UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	A.Q. Docket No. 05-0012
	)	
William Richardson	)	
	)	
Respondent	)	
	)	

Decision

In this decision, I find that Respondent William Richardson committed numerous serious violations and at least 25 moderate or minor violations of the Commercial Transportation of Equines for Slaughter Act and the regulations promulgated thereunder. I impose a penalty of $30,000 for the violations.

Procedural History

On September 1, 2005, a complaint was signed on behalf of the Administrator of USDA's Animal and Plant Inspection Service (APHIS), alleging that Respondent William Richardson had committed numerous violations of the Commercial Transportation of Equines for Slaughter Act ("the Act") between August 2003 and November 2004. After service was effectuated, a timely answer was filed by Respondent, through his attorney.

At a telephonic prehearing conference on February 14, 2006, the parties agreed to proceed to a hearing to be held beginning June 27, 2006 in Sherman, Texas. They also agreed to a schedule for exchanging witness lists and proposed exhibits. At this

conference Respondent's attorney, Larry B. Sullivant, stated that he would be withdrawing from the case before trial due to illness. Mr. Sullivant formally withdrew from the proceeding on May 19, and indicated he had told Respondent "of his immediate need to retain counsel."

I conducted a follow-up telephonic conference on June 7 with Thomas Bolick, Esq., representing Complainant and Respondent representing himself. At this conference, Respondent, who had not submitted his exchange of materials as required by my February 16 order, represented that he had retained the services of a new attorney, who he did not name, and that the hearing should proceed as scheduled. I scheduled another conference call on June 13 so Respondent's new attorney could participate, but on that date, Respondent again represented himself. He maintained that he had retained an attorney, but did not remember his name or address, and stated that he would have his attorney immediately file a notice of appearance.

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On June 20, I granted Complainant's motion to conduct the hearing via audiovisual means, with Respondent, his attorney if he retained one, and several of Complainant's witnesses participating from the U.S. Attorney's office in Sherman, Texas, while Mr. Bolick, several of Complainant's witnesses and I would participate from Washington, D.C.

I conducted a hearing in Sherman, Texas and Washington, D.C. through audiovisual means on June 27-28, 2006. Respondent arrived late for the hearing and appeared pro se.[1] Complainant called eight witnesses and introduced 36 exhibits.

[1] Respondent arrived after the initial testimony of Dr. Cordes and during the initial testimony of Joey Astling. Mr. Bolick had Mr. Astling briefly recap his testimony for the benefit of Respondent, Tr. 55, and when Dr. Cordes was recalled on the second day of the hearing he likewise restated his previous day's testimony for Respondent's benefit, Tr. 425-431.

Respondent testified on his own behalf and called no other witnesses, nor did he introduce any exhibits. At the conclusion of the hearing, I strongly urged Respondent, who apparently has some difficulty with reading and writing, to consider hiring an attorney to help him with his post-hearing submissions. I set a briefing schedule and received a timely brief from Complainant and no brief from Respondent. No responsive briefs were filed.

Statutory and Regulatory Background

The Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note et seq.), part of the 1996 Farm Bill, is intended to assure that equines (horses) being transported for slaughter not be subject to unsafe and inhumane conditions. Congress directed the Secretary of Agriculture to issue guidelines to accomplish this purpose. The Secretary delegated this rulemaking authority to the Animal Plant and Health Inspection Service (APHIS) which ultimately published a final rule at 9 C.F.R. Part 88 in December, 2001, with an effective date of April, 2002.

Among other things, the final rule defined an "owner/shipper" as someone who commercially transports more than 20 equines a year to slaughtering facilities. 9 C.F.R. § 88.1. An owner/shipper is subject to a number of regulations designed to prevent horses from suffering unduly while being transported to the slaughterhouse. Regulations include standards for constructing conveyances, so that horses can be safely loaded, unloaded and transported, and regulations for the care of horses before and during shipment. The regulations, which are generally performance standards, seek to assure that equines being transported to the slaughterhouse are fit to travel, in that they must be weight-bearing on all four legs, must not be blind in both eyes, must be able to walk unassisted, are older

than six months of age, and are not about to give birth. They are to be transported in a manner so as not to cause injury, must be checked at least once every six hours while being transported, and must be offloaded and fed and watered on trips over 28 hours in duration.

