

Agreement"). As such, Appellant violated the terms of the ACP Agreement. On each of the 132 days violations took place. The Hearing Officer found the violations to be procedural and meet the definition of a Minor violation. The Hearing Officer proposed a fine of \$750 per occurrence, for a total penalty of \$99,000. On July 2, 2015, the Respondent adopted the decision as proposed by the Hearing Officer.

On July 15, 2015, the Appellant timely submitted an appeal to the Secretary of the Department of Food and Agriculture (hereinafter "Department") on the following basis:

- 1) A violation of FAC Section 5306 can only be found where there is intent not to comply with a quarantine regulation.
- 2) Evidence does not support the Respondent's finding that the Appellant violated Exhibit T(3) and S(3)(c) of the ACP Agreement, and by extension FAC Section 5306.
- 3) A penalty may only be assessed under FAC Section 5311 when the violation is not intentional. The Respondent's decision determined there was no intentional violation.
- 4) Penalties cannot be assessed against government entities as the definition of "person" in the FAC neither expressly nor impliedly refers to a government entity.
- 5) The penalty assigned is excessive for a violation characterized as minor.

II STANDARD OF REVIEW

The Department may not consider evidence outside the records, but must consider the entire record, and deny the appeal if there is any substantial evidence to support the findings (*Smith v. County of Los Angeles* (1989) 211 Cal.App.3rd 188, 198-199). Substantial evidence is defined as evidence of "ponderable legal significance" which is "reasonable in nature, credible and of solid value," distinguishable from the lesser requirement of "any evidence." (*Newman v. State Personnel Board* (1992) 10 Cal.App 4th 41, 47; *Bowers v. Bernards* (1984) 150 Cal.App. 3rd 870, 873.) In other words, the Department cannot substitute its judgement for the judgement of the finder of fact if there is enough relevant and reliable information to establish a fair argument in support of the result, even if other results might have also been reached. (*Smith v. County of Los Angeles, supra; Bowers v Bernards, supra*, 10 Cal.App. 4th at 873-874)

III STATEMENT OF FACTS

The Respondent presented evidence that, on January 3, 2011, Kahlil Gharios, representing the Appellant, signed and sent an ACP Agreement, including Exhibits S and T, to Rebekah Banales at USDA/APHIS. The ACP Agreement spelled out

conditions for the movement of green waste from the ACP State Interior Quarantine area. In signing, the Appellant agreed to comply with all conditions of the ACP Agreement and its exhibits, including verifying receivers of green waste were operating under appropriate ACP Agreement. The ACP Agreement covered the Harbor Mulching Facility, the Lopez Canyon Environmental Center, and the Central Los Angeles Recycling and Transfer Station.

Karen Sanford, an Environmental Health Specialist with Kern County Environmental Health, testified that on December 26, 2013, the Kern County Environmental Health Department received a complaint of trucks, bearing the seal of the City of Los Angeles, dumping material on a vacant lot located at 1142-3 Frazier Mountain Park Road, Lebec/Frazier Park, CA (a location in Kern County and outside the ACP Quarantine area). An investigation was conducted to determine if the material being dumped was a type of green waste. The Respondent presented evidence that the property at the Frazier Park address was owned by David Blomgren. Mr. Blomgren told investigators he had made a verbal agreement with David Mejia, which had been in effect for approximately six months, to allow stockpiling of mulch-type material on the property.

Ms. Sanford, testified that on December 27, 2013, she, visited the Frazier Park site and examined the material. She found the material to be green waste made up of leaves and wood that "looked like it had been screened." She further stated that it was stored in uncovered and unsecured piles. She observed a truck belonging to Gonzales Trucking at the site and spoke to the driver. Ms. Sanford testified that the driver indicated trucks bring material to the site and transport it away. Ms. Sanford then spoke with the driver's supervisor, Mr. Mejia, operator of Govia Transport and Logistics. Mr. Mejia stated the material came from various locations in southern California and was going to be transported to Synagro, a facility near Taft, in Kern County, to be composted. Mr. Mejia estimated there was approximately 100 tons of material at the Frazier Park location.

On December 31, 2013, Ms. Sanford testified that she, observed trucks from the City of Los Angeles, Bureau of Sanitation dumping additional green waste at the Frazier Park location and trucks owned by Gonzales trucking hauling it away. On January 3, 2014, Ms. Sanford stated that she met with Mr. Mejia about the green waste at the Frazier Park Property. Mr. Mejia indicated Govia Transport had an agreement with the Appellant. Under this agreement, the Appellant would transport material, from Los Angeles to the Frazier Park location up to three times per day, five days per week. He further stated he contracted with Gonzales Trucking to collect the same material from the Frazier Park property and deliver it to Synagro for composting. Ms. Sanford forwarded her investigation to the Respondent.

