

UNITED STATES DEPARTMENT OF AGRICULTURE

USDA  
CALIFORNIA

BEFORE THE SECRETARY OF AGRICULTURE

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	)	P.Q. Docket No. 03-0011
	)	A.Q. Docket No. 03-0004
Federal Express Corporation	)	
	)	
Respondent	)	Consent Decision and Order

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This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701 et seq.) (PPA), and the Animal Health Protection Act (7 U.S.C. §§ 8301 et seq.) (AHPA) by a complaint filed by the Acting Administrator of the Animal and Plant Health Inspection Service (APHIS) alleging that the Respondent violated the Acts (7 U.S.C. § 7713(c) and 7 U.S.C. § 8306(a)(1)). The Complainant and the Respondent have agreed that this proceeding should be terminated by entry of this Consent Decision. In addition, and in view of the provisions of this Consent Decision, Complainant undertakes not to bring any further proceeding against the Respondent before the Secretary of the United States Department of Agriculture (USDA) under the PPA or the AHPA based on any act or omission of the Respondent which occurred prior to the effective date of this Consent Decision.

For the purposes of this Consent Decision only, the Respondent specifically admits that the Secretary of the USDA 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.

The 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 USDA under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the Respondent in connection with this proceeding.

#### Findings of Fact

1. Federal Express Corporation, hereinafter referred to as the Respondent, is a corporation maintaining its corporate headquarters at 3620 Hacks Cross Road, Building B, 3<sup>rd</sup> Floor, Memphis, Tennessee 38125.

2. On or about March 11, 2002, and other dates, articles which were arriving in the United States from abroad and had been selected for agricultural inspection were moved from their ports of entry and delivered to their consignees prior to being inspected and released for delivery by USDA APHIS Plant Protection and Quarantine (PPQ) inspectors.

#### 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

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.) (PPA) and the Animal Health Protection Act (7 U.S.C. §§ 8301 et seq.) (AHPA) that occurred up to and including the effective date of this Order. The Respondent shall send a certified check or money order for four hundred thousand dollars (\$400,000.00), payable to the Treasurer of the United States, to United States Department of Agriculture, APHIS, Accounts Receivable, P.O. Box 3334, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding. Payment of the remaining one hundred thousand dollars (\$100,000.00) of the civil penalty shall be suspended for so long as the conditions set forth below are met:

1. (a) Within ninety (90) days of the effective date of this Order, the Respondent shall develop a revised and enhanced training program for all Federal Express clearance personnel at Memphis, Miami, Indianapolis, Anchorage, Oakland, and Newark who are responsible for the selection and handling of international shipments identified for further inspection and clearance by federal authorities. This training program also shall apply to the supervisors and managers of said clearance personnel. This training program shall be designed to thoroughly familiarize said employees with all federal requirements and procedures for selecting shipments arriving from overseas for agricultural inspection, placing certain shipments on agricultural hold after inspection, and authorizing shipments to be released after inspection or from agricultural hold for delivery to their consignees.
- (b) Respondent shall submit said training program to USDA APHIS for

reasonable and timely approval prior to implementation, and USDA APHIS shall have the right to review said training program periodically after its implementation.

(c) This training program shall be mandatory for all current employees of Respondent listed in paragraph 1(a) of this Order, and shall be completed by said employees within sixty (60) days after the date that said training program is approved by USDA APHIS.

(d) This training program shall be mandatory for any and all future employees whom Respondent may hire to fill the positions and/or perform the duties listed in paragraph 1(a) of this Order, and must be completed by said employees within sixty (60) days of the starting date of their employment.

2. (a) Within ninety (90) days of the effective date of this Order, the Respondent shall revise and enhance its training program for all Federal Express Customer Support Personnel who advise customers regarding federal regulatory requirements affecting shipments imported into the United States (hereinafter "Customer Support Personnel"). This training program shall be designed to thoroughly familiarize such customer support personnel with all available resources concerning USDA APHIS regulatory requirements for shipping agricultural and agriculture-related commodities regulated by USDA APHIS.

