

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

In re:	)	
	)	
Reed Harrison, DVM, d/b/a	)	<b>AWA Docket No. 07-0158</b>
Parmley Education &	)	
Research Center,	)	
	)	<b>Decision and Order</b>
Respondent,	)	<b>by Reason of Default</b>

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act (“AWA” or “Act”), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed on July 13, 2007, by the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “Complainant” or “APHIS”), alleging that the respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

The Complainant, APHIS, is represented by Sharlene Deskins, Esq., with the Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

Reed Harrison, DVM, the Respondent, is an individual who was doing business as Parmley Education & Research Center (frequently herein “Respondent Harrison” or “Respondent”), with a mailing address of P.O. Box 17, Rose Hill, Kansas 67133.

### Procedural History

A copy of the Complaint and a copy of the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130 - 1.151, were served on Respondent Harrison on July 18, 2007, together with the Hearing Clerk's letter of service. Respondent Harrison was informed in the letter of service that an answer should be filed within 20 days from receipt pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

No answer to the Complaint has been received. The time for filing an answer expired on August 7, 2007.

The Complainant's Motion for Adoption of Proposed Decision and Order, filed February 11, 2008, is before me. A copy of the Motion and a copy of the proposed Decision and Order were delivered and signed for by Respondent Harrison on February 21, 2008; he failed to respond. The time for filing a response expired on March 12, 2008.

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

Accordingly, the material allegations in the Complaint, which are admitted by Respondent Harrison's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

## Findings of Fact and Conclusions

### I

A. Reed Harrison, DVM, is an individual who was doing business as Parmley Education & Research Center with a mailing address of P.O. Box 17, Rose Hill, Kansas 67133.

B. Respondent Harrison, at all times material to the Complaint, was operating as a research facility as defined in the Act and the regulations, and was registered until March 22, 2005.

C. Respondent Harrison's registration terminated on March 22, 2005 when the respondent failed to renew his registration in a timely manner. While the Respondent was registered, he received a copy of the regulations and the standards issued pursuant to the Act and agreed in writing to comply with them.

### II

A. On September 23, 2003, APHIS inspected Respondent Harrison's premises and records and found that the semiannual report of the Institutional Animal Care and Use Committee (IACUC) of the research facility did not contain a statement regarding minority views, in violation of section 2.31(c)(3) of the regulations (9 C.F.R. § 2.31(c)(3)).

B. On September 23, 2003, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator had considered alternatives to procedures that would cause more than momentary or slight pain or

distress to the animals, and to have provided a written narrative description of the methods and sources, in violation of section 2.31(d)(1)(ii) of the regulations (9 C.F.R. § 2.31(d)(1)(ii)).

### III

A. On September 29, 2004, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator had considered alternatives to procedures that would cause more than momentary or slight pain or distress to the animals, and to have provided a written narrative description of the methods and sources, in violation of section 2.31(d)(1)(ii) of the regulations (9 C.F.R. § 2.31(d)(1)(ii)).

B. On September 29, 2004, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator provided written assurance that the activities did not unnecessarily duplicate previous experiments, in violation of section 2.31(d)(1)(iii) of the regulations (9 C.F.R. § 2.31(d)(1)(iii)).

C. On September 29, 2004, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator provided medical care for animals as necessary by a qualified veterinarian, in violation of section 2.31(d)(1)(vii) of the regulations (9 C.F.R. § 2.31(d)(1)(vii)).

D. On September 29, 2004, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility

review the procedures used involving animals to ensure that surgical procedures included instructions for pre-operative and post-operative care of the animals, in violation of section 2.31(d)(1)(ix) of the regulations (9 C.F.R. § 2.31(d)(1)(ix)).

E. On September 29, 2004, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have current IACUC records available for inspection, in violation of section 2.35(a) of the regulations (9 C.F.R. § 2.35(a)).

#### IV

A. On January 13, 2005, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator had considered alternatives to procedures that would cause more than momentary or slight pain or distress to the animals, and to have provided a written narrative description of the methods and sources, in violation of section 2.31(d)(1)(ii) of the regulations (9 C.F.R. § 2.31(d)(1)(ii)).

B. On January 13, 2005, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator provided written assurance that the activities did not unnecessarily duplicate previous experiments, in violation of section 2.31(d)(1)(iii) of the regulations (9 C.F.R. § 2.31(d)(1)(iii)).

