

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 05-0026
)	
Craig A. Perry, an individual; Perry's)	
Wilderness Ranch & Zoo, Inc., an Iowa)	
corporation; and Le Anne Smith,)	
an individual,)	Decision and Order as to
)	Craig A. Perry and Perry's
Respondents)	Wilderness Ranch & Zoo, Inc.

PROCEDURAL HISTORY

On July 14, 2005, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint. 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 pursuant to 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 of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151).

The Administrator alleges, during the period September 10, 2000, through June 15, 2005, Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc. [hereinafter PWR], willfully violated the Animal Welfare Act and the Regulations.¹ On August 8, 2005, Mr. Perry and PWR filed an answer in which they deny the material allegations of the Complaint.²

On November 16-20, 2009, and December 7-11, 2009, in Chicago, Illinois, and on January 11-13, 2010, in Cedar Rapids, Iowa, the ALJ conducted a hearing. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington,

¹Compl. at 4-18 ¶¶ 10-12, 14-25, 27, 29-36s. The Administrator also alleges Le Anne Smith, American Furniture Warehouse, Jeff Burton, and Shirley Stanley willfully violated the Animal Welfare Act and the Regulations. On April 21, 2006, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] entered a Consent Decision and Order as to American Furniture Warehouse; thereby, concluding this proceeding as it relates to American Furniture Warehouse. On June 5, 2007, the ALJ amended the case caption by deleting the reference to American Furniture Warehouse (ALJ's Order Amending Case Caption). On November 16, 2009, the ALJ issued a Decision and Order as to Jeff Burton and Shirley Stanley. Neither Mr. Burton nor Ms. Stanley appealed the ALJ's November 16, 2009, Decision and Order as to Jeff Burton and Shirley Stanley, which is now final. Therefore, this proceeding, as it relates to Mr. Burton and Ms. Stanley, is concluded. On April 19, 2010, the ALJ amended the case caption by deleting the references to Mr. Burton and Ms. Stanley (ALJ's Order Amending Case Caption and Revising Post-Hearing Schedule).

²Answer for Craig A. Perry, Perry's Wilderness Ranch & Zoo, Inc., and Leann [sic] Smith, Request for Hearing and Further Request the Hearing be Held at or Near Cedar Rapids, Iowa [hereinafter Answer].

DC, represented the Administrator. Larry J. Thorson, Ackley, Kopecky & Kingery, L.L.P., Cedar Rapids, Iowa, represented Mr. Perry and PWR.³

³Mr. Thorson also represented Ms. Smith.

On March 29, 2012, after the parties submitted post hearing briefs, the ALJ filed a Decision and Order: (1) concluding Mr. Perry and PWR willfully violated the Regulations, as alleged in paragraphs 12, 14-18, 27, 29-30, 33-36g, and 36i-36r of the Complaint; (2) concluding the Administrator failed to prove Mr. Perry and PWR willfully violated the Regulations, as alleged in paragraphs 10-11, 19-25, 31-32, 36h, and 36s of the Complaint; (3) ordering Mr. Perry and PWR to cease and desist from violations of the Animal Welfare Act and the Regulations; (4) assessing Mr. Perry and PWR, jointly and severally, a \$6,750 civil penalty; and (5) assessing Mr. Perry an additional \$500 civil penalty.⁴

On July 5, 2012, the Administrator filed Complainant's Petition for Appeal of Initial Decisions and Orders [hereinafter Appeal Petition], and, on July 26, 2012, Mr. Perry and PWR filed Respondents' Response to Complainant's Appeal and Respondents' Brief.⁵ On August 3, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

⁴ALJ's Decision and Order at 4-24, 74 ¶¶ 12-20, 54-55.

⁵On March 30, 2012, the ALJ issued a Decision and Order as to Ms. Smith. The Administrator's Appeal Petition and Respondents' Response to Complainant's Appeal and Respondents' Brief apply to the ALJ's March 29, 2012, Decision and Order as to Mr. Perry and PWR and to the ALJ's March 30, 2012, Decision and Order as to Ms. Smith.

Based upon a careful review of the record, I affirm the ALJ's Decision and Order as to Mr. Perry and PWR; except that, in addition to the violations found by the ALJ, I also conclude Mr. Perry and PWR willfully violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), as alleged in paragraph 20 of the Complaint, and 9 C.F.R. § 2.131(b)(1) (2004⁶), as alleged in paragraph 23 of the Complaint, and I increase the civil penalties assessed by the ALJ from \$7,250 to \$14,600.⁷

DECISION

Statutory and Regulatory Framework

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to ensure that the animals are provided humane care and treatment. 7 U.S.C. § 2131. The Secretary of Agriculture is authorized to promulgate regulations to govern the humane handling, care, treatment, and transportation of animals. 7 U.S.C. §§ 2143(a), 2151. The Animal Welfare Act requires exhibitors to be licensed and requires the maintenance of records regarding the purchase, sale, transfer, and transportation of regulated animals. 7 U.S.C. §§ 2133-34, 2140.

⁶Effective August 13, 2004, 9 C.F.R. § 2.131(a), (b), (c), and (d) were redesignated 9 C.F.R. § 2.131(b), (c), (d), and (e), respectively. 69 Fed. Reg. 42,089, 42,101 (July 14, 2004).

⁷References in this Decision and Order as to Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc., to the transcript are indicated as "Tr." and the page number. The Administrator's exhibits are identified as "CX" and the exhibit number.

Exhibitors must also allow inspection of their places of business, facilities, animals, and records by the Secretary of Agriculture. 7 U.S.C. § 2146(a). Violations of the Animal Welfare Act or the Regulations by an exhibitor may result in assessment of a civil penalty, issuance of a cease and desist order, and suspension or revocation of the exhibitor's Animal Welfare Act license. 7 U.S.C. § 2149.

The Regulations include requirements for veterinary care, humane handling, enclosures for transportation, feeding, food storage, disposal of waste, sanitation of enclosures, shade for animals housed outdoors, housing, elimination of excess water, recordkeeping, and inspection of facilities, animals, and records by Animal and Plant Health Inspection Service [hereinafter APHIS] officials.

