

AFA vs. USDA

1977 Court Case Settled

by Clifton R. Witt



On July 31, 1979 the AFA law suit against the U.S. Department of Agriculture was finally settled. Filed two years and four months earlier, the case was dismissed "with prejudice." This is a legal way of saying everybody wins, or at least nobody loses face. It was a victory for AFA in that we achieved our goal: a change in USDA's policy regarding the handling of birds suspected to have Exotic Newcastle Disease. They retained their right to destroy birds known to have the disease as well as any flocks with which infected birds had direct contact.

These past two years saw a great many hours of meetings, phone conversations, court room appearances, and "off the record" discussions on the part of AFA officers, lawyers, and individual members to reach this successful outcome. The single most important benefit of this legal action, however, was not the final court order, but the fact that we, the people concerned with birds of all kinds, finally now have a solid working relationship with the government.

The AFA lawsuit got their attention. The fact of whether we won or lost became almost secondary to the relationship that was developing with USDA. They started to listen to us and began to understand our concerns and see that these concerns were legitimate. Many individuals working for APHIS (Animal and Plant Health Inspection Service) all over the country had shared our feelings for a long time but could not easily voice their dissent until we gave them the "support" by presenting ourselves in such large and noisy numbers, both in the courtroom and elsewhere. APHIS officials took a much closer look at us and realized that our interests and the government's interests were very closely aligned. By working with AFA on exotic bird matters, the interests of the United States would be better served.

It is a double-edged sword. We who were in the thick of the battle began to comprehend, however slowly at first, the magnitude of the problem facing APHIS.

Their mission is to make the country safe for chickens. No matter how much they would like to change that mission to include other birds, they cannot. Exotic Newcastle must be kept out of the United States at any cost. If it became established it would dramatically affect the food supply. It would seem, therefore, that if APHIS is going to help us make the country safe for exotic birds (and their owners), we must help APHIS keep Newcastle out of the U.S. Fully comprehending what this means leads to an understanding of why, in recent months, AFA has cooperated wholeheartedly with APHIS on such things as locating stolen birds, etc. Our cooperation with APHIS and APHIS with AFA has become an outstanding example of how government and private industry can work together to solve common problems and avoid conflicts before they arise. Dr. Chaloux and his staff are to be complimented for the efforts they have made toward this end.

So now we have a new Newcastle policy. What does this mean for the future? First of all we can be sure there will be Newcastle in our future. The most likely times to expect outbreaks are during the months of January-April. The Quarantine stations are being diagnosed positive for VVND (Exotic Newcastle Disease) at the rate of about three stations per month. This is further confirmation of the world-wide spread of disease. Any outbreaks that affect our aviaries are not likely to come from this source, however. We are likely to get VVND this year from our old friends, the Double Yellow Heads, the Yellow Napes, the Half-Moons, the parrotlets, the Mexican Red Heads, and other birds commonly imported by A. Smuggler.

When you buy a bird that came from A. Smuggler and it is diagnosed positive for VVND what can you expect under the new policy? First, if there is an outbreak, the AFA Emergency Operations Plan may be used to notify all AFA members and member clubs. Any special instructions

will be passed on to you at that time by telephone.

Second, be thoroughly familiar with the new USDA policy: A bird coming from an infected premises will be purchased by USDA and tested for VVND. The remainder of the flock will be quarantined and possibly swabbed (Cloacal swabs can be used for VVND tests without killing the birds). If the bird from the infected premises tests negative, the quarantine on your flock will be lifted. If the bird tests positive, your flock will be "depopulated" and you will receive an indemnification based on the market value of your birds. Your birds will not be destroyed unless or until that original bird is proven to have VVND. There may be some exceptions in extreme circumstances where they can determine epidemiologically that the flock is certain to be infected. (See Exhibits B & C below).

Third, keep your AFA State Coordinator informed of **all** actions taken by USDA regarding your flock. If the local APHIS agent or Task Force personnel do not seem to be following the above outlined policy, notify your State Coordinator or an AFA officer immediately and action will be taken. If Task Force personnel do not seem to be using necessary sanitation procedures before coming onto your property, deny entry and contact AFA.

