

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 05-0012
)
William Richardson,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

W. Ron DeHaven, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a complaint on September 2, 2005. The Administrator instituted the proceeding under sections 901-905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 1901 note) [hereinafter the Commercial Transportation of Equine for Slaughter Act]; the regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges, on 10 occasions, during the period from on or about August 26, 2003, through on or about November 23, 2004, William Richardson shipped

horses in commercial transportation to Dallas Crown, Inc., in Kaufman, Texas, for slaughter, in violation of the Commercial Transportation of Equine for Slaughter Act and the Regulations.¹ On October 12, 2005, Mr. Richardson filed an answer denying the material allegations of the complaint.

On June 28-29, 2006, Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] conducted an audio-visual hearing in Washington, DC, and Sherman, Texas. Thomas Neil Bolick, Office of the General Counsel, United States Department of Agriculture, represented the Administrator. William Richardson appeared pro se.²

On August 31, 2006, the Administrator filed Complainant's Proposed Findings of Fact, Conclusions, and Brief and Order In Support Thereof. William Richardson did not file a post-hearing brief. On December 19, 2006, the Chief ALJ filed a Decision [hereinafter Initial Decision] concluding Mr. Richardson violated the Regulations as alleged in the complaint and assessing Mr. Richardson a \$30,000 civil penalty.³

On January 26, 2007, the Administrator appealed to the Judicial Officer. William Richardson did not file a response to the Administrator's appeal petition, and on

¹Compl. ¶¶ III-XII.

²William Richardson arrived after the initial testimony of Dr. Timothy Cordes and during the initial testimony of Joseph Astling. Mr. Astling briefly summarized the testimony he had given before Mr. Richardson's arrival (Tr. 55), and, when Dr. Cordes was recalled, he likewise summarized his previous day's testimony (Tr. 425-31).

³Initial Decision at 16-17, 19.

March 15, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I conclude William Richardson violated the Regulations as alleged in the complaint and assess Mr. Richardson a \$77,825 civil penalty. The Administrator's exhibits are designated "CX" and references to the transcript are designated "Tr."

DECISION

Statutory and Regulatory Background

The Commercial Transportation of Equine for Slaughter Act is intended to assure the humane transportation of equines for slaughter. Congress authorized the Secretary of Agriculture to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity. On December 7, 2001, the United States Department of Agriculture published the Regulations with an effective date of February 5, 2002.⁴

The Regulations define the term "owner/shipper" as an individual that engages in the commercial transportation of more than 20 equines a year to slaughtering facilities.⁵ An owner/shipper is subject to a number of requirements designed to assure the health and well-being of equines transported for slaughter. The Regulations include standards

⁴66 Fed. Reg. 63,588-617 (Dec. 7, 2001).

⁵9 C.F.R § 88.1.

for designing, constructing, and maintaining conveyances, so that equines can be safely loaded, unloaded, and transported,⁶ requirements for the care of equines before and during transportation,⁷ and requirements for the care of equines at the slaughtering facility.⁸ Equines transported to a slaughtering facility must be fit to travel, in that they must be able to bear weight on all four legs, must not be blind in both eyes, must be able to walk unassisted, must be older than 6 months of age, and must not be likely to give birth during the trip.⁹ Equines must be transported in a manner so as not to cause injury¹⁰ and must be observed not less than once every 6 hours while being transported.¹¹

Prior to the commercial transportation of equines to a slaughtering facility, the owner/shipper must apply a United States Department of Agriculture backtag to each equine in the shipment.¹² In addition, each equine must be accompanied by an

⁶9 C.F.R. § 88.3.

⁷9 C.F.R. § 88.4.

⁸9 C.F.R. § 88.5.

⁹9 C.F.R. § 88.4(a)(3)(vii).

¹⁰9 C.F.R. § 88.4(a)(4), (b)-(e)

¹¹9 C.F.R. § 88.4(b)(2).

