

***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 49 of the *Plant Protection Act*, 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*.

**Meyers Fruit Farms Inc., Applicant**

**-and-**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**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 \$ 4,000.00 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 oral hearing was held in Niagara Falls, Ontario, on September 23<sup>rd</sup>, 2008.

The Applicant was represented by Mr. Fred Myers.

The Respondent was represented by its counsel, Mr. Samson Wong.

Evidence for the Respondent was given by Ms. Karen Gibson, Ms. Laurie Wickabrod and Ms. Despina Kourakos.

After ascertaining both parties had copies of the following documents, they were entered on the record for the purpose of this hearing:

- Notice of Violation dated July 11<sup>th</sup>, 2007;
- Letter dated July 23<sup>rd</sup>, 2007, from the Applicant requesting a review;
- Letter dated August 20<sup>th</sup>, 2007, from the Respondent enclosing its case submissions;
- Letter received by the Tribunal on September 28<sup>th</sup>, 2007, from the Applicant in response to the Respondent's case submission;
- Letter dated August 14<sup>th</sup>, 2008, from counsel for the Respondent with a witness list.

The Notice of Violation #0708ON1007 dated July 11<sup>th</sup>, 2007, alleges that the Applicant, on the 10<sup>th</sup> day of July, 2007, at Niagara-on-the-Lake, in the province of Ontario, committed a violation, namely: "DID fail to comply with a notice, to wit: Notice to Dispose 1004281", contrary to provision 49 of the *Plant Protection Act*, which states:

49. Every person who fails to comply with a notice communicated to the person under section 6, 8, 24, 30 or 36 or the regulations is guilty of

- (a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
- (b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* provides that a contravention such as this is a violation that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

At the request of counsel for the Respondent, I amended the address of the Applicant on the Notice of Violation from “144 Irvine Road” to “1444 Irvine Road”.

The verbal and written evidence of the Respondent establishes that Notice to Dispose #1004281 was served on the Applicant in accordance with the *Plant Protection Regulations* stating that certain trees must be removed or cut to a short stump by July 9<sup>th</sup>, 2007. The four trees set out in the Notice to Dispose had been analysed by the Respondent and had tested positive for the plum pox virus.

The trees had not been removed on July 10<sup>th</sup>, 2007, and the Applicant was served with the Notice of Violation on July 12<sup>th</sup>, 2007.

The Applicant admitted committing the violation and explained at the hearing how he considered he was not treated fairly.

He testified his farm was always the first to be checked by the Respondent and in this case the Notice was five days before harvest. Further, unlike in the past, he said he was given no notice that inspectors were coming on to his property.

He considered the penalty to be exorbitant in the circumstances and thought it would be very difficult for him to bear this amount of a fine.

The Tribunal wishes to point out that the classification of the violation as “very serious” and the amount of the penalty are set out in the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, and the Tribunal has no authority to vary or rescind the penalty.

Regarding the calculation of the gravity value, the Applicant admitted the violation was committed through an intentional act, but denied the violation could cause serious or wide spread harm as it was the least harmful strain of the virus and was evident in other orchards for a considerably longer period of time without consequence.

Notwithstanding the actual lack of harm, the possibility existed, and I am not inclined to change the value as determined by the Respondent.

Even if the number of points were reduced from 3 to 1 for the “harm” category, this would still leave the total gravity value point count at 6. This would not lead to any point adjustment or change in penalty amount.

The Tribunal wishes to point out to the Applicant that this is not a criminal or a federal offence but a monetary violation, and that he has the right to apply after 5 years to have the notation of this violation removed from the Minister’s records in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which states as follows:

23. (1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from

a) where the notice of violation contained a warning, the date the notice was served, or

b) in any other case, the payment of any debt referred to in subsection 15(1),

unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

Dated at Ottawa, this 9<sup>th</sup> day of October, 2008.

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Thomas S. Barton, Q.C., Chairman