

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
TIGER RESCUE, a California corporation;)	AWA Docket No. 07-0184
JOHN HANS WEINHART, an individual;)	
MARLA SMITH, an individual; and)	
WENDELIN R. RINGEL, an individual,)	Decision and Order as to
)	only MARLA SMITH
Respondents.)	by Reason of Default

This proceeding was instituted under the Animal Welfare Act (“AWA” or “Act”), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed on August 30, 2007, by the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “Complainant” or “APHIS”), alleging that the respondents willfully violated the Act and the regulations and standards promulgated thereunder (“Regulations” and “Standards”). 9 C.F.R. § 1.1 *et seq.*

The Complainant, APHIS, is represented by Colleen A. Carroll, Esq., with the Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

Marla Smith, respondent, is an individual (frequently herein “Respondent Smith” or “Respondent”), whose mailing address was Marla Smith, 9478 Bellegrave Avenue, Riverside, California 92509.

Procedural History

On August 31, 2007, the Hearing Clerk sent to Respondent Marla Smith, by certified mail, return receipt requested, a copy of the Complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151), together with the Hearing Clerk's service letter, addressed to "Marla Smith, Director: Tiger Rescue, 9478 Bellegrave Avenue, Riverside, CA 92509." The Complaint package was returned by the United States Postal Service to the Office of the Hearing Clerk, marked "RETURNED TO SENDER" "Refused." On September 25, 2007, the Hearing Clerk re-mailed the Complaint package to Respondent Smith by ordinary mail at the same address, pursuant to section 1.147(c) of the Rules of Practice. 7 C.F.R. § 1.147(c).

Respondent Smith was informed in the Hearing Clerk's service letter that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent Smith did not file an answer to the Complaint. Her time for filing an answer expired on October 15, 2007.

This case was assigned to me, Jill S. Clifton, on April 9, 2008. APHIS's Motion for Adoption of Proposed Decision and Order as to Respondent Smith, filed November 30, 2007, is before me. The Hearing Clerk, on December 3, 2007, sent to Respondent Smith, by certified mail, return receipt requested, a copy of the Motion (for Decision), together with the Hearing Clerk's letter dated December 3, 2007, addressed to "Marla Smith, Director: Tiger Rescue, 9478 Bellegrave Avenue, Riverside, CA 92509." The Motion (for Decision) package was returned by the United States Postal Service to the Office of the Hearing Clerk, marked

“RETURNED TO SENDER” “UNCLAIMED.” On December 20, 2007, the Hearing Clerk re-mailed the Motion package to Respondent Smith by ordinary mail at the same address. Respondent Smith did not respond. Her time for filing a response to the Motion expired on January 9, 2008.

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

Accordingly, the material allegations in the Complaint, which are admitted by Respondent Smith’s default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. Respondent Marla Smith is an individual whose address was 9478 Bellegrave Avenue, Riverside, California 92509. Respondent Marla Smith was a Director of respondent Tiger Rescue and acting as an agent of respondents Tiger Rescue and John Hans Weinhart at all times material herein. Respondent Smith’s acts, omissions, and failures to act, detailed herein, were within the scope of her office; they are deemed to be her own acts, omissions and failures, as well as the acts, omissions and failures of respondents Tiger Rescue and John Hans Weinhart, for the purpose of construing and enforcing the provisions of the Animal Welfare Act. 7 U.S.C. § 2139.

2. APHIS conducted inspections of the respondents’ facilities, animals and

records on November 20, 2002, November 25, 2002, December 10, 2002, January 28, 2003, April 26, 2003, and April 30, 2003. On April 22 and 23, 2003, the Riverside County Department of Animal Services and the California Department of Fish and Game executed a search warrant at the facilities and home of respondent John Hans Weinhart and Respondent Marla Smith, at 9474 and 9478 Bellegrave Avenue, Glen Avon, California, and 1350 Agua Mansa Road, Colton, California.

