

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. D-05-0005
)
Animals of Montana, Inc.,)
a Montana corporation,)
)
Petitioner) **Decision and Order**

PROCEDURAL HISTORY

On June 6, 2005, the Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], informed Troy Hyde, owner and operator of Animals of Montana, Inc. [hereinafter Animals of Montana], that APHIS intended to terminate Animals of Montana's Animal Welfare Act license (Animal Welfare Act license number 81-C-0023) based upon Troy Hyde's violations of the Lacey Act and the Endangered Species Act. On June 16, 2005, Animals of Montana instituted this proceeding by requesting a hearing regarding APHIS' proposed termination of its Animal Welfare Act license. Animals of Montana 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 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]. On July 8, 2005, the Administrator of APHIS [hereinafter the Administrator], responded to Animals of Montana's request for a hearing stating he agreed with Animals of Montana that a hearing should be scheduled.

Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] scheduled a hearing to commence March 9, 2006, in Washington, DC. On March 6, 2006, the Administrator reversed his position regarding the need for a hearing and requested a continuance of the hearing, without date, pending the Administrator's filing a motion for summary judgment and the ALJ's ruling on that motion for summary judgment. On March 6, 2006, the ALJ cancelled the hearing.

On March 8, 2006, the Administrator filed "Respondent's Motion for Summary Judgment." On May 24, 2006, Animals of Montana filed "Petitioner's Response to Respondent's Motion for Summary Judgment" in which it sought denial of the Administrator's motion for summary judgment. On October 29, 2007, the ALJ issued a "Ruling Upon Consideration of Respondent's Motion for Summary Judgment" in which the ALJ: (1) found no material issues of fact with respect to four conclusions; (2) found a number of issues appropriate for consideration only after a hearing and inappropriate for summary judgment; and (3) ordered supplemental briefs to address the issue of whether Mr. Hyde's May 1999 and May 2000 Lacey Act and Endangered Species Act violations could constitute a basis for termination of Animal of Montana's Animal Welfare Act license based upon a regulation (9 C.F.R. § 2.12) that became effective August 13, 2004,

more than 4 years after Mr. Hyde's violations of the Lacey Act and the Endangered Species Act.

On April 4, 2008, the Administrator filed "Supplemental Briefing and Motion for Reconsideration of Ruling on Consideration of Respondent's Motion for Summary Judgment," and on April 7, 2008, Animals of Montana filed "Petitioner's Memorandum Re: Retroactive Application of 9 C.F.R. § 2.12."

On July 17, 2008, the ALJ held a conference call to discuss the parties' April 2008 filings. The ALJ stated she had "reversed course" and, instead of holding a hearing to receive testimony and exhibits, concluded she would decide the case based upon written submissions. (Hearing Cancellation filed July 17, 2008.) On August 13, 2008, the Administrator filed "Supplemental Declaration of Robert M. Gibbens, D.V.M." Animals of Montana did not file any supplemental written submission in response to the ALJ's July 17, 2008, conference call.

On August 29, 2008, the ALJ issued a Decision and Order [hereinafter the Initial Decision] in which the ALJ: (1) granted the Administrator's March 8, 2006, motion for summary judgment; (2) terminated Animals of Montana's Animal Welfare Act license; and (3) disqualified Animals of Montana from obtaining an Animal Welfare Act license for 2 years.

On September 29, 2008, Animals of Montana appealed the ALJ's Initial Decision to the Judicial Officer, and on January 16, 2009, the Administrator filed "Respondent's

Response to Petitioner’s Appeal Petition.” On January 23, 2009, the Hearing Clerk transmitted the record to me for consideration and decision. Based upon a careful consideration of the record, I affirm the ALJ’s August 29, 2008, Initial Decision terminating Animals of Montana’s Animal Welfare Act license and disqualifying Animals of Montana from obtaining an Animal Welfare Act license for 2 years.

DECISION

Discussion

The Animal Welfare Act provides that the Secretary of Agriculture shall issue licenses to dealers and exhibitors upon application for a license in such form and manner as the Secretary of Agriculture may prescribe (7 U.S.C. § 2133). The power to require and issue licenses under the Animal Welfare Act includes the power to terminate a license and to disqualify a person from becoming licensed.¹ The Regulations specify certain bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). Section 2.11(a)(6) of the Regulations provides that an initial application for an Animal Welfare Act license will be denied if the applicant has provided false records to a

¹*In re Amarillo Wildlife Refuge, Inc.*, __ Agric. Dec. ____, slip op. at 6 (Jan. 6, 2009); *In re Loreon Vigne*, __ Agric. Dec. ____, slip op. at 3-4 (Nov. 18, 2008); *In re Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

government agency or has been found to have violated any federal law pertaining to the transportation, ownership, neglect, or welfare of animals, as follows:

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

....

