

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 02-0020
)	
Lorenza Pearson,)	
d/b/a L & L Exotic)	
Animal Farm,)	
)	
Respondent)	
	and	
)	
In re:)	AWA Docket No. D-06-0002
)	
Lorenza Pearson,)	
)	
Petitioner)	Decision and Order

PRELIMINARY STATEMENT

This consolidated proceeding includes a disciplinary Complaint (AWA Docket No. 02-0020) filed on June 14, 2002, and a First Amended Complaint filed on March 17, 2006, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], and a Petition (AWA Docket No. D-06-0002) filed on October 28, 2005, by Lorenza Pearson, the respondent in the

disciplinary action.¹ The First Amended Complaint alleges Mr. Pearson, a licensed exhibitor, willfully violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act], and the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]. The Administrator seeks a cease and desist order, a civil penalty of at least \$100,000, the revocation of Mr. Pearson's Animal Welfare Act license, and the permanent disqualification of Mr. Pearson from obtaining an Animal Welfare Act license. Mr. Pearson denies the allegations in the First Amended Complaint.

Mr. Pearson's Petition seeks a hearing to oppose the Administrator's intent, as expressed in an October 5, 2005, letter from the Animal and Plant Health Inspection Service [hereinafter APHIS], to terminate Mr. Pearson's Animal Welfare Act license.

Administrative Law Judge Leslie B. Holt [hereinafter ALJ Holt] conducted a hearing in Akron, Ohio, on September 24-25, 2003. The Administrator presented his case and Mr. Pearson cross-examined the Administrator's witnesses; however, Mr. Pearson did not have the opportunity to present a defense at that time. Before the hearing reconvened, ALJ Holt became unavailable and the case was reassigned to Administrative Law Judge Victor W. Palmer [hereinafter ALJ Palmer]. After ALJ Palmer was assigned the case, various events occurred that delayed the proceeding.

¹The instant proceeding is conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

During teleconferences in April and May 2004, ALJ Palmer and counsel for the parties discussed the need for a new hearing. Counsel for Mr. Pearson stressed the need for ALJ Palmer to assess the credibility of the witnesses who testified at the 2003 hearing. Because of these concerns, ALJ Palmer scheduled a hearing for June 8-10, 2004, in Akron, Ohio. In order to accommodate the parties and their witnesses, the hearing was rescheduled twice. On March 31, 2005, 3 weeks before the scheduled date of the hearing, ALJ Palmer received information, during a teleconference, that a proceeding pertaining to Mr. Pearson's facility was pending before authorities for the State of Ohio that could resolve the issues in the instant proceeding. Because of this state proceeding, ALJ Palmer canceled the hearing at that time.

In a teleconference held on September 22, 2005, ALJ Palmer determined the state proceeding would not resolve the instant proceeding, and he further determined a hearing was necessary. ALJ Palmer scheduled the hearing for March 28-31, 2006, in Akron, Ohio. On March 3, 2006, the Administrator moved to file an amended complaint. The First Amended Complaint included new allegations resulting from inspections of Mr. Pearson's facility conducted after the inspections that were the subject of the 2003 hearing. During a teleconference, on March 7, 2006, ALJ Palmer granted the Administrator's motion to amend the complaint. ALJ Palmer ordered the Administrator to send a new witness list and copies of the exhibits to counsel for Mr. Pearson. At a subsequent teleconference, on March 14, 2006, ALJ Palmer determined the number of

allegations in the First Amended Complaint required additional time for Mr. Pearson to prepare for the hearing. ALJ Palmer rescheduled the hearing for June 20-23, 2006, and reserved additional hearing days on June 27-28, 2006, if needed.

On April 27, 2006, the Administrator filed a motion to limit the evidence Mr. Pearson would be allowed to introduce at the hearing. In a teleconference, on June 12, 2006, ALJ Palmer ruled, because the Administrator planned to call the same investigators who testified during the 2003 hearing, he could evaluate credibility without repeating testimony from the 2003 hearing. ALJ Palmer further ruled that Mr. Pearson would be allowed to cross-examine the Administrator's witnesses about the violations alleged by the Administrator in both the Complaint and the First Amended Complaint. Furthermore, Mr. Pearson's witnesses could testify about the violations originally alleged, as well as those added by the First Amended Complaint. ALJ Palmer ruled the June 2006 hearing was a continuation of the 2003 hearing.

On June 15, 2006, Mr. Pearson filed a request for a continuance of the scheduled hearing because his home, with papers, notes, and pictures, had been destroyed by a fire 2 weeks earlier. ALJ Palmer denied this motion on the following basis:

This case involves a complaint initially filed on June 14, 2002, in respect to which a hearing was held on September 24-25, 2003. Judge Leslie B. Holt, who presided over this hearing, became unavailable to decide the case and it was reassigned to me on March 10, 2004. At that time, there was a discussion as to whether another hearing would be needed. It was decided to hold another hearing on the basis of Mr. Whitaker's request. However, time after time, the hearing was postponed and not held. It shall now go forward without further delay.

It would be most inappropriate to grant a continuance in the present circumstances. If photos were destroyed in the fire, they cannot be restored; and witnesses who have lost their notes shall have to rely on their memory of the events when they testify, the same as they would if time were given to reconstruct the lost notes.

ALJ Palmer's June 15, 2006, Denial of Motion to Continue Hearing at 1-2.

At the hearing, counsel for Mr. Pearson again sought a continuance because of the fire. ALJ Palmer again denied the motion. (Tr. 2 at 18-26.)² Furthermore, during the hearing, counsel for Mr. Pearson moved to keep the hearing open in order to obtain testimony from Dr. Faust. Counsel for Mr. Pearson argued he learned, during the hearing, that Dr. Faust was the veterinarian who had, on Mr. Pearson's behalf, inspected his bears that were ultimately confiscated. ALJ Palmer denied this motion explaining his reasoning, as follows:

In a hearing so long delayed and so difficult to schedule, it is expected that all potentially helpful witnesses will be identified in advance of the hearing to prevent surprise to opposing counsel and to allow for the issuance and service of any subpoena [sic] needed to compel attendance.

ALJ Palmer's Decision and Order at 5.

ALJ Palmer presided over the hearing held in Akron, Ohio, on June 20-23, 2006. Attorneys employed by the Office of the General Counsel, United States Department of Agriculture, represented the Administrator. Frank Martin, Jr., and Nazina Razick

²The transcript of the 2003 hearing is referred to as "Tr. 1 at ___." The transcript of the 2006 hearing is referred to as "Tr. 2 at ___." The Administrator's exhibits are referred to as "CX ___." Mr. Pearson's exhibits are referred to as "EX ___."

represented the Administrator at the 2003 hearing, and Frank Martin, Jr., and Babak A. Rastgoufard represented the Administrator at the 2006 hearing. William T. Whitaker of Akron, Ohio, represented Mr. Pearson.

On April 6, 2007, ALJ Palmer issued a Decision and Order finding Mr. Pearson violated the Animal Welfare Act and the Regulations. The ALJ entered an order requiring Mr. Pearson to cease and desist from violating the Animal Welfare Act and the Regulations, revoking Mr. Pearson's Animal Welfare Act license, and permanently disqualifying Mr. Pearson from obtaining an Animal Welfare Act license. ALJ Palmer declined to assess a civil penalty against Mr. Pearson.

On July 23, 2007, Mr. Pearson filed "Respondent's Appeal Petition" [hereinafter Appeal Petition] and "Respondent's Brief in Support of Appeal Petition" seeking to overturn ALJ Palmer's Decision and Order. On August 21, 2007, the Administrator filed his opposition to Mr. Pearson's Appeal Petition which included a cross-appeal, and on October 19, 2007, Mr. Pearson filed "Respondent's Opposition to Complainant's Cross-Appeal." On October 23, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a thorough examination of the record, I adopt ALJ Palmer's conclusion that Mr. Pearson repeatedly violated the Animal Welfare Act and the Regulations during the period May 12, 1999, through February 22, 2006. I also adopt ALJ Palmer's order that Mr. Pearson cease and desist from violations of the Animal

Welfare Act and the Regulations, ALJ Palmer's revocation of Mr. Pearson's Animal Welfare Act license, ALJ Palmer's permanent disqualification of Mr. Pearson from obtaining an Animal Welfare Act license, and ALJ Palmer's denial of Mr. Pearson's petition opposing the Administrator's intent to terminate Mr. Pearson's Animal Welfare Act license. In addition, I find assessment of a civil penalty against Mr. Pearson warranted in law and justified by the facts.

DECISION

Findings of Fact

1. Mr. Pearson is an "exhibitor" as that term is defined in the Animal Welfare Act and the Regulations (Answer to First Amended Complaint).
2. Mr. Pearson holds Animal Welfare Act license number 31-C-0034, issued to: Lorenza Pearson, d/b/a L & L Animal Farm (Answer to First Amended Complaint).
3. Mr. Pearson does business as L & L Animal Farm, a/k/a L & L Exotic Animal Farm, an unincorporated association or partnership with a mailing address of 2060 Columbus Avenue, Akron, Ohio 44320 (Answer to First Amended Complaint).
4. On or about October 5, 2005, APHIS notified Mr. Pearson of its intent to terminate his Animal Welfare Act license pursuant to section 2.12 of the Regulations (9 C.F.R. § 2.12) (Answer to First Amended Complaint).
5. Mr. Pearson operates a medium-sized business. As shown by his applications to renew his Animal Welfare Act license, he has held the following number

of animals. Between October 11, 1999, and October 11, 2000, Mr. Pearson held 59 animals, including 39 wild/exotic felines and 20 bears (CX 1). Between October 11, 2000, and October 11, 2001, Mr. Pearson held 82 animals, including 55 wild/exotic felines and 27 bears (CX 2). Between October 11, 2001, and October 11, 2002, Mr. Pearson held 74 animals, including 46 wild/exotic felines and 28 bears (CX 151). Between October 11, 2002, and October 11, 2003, Mr. Pearson held 75 animals, including 46 wild/exotic felines and 29 bears (CX 150). Between October 11, 2003, and October 11, 2004, Mr. Pearson held 58 animals, including 33 wild/exotic felines and 25 bears (CX 148). Between October 11, 2004, and October 11, 2005, Mr. Pearson held 26 bears (CX 147).

6. APHIS conducted the periodic inspections of Mr. Pearson's facility that are at issue in the instant proceeding during the period May 12, 1999, through February 22, 2006 (CX 5-CX 143, CX 153-CX 192, CX 202).

7. APHIS confiscated seven of Mr. Pearson's bears on May 17, 2005, pursuant to section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.129 of the Regulations (9 C.F.R. § 2.129) for Mr. Pearson's failure to provide those bears requisite care (CX 194-CX 195; Tr. 2 at 662).

8. On May 12, 1999, an APHIS inspector conducted the first inspection at issue in this proceeding, in which the inspector found a "non-compliant item" or "deficiency" (the terms APHIS inspectors alternately use to describe conditions or

practices they believe are at variance with the Regulations). The May 12, 1999, inspection was a routine inspection of Mr. Pearson's facility in which Animal Care Inspector Joseph Kovach observed two lion cubs to have injuries to their noses that, in his opinion, could become infected, if untreated. Inspector Kovach directed Mr. Pearson to contact his attending veterinarian for treatment advice and to have the injuries treated (CX 5; Tr. 1 at 115-19). On September 9, 1999, Inspector Kovach conducted an inspection of Mr. Pearson's facility and found the injuries to the noses of the two lion cubs had been treated (CX 6; Tr. 1 at 119-20).

9. At the time of the September 9, 1999 inspection, Inspector Kovach observed new, non-compliant items. Wires were sticking out of the back wall of an enclosure housing two tigers; a bobcat enclosure had a hole in the roof; more shelter, such as a sleeping den box, was needed to protect a fox from bad weather; a trailer housing an adult tiger was too small for its permanent housing; and a transport trailer needed to be cleaned and sanitized. Inspector Kovach instructed Mr. Pearson to remove the wires from the wall of the tigers' enclosure; repair the roof of the bobcat's enclosure; provide the fox a sleeping box; and build a cage for the adult tiger. (CX 6; Tr. 1 at 120-24.)

