

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) V.S. Docket No. 05 - 0001
)
Charles Johnson,)
)
Respondent) DECISION and ORDER
)
)

This is an administrative proceeding for the assessment of a civil penalty for violations of the regulations governing the maintenance of swine/hogs, their conditions, their feeding, and the disposal of waste therefrom (9 C.F.R. ' 166.1 et seq.) hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. " 1.130 et seq. and 9 C.F.R. " 167.1 et seq..

This proceeding was instituted under the Swine Health Protection Act (7 U.S.C. " 3801 et seq.)(Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service (APHIS) on January 26, 2005, alleging that respondent Charles Johnson violated the Act and regulations promulgated under the Acts (9 C.F.R. ' 94.1 et seq.).

The complaint sought civil penalties as authorized by 7 U.S.C. ' 3805. This complaint specifically alleged that on or about September 26, 2002, the respondent caused the accumulation of dead hogs at his facility, thereby causing the accumulation of material where

insects and rodents may breed, in violation of 9 C.F.R. ' 166.5(a); on or about September 26, 2002, the respondent allowed untreated garbage in swine feeding areas, in violation of 9 C.F.R. ' 166.6; on or about October 8, 2002, the respondent allowed swine access to the garbage handling and treatment areas, in violation of 9 C.F.R. ' 166.3(a); on or about October 8, 2002, the respondent allowed drainage from the handling and treatment of untreated garbage to run directly into hog pens, thereby becoming accessible to swine, in violation of 9 C.F.R. ' 166.3(b); on or about October 8, 2002, the respondent caused the accumulation of dead hogs at his facility, thereby causing the accumulation of material where insects and rodents may breed, in violation of 9 C.F.R. ' 166.5(a); on or about October 8, 2002, the respondent allowed untreated garbage in swine feeding areas, in violation of 9 C.F.R. ' 166.6.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. ' 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. ' 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. ' 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. ' 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision 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).

Findings of Fact

1. Charles Johnson, hereinafter referred to as respondent, is an individual with a mailing address of Rt. 2, Box 75, Wanette, Oklahoma 74878.
2. On or about September 26, 2002, the respondent caused the accumulation of dead hogs at his facility, thereby causing the accumulation of material where insects and rodents may breed, in violation of 9 C.F.R. ' 166.5(a).
3. On or about September 26, 2002, the respondent allowed untreated garbage in swine feeding areas, in violation of 9 C.F.R. ' 166.6.
4. On or about October 8, 2002, the respondent allowed swine access to the garbage handling and treatment areas, in violation of 9 C.F.R. ' 166.3(a).
5. On or about October 8, 2002, the respondent allowed drainage from the handling and treatment of untreated garbage to run directly into hog pens, thereby becoming accessible to swine, in violation of 9 C.F.R. ' 166.3(b).
6. On or about October 8, 2002, the respondent caused the accumulation of dead hogs at his facility, thereby causing the accumulation of material where insects and rodents may breed, in violation of 9 C.F.R. ' 166.5(a).
7. On or about October 8, 2002, the respondent allowed untreated garbage in swine feeding areas, in violation of 9 C.F.R. ' 166.6.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Act and the regulations issued under the Act (9 C.F.R. ' 166.1 et seq). Therefore, the following Order is issued.

Order

Respondent Charles Johnson is assessed a civil penalty of four thousand five hundred dollars (\$4500). This civil penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondents shall indicate on the certified check or money order that payment is in reference to V.S. Docket No. 05-0001.

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 Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. ' 1.145 of the Rules of Practice.

Done at Washington, D.C.
this 27th day of July, 2005

Peter M. Davenport
Administrative Law Judge
PETER M. DAVENPORT