Discussion

Mr. Perry and PWR

Mr. Perry is an individual whose business address is in Center Point, Iowa. PWR was incorporated in 1993 under the laws of the State of Iowa. Mr. Perry is the director, president, vice president, secretary, and treasurer of PWR. (CX 67.) During the period September 10, 2000, to June 20, 2002, Mr. Perry was licensed as an Animal Welfare Act exhibitor and held Animal Welfare Act license number 42-C-0101. During the period June 20, 2002, through June 15, 2005, PWR was licensed as an Animal Welfare Act exhibitor and held Animal Welfare Act license number 42-C-0101. (CX 1.)

Mr. Perry is liable for his acts, omissions, and failures under the Animal Welfare Act, and, while acting for PWR, Mr. Perry's acts, omissions, and failures under the Animal Welfare Act are deemed the acts, omissions, and failures of PWR, as well as the acts, omissions, and failures of Mr. Perry. 7 U.S.C. § 2139.

The Administrator's Appeal of the ALJ's Conclusions of Law

The ALJ concluded that Mr. Perry and PWR violated the Regulations, as alleged in paragraphs 12, 14-18, 27, 29-30, 33-36g, and 36i-36r of the Complaint. None of the parties appealed the ALJ's conclusions that Mr. Perry and PWR violated the Regulations.

Therefore, I adopt the ALJ's findings of fact and conclusions of law that are related to the allegations in paragraphs 12, 14-18, 27, 29-30, 33-36g, and 36i-36r of the Complaint.

The ALJ concluded the Administrator failed to prove that Mr. Perry and PWR violated the Regulations, as alleged in paragraphs 10-11, 19-25, 31-32, 36h, and 36s of the Complaint. The Administrator contends the ALJ's conclusions that the Administrator failed to prove that Mr. Perry and PWR violated the Regulations, as alleged in paragraphs 10 and 19-23 of the Complaint, are error (Appeal Pet. at 17-40).

The Administrator contends the ALJ erred in failing to conclude that, on December 29, 2004, Mr. Perry interfered with and threatened APHIS officials in the course of carrying out their duties, in willful violation of 9 C.F.R. § 2.4, as alleged in paragraph 10 of the Complaint (Appeal Pet. at 17-23).

The Regulations prohibit Animal Welfare Act licensees from interfering with or threatening APHIS officials, as follows:

§ 2.4 Non-interference with APHIS officials.

A licensee or applicant for an initial license shall not interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties.

9 C.F.R. § 2.4.

I have carefully reviewed the evidence of Mr. Perry's December 29, 2004, telephone conversation with APHIS investigator Katherine L. Lies, during which Mr. Perry is alleged to have interfered with and threatened APHIS officials (Tr. 280-98; CX 40, CX 50). I find very little evidence that Mr. Perry's telephone conversation with Ms. Lies interfered with APHIS officials and find the Administrator failed to prove by a preponderance of the evidence that Mr. Perry threatened APHIS officials during this telephone conversation. Therefore, I reject the Administrator's contention that the ALJ's failure to conclude that Mr. Perry violated 9 C.F.R. § 2.4, as alleged in paragraph 10 of the Complaint, is error.

The Administrator contends the ALJ erred in failing to conclude that, on February 8, 2005, Mr. Perry and PWR failed to make, keep, and maintain records in willful violation of 9 C.F.R. § 2.75(b)(1), as alleged in paragraph 19 of the Complaint (Appeal Pet. at 27-38).

The Regulations require exhibitors to make, keep, and maintain records, as follows:

§ 2.75 Records: Dealers and exhibitors.

....

(b)(1) Every . . . exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals . . . purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that . . . exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom the animals were purchased or otherwise acquired;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and State, and driver's license number (or photographic identification card for nondrivers issued by a State) and State of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom an animal was sold or given;

(v) The date of purchase, acquisition, sale, or disposal of the animal(s);

(vi) The species of the animal(s); and

(vii) The number of animals in the shipment.

9 C.F.R. § 2.75(b)(1).

I have carefully reviewed the evidence of Mr. Perry and PWR's violation of 9 C.F.R. § 2.75(b)(1) alleged in paragraph 19 of the Complaint. While the Administrator introduced evidence that Mr. Perry and PWR violated 9 C.F.R. § 2.75(b)(1), I agree with the ALJ that the Administrator failed to prove the violation by a preponderance of the evidence.

The Administrator contends the ALJ erred in failing to conclude that, on January 20, 2005, at 10:00 a.m., Mr. Perry and PWR did not allow APHIS officials access to enter

Mr. Perry and PWR's place of business to conduct an inspection, in willful violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), as alleged in paragraph 20 of the Complaint (Appeal Pet. at 23-27).

The Animal Welfare Act authorizes the Secretary of Agriculture to conduct investigations and inspections and requires exhibitors to allow access for those purposes, as follows:

§ 2146. Administration and enforcement by Secretary

(a) Investigations and inspections

The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter or any regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 2140 of this title of any such dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale. The Secretary shall inspect each research facility at least once a year and, in the case of deficiencies or deviations from the standards promulgated under this chapter, shall conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected.

7 U.S.C. § 2146(a).

The Regulations require all exhibitors to allow APHIS officials to conduct inspections, as follows:

§ 2.126 Access and inspection of records and property.

(a) Each dealer, exhibitor, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

- (1) To enter its place of business;
- (2) To examine records required to be kept by the Act and the regulations in this part;
- (3) To make copies of the records;
- (4) To inspect and photograph the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and
- (5) To document, by the taking of photographs and other means, conditions and areas of noncompliance.

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process.

9 C.F.R. § 2.126.

As an initial matter, Mr. Perry and PWR admit that, on January 20, 2005, they did not allow APHIS officials to conduct an inspection, as follows:

20. Respondents admit that Perry's asked the inspectors if they could come back another time because they were loading animals in preparation for a trip which an itinerary was already given to the APHIS officials . . . and the veterinarian was on his way there with proper health papers to transport the animals. The Respondents further state that this was not normal business hours at the location where the inspection was taking place because this location was not open for business at that time. See C.F.R. § 2.126(a) "during business hours".

