

August 3, 2016

OSHA Albany Area Office
401 New Karner Road, Ste 300
Albany, New York 12205-3809

Via first-class mail (with attachments)

Re: Apparent OSH Act violations at Bailiwick Animal Park

Dear Area Director:

On behalf of PETA, I'm writing to request that the Occupational Safety and Health Administration (OSHA) immediately investigate [Bailiwick Animal Park](#)¹ for exposing staff to the recognized life-threatening hazards associated with "free-contact" bear management in apparent violation of the Occupational Safety and Health (OSH) Act's general-duty clause 29 U.S.C. § 654(a)(1).

[Video](#) recorded at the facility by a concerned citizen on June 30, 2016, shows two apparent Bailiwick employees attempting to distract an seemingly agitated adult brown bear so that a third Bailiwick worker can enter the bear's enclosure—while the bear is still present—to drop food on the ground. The bear and the worker who entered the cage were not separated by a barrier of any kind. Once the bear notices the worker inside her cage, she instantly turns and runs towards the food and the worker. There is reportedly no shift cage or lock-out in this bear enclosure. If true, Bailiwick workers must enter the bear's enclosure in this manner on a daily basis to feed the bear, clean the enclosure, and engage in other husbandry activities.

As detailed in the attached appendix, OSHA has recognized that requiring employees to have direct physical contact with dangerous predators, like brown bears, places employees at significant risk of serious injury or death, and violates the OSH Act.

PETA requests that you assess the maximum civil penalty available for Bailiwick's apparently serious and willful violations of federal law and, to prevent future injuries, exercise your authority to require that all future contact with bears occur through a protective barrier and with the use of shift cages. So long as free contact is used, the significant risk of serious injury or death at Bailiwick's facility persists, and it is imperative that OSHA take all preventive steps necessary to avoid this risk. Thank you for your attention to this serious matter.

Very truly yours,



Lindsay Waskey, Esq.

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland
554 Grand Ave.
Oakland, CA 94610
510-763-PETA

PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

¹ Bailiwick Animal Park is located at 118 Castle Rd, Catskill, NY 12414.

APPENDIX

I. Legal framework

The OSH Act's general duty clause requires employers to furnish employees with an environment and workplace that are free from recognized hazards "likely to cause death or serious physical harm" to employees. 29 U.S.C. § 654(a)(1).

OSHA has recognized that free contact with bears is a serious hazard within the meaning of the general-duty clause. For example, in 2014, OSHA issued a letter and citation to Cherokee Bear Zoo for "serious" OSH Act violations after finding that "employees were being allowed to have unprotected contact with bears while feeding, cleaning cages and assisting activities." *See, e.g.*, Letter from Kimberley Morton, Area Director, OSHA, to Delcianna Winders, PETA Foundation (Jan. 8, 2014) (Ex. 1). Also, in 2010, OSHA issued a letter "officially notifying [an employer] that he should take steps to strictly prohibit 'free contact' with dangerous and exotic animals, and that he should practice 'protected contact' at all times by using holding areas or 'shifting cages' when caregivers feed the animals, clean their cages, or perform other animal servicing activities."² Letter from Julie A. Hovi, Area Director, OSHA, to Deirdre Herbert (Dec. 20, 2010) (Ex. 2). The letter warned that the employer could be held liable for exposing his employees to such hazards. *Id.*

In correspondence to PETA, OSHA made clear that "the issue of workers exposed to large animals [is] a serious occupational health and safety concern" and that the general-duty clause may be violated when workers and large animals are in direct contact. *See* Letter from David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, OSHA, to Delcianna Winders (June 16, 2011) (Ex. 3); *accord* Letter from David Michaels to Delcianna Winders (Dec. 7, 2011) (Ex. 4). And, in 2013, OSHA cited an employer for violating the OSH Act's general-duty clause because "employees were allowed to have direct contact with," and thus "were exposed to potential attacks from[,] captive bears while performing activities including but not limited to sanitation of the enclosure." OSHA Citation, Inspection No. 724901 (Apr. 29, 2013) (Ex. 5); *see also* OSHA Citation, Reporting No. 0830600 (Aug. 14, 2009) (Ex. 6) (citing a roadside zoo for a willful violation of the general-duty clause for failing to "protect[] employees from animal attacks" in that "[e]mployees [were] not physically separated from non-domestic felines while employees [were] cleaning cages"); OSHA Worksheet 2 (July 14, 2009) (Ex. 7) (reporting that a roadside zoo was previously cited for an attack on a volunteer who was required to enter a cage with tigers present to feed them).

