

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 07-0036
)
Tracey Harrington,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on December 6, 2006. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges Tracey Harrington willfully violated the Regulations and Standards on May 10, 2004, and February 3, 2005 (Compl. ¶¶ II-III). The Hearing Clerk served Ms. Harrington with the Complaint, the Rules of Practice, and a service

letter on December 9, 2006.¹ Ms. Harrington failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Ms. Harrington a letter dated January 5, 2007, informing her that she had not filed a timely response to the Complaint.

Ms. Harrington failed to file a response to the Hearing Clerk's January 5, 2007, letter.

On March 15, 2007, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Administrator filed a Motion for Adoption of Proposed Decision and Order [hereinafter Motion for Default Decision] and a Proposed Decision and Order Upon Admission of Facts by Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Tracey Harrington with the Administrator's Motion for Default Decision, the Administrator's Proposed Default Decision, and a service letter on March 19, 2007.² Ms. Harrington failed to file objections to the Administrator's Motion for Default Decision and the Administrator's Proposed Default Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Hearing Clerk sent Ms. Harrington a letter dated May 15, 2007, informing her that she had not filed a timely objection to the Administrator's Motion for Default Decision. Ms. Harrington failed to file a response to the Hearing Clerk's May 15, 2007, letter.

¹United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0003 7198 1947.

²United States Postal Service Domestic Return Receipt for Article Number 7001 0360 0000 0304 6804.

On June 20, 2007, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Decision and Order by Reason of Default [hereinafter Initial Decision]:

(1) concluding Tracey Harrington willfully violated the Animal Welfare Act and the Regulations and Standards, as alleged in the Complaint; (2) ordering Ms. Harrington to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (3) assessing Ms. Harrington a \$10,120 civil penalty; (4) revoking Ms. Harrington's Animal Welfare Act license; and (5) permanently disqualifying Ms. Harrington from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license.

On July 13, 2007, Tracey Harrington appealed the ALJ's Initial Decision to the Judicial Officer. On July 25, 2007, the Administrator filed a response to Ms. Harrington's appeal petition. On July 25, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision, except, for the reason discussed in this Decision and Order, *infra*, I do not conclude Ms. Harrington violated section 3.129(b) of the Regulations and Standards (9 C.F.R. § 3.129(b)) on May 10, 2004, and February 3, 2005.

DECISION

Statement of the Case

Tracey Harrington failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing.

Accordingly, the material allegations in the Complaint, except the allegations that Ms. Harrington violated section 3.129(b) of the Regulations and Standards (9 C.F.R. § 3.129(b)) on May 10, 2004, and February 3, 2005, are adopted as findings of fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact and Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Tracey Harrington is an individual whose address is 1312 State Route 369, Chenango Forks, New York 13746.

3. On May 10, 2004, and February 3, 2005, Tracey Harrington held an Animal Welfare Act license and operated as an “exhibitor” as that word is defined in the Animal Welfare Act and the Regulations and Standards.

4. On May 10, 2004, the Animal and Plant Health Inspection Service inspected Tracey Harrington’s premises and found the following willful violations of section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)):

A. The indoor facilities were not structurally sound and maintained in good repair so as to protect the animals from injury and to contain the animals, in willful violation of section 3.125(a) of the Regulations and Standards (9 C.F.R. § 3.125(a));

B. The facility lacked proper drainage, in willful violation of section 3.127(c) of the Regulations and Standards (9 C.F.R. § 3.127(c)); and

C. A sufficient number of adequately trained employees were not utilized to properly care for the animals, in willful violation of section 3.132 of the Regulations and Standards (9 C.F.R. § 3.132).

5. On February 3, 2005, the Animal and Plant Health Inspection Service inspected Tracey Harrington’s premises and found Ms. Harrington had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide adequate veterinarian care for animals in distress, in willful violation of section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)).

6. On February 3, 2005, the Animal and Plant Health Inspection Service inspected Tracey Harrington's premises and found Ms. Harrington had failed to maintain and provide the proper equipment necessary to euthanize her animals, in willful violation of section 2.40(b)(1) of the Regulations and Standards (9 C.F.R. § 2.40(b)(1)).

7. On February 3, 2005, the Animal and Plant Health Inspection Service inspected Tracey Harrington's premises and found Ms. Harrington had failed to provide for daily observation of her animals to prevent health issues, in willful violation of section 2.40(b)(3) of the Regulations and Standards (9 C.F.R. § 2.40(b)(3)).

8. On February 3, 2005, the Animal and Plant Health Inspection Service inspected Tracey Harrington's premises and Ms. Harrington denied Animal and Plant Health Inspection Service inspectors access to fully inspect her records, in willful violation of section 2.126 of the Regulations and Standards (9 C.F.R. § 2.126).

