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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P.Q. Docket No. 10 - 0456
) A.Q. Docket No. 10 - 0456
Federal Express Corporation,)
)
Respondent)
) Consent Decision

This proceeding was instituted under the Plant Protection Act, as amended (7 U.S.C. §§ 7701 et seq.) and the Animal Health Protection Act (7 U.S.C. §§ 8301 et seq.) (collectively, the Acts) by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service (APHIS) alleging that the respondent violated the Acts (7 U.S.C. §§ 7713(c), 7731(b)(1), and 8307(b)(1)). The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision.

For the purposes of this Consent Decision only, the respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, and admits to the Findings of Fact set forth below.

Respondent waives:

(a) Any further procedure;

(b) Any requirement that the final decision in this proceeding contain findings

and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;

(c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision; and

(d) Any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the respondents in connection with this proceeding.

Findings of Fact

1. Respondent Federal Express Corporation, hereinafter referred to as the respondent or respondent FedEx, is a business maintaining its corporate headquarters at 3620 Hacks Cross Road, Building B, 3rd Floor, Memphis, Tennessee 38125. The respondent receives shipments arriving in the United States from abroad at its facilities located in Memphis, Tennessee; Newark, New Jersey; Indianapolis, Indiana; Miami, Florida; Oakland, California; and Anchorage, Alaska.

2. On or about December 23, 2005, and numerous other dates, shipments arriving in the United States from abroad were selected for inspection by agriculture specialists of the U.S. Department of Homeland Security, Customs and Border Protection.

Conclusions

The respondent has admitted the jurisdictional facts and has agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

Order

1. The respondent Federal Express Corporation is assessed a civil penalty of five hundred thousand dollars (\$500,000.00) for all violations of the Plant Protection Act (7 U.S.C. §§ 7701 et seq.) and the Animal Health Protection Act (7 U.S.C. §§ 8301 et seq.) that are

alleged, or could have been alleged, to have occurred up to and including the effective date of this Order. The respondent shall wire transfer five hundred thousand dollars (\$500,000.00) to the Treasurer of the United States via the U.S. Department of Agriculture, Animal & Plant Health Inspection Service account with the Federal Reserve Bank of New York within thirty (30) days from the effective date of this Agreement (which shall be the date on which the Order is served upon respondent). The wire transfer should reference the docket number of this proceeding.

2. Respondent FedEx will designate, by title, a single person for each of its international hubs who will serve as the official point of contact (POC) between it and APHIS representatives, including investigators from APHIS Investigative & Enforcement Services (IES), for those hubs. Respondent FedEx will further designate, by title, a single person for each of its international hubs who will serve as an alternate POC whenever the official POC for a given hub is not available to meet or confer with APHIS representatives and/or IES investigators. Respondent FedEx will provide counsel for USDA APHIS with a list of the designated POCs and alternate POCs for each of its international hubs within ten (10) days of the effective date of this decision and order.

3. APHIS agrees that IES investigators who investigate reports of alleged violations by respondent FedEx of any statute and/or regulation enforced by USDA APHIS will meet or confer with respondent FedEx's designated POC, will provide the POC with a list of alleged violations sufficient to allow respondent FedEx to prepare a response, and will allow the POC the opportunity to provide a response on behalf of respondent FedEx and to present any mitigating and/or exculpatory evidence in connection with said alleged violations. The parties agree that nothing in this agreement will preclude IES investigators from speaking with and collecting

additional information, including but not limited to sworn statements, airway bills, database print screens, etc., from other FedEx personnel at any given hub, to the extent authorized by statute or regulation and consistent with law. APHIS further agrees that, at least five (5) business days prior to dispatching IES investigators to respondent's hubs, it will use its best efforts to provide respondent's POC with a list of airway bill numbers of international shipments that Agriculture Specialists of the Department of Homeland Security, Customs & Border Protection, have reported to APHIS IES as having been selected for inspection but moved from a port of first entry without having been inspected and authorized for movement by said Agriculture Specialists (e.g., alleged non-presentment for inspection). APHIS further agrees that it will use its best efforts to dispatch IES investigators within 180 days of an alleged non-presentment for inspection.

This Order shall become effective when served on the respondent.


SARAH S. PROSSER, ESQ.
Attorney for Federal Express Corporation,
Respondent


Thomas Neil Bolick
Attorney for Complainant

Issued this 13th day of October, 2010
at Washington, D.C.


Administrative Law Judge