UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 16-0124
	)	AWA Docket No. 16-0125
TIMOTHY L. STARK, an individual; and	)	
WILDLIFE IN NEED AND WILDLIFE IN	)	
DEED, INC., an Indiana corporation,	)	
	)	
	)	
	)	
Respondents	)	

DECISION AND ORDER AFFIRMING INITIAL DECISION

Appearances:

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

Respondents Timothy L. Stark, and Wildlife in Need and Wildlife in Deed, Inc., appearing pro se.

Before Judicial Officer Bobbie J. McCartney.

Summary of Issue in Dispute and Findings

Whether the petition for appeal filed by the Respondents in the above-captioned case on March 4, 2020 (Appeal) supports the reversal in whole or in part of the Initial Decision issued by Chief Administrative Law Judge Channing D. Strother on February 3, 2020 finding that Respondents violated the Animal Welfare Act (AWA) and regulations issued thereunder (9 C.F.R. pt. 2) on multiple occasions over a four-year period between January 2012 and January 2016 and Ordering that Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, cease and desist from violating the AWA and

the regulations and standards issued thereunder; that AWA license number 32-C-0204 be revoked; that Respondents Timothy L. Stark and Wildlife In Need Wildlife In Deed, Inc., be jointly and severally assessed a civil penalty of $300,000 for those violations, and that Respondent Timothy L. Stark is assessed a civil penalty of $40,000 for his violations. For the reasons discussed below, I find that it does not; accordingly, the Initial Decision and Order is hereby AFFIRMED and ADOPTED in all respects, including the findings of fact, conclusions of law, and the sanctions Ordered by the Chief Judge therein. *See* Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (Rules of Practice), 7 C.F.R § 1.145(i).

Respondents' request for oral argument before the Judicial Officer is not supported by good cause because it fails to provide a probative basis as to how oral argument would add to the record, and is therefore denied.[1] *See* Rules of Practice, § 1.145(d).

I. Summary of Procedural History

On July 8, 2016, APHIS filed a complaint alleging that the Respondents, Timothy L. Stark ("Respondent Stark") and Wildlife in Need and Wildlife in Deed, Inc. ("Wildlife in Need") (hereinafter collectively referred to as "Respondents"), violated the AWA and regulations issued thereunder (9 C.F.R. pt. 2) on multiple occasions over a four-year period between January 2012 and January 2016. Respondent Stark is an exhibitor as the term is defined in the AWA and the

[1] Appeal Pet. at 1.

Regulations and is the holder of AWA license 32-C-0204.[2] Respondent Wildlife in Need, an exhibitor as the term is defined in the AWA, is an Indiana Corporation who has never held an AWA license and whose agent for service of process and president is Respondent Stark.[3] Respondents' counsel withdrew from representation three weeks before the hearing and Respondent Stark chose to proceed *pro se*.[4]

On August 23, 2016, Respondents filed an answer in which they admitted the jurisdictional allegations of the complaint and admitted that in 2008 Respondent Timothy Stark was convicted of violating the Endangered Species Act. *United States v. Timothy L. Stark*, Case No. 4:07-CR-00013-001 (S.D. Ind.). Respondents denied the remaining allegations and asserted five affirmative defenses: (1) estoppel; (2) laches; (3) res judicata; (4) statute of limitations; and (5) waiver. Answer at ¶¶ 2, 5. Respondents also asserted in their answer that APHIS "should be barred from bringing a Complaint containing allegations that were not included as a part of the ongoing litigation that is presently the subject of an Appeal in AWA Docket No. 15-0080." Answer at ¶ 4.

