on May 15, 2015. Each payment shall be made by certified check or money order, payable to the "Treasurer of the United States", and sent to: U.S. Department of Agriculture, APHIS, U.S. Bank, P.O. Box 979043, St. Louis, Missouri 63197-9000. The Respondent shall indicate on the face of the certified check or money order that payment is in reference to P.Q. Docket No. 14-0134.

This Order shall become effective the day upon which service of this Consent Decision is made upon the Respondent.


HAROLD E. GREER
President of Greer Gardens, Inc.
Respondent


AARON J. NOTEBOOM
Attorney for Respondent


SUSAN C. GOLABEK
Attorney for Complainant

Issued this 30th day of January,
2015, in Washington, D.C.


ADMINISTRATIVE LAW JUDGE
JANIOG K BULCARD