

# **UNITED STATES DEPARTMENT OF AGRICULTURE**

## **BEFORE THE SECRETARY OF AGRICULTURE**

AWA Docket No. 10-0068

In re: GARY FELTS,  
d/b/a BLACK DIAMOND KENNEL,

Respondent

### **DEFAULT DECISION AND ORDER**

#### **Preliminary Statement**

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served by the Hearing Clerk at the address of the Respondent on January 4, 2010. The Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. Respondent filed an untimely motion for an extension of time on February 3, 2010. The motion was granted on February 5, 2010, allowing the Respondent until February 26, 2010 to file his Answer. Respondent failed to file an answer within the time prescribed, and the material facts alleged in the complaint will be deemed admitted by the

Respondent's failure to file an answer and the following Findings of Fact, Conclusions of Law and Order will be entered.

**Findings of Fact**

1. Gary Felts, hereinafter referred to as the Respondent, is an individual doing business as Black Diamond Kennel located in Kingsley, Iowa.
2. The Respondent, at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations.
3. On September 6, 2005, APHIS inspected Respondent's premises and found that Respondent failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).
4. On September 6, 2005, APHIS inspected Respondent's premises and records and found that the Respondent had failed to individually identify all dogs of sixteen weeks of age or older being kept for breeding in willful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50(a)(1)(2) of the regulations (9 C.F.R. § 2.50(a)(1)(2)).
5. On September 6, 2005, APHIS inspected Respondent's premises and records and found that the Respondent had failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of section 10 of the Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).
6. On September 6, 2005, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

- a. The housing facilities were not kept free of an accumulation of trash and debris (9 C.F.R. § 3.1(b));
- b. Dogs in outdoor housing facilities were not provided with adequate protection from the direct rays of the sun and the direct effect of wind, rain and snow (9 C.F.R. § 3.4(b)(2));
- c. Surfaces of outdoor housing facilities for dogs were not impervious to moisture (9 C.F.R. § 3.4(c));
- d. Primary enclosures for the dogs had sharp points or edges which could injure the animals (9 C.F.R. § 3.6(a)(2)(i)); and
- e. Floors were not constructed in such a manner as to protect the animals from injury and to prevent the animals' feet and legs to pass through openings in the floor (9 C.F.R. §3.6(a)(2)(x)).

7. On August 25, 2006, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

- a. The housing facilities were not kept free of excessive rust (9 C.F.R. § 3.1(c)(1)(i));
- b. Food receptacles were not maintained in a clean and sanitary condition and in good repair (9 C.F.R. § 3.9(b));
- c. Water receptacles were not kept in a clean and sanitary manner (9 C.F.R. § 3.10); and

d. Used primary enclosures were not cleaned and sanitized at least once every two weeks or as often as needed to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards (9 C.F.R. § 3.11(b)(2)).

8. On May 31, 2007, APHIS inspected Respondent's premises and found that Respondent failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

9. On May 31, 2007, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

a. The housing facilities were not kept free of an accumulation of trash and debris (9 C.F.R. § 3.1(b));

b. The housing facilities were not kept free of excessive rust (9 C.F.R. § 3.1(c)(1)(i));

c. Respondent did not provide for the regular and frequent collection of waste material in order to minimize contamination and disease risks (9 C.F.R. § 3.1(f));

d. Surfaces in sheltered housing facilities were not impervious to moisture (9 C.F.R. § 3.3(e)(1)(iii));

e. Floors were not constructed in such a manner as to protect the animals from injury and to prevent the animals' feet and legs to pass through openings in the floor (9 C.F.R. §3.6(a)(2)(x));

f. Wire floors of primary enclosures were not strong enough to prevent them from bending or sagging between the supports (9 C.F.R. §3.6(a)(2)(xii));

- g. Water receptacles were not kept in a clean and sanitary manner (9 C.F.R. § 3.10);
  - h. Respondent failed to remove excreta and food waste daily from primary enclosures and from under primary as often as necessary to prevent excessive accumulation (9 C.F.R. § 3.11(a));
  - i. Used primary enclosures as well as food and water receptacles were not sanitized often enough to prevent an accumulation of dirt, debris and excreta (9 C.F.R. § 3.11(b)); and
  - j. The premises surrounding the housing facilities were not kept clean and in good repair so as to facilitate cleaning and pest control (9 C.F.R. § 3.11(c)).
10. On August 22, 2007, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:
- a. Food for the dogs was not maintained in such a manner as to prevent contamination (9 C.F.R. § 3.1(e));
  - b. Surfaces in sheltered housing facilities were not impervious to moisture (9 C.F.R. § 3.3(e)(1)(iii));
  - c. Primary enclosures for the dogs were not maintained in good repair (9 C.F.R. § 3.6(a)(1));
  - d. Floors were not constructed in such a manner as to protect the animals from injury and to prevent the animals' feet and legs to pass through openings in the floor (9 C.F.R. § 3.6(a)(2)(x)); and
  - e. Cats were not provided with an elevated resting surface in primary

enclosures (9 C.F.R. § 3.6(b)(4)).