¹²9 C.F.R. § 88.4(a)(2).

owner-shipper certificate which contains information about the owner/shipper, the receiver, the conveyance, and the equine, including a statement of fitness to travel.¹³

The Administrator made a significant effort to inform regulated parties of their obligations under the Commercial Transportation of Equine for Slaughter Act. Thus, Dr. Timothy Cordes, a senior staff veterinarian for the Animal and Plant Health Inspection Service, the National Coordinator for Equine Programs, and the Director of the Slaughter Horse Transportation Program, explained that United States Department of Agriculture employees developed public outreach materials, including videos, which were distributed to each known shipper of equines for slaughter. The materials included United States Department of Agriculture backtags and owner-shipper certificates. (Tr. 34-39.) William Richardson received these materials. In addition, Joseph Astling, an animal health technician with the Slaughter Horse Transportation Program, directly assisted Mr. Richardson on a number of occasions with the completion of owner-shipper certificates and otherwise educated Mr. Richardson on various aspects of the Regulations (Tr. 39-40, 46-49).

The Slaughter Horse Transportation Program assigns an animal health technician to each of the equine slaughtering facilities so that each equine is inspected for compliance with the Regulations (Tr. 31-33).

¹³9 C.F.R. § 88.4(a)(3).

Discussion

The testimony established that on 10 occasions, during the period August 26, 2003, through November 23, 2004, William Richardson was the owner/shipper of horses which were transported to Dallas Crown, Inc., in Kaufman, Texas, for slaughter. In most of these instances, Mr. Richardson either directly delivered the horses to Dallas Crown, Inc., 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 Mr. Richardson, who was seeking to circumvent a quota imposed on him by Dallas Crown, Inc., and, in at least one other instance, Mr. Richardson apparently let another individual use his name to enable that individual to obtain a higher price from Dallas Crown, Inc., for which Mr. Richardson was paid a commission.

The Administrator demonstrated that on August 26, 2003, as part of a shipment of 16 horses, William Richardson transported a paint mare that was blind in both eyes. Joseph Astling, the animal health technician assigned to the Dallas Crown, Inc., facility, observed this horse being led off the truck (CX 3; Tr. 50). Mr. Astling noticed her locomotion was “very unstable” and, as the horse came closer, “it was pretty obvious that she was being led for the reason that she couldn’t see at all.” (Tr. 63.) Mr. Astling took photographs of the horse (CX 4) and testified that those photographs depict a horse with eyes which are bluish in color and have no pupil, which he stated is characteristic of blind horses (Tr. 63-64). Mr. Astling also testified that the horse had cuts on her face—a sign

she was bumping into things because she was blind (Tr. 64-65). Dianne Ramsey, a United States Department of Agriculture investigator who also observed the horse, corroborated Mr. Astling's testimony (Tr. 75-77).

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

The Administrator demonstrated that on January 27, 2004, William Richardson transported for slaughter, as part of a load of 43 horses, an Appaloosa that was blind in both eyes. The manager at Dallas Crown, Inc., noted the horse's condition, isolated the horse in a pen, and informed Joseph Astling that the horse was blind in both eyes (CX 44; Tr. 277-78). Mr. Astling observed the horse walking into pipes and otherwise showing signs that the horse was not aware of its surroundings (Tr. 278). Mr. 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. 453-55.)

William Richardson countered by stating he thought the horse might have been blind in one eye and Appaloosas have trouble seeing at night (CX 37; Tr. 302, 393-95). However, 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. 422-23). Accordingly, I find the evidence establishes that Mr. Richardson transported for slaughter a blind Appaloosa on January 27, 2004.

The Administrator demonstrated that on several occasions William Richardson transported horses to Dallas Crown, Inc., that were injured and unable to travel without discomfort, stress, physical harm, or trauma. Thus, on August 26, 2003, a load of horses for which Mr. Richardson was the owner/shipper, which was transported by Troy Ressler, included a horse which, according to Mr. Ressler, had been reloaded at the direction of Mr. Richardson, even though the horse had an injured leg (CX 3; Tr. 79-80, 86). When the shipment arrived at Dallas Crown, Inc., Joseph Astling observed the horse lying in the back of the trailer (CX 3, CX 11; Tr. 79-80). Mr. Astling believed the horse was “profusely sweating” and in a state of shock. Mr. Astling observed the horse attempt to stand up to exit the trailer and then collapse. He ordered the horse to be euthanized. (CX 3, CX 11; Tr. 79-80, 86, 418.) Mr. 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 that the horse had suffered the equivalent of a surgical resection and that the horse bled so much it went into shock (Tr. 432-33).

