

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

|  |   |                               |
|--|---|-------------------------------|
| <b>In re:</b>                                      | ) | <b>AWA Docket No. 04-0001</b> |
|  | ) |                               |
| <b>DAVID GILBERT, an individual doing business</b> | ) |                               |
| <b>as GILBERT'S EDUCATIONAL PETTING</b>            | ) |                               |
| <b>ZOO and SAFARI LAND ZOO,</b>                    | ) | <b>DECISION AND ORDER</b>     |
|  | ) | <b>BY REASON OF</b>           |
| <b>Respondent.</b>                                 | ) | <b>ADMISSION OF FACTS</b>     |

**This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the “Act”), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that Respondent David Gilbert, an individual doing business as Gilbert’s Educational Petting Zoo and Safari Land Zoo, willfully violated the Act and the Regulations and Standards promulgated thereunder (9 C.F.R. § 1.1 *et seq.*)(the “Regulations” and “Standards”).**

**On October 24, 2003, the Hearing Clerk sent to Respondent David Gilbert, by certified mail, return receipt requested, copies of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). The package was mailed to the respondent’s current mailing address, which Respondent had provided to Complainant. Respondent Gilbert was informed in the accompanying letter of service 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 Gilbert**

actually received the complaint on October 29, 2003. Said Respondent has failed to file an answer to the complaint.

On January 28, 2004, no answer having been filed by Respondent, Complainant filed with the Hearing Clerk a Motion for Adoption of Proposed Decision and Order, contending that the failure to file an answer constituted an admission of the allegations in the complaint, and that a civil penalty of \$8800, and certain injunctive relief, was warranted. On February 23, 2004, an unsigned, undated, handwritten document was submitted, apparently by Respondent, to the Hearing Clerk's office. While the Hearing Clerk properly treated the document as objections to Complainant's motion, the document offered no reason for the failure to file an answer, little refutation to the allegations in the complaint, and no dispute as to the requested civil penalty. Accordingly, I find that the objections to Complainant's motion are not meritorious.

Pursuant to sections 1.136 and 1.139 of the Rules of Practice, the material facts alleged in the complaint, are all admitted by Respondent's failure to file an answer or to deny. They are adopted and set forth herein as Findings of Fact and Conclusions of Law, and this decision and order is issued pursuant to section 1.139 of the Rules of Practice.

#### FINDINGS OF FACT

1. Respondent David Gilbert is an individual whose address is 8772 160<sup>th</sup> Street, Swaledale, Iowa 50477. Said respondent does business as Safari Land Zoo and Gilbert's Educational Petting Zoo. Between October 20, 1995, and October 26, 2001, said respondent was operating as a dealer, and held AWA license number 42-B-0144, issued to

**David Gilbert. Thereafter, respondent operated as an exhibitor, and beginning March 12, 2002, held license number 42-C-0150.**

**2. At all times mentioned herein, respondent David Gilbert had ownership of approximately 45 exotic and wild animals. Said respondent has no history of previous violations of the Act or the Regulations. The gravity of the violations alleged herein is serious, involving failure to allow inspection, failing to ensure that animals had an adequate supply of water, and housing dangerous animals in inadequate facilities that would not restrict the entry of other animals or unauthorized persons.**

**3. On August 10, 2001, respondent willfully failed, during business hours, to allow APHIS officials to enter his place of business to inspect the facilities, animals and records therein.**

**4. On or about the following dates, respondent willfully failed to meet the minimum requirements for facilities in section 3.125 of the Standards (9 C.F.R. § 3.125), as follows:**

**a. May 31, 2001. Respondent's housing facilities for its bear were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).**

**b. May 31, 2001. Respondent's housing facilities for its tiger were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).**

c. August 13, 2001. Respondent's housing facilities for its bear were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).

d. August 27, 2001. Respondent's housing facilities for its bear were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).

e. May 31, 2001. Respondent failed to store supplies of food in facilities that adequately protect the food against deterioration or contamination by vermin, and specifically, respondent stored a deer carcass in his driveway. 9 C.F.R. § 3.125(c).