10. On September 18, 1999, Dr. Norma Harlan, a veterinary medical officer employed by APHIS, inspected Mr. Pearson's traveling animal exhibit at a Heinz Corporation employee picnic. Mr. Pearson did not have records for two camels, seven tigers, and three lions. A camel pen, owned by an unlicensed facility, had several sharp

wire edges that needed repair and animals owned by the unlicensed facility were not accompanied with a copy of their health records or a written program of veterinary care. Therefore, Dr. Harlan could not verify if the two lion cubs, owned by the unlicensed facility, that had scrapes on their faces and legs and appeared to be too thin, had received needed veterinary care and were being fed in accordance with a veterinarian approved regimen. In addition to the problems with the animals owned by the unlicensed facility, pens on Mr. Pearson's trailer housing an adult lion and three tigers that he owned were, at 4 feet by 7 feet 11 inches by 5 feet tall, considered by Dr. Harlan to be too small for the animals to make needed postural adjustments; and the big cats did not have access to an exercise area. Mr. Pearson was instructed to have all required paperwork with future exhibitions; provide veterinary care to the two lion cubs and feed the lion cubs properly; repair the camel pen; and give the big cats adequate space and exercise when part of his traveling exhibit. (CX 7; Tr. 1 at 347-63, 403-04.)

11. On January 5, 2000, Inspector Kovach again inspected Mr. Pearson's permanent facility. Inspector Kovach found the enclosures housing the two tigers and the bobcat had been repaired, the fox had been provided adequate shelter, and the dirty transport trailer had been cleaned. Inspector Kovach also found that most of the items identified by Dr. Harlan as non-compliant in the inspection she conducted on September 18, 1999, had been corrected. The veterinary care program was reviewed and found to be up-to-date. The two lion cubs had been treated and later sold. The young

camel was not on site and could not be evaluated. Handholds were now on transport cages, and a different transport vehicle was being used. However, Inspector Kovach found the enclosures housing three tigers identified on September 18, 1999, as too small for each animal to have adequate freedom of movement, were still being used.

Mr. Pearson was given notice that these deficiencies had been documented on prior inspections, and Mr. Pearson was instructed to correct them. (CX 8; Tr.1 at 124-27, 354-55.)

12. On June 12, 2000, Inspector Kovach conducted a routine inspection of Mr. Pearson's facility and found two non-compliant items. The left side of the front gate needed repair to protect the animals from injury and to contain the animals. An enclosure for lions and tigers "had food on the floor with maggots crawling over it" (Tr. 1 at 128). Inspector Kovach characterized the presence of maggot-infested food in the enclosure as significant noncompliance with the Animal Welfare Act and the Regulations because "maggots could cause parasites" (Tr. 1 at 129). Inspector Kovach instructed Mr. Pearson that he should avoid this problem by only leaving food out for a limited period of time or giving the animals a feeding period and if they then chose not to eat the food, to retrieve the food to prevent the animals from eating infested food. (CX 9; Tr. 1 at 128-29.)

13. On July 19, 2000, Inspector Kovach inspected Mr. Pearson's traveling animal exhibit at the Crawford County Fair Grounds. Inspector Kovach observed that the truck used to haul the animals had front tires with insufficient tread and a cracked

windshield. Inspector Kovach believed that these defects violated 9 C.F.R. § 3.138(a); however, 9 C.F.R. § 3.138(a) concerns cargo space only, and I find the problems with the condition of the truck were not a violation of the Animal Welfare Act or the Regulations. Inspector Kovach found that the five pens on the trailer confining two adult lions, two adult tigers, and one adult jaguar were, at 4 feet by 8 feet by 5 feet tall, too small for the animals. The animals also were not provided with an exercise area. These violations were the same violations of 9 C.F.R. § 3.128 for which Mr. Pearson had been cited on September 18, 1999, and January 5, 2000. (CX 10; Tr. 1 at 130-34.)

14. On January 29, 2001, Inspector Kovach and Dr. Harlan performed a routine inspection of Mr. Pearson's facility. During this inspection, the facility housed 8 cougars, 18 lions, 2 lynx, 1 jaguar, 14 tigers, 14 bears, 5 bobcats, 1 fox, 1 goat, and 14 rabbits. Inspector Kovach and Dr. Harlan were accompanied by Inspector Carl LaLonde, Jr., who photographed conditions at Mr. Pearson's facility.

(a) Dr. Harlan testified that the facility lacked sufficient personnel to conduct an adequate care program for the number of animals it housed. Just two persons were at the facility when she and the inspectors arrived. The program of veterinary care was inadequate in that it did not include information concerning the veterinary care for the 14 bears, 1 fox, 1 goat, and 14 rabbits. One of the cougars was in a traveling enclosure that did not provide the cougar sufficient shelter from the wind and the elements; the cougar was wet and could not stay dry and clean; the cougar was ill and

lame with an abscess on its left hind leg; and the cougar required immediate veterinary care to live. In a pen housing five lions, two male lions were dirty and wet and appeared thin. One male lion was lame. A female lion appeared thin and had very tender feet. The pen contained loose stools, indicating one of the lions had diarrhea. The lions, together with a rabbit with a swollen eye, needed immediate veterinary care. On top of a shelter, APHIS employees found a dead badger that they were told had died sometime in December 2000. Mr. Pearson had no record of the death or cause of death of the badger or that of a llama, a black leopard, a bear, a lion and a jaguar, that had died in 2000. APHIS employees also found a dead tiger in one pen. None of the facility employees was sure when the tiger had died, but it was frozen and appeared to have been dead for a significant period of time and should have been removed. Female bears were housed inside hibernating boxes set within a large enclosure in which non-hibernating male bears were roaming around the caged female bears. The boxes did not allow the bears, which in this area of the country are partial hibernators, to be observed so as to determine their condition and to determine if they had come out of hibernation and needed food or water. The hibernating box housing one of the female bears was too small and gave her no room for postural adjustments. The storage of the feed and bedding was inadequate in that the hay and bales of straw were on the ground mixed with tires, lawnmowers, tarps, and pieces of wood and were exposed to moisture and contamination. In the food preparation area, a dead cow was hung up with half of its head missing; the band saw used to cut meat

was covered with dried blood; and the food preparation area was extremely dirty. Animals were using snow or ice to quench their thirst. The 11 bears in the hibernating dens had not been given access to water since November 2000. The facility did not have a 6-foot-high perimeter fence keeping people at least 3 feet away from the enclosure housing four bobcats and an arctic fox. A lion cub and two cougars had not been provided sufficient shelter to protect them from the prevalent, cold, wet, and sleeting weather. The cougars were housed in a transport trailer and the lion cub in a smaller travel enclosure, each of which was inadequate as permanent housing because the animals did not have sufficient space to make normal postural adjustments. The food given the big cats and other carnivores was contaminated because butchering of cow carcasses was performed in a dirty area and then tossed into enclosures on top of old carpet, feces, and urine. The enclosures had not been cleaned often enough to prevent contamination of the animals and their feed as evidenced by an excessive buildup of wet bedding, feces, bones, feed, waste, and debris in all of the pens. A goat and 14 rabbits were housed in the same block enclosure as a cougar, a predator. Rodent holes were found around the base of a lion shelter building. (CX 11; (photographs taken at time of the inspection: CX 12b-CX 16b, CX 17-CX 18, CX 19b-CX 51b); Tr. 1 at 364-94.)

(b) Barbara Brown, who supervises much of the work, including the recordkeeping, at the facility and who has lived with Mr. Pearson and is the mother of two of his children, addressed a number of the deficiencies found by APHIS employees

during the January 29, 2001, inspection. The objects that were in piles in the pens had been covered and hidden by snow until it melted so this was a day when cleaning was probably not up to standards. Ms. Brown admitted there were only two employees at the facility when the inspection was made. However, she stated the inspection was conducted at 9:00 a.m. and six to eight more employees would have arrived during the rest of the day: “they didn’t ask for a list of how many employees we had. They just said we didn’t have enough.” (Tr. 2 at 875.) Ms. Brown said the 14 bears were not listed on the program of veterinary care because Inspector LaLonde, the APHIS inspector who had previously been Mr. Pearson’s inspector for many years, told them, since bears are a native species they need not be listed on their veterinary papers. The goat was not listed because it was a pet and the rabbits were either pets or food for a snake. In respect to written records respecting vaccinations and parasites, those records were kept at the offices of Mr. Pearson’s veterinarian. Mr. Pearson did not know feeding records for the big cats and juvenile cats had to be kept until Dr. David Smith, an APHIS veterinary medical officer, who participated in the next inspection conducted 2 days later, on January 31, 2001, told them the records were needed; Mr. Pearson then started a log. As to the mountain lion that had been described as being wet, ill, and lame and housed in an enclosure that did not provide it sufficient shelter from the wind and rain, Ms. Brown said it had come to them battered, bruised, and looking like it had been hit by a truck. The shelter in which Mr. Pearson had placed the mountain lion had walls on both sides with a

partial wall for its back. The front of the enclosure had a removable plywood door that had been removed to enable observation of the mountain lion that had been isolated in this enclosure in case it had any diseases. The semiannual inspection of the facility by the private practice veterinarian employed by Mr. Pearson, Dr. Connie Ruth Barnes, was scheduled for January 30, 2001, and Ms. Brown believes she was told by Dr. Barnes to isolate and observe the animal until then. In Ms. Brown's opinion, the lions Dr. Harlan identified as too thin were not, and the female that was limping was 9 years old and had arthritis that was treated with aspirin when the arthritis acted up on rainy days. In corroboration, Dr. Barnes testified, when she went to the facility the animals appeared generally healthy and well-fed; she did not remember any malnourished animals and did not see any thin or starving animals (Tr. 2 at 728, 730). In addition, Dr. Harlan stated upon cross-examination that she had observed the tigers in winter and their winter coat camouflages whether or not they are thin (Tr. 1 at 412). Ms. Brown testified that the rabbit with the bad eye had been bought for feed for a snake. Mr. Pearson had a record of the dead badger that she later showed Dr. Smith who told her he would correct the report but she needed to begin to write a log of such incidents. The badger had been kept to be mounted for display with other mounted animals at the shows Mr. Pearson conducts. The dead badger had probably been left where the APHIS employees found it because it had become covered with snow and forgotten. The llama that had died had been a pet for 15 years and had never been shown on any of Mr. Pearson's records although the llama

had been present when past inspections had been conducted. The other animals that had died in the year 2000, were on a list that recorded the dates of each animal's birth and death, but did not show the cause of deaths. Many of the animals were old when received at the facility and the list of their births and deaths was one of the records that had burned in the house fire. In respect to the absence of a record at the facility of the veterinary care given the animals, Ms. Brown did not know until then that she needed to keep a log containing this information. The dead tiger had died during the night and was in a back cage that was among the last ones scheduled to be cleaned that day. In respect to the hibernating bears, the facility had denned bears for 26 years. The boxes used had doors that could be lifted for viewing the hibernating bears and some of the doors had holes allowing observation of the bears without the doors being opened. When the personnel at the facility were outside on warm days, they did not necessarily open the doors to look at the hibernating bears, but they would observe them by listening for noises indicating motion within the boxes. On cold days and when they did not hear such noises, "we wouldn't mess with them because also if you mess with the female bear and she has any babies, she'll kill them." (Tr. 2 at 891.) The tarps and other items mixed with hay for bedding had always been kept together in a storage shed; however, the shed did not contain any feed. The dead cow had been obtained from a farmer who assured them that the cow would not be harmful to the big cats. The cow was hung in the barn, which was a customary practice at the facility, because it is easier to cut a cow up for meat that way.

