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Submitted electronically to <https://dps.alaska.gov/ast/crimereport>, animal.care@matsugov.us, chris.loscar@matsugov.us, and lawpalmerdao@alaska.gov.

Colonel Bryan Barlow, Deputy Commissioner
Alaska Department of Public Safety
Alaska State Troopers
5700 East Tudor Road
Anchorage, Alaska 99507

Chris Loscar, Animal Care Director
Matanuska-Susitna Borough Animal Control
9470 E. Chanlyut Circle
Palmer, Alaska 99645

Melissa J. Winingers-Howard, District Attorney
Palmer District Attorney's Office
Palmer State Office Building
515 E. Dahlia Street, Suite 150
Palmer, Alaska 99645

Dear Colonel Barlow, Director Loscar, and District Attorney Winingers-Howard,

On behalf of Animal Partisan, I submit this correspondence in support of a criminal complaint alleging violation of AS § 11.61.140 and Matanuska-Susitna Borough Ordinance §24.05.090(A) by Alaska Meat Packers, Inc. ("Alaska Meat Packers") and its employee.

Animal Partisan is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms.¹ Alaska Meat Packers is a slaughterhouse located at 385 East Outer Springer Loop Palmer, AK 99645.² The business appears to be owned by Todd Elsberry.³

¹ Home, Animal Partisan, <https://www.animalpartisan.org/> (last visited May 19, 2022).

² Alaska Meat, Facebook, <https://www.facebook.com/alaskameatpackers/> (last visited May 19, 2023); *Alaska Meat Packers Incorporated*, United States Department of Agriculture, <https://www.fsis.usda.gov/inspection/fsis-inspected-establishments/alaska-meat-packers-incorporated> (last visited May 19, 2022).

³ *A North Pole farm family, a struggling Palmer slaughterhouse and a step toward Alaska's food security*, Anchorage Daily News, <https://www.adn.com/business-economy/2021/11/28/a-north-pole-farm-family-a-struggling-palmer-slaughterhouse-and-a-step-toward-alaskas-food-security/> (last visited May 19, 2023).

This complaint is filed pursuant to AS § 03.55.110(a) which provides that “[a] person who believes that cruelty to animals has taken place or is taking place may file a complaint with a public or private animal control agency or organization, the department, or a peace officer.” We respectfully ask that you investigate this incident and enforce the state and borough’s animal cruelty laws to the fullest effect.

I. FACTS GIVING RISE TO COMPLAINT

On June 3, 2022, a United States Department of Agriculture (“USDA”) inspector observing the slaughter of animals at Alaska Meat Packers witnessed an employee inflict prolonged suffering to a bull yak while attempting slaughter. According to the inspector’s report—attached to this complaint as Appendix A⁴—the employee shot the bull yak with a .38 caliber pistol **15 separate times in the head over the course of 25 minutes** until the animal was finally rendered insensible. The yak remained alert and fully conscious for the first 14 shots despite what was undoubtedly massive head trauma resulting from being shot repeatedly in the head at close range. The relevant section of the inspector’s report reads:

At approximately 8:35 am, June 3, Est. 20891 put a mature bull yak into the squeeze chute and shot it in the head with a .38 caliber pistol. The initial stun was ineffective and the knocker continued to shoot it with the same pistol approximately 15 times, about 45 seconds between shots, until it finally collapsed. In between shots I was able to look and see that the yak was still standing, blinking, and tossing its head. After it collapsed, it was shackled and hung up to be bled out at approximately 9:00 am.⁵

In response to the incident, the USDA found that Alaska Meat Packers violated several provisions of federal law governing the treatment of animals at slaughter and suspended inspection services to the plant.⁶ On August 8, 2022, the USDA resumed providing inspection services at the plant as described in Appendix B.⁷

II. BY REPEATEDLY SHOOTING THE YAK IN THE HEAD, ALASKA MEAT PACKERS VIOLATED BOTH STATE AND BOROUGH LAW PROHIBITING CRUELTY TO ANIMALS.

A. State Law

Under Alaska’s animal cruelty statute, AS § 11.61.140(a)(1), “[a] person commits cruelty to animals if the person . . . knowingly inflicts severe and prolonged physical pain or suffering on an animal.” A person acts “knowingly” with “respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that

⁴ Note that the address listed by the USDA for Alaska Meat Packers in Appendix A appears to be associated with a separate and unrelated USDA-regulated establishment in Alaska and is seemingly a typographical error on the part of the agency. The address in Appendix B is accurate.

⁵ Appendix A – Denial of Voluntary Services – Alaska Meat Packers, Inc., United States Department of Agriculture, June 3, 2022.

