UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Timothy L. Stark, an individual; and	)	AWA Docket No. 16-0124
Wildlife in Need and Wildlife in Deed, Inc.	)	
an Indiana corporation,	)	AWA Docket No. 16-0125
	)	
Respondents.	)	

DECISION AND ORDER

Appearances:

Ciarra A. Toomey, Esq., with the Office of the General Counsel, United States Department of Agriculture, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service; and

Respondent Timothy L. Stark, appearing pro se.

Before Chief Administrative Law Judge, Channing D. Strother.

INTRODUCTION AND SUMMARY OF DECISION

The Administrator, Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture ("USDA"), Complainant, instituted this administrative enforcement proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*). ("AWA"), by filing a Complaint alleging that Respondents, Timothy L. Stark ("Respondent Stark") and Wildlife in Need and Wildlife in Deed, Inc. ("Wildlife in Need") (hereinafter collectively referred to as "Respondents"), violated the AWA and regulations issued thereunder (9 C.F.R. pt. 2). Respondent Stark is an exhibitor as the term is defined in the AWA and the Regulations and is the holder of AWA license 32-C-0204.[1] Respondent Wildlife in Need, an exhibitor as the term is defined in the AWA, is an Indiana Corporation who has never held an AWA license and whose agent for service of process and president is Respondent Stark.[2]

---

[1] 7 U.S.C. § 2132(h); Answer at ¶ 1; CX 1.

[2] 7 U.S.C. § 2132(h); Answer at ¶ 1; CX 2.

The Complaint alleges well over 120 violations of the AWA. The record before me is extensive, with 101 admitted exhibits and over 2000 pages of transcript, which includes the testimony of twenty-five witnesses. I note that Respondents' counsel withdrew from representation three weeks before the hearing and Respondent Stark chose to proceed *pro se*.[3]

Although Respondent Stark credibly testified that he loves his animals and would never intentionally hurt them,[4] and the record shows that he inspired trust in the volunteer workers at the subject facilities,[5] the record also shows that Respondent Stark violated the AWA on multiple occasions; in many instances showing blatant disregard for the regulation Standards and requirements applicable to him as a licensee. Respondent Stark, in his actions, testimony, and pleadings, revealed a belief that his own experience and expertise is more reliable that of experienced USDA personnel and experts, and that his opinions should override the AWA and Regulations. I do not have the authority to overrule the AWA and Regulations based upon Respondent Stark's lay opinions. Moreover, while I recognize that Respondent Stark has substantial experience in the handling of animals, his experience is that of one, uncredentialed layman. The animals at issue are not family pets, generally exposed only to family and volunteers, but are exposed to the public for commercial purposes and subject to AWA regulation.

Therefore, based on careful review of the record and arguments before me, I find that

---

[3] Throughout this decision and order I have taken into account that "[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Boxer X v. Harris*, 437 F.3d 1107 (11th Cir. 2006) (quoting *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003)). *See also Ramos v. USDA*, 68 Agric. Dec. 60 (U.S.D.A. 2009). Respondents' filings in this docket, even if done to the best of Respondents' ability, likely have not been as skillfully prepared and articulated as they would have been if aided by counsel and/or other professionals. However, among other things, I have fully attempted to extract Respondents' contentions from not only Respondents' brief but all of the record and to fully and fairly consider each.

[4] *See e.g.* Tr. Vol. 7, 1937-38.

[5] *See e.g.* Tr. Vol. 7 1882, 1837-38, 1861.

Respondents willfully violated the AWA on multiple occasions. As set out below, I also find that that Respondents' business is large, the gravity of such violations was great, there is a history of previous violations, and Respondents did not act in good faith. Therefore, Respondents are ordered to cease and desist from violating the AWA and the regulations and standards issued thereunder; AWA license number 32-C-0204 is hereby revoked; Respondents are jointly and severally assessed a civil penalty of $300,000 for their violations herein; and Respondent Stark is assessed a civil penalty of $40,000 for his violations herein.

JURISDICTION AND BURDEN OF PROOF

The AWA was promulgated to insure the humane care and treatment of animals intended for use in research facilities, exhibition, or as pets.[6] Congress provided for enforcement of the AWA by the Secretary of Agriculture, USDA.[7] Regulations promulgated under the AWA are in the Code of Federal Regulations, part 9, sections 1.1 through 3.142. Among other things, as licensees under the AWA, Respondents are required to comply with the AWA and Regulations.

The burden of proof is on Complainant, APHIS.[8] The standard of proof applicable to adjudicatory proceedings under the Administrative Procedure Act,[9] such as this one, is the

---

[6] 7 U.S.C. § 2131.

[7] 7 U.S.C. §§ 2131-59.

[8] 5 U.S.C. § 556(d). *See also Terranova*, 2019 WL 4580195, at *15–16 (U.S.D.A. 2019) (stating: "Complainant bears the initial burden of coming forward with evidence sufficient for a *prima facie* case" and that, because Complainant established a *prima facie* case, "[t]he burden of production then shifted to Respondents to rebut Complainant's *prima facie* showing. Shifting burdens of production are necessary tools in developing a full and complete record and in assessing the weight to assign evidence") (citing among other things 5 U.S.C. § 556(d); JSG Trading Corp., 57 Agric. Dec. 640, 709-710, 721-22 (U.S.D.A. 1998); *Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 109 n.3 (U.S.D.A. March 15, 1996); *Davenport*, 57 Agric. Dec. 189, 223 (U.S.D.A. 1998) ("The burden of proof in disciplinary proceedings under the Animal Welfare Act is preponderance of the evidence, which is all that is required for the violations alleged in the Complaint."); *Hazardous Waste Treatment Council v. EPA*, 886 F.2d 355, 266 (D.C. Cir. 1989), *cert, denied sub nom. Am. Petroleum Inst. v. EPA*, 498 U.S. 849 (1990); *Bosma v. U.S. Dep't of Agric.*, 754 F.2d 804, 810 (9th Cir. 1984); *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 176 (2d Cir. 1965), cert, denied, 384 U.S. 972 (1966)) (additional citations omitted)..

[9] 5 U.S.C. §§ 551 *et seq.*

preponderance of the evidence.[10]

APPLICABLE STATUTORY PROVISIONS

Congress enacted the AWA, in relevant part "to insure that animals intended for . . . exhibition purposes . . . are provided humane care and treatment"[11]

To achieve this purpose, Congress provided that the Secretary of Agriculture "shall make such investigations or inspections as he deems necessary" to determine violations of the AWA and shall establish rules and regulations as he deems necessary to achieve the purpose of the AWA.[12]

The corresponding Regulations mandate, in pertinent part, that exhibitors must provide access to APHIS officials for inspection of records and property[13] and prohibit exhibitors from interfering with APHIS officials in the course of carrying out official duties.[14] The Regulations establish certain requirements on licensees, such as having an attending veterinarian;[15] accurately keeping records of animal acquisition and disposition;[16] identifying dogs and cats on exhibitor property;[17] and the proper handling of animals.[18] The Regulations set forth Standards[19] for the humane handling, care, treatment and transportation of animals, including Standards relevant to

---

[10] *See Herman & Maclean v. Huddleston,* 459 U.S. 375, 387-91 (1983) (holding the standard of proof in administrative proceedings is the preponderance of the evidence).

[11] 7 U.S.C. § 2131. *See also Animal Legal Defense Fund, Inc. v. Perdue*, 872 F.3d 602, 607 (D.C. Cir. 2017) ("Congress enacted the Animal Welfare Act in 1966 to ensure the humane treatment of animals used in medical research. In 1970, Congress amended the Act to cover animal 'exhibitors' a category that includes zoos.") (internal citations omitted).

[12] 7 U.S.C. § 2146(a).

[13] 9 C.F.R. § 2.126.

[14] 9 C.F.R. § 2.4.

[15] 9 C.F.R. § 2.40.

[16] 9 C.F.R.§§ 2.75(a)(2), 2.75(b).

[17] 9 C.F.R. § 2.50(c).

[18] 9 C.F.R. § 2.131.

[19] 9 C.F.R. § 2.100(a).

this case regarding housing, shelter, and facilities;[20] exercise and enrichment;[21] feeding, watering, and sanitization;[22] and that a sufficient number of employees be utilized.[23] Lastly, the AWA provides for civil penalties as well as suspension or revocation of AWA license if violation of the statute is found.[24]

PROCEDURAL HISTORY

This case was initiated by Complainant APHIS via Complaint on July 8, 2016. An Answer was timely filed on August 23, 2016 and the case was thereafter assigned to the undersigned, now Chief Administrative Law Judge Channing D. Strother,[25] on August 25, 2016. I issued an Order Setting Deadlines for Submissions on September 28, 2016. Complainant filed a List of Exhibits and Witnesses on December 1, 2016, Respondents filed a List of Exhibits and Witnesses on April 20, 2017, and Complainant's filed an Updated and Supplemental List of Witnesses and Exhibits on July 6, 2017.

A telephone conference was held on June 6, 2017 and I issued a Summary of June 6, 2017 Telephone Conference and Order Scheduling Hearing for November 13 to 22, 2017 on June 7, 2017. On November 6, 2017 I issued an Order canceling the scheduled hearing due to a scheduling conflict and providing instructions for rescheduling. I then issued a Summary of June

---

[20] 9 C.F.R. §§ 3.1 (a). 3.1(c)(1)(ii), 3.1(e); 9 C.F.R. § 3.3(e)(1); 9 C.F.R. § 3.4(b); 9 C.F.R. §§ 3.125(a), 3.125(c); 9 C.F.R. §§ 3.127(a), 3.127(b), 3.127(d).

[21] 9 C.F.R. § 3.8; 9 C.F.R. § 3.81.

[22] 9 C.F.R. § 3.9; 9 C.F.R. § 3.10; 9 C.F.R. § 3.11(b)(2); 9 C.F.R. § 3.80(a)(2)(viii); 9 C.F.R. § 3.129; 9 C.F.R. § 3.130.

[23] 9 C.F.R. § 3.132.

[24] 7 U.S.C. §§ 2149(a), (b). The civil penalty for a violation of the AWA is a maximum of $11,390, for violations taking place between December 5, 2017 and March 14, 2018; and a maximum of $10,000 for violations taking place between May 7, 2010 and December 4, 2017. 7 C.F.R. § 3.91(b)(2)(ii).

[25] At the time this case was assigned to the undersigned, then-Administrative Law Judge Strother, the Chief Administrative Law Judge was Bobbie J. McCartney. Secretary Perdue appointed me USDA Chief Administrative Law Judge on October 17, 2018.

18, 2018 Telephone Conference and Order Scheduling Hearing for September 24 to October 5, 2018. On July 19, 2018 an Adjustment of Hearing Dates and Designation of Hearing Location was issued.

On September 4, 2018 counsel for Respondents filed a Motion for Withdrawal of Attorney. A telephone conference was held on September 4, 2018, during which Respondents' motion for withdrawal of counsel was granted and each party expressed a desire to continue with the scheduled hearing. Another telephone conference was held on September 17, 2018, during which the parties agreed that they wished to proceed with the scheduled hearing. Since Respondent Stark stated that he planned to appear *pro se*, counsel for Complainant confirmed that Complainant would assist in ensuring Respondents had all documents needed in advance of the hearing.

On September 28, 2019, Mr. Shane McLain, a non-party, filed a Motion to Quash Subpoena, stating that the subpoena was not timely served, that the witness has no relevant knowledge of the facts alleged in the Complaint, that Mr. McLain was likely subpoenaed for improper purposes, and the witness was currently unavailable for the hearing. Mr. McLain's motion was granted on October 2, 2018.

An in-person Hearing was held on Wednesday, September 26, 2018 through Friday, September 28, 2018, and Monday, October 2, 2018 through Friday, October 5, 2018, a total of eight days, in Louisville, Kentucky. Respondents submitted a Motion in Limine on September 26, 2018, during the Hearing, requesting, at 2, that "any and all evidence that could have been provided in the February 26, 2015 lawsuit . . . be excluded." Respondents' Motion in Limine was denied during the Hearing on September 26, 2018,[26] and it was noted that Respondents could

[26] Tr. Vol. 1, 17:6-7, 23:25.

raise the issue again in post-hearing briefs.[27] The Motion in Limine is discussed further herein.

The official Transcript of the Hearing, Volumes 1 through 8, were filed on December 14, 2018.[28] Complainant filed its Proposed Corrections to Amended Transcript of Oral Hearing on March 5, 2019, which were approved by Order on April 3, 2019. Complainant filed its Proposed Finding of Fact, Conclusions of Law, and Order; and Request to Take Official Notice ("Complainants Proposed Order") as well as Complainant's Brief in Support of Proposed Findings of Fact, Conclusions of Law, and Order ("Complainant's Post-Hearing Brief") on May 7, 2019. Respondents filed their Proposed Findings of Fact, Conclusions of Law, and Order ("Respondent's Proposed Order") as well as an Answering Brief in Support of Respondents' Proposed Findings of Fact, Conclusions of Law, and Order ("Respondent's Post-Hearing Brief") on June 25, 2019.[29] Complainant filed its Reply Brief on July 23, 2019.

On September 5, 2019, Complainant filed a Notice of Limited Appearance and Motion for an Expedited Decision, where USDA General Counsel, Stephen A. Vaden, entered a limited appearance and provided information that was provided to Mr. Vaden from the General Counsel

---

[27] Tr. Vol. 1, 23:4-5.

[28] Due to mistakes made by the court reporting company, among other things, multiple modifications were made to the briefing schedule: Complainant filed a Motion to Modify Schedule for Filing Post-Hearing Briefs on February 5, 2019, which was granted on February 7, 2019; a Notice of Reformatted Transcripts and Order Revising Transcript Corrections Due dates was then filed on February 11, 2019; and Complainant filed a Request for Extension of Time and for Clarification RE Official Transcript on April 2, 2019 which was granted on April 3, 2019.

Complainant also requested clarification regarding the official transcript. *See* April 8, 2019 Order Granting Complainant's Request for Clarification Regarding Official Transcripts (clarifying, at 5, that the "the electronic (.pdf) version of the reformatted transcripts is the official version of the transcripts for the Hearing that took place September 26 through September 28, 2018, and October 1 through October 5, 2018, in Louisville, Kentucky, and are the transcripts that are a part of the official record in this proceeding.").

[29] Despite the April 8, 2019 Order Granting Complainant's Request for Clarification Regarding Official Transcripts, Respondents appear to have referenced the incorrect version of transcripts throughout their Post-Hearing Brief. Because it is not clear exactly the text meant to be cited in the official transcript in every instance Respondents cite the transcript, Respondents' citations to the transcript are quoted as written in Respondents' Post-Hearing Brief.

at the Indiana Department of Natural Resources. Complainant reiterated the urgency of both parties' receiving an expeditious decision in this matter. On September 3, 2019 Respondents responded to Complainant's Notice of Limited Appearance and Motion for an Expedited Decision, expressing concern regarding the attachments to the motion that Respondents consider "unfair at a basic level since they provide evidence via witness statements in which the witness has not been cross-examined" and requesting that the information provided be disregarded.

For the purposes of this Decision and Order, the record in Docket Nos. 16-0124 and 16-0125 is closed. Attachments to and information included in Complainant's entry of limited appearance and motion for expedited decision, which are outside of the allegations in the instant Complaint and outside the hearing conducted in this proceeding, are not considered part of the record and will not be considered in the adjudication of this case, including for purposes of the findings, conclusions, and order of the herein Decision.

DISCUSSION

The Complaint alleges that Respondents willfully violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et. seq.*) ("AWA"), and the Regulations promulgated thereunder (9 C.F.R. part 2) on several occasions ranging from January 2012 through January 2016.

In the Answer filed on August 23, 2016, at 1, Respondents admitted the jurisdictional allegations (Complaint, paras. 1-2) and admitted part of the allegations contained in Complaint, para. 6, regarding a previous conviction under the Endangered Species Act in 2008 but asserted the doctrine of estoppel and laches to prohibit the previous conviction from being used in the proceeding. Respondents specifically denied all other allegations contained in the complaint. *Id.* Respondents also raised certain affirmative defenses, Answer at paras. 4-5, including: estoppel, laches, res judicata, statute of limitations, and waiver.

I. Affirmative Defenses Raised in Answer

Respondents, Answer at 1, assert the affirmative defenses of estoppel and laches, contending that Respondents' previous conviction under the Endangered Species Act should not be used in this proceeding. Respondents also generally assert, *id.* at 1-2, the affirmative defenses of estoppel, laches, res judicata, statute of limitations, and waiver but do not provide any factual support or authority on which to assert such defenses. I find that the affirmative defenses asserted in Respondents' Answer are without merit.

As Complainant accurately points out, "[t]he doctrine of equitable estoppel is not, in itself, either a claim or a defense; rather, it is a means of precluding a litigant from asserting an otherwise available claim or defense against a party who has detrimentally relied on that litigant's conduct. . . . One key principle of equitable estoppel is that the party claiming the theory must demonstrate reliance on the other party's conduct in such a manner as to change his position for the worse."[30] Here, Respondents provide no factual support for having relied on any action by Complainant to their detriment in any way.

Respondents' assertion of estoppel regarding the use of the previous conviction, *United States v. Timothy L. Stark*, Case No. 4:07CR00013~001 (S.D. Ind.), which is perhaps an attempt to assert collateral estoppel, is similarly without merit. As explained by former Chief Judge Davenport as to circumstances similar to those here:

> Even were all the requisite threshold elements present necessary to trigger the defenses, which they are not, a detailed discussion of the doctrines of res judicata, collateral estoppel and waiver is not necessary as the issue of whether disciplinary proceedings instituted by entities other than the Secretary bar a subsequent enforcement action by the Department for the same event has been previously considered and answered adversely to the Respondent by both the Judicial Officer

[30] Complainant's Post Hearing Brief at 3. (quoting *Lawson, d/b/a Noah's Ark Zoo*, 57 Agric. Dec. 980 (U.S.D.A. 1998) (Citing *Kennedy v. United States*, 965 F.2d 413, 417-418 (7th Cir. 1992); *Olsen v. United States*, 952 F.2d 236, 241 (8th Cir. 1991); *ATC Petroleum, Inc. v. Sanders*, 860 F.2d 1104, 1111 (D.C. Cir. 1988); *FDIC v. Roldan Fonseca*, 795 F.2d 1102, 1108 (1st Cir. 1986); *Heckler v. Community Health Services*, 467 U.S. 51, 59 (1984); *Carrillo v. United States*, 5 F.3d 1302, 1306 (9th Cir. 1993)).

> and the Court of Appeals for the Sixth Circuit in *In re Jackie McConnell*, et al., 64 Agric. Dec. 436 (2005), *petition for review denied sub nom. McConnell v. U.S. Department of Agriculture*, WL 2430314 (6th Cir. 2006) (unpublished) (not to be cited except pursuant to Rule 28(g)).

Lacy, 65 Agric. Dec. 1157, 1159 (U.S.D.A. 2006).

Respondents' defenses of laches, res judicata, statute of limitations, and waiver are also unsupported and vague, at best.

Furthermore, as Complainant points out, a defense of laches has long been held inapplicable to administrative proceedings.[31] A defense of res judicata is similarly inapplicable here as Respondents have not demonstrated that there was a previous adjudication that involved the same allegations as the instant Complaint. The defenses of statute of limitations and waiver are also inapplicable here[32] as Respondents provide no factual basis or legal authority to support that any portion of the Complaint was brought after any statute of limitations period passed or that Complainant waived bringing any portion of the Complaint by not bringing it sooner, or in some other manner, or by any other means.

II. Respondent's Motion in Limine

Respondent submitted a Motion in Limine on September 26, 2018, during the Hearing, requesting, at 2, that "any and all evidence that could have been provided in the February 26, 2015 lawsuit . . . be excluded." I denied Respondent's Motion in Limine during the Hearing on September 26, 2018,[33] and noted that Respondent could re-raise the issue in post-hearing briefs.[34]

---

[31] *See* Complainant's Post Hearing Brief at 5 (citing *United States v. Kirkpatrick*, 22 U.S. (9 Wheat.) 720, 735-36 (1824). *See also United States v. Mack*, 295 U.S. 480, 489 (1935); *United States v. Verdier*, 164 U.S. 213, 219 (1896); *German Bank v. United States*, 148 U.S. 573, 579-80 (1893); *Gaussen v. United States*, 97 U.S. 584, 590 (1878); *In re All-Airtransport, Inc.*, 50 Agric. Dec. 412, 414–15 (1991).

[32] *See* 28 U.S.C. § 2462; *Lacy*, *supra,* 65 Agric. Dec. at 1159.

[33] Tr. Vol. 1, 17:6-7, 23:25.

[34] Tr. Vol. 1, 23:4-5.

In their Post-Hearing Brief, at 1-2, Respondents state that "as to Respondents' affirmative defense of estoppel, both in the form of a defense and as it was raised in the motions *in limine*" they are not contending that a complaint is precluded in the present action and are not claiming res judicata, but are arguing that:

> the Complainant is at the very least collaterally estopped from relitigating any particular factual issue that the same Complainant had both the opportunity and the incentive to litigate as a factual issue back on February 26, 2015 in the AWA administrative licensing proceeding by the same complainant, against the same party Timothy Stark, in the same jurisdiction, and under the same rules and regulations.

Respondent contends, *id.* at 2, that

> the doctrine of collateral estoppel has a quite significant preclusive impact on any and all factual issues that Complainant voluntarily elected to not raise when it had the chance and incentive to do so, the effect being that not only all evidence that could have been provided in the February 26,2015 proceeding should have been excluded, but that the Judge at this stage simply should not be redeciding issues of fact that were already precluded earlier as being decided the first time around.

However, Respondents do not point to any specific allegations in the current Complaint that they claim were previously litigated, or could have been litigated, during the February 26, 2015 administrative proceeding.[35] Rather, Respondents contend that, because, they claim, "the final determination" in the 2015 administrative proceeding was that:

> there was no evidence presented that Mr. Stark had harmed any animals in his custody . . . [t]hose judicial findings are binding, and must therefore be considered final determinations of fact with respect to any parallel claims that Mr. Stark harmed any of the same animals in his custody in this proceeding.

Respondents' Post-Hearing Brief at 3 (citing RX 10, 11, 26).

Complainant responds by pointing out that the 2015 administrative proceeding was initiated by an Order to Show Cause Why Animal Welfare Act License 32-C-0204 Should Not Be Terminated ("Order to Show Cause"), a license termination proceeding pursuant to 9 C.F.R.

[35] *Stark*, 9 AWA Docket No. 15-0080, 75 Agric. Dec. 419, 424 (2016).

§§ 2.11(a)(6) and 2.12, as opposed to an administrative disciplinary proceeding as in the instant case under 7 U.S.C. § 2149.[36] The 2015 Order to Show Cause alleged that Mr. Stark was unfit for licensure because "he was convicted for violating the Endangered Species Act (16 U.S.C. § 1538(a)(1)(E)) by illegally transporting an ocelot."[37] Complainant confirms that, in the instant case, Complainant does not seek license termination based on conviction of violating the Endangered Species Act as was sought in the 2015 proceeding and explains that the Complaint states that Respondent Stark was convicted of violating the Endangered Species Act only because it is relevant to the factors that must be considered in the instant case to assess civil penalties.[38]

I again deny Respondents' Motion in Limine. Respondents offer no legal authority or factual support for the contention that any "judicial findings" from the 2015 administrative proceeding regarding termination of an AWA license are "binding" on the instant case. The violations alleged in the Complaint in this proceeding do not involve the violations alleged in the 2015 proceeding and vice versa.

III. Interference with, Verbal Abuse of, and Harassment of APHIS Officials

Complainant alleges that Respondent Timothy Stark —the applicable Complaint paragraphs refer solely to "Respondent Stark" and not to "Respondents," as do the other Complaint paragraphs—willfully violated the AWA and Regulations (9 C.F.R. § 2.4) by interfering with and verbally abusing APHIS officials in the course of carrying out their duties

[36] *See* Complainant's Post-Hearing Brief at 10 (stating "[i]t is well settled that a license termination proceeding is not the same as an administrative disciplinary proceeding" and citing *Greenly*, 72 Agric. Dec. 586, 592–93 (2013)).

[37] *Id.* at 8 (citing *United States v. Stark*, Case No. 4:07-CR-00013-001 (S.D. Ind. Jan. 17, 2008); *Stark*, AWA Docket No. 15-0080, 75 Agric. Dec. 419, 424 (2016). Also noting that Wildlife in Need Wildlife in Deed, Inc. was not a party to the license termination proceeding).

[38] *Id.* at 12 (citing Complaint ¶ 6, Answer ¶ 3; CX 3).

on four occasions: June 25, 2013; September 24, 2013; September 26, 2013; and January 20, 2016.[39] There is no dispute that on each of the relevant dates Respondent Timothy Stark was an AWA licensee.

Complainant presented the testimony of Dr. Dana Miller, an APHIS veterinary medical officer ("VMO"), who was one of two inspectors at Respondents' property on June 25, 2013. Dr. Miller testified that Respondent Stark used "a great deal of profanity," that Respondent Stark "presented . . . a threat to our agency personnel," and that Respondent Stark asked "a number of questions" that were inappropriate and directed towards Dr. Arango such as "[w]here you from, boy."[40] Dr. Miller explained that Respondent Stark informed her that he received a testosterone shot that day and she thought he might be in physical pain[41] but that she began to document Respondent Stark's behavior after subsequent inspections when she realized it was not an isolated occurrence.[42]

As to the September 24, 2013 inspection, Dr. Miller testified about a particular instance where Respondent Stark entered a tiger enclosure, despite being asked not to by Drs. Miller and Arango, that contained "multiple tigers . . . and no shift cage or double gate system that would allow for safe entry."[43] Dr. Miller testified about her perceived danger of the situation stating "at the point at which he had that enclosure open, there would have been nothing standing between [the tigers and] Dr. Arango and myself"[44] and that "Mr. Stark was laughing at it, and saying that he was going to show us . . . saying that he was going to show us tiger teeth, and proceeded to

---

[39] Complaint at ¶ 7(a)-(d).

[40] *See* Complainant's Post Hearing Brief at 26 (citing Tr. Vol 2, 433:4-8, 444:11-445:10, 512; CX 10).

[41] *See* Tr. Vol 2, 161:18-25.

[42] Tr. Vol. 2, 445:3-10.

[43] CX 10 at 5.

[44] Tr. Vol. 2, 522:7-9.

enter that enclosure anyway despite . . . our objections and concern that we had for our safety."[45] Dr. Miller testified she felt Respondent Stark's actions were "an attempt to intimidate [herself and Dr. Arango] and interfere with that inspection process."[46] Dr. Miller explained that it was due to this behavior that she and Dr. Arango decided to start exiting the property because they no longer felt safe.[47] Dr. Arango also testified that he felt this incident was threatening.[48] The record clearly demonstrates that Respondent Stark's behavior took place and was threatening.

Dr. Miller testified that during the exit briefing of the September 26, 2013 inspection, when discussing with Respondent Stark that the inspectors spoke with Dr. Pepin who said that she had neither completed the entire APHIS 7002 Form nor agreed to be the attending veterinarian for Respondent Stark's facility, Respondent Stark became increasingly "agitated" and started to use profanity.[49] Dr. Miller testified that Respondent Stark's "behavior was severe enough that [she] actually had some concerns for Dr. Pepin's safety" and "went so far as to" reach out to Dr. Pepin so that she could make sure to take some precautions.[50]

Dr. Miller also testified that when she invited an Indiana Department of Natural Recourses ("DNR") Officer to attend one of the inspections at the Stark facility, the DNR Officer declined the invitation due to the hostility between Respondent Stark and the DNR.[51] Dr. Miller explained that this reaction by the DNR Officer to the APHIS invitation to attend an inspection,

---

[45] Tr. Vol. 2, 522:18-23. Complainant notes that Drs. Miller and Arango did not ask to see the tiger's teeth. Complainant's Post Hearing Brief at 27, n.17 (citing CX 10).

[46] Tr. Vol. 2, 524:9-11. *See also* CX 10.

[47] Tr. Vol. 2, 522:13-15, 524:12-14.

[48] Tr. Vol. 5, 1412:8-13.

[49] Tr. Vol. 2, 539:10-540:13. Dr. Miller also testified that Respondent Stark began slamming his hand and fist on the table and becoming very hostile. Tr. Vol. 2, 541:7-13.

[50] *Id.* (Also stating that that Respondent Stark made statements about Dr. Pepin that "he would f**king show her, and he would give her what for." Tr. Vol. 2, 540:20-22).

[51] Tr. Vol 2, 547:4-24; CX 28 (April 13, 2014 Memo by Dr. Miller).

as well as anti-government articles and Facebook posts, increased her concerns about safety for inspectors at the Stark Facility.[52]

Complainant states that the January 20, 2016, inspection was conducted by APHIS employees VMO Dr. Peter Kirsten and Animal Care Inspector ("ACI") AnnMarie Houser, accompanied by Indiana State Trooper Mark LaMaster and Officer Nicholas Yeager. Trooper LaMaster testified that he accompanied the APHIS inspectors in his part-time capacity as a security officer with Alliance Security, and, when he arrived, Respondent Stark seemed "agitated" or "upset" and "cursed in regards to how he responded to their requests to do their inspections."[53] Trooper LaMaster also testified that Ms. Stark told him to "keep [your] mouth shut or leave" when he asked about the animals in the room.[54]

Both ACI Houser and Dr. Kirsten testified that Respondent Stark was "agitated" when they arrived and proceeded to refuse the inspection because he was too busy removing snow and then told the inspectors to leave his property.[55] Dr. Kirsten testified that Ms. Stark, who was leaving for a medical appointment, came back and said she would conduct the inspection because she had rescheduled her appointment.[56] Dr. Kirsten described that during the inspection Ms. Stark put on a video recording camera (a "GoPro") as instructed by Respondent Stark and started saying she "felt bullied and threatened" but that her remarks were without cause and

---

[52] Tr. Vol 2, 533:11-20, 536:14-23. *See also* CX 42 (printout of Wildlife in Need, Inc. Facebook page).

[53] Tr. Vol. 1, 137:8-16, 140:13, 140:21-24, 143:4-11 (Trooper LaMaster recalls Respondent Stark telling the group that he was "f**king too busy for their sh*t"), 143:24-144:11 (Trooper LaMaster recalls Respondent Stark telling Dr. Kirsten to "get the f**k off my property").

[54] Tr. Vol. 1, 145:3-6.

[55] Tr. Vol. 3, 736:1-738:7 (ACI Houser recalled that Respondent Stark stated he was "f**king too busy for our sh*t," that he became increasingly angry, used profanity, and turned his anger on one of the troopers when asked to calm down); Tr. Vol 5, 1484:16-1485:10 (Dr. Kirsten recalled that Respondent Stark ordered the inspectors off of his property). *See also* CX 36 (Inspection Report for January 20, 2016); CX 38 (January 21, 2016 Memo by ACI Houser regarding January 20, 2016 inspection); CX 39 (January 20, 2016 Memo by VMO Dr. Kirsten).

[56] Tr. Vol. 5, 1485:11-15.

seemed, in Dr. Kirsten's opinion, "to be for the purpose of the camera."[57] Dr. Kirsten and ACI Houser also testified that during the exit interview Respondent Stark continued to be confrontational towards the inspectors, refusing to provide records, and continuing to use profanity and verbal abuse towards the inspectors.[58]

Respondents do not deny confrontational behavior, intimidation, or use of profanity or verbal abuse directed towards inspectors. Rather, Respondents contend that "no objective evidence of any actual physical interference or actual physical threat by Respondents to any APHIS official was presented by Complainant" and that Respondent Stark's behavior and statements (i.e. "use of profanity, their making generically derogatory comments about others around them, or their being argumentative") are:

> not only *not* violations of the Animal Welfare Act or the regulations, standards, instructions, or orders issued pursuant thereto, but are in fact prime examples of valid conduct, speech acts constitutionally protected from governmental inhibition or punishment under the state and federal constitutional provisions protecting core rights of free speech and free association . . . [and]
>
> punishment of Respondent Stark for engaging in those types of expression would be impermissible prior restraint of protected conduct and would be itself sanctionable as censorship and a violation of citizen's basic rights and liberties.

Respondents' Post-Hearing Brief at 27. Respondents also contend that, for speech to be "true

---

[57] Tr. Vol. 5, 1485:23-1486:11. *See also* Tr. Vol. 3, 739:5-20 (ACI Houser recalled that Ms. Stark kept saying she felt threatened and bullied without cause and "it appeared strange" to ACI Houser because "it felt like a show for the camera, because nothing was happening").

[58] Tr. Vol. 3, 743:19- (ACI Houser recalled that Respondent Stark was angry and kept muttering and cursing under his breath, that Respondent Stark refused to get records for review, and that Respondent Stark told ACI Houser that he was "sick and tired of [your] f**king opinions being in the reports"), 747:1-13 (ACI Houser recalled that Respondent Stark became more confrontational when the fence height violation was brought up and called Dr. Kirsten "you f**king geriatric old bastard"); Tr. Vol. 5, 1488:1-11, 1490:13-23 (Dr. Kirsten recalled that the exit interview became "very confrontational" and Respondent Stark called him a name and so he "took the lead from Inspector Houser . . . that [they] were in a situation that was . . . more dangerous than [they] needed to be in."), 1491:6-11 (Dr. Kirsten stated that because the inspectors felt unsafe even though they had a security guard with them, they decided to leave). *See also* RX 56 (a video taken by Respondent Stark where he clearly becomes confrontational with Dr. Kirsten and ACI Houser); RX 57, at 17:46-52 (a video taken by a GoPro camera worn by Ms. Stark where Respondent Stark calls Dr. Kirsten an "old geriatric bastard" along with other expletives).

intimidation" it must amount to denial of access and that none of the language "rose to anywhere near the level of actual obstruction required to do so."[59]

The Regulation states that "[a] licensee . . . shall not interfere with, threaten, **abuse (including verbally abuse), or harass** any APHIS official in the course of carrying out his or her duties." 9 C.F.R. § 2.4 (emphasis added) ("2.4"). Respondents do not deny Respondent Stark's behavior and statements alleged by Complainant during inspections on June 25, 2013; September 24, 2013; September 26, 2013; and January 20, 2016. The case law Respondents cite in an attempt to demonstrate that Respondent Stark's behavior during the inspections did not "rise to the level of a sanctionable violation of the Act," is inapplicable here.[60] Verbal abuse alone, including calling officials derogatory names, is a willful violation of 2.4 and there is no requirement that "physical threats" be shown.[61]

Here, Complainant alleges, and Respondents do not deny, that Respondent Stark was verbally abusive and harassing toward Dr. Arango during the June 25, 2013 inspection; and toward Dr. Kirsten during the January 20, 2016 exit briefing. Complainant also alleges, and Respondents do not specifically deny, that Respondent Stark displayed threatening and harassing behavior during the September 26, 2013 inspection by being argumentative, using profanity, and threatening the veterinarian; and during the September 24, 2013 inspection clearly

---

[59] *Id.* (citing *SEMA, Inc.*, 49 Agric. Dec. 176, 184 (U.S.D.A. 1990); *Ramos*, 75 Agric. Dec. 24, 42-43 (U.S.D.A. 2016)).

[60] In *Ramos*, 75 Agric. Dec.at 42-43, the Judicial Officer finds that Respondent did not violate 9 C.F.R. § 2.4 because the APHIS inspector claimed verbal abuse in her November 18, 2008 memorandum of the November 7, 2008 inspection, but never actually recorded such violation in the inspection reports. As Complainant points out, Complainant's Reply Brief at 46, *SEMA, Inc.*, where the Respondent was a research facility and not a licensee, is not relevant to the current matter as a violation of 9 C.F.R. § 2.4 was not at issue.

[61] *See Mazzola*, 68 Agric. Dec. 822, 831 (U.S.D.A. 2009) (where respondent calling an APHIS inspector "incompetent" and an "imbecile" who was too "dumb" to conduct and inspection, and also threatened to have the jobs of the inspectors, was found to have willfully violated 2.4).

engaging in threatening behavior by intentionally opening the tiger enclosure and saying he was going to show them tiger teeth which resulted in Drs. Miller and Arango cutting their inspection short due to safety concerns.

Respondent Stark's contention that his behavior and speech was constitutionally protected expression is without merit. As Complainant states: "[a]lthough the United States Constitution guarantees Mr. Stark freedom of speech, it does not guarantee Mr. Stark an Animal Welfare Act license" and "the AWA regulations do prohibit Mr. Stark, as a licensee, form threatening, verbally abusing, or harassing APHIS inspectors."[62]

Therefore, I find that the record shows by a preponderance of the evidence that Respondent Timothy Stark willfully violated the Regulations, 9 C.F.R. § 2.4, by interfering with and verbally abusing, harassing, and threatening APHIS officials in the course of carrying out their duties on four occasions: June 25, 2013; September 24, 2013; September 26, 2013; and January 20, 2016.

IV. Failure to Provide Access to Inspectors

Complainant alleges that Respondents failed to provide APHIS officials with access to conduct AWA inspections of their facilities, animals and records, or to make an authorized person available to accompany APHIS officials on such inspections in willful violation of the AWA and regulations (7 U.S.C. § 2146(a); 9 C.F.R. § 2.126) on the following dates: May 14, 2013; May 23, 2013; and January 17, 2014.[63] Complainant also alleges that Respondents willfully violated the regulations (9 C.F.R. § 2.126(a)(2)) by failing to provide APHIS officials

[62] Reply Brief at 47 (emphasis in original). *See also Shepherd*, 2007 WL 4711537, at *4 (U.S.D.A. 2007) (finding no validity to the respondent's claim that obtaining a license should be voluntary to be constitutional as respondent chose to engage in business which "Congress specifically required those who engage in this business to obtain a license.")

[63] Complaint at ¶ 16; 18.

with access to conduct AWA inspections of their records in June 2013.[64]

a) Complaint Paragraph 16 (May 14, 2013 and May 23, 2013)

In support of the allegations in the Complaint, para. 16, Complainant provides an Inspection Report for May 14, 2013, CX 45, from Dr. Arango stating that "[a] responsible adult was not available to accompany APHIS Officials during the inspection process at 11:00 am on 5/14/2013." Dr. Arango testified that he recalls not seeing anyone when he arrived and was unable to conduct the inspection.[65] Dr. Arango also stated that he returned to the Stark facility on May 23, 2013 and encountered Respondent Stark who said he was leaving for a doctor appointment; Dr. Arango replied that he could conduct the inspection with another person as long as they were more than eighteen years old and reminded Respondent Stark that this would be a repeat violation.[66] Complainant provided the May 23, 2013 Inspection Report, CX 47, stating "[a] responsible adult was not available to accompany APHIS Officials during the inspection process at 10:50 am on 5/23/2013." Complainant contends that these failures to provide access for inspection are willful violations of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a).[67]

In their Post-Hearing Brief, at 17-18, Respondents generally contend that they did not "block" APHIS officials from accessing their facility, but "regularly provided" access for inspections "which were then sadly and repeatedly conducted with aggression and venom by the inspectors toward everything Respondents said and did in spite of their cooperation." Complainant also provides a submission from Respondent Stark to APHIS, CX 46 at 5, relevant

[64] Complaint at ¶ 17.

[65] Tr. Vol. 5, 1266:21-22.

[66] Tr. Vol. 5, 1267:17-23, 1271:19-1272:6.

[67] *See* Complainant's Post-Hearing Brief at 62-63 (citing *Perry*, 71 Agric. Dec. 876, 880 (2012)).

to the May 23, 2013 non-compliance in which Respondent Stark stated:[68]

> I was confronted by ACI Juan F. Arango and was told he was my new inspector and that he needed to come in and do his inspection. I told him I had a Doctors [sic] appointment at noon and was getting ready to leave and that was not to be possible. He very rudely told me that either I or another responsible adult had to be here for him to do his inspection. I again told him no one else was here and that he could come back in 3-4 hours and gave him my cell number so he could make sure I was back so he wouldn't waste his time again. He persistently made me feel threatened by telling me over and over that I had to let him come in to do his inspection. He still proceeded bullying by telling me I had to let him come in so he could do his inspection. At that time I told him to go f**k himself that I was going to my doctor's appointment and he could either come back later or he could just kiss my ass. I felt I had no choice but to stand my ground with him to try and stop the bullying. I was already getting tired of his attitude by him trying to degrade me and that my time was not valued. I then ask him to leave and he said he would call me later if he had time that day to come back.

It is well recognized that the "requirement that exhibitors allow APHIS officials access to and inspection of facilities, property, records, and animals, during business hours, as provided in 9 C.F.R. § 2.126(a), is unqualified and contains no exemption.". [69] AWA license holders are required to have "some employee or agent . . . available at each facility . . . to give full and ready access to it and its records, for any unannounced APHIS inspection [during business hours]."[70] It is well-established that surprise, unannounced inspections providing immediate access to licensee premises and records are appropriate and necessary to the AWA enforcement program.[71] A doctor's appointment for a particular individual does not excuse a licensee from compliance with the AWA and regulations.[72] A particular individual is not required to be available to "give

---

[68] *See also* Tr. Vol. 7, 1907:18-1908:6.

[69] *Greenly*, 72 Agric. Dec. 603, 617 (U.S.D.A. 2013).

[70] *Berosini.*, 54 Agric. Dec. 886 (U.S.D.A. 1995) (quoting *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476, 492 (1991) [, *aff'd*, 991 F.2d 803, (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3)]).

[71] *See Hodgins v. U.S. Dep't of Agric.*, 238 F.3d 421 (6th Cir. 2000) (Table) (published in full at 59 Agric. Dec. 534 (U.S.D.A. 2000).

[72] *See Greenly*, 72 Agric. Dec. 603, 617, where the Judicial Officer determined that, even though the Respondent was ill and had to leave for a doctor's appointment during an attempted inspection, and even though the APHIS inspector agreed to return on another day, the Respondent was found to have violated

full and ready access to the [licensee] and its records," but "some employee or agent" is required to be available during the hours designated in the regulations.