9. On February 3, 2005, the Animal and Plant Health Inspection Service inspected Tracey Harrington's facility and found the following willful violations of section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)):

A. The facilities were not structurally sound and maintained in good repair so as to protect the animals from injury and to contain the animals, in willful violation of section 3.125(a) of the Regulations and Standards (9 C.F.R. § 3.125(a));

B. The facility lacked proper drainage, in willful violation of section 3.127(c) of the Regulations and Standards (9 C.F.R. § 3.127(c)); and

C. Tracey Harrington failed to utilize a sufficient number of employees to maintain the prescribed level of husbandry practices, in willful violation of sections 3.32, 3.57, and 3.132 of the Regulations and Standards (9 C.F.R. §§ 3.32, .57, .132).

10. Tracey Harrington has a small-sized business. The gravity of eight of Ms. Harrington's 10 violations of the Regulations and Standards is significant. The gravity of Ms. Harrington's February 3, 2005, violations of 9 C.F.R. §§ 2.40(a) and 2.126 is severe. Ms. Harrington exhibited a lack of good faith and has a history of previous violations of the Animal Welfare Act and the Regulations and Standards.

11. A cease and desist order against Tracey Harrington, revocation of Ms. Harrington's Animal Welfare Act license, disqualification of Ms. Harrington from becoming licensed under the Animal Welfare Act, and assessment of a \$6,200 civil penalty against Ms. Harrington are warranted in law (7 U.S.C. § 2149) and justified by the facts.

Tracey Harrington's Appeal Petition

Tracey Harrington raises four issues in her July 13, 2007, filing [hereinafter Appeal Petition]. First, Ms. Harrington asserts a number events have made her compliance with the Animal Welfare Act and the Regulations and Standards difficult. These events include a propane gas explosion, which destroyed Ms. Harrington's barn and its contents and damaged Ms. Harrington's home; the refusal by Ms. Harrington's insurance company to pay for damages caused by the gas explosion; the abandonment of

Ms. Harrington by her boyfriend and father of her 6-year-old daughter in November 2004, when, without notice, Ms. Harrington's boyfriend moved to Florida to be with Ms. Harrington's mother; and the care needed by all Ms. Harrington's animals and Ms. Harrington's two small children in the cold winter of upstate New York. Ms. Harrington states physically and mentally she is having difficulty dealing with these events. (Appeal Pet. at 1-5.)

I have no reason to disbelieve Tracey Harrington's assertions regarding events which have adversely affected her ability to comply with the Animal Welfare Act and the Regulations and Standards, and I empathize with Ms. Harrington. Nonetheless, the events which have adversely affected Ms. Harrington's ability to comply with the Animal Welfare Act and the Regulations and Standards are neither defenses to her violations of the Animal Welfare Act and the Regulations and Standards nor mitigating circumstances to be considered when determining the sanction to be imposed for her violations of the Animal Welfare Act and the Regulations and Standards.

Second, Tracey Harrington contends she did not receive anything related to the instant proceeding until March 19, 2007 (Appeal Pet. at 4-5).

The Rules of Practice provide for service of the Complaint, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding . . . shall be deemed to be received by any party

to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

7 C.F.R. § 1.147(c)(1). The record establishes that the Hearing Clerk sent the Complaint to Ms. Harrington, 1312 State Route 369, Chenango Forks, New York 13746, by certified mail. The United States Postal Service delivered the certified mailing to Ms. Harrington's last known address on December 9, 2006, where "Steve Harrington" signed for the Complaint.³ Proper service of a complaint is made under the Rules of Practice when the complaint is delivered by certified mail to the respondent's last known address and someone signs for the complaint.⁴ Thus, I conclude the Hearing Clerk served Ms. Harrington with the Complaint on December 9, 2006, in accordance with the Rules of Practice, and Ms. Harrington was required to file her answer no later than December 29, 2006. Ms. Harrington's first and only filing in this proceeding is her Appeal Petition, which she filed July 13, 2007, 6 months 2 weeks after her answer was

³See note 1.

⁴*In re Ow Duk Kwon* (Order Denying Late Appeal), 55 Agric. Dec. 78, 93 (1996) (stating proper service by certified mail is made when a respondent is served with a certified mailing at his or her last known address and someone signs for the document); *In re Shulamis Kaplinsky*, 47 Agric. Dec. 613, 619 (1988) (stating the excuse, occasionally given in an attempt to justify the failure to file a timely answer, that the person who signed the certified receipt card failed to give the complaint to the respondent in time to file a timely answer has been and will be routinely rejected); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925, 929 (1987) (stating a default order is proper where the respondent's sister signed the certified receipt card as to a complaint and forgot to give it to the respondent when she saw him 2 weeks later).

required to be filed. As Ms. Harrington has failed to file a timely answer, she is deemed to have admitted the material allegations of the Complaint.