3. Respondent Smith operated a large business. On August 29, 2001, Respondent Smith had custody and control of 65 wild and exotic felines and 20 farm animals used in exhibition. Respondent Smith used these animals for economic gain.

4. The gravity of the violations detailed in this Decision is of the utmost severity. Respondent Smith neglected and abused many animals. By April 2003, approximately 90 animals (mostly tigers) died as a direct result of Respondent Smith's lack of care and husbandry. Respondent Smith also handled animals in a manner that was unsafe for the animals and the public, failed to provide minimally-adequate housing or veterinary care to animals in obvious distress, and failed to provide sufficient food to animals. Respondent Smith was convicted by the State of California of 16 counts of felony animal cruelty and 46 misdemeanor violations, and on January 25, 2005, was sentenced to 180 days in jail, and four years' probation.

5. Respondent Smith has not shown good faith, having falsely portrayed the respondents' facility, located at 1350 Agua Mansa Road, Colton, California, to the public as a "sanctuary" for abused animals, and having maintained a separate, undisclosed animal facility at her home in Glen Avon, California.

6. Between November 16, 2002, and April 23, 2003, Respondent Smith operated as an exhibitor at premises for which a valid license had not been issued or made applicable.

7. On or about the following dates, Respondent Smith failed to comply with the attending veterinarian and veterinary care regulations:

a. November 20, November 22, and December 10, 2002. Respondent Smith failed to employ a full-time veterinarian under formal arrangements, or a part-time veterinarian under formal arrangements that included a written program of veterinary care and regularly-scheduled visits to the respondents' premises.

b. November 20 and November 22, 2002. Respondent Smith failed to provide adequate veterinary care to animals, specifically:

i. four severely underweight and undernourished black leopards.

ii. three underweight and undernourished black leopards and numerous underweight and undernourished tigers.

iii. one black leopard suffering from untreated facial wounds.

iv. one underweight and undernourished female tiger (Jaya) suffering from untreated diarrhea, and numerous untreated skin lesions on her body and legs.

v. one female lion and four tigers that were underweight and undernourished with poor coats.

vi. four female tigers that were severely underweight and undernourished, with protruding hipbones, visible ribs, and poor coats.

vii. one male white tiger (Centaur) suffering from several untreated

skin lesions.

c. November 20, November 22 and December 10, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and specifically, failed to maintain minimally-adequate records showing routine care and observations of animals.

d. November 25, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically Nemo, an underweight male tiger with untreated bloody paws, whose enclosure had blood on the floor, and Jaya, an emaciated female tiger with untreated skin lesions on her back, along her right flank, and over her face, and, consequently, APHIS inspectors issued a notice of intent to confiscate these two tigers unless they were treated within 24 hours.

e. November 25, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and daily

observation of animals, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically a tiger in the second pen on the west side of the facility, that had an untreated draining abscess on its neck.

f. November 25 and December 10, 2002, and April 22 and April 23, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, failed to take steps to determine the cause of the high mortality rate in tiger litters born at respondents' facilities, including the felid cubs whose remains were contained in respondents' freezer.

g. December 10, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, Respondent Smith failed to take steps to establish an adequate feeding and separation program for animals, resulting in a large number of underweight, unthrifty animals bearing fight scars.

h. January 28, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved

in the care and use of animals, and specifically, failed to provide veterinary care to a goat suffering from tetanus.

i. April 22, 2003. Respondent Smith failed to obtain adequate veterinary care for animals, specifically:

- i. two black domestic short-hair cats with severe skin problems.
- ii. one small white female goat with overgrown front hooves (four inches), that had difficulty walking and standing, and had a swollen left knee.
- iii. two donkeys with severely (7 inches) overgrown hooves that curled up and away from the feet, and one donkey that could not stand up.

j. April 22, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization and euthanasia, and specifically failed to provide minimally-adequate veterinary care to animals and to document the condition of animals, including 53 dead felid cubs.

k. April 23, 2003. Respondent Smith failed to obtain minimally-adequate veterinary care for animals, specifically, two black domestic short-hair cats suffering from extreme mite infection (*notoedres cati*), that was so advanced as to require their euthanasia.

