

In re: DENNIS HILL, AN INDIVIDUAL, d/b/a WHITE TIGER FOUNDATION; AND WILLOW HILL CENTER FOR RARE & ENDANGERED SPECIES, LLC, AN INDIANA DOMESTIC LIMITED LIABILITY COMPANY, d/b/a HILL'S EXOTICS.

AWA Docket No. 04-0012.

Decision and Order filed October 8, 2004.

AWA – Animal Welfare Act – Failure to file timely answer – Default decision – Bases for denial of motion for default – Sanction – Cease and desist order – Civil penalty – License revocation.

The Judicial Officer reversed Administrative Law Judge Victor W. Palmer's denial of Complainant's motion for a default decision. The Judicial Officer issued a decision in which he found Respondents violated the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act. The Judicial Officer concluded Respondents filed a late answer to the Amended Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), were deemed to have admitted the allegations in the Amended Complaint and waived the opportunity for a hearing. The Judicial Officer rejected Respondents' contention that they had filed meritorious objections to Complainant's motion for a default decision. The Judicial Officer issued a cease and desist order against Respondents, assessed Respondents a \$20,000 civil penalty, and revoked Respondent Dennis Hill's Animal Welfare Act license.

Bernadette R. Juarez, for Complainant.

M. Michael Stephenson, Shelbyville, IN, for Respondents.

Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a "Complaint" on March 4, 2004. Complainant instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges Dennis Hill, d/b/a White Tiger Foundation, and Willow Hill Center for Rare & Endangered Species, LLC, d/b/a Hill's Exotics [hereinafter Respondents], willfully violated the Animal Welfare Act and the Regulations and Standards.¹

The Hearing Clerk served Respondents with the Complaint, the Rules of Practice, and a service letter on March 15, 2004.² Respondents were required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) to answer the Complaint within 20 days after service. On March 26, 2004, Respondents requested an additional 30 days within which to file an answer.³ On March 30, 2004, Chief Administrative Law Judge Marc R. Hillson extended the time for filing Respondents' answer to May 5, 2004.⁴

On April 23, 2004, Complainant filed an "Amended Complaint." On

¹Complaint.

²United States Postal Service Domestic Return Receipts for Article Number 7003 0500 0000 1056 0083 and Article Number 7003 0500 0000 1056 0090.

³Request for Extension of Time to Respond to Complaint.

⁴Extension of Time.

April 27, 2004, Respondents filed an “Answer” in which Respondents deny the material allegations of the Complaint. The Hearing Clerk sent Respondents a letter dated April 27, 2004, stating “Respondents’ Amended Answer to Amended Complaint, has been received and filed in the above-captioned proceeding.” On April 30, 2004, the Hearing Clerk served Respondents with the Amended Complaint.⁵ Respondents failed to file a response to the Amended Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)).

On June 3, 2004, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a “Motion for Adoption of Proposed Decision and Order” [hereinafter Motion for Default Decision] and a proposed “Decision and Order as to Dennis Hill and Willow Hill Center for Rare & Endangered Species, LLC, By Reason of Admission of Facts” [hereinafter Proposed Default Decision]. On June 7, 2004, the Hearing Clerk served Respondents with Complainant’s Motion for Default Decision and Complainant’s Proposed Default Decision.⁶ On June 15, 2004, and June 23, 2004, Respondents filed objections to Complainant’s Motion for Default Decision and Complainant’s Proposed Default Decision.⁷

On July 13, 2004, during a teleconference with counsel for Respondents and counsel for Complainant, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] denied Complainant’s Motion for Default Decision and provided Respondents until August 2, 2004, to file a response to the Amended Complaint.⁸ On August 3, 2004, Respondents filed “Answer to Amended Complaint.”

On August 27, 2004, Complainant appealed the ALJ’s denial of Complainant’s Motion for Default Decision to the Judicial Officer.⁹ On September 15, 2004, Respondents filed “Response in Opposition to Complainant’s Appeal Petition.” On September 22, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I disagree with the ALJ’s denial of Complainant’s Motion for Default Decision. Therefore, I: (1) reverse the ALJ’s July 13, 2004, denial of Complainant’s Motion for Default Decision; and (2) issue this Decision and Order based on Respondents’ failure to file a timely answer to the Amended Complaint.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

⁵United States Postal Service Domestic Return Receipt for Article Number 7003 0500 0000 1056 0458.

⁶United States Postal Service Domestic Return Receipt for Article Number 7003 0500 0000 1056 0656.

⁷Objection to Motion for Adoption of Proposed Decision and Order, filed June 15, 2004, and Supplemental Objection to Motion for Adoption of Proposed Decision and Order, filed June 23, 2004.

⁸Notice of Hearing and Exchange Deadlines at 1, filed by the ALJ on July 14, 2004.

⁹Complainant’s Appeal Petition.

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CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING OF CERTAIN ANIMALS

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

§ 2132. Definitions

When used in this chapter—

....

(f) The term “dealer” means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—

- (i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or
- (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year[.]

§ 2149. Violations by licensees

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- (b) **Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court**

jurisdiction; failure to obey cease and desist order

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty 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. . . .

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(f), 2149(b)-(c), 2151.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Civil Penalties Inflation Adjustment Act of 1990”.

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

- (1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;
- (2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;
- (3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and
- (4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE—The purpose of this Act is to establish a mechanism that shall—

- (1) allow for regular adjustment for inflation of civil monetary penalties;
- (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and
- (3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

- (1) “agency” means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;
- (2) “civil monetary penalty” means any penalty, fine, or other sanction that—
 - (A)(i) is for a specific monetary amount as provided by Federal law; or
 - (ii) has a maximum amount provided for by Federal law; and
 - (B) is assessed or enforced by an agency pursuant to Federal law; and
 - (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and
- (3) “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION
ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter—

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act; and

(2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL
MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

(1) multiple of \$10 in the case of penalties less than or equal to \$100;

(2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) DEFINITION.—For purposes of subsection (a), the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

LIMITATION ON INITIAL ADJUSTMENT.—The first adjustment of a civil monetary penalty . . . may not exceed 10 percent of such penalty.

28 U.S.C. § 2461 (note).

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

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PART 3—DEBT MANAGEMENT

....

SUBPART E—ADJUSTED CIVIL MONETARY PENALTIES

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties—*

....

(2) *Animal and Plant Health Inspection Service.*

....

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750; and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

**CHAPTER I—ANIMAL AND PLANT HEALTH
INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

....

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood,

serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animal to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

PART 2—REGULATIONS

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SUBPART D—ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(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:

....

(2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;

(3) Daily observation of all animals to assess their health and well-being; *Provided, however,* That daily observation of animals may be accomplished by someone other than the attending veterinarian; and *Provided, further,* That a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian[.]

SUBPART G—RECORDS

§ 2.75 Records: Dealers and exhibitors.

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(b)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and exhibitor shall make, keep, and

maintain records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

- (i) The name and address of the person from whom the animals were purchased or otherwise acquired;
- (ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;
- (iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;
- (iv) The name and address of the person to whom an animal was sold or given;
- (v) The date of purchase, acquisition, sale, or disposal of the animal(s);
- (vi) The species of the animal(s); and
- (vii) The number of animals in the shipment.

SUBPART H—COMPLIANCE WITH STANDARDS AND HOLDING PERIOD

§ 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale, and intermediate handler shall comply in all respects with the regulations set forth in part 2 and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals.

SUBPART I—MISCELLANEOUS

....

§ 2.126 Access and inspection of records and property.

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

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

PART 3—STANDARDS

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**SUBPART D—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE,
TREATMENT, AND TRANSPORTATION OF NONHUMAN PRIMATES**

FACILITIES AND OPERATING STANDARDS

§ 3.75 Housing facilities, general.

(a) *Structure*: construction. Housing facilities for nonhuman primates must be designed and constructed so that they are structurally sound for the species of nonhuman primates housed in them. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

....

§ 3.76 Indoor housing facilities.

(a) *Heating, cooling, and temperature*. Indoor housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from temperature extremes and to provide for their health and well-being. The ambient temperature in the facility must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when nonhuman primates are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours when nonhuman primates are present. The ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

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§ 3.80 Primary enclosures.

Primary enclosures for nonhuman primates must meet the following minimum requirements:

(a) *General requirements*. . . .

(2) Primary enclosures must be constructed and maintained so that they:

....

(v) Enable the nonhuman primates to remain dry and clean;

....

(viii) Provide the nonhuman primates with easy and convenient access to clean food and water;

....

(b) *Minimum space requirements*. Primary enclosures must meet the minimum space requirements provided in this subpart. These minimum space requirements must be met even if perches, ledges, swings, or other suspended fixtures are placed in the enclosure. Low perches and ledges that do not allow the space underneath them to be comfortably occupied by the animal will be counted as part of the floor space.

(1) Prior to February 15, 1994:

(i) Primary enclosures must be constructed and maintained so as to provide sufficient space to allow each nonhuman primate to make normal postural adjustments with adequate freedom of movement; and

(ii) Each nonhuman primate housed in a primary enclosure must be provided with a minimum floor space equal to an area at least three times the area occupied by the primate when standing on four feet.