When asked by the APHIS employees why the cow had died, Ms. Brown told them she did not know. In respect to the rodent holes, Ms. Brown testified that rats and weasels lived where the facility is located, and Mr. Pearson puts bait and poison down the holes and then tries to cover the holes. Mr. Pearson would change the poison used every 2 or 3 months to prevent the rodents from becoming immune to it. Ms. Brown explained that the water available to the animals was frozen because the temperature was around 20 degrees or colder. Mr. Pearson provides water to the animals during the day and before the facility employees leave at night, but the water freezes. Facility employees use steel poles to knock the ice out of the water receptacles and then replace the water. In respect to the absence of a perimeter fence around the enclosure housing bobcats and an arctic fox, Mr. Pearson did not know one was needed but installed a perimeter fence after being so instructed. The lion cub and the two cougars that Dr. Harlan found to have insufficient shelter were being isolated as newly acquired animals in temporary cages until Mr. Pearson was certain they were not sick. In respect to the dirty band saw, Mr. Pearson's practice was not to clean it until just before using it to ensure that it is clean when used. Ms. Brown admitted that the denned bears had not been given food since November 2000, but, according to articles by the American Bear Association that Mr. Pearson and Ms. Brown had read before they started their denning practices, hibernating bears can survive without food and water for up to 7 months. Prior to 2001, no one had told Mr. Pearson that food had to be put in the den with the hibernating bears

or that the dens should have windows for observing the bears. In respect to old food, bones, and feces found in the cages, Ms. Brown claimed the cages were cleaned every day, but that the animals often dragged their food around and they could have dragged feces into their cages since they are wild animals that do not care about eating neatly. Also, the filth and debris could have been buried and hidden under snow before the inspection. Ms. Brown did not believe that housing the rabbits next to a cougar was a problem because the rabbits were separated from the cougar by a wall. (Tr. 2 at 874-910.)

(c) Ms. Brown's testimony in explanation of what can only be described as appalling conditions and practices at Mr. Pearson's facility, is insufficient. Even after accepting every plausible explanation Ms. Brown provided, I find that on January 29, 2001, Mr. Pearson willfully violated numerous Regulations of critical importance to the health and well-being of the animals in his possession. Mr. Pearson had animals that needed immediate veterinary care that was unavailable. On January 29, 2001, Mr. Pearson, as had been the case on June 12, 2000, was not feeding his animals wholesome food, free from contamination, and Mr. Pearson was not making clean, potable water accessible to his animals. Mr. Pearson failed to provide several animals with adequate shelter from inclement weather.

15. On January 31, 2001, Inspector Kovach and Dr. David C. Smith, APHIS veterinary medical officer, inspected Mr. Pearson's facility and jointly prepared an inspection report. Dr. Smith testified that the program of veterinary care he was given to

review, did not include the 14 bears and did not mention that the bears were receiving a heartworm preventative that bears housed outdoors need. Mr. Pearson was advised to consult with his veterinarian and revise the program to include the bears and the procedures needed for their care. A den housing two lions had a strong ammonia odor indicative of poor sanitation, and Mr. Pearson was advised to improve the ventilation and increase the frequency of the cleaning of the den. In Dr. Smith's opinion, the condition of the animals and the facilities established that Mr. Pearson had insufficient employees at the facility to provide adequate care for the animals. Throughout the north side of the facility old caging, railroad ties, tires, and miscellaneous junk had been allowed to accumulate that could harbor pests and contribute to the problem of disease control. All the pens were found to be excessively wet with puddles of water because the facility lacked an adequate drainage system. Mr. Pearson was instructed to improve the drainage by either providing a method by which water would drain away from the pens or raising the surfaces of the pens. Water in the water receptacles was mostly frozen and all of the receptacles needed to be cleaned. Mr. Pearson was told to clean the receptacles frequently and to ensure the water is not frozen. The animal enclosures were not being cleaned and sanitized as frequently as needed and all but two pens had excessive amounts of wet bedding, feces, bones, feed waste, and debris. Many animals were wet and appeared uncomfortable due to the condition of the pens. The area for food preparation was not sufficiently clean. The band saw still had meat, bone, and blood residue caked on

it and had not been cleaned after each use as it should have been. A dumpster next to the shed, where cattle are butchered to be fed to the big cats, was not closed and was overflowing with old carcasses and food waste providing rodents an ideal food supply. The ground of each enclosure in which the animals were fed, was extremely contaminated with old food, bones, and feces. Mr. Pearson was instructed that animals must be fed on clean surfaces and that the pens must be cleaned frequently to minimize the accumulation of feces. A cougar observed on January 29, 2001, to have inadequate bedding shelter and to be lame with an abscess on its left hind leg, now had adequate bedding and shelter. However, the cougar's ear margins were frostbitten and there was no record of it having been seen by a veterinarian on January 30, 2001, as it was supposed to have been. So too, there was no record showing that on January 30, 2001, a veterinarian had examined the pen of five lions identified as needing an examination by then. Mr. Pearson still had no appropriate way to monitor the denned bears daily to ensure they were in hibernation, in good condition, and not in need of food and water. (Tr. 2 at 187-244; CX 52-CX 69, CX 70b-CX 126b.)

16. On March 8, 2001, Inspector Kovach, Inspector LaLonde, and Dr. Smith inspected Mr. Pearson's facility. Dr. Smith testified respecting the inspection report that addressed the various previously identified non-compliant items (CX 127; Tr. 1 at 245-53). The following deficiencies had been corrected: (1) the 14 bears and the fox had been added to the program of veterinary care with a heartworm preventative being

described in the program; (2) no rodent activity was observed and rodent baits were being used; (3) post-mortem reports were being prepared by the attending veterinarian on all dead animals and records on animal deaths with written post-mortem reports were available for review; (4) records showing the attending veterinarian's observations were available; (5) the animal enclosures were being cleaned more frequently with no excessive buildups of debris and waste being found at the inspection; (6) animals were being fed in a more sanitary manner; (7) the old caging, railroad ties, tires, and junk had been removed; and (8) the cougar and five lions (two males and three females) were being seen by an attending veterinarian. The following non-compliant items found on January 31, 2001, still remained uncorrected: (1) a den housing two lions still had a very strong ammonia odor and Mr. Pearson had failed to improve its ventilation and the frequency of cleaning; (2) the 10 dened bears that had not been fed since November 2000, were still without food; (3) the water provided to the animals was still insufficient (four tigers, a Canadian Lynx, and a Siberian Lynx had water containers with ice covered with snow, and Mr. Pearson admitted they were not given fresh water the day before); (4) several water receptacles needed to be cleaned; (5) although drainage in some of the pens had improved, drainage was still a problem that was expected to worsen when the snow cover that was present, later melted; and (6) the eight dened bears still could not be observed on a daily basis and none of them could be given water or other care in an emergency. More than 2 months after Mr. Pearson received a written warning and

instructions to remedy these conditions, animals were still without adequate drinking water and animals were in pens that were still wet and subject to flooding because of inadequate drainage.

17. Photographs (CX 128b-CX 133b) received at the hearing on the basis of Dr. Smith's testimony (Tr. 1 at 253-55) depicted other non-compliant items found at the time of the March 8, 2001, inspection. CX 130 shows the food preparation area was still contaminated with blood residue spread out all over the floor, and CX 131 shows that the band saw used for cutting meat was still covered with blood residue. These conditions had been left uncorrected since the written warning given to Mr. Pearson on January 29, 2001, over a month earlier.

18. On June 19, 2001, Inspector Kovach and Dr. Smith inspected Mr. Pearson's facility. They found a mountain lion with an abscess on the right side of its face and the animal was drooling excessively. Dr. Smith believed it was either a superficial abscess or an abscessed tooth that in either event required action by the attending veterinarian. A bear was also found to have superficial cuts on her head and needed to be seen by the attending veterinarian to determine the necessary treatment. At the time of the inspection, no one working at the facility was aware of either problem indicating to Dr. Smith that the animals were not being observed daily to assess their health and well-being. In a follow-up visit on June 28, 2001 (CX 162), Dr. Smith verified that the mountain lion and the bear had been appropriately treated by a veterinarian. Two enclosures housing nine

lions had damaged sections of plywood that needed repair or replacement to give the lions adequate shelter and to protect them from injury. The facility also had a section with high weeds that needed to be cut and had trash in the form of empty plastic buckets, barrels, and tires that needed to be removed. (CX 134-CX 142; Tr. 1 at 255-62.)

19. On April 23, 2002, Inspector Kovach inspected Mr. Pearson's facility and testified he found deficiencies with respect to structural strength, drainage, a perimeter fence, sanitation, separation of animals, and a primary conveyance. The structural deficiency concerned: (1) an unsecured beam across the ceiling of a lion pen that had become unstable from being chewed; (2) a hole in the guillotine door of another lion pen; (3) protruding wires in pens for lions or tigers; and (4) a damaged section of chain link used as a ceiling for a lion pen. The facility still lacked adequate drainage even though Mr. Pearson had been given written warnings by APHIS of the need to correct this deficiency more than a year before on January 31, 2001, and March 8, 2001. Inspector Kovach testified the lack of proper drainage gives rise to mosquitoes that carry diseases transmittable to the animals housed at the facility. The perimeter fence around the bears and leopards was not secure and could not adequately contain the animals. The separation between a male tiger and two female tigers in an adjacent enclosure was not adequate to prevent discomfort of the female tigers. Conveyances used to transport animals were deficient. Exhaust fumes could enter one trailer during the transportation of

animals and the other trailer was heavily rusted and had sharp metal protruding into the interior of the animal cargo area. (CX 164-CX 165 at 1-11; Tr. 2 at 519-26.)

20. On August 27, 2002, and May 5, 2003, APHIS inspectors attempted to inspect Mr. Pearson's facility but were unable to conduct inspections because a responsible person was not available to accompany them (CX 167-CX 168).

21. On September 16, 2003, Inspector Kovach inspected Mr. Pearson's facility. Drainage of and about the pens was still inadequate. Conveyances used to transport animals were deficient. Exhaust fumes could enter one trailer during the transportation of animals and the other trailer was heavily rusted and had sharp metal protruding into the interior of the animal cargo area. (CX 169-CX 170.)

22. On January 30, 2004, APHIS inspected Mr. Pearson's facility and determined that Mr. Pearson began boarding animals at unlicensed and unapproved sites on January 18, 2004, without informing APHIS employees. Mr. Pearson boarded these animals at unlicensed and unapproved sites surreptitiously to prevent the animals from being confiscated. (CX 171-CX 172; Tr. 2 at 90-96, 100-01, 1143-46.)

23. On May 4, 2004, Randall Coleman, an APHIS inspector, conducted a routine inspection of Mr. Pearson's facility. He found two female lions and a tiger requiring veterinary treatment. One of the female lions had a wound that Mr. Pearson testified he failed to observe because the female lion was in heat and being protected by a very aggressive male lion who had kept her inside the den box at the back of the pen. The

attending veterinarian was contacted during the inspection and gave treatment advice for this female lion. The other female lion was suffering from arthritis. The tiger had a swollen muzzle with fluid dripping from her nose. The office of the attending veterinarian dispensed antibiotics to the female lion with the wound and the tiger 2 days after the May 4, 2004, inspection. Based on the record before me, I do not find a violation of the Animal Welfare Act or the Regulations with respect to the veterinary care of the female lion suffering from arthritis. However, antibiotics should have been dispensed to the tiger a day earlier according to the testimony of Mr. Pearson's attending veterinarian and the female lion with the wound should have been attended to without prompting by Inspector Coleman. Inspector Coleman also noted nails protruding from the underside of a lions' nesting perch in an enclosure containing three lions. When Inspector Coleman brought the protruding nails to Mr. Pearson's attention, Mr. Pearson stated he would correct the condition. (CX 173-CX 174; Tr. 2 at 102-09, 766-67.)

24. On May 12, 2004, Inspector Coleman returned to Mr. Pearson's facility and found that the animals that were the subject of his May 4, 2004, report had been examined by the attending veterinarian and they were under recommended treatment. The perch with the protruding nails had been repaired and the perch was structurally sound. (Tr. 2 at 110-12; CX 175.)

