

STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
PARKS & WILDLIFE COMMISSION
OFFICE OF THE HEARING EXAMINER
6060 BROADWAY
DENVER, CO 80216

IN THE MATTER OF THE SUSPENSION OF
PRIVILEGES ASSOCIATED WITH LICENSES
ISSUED BY THE COLORADO DIVISION OF
PARKS AND WILDLIFE TO:

Case No. 8631

SeaQuest Interactive Aquarium
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Littleton, CO 80123
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**HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL
DECISION**

This is a license suspension proceeding pursuant to § 33-6-106, C.R.S., regarding the suspension of privileges associated with licenses issued to SeaQuest Interactive Aquarium by the Colorado Division of Parks and Wildlife (the "Division"). A hearing in this matter was held on March 7, 2019, before Hearing Examiner Steven W. Cooley at the Division's Denver Broadway Office, 6060 Broadway, Denver, CO 80216. SeaQuest Interactive Aquarium did appear for their hearing, to show cause as to why their license privileges should not be suspended in this case. Based on the evidence in the record, the Hearing Examiner makes the following findings of fact, conclusions of law, and initial decision.

I. FINDINGS OF FACT

EPISODE 1

1. In January of 2018, Colorado Parks & Wildlife (CPW) Special Licensing Administrator, Erik Slater, was contacted by Noah Hawkes, Program Manager for SeaQuest Interactive Aquarium (SeaQuest). SeaQuest planned on opening a facility in Littleton, Colorado and was given information by Mr. Slater on how to apply for the required CPW Commercial Parks License, which in this case was a Zoological Parks License. Approval of a Zoological Parks License is a complex process, and Mr. Slater informed SeaQuest that it may take several months to review the application and species list. Mr. Slater did not receive any application or further communication from SeaQuest.
2. In March of 2018, CPW personnel became aware of a news article stating that SeaQuest was holding a grand opening at the Southwest Mall in Jefferson County, Colorado in the spring of 2018. Colorado Wildlife Officer Jerrie McKee was provided with the information and began an investigation. Officer McKee learned of the phone conversation with SeaQuest in January of 2018 and that no further communication had occurred with any representative of SeaQuest.
3. Officer McKee contacted Mr. Hawkes with SeaQuest, who informed the officer that SeaQuest was aware of the licensing requirements and was working to submit the application as well as a list of species they would have at the facility, which were going to arrive within several weeks. The officer advised Mr. Hawkes that the application process would likely take longer than his stated timeline for importing animals into the State. The officer also encouraged SeaQuest to become an Association of Zoos and Aquariums (AZA) accredited a standard in the industry.