Now, for everyone's records, we are reprinting the final legal settlement as filed in U.S. District Court, Central District of California. Please read it through and then keep it in a safe place for reference when A. Smuggler's bird comes onto your property. Exhibits "B" and "C" are the result of our reluctance to accept a policy that would permit depopulation based on "epidemiological" evidence. Our fear was that one individual epidemiologist could arbitrarily decide that a flock was infected without laboratory proof. Dr. Atwell's responses we find to be satisfactory, but if things do not seem to be going the way he describes, notify AFA immediately.

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 Chief, Civil Division
 DANIEL G. CLEMENT
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FILED
 JUN 31, 1979
 CLERK, U.S. DISTRICT COURT
 GENERAL DISTRICT OF CALIFORNIA
 DEPUTY
 BY
 ENTERED
 AUG 2, 1979
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY
 BY

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

AMERICAN FEDERATION OF
 AVICULTURE, et al.,
 Plaintiffs,
 v.
 UNITED STATES DEPARTMENT
 OF AGRICULTURE,
 Defendant.

No. CV 77-0869-WMB
 Stipulation Regarding Settlement
 And Dismissal With Prejudice;
 And Order Thereon

It is hereby stipulated by and between the parties, through their respective counsel, that an Order may be entered dismissing with prejudice the above-captioned civil action.

Plaintiffs have agreed to a dismissal with prejudice of the instant action in exchange for an explanation by the United States Department of Agriculture (hereinafter "USDA") regarding USDA's present procedures in dealing with exotic Newcastle disease involving pet birds. USDA's present procedures have been fully explained in the following three documents attached hereto as exhibits: (1) an undated three-page memorandum entitled "Present Policy of USDA for Controlling and Eradicating Exotic Newcastle Disease Transmitted By Birds," a copy of which is attached hereto as Exhibit "A"; (2) a two-page letter dated May 22, 1979, addressed to a Dr. Richard E. Baer signed by Dr. J. K. Atwell, a copy of which is attached hereto as Exhibit "B"; and (3) a two-page letter dated June 19, 1979, addressed to

Dr. Richard E. Baer signed by Dr. J. K. Atwell, attached hereto as Exhibit "C".

By entering into this Stipulation, defendant does not admit the truth or validity of any of the allegations contained in any complaint or other pleading filed by plaintiffs herein. Although defendant has no present intent to alter or deviate from the aforementioned procedures, defendant does not by entering into this Stipulation waive its inherent right in the future to modify said procedures, within the limits of defendant's legal authority.

Defendant agrees for a period of ten (10) years subsequent to the signing of this Stipulation to take reasonable measures to provide plaintiffs written notice of changes in the procedures explained in the attached documents by mailing said notice to the following addresses: Volney F. Morin, Jr., Esq., 1341 Cahuenga Boulevard, Los Angeles, California 90028; and American Federation of Aviculture, Post Office Box 327, El Cajon, California 92022.

DATED: This 26th day of July, 1979.

ANDREA SHERIDAN ORDIN
 United States Attorney
 FREDERICK M. BROSIO, JR.
 Assistant United States Attorney
 Chief, Civil Division
 Daniel G. Clement

Assistant United States Attorney
 Attorneys for Federal Defendant

DATED: This 13th day of July, 1979.
 VOLNEY F. MORIN, JR.

Attorney at Law
 Attorney for Plaintiffs

ORDER

IT IS HEREBY ORDERED that the instant civil action is dismissed with prejudice.

DATED: This 31st day of July, 1979.

