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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	AWA Docket No. 05-	0004
)		
SANDRA L. SMITH, an individual;)		
KENNETH R. SMITH, an individual; and)		
WESA-A-GEH-YA ZOO, a Missouri)		
nonprofit corporation,)		
)		
Respondents)	COMPLAINT	

There is reason to believe that the respondents named herein have willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.) (the "Act"), and the regulations and standards (9 C.F.R. § 1.1 et seq.) ("Regulations" and "Standards") issued pursuant to the Act, and, therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging as follows:

JURISDICTIONAL ALLEGATIONS

1. Sandra L. Smith is an individual whose mailing address is 36219 State Road A, Warrenton, Missouri 63383, and at all times mentioned herein was operating as an exhibitor, as that term is defined in the Act and the Regulations, and held Animal Welfare Act license number 43-C-0196 issued to "SANDRA & KENNETH SMITH DBA: WESA-A-GEH ZOO." On December 17, 2003, said respondent voluntarily surrendered Animal Welfare Act license number 43-C-0196.

Respondent S. Smith is also the president and chairman of respondent Wesa-A-Geh-Ya Zoo, and directed, managed and controlled its business activities. The acts, omissions, and failures to act by respondent S. Smith alleged herein were within the scope of said respondent's office, and are deemed the acts, omissions and failures of respondent Wesa-A-Geh-Ya Zoo, as well as

respondent S. Smith, for the purpose of construing or enforcing the provisions of the Act and Regulations.

2. Kenneth R. Smith is an individual whose mailing address is 36219 State Road A, Warrenton, Missouri 63383, and at all times mentioned herein was operating as an exhibitor, as that term is defined in the Act and the Regulations, and held Animal Welfare Act license number 43-C-0196 issued to "SANDRA & KENNETH SMITH DBA: WESA-A-GEH ZOO." On December 17, 2003, said respondent voluntarily surrendered Animal Welfare Act license number 43-C-0196.

Respondent K. Smith is also the secretary and treasurer of respondent Wesa-A-Geh-Ya Zoo, and directed, managed and controlled its business activities. The acts, omissions, and failures to act by respondent K. Smith alleged herein were within the scope of said respondent's office, and are deemed the acts, omissions and failures of respondent Wesa-A-Geh-Ya Zoo, as well as respondent K. Smith, for the purpose of construing or enforcing the provisions of the Act and Regulations.

3. Wesa-A-Geh-Ya Zoo is a Missouri domestic nonprofit corporation whose agent for service of process is Sandra Smith 36219 State Road A, Warrenton, Missouri 63383. At all times mentioned herein, said respondent was operating as an exhibitor, as that term is defined in the Act and the Regulations, and held between 33-53 wild or exotic felids, between 4-11 wild or exotic canines, and at least one bear.

4. APHIS personnel conducted inspections of respondents' facilities, records and animals for the purpose of determining respondents' compliance with the Act, Regulations, and Standards on July 19, 2001, October 30, 2001 (58 animals), May 29, 2002, September 4, 2002,

October 7, 2002 (64 animals), October 11, 2002, December 3, 2002, February 11, 2003, June 16, 2003, August 13, 2003, and October 30, 2003.

**ALLEGATIONS REGARDING THE SIZE OF RESPONDENTS' BUSINESSES,
THE GRAVITY OF THE ALLEGED VIOLATIONS,
RESPONDENTS' GOOD FAITH AND RESPONDENTS' COMPLIANCE HISTORY**

5. Respondents have a moderate-sized business, with an average of 48 animals, including wild and exotic animals: bears, lions, cougar, tigers, foxes, and wolves.
6. The gravity of the violations alleged in this complaint is great. They include instances in which respondents impeded an inspection and failed to allow access to their facility, and repeated instances in which they failed to provide minimally-adequate veterinary care. Respondents have continually failed to comply with the Regulations, after having been repeatedly advised of deficiencies.
7. Respondents have not shown good faith. They have repeatedly demonstrated an unwillingness to comply with the Act and the Regulations and Standards, and have impeded an inspection.
8. Respondents have a history of previous violations. On April 27, 2000, complainant issued to respondents an official warning for violations of sections 3.127(b) and 3.125(a) of the Standards.

**ALLEGED NONCOMPLIANCE WITH REGULATIONS GOVERNING
ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE**

9. Respondents willfully violated the attending veterinarian and veterinary care regulations (9 C.F.R. § 2.40), as follows:
 - a. On or about August 1, 2002, through on or about August 21, 2002. Respondents

failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically, failed to obtain veterinary treatment for a juvenile female bear ("Hazel") that appeared malnourished and had sores on the pads of both front feet. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

b. On or about August 1, 2002, through on or about August 21, 2002. Respondents failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being, and specifically, respondents failed to observe and record accurate information related to a juvenile female bear ("Hazel") that appeared malnourished and had sores on the pads of both front feet and were, therefore, unable to convey accurate information as to the animal's health, behavior and well-being to their attending veterinarian. 9 C.F.R. § 2.40(b)(3).

c. On or about August 10, 2002, through on or about August 12, 2002. Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically, failed to obtain veterinary treatment for a juvenile male lion ("Jeffrey") that was lethargic, cold to the touch, and dehydrated. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

d. October 7, 2002. Respondents failed to establish and maintain programs of adequate veterinary care that included a written program of veterinary care and regularly scheduled visits to the premises, and specifically, failed to establish a written program of

veterinary care for 64 animals. 9 C.F.R. § 2.40(a)(1).

e. October 7, 2002. Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically, failed to obtain veterinary treatment for an adult male tiger ("Samson") that had exhibited paralysis in both hind legs for three days and an adult male lion ("Pook") that had an abscess on the left side of his face and month-old bite wounds on both lower hind legs that caused him to limp.