The Complaint alleged over 120 violations of the AWA. An eight-day hearing was held before Chief Administrative Law Judge (Judge) Channing D. Strother on September 26-28 and

[2] 7 U.S.C. § 2132(h); Answer at ¶ 1; CX 1.
[3] 7 U.S.C. § 2132(h); Answer at ¶ 1; CX 2.
[4] Throughout this decision and order I have taken into account that "[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Boxer X v. Harris*, 437 F.3d 1107 (11th Cir. 2006) (quoting *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003)). *See also Ramos v. USDA*, 68 Agric. Dec. 60 (U.S.D.A. 2009). Respondents' filings in this docket, even if done to the best of Respondents' ability, likely have not been as skillfully prepared and articulated as they would have been if aided by counsel and/or other professionals. However, among other things, I have fully attempted to extract Respondents' contentions from not only Respondents' brief but all of the record and to fully and fairly consider each.

October 1-5, 2018, in Louisville, Kentucky. The record before Judge Strother was extensive, with 101 admitted exhibits and over 2000 pages of transcript, which included the testimony of twenty-five witnesses.

Complainant introduced the testimony of seventeen witnesses: Veterinarians Dr. Robert M. Gibbens, Dr. Dana Miller, Dr. Peter R. Kirsten, Dr. Juan Arango, Dr. Cynthia DiGesualdo, Dr. Kerry McHenry, Dr. Barbara Pepin, and Dr. Harold Gough; APHIS Animal Care Inspectors Randall Coleman and Ann Marie Houser; APHIS Investigator Yosarah Stephens; Indiana State Trooper Mark LaMaster, and four members of the public who had attended Respondents' animal exhibitions ([redacted]).

Respondents introduced the testimony of eight witnesses: Respondent Timothy Stark, Melisa Stark, veterinarians Dr. Rick Pelphrey and Dr. Jill Cook, former APHIS inspector Elizabeth Taylor, and three of Respondents' volunteers (Max Strong, Christina Densford, and Jessica Amin).

Following the hearing, the parties filed proposed findings of fact, conclusions of law, and briefs, and reply briefs. On February 3, 2020, Chief Judge Strother (Judge) filed an initial decision and order (ID), in which he found that Respondents willfully violated the AWA on multiple occasions. ID at 2-3 ("…Respondent Stark…in many instances showing blatant disregard for the Regulation Standards and requirements applicable to him as a licensee..."). The Judge concluded that "Respondents' business is large, the gravity of such violations was great, there is a history of previous violations, and Respondents did not act in good faith." ID at 3. Consequently, he assessed a civil penalty against Respondent Stark for $40,000 and a joint and several civil penalty of $300,000 against Respondent's business entity, Wildlife In Need and

Wildlife In Deed, Inc.; ordered AWA license 32-C-0204 revoked; and ordered Respondents to cease and desist from further violations. ID at 146-152. [5]

II. Respondents' Appeal Petition Is Denied

On March 4, 2020, Respondents filed a Petition for Appeal (Appeal), in which they "disagree both overall and point by point with the ALJ's adverse determination in his Decision and Order" and, as discussed more fully below, specifically challenged several of the Judge's findings. Appeal at II. Respondents request that the Judicial Officer reverse all of the Judge's findings "as being erroneous" and remand the matter to "the ALJ to issue a new order and decision consistent with those findings." *Id.* at III.

Respondents' Petition for Appeal contains ten general categories of alleged error by the Judge. More specifically, in the Petition for Appeal, Respondents made ten arguments, some with overlapping issues. He argued that the Chief Judge:

1. erred by finding that he had been provided a reasonable opportunity to correct the alleged violations (Appeal at [unnumbered] 2);
2. erred in finding that Respondents applied AWA criteria and standards as written (Appeal at [unnumbered 2-3);
3. erred in finding that Respondents exhibited the requisite "willfulness" in violating AWA criteria and standards as written (Appeal at [unnumbered] 3-4);
4. erred by making an adverse decision in spite of insufficient proof of inadequate veterinary care (Appeal at [unnumbered] 4-5);
5. erred by finding sufficient proof of inadequate recordkeeping (Appeal at [unnumbered] 5-6);
6. erred by finding sufficient proof of inadequate food, water, or shelter (Appeal at [unnumbered] 6-7);

[5] *Id.*

7. erred in finding sufficient proof of "inadequate employee number" [sic] (Appeal at [unnumbered] 7-8);
8. erred in finding sufficient proof of inadequate care or treatment (Appeal at [unnumbered 8-9);
9. erred in finding sufficient proof of physical interference or actual physical threat (Appeal at [unnumbered 10-11); and
10. erred in awarding fines that violated respondent's' constitutional rights against excessive fines (Appeal at [unnumbered] 11-12).

