UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 14-0150

In re:

INDIAN CREEK ENTERPRISES, INC., a Texas corporation;
THOMAS C. SCHOOLER, an individual; and
KYLE HAY, an individual;

Respondents.

DECISION AND ORDER BY ENTRY OF DEFAULT AGAINST THOMAS C. SCHOLER

Preliminary Statement

The instant matter involves a disciplinary proceeding under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) [hereinafter "Act" or "AWA"], and the regulations and standards promulgated thereunder (9 C.F.R. § 1.1 *et seq.*) [hereinafter "Regulations"]. The proceeding initiated with a Complaint filed by the Administrator, Animal and Plant Health Inspection Service [hereinafter "APHIS"], of the United States Department of Agriculture [hereinafter "USDA"; "Complainant"], alleging that Indian Creek Enterprises, Inc., a Texas corporation [hereinafter "Respondent Indian Creek" or "Indian Creek"]; Thomas C. Schooler, an individual [hereinafter "Respondent Schooler" or "Schooler"]; and Kyle Hay, an individual [hereinafter "Respondent Hay" or "Hay"] [hereinafter collectively referred to as "Respondents"] committed multiple violations of the Act.

Issues

1. Whether default should be entered in this matter;
2. Whether Respondent Schooler willfully violated the Act; and
3. Whether the sanctions recommended by Complainant should be imposed.

Statement of the Case

I. Procedural History

On July 7, 2014, Complainant filed with the Hearing Clerk, Office of Administrative Law Judges [hereinafter "OALJ"; "Hearing Clerk"], a Complaint alleging willful violations of the Animal Welfare Act and Regulations. On July 8, 2014, the Hearing Clerk sent each Respondent, via certified mail, the Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. § 1.130 *et seq.*) [hereinafter "Rules of Practice" or "Rules"].

A return receipt issued by the United States Postal Service [hereinafter "USPS"] indicates that the mailing was delivered to Respondent Schooler's address in Texas; however, the receipt does not provide the date of delivery (USPS Receipt No. [redacted]4978). Nonetheless, the USPS online tracking feature shows that the certified mailing was delivered on July 22, 2014,[1] and a signature on the USPS paper receipt denotes that Respondent Schooler signed for delivery. I accordingly find that Respondent Schooler was effectively served on July 22, 2014. Thus, Respondent Schooler had until August 11, 2014 to respond to the Complaint.[2]

On August 5, 2014, the Hearing Clerk received an unsigned facsimile transmission apparently sent by Respondent Schooler.[3] In the document, Respondent Schooler requested an additional thirty days "before any action is taken" and denied "any complicity in the deaths of canines referenced in the respondents [sic] complaints" (Resp't's Fax). On August 7, 2014, Chief Administrative Law Judge Peter M. Davenport [hereinafter "Chief Judge Davenport"] entered an

---

[1] USPS Tracking No. [redacted]4978, USPS.COM, https://tools.usps.com/go/TrackConfirmAction!input.action (under "USPS Tracking" enter USPS receipt number [redacted]4978; then click "Find").

[2] *See* 7 C.F.R. § 1.136(a) (a respondent "shall file" an answer with the Hearing Clerk "[w]ithin 20 days after the service of the complaint").

[3] The fax references AWA Docket No. 14-0150, which is the number that the Hearing Clerk had assigned to Respondent Schooler in this matter (Resp't's Fax). I consequently find that the fax was sent by Respondent Schooler even though the document does not mention Respondent Schooler by name.

order granting Respondent Schooler's request for an extension of time and allowed him until September 5, 2014 to file an answer ("Order"). Respondent Schooler failed to file an answer by that date.

On November 7, 2014, Chief Judge Davenport issued an order directing the parties to show cause as to why a default decision and order should not be entered in this matter ("Show Cause Order").[4] Complainant filed its "Response to 'Show Cause Order'" on November 24, 2014, along with its "Motion for Adoption of Decision and Order by Reason of Default" and Proposed Decision and Order. All three Respondents failed to respond to the Show Cause Order.