(6) 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, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed 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(a)(6). Section 9 of the Animal Welfare Act (7 U.S.C. § 2139) provides that the act, omission, or failure of any person acting for or employed by an Animal Welfare Act licensee shall be deemed the act, omission, or failure of that licensee. The record supports the conclusions that: (1) Troy Hyde, owner, operator, and president of and the responsible corporate officer for Animals of Montana, has been found to have violated the Lacey Act and the Endangered Species Act; (2) Troy Hyde provided false records to a government agency; (3) Troy Hyde was acting for or employed by Animals of Montana when he was found to have violated the Lacey Act and the Endangered Species Act and when he provided false records to a government agency; and (4) APHIS' termination of Animals of Montana's Animal Welfare Act license and disqualification from obtaining an Animal Welfare Act license for a period of 2 years is warranted in law and justified by the facts.

Findings of Fact

1. Animals of Montana is a Montana corporation (Respondent's Motion for Summary Judgment Attach. A at 2-3).
2. Animals of Montana's mailing address is 14752 Brackett Creek Road, Bozeman, Montana 59715 (Respondent's Motion for Summary Judgment Attach. A at 3).
3. At all times material to the instant proceeding, Animals of Montana held Animal Welfare Act license number 81-C-0023 (Respondent's Motion for Summary Judgment Attach. G at 6-9, 13, 15, 17-22, 24-28, 33-35; Attach. N ¶ 3).
4. Troy Hyde was the incorporator of Animals of Montana (Respondent's Motion for Summary Judgment Attach. A at 3).
5. At all times material to the instant proceeding, Troy Hyde was the registered agent of Animals of Montana (Respondent's Motion for Summary Judgment Attach. A at 3, 6, 8, 10; Attach. N ¶ 6).
6. At all times material to the instant proceeding, Troy Hyde owned and operated Animals of Montana (Respondent's Motion for Summary Judgment Attach. B ¶ 2b; Attach. N ¶ 3; Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶ 13).
7. At all times material to the instant proceeding, Troy Hyde was the president of and the responsible corporate officer for Animals of Montana (Respondent's Motion for Summary Judgment Attach. A at 4, 6-11; Attach. B ¶ 2b; Attach N ¶ 3; Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶ 13).

8. On March 8, 2005, in an Information filed with the United States District Court for the District of Minnesota, the United States Attorney for the District of Minnesota charged Troy Hyde with violations of the Lacey Act and the Endangered Species Act, as follows:

COUNT 1

On or about May 22, 1999, in the State of Minnesota and elsewhere, the defendant,

TROY ALLEN HYDE,

did knowingly transport or cause to be transported wildlife, to wit: a tiger, that had been sold in violation of a law or regulation of the United States, when, in the exercise of due care, he should have known that the wildlife was sold in violation of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(E), (F), and (G); all in violation of Title 16, United States Code, Sections 3372(a) and 3373(d)(1)(B)(2).

COUNT 2

On or about May 14, 2000, in the State of Minnesota and elsewhere, the defendant,

TROY ALLEN HYDE,

did knowingly and unlawfully receive, carry or transport, or cause to be delivered, received, or transported, in interstate commerce, and in the course of commercial activity an endangered species, to wit: a tiger; all in violation of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(E) and (G).

Respondent's Motion for Summary Judgment Attach. C.

9. On March 8, 2005, Troy Hyde appeared before United States District Court Judge Ann D. Montgomery and admitted the allegations in the Information referenced in Findings of Fact number 8 (Respondent's Motion for Summary Judgment Attach. L).