l. April 26, 2003. Respondent Smith failed to have an attending veterinarian who could provide adequate veterinary care to animals, and failed to ensure that it had an attending veterinarian with appropriate authority to ensure the provision of adequate veterinary care, and specifically, Respondent Smith failed to allow access to the facility and animals.

m. April 26, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include daily observation and a mechanism for frequent communication with the attending veterinarian, and specifically, a tiger that had a surgical procedure on April 13, 2003, had not been seen by a veterinarian since, Respondent Smith was not following the veterinarian's instructions, and the veterinarian was not aware of the animal's condition and had not documented the animal's progress or lack thereof.

n. April 26, 2003. Respondent Smith failed to provide adequate veterinary care to (i) a male tiger with a swollen left forelimb; (ii) a tiger with an open wound on its back; (iii) pot-bellied pigs with reddened skin, lack of hair and itchiness; and (iv) animals with diarrhea.

8. On or about November 20, 2002, Respondent Smith failed to identify fourteen leopards.

9. On or about November 20, November 22, November 25, and December 2, 2002, and April 22, 2003, Respondent Smith:

- a. failed to make, keep and maintain any records of animals.
- b. failed to make, keep and maintain records of the name of and address

of the person from whom Respondent Smith acquired animals.

c. failed to make, keep and maintain records of the USDA license or registration number or vehicle license number and driver's license number of the person from whom Respondent Smith acquired animals.

d. failed to make, keep and maintain records of the date of purchase, acquisition, sale and disposition of animals.

10. On November 25, 2002, Respondent Smith refused to provide to the APHIS inspectors, information concerning the person from whom he acquired the female tiger Jaya.

11. On or about the following dates, Respondent Smith failed to comply with the handling regulations, as follows:

a. November 16, November 20, and November 22, 2002. Respondent Smith, during public exhibition, allowed members of the public to handle animals (including large felines) directly without any distance or any barriers.

12. On or about the following dates, Respondent Smith:

a. April 22, 2003. Failed to feed dogs wholesome, uncontaminated food, in sufficient quantities.

b. April 22, 2003. Failed to provide adequate potable water, in clean receptacles, to dogs.

c. April 30, 2003. Housed three 20-pound dogs in a "VariKennel" that was adequate for only one such dog.

d. April 30, 2003. Failed to remove built-up excreta from the "VariKennel" that housed three dogs.

e. April 30, 2003. Failed to establish an effective program of pest control for eight dogs housed at the respondents' facility.

f. April 30, 2003. Failed to have sufficient employees to attain the level of animal care and husbandry required by the Regulations and Standards.

13. On or about the following dates, Respondent Smith:

a. November 16, 2002. Failed to remove excreta from lion and tiger enclosures.

b. November 20, 2002. Failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the respondents' facility in good repair to protect the animals from injury, and specifically:

i. the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends;

ii. the enclosure housing a male leopard, was missing part of the roof, exposing nails;

iii. the shift cage for a male lion was broken, exposing nails;

iv. the tops of the two enclosures housing a female lion and a male lion (Nemo) were broken, exposing nails;

v. the enclosures housing leopards had torn chicken wire, exposing the animals to sharp wire ends;

vi. the main enclosures housing felids had boards that had been

torn from the rear wall that were lying inside the enclosures;

vii. the roof of the east side enclosures housing female tigers was separating from the rest of the structure;

viii. the enclosures housing goats had chain link turned up at its base, exposing sharp wire ends;

ix. the torn water container in the enclosure housing three tiger cubs exposed the animals to sharp metal edges;

x. Respondent Smith housed camels in enclosures constructed of chain link fencing, which material is not appropriate for such animals; and

xi. Respondent Smith housed three pot-bellied pigs in Rubbermaid tool sheds, which trapped the animals inside with inadequate ventilation, and which enclosures were not appropriate for such animals.

