

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



USDA, APHIS, IES
WESTERN REGION
2150 Centre Ave.
Bldg. B-3W10
FORT COLLINS, CO 80526

Memorandum

TO: Dr. Robert Gibbens, USDA APHIS AC WR Director
cc: Allison Khroustaley, USDA APHIS IES Asst. Director

FROM: [Redacted] (b)(6), (b)(7)(c)

DATE: January 15, 2006

SUBJECT: HI04070-AC

Violator 1: University of Hawaii at Manoa
Office of the Chancellor
Hawaii Hall
2500 Campus Rd.
Honolulu, HI 96822
(808)956-6635

Violator 1: Louis M. Herman
The Dolphin Institute & Kewalo Basin Marine Mammal Lab
(KBMLL)
420 Ward Ave.
Honolulu, HI 96822
(808)956-6635

Case Number: HI04070-AC

Violation(s): 9 CFR 2 & 3

Investigator:



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

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

Date: January 14, 2006

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This document and its contents are not to be distributed outside your agency, nor duplicated, without prior consent from Investigative and Enforcement Services, APHIS, USDA.

Dr. Gibbens,

Submitted for your information is a copy of the report of violation involving University of Hawaii and The Dolphin Institute & Kewalo Basin Marine Mammal Lab (KBMLL). The report documents significant violations of Title 9, CFR, Parts 2 and 3, Animal Welfare Act, Regulations and Standards. Such alleged violations include inadequate veterinary care, handling, employees, water quality and various other items.

The original case file has been forwarded to IES Headquarters Staff for reviews.

If you have any questions pertaining to this investigation, please do not hesitate to contact me via e-mail, as I will be out of the country until June 2006, however, I should have e-mail access from where I will be..

Enclosure

HI04070-AC

Page - 2

SYNOPSIS

Violator: 1.) University of Hawaii at Manoa (U of H) is a registered research facility with the USDA. They have been registered since 1968.
2.) The Dolphin Institute & Kewalo Basin Marine Mammal Lab, operated by Dr. Lou Herman, a U of H Professor, was a facility that housed dolphins on which behavior research was conducted. The facility no longer houses dolphins.

Previous History: 1.) University of Hawaii was issued two tickets in 1992, two stipulations in 1993 and 1996, a Letter of Information in 1997 and a stipulation in 1998.
2.) Louis Herman and KBMLL has no history in CITS.

Violation Events: From January 1996 to April 2004, KBMLL and U of H had numerous animal husbandry, handling, adequate staff, water quality and veterinary care issues. Three adult dolphins died in a six month period.

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

REVISED

RESPONDENT:
Louis M. Herman, PhD
The Dolphin Institute
420 Ward Ave.
Honolulu, HI 96822

CASE NUMBER HI04070-AC
DUE ON OR BEFORE June 15, 2006
CONTACT
PHONE (b)(6), b(7)(c)

DATE	CITATION	DESCRIPTION
<u>SEE ATTACHED</u>		
PENALTY	\$15,675	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	Am	Signature of IES Representative

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

REVISED

RESPONDENT:
Louis M. Herman, PhD
420 Ward Avenue, Suite 212
Honolulu, HI 96814

CASE NUMBER HI04070-AC
DUE ON OR BEFORE July 2, 2008
CONTACT
PHONE (b)(6), b(7)(c)

DATE	CITATION	DESCRIPTION
<u>SEE ATTACHED</u>		
PENALTY	\$7,563	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	Am	Signature of IES Representative

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

REVISED

RESPONDENT:
University of Hawaii at Manoa
Office of the Chancellor
Hawaii Hall
2500 Campus Rd.
Honolulu, HI 96822

CASE NUMBER **HI04070-AC**
DUE ON OR BEFORE **June 15, 2008**
CONTACT
PHONE **b(6), b(7)(c)**

DATE	CITATION	DESCRIPTION
<u>SEE ATTACHED</u>		
PENALTY	\$65,000	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

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

REVISED

RESPONDENT:
University of Hawaii at Manoa
Office of the Chancellor
Hawaii Hall
2500 Campus Rd.
Honolulu, HI 96822

CASE NUMBER **HI04070-AC**
DUE ON OR BEFORE **July 2, 2008**
CONTACT
PHONE **b(6), b(7)(c)**

DATE	CITATION	DESCRIPTION
<u>SEE ATTACHED</u>		
PENALTY	\$13,200	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

