

AnimalOutlook.org

Changing the World for Animals

info@animaloutlook.org | 301-891-2458

PO Box 9773 | Washington DC 20016

Submitted electronically to:

carl-martin.ruiz@fsis.usda.gov

scott.safian@fsis.usda.gov

Carl-Martin Ruiz - Deputy Assistant Administrator
USDA Food Safety and Inspection Service
Office of Investigation, Enforcement, and Audit
1400 Independence Avenue, SW
Suite 3133-South Building
Washington, D.C. 20250
(202) 720-8609

Scott Safian - Branch Chief, Enforcement Operations
USDA Food Safety and Inspection Service
Office of Investigation, Enforcement, and Audit
1400 Independence Avenue, SW
Stop Code 3753, PP3, Cubicle 8-235-A
Washington, D.C. 20250
(202) 418-8872

September 25, 2020

Dear Deputy Assistant Administrator Ruiz and Branch Chief Safian,

On behalf of Animal Outlook (“AO”) (formerly Compassion Over Killing), I am writing to notify you of a violation of the 2019 consent decree entered into between the Food Safety and Inspection Service (“FSIS”) and Transhumance Holding Company (“THC”) on behalf of its subsidiary Ellensburg Lamb Company (“ELC”)¹. On August 17, 2020, the FSIS issued a Notice of Intended Enforcement (“NOIE”) to ELC based on inhumane handling and slaughter. The facts giving rise to this NOIE represent a clear violation of the 2019 consent decree and accordingly, AO requests the FSIS to enforce the terms of the decree to the fullest extent possible.

I. Background on the 2019 Consent Decree

On May 14, 2019, the FSIS entered into a consent decree with THC, a copy of which is attached.² The consent decree arose following AO’s 2017 undercover investigation of Superior Farms, a division of ELC. AO’s position was that its investigation revealed egregious and systematic violations of the Humane Methods of Slaughter Act in addition to deeply troubling

¹ ELC does business as Superior Farms.

² Consent Decree, May 14, 2019.

food safety concerns, including workers changing the “best by” dates on meat products and failing to run food through metal detectors.³

Following the investigation, AO brought a False Claims Act (“FCA”) lawsuit against Superior Farms alleging fraud in relation to contracts to supply meat to two federal government agencies, including some intended for the National School Lunch Program. The Department of Justice (“DOJ”) subsequently intervened in the FCA lawsuit.

Ultimately, the FCA case was resolved through a settlement and attendant consent decree. On May 14, 2019, the FSIS and THC entered into a binding consent decree stipulating numerous terms of compliance intended to remedy ELC’s repeated violations of the Humane Methods of Slaughter Act. The consent decree included provisions requiring ELC to hire a Humane Handling Coordinator (“HHC”), conduct training on handling and slaughter, and conduct ongoing program audits.⁴ Importantly, both parties agreed that the consent decree would be binding for two years, or until May 14, 2021.⁵

Most relevant to the present violation, the consent decree clearly mandates that “ELC shall maintain compliance with applicable statutory and regulatory requirements for sanitation, food safety programs, process controls, *humane slaughter and handling*, and all other applicable requirements”⁶

Moreover, the consent decree tasked the HHC with explicit responsibilities, including “ensur[ing] compliance with all statutory, regulatory, and other applicable humane handling and slaughter requirements, including:”

- “Ensure that all stunning devices, restraining equipment and any other equipment used in livestock handling and slaughter have been tested for functionality and compliance with the manufacturer’s guidelines.”⁷
- “Address the specific actions to be taken by employees in the event of an ineffective stun;”⁸

The terms of the consent decree are plain and unambiguous — ELC was ordered to comply with all requirements pertaining to the humane slaughter and handling of animals. By the FSIS’ own words in the NOIE, ELC has breached the consent decree and should be penalized accordingly.

³ ANIMAL OUTLOOK, *Sheer Horror at Superior Farms*, <https://animaloutlook.org/2019-updates/> (last visited Sep. 23, 2020).

⁴ Consent Decree, May 14, 2019 – Section II.

⁵ *Id.* at Section II(F).