c. November 20, 2002. Failed to provide sufficient shade for white tiger housed outdoors in end cage on north side of facility.

d. November 20, 2002. Failed to provide sufficient shelter from inclement weather for large felids, goats, and a camel.

e. November 20, 2002, January 28 and April 22, April 23, April 26 and April 30, 2003. Failed to remove excreta and food waste from nearly all animal enclosures.

f. November 20, 2002, and January 28, and April 26 and April 30, 2003. Failed to provide a suitable method to rapidly eliminate excess water from animal enclosures.

g. December 10, 2002. Failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends.

h. January 28, 2003. Failed to provide sufficient shelter from inclement weather for large felids, goats, and pigs.

i. January 28, 2003. Failed to provide sufficient shade for large felids, goats, and pigs.

j. April 22, 2003. Failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, housed ten live lion cubs and two live leopard cubs in an attic area of her and respondent Weinhart's home, in filthy conditions.

k. April 26 and April 30, 2003. Failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination, and specifically, there was no adequate means of storing food supplies at the respondents' facilities.

l. April 26 and April 30, 2003. Failed to provide sufficient shade for animals, and specifically, most of the shelters have been blown off of the chain link rooftops of animal enclosures.

m. April 30, 2003. Failed to provide sufficient shade for animals, and specifically, housed a tiger (Trevor) in a transport enclosure that offered the animal no shelter from the sun.

n. April 30, 2003. Failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, (i) the camel enclosure had a non-functioning gate; (ii) the old camel enclosure had a 12-inch gap, the chain link fencing was warped, bent and buckled, and the poles were leaning outward; and (iii) shelter boxes for large felids were in a state of disrepair.

o. April 30, 2003. Failed to provide sufficient shelter from inclement weather for all animals.

p. April 30, 2003. Failed to provide adequate space to a deer housed in a "VariKennel."

14. On or about the following dates, Respondent Smith:

a. November 16, November 20, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Failed to feed large felids wholesome, uncontaminated food in sufficient quantities.

b. November 20, November 22, November 25, and December 10, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Failed to provide potable water to animals, in clean receptacles.

c. November 20 and November 22, 2002. Failed to remove excreta from primary enclosures as often as necessary, and in particular, the gap between two

adjacent tiger enclosures (housing Jaya and Nemo), and around the den boxes, were filled with feces.

d. November 20 and November 22, 2002, and April 26 and April 30, 2003. Failed to establish and maintain a safe and effective program for the control of insects, and other pests.

e. November 20, November 22, and December 10, 2002, and January 28, April 22 and April 23, 2003. Failed to keep premises clean and good repair in order to protect animals from injury and to facilitate prescribed husbandry practices, and specifically, inspectors observed accumulations of junk, discarded materials, buildup of filth, food debris, manure, and excreta throughout the facility.

f. November 20, November 22, and December 10, 2002, and April 26 and April 30, 2003. Failed to employ a sufficient number of adequately trained employees to maintain the professionally-acceptable level of husbandry practices.

g. November 16, November 20, November 25 and December 10, 2002. Housed incompatible animals in the same primary enclosures, and housed animals near animals that interfere with their health or well-being, and specifically large felids exhibited scars and open wounds indicative of fighting activity.

h. December 10, 2002, and January 28, April 22, April 23, and April 26, 2003. Failed to remove excreta from primary enclosures as often as necessary.

i. April 30, 2003. Housed seven goats, two pot-bellied pigs, and a llama in the bed of a pick-up truck, with inadequate space, extraneous materials that could harm the animals, and no shade or shelter.

Conclusions

1. Respondent Marla Smith is an individual whose address was 9478 Bellegrave Avenue, Riverside, California 92509. Respondent Marla Smith was a Director of respondent Tiger Rescue and acting as an agent of respondents Tiger Rescue and John Hans Weinhart at all times material herein. Respondent Smith's acts, omissions, and failures to act, detailed herein, were within the scope of her office; they are deemed to be her own acts, omissions and failures, as well as the acts, omissions and failures of respondents Tiger Rescue and John Hans Weinhart, for the purpose of construing and enforcing the provisions of the Animal Welfare Act. 7 U.S.C. § 2139.

