

**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 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*.

**Transport Guérard et Fils Inc., Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following a review of the 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 to the Respondent of the penalty in the amount of \$2,000.00 within 30 days after the day on which this decision is served.**

.../2

**RTA# 60079**

## REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated June 23, 2003, alleges that the Applicant, on the 7<sup>th</sup> day of April, 2003, at L'Ange-Gardien in the Province of Québec, committed a violation, namely: "*Avoir chargé et transporté 2 animaux de ferme (porcs) dans un véhicule moteur qui ne pouvaient être transportés sans souffrances*", contrary to section 138(2)(a) of the *Health of Animals Regulations*, which states:

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;

On April 7, 2003, the Applicant's pigs were loaded and transported by Transport Guérard et Fils Inc. to Viandes Ultra Meats Inc. (Establishment 129). The shipment arrived at 09:58 a.m..

The evidence of the Respondent is that its inspector noticed two hogs at the unloading dock unable to move independently. These hogs were identified as R74-12 and R61-13.

The notes of the inspector indicate hog# R61-13 was barely alive and unable to move, was extremely weak and had difficulty breathing. The animal did not react in the presence of the inspector and wanted to raise its head but was unable to do so. The ante-mortem inspection by a veterinarian states this hog was moribund and unable to get up.

The inspector noted hog# R74-12 was also unable to move and had trouble breathing, its hind section did not seem to move (possibly due to a fracture), and the hog was suffering greatly. It as well did not react when the inspector came near. The ante-mortem inspection by a veterinarian described this hog as emacipated, non ambulatory and with a possible fracture.

The numerous photographs of both hogs in tabs 2 and 3 of the report confirm the sorry state of these animals.

The Applicant did acknowledge that 20 of the 192 pigs delivered were in the back of the van to allow better conditions for them, but stated the two pigs in question were not among those 20 at risk.

The Applicant also suggested possible reasons for the weight differences of the hogs and that injuries could possibly have been inflicted during the transportation. Despite these possibilities, the Applicant admitted from the photographs in the Respondent's record that the hogs were in a deplorable state when loaded.

In such a state it is difficult to imagine how they could have been loaded and transported without undue suffering.

The Tribunal is satisfied, that the Respondent has established, on a balance of probabilities that the Applicant committed the violation, and that the penalty has been properly assessed in accordance with the *Regulations*.

Dated at Ottawa this        of        , 2003.

---

Thomas S. Barton, Q.C., Chairman