⁶ *Id.* at Section II(E) (emphasis added).

⁷ *Id.* at Section II(A)(1).

⁸ *Id.* at Section II(A)(4).

II. The Consent Decree is Breached

The aforementioned terms of the consent decree were breached upon the FSIS' issuance of a NOIE on August 17, 2020 which documented repeated botched stunning attempts that caused unconscionable suffering to a sheep in the custody of ELC. According to the NOIE:

On August 12, 2020, at approximately 0930 hours, the assigned Supervisory Public Health Veterinarian (SPHV), went to the U.S. Suspect pen in the barn at the establishment to check on two nonambulatory sheep. The SPHV observed both sheep were in a sternal recumbent position with heads up and alert. The SPHV took the temperature of the first animal and the temperature was 106.5 F. The SPHV condemned this animal in accordance with Title 9 CFR 309.3(c). [REDACTED] loaded the primary captive bolt gun and back up captive bolt gun to euthanize the condemned sheep in the holding pen. After [REDACTED] applied the first stunning blow to the condemned sheep, the animal's head remained upright, and the animal was looking around. [REDACTED] applied a second stun with the back up captive bolt gun and the animal's head remained upright. [REDACTED] reloaded both captive bolt guns and administered a third stun. Following the third stun, the animal's head remained upright, and it voluntarily moved its legs in an effort to move away. There was blood coming from the animal's nose. After several more stun attempts, the animal was rendered unconscious.⁹

The NOIE leaves no doubt that ELC breached the terms of the consent decree. The NOIE states that these acts "constitute[] failure to adhere to the regulatory requirements of the humane handling and slaughter of livestock, as required by the Federal Meat Inspection Act, 21 U.S.C. 603(b), the Humane Methods of Slaughter Act, and the regulations promulgated thereunder."¹⁰ Based on this failure to adhere, the FSIS notified ELC of its "intent to withhold the marks of inspection and suspend the assignment of inspectors for the slaughter operations."¹¹

Under the terms of the consent decree, ELC was required to "maintain compliance with applicable statutory and regulatory requirements." By the FSIS' own language, ELC has failed to do so and has breached the terms of the consent decree.

III. Penalties for Breach

Under the consent decree, failure to comply with the terms may lead to the imposition of a stipulated penalty in the amount of \$5,000.¹² Moreover, "[s]hould the subject violation last more than one week without being cured," ELC must pay \$5,000 per week "until the deficiency is cured."¹³

⁹ FOOD SAFETY AND INSPECTION SERVICE, *Notice of Intended Enforcement*, Ellensburg Lamb Company, Inc., dba Superior Farms, Dixon, CA, Aug. 17, 2020.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Consent Decree – Section III.

¹³ *Ibid.*

Here, at a minimum, ELC is clearly liable for a stipulated penalty in the amount of \$5,000 for its violation of the terms of the consent decree as clearly documented in the NOIE. In addition, in the event ELC has failed to take corrective actions to remedy the obvious deficiencies in training and/or equipment which led to the failure to properly stun a sheep on at least five separate occasions, they are similarly liable for additional penalties of \$5,000 per week.

The facts of this matter are deeply concerning. AO's 2017 investigation revealed ELC's blatant disregard for federal handling and slaughter requirements and ultimately led to an unprecedented intervention by DOJ into the FCA. The current consent decree arose from these troubling facts and was intended to ensure compliance with the laws intended to offer basic protection for animals slaughtered at ELC. The terms of the consent decree have clearly been breached and in doing so, ELC has demonstrated plainly that past issues persist to this day. We urge the FSIS to fully enforce the terms of the consent decree and — at a bare minimum — impose a penalty of \$5,000 against ELC.

We appreciate your consideration and respectfully request a response to this correspondence notifying us of the outcome of the FSIS' investigation into this matter. If you have any questions regarding this request, please contact me at (804) 307-4102 or wlowrey@animaloutlook.org.

Sincerely,

A handwritten signature in black ink that reads "Will Lowrey". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Will Lowrey
Counsel
Animal Outlook

cc: Kelli L. Taylor, Assistant United States Attorney (kelli.l.taylor@usdoj.gov)