

FOURTH AMENDMENT COMPLAINT TO WILLIAM C. SMITH OF THE USDA, ASKING THAT AGRIPROCESSORS BE HELD ACCOUNTABLE FOR ITS CRIMES

William C. Smith
Assistant Administrator, Office of Field Operations
USDA-FSIS
Administration Building
1400 Independence Ave. S.W., Rm. 344-E
Washington, DC 20250

RE: Fourth Amendment to Complaint Dated November 29, 2004, Alleging Violations of the Humane Methods of Livestock Slaughter Act at AgriProcessors, Inc., Postville, Iowa

Via fax (202-720-5439) and First Class Mail

Dear Mr. Smith:

I am in receipt of your letter dated January 24, 2005. PETA appreciates the fact that the agency appears to be addressing the violations of the HMSA by AgriProcessors with the seriousness that they deserve, and we applaud the agency for developing the recent Humane Interactive Knowledge (HIKE) Scenario 03-04, which instructs federal meat inspectors that behavior such as that documented by PETA at AgriProcessors constitutes "egregious" violations of the HMSA and requires agency personnel to immediately suspend slaughter operation. We are hopeful that continued instruction of this sort will greatly reduce the occurrence of the gratuitous cruelty to animals that was documented at AgriProcessors.

However, we also believe that strong enforcement action is a necessary element of deterrence, which is especially warranted in this case because of the extreme pain and suffering that was intentionally inflicted on animals as a result of a cruel, profit-driven standard operating procedure as well as the parties' subsequent continued denials of wrongdoing. Since Mr. Sholom Rubashkin's initial statements in defense of the inhumane procedures documented by PETA, he has continued to defend the abuse and has not made a single statement of contrition. He published an article in which he stated: "What hit the satellite waves was a documentation of the Shechita process in its full glory. ½ What you actually see is the extraordinary steps taken in assuring the best Shechita in the USA and Canada. ½ You then see the Shochet doing the Shechita the way it's supposed to be done. ½ This Shechita is actually Halachakly [sic] the best there is. ½ What you see on the video is not out of the ordinary. ½ Nothing wrong was, or is being done. There is nothing to admit." ("Rubashkin's Response to the Attack on Shechita," available at <http://www.shmais.com/jnewsdetail.cfm?ID=148>.)

We would like to bring to your attention the fact that similar false statements by and on behalf of AgriProcessors and the Orthodox Union (OU) that deny the reality of the illegal slaughter process documented by PETA at AgriProcessors continue to appear in the media. Specifically, Mr. Menachem Lubinsky, president and CEO of LUBICOM Marketing Consulting and a close associate of the Rubashkins, has repeatedly sent out deceitful news releases and made false statements denying any wrongdoing. Rabbi Menachem Genack, rabbinic administrator of the OU's kosher division, also continues to make false statements relevant to the intent to defraud the public by the individuals and entities named in PETA's complaint to the USDA, thus providing additional support for the imposition of penalties set forth in 21 U.S.C. § 676(a). Examples of these fraudulent statements follow:

- Mr. Lubinsky has stated falsely that "a veterinarian and 4 inspectors of the United States Department of Agriculture observe the kosher slaughter at all times as do 9 rabbis" ("PETA's Credibility on Kosher," *The Jerusalem Post*, 20 Dec. 2004). Although the absurdity of this statement requires no explanation to the USDA, the public who are not familiar with the agency's regulatory process and budget (and who purchase AgriProcessors' products) would have no reason to question its validity.

- In the same article, Mr. Lubinsky stated that "all the leading rabbis in the US and Israel have subsequently ruled that the shechita was kosher and the actions by the animals were reflexive in nature and not that of conscious animals." This is a false statement as documented in PETA's complaint to USDA. Moreover, the condemnation by rabbis of the illegal practices at AgriProcessors that followed the release of the video has been widespread. More than forty rabbis, many of them prominent leaders in the faith, have endorsed a petition ("Jewish Leaders Respond to Animal Abuse at Agriprocessors," available at <http://www.humanekosher.com/>) demanding extensive reforms at the slaughterhouse. The entire Rabbinical Assembly of the Conservative Movement, which represents more than one-third of U.S. Jewry, has condemned AgriProcessors in unequivocal language in a news release posted on its Web site and sent to all members (Rabbi Perry Raphael Rank, President, Rabbinical Assembly, *Statement on Shehitah*, available at <http://www.rabbinicalassembly.org/press/docs/Statement%20on%20Shehitah.doc>).
- Mr. Lubinsky continues to state fraudulently that the behavior at AgriProcessors has always been humane, declaring that "Agri itself has vowed to continue to upgrade its humane standards, not because the animals were ever mishandled or that they endured pain $\frac{1}{2}$ but because it wants to remove even the slightest perception that any animal is not treated humanely." ("There Can Be No Debate With PETA," *The Jewish Press*, 1 Jan. 2005.)
- Rabbi Menachem Genack continues to repeatedly and intentionally misrepresent to the public the number of animals who exhibited signs of consciousness after *shechitah* in the video. In a recent article, the rabbi states, "In the overwhelming number of cases the animal is insensate at [the time the trachea is removed]. However and inevitably, particularly when it is considered that 18,000 cattle were slaughtered during the seven-week period when the video was shot, there was a tiny percentage of the animals whose carotid arteries were not completely severed so they were not completely unconscious. $\frac{1}{2}$ The USDA permits up to a five percent initial failure rate." ("Setting the Record Straight on Kosher Slaughter," *The Jewish Press*, 29 Dec. 2004.) Rabbi Genack is well aware that the video footage was taken on five days during a 42-day period, and that on each of these five days, PETA's investigator filmed—uninterrupted—the slaughter of a total of 278 cattle. Rabbi Genack also knows that the video shows that at least 25 percent of the 278 cattle (a very conservative estimate) remained conscious as their tracheas and esophagi were ripped from their throats—as when they were dumped from the facoima pen—and that more than 10 percent struggled to stand. If extrapolated as a representative sample of the 18,000 animals slaughtered over the 7-week period, more than 4,000 animals were still conscious when they hit the cement floor of the slaughterhouse, and thousands struggled to stand. PETA has repeatedly brought this misrepresentation to the attention of Rabbi Genack, but he chooses to continue his deceptions. PETA's correspondence with Rabbi Genack on this issue is available upon request.

Thank you for your consideration of this additional information. Please note that I have attached an additional copy of PETA's second amendment to our initial complaint. This amendment is dated December 10, 2004, and was not referenced in your January 24 letter. Please ensure that both the December 10 amendment and this letter are included in the USDA file on this matter.

Sincerely,

Lori E. Kettler
Counsel
Research & Investigations Department