

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 06-0015

In re: STEVE NEILL and RONDA NEILL,
 individuals d/b/a CEDAR CREST KENNEL,

Respondents

DEFAULT DECISION AND ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.) (the “Act”), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations and standards (9 C.F.R. § 1.1 et seq.) (the “Regulations”) issued thereunder.

On May 26, 2006, the Hearing Clerk sent to Respondents Steve Neill and Ronda Neill, by certified mail, return receipt requested, a copy of the Complaint. Respondents were informed in the accompanying letter of service that an Answer to the Complaint should be filed pursuant to the Rules of Practice and that a failure to answer any allegation in the Complaint would constitute an admission of that allegation. Respondents received the Complaint on June 12, 2006.¹ Respondents failed to file an Answer within the time prescribed in the Rules of Practice; thus the material facts alleged in the Complaint, which are admitted by Respondents’

¹ See Domestic Return Receipt for Article Number 7003 3110 0003 7112 2922.

default, are adopted and set forth herein as Findings of Fact. This Decision and Order is issued pursuant to section 1.139 of the Rule of Practice, 7 C.F.R. § 1.139.

FINDINGS OF FACT

1. Respondent Steve Neill is an individual whose mailing address is 1015 East Colgate Street, Bolivar, Missouri 65613.

2. Respondent Ronda Neill is an individual whose mailing address is 1015 East Colgate Street, Bolivar, Missouri 65613.

3. Respondents Steve Neill and Ronda Neill, collectively and individually do business as Cedar Crest Kennel, which is believed to be an unincorporated association or partnership with the mailing address 1015 East Colgate Street, Bolivar, Missouri 65613.

4. Respondents Steve Neill, Ronda Neill and Cedar Crest Kennel (collectively, "Respondents"), at all material times mentioned herein, were operating as dealers as defined in the Act and the Regulations.

5. Respondents have a medium-sized business, selling no fewer than 176 puppies of at least five different breeds, during the forty-eight month period (January 2001 through December 2004).

6. In addition, according to Respondents' own application for an Animal Welfare Act license, between April 29, 2003 and April 28, 2004, Respondents sold 100 animals and grossed at least \$15,000 from the sales of those animals.

7. Respondents were aware of the requirement to have a USDA license to sell puppies to a Distributor or Pet Store, but nonetheless continued to engage in regulated activity without the require license and sold a significant number of dogs to entities including licensed dealers.

8. On January 25, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, one Chow-Chow puppy to Tracy's K&J Pets, a licensed dealer (Animal Welfare Act license number 43-B-0015) ("Tracy's"), for resale use as pets or breeding purposes.

9. On May 10, 2001, Respondent Steve Neill, without being licensed, sold, in commerce, one Newfoundland puppy to Tracy's, for resale use as a pet or breeding purposes.

10. On May 16, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, four Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

11. On May 16, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, one Chow-Chow puppy to Tracy's, for resale use as a pet or breeding purposes.

12. On May 16, 2001, Respondent Ronda Neill transported and/or delivered, in commerce, one Chow-Chow puppy that was not yet eight weeks old.

13. On May 17, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, three Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

14. On May 24, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, one Chow-Chow puppy to Tracy's, for resale use as a pet or breeding purposes.

15. On May 31, 2001, Respondent Steve Neill, without being licensed, sold, in commerce, one Newfoundland puppy to Tracy's, for resale use as a pet or breeding purposes.

16. On June 21, 2001, Respondent Steve Neill, without being licensed, sold, in commerce, four Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

17. On August 30, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, four Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

18. On August 30, 2001, Respondent Ronda Neill transported and/or delivered, in commerce, four Labrador Retriever puppies that were not yet eight weeks old.

19. On December 12, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, three Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

20. On December 12, 2001, Respondent Ronda Neill transported and/or delivered, in commerce, three Chow-Chow puppies that were not yet eight weeks old.

21. On December 12, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, one Newfoundland puppy to Tracy's, for resale use as a pet or breeding purposes.

