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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 06-0023  
)  
Clm Disterhaupt, Jr. )  
doing business as )  
Ponca Creek Kennels, ) *Consent Decision*  
) *and Order*  
Respondent )

This proceeding was instituted under the Animal Welfare 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 issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondent admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

### Findings of Fact

1. Clem Disterhaupt, Jr., hereinafter referred to as respondent, is an individual whose address is 49066 900<sup>th</sup> Road, Spencer, Nebraska 68777. The respondent operates under the business name of Ponca Creek Kennels.

2. The respondent, at all times material hereto, was operating as a dealer as defined in the Act and the regulations.

### Conclusions

The respondent has admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

### 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 maintain housing facilities for dogs in a structurally sound condition and in good repair;

(B) Failing to provide APHIS employees with access to the respondent's facility;

(C) Failing to have housing facilities that are constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled ;

(D) Failing to have interior surfaces of housing facilities and surfaces that come in contact with dogs that were free of jagged edges and sharp points that might injure the dogs in the respondent's facility;

(E) Failing to have surfaces of housing facilities that were cleaned and sanitized;

(F) Failing to provide housing for animals that would protect the animals from extreme weather conditions that may be uncomfortable or hazardous to the animals including providing enough shade, wind breaks and bedding for all dogs in the facility;

(G) Failing to provide dogs over the age of 12 weeks which are kept individually in cages with the opportunity for regular exercise;

(H) Failing to remove excreta from primary enclosures on a daily basis;

(I) Failing to clean and sanitize used primary enclosures, and used food receptacles and water receptacles prior to their use by other animals;

(J) Failing to keep the premises including buildings and surrounding grounds, in good repair, and clean and free of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes that are located on the grounds;

(K) Failing to have sheltered housing facilities for dogs that do not have sufficient lighting for the well-being of the animals and to permit routine inspection and cleaning;

(L) Failing to keep inside sheltered facilities breeds of dogs that cannot tolerate the prevalent temperatures of the area without stress or discomfort including bulldogs and

puppies without specific approval by the attending veterinarian that such animals can be outside and limiting their time outside to the time periods specified by the attending veterinarian for the facility;

(M) Failing to provide proper veterinary care by having a veterinary care plan, having regular visits from a veterinarian and treating animals that are sick or injured; and

(N) Failing to provide sufficient space to allow each animal to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

2. The respondent is assessed a civil penalty of \$12,000, 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 90 days and continuing thereafter until the respondent demonstrates to the Animal and Plant Health Inspection Service that he is in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty imposed herein. When the respondent demonstrates to the Animal and Plant Health Inspection Service that he has satisfied this condition and paid the civil

penalty in full, a supplemental order will be issued in this proceeding upon the motion of the Animal and Plant Health Inspection Service, terminating the suspension. The suspension of the Respondent's license shall begin on February 27, 2008.

The provisions of this order unless specified otherwise shall become effective on the first day after service of this decision on the respondent.

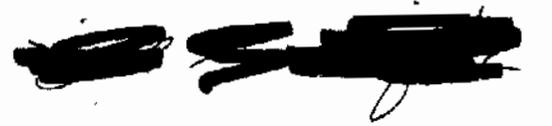
Copies of this decision shall be served upon the parties.

  
Clem Disterhaupt, Jr.  
Respondent

  
Thomas J. Von Wald  
Attorney for Respondent

  
Sharlene Deskins  
Attorney for Complainant

Done at Washington, D.C.  
this 25 day of FEB, 2008

  
Jill S. Clifton  
Administrative Law Judge