William Richardson acknowledged that the horse was injured at the time he loaded the horse onto his trailer, but then said the injury was not serious and that the horse was able to walk onto his trailer (CX 10; Tr. 87-88, 91, 376-78, 401-05). He claimed the injury was like trimming one’s toenails a little too close (Tr. 405), but the photographs in CX 11 indicate otherwise. Mr. Richardson further claimed the horse stuck its leg through a hole in the loading chute upon arriving at Dallas Crown, Inc., but both Joseph Astling and Dianne 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. 412-18, 434).

On October 7, 2003, William Richardson transported a load of 47 horses to Dallas Crown, Inc., 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 (CX 3, CX 10; Tr. 138-61). According to Joseph Astling, Troy 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. 139-45). After the horses had been unloaded from his truck, Mr. Ressler

notified Mr. 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, Mr. Astling directed Dallas Crown, Inc., to euthanize the horse (CX 3, CX 24; Tr. 140-43). Dr. Cordes testified that the photographs indicated this horse could not bear weight on all four legs, as required by the Regulations (Tr. 445-50).

Later that same day, William Richardson arrived at Dallas Crown, Inc., with the load of horses that he was transporting (CX 3; Tr. 146-47, 157). Mr. Richardson notified Joseph Astling that there were two horses in the back of his trailer which he thought Mr. Astling should examine (CX 3; Tr. 146-48). Mr. Astling noted that one of the horses was missing a substantial portion of its left hind foot (CX 3, CX 25; Tr. 145-48). Mr. Richardson indicated to Mr. Astling that, while the horse was injured when the ramp collapsed, the horse could still bear weight on all four limbs, but Mr. Astling observed that the horse was bleeding and could not bear weight on the injured foot, even though the horse was able to walk out of the trailer (Tr. 147-48, 150). Mr. Astling allowed the horse to be slaughtered at Dallas Crown, Inc., rather than euthanized, only because the horse was very close to the entrance of the slaughtering facility (CX 3; Tr. 150-51, 158).

Joseph Astling then noticed that another horse transported by William Richardson had severe lacerations on both left legs and less severe lacerations on the right legs (CX 3; Tr. 157-59). The photographs taken by Mr. Astling illustrate the severity of at

least two of the lacerations (CX 26). In particular, the laceration on the left hind leg was deep enough so that bone was visible and the left forelimb had lacerations deep enough that the knee was visible (Tr. 152-55). Mr. Astling testified that the horse could only bear weight on the severely injured limbs with “[l]ots of pain and difficulty.” (Tr. 155.) He also testified that the horse should have been euthanized or should have been given the prompt medical attention required by the Regulations (Tr. 155-56).

With respect to the three injured horses transported to Dallas Crown, Inc., on October 7, 2003, William Richardson’s principal explanation was that the loading chute collapse happened around 3:00 a.m. and that he did not realize the horses were injured (CX 10; Tr. 165-68, 386-87, 406). Mr. Richardson also denied that the horse transported by Tony Ressler on October 7, 2003, suffered a broken leg before it was transported, testifying that the horse was led up the chute and into the truck (Tr. 386-87, 406-07). Even if the chute collapsed in the dark of night, there is no excuse for not examining the horses after the occurrence of an event that would have a propensity to cause injury. Moreover, the owner-shipper certificate signed by Mr. Richardson (CX 23) states the horses were loaded at 6:00 a.m., when there would have been enough light to determine whether any horses were injured. The evidence overwhelmingly supports a finding, with respect to these three horses, that either they were unable to bear weight on all four limbs or they 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. § 88.4(c).

The Administrator also demonstrated that on September 30, 2003, William Richardson transported to Dallas Crown, Inc., two horses, out of a shipment of 30, which had pre-existing injuries that rendered them unable to bear weight on all four limbs. Personnel at Dallas Crown, Inc., notified Joseph Astling that there was a horse he should examine. Mr. Astling observed and photographed a roan mare with significant injuries to her right front foot and lower right leg (CX 19, CX 22; Tr. 119-20). Both Mr. Astling and Dr. Cordes, who testified based on Mr. Astling's photographs, were of the opinion that the horse was suffering from an old injury seriously impacting the horse's ability to walk. 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 the horse's right front limb. (Tr. 118-24, 435-45.) Dr. Cordes was of the opinion that this horse would not be able to maintain her balance and equilibrium when being transported (Tr. 436-37). Mr. Richardson acknowledged shipping this horse, but maintained that the horse 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 photographs taken by Mr. Astling, that the horse would have difficulty bearing weight on her extremely swollen front right limb. At best, the horse could only step gingerly on the injured extremity, and the horse would have had to endure unnecessary discomfort in the course of being transported to Dallas Crown, Inc., which would violate the prohibition in 9 C.F.R. § 88.4(c).

