

**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 section 39 of the *Plant Protection 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*.

Kuanrong Qiu, 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 \$200.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Ottawa on September 22, 2004.

The Applicant made her own submissions.

The Respondent was represented by its solicitor, Ms. Christine Evans.

The Notice of Violation dated February 11, 2004, alleges that the Applicant, at 22:20 hours on the 11th day of February 2004, at Ottawa, in the province of Ontario, committed a violation, namely: “fail to declare plant as prescribed” contrary to s. 39 of the *Plant Protection Regulations*, which states:

39. Every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or customs officer at a place of entry set out in subsection 40(1).

Section 2 of the *Plant Protection Act*, under which the *Regulations* were passed, states:

2. The purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada.

Section 3 of the *Plant Protection Act* contains the following pertinent definitions:

“pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest;

“plant” includes a part of a plant;

“prescribed” means prescribed by regulation;

“thing” includes a plant and a pest.

The Applicant admitted importing two pieces of cactus from the United States without declaring them to an inspector or customs officer on arrival.

The Respondent, on the other hand, testified that cactus roots and soil were also imported. The original picture shown in Tab 6 of the Respondent's report was tabled at the hearing, it being an unclear Polaroid shot. The Respondent's inspector testified that the brown objects in the photograph were cactus roots and soil remnants, while the Applicant thought the brown spots were caused by the dampness on the newspaper.

On this point, the Tribunal finds the Respondent's evidence, that soil was imported along with the pieces of cactus, more compelling.

The evidence also differed as to whether cactus plants or cuttings from cactus plants were imported. As can be seen from the definitions in the legislation set out above, a part of a plant could be a pest.

As noted at the hearing, the Tribunal accepts the report of Dr. Doreen Watler, set out in exhibit 7 of the Respondent's report which concludes that soil from the United States is a pathway for introducing plant pests of quarantine significance and accordingly, could be considered a "pest" in accordance with the *Plant Protection Regulations*.

This being the case, the Respondent has shown, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 29th day of September, 2004

Thomas S. Barton, Q.C., Chairman