Despite a previous Inspection Report citing the failure to provide access for inspection on May 14, 2013, in violation of 9 C.F.R.§ 2.126, Respondent again intentionally refused APHIS officials' entry for inspection on May 23, 2013, when Respondent Stark had to leave for a doctor appointment and did not arrange for another responsible adult to facilitate the inspection. Therefore, I find that Respondents willfully violated the AWA, 7 U.S.C. § 2146(a), and regulations, 9 C.F.R.§ 2.126, by failing to have a responsible person available to provide access to APHIS officials to inspect its facilities, animals and records during normal business hours on or about May 14, 2013 and on or about May 23, 2013. [73]

b) Complaint Paragraph 17 (June 25, 2013)

Complainant alleges that "[o]n or about June 25, 2013, respondents failed to provide APHIS officials with access to conduct AWA inspections of their records, in willful violation of the Regulations (9 C.F.R. § 2.126(a)(2))" and, specifically, provided false records.[74] Complainant presented the affidavits of Dr. Miller, CX 43, and Dr. Arango, CX 9.

Dr. Arango stated in his Affidavit that he and Dr. Miller received an APHIS form 7002 (also referred to as a "Program for Veterinary Care" or "PVC") from Respondent Stark that

---

the AWA and regulations because "[n]othing in the Animal Welfare Act or the Regulations excuses an exhibitor from compliance with 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a)."

[73] *See also* Tr. 1907:3-17 (where Respondent Stark testifies that Dr. Arango first came to the Stark facility on 28 June, 2013, and no one was present. Respondent Stark contends "I'm a private individual . . . Tim Stark founded Wildlife in Need, but Wildlife in Need is not an open-to-public business. We do not have set hours from 8 to 5 or any of that kind of stuff. It is just there. It is a personal private property that is owned by Tim and Melissa Stark.")

I note that, as a licensee conducting a facility with AWA regulated animals, Respondent Stark is subject to 9 C.F.R.§ 2.126. Further, the regulations are not vague in requiring that licensees must provide access "during business hours," *id.*, and define business hours generally to include "a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday." 9 C.F.R. § 1.1.

[74] Complaint at ¶ 17.

included both Respondent Stark and Dr. Harold Gough's, DVM, information and a signature from Dr. Gough dated January 17, 2013.[75] In her Affidavit, CX 43 at 1-3, Dr. Miller stated that, throughout the inspection, Respondent Stark "referred to his attending veterinarian by either name (Dr. Gough) or title" but when she attempted to contact Dr. Gough by phone on June 26, 2013, the "receptionist confirmed that DVM Gough had not been to Stark's property in several years" and, later when speaking with Dr. Gough over the phone, Dr. Gough "confirmed having been the attending veterinarian for Stark years ago, but stated that he terminated that relationship." Dr. Miller stated in her Affidavit, *id.*, that she "informed DVM Gough that I had a PVC with his information and his apparent signature dated 17 January 2013. DVM Gough stated that he had definitely not signed the PVC; although he had signed them in the past, which would give Stark access to his signature."

Dr. Gough testified that he did not fill out any part of the "Program of Veterinary Care for Research Facilities or Exhibitors," that the handwriting on the form was not his, and that the signature at the bottom in "Block D" was not his signature.[76]

Respondent Stark does not address or deny the allegation that he submitted false records on June 25, 2013 by providing the PVC to Drs. Miller and Arango with Dr. Gough's forged signature, falsely saying it was completed by Dr. Gough as his "attending veterinarian."[77] During his cross-examination of Dr. Gough, Respondent Stark seemed to contend that once a veterinarian has prepared and signed a PVC "it's good for the duration of the relationship."[78]

---

[75] CX 9 at 2.

[76] Tr. Vol. 4, 971:20 (Dr. Gough testified that he never wrote in print and only writes in cursive).

[77] *See* Tr. Vol. 4, 989:16-990:7 (Cross examination of Dr. Gough by Respondent Stark. Dr. Gough testified "you lied and wrote my signature when you shouldn't have" and Respondent Stark does not deny such).

[78] *See* Tr. Vol. 4, 990:8-991:20 (Dr. Gough replied that he did not believe it was true that the form need only be signed once and was good for "the duration of the relationship"). *See* RX 73, the original "Program for Veterinary Care" prepared and signed by Dr. Gough on April 10, 2008). Respondent Stark

The Regulations, 9 C.F.R. § 2.126(a)(2), require that licensed exhibitors allow APHIS officials to "examine records required to be kept by the Act and the regulations in this part." Relevant to this matter, the Regulations also require that "[i]n the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer exhibitor."[79] The PVC, CX 44 at 5, has an attestation on page 1 of 4, which states:

> The attending veterinarian shall establish, maintain and supervise programs . . . for all animals on the premises of the licensee/registrant. A written program of adequate veterinary care between the licensee/registrant and the doctor of veterinary medicine shall be established and reviewed on an annual basis. By law, such programs must include regularly scheduled visits to the premises by the veterinarian.

I find Dr. Gough's testimony credible that he did not assist in the completion of the PVC dated 2013, did not sign the PVC dated 2013, and had not been the attending veterinarian for the Stark facility for several years at the time of the June 25, 2013 inspection. The record is unequivocal that Respondent Stark willfully provided a false, forged PVC to APHIS inspectors on or about June 25, 2013 when asked for the PVC prepared by the attending veterinarian for the facility.[80] Respondent Stark's vague contention that once a PVC is completed it is good "throughout the relationship" does not justify the forgery of a PVC provided for APHIS official inspection or the forging of the professional signature of Dr. Gough. Additionally, such contention is inconsistent with the unambiguous requirements set out on the attestation of the PVC form on page 1.

---

also asked Dr. Gough if he ever called or sent any notification that he was terminating the relationship, and Dr. Gough replied "No; not that I recall." Tr. Vol. 4, 997:23-998:2.

[79] 9 C.F.R. § 2.40(a)(1).

[80] In comparing the original (mostly incomplete) PVC, signed by Dr. Gough in April 2008, RX 73, to the false PVC dated 2013, CX 44 at 5-9, it is clear that the Program recommendations are completely different. *See also* CX 44; Tr. Vol. 4, 977:11-17 (Dr. Gough expressed that he was extremely angered that Respondent Stark would forge his professional signature).

Therefore, the PVC dated 2013, presented to APHIS inspectors on June 25, 2013, was not completed by an attending veterinarian as required by 9 C.F.R. § 2.40(a)(1) and Respondents failed to allow APHIS officials to examine legitimate records required to be kept by the AWA in willful violation of 9 C.F.R. § 2.126(a)(2).

c) Complaint Paragraph 18 (January 17, 2014)

In support of the allegation in the Complaint, para. 18, Complainant provided CX 18 (Inspection Report for January 17, 2014 with pictures); CX 19 (January 17, 2014 Memo from Dr. Juan Arango and ACI AnnMarie Houser, with photographs); and CX 20 (January 28, 2014 Statement by Witness E, redacted). According to the January 17, 2014 Inspection Report, CX 19, and the January 17, 2014 Memo by the APHIS inspectors, Respondents allowed the inspectors to conduct an inspection on January 17, 2014 (albeit not of the animal exhibition the inspectors planned to attend).[81] Therefore, the record is not sufficient to show that Respondents violated the AWA or Regulations, 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126, on January 17, 2014.

V. Veterinary Care and Standards Violations

Complainant alleges sixteen willful violations of veterinary care regulations (9 C.F.R. §§ 2.40(a)-(b)).[82]

In general, Respondents contend that they "relied on and utilized veterinarians in exactly the manner needed for the circumstances[;]"[83] that they "enlisted veterinary resources as needed when needed, networked with a variety of vets on a host of concerns when they arose, contributed his own experience in collaboration with vet, and utilized and relied conscientiously

[81] *See* CX 18; CX 19 at 1

[82] Complaint at ¶ 8 (a)-(p).

[83] Respondents' Post-Hearing Brief at 11 (citing "Transcript at 178:17-179:9 in Testimony of Tim Stark on 10/04/18"; RX 24, 27, 64).

on strong levels of veterinary care for all animals[;]"[84] and that their "actions comported with applicable scientific standards."[85] Respondents also contend[86] that Complainant, and Complainant's witnesses,

> merely speculated on *potential* risks for adverse health, infection, or hypothetical injuries to animals . . . which never came to actual fruition, [and] turned out to be purely irrelevant to any factual determination needed to be made in this adjudication on Respondents actually maintaining a plan of adequate veterinary care for the particular time period charged.

However, at issue is whether Respondents complied with the AWA and Regulations thereunder. As Respondent Stark is an AWA licensee, Respondents cannot have used veterinarians "in . . . the manner needed for the circumstances" if Respondents did not comply with the AWA and the Regulations as written.

Respondents also generally contend that "there is good reason to question whether any of Complainant's so-called 'findings' in this area was ever supported by evidence . . . since it was Complainant's inspectors who did not perform a true physical examination of any of the animals" and "where APHIS inspectors truly believe an animal is suffering and the exhibitor refuses to provide adequate care, the inspector has the power to, and regularly does, confiscate the animal if the inspector even has a suspicion that animal's health is in danger."[87] Respondents reason that because APHIS inspectors never sought to confiscate any of Respondents' animals, "no objective basis existed to believe care was even required much less urgent—and thus no violation occurred."[88]

---

[84] *Id.* (citing "Transcript at 164:20-165:3, 174:10-175:8, 176:3-179:10, 196:16-197:19 in Testimony of Rick Pelphrey, DVM on 10/03/18")

[85] *Id.* at 11-12.

[86] *Id.* at 13.

[87] *Id.* at 15 (citing 9 C.F.R. § 2.129(a)).

[88] *Id.* at 14, 16 (citing *Big Cats of Serenity Springs, Inc. v. Rhodes*, 843 F3d 853, 868 (10th Cir 2016).

Complainant, in the Reply Brief at 26, states "it is not, however, the job of APHIS inspectors to themselves conduct veterinary medical examinations of respondents' animals or to provide care"[89] but that "inspectors are charged with identifying and documenting deficiencies and noncompliance with those regulations." Complainant also contends that Respondents' argument "erroneously conflates the veterinary care regulations with confiscation" whereas "7 U.S.C. § 2146 . . . permits confiscation of any animal found to be suffering as a result of a failure to comply with any provision of the Animal Welfare Act or any regulation or standard issued under the Animal Welfare Act."[90]

I agree with Complainant that Respondents misstate that function of the APHIS inspectors under the AWA and Regulations and confuse the consequence of confiscation with an APHIS inspector's duty to inspect and identify non-compliance.

a) Complaint Paragraphs 8a-8b (October 30, 2012-December 1, 2012; June 25, 2013)

Complainant alleges, Complaint at para. 8a, that, between October 30, 2012 and about December 1, 2012 Respondents failed to obtain any veterinary care for two juvenile female leopards in violation of 9 C.F.R. §§ 2.40(a) and (b)(2); and, *id.* at para. 8b, on June 25, 2013, Respondents failed to obtain adequate veterinary care for a juvenile female leopard and failed to establish and maintain a program of adequate veterinary care in violation of 9 C.F.R. §§ 2.40(a), (b)(1), and (b)(4).

Complainant states that APHIS inspectors, Drs. Miller and Arango performed a compliance inspection on June 25, 2013 and determined that Respondent Stark had acquired two

---

[89] Citing *Lorsch v. United States*, No. CV 14-2202 AJW, 2015 WL 6673464, at *10- 11 (C.D. Cal. Oct. 29, 2015).

[90] *Id.* at 29 (citing *Knaust*, 73 Agric. Dec. 92, 113 (2014)) (internal quotations omitted).

female juvenile leopards on October 30, 2012.[91] Complainant states that, according to Respondent Stark, both leopards suffered from metabolic bone disease and died shortly after their acquisition.[92] Specifically, Dr. Arango stated in the report that: "[r]eportedly one of these leopards was found dead while the second was found gasping for air and was euthanized by the licensee."[93] Complainant's allege that only Respondent Stark, who is not a veterinarian, "diagnosed" the leopards with metabolic bone disease; that the acquisition report states that the two leopards arrived in good condition; and that Respondent Stark admitted that he never had the leopards examined by a veterinarian.[94]

Respondent Stark testified that, after "diagnosing" the leopards with metabolic bone disease, he was "treating that cat" for "somewhere between a week and two weeks at the most" and when he went in to feed the leopard, the leopard charged him and "literally ran into the bat— . . . it fell over and . . . it probably broke it's [sic] neck, or whatever . . . and it was convulsing . . . [t]hat's when me, as an animal owner, as an animal caretaker, as an animal lover, I chose at that moment . . . I had to do the one thing that I hate doing more than anything on this planet: I had to euthanize an animal such as a leopard."[95]

Respondents contend that they did have an attending veterinarian, Dr. Rick Pelphrey, and that Respondent Stark's "extensive and impressive experience with raising, care, and handling of these animals . . . should be given substantial deference in terms of assessing whether proper and

---

[91] *See* Complainant's Post-Hearing Brief at 36-37; CX 6 (June 25, 2013 Inspection Report completed by Dr. Arango); CX 9 (July 25, 2013 Dr. Arango's Affidavit).

[92] *Id.* (citing CX 6 at 2; Tr. Vol. 2, 389:4-390:9; and Tr. Vol. 7, 1933:18-24).

[93] CX 6 at 2.

[94] *See id.* (citing CX 6; CX 9; and Tr. Vol. Tr. Vol. 7, 1933:18-24); Tr. Vol. 7, 1933:10-17 (Respondent Stark testified "I hadn't been able to get any kind of help looking at it, or any of that kind of stuff."), 1934:1-13 (Respondent Stark testified "I didn't need a vet to tell me what was wrong , because I have experienced it numerous times. The animal had metabolic bone disease. . . . So I did diagnose it myself.")

[95] Tr. Vol. 7, 1935:25-1937:19.

appropriate treatment was provided."[96]

The Regulations, 9 C.F.R. §§ 2.40(a) and (b)(1)-(2) provide that:

> (a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.
> (1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and
> (2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.
> (b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:
> (1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter;
> (2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;
> . . . .
> (4) Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia;

The record demonstrates that there was not an attending veterinarian for the Stark facility during the period at issue here, October 30, 2012 through about December 1, 2012, and on June 25, 2013. Dr. Rick Pelphrey testified that he has been the attending veterinarian since 2013,[97] and the Veterinarian Care Agreement provided by Respondents, RX 64, is dated October 1, 2013. Further, it was established *supra* that during the June 25, 2013 inspection by APHIS inspectors, Respondent Stark presented a false PVC with a forged signature of Dr. Gough and falsely claimed that Dr. Gough was the attending veterinarian for the Stark facility.

Respondent Stark's testimony also makes clear that he chose to "diagnose" and "treat" the leopards and chose to "euthanize" one of the leopards, without the assistance of a

---

[96] Respondent's Post-Hearing Brief at 13-14, 15.

[97] Tr. Vol. 6, 1651:20-21, 1686, 5-9.

veterinarian. According to Respondent Stark's testimony, he was aware that there was something wrong with at least one of the leopards for about one to two weeks but did not seek the services of a qualified veterinarian. No matter a licensee's faith in his own experience and self-asserted expertise, such disregard of the Regulations' requirements which direct an exhibitor to "provide adequate veterinary care to its animals" and to "establish and maintain programs of adequate veterinary care that include . . . the availability of emergency, weekend, and holiday care," is a willful violation of those Regulations. Therefore, a preponderance of the evidence shows that Respondents willfully violated 9 C.F.R. §§ 2.40(a) and (b)(1), (b)(2), and (b)(4) by failing to obtain any veterinary medical care for two juvenile female leopards upon acquisition, and for failing to seek professional diagnosis, treatment, and guidance regarding euthanasia by the attending veterinarian, or any veterinarian, when suffering was detected.

Although it is not necessary in determining the above violation to determine the correctness of Respondent Stark's diagnosis of the leopard, his decision to "euthanize" the leopard, or the appropriateness of the manner in which he ultimately killed and disposed of the leopard; I cannot find Respondent Stark's testimony as to the circumstances surrounding the use of a bat to "euthanize" the female juvenile leopard credible. The record shows that Respondent Stark has changed his story on several occasions of the circumstances surrounding the death of the leopard and his reasoning for using blunt force trauma to the head to kill the leopard.[98] His

[98] *See* CX 6 at (June 25, 2013 Inspection Report prepared by Dr. Arango, stating "Reportedly one of these leopards was found dead while the second was found gasping for air and was euthanized by the licensee. They were described as juvenile animals which came to the facility with metabolic bone disease, however, these animals were not examined by the Attending Veterinarian at any time after their arrival. The licensee stated that he did not seek recommendations regarding an appropriate feeding plan or veterinary treatment for this condition at any point that the animals were in his custody and the attending veterinarian was not contacted following their deaths."); CX 9 at 2 (Dr. Arango's affidavit stating that Respondent Stark told him that "he found one dead and the other was gasping for air, which he euthanized. He told me that he killed the cub by hitting it on the head with a bat"); CX 43 at 2 (Affidavit of Dr. Miller stating "Stark stated that, when needed, he euthanizes animals himself and that has never called the veterinarian to do this. . . . Stark stated that he sometimes uses gunshot, but that the 'bat method' works better. Stark described using a baseball bad to bludgeon animals to death as 'euthanasia' .

various accounts of the events leading up to the killing, his reasoning to act as he did, and the facts of the killing itself are inconsistent and not credible.

b) Complaint Paragraphs 8c (January 1, 2012-September 30, 2013)

In the Complaint, para. 8c, Complainants allege that "Respondents failed to employ an attending veterinarian to provide adequate veterinary care to respondents' animals" in violation of 9 C.F.R. §§ 2.40(a) and (b)(1). Complainant, via its Post-Hearing Brief, contends that not only did Respondents misrepresent that Dr. Gough was and had been the attending veterinarian for the Stark facility during the June 25, 2013 inspection,[99] but that Respondents then sent Dr. Miller another PVC on September 24, 2013 identifying Dr. Barbara Pepin as Respondents' attending veterinarian who, the record shows, stated she never agreed to be the Stark facility attending veterinarian.[100]

. . Stark described that he had 'euthanized' the spotted leopard cubs acquired on 10/30/2012 (described as having a bone disease). Stark later stated that one of these cubs had died spontaneously (without euthanasia) while the other he 'euthanized' using this ["bat"] method when it became ill"); CX 41 at 1:39 -2:26 (WHAS 11 News Clip where the reporter states "according to Stark, one of his young leopards had been malnourished before she moved to Wildlife in Need. She progressively got worse and more aggressive." Respondent Stark states "for me to euthanize an animal I do not need to call a veterinarian . . . If I deem it necessary that an animal is beyond that point, that is my requirement"); CX 42 at 1 (Wildlife in Need, Inc. Facebook page posting, where Respondent Stark writes "regarding the leopard that I euthanized in 2012 . . . I did what I had to do in the situation . . .This leopard was previously diagnosed as terminal by a vet and was in extreme suffering. I always carry some form of staff, stick, or night stick with me to keep an animal directed to a safe distance if need be. For that reason and for times' sake this was the method used."), video (Wildlife in Need, Inc. Facebook posting video where Respondent Stark states that the leopard was "already diagnosed terminally ill" and he tried to save it and when he went in to the enclosure the leopard tried to attack him, was staggering, and fell into the bat, then went into a seizure, so he decided to "euthanize" it. Respondent Stark says "I could have easily went and called my veterinarian or whatever" but he chose to use the bat to avoid having the animal lay there suffering.); Tr. Vol. 7, 1935:25-1937:19 (where Respondent Stark testifies to finding one leopard gasping for air and reaching for its leg which he says shatters in his hand, so he "diagnoses" the leopards with metabolic bone disease and continues to treat at least one leopard with calcium supplements for one to two weeks. He then testifies that when he tried to feed the leopard it charged at him and ran into his bat, maybe broke its neck, was convulsing, and he used the bat to "euthanize" the leopard.), 2046:2-6 (where Respondent Stark testifies "it never was diagnosed as terminal, no.").

[99] *See* Complainant's Post-Hearing Brief at 42 (citing CX 6; CX 9; CX 11; CX 44; Tr. Vol. 2, 382:6-386:20).

[100] *Id.* at 43. I note that Dr. Miller testified that the PVC was emailed to Dr. Arango, but the date the PVC was received is unclear. *See* Tr. Vol. 2, 445:24-446:4.

During the hearing, Dr. Pepin testified that she made a house call to the Stark facility, accompanied by her husband, for the sole purpose "to look at a dog that had been injured" by a lion with which he was housed.[101] Dr. Pepin also testified that, after examining the dog, she went to the Stark house to complete some paperwork and that Respondent Stark told her "he had to have a form signed, that somebody had walked through the facility and looked at it."[102] Dr. Pepin testified that she had a brief discussion with Respondent Stark about "a couple other exotic animals" at the facility, explaining that she was not an exotic animal veterinarian and that "hybrid animals were not eligible for rabies vaccinations[;]" but that after she entered the house she "filled out a blank on [the form] saying that - - what I prescribed and that further diagnostics . . . were declined and that he [Respondent Stark] was to come to the clinic the following day and pick up pain medicine and antibiotics for that dog."[103] Dr. Pepin testified that Respondent Stark never asked her to be the attending veterinarian for the Stark facility.[104] Dr. Pepin explained that it was not until after she was contacted by a USDA investigator that she requested copies of the documents she had signed and, upon review, realized the forms had added writing that was not her writing.[105] Dr. Pepin also testifies that she signed the "Attending Veterinarian Documentation Sheet for APHIS Form 7002" but understood that it was only meant to acknowledge that she looked at an animal at the facility and that acknowledgement was all she intended by her dated

---

[101] Tr. Vol. 1, 47:20-52:17. *See also* CX 8 (Dr. Pepin's September 23, 2013 Affidavit and two copies of the PVC: one copy has Dr. Pepin's initials indicating where the form contains her hand writing and notes "not mine" where there is added writing that is not her handwriting, and "unsure" where she cannot recall how in depth the conversation was about the topic indicated); Tr. Vol. 1, 49:18-23 (Dr. Pepin testified that she recommended that the dog be x-rayed but that her recommendation was rejected and she was told that the dog could not be removed from the property because the lion would get "very agitated" and "the housing with the lion might or might not hold him").

[102] Tr. Vol. 1, 52:20-53:6. *See also* CX 8.

[103] Tr. Vol. 1, 54:8-17, 55:2-7, 56:2-13. *See also* CX 8.

[104] Tr. Vol. 1, 56:11-13. *See also* CX 8 at 3, 5; CX 14 at 1.

[105] Tr. Vol. 1, 59: 23-60:4. *See also* CX 8 at 5

signature.[106]

Respondents generally contend that they "relied on and utilized veterinarians in exactly the manner needed for the circumstances" and "more than adequate plans for all animals involved was constructed, discussed, and implemented at all times." [107] Respondents also contend that "Dr. Pepin reviewed enrichment forms and regularly deferred to Respondent Tim Stark's vast experience and knowledge about proper treatment of exotics," and that the testimony of Dr. Pelphrey and Dr. Cook shows that "some attending veterinarian *was* effectively present in person or via ready communication at all times necessary, on who had direct or delegated authority for activities involving animals at Respondents' facility as defined under 9 C.F.R. Section 1.1."[108]

The record demonstrates that Dr. Rick Pelphrey did not become an attending veterinarian to the Stark facility until October 1, 2013.[109] Dr. Jill Cook testified that she met Respondent Stark sometime in the winter of 2015, has provided veterinary care for multiple animals at Respondents' facility, that she has not had a problem with Respondent Stark or anyone affiliated with Respondents "disobeying any recommendations" she had for the care of those animals, but stated that she is not the attending veterinarian under the USDA Regulations.[110]

Respondent Stark's contention that Dr. Pepin "deferred" to his expertise in the treatment

---

[106] Tr. Vol. 1, 68:12-17, 71:23-72:19.

[107] Respondent's Post-Hearing Brief at 11 (citing "Transcript at 178:17-179:9 in Testimony of Tim Stark on 10/04/18"; RX 24, 27, 64), 12.

[108] *Id.* at 12-13. *See also* Tr. Vol. 7, 1808:6-15 (Christina Day testifying that Dr. Pepin said "she doesn't know these kinds of [exotic] animals and she's going to rely on your [Respondent Stark's] expertise in helping to take care of them.").

[109] Tr. Vol. 6, 1651:20-21, 1686, 5-9; RX 64.

[110] Tr. Vol. 6, 1643:4-20, 1639:22-1640:6, 1640:21-1641:1, 1643:20-22. Dr. Cook also testified that, at the time Respondent Stark asked her to treat his tigers he had an attending veterinarian, Dr. Pelphrey, and that she had never treated tigers before. Tr. Vol. 6, 1644:11-17.

of exotic animals, is inconsistent with the record, including the testimony of Dr. Pepin, and is irrelevant to the present analysis of whether Respondents had an attending veterinarian during the time at issue. Dr. Pepin specifically noted that she and Respondent Stark discussed that she did not have expertise in exotic animals and did not wish to treat them.[111] She also testified that she did not know Christine Denford and never reviewed any enrichment forms as alleged by Ms. Denford in her Affidavit, RX 8.[112] As noted, Dr. Pepin stated, and Respondent Stark did not deny, that Respondent Stark never asked her to be his attending veterinarian.[113] I find that Dr. Pepin's testimony that she did not agree to become the attending veterinarian for Respondents is credible and the record shows that she did not function as an attending veterinarian during any period.

The Regulations, 9 C.F.R. §§ 2.40(a) and (b)(1), are unambiguous regarding the requirement that exhibitors "shall have an attending veterinarian who shall provide adequate veterinary care" as well as "written program of veterinary care." Respondent Stark does not deny that he forged the PVC and Dr. Gough's signature presented at inspection on June 25, 2013, nor does he deny that he never specifically asked Dr. Pepin if she would be the facility's attending veterinarian. Here, it is apparent that Respondents misrepresented the relationship with qualified veterinarians to APHIS officials, falsely presenting Dr. Gough and Dr. Pepin as attending veterinarians, not once but twice. Respondent Stark's claims that "some attending veterinarian

---

[111] Tr. Vol. 1, 56:2-8, 82:3-6; CX 8 at 3.

[112] Tr. Vol. 1, 78:14-84:1.

[113] There seems to be some misunderstanding or miscommunication as to the point of Respondent Stark asking Dr. Pepin to be his attending veterinarian. Ms. Day testified that "the reason" Dr. Pepin was present on July 1, 2013 was "to be our primary vet." Tr. Vol. 7, 1809:16-22. Ms. Day does not explain how she came to have the understanding about Dr. Pepin's reason for the house call. However, Ms. Day also testified that she was not familiar with the forms. Tr. Vol. 7, 1815:4-8. Respondent Stark does not, either in testimony or elsewhere that I could identify, deny that he never asked Dr. Pepin to be his attending veterinarian.

was effectively present in person or via ready communication at all times necessary" is inconsistent with the record prior to October 1, 2013 and does not comply with the Regulations. Therefore, I find that Respondents willfully violated the Regulations, 9 C.F.R. §§ 2.40(a) and (b)(1), by failing to employ an attending veterinarian to provide adequate veterinary care to Respondents' animals on or about January 1, 2012 through on or about September 30, 2013.

c) Complaint Paragraph 8d (June 25, 2013)

Complainant alleges that, in violation of the Regulations, 9 C.F.R. §§ 2.40(a), (b)(2), and (b)(3) on or about June 25, 2013 Respondents "failed to obtain adequate veterinary care of a Great Pyrenees dog with a bleeding lesion on his nose, and although respondent Stark represented to APHIS inspectors that a veterinarian had examined the dog, respondents had no documentation of any such examination."[114] Complainants provide that during the inspection, Respondent Stark represented to Drs. Arango and Miller that he had sought a veterinarian's advice for the dog Bandit and was treating the dog with "zinc-oxide type sunblock" but could not produce any documentation showing the veterinarian's diagnosis or recommendations.[115] Complainant states that during her July 1, 2013 house call, Dr. Pepin testified that she evaluated the dog Bandit and noticed the lesions and scabs on his nose for which she recommended a course of treatment.[116] Complainant contends that Respondents failed to follow Dr. Pepin's recommendations as determined during Drs. Arango and Miller's September 24, 2013 inspection.[117]

---

[114] Complaint ¶ 8d. The dog is identified as "Bandit" in Complainant's Post-Hearing Brief at 44.

[115] *See* CX 6 at 1. *See also* Tr. Vol. 2, 387:10-21 (Dr. Miller testifying about the dog Bandit's condition, that there was no documentation regarding the treatment of and care by a veterinarian of Bandit and confirming that Dr. Gough told her that he had never attended the dog).

[116] Complainant's Post-Hearing Brief at 45 (citing CX 8). Dr. Pepin also stated in her Affidavit that Respondent Start declined further diagnostics. CX 8 at 3.

[117] Tr. Vol. 2, 463:23-464:20; CX 14 at 46, 48, 50 (September 24, 2013 Inspection Report with photos). *See also* CX 6 at 2, 9-13.

Respondents do not address this specific allegation in their Post-Hearing Brief but generally contend that the treatment and care provided by the Respondents "should be given substantial deference in terms of assessing whether proper and appropriate treatment was provided."[118]

It has already been found, *supra*, that between January 1, 2012 and September 30, 2013, Respondents did not employ an attending veterinarian whose responsibility was to provide adequate veterinary care in violation of 9 C.F.R. § 2.40(a). The Regulations, 9 C.F.R. §§ 2.40(b)(2) and (b)(3), require that exhibitors maintain programs of veterinary care that include the "use of appropriate methods to prevent, control, diagnose, and treat disease and injuries" and "[d]aily observation of all animals to assess their heal and well-being . . . [p]rovided . . . a mechanism of direct and frequent communication is require so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian." Complainant's contention is that Respondents' representation that veterinary care was obtained for the dog Bandit's nose lesions was questionable due to the lack of documentation. However, Respondent Stark told the APHIS inspectors in June 2013 that, at the direction of an unidentified veterinarian, that the dog Bandit was being treated with zinc-oxide type sunblock, CX 6 at 2, which is the same recommendation provided by Dr. Pepin during her July 1, 2013 examination, CX 8 at 1-3.

Regarding the September 24, 2013 inspection, Dr. Arango testified that the dog Bandit's nose had scabbed over and "the open lesions looked improved."[119] Thus, although, according to Dr. Arango, Respondent Stark said that the dog Bandit's improvement was not due to him following Dr. Pepin's advice, it appears that Respondent Stark had a method to have the dog

[118] Respondents' Post-Hearing Brief at 15.

[119] Tr. Vol. 2, 464:3-8.

Bandit's nose lesions diagnosed by a veterinarian and treated, resulting in improvement. Therefore, I find that Respondents willfully violated 9 C.F.R. §§ 2.40(a) and (b)(3) by not having an attending veterinarian to provide adequate veterinary care or a mechanism for frequent communication with an attending veterinarian for the dog Bandit on or about June 25, 2013. However, the preponderance of evidence does not show that Respondents failed to have the dog Bandit diagnosed and treated by a veterinarian and the record does not demonstrate that Respondents violated 9 C.F.R. § 2.40(b)(2).

d) Complaint Paragraphs 8e-h (August 21 and 25, 2013)

Complainant alleges that, in violation of 9 C.F.R. §§ 2.40(a), (b)(2), and (b)(3), on or about August 25, 2013, Respondents failed to obtain adequate veterinary care for an ocelot, a serval, and a coatimundi, each of which died under unclear circumstances; and on or about August 25, 2013 through on or about September 3, 2013 Respondents failed to obtain adequate veterinary care for a male red kangaroo which also died due to unestablished causes.[120] Complainant contends that, during their September 24, 2013 inspection, Drs. Miller and Arango "documented that multiple animals had died of unknown or unconfirmed causes, . . . having been provided no veterinary care," and observed that Respondents "failed to have frequent and direct communications with their attending veterinarian as to timely attend to the animals' well-being."[121]

First, Complainant presented Dr. Miller's testimony about an ocelot that died on or about August 21, 2013 and about which Respondents told inspectors the cause of death was a "caging accident" in which the ocelot strangled in his cage.[122] Complainant contends that "Respondents

[120] Complaint at ¶ 8e-h.

[121] Complainant's Post-Hearing Brief at 45 (citing CX 14, 6; Tr. Vol. 2, 469-470).

[122] *Id.* (citing CX 14, 6; Tr. Vol. 2, 463:3-18).

had not sought any veterinary care for the ocelot, had not communicated with a veterinarian regarding the ocelot, and did not have a necropsy performed."[123]

Second, Complainant state that a coatimundi and serval died on or about August 25, 2013 and contend that Respondents never sought veterinary care or communicated with a veterinarian about these animals and did not have necropsies performed to determine the cause of death.[124]

Third, Complainant states that a male red kangaroo, acquired on or about August 25, 2013, died on September 3, 2013 and that, although Respondent Stark told the USDA inspectors that the kangaroo had swollen feet shortly after he arrived, Respondent Stark "never had the kangaroo examined by a veterinarian" and instead chose to treat the kangaroo with an unknown dosage of Benadryl.[125]

Aside from their general contentions, [126] Respondents do not address these specific allegations in their Post-Hearing Brief or provide specific evidence to rebut these allegations.

It has already been found, *supra*, that between January 1, 2012 and September 30, 2013, in violation of 9 C.F.R. § 2.40(a), Respondents did not employ an attending veterinarian whose responsibility was to provide adequate veterinary care.

The Regulations, 9 C.F.R. §§ 2.40(b)(2) and (3), require that exhibitors maintain programs of veterinary care that include the "use of appropriate methods to prevent, control, diagnose, and treat disease and injuries" and "[d]aily observation of all animals to assess their health and well-being" which "may be accomplished by someone other than the attending veterinarian" but require "a mechanism of direct and frequent communication is required so that

---

[123] *Id.*

[124] *Id.* at 45-46 (citing Tr. Vol. 2, 463:3-23; CX 14).

[125] *Id.* at 46 (citing Tr. Vol. 2, 461:21-463:2; CX 14).

[126] Respondents' Post-Hearing Brief at 15 (Respondents contend that their assessment of proper and appropriate treatment should be given deference). *See also* CX 6 at 2, 9-13

timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian." Regarding the ocelot, serval, and coatimundi, each of which died due to unknown circumstances, Respondents did not seek out veterinarian advice or diagnosis either before or after death. The record demonstrates that Respondents could not identify the cause of death for these animals. The record also demonstrates that Respondents could not produce a program of adequate veterinary care that specified methods for identifying or treating illness for these animals. Thus, as to the ocelot, serval, and coatimundi, I find that Respondents violated 9 C.F.R. §§ 2.40(a), (b)(2), and (b)(3).

As to the male red kangaroo, Complainant contends, and the record shows, that Respondent Stark's method of applying Benadryl to treat the kangaroo's swollen feet was ineffective to prevent the kangaroo from dying. Respondent Stark could not explain the death of the kangaroo or reason for application of, or precise dosage of, Benadryl.[127] This aside from the fact that Respondent Stark was uncredentialed to diagnose and treat a kangaroo and never sought a veterinarian's care despite his knowledge of the kangaroo's ailment. Therefore, as to the red kangaroo, I find that Complainant has shown by a preponderance of the evidence that Respondents violated 9 C.F.R. §§ 2.40(a), (b)(2), and (b)(3).

e) Complaint Paragraphs 8i-k (September 24, 2013)

Complainant alleges that, on or about September 24, 2013, Respondents violated 9 C.F.R. § 2.40(b)(2) by maintaining expired medication for use on animals, and 9 C.F.R. §§ 2.40(a) and (b)(2) by failing to obtain adequate veterinary care for a Great Pyrenees dog and a tiger (Jumba).[128] Complainant contends that, during their September 24, 2013 inspection, Drs. Arango and Miller identified an expired medication, a de-wormer Ivermectin, as the "only bottle of

[127] Tr. Vol. 2, 461:21-463:2; CX 14.

[128] Complaint at ¶ 8i-k.

medicine for use in animals that was present on respondent's premises."[129] During the same inspection, Complainant contends that Drs. Arango and Miller "found that one of respondents' tigers (Jumba) had visibly abnormal worn, broken and discolored canine teeth, as well as observable weight loss" and that Respondent told the APHIS inspectors he had never sought veterinary care for this tiger.[130]

The allegation in Complaint, para. 8j, is regarding the same dog Bandit and same facts already addressed in discussion of Complaint, para. 8d. Therefore, as there, here I find that Respondents willfully violated 9 C.F.R. § 2.40(a) by not having an attending veterinarian to provide adequate veterinary care for the dog Bandit on or about September 24, 2013, but the record does not demonstrate that Respondents violated 9 C.F.R. § 2.40(b)(2) by failing to have a veterinarian examine and treat the dog.

Aside from their general contentions, [131] Respondents do not address these specific allegations in their Post-Hearing Brief or provide specific evidence to rebut these allegations.

In the September 24, 2014 Inspection Report, Dr. Arango states that Respondent Stark "stated that this [bottle of Ivermectin] was the only bottle of medication present on the property" and that when the expiration date of August 2013 was pointed out, Respondent Stark "stated that he had purchased it earlier in this year and did not realized it had expired."[132] Although Respondent Stark does not deny that the medication was the "only" medication on the property or that it was in fact expired, the record does not indicate whether this medication was actively being used to treat any animals on the property. Therefore, I find that Complainant did not show

---

[129] Complainant's Post-Hearing Brief at 46 (citing Tr. Vol. 2, 460:9-461:14, 460:11-461:14; CX 14)

[130] *Id.* (citing Tr. Vol. 2, 465:17-467:11; CX 14 at 52, 54 (photos)).

[131] Respondents' Post-Hearing Brief at 15 (Respondents contend that their assessment of proper and appropriate treatment should be given deference).

[132] CX 14 at 3. *See also* CX 14 at 44 (photo of medicine bottle).

by a preponderance of the evidence that Respondents violated 9 C.F.R. § 2.40(b)(2)[133] by simply having the expired medication on the property.

As to the tiger Tumba, Dr. Arango observed that all four canine teeth "were broken or worn," particularly "the right lower canine was broken or worn unevenly to the gumline, and the other three canine teeth were all badly damaged or worn."[134] Dr. Miller testified that along with the broken and worn canine teeth, she noticed that the tiger had visibly lost weight since the last inspection and that Respondent Stark told she and Dr. Arango that the tiger Tumba was approximately fifteen years old and had never been examined by any veterinarian for a dental condition.[135] The inspectors also state that Respondent Stark expressed that he didn't believe there was a need to have a veterinarian examine the tiger for dental issues because he had never observed any signs of difficulty eating or signs of pain.[136]

The inspection photos show that the tiger Tumba's canine teeth were severely worn and possibly broken.[137] In view of the record proof of the poor condition of the tiger Tumba's teeth, Respondent Stark's contentions that a veterinarian's opinion was not needed since he did not observe the tiger having any problems eating or signs of pain is inadequate to counterbalance Complainant's evidence that the tiger should have been examined by a veterinarian. Therefore, I find that Respondents violated 9 C.F.R. §§ 2.40(a) and (b)(2) by failing to obtain adequate veterinary care for the tiger Timba leading up to and on or about September 24, 2013.

f) Complaint Paragraphs 8l-m (October 8, 2015)

---

[133] This Regulation concerns the "use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries."

[134] CX 14 at 7. *See also* CX 14 at 52, 54 (photos of tiger's teeth).

[135] Tr. Vol. 2, 465:18-466:19.

[136] *Id.*; CX 14 at 7.

[137] CX 14 at 52, 54. *See also* Tr. Vol. 2, 468:14-25.

Complainant alleges that Respondents violated 9 C.F.R. §§ 2.40(a) and (b)(2) on or about October 8, 2015 by failing to obtain adequate veterinary care of a Great Dane dog and Fennec fox. Complainant contends that, during her compliance inspection of Respondents' property on October 8, 2015, ACI Houser observed "a Great Dane dog had crusted material and a thick green mucus exuding from both eyes, the dog's eyes had not been cleaned, and the dog had not been seen by a veterinarian for this condition[;]" and "a Fennec fox appeared very lethargic, and immobile in a corner of its enclosure, had very runny eyes with a greenish mucus discharge, its left ear appeared to have a scabby material sluffing from the inside out of the ear, and the fox was thin, with a dull coat."[138] ACI Houser wrote in her October 8, 2015 Inspection Report that Respondent Stark indicated that the Fennec Fox's eyes were being treated by a veterinarian but that "a veterinarian had not been consulted in regards to the other issues."[139]

Aside from their general contentions, [140] Respondents do not address these specific allegations in their Post-Hearing Brief or provide specific evidence to rebut these allegations.

The October 8, 2015 inspection photos clearly show that the Fennec fox (CX 35 at 7) and Great Dane (CX 35 at 9) required the attention and treatment of a veterinarian for the reasons stated by ACI Houser. Based on the ACI Houser's statement, uncontradicted by Respondent Stark, that Respondent Stark stated he had a veterinarian treating the Fennec fox's eyes but not any of the other issues, and wholly failed to seek any veterinarian care of the Great Dane dog, the record shows that Respondents did not seek adequate veterinary care. Therefore, I find that Respondents willfully violated the Regulations, 9 C.F.R. §§ 2.40(a) and (b)(2), by failing to

---

[138] Complainant's Post-Hearing Brief at 47 (citing CX 35, Tr. Vol. 3, 706:16-23; 707:1-3). *See* CX 35 at 8 (photo of fennec fox), 9 (photo of Great Dane).

[139] CX 35 at 1.

[140] Respondents' Post-Hearing Brief at 15 (Respondents contend that their assessment of proper and appropriate treatment should be given deference).

obtain adequate veterinarian care for a Fennec fox and Great Dane dog as observed by inspectors on or about October 8, 2015.

g) Complaint Paragraphs 8n-p (January 20, 2016)

Complainant alleges that Respondents violated the Regulations, 9 C.F.R. §§ 2.40(a), (b)(2) and (b)(3), by failing to obtain veterinary care on or about January 20, 2016 for a female brown bear (Chloe), a red kangaroo, and three otters.[141]

Complainant contends that during a compliance inspection on January 20, 2016, Dr. Kirsten and ACI Houser "observed that a female brown bear (Chloe) appeared to have sustained an injury on her left arm, as evidenced by fresh blood in her fur."[142]

Respondents contend that there was not blood on the bear and that there was no injury.[143] Respondent Stark also contends that the inspector's observation of blood on the bear, if there was any, could not be a violation of the Regulations because it was first seen during the inspection and he could not have known to contact his veterinarian until he was made aware of the issue.[144]

Complainant also contends that, during the exit interview on January 20, 2016, inspectors discovered that sometime between October 8, 2015 and the inspection a red kangaroo that was previously known to be ill and three otters died of unknown causes.[145] Complainant contends

---

[141] Complaint at ¶ 8n-p.

