

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 03-0007
)
Andres Reyes Burgos, Inc,)
)
Respondent) DECISION and ORDER
)
)

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing regulated garbage and the requirements and the conditions of a compliance agreement between the respondent and the Complainant, the Animal and Plant Health Inspection Service (APHIS), by failing to properly dispose of regulated garbage to prevent the dissemination of animal and/or plant diseases into or within the United States (7 C.F.R. §§ 330.400 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 380.1 et seq.

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701-7772)(Act), by a complaint filed by the Acting Administrator of the Animal and Plant Health Inspection Service on November 7, 2002, alleging that the respondent violated the Act and regulations promulgated under the Act (7 C.F.R. §§ 330.400 et seq.). The complaint sought civil penalties as authorized by section 424 of the Plant Protection Act (7 U.S.C. § 7734).

This complaint specifically alleged that the respondent corporation violated the regulated garbage regulations and the conditions of the compliance agreement that it had entered into with APHIS by failing to dispose of regulated garbage at an approved facility to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases.

The respondent corporation 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. Andres Reyes Burgos, Inc., hereinafter referred to as the respondent, is a corporation whose mailing address is P.O. Box 1055, Catano, Puerto Rico 00963.

2. On or about October 20, 2000, the respondent corporation violated 7 C.F.R. §§ 330.400(f)(1), (g)(1), and (j)(2) of the regulations by violating the conditions of the compliance agreement by failing to dispose of regulated garbage at an approved facility to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases.

Conclusion

By reason of the Findings of Fact set forth above, the respondent corporation has violated the Act and the regulations issued under the Act (7 C.F.R. §§ 330.400 et. seq.).

Therefore, the following Order is issued.

Order

The respondent, Andres Reyes Burgos, Inc., is assessed a civil penalty of one thousand dollars (\$1,000.00). The respondent Andres Reyes Burgos, Inc. shall pay one thousand dollars (\$1,000.00) as a civil penalty. 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 P.Q. Docket No. 03-0007

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 4th day of May, 2004

Mark Hillson

Administrative Law Judge