Under the OSH Act, an employer is liable for a recognized hazard that is likely to cause serious physical harm or death unless there were no "feasible means to eliminate or materially reduce the hazard." *Philips Petroleum Co.*, No. 84-1425, 1985 WL 71201 (10th Cir. Sept. 10, 1985) (citing *Baroid Division of NL Indus., Inc. v. Occupational Safety & Health Review Comm'n*, 660 F.2d 439, 444 (10th Cir. 1981)).

² "Protected contact" management is the opposite of "free contact" management. In a protected-contact system, there is always a barrier separating handlers and animals, which is not only more humane, but also much safer for both species.

Using a “protected contact,” rather than a “free contact,” management system is standard practice in captive-bear husbandry. OSHA has recognized that a “feasible and acceptable method” of eliminating the hazard to employees from having direct contact with wild predators like bears is “install[ing] holding areas in all cages and ensur[ing] that bears and other apex predators are secured in the holding areas before employees enter the cages to clean them.” OSHA Citation, Inspection No. 724901 (Apr. 29, 2013); accord OSHA Citation, Reporting No. 0830600 (Aug. 14, 2009); see also SeaWorld of Florida, LLC, -- BNA OSHC --, at 41-42 (No. 10-1705, 2012) (ALJ) (Ex. 8) (affirming SeaWorld’s violation of the OSH Act’s general-duty clause in the death of trainer Dawn Brancheau, who was killed while working in direct contact with an orca, and finding that “[p]roximity to the killer whales is the factor that determines the risk to the trainers” and “using physical barriers and minimum distances eliminate[s] the trainers’ exposure to the recognized hazard”); OSHA Worksheet 2 (July 14, 2009) (reporting that, “as abatement for [a previous] citation” for allowing an employee to enter a cage with tigers present to feed them, an employer was supposed “to install holding cages that could be closed from outside thus eliminating direct contact with the animals”); OSHA Citation, Reporting No. 0522500 (Dec. 11, 1992) (Ex. 9) (identifying a “feasible and useful method of abatement” as “the use of shields, barriers, etc., for the transferring of animals”).

II. The Dangers of Free Contact Between Humans and Bears

Animal-training, behavior, and welfare consultant Jay Pratte reviewed the video taken by the concerned citizen and commented that “[t]his is an EXTREMELY dangerous situation,” that the workers are “naïve” of the bear’s behavior, and that by entering the bear’s enclosure in this manner “someone is going to get injured or [the bear] will escape.”

Indeed, since 1990, there have been at least fifty reported incidents of captive-bear attacks in the United States, at least nineteen of which were on caretakers or others who entered captive-bear enclosures. Bear Incidents in the United States, PETA, available at <http://www.mediapeta.com/peta/pdf/Bear-Incident-List-US-only.pdf> (Ex. 10) (source material for PETA’s factsheet is available upon request).

For example, in December 2009 at Chief Saunooke Bear Park in Cherokee, NC (which has since been closed), a seventy-five-year-old caretaker was attacked by a black bear as she was giving the animals water. The bear bit the woman’s hand and wrist and would not let go. As another attendant physically pulled the woman’s arm out of the bear’s mouth and through the cage bars, the skin on the woman’s forearm was severely abraded and sustained a de-gloving injury. The woman also sustained skin lacerations near her mouth and hairline. The victim was airlifted to a hospital for treatment and remained hospitalized nine days later. Feds Sending Inspectors to NC Zoo after Bear Bite, AP, Dec. 9, 2009 (Ex. 11); 75-Year-Old Woman Bitten by Bear, WYFF4.COM, Dec. 7, 2009 (Ex. 12)

Several caretakers have been killed or seriously injured by bears while entering bear enclosures. For example:

- On November 4, 2012, twenty-four-year-old Benjamin Cloutier, an animal trainer at Animals of Montana in Bozeman, Montana, died from wounds sustained when he was mauled by two captive grizzly bears while he was in the bears’ enclosure to clean it. Press Release, Office of

the Sheriff/Coroner, Gallatin County, Montana, Nov. 5, 2012, available at <http://www.gallatinmedia.org/?p=1421> (Ex. 13); Press Release, Office of the Sheriff/Coroner, Gallatin County, Montana, Nov. 4, 2012, available at <http://www.gallatinmedia.org/?p=1416> (Ex. 14).

