

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

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

**Preliminary Statement**

This is a consolidated proceeding that includes a disciplinary complaint (AWA Docket No. 02-0020), filed on June 14, 2002 and later amended on March 3, 2006, by the Administrator of the Animal and Plant Health Inspection Service (“APHIS”), United States Department of Agriculture (“USDA”), and a petition (AWA Docket No. D-06-0002) filed by Lorenza Pearson (“Mr. Pearson”), the respondent in the disciplinary action. The amended complaint in the disciplinary proceeding alleges that Mr. Pearson, a licensed animal exhibitor, willfully violated the Animal Welfare Act (7 U.S.C. §§ 2131-2159; “the AWA” or “the Act”), and the regulations and standards issued under the Act (9 C.F.R. § 1.1 et seq.; “the regulations”) for which APHIS seeks a cease and desist order, a civil penalty of \$100,000, the revocation of the exhibitor’s license held by Mr. Pearson and his permanent disqualification from obtaining a future license. Mr. Pearson denies the allegations and seeks dismissal of the disciplinary complaint. An

administrative hearing was initially held in Akron, Ohio on September 24-25, 2003 before Administrative Law Judge Leslie B. Holt. Due to Judge Holt's subsequent unavailability, the case was reassigned to me. I held a reopened hearing in Akron, Ohio on June 20-23, 2006. The transcript of the 2003 hearing shall be referred to as "Tr. 1 at \_\_\_". The transcript of the 2006 hearing shall be referred to as "Tr. 2 at \_\_\_". APHIS was represented by attorneys of the USDA's Office of the General Counsel: Frank Martin, Jr., Esq. and Nazina Razick, Esq. at the 2003 hearing, and Frank Martin, Jr., Esq. and Babak A. Rastgoufard, Esq. at the 2006 hearing. Mr. Pearson was represented by his attorney, William T. Whitaker, Esq., of Akron, Ohio.

Upon consideration of the evidence of record, the arguments by the parties, the Act, the regulations, and controlling precedent, I have decided that an order should be entered requiring Mr. Pearson to cease and desist from violating the Act and the regulations, revoking his exhibitor's license, and permanently disqualifying him from obtaining a future license. Civil penalties, however, are not being assessed.

#### **Procedural Background and Rulings on Motions**

After the initiating complaint was filed on June 14, 2002, various events occurred that delayed the issuance of this decision and order.

Judge Leslie B. Holt who held the hearing on September, 24 and 25, 2003, and took evidence on the allegations contained in the original complaint, became unavailable. As a result, the Chief Judge reassigned the case to me on March 10, 2004. I conducted a teleconference with the attorneys for the parties on April 6, 2004, and again on May 6, 2004, in which we discussed whether a new hearing was needed. Mr. Pearson's attorney stressed his need to interrogate in my presence, the witnesses who had appeared for

APHIS so that I could independently assess their credibility. Based on his concerns, a hearing was scheduled for June 8-10, 2004 in Akron, Ohio. That hearing date was later changed to better accommodate the convenience of the parties and their witnesses, to December 6-10, 2004. For similar reasons, those hearing dates were cancelled and the hearing was again rescheduled for April 18-21, 2005.

At a teleconference conducted on March 31, 2005, I was advised that a proceeding pertaining to Mr. Pearson's facility was pending before authorities for the State of Ohio that could resolve the issues in this case. The attorneys for the parties recommended that the scheduled hearing should, for that reason, be cancelled. This was done and subsequent teleconferences were held to track the matter.

In a teleconference held on September 22, 2005, I determined that a hearing in this case was still needed and scheduled it for March 28-31, 2006 in Akron, Ohio. On March 3, 2006, APHIS moved to file an amended complaint to include allegations respecting inspections conducted after those that were the subject of the 2003 hearing. Teleconferences were held on March 7, 2006 and March 14, 2006. At the first teleconference, the motion by APHIS to file an amended complaint was granted and APHIS was directed to send a new witness list and exhibits to William Whitaker, Esq., Mr. Pearson's attorney, and a teleconference was scheduled for March 14, 2006, to ascertain if it was still feasible to hold the hearing as then scheduled. At the second teleconference, Mr. Whitaker advised that he was overwhelmed by the multitude of allegations in the amended complaint and needed additional time to prepare for the hearing. It was decided to reschedule the hearing for June 20-23, 2006, and to reserve additional hearing days on June 27-28, if needed.

In April, 2006, APHIS filed a Motion in Limine to limit the evidence that Mr. Pearson would be allowed to introduce at the hearing, and a teleconference was conducted, on June 12, 2006, to resolve the Motion in Limine. I decided and ruled that inasmuch as APHIS was calling the same investigators to prove the violations alleged in its amended complaint, ample opportunity would be provided to test their credibility without restating the transcribed testimony they gave at the 2003 hearing. It was also decided that respondent would be allowed to cross-examine them in respect to both the original violations alleged by APHIS and those alleged in the amended complaint. Also, witnesses called on behalf of Mr. Pearson could testify in respect to both the violations originally alleged as well as those added by the amended complaint. It was further decided that the hearing would be treated as a reopened hearing with the transcript of the first hearing being considered as part of the overall proceedings.

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

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

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

I denied a motion to reconsider my denial of the motion for continuance, and the

hearing was held as scheduled.

At the hearing, Mr. Pearson's attorney moved again for a continuance in light of the fire. The motion was again denied. A motion was also made at the hearing to reconvene the hearing to obtain testimony from Dr. Faust, a veterinarian, who was out of town at the time of the hearing. The motion was made on the grounds that Mr. Whitaker had just learned that Dr. Faust was the veterinarian who had, on Mr. Pearson's behalf, inspected his bears that were ultimately confiscated (*see* Finding 6, *infra*). This motion was likewise denied. In a hearing so long delayed and so difficult to schedule, it is expected that all potentially helpful witnesses will be identified in advance of the hearing to prevent surprise to opposing counsel and to allow for the issuance and service of any subpoenas needed to compel attendance.

At the conclusion of the hearing, briefing dates were set. Each party subsequently filed unopposed motions for extensions of time to file their briefs. The extensions were granted in light of the voluminous exhibits that had been filed and the lengthy testimony that had been given.

Briefing was completed on January 5, 2007, and the file was then referred to me for decision. Mr. Pearson's brief renewed his requests to present Dr. Faust's testimony and for a continuance due to the house fire. These requests are again denied.

### **The Issues and Controlling Precedent**

At issue in this case, is whether Mr. Pearson, a licensed animal exhibitor, committed the kind of violations of the Act and the regulations for which the Act (7 U.S.C. § 2149(b)) provides that an order may be entered by USDA requiring a licensee to cease and desist from continuing violations of the Act, assessing civil penalties of up to

\$3,750 for each violation (increased from \$2,500 pursuant to 28 U.S.C. § 2461 as implemented by 7 C.F.R. § 3.91(a),(b)(2)(v)), and suspending or revoking the person's license. Moreover, under the regulations, a person whose license has been suspended or revoked may not be licensed within the period during which the order of suspension or revocation is in effect (9 C.F.R. § 2.9(b)).

APHIS argues that Mr. Pearson committed numerous, willful violations under the Act and the regulations for many years, and that I should enter an order against him that contains cease and desist provisions, assesses a civil penalty of \$100,000, revokes Mr. Pearson's exhibitor's license, and permanently disqualifies him from obtaining a license.

Mr. Pearson vigorously denies that he did anything to warrant the revocation of his license or the imposition of a \$100,000 penalty. He argues that his situation is analogous to the one before the Sixth Circuit in *Hodgins v. U.S. Dep't of Agric.*, 238 F.3d 421, 2000 U.S. App. Lexis 29892 (6<sup>th</sup> Cir. 2000). In the cited case, the Sixth Circuit vacated and remanded a USDA decision that had included a cease and desist order, assessed a civil penalty of \$13,500, and suspended a license issued under the AWA for 14 days with reinstatement dependent on APHIS declaring that all violations had ended. The USDA decision was set aside for failure to comply with the limitations the Administrative Procedure Act, 5 U.S.C. § 558(c), places on license suspensions and revocations, and for misapplying the Sixth Circuit's standard for willfulness. Inasmuch as Mr. Pearson resides within the Sixth Circuit where his appeal of a USDA decision would eventually lie, *Hodgins* has controlling precedential value in this case.

