

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P.Q. Docket No. 06-0006
)	
Merlin Airways, Inc.)	
)	
Respondent)	Consent Decision

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701 et seq.) (Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspect Service alleging that the respondent violated the Act. Respondent has agreed that this proceeding should be terminated by entry of the Consent Decision set forth below, and has agreed to the following stipulations:

1. For the purpose of this stipulation, and the provisions of this Consent Decision only, the respondent admits specifically 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, admits to the Findings of Fact set forth below, and 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; and

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

2. The respondent also stipulates and agrees that the United States Department of Agriculture is the "prevailing party" in this proceeding and waives 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 the fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

1. Merlin Airways, Inc., herein referred to as respondent, is a company incorporated in the state of Delaware with a business address of P.O. Box 81106, 2220 Grant Road, Billings, Montana 59108-1106.
2. On or about January 27, 2003, the respondent failed to present Animal and Health Inspection Service, Plant Protection and Quarantine Program officers with an update of the time of arrival of an international flight.

Conclusion

The respondent having admitted the jurisdictional facts, and having agreed to the provisions set forth in the following Order in disposition of this proceeding, such Order and Decision will be issued.

Order

The respondent, Merlin Airways, Inc., is assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this Order. Respondent shall indicate that payment is in reference to P.Q. Docket No. 06-0006.

This Order shall become effective the day upon which service of this Order is made upon

the respondent.



PATRICK POMEROY
Senior Vice President
Merlin Airways, Inc.



CARLYNNE S. COCKRUM
Attorney for Complainant

Issued this 28th day of November, 2005
In Washington, D.C.



ADMINISTRATIVE LAW JUDGE
PETER M. DAVENPORT