

Investigative and Enforcement Services

Settlement Agreement

USDA, APHIS, IES
4700 River Road, Unit 85
Riverdale, MD 20737
Phone: (301) 734-8684
Fax: (301) 734-4328

RESPONDENT:

University of California-Davis
One Shields Avenue
Davis, CA 95616

CASE NUMBER CA05004-AC
DUE ON OR BEFORE November 24, 2005
CONTACT
PHONE (b)(6), (b)(7)c

DATE	CITATION	DESCRIPTION
21 AUG 04	9 CFR 3.75(a)	Housing facilities. Failed to maintain housing for non-human primates in good repair to protect the animals from harm. The thermostat and cut off switch were not maintained in good repair, resulting in the deaths of seven non-human primates from excessively high temperatures.
	9 CFR 3.76(a)	Heating, cooling, and temperature. Failed to ensure the animal housing facility was sufficiently cooled when necessary to protect non-human primates from temperature extremes and to provide for their health and well being, resulting in the deaths of seven non-human primates.

PENALTY \$4,815

TERMS

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

You may waive your right to a hearing and agree to pay the specified civil penalty in settlement of this matter. If you do not agree to the specified penalty, a complaint shall be issued charging you with the violation(s) and seeking higher penalties. You will have the opportunity for a hearing before an Administrative Law Judge to present your case.

I acknowledge that I have been given an opportunity for a hearing and waive such hearing. I neither admit nor deny the violations cited above and agree to pay the civil penalty in full settlement of this matter.

Signature of Respondent:

Date:

PAYMENT RECORD - FOR IES USE ONLY

Payment Type	Date	Amount	Signature of IES Representative



9142
93-R 0423
1007

United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Marketing &
Regulatory
Programs Business
Services

4700 River Road
Riverdale, MD
20737

University of California-Davis
One Shields Avenue
Davis, CA 95616

Dear Sir(s):

The Animal and Plant Health Inspection Service (APHIS) enforces regulations in order to protect the health and care of animals, plants, and agricultural industry. Violations of these regulations jeopardize the animal and plant health systems that are vital to protect American agriculture.

Our investigation shows that you have violated Federal Regulations as described on the enclosed Civil Penalty Stipulation Agreement form. APHIS laws and regulations provide for administrative and criminal penalties to enforce these regulatory requirements. The amount of the monetary penalty, or possible criminal charges, depends on the number and severity of the violations.

The Secretary of Agriculture may assess a civil penalty for such violations after notice and an opportunity for a hearing. However, you may waive your right to a hearing and settle this matter by paying \$4,815 and signing the **agreement form**. You may voluntarily accept this reduced agreement to avoid further action.

Please pay the civil penalty by certified check or money order made payable to the Treasurer of the United States. Write the Case Number (CA05004-AC) on your check or money order and mail it with the signed agreement form to:

USDA, APHIS, (General) (CA05004-AC)
P. O. Box 979043
St. Louis, MO 63197-9000

If we do not receive your signed stipulation agreement and payment within 30 days, we will seek higher civil or criminal penalties for each violation. You may contact our office at telephone number (301) 734-8684 if you have any questions.

Sincerely,

Allison Khroustalev
Assistant Director, Enforcement
Investigative and Enforcement Services

Enclosure

cc: T. Fordahl, IES, WR
E. Kelpis, IES CO

Dr. R. Gibbens, AC, WR

APHIS:IES:JSedgwick:ram:734-8759:10/19/05:CA05004-AC Univ of CA Davis



Safeguarding American Agriculture
APHIS is an agency of USDA's Marketing and Regulatory Program
An Equal Opportunity Provider and Employer



September 27, 2004

United States
Department of
Agriculture

Animal and Plant
Health Inspection
Service

Animal Care
Western Region

2150 Centre Ave.
Building B
Mail Stop # 3W11
Ft. Collins, CO 80526
Phone: 970/494-7478
Fax: 970/494-7461

Tim Fordahl
Western Regional Director
Investigative & Enforcement Services

**Request for Investigation of Alleged Violations
Regarding the Animal Welfare Act, Regulations,
and/or Standards**

Please initiate an investigation on the following individual:

NAME: University of California, Davis
ADDRESS: One Shields Avenue
CITY: Davis, CA 95616
LIC / REG #: 93-R-0433

ADDITIONAL INFORMATION:

Seven nonhuman primates died at UC Davis on August 21, 2004. The deaths reportedly occurred as a result of mechanical failures of temperature regulating devices. An investigation is needed to document whether AWA violations were involved. If further information is needed, please let me know.

