

Investigative and Enforcement Services

Settlement Agreement

USDA, APHIS, IES
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RESPONDENT:
University of Kansas Medical Center
Harold E. Phillips –Institutional Official
3901 Rainbow Blvd.
1040 Wescoe Pavillion – MS2014
Kansas City, KS 66160

CASE NUMBER | **KS09015-AC**
DUE ON OR BEFORE | June 7, 2010
CONTACT | Ms. Roxanne Folk
PHONE | (301) 734-5578

DATE	CITATION	DESCRIPTION
		See Attached Pages (Page 1 of 7)

PENALTY \$ 62,500. **TERMS**

Titles 7, 15, 19, and 21 of the United States Code authorize the Secretary of Agriculture, after providing notice and opportunity for a hearing, to impose civil penalties and other sanctions to resolve violations.

Prior to the issuance of a formal complaint seeking sanctions under the Act, The Department may enter into a stipulation to resolve the above-described violations. Your payment constitutes a waiver of your right to a hearing, a finding that the violations of law have occurred, and settlement of such violations.

If you do not pay the specified penalty within the designated time or wish to exercise your right to a hearing, this matter will be forwarded to the Office of the General Counsel for litigation. The penalty offered in this stipulation is not relevant to the sanctions the Department may seek, or that will be assessed, upon issuance of a formal complaint.

Signature of Respondent: *Harold E Phillips* Date: *May 27, 2010*

PAYMENT RECORD - FOR IES USE ONLY

Payment Type	Date	Amount	Signature of IES Representative
			RECEIVED
			3 4 0 8 8 7 JUN 0 3 2010

<u>DATE</u>	<u>CITATION</u> 9 CFR	<u>DESCRIPTION</u>
10-MAR-2009	2.31(d)(2)(iv)(B)	Institutional Animal Care and Use Committee (IACUC). For protocol 2007:1688 failed to include planning and consultation with the attending veterinarian on procedures that may cause more than momentary or slight pain and/or distress to animals.
	2.33(b)(2)	Attending Veterinarian and Adequate Veterinary Care. Failed to establish and maintain adequate programs of veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care. APHIS observed the following: 1) An investigator cart in procedure room 3020 that contained expired drugs (8 vials) of ketamine (expiration date 6/08) and one bottle of Nembutal Sodium Solution/Pentobarbital 50 mg/ml (exp. 9/1/08) also, butterfly catheters were stored in a drawer with an aerosol can of "Clipperside" spray. 2) In procedure room 3025 housing 4 macaques, a bottle of children's chewable vitamins were stored immediately adjacent to cleaning solutions. 3) In room 1048 an oral pill dispenser was observed being stored in a container with grooming supplies including nail clippers and a comb. A large white rabbit was observed with a persistent, abnormal head tilt to the right. 4) In room 3022, an oral dispensing tube of Panacur (Fenbendazole) was being stored on a soap dispenser adjacent to cleaning chemicals. 5) A macaque was observed with red to brown colored crusty discharge around the resin on his surgically placed acrylic head cap. 6) Twenty six nonhuman primates were observed to have hair loss and/or excessive scratching.
	2.33(b)(3)	Attending Veterinarian and Adequate Veterinary Care. Failed to establish and maintain adequate programs of veterinary care that included the daily observation of all animals to assess their health and well-being. APHIS observed several animals that had medical problems that had not been documented by animal caretakers nor communicated to the veterinary staff including a white rabbit (in room 1048) with a persistent, abnormal head tilt to the right; twenty six non human primates with varying amounts of hair loss and excessive scratching, including one animal that was thin.
	3.56(c)	Sanitation. Housekeeping. Failed to keep premises (building and grounds) clean and in good repair in order to protect animals from injury and to facilitate prescribed husbandry practices. The refrigerator room 2015 was observed with a thick layer of brown to tan dusty material on top. There was also a large quantity of spilled bedding present. In room 3030, there was an uncovered trash can containing waste material.

<u>DATE</u>	<u>CITATION</u> 9 CFR	<u>DESCRIPTION</u>
10-MAR-2009	3.75(a)	<p>Housing Facilities, general. Structure. Construction. Failed to provide housing facilities for nonhuman primates that are designed and constructed to be structurally sound, kept in good repair, and to protect the animals from injury. APHIS observed cages (18 squirrel monkeys) in room 5009 had a two inch by four inch opening at the front of the enclosures risking injury to the animal. The following non human primate rooms had drain covers that had been removed for cleaning and not replaced: room 3024 (2 squirrel monkeys); room 3025 (4 macaques); room 3029 (17 squirrel monkeys); room 5019 (11 squirrel monkeys in front, 11 in back); and room 5009 (18 squirrel monkeys).</p>
	3.75(c)(1)	<p>Housing Facilities, general. Surfaces. General Requirements. Failed to provide surfaces in housing facilities that are constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. In room 3028 (housing 10 macaques), the drywall behind the hose was observed bowing out and had a roughened surface with peeling paint. This area is no longer impervious to moisture and can no longer be effectively cleaned and sanitized.</p>
	3.75(f)	<p>Housing Facilities, general. Drainage and waste disposal. Failed to provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, dead animals, debris, garbage, water, and any other fluids and wastes, in a manner that minimizes contamination and disease risk. APHIS observed several rooms housing nonhuman primates in which the trash cans were not covered. Rooms with uncovered or partially uncovered trash cans included: 3025 (4 macaques), 3028 (10 macaques), 3018 (6 macaques), and two trash cans on the dirty side of a cage wash used to clean nonhuman primate enclosures. Standing water was observed in the following rooms 3026 (housing 16 squirrel monkeys), room 5009 (housing 18 squirrel monkeys), room 3028 (housing 10 macaques); and room 3022 (housing 3 macaques) standing water was observed on the bottom shelf of the television cart.</p>
	3.81(c)(2)	<p>Environment Enhancement to Promote Psychological Well-Being. Special considerations. Failed to provide special attention regarding enhancement of environment, based on the needs of the individual species and in accordance with the instructions of the attending veterinarian. Twenty-six nonhuman primates had variable degrees of hair loss ranging from partial to full loss of hair on the tail to patchy hair loss on the body. An additional seven nonhuman primates were observed by APHIS to be actively picking or stripping hair from their bodies or exhibiting stereotypic behaviors such as flipping or swaying.</p>