All of these arguments, with the exception of the excessiveness of the fines, were made by Respondents in their post-hearing brief. With that exception, Respondents simply repeat the arguments initially advanced in their post-hearing brief filed on June 24, 2019.[6] These same arguments were already before the Chief Judge, along with Complainant's response to these arguments as set forth in its post-hearing reply brief filed on July 23, 2019, when he issued his Initial Decision on February 3, 2020. The Chief Judge systematically addressed each allegation in his 183-page Initial Decision and provided detailed findings of fact and conclusions of law, fully supported by the evidence of record, which have already taken these arguments into consideration.

The Chief Judge also addressed each of Respondents' five affirmative defenses: (1) estoppel; (2) laches; (3) res judicata; (4) statute of limitations; and (5) waiver,[7] and, providing rationale, found each to be without merit.[8] Accordingly, the Findings of Fact and Conclusions of

[6] Complainant fully addressed these arguments in its post-hearing reply brief filed on July 23, 2019.
[7] Answer at ¶¶ 2, 5
[8] Respondent's Answer asserted five affirmative defenses: (1) estoppel; (2) laches; (3) res judicata; (4) statute of limitations; and (5) waiver (Answer at ¶¶ 2, 5). As to equitable estoppel, the CALJ found that Respondent provided no evidence of reliance on any action by Complainant. Similarly, a claim of collateral estoppel, related to Respondent's previous conviction, had no merit because an enforcement action by the agency is not barred by disciplinary proceedings instituted by other entities (ID at 9-10; citing former CALJ Davenport in *In re: Perry Lacy*, 65 Agric. Dec. 1157, 1159 (U.S.D.A. 2006). Laches have long been held to be inapplicable to administrative

Law set forth in the Initial Decision are hereby AFFIRMED and ADOPTED for all purposes. Only Respondents' newly raised arguments regarding the excessiveness of the fines will be addressed below.

Civil Penalties Under the AWA Do Not Violate the Eighth Amendment

Respondents contend that the $340,000 penalty violates the Eighth Amendment to the United States Constitution. That Amendment provides that "Excessive Bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const., Amdt. 8. The Supreme Court has recognized that a civil penalty satisfies those protections so long as it is not grossly disproportionate to the gravity of the offense for which it is imposed. *See United States v. Bajakajian*, 524 U.S. 321, 334-35, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998).

Respondents contend that their AWA license revocation and "the imposition the fines by the ALJ are at least partly punitive…" and "Respondent Stark does not fit at all into the class of persons for whom punitive statutes were principally designed." Appeal at II.H. This argument is not supportable in light of well established precedent that the purpose of civil penalties assessed under the Animal Welfare Act is to *deter* future violations of the Animal Welfare Act and the Regulations and the Standard; civil penalties assessed under the Animal Welfare Act are not for the purpose of punishment."[9] The Judicial Officer has held that "the Excessive Fines Clause of

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proceedings (see citations at FN 31, ID at 10). And, Respondent provided no factual basis or legal authority to support any argument related to a statute of limitations issue; therefore waiver would not apply (ID at 10).

