

***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 provision 138(2)(a) 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*.

**9048-7539 Quebec Inc., Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**MEMBER H. LAMED**

**DECISION**

**Following an oral hearing and a review of all oral and written submissions, 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 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 hearing was held in Sherbrooke on May 27, 2008. It should be noted that Notices of Violation were also issued to Ferme Grenier Pouliot Inc. (AMP No. 0506QC0198) and Michel Doyon (AMP No. 0506QC0183) concerning the same lot.

The Applicant does business under the name of Transport d'animaux Michel Ménard.

The Applicant represented itself.

The Respondent is represented by its counsel, Ms. Anne-Marie Lalonde.

Notice of Violation #0506QC0182, dated April 27, 2006, alleges that the Applicant, on January 16, 2006, at Yamachiche, in the Province of Quebec, committed a violation, namely, "a transporté des porcs par véhicule moteur qui, pour des raisons d'infirmité, de maladie, de blessure, de fatigue ou pour toute autre cause, ne pouvaient être transportés sans souffrances indues au cours du voyage prévu ", contrary to provision 138(2)(a) of the *Health of Animals Regulations*, which reads as follows:

138.(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey;

The evidence reveals that on January 16, 2006, the Applicant transported a lot of 36 hogs from Ferme Grenier Pouliot Inc. and a lot of 84 hogs from Michel et Pauline Doyon Enr. (among others) to a slaughterhouse operated by A. Trahan Transformation Inc. ("the Establishment"), as appears from the Receiving Slip issued by the Establishment (Tab 2). Tab 2 states that two hogs, one from each of the abovementioned producers, were detained for non-compliance. The identities and origins of the two detained hogs were established to the satisfaction of the Tribunal. The two hogs were designated as S14 and S20 respectively.

In his testimony, Mr. Ménard admitted having transported those hogs in a separate part of his truck. Mr. Ménard explained that when an animal is compromised, he uses an assessment scale based on mobility to determine whether the animal is fit for transport. According to him, if the animal can get up and get into the truck all by itself, and if it has no open sores, it is considered to be fit for transport. He stated that such was the case with the hogs in question. Mr. Ménard also noted that the duration of the trip (three hours) could have made it difficult for the hogs to move when they arrived at the Establishment, but that did not mean that they had been unfit for transport at the beginning of the trip.

After having heard the evidence of the Respondent and the producers in the files related to this one (file Nos. 1361 and 1362), the Tribunal concluded that hogs S14 and S20 were not fit for transport and gave reasons for each case in the related file.

With the utmost respect for Mr. Ménard, who is a competent professional, his interpretation of what makes a hog fit for transport is excessively narrow. The fact that an animal can walk does not necessarily make it fit for transport if there are other conditions present that require on-farm euthanasia, as was the case with hogs S14 (emaciation and three or more abscesses) and S20 (extreme thinness to the point of emaciation, with a long coat, arthritis in the left shoulder, limping, inability to put weight on the left hind leg and swelling of the right carpus and tarsus).

Having concluded that hogs S14 and S20 experienced undue suffering by reason of their being transported within the meaning of the *Regulations* and case law, the Tribunal concludes that the Respondent has shown that the Applicant committed the alleged violation and orders the Applicant to pay to the Respondent the sum of \$2000 as a monetary penalty within 30 days of the date on which this decision is served.

Dated at Montreal, this 11<sup>th</sup> day of September, 2008.

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Member H. Lamed