In *Hodgins*, the Sixth Circuit concluded that the Judicial Officer erroneously based his suspension of the license on a statement of law that it found "...difficult to

reconcile with the Administrative Procedure Act, which provides that a license can be suspended for a non-willful violation only if the violator is given written notice and an ‘opportunity to demonstrate or achieve compliance with all lawful requirements’ 5 U.S.C. § 558(c)”. The Court then stated:

The proper rule of law, we believe, is this: Unless, it is shown with respect to a specific violation either (a) that the violation was the product of knowing disregard of the action’s legality or (b) that the alleged violator was given a written warning and a chance to demonstrate or achieve compliance, the violation cannot justify a license suspension or similar penalty. This is a principle to which we shall have occasion to turn repeatedly in the discussion that follows.

The question of willfulness is one that must be addressed separately with respect to each specific violation. A blanket finding of willfulness, on the basis of the record before us, is simply not tenable....

2000 U.S. App. Lexis 29892 at 8. The following findings and conclusions have been made in light of the Sixth Circuit’s interpretation of what constitutes willfulness; the court’s instruction that willfulness should be addressed separately with respect to each specific violation; and the limitations that the court found the Administrative Procedure Act places upon USDA suspensions and revocations of AWA licenses. In doing so, I have also considered *Fred Hodgins*, 60 Agric. Dec. 73 (2001), the decision on remand in which the Judicial Officer replaced his previous order with one that continued to impose a cease and desist order, but reduced the civil penalty to \$325 and did not suspend the AWA license. This decision was affirmed in *Hodgins v. USDA*, 33 Fed. Appx. 784, WL 649102, 61 Agric. Dec. 19 (6<sup>th</sup> Cir. 2002).

## **Findings**

### **A. Undisputed General Findings**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Mr. Pearson is an exhibitor as defined in the Animal Welfare Act and the

regulations who holds Animal Welfare Act license number 31-C-0034, issued to: Lorenza Pearson d/b/a L & L Animal Farm.

3. Mr. Pearson does business as L & L Animal Farm (aka L & L Exotic Animal Farm), an unincorporated association or partnership with the mailing address of 2060 Columbus Avenue, Akron, Ohio 44320.

4. On or about October 5, 2005, APHIS notified Mr. Pearson of its intent to terminate his license pursuant to section 2.12 of the regulations (9 C.F.R. § 2.12).

5. Mr. Pearson operates a medium-sized business. As shown by his applications to renew his AWA exhibitor's license, he has held the following number of animals. Between October 11, 1999 and October 11, 2000, he held fifty-nine animals, including thirty-nine wild/exotic felines and twenty bears (CX-1). Between October 11, 2000 and October 11, 2001, he held 82 animals, including fifty-five wild/exotic felines and twenty-seven bears (CX-2). Between October 11, 2001 and October 11, 2002, he held seventy-four animals, including forty-six wild/exotic felines and twenty-eight bears (CX-151). Between October 11, 2002 and October 11, 2003, he held seventy-five animals, including forty-six wild/exotic felines and twenty-nine bears (CX-150). Between October 11, 2003 and October 11, 2004, he held fifty-eight animals, including thirty-three wild/exotic felines and twenty-five bears (CX148). Finally, between October 11, 2004 and October 11, 2005, Mr. Pearson held twenty-six bears (CX-147).

6. The periodic inspections of Mr. Pearson's facility that are at issue in this case were conducted by APHIS from May 12, 1999 through February 22, 2006 (CX-5 through CX-143, CX-153 through CX-192, and CX-202). Seven of Mr. Pearson's bears were confiscated by APHIS on May 17, 2005, under section 2146(a) of the Act and



section 2.129 of the regulations for his alleged failure to provide those animals requisite care (7 U.S.C. § 2146(a); 9 C.F.R. § 2.129; CX-194-195; Tr. 2 at 662).

**B. Findings respecting conditions and practices at Mr. Pearson's Exotic Animal Farm and his traveling animal exhibit from May 12, 1999 through February 22, 2006**

7. On May 12, 1999, an APHIS inspector conducted the first inspection at issue in this proceeding, in which the inspector found a “non-compliant item” or “deficiency” (the terms APHIS inspectors alternately use to describe conditions or practices that they believe are at variance with the regulations and standards). It was a routine inspection of Mr. Pearson's facility in which Animal Care Inspector Joseph Kovach observed two lion cubs to have injuries to their noses that in his opinion could develop into infections if untreated. Mr. Pearson was directed to contact his attending veterinarian for treatment advice and to have the injuries treated (CX 5; Tr. 1 at 115-119).

8. On September 9, 1999, Inspector Kovach next conducted an inspection of Mr. Pearson's facility and found that the injuries to the noses of the two lion cubs had been treated. (CX 6, Tr. 1 at 119-120). Inasmuch as four months were allowed to pass before the inspector checked on the cubs' condition, I infer that their injuries were not very serious. Moreover, the injuries could have happened just prior to the inspection. Therefore, I find no violation, willful or otherwise, of the Act or the regulations in respect to the lion cubs' treatment warranting any kind of sanction. Certainly, in light of Mr. Pearson's complete compliance with the notice he received from the inspector, this was not the kind of non-compliant item that constitutes a violation upon which the revocation of his license may be based.

9. At the time of the September 9, 1999 inspection, Inspector Kovach

observed new, non-compliant items. Wires were sticking out of the back wall of an enclosure housing two tigers; there was a hole in the roof of a bobcat enclosure; more shelter, such as a sleeping den box, was needed to protect a fox from bad weather; a trailer housing an adult tiger was too small for its permanent housing; and a transport trailer needed to be cleaned and sanitized. Mr. Pearson was instructed to remove the wires from the wall of the tigers' enclosure; repair the roof of the bobcat's enclosure; provide the fox a sleeping box; and build a cage for the adult tiger (CX 6; Tr. 1 at 120-124).

10. On September 18, 1999, an inspection was made of Mr. Pearson's traveling animal exhibit at a Heinz Corporation employee picnic. The inspection was conducted by Dr. Norma Harlan, Veterinary Medical Officer for APHIS. Mr. Pearson did not have records for two lion cubs owned by an unlicensed facility that were part of the traveling exhibit. A camel pen owned by the unlicensed facility had several sharp wire edges that needed repair and animals owned by it were not accompanied with a copy of their health records or a written program of veterinary care. Therefore, Dr. Harlan could not verify if the two lion cubs it owned that had scrapes on their faces and legs, and appeared to be too thin, had received needed veterinary care and were being fed in accordance with a veterinarian approved regimen. In addition to the problems with the animals owned by the unlicensed facility, pens on Mr. Pearson's trailer housing an adult lion and three tigers that he owned were, at 4 feet by 7 feet 11 inches by 5 feet tall, considered by Dr. Harlan to be too small for the animals to make needed postural adjustments; and there was no exercise area available to these big cats. Mr. Pearson was instructed to have all required paperwork with future exhibitions; provide veterinary care

to the two lion cubs and feed them properly; repair the camel pen; and give the big cats adequate space and exercise when part of his traveling exhibit. The following day, September 19, 1999, Dr. Harlan returned to observe the loading of Mr. Pearson's traveling exhibit and saw a camel with matted hair that needed clipping; cages containing a leopard and a juvenile tiger without handholds to assure safe handling; and a leopard cage that was not securely tied down on the truck. Mr. Pearson was instructed to make corrections (CX-7, Tr. 1 at 347-363 and Tr. 1 at 403-404).

11. On January 5, 2000, Inspector Kovach again inspected Mr. Pearson's permanent facility. The inspector found that the enclosures housing the two tigers and the bobcat had been repaired, the fox had been provided adequate shelter and the dirty transport trailer had been cleaned. I find that none of these non-compliant items, all of which were corrected, were violations that warrant any sanction. Dr. Kovach also found that most of the items identified by Dr. Harlan as non-compliant in the inspection she conducted on the road had been corrected. The veterinary care program was reviewed and found to be up-to-date. The two lion cubs had been treated and later sold. The young camel was not on site and could not be evaluated. Handholds were now on transport cages, and a different transport vehicle was being used. Again, I find none of these items that Mr. Pearson corrected after receiving notice, to be willful violations or violations that warrant sanction. However, Inspector Kovach found that the enclosures housing three tigers identified in early September, 1999, as too small for each animal to have adequate freedom of movement, were still being used. Mr. Pearson was given notice of the fact that these deficiencies had been documented on prior inspections and he was given the opportunity to correct them (CX-8, Tr.1 at 124-127). Mr. Pearson's continued violation

of the regulation respecting space requirements for animals (9 C.F.R. § 3.128) to protect them from stress, and behavioral and physical problems, after he was instructed to provide his animals larger pens, meets the Sixth Circuit definition of a willful violation for which the sanctions of license suspension or revocation may be imposed in addition to a civil penalty and the issuance of a cease and desist order (CX-8; Tr. 1 at 126-127; and Tr. 1 at 354-355).