Revised Stipulation

<u>Louis M. Herman</u> <u>The Dolphin Institute & Kewalo Basin Marine Mammal Lab</u>	
9 CFR	
<u>October 29, 2003</u>	
3.101(d) and 3.106(a)(b)	Water Quality: Failed to assure the primary enclosure of dolphins contained water which would not be detrimental to their health, or exceed bacterial coliform count of 1000 MPN.
3.107(c)	Sanitation: Failed to assure the food preparation area and building was kept
<u>November 2003 – January 2004</u>	
3.108(a)	Adequate Employees: Failed to provide a sufficient number of adequately trained employees to carry out required activities
<u>December 17, 2003</u>	
2.131(a)(1)	Handling of Animals/Separation: Failed to assure dolphins were handled as expeditiously and carefully as possible as to not cause trauma or behavioral stress, and to separate them when they were not compatible.
3.101(a)(1)	Facilities/General: Failed to maintain indoor and outdoor dolphin facilities in good repair.
3.106(a)(b) and (d)	Water Quality: Failed to assure the primary enclosure of dolphins contained water which would not be detrimental to their health, or exceed a bacterial coliform count of 1000 MPN.
3.107(c)	Sanitation: Failed to assure the food preparation area and building was kept clean and in good repair.
3.109	Handling of Animals/Separation: Failed to assure dolphins were handled as expeditiously and carefully as possible as to not cause trauma or behavioral stress, and to separate them when they were not compatible.
<u>August 16, 2003</u>	
3.109	Separation: Failed to separate two dolphins from an aggressive dolphin, which was not in the best interest of one of the dolphins' health.
<u>October 6-13, 2003</u>	
3.109	Separation: Failed to separate two dolphins from an aggressive dolphin, which was not in the best interest of one of the dolphins' health.

<u>Louis M. Herman</u> <u>The Dolphin Institute & Kewalo Basin Marine Mammal Lab</u>	
9 CFR	
<u>January 1996-August 30, 2002</u>	
9.33(b)(2) 2.40(b)(2)	Veterinary Care: Failed to assure appropriate methods to prevent, control, diagnose and treat diseases were used in the care of dolphins.
<u>November 2002 – January 2004</u>	
3.108(a)	Adequate Employees: Failed to provide a sufficient number of adequately trained employees to carry out required activities
<u>October 29, 2003</u>	
3.106(a), (b) & 3.101(d)	Water Quality: Failed to assure the primary enclosure of dolphins contained water which would not be detrimental to their health, or exceed bacterial coliform count of 1000 MPN.
3.107(c)	Sanitation: Failed to assure the food preparation area and building was kept
<u>December 17, 2003</u>	
2.131(a)(1)	Handling of Animals/Separation: Failed to assure dolphins were handled as expeditiously and carefully as possible as to not cause trauma or behavioral stress, and to separate them when they were not compatible.
3.101(a)(1)	Facilities/General: Failed to maintain indoor and outdoor dolphin facilities in good repair.
3.106(a), (b) & 3.106(d)	Water Quality: Failed to assure the primary enclosure of dolphins contained water which would not be detrimental to their health, or exceed a bacterial coliform count of 1000 MPN.
3.107(c)	Sanitation: Failed to assure the food preparation area and building was kept clean and in good repair.
3.109	Handling of Animals/Separation: Failed to assure dolphins were handled as expeditiously and carefully as possible as to not cause trauma or behavioral stress, and to separate them when they were not compatible.

February/March 2003

2.131(a)(2)(ii) **Handling of Animals-Food Deprivation:** Deprived food of a dolphin when it did not give a desired response during training sessions.

3.105(c) **Feeding:** Deprived food of a dolphin when it did not give a desired response during training sessions.

April 4, 2003

2.40(b)(3) **Veterinarian Care:** Failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins.

May 30, 2003

2.40(b)(3) **Veterinarian Care:** Failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins

2.38(f) **Handling:** Failed to assure a dolphin was handled in a manner that would not cause stress or unnecessary discomfort.

August 16, 2003

3.109 **Separation:** Failed to separate two dolphins from an aggressive dolphin, which was not in the best interest of one of the dolphins' health.

October 6-13, 2003

3.109 **Separation:** Failed to separate two dolphins from an aggressive dolphin, which was not in the best interest of one of the dolphins' health.

November 12, 2003

2.40(b)(3) **Veterinarian Care:** Failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins.

December 28, 2003 – January 10, 2004

2.40(b)(2) **Veterinary Care:** Failed to assure dolphins received adequate veterinary care to prevent, control and treat diseases/illness.

January 17, 2004 – February 24, 2004

2.40(b)(2) **Adequate Veterinary Care:** Failed to assure dolphins received adequate veterinary care to prevent, control and treat disease/illness

University of Hawaii

9 CFR

January 1996-August 30, 2002

9.33(b)(2)

2.40(b)(2)

Veterinary Care: U of H failed to assure appropriate methods to prevent, control, diagnose and treat diseases were used in the care of dolphins.