11. On November 27, 2007, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

a. Respondent failed to provide access for inspection of records (9 C.F.R. § 2.126(a)(2));

b. The housing facilities were not kept free of an accumulation of trash and debris (9 C.F.R. § 3.1(b));

c. Food for the dogs was not maintained in such a manner as to prevent contamination (9 C.F.R. § 3.1(e));

d. The animals were not provided with sufficient heat to protect them from extreme temperatures (9 C.F.R. § 3.3(a));

e. Primary enclosures for the dogs were not maintained in good repair (9 C.F.R. § 3.6(a)(1)); and

f. Floors were not constructed in such a manner as to protect the animals from injury and to prevent the animals' feet and legs to pass through openings in the floor (9 C.F.R. §3.6(a)(2)(x)).

12. On March 20, 2008, APHIS attempted to inspect Respondent's facility; however, Respondent failed to provide access to APHIS for an inspection of the licensed facility in violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a) and 9 C.F.R. § 2.126(a)).

13. On March 21, 2008, APHIS attempted to inspect Respondent's facility; however, Respondent failed to provide access to APHIS for an inspection of the licensed facility in violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a) and 9 C.F.R. § 2.126(a)).

14. On June 17, 2008, APHIS inspected Respondent's premises and records and found that the Respondent had failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of section 10 of the Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

15. On October 15, 2008, APHIS attempted to inspect Respondent's facility; however, Respondent failed to provide access to APHIS for an inspection of the licensed facility in violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a) and 9 C.F.R. § 2.126(a)).

16. On March 9, 2009, APHIS inspected Respondent's premises and found that Respondent failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

17. On March 9, 2009, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the

standards specified below:

a. Hard surfaces of housing facilities were not cleaned often enough to sufficiently reduce disease hazards (9 C.F.R. § 3.1(c));

b. Housing facilities were not sufficiently heated to protect the dogs from

temperature extremes (9 C.F.R. § 3.3(a));

c. Primary enclosure was not maintained so that they contained the dogs securely and protected them from injury (9 C.F.R. § 3.6(a)(2)); and

d. Respondent failed to remove excreta and food waste daily from primary enclosures and from under primary as often as necessary to prevent excessive accumulation (9 C.F.R. § 3.11(a)).

18. On July 6, 2009, APHIS inspected Respondent's premises and found that Respondent failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

19. On July 6, 2009, APHIS inspected Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

a. Housing facilities and areas used for storing animal food or bedding were not free from accumulation of trash, waste material, weeds and junk (9 C.F.R. § 3.1(b));

b. Respondent did not provide for the regular and frequent collection of waste material in order to minimize contamination and disease risks (9 C.F.R. § 3.1(f));

c. Respondent failed to remove excreta and food waste daily from primary enclosures and from under primary as often as necessary to prevent excessive accumulation (9 C.F.R. § 3.11(a));

d. Used primary enclosures as well as food and water receptacles were not sanitized often enough to prevent an accumulation of dirt, debris and excreta (9 C.F.R. § 3.11(b)); and

e. An effective program for the control of insects, parasites, and other pests was not established and maintained so as to promote the health of the animals and reduce contamination (9 C.F.R. § 3.11(d)).

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

### **Order**

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

- a. Failing to establish and maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;
- b. Failing to individually identify animals, as required;
- c. Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required.
- d. Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;
- e. Failing to provide animals with adequate shelter from the elements;
- f. Failing keep food and water receptacles clean and sanitized;
- g. Failing to maintain primary enclosures for animals in a clean and sanitary condition;

h. Failing to keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter;

i. Failing to store supplies of food so as to adequately protect them against contamination;

j. Failing to provide for the regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks; and

k. Failing to provide adequate heating for animals in indoor and sheltered housing facilities when necessary to protect the animals from cold and to provide for their health and comfort.

2. The Respondent is assessed a civil penalty of \$18,938.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondent's license is suspended for a period of 30 days and thereafter until Respondent demonstrates that he is in compliance with the Act and the regulations.

4. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this Default Decision and Order shall be served upon the parties.

Done at Washington, D.C.

June 3, 2010

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**PETER M. DAVENPORT**  
Acting Chief Administrative Law Judge

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