On January 16, 2014, Inspector Nuvia Maldonado, representing the Respondent, testified that she was assigned to investigate green waste coming into Kern County. To that end, on January 16, 2014, she contacted Mr. Gharios and obtained a copy of the Appellant's s ACP Agreement.

On January 27, 2014, the Respondent issued a Notice of Violation (NOV) to the Appellant. The purpose of the NOV was to notify the Appellant their actions were in violation of the ACP quarantine and they were to discontinue shipments to the Frazier Park location. On January 29, 2014, Inspector Maldonado stated that she obtained records from the Appellant indicating 279 loads of green waste had been transported from the Lopez Canyon Environmental Center to the Frazier Park location over the course of 132 days from June 3, 2013 through January 9, 2014. Inspector Maldonado confirmed the material was taken from the Frazier Park location to Synagro. Inspector Maldonado testified that she spoke to Tony Cordova at Synagro. He indicated that when he became aware there was an issue with material from the Frazier Park location, Synagro ceased receiving the material.

On January 31, 2014, Inspector Maldonado interviewed Mr. Mejia and during the interview Mr. Mejia stated he was not aware that he needed a compliance agreement to move the green waste and that he had not signed one for Govia Transport.

On February 27, 2014, Mustafa Abellatif and Ann Kiser of the California Department of Food and Agriculture, met with Mr. Gharis, and other representatives of the Appellant. The Appellant confirmed loads of "mulch" had been moved from the Lopez Canyon Environmental Center to Mr. Mejia at the Frazier Park location and to a second business caller Sun Power Corporation, both located in Kern County. The Appellant did not verify either of the two parties were operating under ACP Agreements. After becoming aware there was an issue, the Appellant stopped shipping mulch to both parties.

During the course of investigation, it was determined the Lopez Canyon Environmental Center was within the boundaries of the ACP State Interior Quarantine, both the Frazier Park Location and the Sun Power location were in Kern County and outside the APC quarantine area.

On August 14, 2014, the Respondent issued the Appellant a revised NOV, citing violations of two additional quarantines – Light-brown Apple Moth ("LBAM") and Oriental Fruit Fly ("OFF"). The Lopez Canyon EC and Harbor Mulching Facility are not within the LBAM or OFF quarantine areas; however both received material that may originate in these areas.

On August 18, 2014, a Notice of Proposed Action (NOPA) was issued by the Respondent proposing the fine the Appellant \$198,000 for violations of FAC Section 6501 on 132 separate days and violating FAC Section 5306 for 279 separate loads. The Appellant requested and was granted a hearing.

During the hearing, the Appellant argued that they are a governmental agency, and as such do not meet the definition of "person" and cannot be fined. The Respondent pointed out that other governmental agencies have been had fine actions against them.

The Appellant argued, to find violation of FAC sections 6501 and 5306 required proof of intent and they did not intentionally violate either section and were not even aware the Frazier park location was in Kern County.

The Appellant argued the definitions of “green waste, unprocessed, and processed” are ambiguous and used inconsistently in the ACP Agreement and questioned whether green waste is a “thing” subject to federal or state quarantine. The Respondent argued the material in question had not been “processed” to the extent to eliminate the risk of spreading ACP.

IV DETERMINATION OF ISSUES

In their appeal, Appellant first argues that a violation of FAC Section 5306 can only be upheld if there is no intent to comply with a quarantine regulation. Under FAC Section 5306(a) it is unlawful to refuse to comply with any quarantine regulation. The Respondent did not present any evidence to indicate that the Appellant refused to comply with the quarantine regulation. In fact, the Appellant willingly signed the ACP Agreement, strived to obtain clarification of the ACP Agreement requirements, and immediately ceased shipments upon being notified such shipments were not in compliance with the ACP Agreement. However, under FAC Section 5306(b) “[i]t is unlawful for any person to possess, propagate, plant, process, sell, or take any other action with regard to a plant or thing subject to a quarantine which has been imported or moved in violation of the quarantine.” This is a strict liability offense and does not require the Respondent to prove intent. The Respondent presented sufficient evidence to demonstrate that Appellant did violate this section.

Appellant next asserts that there is not sufficient evidence to support the Commissioner’s finding that the Appellant violated FAC Section 5306(b) by failing to comply with the ACP Agreement, Exhibits T(3) and S(3)(c). ACP Agreement Exhibit T(3) requires signees to “only load green waste for transport out of an ACP quarantine area onto any conveyance with verification of transporter’s quarantine certification.” Evidence presented by the Respondent only established that the Appellant loaded their own trucks with green waste for shipment to the Frazier Park location. As such, the Department finds that Appellant did not fail to comply with this Exhibit.

