

**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(2) 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*.

Ron McKelvey, 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.

REASONS

The Applicant requested an oral hearing pursuant to ss. 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Barrie on November 14, 2003.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Mr. Robert Jaworski.

The Notice of Violation dated April 10, 2003, alleges that the Applicant, on the 30th day of December, 2002, at Cookstown, in the province of Ontario, committed a violation namely: “did remove or cause the removal of an animal to wit: two veal calves, not bearing an approved tag from a farm or ranch other than the farm of origin” contrary to ss. 176(2) of the *Health of Animals Regulations* which states:

176(2) Subject to section 183, no person shall remove, or cause the removal of, an animal from a farm or ranch other than its farm of origin unless the animal bears an approved tag.

The pertinent facts are not in dispute.

The Applicant admits shipping untagged veal calves from a farm, other than the farm of origin.

The Applicant was unaware that he was required to apply tags to calves that were not tagged at the farm of origin.

This lack of knowledge is not a defence by reason of ss. 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* which states as follows:

18.(1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of the facts that, if true, would exonerate the person.

On the basis that the Applicant was uncertain as to some of the producer requirements under the cattle identification regulations, was willing to comply, and that this was a first violation, the Respondent's inspector recommended a warning would be sufficient to ensure future compliance.

Unfortunately for the Applicant, the recommendation was not accepted, and the Respondent issued a Notice of Violation with a penalty. The Tribunal has no jurisdiction to waive the penalty or to change the Notice of Violation from one with a penalty to one with a warning.

Dated at Ottawa this 20th day of November, 2003.

Thomas S. Barton, Q.C., Chairman