



October 23, 2018

The Honorable Jarvis Parsons, District Attorney
County of Brazos

Sent via email: JParsons@brazoscountytexas.gov

Dear Mr. Parsons:

I write on behalf of People for the Ethical Treatment of Animals (PETA) to notify your office of an apparent violation of Texas' cruelty-to-animals statute that occurred at a laboratory affiliated with Texas A&M University (TAMU) in College Station, where a pig was left outside in the summer heat without any shelter or water. A federal report indicates that the pig subsequently died from "heat stroke." PETA urges your office to pursue an investigation of this matter and criminal charges against any and all offenders.

Earlier this month, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS) released an inspection report concerning TAMU. The report, dated September 6, 2018, cited TAMU with a "critical" violation of the federal Animal Welfare Act (AWA), the most severe category of offense that can be assessed by an inspector. Accompanying the citation was the following factual narrative:

On July 30, 2018, a Yorkshire boar (#10) weighing 563 lbs. was removed from its primary enclosure at approximately 8 a.m. and placed in a connecting alleyway. No shade or water was provided for the animal and the caretaker forgot to return the pig to the enclosure after the cleaning procedure. At approximately 1:20 p.m. the pig was discovered dead in the alleyway. Historical reports of ambient temperatures that day ranged from 75-101 degrees. Large pigs are particularly sensitive to heat stress and hyperthermia. The presumed cause of death, undisputed by necropsy results, was heat stroke. Prolonged exposure to direct sunlight and lack of water likely contributed to the death of this animal.

That apparently at least one TAMU employee was terminated as a result of the pig's death does not nullify the appropriateness of criminal charges for this disturbing incident. Texas law states that a person commits an act of "cruelty to nonlivestock animals" if they knowingly, intentionally, or recklessly fail "unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody."¹ The statute defines "necessary food, water, care, or shelter" to include that which is "provided to the extent required to maintain the animal in a state of good health."² According to the USDA-APHIS report, the lack of shelter and water "likely contributed to the death" of this pig. This incident appears to be an unambiguous violation of state law. The pig in question was being used for experimentation purposes, and thus does not satisfy the statute's definition of a "livestock animal,"

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¹ Tex. Penal Code Ann. § 42.092(b)(3).

² *Id.* § 42.092(a)(7).

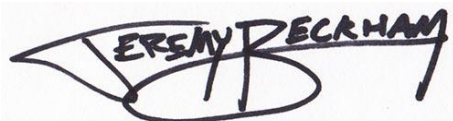
which requires that the animal be “raised for human consumption.”³ Further, there is no applicable exemption.⁴

The AWA, in imposing minimal requirements on the use of animals in experimentation, contains an explicit non-preemption clause that states that the federal law “shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated [in the AWA].”⁵ The provisions of the AWA are intended to be a floor, not a ceiling, and states retain the authority to enforce their own standards and laws with regard to conduct that occurs at AWA-regulated facilities. Such local and state enforcement is especially critical in light of multiple federal audits that have found that “APHIS was not aggressively pursuing enforcement actions against violators of AWA and was assessing minimal monetary penalties.”⁶ A recent report in *The Washington Post* reveals that this already meager enforcement has only deteriorated further in the past year.⁷

While it has already been established by a USDA inspector that TAMU was in violation of federal animal welfare laws, for the reasons stated, there is substantial reason to believe that a violation of state law has also occurred. As a result, PETA urges an investigation of this matter and prosecution of any offenders to the fullest extent of the law.

Thank you for your attention to this matter. I am happy to answer any questions you may have and can be reached at 801-994-6730 or JeremyB@peta.org.

Sincerely,

A handwritten signature in black ink that reads "JEREMY BECKHAM". The signature is written in a stylized, cursive font with a large, looped initial "B".

Jeremy Beckham, MPA, MPH, CPH
Research Associate
Laboratory Investigations Department
People for the Ethical Treatment of Animals

³ *Id.* § 42.09(b)(5). Even if your office determines that the animal in question meets the definition of a “livestock animal,” the act would still fall under the scope of § 42.09.

⁴ The actor was not engaged in any “scientific research” at the time of the pig’s death but was performing a “cleaning procedure” and left the animal outdoors in direct sunlight, without any water or shelter. The inexcusable actions that led to this animal’s prolonged suffering and death were not at all connected to any scientific experiment or approved study design.

⁵ 7 U.S.C. § 2143(a)(8); *see also id.* § 2145(b) (authorizing the USDA to cooperate with states and localities in enforcing state and local laws); *DeHart v. Town of Austin, Ind.*, 39 F.3d 718, 722 (11th Cir. 1994) (“[I]t is clear that the Animal Welfare Act does not evince an intent to preempt state or local regulation of animal or public welfare. Indeed, the Animal Welfare Act expressly contemplates state and local regulation of animals.”); *N.Y. Pet Welfare Ass’n, Inc. v. City of N.Y.*, 143 F. Supp. 3d 50, 61 (E.D.N.Y. 2015) (“[C]ourts have consistently rejected claims that the AWA preempts local legislation concerning animals, even where the legislation bans activity that is otherwise authorized by the AWA.”), *aff’d*, 850 F.3d 79 (2d Cir. 2017).

⁶ USDA Office of Inspector General. APHIS Oversight of Research Facilities, Audit No. 33601-0001-41, p. 3. December 2014. <https://www.usda.gov/oig/webdocs/33601-0001-41.pdf>.

⁷ Karin Brulliard, *USDA’s enforcement of animal welfare laws plummeted in 2018, agency figures show*, Wash. Post. Oct. 18, 2018, available at <https://www.washingtonpost.com/science/2018/10/18/usdas-enforcement-animal-welfare-laws-plummeted-agency-figures-show/>.