

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P.Q. Docket No. 07-0048
	)	
Todd Erickson d/b/a	)	
Meadow Lake Nursery	)	
	)	
Respondent.	)	
	)	Default Decision
	)	and Order

This is an administrative proceeding for the assessment of a civil penalty for violations of the Plant Protection Act (7 U.S.C. § 7701 et seq.)(the Act) and regulations promulgated thereunder (7 C.F.R. section 319.37-10(b)(4)), in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 et seq.

On December 19, 2006, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, instituted this proceeding by filing an administrative complaint against Todd Erickson, doing business as Meadow Lake Nursery (hereinafter, Respondent). The complaint was served on Respondent on August 23, 2006. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), Respondent was informed in the complaint and the letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Respondent's answer thus was due no later than September 13, 2007, twenty days after service of the complaint (7 C.F.R. § 136(a)). Respondent never filed an answer to the complaint.

Therefore, Respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) and failed to deny or otherwise respond to an allegation of the complaint. 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) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Furthermore, since the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and Respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, Respondent's failure to answer is likewise deemed a waiver of hearing. 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).

Complainant initially sought a penalty of \$10,000 in its Motion for Adoption of Proposed Default Decision and Order. After I issued an Order to Show Cause how the proposed penalty was comported with the statutory requirements for civil penalty assessment, Complainant submitted a response detailing how the factors were applied, and lowered the proposed penalty to \$5,000 after factoring in Respondent's cooperation.

#### Findings of Fact

1. Todd Erickson d/b/a Meadow Lake Nursery, is a business with a mailing address of 3500 NE Hawn Creek Road, McMinnville, OR 97128.
2. On or about August 15, 2002 the Respondent violated 7 C.F.R. section 319.37-10(b)(4) of the regulations by importing 30 Malus Bud Sticks from Dresden,

Germany, by mail without plainly and correctly bearing the permit number authorizing the importation on the package.

#### Conclusion

By reason of the Findings of Fact set forth above, Respondent Todd Erickson violated the Plant Protection Act (7 U.S.C. § 7701 et seq.). Therefore, the following Order is issued.

#### Order

Respondent, Todd Erickson, is hereby assessed a civil penalty of five thousand dollars (\$5,000.00). This 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

Respondent shall indicate that payment is in reference to P.Q. Docket No. 07-0048.

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, Todd Erickson, 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).

Done at Washington, D.C.  
this 10<sup>th</sup> day of April, 2008.

Marc R. Hillson  
Administrative Law Judge