The other horse Joseph Astling observed on September 30, 2003, was a paint mare which had an old injury to her left hind ankle as well as a fresh cut on her left hind tendon (CX 19, CX 21; Tr. 120). The left hind ankle injury was “a longstanding chronic lesion” (Tr. 442) 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 her foot (Tr. 442-43). Both Mr. 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, 443-45.) Dr. Cordes testified “this horse should never have been loaded” (Tr. 443), the horse would have had difficulty maintaining her equilibrium while traveling, and the fresh cut on her 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” in 9 C.F.R. § 88.4(c).

On October 21, 2003, at Dallas Crown, Inc., Joseph Astling and David Green, a senior inspector employed by the United States Department of Agriculture, observed a black and white paint horse, one of 14 horses in a shipment owned by William Richardson. The horse was holding its left hind foot off the ground and appeared to be unable to place any weight on it (CX 31-CX 33; Tr. 184-91, 199-200). Mr. 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. 189-90). The photographs at CX 33 indicate the

horse was unable to bear weight on this leg. Mr. Richardson'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 Mr. Stokes may have been Mr. Richardson's agent or employee does not change the fact that Mr. Richardson is the owner/shipper of this horse and is thus responsible for complying with the Commercial Transportation of Equine for Slaughter Act and the Regulations.

With respect to each of the seven injured horses discussed in this Decision and Order, *supra*, the Administrator also established that William Richardson did not comply with the requirement that "the owner/shipper must obtain veterinary assistance as soon as possible from an equine veterinarian for any equines in obvious physical distress."¹⁴ Since each of the seven injured horses was in obvious physical distress and since Mr. Richardson did not request veterinary assistance, the Administrator easily met his burden of proof.

Along with the two blind and seven injured horses which were transported in violation of the Regulations, William Richardson was cited for a number of other violations. When Joseph Astling asked to examine a horse that he thought was blind on October 7, 2003, Mr. Richardson first tried to take the horse into the slaughtering facility, but was stopped by Mr. Astling who informed Mr. Richardson that he wanted to examine

¹⁴9 C.F.R. § 88.4(b)(2).

the horse. Instead, Mr. Richardson argued with Mr. Astling, took the horse back to his trailer, and subsequently left the premises with the horse. (CX 3; Tr. 157-58, 161-63.)

Mr. Richardson testified he thought the horse could see, but did not deny that he removed the horse from the premises rather than allow Mr. Astling to examine the horse (CX 10; Tr. 166, 387). Mr. Richardson's refusal to allow Mr. Astling access to the horse is inconsistent with the requirement that the owner/shipper must "[a]llow a USDA representative access to the equines for the purpose of examination[.]"¹⁵ Mr. Astling also testified that Mr. Richardson was the owner/shipper of 17 horses delivered to Dallas Crown, Inc., at 3:15 a.m. on September 16, 2003. Mr. Richardson left the premises and did not return. Mr. Astling reported to duty at Dallas Crown, Inc., between 9:30 a.m. and 10:00 a.m., and never saw Mr. Richardson. (CX 12, CX 15; Tr. 108-10.) The Regulations allow the owner/shipper to leave the premises of a slaughtering facility if he arrives outside of normal business hours, but require him to return to the facility to meet the United States Department of Agriculture representative. Thus, Mr. Richardson's conduct was inconsistent with the requirements of 9 C.F.R. § 88.5(b).

The Administrator also demonstrated that William Richardson failed to apply United States Department of Agriculture backtags to each horse prior to the commercial transportation of horses to a slaughtering facility. On three occasions, the horses transported by Mr. Richardson did not have the required backtags. On one of these

¹⁵9 C.F.R. § 88.5(a)(3).

