

December 13, 2018

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

Via e-mail: robert.m.gibbens@usda.gov; acwest@aphis.usda.gov

Re: Request for Nonrenewal of Bayou Wildlife Park's Animal Welfare Act License (License No. 74-C-0153)

Dear Dr. Gibbens,

On behalf of People for the Ethical Treatment of Animals (PETA) and its more than 6.5 million members and supporters, I am writing to request that the U.S. Department of Agriculture (USDA) deny the renewal of Animal Welfare Act (AWA) exhibitor license number 74-C-0153, issued to Clinton Wolston III, doing business as "Bayou Wildlife Park."

The USDA cannot lawfully renew Bayou Wildlife Park's license, which is set to expire on December 29, 2018. As part of the renewal process, Bayou Wildlife Park must certify that the facility "is in compliance with the regulations and standards" of the AWA. 9 C.F.R. § 2.2(b). Regardless of what Bayou Wildlife Park certifies, the USDA is well aware that the facility is "grossly and consistently out of compliance with AWA standards," *Animal Legal Defense Fund, Inc. v. Perdue*, 872 F.3d 602, 619 (D.C. Cir. 2017), as evidenced by the agency's own inspection reports. As detailed in the attached appendix, the USDA cited Bayou Wildlife Park for violating the AWA **nineteen times in just the past year**, many of which were repeat violations. Some of these issues continue to persist.

For the reasons detailed in the attached appendix, if the USDA renews the license held by Bayou Wildlife Park, the animals confined there will continue to suffer in violation of the AWA. When, as here, the record is replete with evidence documenting that an exhibitor's self-certification of compliance with the AWA is blatantly false, it is arbitrary and capricious for the USDA to rely on that certification as evidence that the facility complies with AWA standards—a requirement for issuing a license. 7 U.S.C. § 2133; *Perdue*, 872 F.3d at 619. The Bayou Wildlife Park "is routinely and currently out of compliance with AWA standards," and thus cannot be lawfully issued a renewal. *Perdue*, 872 F.3d at 620.

Very truly yours,


Michelle Sinnott
Counsel, Captive Animal Law Enforcement

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Appendix:

The AWA states unequivocally that no AWA license “shall be issued until the dealer or exhibitor shall have *demonstrated* that his facilities comply with” AWA standards.¹ As a federal district court made clear in a case involving the renewal of an exhibitor’s AWA license, “the express language of the statutory mandate . . . requires a demonstration of compliance before such issuance [i.e., granting a renewal license] is proper.”² Renewal applicants are required to certify that “to the best of the applicant’s knowledge and belief, he or she is in compliance with the regulations and standards” of the AWA.³ This self-certification requirement is not intended as an “alternative means of ascertaining compliance” with the AWA.⁴ Rather, renewal applicants are also required to make their “animals, premises, facilities, vehicles, equipment, other premises, and records *available* for inspection” for purposes of allowing the USDA to “ascertain the applicant’s compliance” with the AWA.⁵ The USDA cannot rely on an applicant’s self-certification of compliance to meet the demonstration requirement when the agency knows that self-certification is false.⁶ When faced with inspection reports and other evidence identifying violations of the AWA that contradict the applicant’s self-certification of compliance, the USDA cannot lawfully issue a renewal license because the applicant has not demonstrated compliance with the AWA. Nor can the USDA conduct a single, pre-announced inspection of a facility with chronic non-compliance, and base its renewal decision on the results of that single inspection alone, especially when the results of that announced inspection is contrary to the weight of the evidence.⁷

The Bayou Wildlife Park has not demonstrated and cannot demonstrate compliance with the AWA and the regulations promulgated to ensure the humane care of animals. Bayou Wildlife Park’s history of chronic noncompliance and its current, ongoing noncompliance are documented extensively in the evidence attached herein and discussed below.

¹ 7 U.S.C. § 2133 (emphasis added).

² See Ex. A, Order Denying Defendant’s Motion to Dismiss, *Ray, et al. v. Vilsack, et al.*, No. 5:12-CV-212-BO (E.D.N.C. Jan. 18, 2013) [hereinafter “*Ray v. Vilsack MTD*”]; see also *id.* (license renewal “is not a discretionary enforcement action, but rather an agency action carried out according to statutory mandates issued by Congress and subject to judicial review”).