12. On June 12, 2000, Inspector Kovach conducted a routine inspection of Mr. Pearson's facility and found two non-compliant items. The left side of the front gate needed repair so as to protect the animals from injury and to contain the animals as the regulations require (9 C.F.R. § 3.125 (a)), and he instructed Mr. Pearson to repair it within seven days. An enclosure for lions and tigers "had food on the floor with maggots crawling over it, crawling all over it" (Tr.1 at 128). The inspector characterized the presence of maggot-infested food in the enclosure as significant noncompliance with the Act and the regulations because "maggots could cause parasites" (Tr. 1 at 129). Mr. Pearson was instructed by the inspector that he should avoid this problem by only leaving food out for a limited period of time or giving the animals a feeding period and if they then chose not to eat the food, to retrieve it to protect them from eating infested food (Tr.1 at 129). Inasmuch as there is no further reference to either non-compliant item, it is inferred that Mr. Pearson heeded the instructions. I find that the problem with the gate does not warrant any sanction. In respect to the maggot infested food, Mr. Pearson should have known without receiving instruction, his obligation to prevent contaminated feed from being eaten by his animals; and this is a violation of a controlling regulation (9 C.F.R. § 3.129 (a)) that warrants the imposition of a civil penalty and the issuance of an

order to cease and desist from the practice. It also constitutes a willful violation for which the sanctions of license suspension or revocation may be imposed. (CX-9; and Tr.1 at 128-129).

13. On July 19, 2000, Inspector Kovach inspected Mr. Pearson's traveling animal exhibit at the Crawford County Fair Grounds. He observed that the Ford truck used to haul the animals had front tires with insufficient tread and a cracked windshield. The inspector believed that these defects violated 9 C.F.R. § 3.138 (a), a regulation that provides:

The animal cargo space of primary conveyances used in transporting live animals shall be designed and constructed to protect the health, and ensure the safety and comfort of the live animals therein contained.

Since this regulation deals with cargo space only, I find that the problems with the rest of the truck were within the jurisdiction of State authorities and not USDA. Therefore, no violation of the Act or the regulations is found in respect to the condition of the truck's tires and windshield. Requisite records respecting the animals and a program of veterinary care for them was not immediately available when the inspector asked to see them, but the records were later furnished; and no violation is found to have been committed. The inspector found that the five pens on the trailer confining two adult lions, two adult tigers and one adult jaguar were, at 4 feet by 8 feet by 5 feet tall, too small for the animals when they were not in transit. They also were not being provided with an exercise area. This was the same violation of 9 C.F.R. § 3.128, for which Mr. Pearson had been cited on September 18, 1999, and it was still uncorrected. The issuance of an order requiring Mr. Pearson to cease and desist from this practice and assessing civil penalties is warranted for this violation, and since he failed to correct it after being

previously told to do so, it may also be considered as a basis for suspending or revoking his license (CX-10; Tr. 1 at 130-134).

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

(a) Dr. Harlan testified that the facility lacked sufficient personnel to conduct an adequate care program for the number of animals it housed. Just two persons were there when she and the inspectors arrived. Mr. Pearson arrived afterwards. The program of veterinary care was inadequate in that it did not include information concerning the veterinary care for the 14 bears, 1 fox, 1 goat and 14 rabbits. One of the cougars was in a traveling enclosure that did not provide it sufficient shelter from the wind and the elements; it was wet and could not stay dry and clean; it was ill and lame with an abscess on its left hind leg; and it required immediate veterinary care to live. In a pen housing five lions, two male lions were dirty and wet and appeared thin; and one of them was lame; a female lion appeared thin and had very tender feet; and the pen contained loose stools indicating a slight diarrhea affecting one of the lions. The lions, together with a rabbit with a swollen eye, needed immediate veterinary care. They found a dead badger on top of a shelter that they were told had died sometime in December, 2000. There was no record of the death or cause of death of this animal, nor that of a llama, a black leopard, a bear, a lion and a jaguar, that had died in 2000. They also found a dead tiger in one pen and no one was sure when it had died but it was frozen and appeared to have

been dead for awhile and should have been removed. Female bears were housed inside hibernating boxes set within a large enclosure in which non-hibernating male bears were roaming around the caged female bears. The boxes did not allow the bears inside, that “in this area of the country are partial hibernators”, to be observed so as to check on their condition and determine if they had come out of hibernation and needed food or water. The hibernating box housing one of the female bears was too small and gave her no room for postural adjustments. The storage of the feed and bedding kept at the facility was inadequate in that the hay and bales of straw were on the ground mixed with tires, lawnmowers, tarps and pieces of wood, and were exposed to moisture and contamination. In the food preparation area of the facility, a dead cow was hung up with half of its head missing; the band saw used to cut up meat was covered with dried-up blood; and the area was extremely dirty. Animals were using snow or ice to quench their thirst. The 11 bears in the hibernating dens had not been given access to water since November 2000. The facility did not have a 6 foot high perimeter fence keeping people at least three feet away from the enclosure housing four bobcats and an arctic fox, as required by 9 C.F.R. § 3.127(d). A lion cub and two cougars had not been provided sufficient shelter to protect them from the prevalent, cold, wet and sleeting weather. The cougars were housed in a transport trailer and the lion cub in a smaller travel enclosure that was inadequate as permanent housing because the animals did not have sufficient space to make normal postural adjustments. The food given the big cats and other carnivores was contaminated because butchering of cow carcasses was performed in a dirty area and then tossed into enclosures on top of old carpet, feces and urine. The enclosures appeared not to be cleaned often enough to prevent contamination of the animals and their feed as evidenced

by an excessive buildup of wet bedding, feces, bones, feed, waste, and debris in all of the pens. A goat and 14 rabbits were housed in the same block enclosure as a cougar, a predator, in apparent violation of 9 C.F.R. § 3.133 that requires animals in the same primary enclosure to be compatible. There were rodent holes around the base of a lion shelter building. (CX-11; (photographs taken at time of the inspection: CX-12b through CX-16b, CX-17, CX-18, CX-19b through CX-51b); Tr. 1 at 364-394).

(b) Barbara Brown who supervises much of the work including the recordkeeping at the facility, and who has lived with Mr. Pearson and is the mother of two of his children, testified that the January 29, 2001 inspection took place during a really hard winter of heavy snow and freezing temperatures. The objects that were in piles in the pens had been covered and hidden by snow until it melted so this was a day when cleaning was probably not up to standards. She admitted there may have only been two employees at the facility when the inspection was made. However, she stated it was conducted at 9 AM and six to eight more employees would show up during the rest of the day: "...they didn't ask for a list of how many employees we had. They just said we didn't have enough." She said the 14 bears were not listed on the program of veterinary care because Carl LaLonde, the APHIS inspector who had previously been their inspector for many years, told them that since bears are a native species they need not be listed on their vet papers. The goat wasn't listed because it was a pet and the rabbits were either pets or food for a snake. In respect to written records respecting vaccinations and parasites, those records were kept at the offices of their veterinarian where they were available. They did not know feeding records for the big cats and juvenile cats had to be kept until Dr. David Smith, APHIS Veterinary Medical Officer, who participated in the



next inspection conducted two days later, on January 31, 2001, told them they were needed; they then started a log. As to the mountain lion that had been described as being wet, ill and lame and housed in an enclosure that did not provide it sufficient shelter from the wind and rain, she said it had come to them very beat up, battered, bruised and looking like it had been hit by a truck. The shelter they had placed it in had walls on both sides with a partial wall for its back. The front of the enclosure had a removable plywood door that had been removed to enable them to observe this animal that they had isolated in this enclosure in case it had any diseases. The semiannual inspection of the facility by the private practice veterinarian employed by Mr. Pearson, Dr. Connie Ruth Barnes, was scheduled for January 30, 2001, and Ms. Brown believes she was told by Dr. Barnes to isolate and observe the animal until then. In Ms. Brown's opinion, the lions Dr. Harlan identified as too thin were not, and the female that was limping was nine years old and had arthritis that they would treat with aspirin when it acted up on rainy days. In corroboration, Dr. Barnes testified that when she went to the facility the animals appeared generally healthy and well fed; she did not remember any malnourished animals; and did not see any thin or starving animals (Tr. 2 at 728 and 730). In addition Dr. Harlan stated upon cross-examination that she had observed the tigers in winter and their winter coat camouflages whether or not they are thin (Tr.1 at 412). Ms. Brown testified that the rabbit with the bad eye had been bought for feed for a snake. They had a record of the dead badger that she later showed Dr. Smith who told her he would correct the report but she needed to begin to write a log of such incidents. The badger had been kept to be mounted for display with other mounted animals at the shows Mr. Pearson conducts. The dead badger had probably been left where the APHIS officials found it, because it had become