The final regulation also provides a number of what might be termed paperwork requirements. Each horse must be supplied with a backtag—literally a tag supplied by USDA that sticks to the back of the horse. In addition each horse being shipped must be accompanied by an owner/shipper certificate which contains pertinent information about the owner/shipper, the receiver (the slaughterhouse), the shipping vehicle, and the horse (including a statement of fitness to travel).

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Because the Act and regulations are relatively new and the Agency did not have much manpower to assign to enforcement, Complainant put forth a significant effort to inform regulated parties of their obligations under the Act. Thus Dr. Timothy Cordes, a senior staff veterinarian for APHIS and the National Coordinator for Equine Programs, former veterinarian for the United States Equestrian Team, and Director of the Slaughter Horse Transportation Program (SHTP), explained that given the limited resources available to the program, it was necessary to develop public outreach materials. Tr. 34-39. The program developed five training tools, including videos, which were distributed to each known shipper of horses for slaughter. Id. The materials included back tags and Owner/Shipper Certificates. Respondent received these materials, and additionally was assisted a number of times in filling out his paperwork and otherwise educated on various aspects of the regulations directly by Animal Health Technician (AHT) Joey Thomas Astling. Tr. 40, 46-49.

The SHTP assigns an animal health technician to each of the plants at which horses are "processed" so that on the "killing days" each horse is inspected for compliance with the regulations. Tr. 31-33.

Discussion

The bulk of the testimony established that Respondent was a responsible owner/shipper on at least ten occasions, between August 26, 2003 and June 30, 2004, of horses which were shipped to Dallas Crown, Inc. to be slaughtered. In most of these instances, Respondent either directly delivered the horses to Dallas Crown or had hired the driver performing the delivery. Additionally, several deliveries were made in the name of another individual, but were actually for the benefit of Respondent, who was seeking to get around a quota imposed on him by Dallas Crown, and in at least one other instance he apparently let another individual use his name so that that individual could get a more favorable deal from Dallas Crown, for which he was paid a commission.

Complainant's evidence demonstrated that Respondent committed a significant number of particularly serious violations, as well as numerous lesser violations concerning backtags and the completion of proper paperwork, and for failing to cooperate in several aspects of the inspection process, including failure to return to Dallas Crown after dropping off a shipment of horses outside of normal business hours.

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Complainant demonstrated that on or about August 26, 2003, as part of a shipment of 16 horses, Respondent transported a paint mare that was blind in both eyes. AHT Astling, assigned to the Dallas Crown facility, observed this horse being led off the truck. CX 3, Tr. 50. He noticed her normal locomotion was "very unstable" and that as the horse came closer "it was pretty obvious that she was being led for the reason that she

couldn't see at all." CX 3, Tr. 63. Astling took photographs of the horse (CX 4) and testified that those photos indicated that the horse's eyes were bluish in color and had no pupil, which he stated was characteristic of blind horses. Tr. 63-64. He also testified that the horse had cuts on its face—a sign it was bumping into things because it was blind. Tr. 64-65. His testimony was corroborated by Diane Ramsey, an investigator who also observed this horse. Tr. 75-77.

Respondent did not dispute that this horse was blind, but rather contended that he was not the owner/shipper. CX 10, Tr. 375. He indicated that Dale Gilbreath was the driver of the shipment and the owner/shipper as well. Id. Petitioner testified that he authorized Gilbreath to use his name on the paperwork accompanying that shipment, so that Gilbreath could earn a significantly higher rate per pound for the horses he was selling, and for which Gilbreath would pay Respondent a commission. Tr. 374. Respondent never called Gilbreath to testify at the hearing, and it is evident that Respondent, who regularly employed Gilbreath as a driver, was at the very least a partner or joint venturer in this transaction, and is thus the owner/shipper with regards to this horse.