Answer at 7 ¶ 20. The evidence establishes that Dr. Steven Bellin, an APHIS veterinary medical officer, and David Watson, an APHIS investigator, attempted to conduct an inspection

of Mr. Perry and PWR's place of business, facilities, property, animals, and records on Thursday, January 20, 2005, at 10:00 a.m., as alleged in paragraph 20 of the Complaint. Although Mr. Perry was present, he did not make himself available to accompany Dr. Bellin and Mr. Watson on the inspection and did not make another responsible person available to accompany Dr. Bellin and Mr. Watson on the inspection (CX 58; Tr. 498-508). Mr. Perry and PWR are not excused from their failure to allow inspection merely because inspection on January 20, 2005, would have been inconvenient (Answer). Dr. Bellin's and Mr. Watson's availability to conduct the inspection on another date (CX 58 at 2) does not excuse Mr. Perry and PWR from their failure to allow inspection.⁸

Moreover, I reject Mr. Perry and PWR's contention that Dr. Bellin and Mr. Watson did not attempt to conduct an inspection during "business hours," as that term is used in 9 C.F.R. § 2.126, merely because Mr. Perry and PWR's business was not open to the public at the time Dr. Bellin and Mr. Watson attempted to conduct the inspection. The time of the attempted inspection was 10:00 a.m., Thursday, January 20, 2005, which was not a holiday, and Mr. Perry was present loading animals to be moved to La Crosse, Wisconsin, for exhibition (CX 58 at 2). I find, under these circumstances, Dr. Bellin and Mr. Watson attempted to

⁸ See *In re Lee Marvin Greenly* (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), __ Agric. Dec. __, slip op. at 23 (Aug. 5, 2013) (stating an exhibitor is not excused from compliance with 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), even if the APHIS official offers to return to conduct the inspection at another time).

conduct an inspection of Mr. Perry and PWR's business during business hours, even though the business was not open to the public at that time. Therefore, I conclude Mr. Perry and PWR willfully violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), on January 20, 2005, and I find the ALJ's failure to conclude that Mr. Perry and PWR willfully violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), as alleged in paragraph 20 of the Complaint, is error.

The Administrator contends the ALJ erroneously failed to conclude that, on September 10, 2000, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(a)(1) (2004), as alleged in paragraphs 21 and 22 of the Complaint, and willfully violated of 9 C.F.R. § 2.131(b)(1) (2004), as alleged in paragraph 23 of the Complaint (Appeal Pet. at 38-40).

The Regulations impose requirements for handling animals, as follows:

§ 2.131 Handling of animals.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

....

(b)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public.

9 C.F.R. § 2.131(a)(1), (b)(1) (2004). The evidence establishes that on September 10, 2000, at the New Mexico State Fair, Mr. Perry and PWR conducted numerous photo shoots by placing felids in direct contact with the public (CX 2, CX 4, CX 13-CX 13a; Tr. 62-73, 77-81).

Richard Namm, one of Mr. Perry and PWR's patrons, was injured by a tiger during a photo shoot, when the tiger, held by Mr. Namm, bit Mr. Namm's arm (CX 2-CX 3, CX 5-CX 11; Tr. 65, 73-77, 81-86). Based on this evidence, I conclude the Administrator proved by a preponderance of the evidence that, on September 10, 2000, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(b)(1) (2004), as alleged in paragraph 23 of the Complaint, and I reverse the ALJ. However, I do not find the Administrator's evidence strong enough to reverse the ALJ's conclusions that the Administrator failed to prove by a preponderance of the evidence that Mr. Perry and PWR handled animals in willful violation of 9 C.F.R. § 2.131(a)(1) (2004), as alleged in paragraphs 21 and 22 of the Complaint.

The Administrator's Appeal of the ALJ's Analysis of Violations

The Administrator contends the ALJ erroneously analyzed violations of the Regulations alleged in the Complaint as torts (Appeal Pet. at 40-41). The ALJ apportioned responsibility for the death of three tiger cubs finding Mr. Perry was only about one percent responsible for their deaths.⁹ However, I find nothing in the ALJ's Decision and Order indicating that the ALJ was under the misapprehension that this proceeding is a tort action or that the ALJ found that Mr. Perry and PWR engaged in tortious conduct.

⁹ALJ's Decision and Order at 8-10 ¶ 13(c).

The Administrator's Appeal of the ALJ's Credibility Determination

The Administrator contends the ALJ erroneously found Mr. Perry a credible witness (Appeal Pet. at 41-42).

The ALJ found Mr. Perry was a “very credible witness[.]”¹⁰ The Judicial Officer is not bound by an administrative law judge’s credibility determinations and may make separate determinations of witnesses’ credibility, subject only to court review for substantial evidence. *Mattes v. United States*, 721 F.2d 1125, 1128-29 (7th Cir. 1983).¹¹ The Administrative Procedure Act provides that, on appeal from an administrative law judge’s initial decision, the agency has all the powers it would have in making an initial decision, as follows:

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

....

¹⁰ALJ’s Decision and Order at 51 ¶¶ 32-33.

¹¹*See also In re KOAM Produce, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470, 1474 (2006); *In re Southern Minnesota Beet Sugar Cooperative*, 64 Agric. Dec. 580, 605 (2005); *In re Excel Corp.*, 62 Agric. Dec. 196, 244-46 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 210 (2002), *aff’d*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004); *In re Wallace Brandon* (Decision as to Jerry W. Graves and Kathy Graves), 60 Agric. Dec. 527, 560 (2001), *appeal dismissed sub nom. Graves v. United States Dep’t of Agric.*, No. 01-3956 (6th Cir. Nov. 28, 2001); *In re Midland Banana & Tomato Co.*, 54 Agric. Dec. 1239, 1271-72 (1995), *aff’d*, 104 F.3d 139 (8th Cir.), *cert. denied sub nom. Heimann v. Department of Agric.*, 522 U.S. 951 (1997).

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.