covered with snow and forgotten. The llama that had died had been a pet for 15 years and had never been shown on any of Mr. Pearson's records although the llama had been present when past inspections had been conducted. The other animals that had died in the year 2000, were on a list that recorded the dates of each animal's birth and death, but did not show the cause of deaths. Many of the animals were old when received at the facility and the list of their births and deaths was one of the records that had burned in the house fire. In respect to the absence of a record at the facility of the veterinary care given the animals, she did not know until then that she needed to keep a log containing this information. The dead tiger had died during the night and was in a back cage that was among the last ones scheduled to be cleaned that day. In respect to the hibernating bears, the facility had denned bears for 26 years. The boxes used had doors that could be lifted for viewing the hibernating bears and some of the doors had holes in them allowing the bears to be observed without the doors being lifted open. When the personnel at the facility were outside on warm days they didn't necessarily lift the doors to look at the hibernating bears but they would observe them by listening for noises indicating motion within the boxes. On cold days and when they did not hear such noises, "we wouldn't mess with them because also if you mess with the female bear and she has babies, she'll kill them." There were some tarps and other stuff mixed with hay for bedding that had always been kept together in a storage shed outside the perimeter fence that did not, however, contain any feed. The dead cow had been obtained from an Amish farmer who assured them that there was nothing wrong with it that could hurt the big cats that would eat its meat. The cow was hung up in the barn which was a customary practice at the facility because it is easier to cut a cow up for meat that way. When asked by the APHIS

officials why the cow had died, she told them she did not know but that its meat would not be harmful to the big cats. In respect to the rodent holes, there are rats and weasels out in the country where the facility is located, and they keep after them by putting bait and poison down the holes and then try to cover them up. They would change the poison used every two or three months to prevent the rodents from becoming immune to it. They pursued this rodent control program on a continuing basis. The fact that the water available to the animals was frozen is explained by the fact that the temperature was around 20 degrees or colder. They water the animals during the day and before they leave at night, but the water they set out freezes. They would use steel poles to knock the ice out of the water receptacles and then replace the water. In respect to the absence of a perimeter fence around the enclosure housing bobcats and an arctic fox, they did not know one was needed but they installed one after being so instructed. The lion cub and the two cougars that Dr. Harlan found to have insufficient shelter were being isolated as newly acquired animals in temporary cages until they were sure that they were not sick before being placed in permanent cages and mixed together with the existing population of animals. In respect to the dirty band saw, their practice was not to scrub it clean until just before they again use it to make sure that it is then clean and sanitary. She admitted that the dened bears had not been given food since November, 2000, but that according to articles by the American Bear Association that they had read before they started their denning practices, hibernating bears can go without food and water for up to seven months. Prior to 2001, no one had told them that food had to be put in the den with the hibernating bear, or that the dens should have windows for observing the bears. In respect to old food, bones and feces being in the cage, she claimed the cages were cleaned every

day, but that the animals often dragged their food around and they could have dragged feces into their cages since they are wild animals that don't care about eating neatly. Also the filth and debris could have been buried and hidden under snow before the inspection. She did not believe the fact that the rabbits were housed next to a cougar was a problem because there was a separating wall (Tr. 2 at 874-910).

(c) Ms. Brown's testimony in explanation of what can only be described as appalling conditions and practices at Mr. Pearson's Animal Farm, is insufficient. Even after accepting as plausible every explanation that she gave including some that were at best possible though unlikely, and letting slide any minor infraction or any violation that could, in any sense, be characterized as inadvertent, it is still obvious that Mr. Pearson willfully violated numerous regulations of critical importance to the health and well-being of the animals in his possession. He had animals that needed immediate veterinary care that was unavailable in violation of the requirements of 9 C.F.R. § 2.40:

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section....

(b) Each dealer and exhibitor shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter.

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

On January 29, 2001, Mr. Pearson, as had been the case on June 12, 2000, was not feeding his animals wholesome food, free from contamination, as required by 9 C.F.R. § 3.129. He was not making clean, potable water accessible to his animals in violation of 9 C.F.R. § 3.130:

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 animals. Frequency of

watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

Mr. Pearson failed to provide several animals with adequate shelter from inclement weather as required by 9 C.F.R. § 3.127 (b):

Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all the animals kept outdoors to provide 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.

These were not inadvertent or minor infractions in any sense. An exhibitor who fails to comply with these crucial regulatory requirements for basic hygiene and sanitation, and the proper feeding, watering and sheltering of his animals, should not hold an exhibitor's license. These are willful violations of the Act and the regulations in every sense of the term, as it was defined in *Hodgins*, for which an APHIS license may and should be revoked.

15. On January 31, 2001, Inspector Kovach and Dr. David C. Smith, APHIS Veterinarian Medical Officer, inspected Mr. Pearson's facility and jointly prepared an inspection report. Dr. Smith testified that the program of veterinary care he was given to review, did not include the 14 bears and did not mention that the bears were receiving a heartworm preventative that bears housed outdoors need. Mr. Pearson was advised to consult with his veterinarian and revise the program to include the bears and the procedures needed for their care. A den housing 2 lions had a strong ammonia odor indicative of poor sanitation; and Mr. Pearson was advised to improve its ventilation and increase the frequency of its cleaning. In Dr. Smith's opinion, the condition of the animals and the facilities showed there were insufficient employees at the facility to provide adequate care for the animals. Mr. Pearson was instructed to correct this

deficiency by March 29, 2001. Throughout the north side of the facility old caging, railroad ties, tires and miscellaneous junk had been allowed to accumulate that could harbor pests and contribute to the problem of disease control. Mr. Pearson was instructed to correct this condition by February 15, 2001. All the pens were found to be excessively wet with puddles of water because the facility lacked an adequate system for draining away the melting snow. Mr. Pearson was instructed to improve the drainage by either providing ways for the water to drain away from the pens or to raise the surfaces of the pens. Water in the water receptacles was mostly frozen and all of the receptacles needed to be cleaned. Mr. Pearson was told to clean the receptacles frequently and make sure the water is not frozen. The animal enclosures were not being cleaned and sanitized as frequently as needed and all but two pens had an excessive buildup of wet bedding, feces, bones, feed waste and debris. Many animals were wet and appeared uncomfortable due to the condition of the pens. The area for food preparation was not sufficiently clean. The band saw still had meat, bone and blood residue caked on it and had not been cleaned after each use as it should have been. A dumpster next to the shed where cattle are butchered to be fed to the big cats, was not closed and was overflowing with old carcasses and food waste providing rodents an ideal food supply. The ground of each enclosure on which the animals were fed, was extremely contaminated with old food, bones and feces; and animal feces are a source of bacteria, parasites and may transmit disease upon contaminating food. Mr. Pearson was instructed that food should be fed on clean surfaces and that the pens needed to be cleaned frequently to minimize the accumulation of feces. A mountain lion cub observed on January 29, 2001, to have inadequate bedding shelter and to be lame with an abscess on its left hind leg, now had

adequate bedding and shelter. However, its ear margins were frostbitten and there was no record of it having been seen by a veterinarian on January 30, 2001 as it was supposed to have been. So too, there was no record showing that on January 30, 2001, a veterinarian had examined the pen of five lions identified as needing an examination by then. There still was no appropriate way for the denned bears to be monitored daily to be sure they were still in hibernation, still in good condition and not in need of food and water (Tr.2 at 187-244; CX-52 through CX-69, CX-70b through CX-126b).

16. On March 8, 2001, Mr. Pearson's facility was inspected by Inspectors Kovach and LaLonde and Dr. Smith. Dr. Smith testified respecting the inspection report that addressed the various previously identified non-compliant items (CX-127; Tr. 1 at 245-253).

(a) The following had been corrected:

The 14 bears and the fox had been added to the program of veterinary care with a heartworm preventative being described in the program.

There was no evidence that day of rodent activity and rodent baits were being used.

