

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

DECISION

Application for a review of the facts relating to a violation under provision 138(2)*a*) of the *Health of Animals Regulations*, invoked by the respondent and at the request of the applicant in accordance with paragraph 9(2)*c*) of the *Agricultural and Agri-Food Administrative Monetary Penalties Act*.

Ferme Grenier Pouliot Inc., applicant

-and-

Canadian Food Inspection Agency, respondent

H. LAMED, MEMBER

Decision

After having held a hearing and examined all of the evidence on file, the Board makes an order that the applicant committed the violation and must pay to the respondent the sum of \$2,000 as monetary penalty within 30 days of the date of service of this decision.

GROUND

The applicant requested a hearing in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The hearing took place in Sherbrooke on May 27, 2008. At issue are two cases concerning the same event; a notice of violation was also issued to the carrier, 9048-7539 Québec Inc. (Record #1360).

The applicant is represented by Jacques Pouliot.

The respondent is represented by its attorney, Anne-Marie Lalonde.

Notice of violation # 0506QC0198, dated April 27, 2006, alleges that the applicant, on January 16, 2006, in Yamachiche, in the province of Quebec, committed a violation, namely: “caused to be transported by motor vehicle a hog that by reason of infirmity, illness, injury, fatigue or any other cause could not be transported without undue suffering during the expected journey,” contrary to provision 138(2)a) of the *Health of Animals Regulations*, which reads:

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

Evidence shows that on January 16, 2006, a lot of 36 hogs from the applicant was transported by 9048-7539 Québec Inc. to the A. Trahan Transformation Inc. slaughterhouse (the “establishment”), as indicated on the establishment’s receiving slip (tab 2). Tab 2 indicates that a hog bearing the applicant’s tattoo, i.e., number 24205, was held back because of non-compliance, and identified by the establishment using number S14. The Board is satisfied that the identity and provenance of the hog were established, especially since these were not challenged by the applicant.

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Upon arrival at the slaughterhouse, hog S14 was held back by Mr. Gomez, an employee of the establishment. According to Mr. Gomez's testimony, hog S14 was standing on the receiving dock but was non-ambulatory. The hog could not move to the receiving pen unaided. Mr. Gomez noted that there was a lump on hog S14's haunch and that its tail was turning black.

The veterinarian at the establishment, Dr. Yvonne Dolbec, proceeded with an ante-mortem inspection of hog S14. Dr. Dolbec's observations were recorded in the Non-Compliance Report (tab 6) and were repeated in her testimony at the hearing. She said that hog S14 was small—under 65 kilos—while the standard is 90 kilos. The animal's breathing was faster than normal, probably a sign of pneumonia. Clearly, hog S14 was anaemic and presented with an abscess on his left posterior limb, above the knee, probably as a result of a fracture. The hog would not put any weight on this leg and was limping. In addition, it had an abscess on the carpus and right hock as well as an abscess on its tail. Dr. Dolbec testified that these injuries could not have occurred in the transportation, but dated back several weeks. She was of the opinion that hog S14 was suffering, given its reluctance to move.

It should be noted that in light of hog S14's condition, Dr. Dolbec deemed it necessary to immediately euthanize the animal, before it could be photographed live, which explains the bloody state of the hog on the pictures on file.

Mr. Pouliot testified that hog S14 was always getting its tail chewed by the other hogs, but denied that there was an abscess on its tail. Around December 16, the hog developed a lump on the left posterior limb, and it was treated with penicillin. Mr. Pouliot said he doubled the withdrawal period after the medication was administered from 14 to 28 days. He said the hog always fed itself and that on the day in question it climbed into the truck by itself, with the help of a broom but without an electric prod. It should be noted that hog S14 was transported in isolation with another weakened hog.

In each case, the Board must assess whether, on the balance of probabilities, the animal was already suffering to the point where the transportation would have caused increased suffering. Increasing an animal's suffering by having it transported is equivalent to inflicting undue suffering on the latter. On this point, the Board feels bound by the position of the Federal Court of Appeal in *Canadian Food Inspection Agency v. Samson* [2005] FCA 235, which states in paragraph 12:

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What the provision contemplates is that no animal be transported where having regard to its condition, undue suffering will be caused by the projected transport. Put another way, wounded animals should not be subjected to greater pain by being transported. So understood, any further suffering resulting from the transport is undue. This reading is in harmony with the enabling legislation which has as an objective the promotion of the humane treatment of animals.

As regards hog S14, the Board relied on the information and recommendations regarding the transportation of weakened animals published by the Canadian Agri-Food Research Council (tab 2) as well as those published by the Fédération des producteurs de porcs du Québec (a copy of which is hereto appended). On page 2 of the document, titled "Arbre de décision," under the heading "Euthanasie à la ferme," the conditions requiring on-farm euthanasia are listed, as reproduced below:

[translation]

- Ill, injured and dying animal
- Emaciation (extremely thin hog / **radet**)
- Uterine prolapse
- Arthritis (infected joints) or abscesses (3 or more)
- Category 4 or 5 lameness
- Rectal stenosis with bloating and emaciation

The Board noted that only one of these conditions suffices to trigger the obligation to euthanize the animal at the farm. Hog S14 presented at least two of these conditions, namely emaciation and abscesses numbering 3 or more. Although this information and these recommendations are not enforced by law, they do serve to help farmers make sensible decisions regarding the transportation of hogs. In light of the evidence presented at the hearing, evaluated in light of the recommendations described above, the Board finds that hog S14 experienced undue suffering by being transported. The Board finds that the respondent established that the violation of which the applicant was accused was indeed committed and orders the applicant to pay the sum of \$2,000 to the respondent, as monetary penalty, within 30 days of the date of service of this decision.

Done at Montréal this 26 August 2008.

H. Lamed, Member