On December 15, 2014, Chief Judge Davenport reassigned this case to my docket. On December 18, 2014, I entered an Order Resending Filings in which I: (1) directed that the Show Cause Order and Complainant's Motion for Entry of Default be re-sent to Respondent Schooler via both regular mail and certified mail;[5] (2) directed that the Show Cause Order and Complainant's Motion for Entry of Default be re-sent to Respondent Hay via regular mail at his last known address of record; and (3) granted Respondents twenty-one days to show cause as to why default should not be entered against them (Order Resending Filings).[6] All three Respondents failed to respond to my Order. On December 8, 2015, Complainant filed with the Hearing Clerk a "Request for Ruling on Complainant's Motion for Decision and Order by Reason of Default."

[4] The Show Cause Order directed the parties to comply "no later than fifteen days of the date of [the] Order" (Show Cause Order at 2).

[5] I required that the Show Cause Order and Complainant's Motion be re-mailed to Respondent Schooler at a P.O. Box in Texas, as the documents were originally sent to Respondent Schooler's previous address and not to the P.O. Box, which Respondent Schooler had noted was his address of service on July 11, 2014 (Order Resending Files).

[6] The Order Resending Files was served upon Respondent Schooler by certified mail on January 7, 2015 (USPS Receipt No. [redacted]9639).

II. Statutory and Regulatory Authority

"It is well established that the Rules of Practice, 7 C.F.R. § 1.130 *et seq.*, rather than the Federal Rules of Civil Procedure apply to adjudicatory proceedings under the regulations promulgated under the Animal Welfare Act."[7] Pursuant to the Rules of Practice, a respondent is required to file an answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules also provide that an answer shall "[c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such circumstance, default shall be appropriate.[8] 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation arise, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

Further, the Animal Welfare Act grants USDA the authority to regulate the transportation, purchase, sale, housing, care, handling, and treatment of animals subject to the Act. 7 U.S.C. § 2131. The AWA also authorizes the Secretary of USDA to promulgate

---

[7] Hamilton, 64 Agric. Dec. 1659, 1662 (U.S.D.A. 2005) (internal citations omitted); *see* Noell, 58 Agric. Dec. 130, No. 98-0033, 1999 WL 11230, at *9 (U.S.D.A. 1999) ("The Federal Rules of Civil Procedure are not applicable to administrative proceedings which are conducted before the Secretary of Agriculture under the Animal Welfare Act, in accordance with the Rules of Practice.").

[8] *See* Morrow v. Dep't of Agric., 65 F.3d (West) 168 (6th Cir. 1995) (per curiam) (unpublished disposition) ("7 C.F.R. Secs. 1.136(c) and 1.139 clearly describe the consequences of failing to answer a complaint in a timely fashion. These sections provide for default judgments to be entered [and] for admissions absent an answer . . . . Furthermore, the failure to answer constitutes the waiver of the right to a hearing.") (internal citations omitted).

appropriate rules, regulations, and orders to promote the purposes of the Act. 7 U.S.C. § 2151. Pursuant to the AWA, persons who sell and transport regulated animals are required to obtain a license or registration issued by the Secretary. 7 U.S.C. § 2133. The Act and Regulations fall within the enforcement authority of APHIS, an agency of USDA tasked to regulate and inspect AWA licensees to determine compliance with the AWA.

The AWA provides that sanctions may be imposed for violations of the Act. *See* 7 U.S.C. § 2149. Sanctions may include civil penalties of up to $10,000 per violation, license suspension or revocation, and an order to cease and desist from further violating the Act. 7 U.S.C. § 2149(b).

III. Discussion

A. Whether Default Without Hearing Is Appropriate

Default judgment is appropriate in the present case as Respondent Schooler has failed to file an answer and is therefore deemed to have admitted all material allegations of the Complaint. As previously discussed, the record reflects that Respondent Schooler received certified mailing of the Complaint on July 22, 2014. Accordingly, Respondent Schooler had until August 11, 2014—twenty days after service of the Complaint—to file an answer. *See* 7 C.F.R. § 1.136(a).