(2) On and after February 15, 1994:

(i) The minimum space that must be provided to *each* nonhuman primate, whether housed individually or with other nonhuman primates, will be determined by the typical weight of animals of its species, except for brachiating species and great apes and will be calculated by using the following table [table omitted]:

(ii) Dealers[,] exhibitors, and research facilities, including Federal research facilities, must provide great apes weighing over 110 lbs. (50 kg) an additional volume of space in excess of that required for Group 6 animals as set forth in paragraph (b)(2)(i) of this section, to allow for normal postural adjustments.

(iii) In the case of research facilities, any exemption from these standards must be required by a research proposal or in the judgment of the attending veterinarian and must be approved by the Committee. In the case of dealers and exhibitors, any exemption from these standards must be required in the judgment of the attending veterinarian and approved by the Administrator.

(iv) When more than one nonhuman primate is housed in a primary enclosure, the minimum space requirement for the enclosure is the sum of the minimum floor area space required for each individual nonhuman primate in the table in paragraph (b)(2)(i) of this section, and the minimum height requirement for the largest nonhuman primate housed in the enclosure. Provided however, that mothers with infants less than 6 months of age may be maintained together in primary enclosures that meet the floor area space and height requirements of the mother.

....

§ 3.81 Environment enhancement to promote psychological well-being.

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. The plan, at a minimum, must address each of the following:

(a) *Social grouping.* The environment enhancement plan must include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature. Such specific provisions must be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. The plan may provide for the following exceptions:

(1) If a nonhuman primate exhibits vicious or overly aggressive behavior, or is debilitated as a result of age or other conditions (e.g., arthritis), it should be housed separately;

(2) Nonhuman primates that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony

as directed by the attending veterinarian. When an entire group or room of nonhuman primates is known to have or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatment, and control.

(3) Nonhuman primates may not be housed with other species of primates or animals unless they are compatible, do not prevent access to food, water, or shelter by individual animals[,] and are not known to be hazardous to the health and well-being of each other. Compatibility of nonhuman primates must be determined in accordance with generally accepted professional practices and actual observations, as directed by the attending veterinarian, to ensure that the nonhuman primates are in fact compatible. Individually housed nonhuman primates must be able to see and hear nonhuman primates of their own or compatible species unless the attending veterinarian determines that it would endanger their health, safety, or well-being.

(b) *Environmental enrichment.* The physical environment in the primary enclosures must be enriched by providing means of expressing noninjurious species-typical activities. Species differences should be considered when determining the type or methods of enrichment. Examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing objects to manipulate; varied food items; using foraging or task-oriented feeding methods; and providing interaction with the care giver or other familiar and knowledgeable person consistent with personnel safety precautions.

(c) *Special considerations.* Certain nonhuman primates must be provided special attention regarding enhancement of their environment, based on the needs of the individual species and in accordance with the instructions of the attending veterinarian. Nonhuman primates requiring special attention are the following:

- (1) Infants and young juveniles;
- (2) Those that show signs of being in psychological distress through behavior or appearance;
- (3) Those used in research for which the Committee-approved protocol requires restricted activity;
- (4) Individually housed nonhuman primates that are unable to see and hear nonhuman primates of their own or compatible species; and
- (5) Great apes weighing over 110 lbs. (50 kg). Dealers, exhibitors, and research facilities must include in the environment enhancement plan special provisions for great apes weighing over 110 lbs. (50 kg), including additional opportunities to express species-typical behavior.

(d) *Restraint devices.* Nonhuman primates must not be maintained in restraint devices unless required for health reasons as determined by the attending veterinarian or by a research proposal approved by the Committee at research facilities. Maintenance under such restraint must be for the shortest period possible. In instances where long-term (more than 12 hours) restraint is required, the nonhuman primate must be provided the opportunity daily for unrestrained activity for at least one continuous hour during the period of restraint, unless continuous restraint is required by the research proposal approved by the Committee at research facilities.

(e) *Exemptions.* (1) The attending veterinarian may exempt an individual nonhuman primate from participation in the environment enhancement plan because of its health or condition, or in consideration

of its well-being. The basis of the exemption must be recorded by the attending veterinarian for each exempted nonhuman primate. Unless the basis for the exemption is a permanent condition, the exemption must be reviewed at least every 30 days by the attending veterinarian.

(2) For a research facility, the Committee may exempt an individual nonhuman primate from participation in some or all of the otherwise required environment enhancement plans for scientific reasons set forth in the research proposal. The basis of the exemption shall be documented in the approved proposal and must be reviewed at appropriate intervals as determined by the Committee, but not less than annually.

(3) Records of any exemptions must be maintained by the dealer, exhibitor, or research facility and must be made available to USDA officials or officials of any pertinent funding Federal agency upon request.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

§ 3.82 Feeding.

(a) The diet for nonhuman primates must be appropriate for the species, size, age, and condition of the animal, and for the conditions in which the nonhuman primate is maintained, according to generally accepted professional and husbandry practices and nutritional standards. The food must be clean, wholesome, and palatable to the animals. It must be of sufficient quantity and have sufficient nutritive value to maintain a healthful condition and weight range of the animal and to meet its normal daily nutritional requirements.

(b) Nonhuman primates must be fed at least once each day except as otherwise might be required to provide adequate veterinary care. Infant and juvenile nonhuman primates must be fed as often as necessary in accordance with generally accepted professional and husbandry practices and nutritional standards, based upon the animals' age and condition.

....

(d) Food and food receptacles, if used, must be located so as to minimize any risk of contamination by excreta and pests. Food receptacles must be kept clean and must be sanitized in accordance with the procedures listed in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used food receptacles must be sanitized before they can be used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Measures must be taken to ensure there is no molding, deterioration, contamination, or caking or wetting of food placed in self-feeders.

§ 3.83 Watering.

Potable water must be provided in sufficient quantity to every nonhuman primate housed at the facility. If potable water is not continually available to the nonhuman primates, it must be offered to them as often as necessary to ensure their health and well-being, but no less than twice daily for at least 1 hour each time, unless otherwise required by the attending veterinarian, or as required by the research proposal approved by the Committee at research facilities. Water

receptacles must be kept clean and sanitized in accordance with methods provided in § 3.84(b)(3) of this subpart at least once every 2 weeks or as often as necessary to keep them clean and free from contamination. Used water receptacles must be sanitized before they can be used to provide water to a different nonhuman primate or social grouping of nonhuman primates.

§ 3.84 Cleaning, sanitization, housekeeping, and pest control.

(a) *Cleaning of primary enclosures.* Excreta and food waste must be removed from inside each indoor primary enclosure daily and from underneath them as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent the nonhuman primates from becoming soiled, and to reduce disease hazards, insects, pests, and odors. Dirt floors, floors with absorbent bedding, and planted areas in primary enclosures must be spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta, or as often as necessary to reduce disease hazards, insects, pests, and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, nonhuman primates must be removed, unless the enclosure is large enough to ensure the animals will not be harmed, wetted, or distressed in the process. Perches, bars, and shelves must be kept clean and replaced when worn. If the species of the nonhuman primates housed in the primary enclosure engages in scent marking, hard surfaces in the primary enclosure must be spot-cleaned daily.

....

(c) *Housekeeping for premises.* Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair in order to protect the nonhuman primates from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste, and discarded matter. Weeds, grass, and bushes must be controlled so as to facilitate cleaning of the premises and pest control.

§ 3.85 Employees.

Every person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining nonhuman primates must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide husbandry practices and care, or handle nonhuman primates, must be trained and supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates to supervise others. The employer must be certain that the supervisor can perform to these standards.

SUBPART F—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF WARMBLOODED ANIMALS OTHER THAN DOGS, CATS, RABBITS, HAMSTERS, GUINEA PIGS, NONHUMAN PRIMATES, AND MARINE MAMMALS

FACILITIES AND OPERATING STANDARDS

§ 3.125 Facilities, general.

(a) *Structural strength.* The facility must be constructed of such material and of such 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.

....

(c) *Storage.* Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

(d) *Waste disposal.* Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. The disposal facilities and any disposal of animal and food wastes, bedding, dead animals, trash, and debris shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

....

§ 3.127 Facilities, outdoor.

(a) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

(b) *Shelter from inclement weather.* Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climate.

(c) *Drainage.* A suitable method shall be provided to rapidly eliminate excess water. The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

(d) *Perimeter fence.* On or after May 17, 2000, all outdoor housing facilities (*i.e.*, facilities not entirely indoors) 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, such as, but not limited to, large felines (*e.g.*, lions, tigers, leopards, cougars, etc.), bears, wolves, rhinoceros, and elephants, 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 the animals in the facility. It must be of sufficient distance from the outside of the primary enclosure to prevent physical contact

between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved in writing by the Administrator. A perimeter fence is not required:

(1) Where the outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(2) Where the outdoor housing facility is protected by an effective natural barrier that restricts the animals to the facility and restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(3) Where appropriate alternative security measures are employed and the Administrator gives written approval; or

(4) For traveling facilities where appropriate alternative security measures are employed; or

(5) Where the outdoor housing facility houses only farm animals, such as, but not limited to, cows, sheep, goats, pigs, horses (for regulated purposes), or donkeys, and the facility has in place effective and customary containment and security measures.

§ 3.128 Space requirements.

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

§ 3.129 Feeding.

(a) The 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 for the age, species, condition, size, and type of the animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

(b) Food, and food receptacles, if used, shall be sufficient in quantity and located so as to be accessible to all animals in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

§ 3.130 Watering.

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.

§ 3.131 Sanitation.

(a) *Cleaning of enclosures.* Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the animals confined in such enclosures from being directly sprayed with the stream of water or wetted involuntarily.