Complainant demonstrated that on January 27, 2004 Respondent transported for slaughter, as part of a load of 43 horses, an appaloosa that was blind in both eyes. The plant manager at Dallas Crown noted the horse's condition, isolated it in a pen, and called the condition of the horse to the attention of AHT Astling. CX 44, Tr. 277-278. The plant manager told Astling that the horse was blind in both eyes, and Astling observed it walking into pipes and otherwise showing signs that it was not aware of its surroundings. Tr. 278. Astling took photographs of both eyes which supported his testimony that

neither eye had a clearly defined pupil. CX 46, Tr. 278. Dr. Cordes testified that the photographs illustrated that the horse suffered from periodic ophthalmia or moon blindness, that the pupil was "completely locked shut" and that the horse was "functionally blind." Tr. 453-455.

Respondent countered by stating that he thought the horse might have been blind in one eye, and that appaloosas have trouble seeing at night. Tr. 302, 393-395. However, as I noted at the hearing, the photographs in evidence were time dated in the early afternoon, and the horse was showing every indication of blindness at that time. CX 46, Tr. 422-423. Accordingly, I find that the evidence establishes that Respondent shipped for slaughter a blind appaloosa on January 27, 2004, in contravention of the regulations.

Complainant demonstrated that on several occasions Respondent transported horses to Dallas Crown that were injured, either during the loading or shipping process, or had preexisting injuries to the extent that they were not weight bearing on all four limbs or were otherwise seriously injured and unable to travel without discomfort, stress, physical harm or trauma.

Thus, on August 26, 2003, a load of horses for which Respondent was the owner/shipper which was transported by Troy Ressler, included a horse which, according to Ressler, had been reloaded at the direction of Respondent, even though it had an injured leg. CX 3, Tr. 79-80, 86. When the shipment arrived at Dallas Crown, AHT Astling observed the horse lying in the back of the trailer. CX 3, CX 11, Tr. 79-80. Astling believed the horse was "profusely sweating" and in a state of shock. Id., Tr. 86, 418. Astling observed the horse attempt to stand up to exit the trailer, and then collapse. He ordered the horse to be euthanized. Id. Astling's observations were confirmed by

Dianne Ramsey, who took photographs of the injured horse and testified as well that it appeared to her that the "horse's feet were ground off." CX 11, Tr. 90-91, 414. Dr. Cordes testified in his capacity as a veterinarian that the horse had suffered the equivalent of a surgical resection and that it bled so much it went into shock. Tr. 432-433.

Respondent acknowledged that the horse was injured at the time he loaded it onto his trailer, but then said it wasn't a serious injury and that the horse was able to walk onto his trailer. CX 10, Tr. 87-88, 91, 376-378, 401-405. He claimed the injury was like trimming one's toenails a little too close (Tr. 405) but the bloody and rather gruesome photographs in CX 11 clearly indicate otherwise. He further claimed the horse stuck its leg through a hole in the loading chute upon arriving at Dallas Crown, but both Astling and Ramsey observed otherwise, and Dr. Cordes indicated that an injury of that severity could not be caused merely by stepping through a hole in the loading chute. Tr. 412-418, 434. Overall, the evidence overwhelmingly demonstrates a violation of the Act with regards to this horse.

On October 7, 2003 Respondent transported a load of 47 horses to Dallas Crown, of which three had significant injuries. All three of these horses apparently suffered their injuries when a loading chute collapsed as they were being loaded onto a truck in the middle of the night. CX 3, CX 10, Tr. 138-161. According to Astling, Ressler, who drove one of the two conveyances transporting these horses, told him that they had continued loading the horses even though three of them were injured after the chute collapsed. CX 3, Tr. 139-145. After the horses had been unloaded off his truck, Ressler notified Astling that one of the horses remained in the trailer with a broken leg. CX 3, CX 24, Tr. 140. After inspecting and photographing the horse, which had a break so

severe that bone was exposed, Astling directed Dallas Crown to euthanize the horse. CX 3, CX 24, Tr. 140-143. Dr. Cordes confirmed that the photographs indicated that this horse was not weight bearing on all four legs, as required by the regulations. Tr. 449.