Although Respondent Schooler submitted a facsimile transmission to the Hearing Clerk's Office prior to close of the twenty-day answering period, said communication cannot be considered an answer under 7 C.F.R. § 1.136. The document simply reads as follows:

> FAX: 202 720 9776
>
> USDA/APHIS
> Secretary of Agriculture
> AWA Docket No. 14-0150
> HEARING CLERK
>
> 8/5/2014

> Regarding the above referenced complaint and hearing, and my letters to Coleen [sic] A. Carroll, Attorney for Complainant,
> Please allow an additional 30 days before any action is taken.
> As I explained in my response to Ms. Carroll, my age and health, financial and other conditions regarding current family hospice care prohibit my travel. Legal advise [sic] from a knowledgeable attorney, who formerly represented me, is no long [sic] available. In my statements, I have denied any complicity
> in the deaths of canines referenced in the respondents [sic] complaints. The respondent has refused to accept responsibility for their disregard of their own careless actions. Their actions and fallacious responses have rendered me bankrupt and no longer affective [sic] in International animal movements. They have altered the facts, added non-events, and denied other facts and events. The respondents [sic] permit issued by USDA/APHIS should be reexamined and reconsidered.

(Resp't's Fax).

It is plain that Respondent Schooler's fax does not qualify as an answer because it fails to comply with the "contents" requirements of Rule 1.136(b). As Chief Judge Davenport observed in his Show Cause Order, the fax merely constitutes a "general denial of complicity." Rule 1.136(b) provides that each answer shall:

> (1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent; or
>
> (2) State that the respondent admits all the facts alleged in the complaint; or
>
> (3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

7 C.F.R. § 1.136(b). As Respondent Schooler's fax fails to accomplish any of the contents requirements, the filing shall be treated solely as a motion for extension of time. This is consistent with prior actions by Chief Judge Davenport, who referred to the fax as "Respondent's Request for Extension of Time" in his August 7, 2014 Order.

Additionally, Respondent Schooler's fax should not be regarded as an answer because the communication is unsigned. Rule 1.136 establishes that a "respondent shall file with the Hearing

Clerk an answer *signed by the respondent or the attorney of record in the proceeding.*" 7 C.F.R. § 1.136(a) (emphasis added). As observed earlier in this Decision, the fax bears no signature; I previously concluded that Respondent Schooler sent the document based upon a reference to Respondent Schooler's assigned docket number. The fax clearly fails to satisfy the signature condition of Rule 1.136(a), and I therefore find that it does not constitute an answer for purposes of this proceeding.

Further, default is certainly warranted in the present case as Respondent Schooler failed to file an answer even after he was granted a time extension. He also failed to respond to the Show Cause Order, which Chief Judge Davenport issued more than two months after the extension of time expired.[9] Respondent Schooler's unsigned facsimile was the first and only document that Respondent Schooler filed in this matter. Pursuant to Rule 1.136(c), Respondent Schooler is therefore deemed to have admitted the allegations set forth in the Complaint,[10] and entry of default is appropriate.[11]

Accordingly, I conclude that Respondent Schooler has admitted the gravamen of Complainant's allegations, thereby obviating the need for a hearing in this matter. [12] The

---

[9] The Show Cause Order directed the parties "to show cause no later than fifteen days of this Order why a Default decision and Order should not be entered." The Show Cause Order was issued on November 7, 2014.

[10] The Rules of Practice provide that "[f]ailure to file an answer within [20 days after the service of the Complaint] shall be deemed, for the purposes of the proceeding, an admission of the allegations in the Complaint." 7 C.F.R. § 1.136(c).

[11] *See* 7 C.F.R. § 1.139 ("The failure to file an answer . . . shall constitute a waiver of hearing. Upon such . . . failure to file, complainant shall file a proposed decision, along with a motion for adoption therefore . . . [and] the respondent may file with the Hearing Clerk objections thereto. . . . If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.").

[12] Case law affirms that an oral hearing is necessary only in cases that present an issue of material fact. *See, e.g.*, Carpenito Bros. v. U.S. Dep't of Agric., 851 F.2d 1500, 1500 (D.C. Cir. 1988) ("As we only recently stated, a hearing is not necessary in the absence of any genuine dispute of material fact.") (citations omitted); Veg-Mix, Inc. v. U.S. Dep't of Agric., 832 F.2d 601, 607-08 (D.C. Cir. 1987) ("[A]n agency may ordinarily dispense with a hearing when no genuine dispute exists."); Cmty. Nutrition Inst. v. Young, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986) ("A request for hearing must contain evidence that raises a material issue of fact on which a meaningful hearing might be held.") (citation omitted).

material allegations of the Complaint are therefore adopted as findings of fact, and I find it appropriate to enter a decision on the record by reason of default.