[142] Complainant's Post-Hearing Brief at 47 (citing CX 36 at 2, 12-16; CX 39; Tr. Vol. 3, 716:21-717:17; 719:11-720:15; Tr. Vol. 5, 1487; 1601; 1603:2-5).

[143] RX 51 at 0:55, at 1:58 (Respondent Stark states that the bear had something to eat earlier in the day and may have had "raspberries or something" on her coat). *See also* Tr. Vol. 6, 1596:10-1604:16; RX 30, 31.

[144] *See* Tr. Vol. 6, 1602:24-1604:16; Respondents' Post-Hearing Brief at 24-5 (citing "Transcript at 32:1-34:15 in Testimony of Christina Day on 10/04/18"; RX 33; "Transcript at 150:8-152:21 in Testimony of Tim Stark on 10/04/18").

[145] Complainant's Post-Hearing Brief at 47-48 (citing Tr. Vol. 3, 717:20-718:3; CX 36; RX 57). *See* RX 57 at 4:27-5:48 (exit interview where Respondent Stark and Ms. Stark describe that the kangaroo was found ill and died within twenty-four hours, that the veterinarian Dr. Pelphrey was contacted but didn't say "a whole lot," and that the death and contact of the veterinarian are documented "in the file").

that Respondents knew the red kangaroo was ill but had "not obtained any veterinary medical care for the kangaroo and, following the death of the kangaroo, did not have a necropsy performed to determine the cause of the kangaroo's death."[146] Dr. Pelphrey, Respondents' attending veterinarian, testified he knew of the ill red kangaroo and consulted another practitioner in Kentucky but did not get the information needed to treat the kangaroo.[147]

Respondent Stark avers that he consulted Ms. Lynda Staker, author of "Macropod Husbandry, Healthcare, and Medicinals" as well as his attending veterinarian Dr. Pelphrey regarding the red kangaroo.[148] Respondent Stark states "[a]fter consulting my veterinarian on the death of this kangaroo we felt it conclusive that the animal died as a result of natural causes per the discussion with Ms. Staker and, for this reason, Dr. Pelphrey felt that a necropsy was not necessary."[149]

Complainant also contends that, as to the one adult and two pup otters, a veterinarian was never contacted regarding the adult otter, nor was a necropsy conducted though the cause of death was unknown.[150] The January 26, 2016 Inspection Report indicated that the death of the two otter pups may have been due to a "possible formula issue" but "a veterinarian was not contacted and the animals were not seen by the veterinarian during the time the animals died. No necropsy was conducted."[151] However, Complainants acknowledge that the evidence Respondents provided to show whether necropsies were performed on the deceased otters is

---

[146] *Id.*

[147] Tr. Vol. 6, 1697:13-1698:23.

[148] RX 30 at 3-4 (pages unnumbered). However, note that Respondent Stark is not clear about whether Dr. Pelphrey was consulted before or after the kangaroo's death.

[149] *Id.* However, also note that during Dr. Pelphrey's testimony, he alluded that the lack of necropsy was due to transportation difficulties and did not mention a conclusion that the kangaroo had died from natural causes. Tr. Vol. 6, 1698:5-23.

[150] Complainant's Post-Hearing Brief at 49 (citing CX 36).

[151] CX 36 at 2.

contradictory: Respondent Stark stated that he had not had any necropsies done on the otters but that, after consulting with his veterinarian Dr. Pelphrey and the seller, they determined the deaths were related to the formula, RX 30 at 4 (unnumbered pages); Respondent Stark testified that "any time [Respondents] have a questionable death, [Respondents] do a necropsy," and that he had cut the otter open to see if it had anything lodged inside;[152] and Dr. Pelphrey testified to having performed a necropsy on the deceased otters, but determined that the otters died of "canine distemper virus."[153]

Respondents contend that, although the attending veterinarian, Dr. Pelphrey, was contacted regarding the baby otters, "they both died within hours of initial indicators of any complications" so there was no time for them to be seen or treated by Dr. Pelphrey.[154] Respondents explain the adult otter "died within **minutes** of showing any indication of issue" and not within hours, that it was "immediately tended to, but there was no time to seek veterinary assistance."[155] Respondents contend that the adult otter likely died of natural causes and Dr. Pelphrey was made aware of the otter's death.[156]

The record is conflicting as to whether the brown bear Chloe was, in fact, injured or in need of veterinary care on the date of inspection, January 20, 2016. The video, RX 51 at 0:05-0:30, shows ACI Houser along with Dr. Kirsten pointing out the blood on the bear, ACI Houser states that the blood could be smelled, and that the injury must have just happened; neither Ms. Stark nor anyone else present in the video disagrees that blood (or something) is visible. Additionally, the January 20, 2016 Inspection Report includes photos of the bear, CX 36 at 12-

---

[152] Tr. Vol. 7, 1947:20-24, 1944:13-1947:20.

[153] Tr. Vol. 6, 1698:24-1702:6.

[154] RX 30 at 4 (pages unnumbered).

[155] *Id.* (emphasis in original).

[156] *Id.*

15, that indistinctly show an unknown reddish substance on the bear's fur. However, Respondents also present video evidence of the bear post-inspection, RX 51 at 1:45, showing the bear without any visible injury.

Respondent Stark's point is well taken that, if an injury had just happened at the time of inspection, he could not have failed to seek veterinarian care because of the immediate recency of the injury.[157] Respondent Stark states that the attending veterinarian was on the property the day before the inspection and did not observe an issue with the bear Chloe, *see* RX 30 at 3 (pages unnumbered). Complainant did not provide evidence that an entire day had gone by without the bear Chloe being observed by Respondents. Likewise, Complainant did not present any evidence showing that Respondents failed to provide a written program of veterinary care in place for this bear. Therefore, I find that the record does not demonstrate by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. §§ 2.40(a), (b)(2) and (b)(3), by failing to obtain adequate veterinary care for the bear Chloe on or about January 20, 2016.

As to the red kangaroo, Respondent Stark, in CX 30 at 4 (pages unnumbered), contends that he consulted with Ms. Staker, whom as noted above is the author of a volume on macropod husbandry and whom Respondent Stark understands to be an expert in macropods and, although the timing is unclear, also consulted with the attending veterinarian Dr. Phelprey who also consulted Ms. Staker. Although Respondent Stark does not deny knowing that the animal was sick before it died, he and Ms. Stark told inspectors that the kangaroo died within twenty-four hours.[158] The record is unclear as to whether Respondent Stark contacted his attending veterinarian Dr. Pelphrey before or after the kangaroo died. The record also shows that Respondents never sought a necropsy for the kangaroo to determine the cause of death.

---

[157] *See supra* n.144.

[158] Tr. Vol. 3, 717:22-718:1; RX 57.

Complainant did not address whether the animal had any written program of veterinary care. Although Respondents had an attending veterinarian, Dr. Pelphrey, the record demonstrates that Dr. Pelphrey did not provide care for the kangaroo and Respondents did not otherwise obtain adequate veterinary care for the kangaroo. Therefore, I find that Complainant proved by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. §§ 2.40(a), (b)(2) and (b)(3), by failing to obtain adequate veterinary care for a red kangaroo leading up to its death and the January 20, 2016 inspection.

Respondents' attending veterinarian, Dr. Pelphrey, testified that he was consulted post mortem regarding the otters, and explained it was possible that his determined cause of death, canine distemper virus, would not have displayed any symptoms leading up to death.[159] While the inconsistencies surrounding the observation, speed of death, and involvement of the attending veterinarian to determine the cause of death are concerning, I find Dr. Pelphrey's specific testimony regarding the deceased otters credible. Complainants did not present any evidence or address whether there was a lack of written program for veterinary care. Therefore, I find the record does not show by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. §§ 2.40(a), (b)(2) and (b)(3), by failing to obtain adequate veterinary care for three otters leading up to on or about January 20, 2016.

VI. Failure to Identify Dogs

Complainant alleges that Respondents willfully violated the Regulations, 9 C.F.R. § 2.50(c), by failing to identify dogs.[160] Dr. Miller testified, as corroborated in the September 23, 2013 Inspection Report by Dr. Arango, that the dogs at the facility (a Great Pyrenees, a wolf dog hybrid, and two coyote-dog hybrids) did not wear a collar with identification and no

[159] Tr. Vol. 6, 1698:24-1702:6.

[160] Complaint at ¶ 9.

identification was posted on the dogs' enclosures as required.[161]

Although this allegation is not specifically addressed in Respondents' Post-Hearing Brief and was not specifically addressed during the hearing by Respondents, Respondents present two exhibits, RX 43 (photos of dog tags) and RX 44 (a document entitled "Helpful Reminder-Identification"), presumably to show that this violation was corrected. But the timing of the assumed correction is not clear from this proffered evidence.

The applicable regulation, 9 C.F.R. § 2.50(c), states "[a] class 'C' exhibitor shall identify all live dogs and cats under his or her control or on his or her premises, whether held, purchased, or otherwise acquired." Complainant is correct in that the "Department's policy is that the subsequent correction of a condition not in compliance with the Act or the regulations or standards issued under the Act has no bearing on the fact that a violation has occurred. . . . While corrections are to be encouraged and may be taken into account when determining the sanction to be imposed, even the immediate correction of a violation does not operate to eliminate the fact that a violation occurred and does not provide a basis for the dismissal of the alleged violation."[162] In consideration of penalty, I take into account both that the September 23, 2013 Inspection Report includes and demonstrates the first violation of this nature and that, sometime thereafter, Respondents corrected the violation. I find that the Respondents violated the Regulations, 9 C.F.R. § 2.50(c) by failing to identify the four dogs at their facility on September

---

[161] Tr. Vol. 2, 470:19-471:3; CX 14 at 9, 11. Note that there are no specific photos of the dogs or their enclosures in CX 14 that I could find. Dr. Miller also stated that hybrid dogs are included in the Regulations' definition of dogs and require identification, Tr. Vol. 2, 470:13-18.

Dr. Miller also testified that the inspectors noticed the lack of identification during their June 2013 inspection but did not cite it in the Inspection Report to give Respondents an opportunity to understand the requirement and correct it. Tr. Vol. 2, 471:5-15.

[162] *Hodgins*, 1997 WL 392606, at *22 (quoting *Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 142 (1996)). *See also* Complainant's Post-Hearing Brief at 53 (citing *Tri-State Zoological Park of Western Maryland, Inc.*, 2013 WL 8213614, at *3 (2013)).

23, 2013.

VII. Acquisition and Disposition Records Violations

Complainant alleges that Respondents willfully violated Regulations, 9 C.F.R. 2.75(b), by failing to make, keep, and maintain records or forms that fully and correctly disclose the date of disposal of two juvenile leopards between December 2012 and June 2013, the acquisition of forty-three animals in June 2013, the disposition of six animals in June 2013, and the acquisition of seven animals in September 2013.[163] Complainants also allege that Respondents violated Regulations, 9 C.F.R. 2.75(a)(2), by failing to make, keep, and maintain records or forms that fully and correctly disclose the acquisition and disposition of dogs.[164]

In general, Respondents contend that the "main and essential purpose" of the record keeping requirements "is simply to prevent stolen animals from being sold for medical research" and that there is "no evidence or supported allegations that Respondents had trafficked in stolen animals."[165] Respondents contend, *id.*, that, because inspections are unannounced, in order to avoid allegations of recordkeeping violations licensees would "have to have records that are absolutely perfect at every moment of every day, with no paperwork, not even a single journal entry, left undone, even for the briefest period of time." Respondents aver that the violations were "nothing more than temporary and remediable discrepancies without real affect" and that Respondents should have been provided more opportunity to demonstrate compliance.[166] Respondents flatly contend, *id.* at 17, without providing any additional support, that there was no "preponderance of reliable evidence" to show that Respondents failed to keep records disclosing

---

[163] Complaint at ¶ 10-12, 14-15.

[164] Complaint at ¶ 13.

[165] Respondents' Post-Hearing Brief at 16 (citing "7 USC Section 2140"; "9 CFR Section 2.75").

[166] *Id.* at 17 (citing 5 U.S.C. § 558(c)(2); *Hodgins v. U.S. Dep't of Agric.*, 238 F3d 421 (6th Cir. 2000)).

the acquisition or disposition of animals.

In the Reply Brief at 30, Complainant states that "[i]t is well settled that the purpose of the recordkeeping regulations is not exclusively to prevent trafficking in stolen animals."[167] Complainant contends, *id.* at 332, that Respondents' contentions are without merit because "[a]lthough respondents are required to be in compliance at all times"[168] the alleged violations were not, as Respondents claim, "without effect" and did not require Respondents to meet "absolute perfection" or an "impossible and unnecessary standard";[169] and Respondents were given opportunities to correct deficiencies in their records.[170]

a. Complaint Paragraph 10

In the Complaint, para. 10, Complainants allege that

> (1) respondents had records showing that they had acquired two juvenile leopards (each weighing 15 pounds) on October 31, 2012; (2) between June 18, 2013, and June 20, 2013, a juvenile leopard killed at least one domestic pet cat and several pet dogs in respondents' neighborhood; (3) on June 20, 2013, a juvenile leopard (weighing approximately 48 pounds) was shot and killed by respondents' neighbors; (4) respondent Stark insisted that the juvenile leopard was not his, and that his two leopards had suffered from metabolic bone disease, and had both died within a month of their arrival at respondents' facility; and (5) respondents had no records of the disposition of either leopard, no records of any diagnosis of metabolic bone disease made by any veterinarian, and no records of any veterinary medical treatment given to either leopard for metabolic bone disease, or for any other condition.

Complainant states that Respondents acquired two male juvenile leopards on October 31,

---

[167] Citing *Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 118 (1996); *Browning*, 52 Agric. Dec. 129, 141-42 (1993).

[168] Citing *Tri-State Zoological Park*, 72 Agric. Dec. 128, 175 (2013) ("Each Animal Welfare Act licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations.")

[169] Citing *White*, 73 Agric. Dec. 114, 148-50 (2014).

[170] Explaining that the multiple allegations of non-compliance with recordkeeping requirements span a two-year period; contending that, according to Dr. Arango, "Respondents' recordkeeping was so lax that the inspectors themselves corrected and/or completed respondents records for them," Tr. Vol. 5, 1294:7-1296:11; and citing *Knaust*, 73 Agric. Dec. 92, 104 (2014) ("correction [of records] does not alter the fact that a violation occurred"); *Greenly*, 72 Agric. Dec. 603, 615-16 (2013); *Davenport*, 57 Agric. Dec. 189 (1998).

2012,[171] and APHIS determined that Respondents did not have any records regarding the disposition of either leopard, as well as no other record regarding illness or veterinarian treatment that might support Respondents claim that the two juvenile leopards acquired in 2012 died shortly thereafter.[172]

Respondents did not specifically address these allegations as to the leopards and have not provided any documentation regarding the disposition of the leopards.

The Regulations, 9 C.F.R. § 2.75(b), require that "[e]very . . . exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals . . . in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that dealer"; provided that exhibitors may use APHIS Form 7020, Record of Acquisition, Disposition, or Transport of Animals; and requires that each "exhibitor shall retain one copy of the record containing the information required by paragraph (b)(1) of this section."

As earlier determined, *supra*, Respondents had not provided any records regarding veterinary care or proof of illness for the leopards in question that Respondent Stark claims suffered of metabolic bone disease of which one died, and the other he "euthanized."[173] Respondents were well aware of the recordkeeping requirements, having maintained records of the acquisition of the two leopards, but failed to maintain any other records regarding the leopards care or disposition, leading to inconclusive results of an investigation regarding the

---

[171] Complainant's Post-Hearing Brief at 56 (citing CX 49 at 7; Tr. Vol. 5, 1277, 1289:2-5; Tr. Vol. 7, 2043).

[172] *Id.* at 57 (citing Tr. Vol. 5, 1282:20-1283:7). *See also* CX 49a (July 1, 2013 Animal Welfare Complaint).

I note that the leopards that Respondent Stark claimed died of metabolic bone disease were noted to be female, *see* Complaint ¶ 8a, whereas the leopards at question here, Complaint ¶ 10, are recorded as male in the acquisition documents, *see* CX 49 at 7.

[173] *See supra* pages 26-30; Tr. Vol.7, 2041:21-2042:3.

leopard killed on a neighbor's property less than a mile from Respondents' facility. I find that Complainants demonstrated by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.75(b), by failing to make, keep, and maintain records or forms that fully and correctly disclose the disposition of two juvenile leopards.

b. Complaint Paragraphs 11-12 (June 25, 2013)

Complainant alleges that on or about June 25, 2013, Respondents violated 9 C.F.R. § 2.75(b) by "failing to make, keep and maintain records or forms that fully and correctly disclose the acquisition of forty-three animals" and that "disclose the disposition of six animals."[174] Complainant contends that, during their June 25, 2013 inspection, Drs. Miller and Arango observed forty-three animals for which Respondents did not have any records of acquisition (including no records of animal births on the property), and also noted the absence of six animals for which Respondents had records of acquisition but did not have records of disposition.[175]

Respondents did not specifically address these allegations or produce the records at question.

The Regulations, 9 C.F.R. § 2.75(b), unambiguously require exhibitors to make, keep, and maintain records of acquisition, including "any offspring born of any animal while in his or her possession or under his or her control," and the disposition, including those euthanized, of animals in their possession. I find that the record demonstrates Respondents willfully violated 9 C.F.R. § 2.75(b) by failing to make, keep and maintain records or forms that fully and correctly

---

[174] Complaint at ¶ ¶ 11-12.

[175] *See* CX 6 (June 25, 2013 Inspection Report) at 3-5; Tr. Vol. 2, 399:22-400:17 (where Dr. Miller testified that Respondent Stark's records were so disorganized that she and Dr. Arango helped him organize the records he did have to determine the number of acquisition records and disposition records by species). *See also* Tr. Vol. 2, 400-402 (where Dr. Miller testifies as to the importance of maintenance of acquisition and disposition records); Tr. Vol. 5, 1295:2-1296:11 (where Dr. Arango testifies that he spent a week helping Respondent Stark organize records); CX 13 (Records of Animals On Hand created by Dr. Arango when organizing the boxes of Respondent Stark's records).

disclose the acquisition of forty-three animals and the disposition of six animals as observed by inspectors on or about June 25, 2013.

c. Complaint Paragraph 13-15 (September 24, 2013)

Complainant alleges that Respondents willfully violated the Regulations, 9 C.F.R. § 2.75(a)(2), by "failing to make, keep, and maintain records or forms that fully and correctly disclose the acquisition and disposition of dogs."[176] Complainants also allege that on or about September 24, 2013, Respondents willfully violated 9 C.F.R. § 2.75(b)(1) by "failing to make, keep, and maintain records or forms that fully and correctly disclose the acquisition of four animals" and "the disposition of three domestic pigs."[177]

Complainant provides CX 14 at 11, the September 24, 2013 Inspection Report, completed by Dr. Arango, which states that "dogs being maintained on the property are not being recorded on the APHIS 7005 form and the licensee does not have a variance to utilize a computerized record keeping system. Four dogs were observed in this facility collection. The information required regarding the acquisition source for these animals has not been documented in any other manner in the facility records." Dr. Arango further observes, CX at 11-13, "[a]t the time of inspection numerous (7) animals were missing either acquisition or disposition records" and details the missing records by species.

Respondents neither specifically addressed these allegations, nor have they produced any of the records at question.

As previously mentioned, the Regulations, 9 C.F.R. § 2.75(b), unambiguously require exhibitors to maintain records of the acquisition and disposition of their animals. The Regulations, 9 C.F.R. § 2.75(a)(2), are also clear that "exhibitor[s] shall use Record of Aquisition

[176] Complaint at ¶ 13.

[177] *Id.* at ¶¶ 14-15.

[sic] and Dogs and Cats on Hand (APHIS Form 7005) and Record of Disposition of Dogs and Cats (APHIS Form 7006) to make, keep, and maintain the information required by paragraph (a)(1) of this section" unless other computerized recordkeeping system is utilized. I find that the uncontroverted record demonstrates Respondents willfully violated the Regulations, 9 C.F.R. §§ 2.75(a)(2) and (b)(1), by failing to make, keep and maintain records or forms that fully and correctly disclose acquisition and disposition of four dogs; the acquisition of one coatimundi, one guinea pig, and two domestic pigs; and the disposition of three domestic pigs as observed by inspectors on or about September 24, 2013.

VIII. Handling Violations

Complainant alleges Respondents willfully violated the handling regulations (9 C.F.R. § 2.131) on twenty-seven occasions between December 2012 and September 2015.[178] Of particular gravity, Complainant alleges that Respondents "failed to handle a juvenile female leopard as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, during a compliance inspection on June 25, 2013, respondent Stark represented to APHIS inspectors that he had 'euthanized' the juvenile female leopard by beating her to death with a baseball bat."[179] Complainant also alleges that Respondents failed to properly handle juvenile tigers during exhibition due to lack of distance or barriers between the animals and the public, resulting in injury to a member of the public by one of the tigers on January 10, 2014; three members of the public being bitten and scratched by the tigers on August 19, 2014; and multiple members of the public being scratched and bitten on September 13, 2015.[180]

---

[178] Complaint at ¶¶ 19(a)-(aa)

[179] Complaint at ¶ 19(a).

[180] Complaint at ¶¶ 19c, q, w.

Complainant contends, generally, that "[e]xhibits of exotic felids that offer actual or potential direct contact with people (and especially children, the elderly, and the infirm) present a great risk of physical injury to people (and consequently, to tigers)."[181] Complainant also avers that the "Secretary has determined that even young tigers are simply too large, strong, predatory, quick, and unpredictable for a person (and especially a child) 'to restrain the animal or for a member of the public in contact with [the animal] to have time to move to safety'"[182] and dangerous animals such as tigers are prone to injuring people and at risk of harm in return if not handled with sufficient barriers and/or distance between that animals and public.[183] Complainant contends that Respondents "expected their customers to sustain, at minimum, bites and scratches" and that such bites and scratches could be "serious or deadly" depending on the size of the tiger and the size and condition of the person injured.[184] In addition, Complainant contends that "close contact with exotic felids such as tigers also poses a passive disease risk to both people and tigers."[185]

Generally, Respondents contend that the animals at the Stark facility were given "the best

---

[181] Complainant's Post-Hearing Brief at 70 (footnote omitted) (quoting and citing Tr. Vol.8, 2091:13-2092:5 (testimony of Dr. Laurie Gage) (other citations omitted); *The International Siberian Tiger Foundation, et al.* 61 Agric. Dec. 53, 90 (2002); *Zoocats, Inc.*, 68 Agric. Dec. 737, 746 (2009); *Palazzo d/b/a Great Cat Adventures*, 69 Agric. Dec. 173, 194 (2010); *Tri-State Zoological Park of Western Maryland, Inc.* 72 Agric. Dec 128, 138 (2013)).

[182] *Id.* at 71 (citing *The International Siberian Tiger Foundation*, 61 Agric. Dec. 53, 78).

[183] *Id.* (citations omitted).

[184] *Id.* at 73 (citing Tr. Vol. 8, 2093:2-5, 2165:3-15, 2105:22-2506:6).

[185] *Id.* at 76 (citing www.aphis.usda.gov/ac/bigcatq&a.html ("Commonly Asked Big Cat Questions"); Tr. Vol. 8, 2093, 2094:13-2095:5; Shoemaker, A.H., Maruska, E.J. and R. Rockwell, *Minimum Husbandry Guidelines for Mammals: Large Felids* (American Association of Zoos and Aquariums, 1997)("Annual vaccinations should include prophylaxis against feline panleukopenia (distemper)"); *Siberian Tiger Species Survival Plan* (American Association of Zoo Veterinarians, 2002)("The domestic feline viral diseases that effect tigers include . . . Panleukopenia.")).

care, the best medical . . . everything we feel, you know, is the best top quality."[186] Respondents also aver that Respondent Stark is "one of the most highly experienced and highly qualified exotic animal handlers, trainers, and conservators of the region"[187] and contend that "[t]hat vast extent of experienced and personal development in the field is directly parallel to the ranges of experience proffered by other respondents and lauded in other enforcement cases where significant credit was given for just such credentials -- and where reasonable mitigation of penalties was also granted for just such credentials."[188]

Complainant's Reply Brief states "it is well settled that a respondent's credentials or prior experience is irrelevant to whether there was violation or not."[189] The AWA and Regulations thereunder do not prohibit the exhibition of tigers and do not prohibit direct contact between tigers and the public. At issue here is whether Respondents violated the AWA and Regulations as written and as demonstrated by a preponderance of the evidence on each occasion alleged. If Respondents did violate the AWA and Regulations on any of the occasions alleged, Respondent Stark's experience or self-ascribed expertise is of little significance in light of his obligations as a licensee.

a. Complaint Paragraph 19a (December 1, 2012)

The Complaint, para. 19a, alleges that on or about December 1, 2012 Respondents

---

[186] Respondents' Post-Hearing Brief at 22-23 (internal quotations omitted) (citing "Transcript at 6:10-15 in Testimony of Timothy Stark on 10/05/18).

[187] *Id.* at 23 (citing "Transcript at 124:15-126:3 in Testimony of Tim Stark on 10/04/2018").

[188] *Id.* (citing *Gus White III & Betty White, d/b/a Collins Exotic Animal Orphanage*, 49 Agric. Dec. 123, 150 (U.S.D.A. Feb. 8, 1990)).

[189] Complainant's Reply Brief at 40 (citing *Lang*, 57 Agric. Dec. 91 (1998)). Complainant also avers that the "1990 decision in *Gus White* is inapposite" because 1) the respondent's experience was only one of many mitigating factors, 2) respondents made efforts to comply and had fewer and less grave violations, 3) the Judicial Officer found that violations were due to a lack of resources rather than "obstinacy," and 4) respondents were still issued a cease and desist order, assessed a civil penalty, and their license was suspended and later revoked in 2014. *Id.* at 40-41.

violated 9 C.F.R. § 2.131(b)(1) by "euthanizing" a juvenile female leopard by "beating her to death with a baseball bat." Complainant requests to incorporate the evidenced described regarding alleged violations of the veterinary care Regulations surrounding the same incident.[190] Complainant contends that the killing of the juvenile leopard with a baseball bat, or similar object, "is clearly not careful handling" and "clearly caused trauma," and that Respondent Starks' "conflicting version and justification of his actions raise an inference that killing the leopard (especially in the manner in which it was accomplished) was utterly unnecessary."[191]

As discussed, *supra*, Respondent Stark contends that he performed a "humane euthanasia" of the leopard which was necessary to quickly end "the patent distress and irremediable physical pain of a dying animal."[192] Respondent Stark presents RX 5, AVMA Guidelines for Euthanasia of Animals 2013 Edition, citing page 36, which he states considers "manually applied blunt force trauma to the head" an acceptable form of euthanasia.[193]

I previously determined *supra*, pp. 29-30, that Respondent Stark's testimony regarding the circumstances leading up to the killing of the leopard with a bat, and his stated reasons for killing the leopard, were not credible. Dr. Miller testified for Complainant[194] that, although the AVMA Guidelines provide that manually applied blunt force trauma to the head can be a proper form of euthanasia, *see* RX 5 at 36, it is not the proper method to accomplish euthanasia in the

---

[190] *See* Complainant's Post-Hearing Brief at 36-42. *See also supra* pp. 26-30.

[191] *Id.* at 77-78.

[192] Respondents' Post-Hearing Brief at 25 (citing "Transcript at 159:14-167:2 in Testimony of Tim Stark on 10/04/18").

[193] *Id.* (internal quotations omitted).Respondents also refer to, *Id.*, "scientific studies [that] also support the method when used in urgent conditions" (citing Cors, J.C., Gruber, A.D., Günther, R., Meyer-Kühling, B., Esser, K.H., & Rautenschlein, S. (2015), Electroencephalographic evaluation of the effectiveness of blunt trauma to induce loss of consciousness for on-farm killing of chickens and turkeys, *Poultry Science, 94(2)*, 147-155). The cited study does not appear relevant to the instant case.

[194] Tr. Vol. 2, 389:2-393:10; 556:24-558:2; 436:10-439:8; *see also* CX 43.

instant circumstance as use of blunt force trauma to the head is usually more appropriate for "small laboratory animals with thin craniums" and "young piglets." The AVMA Guidelines state, RX 5 at 36, "[e]uthanasia by manually applied blunt force trauma to the head must be evaluated in terms of the anatomic features of the species on which it is to be performed, the skill of those performing it, the number of animals to be euthanized, and the environment in which it is to be conducted" and that personnel performing such method "must be properly trained and monitored for proficiency" but that "the AVMA encourages those using manually applied blunt force trauma to the head as a euthanasia method to actively search for alternate approaches." The information provided by the AVMA regarding the use of blunt force trauma to the head as a method for euthanasia does not align or support Respondent Stark's lay opinion that it was necessary in the situation or that such method was appropriate for a large feline.

I find that record demonstrates by a preponderance of the evidence Respondents failed to handle the leopard as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort and violated 9 C.F.R. § 2.131(b)(1) by using blunt force trauma to the head as the method of "euthanizing" the leopard.

b. Complaint Paragraphs 19b-d (January 10, 2014)

Complainant contends that, on or about January 10, 2014, Respondents willfully violated the Regulations, 9 C.F.R. § 2.131(c)(1), by having insufficient barriers or distance between the tigers and general public, and allowing direct contact with loose tigers;[195] 9 C.F.R. § 2.131(b)(1), by failing to handle the juvenile tigers as carefully as possible when they allowed tigers "to be loose among multiple persons of all ages, potentially subjecting the animals to stress, trauma, harm and discomfort" and allowed the crowd of attendees to tap the tigers on the nose to correct

[195] *See* Complainant's Post-Hearing Brief at 79 (citing *Zoocats, Inc.*, 68 Agric. Dec. 737, 745-746 (2009)).

behavior;[196] 9 C.F.R. § 2.131(c)(3), by exposing the tigers to "rough and excessive public handling for periods of time that was detrimental to their health and well-being" because the tigers, according to Mr. Charles Grimley, a member of the public, participated in at least three forty-five minutes sessions that day and the tigers were "apparently" not given a rest period or option to participate.[197]

Complainant presents the testimony of Mr. Grimley, who testifies to have attended a thirty to forty-five minutes tiger playtime session at Respondents' facility on January 10, 2014 with his daughter and wife.[198] Mr. Grimley testified that there were about twenty-five attendees during the session; three juvenile tigers which he understood to be about sixteen weeks old and estimated to be about fifty pounds and three and a half feet long; and that Respondent Stark along with two other employees, who stayed outside of the chain-link fenced space or room, were present.[199] Mr. Grimley recalled that he was instructed to "tap" the tigers on the "nose bridge" if the tigers became rough with the audience to distract them, that he was not asked to sanitize his hands prior to the session, despite bottle feeding the tigers, and he did not observe any of the trainers or handlers sanitizing their hands.[200] Mr. Grimley also testified that, during the session, his daughter received a "small puncture wound on her wrist" for which he took her to the doctor to have the wound cleaned and bandaged.[201]

---

[196] *Id.* at 80 (citing *Zoocats, Inc.*, 68 Agric. Dec. 737, 747 (2009)).

[197] *Id.* (citing Tr. Vol. 2, 290).

[198] Tr. Vol. 2, 288:24-290:2. *See also* CX 17 (correspondence and photos of the tiger playtime session from Mr. Grimley), 17a-f (videos of tiger playtime session).

[199] Tr. Vol. 2, 294-96, 293:22-294:1. Mr. Grimley also testified that there was a sloth, monkey, and a couple of ring-tailed lemurs present, *id.*, and a baby kangaroo that was present without barrier between the kangaroo and tigers, *id.* at 294:15-20.

[200] Tr. Vol. 2, 291:21-292:10, 2944-11. Mr. Grimley also testified that he and his wife have a cat and a dog at home, and his daughter has three cats and a dog. *Id.* at 292:18-19.

[201] Tr. Vol. 2, 297:13-19.

Respondents do not specifically address the allegations for January 10, 2014 but contend generally that "testimony by Respondents' witnesses Melisa Stark, Jessica Amin, and Tim Stark reflected that thorough, conscientious, responsible, and exemplary careful handling was provided for all animals."[202] During his cross-examination of Mr. Grimley, Respondent Stark suggested that Mr. Grimley's daughter may have been pressured by Brigette from Second Chances to file a complaint, but Mr. Grimley said that he did not "believe so."[203]

It is clear from the videos that Respondents failed to provide adequate distance or barriers during the tiger playtime session on or about January 10, 2014. The photos and videos of the event show the juvenile tigers pouncing on one another and the attendees, gnawing on an attendee's (Mr. Grimley's daughter's) hand, and attendees, a large group that had not sanitized their hands prior to interaction, being allowed to pet, hold, grab, or touch three tigers with only Respondent Stark inside the enclosure to supervise.[204] This type of handling is rough and excessive, and does not present "minimal risk of harm to the animals and the public." I reject Respondent Stark's apparent contention that the handling of an exotic animal (i.e. the need for sanitization or the expectation of bites or scratches) is the same as that of a domestic pet.[205] Respondent Stark's indifference or expectation of injury during baby tiger playtime is a direct contradiction of the Regulations, 9 C.F.R. §§ 2.131(c)(1), which require minimal risk to the

---

[202] Respondents' Post-Hearing Brief at 24 (citing "Transcripts at 64:4-65:2, 68:19-69:9 in Testimony of Jessica Amin on 10/04/18; RX 68").

[203] *See* Tr. Vol. 2, 309:6-23. Respondent Stark also appears to contend, through his cross-examination of Mr. Grimley, that attendees can expect to get bitten or scratched as when playing with any other kind of house pet and it is not customary to sanitize hands before handling the animals. *Id.* at 314-16.

[204] *See* CX 17b at 0:05-9 (shows tiger chewing on Mr. Grimley's daughter's thumb), at 0:31-35 (tiger jumps on back of attendee).

[205] The record shows that Respondent Stark has communicated to members of the public that it is expected for attendees of his tiger playtime sessions to walk away with an injury *See* CX 17d at 0:05-10 (Respondent Stark asks if attendee is bleeding and when she says "yeah" he responds "cool"), CX 17f at 0:34 (shows attendee's bleeding puncture wound, Respondent Stark says "if you leave here and you're not bleeding a little bit you didn't have fun"); see also Tr. Vol. 2, 319:11-22.

animals and the public.

I agree with Complainant that the handling of the tigers in this instance, where a large number of attendees with minimal instruction and supervision by experienced handlers were allowed to touch or reprimand tigers that became aggressive, was not "done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress . . . or unnecessary discomfort." 9 C.F.R. § 2.131(b)(1). Therefore, I find that the record shows Respondent willfully violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(1), and (c)(3), on or about January 10, 2014, during a tiger playtime session by failing to handle juvenile tigers in a manner that does not cause trauma behavioral stress, physical harm or unnecessary discomfort; by failing to handle the juvenile tigers with minimal risk of harm to the animals and the public and without any distances or barriers between the animals and the public; and by exposing the juvenile tigers to rough or excessive public handling.

c. Complaint Paragraphs 19e-h (January 14, 2014)

Complainant alleges that on or about January 14, 2014 Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (b)(2)(i), (c)(1), and (c)(3), during a "tiger baby playtime" session.[206] Complainant contends that Respondents willfully violated the Regulations by failing to provide sufficient barriers or distance between the animals and the public, allowing the animals and public, including children, to come into direct contact;[207] by not handling tigers as carefully as possible, allowing the tigers to be "loose among multiple persons of all ages, potentially subjecting the animals to stress, trauma, harm and discomfort" by putting "tigers in a position to be reprimanded by a crowd of customers who had no training or education as to how

[206] Complaint ¶¶ 19e-h.

[207] *See* Complainant's Post-Hearing Brief at 82 (quoting CX 15 ("I witnessed that Stark would toss the tiger(s) onto the customer to let the customer deal with it/them while they took the picture."); and citing *Zoocats, Inc.*, 68 Agric. Dec. 737, 745 (2009); *Perry*, 72 Agric. Dec. 635, 656-57 (2013)).

to handle tigers carefully, or what to do in the event of an injury" and also exhibited a sloth and two lemurs in a way that "would cause them stress and unnecessary discomfort, by placing them adjacent to loose tigers."[208] Complainants also contend that Respondents violated the Regulations by using physical abuse to handle the animals, hitting the tigers and instructing their customers to hit the tigers if they became aggressive;[209] and exposed the tigers to rough or excessive handling by not providing a rest period or option not to participate.[210]

Complainant presents the testimony of Nicole Pollitt and Brigette Brouillard who each testified to having attended Respondents' baby tiger playtime session along with "about 40 some people from toddler to adult age" on or about January 14, 2014.[211] The witnesses explained that they were instructed to "tap" or "slap" the tigers in the face if they became aggressive.[212] Ms. Pollitt testified that she did not sanitize her hands before the interaction and that Respondent Stark was the only employee present inside the enclosure.[213] Both witnesses testified that during the session Respondent Stark brought in a young kangaroo, expressing surprise that Respondent Stark would bring in an animal possibly considered 'prey' to the tigers in such close proximity.[214] In an affidavit, one of the witnesses noted that there was a sloth in a "too small" cage on the wall with two lemurs and that the "lemurs were pacing in the cage throughout the

---

[208] *Id.* at 82 (citing CX 15).

[209] *Id.* at 83 (citing CX 15, 16; *Zoocats, Inc.*, 68 Agric. Dec. 737, 746 (2009)).

[210] *Id.* (citing *Perry*, 72 Agric. Dec. 635, 656 (2013)).

[211] CX 15 at 1; Tr. Vol. 1, 170-71; Tr. Vol. 2, 322. *See also* CX 15, 16.

[212] *See* CX 15 at 1 ("He [Stark]said that if a cub is too aggressive to slap it on the face."); CX 16 at 3 ("A few times, when people complained about the bus being too aggressive, he [Stark] would tell them to smack them."); Tr. Vol. 1, 174:8-10; Tr. Vol. 2, 327:22-24.

[213] Tr. Vol. 2, 325:15-17, 325:25-326:7.

[214] *See* Tr. Vol. 1, 176; Tr. Vol. 2, 329. *See also* CX 15 at 1-3, 16 at 25-26 (where both witnesses describe the kangaroo as "nervous" and trying to get away).

event; they seemed agitated."[215]

Aside from their general contentions,[216] Respondents do not specifically address the allegations for or provide any specific evidence to rebut these allegations.

The photos of the event, CX 15 and 16, show that the tigers and kangaroo were allowed to be in direct contact with the public without barriers or distance, with the public having the ability to touch and hit/reprimand the animals while the animals could roam around and jump on or even bite attendees with limited supervision by facility personnel.[217] This placed the kangaroo, tigers, and the public at risk of injury or harm and also subjected the animals possible behavioral stress and unnecessary discomfort.[218] The preponderance of evidence shows that Respondents' practice of "tapping" or "slapping" the tigers on the nose to correct aggressive behavior, and allowing attendees to do the same, amounts to "rough or excessive handling." There is not a preponderance of evidence in the record that demonstrates this practice amounts to the more serious violation of physical abuse.[219] There was no evidence presented as to whether the kangaroo was subjected to reprimand or otherwise handled roughly.

Therefore, I find that on or about January 14, 2014 Respondents willfully violated the

---

[215] CX 15 at 3. *See also* CX 16 at 3 ("I asked Stark if he ever let the sloth out of its cage, which I thought was too small. He responded something to the effect that: no, I cannot handle that bitch.")

[216] Respondents' Post-Hearing Brief at 24 (citing "Transcripts at 64:4-65:2, 68:19-69:9 in Testimony of Jessica Amin on 10/04/18; RX 68"), 25 (citing "Transcript at 119:7-12 in Testimony of Timothy Stark on 10/05/18") (where Respondents contend they provided conscientious, responsible, and exemplary careful handling for all animals; that they handled every animal with minimal risk of harm to the animal and the public; and they made sure to address what periods of time and what conditions were necessary to adhere to in order to be consistent with each animal's good health and well-being).

[217] *See* CX 16 7-9 (tiger chewing on attendee's shoe), 15 (tiger chewing on camera strap). I note that there seems to be some lack of evidence about the ages of the attendees, but at this time this point is not fully relevant. *See* Tr. Vol. 2, 347-50.

[218] *See* CX 15 at 1, 16 at 1 (noting that the room was crowded with spectators); CX 16 at 26 (photo of a tiger drinking a bottle in a crowded area of attendees and next to the kangaroo).

[219] *See Palazzo d/b/a Great Cat Adventures*, 2010 WL 546916, at *4 (U.S.D.A. 2010) (where spraying a tiger with water to encourage it to enter an enclosure was not found to be "the more serious violation of the use of physical abuse").

Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(1), and (c)(3) during a "tiger baby playtime" session by failing to handle juvenile tigers and a juvenile kangaroo as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort; failing to handle juvenile tigers and a juvenile kangaroo without any distance or barriers between the animals and the public and with minimal risk of harm to the animals and the public; and exposing juvenile tigers to rough or excessive public handling. I find that Complainant's did not prove by a preponderance of the evidence that Respondents used physical abuse to train, work, or otherwise handle animals in violation of the Regulations, 9 C.F.R. § 2.131(b)(2)(i).