2. Between November 16, 2002, and April 23, 2003, Respondent Smith operated as an exhibitor at premises for which a valid license had not been issued or made applicable, in willful violation of section 2.1 of the Regulations. 9 C.F.R. § 2.1.

3. On or about the following dates, Respondent Smith willfully violated the attending veterinarian and veterinary care regulations (9 C.F.R. § 2.40) as follows:

a. November 20, November 22, and December 10, 2002. Respondent Smith failed to employ a full-time veterinarian under formal arrangements, or a part-time veterinarian under formal arrangements that included a written program of veterinary care and regularly-scheduled visits to the respondents' premises. 9 C.F.R. § 2.40(a)(1).

b. November 20 and November 22, 2002. Respondent Smith failed to provide adequate veterinary care to animals, in violation of 9 C.F.R. § 2.40(a), specifically:

- i. four severely underweight and undernourished black leopards.
 - ii. three underweight and undernourished black leopards and numerous underweight and undernourished tigers.
 - iii. one black leopard suffering from untreated facial wounds.
 - iv. one underweight and undernourished female tiger (Jaya) suffering from untreated diarrhea, and numerous untreated skin lesions on her body and legs.
 - v. one female lion and four tigers that were underweight and undernourished with poor coats.
 - vi. four female tigers that were severely underweight and undernourished, with protruding hipbones, visible ribs, and poor coats.
 - vii. one male white tiger (Centaur) suffering from several untreated skin lesions.
- c. November 20, November 22 and December 10, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and specifically, failed to maintain minimally-adequate records showing routine care and observations of animals. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).
- d. November 25, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of

appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically Nemo, an underweight male tiger with untreated bloody paws, whose enclosure had blood on the floor, and Jaya, an emaciated female tiger with untreated skin lesions on her back, along her right flank, and over her face, and, consequently, APHIS inspectors issued to Respondent Smith a notice of intent to confiscate these two tigers unless they were treated within 24 hours. 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2).

e. November 25, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and daily observation of animals, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically a tiger in the second pen on the west side of the facility, that had an untreated draining abscess on its neck. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

f. November 25 and December 10, 2002, and April 22 and April 23, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, failed to take steps to

determine the cause of the high mortality rate in tiger litters born at the respondents' facilities, including the felid cubs whose remains were contained in the respondents' freezer. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2).

g. December 10, 2002. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, Respondent Smith failed to take steps to establish an adequate feeding and separation program for animals, resulting in a large number of underweight, unthrifty animals bearing fight scars. 9 C.F.R. § 2.40(b)(2).

h. January 28, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization and euthanasia, and specifically, failed to provide veterinary care to a goat suffering from tetanus. 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

i. April 22, 2003. Respondent Smith failed to obtain adequate veterinary care for animals, in violation of 9 C.F.R. § 2.40(a), specifically:

- i. two black domestic short-hair cats with severe skin problems.
- ii. one small white female goat with overgrown front hooves (four

inches), that had difficulty walking and standing, and had a swollen left knee.

iii. two donkeys with severely (7 inches) overgrown hooves that curled up and away from the feet, and one donkey that could not stand up.

j. April 22, 2003. Respondent Smith failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization and euthanasia, and specifically failed to provide minimally-adequate veterinary care to animals and to document the condition of animals, including 53 dead felid cubs. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

k. April 23, 2003. Respondent Smith failed to obtain minimally-adequate veterinary care for animals, specifically, two black domestic short-hair cats suffering from extreme mite infection (*notoedres cati*), that was so advanced as to require their euthanasia. 9 C.F.R. § 2.40(a).

l. April 26, 2003. Respondent Smith failed to have an attending veterinarian who could provide adequate veterinary care to animals, and failed to ensure that she had an attending veterinarian with appropriate authority to ensure the provision of adequate veterinary care, and specifically, Respondent Smith failed to allow access to the facility and animals. 9 C.F.R. §§ 2.40(a), 2.40(a)(2).

