

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P.Q. Docket No. 06-0010
	)	
Luis A. Barrera,	)	
	)	
Respondent.	)	
	)	Default Decision
	)	and Order

This is an administrative proceeding for the assessment of a civil penalty for a violation of the Plant Protection Act of June 20, 2000, as amended (7 U.S.C. §§ 7701 et seq.)(the Act), 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 Act by a complaint filed on December 12, 2005, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture and served by certified mail on respondent Luis A. Barrera on December 20, 2005. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), respondent Luis A. Barrera was informed in the complaint and the 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. Respondent's answer thus was due no later than January 9, 2006, twenty days after service of the complaint (7 C.F.R. § 1.136(a)). Respondent Luis A. Barrera never filed an answer to the complaint and the Hearing Clerk's Office mailed him a No Answer Letter on February 14, 2006.

Therefore, respondent Luis A. Barrera failed to file an answer within the time prescribed

in 7 C.F.R. § 1.136(a) and failed to deny or otherwise respond to the allegations of the complaint. 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) or to deny or otherwise respond to the allegations of the complaint shall be deemed an admission of the allegations in the complaint. Furthermore, since the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, respondent's failure to answer is likewise deemed a waiver of hearing. 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. Luis A. Barrera, herein referred to as respondent, is an individual with an address of 1784 5<sup>th</sup> Avenue, BXC 46, Bayshore, NY 11706.
2. On or about March 2, 2004, the respondent, in violation of Section 412 (a) of the Act (7 U.S.C. § 7712 (a)) and Section 319.56 of the Code of Federal Regulations (7 C.F.R. § 319.56), imported one kilogram of mangoes from El Salvador.

#### Conclusion

By reason of the Findings of Fact set forth above, Luis A. Barrera has violated the Act. Therefore, the following Order is issued.

Order

Respondent Luis A. Barrera is hereby assessed a civil penalty of five hundred dollars (\$500.00). This 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 Luis A. Barrera shall indicate that payment is in reference to P.Q. Docket No. 06-0010.

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 Luis A. Barrera 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 21<sup>st</sup> day of April, 2006.

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Administrative Law Judge  
**PETER M. DAVENPORT**