[9] *In re: Judie Hansen*, 58 Agric. Dec. 369 (U.S.D.A.), 1999 WL 138224, (1999)(internal quotations omitted) citing *Austin v. United States*, 509 U.S. 602, 609 (1993) (stating that "[t]he purpose of the Eighth Amendment, putting the Bail Clause to one side, was to limit the government's power to punish"); *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989) (stating that the word fine, as used in the Excessive Fines Clause, means payment to a sovereign as punishment for some offense); *Little v. Commissioner*, 106 F.3d 1445, 1454

the Eighth Amendment to the United States Constitution is not applicable to civil administrative enforcement proceedings in which civil penalties are assessed to deter violations, rather than to punish violators.

Civil Penalties Under the AWA Are Established Pursuant to 7 U.S.C. § 2149(b)

Under the Animal Welfare Act, the appropriateness of the civil penalty should be determined "with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations." [10]

The Chief Judge's findings of fact and conclusions of law addressing each of these factors are based on substantial record evidence and a through and well supported analysis of applicable statutes, regulations and judicial and agency precedent. Accordingly, the Chief Judge's findings of fact and conclusions of law set forth in the Initial Decision are hereby **AFFIMED** and **ADOPTED** herein for all purposes.

To facilitate future review, the Chief Judge's analysis addressing each of the four factors required under 7 U.S.C. § 2149(b), as well as whether Respondents' actions were willful, is restated and summarized below. *See* ID at 147-152.

(9th Cir. 1997) (stating that the Excessive Fines Clause is not applicable to additions to income tax for negligence and for substantial understatement of tax because the additions serve only to deter noncompliance with tax laws by imposing a financial risk on those who fail to comply with tax laws); *United States v. One Parcel of Real Estate at 321 S.E. 9th Court*, 914 F. Supp. 522, 525-26 (S.D. Fla. 1995) (stating that the Excessive Fines Clause limits the government's power to extract payments as punishment for an offense).

[10] 7 U.S.C. § 2149(b). Although this part of the regulation is entitled "Violations by licenses" and neither Respondent currently holds a license, it has been held that "the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & O.R. Co.,* 331 U.S. 519, 528–29 (1947).

Willfulness

As the Chief ALJ explained, under the AWA, the term "willful" means "action knowingly taken by one subject to the statutory provision in disregard of the action's legality. . . . Actions taken in reckless disregard of statutory provisions may also be 'willful.' "[11] The Court in *Hodgins* determined the "proper rule": [12]

> Unless it is shown with respect to a specific violation either (a) that the violation was the product of knowing disregard of the action's legality or (b) that the alleged violator was given a written warning and a chance to demonstrate or achieve compliance, the violation cannot justify a license suspension or similar penalty.

The Chief Judge further explained that the Judicial Officer "has long held that a 'willful act under the Administrative Procedure Act ("APA") (5 U.S.C. § 558(c)) is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements.'"[13] He added, "It is also important to note that 'willfulness' determinations are not necessary for issuance of civil penalties or cease and desist orders. Only one finding of a willful violation is needed under 7

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[11] *Hodgins v. U.S. Dep't of Agric.*, 238 F.3d 421, 2000 WL 1785733, *9 (6th Cir. 2000) (table) (internal quotations omitted) (quoting *Volpe Vito, Inc. v. USDA*, No. 97-3603, 1999 WL 16562, at *2 (6th Cir. Jan. 7, 1999); citing *United States v. Illinois Cent. Ry.*, 303 U.S. 239, 242-43 (1938) (one who 'intentionally disregards the statute or is plainly indifferent to its requirements' acts willfully) (quotation omitted); *Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir.1961) (one who 'acts with careless disregard of statutory requirements' acts willfully); Jacob A. Stein et al., Administrative Law § 41.06[3] (2000) (stating the generally accepted test for willful behavior under the Administrative Procedure Act is whether an action "was committed intentionally" or "was done in disregard of lawful requirements" and also noting that "gross neglect of a known duty will also constitute willfulness")).

[12] *Id.* at *10.