³ 9 C.F.R. § 2.2(b).

⁴ Animal Welfare: Licensing and Records, 60 Fed. Reg. 13893, 13894 (Mar. 15, 1995).

⁵ 9 C.F.R. § 2.3(a) (emphasis added).

⁶ *Animal Legal Defense Fund, Inc. v. Perdue*, 872 F.3d 602, 619-20 (D.C. Cir. 2017).

⁷ See, e.g., Ex. B, Animal Dealer Regulation: Hearing Before the Comm. On Commerce, 89th Cong. 89-61 (1966) (testimony of Dr. Samuel Peacock) (“Self-regulation . . . is a farce. For example, one of the facilities with which I am a consultant research associate, was inspected by a committee representing this organization. Their appointment was set a week in advance. The animal colony attendant worked overtime for days cleaning up the colony, painting cages, etc. No cats were ordered for the week so that the usual overcrowding would be avoided. When the committee arrived they saw cats each its own cage with food and water. Had they arrived unannounced 1 week later, they would have seen four or five cats in cages designed for one cat, cages with dead cats among the living, neither food nor water in the cages, and a crate for new cats for which there was no room at all. Such a situation is not at all unusual.”).

I. Dozens of Animals Have Died of Unknown Causes

Over the course of the past year, at least thirty (30) animals have died at Bayou Wildlife Park, including:

- A lethargic watusi who deteriorated “[o]ver the course of three days,” became unable to stand, and eventually died. Ex. C (February 28, 2018 USDA Inspection Report).
- A newborn axis deer and a newborn guar calf who were both eaten by buzzards within two months of each other. Ex. D (March 28, 2018 USDA Inspection Report).
- A water buffalo who was “healthy and had a good weight was found deceased in a pond of what the owner referred to as a drowning.” Ex. E (May 15, 2018 USDA Inspection Report).
- A Sika deer who was found deceased and partially eaten. *Id.* The owner believes a bobcat is getting through the perimeter fence and attacking the animals. *Id.*
- A kangaroo, a giraffe, two elands, a lemur, and twenty deer who “died suddenly and unexpectedly.” Ex. C; Ex. D; Ex. E.

Out of all thirty deaths, not one of them was reported to the attending veterinarian. Ex. C; Ex. D; Ex. E. Bayou Wildlife Park does not know the cause of any of these deaths, and necropsies were not performed. Ex. C; Ex. D; Ex. E. These thirty deaths resulted in the USDA citing Bayou Wildlife Park for three (3) repeat critical violations of the AWA for failing to have timely and accurate communication with the attending veterinarian. A facility that has had at least thirty (30) animals die of unknown causes over the course of a year, and failed to communicate those deaths to the attending veterinarian has not demonstrated compliance with the AWA.

II. Failure to Provide Adequate Veterinary Care

At almost every inspection over the past year, the USDA cited Bayou Wildlife Park for repeat direct violations for failing to provide adequate—and in some cases *any*—veterinary care to the animals at the facility. Since February of this year, Bayou Wildlife Park has been cited for failing to provide adequate veterinary care to several animals, including:

- In February, the USDA found a male Pere David’s deer whose front hoof “appeared to be twisted approximately 90 degrees outward from the other three hooves” and had “significant buildup of brown wet organic matter that made it impossible to see the foot or most of the hoof.” Ex. C. A month later, the “attending veterinarian was made aware” of the issue, but there was “no proof of direction for treatment.” Ex. D. It wasn’t until July that the deer was actually *evaluated* by a licensed veterinarian. Ex. F (July 24, 2018 USDA Inspection Report).
- In August 2017, the USDA found a male aoudad ram who was unable to use either front foot/leg in a normal manner and was seen walking on his knees. Ex. G (2015-2017 USDA Inspection Reports) at Aug. 3, 2017. In February 2018, the ram was still unable to use his front legs in a normal manner. Ex. C. When the USDA returned in May 2018, the ram had died. Ex. E. The facility stated that the ram “laid down inside the rhino barn and did not move for at least two days until it died.” *Id.* During those two days, the attending veterinarian was not notified, nor was any treatment given to the ram. *Id.*