Lastly, there is insufficient evidence in the record to find that the sloth was in a cage too small for its size—the record contains no evidence that the witness had a reliable basis or background for stating the cage was too small for the sloth—or that the lemurs were actually "stressed" or even bothered by the proximity of the tigers or the spectators. I find that Complainant did not prove by a preponderance of the evidence that Respondents violated 9 C.F.R. §§ 2.131(b)(1) and (c)(3) during a "tiger baby playtime" session by failing to handle a sloth and two lemurs as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort; or subjecting a juvenile kangaroo to rough or excessive handling.

d. Complaint Paragraphs 19i-k (January 15, 2014)

The Complaint alleges that on or about January 15, 2014, during a "tiger baby playtime," Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(1), and (c)(3).[220] Complainant contends that Respondents willfully violated the Regulations, by exhibiting juvenile tigers without any distance or barriers between the tigers and the public, allowing direct contact

[220] Complaint ¶¶ 19i-k.

between the public and tigers, resulting in an injury to two members of the public, Ms. AnnMarie Maldini and her then-fiancé's brother.[221] Complainant also contends that Respondents did not handle the tigers as carefully as possible and subjected the tigers to excessive public handling by allowing the tigers to "be loose among multiple persons of all ages, potentially subjecting the animals to stress, trauma, harm and discomfort" and allowed a "crowd of customers" to reprimand the tigers who "had no training or education as to how to handle tigers."[222]

Complainant presented the testimony of Ms. Maldini, who explained that she attended a baby tiger playtime session at Respondents' facility on January 15, 2014 with her then-fiancé and his brother.[223] Ms. Maldini testified that she thought there was "probably 20 to 30" attendees present, that the caged room seemed "crowded," and that Respondent Stark was the only employee in the "cage" while two others stood outside.[224] Ms. Maldini testified that she was only told what to do if a tiger "tried to scratch or bite or nip" her "while it was happening":

> then, one got really close to me and scratched me. So then, I yelled, and that made it worse. So Mr. Starks [sic] told me to hit it on the nose. And I was a little bit scared to do that because that's where its mouth is. But finally, once I was, like, standing up, which also wasn't helpful, and screaming, I hit it on the nose, and then I asked him for the gate to be opened so I could leave because I didn't want to be in there.[225]

Ms. Maldini explained that none of the employees assisted her with removing the tiger and she "was pretty shaken" because the gate was latched closed and a "worker on the other side" had to

---

[221] Complainant's Post-Hearing Brief at 84-85 (citing *Perry*, 72 Agric. Dec. 635, 655 (2013); CX 20; CX 18 at 8-13 and 27-36; CX 19 at 5-12, 29-30)

[222] *Id.* at 85-86.

[223] Tr. Vol. 1, 237-239. *See also* CX 20.

[224] Tr. Vol. 1, 239:17-240:4, 242:12-16.

[225] Tr. Vol. 1, 241:14-242:11. Ms. Maldini described the three tigers as 15 weeks old, about "the size of a big dog, like a German Shepard," and "70-pouds-ish." *Id.* at 243:9-14, 243:18-20, 244:6-9. *See also* CX 18 at 8-13, 27-36 (photos of Ms. Maldini's injuries and the tiger playtime session).

open the gate to let her out.[226] Ms. Maldini stated that she "felt unsafe."[227] Ms. Maldini also testified that her now brother-in-law was also either scratched or bitten after she left.[228]

Aside from their general contentions, [229] Respondents do not specifically address the allegations for or provide any specific evidence to rebut these allegations.

The preponderance of evidence shows that Respondents willfully violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(1), and (c)(3), on or about January 15, 2014 during a baby tiger playtime session by allowing a large group of participants to have direct contact with juvenile tigers, without any distance or barriers between the animals and public, resulting in injuries to two members of the public; and by hitting the tigers, and allowing the attendees to reprimand/hit the tigers, when the tigers acted aggressively.

e. Complaint Paragraphs 19l-n (January 17, 2014)

The Complaint alleges that on or about January 17, 2014, Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(1), and (c)(3) during a "tiger baby playtime" by failing "to handle three juvenile tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort[;]" failing to handle "juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public . . . without any distance or barriers between the animals and the public[;]" and exposing "juvenile tigers to rough or excessive public handling."[230]

Complainant states that ACI Houser and Dr. Arango attempted to conduct a "focused inspection" on January 17, 2014 during a tiger exhibition and, although they were not

---

[226] Tr. Vol. 1, 245:23-246:10.

[227] Tr. Vol. 1, 247:20-21.

[228] Tr. Vol. 1, 246:16-25. *See also* CX 18 at 33 (photo of scratch on attendee's hip).

[229] Respondents' Post-Hearing Brief at 24 and *supra* n.216.

[230] Complaint ¶¶ 19l-n.

"allow[ed]" to view the exhibition, ACI Houser and Dr. Arango were able to see the tigers and the areas where the exhibition was conducted.[231] Complainant states that Respondents explained to inspectors that the sessions usually last "30 minutes (with a 30 minute break) throughout the day," that Respondents told inspectors they have followed this routine every day since the tigers were seven weeks old, and that Respondent Stark stated that he tells the public they may get scratched or nipped by the cubs but that "he did not consider anything to be an injury and harmful to the public" and "a little blood is nothing."[232] Complainant contends that, as determined by the APHIS inspectors, the tigers used for tiger playtime sessions are "too large, too strong and aggressive to have direct contact with the public with minimal risk of harm."[233] Complainant contends that the inspection "as well as respondents' own descriptions of their tiger exhibitions" confirms the alleged violations.

Aside from their general contentions,[234] Respondents do not specifically address the allegations for or provide any specific evidence to rebut these allegations.

While I find this evidence and Respondents own admissions of their manner of conducting tiger exhibitions probative to prior alleged violations, I do not find the record sufficient to show that Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(1), and (c)(3), on or about January 17, 2014. Although Complainant provides Respondents' statements regarding how a baby tiger playtime is "usually" conducted, Complainant does not provide evidence or witness testimony of specific violations occurring on January 17, 2014 during a specified event.

---

[231] Complainant's Post-Hearing Brief at 86-87 (citing CX 12, 18, 19; Tr. Vol. 3, 624-25).

[232] *Id.* at 87 (quoting CX 12 at 11-12 (internal quotations omitted); citing CX 18, 19).

[233] *Id.* at 88 (quoting CX 18).

[234] Respondents' Post-Hearing Brief at 24 and *supra* n. 216.

f. Complaint Paragraphs 19o-t (August 19, 2014)

The Complaint alleges that on or about August 19, 2014, Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (b)(2)(i), (c)(1), (c)(3), and (d)(1) during exhibition by failing "to handle two juvenile tigers, a coatimundi, three nonhuman primates, a kangaroo, and a lemur as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort[;]" using "physical abuse to handle two juvenile tigers, and five nonhuman primates (two lemurs, a macaque, a capuchin, and a vervet)[;]" failing to handle juvenile tigers, five nonhuman primates (two lemurs, a macaque, a capuchin, and a vervet), a kangaroo, and a coatimundi "during exhibition, with minimal risk of harm to the animals and the public . . . without any distance or barriers between the animals and the public[;]" exposing "juvenile tigers to rough or excessive public handling[;]" and exhibiting "two juvenile tigers, a coatimundi, two nonhuman primates, a kangaroo, and a lemur for periods of time and under conditions that were inconsistent with the tigers' good health and well-being."[235]

Complainant contends that, despite inspector directions in the January 17, 2014 Inspection Report to "not allow members of the public to work, handle or discipline the animals by using physical reprimand to keep the animals from getting too aggressive" and to "have sufficient knowledgeable, responsible and readily identifiable staff in attendance," Respondents continued to allow direct contact with the animals and were told to physically reprimand such animals with little supervision by experienced employees.[236] As support for these allegations, Complainant presents the testimony of Dr. Kerry McHenry and ACI Randy Coleman who purchased tickets to and attended a Tiger Playtime event and an Exotic Animal Encounter on

[235] Complaint ¶¶ 19o-t.

[236] *See* Complainant's Post Hearing Brief at 89-91 (citing CX 18, 19 at 3 (regarding previous instructions and warnings); CX 23-27, 53 (documenting the August 2014 visit by inspectors)).

August 19, 2014. Dr. McHenry testified that during the tiger playtime there was "[a] lot of people in a very small space. Rambunctious, aggressive tigers running loose. People getting clawed and bitten. Tigers being poked and prodded."[237] Dr. McHenry observed that the tigers were "aggressive, rambunctious," "intimately close" to the event attendees, and "were being interacted with unrelentingly by the people."[238] Dr. McHenry recalled that a young boy was bitten on the head, a woman was bitten on her face, and another man was bitten on the leg.[239] Dr. McHenry also noted that the tigers "would have experienced increased stress" as they were in an unnatural situation, that the tigers seemed "overwhelmed and overstimulated."[240]

ACI Coleman testified that when the tiger playtime session started, Respondent Stark introduced himself, and that Respondent Stark "deputized" the attendees as a loophole to the directions given by the USDA inspector.[241] ACI Coleman testified that Respondent Stark brought in a fourteen-week old tiger and started to bounce it on his knee, that the cub began to growl and hiss, and that Respondent Stark said he would show the crowd what a "pissed off tiger" looked like.[242] ACI Coleman stated that the tiger playtime lasted about forty-five minutes, there were about twenty-five members of the public present, and during that time one of the tiger cubs bit or scratched him on the back and that a young boy, about ten years old, was bitten on the

---

[237] Tr. Vol. 3, 903:19-22.

[238] Tr. Vol. 3, 905-06.

[239] Tr. Vol. 3, 906:12-19.

[240] Tr. Vol. 3, 907-08.

[241] Specifically, ACI Coleman testified that Respondent Stark "said, 'All I can tell you is protect yourself.' And he said that, 'What you're going to see, the USDA -- my USDA inspector does not like.' He mentioned that he was not allowed to tell us how to train animals, but he had figured out a way around that. And then, he said, 'So I officially deputize you-all as tiger trainers.' He said, 'So that's the way I get around – that's the loophole that I found.' That wording is the wording he used. And at that time he placed two middle fingers in the air and said, 'That's what I think about the government.'" Tr. Vol. 4, 1141:13-24.

[242] Tr. Vol. 4, 1142:18-1143:10. *See also* CX 23, 24, 25.

thigh.[243] ACI Coleman testified that he estimated the two tigers were about thirty to thirty-five pounds, "they were definitely too big, too strong to be in direct contact with the public like they were without any barriers or distance between them and the -- and the public."[244] ACI Coleman also testified that he and Dr. McHenry attended an exotic animal encounter during which Respondent Stark introduced several animals, including a juvenile coatimundi, rhesus macaque, a grivet monkey, a capuchin, a kangaroo, and a ring-tailed lemur, and allowed most of the animals to come into direct contact with the public. ACI Coleman stated that there was a danger to the public in the possibility of being bitten or scratched and a danger to the animals that, if they did bite a human, they may have to be euthanized to be tested for rabies.[245]

In addition to their general contentions,[246] Respondents seem to contend that APHIS inspectors failed to follow protocol as outlined in the 2013 USDA Animal Care inspection Guide (APHIS Training Manual), RX 4, by not announcing their presence to Respondent Stark and proceeding to include the details of their observations from the August 19, 2014 attendance to the tiger playtime and exotic animal encounter in the August 20, 2014 Inspection Report.[247] Respondents do not otherwise provide any specific evidence to rebut the evidence offered by Complainant regarding the August 19, 2014 allegations.

Complainant contends that the AWA "gives the Secretary of Agriculture broad enforcement authority, and directs the Secretary to conduct such inspections and investigations

---

[243] Tr. Vol. 4, 1144:2-11.

[244] Tr. Vol. 4, 1145:13-19. ACI Coleman also testified that the attendees would hit the tigers in self-defense if the tigers nipped at them and that no employee stepped in to make sure injuries were not significant. *Id.* at 1147-48.

[245] Tr. Vol. 4, 1149:8-1151:13. *See also* CX 26.

[246] Respondents' Post-Hearing Brief at 24 and *supra* n. 216.

[247] *See* Tr. Vol. 4, 1197:8-1198:9. ACI Coleman testifies, in answer to Respondent Stark's cross-examination, that he "did not conduct an inspection" on August 19, 2014 and thus did not need to announce his presence to the licensee, Respondent Stark. *See* Tr. Vol. 4, 1195.

as are necessary to determine whether persons regulated under the Act are in compliance or not," that "it is well settled that warrantless inspections of businesses regulated under the AWA are reasonable because the scope of the AWA's regulation of the animal industry is pervasive," and that the "AWA itself puts regulated businesses on notice that they will be subject to periodic inspections and investigations as are necessary to determine whether violations have occurred or are occurring."[248] Complainant contends that it is standard practice for inspectors to pay as a member of the public and attend animal exhibitions for AWA regulated entities without announcing their presence to the licensee.[249]

The AWA and the Regulations promulgated thereunder do not restrict APHIS inspectors from attending animal exhibitions open to the public as paying customers and do not restrict APHIS inspectors for reporting their observations for use in inspection reports. In fact, as Complainant points out, the AWA, 7 U.S.C. § 2146(a), gives wide discretion to the Secretary to conduct inspections and investigations as needed to accomplish the purpose of the AWA. Further, as Complainant points out in the Post-Hearing Brief at 20, guidelines do "not add to, delete from, or change current regulatory requirements or standards, nor does it establish policy."[250] Therefore, I find the evidence submitted regarding Dr. McHenry and ACI Coleman's observations during their attendance to the tiger playtime and exotic animal encounter events on August 19, 2014 to be relevant and properly submitted as a part of the August 20, 2014 Inspection Report submitted by ACI Houser.

---

[248] Complainant's Post-Hearing Brief at 14-15 (citing 7 U.S.C. § 2146(a); *Lesser v. Espy*, 34 F.3d 1301, 1306, 1308-9 (7th Cir. 1994)).

[249] *Id.* at 16-17 (citing *The International Siberian Tiger Foundation, Inc.*, 61 Agric. Dec. 53 (2002); *Greenly*, 72 Agric. Dec. 603, 609 (2013); *Palazzo d/b/a Great Cat Adventures*, 69 Agric. Dec 173 (2010)). Complainant also noted that "attending and observing an animal exhibition is not, per se, a routine compliance inspection, although it may occur in conjunction with one and be memorialized on APHIS's standard inspection report form." *Id.* (citing Tr. Vol. 4, 1177:20-1178:19).

[250] Quoting *Schmidt*, 66 Agric. Dec. 159, 214 (2007).

The record fully supports and I, thus, find that on or about August 19, 2014, during exhibition Respondents violated the following Regulations: 9 C.F.R. § 2.131(b)(1) by failing to handle two juvenile tigers, nonhuman primates and a lemur as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort;[251] 9 C.F.R. § 2.131(c)(1) by failing to handle juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public, without any distance or barriers between the animals and the public, and also failed to handle nonhuman primates, a kangaroo, and a coatimundi during exhibition, with minimal risk of harm to the animals and the public, without any distance or barriers between the animals and the public;[252] and 9 C.F.R. § 2.131(c)(3) by exposing juvenile tigers to rough or excessive public handling.[253]

I find that Complainant failed to show by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(2)(i) and (d)(1), by using physical abuse to work animals or that the periods of time and conditions of exhibition were not

---

[251] CX 53 (video clip of Respondent Stark sitting on a chair and riling up a juvenile tiger, roughly holding and wiggling the tiger by the scruff of the neck), (video clip of Respondent Stark holding a small nonhuman primate by the legs and tail, saying "come on brat"), (video clip of Respondent stark dangling a lemur from a leash, then allowing it to jump from him to the attendee's laps); CX 25, 26.

[252] CX 53 (video clip of Respondent Stark sitting on a chair and riling up a juvenile tiger, roughly holding and wiggling the tiger by the scruff of the neck, then throwing the growling, upset tiger onto a member of the public's lap), (video clip of small nonhuman primate running across attendee's laps and stopping to be face to face with a man), (video clip of Respondent stark dangling a lemur from a leash, then allowing it to jump from him to the attendees' laps), (video of coatimundi running across the attendees' laps and eating out of the attendees' hands unleashed); CX 23 at 21 (photo of red kangaroo allowed to roam free with children present and allowed to pet the kangaroo); CX 24 (videos of the public, including young children, interacting with the tigers: feeding tigers, tigers jumping on attendees, tigers biting attendees, including young children, and nipping at their clothes, attendees letting tigers chew on their hands, attendees and hitting the tigers on the face in reprimand when nipped or scratched); CX 25, 26.

[253] CX 53 (video clip of Respondent Stark sitting on a chair and riling up a juvenile tiger, roughly holding and wiggling the tiger by the scruff of the neck, then throwing the growling, upset tiger onto a member of the public's lap); CX 24 (videos of the public, including young children, interacting with the tigers: feeding tigers, tigers jumping on attendees, tigers biting attendees, including young children, and nipping at their clothes, attendees letting tigers chew on their hands, attendees and hitting the tigers on the face in reprimand when nipped or scratched); CX 25, 26.

consistent with animals' health and well-being during exhibition on or about August 19, 2014. While the evidence shows that Respondents subjected the animals to rough or excessive handling, there is not enough evidence to show that animals were subjected to the more severe violation of abuse.

g. Complaint Paragraphs 19u-aa (September 13, 2015)

The Complaint alleges that on or about September 13, 2015, Respondents violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (b)(2)(i), (c)(1), (c)(3), and (d)(1) during exhibition by failing "to handle four juvenile tigers and one juvenile capuchin monkey as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort[;]" using "physical abuse to handle juvenile tigers[;]" failing to handle juvenile tigers and one juvenile capuchin "during exhibition, with minimal risk of harm to the animals and the public . . . without any distance or barriers between the animals and the public[;]" exhibiting four juvenile tigers to "playtime" and photo session without an adequate rest period and exposing multiple young or immature animals to "rough or excessive public handling[;]" and exhibiting "four juvenile tigers and a juvenile capuchin monkey for periods of time and under conditions that were inconsistent with the animals' good health and well-being."[254]

Complainant presents the testimony of Dr. Cynthia DiGesualdo who paid and attended Respondents' animal exhibition on September 13, 2015 with APHIS Investigator Charles Willey. Dr. DiGesualdo testified that, during the tiger playtime, there were about forty to fifty members of the public present, including a "tiny" baby, toddler, and children under ten years old.[255] She also observed, *id.*, that of the seven attendants present all appeared to be teenagers or in their

---

[254] Complaint ¶¶ 19u-aa.

[255] Tr. Vol. 4, 1030:21-1032:5. *See also* CX 33 at 1; CX 31 (video "man with baby in arms, small children," video "showing number of people in room")

early twenties, but Respondent Stark was not present. She testified that a little girl of about eight or nine years old as well as a woman were bitten by tigers during the playtime; that the tigers, according to the schedule online, were exhibited throughout eleven tiger playtime sessions with only one hour scheduled for break; that one of the handlers would roughhouse the tigers to get them to become more active but when the attendees would do the same the tigers would get "smack[ed]" on the nose with a whip as reprimand; and that the tigers seemed exhausted by the end of the session as they were dragged around by their feet.[256] Dr. DiGesualdo also expressed her concerns regarding a capuchin that was allowed to sit on the shoulders of the attendees, including the children, because of the risk of bites and the stress it appeared to cause the capuchin.[257]

In support of the allegations, Complainant introduced the testimony of expert witness Dr. Laurie Gage who reviewed the videos and commented that the baby in the room was "shocking" and said that having a baby with sixteen- to fourteen-week-old tigers is "just not responsible" where members of the public expect to be safe during an exhibition.[258] Dr. Gage also testified that she has never seen a "tiger so comatose that you would just be able to drag it across the

---

[256] Tr. Vol. 4, 1032:16-1033:14, 1037:2-14, 1035:7-1036:13, 1042:10-25, 1043:5-13. *See also* CX 31 (video "girl says ow," video "cub being pulled across the room," video "cub being pulled by feet," video "cub comatose and yawning," video "dragging sleeping white tiger out," video "dragging sleeping yellow tiger out," video "hard swat with a crop," video "tiger bites man's hip," video "tiger being drug," video "tiger cub not moving," video "tiger swatted with crop," video "tigers slapped with crops," video "tired cup, baby on ground," video "trying to bite and swats," video "very exhausted tiger," video "white cub being pulled," video "white cub crashed and burned"); CX 33 at 1-2. Dr. DiGesualdo also testified that, in her opinion, the exhibitions were not positive for the welfare of the tigers because "they're pulled way from their mother; they're being over worked; they're stressed; they're tired; they're exhausted. I just -- as a veterinarian, this is not how I would recommend somebody raise a tiger cub." Tr. Vol. 4, 1037:25-1038:5. Dr. DiGesualdo also stated that she was unsure whether the tigers were switched out during the day or if the same tigers were exhibited. Tr. Vol. 4, 1045:2-7.

[257] Tr. Vol. 4 1033:15-1034:6, 1059:12-18; CX 32 (video "Capuchin on child's shoulder," video "monkey and scared kid's head"); CX 33 at 2 (saying that the monkey seemed to become agitated but that the handler continued placing it on children for photos).

[258] *See* Complainant's Post-Hearing Brief at 92-3 (citing Tr. Vol. 8, 2106:19-2107:13, 2160:22-2162:5).

room without it having any response whatsoever."[259]

In addition to their general contentions,[260] Respondents contend that APHIS inspectors failed to follow protocol as outlined in the 2013 USDA Animal Care inspection Guide, RX 4, by not announcing their presence to Respondent Stark and contend that the "under cover" inspection on September 13, 2015 and recorded in the September 14, 2015 Inspection Report, CX 30, was "illegal."[261] Respondents also contend that the "purported 'dragging' of the tiger cubs" was "justifiable" and not abuse, and that the "personal opinion by any Complainant witness that the witness simply *felt* that 'dragging' an animal must be abuse, or that 'slapping an animal or using a riding crop would cause an animal distress', lacks foundation as objective scientific evidence of actual distress to a specific animal and is thus irrelevant to any determination to be made in this adjudication on the improper handling of such animals."[262]

As set out in the immediately previous section of this Decision, I find the evidence submitted by Complainant regarding Dr. DiGesualdo and investigator Wiley's observations during their attendance to the tiger playtime event on September 13, 2014 relevant and properly submitted and entered into the record as a part of the September 14, 2014 Inspection Report submitted by Dr. DiGesualdo.

Therefore, I find that Respondents willfully violated the Regulations, 9 C.F.R. §§ 2.131(b)(1), (c)(3), and (d)(1), by failing to handle four juvenile tigers and one juvenile capuchin monkey as carefully as possible in a manner that does not cause trauma, behavioral stress,

---

[259] Tr. Vol. 8, 2103:25-2104:3.

[260] Respondents' Post-Hearing Brief at 24 and *supra* n. 216.

[261] *See* Tr. Vol. 7, 1916:16-1917:20, 1957:23-1958:17, 1959:5-1960:2, 1961:13-14.

[262] Respondents' Post-Hearing Brief at 24 (citing "Transcript at 82:12-83:1 in Testimony of Jessica Amin on 10/04/18"; RX 58 (video explaining why handlers use "dragging" to maneuver tigers around and stating that this helps avoid "unnecessary" or incorrect picking up)). *See also* RX 68 (photos of riding crop); Tr. Vol. 7, 1849:19-25, 1851:22-1853:8.

physical harm, or unnecessary discomfort; by exhibiting four juvenile tigers to "playtime" and photo session without an adequate rest period and exposing multiple young or immature animals to rough or excessive public handling; and by exhibiting four juvenile tigers for periods of time and under conditions that were inconsistent with the animals' good health and well-being. It is clear from the evidence provided that the tigers were not handled as carefully as possible and were exposed to excessive public handling as the videos, CX 31-32, show the tigers being roused by roughhousing with both handlers and the attendees, then reprimanded with slaps from the handlers using riding crops, and hits from the attendees. Although it is unclear whether the same four juvenile tigers were exhibited during every session all day long, the evidence provided, CX 31-32 video clips, also show that the tigers were over exerted and, despite their exhaustion, were left to be touched by the public in a noisy and full room.

Thus the record fully supports and I find that Respondents willfully violated the Regulations, 9 C.F.R. § 2.131(c)(1), by failing to handle juvenile tigers and one juvenile capuchin during exhibition, with minimal risk of harm to the animals and the public, without any distance or barriers between the animals and the public. Of grave concern is the allowance of the infant in the room with loose juvenile tigers nearly twice its size and even allowed on the floor amongst the loose tigers. Also concerning is the allowance of the participation of small children who are encouraged to touch, lay down with, and taunt the tigers. I agree with Complainant witness Dr. Gage, whose background as a large felid expert is exemplary[263] and whose testimony I find highly credible, that such allowance by the Respondents is simply not responsible. In fact, Respondent Stark seems to be aware that participants should not be so young and pointed out himself that participants must be sixteen years old according to Respondents' policy for

[263] Tr. Vol. 8, 2083-2090.

participation, a requirement that was clearly not adhered to during this playtime session.[264]

I find that the Complainant did not demonstrate by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. § 2.131(b)(2)(i) on or about September 13, 2015 by using physical abuse to work or otherwise handle animals. While I note that the videos showing the handlers dragging sleeping tigers into, out of, and across the room, CX 31-32, is somewhat disturbing, based on Respondents' video explaining this method of maneuver, RX 58, it appears that the tigers are trained to be maneuvered this way without resistance. While I agree with Complainant that there is no requirement to introduce "objective scientific evidence of actual distress,"[265] Complainant has the burden of proof to show that dragging the tigers was improper handling and amounted to "abuse" as termed in the Regulations. The testimony from Complainant's expert witness Dr. Gage was not fully supportive of this allegation; although she stated that the dragging seemed to be because the tigers were exhausted, she did not indicate it was abusive.[266]

Respondents' witness testified that Respondents were already notified that the use of riding crops was "unacceptable in any fashion" by Dr. Kirsten and ACI Houser and that Respondents have "ceased the use of riding crops."[267] Nonetheless, although Complainant's expert witness Dr. Gage testified that the tapping with riding crops served as a negative reinforcement, deterring the tigers from doing what was natural and was possibly confusing for

---

[264] *See* Tr. Vol. 2, 345:24-346:16 (referencing CX 15 at 9, an email from Wildlife in Need, Inc. stating that "Participants must be at least 16 years old.").

[265] *See* Complainant's Reply Brief at 41 (citing Respondent's Post-Hearing Brief at 24).

[266] Tr. Vol. 8, 2102-04.

[267] Tr. Vol. 7, 1852:25-1853:8. However, this testimony is unclear regarding the timing, for instance, it is unclear if the use of riding crops "ceased" previously and was resumed or if it ceased after this session in 2015.

them, she did not indicate that the use of riding crops was abusive.[268] I agree that the use of riding crops amounts to rough or excessive handling, but the record is not sufficient to show that the use of riding crops during this session amounts to the more serious violation of physical abuse within the meaning of the Regulations.

IX. Failure to Meet Standards

Complainant alleges that Respondents willfully violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards (9 C.F.R. pt. 3) on multiple occasions as observed by APHIS inspectors, including failing to meet Standards for adequate housing of animals, proper diet, adequate protection of food supply, appropriate exercise plans, appropriate environmental enhancement in accordance with currently-accepted professional standards, potable water supply, and provision of a sufficient number of adequately trained employees. [269]

In their Post-Hearing Brief, Respondents do not specifically address each allegation in the Complaint, but in summary generally contend that:

> The record as a whole demonstrates that Respondents substantially complied with all regulations regarding the size and environmental specifications of facilities where animals are housed or kept; complied with the need for adequate barriers, the feeding and watering of animals, sanitation requirements, and the size of enclosures and manner used to transport animals. [270]

and that "Respondent Tim Stark has had a perfect record for over 13 years as a licensee."[271]

In response, Complainant avers that the "record here establishes respondents' noncompliance, and the fact that Mr. Stark previously passed inspections is irrelevant to whether

---

[268] Tr. Vol. 8 at 2101.

[269] Complaint at ¶¶ 20-27.

I note that Complainant and Complainant's witnesses used the term "performance standard" throughout testimony and reports. Any reference to or use of the words "performance standards" or "standards" are not to be confused with the regulation Standards (9 C.F.R. pt. 3) referred to hereinafter capitalized.

[270] Respondents' Post-Hearing Brief at 28.

[271] *Id.* (citing "Transcript at 127:11-13 in Testimony of Tim Stark on 10/04/18"; RX 59, 60, 61).

the alleged violations occurred in this case."[272]

At issue here is each allegation and whether Complainant has met its burden of proof as to each allegation. If Complainant has moved forward to establish a *prima facie* violation by a preponderance of the evidence, in order to prevail, Respondents must specifically rebut the evidence provided to establish the violation so that the preponderance of evidence in the record is that there is no violation.[273] As further explained below, in most instances Respondents' general claims of compliance are not enough to rebut evidence provided by Complainant establishing violations on the record.

a. Complaint Paragraph 20 (February 29, 2012)

The Complaint alleges that on or about February 29, 2012, Respondents failed to meet the minimum Standards with respect to structural strength and containment.[274] Specifically, Complainant asserts that Respondents housed six tigers and one lion in enclosures that were not constructed of such material and strength as appropriate and in a manner that would contain the animals.[275] Complainant provides the February 29, 2012 Inspection Report, CX 4 and 4a, in which former ACI Elizabeth Taylor observed:

> There are currently 3 large felid enclosure [sic] containing 6 tigers & lion that are all 12' in height. None of the enclosures have hot wire around the top, and [[276]] do not have any type of platform close enough to the fence to use as a jumping off point. These enclosures need to be modified to prevent possible escape. A potential escape would invariably provide a risk to the well-being or the life of the animal, and, additionally, a risk to the safety of the public.

---

[272] Complainant's Reply Brief at 48 (citing *Lang,* 7 Agric. Dec. 91 (1998)).

[273] *See Terranova, supra* n. 8, 2019 WL 4580195, at *15 (explaining that, while the complainant has the burden of proof and must come forward with evidence sufficient for a *prima facie* case, once complainant has met this burden, the burden shifts to respondent to rebut complainant's *prima facie* showing)

[274] *See* Complaint at 15 ¶ 20.

[275] *See* Complainant's Post-Hearing Brief at 104 (citing Complaint ¶ 20; CX 4 and 4a).

[276] It appears to the undersigned that the more appropriate word here would be "but," rather than "and," as "not have any type of platform close enough to the fence to use as a jumping off point" would make the enclosure more secure, not less secure.

Photographs taken by ACI Taylor at the time of inspection corroborate her findings.[277]

Aside from their general contentions,[278] Respondents do not address the allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

That Complainant did not present "evidence of any animal escaping confinement"[279] is immaterial; actual escape is not a requisite element to establish a violation of 9 C.F.R. § 3.125(a).[280] Section 3.125(a) of the Standards (9 C.F.R. § 3.125(a)) requires that facilities:

> must be constructed of such material and strength as appropriate for the animals involved. The indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

ACI Taylor observed that the enclosure fence was twelve feet high and did not have a "hot wire" at the top; she therefore concluded that the fence was insufficient to contain the animals.[281] Ms. Taylor testified that she had a lengthy discussion with Respondent Stark about the inadequacies of the enclosures as documented in her report and her inspection findings were

---

[277] *See* CX 4a at 6-7 (photos of enclosures).

[278] Respondents' Post-Hearing Brief at 18 (citing "Transcript at 242:10-243:22 in Testimony of Tim Stark on 10/04018") (stating "there was no preponderance of reliable evidence at all that Respondents maintained animals in enclosures that were not constructed of such material and strength as appropriate for those species, or in a manner that would somehow not contain those animals" and that there is "no objective evidence of any animal ever escaping confinement," contending that such evidence "would be required to meet that specific standard."). *See also* Respondents' Proposed Findings & Conclusions at 5, ¶ 15.

[279] Respondents' Post-Hearing Brief at 18.

[280] *See Terranova Enters., Inc.*, AWA Docket Nos. 15-0058, 15-0059, 16-0037, 16-0038, 2019 WL 4580195, at *38 (U.S.D.A. Aug. 30, 2019) (holding that the ALJ erred by rejecting violations on the basis that no "animals were actually sick, injured, or suffering . . . because of the non-compliance") ("In so doing, the ALJ completely missed the point of the Regulations and Standards: prevention. The purpose of requiring those who have custody of animals subject to the Act to maintain their facilities in a manner that meets the *minimum* Standards is to ensure against the potential harm to animals from substandard conditions and treatment.") (citing *Hodgins v. U.S. Dep't of Agric.*, No. 97-3899, 238 F.3d 421 (Table), 2000 WL 1785733, at *3 (6th Cir. Nov. 20, 2000); *Zimmerman v. U.S. Dep't of Agric.*, No. 98-3100, 173 F.3d 422 (Table), 57 Agric. Dec. 869, 873 (3d Cir. Dec. 21, 1998); *Mitchell*, 60 Agric. Dec. 91, 128-29 (U.S.D.A. 2001)).

[281] CX 4 and CX 4a.

based on "some guidance that they [enclosures] were going to need to be taller and either have kick-ins or something else added." But ACI Taylor did not describe the justification, context, or source of such "guidance" and Complainant did not otherwise provide such information. It may be that Complainant intends to contend that USDA or APHIS has established an interpretation of 9 C.F.R. § 3.125(a) that would require a hot wire, specific height of fence, or kick-ins that Respondent would be required to comply with and which I would be required to enforce, but Complainant has failed to expressly make that contention or bring forward support that such an interpretation has officially been made by the agency, much less that such interpretation would be binding on Respondents or me.

ACI Taylor, in fact, testified that "there wasn't any definitive, 'This is what you have to have to have a tiger.' " and "there wasn't exact regulations per se for exact enclosures. They just needed to contain the animal."[282] ACI Taylor did not provide further explanation regarding the necessity, in her opinion, of a "hot wire" to contain the animals. Further, the undersigned cannot identify any other of Complainant's allegations where 9 C.F.R. § 3.125(a) is alleged to have been violated solely based on the absence of a "hot wire." Therefore, I find that, as to this allegation, Complainants failed to show by a preponderance of the evidence that Respondents' tiger enclosures were insufficient to contain the animals and violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a).

b. Complaint Paragraphs 21a-d (June 25, 2013)

The Complaint alleges that on or about June 25, 2013, Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet multiple Standards.[283]

1. Written plan for environmental enhancement

[282] Tr. Vol. 6, 1608:14-18, 1609:17-25.

[283] *See generally* Complaint at 16 ¶ 21.

Complainant asserts that Respondents failed to have a written plan for environmental enrichment of Respondents' primates available for APHIS inspectors.[284] Complainant's evidence comprises the June 25, 2013 inspection report of ACI Juan Arango,[285] as well as Dr. Arango's testimony.[286] In his inspection report, Dr. Arango noted:

> Although a large number [of] items were present in the nonhuman primate cages including various children's toys, a swing, and numerous empty plastic bottles, there is *no documentation of an environmental and psychological enrichment plan* to promote the well-being of non-human primates (NHP Enrichment Plan). Lack of adequate enrichment can lead to high levels of stress in nonhuman primates affecting both their health and well-being. Nonhuman Primate Enrichment plans must be in accordance with professionally accepted standards and directed by the attending veterinarian. Written documentation of this enrichment plan is necessary to ensure that all primates are receiving enrichment as directed and in accordance with these standards and that animal health and welfare is not put at risk through the use of inappropriate or unsafe attempted enrichment.

CX 6 at 5 (emphasis added). He described the non-compliance in further detail at hearing:

> Mr. Stark had a number of primates on his facility . . . at the time of inspection, and including a capuchin monkey, lemurs, a baboon. Given -- all of those are required to have . . . an environmental enhancement plan to promote psychological well-being.
>
> Those species -- the primates are a -- a fairly high order complex animal species. They require a significant amount of mental stimulation and . . . environmental enrichment in order to prevent problems developing. And so it is included in the Animal Welfare Act that such exhibitors, as well as dealers in research facilities, have to . . . develop and document a written plan of appropriate environmental enrichment that promotes that psychological well-being.
>
> The plan has to be made in accordance with currently accepted professional standards . . . And it has to be directed by the attending veterinarian, as well as made available to APHIS officials. In this case, Mr. Stark had a large number of things in the primates' enclosures, including toys and plastic bottles and -- and several other things.

---

[284] *See* Complaint at 16 ¶ 20a ("Respondents failed to develop, document, and follow an appropriate plan for environmental enhancement to promote the psychological well-being of nonhuman primates, in accordance with the currently-accepted professional standards, and made available to APHIS upon request."). *See also* Complainant's Post-Hearing Brief at 117-118.

[285] CX 6.

[286] Tr. Vol. 2, 403-05.

But he had no written plan.

Transcript at 403-04 (emphasis added).

Respondents do not specifically address these allegations but contend generally that they "developed, documented, and followed readily appropriate plans for environmental enhancement to promote the psychological well-being of nonhuman primates in accordance with currently-accepted professional standards and the record reflects that an enriched environment was provided."[287] Respondents also aver, *id.*, that "the environmental conditions present at Respondents' facility indeed exceeded the criteria suggested in modern scientific studies." [288] Respondents contend that the "evidence therefore readily establishes that Respondents had in place an adequate plan for environmental enhancement."[289]

The Standards, 9 C.F.R. § 3.81, require, in pertinent part, that:

> Dealers, exhibitors, and research facilities must develop, *document*, and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. The plan must be in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. This plan must be made available to APHIS upon request, and, in the case of research facilities, to officials of any pertinent funding agency.

9 C.F.R. § 3.81. (Emphasis added).

Despite Respondents' claims that they "developed, documented, and followed" an enrichment plan, Respondents have not produced evidence of any such documented plans.

---

[287] Respondents' Post-Hearing Brief at 26 (citing "Transcript at 28:6-21 in Testimony of Christina Day on 10/04/18"). *See also* Respondents' Proposed Findings & Conclusions at 4-5, ¶ 14.

[288] Citing Bloomsmith, M.A., Brent, I., Y., & Schapiro, S.F. (1991). Guidelines for developing and managing and environmental enrichment program for nonhuman primates. *Laboratory Animal Science*, 41(4), 372-77.

[289] *Id.* (citing *Tri-State Zoological Park of W. Maryland Inc.*, 71 Agric. Dec. 915, 963 (U.S.D.A. 2012).

Whether Respondents "provided" an "enriched environment" is not at issue.[290] As Dr. Arango testified: "that written plan is important again because it ensures that the attending veterinarians have something to actually review, but also because enrichment items, if done improperly, can also . . . prevent danger to those animals."[291]

The standard is specific in requiring a documental plan that must be provided to APHIS on request,[292] and the evidence of record shows that Respondents did not have one in existence.[293] Respondents have failed to rebut this showing. Accordingly, I find that the Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.81.

2. Tiger Enclosures

Complainant contends that Respondents housed seven tigers and one lion "in enclosures that were not constructed of such material strength as appropriate for those species, and in a manner that would contain those animals."[294] Dr. Arango explained the noncompliance in his inspection report, as follows:

> At the time of inspection for large felid enclosures (containing a total of 7 Tigers and 1 Lion) were constructed with fencing that was less than 12 feet high. Each of these enclosures is constructed of heavy gauge wire that measured 11 feet 3 inches tall. . . .
>
> None of these pens had any angled top fencing (kick-in) or any species appropriate high tensile smooth electrical wire to provide additional deterrents for escape. These enclosures are similar in height to those where tigers or lions have documented escapes. An escape places the animal's life in jeopardy and may endanger the safety of the public.

---

[290] Respondents' Post-Hearing Brief at 26; Respondents' Proposed Findings & Conclusions at 5 ¶ 14.

[291] Tr. Vol. 2, 404:13-17. I also note that it has been previously established that Respondents did not have an attending veterinarian on June 25, 2013, *see supra* discussion regarding Complaint para. 17.

[292] *See* 9 C.F.R. § 3.81.

[293] *See* Tr. Vol. 2, 404, 405 ("And again, in this particular case, Mr. Stark had no written plan.").

[294] Complainant's Post-Hearing Brief at 104 (citing Complaint at 16 ¶ 21b; C.F.R. § 3.125(a)).

CX 6 at 5-6. Photographs included in the inspection report corroborate Dr. Arango's observations.[295]

At hearing, APHIS veterinarian Dr. Dana Miller testified that "a 16-foot straight up enclosure would be deemed compliant at the time of inspection," or, alternatively, an enclosure that measures "12 feet with a 3-foot kick in."[296] Respondents' pens, however, measured just eleven feet and three inches – and did not have a kick-in.[297] Dr. Miller also explained: "[t]he other concern I did have is that some of the . . . platforms and climbing structures for these animals are pretty close to the . . . wall of the enclosure," which "effectively reduces the height even more."[298] Further, Dr. Miller testified to her concerned that the platforms and climbing structures "would create a ledge that the animal would actually be able to climb if it was motivated."[299]

As to the fence height "noncompliance" Complainant alleges, Respondents seem to contend generally that there is no such requirement in the AWA statute or Regulations.[300] Aside from their other general contentions,[301] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

The Standards, 9 C.F.R. § 3.125(a), require that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall

---

[295] *See* CX 6 at 13, 16, 19-29.

[296] Tr. Vol. 2, 413:20-24.

[297] CX 6 at 6; Tr. Vol. 2, 419:5-12.

[298] Tr. Vol. 2, 419:16-420:1.

[299] Tr. Vol. 2, 421:23-24.

[300] *See* RX 56 at :53-4:20 (video of January 20, 2016 exit interview where Respondent Stark argues with inspectors, stating that such fence height requirements are not in the "Blue Book," referring to the book containing AWA Statutes and Regulations); *see also* Tr. Vol. 3, 861-864.