22. On December 12, 2001, Respondent Ronda Neill, without being licensed, sold, in commerce, four Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

23. On January 10, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, one Newfoundland puppy to Tracy's, for resale use as a pet or breeding purposes.

24. On January 10, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, two Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

25. On January 17, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, two Newfoundland puppies to Tracy's, for resale use as pets or breeding purposes.

26. On March 28, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, three Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

27. On April 25, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, six Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

28. On April 25, 2002, Respondent Ronda Neill transported and/or delivered, in commerce, six Labrador Retriever puppies that were not yet eight weeks old.

29. On May 16, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, five Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

30. On May 16, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, four Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

31. On May 16, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, one Chow-Chow puppy to Tracy's, for resale use as a pet or breeding purposes.

32. On May 16, 2002, Respondent Ronda Neill transported and/or delivered, in commerce, one Chow-Chow puppy that was not yet eight weeks old.

33. On June 27, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, one Labrador Retriever puppy to Tracy's, for resale use as a pet or breeding purposes.

34. On June 27, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, two Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

35. On August 15, 2002, Respondent Ronda Neill, without being licensed, sold, in commerce, three English Springer Spaniel puppies to Tracy's, for resale use as pets or breeding purposes.

36. On January 10, 2003, Respondent Ronda Neill, without being licensed, sold, in commerce, four Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

37. On January 23, 2003, Respondent Ronda Neill, without being licensed, sold, in commerce, four Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

38. On May 1, 2003, Respondent Ronda Neill, without being licensed, sold, in commerce, one Golden Retriever puppy to Tracy's, for resale use as a pet or breeding purposes.

39. On May 1, 2003, Respondent Ronda Neill, without being licensed, sold, in commerce, six Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

40. On May 14, 2003, Respondent Steve Neill, without being licensed, sold, in commerce, eight Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

41. On July 17, 2003, Respondent Steve Neill, without being licensed, sold, in commerce, two Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

42. On October 29, 2003, Respondent Steve Neill, without being licensed, sold, in commerce, four Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

43. On November 13, 2003, Respondent Steve Neill, without being licensed, sold, in commerce, one Golden Retriever puppy to Tracy's, for resale use as a pet or breeding purposes.

44. On November 13, 2003, Respondent Steve Neill, without being licensed, sold, in commerce, two Newfoundland puppies to Tracy's, for resale use as pets or breeding purposes.

45. On November 13, 2003, Respondent Steve Neill transported and/or delivered, in commerce, two Newfoundland puppies that were not yet eight weeks old.

46. On November 18, 2003, Respondent Steve Neill, without being licensed, sold, in commerce, one Newfoundland puppy to Tracy's, for resale use as a pet or breeding purposes.

47. On December 18, 2003, Respondent Ronda Neill, without being licensed, sold, in commerce, six Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

48. On January 21, 2004, Respondent Ronda Neill, without being licensed, sold, in commerce, five Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

49. On January 28, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, three Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

50. On January 28, 2004, Respondent Steve Neill transported and/or delivered, in commerce, three Chow-Chow puppies that were not yet eight weeks old.

51. On February 26, 2004, Respondent Ronda Neill, without being licensed, sold, in commerce, one Golden Retriever puppy to Tracy's, for resale use as a pet or breeding purposes.

52. On March 31, 2004, Respondent Ronda Neill, without being licensed, sold, in commerce, four Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

53. On May 13, 2004, Respondent Ronda Neill, without being licensed, sold, in commerce, two Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

54. On May 27, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, four Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

55. On June 16, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, six Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

56. On June 16, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, three Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

57. On July 1, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, three Labrador puppies to Tracy's, for resale use as pets or breeding purposes.

58. On July 1, 2004, Respondent Steve Neill transported and/or delivered, in commerce, three Labrador puppies that were not yet eight weeks old.

59. On July 1, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, five Labrador puppies to Tracy's, for resale use as pets or breeding purposes.

60. On July 1, 2004, Respondent Steve Neill transported and/or delivered, in commerce, five Labrador puppies that were not yet eight weeks old.

61. On July 22, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, one Labrador puppy to Tracy's, for resale use as a pet or breeding purposes.