10. On March 8, 2005, Troy Hyde entered into a Plea Agreement and Sentencing Stipulations in which he pled guilty to a misdemeanor trafficking violation of the Lacey Act and to a violation of the Endangered Species Act (Respondent's Motion for Summary Judgment Attach. B). The Plea Agreement and Sentencing Stipulations sets forth the factual basis relevant to Troy Hyde's violations of the Lacey Act and the Endangered Species Act, as follows:

1. Charges. The defendant agrees to plead guilty to Count[] One charging the defendant with a misdemeanor trafficking violation of the Lacey Act and Count Two charging a violation of the Endangered Species Act.
2. Factual Basis.
 - a. Regulatory Background. Both the United States Fish and Wildlife Service (USFWS) and the United States Department of Agriculture (USDA) have authority over animals kept in captivity. Among other things, the USFWS regulates the interstate commerce of endangered and threatened species (collectively, referred to hereafter as "protected") through the Endangered Species Act (ESA) (16 U.S.C. §§ 1531 *et seq.*) and Endangered Species Regulations (50 C.F.R. 17). The USFWS also regulates the interstate commerce of wildlife through the Lacey Act (16 U.S.C. §§ 3371 *et seq.*). The Lacey Act, among other things, prohibits a person from knowingly engaging in certain conduct with wildlife when, in the exercise of due care, he should have known that the wildlife was possessed, transported or sold in violation of any wildlife-related federal law or regulation. 16 U.S.C.

§§ 3372(a), 3373(d)(1)(B)(2). The USDA regulates the transportation, purchase, sale, housing, care, handling, and treatment of animals through the Animal Welfare Act (7 U.S.C. §§ 2131 *et seq.*). Among other things, the Animal Welfare Act requires dealers and exhibitors to make and retain certain records with respect to the purchase, sale, transportation, identification, and previous ownership of animals. The Animal and Plant Health Inspection Service (APHIS) is a component of USDA. The APHIS Form 7020 can be used to record the required information.

Under the ESA, the Secretary of the Interior has, through the USFWS, the authority to issue permits authorizing otherwise prohibited activity, for scientific purposes, to enhance the survival of the species, or for the incidental taking of endangered wildlife. These are known as Endangered Species permits, or ES permits (or registration). Such permits/registrations are difficult to obtain.

- b. General Factual Background. The defendant owns and operates a business known as Animals of Montana, Inc. He is the responsible corporate officer for Animals of Montana. Defendant and Animals of Montana acquired an APHIS Class “C” exhibitor license in 1993. Defendant and his business acquired a “Permit for Roadside Menagerie” from the Montana Department of Fish, Wildlife and Parks in approximately 1993. The defendant and his business have acquired leopards, snow leopards, a spotted leopard, tigers, lions, cougars, bobcats, bears, Canada lynx, wolves, and other wildlife over the years. Several of these transactions involved interstate purchases and sales the defendant made with Kenneth and Nancy Kraft of Racine, Minnesota. Defendant displayed the wildlife at his facility in Bozeman, Montana, and he earned income from displaying the wildlife for photographers and by training certain of the wildlife for use in movies, commercials, and similar film work.

In 1999, the defendant received a USFWS Captive-Bred Wildlife (CBW) permit for Siberian tigers. In June 2000, the defendant renewed this CBW registration and also obtained a

CBW for snow leopards. At the time he applied for and received the CBWs, the defendant received copies of the applicable wildlife regulations and related rules regarding his CBW permit. He signed various paperwork related to his CBW certifying he had read the legislation and other materials applicable to CBW registration. The CBW registration allows for commercial activity with species covered by the CBW, but only with other persons who also have a CBW registration.

- c. Offense Conduct. On or about May 22, 1999, the defendant arranged for the sale and purchase of a tiger. The defendant negotiated the sale of the tiger by telephone with Nancy Kraft. He paid the Krafts \$750 for the tiger. The tiger had been identified as both a Bengal and, subsequently, a Siberian. On the APHIS Form 7020, the tiger was identified as a “generic Siberian tiger.” The defendant asked a third party to pick up the tiger cub for him from the Krafts in Minnesota, and the tiger was transported to the defendant in Montana. Tigers are endangered. While the defendant had a CBW for Siberian tigers, the Krafts did not have any permit or license to engage in the interstate commercial activity with these, or any other, endangered species. The sale of these animals in interstate commerce violated the Endangered Species Act, and at the time of the offense, the defendant, in the exercise of due care, should have known that the sale was illegal. Thus, the subsequent knowing transport of this tiger to Montana at the defendant’s direction violated the Lacey Act. APHIS Forms 7020 record information about the acquisition, disposition or transport of animals (other than cats and dogs). The APHIS Form 7020 the defendant received from the Krafts stated the transaction was a “permanent breeding loan” rather than the sale that it was. The defendant had not entered into any agreement to breed the tiger with the Krafts, nor was it his intention to breed the tiger.