⁶ *Ibid.*

⁷ Appendix B – Resumption of Voluntary Services – Alaska Meat Packers, Inc., United States Department of Agriculture, Aug. 8, 2022.

nature or that the circumstance exists.”⁸ As applied to an individual, cruelty to animals under this subsection is a class C felony⁹ punishable by imprisonment up to 5 years and a fine of up to \$50,000.¹⁰ For an organization, a conviction carries a fine not exceeding \$1,000,000.¹¹

Alaska’s animal cruelty statute includes a defense to prosecution if the conduct of the defendant “conformed to accepted veterinary or animal husbandry practices.”¹²

Here, Alaska Meat Packers and its employee should be found guilty of animal cruelty. It defies logic to deny that shooting the yak 15 times in the head caused “severe and prolonged physical pain or suffering.”¹³ A 2022 study on the effects of shooting cattle for slaughter found that the bullets entering the animals’ skulls caused a variety of traumatic injuries including tissue damage, brain hemorrhages, arterial bleeding.¹⁴ Moreover, as documented in the inspection report, Alaska Meat Packers shot the yak repeatedly over a period of 25 minutes during which time the yak stood blinking and tossing his head.¹⁵ For nearly a half-hour, Alaska Meat Packers stood before the yak and repeatedly inflicted trauma to the animal’s head, each shot likely destroying tissue and fracturing the animal’s skull.

Moreover, the prolonged suffering was caused “knowingly.” It was undoubtedly apparent after the first several shots that (1) shooting the yak in the head was not effective and (2) doing so was causing pain and suffering. Yet despite this awareness, Alaska Meat Packers persisted in shooting the yak again and again, meeting the threshold for “knowingly” causing “severe and prolonged physical pain or suffering.”¹⁶

Moreover, Alaska Meat Packers cannot avail itself to the “accepted animal husbandry practices” exception to prosecution. As documented by the USDA, Alaska Meat Packers violated multiple federal laws governing the treatment of animals at slaughter, a plain indication that shooting an animal 15 times in the head is not acceptable under any standards of animal husbandry.

The USDA is not alone in rejecting such conduct as unacceptable. In its “Humane Slaughter Guidelines,” the American Veterinary Medical Association (“AVMA”) states that “[a] properly placed gunshot can cause immediate unconsciousness.”¹⁷ The AVMA further states that “[a] well-trained shooter can render 95% or more of the animals insensible with a single shot” and warns that “[t]here is a definite problem if the first-shot efficacy rate falls below 95%.”¹⁸ Here,

⁸ AS § 11.81.900(2).

⁹ AS § 11.61.140(h)

¹⁰ AS § § 12.55.035(b)(4), 12.55.125(e).

¹¹ AS § 12.55.035(c)(1)(A).

¹² AS § 11.61.140(c)(3).

¹³ AS § 11.61.140(a).

¹⁴ J. Hultgren, *Animal Welfare and Food Safety When Slaughtering Cattle Using the Gunshot Method*, *Animals J.* (2022).

¹⁵ Appendix A.

¹⁶ In the alternative, Alaska Meat Packers is at least culpable for violation of AS § 11.61.140(a)(2) for failing to care for an animal for which it has a legal duty to provide care and, with *criminal negligence*, causing severe physical pain or prolonged suffering to the animal.

¹⁷ Humane Slaughter Guidelines, American Veterinary Medical Association, p.29,

<https://www.avma.org/sites/default/files/resources/Humane-Slaughter-Guidelines.pdf> (last visited May 19, 2023).

¹⁸ *Id.* at p.31.

Alaska Meat Packers did not only fail on the first shot, it failed on the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth shots as well. Such incompetence is far from accepted animal husbandry and caused prolonged pain and suffering for the yak. Thus, Alaska Meat Packers and its employee should be charged with animal cruelty under state law.

B. Matanuska-Susitna Borough Code

In addition to violating the state animal cruelty law, Alaska Meat Packers and its employee violated the code of the borough. Matanuska-Susitna Borough Code §24.05.090(A)(1) states that “[n]o person shall intentionally or recklessly injure or kill an animal unless . . . the act committed is done humanely in conformity with applicable federal, state, or borough law.” Violation of this code is punishable by a fine of up to \$500.00.¹⁹

As with state law, a defense to prosecution exists, but is not helpful here. Under Code §24.05.090(J), “[i]t is an affirmative defense to a prosecution under this section if the act committed was done humanely in conformity with applicable federal, state, or borough law, and the conduct of the person: (3) was in accordance with accepted farming or animal husbandry practices, which for this purpose are those approved and/or practiced by the majority of the members of the local farm bureau.”