Robert M. Gibbens
Director, Western Region
USDA, APHIS, Animal Care



APHIS - Protecting American Agriculture

An Equal Opportunity Employer

(b)(5)

Robert M. Gibbens, DVM
Director, Western Region
USDA, APHIS, Animal Care
2150 Centre Ave.
Bldg B, MS 3W11
Ft. Collins, CO 80526
970/494-7478

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL PLANT HEALTH INSPECTION SERVICE
INVESTIGATIVE AND ENFORCEMENT SERVICES
WESTERN REGION
FORT COLLINS, COLORADO

REPORT OF INVESTIGATION

Violators: University of California-Davis
One Shields Ave.
Davis, CA 95616
(530)752-2364

Case Number: CA05004-AC

Violation(s): 9 CFR 2

Investigator:

(b)(6), (b)(7)c

Date: September 29, 2005

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outside your agency, nor duplicated, without prior consent
from Investigative and Enforcement Services, APHIS, USDA.

SYNOPSIS

Violator: University of California-Davis is a university at which animal research is conducted. Their USDA registration number is 93-R-0433.

Previous History: The University of California-Davis (UCD) has no violation history in CITS.

Violation Events: On August 21, 2004, a catastrophic mechanical failure occurred in an UCD animal room, which resulted in the death of seven out of the eight housed nonhuman primates (*Macaca fascicularis*, aka: Rhesus macaque). The cause of the mechanical failure was the malfunction of a heat controller and a safety sensor that turns the system off when excessive temperatures are reached. The staff veterinarian who examined the animals stated the body temperature of the two live nonhuman primates found in this room was 109 degrees Fahrenheit (normal average is 98.6 degrees Fahrenheit). One of these primates was later euthanized. UCD personnel estimated the animal room to be approximately 115 degrees Fahrenheit when discovered. A report shows the HVAC equipment in this animal room is the original equipment from 1965.

EXPLANATION OF THE EVIDENCE

August 21, 2004

9 CFR

2.31(d)(1)(vi)

IACUC Involvement of Care and Use of Animals

University of California-Davis IACUC failed to assure the animal's living conditions were appropriate and contributed to their health and comfort, as evidenced by:

Exhibit 1- Letter from (b)(6), (b)(7)c (b)(6), (b)(7)c s he notified the USDA that due to a mechanical failure, seven nonhuman primates died at UCD.

Exhibit 2 – Statement from (b)(6), (b)(7)c (b)(6), (b)(7)c, shows he was present when six nonhuman primates were found dead in an over heated room, which was approximately 115 degrees Fahrenheit. He stated a mechanic told him a heater malfunction was the likely cause of the over heated room.

Exhibit 3- Animal Incident Report indicates a UCD animal technician found eight nonhuman primates down while conducting animal husbandry duties. This report states six of the eight animals were dead and two nonhuman primates were still alive, however, they were in poor condition. This report states the room temperature was estimated at 115 degrees Fahrenheit when the animals were found ill/expired and the cages were very hot to the touch the day of discovery and on the following day after the incident.

Exhibit 4- Affidavit of (b)(6), (b)(7)c (b)(6), (b)(7)c shows she discovered the over heated room which housed six dead nonhuman primates and two ill ones. (b)(6), (b)(7)c the temperature gauge for this animal room was broke and that she had experienced other nonhuman primate rooms in that building that were excessively warm in the past.

Exhibit 5- Statement from (b)(6), (b)(7)c (b)(6), (b)(7)c indicates she was notified of an over heated nonhuman primate room with primates that were 'down'. She stated upon examination of the primates, six were dead and two were alive. (b)(6), (b)(7)c the body temperature of the two live nonhuman primates was 109 degrees Fahrenheit (normal is 98.6).

Exhibit 6- Affidavit of (b)(6), (b)(7)c (b)(6), (b)(7)c affirms seven nonhuman primates died due to a heat system malfunction in an animal room. Another nonhuman primate suffered hyperthermia, however, she survived the event.