- In March, the USDA found a female goat who had a large severely bilaterally deformed udder. Ex. D. According to Bayou Wildlife Park, she had mastitis in 2017, but was never treated by a veterinarian for that issue. *Id.* The USDA noted that “[m]astitis is a painful and uncomfortable condition” and the goat’s malformed udder was “likely secondary to an inappropriately treated mastitis.” *Id.* This goat was not evaluated by a veterinarian until May. Ex. E.
- Throughout the year, more than a dozen animals have had such severely overgrown hooves that it was affecting the way they walked, including a Boer goat with a slow gait, several aoudad rams with abnormal gaits, and a pig who would not put weight on the affected foot. Ex. C; Ex. D; Ex. E Overgrown hooves, if chronic, can be the basis for the USDA to confiscate the animals. Ex. H (USDA Confiscation guide) at 9.5.5.
- A watusi named Goliath was found to be “noticeably thinner,” with several ribs and hip bone prominent, and a noticeable head tilt. Ex. C. The facility stated it had given the watusi “several dewormers and that the attending veterinarian had not been made aware of the situation.” *Id.*

In addition, a visitor to the facility in December 2017 documented sheep and goats with extremely long hooves, a sheep with an abnormal gait, a deer with hair loss, obese pigs, and a donkey with a swollen right carpus. Ex. I (Dec. 15, 2017 PETA Submission). On July 23, 2018, a visitor documented an ostrich with missing feathers. Ex. J (July 23, 2018 Visitor Photographs) at Photo 10.

Bayou Wildlife Park has shown time and time again that it is either not willing or not able to provide adequate veterinary care for the animals. There are many instances where the attending veterinarian had not been made aware of an animal’s deteriorating condition and treatment was not given until the USDA issued multiple citations. Ex. C; Ex. D; Ex. E. With painful conditions going untreated for months, Bayou Wildlife Park has proved they are incapable of providing the necessary care for animals. Their repeated citations for failing to provide adequate veterinary care establish that the facility cannot demonstrate compliance with the AWA.

III. Dangerous, Damaged, and Unsanitary Enclosures

The USDA has issued Bayou Wildlife Park repeat citations for rundown enclosures that pose a safety risk to the animals. Since February, the USDA has cited Bayou Wildlife Park for enclosures with damaged fencing, exposed sharp points and long nails, gaps where animals could escape or get stuck, and excessively rusted metal walls and fencing. These conditions have affected dozens of animals. The damaged and dangerous structures include:

- A giraffe enclosure with fencing that was “significantly bent and loose” causing rusted points to be exposed. Ex. C.
- An American buffalo enclosure had “several areas of fencing that were excessively rusted or damaged, exposing bunched up and/or sharp points.” *Id.*
- An enclosure containing three cows had “sections of damaged and rusted fencing.” *Id.*
- Two muntjac were kept in an enclosure with “damage and excessive rust.” *Id.*
- A kangaroo enclosure had “excessive rust and damage causing sharp points to be exposed.” *Id.*

- The hay barn had walls that were excessively rusted, damaged panels causing sharp surfaces near feeding troughs, and sharp, rusted nail heads. *Id.* The barn was in such disrepair that one section of the wall had recently collapsed. *Id.*
- An enclosure containing white tailed deer was in disrepair, with fencing separated from the supporting posts in some areas. *Id.*
- Two sheep were kept in an enclosure with loose fencing, creating a gap where the sheep could be injured or become entrapped. *Id.*
- The sheep, goats, and pigs were confined in the petting zoo area, which was in disrepair with rusted and damaged fencing and several long nails sticking out of the wooden boards that made up the bottom of the fence. *Id.*
- The barrier fence surrounding the facility was “excessively rusted, corroded to the point that there were small gaps in [] some areas, and damage causing sharp and twisted points in the fencing.” *Id.*

In addition to damaged and deteriorating enclosures, Bayou Wildlife Park has also been issued repeat citations for unsanitary conditions. Twice this year, Bayou Wildlife Park was cited for having a “multitude of flies” in and around the animals and on their food. Ex. D; Ex. E. Pests carry diseases, which increase the risk of contamination to the animals, water, and food supply. The AWA requires an effective pest control program, which Bayou Wildlife Park admitted to not having. Ex. E.

