

(b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof; and

(c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision.

2. The respondent also stipulates and agrees that the United States Department of Agriculture is the "prevailing party" in this proceeding and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

1. O & S Garden Center Corporation, d/b/a/ Four Seasons Garden Center, respondent herein, is a retail garden supply store incorporated in the state of Vermont, with a mailing address of 323 Industrial Boulevard, Williston, Vermont 05495.

2. Oliver Gardner, respondent herein (president of respondent corporation), is an individual whose business mailing address is 323 Industrial Boulevard, Williston, Vermont 05495.

3. On or about April 16, 1998, O & S Garden Center Corporation and Oliver Gardner (hereinafter referred to collectively as "respondents") imported approximately fifty-three

(53) articles of Malus spp. (apple, crabapple) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

4. On or about April 16, 1998, respondents imported approximately thirty (30) articles of Prunus spp. (almond, apricot, cherry, laurel, English laurel, nectarine, peach, plum, prune) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

5. On or about June 10, 1998, respondents imported approximately forty-nine (49) articles of Malus spp. (apple, crabapple) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

6. On or about June 10, 1998, respondents imported approximately sixty-two (62) articles of Prunus spp. (almond, apricot, cherry, laurel, English laurel, nectarine, peach, plum, prune) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

7. On or about April 9, 1999, respondents imported approximately seventy-four (74) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

8. On or about April 9, 1999, respondents imported approximately forty-four articles of Prunus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

9. On or about April 9, 1999, respondents imported approximately ten (10) articles of Pyrus spp. (pear) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

10. On or about May 25, 1999, respondents imported approximately fifty-eight (58) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

11. On or about May 25, 1999, respondents imported approximately fourteen (14) articles of Prunus spp. in violation

of 7 C.F.R. section 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

12. On or about May 25, 1999, respondents imported approximately three (3) articles of Pyrus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

13. On or about March 31, 2000, respondents imported approximately ninety-five (95) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

14. On or about March 31, 2000, respondents imported approximately fifteen (15) articles of Prunus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

15. On or about March 31, 2000, respondents imported approximately five (5) articles of Pyrus spp. in violation of 7 C.F.R. sections 319,37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

16. On or about May 23, 2000, respondents imported approximately thirty-five (35) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

17. On or about May 23, 2000, respondents imported approximately forty (40) articles of Prunus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

18. On or about May 23, 2000, respondents imported approximately fifteen (15) articles of Pyrus spp., in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

Conclusions

The respondents have admitted the jurisdictional facts and have agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.


Order

The respondents, O & S Garden Center Corporation and Mr. Oliver Gardner are assessed a civil penalty of nine thousand dollars (\$9,000), of which four thousand dollars (\$4,000) is


suspended, provided that the respondents do not violate the Acts, or the regulations issued thereunder for a period of two (2) years from the effective date of this Order. The respondents shall agree to pay five thousand (\$5,000) dollars of the remaining civil penalty pursuant to a monthly payment schedule, beginning on July 1, 2004. Respondents agree to pay five hundred (\$500) dollars a month, beginning July 1, 2004, for a period of ten (10) consecutive months. Each payment shall be made by certified check or money order and shall include (on the face of the certified check or money order), the docket number of this proceeding, P.Q. Docket No. 04-0003. The certified check or money order shall be payable to "Treasurer of the United States", and shall be forwarded to: United States Department of Agriculture, APHIS, Field Servicing Office, Accounting Section, P.O. Box 3334, Minneapolis, Minnesota 55403.

This Order shall become effective when served on the respondents.


O & S GARDEN CENTER CORPORATION
MR. OLIVER GARDNER
Respondents


TRACEY MANOFF
Attorney for Complainant

Issued this 30th day of April, 2004
at Washington, D.C.


Administrative Law Judge