Post-mortem reports were being prepared by the attending veterinarian on all dying animals and records on animal deaths with written post-mortem reports available for review.

Records showing the attending veterinarian's observations were available.

The animal enclosures were being cleaned more frequently with no excessive buildups of debris and waste being found at the inspection.

Animals were being fed in a more sanitary manner.

The old caging, railroad ties, tires and junk had been removed.

The young mountain lion and a pen of five lions (2 males and three females) were being seen by an attending veterinarian.

(b) Mr. Pearson still had until March 29, 2001 to correct the lack of sufficient personnel at the facility that was needed to conduct an adequate animal care program.

(c) The following non-compliant items found on January 1, 2001, still remained uncorrected:

A den housing 2 lions still had a very strong ammonia odor and Mr. Pearson had failed to improve its ventilation and the frequency of cleaning.

The 10 denned bears that had not been fed since November 2000, were still without food.

Watering of animals was still insufficient. Four tigers, a Canadian Lynx and a Siberian Lynx had water containers with ice covered with snow, and Mr. Pearson admitted they were not given fresh water the day before. Additionally, several water receptacles needed to be cleaned

Although drainage in some of the pens had improved, drainage was still a problem that was expected to worsen when the snow cover that was present, later melted.

The eight denned bears still could not be observed on a daily basis and none of them could be given water or other care in an emergency.

More than two month's after receiving a written warning and instructions to remedy these conditions, animals were still without adequate drinking water, and animals were in pens that were still wet and subject to flooding because of inadequate drainage. Mr. Pearson's failure to achieve compliance as instructed shows these practices and conditions to be willful violations of the regulations and the Act that not only warrant the issuance of a cease and desist order, but are also grounds for the suspension or revocation of Mr. Pearson's license.

17. Photographs (CX-128b-133b) were received at the hearing on the basis of Dr. Smith's testimony (Tr.1 at 253-255) that they depicted other non-compliant items



found at the time of the March 8, 2001 inspection. However, none of these alleged non-compliant items were included as part of the official inspection report given to Mr. Pearson to show him what corrections he still needed to perform at his facility. For that reason, the photographs have not been considered as proof of new violations by Mr. Pearson. However, CX-131 shows that the band saw used for cutting meat was still covered with blood residue and CX-130 shows the food preparation area was still contaminated with blood residue spread out all over the floor. This condition had been left uncorrected since the written warning given to Mr. Pearson on January 29, 2001, over a month earlier.

18. On June 19, 2001, Inspector Kovach and Dr. Smith inspected Mr. Pearson's facility. They found a mountain lion with an abscess on the right side of its face and the animal was drooling excessively. Dr. Smith believed it was either a superficial abscess or an abscessed tooth that in either event required action by the attending veterinarian. A bear was also found to have superficial cuts on her head and needed to be seen by the attending veterinarian to determine needed treatment. At the time of the inspection, no one working at the facility seemed aware of either problem; and that indicated to Dr. Smith that the animals were not being observed daily to assess their health and well-being as required by the regulations (9 C.F.R. § 2.40(b)(3)). A den housing four lions had a damaged section of plywood that needed repair or replacement to give them adequate shelter and to protect them from injury. The facility also had a section with high weeds that needed to be cut down, and had trash in the form of empty plastic buckets, barrels and tires that needed to be removed (CX-134-142; Tr.1 at 255-262).

In a follow-up visit on June 28, 2001 (CX-162), Dr. Smith verified that the mountain lion and the bear had been appropriately treated by a veterinarian. Inasmuch as it is uncertain how long the animals had observable conditions indicating that a consultation with the attending veterinarian was needed, no violation of the regulation requiring daily observation of the animals is found. Mr. Pearson was given until June 30, 2001 to repair the lions' den and until June 21, 2001 to cut the weeds and remove the trash. Mr. Pearson apparently complied and neither of those conditions is found to be a violation of the Act or the regulations that warrants the imposition of a sanction.

19. On July 26, 2001, Inspector Kovach inspected Mr. Pearson's traveling exhibit and found that a wooden transport for a tiger cub and a lion cub needed hand holds (CX-163; TR 2 at 516-518). This condition was evidently corrected by the next day, and a violation warranting the imposition of a sanction is not found to have been committed.

20. On April 23, 2002, Inspector Kovach inspected Mr. Pearson's facility and testified that he found deficiencies in respect to veterinary care, structural strength, drainage, a perimeter fence, sanitation, separation of animals, and a primary conveyance.

The veterinary care deficiency concerned the lack of a record showing that treatment being given two animals was as directed by the attending veterinarian. However, they apparently were being treated, and the failure to produce a record at the time of the inspection is not a violation warranting the imposition of a sanction of any consequence.

The structural deficiency concerned: (1) an unsecured beam across the ceiling of a lion pen that had been become unstable from being chewed; (2) a hole in the guillotine

door of another lion pen; (3) protruding wires in pens for lions or tigers; and (4) a damaged section of chain link used as a ceiling for a lion pen. Although Inspector Kovach testified that these structural deficiencies were repeat deficiencies, I have found nothing in his prior investigative reports or elsewhere in the record proving that these particular structural conditions existed before April 23, 2002. Nor is there any evidence showing that they had existed for a sufficient period of time to infer that Mr. Pearson should have known of them and made needed repairs. No violation is therefore found.

The facility still lacked adequate drainage even though Mr. Pearson had been given written warnings by APHIS of the need to correct this deficiency more than a year before on January 31, 2001 and March 8, 2001. As Inspector Kovach testified, the lack of proper drainage gives rise to mosquitoes that carry diseases transmittable to the animals housed at the facility. In every sense, this is a willful violation that supports suspending or revoking Mr. Pearson's license.

Other deficiencies concerning a perimeter fence, the separation between a male tiger and two female tigers in an adjacent enclosure, and the condition of a primary conveyance used to transport animals were apparently correctible conditions of unknown duration that do not appear to warrant the imposition of sanctions. Although the perimeter fence deficiency was reported as being a repeat non-compliant item previously identified during the November 20, 2001 inspection, the deficiency found on April 23, 2002, apparently involved a different perimeter fence and different construction defects (CX-164; CX-165 pages 1-11; Tr. 2 at 519-526).

21. On August 27, 2002 and May 5, 2003, APHIS investigators attempted to inspect Mr. Pearson's facility but were unable to do so because a responsible person was

not available to accompany them (CX-167; CX-168)

22. On September 16, 2003, Inspector Kovach inspected Mr. Pearson's facility. There was still inadequate drainage of and about the pens in violation of 9 C.F.R. § 3.127. Other non-compliant items reported by the Inspector do not appear to be of the type that warrant any sanction (CX-169-170).

23. On January 30, 2004, APHIS inspected Mr. Pearson's facility, and on February 9, 2004, inspected another site where some of his animals were being boarded. It was ascertained that Mr. Pearson was boarding animals at unlicensed and unapproved sites. He was doing so surreptitiously, to prevent the animals from being confiscated. (CX-171; CX-172; Tr. 2 at 1143-1146; Tr. 2 at 90-96; Tr.2 at 100-101).

24. On May 4, 2004, APHIS Animal Care Inspector Randall Coleman conducted a routine inspection of Mr. Pearson's facility. He found two female lions and a tiger requiring veterinary treatment. One of the female lions had a wound that Mr. Pearson testified he failed to observe because she was in heat and being protected by a very, aggressive male lion who had kept her inside the den box at the back of the pen. The attending veterinarian was contacted during the inspection and gave treatment advice for this animal. The other female lion was apparently suffering from arthritis. The tiger had a swollen muzzle with fluid dripping from her nose. The office of the attending veterinarian dispensed antibiotics to these animals two days after the May 4, 2004, inspection. It does not appear that there was a violation of the Act or the regulations in respect to the veterinary care and treatment the lions received that would warrant the imposition of sanctions. However, antibiotics should have been dispensed to the tiger a day earlier according to the testimony of Mr. Pearson's attending veterinarian. Though

this violation of the regulations could support the assessment of a civil penalty, it is not deemed sufficient to support license suspension or revocation. The inspector also noted that there were nails protruding from the underside of a lions' nesting perch. When they were pointed out to Mr. Pearson, he stated that he would correct the condition (CX-173; CX-174; Tr. 2 at 102-109; Tr. 2 at 766-767).