<u>DATE</u>	<u>CITATION</u> 9 CFR	<u>DESCRIPTION</u>
10-MAR-2009	3.81(e)(2)	Environment Enhancement to Promote Psychological Well-Being. Failed to appropriately exempt animals from the environmental enrichment plan. The committee approved an exemption to environment enhancement for squirrel monkeys on protocol 2007:1688; but the IACUC has not approved this exemption on an individual basis. Several squirrel monkeys had variable degrees of hair loss, which can be a sign of psychological distress.
	3.82(a)	Feeding. Failed to provide a diet of food that is clean, wholesome, palatable to the animals, of sufficient nutritive value for non human primates that is appropriate for the species, size, age, condition of the animal, and for the conditions in which the nonhuman primate is maintained. APHIS officials observed three containers of baby food used as treats for non human primates in the investigator lab in room G010. These containers of food were expired.
19-APR-2009	2.31(d)(5)	Institutional Animal Care and Use Committee (IACUC). Failed to conduct continuing review of activities at appropriate intervals as determined by the IACUC. Protocol 2007-1703; Protocol 2008-1735; and Protocol 2007-1680.
	2.31(e)(4)	Institutional Animal Care and Use Committee (IACUC). Failed to have a sufficiently detailed description of the procedures designed to assure that discomfort and pain to animals will be limited to that which is unavoidable. Protocol 2007-1703, a guinea pig protocol, includes conflicting information concerning the dose and/or route of administration of anesthetic and analgesic drugs.
	2.33(b)(2)	Attending Veterinarian and Adequate Veterinary Care. Failed to establish and maintain adequate programs of veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care. APHIS officials observed the following: 1) two squirrel monkeys (ID#668 and ID#702) wearing beaded metal collars that were rusty; 2) Macaque (ID#99R1027) was prescribed acetaminophen, but was given ibuprofen instead; 3) Medical records for a male macaque (ID#99R1027) stated that the chamber had not been cleaned in 3 weeks; 4) Medical records for macaque (ID#0A0) do not document that any veterinarian performed any evaluations, physical examinations, diagnosis, or developed any treatment plan from 10/07/08 through 10/16/08; and 5) In protocol 2008-1735 failed to weigh monkeys on a regular basis to check for normal weight gain as stated in the protocol.

<u>DATE</u>	<u>CITATION</u>	<u>DESCRIPTION</u>
	9 CFR	
14-APR-2009	3.81(c)(2)	Environment Enhancement to Promote Psychological Well-Being. Special Considerations. Failed to provide special attention regarding enhancement of their environment, based on the needs of the individual species and in accordance with the instructions of the attending veterinarian. Several nonhuman primates had variable degrees of hair loss ranging from partial to full loss of hair on the tail to patchy hair loss on the body; several were observed by APHIS to be actively picking and showing signs of possible psychological distress.
	3.125(c)	Facilities, General. Storage. Failed to develop and follow a program that ensures that all supplies of food and bedding are stored in facilities which adequately protect such supplies from deterioration, molding, or contamination by vermin. The ground floor storage room used to store gerbil bedding was nearly filled with pallets of bedding leaving only a small open area at the entrance of the room, preventing the required cleaning (SOP HUSB 1 Food, Water, and Bedding Management).
30-JUN-2009	2.31(d)(5)	Institutional Animal Care and Use Committee (IACUC). Failed to conduct continuing review of activities at appropriate intervals as determined by the IACUC. Investigators for Protocol 2008-1735 are not conducting animal activities as delineated in the IACUC approved protocol. MRI anesthetic procedures states that nonhuman primates will be tranquilized with ketamine. The laboratory written procedure for MRI utilized by the laboratory staff states that the animals are given a full dose of ketamine followed by a "Dormitor" for transport, which is then followed by a ½ dose of ketamine every 30 minutes thereafter.
	2.31(e)(2)	Institutional Animal Care and Use Committee (IACUC). Failed to ensure that all protocols include an appropriate rationale for the number of animals to be use. Protocol 2009-1796 did not contain a scientific justification for the appropriateness of the number of animals being used.
	2.31(e)(3)	Institutional Animal Care and Use Committee (IACUC). Failed to provide a complete description of the proposed use of the animals to facilitate the evaluation of the protocols by the IACUC. Protocol 2007-1680 did not contain a complete description of the proposed use of the animals.