25. On July 16, 2004, Inspector Coleman inspected Mr. Pearson's facility and found nine bears did not have potable water accessible to them. The water receptacle for

the bears was empty, and they eagerly drank water from a hose that was turned on during the inspection. The explanation Mr. Pearson gave for the absence of water was that the bears had not yet been let out to be fed and watered that day. (CX 176; Tr. 2 at 113-16.)

26. On July 22, 2004, Inspector Coleman found a macaque monkey with Mr. Pearson's traveling exhibit that was not included in the program of veterinary care and for which there was no program of environment enhancement to promote its psychological well-being (CX 177; Tr. 2 at 118-22). Mr. Pearson testified he had borrowed the monkey from a person who was trying to sell it to him, but he does not understand monkeys and only had it for the one show (Tr. 2 at 1141-42).

27. On May 11, 2005, Inspector Coleman was unable to inspect Mr. Pearson's facility because no one was present at the facility (CX 182; Tr. 2 at 124-25).

28. On May 12, 2005, Inspector Coleman returned to the facility and found that the program of veterinary care did not include two goats, a monkey, and a dog. He also found that six bear cubs were being fed 2% milk as their food source which he believed to be insufficient, and he instructed Mr. Pearson to contact his attending veterinarian for appropriate diet recommendations. Inspector Coleman also observed three bears that appeared to be thin with areas of hair loss indicative of health problems. Mr. Pearson was instructed to contact his attending veterinarian for the evaluation and treatment of these bears as well. Mr. Pearson had no record of acquisition for the monkey and Mr. Pearson refused to allow Inspector Coleman to see other primates at the facility because

Mr. Pearson did not own them. The enclosure housing the monkey had open garbage bags, miscellaneous clutter, surfaces that had not been adequately cleaned, and surfaces made of materials that could not be sanitized. In addition, no electricity was available for lighting and cooling. Mr. Pearson did not have a program of environment enhancement to promote the monkey's psychological well-being. No food or water was available for the monkey in the enclosure. Mr. Pearson and Ms. Brown testified that Mr. Pearson did not believe he had any responsibility for the monkeys at his facility because they did not belong to him (Tr. 2 at 1010, 1142-43). The primary enclosure for eight adult bears had a rotting, main support post, protruding wires, and rusted bars for the back wall of a den box. The perimeter fence around the enclosures for 14 bears had a door that was not secured. Two pygmy goats did not have a primary enclosure. A pup, which was either a wolf or a dog, was also inadequately housed, was without water, and looked as if it was not being fed adequately. Ms. Brown testified that the pup was a dog and that she and Mr. Pearson's daughter, Jennifer, owned it. Jennifer was also identified as the owner of the two pygmy goats. Ms. Brown and Mr. Pearson did not believe these animals were subject to the United States Department of Agriculture's jurisdiction (Tr. 2 at 1011-12). Inspector Coleman observed accumulations of trash, clutter, weeds, debris, and old piles of burnt materials throughout the facility. (CX 181; Tr. 2 at 126-60.)

29. On May 13, 2005, the date given to Mr. Pearson by which he was to have his attending veterinarian evaluate the care and feeding of three bears, Inspector Coleman

returned to the facility accompanied by Dr. Harlan and Dr. Albert Lewandowski, the zoo veterinarian for the Cleveland Metro Park Zoo. Inspector Coleman found four bears in an enclosure with 4 or 5 pieces of bread on the floor, and all of the bears appeared thin and malnourished. Though Mr. Pearson told the inspector that the bears had been seen by the attending veterinarian who found no problems with them, attempts to contact the veterinarian were unsuccessful. The bears appeared to Inspector Coleman to be suffering. Their enclosure had an excessive buildup of excreta on the floor and one of the bears was eating bread that was on the excreta-covered floor. The enclosure for three other bears also had a buildup of excreta on its floor and the bears were eating cereal and dog food directly from the excreta-covered floor (CX 183; Tr. 2 at 165-67). Dr. Steven Faust, a veterinarian at Sharon Veterinary Hospital employed by Mr. Pearson as attending veterinarian for the facility, examined an adult bear on May 13, 2005, and found it to have traumatic hair loss and recommended skin scraping if it did not improve (Tr. 2 at 777; EX AAAA at 2). Inspector Coleman also found that the wolf or dog pup was housed in an enclosure that did not protect it from sunlight or inclement weather and had excessive feces on the floor. The pup had feces in his hair from lying in feces, did not have potable water, and appeared malnourished (CX 183; Tr. 2 at 169-70). Inspector Coleman also found that two 1-year old bears were being housed with two older bears approximately 2-3 years of age, and that the older bears were chasing the younger bears keeping them from receiving their needed share of food and water. Only compatible animals may be

housed together, and Mr. Pearson was instructed to separate the older bears from the younger bears. (CX 183; Tr. 2 at 171-72.)

30. Dr. Albert Lewandowski, who accompanied Inspector Coleman and Dr. Harlan when they inspected the facility on May 13, 2005, has been the zoo veterinarian for the Cleveland Metro Park Zoo since 1989. After graduating from Ohio State Veterinary College in 1978, Dr. Lewandowski was in private practice for 3 years. He then took a residency at the University of Pennsylvania and the Philadelphia Zoo from 1981 to 1983. From 1983 to 1989, he was chief veterinarian for the Detroit Zoological Parks. Dr. Lewandowski is a member of the accreditation team for the American Association of Zoological Parks and Aquariums and has routinely inspected zoos throughout the country. He is an eminently qualified expert on the veterinary care and nutrition of animals of the type housed at Mr. Pearson's facility (Tr. 2 at 416-22). Dr. Lewandowski set forth his observations that day in a document in which he concluded: "The facility is squalid." (CX 185.) He testified he would not expect that a facility licensed by the United States Department of Agriculture would "have facilities as bad as this" (Tr. 2 at 427). In his opinion, all three of the bear cubs that were at the facility appeared to be suffering from inadequate care and nutrition (CX 185; Tr. 2 at 440). Furthermore, the cages containing the bears were inadequate and did not adequately secure them (Tr. 2 at 442). He testified what he meant when he used the term "squalid" to describe Mr. Pearson's facility, as follows:

[BY MR. MARTIN:]

Q. And would you explain for us what you meant by the term “squalid”?

[BY DR. LEWANDOWSKI:]

A. Dirty, unkept, uncared for, just general neglect, just a facility that had been neglected not just recently, but for a long period of time. The animals were living under conditions that just aren't appropriate for any type of animal.

Bears are incredibly hardy species, but to maintain them under those conditions over an extended period of time is inappropriate.

Tr. 2 at 442-43.

31. Dr. Harlan prepared a report on her findings at the facility on May 13, 2005, which Dr. Lewandowski read and co-signed as an accurate summary of their observations that day (CX 188; Tr. 2 at 443-44).

32. On May 17, 2005, Inspector Coleman returned to the facility and found Mr. Pearson had not complied with the written warning he had been given and had not corrected the inadequate veterinary care and inadequate feeding of seven bears specified by Inspector Coleman on May 12, 2005, and May 13, 2005. Because these seven bears appeared to be suffering and needed immediate attention to address their nutritional needs and health status, Inspector Coleman confiscated the bears. After the confiscation, eight bears remained at the facility. Though Mr. Pearson had been given until May 16, 2005, to separate two 1-year-old bears from two older bears to protect the younger bears, they had not been separated. Inspector Coleman also found the primary enclosure used for three of

the confiscated bear cubs needed to be replaced or fixed to be safe and secure.

Mr. Pearson was still not furnishing accessible, potable water to the bears, and though wood shavings had been placed over the floor of an enclosure used for three of the confiscated bears, feces was still on the floor. (CX 186; Tr. 2 at 348-50.)

33. The confiscated bears were examined and wormed on May 17, 2005, by Dr. Lewandowski who prepared health certificates that permitted them to be sent to various zoos and other facilities throughout the country. Dr. Lewandowski found, although the seven bears were in good enough condition to travel, they were undernourished and had suffered for an extended period of time from malnutrition. In his opinion, it was in the best interest of these animals to be moved to a facility that could take better care of them. (CX 189, CX 193; Tr. 2 at 445-49.)

34. On October 5, 2005, Inspector Coleman inspected Mr. Pearson's facility and found that his program of veterinary care only listed bears and did not include goats, a dog, a skunk, coatimundi, and hamsters at the facility. Also the program of veterinary care showed that should the need arise, the only means of euthanasia for the eight remaining black bears was a 22 caliber rifle which is an inadequate means of euthanizing bears. A dog at the facility was not properly documented as required by the Regulations. Loose wires protruded into the enclosure for the bears and the perimeter fence had a loose post needing repair. Mr. Pearson refused Inspector Coleman access to the part of the facility that had housed lions and tigers that were no longer at the facility. The outside

enclosure did not provide adequate shade for a dog, the enclosures used to house dogs were not of proper construction, and the water receptacle for a dog was dirty and needed to be cleaned. Potable water was not available to a skunk and two pigmy goats. Two shoebox cages of hamsters were housed in an outdoor facility. Despite repeated prior written warnings, drainage of the bears' enclosure was again observed to be inadequate as evidenced by a large puddle of standing water. Excessive amounts of feces and dirt were in the enclosure. (CX 190; Tr. 2 at 400-02.)

35. On February 22, 2006, Inspector Coleman inspected Mr. Pearson's facility and found that the program of veterinary care only provided for bears. The program of veterinary care did not include a cougar, a leopard, two lions, and six tigers that were at the facility. One female orange tiger was lame and the black leopard had a wound on its tail and scarring on both hips. Mr. Pearson had no records of either animal being examined by a veterinarian or receiving veterinary care or treatment. Mr. Pearson had no records showing where the tigers had been housed prior to February 22, 2006, and Mr. Pearson refused to provide any information other than that he had received them on April 26, 2005. The door of the primary enclosure housing the leopard needed repair to securely contain the leopard. The perimeter fence for six tigers had holes in it and was not strong enough to be a secondary containment for them. Eight bears were denned in forced hibernation in boxes that were not large enough for them to stand up on their hind legs, and an adequate supply of food was not available to them if they came out of their

dens to eat. Additionally, the eight bears did not have access to water. A cow carcass evidently intended as food for the big cats was contaminated with hay, dirt, and feces attached to its hide, and Mr. Pearson's son stated the cause of the cow's death was unknown. The animals had no access to potable water as the water receptacles were either frozen solid or completely dry. (CX 191-CX 192, CX 202; Tr. 2 at 200-14, 393-95.)

36. Conditions at Mr. Pearson's facility were also of concern to local health authorities. Based on a September 28, 2001, inspection of the facility made in response to complaints about its stench, the Summit County Board of Health determined that the facility was "a public health nuisance" (CX 145 (copy of *Summit County Bd. of Health v. Pearson*, No. CV-2002-06-3473, slip op. at 5)). The decision was affirmed upon appeal to the Court of Common Pleas, Summit County, Ohio, and to the Court of Appeals of Ohio (CX 200; 809 N.E.2d 80 (Ohio App. 2004)). Based on those decisions, the Summit County Board of Health sought a court order to enter the property and remove the animals. The court order was granted but later vacated by the Ohio Appellate Court on jurisdictional grounds (CX 201; *Summit County Bd. of Health v. Pearson*, No. 22194, 2005 WL 1398847 (Ohio App. June 15, 2005)). The Summit County Board of Health sought to have Mr. Pearson take the necessary steps to bring his property into compliance with applicable laws and regulations and issued orders to him to abate nuisance conditions in October and December of 2001, and in February and March of 2002, but

little improvement was reported. Moreover, Mr. Pearson refused to permit inspections on April 8, 2002, May 6, 2002, and June 13, 2002 (CX 198-CX 200, slip op. at 2).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On or about May 12, 1999, Mr. Pearson 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. Pearson failed to provide veterinary care for two lion cubs, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).
3. On or about September 9, 1999, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and protect the animals from injury. Specifically, Mr. Pearson housed two adult tigers in an enclosure with a structurally unsound back wall that had protruding wires, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).
4. On or about September 9, 1999, Mr. Pearson housed a bobcat in an enclosure with a damaged roof that did not provide the animal with shelter from inclement weather, in willful violation of section 3.127(b) of the Regulations (9 C.F.R. § 3.127(b)).