[13] *Terranova Enterprises, Inc., A Texas Corp., d/b/a Animal Encounters, Inc.*, 71 Agric. Dec. 876, 880 (U.S.D.A. July 19, 2012) (citing *Bauck*, 68 Agric. Dec. 853, 860-61 (2009), appeal dismissed, No. 10-1138 (8th Cir. Feb. 24, 2010); *D&H Pet Farms, Inc.*, 68 Agric. Dec. 798, 812-13 (2009); *Bond*, 65 Agric. Dec. 92, 107 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *Stephens*, 58 Agric. Dec. 149, 180 (1999); *Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978)).

U.S.C. § 2149(a) to provide authority for the suspension or revocation of a license."[14] ID at 147.

The Chief ALJ considered Respondents' contentions that "willfulness—a mandatory element to be proven—is one that must be addressed separately with respect to each specific violation" and that "Complainant utterly failed to do so at every turn" but that Respondents' evidence "demonstrated well that Respondents did not plan or commit any willful violation, nor intentionally perform any prohibited act without regard to motive or erroneous advice, nor act with *any* disregard of statutory requirements, much less by doing so in a reckless fashion." Answering Brief in Support (Post-Hearing Brief) at 10; emphasis in original; ID at 148. The Chief Judge also considered the contention that Respondents were never given a reasonable opportunity to correct violations because, although Respondents conceded that they "had in fact been provided with copies of the regulations once per year and presumably given written copies of each inspection report," Respondents maintained that they were "definitely *not* provided any such reasonable or realistic opportunity [to demonstrate compliance], especially in any form that would satisfy the core purposes of the Act."[15] Answering Brief at 6-7.

The Chief Judge also considered the position of Complainant, which, in its Reply Brief at 7-8, stated that the APA does not require notice and an opportunity to correct in cases where public health, interest, or safety requires otherwise and that this case is one that "implicates public health, public interest, and public safety."[16] Complainant contended, *id.*, that "the record

[14] *See Big Bear Farm, Inc*, 55 Agric. Dec. 107, 139 (U.S.D.A. 1996); *Horton*, 73 Agric. Dec. 77, 85 (U.S.D.A. 2014).
[15] Citing "Transcript at 148:2-28 in Testimony of Tim Stark on 10/04/18."
[16] Citing *Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 140 (1996) (citing 5 U.S.C. § 558(c)).

is replete with evidence that APHIS repeatedly and specifically advised respondents of their noncompliance - through inspection reports, post inspection exit interviews, correspondence, and a 21-day suspension of respondent Stark's license in 2015."[17] Complainant stated that the "evidentiary record in this case . . . establishes that respondents repeatedly failed to correct the deficiencies documented by the APHIS inspectors."[18] The Chief Judge noted that Complainant further contended, *id.* at 14-15, that Respondents "are wrong on both the law and the facts" as there was no requirement to establish willfulness because 1) willfulness does not need to be established to assess civil penalties or to order a cease and desist; 2) willfulness does not need to be established because Respondents were provided both notice and opportunity to correct;[19] and 3) willfulness does not need to be established because this case concerns public health, public interest, and public safety.

The four-factor analysis of 7 U.S.C. § 2149(b):

The Chief Judge prefaced his analysis as follows:

> Here, regarding each of the allegations, I have considered whether each violation concerned public health, interest, and/or safety. I've also considered whether each violation was a repeat (i.e. Respondents had notice and a chance to correct but failed to do so), the gravity of the violation, and whether Respondents knew or should have known that their action or inaction would lead to a violation based on their knowledge of the Regulations. I have also taken into consideration Respondent Stark's background in animal ownership and exhibition, that Respondent Stark held a Class B AWA license from 1999 until 2008, and has held a Class C exhibitors license since 2008 with full awareness, knowledge of, and access to the AWA and Regulations promulgated thereunder.[20]

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[17] Citing CX 4, 6, 14, 18, 22, 23, 29, 30, 35, 36, 45-48.
[18] *Id.* at 9 (citing CX 4, 6, 14, 18, 22, 23, 29, 30, 35, 36; RX 14, 18-20).
[19] Also noting, *Id.* at 11, that "the Judicial Officer has held that he regulations themselves provide adequate notice of the requirements, particularly with respect to handling" (citing *Zoocats, Inc.*, AWA Docket No. 03-0035., 2009 WL 4927094, at *4 (2009)).
[20] Tr. Vol. 7, 1901:2-1902:9.

