

Jim Payne
Aphis

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	AWA Docket No. 98-0014
)	
The Coulston Foundation,)	
)	
Respondent.)	Consent Decision and Order

THE HEARING CLERK
ON JUSDA

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) by a complaint and amended complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondent violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The Respondent admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter. The Respondent neither admits nor denies the remaining allegations, waives oral hearing and further proceedings, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this Consent Decision and Order.

The complainant agrees to the entry of this decision.

Findings of Fact

(a) The Coulston Foundation, hereinafter referred to as Respondent, is an institution whose address is 1300 LaVelle Road, Alamogordo, New Mexico 88310. The term "Respondent" includes the Coulston Foundation and its successors and assigns.

(b) The Respondent, at all times material herein, was registered and operating as a research facility as defined in the Act and the regulations.

Conclusions

The Respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

I. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall fully comply with the Act and the regulations and standards, and in particular, shall:

(a) Maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

(b) Construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;

(c) Store supplies of food so as to adequately protect them against contamination;

(d) Construct and maintain indoor and sheltered housing facilities for animals so that they are adequately ventilated;

(e) Construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

(f) Maintain primary enclosures for animals in a clean and sanitary condition;

(g) Keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter;

(h) Establish and maintain an effective program for the control of pests; and

(i) Handle animals in a manner which does not cause behavioral stress, physical harm, and unnecessary discomfort to the animals.

(i) Not engage in research prior to approval by Respondent's Institutional Animal Care and Use Committee (IACUC) nor depart significantly from protocols as approved by the IACUC.

2. The Respondent will arrange for an external review team of three to five members, approved by the Animal and Plant Health Inspection Service (APHIS). The parties shall use their best efforts to secure the participation of former and/or current officials from the National Institutes of Health (NIH) to participate as members of the external review team. The review team will examine the entire animal program including facilities and records and will focus on IACUC functions, delivery of veterinary care, and the psychological well-being and environmental enrichment plan for non-human primates, and make a written report to APHIS and the Respondent. APHIS inspections will not be conducted in conjunction with visits of external review team members. These independent compliance review officials shall execute appropriate confidentiality agreements. Such report shall remain confidential, shall be used by APHIS solely for the purpose of evaluating compliance with the Act and its implementing regulations, and shall not be released in whole or in part except in accordance with the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* The Coulston Foundation will be given the opportunity to review and redact confidential information in accordance with the Freedom of Information Act. The external review team shall be constituted within 90 days of entry of this Consent Decision and Order unless a longer period is approved by APHIS.

3. The Respondent will implement all reasonable recommendations of the review team in consultation with APHIS regarding scheduling, cost implications and possible alternative

approaches, and the requirements of the regulations and standards under the Act.

4. The Respondent will employ an adequate number of qualified professional veterinary staff as determined by APHIS. The recommendations from the external team will be considered in determining an adequate number and necessary qualifications. It is understood that personnel needs may change over time as the population changes.

5. The Respondent will arrange for the appointment of one or more independent compliance review officials, approved by APHIS, who will be allowed full access to all facilities, IACUC meetings, and relevant records necessary to ensure compliance with the AWA and to evaluate the financial status of the Respondent with respect to matters under APHIS jurisdiction. These independent compliance review officials shall execute appropriate confidentiality agreements. Respondent shall designate a senior official for the purpose of all official communications between Respondent and the independent compliance review officials. These officials will make periodic reports to both APHIS and the Respondent. Such reports shall remain confidential, shall be used by APHIS solely for the purpose of evaluating compliance with the Act and its implementing regulations, and shall not be released in whole or in part except in accordance with the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* The Coulston Foundation will be given the opportunity to review and redact confidential information in accordance with the Freedom of Information Act. These officials shall be appointed within 90 days of entry of this Consent Decision and Order unless a longer period is approved by APHIS. This provision shall be effective through the year 2002 unless terminated earlier by APHIS. APHIS will specifically review the continuing need for this provision upon request by the Respondent.