WM. MATTHEW BYRNE,

UNITED STATES DISTRICT JUDGE

Exhibit "A"

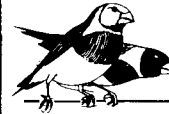
Present Policy of USDA for Controlling and Eradicating Exotic Newcastle Disease Transmitted by Birds

Domestic poultry in the United States are currently not known to be infected with exotic

Newcastle disease virus. However, on several occasions, exotic Newcastle disease has entered the United States in birds and subsequently spread to poultry. One such outbreak in southern California in 1972 cost \$56 million to eradicate. Therefore, the policy of the Department is to control and

Lady Gouldian
 Finches

WHITE-BREASTED
 BLUE-BREASTED
 NORMAL COLORS

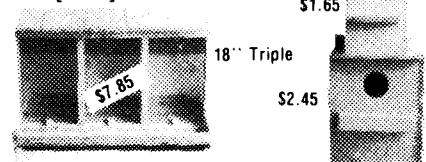


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Woodland Hills, Calif. 91365

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eradicate all outbreaks of exotic Newcastle disease in birds to protect poultry.

The Secretary of Agriculture, pursuant to the provisions of section 1 of the Act of March 3, 1905, as amended (21 U.S.C. 123), is authorized and directed to quarantine any State, Territory, District of Columbia, or any portion thereof when he determines that any animals and/or live poultry are affected with any contagious, infectious, or communicable disease of livestock or poultry or that the contagion of any such disease exists or that vectors which may disseminate any such disease exist in such State, Territory or the District of Columbia. Further, the Secretary of Agriculture, pursuant to the provisions of sections 3 and 11 of the Act of May 19, 1884, as amended (21 U.S.C. 114 and 114a, respectively), is authorized to cooperate with the states to control and eradicate any communicable disease of livestock or poultry, including the payment of claims growing out of the destruction of animals and materials affected by or exposed to any such disease.

The Department has promulgated regulations regarding the imposition of federal quarantines and the payment of indemnities for animals and materials destroyed because of the existence of exotic Newcastle disease.

The primary means of eradicating exotic Newcastle disease is through epidemiological evaluation and testing of birds located on a premises which has been placed under quarantine. When exotic Newcastle disease virus is isolated from one or more birds in a group, the entire group is classified as an infected group. In order to remove any federal quarantine on an infected group of birds, such birds must be destroyed. Any birds which are destroyed are eligible for indemnity payments in accordance with Title 9, Code of Federal Regulations, Part 53.

Movement of birds, personnel, feed, supplies and other material from an infected group to other groups of birds (exposed groups) is the most frequent means of spreading exotic Newcastle disease virus. The disease can also be spread by movement of birds from such an exposed group of birds to another group of birds (exposed group). When such movements occur, the premises to which such birds have been moved may be quarantined pursuant to 21 U.S.C. 123. In order to remove the quarantine, the birds on the quarantined premises are evaluated epidemiologically and/or sampled and tested. If any of the birds in the exposed group are determined, either through epidemiological evaluation or through laboratory and test results, to be infected with exotic Newcastle disease virus, the group is redesignated as an infected group and handled in the manner specified above for an infected group.

Animal and Plant Health Inspection Service, United States Department of Agriculture in dealing with exotic Newcastle disease involving exotic pet birds.

The policy of Veterinary Services in regard to exotic Newcastle disease in birds and the movement of birds from an infected premises to another congregation of birds is to evaluate the group of birds into which they moved. This evaluation involves purchasing, if possible, the birds which have moved from an infected flock and the testing of such birds. Further, a swabbing procedure is commenced on a representative number of birds in the congregation of birds as determined by National Emergency Field Operations Staff, including epidemiologists and other specialists of Veterinary Services. Our general policy is to swab all birds in a cage consisting of 30 or less birds. If more than 30 birds are in a cage, we will swab only 30 birds.

We must retain the ability to require depopulation of birds in order to remove a quarantine when epidemiologically exotic Newcastle disease is determined to be present in a flock. The nature of exotic Newcastle disease and the reliability of the results which we attribute to the epidemiological investigation supervised by epidemiologists of the Department, dictate our policy in this regard. However, the Department is committed to preventing the unwarranted destruction of birds, and therefore, if a decision to recommend depopulation based upon epidemiological investigation is developed, such decision must be reviewed and approved by the National Emergency Field Operations Staff of Veterinary Services in Washington, DC, prior to its implementation.