ID at 149.

a. Size of the business

The Chief Judge found that Respondents' business is large based on the evidence of record as to the number of animals housed at the facility and the revenue conducted. [21] ID at 149-50.

b. Gravity of the violation

The Chief Judge found the gravity of many of the violations to be serious due to: 1) repeated failure and/or refusal to provide access to APHIS inspectors for the purpose of conducting inspections to determine compliance with the AWA and Regulations promulgated thereunder; 2) repeated interference with and verbal abuse of APHIS inspectors; 3) repeated failures to handle animals carefully, particularly repeated exposure of the public and animals to risks by failing to provide proper distance and barriers during exhibition particularly with small children and infants present; 4) repeated failures to provide attending veterinarian supervision and involvement; and 5) repeated failures to provide adequate veterinary care to animals that may have resulted in the deaths of many animals.[22]

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[21] Complainant contends, and Respondents do not deny, that Respondents' business is large based on Respondent Stark's representations to APHIS between 2011 and 2015 that he held between forty-three and 124 animals and derived over $569,000 from animal exhibitions in 2014 alone. Complaint at ¶ 3. *See also* Complainant's Post-Hearing Brief at 128-29 (citing *Perry*, 2013 WL 8213618, at *8 (2013) (citing *Huchital*, 58 Agric. Dec. 763, 816-17 (1999) (finding the respondent, who held approximately 80 rabbits, operated a large business); *Browning*, 52 Agric. Dec. 129, 151 (1993) (finding that respondent, who held 75-80 animals, operated a moderately large business), *aff'd per curium*, 15 F.3d 1097 (11th Cir. 1994); CX 1, CX 36 at 9; Tr. Vol. 7, 1953-54; Respondent Wildlife in Need and Wildlife in Deed, Inc. 2014-17 Tax Returns, attached to Complainant's Proposed Order and Request to Take Official Notice).

[22] *See Mitchell*, 60 Agric. Dec. 91, 128-29 (U.S.D.A. 2001) ("Interference with Animal and Plant Health Inspection Service officials' duties under the Animal Welfare Act and the failure to allow Animal and Plant Health Inspection Service officials access to facilities, animals, and records are extremely serious violations because they thwart the

c. Good faith and History of Previous Violations

The Chief Judge found that Respondents have a history of previous violations and a lack of good faith to comply with the AWA and Regulations promulgated thereunder. He explained:

> Although Respondents have never been subject to a previous adjudication finding that they violated the AWA, [I] have found numerous violations of the AWA and Regulations between January 2012 and January 2016[23] and such an "ongoing pattern of violations establishes a 'history of previous violations' for the purposes of 7 U.S.C. § 2149(b) and a lack of good faith."[24] Specifically, the record reflects that Respondent Stark has shown a lack of good faith by deliberately trying to circumvent the AWA regulations, including presenting forged documents and in his interference with APHIS inspectors, and by repeatedly misrepresenting the involvement of attending veterinarians in operations.

ID at 151 (internal citations omitted).

d. Penalty Amount

Explaining that the amount of the civil penalty was subject to his discretion within the statutory limit at the time of violation, and was justified with a purpose of deterring future violations, the Chief ALJ set forth his finding and rationale as to the penalty amount.