Later that same day, Respondent arrived at Dallas Crown with the load of horses that he was transporting. CX 3, Tr. 146-147, 157. He notified Astling that there were two horses in the back of his trailer, which he had separated from the other horses, which he thought Astling should look at. CX 3, Tr. 146-148. Astling noted that one of the horses was missing a substantial portion of its left hind foot. CX 3, CX 25, Tr. 145-148. Respondent indicated to Astling that while the horse was injured when the ramp collapsed it could still bear weight on all four limbs, but Astling observed that the horse was bleeding and could not bear weight on the injured foot, even though it was able to walk out of the trailer. Tr. 147-148, 150. Astling allowed the horse to be "processed" at Dallas Crown, rather than euthanized, only because the horse was very close to the entrance to the processing facility. CX 3, Tr. 150-151, 158.

Astling then noticed that another horse of Respondent's that was being weighed-in had severe lacerations on both left legs and lesser lacerations on the right legs. CX 3, Tr. 157-159. The photographs taken by Astling vividly illustrate the severity of at least two of the lacerations. CX 26. In particular, the left hind leg's laceration was deep enough so that bone was visible and the left forelimb had lacerations deep enough that the knee was visible. Tr. 153. Astling testified that the horse could only bear weight on the severely injured limbs with "lots of pain and difficulty." Tr. 155. He indicated that the horse should have been euthanized, or at least have been given the prompt medical attention required by the regulations.

With respect to the three just-discussed horses, Respondent's principal explanation was that the loading chute collapse happened around 3 a.m. and that he did not realize the horses were injured. CX 10, Tr. 165-167, 386-387, 406. He also denied that the horse suffered a broken leg before it was transported, testifying that it was led up the chute and into the truck. Tr. 386-387, 406-407. Even if the chute collapsed in the dark of night there is no excuse for not checking on the condition of the horses after the occurrence of an event that obviously would have a propensity to cause significant injury. Moreover, the owner/shipper certificate signed by Respondent (CX 23) indicated that the horses were actually loaded at 6 a.m., when there should have been enough light to determine whether any horses were injured. The evidence overwhelmingly supports a finding, with respect to these three horses, that they were either unable to bear weight on all four limbs, or were otherwise not handled "in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma" as required in 9 C.F.R. § 88.5(c).

Complainant also demonstrated that on September 30, 2003 Respondent commercially transported to Dallas Crown two horses, out of a shipment of thirty, which had pre-existing injuries that rendered them unable to bear weight on all four limbs, and which thus should not have been eligible for shipment for slaughter. AHT Astling was notified by plant personnel at Dallas Crown that there was a horse he should look at, and he observed and photographed a roan mare with significant injuries to its right front foot and lower right leg. CX 19, CX 22, Tr. 119-120. Both Astling and Dr. Cordes, who testified based on the photographs Astling took, were of the opinion that the horse was suffering from an old injury seriously impacting its ability to walk. Tr. 117-123, 436-

445. The right front foot had a substantial swollen mass that Dr. Cordes identified as a fibroma, which resulted in a large mass of tissue at the bottom of its right front limb which he analogized to standing "on top of a basketball." Tr. 436. Dr. Cordes was of the opinion that this horse would not be able to maintain its balance and equilibrium when being transported, and thus should not have been transported under the Act. Tr. 437. Respondent acknowledged shipping this horse, but maintained that it could bear weight on all four legs at the time of loading. CX 10, Tr. 385. However, it is apparent to me upon examining the photos taken by AHT Astling that it would be extremely difficult for this horse to bear weight on its extremely swollen front right hoof. At best, the horse could only step gingerly on the injured extremity and, as Complainant points out in its brief, the horse would have had to endure unnecessary discomfort in the course of being transported to Dallas Crown, which would violate the prohibition contained in 9 C.F.R. § 88.4(c).