- On October 4, 2009, in Saylorsburg, Pennsylvania, Kelly Ann Walz was attacked and killed by her 350-pound “pet” black bear while she was cleaning his cage. The victim’s two young children and the neighbor’s children witnessed the fatal attack. Michael Rubinkam, Pet Bear Turns on Pa. Owner, Kills Her in Cage, AP, Oct. 5, 2009 (Ex. 15).
- On September 15, 2007, an employee at the Smoky Mountain Zoological Park in Pigeon Forge, Tennessee, was attacked by a bear, again while the employee was cleaning the animal’s pen. The bear tore away most of the ligaments and tissues above the employee’s right hip, causing permanent injuries and disfigurement. Jeff Farrell, Woman Sues after Bear Attack, THE MOUNTAIN PRESS, Sept. 19, 2008 (Ex. 16).
- In 2004, Kenneth Hetrick, the owner of a roadside zoo called Tiger Ridge Exotics, in Perrysburg, Ohio, was mauled by two grizzly bears while he was cleaning their cage. As a female bear grabbed him and tried to drag him into the den box, a 700-pound male bear attacked him from behind, hitting him on the head and almost knocking him unconscious, before picking Hetrick up, throwing him, and shaking him multiple times. Hetrick stated, “I looked like I had been in a hatchet fight,” and reported that it had taken hours for the doctor to stitch up his many wounds. Kenneth Hetrick, Grizzly Attack, ANIMAL FINDER’S GUIDE, FEB. 15, 2005 (Ex. 17).
- On February 5, 2004, a keeper at the St. Louis Zoo was attacked by a bear while cleaning the bear’s pen. The keeper suffered bites to his arms and legs and was treated at the hospital for cuts and puncture wounds. Jeremy Kohler, Zookeeper Is Injured in Attack by Sun Bear, ST. LOUIS POST-DISPATCH, Feb. 5, 2004 (Ex. 18).

Else Paulsen, a bear behaviorist who worked with and studied captive bears for decades, and authored more than forty publications on the subject of captive bears, has explained: “[I]t is never recommended to touch, play with, or otherwise handle an adult bear in captivity.” Decl. of Else Paulsen ¶ 10 (Sept. 20, 2010) (emphasis added) (Ex. 19). Grizzly bears, who can weigh upwards of 800 pounds, “are powerful, top-of-the-food chain predators” who “can be dangerous to humans.” Grizzly Bear, National Geographic <http://animals.nationalgeographic.com/animals/mammals/grizzly-bear/> (last accessed July 28, 2016) (Ex. 21). Anytime employees are forced to engage in direct contact with bears places them in grave risk. “A bear can run 50 yards in 3 seconds, or up to 40 mph, faster than a race horse for short distances, and faster than any human, uphill or downhill.” https://www.fws.gov/mountain-prairie/species/mammals/grizzly/close_encounters.pdf. And captivity, combined with lack of environmental enrichment, can cause psychological distress, which can manifest or exacerbate aggression in these bears. Decl. of Else Paulsen ¶ 17 (Sept. 20, 2010).

In her “Survey of Captive American Black Bears in Ontario,” bear expert Marilyn Cole noted that even where a caretaker has a “wonderful rapport” with a bear, “it is always a dangerous practice to enter an animal’s territory and this should be avoided by providing a shifting mechanism.” Marilyn Cole, The Bear Essentials: A Survey of Captive American Black Bears in Ontario, Zoocheck Canada, July 1999, available at <http://www.zoocheck.com/wp->

<content/uploads/2015/06/The-Bear-Essentials.pdf> (Ex. 22). Using free contact with captive bears is considered so dangerous that, in a book on captive elephant science and handling, one author contrasts trends in free contact with elephants (considered incredibly dangerous) with that of bears, saying “keepers would never routinely enter the same space with a bear.” Margaret Whittaker & Gail Laule, Protected Contact and Elephant Welfare, in AN ELEPHANT IN THE ROOM: THE SCIENCE AND WELL-BEING OF ELEPHANTS IN CAPTIVITY 181, 181 (Deborah L. Forthman et al. eds., 2009) (Ex. 23).

Because of these serious and well-recognized risks, to prevent physical contact with an adult bear, caregivers move bears into shift cages using protective barriers. Paulsen Decl. ¶ 11. The shift cage is a separate, smaller enclosure attached to the bear’s main enclosure, with its own secure locking mechanism. Caregivers use positive reinforcement, often food, to lure the bear into the shifting cage, keeping a protective barrier between themselves and the bear at all times. Id. Shift cages are used to confine captive bears during cleaning and maintenance of the primary enclosure; introduction of new enrichment materials, food, or water; or when a caretaker must respond to an emergency in the primary enclosure. Id.

Bailiwick is putting lives at risk every time it requires keepers to enter this or any other bear’s cage.