

**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 subsection 176(1) 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*.

Harley Steinke, 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 \$500.00 to the Respondent within 30 days after the day on which this decision is served.

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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 Edmonton on September 12, 2003.

The Applicant, assisted by his mother, Mrs. Lily Steinke, made his own submissions.

The Respondent was represented by its solicitor, Mr. Marc Deveau.

The Notice of Violation dated April 15, 2003, alleges that the Applicant, on or about 11:55 hours on the 13th day of January, 2003, at Thorsby, in the province of Alberta, committed a violation namely: “remove or cause the removal of an animal not bearing an approved tag from its farm of origin, contrary to subsection 176(1) of the *Health of Animals Regulations* which states:

176(1) Subject to section 183, no person shall remove, or cause the removal of, an animal from its farm of origin unless the animal bears an approved tag.

The Applicant admitted transporting 20 calves to the Thorsby Auction Mart on January 13, 2003. The calves were owned by the Applicant but were born on three different sites. Although approved tags were purchased en route, the cattle were not tagged before they went through the sale ring.

The Applicant stated there was some haste in bringing the calves to auction due to a falling market price and a dangerously low supply of feed.

One of the defences raised by the Applicant was the fact that the farm of origin of some of the calves is the auction mart itself, which is owned by the Applicant. Accordingly it was argued those calves did not leave their farm of origin.

Section 172 of the *Health of Animals Regulations* defines “farm of origin” as follows:

“farm of origin” means the farm or ranch where the animal was born or the first farm or ranch to which the animal was moved after its birth if it was born at a place other than a farm or ranch, including all areas of land, and buildings and other structures on those areas, that are used under one management for breeding or raising animals except any of those areas where the animal may be commingled with animals that are from another farm or ranch.

Although there was very little evidence on this issue, it would appear there may be three separate farms of origin, being the three separate sites on which the Applicant's calves were born. It is not known if these sites are adjacent or contiguous to one another. However, excluded from the definition of a "farm of origin" are those areas where the animal in question may be commingled with animals from another farm or ranch. The auction mart area where the sales take place is clearly an area which would be excluded from the definition.

The Applicant further raised section 183 of the *Regulations* as being a possible defence under which an animal may be moved from its farm of origin without having an approved tag applied to it, to a site for the purpose of having an approved tag applied. Section 183 is subject to a number of conditions, at least two of which were clearly not met by the Applicant. These are the obligation to provide the Respondent in advance with an undertaking, and to immediately apply the tags after the cattle have been received at the tagging site.

Accordingly, based on the undisputed evidence, the Respondent has established the Applicant committed the violation.

The Applicant felt that a representative of the Respondent was overzealous in issuing the Notice of Violation, and went considerably overboard in involving the police on two occasions causing intimidation and embarrassment. He requests the Tribunal take the time to make a fair decision.

The Tribunal points out its authority does not extend to the alleged conduct of officers of the Respondent, its jurisdiction being limited to determining whether or not the Respondent has established, on a balance of probabilities, that the violation was committed.

Dated at Ottawa this 18th day of September, 2003.

Thomas S. Barton, Q.C., Chairman