

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

In re:	)	
	)	<b>AWA Docket No. D-05-0005</b>
ANIMALS OF MONTANA, INC.,	)	
a Montana corporation,	)	
	)	
Petitioner	)	<b>Decision and Order</b>

1. The Petitioner, Animals of Montana, Inc. (Animals of Montana), is represented by Michael L. Humiston, Esq. The Respondent, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS), was previously represented by Colleen A. Carroll, Esq., and is now represented by Bernadette R. Juarez, Esq.
2. The Animal Welfare Act authorized the Secretary of Agriculture “to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.” 7 U.S.C. § 2151.
3. Animals of Montana’s request for hearing, filed in June 2005, concerns APHIS’ termination of Animals of Montana’s Animal Welfare Act license. *See* 9 C.F.R. §§ 2.11, 2.12.
4. APHIS’ Motion for Summary Judgment, filed March 8, 2006, and thereafter supplemented, is GRANTED, as follows.
5. APHIS’ “Supplemental Briefing and Motion for Reconsideration,” filed April 4, 2008, has been carefully considered, together with Animals of Montana’s “Memorandum Re: Retroactive Application” (unsigned), emailed April 4, 2008. Also carefully considered was Dr. Gibbens’ Supplemental Declaration filed August 13, 2008.
6. APHIS has persuaded me that termination pursuant to 9 C.F.R. § 2.12 need not be a permanent remedy and that APHIS does not seek permanent disqualification here. The portion of 9 C.F.R. § 2.11 applicable here provides:

. . . A license **will not be issued** (emphasis added) to any applicant who:  
    . . . Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have

violated any Federal, State, or local laws or regulations pertaining to the transportation, (and) ownership . . . of animals . . . and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11

7. Key, of course, is the Administrator's determination whether the issuance of a license would be contrary to the purposes of the Act. To express APHIS' policy and the Administrator's determinations in this case, APHIS relied on Dr. Gibbens' four-page declaration attached to Respondent's Motion for Summary Judgment. Troy Hyde's misdemeanor convictions of a Lacey Act violation and an Endangered Species Act violation, accompanied by the false and/or fraudulent information on the APHIS Forms 7020 used in the transactions, do require, according to Dr. Gibbens, termination of Animals of Montana, Inc.'s Animal Welfare Act license and a two-year period of disqualification, minimum, but not permanent disqualification. After the period of disqualification, a license **could be issued**.

8. APHIS' policy and the Administrator's determinations are further expressed by Dr. Gibbens' five-page Supplemental Declaration filed August 13, 2008. Dr. Gibbens therein affirmed and further explained the necessity of, at minimum, a two-year period of disqualification from licensure (a one-year period disqualification for each of Troy Hyde's two criminal convictions, served consecutively).

9. No objections have been filed to the following Conclusion, which is supported and reached as a matter of summary judgment.

**Conclusion**

Troy Allen Hyde, also known as Troy A. Hyde and as Troy Hyde, an individual (frequently herein, "Mr. Hyde"), on March 8, 2005, pled guilty to and was found to have committed<sup>1</sup> the two below-described misdemeanor violations:

(a) In May 1999, Mr. Hyde committed a misdemeanor trafficking violation of the Lacey Act, by arranging the transport of a tiger cub, an endangered species, from Minnesota to Montana. Mr. Hyde had bought the tiger cub for \$750 from individuals who had no permit or license to engage in interstate commercial activity with endangered species. Thus, the tiger cub was sold<sup>2</sup> in violation of

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1. Attachment C and Attachment B to Motion for Summary Judgment.

2. The individuals in Minnesota who sold the tiger cub wrote that the transaction was a "permanent breeding loan" rather than the sale that it was. Mr. Hyde did not intend to breed the tiger.

the Endangered Species Act, and Mr. Hyde's subsequent knowing transport to Montana was a violation of the Lacey Act.

(b) In May 2000, Mr. Hyde committed a misdemeanor violation of the Endangered Species Act, by arranging the transport of a tiger, an endangered species, from Minnesota to Montana in the course of commercial activity. Mr. Hyde had bought<sup>3</sup> the tiger ("Keeno") for \$1,000 from the same individuals referenced above who had no permit or license to engage in interstate commercial activity with endangered species.

### Order

This Order is effective on the day after this Decision becomes final (*see* following section regarding finality). The Animal Welfare Act license of Animals of Montana, Inc. is terminated, in accordance with 9 C.F.R. § 2.12, because the above-described misdemeanor violations were committed by an owner, responsible corporate officer, trainer, and agent of Animals of Montana, Inc. Animals of Montana, Inc., and its officers and agents (including but not limited to Troy Allen Hyde, also known as Troy A. Hyde and as Troy Hyde), and any legal entity in which Animals of Montana, Inc., has a substantial interest, (a) are disqualified for 2 years from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person; and (b) may apply for an Animal Welfare Act license 60 days prior to the end of the 2 years of disqualification, with the understanding that no license will issue until disqualification has ended.

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3. The individuals in Minnesota who sold the tiger wrote that the transaction was a "donation" rather than the sale that it was.

**Finality**

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

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

Done at Washington, D.C.  
this 29<sup>th</sup> day of August 2008

Jill S. Clifton  
Administrative Law Judge

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