This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

B. Violations of the Act

It is evident that Respondent Schooler violated the Regulations and Standards issued under the Animal Welfare Act. As discussed in the foregoing paragraphs, Respondent Schooler failed to timely file an answer to the Complaint and is hence deemed, for purposes of the present proceeding, to have admitted "no fewer than 32 violations of the AWA regulations" (Mot. for Adoption of Proposed Decision at 3).[13] These were "egregious, obvious violations" that not only "substantially endangered the health and well-being of the animals" but resulted in the deaths of all fourteen animals—that is, fourteen dogs travelling to Afghanistan for use in explosives and narcotics detection by the Department of Defense (Compl. ¶ 4).[14]

C. Sanctions

Complainant maintains that Respondent Schooler committed, at minimum, thirty-two violations of the AWA Regulations and thereby requests that I: (1) issue a cease-and-desist order; and (2) assess $68,600 in civil penalties, jointly and severally, against Respondent Schooler and Indian Creek (AWA Docket No. 14-0149) (Mot. for Adoption of Proposed Decision at 3). Complainant asserts that "[t]hese sanctions are appropriate in light of the gravity of the violations" (Mot. for Adoption of Proposed Decision at 3). Upon careful review of the

[13] *See* Ramos v. U.S. Dep't of Agric., 322 F. App'x 814, 821 (11th Cir. 2009)) (unpublished) (holding that Judicial Officer was correct in finding that respondent had willfully violated the Act on basis that respondent's "failure to answer or otherwise respond to the Complaint" constituted admission of all material allegations); Drogosch, 63 Agric. Dec. 623, 643 (U.S.D.A. 2004) ("Respondent, by his failure to file a timely answer to the Complaint, is deemed to have admitted the violations of the Regulations and Standards alleged in the Complaint.").

[14] Pearson, 2007 WL 3170312, at *22-*23 (U.S.D.A. 2007), *aff'd*, 411 Fed. App'x 866 (6th Cir. 2011).

documents and arguments submitted by the parties, I find that Complainant's proposed sanctions in this case are warranted.

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

> The 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.

S.S. Farms Linn County, Inc., 50 Agric. Dec. at 497. "In assessing penalties, the Secretary is required to give due consideration to *the size of the business involved, the gravity of the violation, the person's good faith, and the history of previous violations*." *Roach*, 51 Agric. Dec. 252, 264 (U.S.D.A. 1992) (emphasis added); 7 U.S.C. § 2149(b). The purpose of assessing sanctions is not to punish violators but to deter future similar behavior by the violator and others. *Zimmerman*, 57 Agric. Dec. 1038, 1064 (U.S.D.A. 1998).[15]

Among the "many discretionary sanctions" that the Secretary may impose "for remedial purposes in enforcing the Animal Welfare Act" are civil penalties and cease-and-desist orders. *Baird*, 57 Agric. Dec. 127, 177 (U.S.D.A. 1998). The Act provides:

> Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale . . . that violates any provisions of this [Act], or any rule, regulation, or standard promulgated by the Secretary thereunder, *may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation.* Each violation and each day during which a violation occurs shall be a separate offense. No penalty shall be assessed or cease

[15] *See also* Chandler, 64 Agric. Dec. 876, 894 (U.S.D.A. 2005) ("The purpose of an administrative sanction is not to punish one who may have violated governmental regulations; the purpose is instead to take such steps as are necessary to deter the Respondent from future conduct prohibited by the Act.").

> and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals.

7 U.S.C. § 2149(b) (emphasis added). The Secretary may assess civil penalties and issue cease-and-desist orders against intermediate handlers and carriers "even if those persons were not Animal Welfare Act licensees at the time that they violated the Animal Welfare Act or the Regulations." *Knapp*, 72 Agric. Dec. 766, 778 (U.S.D.A. 2013) (Order Den. Am. Pet. for Recons.).