Exhibit 7- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34276 shows the animal was found in an overheated room in a non-responsive state. This record indicates the animal's body temperature was 109 degrees Fahrenheit at time of discovery.

Exhibit 8- CPRC Request for Necropsy report shows animal number MCY34276 was diagnosed with Pulmonary Congestion.

Exhibit 9- CPRC Pathology/Necropsy Report indicates animal number MCY34276 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 10- CPRC Animal Death Record for animal MCY 34276 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 11- CRPRC-ICU Record shows animal MCY34276 was diagnosed with Hyperthermia. It also indicates this nonhuman primate had a body temperature of 105.6 degrees Fahrenheit prior to it being euthanized.

Exhibit 12- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34273 shows the animal was found dead in her cage.

Exhibit 13- CPRC Request for Necropsy report shows animal number MCY34273 was diagnosed with Pulmonary Congestion.

Exhibit 14- CPRC Pathology/Necropsy Report indicates animal number MCY34273 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 15- CPRC Animal Death Record for animal MCY 34273 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 16- CPRC Animal Death Record for animal MCY 34273 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 17- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34274 shows the animal was found dead in her cage.

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Exhibit 19- CPRC Pathology/Necropsy Report indicates animal number MCY34274 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 20- CPRC Animal Death Record for animal MCY 34274 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 21- CPRC Animal Death Record for animal MCY 34274 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 22- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34278 shows the animal was found dead in her cage.

Exhibit 23- CPRC Request for Necropsy report shows animal number MCY34278 was diagnosed with Pulmonary Congestion as cause of death.

Exhibit 24- CPRC Pathology/Necropsy Report indicates animal number MCY34278 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 25- CPRC Animal Death Record for animal MCY 34278 shows the animal's Probable Cause of Death was hyperthermia.

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Exhibit 31- CPRC Animal Death Record for animal MCY 34279 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 32- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34280 shows the animal was found dead in her cage.

Exhibit 33- CPRC Request for Necropsy report shows animal number MCY34280 was diagnosed with Pulmonary Congestion as cause of death.

Exhibit 34- CPRC Pathology/Necropsy Report indicates animal number MCY34280 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 35- CPRC Animal Death Record for animal MCY 34280 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 36- CPRC Animal Death Record for animal MCY 34280 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 37- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34281 shows the animal was found dead in her cage.

Exhibit 38- CPRC Request for Necropsy report shows animal number MCY34281 was found dead in her cage.

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Exhibit 40- Exhibit 7- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34275 shows the animal was found in an overheated room in a minimally responsive condition. This record indicates the animal's body temperature was 109 degrees Fahrenheit at time of discovery.

Exhibit 41- CRPRC-ICU Record shows animal MCY34275 was diagnosed with Hyperthermia. It also indicates this nonhuman primate had a body temperature of 105.6 degrees Fahrenheit prior to bringing it down to 97 degrees Fahrenheit 1.5 hours later.

Exhibit 42- CRPCR Master Problem List shows animal MCY34275 was diagnosed with hyperthermia.

Exhibit 43- Statement from UCD Kathleen Moore, Facilities: Operations and Maintenance, indicates two HVAC equipment failures caused the above mentioned animal room to overheat. She stated the specific equipment that failed (control linkage and cut off switch) were original equipment installed in the facility in 1965.

Exhibit 44- Statement from Rich Mills, UCD HVAC Superintendent, affirms the HVAC system failed in the above mentioned animal room.

Exhibit 45- Work Order Tracking List shows UCD has had numerous excessive heat problems in many of the UCD facility animal rooms.

Exhibit 46- Interoffice Memo to USDA Dr. Bob Gibbens from USDA Dr. Steve Drlica indicates he visited UCD after the incident and confirmed the above mentioned facts pertaining to the death of seven nonhuman primates.

2.38(k)(1)

Compliance with Standards

UCD failed to comply in all respects with the regulations set forth in subpart C of part 2, 9CFR and part 3, 9CFR for the care and housing of animals, as evidenced by:

Exhibit 1- Letter from (b)(6), (b)(7)c indicates he notified the USDA that due to a mechanical failure, seven nonhuman primates died at UCD.

