



April 16, 2018

The Honorable Andrew Bender
Perry County District Attorney

Via e-mail: abender@perryco.org

Dear Mr. Bender,

I hope this letter finds you well. I would like to request that your office (and the proper local law enforcement agency, as you deem appropriate) investigate and file suitable criminal charges against Kistler's Butcher Shop and/or the person(s) responsible for excessively electroshocking a cow and slitting the throat of an improperly stunned cow last month at the business, located at 3692 Sherman's Valley Rd. in Loysville. These actions resulted in two federal citations, as documented by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) in the attached reports. According to a report sent to facility owner Dennis Kistler on March 6, federal officials observed the following:

"[T]he excessive use of the activated electric prod on an Angus [cow] [was seen]. You had trouble getting the [cow] into the stun box. ... You used the activated electric prod alternately on the front of the animal to back it into the stun box and on the rear of the animal to move it back into the holding pen. The [cow] reacted by throwing its head up, kicking out, and snorting in agitation and distress. You used the activated electric prod 10 to 12 times during these attempts, without success in moving the [cow], until Inspection personnel halted the slaughter"¹

On March 20, federal officials suspended operations again after another "egregious" violation and wrote the following to Kistler:

"[Y]ou stunned a beef cow, standing freely in the stun box, with a 410 shotgun. ... [Y]ou proceeded to cut the cow's throat. ... You ... walked away. While Inspection was observing the cow, the blood was slowly pooling under it. They then began to hear the cow vocalize, observe it arch its back, and press its head back against the wall. The Supervisory Public Health Veterinarian (SPHV) walked closer and observed the cow breathing. ... The SPHV felt the tongue and it was tight. The animal continued to vocalize, press its head against the wall, and arch its back. Inspection immediately began walking out of the room to find Mr. Kistler. ... Mr. Kistler could not be found immediately but walked into the room a

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland
554 Grand Ave.
Oakland, CA 94610
510-763-PETA

Info@peta.org
PETA.org

Affiliates:

- PETA Asia
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- PETA Netherlands
- PETA Foundation (U.K.)

¹FSIS District 60 Manager Susan G. Scarcia, *Notice of Suspension, Kistler's Butcher Shop, Est. 44101* (March 6, 2018) <https://www.fsis.usda.gov/wps/wcm/connect/e62dab58-f223-49dd-91ed-cb68786cef10/44101-Suspension-030618.pdf?MOD=AJPERES>.

few moments later. He gave a second stunning attempt with the 410 shotgun. The cow gave a few reflexive kicks and then was still."²

This conduct may violate 18 Pa. Cons. Stat. § 5533(a), Pennsylvania's cruelty-to-animals statute, which states, "A person commits an offense if the person ... recklessly illtreats ... or abuses an animal." This conduct is not exempt from the cruelty-to-animals statute, which, with respect to agriculture, exempts only "activity undertaken in a normal agricultural operation,"³ defined as "[n]ormal activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of ... livestock and their products in the production and harvesting of agricultural ... commodities."⁴ Repeatedly shocking an animal with an electric prod is not "normal" agricultural practice or procedure, nor is permitting a cow to be conscious during or after cutting the throat, as FSIS' action demonstrates. Importantly, FSIS action does not preempt criminal liability under state law for slaughterhouse workers who perpetrate acts of cruelty to animals.⁵

Please let us know what we might do to assist you. I can be reached at ColinH@peta.org and 757-962-8326. Thank you for your consideration and for the difficult work that you do.

Sincerely,



Colin Henstock
Investigations Specialist

²FSIS District 60 Manager Susan G. Scarcia, *Notice of Reinstatement of Suspension, Kistler's Butcher Shop, Est. 44101* (March 20, 2018) <https://www.fsis.usda.gov/wps/wcm/connect/3a1d0b34-9a79-4a45-b82a-a6f0aca92e61/44101-NOROS-032018.pdf?MOD=AJPERES>.

³18 Pa. Cons. Stat. § 5560.

⁴18 Pa. Cons. Stat. § 5531.

⁵*See Nat'l Meat Assoc. v. Harris*, 132 S. Ct. 965, 974 n.10 (2012) ("... States may exact civil or criminal penalties for animal cruelty or other conduct that also violates the FMIA. *See* [21 U.S.C.] §678; *cf. Bates v. Dow Agrosciences, LLC*, 544 U. S. 431, 447 (2005) (holding that a preemption clause barring state laws 'in addition to or different' from a federal Act does not interfere with an 'equivalent' state provision). Although the FMIA [Federal Meat Inspection Act] preempts much state law involving slaughterhouses, it thus leaves some room for the States to regulate.").