

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 04-0006
)
Ponce Airlines Services (P.A.S.),)
)
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 March 26, 2004, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture and served by certified mail on respondent Ponce Airlines Services (P.A.S.) on March 30, 2004. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), respondent P.A.S. 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 April 19, 2004, twenty days after service of the complaint (7 C.F.R. § 136(a)). Respondent P.A.S. never filed an answer to the complaint and the Hearing Clerk's Office mailed it a No Answer Letter on April 22, 2004.

Therefore, respondent P.A.S. 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 an allegation 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 an allegation 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. Respondent P.A.S. is the agent in Puerto Rico for various American airlines and has a mailing address of World Cargo Blvd., Terminal D, Base Muniz, Carolina, Puerto Rico 00979.
2. On or about March 21, 2001, in San Juan, Puerto Rico, respondent P.A.S. removed from Atlas Air Flight GT1062 (Aircraft # N-808MC) regulated garbage, which had originated in Colombia, and disposed of it in an unauthorized manner, in violation of 7 C.F.R. § 330.400.

Conclusion

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

Order

Respondent P.A.S. is hereby assessed a civil penalty of four thousand dollars (\$4,000.00). 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 P.A.S. shall indicate that payment is in reference to P.Q. Docket No. 04-0006.

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 P.A.S. 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 2nd day of July, 2004.

Marc R. Hillson

Chief Administrative Law Judge