occasions, August 26, 2003, Joseph Astling and Dianne Ramsey observed no backtag on a blind paint mare (CX 3; Tr. 57-59, 75-76). On another occasion, November 23, 2003, none of the horses in Mr. Richardson's shipment of 42 horses from Billings, Montana, was backtagged (Tr. 329-32). Mr. Richardson stated that he called a United States Department of Agriculture inspector and told the inspector he was unable to have the backtags applied due to weather problems, but it is undisputed that the backtags were not applied to the horses (CX 57; Tr. 329-32, 356-58). With respect to another shipment of 43 horses, Mr. Richardson called Leslie Chandler, an animal health technician employed by the United States Department of Agriculture, and told him he was unable to backtag the horses because he was in a snowstorm. Mr. Chandler consulted with Mr. Astling and told Mr. Richardson that he could ship the horses to Dallas Crown, Inc., without backtags if he assigned each horse a backtag number on the owner-shipper certificate and provided the backtags to the inspector upon arrival at Dallas Crown, Inc. (CX 44-CX 45; Tr. 268-70, 285-87.) Mr. Richardson agreed, but then never provided the backtags, stating he threw them away and admitting he was at fault (Tr. 389-90).

The Administrator further demonstrated that William Richardson failed to complete an owner-shipper certificate for each horse prior to the commercial transportation of horses to a slaughtering facility. The Administrator demonstrated that on January 27, 2004, and November 23, 2004, Mr. Richardson failed to provide an owner-shipper certificate to accompany horses in commercial transportation to Dallas

Crown, Inc., for slaughter, and on August 26, 2003, September 16, 2003, September 30, 2003, October 7, 2003, October 21, 2003, February 1, 2004, and June 30, 2004, Mr. Richardson provided incorrect or partially completed owner-shipper certificates to accompany horses in commercial transportation to Dallas Crown, Inc., for slaughter. Omissions included failing to sign the certificate, failing to indicate the fitness of the horses, failing to complete the shipper's address or telephone number, and failing to provide the full backtag number for each horse. (CX 3, CX 5-CX 6, CX 9-CX 10, CX 15-CX 16, CX 19-CX 20, CX 23, CX 30-CX 31, CX 37, CX 44-CX 45, CX 54, CX 56-CX 58.)

Findings of Fact

1. William Richardson, a resident of Whitesboro, Texas, is engaged in the business of buying horses and in the commercial transportation of horses for slaughter.
2. Dallas Crown, Inc., in Kaufman, Texas, is a commercial establishment that slaughters horses.
3. William Richardson was the owner/shipper of all of the horses transported to Dallas Crown, Inc., for slaughter which are referenced in findings of fact numbers 4 through 28.

4. On or about August 26, 2003, William Richardson shipped one horse, a paint mare, in commercial transportation to Dallas Crown, Inc., for slaughter without a backtag. (9 C.F.R. § 88.4(a)(2).)

5. On or about August 26, 2003, William Richardson shipped 16 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

6. On or about August 26, 2003, William Richardson shipped one horse, a paint mare, which was blind in both eyes, in commercial transportation to Dallas Crown, Inc., for slaughter with other horses. (9 C.F.R. § 88.4(c).)

7. On or about August 26, 2003, William Richardson shipped 15 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

8. On or about August 26, 2003, William Richardson shipped one horse in obvious physical distress in commercial transportation to Dallas Crown, Inc., for slaughter, without obtaining veterinary assistance as soon as possible from an equine veterinarian. (9 C.F.R. § 88.4(b)(2).)

9. On or about August 26, 2003, William Richardson shipped one horse, with serious leg injuries, in commercial transportation to Dallas Crown, Inc., for slaughter. At the time the horse was observed at Dallas Crown, Inc., the horse had collapsed and was in shock. (9 C.F.R. § 88.4(c).)

10. On or about September 16, 2003, William Richardson shipped 17 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

11. On or about September 16, 2003, William Richardson shipped 17 horses in commercial transportation to Dallas Crown, Inc., for slaughter. William Richardson arrived at Dallas Crown, Inc., outside normal business hours, unloaded the 17 horses, left Dallas Crown, Inc.'s premises, and failed to return to Dallas Crown, Inc.'s premises to meet the United States Department of Agriculture representative upon his arrival. (9 C.F.R. § 88.5(b).)

12. On or about September 30, 2003, William Richardson shipped 30 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

13. On or about September 30, 2003, William Richardson shipped one horse, backtag number USAU 0599, with serious leg injuries, in commercial transportation to Dallas Crown, Inc., for slaughter. (9 C.F.R. § 88.4(c).)

14. On or about September 30, 2003, William Richardson shipped one horse, backtag number USAP 5600, with a serious leg injury, in commercial transportation to Dallas Crown, Inc., for slaughter. (9 C.F.R. § 88.4(c).)

