

FEB 23 1984

Mr. Ronald B. Lantz
President, INTERA
Technologies, Inc.
11999 Katy Freeway
Suite 610
Houston, Texas 77079

Re: Registration of Aircraft N44776

Dear Mr. Lantz:

As you are aware, on February 17, 1984, the Federal Aviation Administration determined that a United States certificate of registration for aircraft S/N 441-0121 (N44776) should be issued to INTERA Technologies, Inc.

In light of the unusual interest in the registrability of the aircraft, we are hereby advising you and other interested parties of our rationale. (See enclosed Certificate of Service.)

Background: An Aircraft Registration Application was first submitted by INTERA Arctic Services, Inc., on October 19, 1983. The aircraft had previously been registered in Canada.

Aero Service Division, Western Geophysical Company of America (hereafter Aero Service) through its attorney Gary Carofalo, immediately challenged registration. Incident thereto, INTERA Environmental Consultants, Inc., had been awarded a significant Government contract by United States Geological Survey (USGS). Aero Service was the unsuccessful bidder. The contract requires use of an aircraft in aerial surveying. The aircraft must either be U.S. registered or licensed by the Civil Aeronautics Board (CAB) under 49 U.S.C. 1508(b).

Aero Service's principal argument was that the applicant, INTERA Arctic Services, Inc., did not meet the U.S. citizenship requirements of 49 U.S.C. 1301(16) and 49 U.S.C. 1401(b)(1)(A)(i).

INTERA Arctic Services, Inc., sold the aircraft to Ronald Lantz (an individual U.S. citizen) who applied for registration in his own name. Aero Service attacked the sale as a bad faith transaction under 14 CFR 47.43(a)(4).

INTERA then sought an advisory opinion from the Federal Aviation Administration (FAA) relating to retransfer from Lantz to INTERA Arctic Services, Inc. Aero Service again challenged registration on the basis of citizenship.

On January 24, 1984, INTEPA Technologies, Inc., submitted an application for registration as a noncitizen corporation. The application was supported by a bill of sale from Ronald Lantz and other documents to meet the requirements of 14 CFR 47.9 and 47.37. In its Answer of February 13, 1984, Aero Service has challenged registration on several theories, which we shall address.

Determinations to be made.

14 CFR 47.9 (Corporations not U.S. citizens) is promulgated pursuant to Section 501(b)(1)(A)(ii) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(b)(1)(A)(ii)) which states,

"(b) An aircraft shall be eligible for registration if, but only if --

" (1)(A) it is --

" (i)

" (ii) owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States;"

It further states,

"For purpose of this subsection, the Secretary of Transportation shall, by regulation, define the term 'based and primarily used in the United States'."

Therefore, to register an aircraft under the statute, FAA must make three determinations:

1. Is the aircraft owned by the applicant?
2. Is the applicant noncitizen corporation lawfully organized and doing business under the laws of the United States or any State thereof, and,
3. Will the aircraft be based and primarily used in the United States?

If the answer to all three questions is in the affirmative then the aircraft is eligible for registration and FAA must issue to the owner a certificate of registration provided the applicant meets the procedural requirements of 14 CFR Part 47. (See 49 U.S.C. 1401(c).)

Ownership.

Records on file with the FAA Aircraft Registry reflect that the aircraft was transferred from Richfield Properties, Ltd., to INTERA Arctic Services, Inc., to Ronald Lantz, to the applicant INTERA Technologies, Inc.

The Aero Service Answer of February 13 raises two points with respect to ownership. (See page 28 of Answer.) First, it acknowledges that failure to state the consideration on the Bill of Sale (AC Form 8050-2) is not ordinarily material. We agree.

Second, Aero Service suggests that the bill of sale from the foreign seller Richfield Properties, Ltd., did not accompany the application. However, as correctly noted at page 4 of INTERA's Reply of February 14, 1984, Richfield Properties, Ltd. bill of sale was submitted to the Registry on October 17, 1983.

There does not appear to be any real question that INTERA Technologies, Inc., is the owner of aircraft serial number 441-0121 for purposes of registration. (49 U.S.C. 1401(f).)

INTERA Technologies, Inc., as non-U.S. citizen.

The statutory requirement is that the non-U.S. citizen applicant be a corporation "lawfully organized and doing business under the laws of the United States or any State thereof".