5. On or about September 9, 1999, Mr. Pearson failed to provide a fox with shelter from inclement weather, in willful violation of section 3.127(b) of the Regulations (9 C.F.R. § 3.127(b)).

6. On or about September 9, 1999, Mr. Pearson housed an adult male tiger in a trailer that was too small for the animal; therefore, depriving the animal of the ability to make normal postural and social adjustments with adequate freedom of movement, in willful violation of section 3.128 of the Regulations (9 C.F.R. § 3.128).

7. On or about September 9, 1999, Mr. Pearson failed to clean and sanitize a transport trailer, in willful violation of section 3.138(e) of the Regulations (9 C.F.R. § 3.138(e)).

8. On or about September 18, 1999, Mr. Pearson, who was without a full-time attending veterinarian, failed to maintain any written program of veterinary care for seven tigers, three lions, two dromedary camels, one leopard, and one jaguar, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

9. On or about September 18, 1999, Mr. Pearson 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. Pearson failed to provide veterinary care for two 7-week-old lion cubs, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

10. On or about September 18, 1999, Mr. Pearson failed to make, keep, and maintain a record of acquisition for seven tigers, in willful violation of section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and section 2.75(b)(1) of the Regulations (9 C.F.R. § 2.75(b)(1)).

11. On or about September 18, 1999, Mr. Pearson failed to make, keep, and maintain a record of acquisition for three lions, in willful violation of section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and section 2.75(b)(1) of the Regulations (9 C.F.R. § 2.75(b)(1)).

12. On or about September 18, 1999, Mr. Pearson failed to make, keep, and maintain a record of acquisition for two camels, in willful violation of section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and section 2.75(b)(1) of the Regulations (9 C.F.R. § 2.75(b)(1)).

13. On or about September 18, 1999, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and protect the animals from injury. Specifically, Mr. Pearson housed two camels in an enclosure that contained several protruding sharp wire edges, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

14. On or about September 18, 1999, Mr. Pearson housed three tigers and one lion in pen enclosures that were too small for the animals; therefore, depriving each animal of the ability to make normal postural and social adjustments with adequate

freedom of movement, in willful violation of section 3.128 of the Regulations (9 C.F.R. § 3.128).

15. On or about September 18, 1999, Mr. Pearson failed to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals. Specifically, Mr. Pearson failed to provide minimally-adequate nutrition to two lion cubs that were excessively thin, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

16. On or about January 5, 2000, Mr. Pearson housed three tigers in enclosures that were too small for the animals; therefore, depriving each animal of the ability to make normal postural and social adjustments with adequate freedom of movement, in willful violation of section 3.128 of the Regulations (9 C.F.R. § 3.128).

17. On or about June 12, 2000, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and contain the animals. Specifically, Mr. Pearson failed to secure the front gate to his facility housing 59 animals, including dangerous animals such as 12 bears and 40 large felids, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

18. On or about June 12, 2000, Mr. Pearson failed to provide lions and tigers wholesome, palatable food, free from contamination. Specifically, Mr. Pearson's lion and tiger enclosure contained maggot-infested food, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

19. On or about July 19, 2000, Mr. Pearson housed two adult lions, two adult tigers, and one jaguar in five separate 4-feet by 8-feet by 5-feet enclosures that were each too small for the animals; therefore, depriving each animal of the ability to make normal postural and social adjustments with adequate freedom of movement, in willful violation of section 3.128 of the Regulations (9 C.F.R. § 3.128).

20. On or about January 29, 2001, Mr. Pearson 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. Pearson failed to provide veterinary care for a cougar, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

21. On or about January 29, 2001, Mr. Pearson 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. Pearson failed to provide veterinary care for a male lion and a female lion, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

22. On or about January 29, 2001, Mr. Pearson failed to establish and maintain a program of adequate veterinary care that included the daily observation of all animals to

assess their health and well-being and, therefore, was unaware that one of his tigers had died, in willful violation of section 2.40(b)(3) of the Regulations (9 C.F.R. § 2.40(b)(3)).

23. On or about January 29, 2001, Mr. Pearson failed to store food and bedding so that they are protected from deterioration, molding, or contamination. Specifically, Mr. Pearson stored feed and bedding on the ground in an area with a dirty floor that contained various debris, in willful violation of section 3.125(c) of the Regulations (9 C.F.R. § 3.125(c)).

24. On or about January 29, 2001, Mr. Pearson failed to provide two cougars with shelter from inclement weather, in willful violation of section 3.127(b) of the Regulations (9 C.F.R. § 3.127(b)).

25. On or about January 29, 2001, Mr. Pearson failed to provide a juvenile lion with shelter from inclement weather, in willful violation of section 3.127(b) of the Regulations (9 C.F.R. § 3.127(b)).

26. On or about January 29, 2001, Mr. Pearson failed to provide food in a manner so as to minimize contamination. Specifically, Mr. Pearson placed food for animals directly on the ground contaminated with old carcasses and excessive feces and urine, in willful violation of section 3.129(b) of the Regulations (9 C.F.R. § 3.129(b)).

27. On or about January 29, 2001, Mr. Pearson failed to provide potable water, in receptacles that are clean and sanitary, as often as necessary for the health and comfort

of 18 lions, 14 tigers, 14 rabbits, 8 cougars, 5 bobcats, 2 lynx, 1 jaguar, 1 fox, and 1 goat, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

28. On or about January 31, 2001, Mr. Pearson, who was without a full-time attending veterinarian, failed to maintain any written program of veterinary care for 14 black bears, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

29. On or about January 31, 2001, Mr. Pearson 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. Pearson failed to provide veterinary care for a cougar, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

30. On or about January 31, 2001, Mr. Pearson 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. Pearson failed to provide veterinary care for two male and three female lions, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

31. On or about January 31, 2001, Mr. Pearson failed to construct and maintain housing facilities that were adequately ventilated. Specifically, Mr. Pearson failed to

provide adequate ventilation inside an enclosure housing two lions, in willful violation of section 3.126(b) of the Regulations (9 C.F.R. § 3.126(b)).

32. On or about January 31, 2001, Mr. Pearson failed to provide a suitable method to rapidly eliminate excess water from enclosures housing animals, in willful violation of section 3.127(c) of the Regulations (9 C.F.R. § 3.127(c)).

33. On or about January 31, 2001, Mr. Pearson failed to provide potable water, in receptacles that are clean and sanitary, as often as necessary for the health and comfort of animals at his facility, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

34. On or about January 31, 2001, Mr. Pearson failed to remove excreta from primary enclosures as often as necessary to prevent the contamination of animals in the enclosures, in willful violation of section 3.131(a) of the Regulations (9 C.F.R. § 3.131(a)).

35. On or about January 31, 2001, Mr. Pearson failed to keep the premises clean and in good repair in order to protect animals from injury and to facilitate prescribed husbandry practices. Specifically, Mr. Pearson allowed the accumulation of old cages, railroad ties, tires, and miscellaneous junk on the premises, in willful violation of section 3.131(c) of the Regulations (9 C.F.R. § 3.131(c)).

36. On or about January 31, 2001, Mr. Pearson utilized an insufficient number of adequately trained employees to maintain a professionally acceptable level of

husbandry practices, in willful violation of section 3.132 of the Regulations (9 C.F.R. § 3.132).

37. On or about March 8, 2001, Mr. Pearson failed to construct and maintain housing facilities that were adequately ventilated. Specifically, Mr. Pearson failed to provide adequate ventilation inside an enclosure housing two lions, in willful violation of section 3.126(b) of the Regulations (9 C.F.R. § 3.126(b)).

38. On or about March 8, 2001, Mr. Pearson failed to provide a suitable method to rapidly eliminate excess water from animal enclosures, in willful violation of section 3.127(c) of the Regulations (9 C.F.R. § 3.127(c)).

39. On or about March 8, 2001, Mr. Pearson failed to provide food that is wholesome, palatable and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals. Specifically, Mr. Pearson failed to provide any food to 10 bears, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

40. On or about March 8, 2001, Mr. Pearson failed to provide potable water, in receptacles that are clean and sanitary, as often as necessary for the health and comfort of four tigers, one Canadian lynx, and one Siberian lynx, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

41. On or about June 19, 2001, Mr. Pearson 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. Pearson failed to provide veterinary care for a mountain lion, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

42. On or about June 19, 2001, Mr. Pearson 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. Pearson failed to provide veterinary care for a bear, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

43. On or about June 19, 2001, Mr. Pearson failed to establish and maintain a program of adequate veterinary care that included the daily observation of all animals to assess their health and well-being and, therefore, was unaware that a mountain lion and a bear were in need of veterinary care, in willful violation of section 2.40(b)(3) of the Regulations (9 C.F.R. § 2.40(b)(3)).

44. On or about June 19, 2001, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and protect the animals from injury. Specifically, Mr. Pearson housed four lions in an enclosure and five lions in a second enclosure each of which contained an interior wall with damaged plywood, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

45. On or about June 19, 2001, Mr. Pearson failed to remove excessive weeds, empty plastic and metal barrels, old tires, and plastic buckets from, in, and around his facility, in willful violation of section 3.131(c) of the Regulations (9 C.F.R. § 3.131(c)).

46. On or about April 23, 2002, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and protect the animals from injury. Specifically, Mr. Pearson housed lions in an enclosure that contained an unstable support beam across the ceiling, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

47. On or about April 23, 2002, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound to protect the animals from injury and contain the animals. Specifically, Mr. Pearson housed three lions in an enclosure that had damaged and unsecured sections of ceiling, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

48. On or about April 23, 2002, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound to protect the animals from injury and contain the animals. Specifically, Mr. Pearson housed a male tiger and female lion in an enclosure that had a damaged guillotine door with protruding wires, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

49. On or about April 23, 2002, Mr. Pearson failed to provide a suitable method to rapidly eliminate excess water from an enclosure housing several lions, in willful violation of section 3.127(c) of the Regulations (9 C.F.R. § 3.127(c)).

50. On or about April 23, 2002, Mr. Pearson failed to construct and maintain a perimeter fence of sufficient height that restricts animals and unauthorized persons from going through or under the fence and that functions as a secondary containment system for the animals in the facility. Specifically, the perimeter fence around the enclosures for bears and leopards was not secure, in willful violation of section 3.127(d) of the Regulations (9 C.F.R. § 3.127(d)).

51. On or about April 23, 2002, Mr. Pearson failed to separate his animals from other animals that interfere with their health or cause them discomfort. Specifically, Mr. Pearson failed to separate a male tiger that exhibited aggressive behavior toward two female tigers in an adjacent enclosure, in willful violation of section 3.133 of the Regulations (9 C.F.R. § 3.133).

52. On or about April 23, 2002, Mr. Pearson failed to construct and maintain a primary conveyance designed to protect the health and safety of his animals. Specifically, Mr. Pearson had metal protrusions in his primary conveyance, in willful violation of section 3.138(a) of the Regulations (9 C.F.R. § 3.138(a)).

53. On or about April 23, 2002, Mr. Pearson failed to construct and maintain a primary conveyance that prevented the ingress of engine exhaust fumes and gases during

transportation, in willful violation of section 3.138(b) of the Regulations (9 C.F.R. § 3.138(b)).

54. On or about August 27, 2002, a responsible person was not available to allow APHIS officials to inspect Mr. Pearson's animals and records, in willful violation of section 2.126(a) of the Regulations (9 C.F.R. § 2.126(a)).

55. On or about May 5, 2003, a responsible person was not available to allow APHIS officials to inspect Mr. Pearson's animals and records, in willful violation of section 2.126(a) of the Regulations (9 C.F.R. § 2.126(a)).