....

(c) *Housekeeping.* Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

(d) *Pest control.* A safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

§ 3.132 Employees.

A sufficient number of adequately trained employees shall be utilized to maintain the professionally acceptable level of husbandry practices set forth in this subpart. Such practices shall be under a supervisor who has a background in animal care.

9 C.F.R. §§ 1.1; 2.40(a), (b)(2)-(3), .75(b)(1), .100(a), .126(a); 3.75(a), .76(a), .80(a)(2)(v), (viii), (b), .81, .82(a)-(b), (d), .83, .84(a), (c), .85, .125(a), (c)-(d), .127, .128, .129, .130, .131(a), (c)-(d), .132 (footnotes omitted).

DECISION

Statement of the Case

Respondents failed to file an answer to the Amended Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) and the failure to deny or otherwise respond to an allegation of the complaint shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer constitutes a waiver of hearing. Accordingly, the material allegations in the Amended Complaint are adopted as findings of fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Dennis Hill is an individual, d/b/a White Tiger Foundation, whose mailing address is 3050 West Willow Road, Flat Rock, Indiana 47234. At all times material to this proceeding, Respondent Dennis Hill was licensed and operating as a “dealer,” as that term is defined in the

Animal Welfare Act and the Regulations, and held Animal Welfare Act license number 32-A-0160, issued to “Dennis Hill, DBA Willow Hill Center for Rare And Endangered Species.”

2. Between April 8, 1998, and March 12, 2002, Respondent Willow Hill Center for Rare & Endangered Species, LLC, was an Indiana domestic limited liability company, d/b/a Hill’s Exotics, whose agent for service of process was M. Michael Stephenson, 30 East Washington Street, Suite 400, Shelbyville, Indiana 46176. At all times material to this proceeding, Respondent Willow Hill Center for Rare & Endangered Species, LLC, operated as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations. On March 12, 2002, the Indiana Secretary of State administratively dissolved Respondent Willow Hill Center for Rare & Endangered Species, LLC.

3. Animal and Plant Health Inspection Service personnel conducted inspections of Respondents’ facilities, records, and animals for the purpose of determining Respondents’ compliance with the Animal Welfare Act and the Regulations and Standards on August 30, 2002 (42 animals), August 31, 2002 (approximately 42 animals), September 5, 2002 (41 animals), October 8, 2002 (39 animals), October 22, 2002, November 4, 2002, November 8, 2002, March 12, 2003, March 14, 2003, July 1, 2003, September 22, 2003, September 23, 2003, and January 22, 2004.

4. On August 30, 2002, Respondents failed to establish and maintain programs of adequate veterinary care that included a written program of veterinary care and regularly scheduled visits to the premises. Specifically, the attending veterinarian had not regularly visited Respondents’ facility. (9 C.F.R. § 2.40(a)(1).)

5. On August 30, 2002, Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to treat diseases and injuries. Specifically, Respondents failed to obtain veterinary treatment for an injured lemur, a British Columbian wolf that exhibited lameness in its left front leg, a tiger (“Patty”) that had a chronic draining abscess on the left side of its mandible, and a black leopard (“Dangerous”) with hair loss on a majority of its tail. (9 C.F.R. § 2.40(a), (b)(2).)

6. On August 30, 2002, Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries. Specifically, three wolves (“Two Way,” “Predator,” and “Tundra”) had fly invested ear edges with open lesions. (9 C.F.R. § 2.40(b)(2).)

7. On August 30, 2002, Respondents failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being. Specifically, Respondents failed to observe and record accurate information related to an injured lemur, three wolves (“Two Way,” “Predator,” and “Tundra”) that had fly invested ear edges with open lesions, a British Columbian wolf that exhibited lameness in its left front leg, a tiger (“Patty”) that had a chronic draining abscess on the left side of its mandible, and a black leopard (“Dangerous”) with hair loss on a majority of its tail. Respondents were, therefore, unable to convey accurate information as to the animals’ health, behavior, and well-being to their attending veterinarian. (9 C.F.R. § 2.40(b)(3).)

8. On August 31, 2002, Respondents failed to establish and maintain programs of adequate veterinary care that included a written program of veterinary care and regularly scheduled visits to the premises. Specifically, the attending veterinarian had not regularly visited Respondents’ facility.

(9 C.F.R. § 2.40(a)(1).)

9. On August 31, 2002, Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to treat diseases and injuries. Specifically, Respondents failed to obtain veterinary treatment for an injured lemur, a British Columbian wolf that exhibited lameness in its left front leg, a tiger (“Patty”) that had a chronic draining abscess on the left side of its mandible, a black leopard (“Dangerous”) with hair loss on a majority of its tail, and a tiger (“Vixie”) with hair loss on its face, chest, front legs, and the inside of its back legs. (9 C.F.R. § 2.40(a), (b)(2).)

10. On August 31, 2002, Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries. Specifically, three wolves (“Two Way,” “Predator,” and “Tundra”) had fly invested ear edges with open lesions. (9 C.F.R. § 2.40(b)(2).)

11. On August 31, 2002, Respondents failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being. Specifically, Respondents failed to observe and record accurate information related to an injured lemur, a British Columbian wolf that exhibited lameness in its left front leg, a tiger (“Patty”) that had a chronic draining abscess on the left side of its mandible, a black leopard (“Dangerous”) with hair loss on a majority of its tail, and a tiger (“Vixie”) with hair loss on its face, chest, front legs, and the inside of its back legs. Respondents were, therefore, unable to convey accurate information as to the animals’ health, behavior, and well-being to their attending veterinarian. (9 C.F.R. § 2.40(b)(3).)

12. On September 4, 2002, Respondents failed to maintain a written program of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine. Specifically, Respondents failed to complete and maintain a written program of veterinary care. (9 C.F.R. § 2.40(a)(1).)

13. On October 8, 2002, Respondents failed to maintain a written program of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine. Specifically, Respondents failed to complete and maintain a written program of veterinary care. (9 C.F.R. § 2.40(a)(1).)

14. On November 4, 2002, Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to treat diseases and injuries. Specifically, Respondents failed to obtain veterinary treatment for a black leopard (“Dangerous”) with hair loss on a majority of its tail and a tiger (“Megan”) with generalized hair loss and skin lesions. (9 C.F.R. § 2.40(a), (b)(2).)

15. On November 4, 2002, Respondents failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being. Specifically, Respondents failed to observe and record accurate information related to a black leopard (“Dangerous”) with hair loss on a majority of its tail and a tiger (“Megan”) with generalized hair loss and skin lesions. Respondents were, therefore, unable to convey accurate information as to the animals’ health, behavior, and well-being to their attending veterinarian. (9 C.F.R. § 2.40(b)(3).)

16. On September 23, 2003, Respondents failed to maintain a written program of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine. Specifically, Respondents failed to complete and maintain a written program of

veterinary care. (9 C.F.R. § 2.40(a)(1).)

17. On September 23, 2003, Respondents failed to establish and maintain programs of adequate veterinary care that included a written program of veterinary care and regularly scheduled visits to the premises. Specifically, the attending veterinarian had not regularly visited Respondents' facility. (9 C.F.R. § 2.40(a)(1).)

18. On January 22, 2004, Respondents failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries. Specifically, Respondents failed to provide annual vaccinations and fecal exams to felids and tetanus vaccinations to four ring-tailed lemurs, in accordance with Respondents' program of veterinary care. (9 C.F.R. § 2.40(a)(1).)

19. On August 30, 2002, Respondents failed to make, keep, and maintain records which fully and correctly disclose information regarding the acquisition and disposition of each animal. Specifically, Respondents failed to maintain, and make available for inspection, records disclosing information concerning animals in their possession. (9 C.F.R. § 2.75(b)(1).)

20. On August 31, 2002, Respondents failed to make, keep, and maintain records which fully and correctly disclose information regarding the acquisition and disposition of each animal. Specifically, Respondents failed to maintain, and make available for inspection, records disclosing information concerning animals in their possession. (9 C.F.R. § 2.75(b)(1).)

21. On September 4, 2002, Respondents failed to make, keep, and maintain records which fully and correctly disclose information regarding the acquisition and disposition of each animal. Specifically, Respondents failed to maintain, and make available for inspection, records disclosing information concerning animals in their possession. (9 C.F.R. § 2.75(b)(1).)

22. On September 22, 2003, Respondents failed to have a responsible party available during business hours to permit Animal and Plant Health Inspection Service officials to conduct an inspection of Respondents' animal facilities (9 C.F.R. § 2.126(a)).

23. On August 30, 2002, Respondents failed to provide food of sufficient quantity and nutritive value to maintain a healthful condition and weight range and to meet normal daily nutritional requirements for nonhuman primates. Specifically, Respondents failed to provide food to eight lemurs. (9 C.F.R. § 3.82(a), (b).)

24. On August 30, 2002, Respondents failed to keep food receptacles clean and sanitary. Specifically, the food receptacle used by the injured lemur was caked with old food, attracted numerous flies, and was in need of sanitation. (9 C.F.R. § 3.82(d).)

25. On August 30, 2002, Respondents failed to keep premises, where housing facilities are located, clean and in good repair. Specifically, the floor and area around the injured lemur's enclosure was covered with feces and debris. (9 C.F.R. § 3.84(c).)