January 2002 – April 24, 2002

2.38(f)(1)&

2.131(a)(1)

Handling: U of H failed to assure housed dolphins were handled in a manner as to not be stressed or experience unnecessary discomfort.

November 2002 – January 2004

2.33(b)(1)

Adequate Veterinary Care: U of H failed to assure the availability of appropriate personnel to provide adequate veterinary care.

3.108(a)

Adequate Employees: U of H failed to provide a sufficient number of adequately trained employees to carry out required activities.

October 29, 2003

2.31(d)(1)(vi)

Institutional Animal Care and Use Committee(IACUC): U of H IACUC failed to assure the animal's living conditions contributed to their health and well being.

3.106(a), (b) &

3.101(d)

Water Quality: U of H failed to assure the primary enclosure of dolphins contained water which would not be detrimental to their health, or exceed bacterial coliform count of 1000 MPN.

3.107(c)

Sanitation: U of H failed to assure the food preparation area and building was kept clean and in good repair.

December 17, 2003

2.31(d)(1)(vi)

Institutional Animal Care and Use Committee(IACUC): U of H IACUC failed to assure the animal's living conditions contributed to their health and well being.

2.38(f)(1)

Handling: U of H failed to assure dolphins were handled as expeditiously and carefully as possible as to not cause trauma or behavioral stress.

Non-Revised Stipulation

3.101(a)(1)	Facilities/General: U of H failed to maintain indoor and outdoor dolphin facilities in good repair.
3.106(a), (b) & 3.106(d)	Water Quality: U of H failed to assure the primary enclosure of dolphins contained water which would not be detrimental to their health, or exceed a bacterial coliform count of 1000 MPN.
3.107(c)	Sanitation: U of H failed to assure the food preparation area and building was kept clean and in good repair.
3.109	Handling of Animals/Separation: U of H failed to assure dolphins were handled as expeditiously and carefully as possible as to not cause trauma or behavioral stress, and to separate them when they were not compatible. February/March 2003
2.131(a)(2)(ii)	Handling of Animals-Food Deprivation: U of H deprived food of a dolphin when it did not give a desired response during training sessions.
2.38(f)(2)(ii)	Handling of Animals-Food Deprivation: U of H deprived food of a dolphin when it did not give a desired response during training sessions.
3.105(c)	Feeding: U of H deprived food of a dolphin when it did not give a desired response during training sessions. April 4, 2003
2.40(b)(3)	Veterinarian Care: U of H failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins.
2.33(b)(3)	Veterinarian Care: U of H failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins. May 30, 2003

2.40(b)(3)	Veterinarian Care: U of H failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins.
2.33(b)(3)	Veterinarian Care: U of H failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins.
2.38(f)	Handling: U of H failed to assure a dolphin was handled in a manner that would not cause stress or unnecessary discomfort. August 16, 2003
3.109	Separation: U of H failed to separate two dolphins from an aggressive dolphin, which was not in the best interest of one of the dolphins' health. October 6-13, 2003
3.109	Separation: U of H failed to separate two dolphins from an aggressive dolphin, which was not in the best interest of one of the dolphins' health. November 12, 2003
2.40(b)(3)	Veterinarian Care: U of H failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins.
2.33(b)(3)	Veterinarian Care: U of H failed to assure direct communication with the Attending Veterinarian on daily observations of ill dolphins. December 16, 2003
2.31(c)(8)&(d)(6)	IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research. December 17, 2003
2.31(c)(8)&(d)(6)	IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research. January 9, 2004
2.31(c)(8)&(d)(6)	IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 12, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 13, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 14, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 15, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 16, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 20, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.31(c)(8)&(d)(6) **January 22, 2004**
IACUC-Suspension: U of H failed to assure research activity was discontinued after IACUC suspended all research.

2.33(b)(2) **December 28, 2003 – January 10, 2004**
Adequate Veterinary Care: U of H failed to assure dolphins received adequate veterinary care to prevent, control and treat diseases/illness.

2.40(b)(2) **Veterinary Care:** U of H failed to assure dolphins received adequate veterinary care to prevent, control and treat diseases/illness.

2.32(c)(4) **January 20, 2004 – February 9, 2004**
Personnel: U of H failed to assure an employee was not subject to reprisal after she reported facility violations.

2.33(b)(2) **January 17, 2004 – February 24, 2004**
Adequate Veterinary Care: U of H failed to assure dolphins received adequate veterinary care to prevent, control and treat diseases/illness.

2.40(b)(2) **Adequate Veterinary Care:** U of H failed to assure dolphins received adequate veterinary care to prevent, control and treat disease/illness.