Additionally, "[t]he administrative recommendation as to the appropriate sanction is entitled to great weight, in view of the experience gained by the administrative officials during their day-to-day supervision of the regulated industry." *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. Nevertheless, an administrative official's recommendation is not controlling; in appropriate cases, the sanction imposed may be considerably less than or different from what is recommended. *Shepherd*, 57 Agric. Dec. 242, 283 (U.S.D.A. 1998). "An agency's choice of sanction is not to be overturned unless it is unwarranted in law or without justification in fact." *Cox v. U.S. Department of Agriculture*, 925 F.2d 1102, 1106 (8th Cir. 1991) (citations omitted).

The proposed sanctions are appropriate in the present case as Respondent Schooler committed at least thirty-two (32) very serious violations of the AWA and Regulations. At the time that the violations occurred, Indian Creek had approximately five to nine employees and generated an annual revenue of $500,000 to $1,000,000 (Compl. ¶ 5). Although I consider Indian Creek to be a relatively small business, I find that the gravity of its violations—and, by extension, Respondent Schooler's violations—was great and resulted in the deaths of fourteen dogs. Further, Respondent Schooler has not shown good faith. Despite having represented to Hill

Country Dog Center that he and Kyle Hay (AWA Docket No. 14-0151) would care for the dogs overnight in Indian Creek's facility, Respondent Schooler held the dogs in their crates, inside the closed transport truck, for thirteen hours without observation or adequate ventilation. After the dogs died, Respondent Schooler declined Hill Country Dog Center's request to place the dogs' bodies on ice in order to reduce deterioration during transport for necropsy. While Respondent Schooler has no individual record of previous violations of the Animal Welfare Act, Indian Creek received an Official Warning for its mishandling of a dog in 2008 (Compl. ¶ 3).

Complainant seeks an assessment of a $68,600 civil penalty and an order requiring Respondent Schooler to cease and desist from violating the AWA and Regulations. I find the Administrator's recommendations to be more than reasonable, as Respondent Schooler could be assessed civil penalties of up to $320,000 for his thirty-two violations.[16] After examining the relevant circumstances in light of the Department's sanction policy and observing the remedial purposes of the Animal Welfare Act and recommendations of APHIS officials, I conclude that a $68,600 civil penalty and cease-and-desist order are appropriate in this case. I regard these sanctions necessary "to ensure Respondent's compliance with the Animal Welfare Act and 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." *Drogosch*, 63 Agric. Dec. 623, 644 (U.S.D.A. 2004).

Based on the foregoing, I hereby issue the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. Respondent Thomas C. Schooler is an individual with a mailing address in Texas.

[16] The Secretary may assess a civil penalty of "not more than $10,000" for each violation. 7 U.S.C. § 2139(b).

2. At all times mentioned in the Complaint, Respondent Schooler was acting for or was employed by a carrier (Indian Creek, AWA Docket No. 14-0149)), and Respondent Schooler's acts, omissions, or failures within the scope of his employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to be his own acts, omissions or failures as well as the acts, omissions, or failures of Indian Creek.
3. The gravity of the violations alleged herein is great. On December 20, 2010, Respondent Indian Creek accepted fourteen dogs from Hill Country Dog Center for transportation on KLM flight 662.[17] The dogs had been purchased by American K-9 Detection Services, Inc. and were scheduled to travel from Houston, Texas via the Netherlands to Kandahar Air Field, Afghanistan to be used in the detection of explosives and narcotics by the Department of Defense, Department of the Army. The dogs were not boarded on KLM flight 662 on December 20, 2010; rather, they were required to remain in Houston overnight and were booked on KLM flight 662 to depart the following day. Respondents, however, did not unload the dogs from the primary conveyance (a transport truck); they instead held the dogs overnight in their crates, inside the closed truck, without observation or adequate ventilation for thirteen hours. All fourteen dogs had died by the next morning. APHIS determined that the dogs died from asphyxiation.
4. Respondent Schooler has not shown good faith. Respondent Schooler represented to Hill Country Dog Center that he and Kyle Hay (AWA Docket No. 14-0151) would care for the fourteen dogs overnight in Indian Creek's facility (rather than the transport truck). Following the deaths of the dogs, Respondent Schooler declined Hill Country Dog

[17] Originally, fifteen dogs were delivered to Respondent Indian Creek for travel to Afghanistan. One dog was returned to Hill Country Dog Center because its handler had not yet deployed to Afghanistan (Proposed Decision & Order at 2).