15. On or about October 7, 2003, William Richardson shipped 47 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

16. On or about October 7, 2003, William Richardson shipped three horses in obvious physical distress in commercial transportation to Dallas Crown, Inc., for slaughter, without obtaining veterinary assistance as soon as possible from an equine veterinarian. (9 C.F.R. § 88.4(b)(2).)

17. On or about October 7, 2003, William Richardson shipped three injured horses in commercial transportation to Dallas Crown, Inc., for slaughter. (9 C.F.R. § 88.4(c).)

18. On or about October 7, 2003, William Richardson shipped 47 horses in commercial transportation to Dallas Crown, Inc., for slaughter, and, upon arrival at Dallas Crown, Inc., failed to allow a United States Department of Agriculture representative access to one roan mare for the purpose of examination. (9 C.F.R. § 88.5(a)(3).)

19. On or about October 21, 2003, William Richardson shipped 14 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

20. On or about October 21, 2003, William Richardson shipped one injured horse, backtag number USA Y 5161, in commercial transportation to Dallas Crown, Inc., for slaughter. (9 C.F.R. § 88.4(c).)

21. On or about January 27, 2004, William Richardson shipped 43 horses in commercial transportation to Dallas Crown, Inc., for slaughter without backtags.

(9 C.F.R. § 88.4(a)(2).)

22. On or about January 27, 2004, William Richardson shipped 43 horses in commercial transportation to Dallas Crown, Inc., for slaughter without an owner-shipper certificate. William Richardson initially shipped these 43 horses from their point of origin to his establishment in Whitesboro, Texas, without an owner-shipper certificate; William Richardson subsequently shipped the 43 horses from Whitesboro, Texas, to Dallas Crown, Inc. (9 C.F.R. § 88.4(a)(3).)

23. On or about January 27, 2004, William Richardson shipped 43 horses in commercial transportation to Dallas Crown, Inc., for slaughter without an owner-shipper certificate. William Richardson initially shipped these 43 horses from their point of origin to his establishment in Whitesboro, Texas; William Richardson subsequently shipped the 43 horses from Whitesboro, Texas, to Dallas Crown, Inc., without preparing a second owner-shipper certificate. (9 C.F.R. § 88.4(b)(4).)

24. On or about January 27, 2004, William Richardson shipped one horse, an Appaloosa, which was blind in both eyes, in commercial transportation to Dallas Crown, Inc., for slaughter with other horses. (9 C.F.R. § 88.4(c).)

25. On or about February 1, 2004, William Richardson shipped 28 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

26. On or about June 30, 2004, William Richardson shipped 12 horses in commercial transportation to Dallas Crown, Inc., for slaughter without a properly completed owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

27. On or about November 23, 2004, William Richardson shipped 42 horses in commercial transportation to Dallas Crown, Inc., for slaughter without backtags. (9 C.F.R. § 88.4(a)(2).)

28. On or about November 23, 2004, William Richardson shipped 42 horses in commercial transportation to Dallas Crown, Inc., for slaughter without an owner-shipper certificate. (9 C.F.R. § 88.4(a)(3).)

Conclusions of Law

1. On or about August 26, 2003, January 27, 2004, and November 23, 2004, William Richardson shipped a total of 86 horses in commercial transportation to Dallas Crown, Inc., for slaughter without backtags, in violation of 9 C.F.R. § 88.4(a)(2).

2. On or about August 26, 2003, September 16, 2003, September 30, 2003, October 7, 2003, October 21, 2003, February 1, 2004, and June 30, 2004, William Richardson shipped a total of 179 horses in commercial transportation to Dallas Crown,

Inc., for slaughter without properly completed owner-shipper certificates, in violation of 9 C.F.R. § 88.4(a)(3).

3. On or about August 26, 2003, September 30, 2003, October 7, 2003, October 21, 2003, and January 27, 2004, William Richardson failed to handle a total of nine horses in commercial transportation to Dallas Crown, Inc., for slaughter as expeditiously and carefully as possible in a manner that did not cause unnecessary discomfort, stress, physical harm, or trauma to the horses, in violation of 9 C.F.R. § 88.4(c).