Bayou Wildlife Park was also cited by the USDA because several areas throughout the facility had piles of feces and used hay “in excess of ten feet wide and up to several feet thick.” Ex. C. The USDA noted that “[r]ecent fresh hay had been placed on top of these areas, and [a]nimals were observed feeding and climbing on the hay.” *Id.* Bayou Wildlife Park was cited for the same issue last year. Ex. G. at August 3, 2017. In addition, a visitor to the facility in December 2017, documented excessively muddy conditions and standing water in multiple enclosures. Ex. I. This visitor also documented the ring-tailed lemurs in an enclosure where they were confined to an island that was almost completely flooded. *Id.*

As of July 23, 2018—a day before the USDA’s most recent inspection of the facility, which failed to identify any issues (Ex. F)—many of these dangerous and unsanitary conditions continued to persist, including feces build-up in the giraffe enclosure, standing water and mud in the peccary enclosure, enclosures with rusted fencing and fence posts, enclosures with loose fencing and damage causing sharp points and gaps, a large pile of apparent feces and used hay that several animals had access to, and the island in the lemur enclosure was still almost completely flooded. Ex. J at Photo 1-7, 9, 11, 13; *see also id.* at Photo 12 (trash near the fence of an enclosure) and Photo 8 (giraffe enclosure with a build-up of cobwebs on the wall and ceiling).

Bayou Wildlife Park’s failure to provide safe and sanitary enclosures is a risk to both the animals and the public. Bayou Wildlife Park cannot demonstrate compliance with the AWA while it continues to have enclosures that expose numerous animals to dangerous, unsanitary conditions that jeopardize their wellbeing.

IV. Lack of an Appropriate Perimeter Fence

Bayou Wildlife Park was cited twice this year for issues related to the facility's perimeter fence. Ex. C; Ex. E. In addition to primary enclosures for the animals, the AWA requires all facilities to "be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out." 9 C.F.R. § 3.127(d). A perimeter fence is necessary to both "protect the animals in the facility by restricting animals and unauthorized persons" from accessing the animals and to protect the public by "function[ing] as a secondary containment system for the animals in the facility." *Id.*

Bayou Wildlife Park is surrounded by a perimeter fence, but because "a majority of the hoofstock animals have free range access within the complex and are not enclosed in any type of pen" this perimeter fence acts as a "large single enclosure without any sort of secondary containment." Ex. C. Not only is this fence not functioning as the required perimeter fence, but it is also not an appropriate primary enclosure because "[t]he entrance and exit to the facility contain large drive through gates that remain open when the facility is open" and "[t]her are no attendants in place to keep animals from escaping." *Id.* While the facility believed that the cattle guards on the roads in several sections of the park would prevent animals from escaping, the USDA noted that "[o]n at least one occasion, hooped animals were seen jumping over one of these cattle guards." *Id.* In addition to animals escaping, the USDA noted that "[i]n the past animals have been found dead of mysterious wounds or found partially eaten." Ex. E. Bayou Wildlife Park admitted that he thinks these mysterious deaths and injuries are because "a bobcat is getting through the perimeter fence at night." *Id.*

Further, the licensee has stated that the perimeter fence is approximately 7.5 feet tall, which does not meet the requirement for the rhinoceros at the facility, who requires a perimeter fence at least 8 feet tall. Ex. C. Without an appropriate perimeter fence, Bayou Wildlife Park cannot demonstrate compliance with the AWA.

V. Lack of Appropriate Barriers and Unsupervised Public Contact

In February, Bayou Wildlife Park was cited because it did not have the required barrier fences to prevent the public from reaching two Patagonian cavys, two adult giraffes, and one adolescent giraffe. Ex. C. There were no employees present in these areas, and in other areas at the facility with goats, pigs, and sheep. *Id.* Last year, the USDA cited Bayou Wildlife Park repeatedly for these same issues. Ex. G at August 24, 2017, and August 3, 2017. Barriers are necessary to assure the safety of the animals as well as the public.