With respect to ACP Agreement Exhibit S(3)(c), which requires that signees only move green waste to landfills or licensed compost facilities within the ACP quarantine area, or to green waste receivers operating an ACP Agreement. Evidence presented during the hearing indicates the Appellant transported, delivered, and gifted green waste, in the form of uncomposted mulch, from inside the ACP quarantine area, to a receiver, not operating under an ACP Agreement, outside the ACP quarantine area. Although there was some confusion over the processed and unprocessed green waste, as a covered material, the ACP Interior State Quarantine, Title 3 CCR Section 3435, C.1 lists green waste of regulated plant species as a commodity covered under the quarantine. Accordingly the Department finds that the Appellant did not comply with Exhibit S(3)(c)

of the ACP Agreement and violated FAC Section 5306(b) and Title 3 CCR Section 3435.

Appellant further argues that a penalty may only be assessed under FAC Section 5311 when the violation is intentional as required by FAC Section 5028. Appellant argues penalties cannot be assessed because the Commissioner's decision determined there was no intentional violation. FAC Section 5028 does state that intentional violations of quarantine regulations are subject to civil penalties under FAC Section 5311. However, under FAC Section 5311 civil penalties are allowed for any violation of quarantine statutes or regulations and it does not specify that those violations be intentional.

Appellant also attempts to get all violations dismissed on the basis that penalties cannot be assessed against government entities because the definition of "person" in the FAC neither expressly nor impliedly refers to a government entity. To support their argument, Appellant notes that the definition of "person" in FAC Section 38 does not include cities or other local government entities. However, FAC Section 25 provides that the definition only applies unless context requires otherwise. The Department finds that implementing and enforcing quarantines would be moot if it did not also apply to cities and local governments. The dangers of transporting quarantined materials still poses the same risk of spreading pests and invasive species regardless of whether it is done by a local government or a private individual. Accordingly the Department finds that the Appellant is a person in this context.

Lastly, Appellant argues that the penalty assigned is excessive for a violation characterized as minor. In previous cases, the penalty assessed for these violations has ranged anywhere from fifty dollars (\$50) to seven hundred and fifty dollars (\$750). The evidence established that the Appellant did not willfully or intentionally violate FAC Section 5306(b) or Title 3, CCR Section 3435. Once Appellant was made aware of the violations they sought clarification and corrected the issue and the Appellant does not have any history of previous violations. Additionally and as supported by the Hearing Officers findings there was some ambiguity in the ACP Agreement. For these reasons, the Department finds that the assessment of seven hundred and fifty dollars (\$750) was excessive and sets the penalty at fifty dollars (\$50) for each violation.

The evidence shows that Appellant did not comply with the terms of Exhibit S(3)(c) of the ACP Agreement, and thereby violated FAC Section 5306(b) and Title 3, CCR Section 3435. However, evidence also supports the Appellant's assertion that language in the ACP Agreement Exhibits was ambiguous and difficult to interpret. It is apparent the Appellant tried, on several occasions, to obtain clarification and went so far as to spell out and submit their interpretation of the ACP Agreement to the Department. It is clear the Appellant did not intentionally violate the terms of the ACP Agreement and acted in good faith during the investigative process. Because of these mitigating factors, the Department orders modification of the penalty, under authority of FAC Section 5311(d)(7), to the amount of fifty dollars (\$50) for each of the 132 violations, for a total penalty of six thousand and six hundred dollars (\$6,600).

**BEFORE THE
DEPARTMENT OF FOOD AND AGRICULTURE
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of)
) File No.: 001-CAP-KER-14/15
City Of Los Angeles, Dept. of Public Works)
Bureau of Sanitation,)
Solid Resources Processing and Construction Div.)
1149 South Broadway, Suite 500 – Mail Stop 624)
Los Angeles, CA 90015)
)
Appellant)
)
)
)
_____)

**V
DECISION**

For the foregoing reasons, the Respondent's decision as to the violations is affirmed, but the civil penalty is reduced to six thousand and six hundred dollars (\$6,600) in this matter. Appellant is required to pay the civil penalty in the amount of \$6,600 to the Kern County Department of Agriculture and Measurement Standards.

This Decision and Order shall be effective SEPTEMBER 30, 2015.

IT IS SO ORDERED this 31 day of AUGUST, 2015.



CRYSTAL D'SOUZA
Staff Counsel
Department of Food and Agriculture

APPELLANT'S RIGHT TO SEEK JUDICIAL REVIEW

Judicial review of the decision of the Department may be sought within thirty (30) days of the effective date of this decision pursuant to Section 1094.5 of the Code of Civil Procedure.