25. On May 12, 2004, Inspector Coleman returned to the facility and found that the animals that were the subject of his May 4<sup>th</sup> report had been examined by the attending veterinarian and they were under recommended treatment. The perch with the protruding nails had been repaired and all nails removed. He further noted that the perch remained structurally sound. In light of Mr. Pearson's responsiveness to the direction to repair the perch, a violation of the Act warranting the imposition of a sanction is not found (Tr.2 at 110-112; CX-175).

26. On July 16, 2004, Inspector Coleman inspected the facility and found that the bears did not have potable water accessible to them. The water receptacle for the bears was empty, and they eagerly drank water from a hose that was turned on during the inspection. The explanation Mr. Pearson gave for the absence of water was that the bears had not yet been let out to be fed and watered that day. The condition was corrected during the inspection, but Mr. Pearson's failure to provide the bears with water as needed by them, after receiving a prior written warning, is construed to be a knowing and willful violation of the Act and the regulations warranting the imposition of all sanctions authorized by the Act even though he corrected the condition when warned that day by the inspector (CX-176; Tr. 2 at 113-116).

27. On July 22, 2004, Inspector Coleman found a macaque monkey with Mr.

Pearson's traveling exhibit that was not included in the program of veterinary care required by 9 C.F.R. § 2.40; and for which there was no program of environment enhancement to promote its psychological well-being as required by 9 C.F.R. § 3.81. Mr. Pearson was given seven days to correct these deficiencies (CX-177; Tr. 2 at 118-122). Mr. Pearson testified that he had borrowed the monkey from a person who was trying to sell it to him, but he does not understand monkeys and only had it for the one show (Tr. 2 at 1141-1142). Inasmuch as there was no follow-up inspection to ascertain whether Mr. Pearson complied with the warning he received, and in light of his testimony that the monkey was only in his possession for one day, his failure to comply with the cited regulations has not been considered as a basis for suspending or revoking his license or otherwise imposing any sanction against him.

28. On May 11, 2005, Inspector Coleman was unable to inspect Mr. Pearson's facility because no one was present at the facility as required by 9 C.F.R. § 2.126 ( CX-182; Tr. 2 at 124-125).

29. On May 12, 2005, Inspector Coleman returned to the facility and found that the program of veterinary care did not include goats, a monkey and a dog. He also found that 12-16 week old bear cubs were being fed 2% milk as their food source which he believed to be insufficient, and he instructed Mr. Pearson to contact his attending veterinarian for appropriate diet recommendations. The inspector also observed three bears that appeared to be thin with areas of hair loss indicative of health problems. Mr. Pearson was instructed to contact his attending veterinarian for the evaluation and treatment of these bears as well. There was no record of acquisition for the monkey and there were other primates at the facility that Mr. Pearson refused to allow the inspector to

see because they were not owned by him. The enclosure housing the monkey had open garbage bags, miscellaneous clutter, surfaces that had not been adequately cleaned and were made of materials that could not be sanitized; and no electricity was available for lighting and cooling. Mr. Pearson did not have a program of environment enhancement to promote the monkey's psychological well-being and there was no food or water for it in the enclosure. Mr. Pearson and Ms. Brown testified that Mr. Pearson did not believe he had any responsibility for the monkeys at his facility because they did not belong to him (Tr. 2 at 1010 and 1142-1143). The primary enclosure for 8 adult bears had a rotting, main support post, protruding wires and rusted bars for the back wall of a den box. The perimeter fence around the enclosures for 14 bears had a door that was not secured. Two pygmy goats did not have a primary enclosure. A pup that was either a wolf or a dog, was also inadequately housed, was without water, and looked as if it was not being fed adequately. Ms. Brown testified that the pup was a dog and that she and Mr. Pearson's daughter, Jennifer, owned it. Jennifer was also identified as the owner of the two pygmy goats. Ms. Brown and Mr. Pearson did not believe these animals were subject to USDA's jurisdiction (Tr. 2 at 1011-1012). The inspector observed accumulations of trash, clutter, weeds, debris, and old piles of burnt materials throughout the facility (CX-181; Tr. 2 at 126-160).

30. On May 13, 2005, the date given to Mr. Pearson by which he was to have his attending veterinarian evaluate the care and feeding of three bears, Inspector Coleman returned to the facility accompanied by Dr. Harlan and Dr. Albert Lewandowski, the zoo veterinarian for the Cleveland Metro Park Zoo. Inspector Coleman found four bears in the enclosure with 4 or 5 pieces of bread on the floor, and all of the bears appeared thin

and malnourished. Though Mr. Pearson told the inspector that the bears had been seen by the attending veterinarian who found no problems with them, attempts to contact the veterinarian were unsuccessful. The bears appeared to the inspector to be suffering. Their enclosure had an excessive buildup of excreta on its floor and one of the bears was eating bread that was on the excreta covered floor. The enclosure for three other bears also had a buildup of excreta on its floor and the bears were eating cereal and dog food directly from the excreta covered floor (CX-183; Tr. 2 at 165-167). Dr. Steven Faust, a veterinarian at Sharon Veterinary Hospital employed by Mr. Pearson as attending veterinarian for the facility, did examine an adult bear on May 13, 2005 and found it to have traumatic hair loss and recommended skin scraping if it did not improve (Tr. 2 at 777; EX-AAAA at 2). The inspector also found that the wolf or dog pup was housed in an enclosure that did not protect it from sunlight or inclement weather and had excessive feces on the floor. The pup had feces in his hair from lying in feces; did not have potable water; and appeared malnourished (CX-183; Tr. 2 at 169-170). The inspector also found that two one-year old bears were being housed with two older bears approximately 2-3 years of age, and that the older ones were chasing the younger ones keeping them from receiving their needed share of food and water. Only compatible animals may be housed together (9 C.F.R. § 3.133), and Mr. Pearson was given until May 16, 2005 to place them in separate housing (CX-183; Tr. 2 at 171-172).

31. Dr. Albert Lewandowski, who accompanied Inspector Coleman and Dr. Harlan when they inspected the facility on May 13, 2005, has been the zoo veterinarian for the Cleveland Metro Park Zoo since 1989. After graduating from the Ohio State Veterinary College in 1978, Dr. Lewandowski was in private practice for three years. He



then took a residency at the University of Pennsylvania and the Philadelphia Zoo from 1981 to 1983. From 1983 to 1989, he was Chief Veterinarian for the Detroit Zoological Parks. Dr. Lewandowski is a member of the accreditation team for the American Association of Zoological Parks and Aquariums and has routinely inspected zoos throughout the country. He is an eminently qualified expert on the veterinary care and nutrition of animals of the type housed at Mr. Pearson's facility (Tr.2 at 416-422). He set forth his observations that day in a document that was received in evidence as CX-185, in which he concluded: "The facility is squalid." He testified that he would not expect that a facility licensed by USDA would: "...have facilities as bad as this" (Tr. 2 at 427). In his opinion, all three of the bear cubs that were at the facility, appeared to be suffering from inadequate care and nutrition (CX-185; Tr. 2 at 440). Furthermore, the cages containing the bears were inadequate and did not adequately secure them (Tr. at 442). He testified what he meant when he used the term "squalid" to describe the facility:

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

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

Tr. 2 at 442-443.

32. Dr. Harlan also prepared a report on her findings at the facility on May 13, 2005, which Dr. Lewandowski read and co-signed as an accurate summary of their observations that day (CX-188, Tr. 2 at 443-444).

33. On May 17, 2005, Inspector Coleman returned to the facility and found that Mr. Pearson had not complied with the written warning he had been given and had not corrected the inadequate veterinary care and inadequate feeding of seven bears

specified by Inspector Coleman on May 12<sup>th</sup> and 13<sup>th</sup>. Because these seven bears appeared to be suffering and needed immediate attention to address their nutritional needs, feeding requirements, and overall health status, Inspector Coleman confiscated them. After the confiscation, eight bears remained at the facility, and there were deficiencies respecting their separation, housing conditions, and access to potable water. Though Mr. Pearson had been given until May 16, 2007, to separate two, one-year old bears from two older bears to protect the younger bears, they had not been separated. The inspector also found that the primary enclosure used for three of the confiscated bear cubs needed to be replaced or fixed to be safe and secure. Mr. Pearson was still not furnishing accessible, potable water to the bears, and though wood shavings had been placed over the floor of an enclosure used for three of the confiscated bears, feces was still on the floor (CX-186; Tr.348-350). Mr. Pearson's failure to comply with the written warning he received in respect to needed veterinary care and examinations; the need to provide accessible, potable water and nutritional diets to his animals; and to separate young bears from older, aggressive bears are found to be willful violations of the Act and the regulations that support the suspension or revocation of Mr. Pearson's exhibitor's license.