[301] Respondents' Post-Hearing Brief at 18; see *supra* n. 278.

be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals."[302] That Complainant presented no "evidence of any animal escaping confinement" is immaterial; such evidence is not required to prove a violation of 9 C.F.R. § 3.125(a).[303]

The language of the Standard, 9 C.F.R. § 3.125(a), does not include any specific fence height required to "contain the animals." Dr. Miller testified that, at the time of this inspection, APHIS had "some written policies that were available through the inspection guide . . . that stated, . . . what things would . . . be compliant, and it actually was a 16-foot straight up enclosure would be deemed compliant at the time of inspection, 12 feet with a 3-foot kick-in, so a horizon piece that comes over to prevent the animal from just jumping."[304] She also testified that this such fence height specifications were based on instances of other big cat escapes at other facilities that were reviewed by big cat specialists.[305]

Dr. Miller did not specifically identify in which "inspection guide" the referenced "written policies" were set out; exactly who in the USDA organizations developed and/or issued those fence height specifications, and on what basis and with what support; or the specific intended use of such fence height specifications. Complaint did not otherwise provide such information for the record. However, Respondent provides a document detailing fence height specifications for lions and tigers, RX 2, entitled "Lion and Tiger Enclosure Heights and Kick-Ins Inspection," (hereinafter referred to as "Lion and Tiger Enclosure Guidelines") which appears to be a guidance document issued by APHIS.[306] The Lion and Tiger Enclosure

---

[302] 9 C.F.R. § 3.125(a).

[303] *See supra* n. 280 and accompanying text.

[304] Tr. Vol. 2, 413:12-414:1.

[305] *Id.*

[306] I note that Respondents contend in various manners at various points that they never received these guidelines, see RX 56. However, Complainant's witnesses state that the guidelines were provided to

Guidelines, RX 2, reference back to the USDA, APHIS, Animal Welfare Inspection Guide,[307] which states at section 1.1 "Purpose"

> The Inspection Guide is not a Regulation or Standard and **does not rise to the level of policy**. It serves as a tool to improve the quality and uniformity of inspections, documentation, and administration of the Animal Care Program.
>
> The Inspection Guide is designed to facilitate the decision-making process. It cannot, and is not intended to, replace the inspector's professional judgment.
>
> The Inspection Guide **summarizes** current regulatory and procedural criteria for USDA licensed/registered facilities, and provides examples of inspection processes for verifying compliance. It does **not** add to, delete from, or change current Regulations or Standards. [Emphasis added.]

At section 1.2 "Disclaimer," it states:

> The Animal Welfare Inspection Guide is intended to be a reference document to assist the inspector. The Inspection Guide does not supersede the Animal Welfare Act (AWA), the AWA Regulations and Standards, AC policies and other guidance, the Required Inspection Procedures, standard procedures, or the inspector's professional judgment. All inspection decisions must be justified by applicable sections of the AWA and/or the AWA Regulations and Standards.

Complainant may intend to contend that such written guidance constitutes binding USDA or APHIS interpretations of 9 C.F.R. § 3.125(a), but Complainant does not expressly so argue, and does not provide any explanation for why such an interpretation would be legally binding upon AWA licensees or upon me in making a determination of whether Respondents violated the AWA and the Regulations. As quoted immediately above, such guidance could scarcely be more explicit that it is not intended to provide binding rules distinct from the AWA and Regulations. It explicitly states that it does not "rise to the level of policy." Additionally, although the Lion and Tiger Enclosure Guidelines, RX 2, state at 1 "[t]his guidance is a distillation of a well-established interpretation of the AWA regulations and standards," Complainant does not

---

Respondents and Respondents certainly had possession of them to submit them into the record. *See* Tr. Vol. 3 828:12-23; Tr. Vol. 6, 1528.

[307] *See* https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf (last visited Jan. 28, 2020).

expressly argue such, and the record does not otherwise support that this guidance is official USDA interpretation of the AWA Regulations and Standards.

Because Complainant does not specifically contend or set out that the height, "kick-in", or "hot-wire" requirements are enforceable "policy" based on, or interpretive rule of, the Standard, 9 C.F.R. § 3.125(a), in this decision I do not have to reach this issue.[308] In these circumstances, I evaluate the record, including Dr. Miller's testimony, to determine if a preponderance of the evidence demonstrates that Respondents violated the regulations, specifically Standard, 9 C.F.R. § 3.125(a).

Dr. Miller does not testify, and Complainant does not otherwise provide expert testimony or other evidence, to explain why a fence of eleven feet and three inches could not contain a lion or tiger but a fence of twelve feet with a three foot "kick-in" would. However, Dr. Miller testified, and Complainant provided photographic evidence, that climbing structures within the enclosures were close to the wall of the enclosure, as well as cross bars on the tiger enclosure side of the fence, providing a possible "launching pad" or ledge for tigers to scale or jump over the enclosure fence.[309] While the evidence presented regarding fence height alone does not demonstrate whether the enclosures could contain the animals, the record demonstrates that the enclosure was not sufficient to contain the animals due to the platforms and ledge that could

---

[308] In other words, I will not address whether the APHIS guidance (also referred to as "policies" or "performance standards," even though that guidance specifically states it does not establish policy or Standards) regarding enclosure fence height relied upon, in part, by Dr. Miller in finding that Respondents violated the Standard, 9 C.F.R. § 3.125(a), are APHIS "interpretive rules" under the Administrative Procedure Act, 5 U.S.C. § 553, that might, on one hand, be argued to bind Respondents and me, or on the other hand, might be argued to not be so binding. *See Kisor v. Wilkie,* 139 S. Ct. 2400, 2420 (2019) (stating "An interpretive rule itself never forms 'the basis for an enforcement action'—because, as just noted, such a rule does not impose any 'legally binding requirements' on private parties.") (citing *National Min. Assn. v. McCarthy*, 758 F.3d 243, 251 (CADC 2014)); *Hoctor v. U.S. Dep't of Agric.,* 82 F.3d 165 (7th Cir. 1996) (holding that USDA "rule governing minimum height of enclosures for dangerous animals was a substantive rule subject to the notice and comment procedures set forth in the Administrative Procedure Act (APA).").

[309] Tr. Vol. 2, 419:13-420:3, 421:17-25; CX 6 at 13, 16, 19-29.

provide the animals with a "launching pad" for escape.

I, therefore, find that the inspection report, photographs, and testimony presented by Complainant are reliable evidence of the alleged violation—evidence that Respondents failed to rebut. Accordingly, I find that Complainant showed by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a).

3. Perimeter fences

Complainant asserts that Respondents housed multiple tigers in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect the tigers from injury, to function as a secondary containment system, and to prevent the animals from physical contact with persons or other animals outside the fence.[310] The noncompliance was documented in Dr. Arango's inspection report, as follows:

> A 12-foot high perimeter fence was present around the portion of the facility housing the majority of the tigers. At the time of inspection there were large amounts of building materials present in the area between the tigers and primary enclosures and the perimeter fence. This building material included numerous chain link fence panels that were leaning at an angle against the side of the perimeter fence facing in towards the enclosures functionally forming a ramp up the perimeter fence. Other piles of fencing panels and wood for building were stacked near the foot of the perimeter fence in a manner that would allow animals to use it as a platform to jump from. Depending on their orientation, these panels effectively reduced the perimeter height by 3 to 8 feet. The present of these building materials prevents the perimeter fence from functioning as an adequate secondary containment system for the animals at this facility.
>
> One gate present in the perimeter fence (for the portion of the facility that houses the majority of the tigers) was constructed of vertical bars. Gaps were present underneath this gate which ranged from 3 to 9 inches. These gaps are large enough that it could allow the entry of an unauthorized person or animal.
>
> A substantial perimeter fence that is maintained in good repair and is not less than 8 feet in height is required for all potentially dangerous animals. This perimeter fencing protects the animals by ensuring that in the event of an

[310] Complaint at 16 ¶ 21c.

> accidental escape there is a secondary containment mechanism to prevent the animal from leaving the property and endangering public safety and thereby placing the animal's life in jeopardy. Correct this by removing all construction materials or other debris that is within close proximity to the perimeter fence, and by modifying the gate to prevent unauthorized entry.

CX 6. Photographs taken on the date of inspection corroborate Dr. Arango's findings,[311] as does Dr. Miller's testimony:

> In Mr. Stark's facility, he actually had a 12-foot tall perimeter fence, which was great, in the majority of these areas. However, there was so much construction debris, fencing material, those large spools, things like that were right up against the fences or very close to them, and some of those stacks were tall enough that they were effectively reducing the perimeter height by as much as 3 to 8 feet.
>
> So even though it was a 12-foot height, when you have a ramp -- or a -- a gate or something leaning against it at an angle, our concern is that's making a ramp essentially that would allow an animal to escape more easily. The perimeter fence requirement itself -- and what it says in there is the fence must be constructed so it protects animals and the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals as -- at the facility, and so that it can function as a secondary containment system for animals in the facility.
>
> So essentially, that perimeter fences functions both to keep people out of the facility that shouldn't be in, and keep them from contacting the animals. And were an animal to escape, . . . it provides some secondary containment, which would give you enough time to hopefully recapture that animal and return it to its enclosure and prevent complete escape from the facility. So my -- our concern very much so was that having all of that debris made it so that it could not perform that function of secondary containment.
>
> And then we also had several areas where there were gaps underneath the fence or around the gate that were large enough that a person or an animal like a dog or raccoon could enter the facility, as well. So we had some failures in both aspects, even though there was a tall fence present.

Transcript at 424:6-425:22. When asked what problem a dog or raccoon might cause by gaining entry, Dr. Miller explained:

> It's multifold. . . . Raccoon or cat, both of them can carry diseases that would potentially impact the animal, so fecal contamination or direct diseases. Raccoons

[311] *See* C -6 at 17, 33-37.

can carry distemper.

> There were canines at the facilities. So . . . that would be a disease of concern if you have wild raccoons coming on and off at will. And then, as far as . . . a person, I think that's -- both injury to the animal and the person.

Transcript Vol. 1, at 426:13-23.

Aside from their general contentions,[312] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence provided by Complainant.

The Standards, 9 C.F.R. § 3.127(d), provide, in pertinent part, that outdoor facilities:

> must be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for potentially dangerous animals . . . or less than 6 feet high for other animals must be approved in writing by the Administrator. The fence must be constructed so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals in the facility, and so that it can function as a secondary containment system for animals in the facility.

9 C.F.R. § 3.127(d).

Complainant demonstrates by a preponderance of the evidence that the perimeter fence surrounding Respondents' tiger enclosure was inadequate to contain them. Although the actual fence measured more than eight feet, the presence of building materials throughout the area effectively reduced the perimeter height preventing the fence from providing secondary containment. Moreover, gaps in the fencing allowed opportunities for other animals or unauthorized persons to enter.

While Complainant presented documentary, photographic, and testimonial evidence that the tiger perimeter fence failed to meet the minimum Standards set out in 9 C.F.R. § 3.127(d), as mentioned, Respondents set forth no specific evidence to rebut that showing. Respondents maintain that Complainant failed to present evidence "of any animal escaping confinement," but,

---

[312] Respondents' Post-Hearing Brief at 18; see *supra* n. 278.

again, evidence of an actual escape is not required to establish a violation.[313] Accordingly, I find that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.127(d).

4. Diet for animals

Complainant asserts that Respondents fed large carnivores a diet that was not prepared with consideration for the age, species, condition, size, and type of animals.[314] Dr. Arango wrote in his inspection report:

> The licensee stated that he feeds a variety of feed material to the various animals maintained on the property. The large carnivores are generally fed a mixed diet consisting of donated recently expired meat products from human food channels and road kill with vitamin / mineral supplementation. There is no written guidance from the attending veterinarian for feeding the large felids. A species specific feeding plan(s) which includes the amount and type of meat provided as well as any additional necessary vitamin or mineral supplementation is necessary when feeding a non-commercially prepared diet for large felids to ensure that the diet is of sufficient quantity and nutritive value to maintain the animals in good health. The licensee must obtain from the veterinarian written guidance for the feeding of the large cats. This feeding plan must address the species, size, condition, and type of animal in order to ensure appropriate care and feeding for all felids in the facility.

CX 6. Dr. Miller testified to this at hearing and explained that "use of expired products could have been a concern for these animals."[315]

Aside from Respondents' general contentions,[316] Respondents do not address this allegation specifically or provide specific evidence to rebut Complainant's evidence. Respondents simply aver, *id.*, without evidentiary support, that "a more than appropriate diet was

---

[313] *See supra* n. 280 and accompanying text.

[314] Complaint at 16 ¶ 21d.

[315] Tr. Vol. 2, 429:16-17.

[316] Respondents' Post-Hearing Brief at 18 (where Respondents contend "[t]here was no preponderance of reliable evidence that Respondents fed large carnivores a diet that was not prepared with consideration for the age, species, conditions, size, and type of those specific animals"). *See also* Respondents' Proposed Findings & Conclusions at 5 ¶ 17.

provided at all times for all the large carnivores" and that Respondents were "adhering regularly to modern scientific standards about the provision of carcasses."[317]

At issue here with whether Respondents complied with the terms of the text of the regulation Standards as written and not whether Respondents' practice of providing partially intact carcasses is in fact "modern scientific standards" as Respondents contend. The Standards, 9 C.F.R. § 3.129(a), require that:

> food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration of the age, species, condition, size, and type of animal. Animals shell be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

9 C.F.R. § 3.129(a).

Contrary to Respondents' assertion, the record, including the Inspection Report, CX 6, and Dr. Miller's testimony, demonstrates that an appropriate diet was not provided for large carnivores at all times. Accordingly, I find that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.129(a).

c. Complaint Paragraphs 22a-p (September 24, 2013)

The Complaint alleges that on or about September 24, 2013, Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to comply with multiple provisions of the Standards.[318]

1. Food storage for dogs

Complainant contends that on September 24, 2013, Respondents failed to meet the

---

[317] Respondents cited: "Transcript at 9:21-11:7 in Testimony of Timothy Stark on 10/05/18"; "McPhee, M.E., (2002). Intact carcasses as enrichment for large felids: Effect on on-and of-exhibit behaviors. *Zoo Biology: Published in affiliation with the American Zoo and Aquarium Association*, 21(1), 37-47."

[318] *See generally* Complaint at 16-18 ¶ 22.

minimum Standards for storage of foods for dogs.[319] In particular, Complainant asserts that Respondents failed to store supplies of food for dogs in facilities that adequately protect the supplies of food from deterioration, molding, or contamination by vermin.[320] Dr. Miller testified that there was an "excessive accumulation of rodent feces on the floor" in the dry storage room,[321] which was "especially bad around the feed containers";[322] that "dog food bags were left open or had no . . . lid on them"; [323] and that "there were even rodent feces on some of those open bags."[324] Photographs taken at the time of inspection corroborate Dr. Miller's testimony and clearly depict the rodent feces and open containers, evidencing that Respondents failed to protect the supplies from spoilage, contamination, and vermin infestation.[325]

Aside from their general contentions,[326] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence. Respondents simply and generally aver that their witnesses have testified that food areas were clean or being cleaned during each inspection.[327] Respondents also argue that alleged violations were "based upon appearances and not proof of actual and potential risk to animals or visitors" and that there is no evidence of the animals ever having been "physically sickened by foodstuffs, and nothing to

---

[319] Complainant's Post-Hearing Brief at 96 (citing Complaint at 16 ¶ 22a; 9 C.F.R. § 3.1(e)).

[320] Complaint at 16 ¶ 22a.

[321] Tr. Vol. 2, 473:5-7.

[322] Tr. Vol. 2, 473:9-10.

[323] Tr. Vol. 2, 473:17-18.

[324] Tr. Vol. 2, 473:19-20.

[325] CX 14 at 56, 58, 60, 62, 64, 68, 70, 72; *see* Tr. Vol. 2, 473:21-475:21.

[326] Respondents' Post-Hearing Brief at 19 (where Respondents contend that there is "no preponderance of reliable evidence that Respondents ever failed to store adequate supplies of food for their animals in facilities that adequately protected the food from deterioration, molding, or contamination by vermin" and there is "[n]o objective evidence of any actual health contamination" as "Complainant failed to actually conduct any testing of any food or any food storage materials."). *See also* Respondents' Proposed Findings & Conclusions at 5-6 ¶ 18.

[327] *Id.* (citing "Transcript at 29:15-30:15 in Testimony of Day on 10/04/19").

suggest even minor conditions were not corrected."[328]

The preponderance of the evidence supports the alleged violation, and Respondents offer no specific evidence to the contrary. A claim of compliance is not sufficient to counterbalance a record replete with evidence of non-compliance. The Standards, 9 C.F.R. § 3.1(e), require, in pertinent part, that:

> Supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. . . . All open supplies of food and bedding must be kept in leakproof containers with tightly fitting lids to prevent contamination and spoilage.

Moreover, Complainant need not submit "objective evidence of any actual health contamination"[329] to establish a violation. As the Judicial Officer recently held: "[t]he housekeeping Standards relate to protection and prevention; evidence of actual rodent or pest infestation is not required."[330] Therefore, I conclude the preponderance of the evidence shows that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), and failed to meet the Standards, 9 C.F.R. § 3.1(e), by failing to store supplies of food for dogs in facilities that adequately protect the supplies from deterioration, molding, or contamination by vermin.

---

[328] *Id.* (citing "Transcript at 34:5-16 in Testimony of Tim Stark on 10/04/18; *Hoctor*, 56 Agric Dec. 416 (U.S.D.A. 1977)). Noting that I do not find any relevance of *Hoctor* to the instant allegations.

Respondents state, *id.,* that the "personal opinions" of Complainant's witnesses "speculated that deterioration, molding, or contamination by vermin 'could occur' in the undetermined future" was "impermissible opinion which lacks foundation as objective scientific evidence" Respondents do not specifically cite to any testimony that they perceived to be speculation or "impermissible opinion." Respondents also state: "Even Complainant's own expert, Dr. Laurie Gage, was compelled to admit that Respondents' sanitation procedures were compliant" (citing "Transcript at 122:5-18 in Testimony of Laurie Gage on 10/05/18"). Reviewing the uncorrected, improperly formatted version of the transcript to which Respondents cite, the cited testimony is Dr. Gage discussing when she does and does not sanitize her hands before touching an animal. Dr. Gage does not there "admit" in any way that Respondents' sanitation procedures were compliant with the regulations.

[329] Respondents' Proposed Findings & Conclusions at 5 ¶ 18.

[330] *Terranova Enters., Inc.*, AWA Docket Nos. 15-0058, 15-0059, 16-0037, 16-0038, 2019 WL 4580195, at *37 (U.S.D.A. Aug. 30, 2019). Noting, however, that here signs of vermin infestation, such as littering of feces, was observed in and around the open containers of food.

2. *Moisture in hybrid-dog enclosures*

Complainant contends that Respondents housed three hybrid dogs in enclosures with surfaces that were not impervious to moisture.[331] Dr. Miller testified that:

> the area that Mr. Stark was keeping those dogs in was constructed of unsealed wood. None of that wood was impervious to water. It had what appeared to be a dirt floor on it . . . it was really gross . . . there was an accumulation of feces, cobwebs, dust, debris. There were bones littering the floor. It had an odor coming from it and in certain areas it was actually wet and damp.

Tr. 476:25-477:9. Further, Dr. Arango documented Respondents' noncompliance in the September 24, 2013 Inspection Report, noting in particular that:

> Walls and flooring constructed of unsealed wood and dirt which are permeable to moisture provide an optimal area for bacterial and fungal growth both of which can cause disease in the dogs housed in these enclosures. Ultimately the failure to construct dog enclosures out of surfaces that are impervious to moisture results in an ability to properly clean and sanitize the primary enclosures and creates a risk of disease and illness.

CX 14 at 15. Photographs taken during the inspection corroborate Dr. Miller's testimony and the inspection report.[332]

Aside from their general contentions, [333] Respondents do not address this allegation or provide any specific evidence to rebut Complainant's evidence.

The record provides no support for Respondents' claims of compliance, and the preponderance of evidence in the record is to the contrary. The Standards, 9 C.F.R. § 3.3(e)(1), require that:

---

[331] Complainant's Post-Hearing Brief at 97 (citing Complaint at 17 ¶ 22b).

[332] *See* CX 14 at 74, 76.

[333] Respondents' Post Hearing Brief at 20 (contending that there "was no preponderance of reliable evidence that Respondents housed any animal in enclosures with surfaces that were not impervious to moisture" and that "unrebutted testimony by Respondents' veterinarians reflected that more than adequate . . . shelter [was] provided for all of the animals involved, and met or exceeded scientific standards per industry standard publications.") (citing Hosey, G., Me.fi, V., & Pankhurst, S. (2013. *Zoo animals: behavior, management, and welfare.* Oxford University Press.). *See also* Respondents' Proposed Findings & Conclusions at 6 ¶ 19.

The following areas in sheltered housing facilities must be impervious to moisture:

(i) Indoor floor areas in contact with the animals;

(ii) Outdoor floor areas in contact with the animals, when the floors are not exposed to direct sun, or are made of hard material such as wire, wood, metal, or concrete; and

(iii) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

9 C.F.R. § 3.3(e)(1). Complainant provided reliable evidence showing that Respondents housed three hybrid dogs in enclosures with surfaces that were not impervious to moisture. Therefore, I find that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.3(e)(1).

3. Exercise plan for dogs

Complainant contends that Respondents failed to develop, document, and follow an appropriate plan for exercise for dogs, as required by 9 C.F.R. § 3.8.[334] During the hearing, Dr. Miller testified: "[n]ot only did [Respondents] not have an attending veterinarian again, but [they] also had no written exercise plan."[335] The September 24, 2013 inspection report shows the same[336] and further states that "[e]xercise is necessary to benefit the health, comfort, and well-being of the dogs."[337]

Aside from their general contentions,[338] Respondents do not specifically address this allegation or provide any specific evidence to rebut Complainant's evidence.

---

[334] Complainant's Post-Hearing Brief at 99 (citing Complaint at 17 ¶ 22c).

[335] Tr. Vol. 2, 487:13-15.

[336] *See* CX 14 at 17-19.

[337] *See* CX 14 at 19.

[338] Respondents' Proposed Findings & Conclusions at 6 ¶ 20 (contending that "[t]here is no preponderance of reliable evidence that Respondents failed to develop, document, and follow an appropriate plan for exercise for any animal at any time relevant to this adjudication."). In their reply Brief, Respondents also state "there was no preponderance of reliable evidence that Respondents did not have an attending veterinarian at any time relevant to this adjudication." Respondents' Reply Brief at 13. As discussed *supra*, Dr. Miller testified to the contrary.

The Standards, 9 C.F.R. § 3.8, require in relevant part, that "exhibitors . . . must develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise" and that such written plan "must be approved by the attending veterinarian" and "made available to APHIS upon request." The record is clear that Respondents had no such plan.[339] Accordingly, I find that the Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.8.

4. Cleaning and sanitation of food receptacles for hybrid dogs

Complainant contends that Respondents failed to clean and sanitize food receptacles for three hybrid dogs as required by the Standards.[340] Dr. Miller described Respondents' food receptacle for hybrid dogs as follows:

> It was actually made of a very large blue and white cooler that, in fact, could not be easily removed from the enclosure itself. It had -- it was affixed to the chainlink using sections of garden hose that were woven through the chainlink and then actually screwed into the cooler that was holding it up. So it wasn't like you could actually just take that feed out, that feeder out and clean it very well every two weeks as -- as in accordance with those prescribed methods which include either disinfection by a steam or a chemical disinfectant follow -- you know, followed by a chemical disinfectant during which, you know, contact time is important and things like that.
>
> When we asked Mr. Stark about how they were cleaned because there was a -- I mean, just a huge buildup of organic material, dust, grime, dirt, there was a lot of food waste in it. It was a huge container with -- just filled with dog food, as well.
>
> Mr. Stark said on a weekly basis his volunteers go into the enclosure, remove all of the food, and then clean and sanitize that feeder. That statement did not seem consistent either with what we observed on the feeder itself or the ease of cleaning. So this -- clearly, if it was true that they were going in weekly, then weekly was not often enough.

Tr. 491:5-492:8. Photographs from the September 24, 2013 inspection corroborate Dr. Miller's

---

[339] *See* CX 14 at 17-19; Tr. Vol. 2, 487:9-13.

[340] Complainant's Post-Hearing Brief at 99 (citing Complaint at 17 ¶ 22d).

assessment.[341] The Inspection Report explains that "[a]ccumulated organic debris provides an optimal area for the growth of bacterial and fungal pathogens that can easily contaminate food when present on feed receptacles creating a disease hazard for the dogs."[342]

Aside from their general contentions,[343] Respondents do not address this allegation specifically and do not provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.9(b), require, in pertinent part, that:

> Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain and snow. Feeding pans must be either made of a durable material that can be easily cleaned and sanitized or be disposable.

9 C.F.R. § 3.9(b). The record reflects that the food receptacle used for the hybrid dogs was not easily cleaned and sanitized due to its structure, and Respondents failed to regularly clean and sanitize it. Accordingly, I find that the Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.9.

5. Sanitization of primary enclosures for hybrid dogs

Complainant contends that Respondents failed to sanitize used primary enclosures for three hybrid dogs as required by 9 C.F.R. § 3.11(b)(2).[344] Dr. Arango documented in the September 24, 2013 Inspection Report:

> Three dogs . . . are housed in a sheltered primary enclosure towards the bears. All hard surfaces in this building including chain link fencing, raised platforms, floors, walls, and support beams have a moderate to heavy accumulation of dirt, dust, cobwebs, organic material, and hair. The accumulated debris is evidence that current cleaning and sanitation protocols are inadequate to prevent their accumulation. Accumulated organic debris provides an optimal area for the

[341] *See* CX 14 at 82, 84, 86, 88, 90, 92.

[342] CX 14 at 19.

[343] Respondents' Proposed Findings & Conclusions at 6 ¶ 21 (stating "[t]here is no preponderance of reliable evidence that Respondents failed to clean and sanitize food receptacles or any primary enclosure for any animal at any time relevant to this adjudication."); *see also* Respondents' Reply Brief at 18-20.

[344] Complainant's Post-Hearing Brief at 100 (citing Complaint ¶ 22e).

> growth of bacterial and fungal pathogens creating a disease hazard for the dogs. Additionally, this accumulated debris can attract pests including flies and vermin as well as contributes to odors within the facility.

CX 14 at 21.

The photographs and Dr. Miller's testimony corroborate the Inspection Report.[345] Looking at one such photograph, Dr. Miller observed: "So you can actually see a bone, again concerning because the dogs will be potentially picking that up and chewing it, and it's laying in contaminant."[346] Dr. Miller also testified that the enclosure was located in "an area where the sunlight does not penetrate in order to sanitize."[347]

Aside from their general contentions,[348] Respondents do not address this allegation specifically and do not provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.11(b)(2), require that:

> Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

The Standards, 9 C.F.R. § 3.11(b)(3), also require that hard surfaces of primary enclosures be sanitized using one of three methods: 1) live steam under pressure, 2) washing with hot water and soap/detergent, and 3) washing with appropriate detergent and disinfectants, or other product that accomplishes the same purpose.

The record demonstrates Respondents failed to clean and sanitize its hybrid-dog enclosure. Therefore, I find the preponderance of the evidence establishes Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.11(b)(2).

---

[345] *See* CX 14 at 94, 96, 98; Tr. 495:14-496:11.

[346] Tr. Vol. 2, 495:21-24; *see* CX 14 at 96.

[347] Tr. Vol. 2, 496:10-11; *see* CX 14 at 98.

[348] *See supra* n. 343.

6. Written plan for environmental enhancement

Complainant contends that Respondents failed to have a written plan for the environmental enrichment of nonhuman primates available for inspection.[349] Complainant contends that although Respondents had a document that "include[d] various items for enrichment of nonhuman primates," this document failed to meet the requirements of 9 C.F.R. § 3.81 because it was not evaluated by an attending veterinarian.[350] This was a repeat violation.[351] As Dr. Arango documented in the Inspection Report, CX 14 at 21,

> During inspection the licensee stated that he created this document and that he had not had it evaluated by the attending veterinarian. At this time there has been no guidance or input from the attending veterinarian regarding the plan for environmental enhancement to promote psychological well-being of nonhuman primates. Enrichment plans must be in accordance with professionally accepted standards as cited in appropriate professional journals and must be directed by the attending veterinarian.

Aside from their general contentions,[352] Respondents do not address this allegation specifically. Respondents presented the testimony of Christina Densford, a volunteer at Respondents' facility, and from Respondent Stark as evidence to rebut Complainant's evidence of noncompliance. Ms. Densford testified that she was generally responsible for providing the enrichment but admitted that, apart from her experience with Respondent Stark, she had no training in handling AWA-regulated animals.[353] Respondent Stark said nothing about an attending veterinarian in his testimony; he mainly described how the inspectors conducted their

---

[349] Complainant's Post-Hearing Brief at 102 (citing Complaint at 17 ¶ 22f).

[350] CX 14 at 21. *See also* Tr. Vol. 2, 494:5-8 (Dr. Miller testified that "the requirement is that the enrichment needs to be directed by the attending veterinarian, and Mr. Stark had no attending veterinarians.").

[351] *See* CX 14 at 21.

[352] *See supra* discussion regarding Complaint paras. 21a-d, p. 80, and *supra* nn. 287-89.

[353] *See* Tr. Vol. 7, 1816:1-14, 1823:10-24.

inspection and cited Respondents for a "repeat" noncompliance.[354]

It is clear that Respondents failed to retain an attending veterinarian to direct the enrichment plan and the failure to do so constitutes noncompliance with the Standards, 9 C.F.R. § 3.81, which require an environmental enrichment plan in accordance with professional standards and "as directed by the attending veterinarian." Therefore, I find the evidence of record establishes that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.81.

7. Tiger Enclosures

Complainant contends that Respondents housed seven tigers and one lion in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals.[355] Complainant also contends that Respondents housed four tigers in an enclosure with a resting platform placed close to the side of the enclosure such that it could provide a means for the tigers to escape.[356] Complainant provided the Inspection Report, CX 14, completed by Dr. Arango, which documented the following:

> None of these pens had any angled top fencing (kick-in) or any species appropriate high tensile smooth electrical wire to provide additional deterrents for escape. These enclosures are similar in height to those where tigers or lions have had documented escapes.
>
> . . . .
>
> These enclosures are not tall enough to properly contain the animals as these adult tigers could easily jump out of the enclosure if they were motivated to do so.

CX 14 at 23. This is also a repeat violation, which Dr. Miller testified to at hearing.[357] The Inspection Report, *id.*, also noted that "a large resting platform" was "too close to the side"

---

[354] *See* Tr. Vol. 7, 2005-2006.

[355] Complainant's Post- Hearing Brief at 104 (citing Complaint at 17 ¶ 22g).

[356] Complainant's Brief at 105 (citing Complaint at 17 ¶ 22h).

[357] *See* CX 14 at 23.

of one of Respondents' tiger pens. Dr. Arango explained, *id.*, that "[t]he current placement of this platform combined with its height and the adjacent wire covered cage provides a potential opportunity for escape." At hearing, Dr. Miller testified about the dangers of such a platform:

> our concern in particular with these elevated platforms is that they are both high enough, which having some height and some elevated platforms can be . . . close enough to the primary enclosure fence wall that . . . it could potentially provide a pretty easy platform for that tiger to escape the enclosure if it was motivated.

Tr. Vol. 2, 497:24-498:7.

Aside from their general contentions,[358] Respondents do not address this allegation specifically or provide specific evidence to the evidence offered by Complainant.

The Standards, 9 C.F.R. § 3.125(a), require that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals." A preponderance of the evidence shows that Respondents' tiger enclosures failed to comply with section 3.125(a) of the Standards (9 C.F.R. § 3.125(a)).

As previously discussed, *supra* pp. 85-87,[359] because Complainant does not specifically contend or set out that the alleged height, "kick-in," or "hot wire" requirements set out in APHIS guidance[360] are enforceable "policy" or guidance based on, or interpretive rules of, the Standard, 9 C.F.R. § 3.125(a), in this decision I do not reach the issue of whether these are enforceable requirements apart from what is required by the Regulations and Standards themselves.[361] In these circumstances, I evaluate the record, including Drs. Miller and Arango's testimony, to determine if a preponderance of the evidence demonstrates that Respondents violated the

---

[358] Respondents' Post-Hearing Brief at 18; see *supra* n. 278.

[359] In discussion regarding Complaint ¶¶ 22g-h.

[360] *See* RX 2.

[361] *See supra* n. 308.

Standard as written, 9 C.F.R. § 3.125(a).

Dr. Miller's testimony, as well as the photographic evidence provided detailing how the platforms could be used to provide a potential means of escape, show that the tiger enclosures were insufficient to contain the animals as required by the regulation. Further, that Complainant did not present "evidence of any animal escaping confinement"[362] is immaterial; actual escape is not a requisite element to establish a violation of 9 C.F.R. § 3.125(a).[363] Accordingly, I find that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a).

8. Food storage

Complainant contends that on September 24, 2013, Respondents failed to meet the minimum Standards with regard to food storage.[364] First, the September 24, 2013 Inspection Report notes that several types of meat, including both unidentified ground red meat and whole poultry products, "were observed in the freezer unsealed and frozen in buckets."[365]

> These types of meat are being fed to the lions, tigers, servals, ocelots, and bobcats (per the Nutrition and Enrichment Fact sheet supplied by the licensee). The red meat had areas of brown-grey discoloration that appeared dry/desiccated. The poultry was frozen in a large box of ice and had areas on the exposed extremities that appeared lighter colored and similarly dried. The license [sic] stated that this meat was recently received and would be fed before the end of the week; however, the meat products observed in the freezer did not have a date of receipt/ freezing or a use by date. Failure to properly seal frozen foods and prolonged storage of perishable foods (even when frozen) can result in freezer burn, desiccation, and oxidation causing alteration of the food's palatability and nutritive value. Perishable food must be maintained in a manner that prevents against deterioration in order to ensure that food remains palatable and wholesome.

---

[362] Respondent's Proposed Findings & Conclusions at 5 ¶ 15.

[363] *See supra* n. 280.

[364] *See* Complaint at 17 ¶ 22i.

[365] CX 14 at 25.

CX 14 at 25. At the hearing, Dr. Miller explained that the inspectors' primary concern was that the storage was "not really preventing deterioration of those food stuffs even though they were frozen."[366] Photographs taken at the time of inspection, as well as Dr. Miller's testimony, corroborate the inspection-report findings.[367]

Second, the Inspection Report reflects issues with Respondents' dry-food storage:

> The dry food storage room has an excessive accumulation of rodent feces on the floor. The accumulation is worst in all corners of the room, along the walls, and around the feed storage containers. Additionally, there is rodent feces present on the lids of the feed storage containers and the countertop. Numerous metal barrels were being used as feed storage containers. Although the majority of feed containers have lids, one container was present without a lid. Several open bags of commercial dog food were observed in this container and rodent feces were present on the bags of feed. In addition to being fed to dogs, commercial dog food being fed to several wild and exotic animal species including the bears, foxes, and African Crested Porcupine (per the Nutrition and enrichment fact sheet supplied by the licensee). The licensee stated that he uses mouse poison for rodent control, and while multiple bags containing rodenticide were observed in the room, the significant accumulation of rodent feces particularly on the tops of feed containers indicates that rodent control is inadequate at this time.

CX 14 at 25. Dr. Miller testified that Respondent Stark "confirmed that the dog food was both being fed to the . . . dogs at the facility, as well as several other species of non-human primate."[368] The presence of rodent feces on and around open food containers, as clearly depicted in the inspection photographs, indicates that Respondents failed to protect the food supplies from spoilage, contamination, and vermin infestation.[369] As Dr. Arango stated in the inspection report: "[r]odents are a known source of multiple diseases for other mammals which can be transmitted through urine, feces, and fleas. Contamination of feed with rodent feces poses

---

[366] Tr. Vol. 2, 500:18-20; *see* Tr. Vol. 2, 500:13-16 ("The poultry was frozen in large blocks of ice and . . . was not covered by anything but just big chickens sticking out that were not covered[.]").

[367] *See* Tr. Vol. 2, 500-501; CX 14 at 108, 112, 114.

[368] Tr. Vol. 2, 499:15-20.

[369] *See* CX 14 at 56, 58, 60, 62, 64, 66, 68, 70, 72, 116.

a health risk to the animals through potential disease transmission."[370]

Aside from their general contentions,[371] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

As set out above, the record evidence demonstrates noncompliance with the Standards for food storage. There is no requirement for inspectors to conduct any testing of food or food storage materials as Respondents suggest in their general contentions.[372] Therefore, I find that the preponderance of evidence establishes that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(c).

9. Perimeter fences

Complainant contends that Respondents housed multiple tigers in facilities that did not comply with the minimum Standards for perimeter fences.[373] The Complainant also alleges that Respondents housed a lion, two tigers, one leopard, and four bears in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect these animals from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence.[374]

First, the Complainant alleges that Respondents' tiger facility was not enclosed by an adequate perimeter fence and, specifically, there was a gap of three to six inches between one of

---

[370] CX 14 at 25.

[371] Respondents' Post-Hearing Brief at 19 (contending alleged violations were "based upon appearances and not proof of actual and potential risk to animals or visitors" and that there is no evidence of the animals ever having been "physically sickened by foodstuffs, and nothing to suggest even minor conditions were not corrected.") (citing "Transcript at 29:15-30:15 in Testimony of Day on 10/04/19"; "Transcript at 34:5-16 in Testimony of Tim Stark on 10/04/18; Hoctor, 56 Agric Dec. 416 (U.S.D.A. 1977)); *see also supra* n. 326.

[372] *See* 9 C.F.R. § 3.125(c).

[373] *See* Complaint at 18 ¶ 22j.

[374] Complaint at 18 ¶ 22k.

the gates and the fence.[375] Dr. Arango documented the noncompliance in the September 24, 2013 Inspection Report as follows:[376]

> A 12-foot high perimeter fence was present around the portion of the facility housing the majority of the tigers. One gate (constructed out of vertical bars) present in this area of perimeter fence was cited on the previous report for gaps present at side of this gate which ranged from 3 to 9 inches. While the licensee reduced the size of gaps under and above this gate, a significant gap remains at the locking side of this gate. This remaining gap is large enough that it could allow the entry of an unauthorized person or animal.

Dr. Miller testified to the same.[377]

> Second, Dr. Arango documented the height issue in the inspection report, observing:
>
> An 8-foot high perimeter fence surrounds the portion of the facility which contains the majority of the animals (including one lion, two tigers, one leopard, 4 bears, and all other species). One area of this perimeter fence (nearest to the leopard enclosure) was constructed of chain link that was only 69 inches (5'9"). Three unsecured single strands of wire were present above the chain link. These were placed at 4 inches,16 inches, and 23 inches above the top of the chain link. The licensee stated that these used to be electrified wire, however, the electricity has been off to these wires. Vining plants were observed growing along and between these wires. These wires were easily movable and not taut enough to prevent an animal or person from shifting them to allow entry or exit through this area of the fence. For that reason the wire strands are inadequate to act as a structural barrier and not included in the height of this perimeter fence. Perimeter fencing must be a minimum of 8 feet high for dangerous animals (or written approval must be obtained from the APHIS administrator).

CX 14 at 27. At the hearing, Dr. Miller testified to having "pretty big concerns"[378] about the height of the fence and opined that it "would be an area that a person or an animal could pretty easily cross through."[379] With regard to structural issues, Dr. Arango observed:

> At the time of the inspection there were large amounts of building materials present and equipment storage present leaning against the perimeter fence in the area adjacent to the dry feed storage room, freezer and lion / dog enclosure. This

---

[375] Complaint at 18 ¶ 22j.

[376] *See* CX 14 at 27. *See also* CX 14 at 138 (photo of significant gap between the fencing and the gate).

[377] *See* Tr. Vol. 2, 510:4-9.

[378] Tr. Vol. 2, 507:24-25.

[379] Tr. Vol. 2, 508:16-17.

> portion of the facility includes primary enclosures for several dangerous animals . . . The building material included numerous chain link fence rolls, plastic tanks, plastic barrels, one wooden industrial cable spool, and several solidified concrete bags. *These materials were adjacent to or leaning against the side of the perimeter fence facing in towards the enclosures functionally forming a platform to climb or jump over the perimeter fence. These materials and rolls effectively reduced the perimeter height by 3 to 6 feet. The presence of these building materials prevents the perimeter fence from functioning as an adequate secondary containment system for the animals at this facility.*

CX 14 at 27-29 (emphasis added). Moreover, Dr. Miller testified that this was a repeat violation.[380] Together with Dr. Miller's testimony, photographs taken on the date of inspection support Dr. Arango's findings.[381]

Aside from their general contentions,[382] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

That Complainant did not present evidence of an actual animal escape is immaterial to whether Respondents violated the Standard.[383] As set out above, the preponderance of the evidence shows that Respondents failed to meet this Standard, 9 C.F.R. § 3.127(d), by housing multiple tigers in facilities not enclosed by an adequate perimeter fence and housing a lion, two tigers, one leopard, and four bears in facilities not enclosed by an adequate perimeter fence that would prevent animals from physical contact with persons or other animals outside the fence. Therefore, I find that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.127(d).

10. Diet for animals

Complainant contends that Respondents failed to provide animals a diet that was

---

[380] Tr. Vol. 2, 507:4-14.

[381] *See* CX 14 at 120, 122, 124, 126, 128, 132, 134, 136, 140, 142, 144, 146, 148; Tr. Vol. 2, 508:5-511:11.

[382] Respondents' Post-Hearing Brief at 18; see *supra* n. 278.

[383] Respondents' Proposed Findings & Conclusions at 5 ¶ 16. *See supra* n. 280.

wholesome, palatable, and free from contamination and prepared with consideration for the age, species, condition, size, and type of animals in violation of the Regulations, 9 C.F.R.§ 2.100(a), failing to meet the Standards, 9 C.F.R. § 3.129(a).[384]

At hearing, Dr. Miller testified that Respondents were feeding the same diet to their big cats as they had been at the time of the previous inspection.[385] According to Dr. Miller, Respondents "still didn't have a feeding plan that was directed by an attending veterinarian or weighed in on in any way giving consideration to the species and age and condition of those animals,"[386] which "have some pretty specialized feeding requirements."[387] As noted in the Inspection Report, CX 14 at 29:

> A species specific feeding plan(s) which includes the amount and type of meats provided as well as any additional necessary vitamin or mineral supplementation is necessary when feeding a non-commercially prepared diet for large felids to ensure that the diet is of sufficient quantity and nutritive value to maintain the animals in good health. The licensee must obtain from the veterinarian written guidance for the feeding of the large cats. This feeding plan must address the species, size, condition, and type of animal in order to ensure appropriate care and feeding for all felids in the facility.