The other horse AHT Astling observed on September 30, 2003 was a paint mare which had an old injury to its left hind ankle as well as a fresh cut on its left hind tendon. CX 19, CX 21, Tr. 120. The left hind ankle injury was "a long-standing, chronic lesion" that caused the horse's hoof to flop forward at a right-angle to the leg, so that the weight of the horse was effectively on the back of the horse's ankle rather than its foot. Tr. 442-442. Both AHT Astling and Dr. Cordes characterized the injury as an old one and stated that, in essence, it was a failure of the horse's "suspensory apparatus." Tr. 117, 444-445. Dr. Cordes testified that "this horse should never have been loaded" (Tr. 443) and that it would have had difficulty maintaining its equilibrium while traveling, and that the fresh cut on its left hind tendon likely resulted from an injury while in transit. Shipping this

horse was "not safe and humane" (Tr. 445) and was a violation of the proscription against exposure to "unnecessary discomfort, stress, physical harm, or trauma" as per the regulation.

On October 21, 2003, a black and white paint, one of 14 horses in a shipment owned by Respondent, was observed by AHT Astling and senior inspector Davis Green at Dallas Crown to be holding its left hind foot off the ground, and appeared to be unable to place any weight on it. CX 31-33, Tr. 184-191, 199-200. Green opined that the horse had an old, preexisting injury such that the area above the ankle and around the knee was extremely swollen. Tr. 189-190. It is clear from the photographs at CX33 that the horse was unable to bear weight on this leg. Respondent's principal defense regarding this horse is that he never saw the horse because this load of horses was purchased for him by an individual named Bubba Stokes. CX 37, Tr. 388. The fact that Stokes may have been Respondent's agent or employee does not change the fact that Respondent is the owner/shipper of this horse and is thus responsible for complying with the Act and regulations.

With respect to each of the seven injured horses discussed, Complainant also established that Respondent did not comply with the regulation requiring that "an owner/shipper must obtain veterinary assistance as soon as possible from an equine veterinarian for any equines in obvious physical distress." 9 C.F.R. § 88.4(b)(2). Since each of the injured horses were inarguably in obvious physical distress, and since Respondent in none of these instances requested veterinary assistance, Complainant easily met its burden of proof.

Along with the above-discussed two blind and seven injured horses who were transported in violation of the Act, Respondent was cited for a number of other violations. When Astling asked to examine a horse that he thought was blind on October 7, 2003, Respondent first tried to take the horse into the plant itself, but was stopped by Astling who informed him that he wanted to examine the horse. CX 3, Tr. 157-158, 161-163. Instead, Respondent argued with Astling, and took the horse back to his trailer, and subsequently left the premises with it. Id. Respondent testified that he thought the horse could see, but did not deny that he removed it from the premises rather than let Astling examine it. CX 10, Tr. 166, 387. This is inconsistent with the requirement at 9 C.F.R. § 88.5(a)(3) that the owner/shipper must allow "a USDA representative access to the equines for the purpose of examination." Astling also testified that Respondent was the owner/shipper of 17 horses delivered to Dallas Crown at 3:15 a.m. on September 16, 2003. CX 12, CX 15, Tr. 108-110. Respondent left the premises and did not return. Id. Astling reported to duty at Dallas Crown between 9:30 and 10 a.m., and never saw Respondent. Id. The regulations allow the owner/shipper to leave the premises if he arrives outside of normal business hours, but require him to return to the facility to meet the USDA representative. Thus, Respondent's conduct was inconsistent with the specific requirements of 9 C.F.R. § 88.5(b).

Complainant also demonstrated that Respondent almost routinely violated the Act's various paperwork provisions. On three occasions, the horses transported by Respondent did not have the required backtags. On one of these occasions, August 26, 2003, the inspectors observed no backtag on the blind paint horse that has already been discussed, but did not find violations with regards to the other horses shipped that day.