5 U.S.C. § 557(b).

Moreover, the Attorney General's Manual on the Administrative Procedure Act describes the authority of the agency on review of an initial or recommended decision, as follows:

Appeals and review. . . .

In making its decision, whether following an initial or recommended decision, the agency is in no way bound by the decision of its subordinate officer; it retains complete freedom of decision—as though it had heard the evidence itself. This follows from the fact that a recommended decision is advisory in nature. See *National Labor Relations Board v. Elkland Leather Co.*, 114 F.2d 221, 225 (C.C.A. 3, 1940), certiorari denied, 311 U.S. 705.

Attorney General's Manual on the Administrative Procedure Act 83 (1947).

However, the consistent practice of the Judicial Officer is to give great weight to the findings by, and particularly the credibility determinations of, administrative law judges, since they have the opportunity to see and hear witnesses testify.¹²

¹²*In re KOAM Produce, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470, 1476 (2006); *In re Jewel Bond* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1175, 1183 (2006); *In re G&T Terminal Packing Co.*, 64 Agric. Dec. 1839, 1852 (2005), *aff'd*, 468 F.3d 86 (2d Cir. 2006), *cert. denied*, 552 U.S. 814 (2007); *In re Southern Minnesota Beet Sugar Cooperative*, 64 Agric. Dec. 580, 608 (2005); *In re Excel Corp.*, 62 Agric. Dec. 196, 244-46 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 210 (2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004); *In re Wallace Brandon* (Decision as to Jerry W. Graves and Kathy Graves), 60 Agric. Dec. 527, 561-62 (2001), *appeal dismissed sub nom. Graves v. United States Dep't of Agric.*, No. 01-3956 (6th Cir. Nov. 28, 2001); *In re Sunland Packing House Co.*, 58 Agric. Dec. 543, 602 (1999); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1055-56 (1998); *In re Jerry Goetz*, 56 Agric. Dec. 1470, 1510 (1997), *aff'd*, 99 F. Supp. 2d 1308 (D. Kan. 1998), *aff'd*, 12 F. App'x 718 (10th Cir.), *cert. denied*, 534 U.S. 1440 (2001); *In re Saulsbury Enterprises*, 56 Agric. Dec. 82, 89 (1997) (Order Denying Pet. for Recons.); *In re Andershock's Fruitland, Inc.*, 55 Agric. Dec. 1204, 1229 (1996), *aff'd*, 151 F.3d 735 (7th Cir. 1998); *In re Floyd Stanley White*, 47 Agric. Dec. 229, 279 (1988), *aff'd per curiam*, 865 F.2d 262, 1988 WL 133292 (6th Cir. 1988); *In re King Meat Packing Co.*, 40 Agric. Dec. 552, 553 (1981); *In re Mr. & Mrs. Richard L. Thornton*, 38 Agric. Dec. 1425, 1426 (1979) (Remand Order); *In re Unionville Sales Co.*, 38 Agric. Dec. 1207, 1208-09 (1979) (Remand Order); *In re Steve Beech*, 37 Agric. Dec. 869, 871-72 (1978); *In re National Beef Packing Co.*, 36 Agric. Dec. 1722, 1736 (1977), *aff'd*, 605 F.2d 1167 (10th Cir. 1979); *In re Edward Whaley*, 35 Agric. Dec. 1519, 1521 (1976); *In re Dr. Joe Davis*, 35 Agric. Dec. 538, 539 (1976); *In re American Commodity Brokers, Inc.*, 32 Agric. Dec. 1765, 1772 (1973); *In re Cardwell Dishmon*, 31 Agric. Dec. 1002, 1004 (1972); *In re Sy B. Gaiber & Co.*, 31 Agric. Dec. 474, 497-98 (1972); *In re Louis Romoff*, 31 Agric. Dec. 158, 172 (1972).

I have examined the record and find no basis to reverse the ALJ's credibility determination with respect to Mr. Perry. Therefore, I reject the Administrator's contention that the ALJ's credibility determination regarding Mr. Perry, is error.

The Administrator's Appeal of the ALJ's Assessment of a \$7,250 Civil Penalty

The Administrator contends the ALJ's assessment of a \$6,750 civil penalty against Mr. Perry and PWR, jointly and severally, and an additional \$500 civil penalty against Mr. Perry, is error. The Administrator contends, in addition to the cease and desist order issued by the ALJ, the appropriate sanction is an order revoking Animal Welfare Act license number 42-C-0101 or, in the alternative, an order assessing Mr. Perry and PWR, jointly and severally, an \$85,000 civil penalty. (Appeal Pet. at 11-17.)

When determining the amount of the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations, 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.¹³

¹³7 U.S.C. § 2149(b).

The ALJ found Mr. Perry and PWR's business to be "medium in size, not highly profitable[.]"¹⁴ I disagree with the ALJ's finding that Mr. Perry and PWR's business is medium in size, and I disagree with the ALJ's reliance on the profitability of Mr. Perry and PWR's business to determine the size of their business. The evidence establishes that, during the period 2000 through 2005, Mr. Perry and PWR held as few as 56 animals and as many as 83 animals (CX 1 at 5-6, 8, 10, 12, 14). Based upon the number of animals held by Mr. Perry and PWR, I find they operate a moderately large business.¹⁵

¹⁴ALJ's Decision and Order at 24 ¶ 21.

¹⁵See *In re Michael A. Huchital, Ph.D.*, 58 Agric. Dec. 763, 816-17 (1999) (finding the respondent, who held approximately 80 rabbits, operated a large business); *In re Cecil Browning*, 52 Agric. Dec. 129, 151 (1993) (finding the respondent, who held 75-80 animals, operated a moderately large business), *aff'd per curiam*, 15 F.3d 1097 (11th Cir. 1994) (Table).