Aside from Respondents' general contentions,[388] Respondents do not address this allegation specifically and provide little evidence to rebut Complainant's evidence. Other than Respondent Stark's own testimony regarding the variety of meats fed to the large cats, including

---

[384] Complainant's Post-Hearing Brief at 124 (citing Complaint at 18 ¶ 22l).

[385] *See* Tr. Vol. 2, 513:4-9.

[386] Tr. Vol. 2, 513:6-9.

[387] Tr. Vol. 2, 513:10-11.

[388] Respondents' Post-Hearing Brief at 18 (also contending that "a more than appropriate diet was provided at all times for all the large carnivores" and that Respondents were "adhering regularly to modern scientific standards about the provision of carcasses.") (citing "Transcript at 9:21-11:7 in Testimony of Timothy Stark on 10/05/18"; McPhee, M.E., (2002). Intact carcasses as enrichment for large felids: Effect on on-and of-exhibit behaviors. *Zoo Biology: Published in affiliation with the American Zoo and Aquarium Association*, 21(1), 37-47); *see supra* n. 316.

store bought meat and road kill of a variety of species,[389] Respondents offer no other support for to show that they complied with the regulation by ensuring a diet "prepared with consideration for the age, species, condition, size, and type of the animal" and as directed by an attending veterinarian.[390] Therefore, I find that the preponderance of the evidence is that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.129.

11. Potable water for bears, tigers, and lion

Complainant contends that on September 24, 2013, Respondents failed to provide potable water to bears, tigers, and a lion.[391] At hearing, Dr. Miller described the water issues as follows:

> [t]here was water sources present, but the water wouldn't necessarily be potable or drinkable for the animals. And while it's not required at all times for every species, it -- the water receptacles that are there need to be clean and sanitary.

Tr. 513:22-514:2. The inspection report describes the bears' only water source – a pond – as "murky," with "an abundance of vegetative growth on the surface" and "a strong odor coming from the enclosure."[392] Further, the report notes that "[n]o potable water was observed in the majority of the tigers' enclosures" as the water was "excessively green" and "there were numerous mosquitos and mosquito larvae present on and just below the surface of the water."[393]

Respondents assert that "[u]nrebutted testimony by Respondents' veterinarians reflected that more than adequate water . . . was provided for all animals involved at all times relevant to

---

[389] Tr. Vol. 8, 2059: 6-2060:11.

[390] 9 C.F.R. § 3.129(a).

[391] Complainant's Post-Hearing Brief at 125 (citing Complaint at 18 ¶¶ 22m, 22n, 22o).

[392] CX 14 at 31.

[393] *Id.* (also noting "The turbidity of the water was sufficient to prevent visualization of the bottom of the container even though each container was relatively shallow (less than 3 feet deep"). *See also* Tr. Vol. 2, 515:6-11 ("I also made the notation that the facilities should be concerned about the mosquito breeding, as well just given the fact that big cats are sensitive to West Nile Virus and things like that. So it's an additional risk for those animals, although not directly about the water."); CX 14 at 150, 152, 154, 156, 157, 159, 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183 (photos of green water in animal enclosures); Tr. Vol. 2, 513:2-518:20.

this adjudication."[394] However, Respondents provide no citations to the record for any such veterinarian's testimony, and I am unable to locate such testimony in the record. Respondent Stark, who is not a veterinarian, did not contend that the water was not green but testified that green water is potable and that Respondents' water is changed more often than it might appear.[395] Similarly, while Ms. Christina Densford testified that one of her responsibilities as a volunteer at Respondents' facility was to ensure that water and feeding receptacles are clean and sanitized,[396] Ms. Densford did not testify whether the water was green at the time of the inspections, and she is neither a veterinarian nor qualified to opine on whether such green water would be potable.[397]

The Standards, 9 C.F.R. § 3.130, require:

> If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

As the record demonstrates, particularly the photographic evidence of water receptacles holding green water that is, in some instances, laden with mosquitos,[398] Respondents failed to meet the Standards by keeping water receptacles clean and sanitary. Therefore, I conclude the preponderance of the evidence shows that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.130.

12. Employees

---

[394] Respondents' Proposed Findings & Conclusions at 6 ¶ 21.

[395] *See* Tr. Vol. 8, 2078:17-2081:16.

[396] Tr. Vol. 7, 1829:20-1830:2.

[397] Ms. Densford testified that she is a Special Ed teacher and has "a bachelors in art therapy, minors in philosophy and psychology, a masters of arts and certification in behavioral analysis and education." Tr. 1805:19-24.

[398] CX 14 at 150, 152, 154, 156, 157, 159, 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183.

The Complaint alleges that Respondents failed to employ a sufficient number of adequately trained employees in accordance with the Standards.[399] Complainant provides the Inspection Report, CX 14 at 31-33, and the testimony of Dr. Miller, who stated:

> We had asked Mr. Stark to provide us with a list of the employees at the facility, including the volunteers. We wanted to assess how many people are actually taking care of a collection of this size. Mr. Stark stated that he had no additional paid staff, and that he was not willing to provide us with a list of volunteers, because he thought that that was a violation of their privacy.
>
> He stated that he, personally, directs all of the animal care, and that volunteers are only allowed to do food preparation and to guide visitors through the facility. That did conflict with other statements he made during the inspection, however, where he also described that the volunteers go into the dog hybrid enclosure in order to clean those receptacles and take them out. So we did have some conflicting statements as far as whether there actually was volunteer interaction.
>
> . . . . Given the large number of noncompliances, the significance of them, the extent of them, how many enclosures were filthy, how many, you know, water receptacles that needed to be filled and all, it was pretty clear that this would not be something that a s ingle person was able to keep up with, and either that the employees and staff were -- there was either an insufficient number of inadequate training and experience in order to be able to carry out these -- these activities, and therefore, that Mr. Stark did not have sufficient employees.

Tr. Vol. 2, 518:25-520:1-12.

As further support, Complainant's Proposed Findings of Fact, Conclusions of Law, and Order; and Request to Take Official Notice, includes materials "referenced in complainant's supporting brief, which are the subject of complainant's request to take official notice, pursuant to 7 C.F.R. § 1.14 l(h)(6)." The attached materials include federal tax returns for 2014-2017 filed by respondent Wildlife in Need Wildlife in Deed, Inc., "which are publicly available government records."[400] Complainant avers that these tax returns demonstrate that no employees were hired by Respondents.[401] Respondents "specifically object to Complainant's caption request to take

---

[399] Complaint at 18 ¶ 22p.

[400] Complainant's Post-Hearing Brief at 129.

[401] Complainant's Reply Brief at 39.

official notice of matter where no such actual request then in fact was presented anywhere in the brief of in the proposed findings." As the 2014-2017 federal tax returns filed by Respondent Wildlife in Need Wildlife in Deed, Inc. are publicly available government records and Respondents did not advance a specific objection to review of these documents, I hereby take official notice of the 2014-2017 federal tax returns filed by Respondent Wildlife in Need Wildlife in Deed, Inc.

Respondents generally contend that "whenever circumstances required, or whenever APHIS recommended additional assistance by employees, Respondents met and exceeded that condition" and aver that, despite these efforts, "APHIS inspectors still would nevertheless demand an unsupportably [sic] high standard for compliance that included the topic of the number of employees."[402] Respondents further contend that "no staffing problems arose" but that "[m]ore than necessary numbers of extra workers and volunteers helped round out the significant groups of people attending daily to the animals."[403] Respondents aver that it is the inspectors' "interpretation of the regulations requiring a particular number of employees to do all those tasks at every moment of the day [that] has been held by the Courts to go way too far."[404]

Respondents do not deny that they have few, if any, full-time employees.[405] Respondents' contentions that "no staffing problems arose" is inconsistent with Dr. Miller's testimony and record evidence.[406] Moreover, Neither Ms. Stark, Ms. Amin, nor Respondent

---

[402] Respondents' Post-Hearing Brief at 21 (citing "Transcript at 71:3-9 in Testimony of Jessica Amin on 10/04/18"; "Transcript at 25:16-19 in Testimony of Tim Stark on 10/05/18 identifying 60 volunteers"; RX 24, 27,64). *See also* Respondents' Proposed Findings & Conclusions at 6 ¶ 23.

[403] *Id.* (citing "Transcript at 93:13-96:2 in Testimony of Jessica Amin on 10/04/18").

[404] *Id.* at 22 (referring to sanitation related regulations, 9 C.F.R. §§ 3.1(c)(3) and 3.11(a); citing *Hodgins v. U.S. Dep't of Agric.*, 238 F3d 421 (6th Cir 2000)).

[405] Tr. Vol. 7, 1874:12-1875:11 (Ms. Amin testifying as to the number of full-time employees she recalls being on staff with Respondents over the years).

[406] *See* Tr. Vol. 2, 518:25-520:1-12; CX 14.

Stark gave testimony that would support a finding that Respondents employed a sufficient number of adequately trained employees for the facility.

Respondents' contentions that APHIS requirements for a sufficient number of adequately trained employees is merely an "interpretation" of the standards by the inspectors and an unreasonable expectation that employees should be conducting regulated tasks "at every moment of every day" is without merit. The Standards, 9 C.F.R. § 3.132, require that a "sufficient number of adequately trained employees shall be utilized to maintain the professionally acceptable level of husbandry practices set forth" in the Standards and that "[s]uch practices shall be under a supervisor who has a background in animal care."[407] Respondents cited *Hodgins,* in which the 6th Circuit observed that an inspector's interpretation that cleaning be performed three times per day "goes too far."[408] However, here the inspectors' were not making such interpretations. Dr. Miller's testimony was clear that the violation was found not because of an expectation that tasks must be done "at every moment of everyday"[409] but because of the general overall lack of upkeep at the facility, the number and significance of violations, made it apparent that there were not enough trained employees to maintain the facility.[410] The preponderance of the evidence shows that Respondents failed to employ a sufficient number of adequately trained employees as required that would permit them to maintain a "professionally acceptable level of husbandry practices" set forth in the Standards. Therefore, I find that Respondents violated the Regulations, 9 C.F.R.§ 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.132.

---

[407] 9 C.F.R. § 3.132.

[408] *Hodgins v. U.S. Dep't of Agric.*, 2000 WL 1785733, *28, 238 F.3d 421 (Table) (6th Cir. 2000).

[409] Respondents' Post-Hearing Brief at 22.

[410] *See* Tr. Vol. 2, 520:1-12.

d. Complaint Paragraphs 23a-i (May 6, 2014)

Complainant alleges that "on or about May 6, 2014, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a) by failing to meet the Standards," including 9 C.F.R. §§ 3.3(e)(1), 3.10, 3.11(b)(2), 3.125(a), 3.127(a), and 3.130.[411]

1. Moisture in hybrid-dog enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.3(e)(1), by housing "three dogs in enclosures with surfaces that were not impervious to moisture."[412] Complainant provides the May 6, 2014 Inspection Report competed by ACI Houser, including photographs, observing a repeat violation regarding the enclosure for the three wolf-dog and two coyote-dog hybrids in which the shelter that was constructed of unsealed wood that is not impervious to water with support posts that have been chewed, and the dirt floor does not have access to direct sunlight and cannot be sanitized.[413] ACI Houser explained that:

> hybrids are considered dogs. And under the dog regulation, every surface they come in contact with has to be impervious to moisture. It has to be sealed. Also, because of the dog regulation, it requires daily spot cleaning. So, when they're in an enclosure, if they go, you know -- if they -- if they defecate that day, at least once a day -- once a day, they need to at least spot clean and pick up the solids so that they're not stepping in it. They can't get away from it.[414]

Aside from their general contentions,[415] Respondents do not address this allegation or provide any specific evidence to rebut Complainant's evidence.

Respondents' general contentions are unsupported by the record and Complainants show by a preponderance of the evidence that Respondents failed to meet the Standards, 9 C.F.R. §

---

[411] Complaint at 18-19, ¶¶ 23a-i.

[412] Complaint at 19, ¶ 23a.

[413] CX 22 at 1. *See also* CX 22 at 5-6 (photos of the hybrid dog enclosure).

[414] Tr. Vol. 3, 666:18-667:2.

[415] Respondents' Post Hearing Brief at 20; *see supra* n. 333.

3.3(e)(1), because their facilities that were not impervious to moisture. Thus, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.3(e)(1).

2. Potable water for animals

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. §§ 3.10 and 3.130, by failing "to provide potable water to a dog"[416] and failing to "provide potable water to multiple tigers, four bears, one cougar, and one lion."[417] ACI Houser testified that this was a repeat citation and that:

> There were several -- all of the tiger water pools; 3 enclosures 1, 2, 3, 4, and 5, and including the bears, a cougar, the lion and -- and dog waters; all of these waters were full of green algae to where they actually had floating -- floating pads of algae. And this -- we -- we require that animals have potable water. They have to have water accessible to them that's clean to drink. And -- and when there's algae floating and – and pods of algae, that is not acceptable for numerous reasons. And this was something that Mr. Stark had stated that he -- it had been about three weeks or so since he had gotten to that due to construction issues.[418]

Aside from Respondents' general contentions, [419] they do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

---

[416] Complainant's Post-Hearing Brief at 100 (Citing CX 22).

[417] Complaint at 19, ¶ 23i.

[418] Tr. Vol. 3, 677:1-15 (referencing CX 22 at 3). Noting that the Inspection Report, CX 22, does not cite 9 C.F.R. § 3.10. *See also* Tr. Vol. 3, 678:2-25 (referencing CX 22 at 7 (photo of "Floating algae in drinking water tub in cougar enclosure with a dark green color and algal debris/foam on top"), 8 (photo of "Algae along bottom and gloating in tiger enclosure 2 water tub/bath pool causing water to be green), 12 (photo of "Bear enclosure with pond" green with algae)); CX 22 at 9 (photo of tiger enclosure 4 with green water in tub), 10 (photo of tiger enclosure 5 with green water in tub).

[419] Respondents' Post-Hearing Brief at 19 (contending that "violations were based upon appearances and not proof of actual and potential risk to animals or visitors, and Complainant failed to substantiate these violations by a preponderance of the evidence in the requisite manner[;]" that "the record confirmed that Complainant failed to establish how the conditions which the inspectors described posed any true sanitation or health risks to any animal at Respondents facility[;]" and that "[n]o testing of the water was conducted, and regardless of inspector's personal concerns about potable water, the record fails to establish the actual amount of content of any water source, or that the water contained algae.") (citing *Tri-State Zoological Park of W. Maryland Inc.*, 71 Agric. Dec. 915, 954 (U.S.D.A. 2012); citing "Transcript at 34:5-16 in Testimony of Tim Stark on 10/04/18"; *Hoctor*, 56 Agric. Dec. 416 (U.S.D.A. 1977)). *See also* Respondents' Proposed Findings & Conclusions at 6 ¶ 22.

I reject Respondents' general contentions. The Standards do not require that inspectors test water and do not require inspectors to "establish the actual amount of content of any water source." The Standards, 9 C.F.R. §§ 3.10 and 3.130 require that potable water be provided and that "all water receptacles must be kept clean and sanitized" or "sanitary."

The record, including the photos of the green water in the enclosures, CX 22 at 7-9, 10, and 12, demonstrate that that the water receptacles were not "kept clean and sanitized." Therefore, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. §§ 3.10 and 3.130.

3. Sanitization of primary enclosures for hybrid dogs

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.11(b)(2), by failing "to clean and sanitize two enclosures housing five hybrid dogs as required."[420] ACI Houser testified that this is a repeat violation and "in that sheltered enclosure, there was an accumulation of debris and feces that has not been cleaned for at least, you know, two or three days, from what Mr. Stark advised."[421] The Inspection Report, CX 22 at 2-3, completed by ACI Houser states that the enclosure has "an accumulation of more than 2 days of fecal material and hair." The Inspection Report, *id.*, explained that: "[a]ccumulated organic debris provides an optimal area for the growth of bacterial and fungal pathogens creating a disease hazard for the dogs. Additionally, this accumulated debris can attract pests including flies and vermin as well as contributes to odors within the facility."

Aside from their general contentions,[422] Respondents do not address this allegation specifically and do not provide specific evidence to rebut Complainant's evidence.

---

[420] Complainant's Post-Hearing Brief at 101 (citing Complaint ¶ 23c; CX 22 at 1; Tr. Vol. 3, 667).

[421] Tr. Vol. 3, 666:10-13 (referencing CX 22 at 1-2).

[422] Respondents' Post-Hearing Brief at 19; *see supra* n. 343.

I reject Respondents' general contentions. Claims of compliance without more are not enough to rebut the evidence of noncompliance provided by Complainant. The Standards, 9 C.F.R. § 3.11(b)(2), require sanitization of food and water receptacles for dogs "at least once every 2 weeks." or as necessary to "prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards." While Complainant contends, CX 22 at 1, that the enclosure had not been cleaned in at least two days, the fact of the accumulation of debris, food waste, and excreta is a preponderance of the evidence to the contrary. Thus, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. §§ 3.11(b)(2).

4. Tiger, Lion and Bear Enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.125(a), by housing tigers and lions in "enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals" and housing bears and tigers in enclosures that were not maintained in good repair.[423] Complainant notes that "[a]lthough respondents had corrected tiger pens 2 and 3, tiger pens 1, 4, and 5 and lion pen 1 still had the same noncompliances as documented in the previous report."[424] ACI Houser testified these violations were repeat, and observed that:

> There were various tiger and lion pens that their fence height were not according to how our – our performance standards were being looked at that time. They were under 12 feet, and we required that they be at least 16 feet high – straight high, or at least, you know, 12 feet with 3-foot kick-ins. This was something that had been discussed in previous reports – previous inspections.[425]

ACI Houser also testified that in the bear enclosure:

> there were several pieces of 2x4 and timber with two to three inches of nail

[423] Complainant's Post-Hearing Brief at 106 (citing Complaint ¶ 23d; CX 22). *See also* Complaint at ¶¶ 23d-g.

[424] *Id.* (citing CX 22 at 2; Tr. Vol. 3, 670:11-671:10). *See also* Tr. Vol. 3, 673:19-24 (referencing CX 22 at 10 (photo of tiger enclosure 5 with fence less than 12 feet)).

[425] Tr. Vol. 3, 670:13-22.

> sticking through the boards that were face-up. So the -- the nails were sticking up, and they were -- it was littered throughout that enclosure, primarily over a walking path that's worn. And I actually observed the bears frequently step over those nails of the board in pacing back and forth to the fence.[426]

ACI Houser observed that a tiger enclosure contained a wooden spool that had

> several protruding nails poking through, as well as the -- the spool has degraded to such a point that if an animal was going to continue to step and climb on it, they could get stabbed or their -- you know, from the protruding wood points, or get their leg stuck in the center of the spool.[427]

As to the fence height "noncompliance" Complainant alleges, Respondents seem to generally contend that there is no such requirement in the AWA statute or Regulations.[428] Aside from their other general contentions,[429] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

The Standards, 9 C.F.R. § 3.125(a), require that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals."[430] That Complainant presented no "evidence of any animal escaping confinement" is immaterial; such evidence is not required to prove a violation of 9 C.F.R. § 3.125(a).[431]

---

[426] Tr. Vol. 3, 671:18-672:5. *See also* Tr. Vol. 3, 672:16-19 (referencing CX 22 at 4 (photo of boards with nails sticking out in bear enclosure), 674:2-13 (referencing CX 22 at 11 (photo of bear in enclosure stepping over board with nails), 674:16-675:2 (referencing CX 22 at 12 (photo of bear enclosure littered with boards, broken pieces of wood)).

[427] Tr. Vol. 3, 672:23-673:14 (referencing CX 22 at 9 (photo of tiger enclosure 4 with broken spool with nails and broken boards exposed as well as no kick-ins and fences with height under 12 feet)). *See also* Tr. Vol. 3, 675:4-12 (referencing CX 22 at 13 (photo of broken spook in tiger enclosure)).

[428] *See* RX 56 at :53-4:20 (video of January 20, 2016 exit interview where Respondent Stark argues with inspectors, stating that such fence height requirements are not in the "Blue Book," referring to the book containing AWA Statutes and Regulations); *see also* Tr. Vol. 3, 861-864.

[429] Respondents' Post-Hearing Brief at 18; see *supra* n. 278.

[430] 9 C.F.R. § 3.125(a).

[431] *See supra* n. 280 and accompanying text.

As previously discussed, *supra* pp. 85-87,[432] because Complainant does not specifically contend or set out that the alleged height, "kick-in," or "hot wire" requirements set out in APHIS guidance[433] —referred to by APHIS inspectors as "performance standards" or "written policy"[434]—are enforceable "policy" based on, or interpretive rules of, the Standard, 9 C.F.R. § 3.125(a), in this decision I do not reach the issue of whether these are enforceable requirements apart from what is required by the Regulations and Standards themselves.[435] In these circumstances, I evaluate the record, including ACI Houser's testimony, to determine if a preponderance of the evidence demonstrates that Respondents violated the Standard as written, 9 C.F.R. § 3.125(a).

Complainant's evidence of dangerous debris found in the animal enclosures, including ACI Houser's testimony and photographs of the boards with protruding nails in the bear enclosure and spools with jagged nails in the tiger enclosure, shows that Respondents failed to maintain the facilities "in good repair." However, the evidence provided by Complainant, including inspector's testimony and report stating that the fence height not meet that set out in the alleged "performance standards,"[436] does not show that the enclosures were not "constructed

---

[432] In discussion regarding Complaint ¶¶ 22g-h.

[433] *See* RX 2.

[434] *See* Tr. Vol. 2, 413:12-414:1 (where Dr. Miller refers to the alleged height requirements as "written policy"); Tr. Vol. 3, 670:11-22 (where ACI Houser refers to the alleged height requirements as "performance standards").

To reiterate, although Complainant and Complainant's witnesses used the term "performance standard" throughout testimony and reports, any reference to or use of the words "performance standards" or "standards" are not to be confused with the regulation Standards (9 C.F.R. pt. 3) referred to capitalized.

[435] *See supra* n.308.

[436] ACI Houser, as mentioned, refers to the height, kick-in, and hot-wire "requirements" as "performance standards." Other inspectors have also referred to these "requirements" as "performance standards," *see* RX 56 (video of January 20, 2016 exit interview). However, Complainant has not addressed the source of such "performance standards," the authority from which they stem, the enforceability of such, or whether they are binding on licensees or me. *See* Tr. Vol. 3, 861:9-864:17 (where Respondent Stark, in cross-examination of ACI Houser, asks in reference to RX 2, entitled "Lion and Tiger Enclosure Heights and Kick-Ins Inspection," whether these "performance standards" are "actually considered." ACI Houser says

of such material and of such strength as appropriate . . . [or] maintained in good repair to protect the animals from injury and to contain the animals," 9 C.F.R. § 3.125(a). ACI Houser does not explain, and Complainant does not otherwise provide expert testimony or evidence, as to why the current fence could not contain the animals. I find that Complainants have shown by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a) as to the bear enclosure and tiger enclosures containing dangerous debris; but Complainant did not show by a preponderance of evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a) as to the tiger and lion enclosures' ability to contain the animals.

5. Enclosures with inadequate shade

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.127(a) by "hous[ing] twelve animals (eight foxes, one cougar, and three porcupines) in enclosures that did not provide them with adequate shade."[437] ACI Houser testified that, during the inspection, she observed that none of these enclosures had shade, "the sun was beating down on top of them," and that, even though the foxes had plastic igloos, such shelter would be too hot to seek shelter.[438] ACI Houser explained that Respondent Stark corrected the lack of shade by the end of the inspection.[439]

---

that it is "information . . .that our agency sent to all licensees in regards to the charges in the performance standards and what you need to do to become compliant for the future" but is otherwise unable to testify as to whether such "performance standards" are policy, guidance, or regulation); Tr. Vol. 6, 1533:3-1535:25 (where Respondent Stark, in cross-examination of Dr. Kirsten, asks where the height requirements are stated in the "Blue Book" and Dr. Kirsten attempts to explain in various ways that the "Blue Book" contains the Regulations and Standards and that the height requirement is a "performance standard," but otherwise does explain why the "performance standard" should be or is enforceable).

[437] Complaint at 19, ¶ 23h.

[438] Tr. Vol. 3, 675:25-676:11.

[439] Tr. Vol. 3, 676:12-23; CX 22 at 3.

Aside from their general contentions,[440] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.127(a) require that "sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight." Here, it appears that Respondents immediately corrected the lack of shade for the specified enclosures during the inspection. While subsequent correction of a violation does not obviate the violation,[441] it is considered for the purposes of penalties. I find that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.127(a).

e. Complaint Paragraphs 24a-f (August 20, 2014)

Complainant alleges that "on or about August 20, 2014, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a) by failing to meet the Standards," including 9 C.F.R. §§ 3.3(e)(1), 3.10, 3.125(a), and 3.130.[442]

1. Moisture in hybrid-dog enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.3(e)(1), by housing "three dogs in enclosures with surfaces that were not impervious to

---

[440] Respondents' Post-Hearing Brief at 19-20 (contending that "violations were based upon appearances and not proof of actual and potential risk to animals or visitors, and Complainant failed to substantiate these violations by a preponderance of the evidence in the requisite manner" and that "[t]here was no preponderance of reliable evidence that Respondents . . . failed to provide . . . adequate shade or shelter for any animal" but that "unrebutted testimony by Respondents' veterinarians reflected that more than adequate . . . shade, and shelter were provided for all of the animals involved, and met or exceeded scientific standards per industry standard publications.") (citing *Tri-State Zoological Park of W. Maryland Inc.*, 71 Agric. Dec. 915, 954 (U.S.D.A. 2012); Hosey, G., Me.fi, V., & Pankhurst, S. (2013. *Zoo animals: behavior, management, and welfare.* Oxford University Press.). *See also* Respondents' Proposed Findings & Conclusions at 6 ¶ 22.

I note that Respondents do not cite to the "unrebutted" veterinarian testimony regarding this matter and a search of the transcripts did not reveal relevant testimony by Respondents' veterinarian Dr. Pelphrey.

[441] *Hodgins*, 1997 WL 392606, at *22 (quoting *Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 142 (1996)).

[442] Complaint at 19-20, ¶¶ 24a-f.

moisture."[443] Complainant provides the testimony of ACI Houser who observed that these housing issues, regarding the enclosures of dog hybrids and coyote-dogs, were repeat violations; ACI Houser stated "nothing had been changed . . . [n]othing had been sealed . . . he did not repair the issue from the last inspection."[444]

Aside from their general contentions,[445] Respondents do not address this allegation or provide specific evidence to rebut Complainant's evidence.

Respondents' general contentions are unsupported by the record and Complainants show by a preponderance of the evidence that Respondents failed to meet the Standards, 9 C.F.R. § 3.3(e)(1), by maintaining facilities that are impervious to moisture. Thus, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.3(e)(1).

2. Potable water for animals

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. §§ 3.10 and 3.130, by failing "to provide potable water to a dog"[446] and failing to "provide potable water to multiple tigers, four bears, two cougars, and one lion."[447] ACI Houser testified that this was a repeat citation and that:

> Now all of the tiger enclosures: 1, 2, 3, 4, and 5 were full of algae. The bears, the cougars, the lion, and . . . the eight foxes and the cougar and the porcupines al -- also had the algae. But basically the conditions were the same if not a little worse.[448]

---

[443] Complainant's Post-Hearing Brief at 97 (Citing Complaint ¶ 24a).

[444] Tr. Vol. 3, 688:4-9 (referencing CX 23 at 2). *See also* Tr. Vol. 3, 689:19-690:2 (referencing CX 23 at 6 (photo of "hybrid wolf enclosure with unsealed wood and buildup of excreta and old food")), 690:9-15 (referencing CX 23 at 8 (photo of "unsealed wood and chewed posts in hybrid dog enclosure.")).

[445] Respondents' Post Hearing Brief at 20; *see supra* n. 333.

[446] Complainant's Post-Hearing Brief at 100 (Citing CX 23).

[447] Complaint at 20, ¶ 24f.

[448] Tr. Vol. 3, 689:7-14 (referencing CX 23 at 4). Noting that the Inspection Report, CX 23, does not cite 9 C.F.R. § 3.10. *See also* Tr. 691:6-692:3 (referencing CX 23 at 11 (photo of "Cougar 1 water with

Aside from Respondents' general contentions,[449] they do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

I reject Respondents' general contentions. The Standards do not require that inspectors test water and do not require inspectors to "establish the actual amount of content of any water source." The Standards, 9 C.F.R. §§ 3.10 and 3.130 require that potable water be provided and that "all water receptacles must be kept clean and sanitized" or "sanitary."

The record, especially the photos of the green water in the enclosure, CX 29 at 11-14, clearly demonstrates that that the water receptacles were not "kept clean and sanitized." Thus, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. §§ 3.10 and 3.130.

3. Sanitization of primary enclosures for hybrid dogs

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.11(b)(2), by failing "to clean and sanitize two enclosures housing five hybrid dogs as required."[450] ACI Houser testified that this is a repeat violation and "the enclosure with five dogs and hybrids, still [had] a large accumulation of fecal debris and food."[451] The Inspection Report, CX 23 at 3, completed by ACI Houser states that the enclosure has "an accumulation of more than 2 days of fecal material and hair" and the "meat that was put into the enclosure had an accumulation of fly eggs due to the heat and moisture over the past 2 days, and has not been

---

floating algae"), 12 (photo of "Lion enclosure 1 with . . . algae in water tank for lion and dog"), 13 (photo of "All water buckets(6) in fox enclosures with floating algae), 14 (photo of "Tiger enclosure 5 . . .with water tanks with floating algae")); CX 23 at 16 (photo of "Tiger enclosure 4 with pool and drinking water fool of floating algae and algae buildup in tank"), 17 (photo of "Black leopard water tank full of floating algae and algae buildup. Has not been cleaned 6-8 days."), 19 (photo of "Floating algae and algae buildup in cougar 2 water.").

[449] Respondents' Post-Hearing Brief at 19; *see supra* n. 419.

[450] Complainant's Post-Hearing Brief at 117 (citing Complaint ¶ 24(c); CX 23; Tr. Vol. 3, 688:14-18).

[451] Tr. Vol. 3, 688:14-18, 689:22-690:2 (referencing CX 23 at 3, 6 (photo of enclosure)).

eaten or the left over waste removed." The Inspection Report, *id.*, explained that: "[a]ccumulated organic debris provides an optimal area for the growth of bacterial and fungal pathogens creating a disease hazard for the dogs. Additionally, this accumulated debris can attract pests including flies and vermin as well as contributes to odors within the facility."

Aside from their general contentions,[452] Respondents do not address this allegation specifically and do not provide specific evidence to rebut Complainant's evidence.

I reject Respondents' general contentions. Claims of compliance without more are not enough to rebut the evidence of noncompliance provided by Complainant. The Standards, 9 C.F.R. § 3.11(b)(2), require that sanitization of water receptacles for dogs and cats "to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards." While Complainant contends, CX 23 at 3, that the enclosure had not been cleaned in at least two days, it is apparent that accumulation of debris, food waste, and excreta had accumulated. Thus, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. §§ 3.11(b)(2).

4. Tiger, Lion, and Bear Enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.125(a), by housing lions and tigers "in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals" and bears in an enclosure "with a wooden walkway that was in disrepair, and there were broken pieces of wood with exposed nails inside the bear enclosure."[453]

ACI Houser testified that some of these violations were repeat, including "tigers pen 4, tiger pen five, and 1 that were still out of compliance" and "the bear enclosure with the pond that

---

[452] Respondents' Post-Hearing Brief at 19-20; s*ee supra* n. 343.

[453] Complainant's Post-Hearing Brief at 122 (citing Complaint ¶ 24d, 24e; CX 23, Tr. 688:21-689:4).

had all of the wooden boards and nails sticking through, that -- all of that was still lying on the -- on the ground. None of that had been picked up."[454] ACI Houser also testified that, during the inspection, she observed that the fence height in the lion enclosure had not been repaired.[455]

Aside from their general contentions,[456] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

The Standard, 9 C.F.R. § 3.125(a), requires that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals." There is no requirement that there be proof an animal has escaped an enclosure to show that a licensee has failed to meet the Standards.[457]

As previously discussed, *supra* pp. 85-87,[458] and *supra* pp. 117-120,[459] in this decision I do not reach the issue of whether the fence height, "kick-in" and "hot-wire" "performance standards" are enforceable requirements apart from what is required by the Regulations and Standards themselves.[460] In these circumstances, I evaluate the record, including ACI Houser's testimony, to determine if a preponderance of the evidence demonstrates that Respondents violated the Standard as written, 9 C.F.R. § 3.125(a).

Complainant's evidence of dangerous debris found in the animal enclosures, including

---

[454] Tr. Vol. 3, 688:21-689:4 (referencing CX 23 at 3-4). *See also* Tr. 690:24-691:5 (referencing CX 23 at 9-10 (photos of the bear enclosure where boards are left with nails in them)

[455] Tr. Vol. 3, 691:8-14 (referencing CX 23 at 12 (photo of the lion enclosure fence)), 692:6-9 (referencing CX 23 14-15 (photos of fence enclosures less than 12 feet in height)).

[456] Respondents' Post-Hearing Brief at 18; see *supra* n. 278. *See also supra* n. 428.

[457] *See supra* n. 280 and accompanying text.

[458] In discussion regarding Complaint ¶¶ 22g-h.

[459] In discussion regarding Complaint ¶¶ 23d-g.

[460] *See supra* n. 308.

ACI Houser's testimony and photographs of the boards with protruding nails in the bear enclosure, shows that Respondents failed to maintain the facilities "in good repair." However, the record evidence does not show that the lion and tiger enclosures, particularly the existing fence, could not contain the animals as constructed. I find that Complainants have shown by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a) as to the bear enclosure; but Complainant did not show by a preponderance of evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a) as to the tiger and lion enclosures.

f. Complaint Paragraphs 25a-g (July 27, 2015)

Complainant alleges that "on or about July 25, 2015, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a) by failing to meet the Standards," including 9 C.F.R. §§ 3.1(a), 3.10, 3.125(a), 3.130, and 3.129.[461]

1. Housing facility for dog

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.1(a), when, during inspection, "APHIS found that respondents housed a dog (Bandit) in an enclosure that contained sheets of unused siding adjacent to the shelter structure."[462] Complainant provides the July 27, 2015 Inspection Report, CX 29, by Dr. Kirsten which does not specifically refer to a failure to meet standard 9 C.F.R. § 3.1(a) but does provide a photo, at 8, of "pieces of sheet steel laying on ground next to shelter for Lion, Chief, and dog, Bandit."

Aside from their general contentions,[463] Respondents do not specifically address this

[461] Complaint at 20-21, ¶¶ 25a-g.

[462] Complainant's Post-Hearing Brief at 95 (Citing CX 29).

[463] Respondents' Post-Hearing Brief at 19 (contending that "violations were based upon appearances and not proof of actual and potential risk to animals or visitors, and Complainant failed to substantiate these

allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.1(a) require that "Housing facilities for dogs and cats must . . . be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering." The photographic evidence provided does not show whether the sheet metal is in the dog's enclosure and there is no supporting narrative in the Inspection Report, CX 29. However, Dr. Kirsten testified that "there were sheets of metal siding laying next to the shelter for the lion in the -- in the pen."[464] I reject Respondent's general contentions and agree with Complainant that sheets of metal siding in an enclosure are noncompliant with the standard as they present a risk of injury to the animals. Thus, I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.1(a).

2. Potable water for animals

Second, Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. §§ 3.10 and 3.130, by failing to keep the water receptacle for a dog (Bandit) and a lion (Chief) clean and sanitized.[465] Dr. Kirsten testified that, during the inspection he observed that there was "green water in the enclosure for the lion, Chief, and dog, Bandit" which is corroborated by the Inspection Report and accompanying photos.[466]

Aside from Respondents' general contentions, [467] they do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

---

violations by a preponderance of the evidence in the requisite manner.") (citing *Tri-State Zoological Park of W. Maryland Inc.*, 71 Agric. Dec. 915, 954 (U.S.D.A. 2012)).

[464] Tr. Vol. 5, 1468:14-16. It has been established that the dog Bandit and the lion Chief cohabitate in an enclosure.

[465] Complainant's Post-Hearing Brief at 100 (citing CX 29).

[466] Tr. Vol. 5, 1468:20-21 (referencing CX 29 at 1, 7 (photo)).

[467] Respondents' Post-Hearing Brief at 19; *see supra* n. 419.

I reject Respondents' general contentions. The Standards do not require that inspectors test water and do not require inspectors to "establish the actual amount of content of any water source." The Standards, 9 C.F.R. §§ 3.10 and 3.130 require that potable water be provided and that "all water receptacles must be kept clean and sanitized" or "sanitary."

The record, especially the photo of the green water in the enclosure, CX 29 at 7, clearly demonstrates that that the water receptacle was not "kept clean and sanitized." I find Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. §§ 3.10 and 3.130.

3. Lion, tiger, and hyena enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.125(a), by housing tigers and lions "in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals[;]"hyenas in enclosures with "broken wires protruding into the enclosure"; and a lion in an enclosure "that contained sheets of unused siding adjacent to the shelter structure."[468] Complainant also contends, *id.*, "[n]one of these enclosures have any angled top fencing (kick-in), or any additional means to ensure adequate containment."

Complainant provides the testimony of Dr. Kirsten who stated that, during the inspection, he observed a repeat violation "in that, there was still three pens, large feline pens, that were out of compliance with that section, Tiger Pen 4 and 5 and Lion Pen 1. Also[,] there were some broken wire ends protruding into the hyena enclosure. And there were sheets of metal siding laying next to the shelter for the lion in the -- in the pen."[469] Dr. Kirsten explained that "[t]he

[468] Complainant's Post-Hearing Brief at 106-7 (citing Complaint ¶ 25(c)-25(e)).

[469] Tr. Vol. 5, 1468:9-16 (referencing CX 29 at 1, 5 (photo of broken wire ends in hyena enclosure), 8 (sheet metal in lion enclosure)).

kick-in is…required as – in order to prevent escape. And especially on -- well in enclosures that are at least 12 feet high, and then we, you know, for the – we've asked persistently for a 3-foot kick-in on those enclosures."[470]

Aside from their general contentions,[471] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

The Standard, 9 C.F.R. § 3.125(a), requires that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals." There is no requirement that there be proof an animal has escaped an enclosure to show that a licensee has failed to meet the Standards.[472]

As previously discussed, *supra* pp. 85-87,[473] and *supra* pp. 117-120,[474] in this decision I do not reach the issue of whether the fence height, "kick-in" and "hot-wire" "performance standards" are enforceable requirements apart from what is required by the Regulations and Standards themselves.[475] But the record evidence, including ACI Houser's testimony, demonstrate by a preponderance of the evidence that Respondents violated the Standard as written, 9 C.F.R. § 3.125(a).

Complainant's evidence of dangerous debris found in the animal enclosures, including Dr. Kirsten's testimony and photographs showing hanging wires in the hyena enclosures and sheet metal debris in the lion enclosure, shows that Respondents failed to maintain these

---

[470] Tr. Vol. 5, 1471:8-16. *See also* Tr. 1472:20, 1473-1475; CX 29 at 1.

[471] Respondents' Post-Hearing Brief at 18; see *supra* n. 278. *See also supra* n. 428.

[472] *See supra* n. 280 and accompanying text.

[473] In discussion regarding Complaint ¶¶ 22g-h.

[474] In discussion regarding Complaint ¶¶ 23d-g.

[475] *See supra* n. 308.

facilities "in good repair." However, the record does not show that the lion and tiger enclosures were not constructed "in a manner that would contain those animals." Aside from citing the "performance standard," Dr. Kirsten does not testify, and Complainant provides no other expert testimony or evidence, as to why a "kick-in" is required or why the lion and tiger enclosure fencing could not contain the animals as constructed. Therefore, I find that Complainants have shown by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a), by failing to maintain the lion, and hyena enclosures in good repair; but Complainant did not show by a preponderance of the evidence that the lion and tiger enclosures were insufficient to contain the animals.

3. Diet for animals

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.129, by failing "to provide juvenile tigers a diet that was wholesome, palatable, and free from contamination and prepare with consideration for the age, species, condition, size, and type of animals."[476] Dr. Kirsten testified that "there were four 10-week-old tiger cubs that were on a diet which was described to me as 100 percent formula, utilizing Fox Valley 32/40. They were no -- I was told they were not being offered any ground meat at the time" and he explained the diet he recommended to licensee.[477] In his Inspection Report, CX 29 at 1-2, Dr. Kirsten explains that "[b]y the time they [the baby tigers] are 10-12 weeks old they should be getting a diet very close to that of an adult in order to provide for added nutritive value."

Aside from Respondents' general contentions,[478] Respondents do not address this

[476] Complaint at 21, ¶ 25g.

[477] Tr. Vol. 5, 1468:25-1469:16.

[478] Respondents' Post-Hearing Brief at 19 (contending "violations were based upon appearances and not proof of actual and potential risk to animals or visitors, and Complainant failed to substantiate these violations by a preponderance of the evidence in the requisite manner.") (citing *Tri-State Zoological Park*

allegation specifically or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.129, require in relevant part that animals' food "shall be wholesome, palatable, and free from contamination and . . .shall be prepared with consideration for the age, species, condition, size, and type of the animal." I find that Complainants have shown by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.129.

g. Complaint Paragraphs 26a –l (October 8, 2015)

The Complaint alleges that "on or about October 8, 2015, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a) by failing to meet the Standards," including 9 C.F.R. §§ 3.1(a), 3.3(e)(1), 3.4(b)(2), 3.80(a)(2)(viii), 3,125(a), and 3.127(d).[479]

1. Housing facility for dog

Complainant contends that "APHIS found that respondents housed two dogs in an enclosure that contained a shelter in disrepair, with exposed nails and detached wood" in noncompliance with the Standards, 9 C.F.R. § 3.1(a).[480] Complainant provides the testimony of ACI Houser who stated that during the inspection she observed an enclosure for two dogs in which the shelter had "various broken planks of wood, more pulled apart on the roof and on the sides" and that "[n]ails were exposed."[481]

Aside from their general contentions,[482] Respondents do not specifically address this

---

of W. Maryland Inc., 71 Agric. Dec. 915, 954 (U.S.D.A. 2012)). *See also* Respondents' Proposed Findings & Conclusions at 5 ¶ 24.

