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November 1, 2018

Robert Gibbens, D.V.M.  
Director, Animal Welfare Operations  
USDA/APHIS/Animal Care

Via e-mail: [REDACTED]; [aceast@aphis.usda.gov](mailto:aceast@aphis.usda.gov)

Re: Request to Investigate Oswald's Bear Ranch and Nelson Paint Company for  
Conducting Unregistered and Unapproved Experiments on Live Animals

Dear Dr. Gibbens:

I am writing on behalf of PETA to request that the U.S. Department of Agriculture (USDA) investigate Dean and Jewel Oswald, dba "Oswald's Bear Ranch" ("Oswald's"; license no. 34-C-0123), for conducting experiments on animals apparently without Institutional Animal Care and Use Committee (IACUC) approval. The experiments were apparently conducted at the request of Nelson Paint Company—an unregistered facility—in violation of the Animal Welfare Act (AWA).

PETA recently received records that included internal Michigan Department of Natural Resources (MDNR) email correspondence from September 21, 2011, which detailed a complainant's report that Oswald's was shooting bears with paintball guns. An MDNR officer reported speaking to Jewel Oswald about the allegation. Mrs. Oswald told the officer that they were shooting the bears at the request of the Nelson Paint Company ("Nelson") to test how long the paint would stay on the bears. Mrs. Oswald indicated that a representative from the paint company visited the ranch to see how the experiment was progressing. The MDNR officer determined this activity constituted "harassment" in violation of Oswald's state permit to possess large carnivores. (*See Exhibit 1.*) Following this incident (and several other alleged violations of Michigan's Large Carnivore Act), MDNR ordered Oswald's to cease and desist from all illegal activity, including any "mistreatment of the bear in [Oswald's] facility. (i.e.: shooting bear with paintballs, etc.)." (*See Exhibit 2.*)

Based upon this information, Oswald's bears were used in non-agricultural research and testing by, or at the request of, the [Nelson Paint Company](#). Nelson mainly provides equipment for forestry marking, and it supplies paintball guns and paint pellets. Its headquarters are in Kingsford, Michigan—however, the USDA's [List of Certificate Holders](#) lists no registrants at that location, nor does the ACIS Search Tool return any responsive results to a search for "Nelson Paint Company." There is no evidence that Nelson conducted the experiment under the auspices of a registered facility or, in the alternative, were granted an exemption from registration. If this is correct, they operated in violation of the AWA both with respect to their failure to register with the USDA as a research facility and the associated requirement that they operate with the oversight of an IACUC. The paintball testing should have been reviewed by a veterinarian scrutinizing the pain and distress associated with the experimental protocol.

Pursuant to 9 C.F.R. § 2.30, a facility which intends to use live animals for research, tests, or experiments must register with Animal Care and acknowledge that it will comply with AWA regulations and standards. Further, "the research facility shall appoint an Institutional Animal Care and Use Committee (IACUC), qualified through the experience and expertise of its members to assess the research facility's animal program, facilities, and procedures." *Id.* at § 2.31(a). This committee is required to "[r]eview and approve,

require modifications in (to secure approval), or withhold approval of those components of proposed activities related to the care and use of animals," and in this review the IACUC must ensure that the research activities "will avoid or minimize discomfort, distress, and pain to the animals." *Id.* at § 2.31(c)(6), (d)(1)(i).

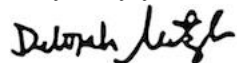
In addition, MDNR's assessment that this situation constituted "harassment" and "mistreatment" provides strong evidence that Oswald's Bear Ranch violated 9 C.F.R. § 2.131(b)(1), which requires that all exhibited animals are handled "in a manner that does not cause trauma, ... behavioral stress, physical harm, or unnecessary discomfort," and 9 C.F.R. § 2.131(b)(2)(i), which states that "[p]hysical abuse shall not be used to train, work, or otherwise handle animals." Without the benefit of IACUC oversight, it is likely the case that the pain, discomfort, and distress endured by the bears used in this experiment was not minimized, as is required by 9 C.F.R. § 2.31(d)(1)(i).

There is precedent for the USDA taking action in cases such as this. In 2008, following information provided by PETA, the USDA issued an Official Warning to Weseman Engineering, Inc., after it conducted a test to recreate an injury scenario using a pig they killed for the experiment—without having registered as a research facility or submitting the protocol for review by a properly constituted IACUC, in violation of 9 C.F.R. §§ 2.30–2.31 as described above. (*See* Exhibit 3.)

Though these experiments took place years ago, this conduct cannot be tolerated. PETA has reported other egregious issues at Oswald's to the USDA, such as cubs exhibiting signs of distress while forced to live on harmful concrete floors—which bear experts agree are serious welfare concerns—yet the inspector assigned to Oswald's apparently refuses to take these issues seriously. Similar conditions and behaviors have been cited at other regulated facilities as failure to meet the AWA's space requirements and failure to provide adequate veterinary care. Because of these inconsistencies, we respectfully request that an alternate inspector investigate this complaint. As you know, inconsistencies in AWA enforcement are a longstanding issue. In a 2005 audit of the USDA's Animal Care unit, the Office of the Inspector General (OIG) found that there was a significant lack of meaningful action taken against licensees in the Eastern region (which would include Oswald's) and inspections were inconsistent with the Western region with regard to each region's treatment of violators.<sup>1</sup> And an OIG audit last year again found serious inconsistencies in inspections.<sup>2</sup> The inspections of Oswald's seem to exemplify these inconsistencies, and it's clear that a pattern of apparent AWA violations will persist at the facility—and bears cubs will suffer—if they continue to be disregarded by the USDA.

Please hold Dean and Jewel Oswald and the Nelson Paint Company accountable to the fullest extent of the law for any violations that your investigation reveals. Thank you for your attention to this important matter. Please inform me of the complaint number that your agency assigns to this correspondence.

Very truly yours,



Deborah Metzler, M.S.  
Supervising Captive Wildlife Specialist  
Captive Animal Law Enforcement

cc: Dr. Nicolette Petervary, Regional Animal Care Specialist ( [REDACTED] )  
Andrea D'Ambrosio, Animal Care Inspector ( [REDACTED] )

<sup>1</sup>See USDA OIG, Audit Report 33002-3-SF, APHIS Animal Care Program Inspection and Enforcement Activities (September 2005), <https://www.usda.gov/oig/webdocs/33002-03-SF.pdf>.

<sup>2</sup>USDA OIG, Audit Report 33601-0001-31, APHIS: Animal Welfare Act – Marine Mammals (Cetaceans) (May 2017), <https://www.usda.gov/oig/webdocs/33601-0001-31.pdf>. While this audit was generally focused on enforcement of the AWA as to cetaceans, the findings with regard to inspections were much broader. *See id.* at 9-13.