Exhibit 2 – Statement from (b)(6), (b)(7)c, shows he was present when six nonhuman primates were found dead in an over heated room, which was approximately 115 degrees Fahrenheit. He stated a mechanic told him a heater malfunction was the likely cause of the over heated room.

Exhibit 3- Animal Incident Report indicates a UCD animal technician found eight nonhuman primates down while conducting animal husbandry duties. This report states six of the eight animals were dead and two nonhuman primates were still alive, however, they were in poor condition. This report states the room temperature was estimated at 115 degrees Fahrenheit when the animals were found ill/expired and the cages were very hot to the touch the day of discovery and on the following day after the incident.

Exhibit 4- Affidavit of (b)(6), (b)(7)c Animal Technician, shows she discovered the over heated room which housed six dead nonhuman primates and two ill ones. (b)(6), (b)(7)c the temperature gauge for this animal room was broke and that she had experienced other nonhuman primate rooms in that building that were excessively warm in the past.

Exhibit 5- Statement from (b)(6), (b)(7)c indicates she was notified of an over heated nonhuman primate room with primates that were 'down'. She stated upon examination of the primates, six were dead and two were alive. (b)(6), (b)(7)c s stated the body temperature of the two live nonhuman primates was 109 degrees Fahrenheit (normal is 98.6).

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Exhibit 7- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34276 shows the animal was found in an overheated room in a non-responsive state. This record indicates the animal's body temperature was 109 degrees Fahrenheit at time of discovery.

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Exhibit 23- CPRC Request for Necropsy report shows animal number MCY34278 was diagnosed with Pulmonary Congestion as cause of death.

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Exhibit 42- CRPCR Master Problem List shows animal MCY34275 was diagnosed with hyperthermia.

Exhibit 43- Statement from (b)(6), (b)(7)c indicates two HVAC equipment failures caused the above mentioned animal room to overheat. She stated the specific equipment that failed (control linkage and cut off switch) were original equipment installed in the facility in 1965.

Exhibit 44- Statement from (b)(6), (b)(7)c, affirms the HVAC system failed in the above mentioned animal room.

Exhibit 45- Work Order Tracking List shows UCD has had numerous excessive heat problems in many of the UCD facility animal rooms.

Exhibit 46- Interoffice Memo to USDA Dr. Bob Gibbens from USDA Dr. Steve Drlica indicates he visited UCD after the incident and confirmed the above mentioned facts pertaining to the death of seven nonhuman primates.

3.75(a)

Housing Facilities

UCD failed to assure housing for nonhuman primates protected the contained animals from harm due to a failed heating device, as evidenced by:

Exhibit 1- Letter from (b)(6), (b)(7)c indicates he notified the USDA that due to a mechanical failure, seven nonhuman primates died at UCD.

Exhibit 2 - Statement from (b)(6), (b)(7)c, shows he was present when six nonhuman primates were found dead in an over heated room, which was approximately 115 degrees Fahrenheit. He stated a mechanic told him a heater malfunction was the likely cause of the over heated room.

Exhibit 3- Animal Incident Report indicates a UCD animal technician found eight nonhuman primates down while conducting animal husbandry duties. This report states six of the eight animals were dead and two nonhuman primates were still alive, however, they were in poor condition. This report states the room temperature was estimated at 115 degrees Fahrenheit when the animals were found ill/expired and the cages were very hot to the touch the day of discovery and on the following day after the incident.

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3.76(a)

Heating/Temperature

UCD failed to ensure the animal housing facility was sufficiently cooled when necessary to protect nonhuman primates from temperature extremes and to provide for their health and well-being, as evidenced by:

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Exhibit 2 – Statement from (b)(6), (b)(7)c, shows he was present when six nonhuman primates were found dead in an over heated room, which was approximately 115 degrees Fahrenheit. He stated a mechanic told him a heater malfunction was the likely cause of the over heated room.

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Exhibit 4- Affidavit of (b)(6), (b)(7)c, shows she discovered the over heated room which housed six dead nonhuman primates and two ill ones. (b)(6), (b)(7)c the temperature gauge for this animal room was broke and that she had experienced other nonhuman primate rooms in that building that were excessively warm in the past.