4. On or about August 26, 2003, and October 7, 2003, William Richardson shipped a total of four horses in obvious physical distress in commercial transportation to Dallas Crown, Inc., for slaughter, without obtaining veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

5. On or about September 16, 2003, William Richardson shipped 17 horses in commercial transportation to Dallas Crown, Inc., for slaughter. William Richardson arrived at Dallas Crown, Inc., outside normal business hours, unloaded the 17 horses, left Dallas Crown, Inc.'s premises, and failed to return to Dallas Crown, Inc.'s premises to meet the United States Department of Agriculture representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

6. On or about October 7, 2003, William Richardson shipped 47 horses in commercial transportation to Dallas Crown, Inc., for slaughter, and, upon arrival at Dallas

Crown, Inc., failed to allow a United States Department of Agriculture representative access to one horse for the purpose of examination, in violation of 9 C.F.R. § 88.5(a)(3).

7. On or about January 27, 2004, and November 23, 2004, William Richardson shipped a total of 85 horses in commercial transportation to Dallas Crown, Inc., for slaughter without an owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3).

8. On or about January 27, 2004, William Richardson shipped 43 horses in commercial transportation to Dallas Crown, Inc., for slaughter without an owner-shipper certificate. William Richardson initially shipped these 43 horses from their point of origin to his establishment in Whitesboro, Texas, and subsequently shipped the 43 horses from Whitesboro, Texas, to Dallas Crown, Inc., without preparing a second owner-shipper certificate, in violation of 9 C.F.R. § 88.4(b)(4).

Sanction

The Commercial Transportation of Equine for Slaughter Act authorizes the Secretary of Agriculture to “establish and enforce appropriate and effective civil penalties.”¹⁶ The Regulations provide that the Secretary of Agriculture “is authorized to assess civil penalties of up to \$5,000 per violation of any of the regulations in [9 C.F.R. pt. 88].”¹⁷ The preamble of the final rulemaking document promulgating 9 C.F.R. pt. 88

¹⁶ U.S.C. § 1901 (note).

¹⁷ 9 C.F.R. § 88.6.

states the amount of the civil penalty is to be based on the severity of the violations and the history of the owner/shipper's compliance with the Regulations.¹⁸

I find extremely severe William Richardson's failures: (1) on August 26, 2003, and October 7, 2003, to obtain veterinary assistance for four horses in obvious physical distress, in violation of 9 C.F.R. § 88.4(b)(2); and (2) on August 26, 2003, September 30, 2003, October 7, 2003, October 21, 2003, and January 27, 2004, to handle nine horses as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c). The Commercial Transportation of Equine for Slaughter Act and the Regulations are designed to assure the humane transportation of equines for slaughter. Each of Mr. Richardson's violations of 9 C.F.R. § 88.4(b)(2) and (c) strikes at the heart of the Commercial Transportation of Equine for Slaughter Act and the Regulations. I also find extremely severe Mr. Richardson's October 7, 2003, failure to allow a United States Department of Agriculture representative access to a horse for the purpose of examination, in violation of 9 C.F.R. § 88.5(a)(3). This violation thwarts the Secretary of Agriculture's ability to carry out the purposes of the Commercial Transportation of Equine for Slaughter Act and the Regulations. I find less severe, but still very significant, Mr. Richardson's September 16, 2003, failure, after delivering 17 horses outside of normal business hours, to return to Dallas Crown, Inc.'s premises to meet the United States Department of

¹⁸66 Fed. Reg. 63,606 (Dec. 7, 2001).

Agriculture representative upon his arrival, in violation of 9 C.F.R. § 88.5(b). I find less severe, but nonetheless significant, Mr. Richardson's numerous failures to have each horse transported in commercial transportation to Dallas Crown, Inc., accompanied by a complete and accurate owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3) and to apply a United States Department of Agriculture backtag to each horse prior to the commercial transportation of the horse to Dallas Crown, Inc., in violation of 9 C.F.R. § 88.4(a)(2).

I also find William Richardson's ongoing pattern of violations during the period from on or about August 26, 2003, through on or about November 23, 2004, establishes a history of previous violations for the purposes of the Regulations.

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience

gained by administrative officials during their day-to-day supervision of the regulated industry.

