

**AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT**

DECISION

In the matter of an application for a review of the facts of a violation of paragraph 47.1(6)(b) of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Aqua Clean Ships Ltd., Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,000.00 to the Respondent within 30 days after the day on which this decision has been served.

REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The hearing was initially scheduled for Tuesday, December 10th, 2002, however no one appeared for the Applicant. With the consent of the Respondent, the matter was adjourned to December 11th, 2002. Prior to that time, the Tribunal attempted to contact the Applicant by telephone, facsimile and e-mail, to no avail.

The Applicant did not attend the hearing on December 11th, 2002.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey.

The Respondent requested that the Tribunal make an order stating the Applicant had abandoned its appeal. However, the Tribunal, after being satisfied the Notice of Hearing had been properly sent, decided to proceed with the hearing in the absence of the Applicant pursuant to section 41 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)*.

The Notice of Violation dated May 22, 2002, alleges that the Applicant, on or about 07:45 hours on the 9th day of April, 2002, at Vancouver, in the province of British Columbia, committed a violation namely: “*Handle, transport or keep garbage, refuse or manure in a manner that could result in the introduction or spread of disease*” contrary to paragraph 47.1(6)(b) of the *Health of Animals Regulations*.

Paragraph 47.1(6)(b) states as follows:

47.1(6) Aircraft garbage, ship’s refuse and animal manure may be discharged at a place where that garbage, refuse or manure cannot be treated and disposed of in accordance with this section if it is

(b) handled, transported and kept under the supervision of or to the satisfaction of an inspector in such a manner that the handling, transportation or keeping would not be likely to, result in the introduction into Canada, or spread within Canada, of a vector, disease or toxic substance.

The Applicant had removed garbage from one ship and was on its way to another vessel to receive its garbage. Upon hearing instructions by an Inspector of the Respondent to cover the bins, the Applicant did so with a tarp. There was no denial that the Applicant transported an uncovered bin of garbage.

Accordingly, the Tribunal finds the Applicant committed the violation.

The Tribunal wishes to point out the Respondent improperly calculated the “*harm*” part of the total gravity value.

The Respondent assessed five (5) points on the basis that serious harm was caused. There is absolutely no evidence to indicate any harm was caused as a result of the violation. Therefore, the Tribunal finds the points under this heading should be assessed as three (3) rather than five (5).

Although the total gravity value is now reduced to eight (8) instead of ten (10), this does not affect the amount of the penalty assessed by the Respondent.

Dated at Ottawa this 23rd day of December, 2002.

Thomas S. Barton, Q.C., Chairman