VI. Insufficient Employees to Care for the Animals

In February, the USDA noted that Bayou Wildlife Park had one less employee than at prior inspections. Ex. C. While it is unclear how many employees Bayou Wildlife Park has, the USDA cited the facility for not having "an adequate number of trained and knowledgeable employees to conduct adequate husbandry practices." *Id.* This citation was "[b]ased on the number of incidents of noncompliance, animals observed with health abnormalities, and deaths since the prior inspection." *Id.* On top of an insufficient number of employees, the facility lamented that it had "problems getting the employees that he does have to do adequate work." *Id.*

Some of the critical issues cited by the USDA over the past year were not identified and promptly addressed, which in some cases resulted in animals suffering for days before dying of an unknown cause. For example, when a watusi became lethargic and was having trouble standing, an attending veterinarian was not notified during the three-day period that the animal deteriorated and eventually died. Ex. C. A cause of death was never determined. *Id.* In addition, twenty-five animals (twenty Axis deer, a kangaroo, a giraffe, two eland, and a lemur) died suddenly and unexpectedly, and “the attending veterinarian was not notified about any of these animal deaths, nor does the licensee know how the animals died.” Ex. C; Ex. D. As a result, the USDA cited Bayou Wildlife Park for not conducting appropriate daily observations of animals and not having timely and accurate communications with the attending veterinarian. Ex. AC Ex. D; Ex. E.

Without an adequate number of employees to monitor and care for the animals’ basic needs, Bayou Wildlife Park cannot demonstrate compliance with the AWA.

VII. Lack of Access to Clean Food and Water

Bayou Wildlife Park was issued a repeat citation this year for depriving animals of access to both clean drinking water and food:

- The javalina’s food appeared to have been dropped onto the ground, rather than being placed into a sanitized receptacle. Ex. C.
- There was “deteriorated food pellets on the ground covered in whitish grey mold” in a Jacobs four horned sheep enclosure. *Id.*
- White tailed deer had animal excreta in their feeding receptacle. *Id.*
- Jacobs four horned sheep, muntjac, wallaby, and goats all had watering receptacles that were “discolored, and contained green, organic materials inside.” *Id.* The Jacobs sheep water receptacle also had “a multitude of insects inside the water.” *Id.*

In addition, a visitor to the facility in December 2017 documented food on the ground in muddy areas of the peccary enclosure. Ex. I. As of July 23, 2018, there continued to be food on the ground in the peccary enclosure. Ex. J. Repeated citations for failing to provide animals with access to clean food and water demonstrates that Bayou Wildlife Park cannot meet even the most basic requirements of the AWA.

VIII. Failure to Maintain Necessary Records

Bayou Wildlife Park was issued repeat citations twice this year for failing to have up to date acquisition and disposition records for the “animals on hand,” a problem that has occurred multiple times in the past. Ex. G at October 24, 2017, and August 3, 2017. Bayou Wildlife Park had no acquisition or disposition records for at least thirty animals. Ex. C; Ex. D. Accurate, up to date records are necessary in order to track animals being used in regulated activities to ensure their humane care and use. By failing to maintain the required records, Bayou Wildlife Park has shown that it is unable to meet the basic record keeping requirements of the AWA.

Conclusion

In the past four years, the USDA cited Bayou Wildlife Park for violating the AWA more than forty times, many of which were repeat, direct, or critical violations. Ex. G. In 2018 alone, Bayou Wildlife Park accrued nineteen violations, *eighteen* of which were repeat and four which were critical. While it does not appear that the USDA has conducted an inspection since July, should the agency conduct a pre-announced inspection of Bayou Wildlife Park prior to renewal, the results of that inspection alone should not dictate the agency's renewal decision, especially if the results of that inspection are contrary to the weight of the evidence.

When the record is replete with evidence documenting that an exhibitor's self-certification of compliance with the AWA is blatantly false, it is arbitrary and capricious for the USDA to rely on that certification for demonstrating that the facility complies with AWA standards—a requirement for issuing a license. *Perdue*, 872 F.3d at 610.

Because the USDA cannot rely on the exhibitor's self-certification of compliance, and because the evidence shows the facility routinely fails to comply with AWA standards, the USDA must not renew Bayou Wildlife Park's license.