Exhibit 5- Statement from (b)(6), (b)(7)c indicates she was notified of an over heated nonhuman primate room with primates that were 'down'. She stated upon examination of the primates, six

were dead and two were alive. (b)(6), (b)(7)(c) the body temperature of the two live nonhuman primates was 109 degrees Fahrenheit (normal is 98.6).

Exhibit 6- Affidavit of (b)(6), (b)(7)(c) seven nonhuman primates died due to a heat system malfunction in an animal room. Another nonhuman primate suffered hyperthermia, however, she survived the event.

Exhibit 7- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34276 shows the animal was found in an overheated room in a non-responsive state. This record indicates the animal's body temperature was 109 degrees Fahrenheit at time of discovery.

Exhibit 8- CPRC Request for Necropsy report shows animal number MCY34276 was diagnosed with Pulmonary Congestion.

Exhibit 9- CPRC Pathology/Necropsy Report indicates animal number MCY34276 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 10- CPRC Animal Death Record for animal MCY 34276 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 11- CRPRC-ICU Record shows animal MCY34276 was diagnosed with Hyperthermia. It also indicates this nonhuman primate had a body temperature of 105.6 degrees Fahrenheit prior to it being euthanized.

Exhibit 12- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34273 shows the animal was found dead in her cage.

Exhibit 13- CPRC Request for Necropsy report shows animal number MCY34273 was diagnosed with Pulmonary Congestion.

Exhibit 14- CPRC Pathology/Necropsy Report indicates animal number MCY34273 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 15- CPRC Animal Death Record for animal MCY 34273 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 16- CPRC Animal Death Record for animal MCY 34273 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 17- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34274 shows the animal was found dead in her cage.

Exhibit 18- CPRC Request for Necropsy report shows animal number MCY34274 was diagnosed with Pulmonary Congestion.

Exhibit 19- CPRC Pathology/Necropsy Report indicates animal number MCY34274 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 20- CPRC Animal Death Record for animal MCY 34274 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 21- CPRC Animal Death Record for animal MCY 34274 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 22- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34278 shows the animal was found dead in her cage.

Exhibit 23- CPRC Request for Necropsy report shows animal number MCY34278 was diagnosed with Pulmonary Congestion as cause of death.

Exhibit 24- CPRC Pathology/Necropsy Report indicates animal number MCY34278 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 25- CPRC Animal Death Record for animal MCY 34278 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 26- CPRC Animal Death Record for animal MCY 34278 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 27- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34279 shows the animal was found dead in her cage.

Exhibit 28- CPRC Request for Necropsy report shows animal number MCY34279 was diagnosed with Pulmonary Congestion as cause of death.

Exhibit 29- CPRC Pathology/Necropsy Report indicates animal number MCY34279 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 30- CPRC Animal Death Record for animal MCY 34279 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 31- CPRC Animal Death Record for animal MCY 34279 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 32- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34280 shows the animal was found dead in her cage.

Exhibit 33- CPRC Request for Necropsy report shows animal number MCY34280 was diagnosed with Pulmonary Congestion as cause of death.

Exhibit 34- CPRC Pathology/Necropsy Report indicates animal number MCY34280 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 35- CPRC Animal Death Record for animal MCY 34280 shows the animal's Probable Cause of Death was hyperthermia.

Exhibit 36- CPRC Animal Death Record for animal MCY 34280 shows the animal was diagnosed with Pulmonary Congestion.

Exhibit 37- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34281 shows the animal was found dead in her cage.

Exhibit 38- CPRC Request for Necropsy report shows animal number MCY34281 was found dead in her cage.

Exhibit 39- CPRC Pathology/Necropsy Report indicates animal number MCY34281 died of severe pulmonary congestion and alveolar edema, due to exposure to hyperthermia.

Exhibit 40- Exhibit 7- California Primate Research Center (CPRC) Animal Record for nonhuman primate number 34275 shows the animal was found in an overheated room in a minimally responsive condition. This record indicates the animal's body temperature was 109 degrees Fahrenheit at time of discovery.

Exhibit 41- CRPRC-ICU Record shows animal MCY34275 was diagnosed with Hyperthermia. It also indicates this nonhuman primate had a body temperature of 105.6 degrees Fahrenheit prior to bringing it down to 97 degrees Fahrenheit 1.5 hours later.