m. April 26, 2003. Respondent Smith failed to establish and maintain

programs of adequate veterinary care that include daily observation and a mechanism for frequent communication with the attending veterinarian, and specifically, a tiger that had a surgical procedure on April 13, 2003, had not been seen by a veterinarian since, Respondent Smith was not following the veterinarian's instructions, and the veterinarian was not aware of the animal's condition and had not documented the animal's progress or lack thereof. 9 C.F.R. § 2.40(b)(3).

n. April 26, 2003. Respondent Smith failed to provide adequate veterinary care to (i) a male tiger with a swollen left forelimb; (ii) a tiger with an open wound on its back; (iii) pot-bellied pigs with reddened skin, lack of hair and itchiness; and (iv) animals with diarrhea. 9 C.F.R. § 2.40(a).

4. On or about November 20, 2002, Respondent Smith willfully violated the identification regulations (9 C.F.R. § 2.50), by failing to identify one or more animals other than dogs and cats confined in a primary enclosure, and specifically, failed to identify fourteen leopards. 9 C.F.R. §§ 2.50(e)(2), 2.50(e)(3).

5. On or about November 20, November 22, November 25, and December 2, 2002, and April 22, 2003, Respondent Smith willfully violated the record-keeping regulations (9 C.F.R. § 2.75(b)(1)), by failing to make, keep and maintain records or forms that fully and correctly disclose required information concerning animals other than dogs and cats purchased or otherwise acquired, owned, held, leased, or otherwise in respondents' possession or under respondents' control, or transported, sold, euthanized, or otherwise disposed of, and specifically:

a. failed to make, keep and maintain any records of animals.

b. failed to make, keep and maintain records of the name of and address of the person from whom Respondent Smith acquired animals.

c. failed to make, keep and maintain records of the USDA license or registration number or vehicle license number and driver's license number of the person from whom Respondent Smith acquired animals.

d. failed to make, keep and maintain records of the date of purchase, acquisition, sale and disposition of animals.

6. On November 25, 2002, Respondent Smith refused to provide to the APHIS inspectors, information concerning the person from whom the respondents acquired the female tiger Jaya, in willful violation of section 2.125 of the Regulations. 9 C.F.R. § 2.125.

7. On or about the following dates, Respondent Smith willfully violated the handling regulations (9 C.F.R. § 2.131), as follows:

November 16, November 20, and November 22, 2002. Respondent Smith failed to handle animals during public exhibition so that there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the public so as to assure the safety of the animals and the public, and specifically, allowed members of the public to handle animals (including large felines) directly without any distance or any barriers. 9 C.F.R. § 2.131(b)(1).

8. On or about the following dates, Respondent Smith willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the general facilities and operating standards for dogs, as follows:

a. April 22, 2003. Respondent Smith failed to feed dogs wholesome

uncontaminated food in sufficient quantities. 9 C.F.R. § 3.9.

b. April 22, 2003. Respondent Smith failed to provide dogs with adequate potable water in clean receptacles. 9 C.F.R. § 3.10.

c. April 30, 2003. Respondent Smith failed to house dogs in primary enclosures that offered them an adequate amount of space, and specifically, housed three 20-pound dogs in a “VariKennel” that was adequate for only one such dog. 9 C.F.R. § 3.6.

d. April 30, 2003. Respondent Smith failed to remove excreta from primary enclosures for dogs as often as necessary, and specifically, there was a buildup of excreta in the “VariKennel” that housed three dogs. 9 C.F.R. § 3.11(a).

e. April 30, 2003. Respondent Smith failed to establish an effective program of pest control for eight dogs housed at the respondents’ facility. 9 C.F.R. § 3.11(d).

f. April 30, 2003. Respondent Smith failed to have sufficient employees to attain the level of animal care and husbandry required by the Regulations and Standards. 9 C.F.R. § 3.12.