CX 3, Tr. 57-59, 75-76. On another occasion, November 23, 2003, none of a shipment of 42 horses picked up in Billings, Montana was backtagged. Tr. 331. Respondent stated that he called USDA and told them he was unable to have the tags affixed due to weather problems, but it appears to be undisputed that the tags were not affixed. CX 57, Tr. 330-332, 356-358. With respect to another shipment of 43 horses, Respondent called AHT Leslie Chandler and told him he was unable to backtag the horses because he was caught in a snowstorm. CX 44-45, Tr. 268, 285-287. Chandler consulted with Astling and told Respondent that he could ship the horses to Dallas Crown without backtags if he assigned each horse a backtag number on the owner/shipper certificate and followed up by sending the backtags after the fact. Id. Respondent agreed, but then never did provide the backtags, stating that he threw them away, and admitting he was at fault. Tr. 389-390.

With respect to the other paperwork required under the regulations, principally the owner/shipper statement, Complainant demonstrated that the forms were either not filled out on a few occasions, and were incorrectly or partially filled out on numerous occasions. Omissions included not signing the certificate, failing to indicate the fitness of the horses, failure to complete the shipper's address or telephone number, failing to provide the full backtag number for each horse, etc.

Findings of Fact

1. Respondent William Richardson, a resident of Whitesboro, Texas, is engaged in the business of buying horses and transporting them for slaughter.

2. Respondent was the owner/shipper of horses being transported for slaughter to Dallas Crown in Kaufman, Texas on the following ten occasions between August 26,

2003 and June 30, 2004: August 26, 2003 (2 shipments of 15 and 16 horses), September 16, 2003 (17 horses), September 30, 2003 (30 horses), October 7, 2003 (47 horses), October 21, 2003 (14 horses), January 27, 2004 (43 horses), February 1, 2004 (28 horses), June 30, 2004 (12 horses), and November 23, 2004 (42 horses).

3. On August 26, 2003 and January 27, 2004, Respondent transported for slaughter horses that were blind in both eyes.

4. On August 26, 2003, Respondent transported for slaughter a horse with a serious leg injury to the extent that it had suffered the equivalent of a surgical resection. At the time it was observed at Dallas Crown it had collapsed and was in shock, and USDA officials ordered it euthanized. The horse obviously could not bear weight on all four limbs.

5. On October 7, 2003, Respondent transported for slaughter three horses that were severely injured when the loading chute collapsed. One of the horses had a broken leg and was euthanized shortly after arrival at Dallas Crown. Another horse was missing a significant portion of its left hind foot. A third horse suffered lacerations so sever its bones were visible. None of these horses could bear weight on all four limbs.

6. On September 30, 2003, Respondent transported for slaughter two horses that had significant pre-existing injuries, preventing them from bearing weight on all four limbs.

7. On October 21, 2003, Respondent transported for slaughter a horse that had a significant pre-existing injury, preventing it from bearing weight on all four limbs.

8. With respect to the horses described in Findings 4 through 7, each of the seven horses was in obvious physical distress, but Respondent did not seek veterinary care for any of these horses.

9. With respect to the horses described in Findings 3 through 7, each of these nine horses was not transported in a manner that did not cause unnecessary discomfort, stress, physical harm, or trauma.

10. On October 17, 2003, Respondent denied AHT Astling the opportunity to examine one of the horses he had transported for slaughter.

11. On September 16, 2003, Respondent delivered horses for slaughter to Dallas Crown outside of normal business hours, and neither waited with the horses, nor returned later that day to meet the USDA representative on site.

12. On at least three occasions, Respondent delivered horses for slaughter that were not backtagged.

13. On numerous occasions, Respondent delivered horses for slaughter that were accompanied by incomplete or improperly filled out owner/shipper certificates.

Conclusions of Law

1. Respondent violated 9 C.F.R. § 88.4(c) with respect to the two blind and seven injured horses described in Findings of Fact 3 through 7 by failing to transport them to the slaughtering facility "as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma."