The ALJ states she kept in mind the gravity of Mr. Perry and PWR's violations. I agree with the ALJ that Mr. Perry and PWR's violations of the Animal Welfare Act and the Regulations are grave. I find particularly grave Mr. Perry and PWR's violations of the handling regulations (9 C.F.R. § 2.131) and the veterinary care regulations (9 C.F.R. § 2.40) because those violations thwarted the Secretary of Agriculture's efforts to protect the health and well-being of exhibited animals.¹⁶ Mr. Perry and PWR's violations of the handling regulations and the veterinary care regulations resulted in the very harm these regulations are designed to prevent; namely, the death of animals and injuries to members of the public.

Moreover, an exhibitor's failure to allow APHIS officials to enter his or her place of business to conduct an inspection, in violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), is a serious violation because it thwarts the Secretary of Agriculture's ability to monitor the exhibitor's compliance with the Animal Welfare Act and the Regulations and severely undermines the Secretary of Agriculture's ability to enforce the Animal Welfare Act and the Regulations.

¹⁶See *In re John D. Davenport*, 57 Agric. Dec. 189, 240 (1998) (stating the respondent's violations are very serious because they thwart the United States Department of Agriculture's efforts to protect the health and well-being of exhibited exotic species), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998).

The ALJ states Mr. Perry's good faith is obvious to her. The ALJ bases her finding of good faith on the length of time Mr. Perry has held an Animal Welfare Act license, the successes Mr. Perry has had which benefitted animals and people, Mr. Perry's courage and expertise in caring for animals, Mr. Perry's efforts to comply with the Animal Welfare Act and the Regulations, and Mr. Perry's instructions to his employees to comply with the Animal Welfare Act and the Regulations.¹⁷

¹⁷ALJ's Decision and Order at 24 ¶ 21.

The record does not support the ALJ's assessment of Mr. Perry's good faith. I do not find the length of time that Mr. Perry held an Animal Welfare Act license or Mr. Perry's courage, expertise, and success establish his good faith. Efforts to comply with the Animal Welfare Act and the Regulations and instructions to employees to comply with the Animal Welfare Act and the Regulations are relevant to good faith. However, the record establishes that Mr. Perry repeatedly violated the Animal Welfare Act and the Regulations during the period September 10, 2000, through June 15, 2005. Moreover, Mr. Perry was a respondent in a previous Animal Welfare Act enforcement proceeding. In that proceeding, Mr. Perry entered into a consent decision in which he neither admitted nor denied the allegations that he violated the Animal Welfare Act and the Regulations.¹⁸ While a consent decision does not prove a prior violation, a consent decision can be used to determine the sanction necessary to deter a respondent from future violations of the Animal Welfare Act.¹⁹

Finally, Mr. Perry and PWR have a history of violations. An ongoing pattern of violations establishes a history of previous violations for the purposes of 7 U.S.C. § 2149(b).

¹⁸*In re Craig A. Perry* (Consent Decision and Order), 55 Agric. Dec. 1118 (1996) (CX 61).

¹⁹*In re John D. Davenport*, 57 Agric. Dec. 189, 240 (1998), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998); *In re Delta Air Lines, Inc.*, 53 Agric. Dec. 1076, 1085 (1994).

The United States Department of Agriculture's 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 generally entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry.

However, I have repeatedly stated 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.²⁰

²⁰*In re Lee Marvin Greenly* (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), __ Agric. Dec. __, slip op. at 33-34 (Aug. 5, 2013); *In re Sam Mazzola*, 68 Agric. Dec. 822, 849 (2009), *dismissed*, 2010 WL 2988902 (6th Cir. Oct. 27, 2010); *In re Lorenza Pearson*, 68 Agric. Dec. 685, 731 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011); *In re Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 89 (2009); *In re Alliance Airlines*, 64 Agric. Dec. 1595, 1608 (2005); *In re Mary Jean Williams* (Decision as to

The Administrator, one of the officials charged with administering the Animal Welfare Act, recommends that I revoke Animal Welfare Act license number 42-C-0101 or, in the alternative, assess Mr. Perry and PWR, jointly and severally, an \$85,000 civil penalty for their violations of the Animal Welfare Act and the Regulations (Appeal Pet. at 11; Complainant's Proposed Findings of Fact, Conclusions of Law, Brief and Proposed Order at 56). Based upon the record before me, I agree with the ALJ that revocation of Animal Welfare Act license number 42-C-0101 is not necessary to ensure Mr. Perry's and PWR's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act. However, I find a civil penalty is warranted in law and justified by the facts.

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); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 49 (2002).

I conclude Mr. Perry and PWR committed 47 violations of the Animal Welfare Act and the Regulations during the period September 10, 2000, through June 15, 2005.²¹ Mr. Perry and PWR could be assessed a maximum civil penalty of \$129,250 for 47 violations of the Animal Welfare Act and the Regulations.²² After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the factors required to be considered in 7 U.S.C. § 2149(b) and the remedial purposes of the Animal Welfare Act, I conclude a \$14,600 civil penalty is appropriate and necessary to ensure Mr. Perry's and PWR's compliance with the Animal Welfare Act and the Regulations in the

²¹The Animal Welfare Act provides that each violation and each day during which a violation continues shall be a separate offense. 7 U.S.C. § 2149(b).

²²Prior to June 18, 2008, the Animal Welfare Act, authorized the Secretary of Agriculture to assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations (7 U.S.C. § 2149(b)). However, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), provides that the head of each agency shall, by regulation, adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency by increasing the maximum civil penalty for each civil monetary penalty by a cost-of-living adjustment. In 1997, the Secretary of Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed under 7 U.S.C. § 2149(b) for each violation of the Animal Welfare Act and the Regulations by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v) (2005)). This maximum civil penalty was in effect during the period September 10, 2000, through June 15, 2005, when Mr. Perry and PWR committed violations of the Animal Welfare Act and the Regulations. Thus, the Secretary of Agriculture is authorized to assess Mr. Perry and PWR a civil penalty of not more than \$2,750 for each of their 47 violations of the Animal Welfare Act and the Regulations.

future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.²³

Based upon the record before me, the following Findings of Fact and Conclusions of Law are entered.