Exhibit 42- CRPCR Master Problem List shows animal MCY34275 was diagnosed with hyperthermia.

Exhibit 43- Statement from (b)(6), (b)(7)c and Maintenance, indicates two HVAC equipment failures caused the above mentioned animal room to overheat. She stated the specific equipment that failed (control linkage and cut off switch) were original equipment installed in the facility in 1965.

Exhibit 44- Statement from (b)(6), (b)(7)c, affirms the HVAC system failed in the above mentioned animal room.

Exhibit 45- Work Order Tracking List shows UCD has had numerous excessive heat problems in many of the UCD facility animal rooms.

Exhibit 46- Interoffice Memo to USDA Dr. Bob Gibbens from USDA Dr. Steve Drlica indicates he visited UCD after the incident and confirmed the above mentioned facts pertaining to the death of seven nonhuman primates.

3.80(a)(2)(ii)

3.80(a)(2)(vi)

Primary Enclosure

UCD failed to ensure the metal primary enclosures which contained nonhuman primates, protected them from injury and extreme temperatures, as evidenced by:

Exhibit 1- Letter from (b)(6), (b)(7)c

(b)(6), (b)(7)c, indicates he notified the USDA that due to a mechanical failure, seven nonhuman primates died at UCD.

Exhibit 2 – Statement from (b)(6), (b)(7)c shows he was present when six nonhuman primates were found dead in an over heated room, which was approximately 115 degrees Fahrenheit. He stated a mechanic told him a heater malfunction was the likely cause of the over heated room.

Exhibit 3- Animal Incident Report indicates a UCD animal technician found eight nonhuman primates down while conducting animal husbandry duties. This report states six of the eight animals were dead and two nonhuman primates were still alive, however, they were in poor condition. This report states the room temperature was estimated at 115 degrees Fahrenheit when the animals were found ill/expired and the cages were very hot to the touch the day of discovery and on the following day after the incident.

Exhibit 4- Affidavit of (b)(6), (b)(7)c shows she discovered the over heated room which housed six dead nonhuman primates and two ill ones. (b)(6), (b)(7)c and the temperature gauge for this animal room was broke and that she had experienced other nonhuman primate rooms in that building that were excessively warm in the past.

Exhibit 5- Statement from (b)(6), (b)(7)c indicates she was notified of an over heated nonhuman primate room with primates that were 'down'. She stated upon examination of the primates, six were dead and two were alive. (b)(6), (b)(7)c the body temperature of the two live nonhuman primates was 109 degrees Fahrenheit (normal is 98.6).

Exhibit 6- Affidavit of (b)(6), (b)(7)c affirms seven nonhuman primates died due to a heat system malfunction in an animal room. Another nonhuman primate suffered hyperthermia, however, she survived the event.

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Exhibit 8- CPRC Request for Necropsy report shows animal number MCY34276 was diagnosed with Pulmonary Congestion.

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an overheated room in a minimally responsive condition. This record indicates the animal's body temperature was 109 degrees Fahrenheit at time of discovery.

Exhibit 41- CRPRC-ICU Record shows animal MCY34275 was diagnosed with Hyperthermia. It also indicates this nonhuman primate had a body temperature of 105.6 degrees Fahrenheit prior to bringing it down to 97 degrees Fahrenheit 1.5 hours later.

Exhibit 42- CRPCR Master Problem List shows animal MCY34275 was diagnosed with hyperthermia.

Exhibit 43- Statement from (b)(6), (b)(7)c indicates two HVAC equipment failures caused the above mentioned animal room to overheat. She stated the specific equipment that failed (control linkage and cut off switch) were original equipment installed in the facility in 1965.

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Exhibit 46- Interoffice Memo to USDA Dr. Bob Gibbens from USDA Dr. Steve Drlica indicates he visited UCD after the incident and confirmed the above mentioned facts pertaining to the death of seven nonhuman primates.

OTHER EVIDENCE

Exhibit 47- USDA APHIS Annual Report of Research Facility, dated 10/16/02, indicates by signing this form, UCD acknowledged and agreed to comply with the Animal Welfare Act during the time period of the above mentioned incident.

Exhibit 48- USDA Animal Care License shows UCD is a registered facility to practice animal use research.

