

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Union Pacific Railroad Co.;) P.Q. Docket No. 07-0126
)
)
Respondent.) Consent Decision and Order

This proceeding was instituted under the Plant Protection Act (7 U.S.C. § 7701 et seq.), and regulations promulgated thereunder (7 C.F.R. § 319.8 et seq., 7 C.F.R. 352 et seq., and 7 C.F.R. 330 et seq.), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Act and regulations promulgated thereunder. The complainant and the respondent Union Pacific Railroad Co. have agreed that this proceeding against Respondent should be terminated by entry of this Consent Decision, and have agreed to the following stipulations:

1. For the purpose of this Consent Decision only, Respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, admits to the Findings of Fact set forth below, and waives:

- (a) Any further procedure;
- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the

reasons or bases thereof; and

(c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision.

2. The Respondent also stipulates and agrees that the United States Department of Agriculture is the “prevailing party” in this proceeding and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

1. Union Pacific Railroad Company, hereinafter referred to as a Respondent, is a corporation doing business as a railroad carrier, whose mailing address is 2115 Farragut St., Laredo, Texas, 78040, and whose headquarter’s mailing address is 1400 Douglas St., Omaha, Nebraska, 68102.

2. On or about June 13, 2002, Respondent entered into the United States at the port of Eagle Pass, Texas from Mexico, cotton linters without the proper permit

3. On or about June 13, 2002, Respondent failed to properly notify the United States Department of Agriculture of the arrival and entry of a shipment of regulated cotton linters from Mexico.

4. On or about June 13, 2002, Respondent failed to provide for inspection of cotton linters from Mexico at Eagle Pass, Texas, the port of first arrival into the United States.

5. On or about June 15, 2002, Respondent entered into the United States at the port of Eagle Pass, Texas from Mexico, cotton linters without the proper permit.

6. On or about June 15, 2002, Respondent failed to properly notify the United States Department of Agriculture of the arrival and entry of a shipment of regulated cotton linters from Mexico.

7. On or about June 15, 2002 Respondent failed to provide for inspection of Mexican cotton linters from Mexico at Eagle Pass, Texas, the port of first arrival into the United States.

Conclusions

The respondent has admitted the jurisdictional facts and has agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

Order

The Respondent is assessed a civil penalty of eighty thousand dollars (\$80,000.00), allocated as described below.

1. The respondent shall pay twenty thousand dollars (\$20,000.00) via a certified check or money order, payable to the Treasurer of the United States, to United States Department of Agriculture, APHIS, P.O. Box 979043, Saint Louis, Missouri, 63197-9000, within fifteen (15) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

2. The remaining sixty thousand dollars (\$60,000.00) shall be held in abeyance, provided that these funds shall be allocated and spent by Respondent solely for the use of the following expenditures:

(a) actual physical improvements of the Union Pacific Railroad Company at the Laredo,

Eagle Pass, or Brownsville, Texas - Mexico railroad ports of entry, that add to and improve current agricultural safeguarding measures and compliance operations of Respondent; and/or

(b) additional equipment or materials needed to improve upon agricultural safeguarding measures and compliance operations, to be used at the Laredo, Eagle Pass, or Brownsville Texas - Mexico railroad ports of entry.

3. The sixty thousand dollars (\$60,000.00) being held in abeyance must have USDA, APHIS, PPQ written pre-approval prior to any expenditure of funds by Respondent, such pre-approval shall not be unreasonably withheld. Any requests for prior approval of the expenditure of funds must be in writing, and addressed to: USDA, APHIS, 4700 River Rd., Unit # 60, Riverdale, MD 20737. Attn: Assistant Director; Quarantine, Policy, Analysis and Support Staff. All requests shall include the cost of the requested expenditure, and a reasonably complete explanation of the use, function and reason as to how such expenditure falls within the allowable costs, as described in paragraph (2)(a) and (b) of this Order. Any expenditure of funds not approved by APHIS shall continue to be included in the amount held in abeyance in paragraph (2) of this Order.

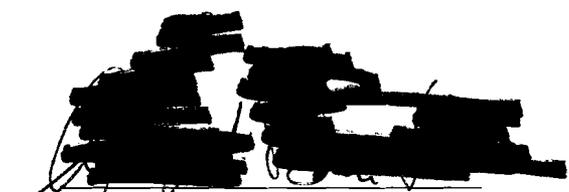
4. All funds being held in abeyance must be spent by Respondent or pending pre-approval within a one (1) year time frame upon the effective date of this Order.

5. Upon the expiration of the one year time frame, any remaining amount of the sixty thousand dollar (\$60,000.00) funds held in abeyance that have not been spent by Respondent, or pending pre-approval, shall be paid to the Treasurer of the United States within fifteen (15) days after the expiration of the one year time frame. Respondent shall pay this amount via a certified check or money order, payable to the Treasurer of the United States, to United States Department of Agriculture, APHIS, P.O. Box 979043, Saint Louis, Missouri, 63197-9000.

If any provision of this Order is declared to be invalid, such declaration shall not affect the validity of any other provision herein.

This Order shall become effective when served on the Respondent.


UNION PACIFIC RAILROAD CO.
Respondent


MARGARET BURNS RATH
Attorney for Complainant


RAYMOND HASIAK
Attorney for Respondent

Issued this 20 day of October, 2009
at Washington, D.C.



Administrative Law Judge
Jill S. Clifton