Findings of Fact

1. Mr. Perry is an individual whose business address is in Center Point, Iowa.
2. At all times material to this proceeding, Mr. Perry was an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations.
3. During the period September 10, 2000, to June 20, 2002, Mr. Perry was licensed as an Animal Welfare Act exhibitor and held Animal Welfare Act license number 42-C-0101.
4. PWR was incorporated in 1993 under the laws of the State of Iowa.

²³I assess Mr. Perry and PWR: (1) a \$500 civil penalty for each of their nine violations of 9 C.F.R. § 2.40(b); (2) a \$500 civil penalty for each of their four violations of 9 C.F.R. § 2.40(a); (3) a \$500 civil penalty for each of their five violations of 9 C.F.R. § 2.40(a)(1); (4) a \$300 civil penalty for their violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a); (5) a \$500 civil penalty for each of their three violations of 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1); (6) a \$500 civil penalty for each of their four violations of 9 C.F.R. § 2.131(a)(1) (2004); (7) a \$500 civil penalty for their violation of 9 C.F.R. § 2.131(b)(3) (2004); (8) a \$500 civil penalty for their violation of 9 C.F.R. § 2.131(c)(1) (2004); and (9) an \$800 civil penalty for their violations of 9 C.F.R. §§ 2.100(a), 3.125(a), 3.125(c), 3.125(d), 3.127(a), 3.127(c), 3.129(a), 3.131(a), and 3.137(a).

5. At all times material to this proceeding, PWR was an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations.

6. Mr. Perry is the director, president, vice president, secretary, and treasurer of PWR.

7. During the period June 20, 2002, through June 15, 2005, PWR was licensed as an Animal Welfare Act exhibitor and held Animal Welfare Act license number 42-C-0101.

8. On October 26, 2002, at Fort Collins, Colorado, Mr. Perry and PWR failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel or on-site personnel capable of discerning when an animal was in need of veterinary care. Specifically, Mr. Perry and PWR delegated to untrained persons the responsibility of handling lions in exhibition to the public.

9. From February 19, 2003, through February 22, 2003, Mr. Perry and PWR failed to have a veterinarian provide adequate veterinary care to three unweaned infant tigers, born February 11, 2003. Instead, Mr. Perry and PWR transported the three infant tigers (two of which had not opened their eyes), by truck, from Iowa to Colorado, to work in photo shoots at American Furniture Warehouse, in Thornton, Colorado, on February 21, 2003, and continued to withhold veterinary medical care, despite clear signs that the tigers were in distress and in need of veterinary medical care.

10. From February 19, 2003, through February 22, 2003, Mr. Perry and PWR failed to employ a full-time attending veterinarian or a part-time attending veterinarian under formal arrangements that included a written program of veterinary care. Specifically, Mr. Perry and PWR had no program for emergency care.

11. On or about February 27, 2003, and March 10, 2003, Mr. Perry and PWR failed to employ a full-time attending veterinarian or a part-time attending veterinarian under formal arrangements that included a written program of veterinary care and regularly scheduled visits to a facility that provided emergency care for animals.

12. From on or about February 19, 2003, through February 27, 2003, in Thornton, Colorado, Mr. Perry and PWR failed to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care. Specifically, Mr. Perry and PWR failed to establish a plan for emergency veterinary medical care or a plan for obtaining veterinary care while traveling and failed to obtain any veterinary care for three unweaned infant tigers, all of whom died on February 22, 2003. Instead, Mr. Perry and PWR turned for assistance to their attending veterinarian in Iowa, who was unavailable.

13. On February 25, 2003, Mr. Perry and PWR, in Jackson, Minnesota, failed to have a veterinarian provide adequate veterinary care to two unweaned infant tigers, born

February 18, 2003. Instead, Mr. Perry and PWR transported the tigers to Colorado on February 26, 2003, without having obtained any health examination.

14. On January 20, 2005, at 10:00 a.m., at Center Point, Iowa, Mr. Perry and PWR failed to allow APHIS officials access to enter their place of business, during business hours, and conduct an inspection of their facilities, animals, and records.

15. On September 10, 2000, at the New Mexico State Fair, in Albuquerque, New Mexico, Mr. Perry and PWR repeatedly failed to handle animals, during public exhibition, so there was minimal risk of harm to animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public. Specifically, Mr. Perry and PWR exhibited a four-month-old tiger and two lions to the public (including toddlers) without any barriers or distance between the animals and the public to prevent the public from coming into contact with the animals.

16. From February 19, 2003, through February 22, 2003, Mr. Perry and PWR failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm. Specifically, Mr. Perry and PWR: (i) acquired three infant tiger cubs from Ohio on February 19, 2003; (ii) transported the infant tigers from Iowa to Colorado; (iii) discontinued use of the infant tigers' formula; (iv) removed the infant tigers from a heated enclosure and exhibited the infant tigers in an unheated warehouse in photo shoot sessions; (v) used the three infant tigers for

photo shoots with the general public, although the tigers' immune systems had not yet fully developed and the tigers had not been properly weaned; and (vi) failed to obtain veterinary care for the three infant tigers, despite their obvious ill health, which was demonstrated by vomiting and listlessness.

17. On February 21, 2003, Mr. Perry and PWR exposed young or immature animals to excessive public handling and exhibited the animals for periods of time that would be detrimental to the animals' health or well-being. Specifically, Mr. Perry and PWR used three infant tigers, which had not been properly weaned and were only 10 days old, for up to 10 hours of photo shoots with the general public. The animals were too young for any public handling.

18. On February 21, 2003, Mr. Perry and PWR exhibited animals for periods of time that were inconsistent with the animals' good health and well-being. Specifically, Mr. Perry and PWR used three infant tigers, which were 10 days old, had not been properly weaned, and whose immune systems had not been fully developed, for approximately 9 hours of photo shoots with the general public.

19. On August 1, 2004, at the Lake County Fair, in Grayslake, Illinois, Mr. Perry and PWR failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm. Specifically, Mr. Perry and PWR allowed the public to handle and feed lion cubs and, as a

result of the handling, a lion cub injured a member of the public and the lion cub was quarantined for rabies testing.