26. On August 30, 2002, Respondents failed to utilize a sufficient number of adequately trained employees to maintain a professionally acceptable level of husbandry practices and care for nonhuman primates. Specifically, Respondents failed to have any employees that were able to handle, or provide husbandry practices and care to, eight lemurs. (9 C.F.R. § 3.85.)

27. On October 8, 2002, Respondents failed to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of nonhuman primates that is in accordance with the currently accepted professional journals or reference guides, or as directed by the attending veterinarian. Specifically, Respondents failed to provide

environment enhancement to seven lemurs. (9 C.F.R. § 3.81.)

28. On November 4, 2002, Respondents failed to provide food of sufficient quantity and nutritive value to maintain a healthful condition and weight range and to meet normal daily nutritional requirements for nonhuman primates. Specifically, Respondents failed to provide a sufficient amount of food to seven lemurs that appeared thin with poor haircoats. (9 C.F.R. § 3.82(a), (b).)

29. On November 4, 2002, Respondents failed to provide potable water to every nonhuman primate, when potable water was not accessible to the nonhuman primates at all times, as often as necessary for their health and well-being. Specifically, Respondents failed to provide potable water to seven lemurs. (9 C.F.R. § 3.83.)

30. On November 4, 2002, Respondents failed to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of nonhuman primates that is in accordance with the currently accepted professional journals or reference guides, or as directed by the attending veterinarian. Specifically, Respondents failed to provide environment enhancement to seven lemurs. (9 C.F.R. § 3.81.)

31. On November 4, 2002, Respondents failed to remove excreta and food waste from inside each indoor primary enclosure daily and from underneath each primary enclosure as often as necessary to prevent excessive accumulation of feces and food waste, to prevent the nonhuman primate from becoming soiled, and to reduce disease hazards, insects, pests, and odors. Specifically, Respondents housed seven lemurs in soiled primary enclosures. (9 C.F.R. § 3.84(a).)

32. On November 4, 2002, Respondents failed to construct and maintain the primary enclosures for seven lemurs so as to enable the nonhuman primates to remain dry and clean and failed to provide the nonhuman primates with easy and convenient access to clean food and water (9 C.F.R. § 3.80(a)(2)(v), (viii)).

33. On November 4, 2002, Respondents failed to utilize a sufficient number of adequately trained employees to maintain a professionally acceptable level of husbandry practices and care for nonhuman primates. Specifically, Respondents failed to have any employees that were able to handle, or provide husbandry and care to, seven lemurs. (9 C.F.R. § 3.85.)

34. On March 12, 2003, Respondents failed to construct and maintain the primary enclosures for nonhuman primates so as to meet the minimum space requirements. Specifically, Respondents housed six lemurs in enclosures that provided each lemur approximately 2 square feet of space and 14 inches of height. (9 C.F.R. § 3.80(b).)

35. On March 12, 2003, Respondents failed to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of nonhuman primates that is in accordance with the currently accepted professional journals or reference guides, or as directed by the attending veterinarian. Specifically, Respondents failed to provide or follow a plan of environment enhancement for six lemurs. (9 C.F.R. § 3.81.)

36. On March 12, 2003, Respondents failed to provide potable water to every nonhuman primate, when potable water was not accessible to the nonhuman primates at all times, as often as necessary for their health and well-being. Specifically, Respondents failed to provide potable water to six lemurs. (9 C.F.R. § 3.83.)

37. On March 12, 2003, Respondents failed to remove excreta and food waste from inside each indoor primary enclosure daily and from underneath each primary indoor enclosure as often as necessary to prevent excessive accumulation of feces and food waste, to prevent the nonhuman primate from

becoming soiled, and to reduce disease hazards, insects, pests, and odors. Specifically, Respondents housed six lemurs in primary enclosures with excessive accumulations of feces and food waste. (9 C.F.R. § 3.84(a).)

38. On March 12, 2003, Respondents failed to construct and maintain the primary enclosures for nonhuman primates so as to enable the nonhuman primates to remain dry and clean. Specifically, Respondents housed six lemurs in enclosures so contaminated with excessive feces and food waste that some of the lemurs had feces on their haircoats and could not avoid the overwhelming contamination of wet filth. (9 C.F.R. § 3.80(a)(2)(v).)

39. On January 22, 2004, Respondents failed to design and construct primate facilities so they were structurally sound and failed to keep the primate facilities in good repair to protect the animals from injury, contain the animals securely, and restrict other animals from entering. Specifically, the enclosure housing four ring-tailed lemurs had a leaking roof, exposed electrical wires, and door that was off its hinge. (9 C.F.R. § 3.75(a).)

40. On January 22, 2004, Respondents failed to construct the surfaces of housing facilities in a manner, and made of material, that allow the surfaces to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Specifically, Respondents constructed the walls and flooring in the lemurs' enclosure of unsealed wood. (9 C.F.R. § 3.75(a).)

41. On January 22, 2004, Respondents failed to sufficiently heat indoor housing facilities when necessary to protect nonhuman primates from temperature extremes and to provide for their health and well-being. Specifically, the heating device in the enclosure housing four ring-tailed lemurs provided insufficient heat to prevent the ambient temperature from dropping below 45 degrees Fahrenheit for more than 4 hours. (9 C.F.R. § 3.76(a).)

42. On January 22, 2004, Respondents failed to provide potable water to every nonhuman primate, when potable water was not accessible to the nonhuman primates at all times, as often as necessary for their health and well-being. Specifically, Respondents failed to provide potable water to four ring-tailed lemurs. (9 C.F.R. § 3.83.)

43. On January 22, 2004, Respondents failed to clean and sanitize water receptacles as often as necessary to keep them clean and free from contamination. Specifically, the water receptacle used by four ring-tailed lemurs contained green algae, fecal material, and floating monkey biscuits. (9 C.F.R. § 3.83.)

44. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to fill the large holes and repair the retainer device in an enclosure housing two wolves ("Two Way" and "Tundra"). (9 C.F.R. § 3.125(a).)

45. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the sagging fencing material in the top, southeast corner of the black bears' enclosure. (9 C.F.R. § 3.125(a).)

46. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the chainlink fence that was detached from the horizontal foundational bar in the spotted leopard's ("Maya") enclosure. (9 C.F.R. § 3.125(a).)

47. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the damaged chainlink fence on the front of the Timber wolf's enclosure and used torn and bent chainlink fencing with sharp edges to patch the damaged east-side area of the cougar's ("Maurice") enclosure. (9 C.F.R. § 3.125(a).)

48. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, two tigers ("Thor" and "Dixie") escaped from their primary enclosure through an unsound gate. (9 C.F.R. § 3.125(a).)

49. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents constructed an 8-foot-high, open-top outdoor enclosure for two tigers ("Sophie" and "Bubba"). (9 C.F.R. § 3.125(a).)

50. On August 30, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury. Specifically, Respondents failed to remove an exposed, sharp nail in a black bear's ("Teddy") primary enclosure. (9 C.F.R. § 3.125(a).)

51. On August 30, 2002, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration, molding, or contamination by vermin. Specifically, the freezer used for food storage was non-functional and meat, which was thawing in a wheel barrow, exhibited putrefaction and fly infestation. (9 C.F.R. § 3.125(c).)

52. On August 30, 2002, Respondents failed to make provisions for the removal and disposal of animal and food wastes, trash, and debris. Specifically, decomposing food was found in several enclosures, empty feed boxes were scattered throughout the facility, and boxes containing rotting, maggot infested meat, and debris associated with the boxes, were found behind the wolves' enclosures. (9 C.F.R. § 3.125(d).)

53. On August 31, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to fill the large holes and repair the retainer device in a wolf's ("Two Way") enclosure. (9 C.F.R. § 3.125(a).)

54. On August 31, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the chainlink fence that was detached from the horizontal foundational bar in the spotted leopard's ("Maya") enclosure. (9 C.F.R. § 3.125(a).)

55. On August 31, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the damaged chainlink fence on the front of the Timber wolf's enclosure and used torn and bent chainlink fencing with sharp edges to patch the damaged east-side area of the cougar's ("Maurice") enclosure. (9 C.F.R. § 3.125(a).)

56. On August 31, 2002, Respondents failed to construct indoor and

outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to remove an exposed, sharp nail in a black bear's ("Teddy") primary enclosure. (9 C.F.R. § 3.125(a).)

57. On August 31, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents used 11.5 gauge chainlink to construct the enclosures for nine young tigers housed in the barn. (9 C.F.R. § 3.125(a).)

58. On August 31, 2002, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration, molding, or contamination by vermin. Specifically, the freezer used for food storage was non-functional and meat, which was thawing in a wheel barrow, exhibited putrefaction and fly infestation. (9 C.F.R. § 3.125(c).)

59. On August 31, 2002, Respondents failed to make provisions for the removal and disposal of animal and food wastes, trash, and debris. Specifically, decomposing food was found in several enclosures for wolves, tigers, and leopards. (9 C.F.R. § 3.125(d).)

60. On September 4, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury. Specifically, Respondents failed to remove an exposed, sharp nail in a black bear's ("Teddy") primary enclosure. (9 C.F.R. § 3.125(a).)

61. On September 4, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents used 11.5 gauge chainlink to construct the enclosures for nine young tigers housed in the barn. (9 C.F.R. § 3.125(a).)

62. On September 4, 2002, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration, molding, or contamination by vermin. Specifically, the freezer used for food storage was non-functional. (9 C.F.R. § 3.125(c).)