62. On July 22, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, one Labrador Retriever puppy to Tracy's, for resale use as a pet or breeding purposes.

63. On August 5, 2004, Respondent Ronda Neill, without being licensed, sold, in commerce, three Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

64. On August 5, 2004, Respondent Ronda Neill, without being licensed, sold, in commerce, nine Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

65. On August 5, 2004, Respondent Ronda Neill transported and/or delivered, in commerce, nine Labrador Retriever puppies that were not yet eight weeks old.

66. On August 25, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, two Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

67. On August 25, 2004, Respondent Steve Neill transported and/or delivered, in commerce, two Labrador Retriever puppies that were not yet eight weeks old.

68. On August 25, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, eight Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

69. On August 25, 2004, Respondent Steve Neill transported and/or delivered, in commerce, eight Golden Retriever puppies that were not yet eight weeks old.

70. On October 21, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, two Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

71. On October 21, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, seven Golden Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

72. On December 1, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, three Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

73. On December 1, 2004, Respondent Steve Neill, without being licensed, sold, in commerce, seven Labrador Retriever puppies to Tracy's, for resale use as pets or breeding purposes.

74. On December 27, 2004, Respondents failed to provide no fewer than ten dogs with shelter from sunlight.

75. On December 27, 2004, Respondents failed to provide no fewer than ten dogs with a shelter that contained a wind break and rain break at the entrance.

76. In December 2005, Respondent Steve Neill, without being licensed, sold, in commerce, no fewer than three Chow-Chow puppies to Tracy's, for resale use as pets or breeding purposes.

77. On March 14, 2006, Respondents failed to provide no fewer than eleven dogs with shelter from sunlight.

78. On March 14, 2006, Respondents failed to provide no fewer than ten dogs with a shelter that contained a wind break and rain break at the entrance.

79. Respondents do not have a previous history of violations; however, Respondents' conduct over the period described herein demonstrates a consistent disregard for, and unwillingness to abide by, the requirements of the Act and the Regulations. Despite having attested to Respondents' awareness that "we needed to have a USDA license to sell puppies to a Distributor or a Pet store", Respondents continued to engage in regulated activity without a license and have sold numerous dogs, including to licensed dealers.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. By reason of the foregoing Findings of Fact, the Respondents are found to have violated the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and the regulations promulgated thereunder (9 C.F.R. § 1.1 et seq.)
3. The gravity of the violations is great and include repeated instances in which Respondents, without being licensed operated as a dealer, which is a serious violation because enforcement of the Act and Regulations depends upon the identification of persons operating as

dealers. See 7 U.S.C. § 2131; *In re: Shaffer*, 60 Agric. Dec. 444, 478, 2001 WL 1143410, at 23 (U.S.D.A. Sept. 26, 2001) (opinion of Judicial Officer) (“[T]he failure to obtain an Animal Welfare Act license before operating as a dealer is a serious violation because enforcement of the Animal Welfare Act and the Regulations and Standards depends upon the identification of persons operating as dealers.”); *In re: Zimmerman*, 56 Agric. Dec. 1419, 1453, 1997 WL 730380, at 22 (U.S.D.A. Nov. 6, 1997) (opinion of Judicial Officer) (“Respondent’s failures to provide adequate veterinary care, and failures to remove excreta from primary enclosures...constitute ‘serious’ violations in that they directly affected the health and well-being of Respondent’s animals”).

4. The violations also include repeated instances in which Respondents transported and/or delivered, in commerce, puppies that were not yet eight weeks old, which is a serious violation because transporting dogs under eight weeks old endangers their health because their immune systems are not developed enough to withstand the stress of long-distance travel and because it also interferes with their psychological development, and thus their ability to function when fully grown. See *Cox v. United States Dep’t of Agric.*, 925 F.2d 1102, 1106 (8th Cir. 1991); see also *In re: James & Julia Stuekerjuergen*, 44 Agric. Dec. 186, 189, 1985 WL 62918, at 2 (U.S.D.A. Feb. 27, 1985) (opinion of Judicial Officer) (“Violation of the minimum age requirement is a serious violation of the Act...the minimum age requirement is based on a finding by the Secretary that shipment of dogs under 8 weeks of age adversely affects ‘the animal’s ability to function in its adult environment,’ and is, therefore inhumane.”).