In or about May 2000, the defendant negotiated with Nancy Kraft the purchase of a tiger (“Keeno”) for \$1,000. The defendant arranged for the transport of the tiger from Minnesota to Montana. While the defendant had a CBW for

Siberian tigers, the Krafts did not have any permit or license to engage in the interstate commercial activity with these, or any other, endangered species. The knowing and unlawful transport of these animals in interstate commerce violated the Endangered Species Act. APHIS Forms 7020 record information about the acquisition, disposition or transport of animals (other than cats and dogs). The APHIS Form 7020 for this transaction reflected that it was a “donation” rather than the sale that it was.

Respondent’s Motion for Summary Judgment Attach. B at 1-3.

11. On March 8, 2005, William H. Koch, Assistant United States Attorney, and Catherine C. Pisaturo, Trial Attorney, United States Department of Justice, on behalf of Thomas B. Heffelfinger, United States Attorney; Troy Hyde; and Bret B. Hicken, Attorney for Troy Hyde, signed the Plea Agreement and Sentencing Stipulations referenced in Findings of Fact number 10 (Respondent’s Motion for Summary Judgment Attach. B at 9).

12. On September 8, 2005, based on the Plea Agreement and Sentencing Stipulations referenced in Findings of Fact numbers 10 and 11, United States District Court Judge Ann D. Montgomery convicted Troy Hyde of a trafficking violation of the Lacey Act and a violation of the Endangered Species Act, sentenced Troy Hyde to 2 years of probation and 180 days of home detention, and ordered Troy Hyde to pay \$10,000 in restitution (Respondent’s Motion for Summary Judgment Attachs. E-F).

13. Troy Hyde falsified United States Department of Agriculture records (APHIS Form 7020) in furtherance of and to conceal his violations of the Lacey Act and the Endangered Species Act (Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶ 15).

14. Based upon Troy Hyde's falsification of United States Department of Agriculture records and violations of the Lacey Act and the Endangered Species Act Dr. Robert M. Gibbens, D.V.M., Western Regional Director, Animal Care, APHIS, found Animals of Montana unfit to hold an Animal Welfare Act license (Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶ 16).

15. Based upon Troy Hyde's falsification of United States Department of Agriculture records and violations of the Lacey Act and the Endangered Species Act, Dr. Robert M. Gibbens, D.V.M., Western Regional Director, Animal Care, APHIS, found the issuance of an Animal Welfare Act license to Animals of Montana contrary to the purposes of the Animal Welfare Act (Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶ 19).

16. Dr. Robert M. Gibbens, based upon his 8 years of experience as Western Regional Director, Animal Care, APHIS, and based upon Troy Hyde's falsification of United States Department of Agriculture records and violations of the Lacey Act and the Endangered Species Act, recommended termination of Animals of Montana's Animal Welfare Act license and disqualification of Animals of Montana from becoming licensed

under the Animal Welfare Act for a period of 2 years (Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶¶ 1, 20-24).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Based on the Findings of Fact, I conclude the Administrator's determination that Animals of Montana's retention of an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act, is reasonable.
3. Based on the Findings of Fact, I conclude Animals of Montana is unfit to be licensed under the Animal Welfare Act within the meaning of 9 C.F.R. § 2.11(a)(6).

Animals of Montana's Appeal Petition

Animals of Montana raises eight issues in "Petitioner's Appeal of Hearing Officer's Decision and Order" [hereinafter Appeal Petition]. First, Animals of Montana argues the Administrator's motion for summary judgment was time-barred by section 1.143(b)(2) of the Rules of Practice (7 C.F.R. § 1.143(b)(2)) (Appeal Pet. at 3).