Center's request to place the dogs' bodies on ice in order to reduce deterioration during transport for necropsy.

5. On or about December 20, 2010 and December 21, 2010, Respondent Schooler failed to handle fourteen dogs as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, physical harm, or unnecessary discomfort.

6. On or about December 20, 2010 and December 21, 2010, Respondent Schooler failed to take appropriate measures to alleviate the impact of climatic conditions that represented a threat to fourteen dogs and by subjecting fourteen dogs to a combination of temperature, humidity, and time that was detrimental to the dogs' health and wellbeing.

7. On or about December 20, 2010 and December 21, 2010, Respondent Schooler failed to meet the minimum Standards, as follows:

   a. The animal cargo space of the primary conveyance used to transport and house fourteen dogs was not maintained in a manner that at all times protected the health and well-being of the dogs, ensured the safety and well-being of the dogs, and prevented the entry of engine exhaust.

   b. The animal cargo space of the primary conveyance used to transport and house fourteen dogs did not have a supply of air that was sufficient to enable the fourteen dogs to breathe normally while inside the conveyance.

   c. Respondent Schooler failed to position primary enclosures for fourteen dogs in the primary conveyance in a manner that allowed the dogs to be removed quickly and easily from the primary conveyance.

   d. Respondent Schooler failed to ensure that each of the fourteen dogs in its custody was observed as often as circumstances allowed, but not fewer than once

every four hours, to ensure that the dogs had sufficient air for normal breathing, that the ambient temperature was within the limits provided in 9 C.F.R. § 3.15(e), and that the dogs were not in any obvious physical distress or in need of veterinary care.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. On or about December 20, 2010 and December 21, 2010, Respondent Schooler violated section 2.131(b)(1) of the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle fourteen dogs as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, physical harm, or unnecessary discomfort.

3. On or about December 20, 2010 and December 21, 2010, Respondent Schooler violated section 2.131(e) of the Regulations, 9 C.F.R. § 2.131(e), by failing to take appropriate measures to alleviate the impact of climactic conditions that represented a threat to fourteen dogs and by subjecting fourteen dogs to a combination of temperature, humidity, and time that was detrimental to the dogs' health and wellbeing.

4. On or about December 20, 2010 and December 21, 2010, Respondent Schooler violated section 2.100(b) of the Regulations, 9 C.F.R. § 2.100(b), by failing to meet the minimum Standards, as follows:

   a. The animal cargo space of the primary conveyance used to transport and house fourteen dogs was not maintained in a manner that at all times protected the health and well-being of the dogs, ensured the safety and well-being of the dogs, and prevented the entry of engine exhaust. 9 C.F.R. § 3.15(a).

b. The animal cargo space of the primary conveyance used to transport and house fourteen dogs did not have a supply of air that was sufficient to enable the fourteen dogs to breathe normally while inside the conveyance. 9 C.F.R. § 3.15(b).

c. Respondent Schooler failed to position primary enclosures for fourteen dogs in the primary conveyance in a manner that allowed the dogs to be removed quickly and easily from the primary conveyance. 9 C.F.R. § 3.15(f).

d. Respondent Schooler failed to ensure that each of the fourteen dogs in his custody was observed as often as circumstances allowed, but not fewer than once every four hours, to ensure that the dogs had sufficient air for normal breathing, that the ambient temperature was within the limits provided in 9 C.F.R. § 3.15(e), and that the dogs were not in obvious physical distress or in need of veterinary care. 9 C.F.R. § 3.17(a).

ORDER

1. Respondent Thomas C. Schooler, his 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 issued thereunder.
2. Respondent Thomas C. Schooler is assessed a civil penalty of $68,600.00, jointly and severally with Indian Creek (AWA Docket No. 14-0149), which civil penalty shall be payable to the Treasurer of the United States.
3. This Decision and Order shall have the same effect as if entered after a full hearing.
4. The provisions of this Order shall become effective on the first day after this Decision becomes final. Pursuant to the Rules of Practice, this Decision shall become final without

further proceedings thirty-five (35) days after the date of service upon Respondent Thomas C. Schooler, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service. 7 C.F.R. §§ 1.139, 1.145(a).

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

SO ORDERED this 15th day of March, 2016, at Washington, D.C.

Janice K. Bullard
Administrative Law Judge