

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

2016 NOV 22 PM 4:30

RECEIVED

In re:

Jorge Hernandez, dba	)	Docket No.16-0078
Jorge's Lumber, dba	)	
Jorge's Lumber Yard, dba	)	
Jorge's Mesquite Lumber Yard	)	
	)	Default Decision and Order as to the
Respondent	)	Respondent Jorge Hernandez

This administrative proceeding seeks the assessment of a civil penalty for violations of the Plant Protection Act, as amended and supplemented (7 U.S.C. §§ 7701 *et seq.*) (Act), and the regulations promulgated thereunder, in accordance with the rules of practice applicable to this proceeding as set forth in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

On or about March 8, 2016, the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), initiated this proceeding by filing an administrative complaint against the Respondent. The Respondent Jorge Hernandez is an individual. The Respondent's mailing address was not provided in the complaint to protect the privacy of Mr. Hernandez, but was provided to the Hearing Clerk, United States Department of Agriculture, for the purpose of service of the complaint and future documents. On March 9, 2016 the Hearing Clerk sent an envelope containing the complaint, Hearing Clerk's letter, and Rules of Practice via Certified mail (tracking number [REDACTED] 9379), to the Respondent's mailing address, which was returned by the Postmaster on April 6, 2016 as "Unclaimed". On May 23, 2016 the Hearing Clerk sent another envelope again containing the complaint, Hearing Clerk's letter, and Rules of Practice via Certified mail (tracking number [REDACTED] 9867), to the Respondent's mailing address. The envelope was "Delivered" on May 27, 2016, at 3:26pm. The Respondent failed to respond to the May 23, 2016 Hearing

Clerk's mailing. The complaint was mailed to the Respondent twice via certified mail, return receipt requested. Therefore, the Respondent is deemed to have been properly served with the complaint.

Section 1.136 of the rules of practice (7 C.F.R. § 1.136) states that an answer to a complaint should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer or otherwise respond to an allegation of the complaint within twenty (20) days after service of the complaint shall be deemed both an admission of the allegations in the complaint and a waiver of a hearing. The Respondent's answer thus was due no later than June 16, 2016, twenty days after service of the complaint (7 C.F.R. § 136(a)). Pursuant to section 1.136 of the Rules of Practice, the Respondent was informed in both the complaint and the Hearing Clerk's 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. Despite being so notified, the Respondent has not filed an answer to the complaint.

The Respondent has failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice and thus has failed to deny or otherwise respond to the allegations of the complaint. In accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), the Respondent's failure to answer the complaint is deemed an admission of the allegations in the complaint. Furthermore, section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) states that an admission of the allegations in a complaint constitutes a waiver of hearing. Because the Respondent failed to answer the complaint this constitutes an admission of the allegations in the complaint pursuant to section 1.136(c), it likewise constitutes a waiver of hearing pursuant to

section 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 (7 C.F.R. § 1.139).

#### Findings of Fact

1. Respondent Jorge Hernandez (Respondent) is an individual with a mailing address in the State of Arizona. The address will not be stated in the complaint to protect the privacy of Respondent, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purpose of service of this complaint.
2. On or about January 25, 2015, Respondent attempted to import mesquite wood for commercial purposes into the United States from Mexico without a permit in violation of 7 C.F.R. § 319.40-2(a) and 3(a)(1)(ii).
3. Respondent failed to have the above referenced mesquite wood inspected at a port of first arrival, in violation of 7 C.F.R. § 319.40-9, and did not provide an importer document stating that the wood was derived from trees harvested in Mexico adjacent to the United States border, in violation of 7 C.F.R. § 319.40-3(a)(2).
4. Respondent also failed to have the above referenced mesquite wood fumigated in accordance with 7 C.F.R. § 319.40-5(d) or heat treated under 7 C.F.R. 319.40-6(b)(2).

#### Conclusion

By reason of the Findings of Fact set forth above, the Respondent violated 7 C.F.R. § 319.40-2(a), § 319.40-3(a)(1)(ii), 7 C.F.R. § 319.40-9, 7 C.F.R. § 319.40-3(a)(2), 7 C.F.R. § 319.40-5(d), and 7 C.F.R. 319.40-6(b)(2) on or about January 25, 2015. Therefore, the following Order is issued. [REDACTED]

Order

The Respondent is hereby assessed a total civil penalty of Twelve-Thousand Five-Hundred Dollars (\$12,500). Pursuant to 7 U.S.C. § 7734(b)(1) the civil penalty assessed for the violations on or about January 25, 2015 is Twelve-Thousand Five-Hundred Dollars (\$12,500).

The Respondent shall send a certified check or money order for Twelve-Thousand Five-Hundred Dollars (\$12,500), made payable to the U.S. Department of Agriculture, to USDA APHIS, P. O. Box 979043, St. Louis, Missouri 63197-9000 within thirty (30) days from the effective date of this Order. The Respondent shall indicate on the certified check or money order that this payment is in reference to Docket No. 16-0078.

The Respondent shall cease and desist from violating the Act.

This order shall be final and effective thirty five (35) days after service of this default decision and order upon the Respondent, 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 22<sup>nd</sup> day of November, 2016

  
Bobbie J. McCartney  
Chief Administrative Law Judge