20. On August 1, 2004, at the Lake County Fair, in Grayslake, Illinois, Mr. Perry and PWR failed to handle animals, during public exhibition, so there was minimal risk of harm to animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public. Specifically, Mr. Perry and PWR exhibited a lion cub to the public without any barriers or distance between the animal and the public to prevent the public from coming into contact with the animal, and, as a result of the handling, the lion cub injured a member of the public and was quarantined for rabies testing.

21. On or about December 27, 2004, at the Thunder Mountain Harley Davidson Dealership, in Loveland, Colorado, Mr. Perry and PWR repeatedly failed to handle animals, during public exhibition, so there was minimal risk of harm to animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public. Specifically, Mr. Perry and PWR exhibited tigers to the public using a fire pit as a barrier.

22. On October 11, 2000, Mr. Perry and PWR transported animals to the East Texas State Fair, in Beaumont, Texas, in a two-story aluminum cattle trailer the side of which was corroded.

23. On June 13, 2001, Mr. Perry and PWR failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain the animals. Specifically, Mr. Perry and PWR failed to repair the cattle panels in the front area of the enclosures housing Texas Longhorn cattle and Scottish Highlander cattle.

24. On June 13, 2001, Mr. Perry and PWR failed to provide for removal and disposal of animal waste and bedding. Specifically, Mr. Perry and PWR failed to remove an excessive buildup of excreta mixed with bedding materials from the enclosure housing Texas Longhorn cattle and Scottish Highlander cattle.

25. On June 13, 2001, Mr. Perry and PWR failed to provide sufficient shade, by natural or artificial means, to allow animals kept outdoors to protect themselves from direct sunlight when sunlight is likely to cause overheating or discomfort. Specifically, Mr. Perry and PWR failed to provide adequate shade to an adult lion housed outdoors, when the weather was sunny and the temperature was 90 degrees Fahrenheit.

26. On June 13, 2001, Mr. Perry and PWR failed to provide a suitable method to rapidly eliminate excess water. Specifically, Mr. Perry and PWR: (i) failed to eliminate standing water and mud in exotic hoofstock enclosures; (ii) failed to eliminate standing water and mud in calf enclosures; (iii) failed to eliminate standing water and mud in camel enclosures; (iv) failed to eliminate standing water and mud in sheep enclosures; (v) failed to

eliminate standing water and mud in goat enclosures; and (vi) failed to eliminate standing water and mud in coyote enclosures.

27. On June 13, 2001, Mr. Perry and PWR failed to provide wholesome, palatable, and uncontaminated food of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, Mr. Perry and PWR: (i) failed to feed large felids a balanced diet and, instead, fed the large felids a diet consisting of chicken and red muscle meat, some of which was store-bought and bore expiration dates from at least April 2001; (ii) failed to feed large felids a balanced diet and, instead, fed the large felids a diet consisting of chicken and red muscle meat, with no nutritional supplements provided, except to newborn or infant felids; and (iii) failed to ensure that food was wholesome, palatable, and free from contamination and failed to thaw frozen food in a refrigerator, but, instead, used igloo-type coolers.

28. On June 13, 2001, Mr. Perry and PWR failed to remove excreta from the primary enclosure housing Texas Longhorn cattle and Scottish Highlander cattle as often as necessary to prevent contamination of the animals contained in the primary enclosure, to minimize disease hazards, and to reduce odors.

29. On February 27, 2003, and March 10, 2003, Mr. Perry and PWR failed to establish a program for feeding wholesome, palatable, and uncontaminated food of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, Mr. Perry and PWR had no feeding protocol for young tiger cubs.

30. On February 8, 2005, Mr. Perry and PWR failed to provide for removal and disposal of animal waste from primary enclosures housing tigers, wolves, lions, leopards, coyote, zebra, camels, llamas, sheep, goats, audad, water buffalo, and Brahma cattle.

31. On February 8, 2005, Mr. Perry and PWR failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain the animals. Specifically, Mr. Perry and PWR failed to repair the east metal wall of the enclosure housing camels.

32. On February 8, 2005, Mr. Perry and PWR failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain the animals. Specifically, Mr. Perry and PWR failed to repair the shade tarps above the enclosure housing the male lion.

33. On February 8, 2005, Mr. Perry and PWR failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain the animals. Specifically, Mr. Perry and PWR failed to repair the shade tarps above the enclosure housing wolves.

34. On February 8, 2005, Mr. Perry and PWR failed to store supplies of food in facilities that adequately protected the supplies of food against deterioration, molding, and contamination by vermin. Specifically, Mr. Perry and PWR stored open packages of meat in an outdoor feed shed.

35. On February 8, 2005, Mr. Perry and PWR failed to provide wholesome, palatable, and uncontaminated food of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, Mr. Perry and PWR: (i) had no fewer than four unopened bags of Purina primate chow with milling dates of May 17, 2004; and (ii) failed to feed large felids a balanced diet, fed no supplements, and, instead, fed the large felids a diet consisting of chicken and beef that had been exposed to the elements, pests, and vermin.

36. On February 8, 2005, Mr. Perry and PWR failed to remove excreta, snow, ice, and food waste from primary enclosures housing tigers, wolves, lions, coyote, zebra, camels, llamas, sheep, goats, audad, water buffalo, and Brahma cattle as often as necessary to prevent contamination of the animals contained in the primary enclosures, to minimize disease hazards, and to reduce odors.

37. On June 15, 2005, Mr. Perry and PWR failed to provide for removal and disposal of food waste from the enclosure housing two adult tigers. Specifically, Mr. Perry and PWR failed to provide for removal and disposal of the rear quarter of a calf and other uneaten portions of the calf.