4. In April of 2018, Amber Partridge with SeaQuest came into the Denver CPW office and spoke with Mr. Slater. Mr. Slater again explained the State of Colorado importation and licensing requirements for CPW. Ms. Partridge advised Mr. Slater that she would be in charge of the licensing and importation of species for SeaQuest, and that SeaQuest intended on becoming AZA accredited.
5. On April 17, 2018, Colorado Parks & Wildlife received the Zoological Parks License Application from SeaQuest, and began the review process. The application contained errors, including the misspelling of the SeaQuest CEO as Vince Corvino, when his name is spelled Covino. Also, Arapahoe County was listed for the facility location, when in fact it was Jefferson County. Initially SeaQuest listed 559 individual species on the application, including mammals, sharks and rays, terrestrial and saltwater invertebrates, birds, reptiles, freshwater fish and amphibians. The following week SeaQuest added another 94 species to the list of animals request to be permitted for importation.
6. Each individual species required research as to it's specific taxonomic classification, and if the animal was regulated, unregulated or prohibited and potentially detrimental to Colorado's native wildlife or human safety.
7. Licensing for a facility such as SeaQuest requires specific licenses from different local, state and federal agencies. Officer McKee learned that SeaQuest had not contacted the Colorado Department of Agriculture, Pet Animal Care Facilities Act program, or the Animal Control Manager for Jefferson County. When informed by Officer McKee of SeaQuest's facility, both agencies stated they would contact SeaQuest to begin their specific licensing requirements. Officer McKee would later learn that SeaQuest had informed Jefferson County that they were an aquarium, and did not advise the county that they would also have reptiles, birds, amphibians and mammals that would physically interact with the public.
8. CPW Special Licensing Administrator, Erik Slater, continued to have conversations with SeaQuest CEO Mr. Covino and Ms. Partridge regarding species that were unregulated, and those species that were regulated, requiring licensing and permits. Specifically, SeaQuest was advised that any regulated species could not be imported into Colorado, or possessed in Colorado until CPW licensing was issued. Mr. Slater followed up these conversations with an email that reiterated that prior to importation or possession of regulated species, the required licensing or permits were required from each governmental agency.
9. On May 18, 2018, Colorado Parks & Wildlife received information from the Colorado Department of Agriculture State Veterinarian's Office that SeaQuest had purchased a two-toed sloth and that it was to be delivered to SeaQuest in Colorado. A two-toed sloth is a regulated species and would require licensing and permits, specifically the Zoological Parks License from Colorado Parks & Wildlife. Further, the State Veterinarian's Office in Colorado had not been notified of the importation of the two-toed sloth, and no Importation Permit had been issued by the agency. No Certified Veterinarian Inspection (CVI) had been performed.
10. During a site visit to the SeaQuest facility on May 18, 2018, which was still under construction, Officer McKee learned that Ms. Partridge was in possession of a two-toed sloth and two capybara's, a large rodent native to South America, at her residence. Both species are regulated by CPW and SeaQuest was required to be licensed prior to importation or possession of either species.
11. Officer McKee spoke with Ms. Partridge, who initially told the officer that she had been informed that the species were unregulated, but later said she had misunderstood the requirements. Officer McKee advised Ms. Partridge that health certificates, importation permits, Certified Veterinarian Inspection's, county approval and a letter from a veterinarian who would provide care, were all required in addition to the CPW Zoological Parks License. Ms. Partridge said she did have health certificates and importation permits and would send the officer those documents, and would work on providing the other required documents. None of these documents were received by the officer, however Ms. Partridge was advised to hold the animals until further notice.

12. On May 21, 2018, wildlife officers inspected Ms. Partridge's residence where the two-toed sloth and capybara's were being held. The rooms were of adequate size and the animals were being cared for. CPW authorized the animals to remain in place until SeaQuest's Zoological Parks License was issued, with several conditions that included; the animals stay in Ms. Partridge's care, the animals not be moved to another site, the animals could not come in contact with domestic pets, other wildlife or the general public, and all contact with the animals would be limited to trained SeaQuest staff or licensed veterinarians.
13. Although Ms. Partridge did provide the officer with Certified Veterinarian Inspection's for each animal, she told the officer that she knew there were issues with the importation of the animals, because the State Veterinarian's Office had not been informed of the importation and no permits had been obtained.
14. On May 25, 2018, Colorado Parks & Wildlife sent an email to SeaQuest that the Zoological Parks License would be approved, and the license would be issued in approximately 10 days.
15. On May 31, 2018, CPW staff performed a site inspection of the SeaQuest facility. Staff noted several human safety concerns, as well as several animal welfare issues during the inspection. Staff also observed that the two-toed sloth and the capybara's had been moved to the facility, despite SeaQuest having been advised that they were not to be moved until licensing was issued. Ms. Partridge misunderstood the email from May 25th and thought that it had served as the licensing.
16. Officer McKee issued SeaQuest Interactive Aquarium, accepted by site General Manager Grant Carter, Penalty Assessment D726585 for the following:
- Count 1 § 33-6-109(1), Did unlawfully have in possession wildlife (to wit: two-toed sloth) (5 points).
C.R.S.
 - Count 2 2 CCR 406-0 Did unlawfully import live wildlife without an
#007.A, importation permit (two-toed sloth) (5 points).
pursuant to 33-
6-104(1)
 - Count 3 2 CCR 406-11 Did unlawfully possess live wildlife without obtaining a
#1102.A.1, proper license (two-toed sloth without zoological park
pursuant to 33- license) (5 points).
6-104(1)
17. On June 23, 2018, SeaQuest Interactive Aquarium paid the penalty assessment fine \$206.50 to Colorado Parks and Wildlife, acknowledging guilt to Counts 1, 2 & 3 and assessed 15 license suspension points against SeaQuest Interactive Aquarium.