On file with the FAA Aircraft Registry are certified documents from the Secretary of State of the State of Texas showing that INTERA Technologies, Inc., (originally INTERA Environmental Consultants, Inc.) has been organized and doing business in the State of Texas since 1976.

"Based and Primarily Used in the United States."

14 CFR 47.9(a)(1), (2), (3), and (4), respectively, require that together with its application, an applicant submit its certificate of incorporation; a certification that it is lawfully qualified to do business in one or more States, a certification that the aircraft will be based and primarily used in the United States; and the location where the records of total flight hours will be maintained.

The applicant has complied with 14 CFR 47.9(a)(1), (2), (3), and (4). In fact, in an apparent effort to withstand challenge, the applicant tendered a "Schedule Plan for Cessna Conquest II, S/N 0121." (See attachment to Lantz certification dated January 25, 1984.)

As a framework for discussing the relevant Aero Service issues (USGS and Deadhorse operations), we would basically agree with certain assumptions made by Aero Service with respect to the INTERA schedule. (See pages 30 and 31 of Answer.) Those assumptions are:

- 1. For purpose of 14 CFR 47.9(b)(2), the 6-month period for determining 60 percent use in the United States is through August 1984.
- 2. The Deadhorse operation in Alaska will be completed by the end of August 1984.
- 3. Based on representations made in INTERA's Schedule, the aircraft will be used as follows:
 - a) 205 hours in United States (USGS contract).
 - b) 20 hours in Canada (SLAR modification).
 - c) 200 hours in United States (Deadhorse operation).
 - d) 50 hours in Canada (Beaufort operation).

USGS Operation. (See page 35 et seq. of Aero Service Answer.)

The first use of N44776 is in support of the USGS contract. It is uncontroverted that it will be performed in the 48 contiguous States. Aero Service asserts however that by reason of its pending action in U.S. District Court in Houston that it is likely that the USGS contract award to INTERA will be invalidated. Therefore, Aero Service argues that the flight times associated with the USGS contract should not be counted.

We disagree. Even should the court act before the performance date (on or about April 15, 1984), the results are entirely speculative. (See INTERA Reply of February 14, 1984, page 3, footnote 1.)

Although any court action favoring Aero Service way subsequently prove relevant with respect to the duration of registration under 14 CFR 47.41(a)(2)(ii); it is inappropriate for the FAA to decide prospectively the merits of the court action.

Deadhorse Operation.

Initially, we conclude that the fact that INTERA does not have contracts in hand for the Deadhorse operation does not preclude the Deadhorse time from being counted. (See Aero Service Answer at page 32. Also see INTERA Reply at page 6, wherein it is stated, "INTERA fully expects to obtain survey work in Alaska under contract").

For reasons which we discussed under USGS Operation above, FAA will not engage in speculation to the applicant's detriment.

"Two Points" under 14 CFR 47.9(c).

14 CFR 47.9(c) clarifies 14 CFR 47.9(b) by limiting flight hours accumulated within the United States to nonstop flights "between two points in the United States, even if the aircraft is outside the United States during part of the flight,"

The precise nature of the proposed Deadhorse operation has not been made clear. However, for purpose of this discussion, we shall assume that flights will take off from an airport in Deadhorse, Alaska, fly nonstop in airspace outside the United States (either over the high seas or over Canadian airspace), and return to the same airport at Deadhorse.

Initially, we should note that the Aero Service "two points" argument (see its Answer, pages 21, 22, 34, and 35) requires an additional assumption in which we do not necessarily concur. That is, that if flight time for the Deadhorse operation (200 hours) won't count under 14 CFR 47.9(b), then "the flight hours for Canadian-based operations should be substantially increased." (Aero Service Answer at pages 33 and 34.)

However, contrary to the Aero Service assumption, there is nothing of record to support that the aircraft would be placed in substitute service in Canada. Without such assumption, under the Schedule, the aircraft would be used 205 hours in the United States and 70 hours in Canada, meeting the 60 percent requirement of 14 CFR 47.9(b).

In any event, the main thrust of the Aero Service argument is that if an aircraft is operated outside the United States, it may not return to the same point in order to have flight hours count.

Applying the Aero Service argument to the language of 14 CFR 47.9(c), a flight wholly within the United States airspace which returned to the same airport would not count.

Also, applying the Aero Service argument, a flight which originated at Deadhorse, flew over the high seas, and returned to Livehorse (a fictitious airport located two miles from Deadhorse) would count.

