

**UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE**

In re: Maribel Leal Leyva,     )  
Respondent.                     )

P.Q. Docket No. 06-0021

**DEFAULT DECISION AND ORDER**

This is an administrative proceeding for the assessment of a civil penalty for violations of the Plant Protection Act (hereafter the “Act”), 7 U.S.C. § 7701 *et seq.* and the regulations promulgated thereunder, 7 C.F.R. § 319.37 *et seq.*, in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.* and 380.1 *et seq.*

On August 14, 2006, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, instituted this proceeding by the filing of an administrative complaint against the Respondent Maribel Leal Leyva. The complaint was served on the Respondent on August 22, 2006. Pursuant to section 1.136 of the Rules of Practice (7 C.F.

R. § 1.136), the Respondent was informed in the complaint and the letter accompanying the complaint that an answer should be filed with

the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint would constitute an admission of the allegations in the complaint and waiver of a hearing. Respondent's answer was due no later than September 11, 2006 (twenty days after service of the complaint); however, Respondent never filed an answer to the complaint and the Hearing Clerk's Office mailed her a No Answer Letter on September 13, 2006.

Respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) and failed to deny or otherwise respond to an allegation of the complaint. Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Furthermore, since the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and Respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, Respondent's failure to answer is likewise deemed a waiver of hearing. Accordingly, the material allegations in the complaint are adopted and set forth in

this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

### **FINDINGS OF FACT**

1. Respondent Maribel Leal Leyva is an individual with a mailing address of 2382 El Arbol Drive, Brownsville, Texas 78520.
2. On or about November 28, 2004, respondent brought two (2) mango trees in soil into the United States from Mexico in violation of the regulations in 7 C.F.R. pt. 319, as follows:
  - (a) The mango trees were imported without a written PPQ permit, as required in 7 C.F.R. § 319.37-3(a)(2).
  - (b) Respondent did not submit a signed post-entry quarantine growing agreement to PPQ for the mango trees, as required in 7 C.F.R. § 319.37-7(a)(2).
  - (c) The mango trees were not free of sand, soil, earth, or other growing media, as required in 7 C.F.R. § 319.37-8(a).

### **CONCLUSION OF LAW**

By reason of the Findings of Fact set forth above, Respondent Maribel Leal Leyva is found to have violated the Plant Protection Act (7 U.S.C. § 7701 *et seq.*). Therefore, the following Order is issued.

### **ORDER**

1. Respondent Maribel Leal Leyva is hereby assessed a civil penalty of

one thousand dollars

(\$1,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture

APHIS Field Servicing Office

Accounting Section

P.O. Box 3334 Minneapolis, Minnesota 55403

Respondent Maribel Leal Leyva shall indicate that payment is in reference to P.Q. Docket No. 060021.

2. This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent Maribel Leal Leyva unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

Copies of this Default Decision and Order shall be served on the parties by the Hearing Clerk's Office.

Done at Washington, D.C.

January 4, 2007

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**PETER M. DAVENPORT**

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

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