The Rules of Practice provide "[a]ll motions and request[s] concerning the complaint must be made within the time allowed for filing an answer." (7 C.F.R. § 1.143(b)(2).) On June 16, 2005, Animals of Montana instituted this proceeding by requesting a hearing regarding APHIS' proposed termination of its Animal Welfare Act license.² The Hearing Clerk served the Administrator with Animals of Montana's request

²The Rules of Practice define the word "complaint" as including a "document by
(continued...)

for a hearing on June 23, 2005; therefore, the Administrator was required to file with the Hearing Clerk any motion concerning the request for hearing no later than July 13, 2005.³

The Administrator filed the motion for summary judgment with the Hearing Clerk on March 8, 2006, more than 7 months after a motion concerning the request for hearing was required to be filed. However, after review of the Administrator's motion for summary judgment, I conclude the Administrator's March 8, 2006, motion for summary judgment is not a motion "concerning" the request for hearing. The Administrator does not seek correction or clarification of the request for hearing and does not seek an extension of time to file a response to the request for hearing. Instead, the Administrator's motion for summary judgment seeks a judgment based on the filings in the record. Therefore, I find the time limit in 7 C.F.R. § 1.143(b)(2) is not applicable to the Administrator's March 8, 2006, motion for summary judgment.

Second, Animals of Montana argues the Administrator's motion for summary judgment is inappropriate because suspension or revocation of Animal of Montana's Animal Welfare Act license is discretionary (Appeal Pet. at 4).

²(...continued)
virtue of which a proceeding is instituted." (7 C.F.R. § 1.132.) Therefore, I find Animals of Montana's request for a hearing constitutes a "complaint" for the purposes of 7 C.F.R. § 1.143(b)(2).

³The Rules of Practice require that an answer must be filed with the Hearing Clerk within 20 days after service of the document instituting the proceeding (7 C.F.R. § 1.136(a)).

The Administrator seeks termination of Animals of Montana's Animal Welfare Act license and a 2-year disqualification from obtaining an Animal Welfare Act license based upon 9 C.F.R. §§ 2.11, .12. The Administrator does not seek suspension or revocation of Animals of Montana's license pursuant to 7 U.S.C. § 2149(a) for violations of the Animal Welfare Act or the Regulations, as Animals of Montana asserts. Therefore, I find Animals of Montana's argument that summary judgment is inappropriate because suspension or revocation of Animals of Montana's license is discretionary, misplaced. Moreover, I have repeatedly found summary judgment appropriate in cases involving the termination and denial of Animal Welfare Act licenses based upon prior criminal convictions.⁴ Hearings are futile where, as in the instant proceeding, there is no factual dispute of substance.⁵

⁴See *In re Amarillo Wildlife Refuge, Inc.*, __ Agric. Dec. ____, slip op. at 6 (Jan. 6, 2009) (affirming the administrative law judge's initial decision granting the administrator's motion for summary judgment to terminate an Animal Welfare Act license based on the conviction of Amarillo Wildlife Refuge, Inc.'s president, director, and agent for violations of the Endangered Species Act notwithstanding Amarillo Wildlife Refuge, Inc.'s request for an oral hearing); *In re Loreon Vigne*, __ Agric. Dec. ____, slip op. at 1-3 (Nov. 18, 2008) (affirming the administrative law judge's initial decision granting the administrator's motion for summary judgment to terminate an Animal Welfare Act license based on the Endangered Species Act conviction of a corporation that Loreon Vigne managed, directed, and controlled); *In re Mark Levinson*, 65 Agric. Dec. 1026, 1028 (2006) (upholding the administrative law judge's initial decision affirming the administrator's denial of Mark Levinson's Animal Welfare Act license application after the administrator demonstrated there was no material fact upon which to hold a hearing).

⁵See *Veg-Mix, Inc. v. United States Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the
(continued...)

Third, Animals of Montana argues the Administrator's motion for summary judgment is inappropriate because Animals of Montana was not given an opportunity to demonstrate or achieve compliance with all lawful requirements (Appeal Pet. at 4).

The Administrative Procedure Act provides, before institution of agency proceedings for revocation of a license, the licensee must be given notice of facts warranting revocation and an opportunity to achieve compliance, except in cases of willfulness, as follows:

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

....

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

5 U.S.C. § 558(c). License termination in the instant proceeding is predicated upon

Mr. Hyde's having been found to have knowingly violated the Endangered Species Act

⁵(...continued)

Rules of Practice and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations).

and the Lacey Act. Therefore, termination of Animals of Montana's Animal Welfare Act license falls within the Administrative Procedure Act's "willfulness" exception to the notice and opportunity to demonstrate or achieve compliance requirement.

Fourth, Animals of Montana contends 9 C.F.R. §§ 2.11, .12 are inconsistent with 7 U.S.C. § 2149 because 9 C.F.R. § 2.11 identifies the circumstances under which an Animal Welfare Act license "will not be issued," while 7 U.S.C. § 2149 specifies when the Secretary of Agriculture "may" suspend or revoke an Animal Welfare Act license for violations of the Animal Welfare Act and the Regulations (Appeal Pet. at 4-6).