6. Respondent shall not breed any chimpanzees owned or held by Respondent without

prior identification of long-term funding sources to support the offspring. This provision shall be effective through the year 2002, unless terminated earlier by APHIS. APHIS will specifically review the continuing need for this provision upon request by the Respondent.

7. The Respondent will not acquire any additional chimpanzees from external sources without specific written approval by APHIS. This provision shall be effective through the year 2002 unless terminated earlier by APHIS. APHIS will specifically review the continuing need for this provision upon request by the Respondent.

8. The number of chimpanzees owned by the Respondent as of July 20, 1999, will be reduced by transferring chimpanzees according to the following schedule: 30 by January 1, 2000, an additional 120 by January 1, 2001, and an additional 150 by January 2, 2002, for a total reduction of 300 chimpanzees in addition to any attrition. The specific obligation of the Respondent is to make these numbers of chimpanzees available for transfer to other entities and to facilitate transfers. It is understood that transfers cannot occur without acceptable sites willing to take the chimpanzees and able to provide appropriate care and housing. Any physical transfers which do not occur as scheduled shall be carried forward until they can be accomplished. The number of chimpanzees to be transferred may be reduced by APHIS based upon changes in research needs and funding. Within 30 days of the date of this Order, the Respondent will provide APHIS with a complete inventory, by location, of chimpanzees owned or held anywhere as of July 20, 1999.

9. The Respondent is assessed a civil penalty of \$100,000, which shall be held in abeyance provided that the Respondent complies with this Order. This civil penalty shall be reduced by the amount of fees and expenses borne by Respondent and associated with the establishment and visits of both the external review team referenced in ¶ 2 and the independent compliance review

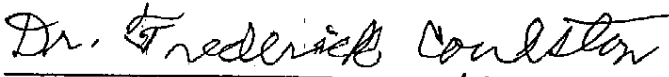
officials referenced in ¶ 5. Jurisdiction is retained for the limited purpose of enforcing this provision.

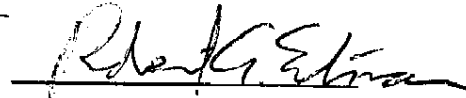
10. This Consent Decision and Order may be modified by a writing signed by all parties.

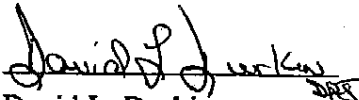
The provisions of this order shall become effective on the first day after service of this Consent Decision and Order on the Respondent.

Copies of this decision shall be served upon the parties.

The Coulston Foundation
Respondent,


Dr. Frederick Coulston
Chairman and Chief Executive Officer


Robert A. Ertman
Attorney for Complainant


David L. Durkin
Attorney for Respondent

Done at Washington, D.C.
this 24 day of August, 1999


Administrative Law Judge

APHIS News

United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

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COULSTON FOUNDATION SETTLES AWA CHARGES BY SURRENDERING 300 CHIMPS

WASHINGTON, Sept. 1, 1999--The U.S. Department of Agriculture and the Coulston Foundation, a registered research facility in Alamogordo, N.M., have agreed to a consent decision and order regarding violations of the Animal Welfare Act.

"This is an unprecedented consent agreement and a big win for these magnificent animals," said Michael V. Dunn, under secretary for marketing and regulatory programs. "By the first of the year, Coulston will transfer 30 chimps. By January 1, 2001, they will place 120 more. And, at the start of 2002, Coulston will divest itself of an additional 150 for a total of 300." "This agreement will help to ensure that all of the approximately 650 chimps currently housed at the Coulston Foundation are provided quality care well into the next century."

In addition to divesting itself of 300 chimps, the Coulston Foundation must arrange for a USDA approved external review team to examine their entire animal program. The Coulston Foundation will then implement all reasonable recommendations of the review team.

Also, the Foundation will be required to employ an adequate number of qualified professional veterinary staff as determined by USDA's Animal and Plant Health Inspection Service. The Foundation can no longer breed chimpanzees without identifying to APHIS long-term funding sources and the facility cannot acquire any new chimps without specific written approval by APHIS.