5. On or about the following dates, respondent willfully failed to meet the minimum requirements for outdoor facilities in section 3.127 of the Standards (9 C.F.R. § 3.127), as follows:

a. May 31, 2001. Respondent failed to enclose his outdoor housing facilities for a bear by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

b. May 31, 2001. Respondent failed to enclose his outdoor housing facilities for a tiger by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

c. August 13, 2001. Respondent failed to enclose his outdoor housing facilities for a tiger by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

d. August 27, 2001. Respondent failed to enclose his outdoor housing facilities for a tiger by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

6. On or about the following dates, respondent willfully failed to meet the minimum requirements for watering in section 3.130 of the Standards (9 C.F.R. § 3.130), as follows:

a. May 31, 2001. Respondent failed to provide potable water to a bear as often as necessary for the health and comfort of the animal. 9 C.F.R. § 3.130.

b. May 31, 2001. Respondent failed to provide potable water to a tiger as often as necessary for the health and comfort of the animal. 9 C.F.R. § 3.130.

c. August 13, 2001. Respondent failed to provide potable water to a tiger as often as necessary for the health and comfort of the animal. 9 C.F.R. § 3.130.

7. On or about the following dates, respondent willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum requirements for employees in section 3.132 of the Standards (9 C.F.R. § 3.132), as follows:

a. May 31, 2001. Respondent failed to utilize an sufficient number of adequately-trained employees to maintain a professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.

b. August 13, 2001. Respondent failed to utilize an sufficient number of adequately-trained employees to maintain a professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.

c. August 27, 2001. Respondent failed to utilize an sufficient number of adequately-trained employees to maintain a professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.

#### CONCLUSIONS OF LAW

1. On August 10, 2001, respondent failed, during business hours, to allow APHIS officials to enter his place of business to inspect the facilities, animals and records therein, in willful violation of section 2146 of the Act and section 2.126 of the Regulations. 7 U.S.C. § 2146(a), 9 C.F.R. § 2.126.

2. On or about the following dates, respondent willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum requirements for facilities in section 3.125 of the Standards (9 C.F.R. § 3.125), as follows:

a. May 31, 2001. Respondent's housing facilities for its bear were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).

b. May 31, 2001. Respondent's housing facilities for its tiger were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).

c. August 13, 2001. Respondent's housing facilities for its bear were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).

d. August 27, 2001. Respondent's housing facilities for its bear were not structurally sound and maintained in good repair to contain the animal securely. 9 C.F.R. § 3.125(a).

e. May 31, 2001. Respondent failed to store supplies of food in facilities that adequately protect the food against deterioration or contamination by vermin, and specifically, respondent stored a deer carcass in his driveway. 9 C.F.R. § 3.125(c).

3. On or about the following dates, respondent willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum requirements for outdoor facilities in section 3.127 of the Standards (9 C.F.R. § 3.127), as follows:

a. May 31, 2001. Respondent failed to enclose his outdoor housing facilities for a bear by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

b. May 31, 2001. Respondent failed to enclose his outdoor housing facilities for a tiger by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

c. August 13, 2001. Respondent failed to enclose his outdoor housing facilities for a tiger by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

d. August 27, 2001. Respondent failed to enclose his outdoor housing facilities for a tiger by a perimeter fence of sufficient height to keep animals and unauthorized persons out. 9 C.F.R. § 3.127(d).

4. On or about the following dates, respondent willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum requirements for watering in section 3.130 of the Standards (9 C.F.R. § 3.130), as follows:

a. May 31, 2001. Respondent failed to provide potable water to a bear as often as necessary for the health and comfort of the animal. 9 C.F.R. § 3.130.

b. May 31, 2001. Respondent failed to provide potable water to a tiger as often as necessary for the health and comfort of the animal. 9 C.F.R. § 3.130.

c. August 13, 2001. Respondent failed to provide potable water to a tiger as often as necessary for the health and comfort of the animal. 9 C.F.R. § 3.130.

5. On or about the following dates, respondent willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum requirements for employees in section 3.132 of the Standards (9 C.F.R. § 3.132), as follows:

a. May 31, 2001. Respondent failed to utilize an sufficient number of adequately-trained employees to maintain a professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.

b. August 13, 2001. Respondent failed to utilize an sufficient number of adequately-trained employees to maintain a professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.

c. August 27, 2001. Respondent failed to utilize an sufficient number of adequately-trained employees to maintain a professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.

#### Order

1. Respondent David Gilbert, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

2. Respondent David Gilbert is assessed a civil penalty of \$8,800.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.  
this 23<sup>rd</sup> day of August, 2004

**Marc R. Hillson**  
**Administrative Law Judge**