9 C.F.R. §§ 2.40(a), 2.40(b)(2).

f. June 16, 2003. Respondents failed to have their attending veterinarian provide adequate veterinary care to their animals that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically, failed to obtain veterinary treatment for a lion ("Simbanala") that had a lacerated ear and a tiger ("Brutus") that had an injured tail, the skin was peeled back and it appeared inflamed. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

g. June 16, 2003. Respondents failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being, and specifically, respondents failed to observe and record accurate information related to a lion ("Simbanala") that had a lacerated ear and a tiger ("Brutus") that had an injured tail and were, therefore, unable to convey accurate information as to the animals' health, behavior and well-being to their attending veterinarian. 9 C.F.R. § 2.40(b)(3).

ALLEGED NONCOMPLIANCE WITH REGULATIONS GOVERNING LICENSEES

10. On July 19, 2001, respondents willfully violated section 2.126 Regulations and by failing to permit APHIS officials to conduct an inspection of their animal facilities.
9 C.F.R. § 2.126(a).

11. On August 13, 2003, respondents willfully violated section 2.126(a) of the Regulations by failing to permit APHIS officials to conduct a complete inspection of their animal facilities, and specifically, respondents refused to allow APHIS officials to photographically document the condition of their facility. 9 C.F.R. § 2.126(a)(5)

ALLEGED NONCOMPLIANCE WITH STANDARDS GOVERNING
HUMANE HANDLING, CARE, AND TREATMENT OF OTHER ANIMALS

12. Respondents willfully violated section 2.100(a) of the Regulations and Standards by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. 3.125 Facilities, general

i. October 7, 2002. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically, housed seven tigers in enclosures that had sharp, exposed fencing wire and protruding nails at the entrance of the wooden shelter. 9 C.F.R. §§ 2.100(a), 3.125(a).

ii. October 7, 2002. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to

protect the animals from injury and to contain the animals, and specifically, housed two lions in an open-top, outdoor enclosure constructed with chainlink fencing that was approximately 7.5 feet high and two tigers in an enclosure with a wooden shelter that had a gap, approximately 18 inches in diameter, between it and the dirt floor. 9 C.F.R. §§ 2.100(a), 3.125(a)

iii. June 16, 2003. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically, failed to repair or replace metal support poles and chainlink fencing that were pitted with rust. 9 C.F.R. §§ 2.100(a), 3.125(a).

iv. June 16, 2003. Respondents failed to store supplies of food in facilities which adequately protect the food against deterioration, molding or contamination by vermin, and specifically, stored and thawed meat in a non-functioning freezer that had meat fluids and blood from exposed carcasses dripping on to other meat and the freezer floor, and a large number of maggots and flies accumulated at the freezer entrance. 9 C.F.R. §§ 2.100(a), 3.125(c).

v. August 13, 2003. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically, failed to repair or replace the deteriorating and chewed wood shelter boxes provided to the lion and tigers (end enclosure, central row) and three lion cubs. 9 C.F.R. §§ 2.100(a), 3.125(a).

vi. August 13, 2003. Respondents failed to construct indoor and outdoor housing

facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically, three enclosures housing lions and a tiger had 6 inch gaps between the bottom of the chainlink fencing and the ground. 9 C.F.R. §§ 2.100(a), 3.125(a).

vii. August 13, 2003. Respondents failed to store food supplies in facilities that adequately protect such supplies against deterioration, molding, or contamination by vermin, and specifically, a foul odor of rotten meat emanated from the freezer. 9 C.F.R. §§ 2.100(a), 3.125(c).

viii. October 30, 2003. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically, housed two tiger cubs in a rusted metal enclosure that had holes along the edges. 9 C.F.R. §§ 2.100(a), 3.125(a).

ix. October 30, 2003. Respondents failed to store food supplies in facilities that adequately protect such supplies against deterioration, molding, or contamination by vermin, and specifically, the cooler used to thawed and stored meat had accumulated blood and drippings on the bottom. 9 C.F.R. §§ 2.100(a), 3.125(c).

b. 3.127 Facilities, outdoor

i. October 30, 2001. Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of such animals, and specifically, failed to provide adequate shelter and protection from inclement weather to two tigers that shared one igloo-type dog house; three tigers and one

lion that shared one wood box; and two wolves that shared one igloo-type house

9 C.F.R. §§ 2.100(a), 3.127(b).

ii. September 4, 2002. Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of such animals, and specifically, failed to provide adequate shelter and protection from the inclement weather to four tigers that shared one house. 9 C.F.R. §§ 2.100(a), 3.127(b).