The Department's policy concerning endangered species of exotic birds as listed by the U.S. Department of the Interior which are determined to be exposed and/or infected with exotic Newcastle disease is to deal with this problem on a case-by-case basis and in full consultation with the U.S. Department of the Interior and the owner.

Sincerely,

J. K. Atwell
Assistant Deputy Administrator
Animal Health Program
Veterinary Services

“Exhibit C”

UNITED STATES
DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT
HEALTH INSPECTION SERVICE
FEDERAL BUILDING
HYATTSVILLE, MARYLAND 20782
JUNE 19, 1979

Dr. Richard E. Baer
464 ½ Naomi Ct.
Box 206
Groveport, Ohio 43125

Dear Dr. Baer:

This is in reply to your letter of May 28, 1979, in which you requested additional information and responses to questions which you raised concerning the procedure and policy of the United States Department of Agriculture (USDA) in dealing with exotic Newcastle disease involving pet birds.

In my letter of May 22, 1979, I stated that if epidemiologically exotic Newcastle disease is determined to be present in a flock, we must retain the ability to require depopulation of all birds on the premises. The nature of exotic Newcastle disease and the reliability of the results which we attribute to the epidemiological investigation supervised by epidemiologists of the Department dictate our policy in this regard. However, the Department is

committed to prevent any unwarranted destruction of birds. The decision to depopulate a group of birds based on epidemiological evaluation will not be based on the opinion of one person making the evaluation in the field. Therefore, if a decision to recommend depopulation based upon epidemiological investigation is developed, such decision must be reviewed and approved by the National Emergency Field Operations Staff of Veterinary Services in Washington, DC, prior to its implementation.

As a result of this statement in the letter, you raised a question concerning the intent of the statement “If epidemiologically exotic Newcastle disease is determined to be present in the flock.” This decision will be based on the involvement of a number of epidemiological factors rather than any one factor. Some of the factors which will be considered in making such a determination in conjunction with the local evaluating epidemiologists, the task force, and the staff here in Hyattsville, Maryland, will include the following items:

1. Clinical evidence of the disease is a factor which will be considered.
2. The presence of lesions of exotic Newcastle disease on examination at necropsy will be considered.
3. Evidence of the disease with death losses and rapid spread within a population will be considered.
4. The isolation of a Newcastle disease virus even though it has not been characterized as exotic Newcastle disease virus will be considered.
5. Another factor which will be considered is the number and percentage of birds which moved from a known infected premises to the flock that is being evaluated.
6. Another factor which will be used in making a determination as to the disposition of the flock being evaluated will be the risk to populations of other avian species. This will include the probability of rapid spread and the risk of spread if depopulation is delayed.

As stated previously, all of these factors will be used collectively to determine the status of the flock.

When an outbreak of exotic Newcastle disease first occurs, and the first Federal quarantine is imposed, the address of the office which will be handling the outbreak such as the Regional Emergency Animal Disease Eradication (READEO) or task force office will be printed in the Federal Register. At that time, interested organizations can establish and maintain liaison with the task force so that they can be kept informed of all activities. In addition, every effort will be made to keep the AFA and all interested organizations, individuals, and the general public informed of all the activities. However, it would seem desirable if those people who have an intense interest in the program would establish contact and rapport with the task force so that such liaison would be insured. As you can imagine, it would be extremely difficult for us to keep each and every organization informed on an hour-by-hour or day-by-day basis as to the status of an outbreak and the flocks involved. We feel that by the interested organizations establishing rapport with the task force that such information can be exchanged on a timely basis. In addition to the publication in the Federal Register, we will make every effort to notify interested organizations of the initial outbreak and of the location, address, and telephone number of the task force or the Area Veterinary Services offices involved.

