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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-01-0025  
)  
Weatherhead Potato Corp., )  
)  
)  
)  
Respondent )

**DECISION WITHOUT HEARING BY REASON OF CONSENT**

In this disciplinary proceeding under the Perishable Agricultural Commodities Act (7 U.S.C. § 499a et seq.), hereinafter referred to as the Act or PACA, in a complaint filed August 16, 2001, Complainant alleges that Respondent Weatherhead Potato Corp. has committed willful, flagrant and repeated violations of Section 2(5) of the PACA (7 U.S.C. § 499b(5)) by misrepresenting by word, act, mark, stencil, statement, or deed, the size of one load of potatoes packed and sold in interstate commerce on February 1, 2001. Complainant requests a finding that Respondent committed willful, repeated and flagrant violations of Section 2(5) of the Act (7 U.S.C. § 499b(5)), and that the license of Respondent be suspended for a period of 30 days.

The parties have now agreed to an entry of a Decision Without Hearing By Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provision of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

**Findings of Fact**

1. Weatherhead Potato Corp., (hereinafter, "Respondent"), is a corporation organized and existing under the laws of Maine. Its business address is Route 1A, Fort Fairfield, Maine 04742. Its mailing address is P.O. Box 447, Fort Fairfield, Maine 04742.

2. Pursuant to the licensing provisions of the Act, license number 961504 was issued to Respondent on May 14, 1996. This license has been renewed annually and is next subject for renewal on May 14, 2002.

3. Respondent misrepresented by word, act, mark, stencil, label, statement, or deed, the size of potatoes that it packed and sold, in the course of interstate commerce, as the potatoes were represented to have a minimum diameter of 2 1/4 inches, when in fact the potatoes failed to meet this specific size requirement. These misrepresentations were made in connection with one load of potatoes consisting of 4,400 – 10 pound packages sold by Respondent to Maine Farmers Exchange on February 1, 2001, under Respondent's lot number 1227.

4. The potatoes involved in this matter were inspected on February 2, 2001, at the Respondent's place of business. Inspection certificate A-473961 documented that the potatoes did not meet the purported 2 1/4 inch minimums. Notwithstanding the inspection findings, Respondent disregarded the results cited in the inspection certificate and shipped the misbranded product to the eventual receiver in New York.

#### Conclusion

Respondent's misrepresentations, described in Findings of Fact 3 and 4 and as more fully set forth in paragraph III of the Complaint, constitute willful, flagrant and repeated violations of Section 2(5) of the PACA (7 U.S.C. § 499b(5)), for which the order below is issued.

#### Order

Respondent is found to have willfully, repeatedly, and flagrantly violated Section 2(5) of the PACA (7 U.S.C. § 499b(5)).

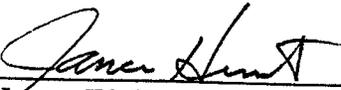
Respondent shall serve a 30-day suspension which shall be held in abeyance pending the payment of a civil penalty in the amount of \$10,000.00 as set forth in the Understanding

Regarding Civil Penalty and Payment Terms entered into between Complainant and Respondent.

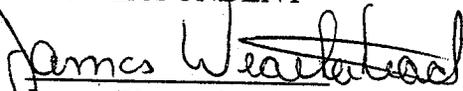
This order shall become final within 10 days of issuance. Copies shall be served upon the parties.

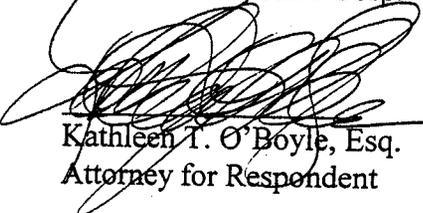
Issued at Washington, D.C.

This 5th day of June, 2002

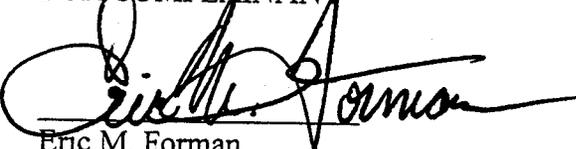
  
James W. Hunt  
Chief Administrative Law Judge

FOR RESPONDENT

  
James Weatherhead  
Weatherhead Potato Corp.

  
Kathleen T. O'Boyle, Esq.  
Attorney for Respondent

FOR COMPLAINANT

  
Eric M. Forman  
Associate Deputy Administrator  
Fruit and Vegetable Programs  
Agricultural Marketing Service

  
Ann Parnes  
Attorney for Complainant