Exhibit 49- USDA APHIS Annual Report of Research Facility, dated 12/01/04, shows UCD is currently registered with the USDA.

Exhibit 50- Protocol 10162 indicates the nonhuman primates mentioned in this case were research animals at UCD.

Exhibit 51- UCD Laboratory Animal Monthly Care Record for animal room ARDE3 (subject room housing subject animals) indicates the check off list was prematurely initialed prior to attending to the duties listed on this document (b)(6), (b)(7)c admits in her affidavit to checking off the items prior to conducting the listed duty (Exhibit 4).

Exhibit 52- Maintenance Record indicates the subject building housing the subject nonhuman primates was checked at 5:55 a.m. on 8/21/04, and all appeared to be fine. How (b)(6), (b)(7)c states in her affidavit that when she examined the subject nonhuman primates at approximately 9:30 a.m., the animals were in a rigor mortis condition, which takes approximately 3-12 hours to set in an animal (Exhibit 6).

Exhibit 53- Internet Information indicates the subject nonhuman primates, *Macaca mulatto* (Rhesus macaque) has a normal body temperature between 36-40 degrees Celsius (96.8 and 104 degrees Fahrenheit).

Exhibit 54- Internet Information shows hyperthermia is an acute condition resulting from the body absorbing more heat than it can dissipate, usually due to excessive heat exposure. It shows body temperatures above 104 degrees Fahrenheit are life threatening and can cause organ failure.

Exhibit 55- Internet Information indicates Pulmonary Edema (pulmonary congestion) is a manifestation of Congestive Heart Failure.

EXHIBIT LIST

- Exhibit 1-** Letter of notification from (b)(6), (b)(7)c d 9/14/04
Exhibit 2- Statement from (b)(6), (b)(7)c 12/15/04
Exhibit 3- Animal Incident Report, dated 8/21/04
Exhibit 4- Affidavit of (b)(6), (b)(7)c d 1/24/05
Exhibit 5- Statement from (b)(6), (b)(7)c dated 12/15/04
Exhibit 6- Affidavit of Dr (b)(6), (b)(7)c ed 12/16/04
Exhibit 7- CPRC Animal Record, dated 6/3/02-8/21/04
Exhibit 8- CPRC Necropsy Request, dated 8/21/04
Exhibit 9- Pathology: Necropsy Report, dated 8/25/04
Exhibit 10- Animal Death Record, dated 8/21/04
Exhibit 11- CRPRC ICU Record, dated 8/21/04
Exhibit 12- CPRC Animal Record, dated 5/30/02-8/21/04
Exhibit 13- CPRC Necropsy Request, dated 8/21/04
Exhibit 14- Pathology: Necropsy Report, dated 8/25/04
Exhibit 15- Animal Death Record, dated 8/21/04
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Exhibit 38- CPRC Necropsy Request, dated 8/21/04
Exhibit 39- Pathology: Necropsy Report, dated 8/25/05
Exhibit 40- CPRC Animal Record, dated 6/3/02-11/30/04
Exhibit 41- CRPRC-ICU Record, date 8/21/04
Exhibit 42- Master Problem List, dated 8/21/04-9/17/04
Exhibit 43- Summary of FO&M Events, dated 9/10/04

- Exhibit 44-** Statement from (b)(6), (b)(7)c dated
- Exhibit 45-** Work Order Tracking List, dated 12/14/04
- Exhibit 46-** Interoffice Memo, dated 8/25/04
- Exhibit 47-** USDA Application for Registration, dated 10/16/02
- Exhibit 48-** USDA APHIS Animal Care License, expiration date 9/15/05
- Exhibit 49-** USDA Annual Report of Research Facility, dated 12/1/04
- Exhibit 50-** UCD Protocol for Animal Use and Care, dated 7/3/04
- Exhibit 51-** Laboratory Animal Monthly Care Record, dated 8/04
- Exhibit 52-** Building ARS J-1 Maintenance Log, dated 8/04
- Exhibit 53-** Internet Information on Primate Body Temperatures, dated 9/27/05
- Exhibit 54-** Internet Information on Hyperthermia, dated 9/27/05

WITNESS LIST

(b)(6), (b)(7)c

(b)(6), (b)(7)c