56. On or about September 16, 2003, Mr. Pearson failed to provide a suitable method to rapidly eliminate excess water from an area around his lion pens, in willful violation of section 3.127(c) of the Regulations (9 C.F.R. § 3.127(c)).

57. On or about September 16, 2003, Mr. Pearson failed to construct and maintain a primary conveyance designed to protect the health and safety of his animals. Specifically, Mr. Pearson had sharp metal protrusions in the animal cargo area of his primary conveyance, in willful violation of section 3.138(a) of the Regulations (9 C.F.R. § 3.138(a)).

58. On or about September 16, 2003, Mr. Pearson failed to construct and maintain a primary conveyance that prevented the ingress of engine exhaust fumes and gases into the animal cargo area during transportation, in willful violation of section 3.138(b) of the Regulations (9 C.F.R. § 3.138(b)).

59. On or about January 18, 2004, Mr. Pearson housed no fewer than 15 animals at unapproved locations, in willful violation of section 2.5(d) of the Regulations (9 C.F.R. § 2.5(d)).

60. On or about January 30, 2004, Mr. Pearson housed no fewer than 18 animals at unapproved locations, in willful violation of section 2.5(d) of the Regulations (9 C.F.R. § 2.5(d)).

61. On or about January 30, 2004, Mr. Pearson failed to notify the Animal Care Regional Director by certified mail of additional sites at which Mr. Pearson housed animals, in willful violation of section 2.8 of the Regulations (9 C.F.R. § 2.8).

62. On or about May 4, 2004, Mr. Pearson 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. Pearson failed to provide veterinary care for a female lion and a female tiger, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

63. On or about May 4, 2004, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and protect the animals from injury. Specifically, Mr. Pearson housed three lions in an enclosure that had a resting perch with numerous protruding nails, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

64. On or about July 16, 2004, Mr. Pearson failed to provide potable water, in receptacles that are clean and sanitary, as often as necessary for the health and comfort of nine bears, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

65. On or about July 22, 2004, Mr. Pearson, who was without a full-time attending veterinarian, failed to maintain any written program of veterinary care for one macaque monkey, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

66. On or about July 22, 2004, Mr. Pearson failed to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of a macaque monkey that was held by Mr. Pearson, in willful violation of section 3.81 of the Regulations (9 C.F.R. § 3.81).

67. On or about May 11, 2005, a responsible person was not available to allow APHIS officials to inspect Mr. Pearson's animals and records, in willful violation of section 2.126(a) of the Regulations (9 C.F.R. § 2.126(a)).

68. On or about May 12, 2005, Mr. Pearson, who was without a full-time attending veterinarian, failed to maintain any written program of veterinary care for two pygmy goats, one snow macaque monkey, and one dog, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

69. On or about May 12, 2005, Mr. Pearson 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. Pearson failed to provide veterinary care for three bears, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

70. On or about May 12, 2005, Mr. Pearson failed to make, keep, and maintain a record of acquisition for a macaque monkey, in willful violation of section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and section 2.75(b)(1) of the Regulations (9 C.F.R. § 2.75(b)(1)).

71. On or about May 12, 2005, Mr. Pearson failed to maintain housing facilities for nonhuman primates in order to carry out generally-accepted husbandry standards. Specifically, Mr. Pearson housed a macaque monkey in an area that contained open garbage bags, empty feed bags, and other clutter, in willful violation of section 3.75(b) of the Regulations (9 C.F.R. § 3.75(b)).

72. On or about May 12, 2005, Mr. Pearson failed to ensure that the surfaces of housing facilities for nonhuman primates were constructed of materials that allow them to be readily cleaned and sanitized, or removed or replaced. Specifically, Mr. Pearson housed a macaque monkey in a den box made of exposed wood and excessively rusted metal bars, in willful violation of section 3.75(c)(1) of the Regulations (9 C.F.R. § 3.75(c)(1)).

73. On or about May 12, 2005, Mr. Pearson failed to maintain the surfaces of the primary enclosure for a nonhuman primate on a regular basis. Specifically, Mr. Pearson failed to rake or spot-clean the floor of a primary enclosure housing a macaque monkey with sufficient frequency to prevent the build-up of excreta and urine, in willful violation of section 3.75(c)(3) of the Regulations (9 C.F.R. § 3.75(c)(3)).

74. On or about May 12, 2005, Mr. Pearson housed a macaque monkey in a facility that did not have electric power for lighting, cooling, or ventilation or for carrying out generally-accepted husbandry standards, in willful violation of section 3.75(d) of the Regulations (9 C.F.R. § 3.75(d)).

75. On or about May 12, 2005, Mr. Pearson housed a macaque monkey in a facility that did not have sufficient lighting to permit routine inspection and cleaning of the facility or observation of the animal, in willful violation of section 3.77(c) of the Regulations (9 C.F.R. § 3.77(c)).

76. On or about May 12, 2005, Mr. Pearson failed to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of a macaque monkey, in willful violation of section 3.81 of the Regulations (9 C.F.R. § 3.81).

77. On or about May 12, 2005, Mr. Pearson failed to provide a macaque monkey with food, in willful violation of section 3.82 of the Regulations (9 C.F.R. § 3.82).

78. On or about May 12, 2005, Mr. Pearson failed to provide a macaque monkey with potable water in sufficient quantities as often as necessary to ensure the health and well-being of the animal, in willful violation of section 3.83 of the Regulations (9 C.F.R. § 3.83).

79. On or about May 12, 2005, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound to protect the animals from injury and contain the animals. Specifically, Mr. Pearson housed eight bears in an enclosure with structural support posts that were rotted with large holes completely through the support posts, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

80. On or about May 12, 2005, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound to protect the animals from injury and contain the animals. Specifically, Mr. Pearson failed to provide housing for two pygmy goats, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

81. On or about May 12, 2005, Mr. Pearson failed to construct and maintain a perimeter fence of sufficient height that restricts animals and unauthorized persons from going through or under the fence and that functions as a secondary containment system for the animals in the facility. Specifically, the perimeter fence around the enclosures for

14 bears had an unsecured door, in willful violation of section 3.127(d) of the Regulations (9 C.F.R. § 3.127(d)).

82. On or about May 12, 2005, Mr. Pearson failed to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals. Specifically, Mr. Pearson failed to provide minimally-adequate nutrition to six bear cubs, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

83. On or about May 12, 2005, Mr. Pearson failed to remove accumulated debris and trash from, in, and around his facility housing bears and goats, in willful violation of section 3.131(c) of the Regulations (9 C.F.R. § 3.131(c)).

84. On or about May 12, 2005, Mr. Pearson failed to provide potable water as often as necessary for the health and comfort of an animal and in receptacles that are clean and sanitary. Specifically, Mr. Pearson failed to provide potable water to one dog, in willful violation of section 3.10 of the Regulations (9 C.F.R. § 3.10).

85. On or about May 12, 2005, Mr. Pearson refused to allow APHIS officials to inspect and photograph his entire facility and all his animals, in willful violation of section 2.126(a)(4) of the Regulations (9 C.F.R. § 2.126(a)(4)).

86. On or about May 13, 2005, Mr. Pearson 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. Pearson failed to provide veterinary care for an adult bear, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

87. On or about May 13, 2005, Mr. Pearson failed to remove excessive excreta as often as necessary from a primary enclosure housing a dog, in willful violation of section 3.11(a) of the Regulations (9 C.F.R. § 3.11(a)).

88. On or about May 13, 2005, Mr. Pearson failed to provide a dog with shelter from the direct rays of the sun and the direct effect of wind, rain, and snow, in willful violation of section 3.4(b)(2) of the Regulations (9 C.F.R. § 3.4(b)(2)).

89. On or about May 13, 2005, Mr. Pearson failed to separate his animals from other animals that interfere with their health or cause them discomfort. Specifically, Mr. Pearson housed two young bears together with older bears that were interfering with the health and comfort of the younger bears, in willful violation of section 3.133 of the Regulations (9 C.F.R. § 3.133).

90. On or about May 13, 2005, Mr. Pearson failed to remove excessive excreta as often as necessary from two primary enclosures housing seven bears, in willful violation of section 3.131(a) of the Regulations (9 C.F.R. § 3.131(a)).

91. On or about May 17, 2005, Mr. Pearson failed to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals. Specifically, Mr. Pearson failed to

provide minimally-adequate nutrition to seven bears, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

92. On or about October 5, 2005, Mr. Pearson, who was without a full-time attending veterinarian, failed to maintain any written program of veterinary care for two pygmy goats, one dog, one skunk, and one coatimundi, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

93. On or about October 5, 2005, Mr. Pearson 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. Pearson failed to have an appropriate method of euthanasia for eight bears, in willful violation of section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.40(b)(1)).

94. On or about October 5, 2005, Mr. Pearson, failed to make, keep, and maintain a record of acquisition for one dog, in willful violation of section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the Regulations (9 C.F.R. § 2.75(a)(1)).

95. On or about October 5, 2005, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and protect the animals from injury. Specifically, Mr. Pearson housed eight adult black bears in an

enclosure that contained protruding wires, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

96. On or about October 5, 2005, Mr. Pearson failed to provide a suitable method to rapidly eliminate excess water from an enclosure housing eight bears, in willful violation of section 3.127(c) of the Regulations (9 C.F.R. § 3.127(c)).

97. On or about October 5, 2005, Mr. Pearson failed to construct and maintain a perimeter fence of sufficient height that restricts animals and unauthorized persons from going through or under the fence and that functions as a secondary containment system for the animals in the facility. Specifically, the left corner post of the perimeter fence around Mr. Pearson's facility was leaning and causing the perimeter fence to be loose, in willful violation of section 3.127(d) of the Regulations (9 C.F.R. § 3.127(d)).

98. On or about October 5, 2005, Mr. Pearson failed to provide potable water as often as necessary for the health and comfort of the animals and in receptacles that are clean and sanitary. Specifically, Mr. Pearson failed to maintain water receptacles for two pygmy goats and one skunk that were clean, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

99. On or about October 5, 2005, Mr. Pearson failed to provide a dog with shelter from sunlight, in willful violation of section 3.4(b)(2) of the Regulations (9 C.F.R. § 3.4(b)(2)).

100. On or about October 5, 2005, Mr. Pearson used a metal barrel as a shelter for one dog, in willful violation of section 3.4(c) of the Regulations (9 C.F.R. § 3.4(c)).

101. On or about October 5, 2005, Mr. Pearson failed to provide potable water as often as necessary for the health and comfort of an animal and in receptacles that are clean and sanitary. Specifically, Mr. Pearson failed to maintain water receptacles for one dog that were clean, in willful violation of section 3.10 of the Regulations (9 C.F.R. § 3.10).

102. On or about October 5, 2005, Mr. Pearson refused to allow APHIS officials to inspect and photograph his entire facility, in willful violation of section 2.126(a)(4) of the Regulations (9 C.F.R. § 2.126(a)(4)).

103. On or about February 22, 2006, Mr. Pearson, who was without a full-time attending veterinarian, failed to maintain any written program of veterinary care for six tigers, two lions, one leopard, and one cougar, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

104. On or about February 22, 2006, Mr. Pearson 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. Pearson failed to provide veterinary care for a female orange tiger that was lame in her hind leg, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

105. On or about February 22, 2006, Mr. Pearson 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. Pearson failed to provide veterinary care for a black leopard that was in need of care, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

106. On or about February 22, 2006, Mr. Pearson failed to make, keep, and maintain a record of acquisition for six tigers, in willful violation of section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and section 2.75(b)(1) of the Regulations (9 C.F.R. § 2.75(b)(1)).

107. On or about February 22, 2006, Mr. Pearson failed to construct and maintain housing facilities for his animals so that they are structurally sound and contain the animals. Specifically, Mr. Pearson housed one leopard in an enclosure that was not secure, in willful violation of section 3.125(a) of the Regulations (9 C.F.R. § 3.125(a)).

