

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

FBI

In re:)	
)	
Erickson Farm, Inc.,)	P.Q. Docket No. 09-0073
)	
Respondent)	
)	Consent Decision

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701 et seq.) (“the Act”) by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the Respondent violated the Act. The Complainant and the Respondent have agreed that this proceeding should be terminated by entry of this Consent Decision, and have agreed to the following stipulations:

1. For the purpose of this Consent Decision only, Respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter and neither admits nor denies the remaining allegations in the Complaint.

Findings of Fact

For purposes of this Consent Decree, the United States Department of Agriculture and Erickson Farm, Inc., stipulate to the following Findings of Fact:

1. Erickson Farm, Inc., hereinafter referred to as Respondent, has a mailing address of 13646 US Highway 441 North, Canal Point, Florida 33438.
2. On or about January 9, 2008, Erickson Farm, Inc., mailed approximately two pounds of curry leaves (*Murraya* sp.) from Florida to Missouri.
3. On or about February 4, 2008, Erickson Farm, Inc., mailed approximately two pounds of curry leaves (*Murraya* sp.) from Florida to Missouri.

Ultimate Facts and Conclusions of Law

4. The Respondent is a person within the meaning of 7 U.S.C. § 7702.

5. The United States Department of Agriculture has jurisdiction over the Respondent and the alleged mailing of curry leaves pursuant to 7 U.S.C. §§ 7701 et seq.

6. Without admitting liability, the Respondent has provided the United States Department of Agriculture with reasonable assurances of good faith by entering into a Consent Decree with the United States Department of Agriculture in return for the United States Department of Agriculture not pursuing any further enforcement or administrative action for the alleged violations described above. Respondent agrees that all factual and legal matters, alleged herein and agreed to herein and which provided the basis for this Consent Decree, including all terms, provisions and matters referred to in the “findings of fact” and “ultimate facts” and “conclusions of law” sections, shall not be contested in any subsequent legal proceedings, which may be brought to enforce the terms of this Consent Decree except to the extent of clarifying the meaning and/or intent of the Consent Decree.

7. For purposes of the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.), 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 for fees and other expenses incurred by the Respondent in connection with this proceeding. However, this Consent Decree shall not in any manner preclude Respondent's eligibility for any programs (including funding) administered or funded (in whole or in part) by the United States Department of Agriculture.

8. United States Department of Agriculture hereby expressly reserves the right to petition for judicial or administrative enforcement of the terms of this Consent Decree.

9. The Respondent hereby 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 basis thereof; and

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

10. The United States Department of Agriculture is authorized to enter into Consent Decrees pursuant to the Act.

Order

11. The Respondent, Erickson Farm, Inc., is assessed a civil penalty of three thousand dollars (\$3,000.00), payable in monthly installments of one hundred and twenty-five dollars (\$125.00) each. The Respondent shall send a certified check or money order for each installment, payable to the Treasurer of the United States, to United States Department of Agriculture, APHIS, U.S. Bank, P.O. Box 979043, St. Louis, Missouri 63197-9000. The first installment shall be due no later than August 1, 2010; and the remaining twenty-three installments shall be due no later than the first of the month for each subsequent month until the three thousand dollars (\$3,000.00) is paid in full. Each installment shall be paid by a certified check or money order made payable to the Treasurer of the United States at the mailing address listed above. Each certified check or money order should include the docket number of this proceeding. In the event that


the payments are not made by the Respondent in compliance with this Order, the entire balance outstanding shall be due and payable immediately.


12. If any event occurs which causes delay or reasonable likelihood of delay, in complying with the requirements or deadlines of this Consent Decree, the Respondent shall have the burden of proving that the delay was or will be caused by circumstances beyond the control of the Respondent. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Respondent shall notify the United States Department of Agriculture orally within 24 hours or by the next working day and shall, within seven days of oral notification to the United States Department of Agriculture, notify the United States Department of Agriculture in writing of the delay. If the parties can agree that the delay, or anticipated delay, has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. If the parties cannot agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the Respondent must comply with the original deadline. Failure of the Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute waiver of the Respondent's right to request an extension of time for compliance with the requirements or deadlines of this Consent Decree.

13. This Consent Decree shall not constitute an admission of liability on Respondent's behalf.

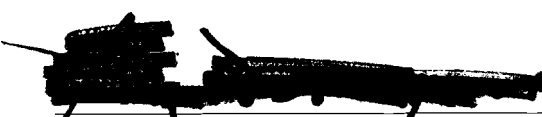
14. This Order shall become effective when served on the Respondent.


JAMES CHARLES
Attorney for Respondent


LAUREN C. AXLEY
Attorney for Complainant


Dale Erickson, President
ERICKSON FARM, INC.
Respondent

Issued this 21st day of May, 2010
at Washington, D.C.


Administrative Law Judge