9. On or about the following dates, Respondent Smith willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the general facilities and operating standards for warm-blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.128), as follows:

a. November 16, 2002. Respondent Smith failed to provide for the removal of animal waste, and specifically, failed to remove excreta from lion and tiger

enclosures. 9 C.F.R. § 3.125(d).

b. November 20, 2002. Respondent Smith failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the respondents' facility in good repair to protect the animals from injury (9 C.F.R. § 3.125(a)), and specifically:

- i. the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends;
- ii. the enclosure housing a male leopard, was missing part of the roof, exposing nails;
- iii. the shift cage for a male lion was broken, exposing nails;
- iv. the tops of the two enclosures housing a female lion and a male lion (Nemo) were broken, exposing nails;
- v. the enclosures housing leopards had torn chicken wire, exposing the animals to sharp wire ends;
- vi. the main enclosures housing felids had boards that had been torn from the rear wall that were lying inside the enclosures;
- vii. the roof of the east side enclosures housing female tigers was separating from the rest of the structure;
- viii. the enclosures housing goats had chain link turned up at its base, exposing sharp wire ends;
- ix. the torn water container in the enclosure housing three tiger

cubs exposed the animals to sharp metal edges;

x. Respondent Smith housed camels in enclosures constructed of chain link fencing, which material is not appropriate for such animals; and

xi. Respondent Smith housed three pot-bellied pigs in Rubbermaid tool sheds, which trapped the animals inside with inadequate ventilation, and which enclosures were not appropriate for such animals.

c. November 20, 2002. Respondent Smith failed to provide sufficient shade for white tiger housed outdoors in end cage on north side of facility. 9 C.F.R. § 3.127(a).

d. November 20, 2002. Respondent Smith failed to provide sufficient shelter from inclement weather for large felids, goats, and a camel. 9 C.F.R. § 3.127(c).

e. November 20, 2002, January 28 and April 22, April 23, April 26 and April 30, 2003. Respondent Smith failed to provide for the removal of animal waste, and specifically failed to remove excreta and food waste from nearly all animal enclosures. 9 C.F.R. § 3.125(d).

f. November 20, 2002, and January 28, and April 26 and April 30, 2003. Respondent Smith failed to provide a suitable method to rapidly eliminate excess water from animal enclosures. 9 C.F.R. § 3.127(c).

g. December 10, 2002. Respondent Smith failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury,

and specifically the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends. 9 C.F.R. § 3.125(a).

h. January 28, 2003. Respondent Smith failed to provide sufficient shelter from inclement weather for large felids, goats, and pigs. 9 C.F.R. § 3.127(b).

i. January 28, 2003. Respondent Smith failed to provide sufficient shade for large felids, goats, and pigs. 9 C.F.R. § 3.127(a).

j. April 22, 2003. Respondent Smith failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, housed ten live lion cubs and two live leopard cubs in an attic area of her and respondent Weinhart's home, in filthy conditions. 9 C.F.R. § 3.125(a).

k. April 26 and April 30, 2003. Respondent Smith failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination, and specifically, there was no adequate means of storing food supplies at Respondent Smith's facilities. 9 C.F.R. § 3.125(c).

l. April 26 and April 30, 2003. Respondent Smith failed to provide sufficient shade for animals, and specifically, most of the shelters have been blown off of the chain link rooftops of animal enclosures. 9 C.F.R. § 3.127(a).

m. April 30, 2003. Respondent Smith failed to provide sufficient shade for animals, and specifically, housed a tiger (Trevor) in a transport enclosure that offered the animal no shelter from the sun. 9 C.F.R. § 3.127(a).

n. April 30, 2003. Respondent Smith failed to construct the respondents' facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, (i) the camel enclosure had a non-functioning gate; (ii) the old camel enclosure had a 12-inch gap, the chain link fencing was warped, bent and buckled, and the poles were leaning outward; and (iii) shelter boxes for large felids were in a state of disrepair. 9 C.F.R. § 3.125(a).

o. April 30, 2003. Respondent Smith failed to provide sufficient shelter from inclement weather for all animals. 9 C.F.R. § 3.127(b).

p. April 30, 2003. Respondent Smith failed to provide adequate space to a deer housed in a "VariKennel." 9 C.F.R. § 3.128.