EPISODE 2

18. On July 31, 2018, Colorado Wildlife Officer Jerrie McKee was notified by the Colorado Department of Agriculture (CDA), Pet Animal Care Facilities Act program administrator Nick Fischer, that SeaQuest had been issued a Cease & Desist Order. The order was based on the number of avian species on display and failure to be properly licensed by the CDA, a subsequent request by SeaQuest for an exemption and failure to follow through with necessary inspections. SeaQuest was ordered to reduce the number of avian species on display to comply with CDA requirements.

19. On August 9, 2018, Officer McKee contacted CPW Special Licensing Administrator, Erik Slater, if SeaQuest had notified CPW of the Cease & Desist Order as required by their Zoological Parks License.
20. Officer McKee contacted SeaQuest General Manager Grant Carter, who told the officer that he was not aware of the requirement to notify CPW of the order.
21. Officer McKee issued SeaQuest Interactive Aquarium Penalty Assessment D726401 for the following:
 - Count 1 2 CCR 406-11 Did unlawfully fail to comply with the conditions
 #1102.A.4, imposed on a license (to wit: mandatory violation
 pursuant to 33- reporting on a zoological park license) (5 points).
 6-104(1)
22. On August 15, 2018, SeaQuest Interactive Aquarium paid the penalty assessment fine \$70.50 to Colorado Parks and Wildlife, acknowledging guilt to Count 1 and assessed 5 license suspension points against SeaQuest Interactive Aquarium.

EPISODE 3

23. In August of 2018, Colorado Wildlife Officer Jerrie McKee learned from other regulatory agencies that a Kookaburra had died in SeaQuest's Littleton, Colorado facility on August 3, 2018. SeaQuest failed to report the death as required under the conditions of their Zoological Parks License. A Kookaburra is a bird native to Australia and New Guinea.
24. Officer McKee had been at the SeaQuest facility on August 15, 2018, to issue a citation (see paragraphs 18-22 above) and was not informed about the death of the bird by any staff at that time.
25. Officer McKee contacted SeaQuest staff, including SeaQuest's Chief of Staff, Kelly Miller, advising them that she had heard that the Kookaburra had died, and asked for additional details. Officer McKee was received an email later that evening detailing the mortality.
26. SeaQuest was advised by CPW staff that previous outstanding violations that had been self-reported would not be cited, but would receive written warnings, and additional, discovered violations would be cited.
27. On August 31, 2018, Officer McKee met with SeaQuest General Manager, David Slater, and SeaQuest Regional Vice President, David Nearhouse, and SeaQuest's reptile, bird and mammal Control Officer, Ashleigh Belfiore, and issued SeaQuest Interactive Aquarium Penalty Assessment D726423 for the following:
 - Count 1 2 CCR 406-11 Did unlawfully fail to comply with the conditions
 #1102.A.4, imposed on a license (to wit: mandatory mortality
 pursuant to 33- reporting of a kookaburra on a zoological park license)
 6-104(1) (5 points).
28. On August 31, 2018, SeaQuest Interactive Aquarium paid the penalty assessment fine \$70.50 to Colorado Parks and Wildlife, acknowledging guilt to Count 1 and assessed 5 license suspension points against SeaQuest Interactive Aquarium.

EPISODE 4

29. On September 13, 2018, SeaQuest General Manager David Slater contacted Colorado Wildlife Officer Jerrie McKee to inform the officer that he had discovered five previously unreported

injuries that had been sustained by visitors to SeaQuest's Littleton, Colorado facility. One of the injuries had been caused when a sloth bite an employee on June 5, 2018. The employee was seeking Workers Compensation for the medical bills.