Sincerely,

J. K. Atwell
Assistant Deputy Administrator
Animal Health Programs ●

Exhibit “B”

UNITED STATES
DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT
HEALTH INSPECTION SERVICE
FEDERAL BUILDING
HYATTSVILLE, MARYLAND 20782
MAY 22, 1979

Dr. Richard E. Baer
464 ½ Naomi Ct.
Box 206
Groveport, Ohio 43125

Dear Dr. Baer:

In accordance with our telephone conversation of May 3, 1979, the following is an explanation of the procedure and policy of Veterinary Services,

**AN IMPORTANT
AVIAN NUTRITIONAL
ANNOUNCEMENT from**

AVIARIES TROPICAL OF DALLAS



At last, there is now available on the market a **complete** bird food containing, in one mix, all of the nutritional elements thus far known to be necessary for optimal avian growth, development, health, and breeding. Except for perhaps fresh greens, no additional nutritional products (proteins, vitamins, minerals, fruits, etc.) are needed when feeding this seed compound to both adult and young birds. The contents of this seed "compound" produced by Topper's Bird Ranch, comply with recommendations of some of our nation's leading university avian nutritionists.

This seed "compound" utilizes a **safflower** base, rather than the usual sunflower seed used in most psittacine mixes. Besides already having proteins, vitamins, and minerals, it has added to it the advantages of producing less visual "mess" than does sunflower husk, but its primary advantage over sunflower base mixes is that safflower is **lower in Tri-Glycerides**, thus producing less cholesterol in your birds, and it also does not contain the drug "Papaverine," that sunflower seed does, which tends to produce a euphoric state which may decrease breeding.

Under normal conditions, the preservatives used in the **unsaturated** oils, which binds the protein, vitamin, and mineral additives to the seed mix, prevent rancidity of these oils for the normal useful life of the seed.

Most psittacines can be switched from their old seed mix to this new one easily and gradually over a one- or two-week period.

The impressive nutritive breakdown per cup of this seed "compound" is as follows:

Protein — Min. 18%	Fiber — Max. 10%
Fat — Min. 18%	Ash — Max. 4%

VITAMINS	AMINO ACIDS	MINERALS
A 1,100 I.U.	Isolucine 24 Mgm	Calcium 290 Mgm
B1 0.50 Mgm	Lucine 38 Mgm	Copper 58 Mcgm
B2 0.75 Mgm	Lysine 50 Mgm	Iodine 8.8 Mcgm
B6 0.50 Mgm	Methonine 35 Mgm	Iron 2.9 Mgm
B12 0.003 Mgm	Phenylalanine 30 Mgm	Magnesium 9.5 Mgm
C 6.222 Mgm	Threonine 39 Mgm	Manganese 95 Mcgm
D3 85 I.U.	Tyrosine 44 Mgm	Phosphorus 195 Mgm
E 11.70 I.U.	Tryptophan 11 Mgm	Potassium Cl 56 Mgm
K 2.0 Mcgm	Arginine 40 Mgm	Sodium Cl 50 Mgm
Bioflavonoids 850 Mcgm	Alanine 36 Mgm	Zinc 345 Mcgm
Niacinamide 3.7 Mcgm	Cysteine HCl 8 Mgm	Cobalt Trace
Biotin 3.1 Mcgm	Glycine 36 Mgm	
Asperidine Cmplx 7.5 Mcgm	Histidine 22 Mgm	
Rutin 4.2 Mcgm	Proline 46 Mgm	
Carotene 365 Mcgm	Serine 50 Mgm	
Choline 11.1 Mgm	Glutamic Acid 140 Mgm	
D. Pantothenic Acid 2.7 Mgm		
Folic Acid 139 Mcgm		
Inositol 11.4 Mgm		
Lecithin 1.67 Mgm		

This seed "compound" is available in two forms:

- (1) 50 lb. bags of **LARGE** Hookbill Mix — For psittacines larger than cockatiels.
- (2) 50 lb. bags of **SMALL** Hookbill Mix — For cockatiels and smaller beaked psittacines.

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