10. On or about the following dates, Respondent Smith willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the animal health and husbandry and transportation standards for warm-blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.129-3.142), as follows:

a. November 16, November 20, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Respondent Smith failed to feed large felids wholesome, uncontaminated food in sufficient quantities. 9 C.F.R. § 3.129.

b. November 20, November 22, November 25, and December 10, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Respondent Smith failed to provide potable water to animals, in clean receptacles. 9 C.F.R. § 3.130.

- c. November 20 and November 22, 2002. Respondent Smith failed to remove excreta from primary enclosures as often as necessary, and in particular, the gap between two adjacent tiger enclosures (housing Jaya and Nemo), and around the den boxes, were filled with feces. 9 C.F.R. § 3.131(a).
- d. November 20 and November 22, 2002, and April 26 and April 30, 2003. Respondent Smith failed to establish and maintain a safe and effective program for the control of insects, and other pests. 9 C.F.R. § 3.131(d).
- e. November 20, November 22, and December 10, 2002, and January 28, April 22 and April 23, 2003. Respondent Smith failed to keep premises clean and in good repair in order to protect animals from injury and to facilitate prescribed husbandry practices, and specifically, inspectors observed accumulations of junk, discarded materials, buildup of filth, food debris, manure, and excreta throughout the facility. 9 C.F.R. § 3.131(c).
- f. November 20, November 22, and December 10, 2002, and April 26 and April 30, 2003. Respondent Smith failed to employ a sufficient number of adequately trained employees to maintain the professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.
- g. November 16, November 20, November 25 and December 10, 2002. Respondent Smith housed incompatible animals in the same primary enclosures, and housed animals near animals that interfere with their health or well-being, and specifically large felids exhibited scars and open wounds indicative of fighting activity. 9 C.F.R. § 3.133.

h. December 10, 2002, and January 28, April 22, April 23, and April 26, 2003. Respondent Smith failed to remove excreta from primary enclosures as often as necessary. 9 C.F.R. § 3.131(a).

i. April 30, 2003. Respondent Smith housed seven goats, two pot-bellied pigs, and a llama in the bed of a pick-up truck, with inadequate space, extraneous materials that could harm the animals, and no shade or shelter. 9 C.F.R. §§ 3.125(a), 3.127(a), 3.127(b), 3.128, 3.138.

Order

1. Respondent Smith, her 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.

2. Respondent Smith is assessed a civil penalty of **\$99,550** for her 362 violations of the Act and the Regulations and Standards.¹ 7 U.S.C. § 2149(b), 7 C.F.R. § 3.91(b)(2)(v) (since renumbered).

3. Respondent Smith shall pay the **\$99,550** by cashier's check(s) or certified check(s) or money order(s), made payable to the order of the **Treasurer of the United States** and delivered within sixty (60) days from the effective date of this Order to:

Colleen A. Carroll
Office of the General Counsel, Marketing Division
United States Department of Agriculture

¹ The 362 violations comprise 159 violations of the licensing regulations, 67 violations of the veterinary care regulations, 20 violations of the identification regulations, 3 violations of the handling regulations, and 113 instances of noncompliance with the standards. Civil penalties of up to \$2,750 were provided for each violation during the time of these violations. 7 U.S.C. § 2149(b), 7 C.F.R. § 3.91(b)(2)(v). For these 362 violations, the civil penalty amount can be \$995,500.

1400 Independence Avenue, SW
South Building Room 2343
Washington, DC 20250-1417

Respondent Smith shall include on the cashier's check(s) or certified check(s) or money order(s) the docket number of this proceeding, **AWA Docket No. 07-0184**.

Finality

This Decision and Order shall be final and effective thirty five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 9th day of May 2008

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776