

USDA
OAL/OHC
2010 MAR 29 PM 3:45
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

A. Q. Docket No. 09-0071

In re: ADRIAN OJEDA,

Respondent

DEFAULT DECISION AND ORDER

This is an administrative proceeding brought under the Animal Health Protection Act (7 U.S.C. §§ 8301 *et seq.*)(the Act), for the assessment of a civil penalty for a violation of the regulations (9 C.F.R. § 94.25 *et seq.*) (The Regulations). The action was initiated by the filing of a complaint by the Acting Administrator of the Animal and Plant Health Inspection Service (APHIS) on March 17, 2009, alleging that respondent Adrian Ojeda violated the Act and regulations governing the importation of pork products from Mexico into the United States (9 C.F.R. § 94.25 *et seq.*). The complaint sought civil penalties as authorized by 7 U.S.C. § 8313 and specifically alleged that on or about January 6, 2007, respondent imported into the United States from Baja California, Mexico, approximately 47 pounds of pork products, without the required certification.

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 the

following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Adrian Ojeda, hereinafter referred to as respondent, is an individual with a mailing address in San Diego, California.
2. On or about January 6, 2007, the respondent imported approximately forty-seven pounds of pork products ("Cueritos") into the United States from Baja California, Mexico, at the San Ysidro Port of Entry in California, without presenting a certification as specified in 9 C.F.R. § 94.25(c), in violation of 9 C.F.R. § 94.25.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, the respondent violated the Act and the regulations issued under the Act (9 C.F.R. § 94.25 et seq).

Order

1. Respondent Adrian Ojeda is assessed a civil penalty of three thousand dollars (\$3,000). 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

Respondent shall indicate on the certified check or money order that payment is in reference to A.Q. Docket No. 09-0071.

2. 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.

Copies of this Default Decision and Order shall be served on the parties.

Done at Washington, D.C.

March 29, 2010


PETER M. DAVENPORT
Acting Chief Administrative Law Judge