

5. On September 6, 2005, APHIS inspected Felts' premises and found that Felts 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), see Exhibit A.

6. On September 6, 2005, APHIS inspected Felts' premises and records and found that Felts had failed to individually identify all dogs being kept for breeding of sixteen weeks of age or older, in willful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50(a) of the regulations (9 C.F.R. § 2.50(a)), see Exhibit A.

7. On September 6, 2005, APHIS inspected Felts' premises and records and found that Felts 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)), see Exhibit A.

8. On September 6, 2005, APHIS inspected Felts' 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)), see Exhibit A;

(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)), see Exhibit A;

(c) Surfaces of outdoor housing facilities for dogs were not impervious to moisture (9 C.F.R. § 3.4(c)), see Exhibit A;

(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)), see Exhibit A; and

(e) Floors were not constructed in a manner that protected the animals from injury and prevented the animals' feet and legs from passing through openings in the floor (9 C.F.R. §3.6(a)(2)(x)), see Exhibit A.

9. On August 25, 2006, APHIS inspected Felts' 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 were not kept free of excessive rust (9 C.F.R. § 3.1(c)(1)(i)), see Exhibit A;

(b) Food receptacles were not maintained in a clean and sanitary condition and in good repair (9 C.F.R. § 3.9(b)), see Exhibit A;

(c) Water receptacles were not kept in a clean and sanitary manner (9 C.F.R. § 3.10), see Exhibit A; and

(d) 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)), see Exhibit A.

10. On May 31, 2007, APHIS inspected Felts' premises and found that Felts 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), see Exhibit A.

11. On May 31, 2007, APHIS inspected Felts' 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 were not kept free of an accumulation of trash and debris (9 C.F.R. § 3.1(b)), see Exhibit A;

(b) Housing facilities were not kept free of excessive rust (9 C.F.R. § 3.1(c)(1)(i)), see Exhibit A;

(c) Regular and frequent collection of waste material in order to minimize contamination and disease risks were not provided by Felts (9 C.F.R. § 3.1(f)), see Exhibit A;

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

(e) Floors were not constructed in a manner that protected the animals from injury and prevented the animals' feet and legs from passing through openings in the floor (9 C.F.R. §3.6(a)(2)(x)), see Exhibit A;

(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)), see Exhibit A;

(g) Water receptacles were not kept in a clean and sanitary manner (9 C.F.R. § 3.10), see Exhibit A;

(h) Excreta and food waste were not removed daily from primary enclosures and from under primary enclosures as often as necessary to prevent excessive accumulation (9 C.F.R. § 3.11(a)), see Exhibit A;

(i) 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)), see Exhibit A; and

(j) 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)), see Exhibit A.

12. On August 22, 2007, APHIS inspected Felts' 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 a manner that prevented contamination (9 C.F.R. § 3.1(e)), see Exhibit A;

(b) Surfaces in sheltered housing facilities were not impervious to moisture (9 C.F.R. § 3.3(e)(1)(iii)), see Exhibit A;

(c) Primary enclosures for the dogs were not maintained in good repair (9 C.F.R. § 3.6(a)(1)), see Exhibit A;

(d) Floors were not constructed in a manner that protected the animals from injury and prevented the animals' feet and legs from passing through openings in the floor (9 C.F.R. § 3.6(a)(2)(x)), see Exhibit A; and

(e) Cats were not provided with an elevated resting surface in primary enclosures (9 C.F.R. § 3.6(b)(4)), see Exhibit A.

13. On November 27, 2007, APHIS inspected Felts' 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) Access for inspection of records was not provided (9 C.F.R. § 2.126(a)(2)), see Exhibit A;

(b) Housing facilities were not kept free of an accumulation of trash and debris (9 C.F.R. § 3.1(b)), see Exhibit A;

(c) Food for the dogs was not maintained in a manner that prevented contamination (9 C.F.R. § 3.1(e)), see Exhibit A;

(d) Animals were not provided with sufficient heat to protect them from extreme temperatures (9 C.F.R. § 3.3(a)), see Exhibit A;

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

(f) Floors were not constructed in such a manner that protected the animals from injury and prevented the animals' feet and legs from passing through openings in the floor (9 C.F.R. §3.6(a)(2)(x)), see Exhibit A.

14. On March 20, 2008, APHIS attempted an inspection of Felts' facility and found that Felts failed to provide access to APHIS for an inspection of the licensed facility (9 C.F.R. § 2.126(a)), in willful violation of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)), see Exhibit A.

15. On March 21, 2008, APHIS attempted an inspection of Felts' facility and found that Felts failed to provide access to APHIS for an inspection of the licensed facility (9 C.F.R. § 2.126(a)), in willful violation of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)), see Exhibit A.

16. On June 17, 2008, APHIS inspected Felts' premises and records and found that Felts 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)), see Exhibit A.

17. On October 15, 2008, APHIS attempted an inspection of Felts' facility and found that Felts had failed to provide access to APHIS for an inspection of the licensed facility (9 C.F.R. § 2.126(a)), in willful violation of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)), see Exhibit A.

18. On March 9, 2009, APHIS inspected Felts' premises and found that Felts 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), see Exhibit A.