We do not view the legislative history of P.L. 95-163 and P.L. 95-241 or previous interpretations of 14 CFR 47.9(c) as suggesting that the "two points" language precludes return to the airport of origin. Rather, we view a flight from Deadhorse, over the high seas, and return to Deadhorse, as consistent with 14 CFR 47.9(c).

The "Good Faith" Standard.

Under 14 CFR 47.43(a)(4), registration of an aircraft is invalid if, at the time it is made, the interest of the applicant was created by a transaction that was not entered into in good faith, but rather to avoid compliance with 49 U.S.C. 1401.

Counsel for Aero Service has made an exhaustive study of the INTERA applications. He has examined articles of incorporation, amendments, stock transfer ledgers, brochures, all for the purpose of showing an inextricable Canadian connection in all INTERA dealings. (Aero Service Answer of February 13, 1984, pages 7 through 10, Exhibits A, B, and C; Aero Service Answers of January 10 and 13, 1984.)

Additionally, Aero Service has called attention to the various false starts in attempting to register N44776 (e.g., prior applications by INTERA Arctic Services, Inc., and Ronald Lantz. See Aero Service Answer at page 11.) Aero Service also calls attention to the alleged improper registration of aircraft 441-0171 as N10FG. All of which Aero Service says makes any application by INTERA inherently suspect (at best), or makes the aircraft unregistrable because of the good faith requirement.

On the other hand, INTERA argues that previous attempts at registration of aircraft 441-0121 were attempts to comply with (and not avoid) requirements of 49 U.S.C. 1401. INTERA says that the abandonment of previous applications was to avoid delay in light of the dedicated opposition by Aero Service. INTERA suggests that any question about previous registration of N10FG involved an honest misunderstanding about the scope of the "citizen of the United States" requirement under 49 U.S.C. 1301(16). See INTERA Brief of February 13, 1984, at page 18.

In our discussion of the "good faith" requirement under 14 CFR 47.43(a)(4), we first note that the proper context should be limited to whether the applicant is trying to avoid the requirements of 49 U.S.C. 1401. Incident thereto, we shall not consider alleged avoidance of 49 U.S.C. 1508(b), the CAB permit.

Also, it is important to recognize that the FAA has not made a determination that previous attempts at registration by INTERA Arctic Services, Inc., and Ronald Lantz were in bad faith. In that regard INTERA has responded that such previous attempts were to quell the "firestorms" of Aero Service objections and facilitate registration. (INTERA Brief of February 13, pages 13 through 16.)

With respect to the "good faith" issue, we infer no per se, invidious motive to previous sale transactions, corporate reorganizations and corporate stock transfers. Such transfers and restructuring to meet requirements of Title V of the Federal Aviation Act and 14 CFR Part 47, are not proscribed.

The sale to INTERA Technologies is not a sham. INTERA Technologies, Inc. is not only the legal title holder to the aircraft and the financial obligee under an outstanding aircraft security agreement, (Allied Addicks Bank Aircraft Security Agreement dated January 23, 1984) but it appears to have total beneficial interest in the aircraft.

INTERA Technologies, Inc., is not incapacitated or otherwise incapable of operating the aircraft in performance of the USGS contract or other contracts. In that regard, INTERA Technologies, Inc., and its predecessor, INTERA Environmental Consultants, Inc., has been a viable corporation since 1976, and was not created simply to facilitate registration of N44776. Therefore, the discussion in the FAA Chief Counsel's letter of August 16, 1961, to Mr. Hamill (alien father "sale" to minor citizen child) is not on point here.

The most persuasive "bad faith" argument advanced by Aero Service is that INTERA Technologies, Inc., is a bare nominee for INTERA Technologies, Ltd., a Canadian corporation, not organized in the United States and, therefore, not eligible to register aircraft in the United States. (Aero Service Answer at pages 38, 39, and 40.) Aero Service argues that INTERA Technologies, Inc., is the real party in interest.

However, it is INTERA Technologies, Inc., and not INTERA Technologies, Ltd., which is party to the USGS contract. Further, Ronald Lantz, president of INTERA Technologies, Inc., confirmed on February 16, 1984, that INTERA Technologies, Inc., will perform both the USGS contract and Deadhorse operation.

In Exhibits B and C to its Answer, Aero Service alleges further support for the proposition that INTERA Technologies, Ltd., is the real party in interest.