> The maximum civil penalty per violation in this case is $10,000.[25] Complainant states that the Complaint alleged Respondents committed not fewer than 339 willful violations of the AWA and Regulations and Complainant calculates that Respondent Stark is alleged to have committed not fewer than four willful

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Secretary of Agriculture's ability to carry out the purposes of the Animal Welfare Act."); *Yost*, 2019 WL 2345417, at *9 (U.S.D.A. 2019) ("The Secretary has found that violations based on an exhibitor's failure to handle dangerous animals with sufficient distance and/or barriers are serious, can result in harm to animals and people, and merit assessment of 'the maximum, applicable civil penalty for each handling violation.'") (citing *Mitchell*, 2010 WL 5295429, at *8 (U.S.D.A. 2010)).

[23] Also noting that Respondent Stark's AWA license was previously suspended in 2015 for a period of twenty-one (21) days, RX 9.

[24] *Staples, d/b/a Staples Safari Zoo & Brian Staples Prods.*, 73 Agric. Dec. 173, 189 (U.S.D.A. 2014). I here acknowledge that Respondent Stark was convicted of violating the Endangered Species Act in 2008, *United States v. Timothy L. Stark*, Case No. 4:07CR00013~001 (S.D. Ind.), and is was respondent in a license termination proceeding, *Stark*, AW A Docket No. 15-0080, but it was found on the merits that Respondent Stark's AWA license should not be terminated in that case.

[25] 7 U.S.C. § 2149(b). *See also supra* n. 24.

> violations of the AWA and Regulations.[26] Complainant asks that the undersigned not assess less than ten percent (10%) of the maximum penalties assessable under the AWA.[27] Complainant's reasoning is considered and consideration of other mitigation factors regarding gravity have been noted as to each allegation where appropriate. Based on the number of violations,[28] size of the business, the gravity of the violations, the history of previous violations, and Respondents' lack of good faith, I find that Respondents should be jointly and severally assessed a civil penalty in the amount of $300,000.

ID at 151-52.

As the Chief ALJ noted, the Complaint in paragraphs 7 (a) through (d) alleged that "respondent Stark willfully violated the Act and the Regulations, 9 C.F.R. § 2.4, by interfering with, and/or verbally abusing APHIS officials in the course of carrying out their duties . . ." The text of the Complaint does not allege that Respondent Wildlife in Need committed these particular violations, and Complainant on brief seeks penalties only against Respondent Stark for these violations. As Complainant stated on brief: "Dr. Gibbens testified that the kind of behavior exhibited by respondent Timothy Stark impedes the ability of the Department to enforce the AWA." [29]

The Chief ALJ found the allegations of these Complaint paragraphs "virtually undisputed in the record with no credible showing of any alleged good faith, and to state violations of great gravity." The Chief ALJ agreed with Dr. Gibbens'—who at the time of the Hearing was the

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[26] Complainant's Post-Hearing Brief at 133.
[27] *Id.*
[28] Based on the findings herein, Complainant did not meet its burden of proof regarding at least twenty (20) alleged violations. It is unclear how Complainant counted each alleged violation, considering alleged violations that pertained to multiple animals. Thus, I have rounded down Complainant's calculated number of violations. Respondent Stark individually is found herein to have committed four willful violations of the AWA and Regulations.
[29] Complainant's Post-Hearing Brief at 32-33 (citing Tr. Vol. 8 at 2217:11-19).

National Director of APHIS Animal Care's Field Operations and previously an APHIS VMO, Field Supervisor, and Regional Director[30]—opinion that the subject actions by Respondent Stark interfered with the ability of APHIS to enforce the AWA. He explained, "The ability to enforce the AWA is fundamental to the USDA program, and the maximum penalties are appropriate for such interference in the circumstances of this proceeding." ID at 152. The Chief Judge therefore found that Respondent Stark should be assessed a civil penalty in the amount of $40,000.