Third, Tracey Harrington states she called (202) 720-4443 on March 19, 2007, and requested an extension of time from a woman answering the telephone. Ms. Harrington asserts the woman granted an extension of time and assured Ms. Harrington she would inform me of the extension of time. The telephone number for the Office of the Hearing Clerk is (202) 720-4443; therefore, I infer Ms. Harrington asserts she spoke with a woman employed in the Office of the Hearing Clerk. (Appeal Pet. at 4-5.)

As an initial matter, I find nothing in the record indicating Ms. Harrington requested or was granted an extension of time to file any document in the instant proceeding and no one from the Office of the Hearing Clerk has contacted me in reference to a request for an extension of time in the instant proceeding.

The Hearing Clerk served Ms. Harrington with the Complaint on December 9, 2006.⁵ Therefore, Ms. Harrington was required to file a response to the Complaint no later than December 29, 2006. Ms. Harrington asserts she requested an extension of time on March 19, 2007. Ms. Harrington's request for an extension of time to file a response to the Complaint on March 19, 2007, is a nullity as extensions of time must be requested before the expiration of the time for filing the document that is the subject of the request for an extension of time.

⁵See note 1.

Moreover, any extension of time granted by an employee of the Office of the Hearing Clerk would be a nullity. The Rules of Practice explicitly provide extensions of time may only be granted by an administrative law judge or the Judicial Officer, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(f) *Extensions of time.* The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge or the Judicial Officer as provided in § 1.143 if, in the judgment of the Judge or the Judicial Officer, as the case may be, there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

7 C.F.R. § 1.147(f). None of the employees of the Office of the Hearing Clerk are administrative law judges or judicial officers. Therefore, I reject Ms. Harrington's contention that she was granted an extension of time.

Fourth, Tracey Harrington contends she is not able to pay the \$10,120 civil penalty assessed by the ALJ (Appeal Pet. at 4-5).

When determining the amount of the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations and Standards, the Secretary of Agriculture is required to give due consideration to four factors: (1) the size of the business of the person involved, (2) the gravity of the violations, (3) the person's good faith, and (4) the

history of previous violations.⁶ A respondent's ability to pay the civil penalty is not one of the factors considered by the Secretary of Agriculture when determining the amount of the civil penalty. Therefore, Ms. Harrington's inability to pay the \$10,120 civil penalty is not a basis for reducing the \$10,120 civil penalty assessed by the ALJ.⁷

The Administrator does not allege the size of Tracey Harrington's business; thus, Ms. Harrington is not deemed to have admitted the size of her business by her failure to file a timely answer. As the record before me does not establish the size of Ms. Harrington's business, I find Ms. Harrington has a small business, which is the most favorable finding I can make when determining the amount of the civil penalty. Based on the nature of the violations which Ms. Harrington is deemed to have admitted, I find eight of her violations are significant; however, the Administrator does not contend that any of these eight violations resulted in harm or injury to Ms. Harrington's animals. I find Ms. Harrington's February 3, 2005, failure to provide adequate veterinary care for animals in distress, in violation of section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)), severe because the violation appears that it may have caused harm to her animals. In addition, I find Ms. Harrington's February 3, 2005, denial of Animal and

⁶7 U.S.C. § 2149(b).

⁷See *In re Marjorie Walker*, ___ Agric. Dec. ___, slip op. at 48 (Aug. 10, 2006) (stating section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) sets forth factors that must be considered when determining the amount of the civil penalty to be assessed against a respondent for violations of the Animal Welfare Act and the Regulations and Standards and a respondent's ability to pay the civil penalty is not one of those factors).

Plant Health Inspection Service inspector access to her records, in violation of section 2.126 of the Regulations and Standards (9 C.F.R. § 2.126), severe because it thwarts the Secretary of Agriculture's ability to carry out the purposes of the Animal Welfare Act. Ms. Harrington's ongoing pattern of violations on May 10, 2004, and February 3, 2005, establishes a history of previous violations for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and a lack of good faith.

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. However, the recommendations of administrative officials as to the sanction are

not controlling, and, in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.⁸

The Administrator seeks assessment of a \$10,120 civil penalty against Tracey Harrington, issuance of a cease and desist order against Ms. Harrington, revocation of Ms. Harrington's Animal Welfare Act license, and disqualification of Ms. Harrington from obtaining an Animal Welfare Act license.⁹ However, the Administrator does not provide any basis for his recommendation. I find Ms. Harrington is deemed to have admitted she committed 10 violations of the Regulations and Standards and she could be assessed a maximum civil penalty of \$2,750 for each of her 10 violations of the Regulations and Standards.¹⁰ After examining all the relevant circumstances, in light of

⁸*In re Jerome Schmidt*, __ Agric. Dec. __, slip op. at 56 (Mar. 26, 2007); *In re Alliance Airlines*, 64 Agric. Dec. 1595, 1608 (2005); *In re Mary Jean Williams* (Decision as to Deborah Ann Milette), 64 Agric. Dec. 364, 390 (2005); *In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. 763, 787 (2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re Excel Corp.*, 62 Agric. Dec. 196, 234 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005).