63. On October 8, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury. Specifically, Respondents failed to remove an exposed, sharp nail in the black bears' ("Boo Boo" and "Apache") primary enclosure. (9 C.F.R. § 3.125(a).)

64. On October 8, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents used 11.5 gauge chainlink to construct the enclosures for five young tigers housed in the barn. (9 C.F.R. § 3.125(a).)

65. On October 8, 2002, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to fill the large holes and repair the retainer device in a wolf's ("Tundra") enclosure. (9 C.F.R. § 3.125(a).)

66. On October 8, 2002, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration,

molding, or contamination by vermin. Specifically, the freezer used for food storage was non-functional. (9 C.F.R. § 3.125(c).)

67. On November 4, 2002, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration, molding, or contamination by vermin. Specifically, the freezer used for food storage was non-functional. (9 C.F.R. § 3.125(c).)

68. On November 4, 2002, Respondents failed to make provisions for the removal and disposal of animal and food wastes, trash, and debris. Specifically, Respondents allowed piles of manure packs to accumulate outside the tigers' enclosures. (9 C.F.R. § 3.125(d).)

69. On March 12, 2003, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the roof of a tiger's ("Sierra") enclosure (two sections of the fencing that comprised the roof were disconnected). (9 C.F.R. § 3.125(a).)

70. On March 12, 2003, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration, molding, or contamination by vermin. Specifically, the freezer used for food storage was non-functional. (9 C.F.R. § 3.125(c).)

71. On January 22, 2004, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to secure the perimeter fence with a locking device to prevent unauthorized access. (9 C.F.R. § 3.125(a).)

72. On January 22, 2004, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the top of the shelter box used by two tigers ("Thor" and "Vixie") that had become detached. (9 C.F.R. § 3.125(a).)

73. On January 22, 2004, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the detached panel on the top east side of the enclosure housing two bears. (9 C.F.R. § 3.125(a).)

74. On January 22, 2004, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to adequately secure chainlink fencing panels in enclosures housing three tigers ("Rachel," Sophie," and "Bubba"). (9 C.F.R. § 3.125(a).)

75. On January 22, 2004, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair or remove the fallen resting platform in a leopard's enclosure ("Pepper"). (9 C.F.R. § 3.125(a).)

76. On January 22, 2004, Respondents failed to construct indoor and outdoor housing facilities so they were structurally sound and failed to maintain the housing facilities in good repair to protect the animals from injury and to contain the animals. Specifically, Respondents failed to repair the sharp,

exposed wire ends in a tiger cub's enclosure ("Bolbar"). (9 C.F.R. § 3.125(a).)

77. On January 22, 2004, Respondents failed to store food supplies in facilities that adequately protect the food supplies against deterioration, molding, or contamination by vermin. Specifically, Respondents stored turkey legs (being fed to animals) on the ground outside. (9 C.F.R. § 3.125(c).)

78. On August 30, 2002, Respondents failed to provide sufficient shade by natural or artificial means to allow all animals kept outdoors to protect themselves from direct sunlight. Specifically, the damaged tarp, used as a shade structure for a tiger ("Ozzie"), was pulled away from its enclosure and failed to provide shelter from direct sunlight. (9 C.F.R. § 3.127(a).)

79. On August 30, 2002, Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of the animals. Specifically, a wolf ("Predator") was without any shelter. (9 C.F.R. § 3.127(b).)

80. On August 30, 2002, Respondents failed to provide a suitable method to rapidly eliminate excess water. Specifically, excess water in a tiger's ("Tony") enclosure resulted in the animal being unable to remain clean and dry. (9 C.F.R. § 3.127(c).)

81. On August 30, 2002, Respondents failed to construct a perimeter fence around dangerous animals maintained on the premises, including nine tigers and one leopard housed in the barn (9 C.F.R. § 3.127(d)).

82. On August 30, 2002, Respondents failed to construct a perimeter fence so that it protected the animals in the facility by restricting animals and unauthorized persons from going through or under it and having contact with animals in the facility. Specifically, the west-side gate of Respondents' perimeter fence was damaged and there was a large hole under the perimeter fence in the northeast corner of the facility. (9 C.F.R. § 3.127(d).)

83. On August 30, 2002, Respondents failed to construct a perimeter fence so that it protected the animals in the facility by restricting animals and unauthorized persons from going through or under it and having contact with animals in the facility. Specifically, the security of the perimeter fence was compromised; the key used to secure the padlock was lost and, therefore, the padlock was non-functional. (9 C.F.R. § 3.127(d).)

84. On August 31, 2002, Respondents failed to provide sufficient shade by natural or artificial means to allow all animals kept outdoors to protect themselves from direct sunlight. Specifically, the damaged tarp, used as a shade structure for a tiger ("Ozzie"), was pulled away from its enclosure and failed to provide shelter from direct sunlight. (9 C.F.R. § 3.127(a).)

85. On August 31, 2002, Respondents failed to provide sufficient shade by natural or artificial means to allow all animals kept outdoors to protect themselves from direct sunlight. Specifically, the damaged tarp, used as a shade structure for a wolf ("Predator"), failed to provide shelter from direct sunlight. (9 C.F.R. § 3.127(a).)

86. On August 31, 2002, Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of the animals. Specifically, a wolf's ("Two Way") igloo-style enclosure was damaged above the entrance and did not protect against inclement weather. (9 C.F.R. § 3.127(b).)

87. On August 31, 2002, Respondents failed to provide a suitable method to rapidly eliminate excess water. Specifically, Respondents failed to eliminate excess water in a tiger's ("Tony") enclosure. (9 C.F.R. § 3.127(c).)

88. On August 31, 2002, Respondents failed to construct a perimeter fence around dangerous animals maintained on the premises, including nine tigers and one leopard housed in the barn (9 C.F.R. § 3.127(d)).

89. On September 4, 2002, Respondents failed to construct a perimeter fence around dangerous animals maintained on the premises, including nine tigers and one leopard housed in the barn (9 C.F.R. § 3.127(d)).
90. On October 8, 2002, Respondents failed to provide a suitable method to rapidly eliminate excess water. Specifically, Respondents failed to eliminate excess water in three tiger enclosures (“Munchkin,” “Ozzie,” and “Sierra”). (9 C.F.R. § 3.127(c).)
91. On October 8, 2002, Respondents failed to construct a perimeter fence around dangerous animals maintained on the premises, including seven tigers and three leopards housed in the barn (9 C.F.R. § 3.127(d)).
92. On March 12, 2003, Respondents failed to provide adequate natural or artificial shelter for animals kept outdoors. Specifically, the wet bedding used by the tigers and bears provided inadequate shelter from inclement weather. (9 C.F.R. § 3.127(b).)
93. On March 12, 2003, Respondents failed to provide a suitable method to rapidly eliminate excess water. Specifically, standing water and mud covered 100% of the enclosure for two tigers (“Sophie” and “Bubba”) and 60% of the enclosure for two other tigers (“Zinny” and “Montrose”). (9 C.F.R. § 3.127(c).)
94. July 1, 2003, Respondents failed to provide a suitable method to rapidly eliminate excess water. Specifically, standing water and mud covered 100% of the enclosure for two tigers (southeast enclosures) and 60% of the enclosure for two other tigers (southeast enclosures). (9 C.F.R. § 3.127(c).)
95. On September 23, 2003, Respondents failed to provide a suitable method to rapidly eliminate excess water. Specifically, standing water and mud was found in two tiger enclosures housing three tigers. (9 C.F.R. § 3.127(c).)
96. On January 22, 2004, Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of the animals. Specifically, Respondents provided a shelter box for two tigers (“Ozzie” and “Sierra”) that was too small to contain both animals. (9 C.F.R. § 3.127(b).)
97. On August 30, 2002, Respondents failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Specifically, four enclosures, each housing two tigers, measured less than 12 feet by 12 feet. (9 C.F.R. § 3.128.)
98. On August 31, 2002, Respondents failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Specifically, four enclosures, each housing two tigers, measured less than 12 feet by 12 feet. (9 C.F.R. § 3.128.)
99. On September 4, 2002, Respondents failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Specifically, four enclosures, each housing two tigers, measured less than 12 feet by 12 feet. (9 C.F.R. § 3.128.)
100. On September 4, 2002, Respondents failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Specifically, Respondents housed a spotted leopard in an enclosure that measured 3 feet by 12 feet. (9 C.F.R. § 3.128.)
101. On October 8, 2002, Respondents failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Specifically, two

enclosures, each housing two tigers, measured less than 12 feet by 12 feet. (9 C.F.R. § 3.128.)

102. On January 22, 2004, Respondents failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Specifically, Respondents housed a 9-month old tiger (“Darley”), that weighed between 150 pounds and 175 pounds, in an enclosure that measured 4 feet by 8 feet. (9 C.F.R. § 3.128.)

103. On August 30, 2002, Respondents failed to provide food that was wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, wholesome, palatable food was not available for 16 tigers, 7 leopards, 1 cougar, 1 jaguar, 3 bears, and 6 wolves. (9 C.F.R. § 3.129.)

104. On October 8, 2002, Respondents failed to provide food that was wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, no food was available for 14 tigers, 7 leopards, 1 cougar, 1 jaguar, 3 bears, and 6 wolves. (9 C.F.R. § 3.129.)