As an initial matter, the Administrator does not seek to suspend or revoke Animals of Montana's Animal Welfare Act license for violations of the Animal Welfare Act or the Regulations, pursuant to 7 U.S.C. § 2149(a). Instead, the Administrator seeks to terminate Animals of Montana's Animal Welfare Act license because Mr. Hyde violated the Endangered Species Act and the Lacey Act and provided false records to a government agency thereby demonstrating that Animals of Montana is unfit to hold an Animal Welfare Act license (Supplemental Decl. of Robert M. Gibbens, D.V.M. ¶ 20).

Moreover, in a recent proceeding, I addressed the contention that 9 C.F.R. § 2.11(a)(6) is "faulty," as follows:

. . . I note the Secretary of Agriculture is authorized to promulgate regulations that the Secretary deems necessary to effectuate the purposes of the Animal Welfare Act (7 U.S.C. § 2151) and 9 C.F.R. § 2.11(a)(6) is clearly a regulation which the Secretary of Agriculture is authorized by 7 U.S.C. § 2151 to promulgate. Moreover, I find there is a rational connection between 9 C.F.R. § 2.11(a)(6) and its purpose. The purpose of

9 C.F.R. § 2.11(a)(6) is to deny Animal Welfare Act licenses to persons who are not fit to have Animal Welfare Act licenses, and I find 9 C.F.R. § 2.11(a)(6) accomplishes its purpose. Finally, I find 9 C.F.R. § 2.11(a)(6) was promulgated in accordance with the Administrative Procedure Act. Therefore, I reject Ms. Vigne's contention that 9 C.F.R. § 2.11(a)(6) is "faulty."

In re Loreon Vigne, __ Agric. Dec. ___, slip op. at 11-12 (Nov. 18, 2008) (footnote omitted).

Further still, the proposed rule relevant to the promulgation of 9 C.F.R. §§ 2.11, .12 explains that the proposed regulations promote the Animal Welfare Act's remedial purpose of ensuring the humane care and treatment of animals and that persons who have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, transportation, ownership, neglect, or welfare would be unfit for an Animal Welfare Act license (65 Fed. Reg. 47,908, 47,911 (Aug. 4, 2000)).

Thus, contrary to Animals of Montana's contention, 9 C.F.R. §§ 2.11, .12 were lawfully adopted pursuant to 7 U.S.C. § 2151, promote the remedial purpose of the Animal Welfare Act, and are rationally related to the purpose of denying Animal Welfare Act license applications to applicants unfit to hold Animal Welfare Act licenses and terminating Animal Welfare Act licenses held by those unfit to hold them.

Fifth, Animals of Montana asserts Mr. Hyde's violations of the Lacey Act and the Endangered Species Act merely disrupted the administrative mechanism designed to carry out the purposes of the Lacey Act and the Endangered Species Act. Animals of Montana

further asserts Mr. Hyde's violations did not result in harm to endangered wildlife or a reduction of the endangered species population. (Appeal Pet. at 6-8.)

Even if I were to find that Mr. Hyde's violations of the Lacey Act and the Endangered Species Act only disrupted the administrative mechanism designed to carry out the purposes of the Lacey Act and the Endangered Species Act and that Mr. Hyde did not harm endangered wildlife and did not reduce the population of endangered species, I would not dismiss the instant proceeding. An Animal Welfare Act license may be terminated if a person acting for or employed by a licensee has been found to have violated any federal laws pertaining to the transportation, ownership, neglect, or welfare of animals.⁶ Animals of Montana does not dispute the fact that Mr. Hyde has been found to have violated two statutes pertaining to the transportation, ownership, neglect, or welfare of animals; namely, the Lacey Act and the Endangered Species Act. The Administrator is not also required to establish that Mr. Hyde's violations resulted in harm to animals or the reduction of the population of animals in order to support the termination of Animals of Montana's Animal Welfare Act license.

Sixth, Animals of Montana asserts Mr. Hyde "has already been criminally sanctioned"; thus, "[d]eterrence has already been fully accomplished in his case." (Appeal Pet. at 8-9.)

⁶7 U.S.C. § 2139; 9 C.F.R. §§ 2.11, .12.