19. On March 9, 2009, APHIS inspected Felts' 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)), see Exhibit A;

(b) Housing facilities were not sufficiently heated to protect the dogs from temperature extremes (9 C.F.R. § 3.3(a)), see Exhibit A;

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

(d) Excreta and food waste were not removed daily from primary enclosures and from under primary enclosures as often as necessary to prevent excessive accumulation (9 C.F.R. § 3.11(a)), see Exhibit A.

20. On July 6, 2009, APHIS inspected Felts' premises and found that Felts 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), see Exhibit A.

21. On July 6, 2009, APHIS inspected Felts' 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)), see Exhibit A;

(b) Regular and frequent collection of waste material was not provided by Felts in order to minimize contamination and disease risks (9 C.F.R. § 3.1(f)), see Exhibit A;

(c) Excreta and food waste were not removed daily from primary enclosures and from under primary enclosures as often as necessary to prevent excessive accumulation (9 C.F.R. § 3.11(a)), see Exhibit A;

(d) 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)), see Exhibit A; 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)), see Exhibit A.

22. The Administrator of APHIS filed an Administrative Complaint (“Complaint”) against Felts under the Regulations for willfully violating the Act. The Complaint was properly served on Felts, but he did not file an Answer to the Complaint. On June 5, 2010, a USDA Administrative Law Judge issued a Default Decision and Order (“Decision”) that entered a judgment for a civil penalty of \$18,938.00 against Felts, as well as entering a cease and desist order and suspending Felts’ license, see Exhibit A. The Decision is attached hereto as Exhibit A.

23. Demands for payment of the civil penalty were sent to Felts, but Felts has failed to pay the amount owing.

24. As of February 7, 2011, the total amount owing was \$19,474.57, see Exhibit B. This amount includes principal of \$18,938.00, together with interest of \$63.12 to January 5, 2011, and penalties of \$473.45 to January 31, 2011. *Id.* Interest

continues to accrue at the annual rate of 1%. Id. Penalties continue to accrue at the annual rate of 6%. Id. A Certificate of Indebtedness is attached hereto as Exhibit B.

THEREFORE, plaintiff prays for Judgment in the amount of \$19,474.57, plus statutory interest and penalties as stated herein, and for such other and further relief as this Court deems proper.

Dated this 23rd day of March 2011.

Respectfully submitted,

STEPHANIE M. ROSE
United States Attorney

By: /s/ Lawrence D. Kudej

LAWRENCE D. KUDEJ
Assistant United States Attorney
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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

EXHIBIT A

PAGE 1 OF 11

received
DMT 7/27/10

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

c. 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

A handwritten signature in black ink, appearing to read "P. M. Davenport", is written over a horizontal line.

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776



CERTIFICATE OF INDEBTEDNESS

This is to certify that Gary Felts d/b/a Black Diamond Kennel has a debt owing to the USDA – APHIS – Account Number [REDACTED] 644 A. The total amount owing is \$19,474.57. This amount is comprised of the principle amount of 18,938.00. As of January 5, 2011 interest applied to the bill in the amount of \$63.12, accruing at the rate of 1%. As of January 31, 2011 penalties applied to the bill in the amount of \$473.45, at the annual rate of 6%.

The debt resulted from a violation of the Animal Welfare Act and a complaint being filed by the USDA APHIS. USDA – APHIS received a Default Decision and Order signed by Peter M. Davenport, Acting Chief Administrative Law Judge on June 3, 2010. The Order stated that the respondent, his agents, 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;



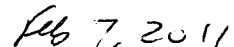
- e. Failing to provide animals with adequate shelter from the elements;
- f. Failing keep food and water receptacles clean and sanitized;
- g. Failing to maintain primary enclosures for animals in a clean and sanitary condition;
- h. Failing to keep the premises clean and in good repair and free of 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.

The respondent was assessed a civil penalty in the amount of \$18,938.00. Respondent's license was also suspended for a period of 30 days and thereafter until Respondent demonstrates that he is in compliance with the Act and the regulations.

CERTIFICATION: Pursuant to 28 USC § 1746, I certify under penalty of perjury that the foregoing is true and correct.



DANIEL B. HUBBARD
Supervisory Financial Management
Analyst


February 7, 2011

(Rev. 07/89)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

GARY FELTS d/b/a BLACK DIAMOND KENNEL

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS

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ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

- ☒ **1 U.S. Government Plaintiff**
- ☐ **2 U.S. Government Defendant**
- ☐ **3 Federal Question**
(U.S. Government Not a Party)
- ☐ **4 Diversity**
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another Place | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Title 7 U.S.C. Section 2131

V. NATURE OF SUIT

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Person injury -- Med Malpractice <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL INJURY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Blank Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 RICO <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Judge from Magistrate Judgment

Appeal to District

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A

CLASS ACTION

DEMAND \$

☐ UNDER F.R.C.P. 23

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASES IF ANY

Judge _____

Docket Number _____

DATE
03/23/2011SIGNATURE OF ATTORNEY OF RECORD
/s/ Lawrence D. Kudej

LAWRENCE D. KUDEJ, ASSISTANT U.S. ATTORNEY

UNITED STATES DISTRICT COURT