(b) Respondent shall submit said training program to USDA APHIS for reasonable and timely approval prior to implementation, and USDA APHIS shall have the right to review said training program periodically after its implementation.

(c) This training program shall be mandatory for all of Respondent's current Customer Support Personnel and shall be completed by said personnel within sixty (60) days after the date that said training program is approved by USDA APHIS.

(d) This training program shall be mandatory for any and all future employees whom Respondent may hire to work as Customer Support Personnel and must be completed by said employees within sixty (60) days of the starting date of their employment.

3. (a) Within ninety (90) days of the effective date of this Order, the Respondent shall hire or designate four (4) Full Time Permanent Compliance Specialists, one each in Memphis, Miami, Indianapolis, and Anchorage. Said Compliance Specialists shall provide operational management and corporate-level oversight of the USDA APHIS and the U.S. Department of Homeland Security (DHS) Customs and Border Patrol (CBP) clearance process in said ports and shall be responsible for planning and developing process improvements to ensure proper identification of all shipments selected for agricultural inspection and/or placed on agricultural hold.


(b) Said Compliance Specialists also shall be responsible for conducting a minimum of three (3) audits per port per year and meeting with designated APHIS PPQ officials on a quarterly basis to report audit results and review operational issues and trends.


(c) Respondent shall also make itself available to meet with APHIS PPQ officials twice during the first year covered by this Order and thereafter annually in the


second and third years of the period covered by this Order. The purpose of these meetings will be to address operational issues at a corporate level.

4. Within forty-five (45) days of the effective date of this Order, the Respondent shall hire or designate four (4) Full Time Permanent On-Site Operations Personnel, one each in Memphis, Miami, Indianapolis, and Anchorage. Said On-Site Operations Personnel shall implement the process improvements planned and developed for their respective ports by the Compliance Specialists described in paragraph 3 of this Order. Said On-Site Operations Personnel also shall maintain a close liaison with DHS CBP Agricultural Inspection on-site officials to ensure that all of the Respondent's management and supervisory officials are apprised daily of the hold and inspection status of all shipments prior to release of those shipments to their consignees.
5. As the Respondent meets each of the requirements set forth in paragraphs 1(a-c), 2(a-c), 3(a-b), and 4 of this Order, the Respondent shall submit to William Thomas, Quality Assurance Coordinator, Quarantine Policy, Analyses, and Support, USDA APHIS Plant Protection and Quarantine, written documentation verifying that the Respondent has completely complied with all the provisions and terms of paragraphs 1(a-c), 2(a-c), 3(a-b), and 4 of this Order.
6. If the terms and provisions listed in paragraphs 1 through 5 of this Order are not met, the Respondent shall become immediately liable for payment of the one hundred thousand dollar (\$100,000.00) portion of the civil penalty previously held in suspension, following notice of said violation, but without a requirement for hearing.

7. If the Respondent complies with the terms and provisions of paragraphs 1 through 5 this Order for three (3) years after the entry of this Consent Decision and Order, the one hundred thousand dollar (\$100,000.00) portion of the civil penalty previously held in suspension shall be canceled. Additionally, the provisions of paragraphs 1(b), 2(b), 3(b), and 3(c) of this Order shall remain in effect for three (3) years after the entry of this Consent Decision and Order. All other terms and provisions of this Order shall remain in effect indefinitely beginning on the effective date of this Consent Decision and Order.
8. If any provision of this Order is declared to be invalid, such declaration shall not affect the validity of any other provision herein.
9. This Order shall become effective when served on the Respondent.

  
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Federal Express Corporation

  
Thomas N. Bolick  
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David L. Durkin  
Counsel for Respondent  
Federal Express Corporation

  
Krishna G. Ramaraju  
Attorney for Complainant

Issued this 6th day of October, 2004

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at Washington, D.C.

A signature that has been completely redacted with black ink.

Administrative Law Judge