38. On June 15, 2005, Mr. Perry and PWR failed to provide a suitable method to rapidly eliminate excess water. Specifically, Mr. Perry and PWR: (i) failed to eliminate standing water in enclosures housing tigers; (ii) failed to eliminate standing water in enclosures housing camels; (iii) failed to eliminate standing water in enclosures housing sheep;

(iv) failed to eliminate standing water in enclosures housing goats; and (v) failed to eliminate standing water in enclosures housing cattle.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On October 26, 2002, and, from February 19, 2003, through February 27, 2003, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.40(b) by failing to establish and maintain a program of adequate veterinary care.
3. From February 19, 2003, through February 22, 2003, and on February 25, 2003, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.40(a) by failing to have an attending veterinarian provide adequate veterinary care to their animals.
4. From February 19, 2003, through February 22, 2003, on February 27, 2003, and on March 10, 2003, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.40(a)(1) by failing to employ an attending veterinarian under formal arrangements.
5. On January 20, 2005, Mr. Perry and PWR willfully violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) by failing to allow APHIS officials to inspect Mr. Perry and PWR's facilities, property, animals, and records, during business hours.
6. On September 10, 2000, and August 1, 2004, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(b)(1) (2004) and on December 27, 2004, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(c)(1) by failing to handle animals, during public

exhibition, so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public.

7. From February 19, 2003, through February 22, 2003, and on August 1, 2004, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(a)(1) (2004) by failing to handle animals as carefully as possible in a manner that does not cause trauma, unnecessary discomfort, behavioral stress, or physical harm.

8. On February 21, 2003, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(b)(3) (2004) by exposing young or immature animals to excessive public handling and exhibiting the animals for periods of time that would be detrimental to their health or well-being.

9. On February 21, 2003, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.131(c)(1) (2004) by exhibiting animals for periods of time that were inconsistent with their good health and well-being.

10. On October 11, 2000, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.100(a) and 3.137(a) by failing to transport animals in a primary enclosure constructed in such a manner that the structural strength of the primary enclosure was sufficient to contain the animals and to withstand the normal rigors of transportation.

11. On June 13, 2001, and February 8, 2005, Mr. Perry and PWR willfully violated 9 C.F.R. §§ 2.100(a) and 3.125(a) by failing to maintain housing facilities so that the housing facilities were structurally sound and by failing to maintain housing facilities in good repair.

12. On June 13, 2001, February 8, 2005, and June 15, 2005, Mr. Perry and PWR willfully violated 9 C.F.R. §§ 2.100(a) and 3.125(d) by failing to provide for removal and disposal of animal waste, food waste, and bedding.

13. On June 13, 2001, Mr. Perry and PWR willfully violated 9 C.F.R. §§ 2.100(a) and 3.127(a) by failing to provide sufficient shade, by natural or artificial means, to allow animals kept outdoors to protect themselves from direct sunlight when sunlight is likely to cause overheating or discomfort.

14. On June 13, 2001, and June 15, 2005, Mr. Perry and PWR willfully violated 9 C.F.R. §§ 2.100(a) and 3.127(c) by failing to provide a suitable method to rapidly eliminate excess water.

15. On June 13, 2001, February 27, 2003, March 10, 2003, and February 8, 2005, Mr. Perry and PWR willfully violated 9 C.F.R. §§ 2.100(a) and 3.129(a) by failing to provide wholesome, palatable, and uncontaminated food of sufficient quantity and nutritive value to maintain all animals in good health.

16. On June 13, 2001, and February 8, 2005, Mr. Perry and PWR willfully violated 9 C.F.R. §§ 2.100(a) and 3.131(a) by failing to remove excreta from primary enclosures as

often as necessary to prevent contamination of the animals contained in the primary enclosures, to minimize disease hazards, and to reduce odors.

17. On February 8, 2005, Mr. Perry and PWR willfully violated 9 C.F.R. § 2.100(a) and 3.125(c) by failing to store supplies of food in facilities that adequately protected the supplies of food against deterioration, molding, and contamination by vermin.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Perry and PWR, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and, in particular, shall cease and desist from:
 - a. failing to establish and maintain a program of adequate veterinary care;
 - b. failing to have a veterinarian provide adequate veterinary care to their animals;
 - c. failing to allow APHIS officials access to enter their place of business, during business hours, and conduct an inspection of their facilities, animals, and records;
 - d. failing to handle animals, during public exhibition, so there is minimal risk of harm to animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public;
 - e. failing to handle animals as expeditiously and carefully as possible in a manner that does not cause trauma, unnecessary discomfort, behavioral stress, or physical harm to the animals;
 - f. exhibiting animals for periods of time and under conditions inconsistent with the good health and well-being of the animals;
 - g. failing to transport live animals in primary enclosures that are of sufficient structural strength to contain the animals and to withstand the normal rigors of transportation;

- h. failing to maintain housing facilities so that the housing facilities are structurally sound and in good repair sufficient to protect the animals in the facilities from injury and to contain the animals in the facilities;
- i. failing to provide for removal and disposal of animal waste, food waste, and bedding;
- j. failing to provide sufficient shade, by natural or artificial means, to animals kept outdoors to allow the animals to protect themselves from direct sunlight when sunlight is likely to cause overheating or discomfort;
- k. failing to provide a suitable method to rapidly eliminate excess water;
- l. failing to provide wholesome, palatable, and uncontaminated food of sufficient quantity and nutritive value to maintain all animals in good health;
- m. failing to remove excreta from primary enclosures housing animals as often as necessary to prevent contamination of the animals contained in the primary enclosures, to minimize disease hazards, and to reduce odors; and

n. failing to store supplies of food in facilities that adequately protect the supplies of food against deterioration, molding, and contamination by vermin.

Paragraph 1 of this Order shall become effective upon service of this Order on Mr. Perry and PWR.

2. Mr. Perry and PWR are assessed, jointly and severally, a \$14,600 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:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing, Regulatory, and Food Safety Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Ms. Carroll within 60 days after service of this Order on Mr. Perry and PWR. Mr. Perry and PWR shall state on the certified check or money order that payment is in reference to AWA Docket No. 05-0026.

RIGHT TO JUDICIAL REVIEW

Mr. Perry and PWR have 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. Mr. Perry and PWR must seek judicial review within 60 days after entry of the

Order in this Decision and Order.²⁴ The date of entry of the Order in this Decision and Order is September 6, 2013.

Done at Washington, DC

September 6, 2013

William G. Jenson
Judicial Officer

²⁴7 U.S.C. § 2149(c).