105. On November 4, 2002, Respondents failed to provide food that was wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, no food was available for approximately 14 tigers, 10 of which (“Dixie,” “Thor,” “Sophie,” “Bubba,” “Zinni,” “Montrose,” “Megan,” “Luna,” “Shantra,” and “Ozzie”) appeared thin and gaunt with thin brittle haircoats. (9 C.F.R. § 3.129.)

106. On November 4, 2002, Respondents failed to provide food that was wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, no food was available for approximately three bears, one of which (the singly housed bear) appeared thin with a poor quality haircoat. (9 C.F.R. § 3.129.)

107. On November 4, 2002, Respondents failed to provide food that was wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, no food was available for approximately one cougar, one jaguar, and seven leopards, six of which (excepting “Pepper”) appeared thin with poor quality haircoats. (9 C.F.R. § 3.129.)

108. On March 12, 2003, Respondents failed to provide food that was wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. Specifically, no food was available for the large felids. (9 C.F.R. § 3.129.)

109. On August 30, 2002, Respondents failed to ensure that water receptacles were clean and sanitary. Specifically, all of the water receptacles used by the animals were in need of cleaning and sanitation. (9 C.F.R. § 3.130.)

110. On October 8, 2002, Respondents failed to provide access to potable water and ensure that water receptacles were clean and sanitary. Specifically, a tiger’s (“Munchkin”) water and water receptacle were contaminated with maggots. (9 C.F.R. § 3.130.)

111. On October 22, 2002, Respondents failed to provide potable water to animals, when potable water was not accessible to the animals at all times, as often as necessary for the health and comfort of the animals. Specifically, water receptacles used by the tigers contained insufficient water. (9 C.F.R. § 3.130.)

112. On November 4, 2002, Respondents failed to provide potable water

to animals, when potable water was not accessible to the animals at all times, as often as necessary for the health and comfort of the animals and failed to ensure that water receptacles were clean and sanitary. Specifically, water receptacles used by the animals at Respondents' facility contained insufficient water contaminated with debris and were in need of sanitation. (9 C.F.R. § 3.130.)

113. On March 12, 2003, Respondents failed to provide access to potable water and failed to ensure that water receptacles were clean and sanitary. Specifically, the water and water receptacle used by two tigers ("Ozzy" and "Luna") was filled with feces. (9 C.F.R. § 3.130.)

114. On January 22, 2004, Respondents failed to provide potable water to animals, when potable water was not accessible to the animals at all times, as often as necessary for the health and comfort of the animals. Specifically, all the outdoor water receptacles were frozen, several of which were completely iced to the top; four cubs housed in the building had no water; and the water and water receptacle used by one tiger ("Rachel") contained bird droppings. (9 C.F.R. § 3.130.)

115. On August 30, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, liquid excreta and urine seeped from the enclosures housing nine tigers in the barn. (9 C.F.R. § 3.131(a).)

116. On August 30, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed bears in an enclosure with excessive feces. (9 C.F.R. § 3.131(a).)

117. On August 30, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed six wolves and seven tigers in enclosures with accumulated piles of manure. (9 C.F.R. § 3.131(a).)

118. On August 30, 2002, Respondents failed to keep premises clean and in good repair. Specifically, diffused piles of debris and trash were within and outside of Respondents' facility and the trash cans and dumpsters were at full capacity and needed to be emptied. (9 C.F.R. § 3.131(c).)

119. On August 30, 2002, Respondents failed to establish and maintain an adequate program of pest control. Specifically, Respondents failed to take minimally-adequate steps to control avian and mammalian pests. (9 C.F.R. § 3.131(d).)

120. On August 31, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, liquid excreta and urine seeped from the enclosures housing nine tigers in the barn. (9 C.F.R. § 3.131(a).)

121. On August 31, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed bears in an enclosure with excessive feces. (9 C.F.R. § 3.131(a).)

122. On August 31, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed six wolves and seven tigers in enclosures with accumulated piles of manure. (9 C.F.R. § 3.131(a).)

123. On August 31, 2002, Respondents failed to keep premises clean and in good repair. Specifically, trash cans and dumpsters were at full capacity and needed to be emptied. (9 C.F.R. § 3.131(c).)

124. On August 31, 2002, Respondents failed to establish and maintain

an adequate program of pest control. Specifically, Respondents failed to take minimally-adequate steps to control avian and mammalian pests. (9 C.F.R. § 3.131(d).)

125. On September 4, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed bears, wolves, and tigers in enclosures with excessive feces. (9 C.F.R. § 3.131(a).)

126. On October 8, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed six wolves, four tigers, and two bears in enclosures with accumulated piles of manure and/or excessive feces. (9 C.F.R. § 3.131(a).)

127. On October 8, 2002, Respondents failed to keep premises clean and in good repair. Specifically, Respondents left pieces of chainlink fencing, unused water tubs, portions of a partially dismantled enclosure, and other debris throughout the facility. (9 C.F.R. § 3.131(c).)

128. On October 8, 2002, Respondents failed to establish and maintain an adequate program of pest control. Specifically, Respondents failed to take minimally-adequate steps to control mammalian pests. (9 C.F.R. § 3.131(d).)

129. On November 4, 2002, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, liquid excreta and urine seeped from the enclosures housing the large felids. (9 C.F.R. § 3.131(a).)

130. On March 12, 2003, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed three bears in enclosures with excessive accumulation of feces. (9 C.F.R. § 3.131(a).)

131. On January 22, 2004, Respondents failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor. Specifically, Respondents housed five tigers ("Montrose," "Zinni," "Ozzie," "Seirra," and "Zeus") in enclosures with excessive accumulations of feces on top of, and behind, the shelter boxes. (9 C.F.R. § 3.131(a).)

132. On August 30, 2002, Respondents failed to utilize a sufficient number of adequately trained employees to maintain a professionally acceptable level of husbandry practices. Specifically, Respondents failed to have any employees that were able to handle, or provide husbandry and care to, 34 animals. (9 C.F.R. § 3.132.)

133. On August 31, 2002, Respondents failed to utilize a sufficient number of adequately trained employees to maintain a professionally acceptable level of husbandry practices. Specifically, Respondents failed to have any employees that were able to handle, or provide husbandry and care to, 34 animals. (9 C.F.R. § 3.132.)

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth in this Decision and Order, *supra*, I conclude Respondents willfully violated the Animal Welfare Act and the Regulations and Standards as set forth in paragraphs 3 through 34 of these Conclusions of Law.
3. On August 30, 2002, August 31, 2002, September 4, 2002, October 8, 2002, September 23, 2003, and January 22, 2004, Respondents willfully violated section 2.40(a)(1) of the Regulations and Standards (9 C.F.R.

§ 2.40(a)(1)).

4. On August 30, 2002, August 31, 2002, and November 4, 2002, Respondents willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)).

5. On August 30, 2002, August 31, 2002, and November 4, 2002, Respondents willfully violated section 2.40(b)(2) of the Regulations and Standards (9 C.F.R. § 2.40(b)(2)).

6. On August 30, 2002, August 31, 2002, and November 4, 2002, Respondents willfully violated section 2.40(b)(3) of the Regulations and Standards (9 C.F.R. § 2.40(b)(3)).

7. On August 30, 2002, August 31, 2002, and September 4, 2002, Respondents willfully violated section 2.75(b)(1) of the Regulations and Standards (9 C.F.R. § 2.75(b)(1)).

8. On September 22, 2003, Respondents willfully violated section 2.126(a) of the Regulations and Standards (9 C.F.R. § 2.126(a)).

9. On August 30, 2002, and November 4, 2002, Respondents willfully violated sections 2.100(a) and 3.82(a) and (b) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.82(a)-(b)).

10. On August 30, 2002, Respondents willfully violated sections 2.100(a) and 3.82(d) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.82(d)).

11. On August 30, 2002, Respondents willfully violated sections 2.100(a) and 3.84(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.84(c)).

12. On August 30, 2002, and November 4, 2002, Respondents willfully violated sections 2.100(a) and 3.85 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.85).

13. On October 8, 2002, November 4, 2002, and March 12, 2003, Respondents willfully violated sections 2.100(a) and 3.81 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.81).

14. On November 4, 2002, March 12, 2003, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.83 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.83).

15. On November 4, 2002, and March 12, 2003, Respondents willfully violated sections 2.100(a) and 3.84(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.84(a)).

16. On November 4, 2002, Respondents willfully violated sections 2.100(a) and 3.80(a)(2)(v) and (viii) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.80(a)(2)(v), (viii)).

17. On March 12, 2003, Respondents willfully violated sections 2.100(a) and 3.80(b) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.80(b)).

18. On March 12, 2003, Respondents willfully violated sections 2.100(a) and 3.80(a)(2)(v) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.80(a)(2)(v)).

19. On January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.75(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.75(a)).

20. On January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.76(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.76(a)).

21. On August 30, 2002, August 31, 2002, September 4, 2002, October 8, 2002, March 12, 2003, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.125(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.125(a)).