C. On January 13, 2005, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that the principal investigator

provided medical care for animals as necessary by a qualified veterinarian, in violation of section 2.31(d)(1)(vii) of the regulations (9 C.F.R. § 2.31(d)(1)(vii)).

D. On January 13, 2005, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have the IACUC of the research facility review the procedures used involving animals to ensure that surgical procedures included instructions for pre-operative and post-operative care of the animals, in violation of section 2.31(d)(1)(ix) of the regulations (9 C.F.R. § 2.31(d)(1)(ix)).

E. On January 13, 2005, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to have current IACUC records available for inspection, in violation of section 2.35(a) of the regulations (9 C.F.R. § 2.35(a)).

F. On January 13, 2005, APHIS inspected Respondent Harrison's facility and found the following willful violations of section 2.38(k) of the regulations (9 C.F.R. § 2.38(k)(1)) and the standards specified below:

(1) Supplies of food and bedding were not stored in a manner that protects them from spoilage, contamination, and vermin infestation (9 C.F.R. § 3.1(e)); and

(2) Primary enclosures for cats did not contain adequate resting surfaces (9 C.F.R. § 3.6(b)(4)).

V

APHIS inspected Respondent Harrison's premises and records and found that on or about June 28, 2005, the Respondent failed to file a registration form before conducting a regulated activity, in violation of section 2.30(a)(1) of the regulations (9 C.F.R. § 2.30(a)(1)).

## VI

On or about June 29, 2005, APHIS inspected Respondent Harrison's premises and records and found that the Respondent failed to file a registration form before conducting a regulated activity, in violation of section 2.30(a)(1) of the regulations (9 C.F.R. § 2.30(a)(1)).

## VII

- A. The Secretary of Agriculture has jurisdiction.
- B. By reason of the facts set forth above, Respondent Harrison has willfully violated the Animal Welfare Act and regulations promulgated under the Act.
- C. The \$26,400 civil penalty requested by APHIS is appropriate and necessary to achieve the remedial purposes of the Act. 7 U.S.C. § 2149.

## Order

1. Respondent Harrison, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations issued thereunder, and, in particular, shall cease and desist from engaging in any activity for which a license is required under the Act and Regulations without being licensed as required, and shall cease and desist from:

(a) failing to have his Institutional Animal Care and Use Committee (IACUC) review procedures used involving animals to ensure that the principal investigator had considered alternatives to procedures that would cause more than momentary or slight pain or distress to the animals and to provide a written narrative description of the methods and sources; that the activities did not unnecessarily duplicate previous experiments; that medical care for animals

was provided as necessary by a qualified veterinarian; and that procedures included parameters used to monitor animals during anesthesia, and instructions for pre-operative and post-operative care of the animals;

(b) failing to file complete annual reports;

(c) failing to make records available for inspection;

(d) failing to register before conducting any regulated activities under the Act and the regulations;

(e) failing to provide primary enclosures for cats that contain adequate resting surfaces; and

(f) failing to store supplies of food and bedding so as to adequately protect them from spoilage, contamination and vermin infestation.

2. Respondent Harrison is assessed a civil penalty of **\$26,400**, which he shall pay by certified check(s) or cashier's check(s) or money order(s), made payable to the order of "**Treasurer of the United States**", and forwarded within forty-five (45) days from the effective date of this Order **by a commercial delivery service, such as FedEx or UPS**, to

United States Department of Agriculture  
Office of the General Counsel, Marketing Division  
Attn: Sharlene Deskins, Esq.  
Room 2343 South Building, Mail Stop 1417  
1400 Independence Avenue SW  
Washington, D.C. 20250-1417.

Respondent Harrison shall include **AWA Docket No. 07-0158** on the certified check(s) or cashier's check(s) or money order(s). Respondent Harrison shall not engage in any activity covered by the AWA until the civil penalty is paid.



Finality

This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 24<sup>th</sup> day of March 2008

Jill S. Clifton  
Administrative Law Judge

Hearing Clerk's Office  
U.S. Department of Agriculture  
South Bldg Room 1031  
1400 Independence Avenue, SW  
Washington, DC 20250-9203  
202-720-4443  
FAX: 202-720-9776

## APPENDIX A

### 7 C.F.R.:

#### TITLE 7—AGRICULTURE

#### SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

#### PART 1—ADMINISTRATIVE REGULATIONS. . . .

#### SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

#### ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

#### VARIOUS STATUTES

. . .

#### § 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145