[479] Complaint at 21-22, ¶¶ 26a-l.

[480] Complainant's Post-Hearing Brief at 95 (citing Tr. Vol. 3, 707-714; CX 35). Noting that the Inspection Report includes the narrative of the green water in the dog Bandit and the lion Chief's enclosure under cite to violation of standard 9 C.F.R. § 3.130.

[481] Tr. Vol. 3, 707:7-22 (referencing CX 35 at 2, 9 (photo)). The photo does not show wood enclosure alleged to be in disrepair with exposed nails.

[482] Respondents' Post-Hearing Brief at 19; *see supra* n. 463.

allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.1(a) require that "Housing facilities for dogs and cats must . . . must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering." Based on the Inspection Report and ACI Houser's testimony, as well as and the lack of evidence offered by Respondents to rebut Complainant's evidence, I find that the preponderance of evidence shows that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.1(a).

2. Moisture in dog enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.3(e)(1), by housing "two Terrier dogs in enclosures with surfaces that were not impervious to moisture."[483] ACI Houser testified that the "two terrier dogs . . . had unsealed and chewed the wood on all sides of their kennel."[484]

I find the record insufficient to show that Respondents failed to meet the Standards, 9 C.F.R. § 3.3(e)(1). Aside from ACI Houser's brief testimony about the terriers' kennel, which does not fully explain why the chewed wood might cause the kennel to be permeable to moisture, the Inspection Report does not reference Standard 9 C.F.R. § 3.3(e)(1), and there is no photographic evidence showing whether the enclosure was impervious to moisture.

3. Outdoor facilities for dogs

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.4(b)(2), by housing "two dogs, a Great Dane and a Mastiff, in an enclosure that did not provide the dogs with adequate shelter from the sun."[485] ACI Houser testified that the enclosure housing

---

[483] Complainant's Post-Hearing Brief at 98 (citing Complaint ¶ 26(b); CX 35; Tr. Vol. 3, 707-714).

[484] Tr. Vol. 3, 707:13-14 (referencing CX 35 at 2). I note that the Inspection Report, CX 35, does not recite a violation of 9 C.F.R. § 3.3(e)(1) and does not include any pictures of the terriers' kennel.

[485] Complainant's Post-Hearing Brief at 98 (citing CX 35; Tr. Vol. 3, 707-714).

the Great Dane and mastiff did not have any shade aside from a plastic container used as a dog house.[486]

Aside from their general contentions,[487] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

The Standard, 9 C.F.R. § 3.4(b)(2), requires that "[s]helters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and must . . . [p]rovide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow." I reject Respondents general contentions. Complainant provided testimonial, written, and photographic evidence in support of this allegation, all unrebutted by Respondent. Therefore, I find that Complainant has shown by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.4(b)(2).

4. Convenient access to food and water for primates

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.80(a)(2)(viii) by housing "three ring-tailed lemurs in an enclosure that did not provide them with easy and convenient access to food and water."[488] ACI Houser testified that, during the inspection, she observed that the "[g]uillotine door for three ring-tailed lemurs was broken and did not allow for the lemurs to be able to get inside the shelter facility overnight" but, because the lemurs' food and water were on the inside, the lemurs "had been locked out without food and water or shelter outside all night long."[489]

---

[486] Tr. Vol. 3, 708:3-9 (referencing CX 35 at 2, 9 (photo)). I note that the photo is focused on the Great Dane and does not show the full enclosure.

[487] Respondents' Post-Hearing Brief at 19-20; *see supra* n. 440.

[488] Complainant's Post-Hearing Brief at 101 (citing Complaint ¶ 26(d); Tr. Vol.3, 707-714; CX 35)

[489] Tr. Vol. 3, 713:15-714:7 (referencing CX 35 at 5). The Inspection Report does not contain any photographic evidence of the lemur enclosure.

Aside from general contentions, [490] Respondents do not specifically address or deny this allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.80(a)(2)(viii), require that "[p]rimary enclosures must be constructed and maintained so that they . . . [p]rovide the nonhuman primates with easy and convenient access to clean food and water. I find that Complainant has shown by a preponderance of the record evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.80(a)(2)(viii).

5. Tiger, lion, hyena, and cougar enclosures

Complainant contends that Respondents failed to meet the Standards, 9 C.F.R. § 3.125(a), by housing tigers and lions "in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals" and hyenas, a cougar, and multiple tigers in enclosures that were in disrepair. [491] ACI Houser testified that, during the inspection, she observed a repeat violation of the tiger and lion pens not having the correct fence height and having a "large amount of bone and debris litter in the enclosure," and a "hyena enclosure where the fencing had been pulled apart, so there were numerous wires there were protruding into the enclosure approximately six to nine inches of length" which were poking the hyena in the chest and neck.[492] ACI Houser also stated that the shelter for the cougar

---

[490] Respondents' Post-Hearing Brief at 19 (contending ""violations were based upon appearances and not proof of actual and potential risk to animals or visitors, and Complainant failed to substantiate these violations by a preponderance of the evidence in the requisite manner") (citing *Tri-State Zoological Park of W. Maryland Inc.*, 71 Agric. Dec. 915, 954 (U.S.D.A. 2012)); *id.* at 21 (contending "deficiencies that were either corrected or were not timely allowed to be corrected simply cannot be used to support a license suspension or enforcement proceeding.") (citing *Hodgins v. U.S. Dep't of Agric.*, 238 F3d 421 (6th Cir 2000)).

[491] Complainant's Post-Hearing Brief at 107-8 (citing Complaint ¶ 26(e)-26(k); Tr. Vol. 3, 707-714; CX 35).

[492] Tr. Vol. 3, 708:10-709:5 (referring to CX 35 at 3-4, 10 (photo of Pen #5, lion enclosure), 11(photo of Pen #6, tiger enclosure)), 710:1-9 (referring to CX 35 at 12 (photo of Pen #4, lion enclosure)), 710:20-711:6 (referring to CX 35 at 14 (photo of hyena enclosure)).

had "a roof and side wall that was broken – and needed to be repaired."[493]

Aside from their general contentions,[494] Respondents do not address this allegation specifically or provide specific evidence to rebut the evidence offered by Complainant.

The Standard, 9 C.F.R. § 3.125(a), requires that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals." There is no requirement that there be proof an animal has escaped an enclosure to show that a licensee has failed to meet the Standards.[495]

As previously discussed, *supra* pp. 85-87,[496] and *supra* pp. 117-120,[497] in this decision I do not reach the issue of whether the fence height, "kick-in" and "hot-wire" "performance standards" are enforceable requirements apart from what is required by the Regulations and Standards themselves.[498] In these circumstances, I evaluate the record, including ACI Houser's testimony, to determine if a preponderance of the evidence demonstrates that Respondents violated the Standard as written, 9 C.F.R. § 3.125(a).

Complainant's evidence of dangerous debris found in the animal enclosures, including ACI Houser's testimony and photographs showing protruding wires in the hyena enclosure and bone debris and litter in the tiger enclosures, shows that Respondents failed to maintain the facilities "in good repair." However, the record does not show that the lion and tiger enclosures were not constructed "in a manner that would contain those animals." ACI Houser does not

---

[493] Tr. Vol. 3, 709:6-9, 710:12-17 (referring to CX 35 at 13, 16 (photo of cougar enclosure with broken fence), 711:9-17 (referring to CX 35 at 14 (photo of cougar enclosure with debris)).

[494] Respondents' Post-Hearing Brief at 18; see *supra* n. 278. *See also supra* n. 428.

[495] *See supra* n. 280 and accompanying text.

[496] In discussion regarding Complaint ¶¶ 22g-h.

[497] In discussion regarding Complaint ¶¶ 23d-g.

[498] *See supra* n. 308.

explain, and Complainant provides no other expert testimony or evidence, as to why the fences of the lion and tiger enclosures as constructed would not contain the animals. Therefore, I find that Complainants have shown by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a), by not maintaining the tiger and hyena enclosures in good repair; but I find that Complainant did not show by a preponderance of the evidence that the lion and tiger enclosures were insufficient to contain the animals.

6. Perimeter fences

Complainant contends that Respondents did not meet the Standards, 9 C.F.R. § 3.127(d), by housing animals in facilities with an inadequate perimeter fence that would sufficiently "protect these animals from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence."[499] ACI Houser testified that she observed that the height of the fence did not meet height requirement set out in the Standards, 9 C.F.R. § 3.127(d), and that:

> a large section that two poles had been damaged; they had been bent approximately two feet off the ground, which allowed an angle of the fence posts in such a way that, you know, it -- it changed the height of the perimeter fence as well as the strength of it. And on the two poles, there's -- there were no fence clips connected to it, so the fence was just loose on it, resulting in a weak area in a that, you know, if an animal want [sic] to, they could either get in or out. This -- this stretched approximately 20 to 40 feet in length of – this area of disrepair.[500]

Complainant did not provide any photographs or other evidence of the structural instability of the fence at issue.

Aside from their general contentions,[501] Respondents do not address this allegation

---

[499] Complaint ¶ 26(l).

[500] Tr. Vol. 3, 712:20-713:11 (referencing CX 35 at 4). The Inspection Report, CX 35, does not include pictures of the perimeter fencing.

[501] Respondents' Post-Hearing Brief at 18; *see supra* n. 278.

specifically or provide specific evidence to rebut the evidence offered by Complainant.

That Complainant did not present evidence of an actual animal escape is immaterial to whether Respondents violated the Standard.[502] Respondent's other general contentions are without merit. The Standard, 9 C.F.R. § 3.127(d), requires that outdoor housing facilities must be enclosed by a perimeter fence at least eight feet high for dangerous animals and at least six feet high for other animals (unless exempted in writing by the Administrator after a submitted request for exemption by the licensee, and the record reveal no such exemption here). The regulation Standards, *id.*, require that a perimeter fence "protects the animals in the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals in the facility." I find that Complainant showed by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.127(d).

h. Complaint Paragraphs 27a-i (January 20, 2016)

The Complaint alleges that "on or about January 20, 2016, Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a) by failing to meet the Standards," including 9 C.F.R. §§ 3.1(a), (c)(1)(ii), 3.4(b), 3.125(a), and 3.127(b).[503]

1. Housing facilities for dogs

Complainant contends that Respondents housed a hybrid dog in an "enclosure that contained a shelter in disrepair, with exposed nails and detached wood"[504] in violation of 9 C.F.R. §§ 3.1(a), (c)(1)(ii). ACI Houser testified that this is a repeat offence, that there were "two nails protruding out that can come in contact as the dogs jump on and off of the enclosure," and

[502] Respondents' Proposed Findings & Conclusions at 5 ¶ 16. *See supra* n. 280.

[503] Complaint at 23-24, ¶¶ 27a-i.

[504] Complainant's Post-Hearing Brief at 95 (citing CX 36; Tr. Vol. 3., 720-729).

that a board on top of the shelter within the enclosure was missing "[s]o that just allows the rain and snow to go directly into the housing."[505]

Aside from their general contentions,[506] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. §§ 3.1(a), (c)(1)(ii), require that housing for dogs "must be designed and constructed so that they are structurally sound[,] . . . kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering." The Standards, *id.*, also require that "[i]nterior and any surfaces that come in contact with dogs or cats must: . . . [b]e free of jagged edges or sharp points that might injure the animals."

I reject Respondents general contentions. Complainant provided testimonial, written, and photographic evidence in support of this allegation sufficient to establish a *prima facie* violation, and Respondent presented no evidence in response. Therefore, I find that Complainant has shown by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. §§ 3.1(a), (c)(1)(ii).

2. Outdoor facilities for dogs

Complainant contends that Respondents failed to the meet the Standards, 9 C.F.R. §§ 3.4 and 3.4(b), by housing "a hybrid dog in an enclosure that contained a shelter that did not protect the dog from the elements, and housed a dog (Bandit) in an enclosure that contained a shelter that did not contain adequate bedding to protect the dog from the cold."[507] ACI Houser testified that during the inspection "the ground was snow-covered, it was extremely cold, there was a

---

[505] Tr. Vol 3, 721:2-10 (referencing CX 36 at 2-3, 17-18 (photos)).

[506] Respondents' Post-Hearing Brief at 19; *see supra* n. 463.

[507] Complainant's Post-Hearing Brief at 98 (citing CX 36, Tr. Vol.3, 720-729).

three-sided shelter, and there was no bedding on the floor. So the – the dog only had – the dirt or snow to lay on."[508]

Aside from their general contentions,[509] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.4, require that "[o]utdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility" which "contain a roof, four sides, and a floor," provide adequate protection from the cold and heat, and contain "clean, dry, bedding material if the ambient temperature is below 50 °F (10 °C). Additional clean, dry bedding is required when the temperature is 35 °F (1.7 °C) or lower."

I reject Respondents' general contentions. Complainant provided testimonial, written, and photographic evidence of this allegation. Therefore, I find that Complainant has shown by a preponderance of the evidence that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.4.

3. Tiger, lion, hyena, and coyote enclosers

Complainant contends that Respondents failed to meet Standards, 9 C.F.R. § 3.125(a), by housing tigers and lions "in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals[;]"[510]hyenas in in an enclosure in disrepair; and a coyote in an enclosure with a shelter that was open to the elements. ACI Houser testified that the tiger and lion enclosures were less than twelve feet high, a repeat violation and that the fencing of one of the tiger enclosures "was pulled away from his shelter box creating a hole about one to two feet in diameter with broken wires poking into the

[508] Tr. Vol. 3, 721:16-24 (referring to CX 36 at 3, 20 (photo), 28 (photo)).

[509] Respondents' Post-Hearing Brief at 19-20; *see supra* n. 440.

[510] Complainant's Post-Hearing Brief at 108 (citing Complaint ¶ 27(d)-27(f); CX 36; Tr. Vol. 3, 720-729).

enclosure that could come into contact with the animals."[511] ACI Houser also testified that there was a section of the hyena enclosure "where the fence has been pulled apart, resulting in multiple wires protruding into the enclosure."[512] ACI Houser did not specifically testify as to the coyote enclosure this specific allegation (Complaint at 23, para. 27f) was not addressed in Complainant's Post-Hearing Brief.

Aside from their general contentions,[513] Respondents do not address this allegation specifically or provide specific evidence to rebut Complainant's evidence offered.

The Standard, 9 C.F.R. § 3.125(a), requires that facilities "must be constructed of such material and strength as appropriate for the animals involved" and that "housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals." There is no requirement that there be proof an animal has escaped an enclosure to show that a licensee has failed to meet the Standards.[514]

As previously discussed, *supra* pp. 85-87,[515] and *supra* pp. 117-120,[516] in this decision I do not reach the issue of whether the fence height, "kick-in" and "hot-wire" "performance standards" are enforceable requirements apart from what is required by the Regulations and Standards themselves.[517] In these circumstances, I evaluate the record, including ACI Houser's testimony, to determine if a preponderance of the evidence demonstrates that Respondents violated the Standard as written, 9 C.F.R. § 3.125(a).

---

[511] Tr. Vol. 3, 722:13-723:5 (referencing CX 36 at 3-4, 21-27 (photos)).

[512] Tr. Vol. 3, 723:6-12, 16-25 (referencing CX 36 at 3-4, 19 (photo)).

[513] Respondents' Post-Hearing Brief at 18; *see supra* n. 278. *See also supra* n. 428.

[514] *See supra* n. 280 and accompanying text.

[515] In discussion regarding Complaint ¶¶ 22g-h.

[516] In discussion regarding Complaint ¶¶ 23d-g.

[517] *See supra* n. 308.

Complainant's evidence of dangerous debris found in the hyena enclosure, including ACI Houser's testimony and photographs of the protruding wires, shows that Respondents failed to maintain the enclosure "in good repair." Further, the evidence showing the gaps in fencing and broken wires in the tiger enclosure, particularly ACI Houser's testimony, demonstrate that the tiger enclosure was not "maintained in good repair to protect the animals from injury and to contain the animals" in accordance with the Standard. However, the record does not show that the lion enclosure was not constructed "in a manner that would contain those animals." Complainant does not provide specific evidence, either in ACI Houser's testimony or other expert testimony, explaining why the lion enclosure as constructed would not contain the animal.

I find that Complainants have shown by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a), as regards hyena enclosure not maintained in good repair and the tiger enclosure that was in disrepair and not sufficiently constructed to maintain the animals; but I find that Complainant did not show by a preponderance of the evidence that the lion enclosure was insufficient to contain the animal. Further, I do not find the record sufficient to show that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.125(a), with regards to a coyote enclosure as Complainant did not provide evidence or testimony regarding this allegation.

4. Shelter from elements for animals

Complainant contends that Respondents failed to meet Standards, 9 C.F.R. § 3.127(b), by housing "a coyote in an enclosure containing a shelter that was open to the elements," housing "three wolves in an enclosure containing a single shelter that was not adequate to accommodate all three wolves," and housing a lion and tiger "in an enclosure that did not provide adequate

shelter from the elements for both animals."[518] ACI Houser testified that the enclosure housing wolves "only had one medium to large-size igloo" which was "about big enough for one of those animals, so that means the other two animals are completely out in the open." [519] ACI Houser also observed that the lion and tiger enclosure did not have enough shelter to fit all animals simultaneously but did not fully explain why or how the animals did not have adequate shelter.[520] However, the Inspection Report, CX 36, does not include pictures of the shelter in the lion and tiger enclosure. ACI Houser did not testify as to the coyote enclosure, the coyote enclosure is not mentioned in the Inspection Report, CX 36, and Complainant did not address the coyote enclosure in its Post-Hearing Brief.

Aside from their general contentions, [521] Respondents do not specifically address this allegation or provide specific evidence to rebut Complainant's evidence.

The Standards, 9 C.F.R. § 3.127(b), require that appropriate natural or artificial shelter be provided for all animals housed outdoors to provide protection and prevent discomfort. I reject Respondents general contentions. Complainant provided testimonial, written, and photographic evidence of the allegations regarding the wolf enclosure. Therefore, I find that Complainants have shown by a preponderance of the evidence that Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.127(b), regarding the wolves' enclosure. However, regarding the lion, tiger, and coyote enclosures, I find the record insufficient to show that Respondents violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, 9 C.F.R. § 3.127(b), because Complainant did not provide

[518] Complaint at 23, ¶¶ 27g-i.

[519] Tr. Vol. 3, 727:22-728:7 (referencing CX 36 at 4, 18 (photo)).

[520] Tr. Vol. 3, 728:8-16 (referencing CX 36 at 4).

[521] Respondents' Post-Hearing Brief at 19-20; *see supra* n. 440.

sufficient evidence regarding these allegations to establish a *prima facie* violation.

X. Respondents' Other Contention: Bias

Respondents claim "it has been expressly found previously that APHIS is biased in general in favor of animal rights activists and against Class B animal dealers."[522] As support for this claim, Respondents contend that, when asked "if it had ever been noted in federal court that he and Dr. Gondentyre had been instructing APHIS inspectors to falsify inspection reports on certain targeted licensees" Dr. Gibbins "perjured his testimony by denying his involvement" because "it clearly states and was brought to light that Dr. Goldentyre was noted by a federal judge to have been purposely instructing inspectors to do just that."[523]

First, Respondent cites *Hodgins* in its contention that APHIS has been found "biased in general in favor of animal rights activists and against Class B animal dealers." However, the 6th Circuit Judge in *Hodgins* did not find bias. Rather, in *Hodgins* the 6th Circuit found that the ALJ erred in denying, and Judicial Officer erred in upholding the denial of, respondent's proposed evidence of bias and noted that such evidence would be relevant to the determination of inspectors' testimony and report credibility.[524] The Decision and Order in *Hodgins* was vacated and the case remanded to the agency for further proceedings.[525] Here, Respondents enter no specific evidence to show that the APHIS inspectors involved in this proceeding demonstrated

---

[522] Respondents' Post-Hearing Brief at 29 (citing *Hodgins v. U.S. Dep't of Agric.*, 238 F3d 421 (6th Cir 2000).

[523] *Id.* at 30 (citing "Caudill, Kalmanson, et. al, Docket 10-0416, Decision and Order as to Mitchell Kalmanson"; 'Terranova, et. al, 15-0058, 15-0059, 16-0037, 16-0038"; "AWA Docket No. 16-0124 and AWA DocketNo. [sic] 16-0125 Page: 201 line 22-Page: 202 line 8").

[524] *Hodgins v. U.S. Dep't of Agric.*, 2000 WL 1785733, *30-31, 238 F.3d 421 (6th Cir. 2000).

[525] *Id.* at 32. As Complainant notes in its Reply Brief at 49, after remand to the Department, the 6th Circuit affirmed the Judicial Officer's Decision and Order on remand and, in its affirmation of the Decision and Order on remand, the 6th Circuit does not make a determination of APHIS bias against animal rights activists or Class B licensees. *Hodgins v. US. Dep't of Agric.*, 33 Fed. Appx 784 (6th Cir. 2002).

any bias in conducting inspections, reporting, or testifying. Unlike the ALJ in *Hodgins* I have not denied Respondents the entry of any alleged evidence of bias. A vague claim of bias does not show that Respondents were targeted in any way and does not discredit the evidence presented by Complainant in support of the allegations.

Second, Respondents claim that Dr. Gibbens participated in a scheme with Dr. Godentyre to instruct "APHIS inspectors to falsify inspection reports on certain targeted licensees" and thus "perjured his testimony by denying his involvement" is unsubstantiated. Respondents do not cite any federal case to show that any such scheme existed, was alleged, or was tried. The citations Respondents presented (listing names as follows: *Kalmanson*, *Terranova*, and *Stark*) are vague, at best, and do not appear to support Respondents' contentions. As to the September 24, 2012 "Decision and Order as to Mitchell Kalmanson,"[526] there is no mention of either Dr. Gibbens or Dr. Goldentyre. In *Terranova,* USDA AWA Docket Nos. 15-0058, 15-0059, 16-0037, and 16-0038, the initial September 26, 2016 Decision and Order was appealed on November 29, 2016. Although not entirely relevant as the initial Decision and Order was appealed and, thus, not final, the September 26, 2016 Decision and Order in *Terranova* mentioned neither Dr. Goldentyre nor Dr. Gibbens and did not find any scheme of selective enforcement or bias. Lastly, Respondents cite their own cases, AWA Docket Nos. 16-0124 and 16-0125, and provide page numbers to an unidentified document which I assume is meant to refer to the transcript of the instant hearing. Respondents citations are irrelevant to any bias claim and Respondents' claim that a scheme for selective enforcement was "noted by a federal judge" is unsubstantiated.

Further, Respondents' theory or contention that APHIS inspectors' reports are "biased against Respondents" because bias "from superiors within the USDA . . . passed down to their

[526] *Caudill*, 71 Agric. Dec. 1007 (U.S.D.A. 2012). The undersigned assumes this is the case to which Respondents intend to cite. However, Respondents only included a simple italicized name without further citation, so it is not certain this is the case Respondents intended to cite.

inspectors who, in fact, only do what they are told to do in order to maintain their employment" is equally unsubstantiated and without merit. A presumption of regularity supports the official acts of public officers.[527] Thus, in the absence of evidence to the contrary, I presume that APHIS inspectors' inspections and reports were completed according to the AWA and the Regulations promulgated thereunder and not to carry out biased targeted enforcement that "stem" from USDA superiors.

XI. Penalties

Complainant recommends a cease and desist order, revocation of Respondents' AWA

---

[527] *Blackburn*, 2017 WL 9473110, at *5 (U.S.D.A. 2017) (citing *National Archives and Records Admin, v. Favish*, 541 U.S. 157, 174 (2004) (holding, absent clear evidence to the contrary, there is a presumption of legitimacy accorded to the government's official conduct); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926) (stating a presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume public officers have properly discharged their official duties); *Sunday Lake Iron Co. v. Wakefield TP*, 247 U.S. 350, 353 (1918) (stating the good faith of taxing officers and the validity of their actions are presumed; when assailed, the burden of proof is on the complaining party); *Lawson Milk Co. v. Freeman*, 358 F.2d 647, 649 (6th Cir. 1966) (stating, without a showing that the action of the Secretary of Agriculture was arbitrary, bis action is presumed to be valid); *Donaldson v. United States*, 264 F.2d 804, 807 (6th Cir. 1959) (stating the presumption of regularity supports official acts of public officers and, in the absence of clear evidence to the contrary, courts presume public officers have properly discharged their duties); *Greenville Packing Co.*, 59 Agric. Dec. 194, 220-22 (U.S.D.A. 2000) (stating, in the absence of evidence to the contrary, Food Safety and Inspection Service inspectors are presumed to have properly issued process deficiency records), *aff'd in part and transferred in part*, No. 00-CV-1054 (N.D.N.Y. Sept. 4, 2001), *appeal withdrawn*, No. 01-6214 (2d Cir. Apr. 30, 2002); Shepherd, 57 Agric. Dec. 242, 280-82 (U.S.D.A. 1998) (stating, in the absence of clear evidence to the contrary, United States Department of Agriculture inspectors and investigators are presumed to have properly discharged their duty to document violations of the Animal Welfare Act); *Auvil Fruit Co.*, 56 Agric. Dec. 1045, 1079 (U.S.D.A. 1997) (stating, without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *Mil-Key Farm, Inc.*, 54 Agric. Dec. 26, 55 (U.S.D.A. 1995) (stating, without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *King Meat Co.*, 40 Agric. Dec. 1468, 1494 (U.S.D.A. 1981) (stating there is a presumption of regularity with respect to the issuance of instructions as to grading methods and procedures by the Chief of the Meat Grading Branch, Food Safety and Quality Service, United States Department of Agriculture), *aff'd.* No. CV 81-6485 (C D. Cal. Oct. 20, 1982), *remanded*, No. CV 81-6485 (C.D. Cal. Mar. 25, 1983) (to consider newly discovered evidence), *order on remand*, 42 Agric. Dec. 726 (U.S.D.A. 1983), *aff'd*, No. CV 81-6485 (C.D. Cal. Aug. 11, 1983) (original order of Oct. 20, 1982, *reinstated nunc pro tunc*), *aff'd,* 742 F.2d 1462 (9th Cir. 1984) (unpublished) (not to be cited as precedent under 9th Circuit Rule 21); *Gold Bell-I&S Jersey Farms. Inc.*, 37 Agric. Dec. 1336, 1361 (U.S.D.A. 1978) (rejecting the respondent's theory that United States Department of Agriculture shell egg graders switched cases of eggs to discredit respondent, in view of the presumption of regularity supporting acts of public officials), *aff'd*, No. 78-3134 (D.N.J. May 25, 1979), *aff'd mem.*, 614 F.2d 770 (3d Cir. 1980).

license, joint and several civil penalties of not less than $339,000 for Respondents, and a civil penalty of $40,000 for Respondent Stark.

Respondents' argue that Complainant "demands monetary penalties . . . the factual record developed at trial does not possibly support" and "overreaches to assess penalties in a magnitude higher" than $30,000 and that the penalties requested by Complainant are "entirely incommensurate with the minor conduct at issue."[528] Respondents aver that they have not failed to comply with any part of the AWA, Regulations, or Standards and therefore "[n]o cease and desist order, license revocation, or civil penalty is therefore appropriate."[529]

Under the AWA, the appropriateness of the civil penalty should be determined "with respect 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."[530] As discussed fully herein, I have found that Respondents violated the AWA and Regulations on many occasions. Further, I disagree with Respondents that their conduct was "minor." Conversely, based on the record and following analysis of the factors, including willfulness, size of business, gravity, history, and good faith, in my opinion the issuance of a cease and desist order and only civil penalties would not be sufficient to ensure Respondents' compliance with the AWA and Regulations. I also do not think only a minimal civil penalty and issuance of a cease and desist order would deter others from violating the AWA and Regulations to fulfill the remedial purpose of the AWA. Thus, I find that revocation of AWA license 32-C-0204, permanent disqualification from obtaining an

---

[528] Respondents' Post-Hearing Brief at 31 (citing *Spencer Livestock Commission Co.*, 46 Agric. Dec. 268, 435-62 (1987)).

[529] *Id.* at 32.

[530] 7 U.S.C. § 2149(b). Although this part of the regulation is entitled "Violations by licenses" and neither Respondent currently holds a license, it has been held that "the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & O.R. Co.,* 331 U.S. 519, 528–29 (1947).

AWA license, and issuance of a cease and desist order is necessary; and that Respondents should be jointly and severally assessed a civil penalty in the amount of $300,000 and Respondent Timothy Stark should be assessed a civil penalty in the amount of $40,000.

a. Willfulness

Under the AWA, the term "willful" means "action knowingly taken by one subject to the statutory provision in disregard of the action's legality. . . . Actions taken in reckless disregard of statutory provisions may also be 'willful.' "[531] The Court in *Hodgins* determined the "proper rule": [532]

> Unless it is shown with respect to a specific violation either (a) that the violation was the product of knowing disregard of the action's legality or (b) that the alleged violator was given a written warning and a chance to demonstrate or achieve compliance, the violation cannot justify a license suspension or similar penalty.

The Judicial Officer has long held that a "willful act under the Administrative Procedure Act ("APA") (5 U.S.C. § 558(c)) is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements."[533] It is also important to note that 'willfulness'

---

[531] *Hodgins v. U.S. Dep't of Agric.*, 238 F.3d 421, 2000 WL 1785733, *9 (6th Cir. 2000) (table) (internal quotations omitted) (quoting *Volpe Vito, Inc. v. USDA*, No. 97-3603, 1999 WL 16562, at *2 (6th Cir. Jan. 7, 1999); citing *United States v. Illinois Cent. Ry.*, 303 U.S. 239, 242-43 (1938) (one who 'intentionally disregards the statute or is plainly indifferent to its requirements' acts willfully) (quotation omitted); *Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir.1961) (one who 'acts with careless disregard of statutory requirements' acts willfully); Jacob A. Stein et al., Administrative Law § 41.06[3] (2000) (stating the generally accepted test for willful behavior under the Administrative Procedure Act is whether an action "was committed intentionally" or "was done in disregard of lawful requirements" and also noting that "gross neglect of a known duty will also constitute willfulness")).

[532] *Id.* at *10.

[533] *Terranova Enterprises, Inc., A Texas Corp., d/b/a Animal Encounters, Inc.*, 71 Agric. Dec. 876, 880 (U.S.D.A. July 19, 2012) (citing *Bauck*, 68 Agric. Dec. 853, 860-61 (2009), appeal dismissed, No. 10-1138 (8th Cir. Feb. 24, 2010); *D&H Pet Farms, Inc.*, 68 Agric. Dec. 798, 812-13 (2009); *Bond*, 65 Agric. Dec. 92, 107 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *Stephens*, 58 Agric. Dec. 149, 180 (1999); *Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978)).

determinations are not necessary for issuance of civil penalties or cease and desist orders. Only one finding of a willful violation is needed under 7 U.S.C. § 2149(a) to provide authority for the suspension or revocation of a license.[534]

Respondents contend, Post-Hearing Brief at 10, that "willfulness—a mandatory element to be proven—is one that must be addressed separately with respect to each specific violation" and that "Complainant utterly failed to do so at every turn" but that Respondents' evidence "demonstrated well that Respondents did not plan or commit any willful violation, nor intentionally perform [sic] any prohibited act without regard to motif or erroneous advice, nor act with *any* disregard of statutory requirements, much less by doing so in a reckless fashion." Respondents also contend, *id.* at 6-7, that they were never given a reasonable opportunity to correct violations because, although Respondents concede that they "had in fact been provided with copies of the regulations once per year and presumably given written copies of each inspection report," Respondents were "definitely *not* provided any such reasonable or realistic opportunity [to demonstrate compliance], especially in any form that would satisfy the core purposes of the Act."[535]

Complainant, in its Reply Brief at 7-8, states that the APA does not require notice and an opportunity to correct in cases where public health, interest, or safety requires otherwise and that this case is one that "implicates public health, public interest, and public safety."[536] Complainant contends, *id.*, that "the record is replete with evidence that APHIS repeatedly and specifically advised respondents of their noncompliance - through inspection reports, post inspection exit

---

[534] *See Big Bear Farm, Inc*, 55 Agric. Dec. 107, 139 (U.S.D.A. 1996); *Horton*, 73 Agric. Dec. 77, 85 (U.S.D.A. 2014).

[535] Citing "Transcript at 148:2-28 in Testimony of Tim Stark on 10/04/18."

[536] Citing *Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 140 (1996) (citing 5 U.S.C. § 558(c)).

interviews, correspondence, and a 21-day suspension of respondent Stark's license in 2015."[537] Complainant states the "evidentiary record in this case . . . establishes that respondents repeatedly failed to correct the deficiencies documented by the APHIS inspectors."[538] Further, Complainant contends, *id.* at 14-15, that Respondents "are wrong on both the law and the facts" as there was no requirement to establish willfulness because 1) willfulness does not need to be established to assess civil penalties or to order a cease and desist; 2) willfulness does not need to be established because Respondents were provided both notice and opportunity to correct;[539] and 3) willfulness does not need to be established because this case concerns public health, public interest, and public safety.

Here, regarding each of the allegations, I have considered whether each violation concerned public health, interest, and/or safety. I've also considered whether each violation was a repeat (i.e. Respondents had notice and a chance to correct but failed to do so), the gravity of the violation, and whether Respondents knew or should have known that their action or inaction would lead to a violation based on their knowledge of the Regulations. I have also taken into consideration Respondent Stark's background in animal ownership and exhibition, that Respondent Stark held a Class B AWA license from 1999 until 2008, and has held a Class C exhibitors license since 2008 with full awareness, knowledge of, and access to the AWA and Regulations promulgated thereunder.[540]

b. Size of the business

I find that the Respondents' business is large based on the evidence of record as to the

---

[537] Citing CX 4, 6, 14, 18, 22, 23, 29, 30, 35, 36, 45-48.

[538] *Id.* at 9 (citing CX 4, 6, 14, 18, 22, 23, 29, 30, 35, 36; RX 14, 18-20).

[539] Also noting, *Id.* at 11, that "the Judicial Officer has held that he regulations themselves provide adequate notice of the requirements, particularly with respect to handling" (citing *Zoocats, Inc.*, AWA Docket No. 03-0035., 2009 WL 4927094, at *4 (2009)).

[540] Tr. Vol. 7, 1901:2-1902:9.

number of animals housed at the facility and the revenue conducted. [541]

c. Gravity of the violation

I find the gravity of many of the violations to be serious due to: 1) repeated failure and/or refusal to provide access to APHIS inspectors for the purpose of conducting inspections to determine compliance with the AWA and Regulations promulgated thereunder; 2) repeated interference with and verbal abuse of APHIS inspectors; 3) repeated failures to handle animals carefully, particularly repeated exposure of the public and animals to risks by failing to provide proper distance and barriers during exhibition particularly with small children and infants present; 4) repeated failures to provide attending veterinarian supervision and involvement; and 5) repeated failures to provide adequate veterinary care to animals that may have resulted in the deaths of many animals.[542]

d. Good faith and History of Previous Violations

I find that Respondents have a history of previous violations and a lack of good faith to comply with the AWA and Regulations promulgated thereunder. Although Respondents have

---

[541] Complainant contends, and Respondents do not deny, that Respondents' business is large based on Respondent Stark's representations to APHIS between 2011 and 2015 that he held between forty-three and 124 animals and derived over $569,000 from animal exhibitions in 2014 alone. Complaint at ¶ 3. *See also* Complainant's Post-Hearing Brief at 128-29 (citing *Perry*, 2013 WL 8213618, at *8 (2013) (citing *Huchital*, 58 Agric. Dec. 763, 816-17 (1999) (finding the respondent, who held approximately 80 rabbits, operated a large business); *Browning*, 52 Agric. Dec. 129, 151 (1993) (finding that respondent, who held 75-80 animals, operated a moderately large business), *aff'd per curium*, 15 F.3d 1097 (11th Cir. 1994); CX 1, CX 36 at 9; Tr. Vol. 7, 1953-54; Respondent Wildlife in Need and Wildlife in Deed, Inc. 2014-17 Tax Returns, attached to Complainant's Proposed Order and Request to Take Official Notice).

[542] *See Mitchell*, 60 Agric. Dec. 91, 128-29 (U.S.D.A. 2001) ("Interference with Animal and Plant Health Inspection Service officials' duties under the Animal Welfare Act and the failure to allow Animal and Plant Health Inspection Service officials access to facilities, animals, and records are extremely serious violations because they thwart the Secretary of Agriculture's ability to carry out the purposes of the Animal Welfare Act."); *Yost*, 2019 WL 2345417, at *9 (U.S.D.A. 2019) ("The Secretary has found that violations based on an exhibitor's failure to handle dangerous animals with sufficient distance and/or barriers are serious, can result in harm to animals and people, and merit assessment of 'the maximum, applicable civil penalty for each handling violation.'") (citing *Mitchell*, 2010 WL 5295429, at *8 (U.S.D.A. 2010)).

never been subject to a previous adjudication finding that they violated the AWA, I have found numerous violations of the AWA and Regulations between January 2012 and January 2016[543] and such an "ongoing pattern of violations establishes a 'history of previous violations' for the purposes of 7 U.S.C. § 2149(b) and a lack of good faith."[544] Specifically, the record reflects that Respondent Stark has shown a lack of good faith by deliberately trying to circumvent the AWA regulations, including presenting forged documents and in his interference with APHIS inspectors, and by repeatedly misrepresenting the involvement of attending veterinarians in operations.

e. Penalty Amount

The amount of the civil penalty is subject to my discretion within the statutory limit at the time of violation and justified with a purpose of deterring future violations. The maximum civil penalty per violation in this case is $10,000.[545] Complainant states that the Complaint alleged Respondents committed not fewer than 339 willful violations of the AWA and Regulations and Complainant calculates that Respondent Stark is alleged to have committed not fewer than four willful violations of the AWA and Regulations.[546] Complainant asks that the undersigned not assess less than ten percent (10%) of the maximum penalties assessable under the AWA.[547] Complainant's reasoning is considered and consideration of other mitigation factors regarding

[543] Also noting that Respondent Stark's AWA license was previously suspended in 2015 for a period of twenty-one (21) days, RX 9.

[544] *Staples, d/b/a Staples Safari Zoo & Brian Staples Prods.*, 73 Agric. Dec. 173, 189 (U.S.D.A. 2014). I here acknowledge that Respondent Stark was convicted of violating the Endangered Species Act in 2008, *United States v. Timothy L. Stark*, Case No. 4:07CR00013~001 (S.D. Ind.), and is was respondent in a license termination proceeding, *Stark*, AW A Docket No. 15-0080, but it was found on the merits that Respondent Stark's AWA license should not be terminated in that case.

[545] 7 U.S.C. § 2149(b). *See also supra* n. 24.

[546] Complainant's Post-Hearing Brief at 133.

[547] *Id.*

gravity have been noted as to each allegation where appropriate. Based on the number of violations,[548] size of the business, the gravity of the violations, the history of previous violations, and Respondents' lack of good faith, I find that Respondents should be jointly and severally assessed a civil penalty in the amount of $300,000.

The Complaint in paragraphs 7 (a) through (d) alleged that "respondent Stark willfully violated the Act and the Regulations, 9 C.F.R. § 2.4, by interfering with, and/or verbally abusing APHIS officials in the course of carrying out their duties . . ." The text of the Complaint does not allege that Respondent Wildlife in Need committed these particular violations, and Complainant on brief seeks penalties only against Respondent Stark for these violations. As Complainant states on brief: "Dr. Gibbens testified that the kind of behavior exhibited by respondent Timothy Stark impedes the ability of the Department to enforce the AWA." [549] I find the allegations of these Complaint paragraphs virtually undisputed in the record with no credible showing of any alleged good faith, and to state violations of great gravity. I agree with Dr. Gibbens'—who at the time of the Hearing was the National Director of APHIS Animal Care's Field Operations and previously an APHIS VMO, Field Supervisor, and Regional Director[550]—opinion that the subject actions by Respondent Stark interfere with the ability of APHIS to enforce the AWA. The ability to enforce the AWA is fundamental to the USDA program, and the maximum penalties are appropriate for such interference in the circumstances of this proceeding. I therefore find that Respondent Stark should be assessed a civil penalty in the amount of $40,000.

---

[548] Based on the findings herein, Complainant did not meet its burden of proof regarding at least twenty (20) alleged violations. It is unclear how Complainant counted each alleged violation, considering alleged violations that pertained to multiple animals. Thus, I have rounded down Complainant's calculated number of violations. Respondent Stark individually is found herein to have committed four willful violations of the AWA and Regulations.

[549] Complainant's Post-Hearing Brief at 32-33 (citing Tr. Vol. 8 at 2217:11-19).

[550] Tr. Vol. 8, 2196.

FINDINGS OF FACT

1. Timothy L. Stark (Stark) is an individual whose business address is 3320 Jack Teeple Road, Charlestown, Indiana 47111. At all times mentioned in the Complaint, Respondent Stark was an exhibitor as that term is defined in the AWA and the Regulations and held AWA license 32-C-0204 as an "individual." Respondent Stark, together with Wildlife In Need and Wildlife In Deed, Inc., operated a zoo at the Charlestown, Indiana address. Answer at ¶ 1.

2. Respondent Wildlife In Need and Wildlife In Deed, Inc. (Wildlife, Inc.), is an Indiana corporation (1999081064) whose agent for service of process and president is Respondent Stark, 3320 Jack Teeple Road, Charlestown, Indiana 47111. At all times mentioned in the Complaint, Wildlife, Inc., was an exhibitor, as that term is defined in the AWA and the Regulations and together with Respondent Stark operated a zoo at the Charlestown, Indiana, address. Respondent Wildlife, Inc., is registered as a 501(c)(3) not-for-profit corporation and has never held any AWA license. Answer at ¶ 1; CX 2.