30. Mr. Slater explained that he was new to the General Manager position, and in reviewing SeaQuest's files, he became aware of the unreported injury reports and wanted to make CPW aware of the incident.
31. Officer McKee issued SeaQuest Interactive Aquarium Penalty Assessment F120304 for the following:
- Count 1 2 CCR 406-11 Did unlawfully fail to comply with the conditions imposed on a license (to wit: failure to report human injury) (5 points).
#1102.A.4,
pursuant to 33-6-104(1)
 - Count 2 2 CCR 406-11 Did unlawfully fail to comply with the conditions imposed on a license (to wit: failure to report human injury) (5 points).
#1102.A.4,
pursuant to 33-6-104(1)
32. On September 27, 2018, SeaQuest Interactive Aquarium paid the penalty assessment fine \$139.50 to Colorado Parks and Wildlife, acknowledging guilt to Counts 1 & 2 and assessed 10 license suspension points against SeaQuest Interactive Aquarium.

EPISODE 5

33. In November of 2018, Colorado Wildlife Officer Jerrie McKee learned that a sloth that was housed on display at the SeaQuest Littleton, Colorado facility had been burned in October and again in November, and the injuries had not been reported to CPW as required under SeaQuest's Zoological Parks License.
34. Officer McKee learned that on October 18, 2018, the sloth had come into contact with the heatlamp in its enclosure and received a burn the nose. The sloth was treated for the burn, however the heat lamp was not moved or covered to prevent the injury from occurring again. The injury was not reported to CPW, or to the veterinarian that provided care for SeaQuest's animals, but was treated with honey, coconut oil and antibiotic cream.
35. The sloth was burned more severely around November 8, 2018. This burn visible swelling and discomfort to the sloth around the eyes, nose, mouth and lips. Staff observed that the sloth would wince when it attempted to eat. SeaQuest again did not notify their contracted veterinarian.
36. The second injury was reported anonymously to Jefferson County Animal Control on November 9, 2018. SeaQuest's reptile, bird and mammal Control Officer, Ashleigh Belfiore, told Jefferson County Animal Control Officer's (ACO's) that she had called a veterinarian, who had seen the sloth and recommended the sloth be treated with coconut oil and antibiotic cream. Jefferson County ACO's attempted to contact the veterinarian and left a message to inquire about this information on November 16, 2018. The veterinarian returned the call on November 29, 2018 and advised the ACO's that she was not aware of the injuries to the sloth and that was the cause of the delay in returning their phone inquiry.
37. The veterinarian was not advised of the injury to the sloth by SeaQuest and that she had not provided any treatment advice to them regarding the burn. During a routine visit to the SeaQuest facility on November 27, 2018, the veterinarian inspected the sloth and it appeared to be healing fine.

38. SeaQuest did reconfigure the sloth's enclosure following the second burn, with the heat lamp no longer accessible to the animal and covering the lamp's bulb.
39. Officer McKee issued SeaQuest Interactive Aquarium Penalty Assessment F120304 for the following:
- Count 1 2 CCR 406-11 Did unlawfully fail to comply with the conditions
 #1108.F.1, imposed on a license (to wit: failure to report human
 pursuant to 33- injury) (5 points).
 6-104(1)
40. On January 11, 2019, SeaQuest Interactive Aquarium paid the penalty assessment fine \$70.50 to Colorado Parks and Wildlife, acknowledging guilt to Count 1 and assessed 5 license suspension points against SeaQuest Interactive Aquarium.
41. SeaQuest Interactive Aquarium has now been assessed 40 license suspension points.