5. Between January 2001 and August 2004, Respondent Ronda Neill, without being licensed, sold, in commerce ninety-seven puppies to Tracy’s, for resale use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations.

7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on or about the following dates: January 25, 2001, May 16, 2001, May 17, 2001, May 24, 2001, August 30, 2001, December 12, 2001, January 10, 2002, January 17, 2002, March 28, 2002, April 25, 2002, May 16, 2002, June 27, 2002, August 15, 2002, January 10, 2003, January 23, 2003, May 1, 2003, December 18, 2003, January 21, 2004, February 26, 2004, March 31, 2004, May 13, 2004 and August 5, 2004.

6. Between May 2001 and August 2004, Respondent Ronda Neill transported and/or delivered, in commerce, twenty-four puppies that were not yet eight weeks old, in willful violation of section 2.130 of the Regulations. 9 C.F.R. § 2.130. The transportation and/or delivery of each dog constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on or about the following dates: May 16, 2001, August 30, 2001, December 12, 2001, April 25, 2002, May 16, 2002 and August 5, 2004.

7. Between May 2001 and December 2005, Respondent Steve Neill, without being licensed, sold, in commerce eighty-two puppies to Tracy's, for resale use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on or about the following dates: May 10, 2001, May 31, 2001, June 21, 2001, May 14, 2003, July 17, 2003, October 29, 2003, November 13, 2003, November 18, 2003, January 28, 2004, May 27, 2004, June 16, 2004, July 1, 2004, July 22, 2004, August 25, 2004, October 21, 2004, December 1, 2004 and December 2005.

8. Between November 2003 and August 2004, Respondent Steve Neill transported and/or delivered, in commerce, twenty-three puppies that were not yet eight weeks old, in willful violation of section 2.130 of the Regulations. 9 C.F.R. § 2.130. The transportation and/or

delivery of each dog constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on or about the following dates: November 13, 2003, January 28, 2004, July 1, 2004 and August 25, 2004.

9. On or about December 27, 2004, Respondents failed to provide no fewer than ten dogs with shelter from sunlight, in willful violation of section 3.4(b) of the Regulations. 9 C.F.R. § 3.4(b). The failure to maintain an appropriate facility for each animal constitutes a separate violation. 7 U.S.C. § 2149(b).

10. On or about December 27, 2004, Respondents failed to provide no fewer than ten dogs with a shelter that contained a wind break and rain break at the entrance, in willful violation of section 3.4(b)(3) of the Regulations. 9 C.F.R. § 3.4(b)(3). The failure to maintain an appropriate facility for each animal constitutes a separate violation. 7 U.S.C. § 2149(b).

11. On or about March 14, 2006, Respondents failed to provide no fewer than eleven dogs with shelter from sunlight, in willful violation of section 3.4(b) of the Regulations. 9 C.F.R. § 3.4(b). The failure to maintain an appropriate facility for each animal constitutes a separate violation. 7 U.S.C. § 2149(b).

12. On or about March 14, 2006, Respondents failed to provide no fewer than ten dogs with a shelter that contained a wind break and rain break at the entrance, in willful violation of section 3.4(b)(3) of the Regulations. 9 C.F.R. § 3.4(b)(3). The failure to maintain an appropriate facility for each animal constitutes a separate violation. 7 U.S.C. § 2149(b).

13. The ongoing pattern of violations by the Respondents establishes a “history of previous violations” for the purposes of section 2149(b) of the Act (7 U.S.C. § 2149(b)) and constitutes a lack of good faith.

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 engaging in activities for which an Animal Welfare Act license is required

2. Respondents are jointly and severally assessed a civil penalty of \$25,850.00. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Washington, D.C. 20250-1417

Respondent shall state on the certified check or money order that the payment is in reference to AWA Docket No. 06-0015.

3. The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice.

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
January 19, 2007

PETER M. DAVENPORT
Administrative Law Judge