iii. September 4, 2002. Respondents failed to enclose their outdoor housing facilities by a perimeter fence of sufficient height to keep animals and unauthorized persons out, and as a containment system for animals housed in the facility, including, among others, tigers, cougars, lions and wolves. 9 C.F.R. §§ 2.100(a), 3.127(d).

iv. October 7, 2002. Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of such animals, and specifically, failed to provide adequate shelter and protection from inclement weather to two female lions and one female tiger that shared one shelter, three tigers that shared one shelter, two tigers that shared one shelter, five wolves that shared one shelter, and two wolves that were not provided any shelter at all. 9 C.F.R. §§ 2.100(a), 3.127(b).

v. October 7, 2002. Respondents failed to provide a suitable method to rapidly eliminate excess water, and specifically, failed to remove standing water from around and under animal enclosures. 9 C.F.R. §§ 2.100(a), 3.127(c).

vi. June 16, 2003. Respondents failed to provide sufficient shade by natural or artificial means to allow all animals kept outdoors to protect themselves from direct

sunlight, and specifically, failed to provide any shade to thirty-four animals housed in eighteen outdoor enclosures. 9 C.F.R. §§ 2.100(a), 3.127(a)

vii. On or about June 16, 2003 through on or about October 30, 2003. Respondents failed to enclose their outdoor housing facilities by a perimeter fence of sufficient height to keep animals and unauthorized persons out, and as a containment system for animals housed in the facility, including, among others, tigers, lions, cougars and wolves. 9 C.F.R. §§ 2.100(a), 3.127(d).

viii. August 13, 2003. Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of such animals, and specifically, failed to provide adequate shelter and protection from inclement weather to three adult female cougars and three newborn cubs that shared one igloo-type dog house. 9 C.F.R. §§ 2.100(a), 3.127(b).

ix. October 30, 2003. Respondents failed to provide sufficient shade by natural or artificial means to allow all animals kept outdoors to protect themselves from direct sunlight, and specifically, failed to provide any shade to animals in few outdoor enclosures. 9 C.F.R. §§ 2.100(a), 3.127(a)

x. October 30, 2003. Respondents failed to provide appropriate natural or artificial shelter for all animals kept outdoors to afford them protection and to prevent discomfort of such animals, and specifically, failed to provide adequate shelter and protection from inclement weather to three tigers that shared one shelter and five wolves that shared one shelter. 9 C.F.R. §§ 2.100(a), 3.127(b).

c. **3.130 Watering.**

- i. October 7, 2002. Respondents failed to ensure that water receptacles were clean and sanitary, and specifically, the metal water receptacles were rusty, had chipped paint, and could not be sanitized. 9 C.F.R. §§ 2.100(a), 3.130.
- ii. August 13, 2003. Respondents failed to ensure that water receptacles were clean and sanitary, and specifically, the bear's metal swimming pool had algae growth on its interior surfaces and algae blooms floating on top; green tinted water dropped from the bear as it exited the pool. 9 C.F.R. §§ 2.100(a), 3.130.

d. **3.131 Sanitation.**

- i. October 7, 2002. Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of animals, minimize disease hazards, and reduce odor, and specifically, failed to remove accumulated hair, fecal, and food residue from shelters' floors, corners, wood crevices, from the area between the shelters and chainlink fencing and from underneath the floors (shelters with slotted wood floors). 9 C.F.R. §§ 2.100(a), 3.131(a).
- ii. October 7, 2002. Respondents failed to establish and maintain an adequate program of pest control, and specifically, failed to take minimally-adequate steps to control rodents. 9 C.F.R. §§ 2.100(a), 3.131(d).
- iii. June 13, 2003. Respondents failed to keep premises clean and in good repair, and specifically, meat fluids and blood accumulated on the floor of, and around the outside of, freezer used to store and thaw meat and a large number of flies and maggots accumulated around the freezer entrance. 9 C.F.R. §§ 2.100(a), 3.131(c).

iv. August 13, 2003. Respondents failed to keep premises clean and in good repair, and specifically, failed to remove weeds and tall grass growing around the enclosures housing wolves and bears. 9 C.F.R. §§ 2.100(a), 3.131(c).

e. 3.132 Employees.

i. October 7, 2002. Respondents failed to utilize a sufficient number of adequately trained employees to maintain a professionally acceptable level of husbandry practices, and specifically, failed to utilize a sufficient number employees to provide husbandry and care to sixty-four animals. 9 C.F.R. §§ 2.100(a), 3.132.

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondents have in fact willfully violated the Act and the regulations issued under the Act, this complaint shall be served upon the respondents. The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests:

1. That unless the respondents fail to file an answer within the time allowed therefor, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order:

(a) Requiring the respondents to cease and desist from violating the Act and the

regulations and standards issued thereunder;

(b) Assessing civil penalties against the respondents in accordance with section 19 of the Act (7 U.S.C. § 2149); and

(c) Suspending or revoking respondents' license.

Done at Washington, D.C.
this 15 day of November, 2004



Administrator
Animal and Plant Health
Inspection Service

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