II. DISCUSSION

LICENSEE'S ARGUMENTS REGARDING MITIGATING CIRCUMSTANCES

42. David Slater appeared in person for SeaQuest Interactive Aquarium in their license suspension hearing and offered the following arguments. For purposes of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Initial Decision, the information listed in the sub-paragraphs below is argument, not record evidence.
- a. Mr. Slater states that Officer McKee has been very helpful in coming into compliance.
 - b. Mr. Slater was hired at the SeaQuest Littleton facility on, or about, August 25, 2018, and the majority of these violations occurred prior to his hiring.
 - c. In regards to Episode 1, SeaQuest did not do a good job researching the animals that were regulated. The laws vary greatly in the states that SeaQuest has facilities and should have been more diligent in understanding Colorado's laws.
 - d. In regards to Episode 2, this was ignorance of the regulations and the number of birds they could possess.
 - e. In regards to Episode 3, this violation was not reported as it should have been. SeaQuest did not follow procedure and policy as it should have.
 - f. In regards to Episode 4, Mr. Slater had just been hired, and in reviewing the previous staffs' files he discovered the injury reports. Mr. Slater immediately reported these to CPW.
 - g. In regards to Episode 5, the initial burn was minor and did not appear to cause any discomfort and healed in a matter of 2 days. They had raised the heat lamp, but the sloth sought it out and got burned again. The burn was healed within 7-10 days, but the sloth did appear to be in discomfort and had difficulty eating. Both injuries were treated with honey, coconut oil and antibiotic treatment.
 - h. The injury should have been reported to CPW as the sloth is a regulated species. The sloth's enclosure has been reconfigured so that the animal cannot come into contact with the lamp, and the lamp is covered. This has been done for all animals requiring a heat lamp.
 - i. SeaQuest has taken steps to improve and comply, and acknowledges responsibility in its actions. This is why all violations fines were paid and not contested.

ADDITIONAL INFORMATION

43. Counsel for PETA Foundation, Lindsay Waskey, submitted a statement of concern regarding SeaQuest's violations with three attachments of specific incidents. This public comment letter has been included in the license suspension case file.

APPLICABLE LAW

44. The Colorado Parks and Wildlife Commission (“Commission”), or a hearing officer who has been delegated authority by the Commission, has the authority to suspend the privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the Division for a period not to exceed five years, except as otherwise provided in articles 1-6 of Title 33, C.R.S., if a person has been convicted of violations of articles 1 to 6 of Title 33, C.R.S., totaling twenty or more points in any consecutive five-year period. § 33-6-106(1)(a), C.R.S.
45. For purposes of a license suspension under § 33-6-106(1), C.R.S., the payment of a penalty assessment is deemed a conviction. § 33-6-106(2), C.R.S.
46. If a person’s privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the Division is suspended three or more times pursuant to this section, such person shall receive a lifetime suspension of such privileges. § 33-6-106(8), C.R.S.
47. When determining the duration of any license privileges suspension, the Hearing Examiner considers the facts of the underlying violation(s) giving rise to the criminal conviction(s) and the administrative license suspension hearing, along with all relevant written materials and documentary evidence contained in the Division’s records, all written materials and documentary evidence provided by the party before the administrative license suspension hearing, and all evidence provided during the hearing. 2 C.C.R. 406-16:1601.B.2.f.
48. In addition to considering the information referenced in the above paragraph, when determining the duration of any license privileges suspension, the Hearing Examiner gives specific consideration to the absence or presence of the 17 factors listed in 2 C.C.R. 406-16:1601.B.2.f.1-17.

ANALYSIS

49. In review of the factors in Colorado Parks & Wildlife Commission Regulation 2 C.C.R. 406-16:1601.B.2.f 1-17, the Hearing Examiner will determine the weight to be given to any factor and that factor’s effect on the duration of the suspension term.
 - 1) Whether the violation(s) caused or resulted in the take of wildlife, injury or death of a person, or damage to or destruction of public or private property;
 - Yes
 - 2) The number of violations arising from the same transaction or occurrence;
 - Three (3) in Episode 1, one (1) in Episode 2, one (1) in Episode 3, two (2) in Episode four and one (1) in Episode five.
 - 3) Whether the violation(s) involved the take of species listed as endangered, threatened or of special concern;
 - No
 - 4) Whether the violation(s) involved the take of trophy wildlife;
 - No
 - 5) Whether the violation(s) showed an intentional, knowing, or negligent disregard for wildlife or public safety;
 - Yes