108. On or about February 22, 2006, Mr. Pearson failed to construct and maintain a perimeter fence of sufficient height that restricts animals and unauthorized persons from going through or under it and that functions as a secondary containment system for the animals in the facility. Specifically, the perimeter fence around the enclosures for dangerous animals, including six tigers, was compromised by holes, in willful violation of section 3.127(d) of the Regulations (9 C.F.R. § 3.127(d)).

109. On or about February 22, 2006, Mr. Pearson failed to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals. Specifically, the only source of food available for Mr. Pearson's 10 large cats came from a dead animal of unknown source that was contaminated with dirt, hay, and feces, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

110. On or about February 22, 2006, Mr. Pearson failed to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals. Specifically, Mr. Pearson failed to provide access to food for eight bears that were locked in a den, in willful violation of section 3.129(a) of the Regulations (9 C.F.R. § 3.129(a)).

111. On or about February 22, 2006, Mr. Pearson failed to provide potable water, in receptacles that are clean and sanitary, as often as necessary for the health and comfort of three white tigers, three orange tigers, two lions, one black leopard, and one cougar, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

112. On or about February 22, 2006, Mr. Pearson failed to provide access to potable water to eight bears that were locked in a den, in willful violation of section 3.130 of the Regulations (9 C.F.R. § 3.130).

Discussion

Although Mr. Pearson sometimes followed instructions and corrected deficiencies at his facility, he often did not. The premises were filthy. Basic hygiene and sanitation was not practiced. Inadequate drainage of pens housing the animals was a chronic problem that was never fully remedied and the animals frequently had to endure the discomfort of staying wet. When water receptacles froze in the winter, the animals had no water to drink. In the summer when water was accessible, the water receptacles were dirty. If the hibernation of the bears was interrupted, no food or water was available to the bears. Moreover, some of those bears were kept, as were some lions and tigers, in enclosures that were too small for their comfort.

By way of defense, Mr. Pearson asserts his problems with APHIS started after Dr. Harlan became part of the team assigned to inspect his facility and his traveling exhibit. Mr. Pearson claims his refusal to cooperate with Dr. Harlan in her investigation of an unlicensed dealer, whose animals he included with the traveling exhibit he took to a Heinz Corporation employee picnic in September of 1999, caused Dr. Harlan and her APHIS colleagues to seek revenge. Mr. Pearson contends, when Dr. Harlan and Inspector Kovach subsequently inspected his facility, they were seeking ways to cite him for violations of the Regulations. Mr. Pearson asserts inspections by a previously assigned APHIS inspector never resulted in more than two or three citations. In contrast, when Dr. Harlan first visited his facility on January 29, 2001, he was cited for

15 violations. However, his defense of selective prosecution is belied by the appalling conditions that confronted Dr. Harlan and Inspector Kovach when they made the January 2001 inspection of Mr. Pearson's facility.

Two dead animals were found on the premises. The explanations given Dr. Harlan and Inspector Kovach were that one of the animals, a tiger, must have died suddenly during the night and that the other, a badger, though obviously dead for some time, had been kept to be skinned and was inadvertently forgotten when it became covered with snow. Dr. Harlan and Inspector Kovach also found that female bears were being kept in boxes in forced hibernation with non-hibernating male bears roaming freely about the boxes. Mr. Pearson provided no practical way to observe the boxed bears to determine whether they needed food, water, or emergency care. The food preparation area for the big cats was dirty and contained a dead cow with half its head missing hung up for butchering. The band saw used for butchering carcasses was covered with dried blood. Animals were without drinking water and trying to quench their thirst by licking ice and eating snow. A mountain lion was housed in a cage that provided it no protection from the wind and snow, and the mountain lion was wet without any way to stay dry. Other animals were also wet and dirty. Some animals needed immediate veterinary care. This discussion is only a partial list of the odious conditions that Dr. Harlan and Inspector Kovach found when they made that inspection, but it is sufficient to show that

Mr. Pearson was cited, not out of vindictiveness, but because of the deplorable conditions that existed at his facility.

Dr. Harlan and Investigator Kovach both impressed ALJ Palmer as highly credible witnesses (ALJ Palmer's Decision and Order at 45). The full details of their investigations on January 29, 2001, are set forth in their investigative report and testimony, together with corroborating photographs. Mr. Pearson has not met the burden of proving the requisite elements of a selective enforcement defense that are set forth in *In re Marilyn Shepard*, 57 Agric. Dec. 242, 278-80 (1998). APHIS' failure to cite Mr. Pearson for violations of the Animal Welfare Act and the Regulations prior to 1999, does not absolve Mr. Pearson from being held accountable for the violations that the inspections since 1999 show he has committed. See *In re John D. Davenport*, 57 Agric. Dec. 189, 209 (1998), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998).

Mr. Pearson also argues he should not be penalized for non-compliant items that he corrected. Each Animal Welfare Act licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations. While Mr. Pearson's corrections of his Animal Welfare Act violations can be taken into account when determining the sanction to be imposed, Mr. Pearson's corrections of his violations do not eliminate the fact that the violations occurred.³

³*In re Jewel Bond*, 65 Agric. Dec. 92, 109 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *In re Eric John Drogosch*, 63 Agric. Dec. 623, 643 (2004); *In re*
(continued...)

The violations that I conclude Mr. Pearson committed and that are the basis for my order revoking Mr. Pearson's Animal Welfare Act license, are in every sense egregious, obvious violations of the Animal Welfare Act and the Regulations that substantially endangered the health and well-being of the animals Mr. Pearson kept at his facility for exhibition. Many of these egregious violations were often uncorrected and persistent; therefore, requiring, in addition to the issuance of a cease and desist order and assessment of a civil penalty, the revocation of Mr. Pearson's Animal Welfare Act license as the only effective way to prevent their future occurrence.

MR. PEARSON'S APPEAL PETITION

Mr. Pearson raises four issues in his Appeal Petition. First, Mr. Pearson contends ALJ Palmer's findings of fact are not supported by substantial evidence (Appeal Pet. at 1-4).

The standard of proof before both the ALJ and myself is preponderance of the evidence,⁴ not substantial evidence, as Mr. Pearson contends. Use of the higher

³(...continued)

Reginald Dwight Parr, 59 Agric. Dec. 601, 644 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re Susan DeFrancesco*, 59 Agric. Dec. 97, 112 n.12 (2000); *In re Michael A. Huchital*, 58 Agric. Dec. 763, 805 n.6 (1999); *In re James E. Stephens*, 58 Agric. Dec. 149, 184-85 (1999).

⁴*Herman & MacLean v. Huddleston*, 459 U.S. 375, 387-92 (1983); *Steadman v. SEC*, 450 U.S. 91, 92-104 (1981); *In re Jerome Schmidt*, 66 Agric. Dec. 159, 178 (2007); *In re The Int'l Siberian Tiger Found.* (Decision as to The International Siberian Tiger Foundation, Diana Cziraky, The Siberian Tiger Foundation, and Tiger Lady), 61 Agric. Dec. 53, 79 n.3 (2002); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 169 n.4 (1997), *aff'd*,
(continued...)

preponderance standard⁵ should, in theory, benefit Mr. Pearson. However, applying either standard, the overwhelming weight of the evidence convinces me that Mr. Pearson violated the Animal Welfare Act and the Regulations. Mr. Pearson challenges all of the ALJ's findings of fact. After a thorough review of the record, I find the ALJ's findings of fact supported by a preponderance of the evidence. The ALJ amply addressed his findings, and I adopt his findings with only minor modifications.

Second, Mr. Pearson asserts ALJ Palmer's failure to grant a continuance when fire destroyed many of his records, is error (Appeal Pet. at 4-5).

While the fire that destroyed Mr. Pearson's house shortly before the hearing surely was devastating to Mr. Pearson and to his business, Mr. Pearson's arguments for a continuance are unpersuasive. Management of the proceeding, including the timing and scheduling of the hearing, rests with the discretion of the administrative law judge. Even if I would have found differently than ALJ Palmer, had the decision been mine, absent an abuse of ALJ Palmer's discretion, I am reluctant to reverse his decision regarding

⁴(...continued)

172 F.3d 51, 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206), *printed in* 58 Agric. Dec. 85 (1999); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 109 n.3 (1996).

⁵*See Bobo v. U.S. Dep't of Agric.*, 52 F.3d 1406, 1410 (6th Cir. 1995) (stating substantial evidence means more than a scintilla but less than a preponderance of the evidence); *Elliott v. Administrator, Animal and Plant Health Inspection, Serv.*, 990 F.2d 140, 144 (4th Cir.) (same), *cert. denied*, 510 U.S. 867 (1993).

scheduling and other case management issues. In the instant proceeding, I decline to reverse ALJ Palmer's denial of the motion for a continuance.

Mr. Pearson argues "continuance was necessary because all of the papers, notes, pictures and documents necessary to the defense of the USDA action were lost in the fire." (Respondent's Brief in Support of Appeal Pet. at 13.) This argument rings hollow. Mr. Pearson's failure to provide the Administrator with a list of, and copies of, exhibits he intended to enter into evidence, as ordered by ALJ Palmer, provides ample justification to deny the continuance. With no exhibit list filed by Mr. Pearson, I can, and do, infer Mr. Pearson did not intend to provide exhibits during the hearing.⁶ Furthermore, Mr. Pearson made no "offers of proof" during the proceeding in an effort to explain to ALJ Palmer the importance of the evidence that was crucial but missing as a result of the fire. (See 7 C.F.R. § 1.141(h)(7).) Therefore, I conclude Mr. Pearson did not intend to produce exhibits for admission into the record and Mr. Pearson suffered no prejudice resulting from the denial of the continuance. I decline to reverse ALJ Palmer's decision denying a continuation of the hearing.

⁶I note Mr. Pearson provided an exhibit list on August 21, 2003, to cover the first part of the hearing conducted in 2003. The only items identified on that list were USDA inspection reports. If Mr. Pearson's copies of the USDA inspection reports had been destroyed in the fire, he could have, and should have, requested copies from the Administrator.

Third, Mr. Pearson asserts ALJ Palmer erroneously refused to allow him to present the deposition testimony of Dr. Faust, a veterinarian who had seen and treated Mr. Pearson's animals (Appeal Pet. at 5).

Again, Mr. Pearson's argument is not persuasive. I am somewhat troubled that counsel for Mr. Pearson did not determine he needed the testimony of Dr. Faust until June 23, 2006, the last day of the 4-day 2006 hearing (Tr. 2 at 1196-98). On March 14, 2006, at Mr. Pearson's request, ALJ Palmer postponed the hearing from March 28-31, 2006, to June 20-23, 2006, in order to give Mr. Pearson additional time to prepare for the hearing (Summary of Telephone Conference; Exchange Deadline and Scheduling of Oral Hearing, filed Mar. 17, 2006). I agree with ALJ Palmer that further delay because of a lack of preparation is not justified.

Fourth, Mr. Pearson asserts testimony taken by another administrative law judge was improperly relied upon by ALJ Palmer when, as the trier of fact, he should have heard the testimony personally from all witnesses (Appeal Pet. at 5-6).

ALJ Palmer stated during the hearing "there is a lot of case law that says one Judge can take over from another Judge in administrative hearings." (Tr. 2 at 12.) The real issue is not whether a judge can take over for another judge – that happens frequently – the question is: must the new judge begin from the beginning or can the new judge continue the hearing from the point at which the new judge is assigned the proceeding. The Rules of Practice anticipate this issue.

§ 1.144 Judges.

....

(d) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned proceeding may, without abatement of the proceeding unless otherwise directed by the Chief Judge, be assigned to any other Judge.

7 C.F.R. § 1.144(d). I interpret this provision of the Rules of Practice to mean, absent an order from the Chief Administrative Law Judge, the case will proceed from the point at which the first administrative law judge became unavailable. The case would not start from the beginning and the record already established would be used by the new administrative law judge in rendering a decision.