22. On August 30, 2002, August 31, 2002, September 4, 2002, October 8, 2002, November 4, 2002, March 12, 2003, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.125(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.125(c)).
23. On August 30, 2002, August 31, 2002, and November 4, 2002, Respondents willfully violated sections 2.100(a) and 3.125(d) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.125(d)).
24. On August 30, 2002, and August 31, 2002, Respondents willfully violated sections 2.100(a) and 3.127(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.127(a)).
25. On August 30, 2002, August 31, 2002, March 12, 2003, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.127(b) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.127(b)).
26. On August 30, 2002, August 31, 2002, October 8, 2002, March 12, 2003, July 1, 2003, and September 23, 2003, Respondents willfully violated sections 2.100(a) and 3.127(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.127(c)).
27. On August 30, 2002, August 31, 2002, September 4, 2002, and October 8, 2002, Respondents willfully violated sections 2.100(a) and 3.127(d) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.127(d)).
28. On August 30, 2002, August 31, 2002, September 4, 2002, October 8, 2002, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.128 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.128).
29. On August 30, 2002, October 8, 2002, November 4, 2002, and March 12, 2003, Respondents willfully violated sections 2.100(a) and 3.129 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.129).
30. On August 30, 2002, October 8, 2002, October 22, 2002, November 4, 2002, March 12, 2003, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.130 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.130).
31. On August 30, 2002, August 31, 2002, September 4, 2002, October 8, 2002, November 4, 2002, March 12, 2003, and January 22, 2004, Respondents willfully violated sections 2.100(a) and 3.131(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.131(a)).
32. On August 30, 2002, August 31, 2002, and October 8, 2002, Respondents willfully violated sections 2.100(a) and 3.131(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.131(c)).
33. On August 30, 2002, August 31, 2002, and October 8, 2002, Respondents willfully violated sections 2.100(a) and 3.131(d) of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.131(d)).
34. On August 30, 2002, and August 31, 2002, Respondents willfully violated sections 2.100(a) and 3.132 of the Regulations and Standards (9 C.F.R. §§ 2.100(a); 3.132).

COMPLAINANT'S APPEAL PETITION

Complainant contends the ALJ's denial of Complainant's Motion for Default Decision is error. Complainant requests that I issue an order reversing the ALJ's July 13, 2004, denial of Complainant's Motion for Default Decision or that I issue an order vacating the ALJ's denial of Complainant's Motion for Default Decision and remanding the proceeding to the ALJ for issuance of a decision in accordance with the Rules of Practice. (Complainant's Appeal Pet. at 3-9.)

During a July 13, 2004, teleconference with counsel for Respondents and counsel for Complainant, the ALJ denied Complainant's Motion for Default Decision and provided Respondents until August 2, 2004, to file a response to the Amended Complaint. In a July 14, 2004, filing, the ALJ made reference to his July 13, 2004, denial of Complainant's Motion for Default Decision, as follows:

Motion for Adoption of Proposed Decision and Order, filed June 3, 2004, was denied during the teleconference. Respondent [sic] is allowed to file his [sic] Answer to the Amended Complaint no later than **Monday, August 2, 2004.**

Notice of Hearing and Exchange Deadlines at 1 (emphasis in original).

The ALJ did not explicitly conclude that Respondents filed meritorious objections to Complainant's Motion for Default Decision. However, section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) requires that an administrative law judge deny, with supporting reasons, a complainant's motion for a default decision if the administrative law judge finds the respondent has filed meritorious objections to the motion, and requires that an administrative law judge issue a decision, without further procedure or hearing, if the administrative law judge finds the respondent has failed to file meritorious objections to the motion. Therefore, I infer, based on the ALJ's July 13, 2004, denial of Complainant's Motion for Default Decision, the ALJ found meritorious some or all of Respondents' June 15, 2004, and June 23, 2004, objections to Complainant's Motion for Default Decision. I disagree with the ALJ's finding that Respondents filed meritorious objections to Complainant's Motion for Default Decision. Instead, I find Respondents' objections, filed June 15, 2004, and June 23, 2004, are without merit, and I conclude a decision, without further procedure or hearing, must be issued.

Respondents are deemed, for purposes of this proceeding, to have admitted the allegations in the Amended Complaint because they failed to file an answer to the Amended Complaint within 20 days after the Hearing Clerk served them with the Amended Complaint. The Hearing Clerk served Respondents with the Amended Complaint and the Hearing Clerk's April 23, 2004, service letter on April 30, 2004.¹⁰ Sections 1.136(a), 1.136(c), 1.139, and 1.141(a) of the Rules of Practice state the time within which an answer must be filed and the consequences of failing to file a timely answer, as follows:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding

. . . .

(c) *Default.* Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said

¹⁰See note 5.

allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

Moreover, the Amended Complaint informs Respondents of the consequences of failing to file a timely answer, as follows:

The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this amended complaint.

Amended Compl. at 29.

Similarly, the Hearing Clerk informed Respondents in the April 23, 2004, service letter that a timely answer must be filed pursuant to the Rules of Practice and that failure to file a timely answer to any allegation in the Amended Complaint would constitute an admission of that allegation, as follows:

April 23, 2004

Mr. Michael Stephenson, Esq.
McNeely, Stephenson, Thopy & Harrold
30 East Washington Street, Suite 400
Shelbyville, Indiana 46176

Dear Mr. Stephenson:

**Subject: In re: Dennis Hill, an individual d/b/a White Tiger Foundation and Willow Hill Center for Rare & Endangered Species, LLC, an Indiana domestic limited liability company d/b/a Hill's Exotics
AWA Docket No. 04-0012**

Enclosed is a copy of Complainant's Amended Complaint, which has been filed with this office in the above-captioned proceeding.

Inasmuch as Complainant has filed the Amended Complaint prior to the filing of a motion for hearing, the amendment is effective upon filing.

You will have 20 days from service of this letter in which to file an answer to the amended complaint. Failure to file a timely Answer to or plead specifically to any allegation of the Amended Complaint shall constitute an admission of such allegation.

Your answer, as well as any motion or requests that you may wish to file hereafter in this proceeding, should be submitted to the Hearing Clerk, Room 1081, South Building, United States Department of Agriculture, Washington, D.C. 20250. An original and 3 copies are required for each document submitted.

Sincerely,

/s/

Joyce A. Dawson
Hearing Clerk

On April 27, 2004, 3 days before the Hearing Clerk served Respondents with the Amended Complaint, Respondents filed an Answer in response to the Complaint. The Hearing Clerk sent Respondents a letter dated April 27, 2004, informing Respondents that their response to the Amended Complaint had been received, as follows:

April 27, 2004

Mr. Michael Stephenson, Esquire
McNeely, Stephenson, Thopy & Harrold
30 East Washington Street
Suite 400
Shelbyville, Indiana 46176

Dear Mr. Stephenson:

Subject: In re: Dennis Hill, an individual d/b/a White Tiger Foundation and Willow Hill Center for Rare & Endangered Species, LLC, an Indiana domestic limited liability company d/b/a Hill's Exotics., Respondents
AWA Docket No. 04-0012

Respondents' Amended Answer To Amended Complaint, has been received and filed in the above-captioned proceeding.

You will be informed of any future action taken in this matter[.]

Sincerely,
/s/
Joyce A. Dawson
Hearing Clerk

Notwithstanding the Hearing Clerk's April 27, 2004, letter, the record establishes that Respondents' April 27, 2004, filing was neither an amended answer nor a response to the Amended Complaint. As an initial matter, the Hearing Clerk did not serve Respondents with the Amended Complaint until April 30, 2004,¹¹ 3 days after Respondents filed their Answer. Moreover, Respondents entitle their April 27, 2004, filing "Answer." Further still, Respondents state in the April 27, 2004, filing that the filing is a response to the "Complaint" and pray that the ALJ deny the "Complaint." In addition, Respondents' letter transmitting the April 27, 2004, filing is dated April 22, 2004, the April 27, 2004, filing contains a certificate of service stating counsel for Respondents placed the filing "in the United States Mail, first class, postage prepaid, this 22nd day of April, 2004[.]"¹² and the envelope containing the April 27, 2004, filing is postmarked April 22, 2004, 1 day prior to the date Complainant filed the Amended Complaint and 8 days prior to the date the Hearing Clerk served Respondents with the Amended Complaint. Based on the record before me, I find Respondents' April 27, 2004, filing is an answer filed in response to the Complaint and Complainant's operative pleading is the Amended Complaint.

Respondents rely on the Hearing Clerk's April 27, 2004, mischaracterization of Respondents' April 27, 2004, filing as the basis for their Objection to Motion for Adoption of Proposed Decision and Order. The Rules of Practice, the Amended Complaint, and the Hearing Clerk's April 23, 2004, service letter clearly inform Respondents of the requirement for a timely response to the Amended Complaint and the consequences of a failure to file a timely response to the Amended Complaint. Therefore, I find Respondents' reliance on the Hearing Clerk's April 27, 2004, mischaracterization of Respondents' April 27, 2004, filing, misplaced.

Moreover, I find Respondents' 13 objections to Complainant's Motion for Default Decision in Respondents' Supplemental Objection to Motion for Adoption of Proposed Decision and Order, without merit. The length of time Respondents maintained an Animal Welfare Act license; the request that Respondent Dennis Hill testify on the United State Department of Agriculture's behalf as an expert on large cats; the failure of any animal to escape from Respondents' property; the failure of any animal to injure Respondents; Respondents' disposal, or intention to dispose, of animals after the Animal Welfare Act violations occurred;¹³ and Respondents' short-term economic downturn (Supplemental Objection to Motion for Adoption of Proposed Decision and Order ¶¶ 1-5, 8, 10-11, 13) are neither meritorious bases for

¹¹See note 5.

¹²Answer at second unnumbered page.