Here, Alaska Meat Packers violated borough code and should be subject to a fine of \$500.00. First, as Alaska Meat Packers was slaughtering the animal, the killing was plainly “intentional.” Second, as evidenced by the fact that the USDA found that Alaska Meat Packers violated federal animal welfare laws,²⁰ the conduct was done neither “humanely” nor “in conformity with applicable federal . . . law.” Lastly, as stated above, shooting an animal 15 times in the head during a botched slaughter is not an “accepted animal husbandry practice” under any set of standards. Accordingly, Alaska Meat Packers and its employee should be fined for violating Matanuska-Susitna Borough Code.

III. ALASKA MEAT PACKERS CAN BE CHARGED CRIMINALLY AS AN ORGANIZATION.

Pursuant to AS §11.16.130(a)(1)(A), “an organization is legally accountable for conduct constituting an offense if the conduct . . . is the conduct of its agent and . . . within the scope of the agent’s employment and in behalf of the organization.”

The term “agent” means “a director, officer, or employee of an organization or any other person who is authorized to act in behalf of the organization.”²¹ The term “organization” means “a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons

¹⁹ Matanuska-Susitna Borough Code §24.40.050(A).

²⁰ Appendix A.

²¹ AS §11.16.130(b).

organized for any purpose.”²² As stated above, an organization convicted of a felony under state law is subject to a fine of up to \$1,000,000.²³

Here, Alaska Meat Packers is a corporation registered with the state of Alaska under Entity # 10177462²⁴ and is therefore an “organization.” Moreover, as reflected in Appendix B, the USDA inspector identified the conduct as committed by an “establishment employee.”²⁵ As the employee was “acting on behalf” of Alaska Meat Packers, they are “agent” under the law. Moreover, the act was committed “within the scope of the agent’s employment and in behalf of the organization”, as the employee was attempting to slaughter the animal, the very activity for which the business exists. Accordingly, all elements are met for organizational liability and Alaska Meat Packers should be criminally charged.

IV. THE STATE AND BOROUGH ARE NOT PREEMPTED BY FEDERAL LAW FROM ENFORCING ALASKA’S ANIMAL CRUELTY LAWS.

Alaska Meat Packers is not immune from prosecution for animal cruelty simply because it engages in a federally regulated business. This issue has been squarely addressed by the Supreme Court of the United States. In *National Meat Association v. Harris*, the Court considered an argument that the Federal Meat Inspection Act (“FMIA”, which incorporates the Humane Methods of Slaughter Act) preempted a California law regulating the handling of “downed” animals at slaughter.²⁶ The Court concluded that states may still enforce animal cruelty laws at federal slaughter establishments:

[B]ecause the FMIA's express preemption provision prevents States from imposing only “addition[al]” or “different” requirements, [] States may exact civil or *criminal penalties for animal cruelty* or other conduct that also violates the FMIA . . . Although the FMIA preempts much state law involving slaughterhouses, it thus leaves some room for the States to regulate.²⁷

Thus, the mere fact that Alaska Meat Packer’s criminal act occurred during slaughter at a federally inspected slaughterhouse and was witnessed by the USDA does not preclude the state or borough from enforcing its own animal cruelty law.

V. CONCLUSION

Alaska Meat Packers took nearly 30 minutes to kill a yak destined for slaughter. During this time, an employee fired a .38 caliber pistol into the head of the yak on fifteen separate occasions. As each bullet tore into the skull of the yak, he remained conscious, alert, and suffering immensely. **As a matter of demonstration, over the time it would take a reader to read this**

²² AS § 11.81.900(a)(43).

²³ AS § 12.55.035(c)(1)(A).

²⁴ *Alaska Meat Packers*, Department of Commerce, Community, and Economic Development, <https://www.commerce.alaska.gov/cbp/main/search/entities> (last visited May 19, 2023).

²⁵ Appendix A.


²⁶ *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, n.10 (2012).

²⁷ *Ibid.* (emphasis added).

entire letter nearly three times in a row,²⁸ Alaska Meat Packers continuously fired bullets into the skull of the fully conscious and suffering yak.

Alaska Meat Packers had no sense of urgency, no backup plan, and no modicum of compassion for the suffering animal. As a result, the yak was subjected to prolonged suffering that violated state, borough, and even federal law. The employee who botched this slaughter was an agent of Alaska Meat Packers and was engaged in their scope of work for the company. Alaska Meat Packers and the individual employee should be held criminally liable for this act of cruelty and subject to substantial criminal penalties.

If you have any questions on this request, please contact me at wlowrey@animalpartisan.org or (804) 307-4102. Thank you in advance for your attention to this matter.



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²⁸ M. Brysbaert, *How many words do we read per minute? A review and meta-analysis of reading rate*, Journal of Memory and Language (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0749596X19300786> (finding that the rate for silent English reading is 238 words per minute).