THE ADMINISTRATOR'S CROSS-APPEAL

The Administrator raises six issues in his cross-appeal. First, the Administrator contends ALJ Palmer improperly failed to assess a civil penalty. The Administrator asserts Mr. Pearson committed around 600 violations of the Animal Welfare Act and the Regulations and requests that I assess a civil penalty of at least \$100,000 for those violations. (Complainant's Reply Brief in Opposition to Respondent's Appeal Pet. and Cross-Appeal at 24-29.)

Administrative law judges and the Judicial Officer have significant discretion when imposing a civil penalty under the Animal Welfare Act. The Animal Welfare Act provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act or the Regulations (7 U.S.C.

§ 2149(b)). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture, effective September 2, 1997, adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v) (2005)). Subsequently, the Secretary of Agriculture adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations occurring after June 23, 2005, by increasing the maximum civil penalty from \$2,500 to \$3,750 (7 C.F.R. § 3.91(b)(2)(ii) (2006)).

The Administrator correctly points out that the United States Department of Agriculture's sanction policy provides that the administrative law judges and the Judicial Officer must give appropriate weight to sanction recommendations of administrative officials, as follows:

[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.

In re S.S. Farms Linn County, Inc. (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991). 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.⁷ I find the recommendation of “at least \$100,000” for “around 600 violations” too vague to be relied upon.

With respect to the civil monetary penalty, the Secretary of Agriculture is required to give due consideration to the size of the business of the person involved, the gravity of the violation, the person’s good faith, and the history of previous violations.⁸

Mr. Pearson operates a medium-sized business (Decision and Order, *supra*). Mr. Pearson’s violations during the period May 12, 1999, through February 22, 2006, reveal a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations. An ongoing pattern of violations establishes a “history of previous violations” for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and a lack of good faith.

I conclude Mr. Pearson committed 281 violations of the Animal Welfare Act and the Regulations. Mr. Pearson could be assessed a maximum civil penalty of \$832,750 for his 281 violations. After examining all the relevant circumstances, in light of the United

⁷*In re Amarillo Wildlife Refuge, Inc.*, __ Agric. Dec. __, slip op. at 16 (Jan. 6, 2009); *In re Alliance Airlines*, 64 Agric. Dec. 1595, 1608 (2005); *In re Mary Jean Williams* (Decision as to Deborah Ann Milette), 64 Agric. Dec. 364, 390 (2005); *In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. 763, 787 (2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re Excel Corp.*, 62 Agric. Dec. 196, 234 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 49 (2002).

⁸See 7 U.S.C. § 2149(b).

States Department of Agriculture's sanction policy, and taking into account the requirements of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), and the remedial purposes of the Animal Welfare Act, I conclude revocation of Mr. Pearson's Animal Welfare Act license, permanent disqualification of Mr. Pearson from obtaining an Animal Welfare Act license, a cease and desist order, and assessment of a \$93,975 civil penalty⁹ are appropriate and necessary to ensure Mr. Pearson'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 fulfill the remedial purposes of the Animal Welfare Act.

Second, the Administrator contends ALJ Palmer erroneously conflated the limitations in the Administrative Procedure Act on the imposition of a sanction (5 U.S.C. § 558(b)) and the limitations in the Administrative Procedure Act on the revocation of a

⁹I assess Mr. Pearson a civil penalty of \$275 for each violation committed on or before June 23, 2005, and \$375 for each violation committed after June 23, 2005. Except that, I assess Mr. Pearson \$1,000 for each failure to have a responsible person available to allow APHIS officials to inspect his facility, in violation of section 2.126(a) of the Regulations (9 C.F.R. § 2.126(a)) (August 27, 2002, May 5, 2003, and May 11, 2005); \$2,000 for housing animals at unapproved locations on January 18, 2004, in violation of section 2.5(d) of the Regulations (9 C.F.R. § 2.5(d)); \$2,000 for housing animals at unapproved locations on January 30, 2004, in violation of section 2.5(d) of the Regulations (9 C.F.R. § 2.5(d)); \$2,000 for the January 30, 2004, failure to notify the Animal Care Regional Director of additional sites at which Mr. Pearson housed animals, in violation of section 2.8 of the Regulations (9 C.F.R. § 2.8); and \$2,000 for each refusal to allow APHIS officials to inspect his entire facility, in violation of section 2.126(a)(4) of the Regulations (9 C.F.R. § 2.126(a)(4)) (May 12, 2005, and October 5, 2005). I find these violations are extremely serious because they thwart the Secretary of Agriculture's ability to enforce the Animal Welfare Act.

license (5 U.S.C. § 558(c)) (Complainant's Reply Brief in Opposition to Respondent's Appeal Pet. and Cross-Appeal at 29-32).

I do not find ALJ Palmer conflated the limitations in the Administrative Procedure Act on the imposition of a sanction (5 U.S.C. § 558(b)) and the limitations in the Administrative Procedure Act on the revocation of a license (5 U.S.C. § 558(c)), as the Administrator asserts. I cannot locate any statement by ALJ Palmer indicating the requirements in 5 U.S.C. § 558(c) necessary for the withdrawal, suspension, revocation, or annulment of a license are also necessary for the assessment of a civil penalty. Therefore, I reject the Administrator's assertion that ALJ Palmer erroneously conflated the limitations in the Administrative Procedure Act on the imposition of a sanction (5 U.S.C. § 558(b)) and the limitations in the Administrative Procedure Act on the revocation of a license (5 U.S.C. § 558(c)). However, I note that I agree with the Administrator's position that a finding of willfulness is not required under 5 U.S.C. § 558 for assessment of a civil penalty.

Third, the Administrator asserts ALJ Palmer incorrectly concluded 5 U.S.C. § 558(c) provides that a license may only be suspended or revoked for a non-willful violation if the violator is given written notice and an opportunity to demonstrate or achieve compliance with all lawful requirements (Complainant's Reply Brief in Opposition to Respondent's Appeal Pet. and Cross-Appeal at 32-38).

ALJ Palmer, relying on *Hodgins v. U.S. Dep't of Agric.*, 238 F.3d 421 (Table), 2000 WL 1785733 (6th Cir. 2000), indicates that, under the Administrative Procedure Act, a license can be suspended for a non-willful violation only if the violator is given written notice and an opportunity to demonstrate or achieve compliance with all lawful requirements (ALJ Palmer's Decision and Order at 7). The Administrative Procedure Act limits an agency's authority to withdraw, suspend, revoke, or annul a license to: (1) cases of willfulness; (2) cases in which public health, interest, or safety requires withdrawal, suspension, revocation, or annulment; and (3) cases in which the licensee has been given (a) notice by the agency in writing of the facts or conduct which warrant license withdrawal, suspension, revocation, or annulment and (b) an opportunity to demonstrate or achieve compliance with all valid requirements (5 U.S.C. § 558(c)). Therefore, I do not adopt ALJ Palmer's statement that a license can be suspended or revoked for a non-willful violation only if the violator is given written notice of the facts or conduct which warrant license suspension or revocation and an opportunity to demonstrate or achieve compliance with all valid requirements. Mr. Pearson's violations were willful and Mr. Pearson was given notice of many of the violations and an opportunity to achieve compliance with the Animal Welfare Act and the Regulations, but failed thereafter to continuously comply with the Animal Welfare Act and the Regulations. Therefore, ALJ Palmer's revocation of Mr. Pearson's Animal Welfare Act license comports with the requirements in the Administrative Procedure Act (5 U.S.C. § 558(c)).

Fourth, the Administrator contends “countless findings of fact are made” establishing that Mr. Pearson committed “various violations”; however, “a large number of these violations are unaccompanied by any conclusions of law or mention of sanctions” (Complainant’s Reply Brief in Opposition to Respondent’s Appeal Pet. and Cross-Appeal at 38). The Administrator specifically addresses ALJ Palmer’s finding of fact number 29 and ALJ Palmer’s failure to provide appropriate conclusions of law corresponding to finding of fact number 29. The Administrator concludes “[t]his [failure by ALJ Palmer to provide a conclusion of law corresponding to finding of fact number 29] is improper and all such similar inconsistencies should be corrected” (Complainant’s Reply Brief in Opposition to Respondent’s Appeal Pet. and Cross-Appeal at 40 (footnote omitted)).

I agree with the Administrator that, generally, a finding of fact supporting a conclusion that a respondent has violated the Animal Welfare Act or the Regulations should be mirrored by an appropriate conclusion of law. Therefore, I have modified the conclusions of law to mirror ALJ Palmer’s finding of fact number 29. The Administrator’s request that I correct “similar inconsistencies” is vague. Nonetheless, in this Decision and Order, *supra*, I set forth conclusions of law that I conclude are supported by ALJ Palmer’s other findings of fact.

Fifth, the Administrator contends ALJ Palmer’s grounds for his failure to impose a sanction, are error. Specifically, the Administrator asserts ALJ Palmer declined to impose a sanction in instances in which Mr. Pearson subsequently corrected the violations, in

instances in which Mr. Pearson's violations were of unknown duration, and in instances in which ALJ Palmer found Mr. Pearson's violations were de minimis (Complainant's Reply Brief in Opposition to Respondent's Appeal Pet. and Cross-Appeal at 40-43).

Each Animal Welfare Act licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations. While Mr. Pearson's corrections of his violations of the Animal Welfare Act and the Regulations can be taken into account when determining the sanction to be imposed, Mr. Pearson's corrections of his violations do not eliminate the fact that the violations occurred.¹⁰ Similarly, the seriousness of a violation and the duration of a violation can be taken into account when determining the sanction to be imposed;¹¹ however, a finding that a violation is de minimis or of short duration, does not eliminate the fact that a violation occurred.

Sixth, the Administrator contends, during the hearing, ALJ Palmer erroneously refused to allow testimony regarding events that took place after the filing of the First Amended Complaint and erroneously allowed the testimony of one of Mr. Pearson's witnesses using notes she had prepared as reference (Complainant's Reply Brief in Opposition to Respondent's Appeal Pet. and Cross-Appeal at 43-46).

¹⁰See note 3.

¹¹See *In re Jerome Schmidt*, 66 Agric. Dec. 159, 206-07 (2007) (declining to assess a civil penalty for a minor violation of the Regulations, but imposing a cease and desist order).

Without discussing the merits of each of these issues, I decline to overturn ALJ Palmer's rulings. Even if I were to grant the Administrator's request and remand the proceeding to ALJ Palmer, the disposition of the instant proceeding would not change.

For the foregoing reasons, the following Order is issued.

ORDER

1. Lorenza Pearson, d/b/a L & L Exotic Animal Farm, his agents, 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.

Paragraph 1 of this Order shall become effective 1 day after service of this Order on Mr. Pearson.

2. Animal Welfare Act license number 31-C-0034 issued to Lorenza Pearson, d/b/a L & L Animal Farm, is revoked.

Paragraph 2 of this Order shall become effective 60 days after service of this Order on Mr. Pearson.

3. Mr. Pearson is permanently disqualified from obtaining a license under the Animal Welfare Act and the Regulations.

Paragraph 3 of this Order shall become effective immediately upon service of this Order on Mr. Pearson.

4. Mr. Pearson is assessed a \$93,975 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:

Frank Martin, Jr.
United States Department of Agriculture
Office of the General Counsel
Marketing 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, Frank Martin, Jr., within 60 days after service of this Order on Mr. Pearson. Mr. Pearson shall state on the certified check or money order that payment is in reference to AWA Docket No. 02-0020.

5. Mr. Pearson's petition opposing APHIS' intent to terminate Mr. Pearson's Animal Welfare Act license is denied.

Paragraph 5 of this Order shall become effective immediately upon service of this Order on Mr. Pearson.

RIGHT TO JUDICIAL REVIEW

Mr. Pearson has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Mr. Pearson must seek judicial review within 60 days after entry of the Order in this Decision and Order.¹² The date of entry of the Order in this Decision and Order is July 13, 2009.

Done at Washington, DC

July 13, 2009

William G. Jenson
Judicial Officer

¹²7 U.S.C. § 2149(c).