¹³*In re Mary Meyers*, 56 Agric. Dec. 322, 348 (1997) (stating the respondent's disposal of animals under the jurisdiction of the Secretary of Agriculture under the Animal Welfare Act is not a defense to a violation of the Animal Welfare Act or the Regulations and Standards); *In re Dora Hampton*, 56 Agric. Dec. 301, 320 (1997) (stating the respondent's intention to dispose of animals under the jurisdiction of the Secretary of Agriculture under the Animal Welfare Act is not a defense to a violation of the Animal Welfare Act or the Regulations and Standards).

denying Complainant's Motion for Default Decision nor relevant to this proceeding. Further, while Respondents' corrections of their Animal Welfare Act violations (Supplemental Objection to Motion for Adoption of Proposed Decision and Order ¶¶ 6-7, 9, 12) are commendable and can be taken into account when determining the sanction to be imposed, they neither eliminate the fact that violations of the Animal Welfare Act and the Regulations and Standards occurred¹⁴ nor constitute meritorious bases for denying Complainant's Motion for Default Decision.

The Rules of Practice provide that an answer must be filed within 20 days after service of the amended complaint (7 C.F.R. § 1.136(a)), and Respondents' answer to the Amended Complaint was required to be filed no later than May 20, 2004. Respondents filed an Answer to Amended Complaint on August 3, 2004, 3 months 4 days after the Hearing Clerk served Respondents with the Amended Complaint. Respondents' failure to file a timely answer to the Amended Complaint is deemed, for purposes of this proceeding, an admission of the allegations in the Amended Complaint and constitutes a waiver of hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)).

Accordingly, there are no issues of fact on which a meaningful hearing could be held in this proceeding. Application of the default provisions of the Rules of Practice does not deprive Respondents of rights under the due process clause of the Fifth Amendment to the Constitution of the United States.¹⁵

SANCTION

Respondents, by their failure to file an answer within 20 days after the Hearing Clerk served them with the Amended Complaint, are deemed to have admitted the allegations in the Amended Complaint.¹⁶

With respect to the civil monetary penalty, the Secretary of Agriculture is required to give due consideration to the size of the business of the person

¹⁴*In re Reginald Dwight Parr*, 59 Agric. Dec. 601, 644 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re Susan DeFrancesco*, 59 Agric. Dec. 97, 112 n.12 (2000); *In re Michael A. Huchital*, 58 Agric. Dec. 763, 805 n.6 (1999); *In re James E. Stephens*, 58 Agric. Dec. 149, 184-85 (1999); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 274 (1998); *In re John D. Davenport*, 57 Agric. Dec. 189, 219 (1998), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998); *In re Samuel Zimmerman*, 56 Agric. Dec. 1419, 1456 n.8 (1997), *aff'd*, 173 F.3d 422 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 869 (1998); *In re David M. Zimmerman*, 56 Agric. Dec. 433, 466 (1997), *aff'd*, 156 F.3d 1227 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 46 (1998); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 269, 272-73 (1997) (Order Denying Pet. for Recons.); *In re John Walker*, 56 Agric. Dec. 350, 367 (1997); *In re Mary Meyers*, 56 Agric. Dec. 322, 348 (1997); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 254 (1997), *aff'd*, 172 F.3d 51, 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206) (Table), printed in 58 Agric. Dec. 85 (1999); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 142 (1996); *In re Pet Paradise, Inc.*, 51 Agric. Dec. 1047, 1070 (1992), *aff'd*, 61 F.3d 907, 1995 WL 309637 (7th Cir. 1995) (not to be cited per 7th Circuit Rule 53(b)(2)).

¹⁵*See United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding that a hearing was not required under the Fifth Amendment to the Constitution of the United States where the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). *See also Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating that due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

¹⁶*See* 7 C.F.R. § 1.136(c).

involved, the gravity of the violation, the person's good faith, and the history of previous violations.¹⁷

During 3 of the 11 days on which Respondents violated the Animal Welfare Act and the Regulations and Standards, Respondents maintained between 39 and 42 animals at Respondents' facility.¹⁸ The limited record before me does not provide me with any other indication of the size of Respondents' business; therefore, for the purposes of determining the amount of the civil penalty, I give Respondents the benefit of the lack of a record and assume for purposes of this Decision and Order that Respondents' business is a small business.

Many of Respondents' violations are serious violations which directly jeopardized the health and well-being of Respondents' animals.

Respondents' willful violations on 11 days during the period August 30, 2002, through January 22, 2004, reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations and Standards. An ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and a lack of good faith.

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. However, the recommendation of administrative officials as to the sanction is not controlling, and in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.¹⁹

¹⁷See 7 U.S.C. § 2149(b).

¹⁸Amended Compl. ¶ 6.

¹⁹*In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. ____, slip op. at 33-34 (Oct. 29, 2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re Excel Corp.*, 62 Agric. Dec. 196, 234 (2003), *appeal docketed*, No. 04-9540 (10th Cir. Apr. 24, 2004); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 49 (2002); *In re H.C. MacClaren, Inc.*, 60 Agric. Dec. 733, 762-63 (2001), *aff'd*, 342 F.3d 584 (6th Cir. 2003); *In re Karl Mitchell*, 60 Agric. Dec. 91, 130 (2001), *aff'd*, 42 Fed. Appx. 991, 2002 WL 1941189 (9th Cir. 2002); *In re American Raisin Packers, Inc.*, 60 Agric. Dec. 165, 190 n.8 (2001), *aff'd*, No. CIV F 015606 AWI SMS (E.D. Cal. May 18, 2001), *aff'd*, No. 02-15602, 2003 WL 21259771 (9th Cir. May 29, 2003); *In re Fred Hodgins*, 60 Agric. Dec. 73, 88 (2001) (Decision and Order on Remand), *aff'd*, 33 Fed. Appx. 784, 2002 WL 649102 (6th Cir. 2002) (unpublished); *In re Reginald Dwight Parr*, 59 Agric. Dec. 601, 626 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re Greenville Packing Co.*,

(continued...)

Complainant seeks revocation of Respondent Dennis Hill's Animal Welfare Act license, assessment of a \$27,775 civil penalty against Respondents, and a cease and desist order (Complainant's Motion for Default Decision at 1).

Respondents committed more than 500 violations of the Animal Welfare Act and the Regulations and Standards. Respondents could be assessed a maximum civil penalty of \$2,750 for each of their violations of the Animal Welfare Act and the Regulations and Standards.²⁰ After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the requirements of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), the remedial purposes of the Animal Welfare Act, and the recommendations of the administrative officials, I conclude that a cease and desist order, assessment of a \$20,000 civil penalty,²¹ and revocation of Respondent Dennis Hill's Animal Welfare Act license are appropriate and necessary to ensure Respondents' compliance with the Animal Welfare Act and the Regulations and Standards in the future, to deter others from violating the Animal Welfare Act and the Regulations and Standards, and to fulfill the remedial purposes of the Animal Welfare Act.

For the foregoing reasons, the following Order should be issued.

ORDER

1. Respondents, their agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondents.

2. Respondents are jointly and severally assessed a \$20,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable

¹⁹(...continued)

59 Agric. Dec. 194, 226-27 (2000), *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); *In re James E. Stephens*, 58 Agric. Dec. 149, 182 (1999); *In re Western Sierra Packers, Inc.*, 57 Agric. Dec. 1578, 1604 (1998); *In re Colonial Produce Enterprises, Inc.*, 57 Agric. Dec. 1498, 1514 (1998); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1141 (1998), *appeal dismissed*, 221 F.3d 1342 (Table), 2000 WL 1010575 (8th Cir. 2000) (per curiam); *In re Richard Lawson*, 57 Agric. Dec. 980, 1031-32 (1998), *appeal dismissed*, No. 99-1476 (4th Cir. June 18, 1999); *In re Scamcorp, Inc.*, 57 Agric. Dec. 527, 574 (1998); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 283 (1998); *In re Allred's Produce*, 56 Agric. Dec. 1884, 1918-19 (1997), *aff'd*, 178 F.3d 743 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *In re Kanowitz Fruit & Produce, Co.*, 56 Agric. Dec. 942, 953 (1997) (Order Denying Pet. for Recons.); *In re William E. Hatcher*, 41 Agric. Dec. 662, 669 (1982); *In re Sol Salins, Inc.*, 37 Agric. Dec. 1699, 1735 (1978); *In re Braxton McLinden Worsley*, 33 Agric. Dec. 1547, 1568 (1974).

²⁰Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v)).

²¹I did not adopt Complainant's recommendation that I assess Respondents a \$27,775 civil penalty only because Complainant's recommendation is based, in part, on his contention that "Respondents have a moderate size business" (Complainant's Motion for Default Decision at 2). The limited record before me does not allow me to conclude that Respondents have a moderate size business. Therefore, I give Respondents the benefit of the lack of a record and assume for purposes of this Decision and Order that Respondents' business is a small business.

to the Treasurer of the United States and sent to:

Bernadette R. Juarez
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Bernadette R. Juarez within 60 days after service of this Order on Respondents. Respondents shall state on the certified check or money order that payment is in reference to AWA Docket No. 04-0012.

3. Respondent Dennis Hill's Animal Welfare Act license (Animal Welfare Act license number 32-A-0160) is revoked.

The Animal Welfare Act license revocation provisions of this Order shall become effective on the 60th day after service of this Order on Respondent Dennis Hill.

RIGHT TO JUDICIAL REVIEW

Respondents have the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of this Order. Respondents must seek judicial review within 60 days after entry of this Order. 7 U.S.C. § 2149(c). The date of entry of this Order is October 8, 2004.