34. The confiscated bears were examined and wormed on May 17, 2005, by Dr. Lewandowski who prepared health certificates that permitted them to be sent to various zoos and other facilities throughout the country. Dr. Lewandowski found that although the seven bears were in good enough condition to travel, they were undernourished and had suffered for an extended period of time from malnutrition. In his opinion, it was in the best interest of these animals to be moved to a facility that could take better care of them (CX-189; CX-193; Tr. 2 at 445-449).

35. On October 5, 2005, Inspector Coleman inspected Mr. Pearson's facility and found that his program of veterinary care only listed bears and did not include goats, dogs, skunk, coatimundi and hamsters at the facility. Also the program showed that should the need arise, the only means of euthanasia for the eight remaining black bears was a 22 caliber rifle that is obviously inadequate for that purpose and is found to be a willful violation of 9 C.F. R. § 2.40. A dog at the facility was not properly documented as required by the regulations, and Mr. Pearson was given until October 18, 2005 to correct his records. This record deficiency; the fact that loose wires protruded into the enclosure for the bears; and that the perimeter fence had a loose post needing repair are not deficiencies that are found to be violations that require the imposition of a sanction. Mr. Pearson refused the inspector access to part of the facility that had housed lions and tigers that were no longer at the facility. This was a willful violation of 9 C.F. R. § 2.126(a)(4). The outside enclosure for a dog did not provide it adequate shade; the enclosures used to house dogs were not of proper construction; and the water receptacle for a dog was dirty and needed to be cleaned. Potable water was not available to a skunk and two pigmy goats. Two shoebox cages of hamsters were housed in an outdoor facility These otherwise apparent violations of 9 C.F.R. §§ 3.4, 3.130 and 3.27(a) are excused by Mr. Pearson on the basis of the animals being pets and not covered by the Act and the regulations. In light of a statement in *Hodgins* to that effect (*see* discussion *infra*), these conditions are not being found to be violations of the Act. On the other hand, despite repeated prior written warnings, drainage of the bears' enclosure was again observed to be inadequate as evidenced by a large puddle of standing water with feces and dirt in the enclosure. This was willful violation of 9 C.F.R. § 3.127(c) (CX-190; Tr. 2 at 400-402).

36. On February 22, 2006, Inspector Coleman inspected Mr. Pearson's facility and found that the Program of Veterinary Care only provided for bears. It did not include a cougar, a leopard, a lion and tigers that were at the facility. One tiger was lame, the leopard had a wound on its tail and scarring on both hips, and there were no records of either animal being examined by a veterinarian or receiving veterinary care or treatment. There were no records showing where the tigers had been housed prior to February 22, 2006, and Mr. Pearson refused to provide any information other than that he had received them on April 26, 2005. The door of the primary enclosure housing the leopard needed repair to securely contain it. The perimeter fence for six tigers had holes in it and was not strong enough to be a secondary containment for them. Eight bears were being denned in forced hibernation in boxes that were not large enough for them to stand up on their hind legs, and there was not an adequate supply of food available to them if they came out of their dens to eat. A cow carcass evidently intended as food for the big cats was contaminated with hay, dirt and feces attached to its hide, and Mr. Pearson's son stated the cause of the cow's death was unknown. There was no potable water accessible to any of the animals. The bears had no access to water and the water receptacles for the other animals were either frozen solid or completely dry. These were all willful violations of the regulations (CX-191; CX-192; CX-202; Tr. 2 at 200-214; Tr.2 at 393-395).

37. Conditions at Mr. Pearson's Exotic Animal Farm were also of concern to local health authorities. Based on a September 28, 2001 inspection of the facility made in response to complaints about its stench, the Summit County General Health District determined that the facility was "a public health nuisance" (CX-145 (copy of *Summit Co. Bd. of Health v. Lorenza and Barbara Pearson*, No. CV-2002-06-3473, slip opinion at

5)). The decision was affirmed upon appeal to the Court of Common Pleas, Summit County, Ohio (Ibid.), and to the Court of Appeals of Ohio (CX-200; 809 N.E.2d 80 (Ohio App. 2004)). Based on those decisions, the County Board of Health sought a court order to enter the property and remove the animals. The court order was granted but later vacated by the Ohio Appellate Court on jurisdictional grounds (CX-201; *Summit County Board of Health v. Pearson*, No. 22194, 2005 WL 1398847 (Ohio App. June 15, 2005)). The Health Department sought to have Mr. Pearson take the necessary steps to bring his property into compliance with applicable laws and regulations and issued orders to him to abate nuisance conditions in October and December of 2001, and in February and March of 2002, but little improvement was reported. Moreover, Mr. Pearson refused to permit inspections on April 8, 2002, May 6, 2002 and June 13, 2002 (CX- 198; CX-199; CX-200, slip opinion at 2).

### **Conclusions**

Lorenza Pearson d/b/a L&L Exotic Animal Farm should be made subject to a cease and desist order and have his exhibitor's license revoked in that he willfully violated the regulations and standards issued under the Animal Welfare Act, and thereby the Animal Welfare Act itself, on the following dates and in the following respects:

1. On January 5, 2000, Mr. Pearson housed three tigers in an enclosure that was too small for each animal to have adequate freedom of movement, and did so after he had received a prior written warning on September 18, 1999 that using this enclosure to house the tigers was in violation of 9 C.F.R. § 3.128 that specifies the following space requirement for animal enclosures:

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....

2. On June 12, 2000, Mr. Pearson provided maggot infested food to his lions and tigers in violation of 9 C.F.R. § 3.129 (a) that requires for feeding animals that:

(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...

3. On July 19, 2000, Mr. Pearson housed two adult lions, two adult tigers and one adult jaguar in enclosures that were too small for each animal to have adequate movement, and this violation was committed after he had received written warnings on September 18, 1999 and January 5, 2000, that using these enclosures violated the space requirements of 9 C.F.R. § 3.128.

4. On January 29, 2001, Mr. Pearson had one cougar and five lions at his facility that were in need of immediate veterinary care that was unavailable to the animals in violation of 9 C.F.R. § 2.40 that provides:

(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 consulting 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 and exhibitor shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter;

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

(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;

(4) Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and

(5) Adequate pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

5. On January 29, 2001, Mr. Pearson was again feeding his big cats and other carnivores food that was not wholesome and free from contamination as required by 9 C.F.R. § 3.129(a).

6. On January 29, 2001, Mr. Pearson did not make potable water accessible to his big cats, other carnivores and bears in violation of 9 C.F.R. § 3.130:

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 animals. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

7. On January 29, 2001, Mr. Pearson failed to provide a lion cub and two cougars with adequate shelter from inclement weather as required by 9 C.F.R. § 3.127

(b):

Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all the animals kept outdoors to provide 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.

8. On March 8, 2001, Mr. Pearson did not provide four tigers, one Canadian

Lynx, and one Siberian Lynx potable water in violation of 9 C.F.R. § 3.130.

9. On March 8, 2001, Mr. Pearson's facility did not have an adequate method to drain excess water from the enclosures that then housed sixty-seven animals, despite having been given a written warning on January 31, 2001, that he was in violation of 9 C.F.R. § 3.127 that provides:

(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.

10. On April 23, 2001, and on September 16, 2003, Mr. Pearson's facility still did not have adequate drainage for the enclosures housing his animals in violation of 9 C.F.R. § 3.127.

11. On January 30, 2004, Mr. Pearson, without giving requisite notice to APHIS, housed eighteen animals at three, off-site locations that were not specified in his exhibitor's license in violation of 9 C.F.R. § 2.8:

A licensee shall promptly notify the AC Regional Director by certified mail of any change in the name, address, management, or substantial control or ownership of his business or operation, or of any additional sites, within 10 days of any change.

12. On July 16, 2004, Mr. Pearson did not provide his bears potable water in violation of 9 C.F.R. § 3.130.

13. On May 12, 2005, Mr. Pearson was feeding his animals food that was not wholesome and free from contamination in violation of 9 C.F.R. § 3.129(a).

14. On May 12, 2005 and on May 17, 2005, Mr. Pearson was not providing accessible potable water to his animals in violation of 9 C.F.R. § 3.130.

15. Between May 13, 2005 and May 17, 2005, Mr. Pearson housed two young



bears with older, aggressive bears that were interfering with the young bears health and causing them discomfort in violation of 9 C.F.R. § 3.133.