2. Respondent violated 9 C.F.R. § 88.4(b) (2) with respect to the seven injured horses described in Findings of Fact 4 through 7 by not obtaining "veterinary assistance

as soon as possible from an equine veterinarian for any equine in obvious physical distress."

3. Respondent violated 9 C.F.R. § 88.4 (a) in numerous respects on many occasions for failing to apply backtags to each horse, and for failing to properly fill out numerous aspects of the owner/shipper certificate.

4. Respondent violated 9 C.F.R. § 88.5 (a) (3) on October 17, 2003, by refusing to allow access to a horse for the purpose of examination.

5. Respondent violated 9 C.F.R. § 88.5(b) on September 16, 2003 by leaving the premises of a slaughtering facility when arriving outside of normal business hours without returning during normal business hours to meet the USDA representative.

Appropriate Sanctions

The only sanction provided by the Act for violation of these regulations is assessment of civil penalties of up to $5,000 per violation. Each horse transported in violation of the regulations is considered a separate violation. Neither the Act nor regulations provide any further guidance as to appropriate penalties, such as the violator's compliance history, size of business, culpability, seriousness of violations, ability to pay, etc.

Complainant contends that a civil penalty of $85,000 is appropriate. Even in the absence of statutory or regulatory guidance, Complainant addresses a number of factors it believes I should consider in assessing a penalty. While I agree with most of Complainant's arguments on these factors, I find that the proposed civil penalty for this first time violator, even factoring in the relative egregiousness of the violations is too high. I impose a penalty of $30,000.

I am mindful that Respondent committed these violations in spite of being afforded extensive assistance by Complainant before and continuing throughout the period the violations were committed. The violations of transporting blind and severely injured horses are probably the most serious types of violations subject to the Act. The violative actions took place ten times in less than one year, indicating that it was a fairly routine practice of Respondent to ignore the rules. Respondent did not present any evidence supporting his inability to pay a substantial penalty.

Complainant asks that I assess a maximum $5,000 for each of 15 violations and a $10,000 penalty for a combination of what he terms "moderate or minor" violations. However, this calculation by Complainant imposes penalties for multiple violations with regard to several horses. The regulations seem to limit the penalties to a maximum of $5,000 for each horse transported in violation of the regulations. Thus, 9 C.F.R. § 88.6(b) provides:

> Each equine transported in violation of the regulations of this part will be considered a separate violation.

Thus, since I have found serious violations with regard to nine horses, it would appear that for these violations the most I can assess is $45,000. However, assessing the maximum penalty is contraindicated by the fact that Complainant did not initiate an enforcement action until over a full year after the last of the ten violations. A party cannot be said to have a history of violations unless he has previously been found liable for violations. It is quite possible that Respondent might have corrected his violative conduct if he was subject to an enforcement action before he had the opportunity to violate the act on ten different occasions. Respondent has no past record of

noncompliance with the Act—a factor which militates against the imposition of maximum penalties.

I conclude that a penalty of $3,000 for each of the nine horses transported in violation of the Act is appropriate. I am imposing an additional penalty of $1,000 for each of the two violations of 9 C.F.R. § 88.5, and a final $1,000 for the variety of paperwork violations.

Order

Respondent William Richardson is assessed a civil penalty of thirty thousand dollars ($30,000). Respondent shall send a certified check or money order for $30,000 payable to the Treasurer of the United States to

United States Department of Agriculture
APHIS, Accounts Receivable
P.O. Box 3334
Minneapolis, Minnesota

Within thirty days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

This order shall become effective on the first day after this decision becomes final. Unless appealed pursuant to the Rules of Practice at 7 C.F.R. § 1.145(a), this decision becomes final without further proceedings 35 days after service as provided in the Rules of Practice, 7 C.F.R. 1.142(c)(4).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 19th day of December, 2006

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MARC R. HILLSON
Chief Administrative Law Judge