Exhibit B is a letter dated November 29, 1983, from INTERA Environmental Consultants, Ltd., to the Canadian Regional Department of Transport seeking authority to operate aircraft S/N 441-0121 as a non-Canadian registered aircraft in operations under a contract with Dome Canmar, Ltd. The aircraft was to be leased from INTERA Arctic Services, Inc. (Exhibit C to Aero Service Answer) for the base period ending February 28, 1984, and to be operated from INTERA Technologies, Ltd.'s base at Calgary/Red Deer, Alberta.

In our view, neither Exhibit B nor Exhibit C evidence an intent that INTERA Technologies, Ltd., (nee INTERA Environmental Consultants, Ltd.) will perform the USGS contract or Deadhorse operation.

We are not blind to the obvious interrelationship between the generic INTERA affiliates (particularly INTERA Technologies, Inc., and INTERA Technologies, Ltd.). Nevertheless INTERA Technologies, Inc., is a separate legal entity and we shall recognize it as such.

Finally, we acknowledge awareness of the commercial motives relating to the sale to INTERA Technologies, Inc., and the present application.

We conclude that registration would not be inconsistent with 14 CFR 47.43(a)(4).

Other Issues.

In its Answer of February 13, 1984, Aero Service raises other issues which are well-briefed and well-argued. However, we do not believe that they relate to our responsibilities under the Federal Aviation Act and Federal Aviation Regulations. Therefore we will respond only briefly.

The CAB 1108(b) Permit.

Aero Service, as well as the Chairman of the Civil Aeronautics Board and certain members of the United States House of Representatives have indicated their concern that INTERA is seeking U.S. registration to avoid attempting to obtain a permit from the Civil Aeronautics Board authorizing navigation of foreign aircraft in the United States.

The Chairman of the Civil Aeronautics Board, in particular, has articulated his real concern about the failure of Canada to grant reciprocity to United States companies to conduct aerial survey work. (Chairman McKinnon's letter to me dated January 10, 1984.)

While mindful of the reciprocity problem, we are also mindful of the language of 49 U.S.C. 1401 which states, "Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Secretary of Transportation and the Secretary shall issue to the owner thereof a certificate of registration." [Emphasis added.]

Under the circumstances we can find no legal basis to refuse or defer registration of an aircraft which is eligible for registration.

Incidentally, we note that the issue of the public interest has not been totally one-sided. USGS through its contracting officer has strongly urged that the "public interest" militates in favor of performance of the contract by INTERA, a competent contractor, at a cost saving of approximately 1.3 million dollars to the U.S. Government.

United States District Court Action (Houston).

Aero Service alternatively requests deferral of registration until the U.S. District Court rules on a Motion for Preliminary Injunction (against USGS award to INTERA) which Aero Service says that it intends to file no later than February 24, 1984. (Aero Service Answer, page 45.) While arguably maintaining the "status quo" in the court action, further delay by FAA in taking action on INTERA's pending application would not preserve the status quo vis-a-vis INTERA's commitments under the USGS contract, (INTERA Brief, page 22; INTERA Reply, pages 2 and 3.)

As discussed above under The CAB 1108(b) Permit, we can find no legal basis for delaying registration action mandated under 49 U.S.C. 1401(c).

It goes without saying that Aero Service or any party adversely affected by FAA's registration determination may seek such affirmative or injunctive relief as the courts may grant.

Request for FAA Hearing.

Beginning at page 41 of its Answer, Aero Service alternatively requests a hearing under authority of Sections 313(a) and 1002(b) of the Federal Aviation Act, "if the FAA believes that there are any relevant questions remaining unanswered." Chairman McKinnon has made a similar request in his letter to me dated January 10, 1984.

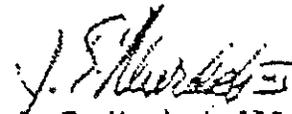
For purposes of determining eligibility for registration, and in light of the exhaustive presentations by Aero Service particularly and INTERA, we do not believe that such a hearing is necessary.

CONCLUSION:

We believe that the applicant has shown eligibility for registration under 49 U.S.C. 1401(b)(1)(A)(ii) and 14 CFR 47.9.

As you know, aircraft registration is not usually adversary. By this letter and copies thereof, we express our thanks for the patience, understanding, and professionalism of Aero Service counsel, INTERA Counsel, and other concerned parties.

Sincerely,


J. E. Murdock III
Chief Counsel