I reject Animal of Montana's contention that the criminal penalty imposed on Mr. Hyde in *United States v. Hyde*, Case No. 03-315(6) (D. Minn. Sept. 8, 2005), is relevant to the remedy to be imposed on Animals of Montana in the instant civil administrative proceeding. The criminal penalty imposed on Mr. Hyde in *United States v. Hyde* does not address the remedial purposes of the Animal Welfare Act.⁷

Seventh, Animals of Montana asserts that any suspension of its Animal Welfare Act license for more than a month or two will end Mr. Hyde's "otherwise" law-abiding career of 22 years (Appeal Pet. at 9-10).

The impact on Mr. Hyde's career, which may result from the termination of Animals of Montana's Animal Welfare Act license and disqualification of Animals of Montana from holding an Animal Welfare Act license, is not relevant to determining whether Animals of Montana is unfit to hold an Animal Welfare Act license. Moreover, collateral effects of the termination of an Animal Welfare Act license and disqualification from holding an Animal Welfare Act license are not relevant to the determination of whether Animals of Montana is unfit to be licensed.⁸

⁷*See In re Amarillo Wildlife Refuge, Inc.*, __ Agric. Dec. ___, slip op. at 17 (Jan. 6, 2009) (rejecting Amarillo Wildlife Refuge, Inc.'s argument that its principal's 6 months of house arrest, 3 years of probation, and payment of over \$50,000 in fines and attorneys fees in connection with his violations of the Endangered Species Act should be considered when determining the remedy in an Animal Welfare Act license termination proceeding).

⁸*In re Loreon Vigne*, __ Agric. Dec. ___, slip op. at 15 (Nov. 18, 2008).

Eighth, Animals of Montana argues the Secretary of Agriculture cannot retroactively apply a regulation (9 C.F.R. § 2.12) effective after Mr. Hyde violated the Lacey Act and the Endangered Species Act (Appeal Pet. at 10-11).

On September 8, 2005, United States District Court Judge Ann D. Montgomery adjudicated Mr. Hyde guilty of violating the Lacey Act in May 1999 and violating the Endangered Species Act in May 2000 (Respondent's Motion for Summary Judgment Attachs. E-F). The instant proceeding regarding the termination of Animal of Montana's Animal Welfare Act license is based upon 9 C.F.R. § 2.12, a regulation which became effective August 13, 2004,⁹ more than 4 years after Mr. Hyde's violations of the Lacey Act and the Endangered Species Act and more than 1 year before Mr. Hyde was convicted of violating the Lacey Act and the Endangered Species Act.

The Regulations provide that the Secretary of Agriculture may terminate an Animal Welfare Act license when a licensee (or any person acting for or employed by the licensee¹⁰) "has been found to have violated" any federal laws pertaining to the transportation, ownership, neglect, or welfare of animals.¹¹ Based upon the language of the Regulations, I find Mr. Hyde's September 8, 2005, conviction of having violated the Lacey Act and the Endangered Species Act triggered the Secretary of Agriculture's ability

⁹69 Fed. Reg. 42,089 (July 13, 2004).

¹⁰7 U.S.C. § 2139.

¹¹9 C.F.R. §§ 2.11(a)(6), .12.

to terminate Animals of Montana's Animal Welfare Act license; not the date of the underlying criminal activities, as Animals of Montana suggests.¹² Thus, the ALJ's application of 9 C.F.R. § 2.12, to terminate Animals of Montana's license based on Mr. Hyde's September 8, 2005, conviction has no retroactive effect.

For the foregoing reasons, the following Order is issued.

ORDER

1. Animal Welfare Act license 81-C-0023 is terminated.
2. Animals of Montana is disqualified for 2 years 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.

This Order shall become effective on the 60th day after service of this Order on Animals of Montana.

Done at Washington, DC

March 10, 2009

William G. Jenson
Judicial Officer

¹²See *In re Amarillo Wildlife Refuge, Inc.*, ___ Agric. Dec. ___, slip op. at 13 (Jan. 6, 2009) (stating termination of Amarillo Wildlife Refuge, Inc.'s Animal Welfare Act license, pursuant to 9 C.F.R. § 2.12, is based upon Mr. Azzopardi's relationship with Amarillo Wildlife Refuge, Inc., when Mr. Azzopardi was "convicted" of violating the Endangered Species Act).