

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. D-05-0002
Suncoast Primate)	
Sanctuary Foundation ,)	
Inc., a Florida corporation,)	
)	
Petitioner)	

Ruling denying Motion for Reconsideration

On June 7, 2006, I issued my decision in the above-captioned matter, sustaining APHIS's denial of Suncoast Primate's application for an exhibitor's license, but remanding the case to the Agency to do a more complete investigation. On June 26, Respondent APHIS filed a Motion for Reconsideration, and on July 14, Petitioner filed a Response opposing the Motion.

In short, Respondent's Motion raises no issues that lead me to alter my initial decision. While I concluded that APHIS denial of Petitioner's application was justified on the limited, but inadequate record that was developed, I see no reason to revisit my conclusion that both parties fell short of fulfilling what the statute contemplates in terms of the obligations of an applicant and a reviewer in terms of developing an adequate record, particularly given the complexities of this situation presented by the prior license revocation proceeding and the confusion over who owns the facility and the animals in the facility, as well as the relationships between the current board membership of Petitioner to the entity whose license was revoked. Nothing in the Motion for

Reconsideration changes my conclusion that Petitioner fell short of its duty to provide all pertinent information to support its license request, nor that Respondent did not perform a full and complete investigation before denying the application for a license.

APHIS also asks me to reconsider my statement that “it would be improper to permanently deny such a license without the record being more fully developed.” Initial Decision at 12. APHIS points out that Petitioner could reapply a year later, unless I ordered otherwise. However, the ban on license issuance to a party whose license has been revoked is indeed a permanent one. Until Petitioner provides all the information that Respondent needs to make a determination, and until Respondent makes a determination based on all the appropriate information, the denial would appear to be permanent. Petitioner is entitled to know what criteria Respondent is utilizing to determine whether current ownership and/or management are the same entity whose license was revoked in the prior proceeding.

Petitioner, both in its Response and in its Notice of Respondent’s Non-Compliance With This Court’s Order of June 7, 2006, has alleged that Respondent has not complied with my June 7 Order, and that I should either impose sanctions or direct that Respondent issue a license to Petitioner. While it is true that Respondent did not request that I stay my Order pending my ruling on its Motion, the Rules of Practice do not make it clear whether or not a Motion to Reconsider automatically stays my order. Given the relatively short time period that has elapsed, and the real possibility that Petitioner may not be entitled to a license, I will deny the request that I direct license issuance. However, since Respondent has had ample time to prepare to comply with my Order, I direct them to comply with the initial step—informing Petitioner exactly what

information they require—within 20 days from today, with Petitioner’s response due within 50 days from today, and a decision to grant or deny the license application within 80 days from today. Otherwise, my initial decision and order stands as written.

Respondent’s Motion for Reconsideration is DENIED.

MARC R. HILLSON
Chief Administrative Law Judge

July 28, 2006