As previously explained, while license termination proceedings are not penal and license termination is not a sanction,[31] it is well settled that in administrative enforcement cases, "[t]he purpose of an administrative sanction is deterrence of future violations by the violator and other potential violators." *In re David M. Zimmerman*, 57 Agric. Dec. 1038 (1998). Here, the Initial Decision reflects that the Respondents violated the AWA and its Regulations over 100 times from December 2012 to January 2016 clearly establishing that Respondents have remained undeterred by APHIS's previous enforcement efforts, including two summary license suspensions,[32] and demonstrating Respondents' continued disregard for, and unwillingness to abide by, the requirements of the Act and Regulations.

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[30] Tr. Vol. 8, 2196.

[31] As established by previous case precedent, the Animal Welfare Act is a remedial statute and Animal Welfare Act license termination proceedings are not penal. "The Administrator does not seek to punish Mr. Greenly for his actions. Instead, the Administrator seeks termination of Mr. Greenly's Animal Welfare Act license because Mr. Greenly's actions reflect on his fitness to be licensed under the Animal Welfare Act." *In re Lee Marvin Greenly*, 72 Agric. Dec. 586, 592–93 (2013).

[32] *See* RX 9

As the Chief Judge explained in his analysis of good faith and history of previous violations as set forth above (*supra* at 13), he found a lack of good faith evidenced by numerous violations of the AWA and Regulations between January 2012 and January 2016, and well as deliberate attempts to circumvent the AWA regulations. The Chief ALJ concluded, that despite no previous adjudication that Respondents violated the AWA, "[S]uch an "ongoing pattern of violations establishes a 'history of previous violations' for the purposes of 7 U.S.C. § 2149(b) and a lack of good faith." ID at 151.

Based on substantial record evidence, and following a through and well supported analysis of these factors, the Chief Judge determined that revocation of AWA license 32-C-0204, permanent disqualification from obtaining an AWA license, and issuance of a cease and desist order was necessary to deter future violations, that Respondents should be jointly and severally assessed a civil penalty in the amount of $300,000 and Respondent Timothy Stark should be assessed a civil penalty in the amount of $40,000.

ORDER

Respondents' arguments have been previously considered and are rejected. Accordingly, Respondents' Petition for Appeal is ***denied*** and the Initial Decision issued by Chief Administrative Law Judge Channing D. Strother on February 3, 2020 finding that Respondents violated the Animal Welfare Act and regulations issued thereunder (9 C.F.R. pt. 2) on multiple occasions over a four-year period between January 2012 and January 2016 is hereby ***affirmed and adopted*** by the Judicial Officer for all purposes.

Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall decease and desist from violating the AWA and the regulations and standards issued thereunder; AWA license number 32-C-0204 shall be revoked; Respondents Timothy L. Stark and Wildlife In Need and Wildlife In Deed, Inc., shall be jointly and severally assessed a civil penalty of $300,000 for those violations, and Respondent Timothy L. Stark is assessed a civil penalty of $40,000 for his violations.

RIGHT TO SEEK JUDICIAL REVIEW

Respondents have the right to seek judicial review of the Decision and Order entered in this proceeding on February 3, 2020 and of this Order Denying Respondents' Petition for Appeal and Affirming the February 3, 2020 Decision and Order in the appropriate United States Court of

Appeals in accordance with 28 U.S.C. §§ 2341–2350. Respondents must seek judicial review within sixty (60) days after entry of this Order.[33]

Copies of this Order shall be served by the Hearing Clerk upon each of the parties (by certified mail as to Respondents), with courtesy copies provided via email where available.

Done at Washington, D.C.
this __8th__day of April, 2020

Judge Bobbie J. McCartney
Judicial Officer

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[33] The appeal deadline for the Decision and Order issued in this proceeding on 2/3/2020 was stayed by the timely filing of Respondents' Petition for Appeal and the time for judicial review shall begin to run for the date of entry of this Order as the final action in this proceeding in accordance with 7 CFR § 1.146(b). Respondents must seek judicial review within sixty (60) days of entry of this Order in accordance with 7 U.S.C. § 2149(c).