3. In 2011, respondent Stark represented to APHIS that he held 46 animals (5 nonhuman primates and 41 wild or exotic mammals); in 2012, he represented to APHIS that he held 43 animals (five non-human primates and 38 wild or exotic mammals); in 2013, he represented to APHIS that he held 75 animals (four dogs, two cats, and 69 wild or exotic mammals); in 2014, he represented to APHIS that he held 120 animals (one dog, two cats, and 117 wild or exotic mammals); in 2015, he represented to APHIS that he held 124 animals (one dog, one cat, 25 nonhuman primates and 97 wild or exotic mammals); in 2016, he represented to APHIS that he held 222 animals (two dogs, 36 non-human primates and 184 wild or exotic mammals); in 2017, he represented to APHIS that he held 252 animals (two dogs, 54 non-human primates and 196 wild or exotic mammals);

and in 2018, he represented to APHIS that he held 293 animals (one dog, 64 non-human primates and 228 wild or exotic mammals). CX 1, 51.

4. On or about the following dates, Respondent Stark interfered with, and/or verbally abused APHIS officials in the course of carrying out their duties:

   a. June 25, 2013. During a compliance inspection, Respondent Stark repeatedly used profanity, made derogatory comments about the Animal Care Inspector (ACI), and suggested that he could not understand what the ACI said because of his manner of speaking. CX 10, 11, 43; Tr. Vol. 2 at 433, 444, 512.

   b. September 24, 2013. During a compliance inspection, Respondent Stark was argumentative, repeatedly used profanity, insisted several times that the APHIS inspectors needed to enter an enclosure (without a shift cage or double-gate system) that housed multiple tigers, and over the objections of the inspectors, Respondent Stark opened the enclosure, left it unlocked, and entered the enclosure, leaving the inspectors inside the perimeter fence. CX 10, 12, 14, 28; Tr. Vol. 2 at 522, 524-527; Tr. Vol. 6 at 1412.

   c. September 26, 2013. During a compliance inspection exit interview, Respondent Stark was argumentative with the APHIS inspectors, repeatedly used profanity, slammed his fist on the table several times, repeatedly called his attending veterinarian a "f**king lying bitch," and told the inspectors that he would go down and "f**king show her." CX 10, 12, 14, 28; Tr. Vol. 2 at 520-21, 531-33, 536, 540, 543, 545, 547.

   d. January 20, 2016. When APHIS Veterinary Medical Officers (VMOs) arrived to conduct a compliance inspection, accompanied by two Indiana State Troopers, Respondent Stark was argumentative, repeatedly used profanity, and at one point

told the inspectors and the troopers to get "the f**k off" of his property. Following the inspection, Respondent Stark called one of the VMOs a "geriatric old bastard," and told the other VMO that he was "sick and tired" of her "f**king opinions." CX 38, 29, 56, 57; Tr. Vol 1, 139, 144, 148; Tr. Vol. 3 at 729-732, 735-752; Tr. Vol. 5 at 1482-1485, 1487-1491; Tr. Vol. 8 at 2217.

5. On the following occasions, APHIS inspectors documented noncompliance with the Regulations governing attending veterinarians and adequate veterinary care:

   a. October 30, 2012-December 1, 2012. Respondents failed to obtain any veterinary medical care for two juvenile leopards who, according to respondent Stark, were suffering from metabolic bone disease. CX 6, 9, 42, 43,49, 49a; Tr. Vol. 2 at 389-390; Tr. Vol. 5 at 1293; Tr. Vol. 7 at 1932-1938; 2041; Tr. Vol. 7 at 2043; Tr. Vol. 8 at 2095-2098, 2111.

   b. June 25, 2013. Respondents failed to obtain adequate veterinary care for a juvenile leopard and failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate services and adequate guidance to personnel involved in the care and use of animals regarding euthanasia by using blunt force trauma to the head to "euthanize" a juvenile leopard. CX 6, 9, 41-43, 49, 49a; Tr. Vol. 2 at 389-392, 436-439, 556-558, 568-569, 571.

   c. January 1, 2012. September 30, 2013. Respondents failed to employ an attending veterinarian to provide adequate veterinary care to Respondents' animals. CX 6, 8, 10, 12, 14, 43, 44; Tr. Vol. 2 at at 382-386, 393-394, 440- 441, 445-448, 453-459, 538-539.

   d. June 25, 2013. Respondents failed to obtain adequate veterinary care for a Great

Pyrenees dog with a bleeding lesion on his nose. CX 6, 8; Tr. Vol. 2 at 387-388, 394-98.

e. On or about August 21, 2013. Respondents failed to obtain adequate veterinary care for an ocelot that died, specifically, Respondents did not obtain any veterinary care for the ocelot, communicate with a veterinarian regarding the ocelot, or have a necropsy performed to determine the cause of the ocelot's death. CX 14; RX 29; Tr. Vol. 2 at 463.

f. On or about August 25, 2013. Respondents failed to obtain adequate veterinary care for a serval that died, and specifically, Respondents did not obtain any veterinary care for the serval, communicate with a veterinarian regarding the serval, or have a necropsy performed to determine the cause of the serval's death. CX 14; RX 29; Tr. Vol. 2 at 463.

g. August 25, 2013-September 3, 2013. Respondents failed to obtain adequate veterinary care for a male red kangaroo that died, and specifically, Respondents never obtained any veterinary care for the kangaroo and did not have a necropsy performed to determine the cause of the kangaroo's death. CX 14; RX 29; Tr. Vol. 2 at 461-463.

h. On or about August 25, 2013. Respondents failed to obtain adequate veterinary care for a coatimundi that died, and specifically, Respondents did not obtain any veterinary care for the coatimundi, communicate with a veterinarian regarding the coatimundi, or have a necropsy performed to determine the cause of the coatimundi's death. CX 14; RX 29; Tr. Vol. 2 at 463, 469-470.

i. September 24, 2013. Respondents failed to obtain adequate veterinary care for a Great Pyrenees dog with lesions and scabs on his nose. CX 12, 14; RX 29; Tr.

Vol. 2 at 463-465.

j. September 24, 2013. Respondents failed to obtain adequate veterinary care for a tiger with abnormally worn, broken and discolored canine teeth, and visible weight loss, and for which Respondents admitted they had never obtained veterinary care. CX 12, 14, 54; RX 29; Tr. Vol. 2 at 465-467.

k. October 8, 2015. Respondents failed to obtain adequate veterinary care for a Great Dane dog that was observed to have crusted material and a thick green mucus exuding from both eyes. CX 35; Tr. Vol. 3 at 705-706.

l. October 8, 2015. Respondents failed to obtain adequate veterinary care for a thin Fennec fox that was observed to be lethargic and reluctant to ambulate, had a dull coat, scabby material sluffing off from inside its left ear, and a green discharge from both eyes. CX 35; Tr. Vol. 3 at 706-707.

m. On or about January 20, 2016. Respondents failed to obtain adequate veterinary care for a red kangaroo that respondents knew was ill; the kangaroo died sometime between October 8, 2015, and the date of the inspection, without having received any veterinary care, and respondents did not have a necropsy performed to determine the cause of the kangaroo's death. CX 36, 38, 39; RX 30, 57; Tr. Vol. 3 at 717- 718.

6. On or about September 24, 2013, Respondents failed to identify dogs as required. CX 14; RX 43, 44; Tr. Vol. 2 at 470-471.

7. On or about December 1, 2012, through June 24, 2013, Respondents failed to make, keep, and maintain records or forms that fully and correctly disclose the date of disposal of two juvenile leopards acquired by respondents on or about October 31, 2012, and specifically, Respondents had records showing that they had acquired two juvenile

leopards on October 31, 2012 and Respondents had no records of the disposition of either leopard, no records of any diagnosis of metabolic bone disease made by any veterinarian, and no records of any veterinary medical treatment given to either leopard for metabolic bone disease, or for any other condition. CX 6 ,9, 43, 49, 49a; Tr. Vol. 5 at 1282-1283, 1277-1287, 1289, 2041-2043.

8. On or about June 25, 2013, Respondents failed to make, keep, and maintain records or forms that fully and correctly disclose the acquisition of forty-three animals that were observed by the APHIS inspectors at Respondents' facility during the June 25, 2013, inspection, as follows: there were no acquisition records for one baboon; one black-capped capuchin; one white-handed gibbon; two Patagonian cavies; one guinea pig; one groundhog; three hybrid dogs; ten ocelots; four servals; one African crested porcupine; one armadillo; three bobcats; three foxes; one hedgehog; two kinkajou; seven tigers; and one caracal. CX 6, 13; Tr. Vol. 2 at 399-402; Tr. Vol. 5 at 1295-1296.
9. On or about June 25, 2013, Respondents failed to make, keep, and maintain records or forms that fully and correctly disclose the disposition of six animals, as follows: there were no disposition records for two lemurs; one kangaroo; one tayra; and two leopards. CX 6, 13; Tr. Vol. 2 at 399-402; Tr. Vol. 5 at 1295-1296.
10. On or about September 24, 2013. Respondents failed to make, keep, and maintain records or forms that fully and correctly disclose the acquisition and disposition of dogs, as required. CX 14; Tr. Vol. 2 at 471-472.
11. On or about September 24, 2013, Respondents failed to make, keep, and maintain records or forms that fully and correctly disclose the acquisition of four animals that were observed by the APHIS inspectors at respondents' facility during the September 24, 2013 inspection, as follows: there were no acquisition records for one coatimundi; one guinea

pigs; and two domestic pigs. CX 14.

12. On or about September 24, 2013, Respondents failed to make, keep, and maintain records or forms that fully and correctly disclose the disposition of three domestic pigs. CX 14.

13. On or about May 14, 2013 and May 23, 2013, APHIS inspector Dr. Juan Arango attempted to conduct a compliance inspection at respondents' facility, but no one was available to provide access or to accompany him. CX 45-47; Tr. Vol. 5 at 1266, 1271-1272; Tr. Vol. 4 at 1478-1479; Tr. Vol. 6 at 1907-1908.

14. On or about June 25, 2013, respondents failed to provide APHIS officials with access to conduct AWA inspections of their records, and specifically, Respondents produced a written program of veterinary care dated January 17, 2013, on which the name of the veterinarian and the veterinarian's signature were forged and written without the veterinarian's consent (the veterinarian named testified he ceased to serve as respondents' attending veterinarian several years earlier). CX 6 ,9, 43-44; RX 73; Tr. Vol. 3 at 970-972; Tr. Vol. 4 at 977.

15. On or about the following dates, APHIS inspectors documented noncompliance with the Regulations governing the handling of animals:

    a. December 1, 2012. Respondents failed to handle a juvenile leopard as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, by using blunt force trauma to the head to "euthanize" the juvenile leopard. CX 6, 9 ,43; Tr. Vol. 2 at 390-392; Tr. Vol. 7 at 1937-1938.

    b. January 10, 2014. Respondents failed to handle juvenile tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger baby playtime." CX 17,1 7a-f; Tr. Vol. 2 at 288-298, 301.

c. January 10, 2014. Respondents failed to handle juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public, and specifically, exhibited the tigers without any distance or barriers between the animals and the public and a member of the public was injured by one of the tigers. CX 17,1 7a-f; Tr. Vol. 2 at 288-298, 301.

d. January 10, 2014. Respondents exposed juvenile tigers to rough or excessive public handling. CX 17,1 7a-f; Tr. Vol. 2 at 288-298, 301.

e. January 14, 2014. Respondents failed to handle a juvenile tiger and a juvenile kangaroo as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger baby playtime." CX 15-16; Tr. Vol. 1 at 170-199; Tr. Vol. 2 at 321-359.

f. January 14, 2014. Respondents failed to handle juvenile tigers and a juvenile kangaroo, during exhibition, with minimal risk of harm to the animals and the public, and specifically, exhibited the tigers and the kangaroo without any distance or barriers between the animals and the public. CX 15-16; Tr. Vol. 1 at 170-199; Tr. Vol. 2 at 321-359.

g. January 14, 2014. Respondents exposed juvenile tigers to rough or excessive public handling. CX 15-16; Tr. Vol. 1 at 170-199; Tr. Vol. 2 at 321-359.

h. January 15, 2014. Respondents failed to handle three juvenile tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger baby playtime." CX 18, 19, 19a, 20; Tr. Vol. 1 at 238-271.

i. January 15, 2014. Respondents failed to handle three juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public, and

specifically, exhibited the tigers without any distance or barriers between the animals and the public, and, two members of the public were injured by tigers. CX 18, 19, 19a, 20; Tr. Vol. 1 at 238-271; Tr. Vol. 3 at 694.

j. January 15, 2014. Respondents exposed three juvenile tigers to rough or excessive public handling. CX 18, 19, 19a, 20; Tr. Vol. 1 at 238-271.

k. August 19, 2014. Respondents failed to handle two juvenile tigers, a coatimundi, nonhuman primates, and a lemur as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort. CX 23-27, 53; Tr. Vol. 1 at 169; Tr. Vol. 3 at 903, 916- 917, 922-923, 926-929; Tr. Vol. 4 at 1141, 1146, 1150-1151, 1155-1158.

l. August 19, 2014. Respondents failed to handle two juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public, and specifically, exhibited the tigers without any distance or barriers between the animals and the public, and three members of the public were scratched or bitten by the tigers. CX 23-27, 53; Tr. Vol. 1 at 169; Tr. Vol. 3 at 903, 916- 917, 922-923, 926-929; Tr. Vol. 4 at 1141, 1146, 1150-1151, 1155-1158.

m. August 19, 2014. Respondents failed to handle five nonhuman primates (two lemurs, a macaque, a capuchin, and a vervet), a kangaroo, and a coatimundi, during exhibition, with minimal risk of harm to the animals and the public, and specifically, exhibited these animals without any distance or barriers between the animals and the public, and, inter alia, Respondent Stark was observed to swing a capuchin monkey around by its tail, to swing a macaque by a belt around its hips, and to swing a nonhuman primate around by a belt, and then to toss the primate onto the lap of one of respondents' customers. CX 23-27, 53; Tr. Vol. 1 at 169;

Tr. Vol. 3 at 903, 916- 917, 922-923, 926-929; Tr. Vol. 4 at 1141, 1146, 1150-1151, 1155-1158.

n. August 19, 2014. Respondents exposed two juvenile tigers to rough or excessive public handling. CX 23-27, 53; Tr. Vol. 1 at 169; Tr. Vol. 3 at 903, 916- 917, 922-923, 926-929; Tr. Vol. 4 at 1141, 1146, 1150-1151, 1155-1158.

o. September 13, 2015. Respondents failed to handle four juvenile tigers and one juvenile capuchin monkey as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger playtime" exhibit. CX 30-33; Tr. Vol. 4 at 1037, 1059, 1129; Tr. Vol. 8 at 2094- 2095, 2108.

p. September 13, 2015. Respondents failed to handle four juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public, and specifically, exhibited the tigers to groups of approximately thirty people, without any distance or barriers between the tigers and the public, and multiple persons were scratched and/or bitten, and the juvenile tigers were repeatedly hit with riding crops. CX 30-33; Tr. Vol. 4 at 1038-1039, 1052, 1054-1055, 1125-1127, Tr. Vol. 8 at 2091-2093, 2105-2107, 2160-2162, 2165.

q. September 13, 2015. Respondents failed to handle one juvenile capuchin monkey, during exhibition, with minimal risk of harm to the animal and the public, and specifically, exhibited the capuchin to groups of approximately thirty people, without any distance or barriers between the nonhuman primate and the public, exposing both the animal and the public to harm. CX 30-33.

r. September 13, 2015. Respondents exhibited four juvenile tigers in successive "playtime" and photo sessions without providing them an adequate rest period.

CX 30-33; Tr. Vol. 4 at 1036, 1045, 1050-1052, 1056-1058; Tr. Vol. 8 at 2104.

s. September 13, 2015. Respondents exposed multiple young or immature animals to rough or excessive public handling. CX 30-33; Tr. Vol. 4 at 1042.

t. September 13, 2015. Respondents exhibited four juvenile tigers and a juvenile capuchin monkey for periods of time and under conditions that were inconsistent with the animals' good health and well-being. CX 30-33.

16. On or about June 25, 2013, APHIS inspectors documented noncompliance with the Standards, as follows:

a. Respondents failed to develop, document, and follow an appropriate plan for environmental enhancement to promote the psychological well-being of nonhuman primates, in accordance with currently accepted professional standards, and made available to APHIS upon request. CX 6; Tr. Vol. 2 at 404

b. Respondents housed seven tigers and one lion in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals. CX 6.

c. Respondents housed multiple tigers in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect the tigers from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence. CX 6; Tr. Vol. 2 at 423-428.

d. Respondents fed large carnivores a diet not prepared with consideration for the age, species, condition, size, and type of animals. CX 6; Tr. Vol. 2, 428-429.

17. On or about September 24, 2013, APHIS inspectors documented noncompliance with the Standards, as follows:

a. Respondents failed to store supplies of food for dogs in facilities that adequately protect the supplies of food from deterioration, molding, or contamination by vermin. CX 14; Tr. Vol. 2 at 473-475.

b. Respondents housed three hybrid dogs in enclosures with surfaces that were not impervious to moisture. CX 14; Tr. Vol. 2 at 476-477.

c. Respondents failed to develop, document, and follow an appropriate plan for exercise for dogs, as required. CX 14; Tr. Vol. 2 at 487.

d. Respondents failed to clean and sanitize food receptacles for three hybrid dogs as required. CX 14; Tr. Vol. 2 at 491-493.

e. Respondents failed to sanitize used primary enclosures for three hybrid dogs as required. CX 14; Tr. Vol. 2 at 495-496.

f. Respondents failed to develop, document, and follow an appropriate plan for environmental enhancement to promote the psychological well-being of nonhuman primates, in accordance with currently accepted professional standards, and made available to APHIS upon request. CX 14; Tr. Vol. 2 at 494; Tr. Vol. 4 at 1816, 1823, 2005-2006.

g. Respondents housed seven tigers and one lion in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals. CX 14; Tr. Vol. 2 at 497.

h. Respondents housed four tigers in an enclosure with a resting platform placed close to the side of the enclosure such that it could provide a means for the tigers to escape. CX 14; Tr. Vol. 2 at 497-498.

i. Respondents failed to store supplies of food in facilities that adequately protect the supplies of food from deterioration, molding, or contamination by vermin. CX

14; Tr. Vol. 2 at 499-502.

j. Respondents housed multiple tigers in facilities that were not enclosed by a perimeter fence to protect the tigers from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence, and specifically, there was a 3-to-6-inch gap between one of the gates and the fence. CX 14; Tr. Vol. 2 at 507-508.

k. Respondents housed a lion, two tigers, one leopard, and four bears in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect these animals from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence. CX 14.

l. Respondents failed to provide animals a diet that was wholesome, palatable, and free from contamination and prepared with consideration for the age, species, condition, size, and type of animals. CX 14; Tr. Vol. 2 at 513.

m. Respondents failed to provide potable water to bears. CX 14; Tr. Vol. 2 at 513-518.

n. Respondents failed to provide potable water to the tigers housed in pens 1, 2, 4, 5. CX 14; Tr. Vol. 2 at 513-518.

o. Respondents failed to provide potable water to a lion. CX 14; Tr. Vol. 2 at 513-518.

p. Respondents failed to employ a sufficient number of adequately trained employees. CX 14; Tr. Vol. 2 at 518-520.

18. On or about May 6, 2014, an APHIS inspector documented noncompliance with the Standards, as follows:

a. Respondents housed three dogs in enclosures with surfaces that were not impervious to moisture. CX 22; Tr. Vol. 2 at 661-665.

b. Respondents failed to provide potable water to a dog. CX 22.

c. Respondents failed to clean and sanitize two enclosures housing five hybrid dogs as required. CX 22; Tr. Vol. 3 at 667.

d. Respondents housed four bears in an enclosure with a wooden walkway that was in disrepair, and there were broken pieces of wood with exposed nails inside the bear enclosure. CX 22; Tr. Vol. 3 at 671-672.

e. Respondents housed a tiger in an enclosure with a wooden spool that had collapsed, leaving broken pieces of wood and exposed nails. CX 22.

f. Respondents housed a tiger in an enclosure that contained logs with exposed nails. CX 22.

g. Respondents housed twelve animals (eight foxes, one cougar, and three porcupines) in enclosures that did not provide them with adequate shade. CX 22; Tr. Vol. 3 at 675-676.

h. Respondents failed to provide potable water to multiple tigers, four bears, one cougar, and one lion. CX 22.

19. On or about August 20, 2014, Respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents housed three dogs in enclosures with surfaces that were not impervious to moisture. CX 23.

b. Respondents failed to provide potable water to a dog. CX 23.

c. Respondents failed to clean and sanitize two enclosures housing five hybrid dogs as required. CX 23; Tr. Vol. 3 at 688.

d. Respondents housed four bears in an enclosure with a wooden walkway that was in disrepair, and there were broken pieces of wood with exposed nails inside the bear enclosure. CX 23; Tr. Vol. 3 at 688-689.

e. Respondents failed to provide potable water to multiple tigers, four bears, two cougars, and one lion. CX 23.

20. On or about July 27, 2015, an APHIS inspector documented noncompliance with the Standards, as follows:

a. Respondents housed a dog in an enclosure that contained sheets of unused siding adjacent to the shelter structure. CX 29.

b. Respondents failed to keep a dog's water receptacle clean and sanitized. CX 29.

c. Respondents housed two hyenas in an enclosure that had broken wires protruding into the enclosure and accessible to the hyenas. CX 29; Tr. Vol. 5 at 1468.

d. Respondents housed a lion in an enclosure that contained sheets of unused siding adjacent to the shelter structure. CX 29; Tr. Vol. 5 at 1468.

e. Respondents failed to keep a lion's water receptacle clean and sanitized. CX 29.

f. Respondents failed to provide juvenile tigers a wholesome and palatable diet, free from contamination and prepared with consideration for the age, species, condition, size, and type of animals. CX 29; Tr. Vol. 5 at 1468-1469, 1476.

21. On or about October 8, 2015, APHIS inspectors documented noncompliance with the Standards, as follows:

a. Respondents housed two dogs in an enclosure that contained a shelter in disrepair, with exposed nails and detached wood. CX 35.

b. Respondents housed two dogs in an enclosure that did not provide the dogs with adequate shelter from the sun. CX 35; Tr. Vol. 3 at 707-714.

c. Respondents housed three ring-tailed lemurs in an enclosure that did not provide them with easy and convenient access to food and water. CX 35; Tr. Vol. 3 at 707-714.

d. Respondents housed a tiger in an enclosure containing a platform that was in disrepair, with numerous protruding nails accessible to the tiger. CX 35.

e. Respondents housed four tigers in an enclosure containing a shelter that was in disrepair, with portions of tin detached from the wall. CX 35.

f. Respondents housed two hyenas in an enclosure in disrepair, with sections of detached fencing exposing wires that protruded into the enclosure. CX 35.

g. Respondents housed a cougar in an enclosure containing a shelter in disrepair and open to the elements. CX 35.

h. Respondents housed multiple tigers in enclosures that contained excessive amounts of food waste. CX 35.

i. Respondents housed a cougar in an enclosure that contained a buildup of feces. CX 35.

j. Respondents housed animals in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect these animals from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence. CX 35; Tr. Vol. 3 at 707-714.

22. On or about January 20, 2016, APHIS inspectors documented noncompliance with the Standards, as follows:

a. Respondents housed a hybrid dog in an enclosure that contained a shelter in disrepair, with exposed nails and detached wood. CX 36; Tr. Vol. 3 at 720-729.

b. Respondents housed a hybrid dog in an enclosure that contained a shelter that did not protect the dog from the elements. CX 36; Tr. Vol. 3 at 720-729.

c. Respondents housed a dog in an enclosure that contained a shelter that did not contain adequate bedding to protect the dog from the cold. CX 36; Tr. Vol. 3 at 720-729.

d. Respondents housed three tigers in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals. CX 36; RX 14, 18-20, 30, 56-57; Tr. Vol. 6 at 1532, 1544; Tr. Vol. 7 at 1921-1922; Tr. Vol. 8 at 2200; 2201.

e. Respondents housed two hyenas in an enclosure that was in disrepair, with sections of detached fencing exposing wires that protruded into the enclosure. CX 36; Tr. Vol. 3 at 720-729.

f. Respondents housed three wolves in an enclosure containing a single shelter that was not adequate to accommodate all three wolves. CX 36; Tr. Vol. 3 at 720-729.

CONCLUSIONS OF LAW

1) The Secretary has jurisdiction over this matter.

2) On June 25, 2013, September 24, 2013, September 26, 2013, and January 20, 2016, Respondent Stark willfully violated the AWA and Regulations by interfering with, and verbally abusing APHIS officials in the course of carrying out their duties. 9 C.F.R. § 2.4

3) On or about the following dates, Respondents willfully violated the Regulations governing attending veterinarian and adequate veterinary care (9 C.F.R. § 2.40), by failing to provide adequate veterinary care to the following animals and/or failing to establish programs of adequate veterinary care that included the availability of appropriate facilities, personnel, equipment, equipment and services, and/or the use of

appropriate methods to prevent, control, and treat diseases and injuries, and/or daily observation of animals, and a mechanism of direct and frequent communication in order to convey timely and accurate information about animals to the attending veterinarian, and/or adequate guidance to personnel involved in animal care:

a. Between October 30, 2012, and approximately December 1, 2012. Respondents failed to obtain any veterinary medical care for two juvenile leopards. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

b. June 25, 2013. Respondents failed to obtain adequate veterinary care for a juvenile leopard and failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate services and adequate guidance to personnel involved in the care and use of animals regarding euthanasia. 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(4).

c. January 1, 2012, through September 30, 2013. Respondents failed to employ an attending veterinarian to provide adequate veterinary care to Respondents' animals. 9 C.F.R. §§ 2.40(a), 2.40(a)(1).

d. June 25, 2013. Respondents failed to obtain adequate veterinary care for a Great Pyrenees dog with a bleeding lesion on his nose. 9 C.F.R. §§ 2.40(a) and 2.40(b)(3).

e. On or about August 21, 2013. Respondents failed to obtain adequate veterinary care for an ocelot that died. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

f. On or about August 25, 2013. Respondents failed to obtain adequate veterinary care for a serval that died. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

g. August 25, 2013, through September 3, 2013. Respondents failed to obtain adequate veterinary care for a male red kangaroo that died on September 3, 2013.

9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

h. On or about August 25, 2013. Respondents failed to obtain adequate veterinary care for a coatimundi that died. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

i. September 24, 2013. Respondents failed to obtain adequate veterinary care for a Great Pyrenees dog. 9 C.F.R. § 2.40(a).

j. September 24, 2013. Respondents failed to obtain adequate veterinary care for a tiger. 9 C.F.R. §§ 2.40(a).

k. October 8, 2015. Respondents failed to obtain adequate veterinary care for a Great Dane dog. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

l. October 8, 2015. Respondents failed to obtain adequate veterinary care for a Fennec fox. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

m. On or about January 20, 2016. Respondents failed to obtain adequate veterinary care for a red kangaroo that died sometime between October 8, 2015. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

4) On or about September 24, 2013. Respondents violated the Regulations by failing to identify dogs as required. 9 C.F.R. § 2.50(c).

5) On or about December 1, 2012, through June 24, 2013. Respondents willfully violated the Regulations by failing to make, keep, and maintain records or forms that fully and correctly disclose the date of disposal of two juvenile leopards acquired by Respondents on or about October 31, 2012. 9 C.F.R. § 2.75(b)

6) On or about June 25, 2013. Respondents willfully violated the Regulations by failing to make, keep, and maintain records or forms that fully and correctly disclose the acquisition of forty-three animals that were observed by the APHIS inspector at respondents' facility during the June 25, 2013. 9 C.F.R. § 2.75(b).

7) On or about June 25, 2013. Respondents willfully violated the Regulations by failing to make, keep, and maintain records or forms that fully and correctly disclose the disposition of six animals. 9 C.F.R. § 2.75(b).

8) On or about September 24, 2013. Respondents willfully violated the Regulations by failing to make, keep, and maintain records or forms that fully and correctly disclose the acquisition and disposition of dogs. 9 C.F.R. § 2.75(a)(2).

9) On or about September 24, 2013. Respondents willfully violated the Regulations by failing to make, keep, and maintain records or forms that fully and correctly disclose the acquisition of four animals. 9 C.F.R. § 2.75(b)(1).

10) On or about September 24, 2013. Respondents willfully violated the Regulations by failing to make, keep, and maintain records or forms that fully and correctly disclose the disposition of three domestic pigs. 9 C.F.R. § 2.75(b)(1).

11) On May 14, 2013 and May 23, 2013. Respondents willfully violated the Regulations governing access for inspections. 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126.

12) On or about June 25, 2013, respondents failed to provide APHIS officials with access to conduct AWA inspections of their records, in willful violation of the Regulations producing an illegitimate written program of veterinary care with forged signature dated January 17, 2013. 9 C.F.R. § 2.126(a)(2).

13) On or about the following dates, Respondents willfully violated the Regulations governing the handling animals:

    a. December 1, 2012. Respondents failed to handle a juvenile leopard as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort by using blunt force trauma to the head to "euthanize" the juvenile leopard. 9 C.F.R. § 2.131(b)(1).

b. January 10, 2014. Respondents failed to handle juvenile tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger baby playtime." 9 C.F.R. § 2.131(b)(1).

c. January 10, 2014. Respondents failed to handle juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public, by exhibiting the tigers without any distance or barriers between the animals and the public resulting in injury to a member of the public. 9 C.F.R. § 2.131(c)(1).

d. January 10, 2014. Respondents exposed juvenile tigers to rough or excessive public handling. 9 C.F.R. § 2.131(c)(3).

e. January 14, 2014. Respondents failed to handle a juvenile tiger and a juvenile kangaroo as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger baby playtime." 9 C.F.R. § 2.131(b)(1).

f. January 14, 2014. Respondents failed to handle juvenile tigers and a juvenile kangaroo, during exhibition, with minimal risk of harm to the animals and the public by exhibiting the tigers and the kangaroo without any distance or barriers between the animals and the public. 9 C.F.R. § 2.131(c)(1).

g. January 14, 2014. Respondents exposed juvenile tigers and a juvenile kangaroo to rough or excessive public handling. 9 C.F.R. § 2.131(c)(3).

h. January 15, 2014. Respondents failed to handle three juvenile tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger baby playtime." 9 C.F.R. § 2.131(b)(1).

i. January 15, 2014. Respondents failed to handle three juvenile tigers, during

exhibition, with minimal risk of harm to the animals and the public by exhibiting the tigers without any distance or barriers between the animals and the public, resulting in injuries to two members of the public. 9 C.F.R. § 2.131(c)(1).

j. January 15, 2014. Respondents exposed three juvenile tigers to rough or excessive public handling. 9 C.F.R. § 2.131(c)(3).

k. August 19, 2014. Respondents failed to handle two juvenile tigers, a coatimundi, nonhuman primates, and a lemur as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort. 9 C.F.R. § 2.131(b)(1).

l. August 19, 2014. Respondents failed to handle two juvenile tigers, during exhibition, with minimal risk of harm to the animals and the public by exhibiting the tigers without any distance or barriers between the animals and the public, resulting in injury to three members of the public. 9 C.F.R. § 2.131(c)(1).

m. August 19, 2014. Respondents failed to handle five nonhuman primates (two lemurs, a macaque, a capuchin, and a vervet), a kangaroo, and a coatimundi, during exhibition, with minimal risk of harm to the animals and the public. 9 C.F.R. § 2.131(c)(1).

n. August 19, 2014. Respondents exposed two juvenile tigers to rough or excessive public handling. 9 C.F.R. § 2.131(c)(3).

o. September 13, 2015. Respondents failed to handle four juvenile tigers and one juvenile capuchin monkey as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, during a "tiger playtime" exhibit. 9 C.F.R. § 2.131(b)(1).

p. September 13, 2015. Respondents failed to handle four juvenile tigers, during

exhibition, with minimal risk of harm to the animals and the public. 9 C.F.R. § 2.131(c)(1).

q. September 13, 2015. Respondents failed to handle one juvenile capuchin monkey, during exhibition, with minimal risk of harm to the animal and the public. 9 C.F.R. § 2.131(c)(1).

r. September 13, 2015. Respondents exhibited four juvenile tigers in successive "playtime" and photo sessions without providing them an adequate rest period. 9 C.F.R. § 2.131(c)(3).

s. September 13, 2015. Respondents exposed multiple young or immature animals to rough or excessive public handling. 9 C.F.R. § 2.131(c)(3).

t. September 13, 2015. Respondents exhibited four juvenile tigers and a juvenile capuchin monkey for periods of time and under conditions that were inconsistent with the animals' good health and well-being. 9 C.F.R. § 2.131(d)(1).

14) On or about June 25, 2013, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents failed to develop, document, and follow an appropriate plan for environmental enhancement to promote the psychological well-being of nonhuman primates, in accordance with currently accepted professional standards, and made available to APHIS upon request. 9 C.F.R. § 3.81.

b. Respondents housed seven tigers and one lion in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals. 9 C.F.R. § 3.125(a).

c. Respondents housed multiple tigers in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect the tigers

from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence. 9 C.F.R. § 3.127(d).

d. Respondents fed large carnivores a diet that was not prepared with consideration for the age, species, condition, size, and type of animals. 9 C.F.R. § 3.129(a).

15) On or about September 24, 2013, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents failed to store supplies of food for dogs in facilities that adequately protect the supplies of food from deterioration, molding, or contamination by vermin. 9 C.F.R. § 3.1(e).

b. Respondents housed three hybrid dogs in enclosures with surfaces that were not impervious to moisture. 9 C.F.R. § 3.3(e)(1).

c. Respondents failed to develop, document, and follow an appropriate plan for exercise for dogs, as required. 9 C.F.R. § 3.8.

d. Respondents failed to clean and sanitize food receptacles for three hybrid dogs as required. 9 C.F.R. § 3.9.

e. Respondents failed to sanitize used primary enclosures for three hybrid dogs as required. 9 C.F.R. § 3.11(b)(2).

f. Respondents failed to develop, document, and follow an appropriate plan for environmental enhancement to promote the psychological well-being of nonhuman primates, in accordance with currently accepted professional standards, and made available to APHIS upon request. 9 C.F.R. § 3.81.

g. Respondents housed seven tigers and one lion in enclosures that were not constructed of such material and strength as appropriate for those species, and in a

manner that would contain those animals. 9 C.F.R. § 3.125(a).

h. Respondents housed four tigers in an enclosure with a resting platform placed close to the side of the enclosure such that it could provide a means for the tigers to escape. 9 C.F.R. § 3.125(a).

i. Respondents failed to store supplies of food in facilities that adequately protect the supplies of food from deterioration, molding, or contamination by vermin. 9 C.F.R. § 3.125(c).

j. Respondents housed multiple tigers in facilities that were not enclosed by a perimeter fence to protect the tigers from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence. 9 C.F.R. § 3.127(d).

k. Respondents housed a lion, two tigers, one leopard, and four bears in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect these animals from injury, function as a secondary containment system, and prevent the animals from physical contact with persons or other animals outside the fence. 9 C.F.R. § 3.127(d).

l. Respondents failed to provide animals a diet that was wholesome, palatable, and free from contamination and prepared with consideration for the age, species, condition, size, and type of animals. 9 C.F.R. § 3.129.

m. Respondents failed to provide potable water to bears. 9 C.F.R. § 3.130.

n. Respondents failed to provide potable water to the tigers housed in pens 1, 2, 4, 5. 9 C.F.R. § 3.130.

o. Respondents failed to provide potable water to a lion. 9 C.F.R. § 3.130.

p. Respondents failed to employ a sufficient number of adequately trained

employees. 9 C.F.R. § 3.132.

16) On or about May 6, 2014, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents housed three dogs in enclosures with surfaces that were not impervious to moisture. 9 C.F.R. § 3.3(e)(1).

b. Respondents failed to provide potable water to a dog. 9 C.F.R. § 3.10.

c. Respondents failed to clean and sanitize two enclosures housing five hybrid dogs as required. 9 C.F.R. § 3.11(b)(2).

d. Respondents housed four bears in an enclosure with a wooden walkway that was in disrepair, and there were broken pieces of wood with exposed nails inside the bear enclosure. 9 C.F.R. § 3.125(a).

e. Respondents housed a tiger in an enclosure with a wooden spool that had collapsed, leaving broken pieces of wood and exposed nails. 9 C.F.R. § 3.125(a).

f. Respondents housed a tiger in an enclosure that contained logs with exposed nails. 9 C.F.R. § 3.125(a).

g. Respondents housed twelve animals in enclosures that did not provide them with adequate shade. 9 C.F.R. § 3.127(a).

h. Respondents failed to provide potable water to multiple tigers, four bears, one cougar, and one lion. 9 C.F.R. § 3.130.

17) On or about August 20, 2014, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents housed three dogs in enclosures with surfaces that were not impervious to moisture. 9 C.F.R. § 3.3(e)(1).

b. Respondents failed to provide potable water to a dog. 9 C.F.R. § 3.10.

c. Respondents failed to clean and sanitize two enclosures housing five hybrid dogs as required. 9 C.F.R. § 3.11(b)(2).

d. Respondents housed four bears in an enclosure with a wooden walkway that was in disrepair, and there were broken pieces of wood with exposed nails inside the bear enclosure. 9 C.F.R. § 3.125(a).

e. Respondents failed to provide potable water to multiple tigers, four bears, two cougars, and one lion. 9 C.F.R. § 3.130.

18) On or about July 27, 2015, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents housed a dog in an enclosure that contained sheets of unused siding adjacent to the shelter structure. 9 C.F.R. § 3.1(a).

b. Respondents failed to keep the water receptacle for a dog clean and sanitized. 9 C.F.R. § 3.10.

c. Respondents housed two hyenas in an enclosure that had broken wires protruding into the enclosure and accessible to the hyenas. 9 C.F.R. § 3.125(a).

d. Respondents housed a lion in an enclosure that contained sheets of unused siding adjacent to the shelter structure. 9 C.F.R. § 3.125(a).

e. Respondents failed to keep the water receptacle for a lion clean and sanitized. 9 C.F.R. § 3.130.

f. Respondents failed to provide juvenile tigers a diet that was wholesome, palatable, and free from contamination and prepared with consideration for the age, species, condition, size, and type of animals. 9 C.F.R. § 3.129.

19) On or about October 8, 2015, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents housed two dogs in an enclosure that contained a shelter in disrepair, with exposed nails and detached wood. 9 C.F.R. § 3.1(a).

b. Respondents housed two dogs in an enclosure that did not provide the dogs with adequate shelter from the sun. 9 C.F.R. § 3.4(b)(2).

c. Respondents housed three ring-tailed lemurs in an enclosure that did not provide them with easy and convenient access to food and water. 9 C.F.R. § 3.80(a)(2)(viii).

d. Respondents housed a tiger in an enclosure containing a platform that was in disrepair, with numerous protruding nails accessible to the tiger. 9 C.F.R. § 3.125(a).

e. Respondents housed four tigers in an enclosure containing a shelter that was in disrepair, with portions of tin detached from the wall. 9 C.F.R. § 3.125(a).

f. Respondents housed two hyenas in an enclosure that was in disrepair, with sections of detached fencing exposing wires that protruded into the enclosure. 9 C.F.R. § 3.125(a).

g. Respondents housed a cougar in an enclosure containing a shelter that was in disrepair and open to the elements. 9 C.F.R. § 3.125(a).

h. Respondents housed multiple tigers in enclosures that contained excessive amounts of food waste. 9 C.F.R. § 3.125(a).

i. Respondents housed a cougar in an enclosure that contained a buildup of feces. 9 C.F.R. § 3.125(a).

j. Respondents housed animals in facilities that were not enclosed by a perimeter fence of sufficient height and structural strength to protect these animals from injury, function as a secondary containment system, and prevent the animals from

physical contact with persons or other animals outside the fence. 9 C.F.R. § 3.127(d).

20) On or about January 20, 2016, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards, as follows:

a. Respondents housed a hybrid dog in an enclosure that contained a shelter in disrepair, with exposed nails and detached wood. 9 C.F.R. §§ 3.1(a), 3.1(c)(1)(ii).

b. Respondents housed a hybrid dog in an enclosure that contained a shelter that did not protect the dog from the elements. 9 C.F.R. § 3.4(b).

c. Respondents housed a dog in an enclosure that contained a shelter that did not contain adequate bedding to protect the dog from the cold. 9 C.F.R. § 3.4(b)(4).

d. Respondents housed three tigers in enclosures that were not constructed of such material and strength as appropriate for those species, and in a manner that would contain those animals. 9 C.F.R. § 3.125(a).

e. Respondents housed two hyenas in an enclosure that was in disrepair, with sections of detached fencing exposing wires that protruded into the enclosure. 9 C.F.R. § 3.125(a).

f. Respondents housed three wolves in an enclosure containing a single shelter that was not adequate to accommodate all three wolves. 9 C.F.R. § 3.127(b).

ORDER

By reasons of the Findings of Fact above, the Respondents have violated the AWA and, therefore, the following Order is issued:

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the AWA and the regulations and standards issued thereunder.

2. AWA license number 32-C-0204 is hereby revoked.

3. Respondents Timothy L. Stark and Wildlife In Need and Wildlife In Deed, Inc., are jointly and severally assessed a civil penalty of $300,000 for their violations herein. The civil penalty shall be made by check made payable to "The Treasurer of the United States," must include the Docket Nos. 16-0124 and 16-0125, and shall be remitted either by U.S. Mail addressed to:

USDA, APHIS, Miscellaneous
P.O. Box 979043
St. Louis, MO 63197-9000

or by overnight delivery addressed to:

US Bank
ATTN: Govt Lockbox 979043
1005 Convention Plaza
St. Louis, MO 63101

4. Respondent Timothy L. Stark is assessed a civil penalty of $40,000 for his violations herein, payable as set forth in paragraph 3 above.

This Decision and Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) applicable to this proceeding.

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

Issued this 3rd day of February 2020, in Washington, D.C.

Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
Email: SM.OHA.HearingClerks@USDA.GOV