Animals housed in the same primary enclosure must be compatible.  
Animals shall not be housed near animals that interfere with their health or cause them discomfort.

16. On May 12, 2005 and on May 17, 2005, Mr. Pearson did not maintain a program of veterinary care that was adequate for evaluating the care, condition and the nutritional sufficiency of the food he was providing to his bears, in violation of 9 C.F.R. § 2.40.

17. On October 5, 2005, Mr. Pearson failed to maintain a written program of veterinary care that had an appropriate method for euthanizing his bears in an emergency situation in violation of 9 C.F.R. § 2.40.

18. On October 5, 2005, Mr. Pearson failed to provide a suitable method to rapidly drain excess water from an enclosure housing eight bears in violation of 9 C.F.R. § 3.127(c).

19. On October 5, 2005, Mr. Pearson refused to allow APHIS inspectors to inspect and photograph his entire facility in violation of 9 C.F.R. § 2.126(a)(4).

20. On February 22, 2006, Mr. Pearson had not established and did not maintain a written program of veterinary care for six tigers, two lions, one leopard and one cougar housed at his facility in violation of 9 C.F.R. § 2.40 (a)(1). One tiger was lame, the leopard had a wound on its tail and scarring on both hips and there were no records of examination, or care and treatment of either animal by a veterinarian in violation of 9 C.F.R. § 2.40(b).

21. On February 22, 2006, Mr. Pearson did not have and had not maintained

requisite records respecting his acquisition of six tigers in violation of 9 C.F.R. § 2.75

(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....

22. On February 22, 2006, Mr. Pearson housed a leopard in an enclosure with a door that needed repairs in order to securely contain the leopard in violation of 9 C.F.R.

§ 3.125(a):

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.

23. On February 22, 2006, Mr. Pearson housed six tigers in an enclosure that had a perimeter fence with holes in it and that was not strong enough to act as a secondary containment for the tigers in violation of 9 C.F.R. § 3.127(d):

On or after May 17, 2000, all outdoor facilities (*i.e.*, facilities not entirely indoors) must be enclosed by a perimeter fence....The fence must be so 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....

24. On February 22, 2006, Mr. Pearson was feeding six tigers, two lions, one leopard and one cougar food that was not wholesome and free from contamination in violation of 9 C.F.R. § 3.129(a).

25. On February 22, 2006, Mr. Pearson failed to provide access to food to eight bears that he was keeping denned in forced hibernation in violation of 9 C.F.R. § 3.129(a).

26. On February 22, 2006, Mr. Pearson was not providing accessible potable water, in clean, sanitary receptacles, to his animals, in violation of 9 C.F.R. § 3.130.

### **Discussion**

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

By way of defense, Mr. Pearson asserts that his problems with APHIS started after Dr. Harlan became part of the team assigned to the inspection of his Exotic Animal Farm and his traveling exhibit. He claims that his refusal to cooperate with Dr. Harlan in her investigation of an unlicensed dealer whose animals he included with the traveling exhibit he took to a Heinz Corporation employee picnic in September of 1999, caused her and her colleagues at APHIS to seek revenge. He contends that when Dr. Harlan and Inspector Kovach subsequently inspected his facility, they were seeking ways to cite him for violations of the regulations. He points to the fact that inspections by a previously

assigned APHIS inspector never resulted in more than two or three citations. In contrast, when Dr. Harlan first visited his facility on January 29, 2001, he was cited for 15 violations. However, his defense of selective prosecution is belied by the appalling conditions that confronted Dr. Harlan and Inspector Kovach when they made the January, 2001 inspection of Mr. Pearson's Exotic Animal Farm.

Two dead animals were found on the premises. The explanations given them were that one of the animals, a tiger, must have died suddenly during the night, and that the other, a badger, though obviously dead for some time, had been kept to be skinned and was inadvertently forgotten when it became covered with snow. Dr. Harlan and Inspector Kovach also found that female bears were being kept in boxes in forced hibernation with non-hibernating male bears roaming freely about the boxes. There was no practical way to observe the boxed bears to find out whether they needed food, water, or emergency care. The food preparation area for the big cats was dirty; had a dead cow with half its head missing hung up for butchering; and the band saw used for butchering the carcass was covered with dried blood. Animals were without drinking water and trying to quench their thirst by licking ice and eating snow. There was a mountain lion in a cage that provided it no protection from the wind and snow, and it was wet without any way to stay dry. Other animals were also wet and dirty. Some needed immediate veterinary care. This is only a partial list of the odious conditions that Dr. Harlan and Inspector Kovach found when they made that inspection, but it is sufficient to show that Mr. Pearson was cited, not out of vindictiveness, but because of the deplorable conditions that existed at his Animal Farm.

Dr. Harlan and Investigator Kovach have both impressed me as highly credible witnesses. The full details of their investigations on January 29, 2001, are set forth in their investigative report and testimony, together with corroborating photographs (*see* finding 14 *supra*). Mr. Pearson has not met the burden of proving the requisite elements of a selective enforcement defense that are set forth in *Marilyn Shepard*, 57 Agric. Dec. 242, 278-80 (1998).

The fact that a prior assigned APHIS inspector did not often cite Mr. Pearson for violations may indicate that the inspector was distracted, or was lax in his enforcement of the Act and the regulations. Whatever the reason Mr. Pearson was not frequently cited prior to 1999, that fact does not absolve him from being held accountable for the violations that the inspections since 1999, show he has committed. *See, John D. Davenport, d/b/a King Royal Circus*, 57 Agric. Dec. 189, 209 (1998).

Mr. Pearson also argues that he should not be penalized for non-compliant items that he corrected. Even though *Hodgins*, 2000 U.S. App. Lexis 29892 at 7-8, states that a violation that is immediately corrected does not ordinarily justify a license suspension or revocation, it may if the violation was the product of a knowing disregard of the requirements of the law.

At any rate, I have disregarded every deficiency or non-compliant item cited by APHIS where Mr. Pearson has offered any explanation that appeared to be the least bit plausible or where his non-compliance was not truly egregious.

I have also not based any ordered sanction on allegations by APHIS respecting the treatment of animals Mr. Pearson or Ms. Brown identified as personal pets. Those allegations by APHIS have been set forth in the findings for the sake of factual

completeness, but are excluded from the violations listed in the conclusions in light of a statement in *Hodgins, supra*, 2000 U.S. App. LEXIS 29892, slip opinion at 13, n 11, that the Animal Welfare Act has no requirements for the treatment of personal pets. For the reasons previously stated, I am treating the Sixth Circuit's decision in *Hodgins* as controlling precedent in this case.

The violations that I have nonetheless found and that are the basis for my order revoking Mr. Pearson's license, were in every sense egregious, obvious violations of the Act and the regulations that substantially endangered the health and well-being of the animals Mr. Pearson kept at his facility for exhibition. The fact that many of these violations were often uncorrected and persistent requires, in addition to the issuance of a cease and desist order, the revocation of Mr. Pearson' exhibitor's license as the only effective way to prevent their future occurrence.

I am not assessing, however, the \$100,000.00 civil penalty APHIS has requested. Upon revocation of his license, there should be no further opportunity for Mr. Pearson to engage in conduct prohibited by the Act. As stated in *Chandler d/b/a Bill Chandler Cattle*, 64 Agric. Dec. 876, 894 (2005), citing *Spencer Livestock Commission v. Department of Agriculture*, 841 F.2d 1451, 1458 (9<sup>th</sup> Cir. 1988):

The purpose of an administrative sanction is not to punish one who may have violated governmental regulations; the purpose is instead to take such steps as are necessary to deter the Respondent from future conduct prohibited by the Act. *See Spencer, supra* at 1458.

Accordingly, the following Order is being issued.

### **ORDER**

It is hereby ORDERED that Lorenza Pearson, d/b/a L& L Exotic Animal Farm, his agents and employees, successors and assigns, directly or through any corporate or

other device, shall cease and desist from violating the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act.

It is further ORDERED that Animal Welfare Act license number 31-C-0034 issued to Lorenza Pearson, d/b/a L&L Exotic Animal Farm, is permanently revoked; and that Lorenza Pearson is permanently disqualified from obtaining a license under the Act and the regulations.

This decision and order shall become effective and final 35 days from its service upon the parties who have the right to file an appeal with the Judicial Officer within 30 days after receiving service of this decision and order by the Hearing Clerk as provided in the Rules of Practice (7 C.F.R. § 1.145).

Dated: April 6, 2007

Victor W. Palmer  
Victor W. Palmer  
Administrative Law Judge