⁹The Administrator's Proposed Default Decision at fifth unnumbered page.

¹⁰Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture, effective September 2, 1997, adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v) (2005); 62 Fed. Reg. 40,924 (July 31, 1997)). Subsequently, the Secretary of Agriculture adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare

(continued...)

the United States Department of Agriculture's sanction policy, and taking into account the requirements of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), the remedial purposes of the Animal Welfare Act, and the recommendations of the administrative officials, I conclude a cease and desist order against Ms. Harrington, revocation of Ms. Harrington's Animal Welfare Act license, disqualification of Ms. Harrington from obtaining an Animal Welfare Act license, and assessment of a \$6,200 civil penalty¹¹ against Ms. Harrington are appropriate and necessary to ensure Ms. Harrington's compliance with the Regulations and Standards in the future, to deter others from violating the Animal Welfare Act and the Regulations and Standards, and to fulfill the remedial purposes of the Animal Welfare Act.

The ALJ's Conclusion That Tracey Harrington Violated 9 C.F.R. § 3.129(b)

The Administrator alleges that, on May 10, 2004, and February 3, 2005, Tracey Harrington failed to take adequate measures to prevent molding, contamination, and deterioration of *food containers*, in willful violation of section 3.129(b) of the

¹⁰(...continued)

Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards occurring after June 23, 2005, by increasing the maximum civil penalty from \$2,500 to \$3,750 (7 C.F.R. § 3.91(b)(2)(ii) (2006)). None of Ms. Harrington's violations of the Regulations and Standards occurred after June 23, 2005.

¹¹I assess Ms. Harrington a \$2,000 civil penalty for her February 3, 2005, violation of 9 C.F.R. § 2.40(a); a \$2,000 civil penalty for her February 3, 2005, violation of 9 C.F.R. § 2.126; and \$275 for each of her other eight violations of the Regulations and Standards.

Regulations and Standards (9 C.F.R. § 3.129(b)) (Compl. ¶¶ II A.3., III E.3.), and, by reason of her failure to file a timely answer, Ms. Harrington is deemed to have admitted the allegations in the Complaint. Based upon this deemed admission, the ALJ found that, on May 10, 2004, and February 3, 2005, Ms. Harrington failed to take adequate measures to prevent molding, contamination, and deterioration of *food containers*, in willful violation of section 3.129(b) of the Regulations and Standards (9 C.F.R. § 3.129(b)). However, section 3.129(b) of the Regulations and Standards (9 C.F.R. § 3.129(b)) provides “[i]f self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of *food*.” (Emphasis added.) Ms. Harrington’s admission that she failed to take adequate measures to prevent molding, contamination, and deterioration of *food containers* is not a basis for concluding that she violated 9 C.F.R. § 3.129(b). Therefore, I decline to conclude Ms. Harrington violated 9 C.F.R. § 3.129(b).

For the foregoing reasons, the following Order is issued.

ORDER

1. Tracey Harrington, her agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards. Ms. Harrington, her agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from engaging in any activity for which a

license is required under the Animal Welfare Act and the Regulations and Standards without being licensed, as required.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Ms. Harrington.

2. Tracey Harrington is assessed a \$6,200 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Brian T. Hill
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building, Mail Stop 1417
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Brian T. Hill within 60 days after service of this Order on Ms. Harrington. Ms. Harrington shall state on the certified check or money order that payment is in reference to AWA Docket No. 07-0036.

3. Tracey Harrington's Animal Welfare Act license is revoked.

Paragraph 3 of this Order shall become effective on the 60th day after service of this Order on Ms. Harrington.

4. Tracey Harrington is permanently disqualified from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal

Welfare Act license, directly or indirectly through any corporate or other device or person, effective on the 60th day after service of this Order on Ms. Harrington.

RIGHT TO JUDICIAL REVIEW

Tracey Harrington has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of the Order in this Decision and Order. Ms. Harrington must seek judicial review within 60 days after entry of the Order in this Decision and Order.¹² The date of entry of the Order in this Decision and Order is August 28, 2007.

Done at Washington, DC

August 28, 2007

William G. Jenson
Judicial Officer

¹²7 U.S.C. § 2149(c).