- 6) Whether the violation(s) showed an intentional, knowing, or negligent action on behalf of the party;
 - Yes
 - 7) Whether the party has any prior violations of wildlife statutes or regulations, or violations of state or federal law committed while hunting, fishing, or engaged in a related activity;
 - Not in Colorado
 - 8) Whether the party has any prior license suspensions;
 - No
 - 9) Whether the violation(s) occurred while the party was subject to a prior suspension or otherwise unlicensed;
 - No
 - 10) Whether the violation(s) involved any assault or threat to or resisting a peace officer;
 - No
 - 11) Whether the party self-reported the violation(s) or otherwise attempted to remedy or ameliorate the harm caused by the violation(s);
 - No
 - 12) The experience and age of the party and other social factors or circumstances associated with the violation(s);
 - N/A
 - 13) Whether the party interfered with or hindered the investigation of the violation(s);
 - No
 - 14) The criminal penalties imposed as part of the violation(s);
 - Paid Penalty Assessment fines in all Episodes
 - 15) Whether the party acted alone or in concert with other parties;
 - N/A
 - 16) The species and number of wildlife taken, and;
 - N/A
 - 17) Whether the violation(s) involved any specified illegal manner of take (use of bait, traps, snares, poison, etc.).
 - No
50. SeaQuest Interactive Aquarium(SeaQuest) has repeatedly failed to comply with the conditions of the State of Colorado’s Zoological Parks License requirements. Initially, SeaQuest ignored the requirement for a license entirely and imported a sloth without any of the required permits or licensing. Since that initial violation episode, SeaQuest has continued to ignore the reporting requirements of the Zoological Parks License, despite having several in person meetings with CPW staff to assist in understanding these requirements. CPW staff appears to have gone to some lengths in helping SeaQuest comply and understand what is required under the issued Zoological Parks License.
51. Although there has been a great deal of staff turnover since SeaQuest’s opening, there continues to be unreported violations occurring at SeaQuest, including injuries to a sloth that went unreported to both CPW and to a veterinarian. SeaQuest staff misled investigators in reporting that a veterinarian had been consulted, which turned out to be false.

52. The best interest of regulated wildlife and public safety is at the center of this suspension decision. SeaQuest has repeatedly ignored, or failed to report violations, that included human injuries and wildlife care issues. s

III. CONCLUSIONS OF LAW

53. By paying the penalty assessments referenced in Paragraphs 17, 22, 28, 32 & 40, herein, SeaQuest Interactive Aquarium is deemed convicted of Counts 1, 2 & 3 (Episode 1), Count 1 (Episode 2), Count 1 (Episode 3), Counts 1 & 2 (Episode 4), and Count 1 (Episode 5), pursuant to § 33-6-106(2), C.R.S.
54. Pursuant to § 33-6-106(1)(a), C.R.S., the 40 license suspension points assessed against SeaQuest Interactive Aquarium authorize the Commission to suspend, for up to five years, SeaQuest Interactive Aquarium's privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the Division.
55. The Hearing Examiner finds and concludes that a suspension is warranted in this case, because SeaQuest Interactive Aquarium's violations did involve injury to a person (factor 1 in paragraph 49 above); SeaQuest Interactive Aquarium has five (5) separate criminal episodes resulting in a total of eight (8) total convictions (factor 2 in paragraph 49 above); SeaQuest Interactive Aquarium displayed both a negligent, and intentional disregard for human safety and for wildlife (factor 5 in paragraph 49 above); SeaQuest Interactive Aquarium's violations were committed both negligently and knowingly (factor 6 in paragraph 49 above); SeaQuest Interactive Aquarium committed the initial violation while unlicensed (factor 9 in paragraph 49 above); SeaQuest Interactive Aquarium is an experienced wildlife facility (factor 12 in paragraph 49 above). and, SeaQuest Interactive Aquarium hindered the investigation by failing to report violations (factor 13 in paragraph 49 above).

IV. INITIAL DECISION

30. A suspension period of **2 years** is warranted and ordered for the privilege of applying for, purchasing, or exercising the benefits conferred by all licenses issued by the Division, from the permissible range of 0 to 5 years pursuant to § 33-6-106(1)(a), C.R.S.

SWC 4/1/2019