

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Eddie Robinson Squires,)	A.Q. Docket No. 02-0005
)	
Respondent)	Default Decision and Order

[1] This proceeding was instituted under the Act of February 2, 1903, as amended (21 U.S.C. § 111), section 2; and the Act of May 29, 1884, as amended (21 U.S.C. § 120), sections 4 and 5; and the regulations promulgated thereunder (9 C.F.R. §§ 71.1 et seq. and 78.1 et seq.), by a Complaint filed on March 21, 2002, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS).

[2] Respondent Eddie Robinson Squires was served with a copy of the Complaint on July 28, 2003. (A copy of the Complaint was mailed to him in March 2002, but the U. S. Postal Service did not document whether he received that mailing.) Respondent failed to file an answer to the Complaint within 20 days after July 28, 2003, the time prescribed in the Rules of Practice, 7 C.F.R. § 1.136(a); to date, respondent has not filed an answer to the Complaint.

[3] The Rules of Practice provide 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. 7 C.F.R. § 1.136(c). 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 the Rules of Practice. 7 C.F.R. § 1.139. *See* 7 C.F.R. § 1.130 et seq.; *see also* 7 C.F.R. § 380.1 et seq.

[4] Respondent filed his response to APHIS's Motion for Adoption of Proposed Default Decision and Order. APHIS requests a civil penalty of \$18,500.00. Respondent requests that there not be a civil penalty assessed against him; that a letter of warning be given for first timers.

Findings of Fact

[5] Eddie Robinson Squires, respondent (often referred to herein as respondent), is an individual with a mailing address of 600 Raintree Drive, Matthews, NC 28105.

[6] On or about November 20, 1997, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved approximately two cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[7] On or about November 20, 1997, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved approximately two test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[8] On or about November 20, 1997, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved approximately 11 swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[9] On or about November 20, 1997, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved approximately 11 swine interstate from Stallings, NC to York, SC, for slaughter or for sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[10] On or about November 20, 1997, respondent, in violation of 9 C.F.R. § 71.19(e)(1) and (e)(2), moved approximately 11 swine interstate from Stallings, NC to York, SC, for sale without keeping records related to such swine.

[11] On or about November 20, 1997, respondent, in violation of 9 C.F.R. §§ 78.31(b), (c) and (e), moved one Brucellosis reactor swine interstate from Stallings, NC to York, SC.

[12] On or about April 30, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved approximately seven cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[13] On or about April 30, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved approximately seven test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[14] On or about June 4, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved approximately nine cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[15] On or about June 4, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved approximately nine test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[16] On or about June 4, 1998, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved approximately nine swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[17] On or about June 4, 1998, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved approximately nine swine interstate from Stallings, NC to York, SC, for slaughter or for sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[18] On or about August 13, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved approximately four cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[19] On or about August 13, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved approximately four test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[20] On or about August 13, 1998, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved approximately 11 swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[21] On or about August 13, 1998, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved approximately 11 swine interstate from Stallings, NC to York, SC, for slaughter or for sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[22] On or about August 20, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved approximately three cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[23] On or about August 20, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved approximately three test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[24] On or about August 20, 1998, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved approximately five swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[25] On or about August 20, 1998, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved approximately five swine interstate from Stallings, NC to York, SC, for slaughter or for sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[26] On or about August 24, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved approximately five cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[27] On or about August 24, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved approximately five test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[28] On or about August 24, 1998, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved approximately five swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[29] On or about August 24, 1998, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved approximately five swine interstate from Stallings, NC to York, SC, for slaughter or for

sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[30] On or about August 27, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved at least two cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[31] On or about August 27, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved at least two test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[32] On or about September 3, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved at least three cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[33] On or about September 3, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved at least three test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[34] On or about September 10, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved at least two cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[35] On or about September 10, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved at least two test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

[36] On or about September 10, 1998, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved at least five swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[37] On or about September 10, 1998, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved at least five swine interstate from Stallings, NC to York, SC, for slaughter or for sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[38] On or about October 22, 1998, respondent, in violation of 9 C.F.R. § 71.19(a)(1)(I) and (a)(3), moved at least five swine interstate from Stallings, NC to York, SC, without such swine being identified as approved by the Administrator as described in 9 C.F.R. § 71.19(b), as required.

[39] On or about October 22, 1998, respondent, in violation of 9 C.F.R. §§ 78.33 and 78.30(b), moved at least five swine interstate from Stallings, NC to York, SC, for slaughter or for sale for slaughter without such swine being identified in accordance with 9 C.F.R. § 71.19 before being moved interstate and before being mixed with swine from any other source.

[40] On or about October 22, 1998, respondent, in violation of 9 C.F.R. § 71.19(e)(1) and (e)(2), moved approximately seven swine interstate from Stallings, NC to York, SC, for sale without keeping records related to such swine.

[41] On or about November 12, 1998, respondent, in violation of 9 C.F.R. § 71.18(a)(1)(I) and (a)(3), moved at least six cattle two years of age or older interstate from Stallings, NC to York, SC, without such cattle being identified by a USDA approved backtag and accompanied by an owner/shipper statement or other required document, as required.

[42] On or about November 12, 1998, respondent, in violation of 9 C.F.R. § 78.9(a)(3)(iii), moved at least six test-eligible cattle interstate from Stallings, NC to York, SC, without such cattle being accompanied by a certificate, as required.

Conclusions

[43] The Secretary of Agriculture has jurisdiction.

[44] As shown in the Findings of Fact, during the approximately 1-year period from November 1997 through November 1998, Eddie Robinson Squires, respondent, violated section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111); sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. § 120); and the regulations promulgated thereunder (9 C.F.R. §§ 71.1 et seq. and 78.1 et seq.). (The Farm Security and Rural Investment Act of 2002 (Public Law 107-171, Title X, May 13, 2002, 116 Stat. 507, 508), repealed the Act of February 2, 1903, 21 U.S.C. §§ 111, 120-122, which was in effect at the times of these violations of Eddie Robinson Squires, respondent.)

[45] During the approximately 1-year period, as shown in the Findings of Fact, these violations of Eddie Robinson Squires, respondent, occurred on approximately 10-11 days involving at least 43 cows and at least 53 swine.

[46] Under such circumstances, and in accordance with 21 U.S.C. § 122, a reasonable, adequate, and appropriate civil penalty for these violations is \$3,175.00.

[47] Consequently, the following Order is issued.

Order

[48] Respondent Eddie Robinson Squires is hereby assessed a civil penalty of \$3,175.00.

[49] Respondent shall pay the \$3,175.00 by cashier's check or money order, made payable to the order of the "**Treasurer of the United States**" and forwarded within thirty (30) days from the effective date of this Order, by a commercial delivery service, such as FedEx or UPS, 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 **A.Q. Docket No. 02-0005**.

[50] This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final and effective 35 days after service upon respondent, unless an appeal to the Judicial Officer is filed within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 8th day of April 2004

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1081, South Building
Washington, D.C. 20250-9200
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period,

shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145