The Administrator appealed the \$30,000 civil penalty assessed by the Chief ALJ. I find the reasoning of the Chief ALJ in determining the amount of the civil penalty to be erroneous. I conclude 9 C.F.R. § 88.6 provides the Secretary of Agriculture may assess a maximum civil penalty of \$5,000 for each violation of the Regulations and the Secretary of Agriculture may assess the maximum civil penalty for each violation that affects a single equine. I have consistently held under the Animal Welfare Act¹⁹ that an ongoing pattern of violations over a period of time establishes a violator's "history of previous violations," even if the violator has not been previously found to have violated the Animal Welfare Act.²⁰ I find no reason to treat an ongoing pattern of violations under the Commercial Transportation of Equine for Slaughter Act any differently than I treat an ongoing pattern of violations under the Animal Welfare Act. Therefore, I conclude William Richardson's ongoing pattern of violations during the period from on or about August 26, 2003, through on or about November 23, 2004, establishes Mr. Richardson's history of a failure to comply with the Regulations. Finally, I reject the Chief ALJ's conclusion that a civil penalty otherwise warranted in law and justified by the facts must

¹⁹7 U.S.C. §§ 2131-2159.

²⁰*In re Jerome Schmidt*, ___ Agric. Dec. ___, slip op. at 55 (Mar. 26, 2007); *In re Karen Schmidt*, ___ Agric. Dec. ___, slip op. at 17 (Aug. 30, 2006); *In re For The Birds, Inc.*, 64 Agric. Dec. 306, 359 (2005).

be reduced because an agency official could have initiated an enforcement action prior to the date the action was actually initiated. The decision of whether and when an agency must exercise its enforcement powers is left to agency discretion, except to the extent determined by Congress.²¹ Congress has not mandated the timing of enforcement actions under Commercial Transportation of Equine for Slaughter Act. Moreover, neither the Commercial Transportation of Equine for Slaughter Act nor the Regulations makes relevant the timing of the filing of a complaint to the determination of the appropriate civil penalty.

The Administrator seeks assessment of an \$85,000 civil penalty against William Richardson.²² I find Mr. Richardson committed at least 408 violations of the Regulations. After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the severity of Mr. Richardson's violations and Mr. Richardson's history of compliance with the Regulations, the remedial purposes of the Commercial Transportation of Equine for Slaughter Act, and the recommendations of the administrative officials, I conclude assessment of a \$77,825 civil

²¹*See Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *United States v. Batchelder*, 442 U.S. 114, 123-24 (1979); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967); *Confiscation Cases*, 74 U.S. (7 Wall.) 454 (1869); *Sierra Club v. Whitman*, 268 F.3d 898, 902-03 (9th Cir. 2001); *Massachusetts Pub. Interest Research Group v. U.S. Nuclear Regulatory Comm'n*, 852 F.2d 9, 14-19 (1st Cir. 1988); *Harmon Cove Condominium Ass'n, Inc. v. Marsh*, 815 F.2d 949, 952-53 (3d Cir. 1987).

²²Complainant's Proposed Findings of Fact, Conclusions, Brief and Order In Support Thereof at 67-74.

penalty is appropriate and necessary to ensure Mr. Richardson's compliance with the Regulations in the future, to deter others from violating the Commercial Transportation of Equine for Slaughter Act and the Regulations, and to fulfill the remedial purposes of the Commercial Transportation of Equine for Slaughter Act.²³

For the foregoing reasons, the following Order is issued.

ORDER

William Richardson is assessed a \$77,825 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States and sent to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Payment of the civil penalty shall be sent to, and received by, the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, within

²³I assess William Richardson: (1) a \$5,000 civil penalty for each of the four horses for which he failed to obtain veterinary assistance and for each of the nine horses which he failed to handle as expeditiously and carefully as possible, in violation of 9 C.F.R. § 88.4(b)(2), (c); (2) a \$2,500 civil penalty for his failure to allow a United States Department of Agriculture representative access to a horse for the purpose of examination, in violation of 9 C.F.R. § 88.5(a)(3); (3) a \$500 civil penalty for his failure, after delivering horses outside of normal business hours, to return to the slaughtering facility premises, in violation of 9 C.F.R. § 88.5(b); (4) a \$2,150 civil penalty for his failure to apply United States Department of Agriculture backtags to 86 horses, in violation of 9 C.F.R. § 88.4(a)(2); and (5) a \$7,675 civil penalty for his failure to have 307 horses accompanied by complete and accurate owner-shipper certificates, in violation of 9 C.F.R. § 88.4(a)(3).

60 days after service of this Order on William Richardson. William Richardson shall indicate on the certified check or money order that payment is in reference to A.Q.

Docket No. 05-0012.

Done at Washington, DC

June 13, 2007

William G. Jenson
Judicial Officer