"To make sure that the Coulston Foundation follows the terms of this settlement, a civil penalty of \$100,000 is being held in abeyance," added Dunn. "It will become payable if the agreement is broken."

The Coulston Foundation neither admitted nor denied any violations of the AWA. They were originally charged with AWA violations when APHIS inspectors found they failed to:

-- Handle three sedated chimpanzees as carefully as possible in a manner that did not cause behavioral stress, physical harm, and unnecessary discomfort;

-- Provide adequate veterinary care to three chimpanzees in sedating them as a group;

-- Establish and maintain programs of adequate veterinary care, including procedures and equipment for emergency care;

-- Provide adequate pre-procedural care in accordance with current established veterinary medical and nursing procedures, in that Coulston personnel failed to ensure that the chimpanzees had fasted prior to sedation;

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-- Provide adequate pre-procedural care in accordance with current established veterinary medical and nursing procedures in that Coulston personnel failed to treat a chimpanzee for shock and stabilize its condition prior to surgical treatment;

-- Provide adequate veterinary care to the chimpanzee, "Echo," in that Coulston personnel undertook an extensive surgical procedure under inappropriate conditions;

-- Provide adequate post-procedural care in accordance with current established veterinary medical and nursing procedures in that Coulston personnel failed to adequately monitor the chimpanzee following surgery;

-- Maintain primary enclosures for nonhuman primates in good repair so as to protect the animals from injury and contain them;

-- Store supplies of food for nonhuman primates in a manner that protects them from spoilage, contamination and vermin infestation;

-- Provide for the regular and frequent collection, removal, and disposal of animal and food wastes, in a manner that minimizes contamination and disease risk. The facility was not equipped with disposal facilities and drainage systems constructed and operated so that animal wastes and water are rapidly eliminated and the animals may stay dry;

-- Construct surface materials of housing facilities in a manner that allows for easy cleaning, sanitization and replacement;

-- Clean and sanitize primary enclosure for nonhuman primates as required;

-- Maintain structurally sound housing facilities and maintain them in good repair so as to protect the animals from injury;

-- Maintain sheltered housing facilities for nonhuman primates in a manner that ensures that the animals were protected from temperature extremes, and to provide for their health and well-being;

-- Establish and maintain an effective program for the control of insects and mammals that are pests so as to promote the well-being of the animals and reduce contamination by pests;

-- Keep the premises, including buildings, clean and in good repair in order to protect the nonhuman primates from injury and to facilitate the required husbandry practices;

-- Adequately ventilate the facility for nonhuman primates;

-- Make provisions for the regular and frequent collection, removal, and disposal of animal and food wastes;

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--Establish and maintain a program of adequate veterinary care, including the prevention, control, diagnosis, and treatment of diseases and injuries by failing to make itself and its veterinarians aware of known side effects and complications of pharmaceutical compounds being tested, resulting in the unnecessary deaths of three chimpanzees known as Holly, Terrance, and Muffin;

--On three occasions, provide adequate rationale for the number of animals to be used in the proposed activity;

--On three occasions, provide a complete description of the proposed use of the animals within the protocol; and

--On five occasions, have the Institutional Animal Care and Use Committee of the research facility review and approve proposed significant changes regarding the care and use of animals in ongoing activities.

APHIS inspectors conduct inspections of licensees to ensure compliance with the Act. Any violations that inspectors find can lead to civil penalties. The AWA requires that regulated individuals and businesses provide animals with care and treatment according to standards established by APHIS. The standards include requirements for recordkeeping, adequate housing, sanitation, food, water, transportation, exercise for dogs, veterinary care, and shelter. The law regulates the care of animals that are sold as pets at the wholesale level, transported in commerce, used for biomedical research, or used for exhibition purposes.

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NOTE: USDA news releases, program announcements, and media advisories are available on the Internet. Access the APHIS Home Page by pointing your Web browser to <http://www.aphis.usda.gov> and clicking on "APHIS Press Releases." Also, anyone with an e-mail address can sign up to receive APHIS press releases automatically. Send an e-mail message to majordomo@info.aphis.usda.gov and leave the subject blank. In the message, type `subscribe press_releases`