



February 8, 2022

Delivered Electronically

Attorney General Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Acting United States Attorney Phillip A. Talbert
United States Attorney's Office
Robert T. Matsui United States Courthouse
501 I Street, Suite 10-100
Sacramento, CA 95814

Re: Request for Initiation of Civil Suit under the Twenty-Eight Hour Law for Unlawful Confinement of Pigs

Dear Attorney General Garland and Acting U.S. Attorney Talbert:

On behalf of Animal Outlook (AO) and the Animal Welfare Institute (AWI), we write to inform you of recent violations of the Twenty-Eight Hour Law, Title 49 U.S.C. § 80502, in Nevada County, California. The Twenty-Eight Hour Law ("the Act") generally requires that for every 28 hours of interstate transit, animals be offloaded for at least 5 hours and given food, water and the chance to rest. The Act imposes a mandatory duty upon the Attorney General's office to bring a civil action to collect fines upon learning of violations of the Act. 49 U.S.C. § 80502(d).

As explained below, the confinement of a truckload of pigs for more than 28 consecutive hours constitutes a clear violation of the Twenty-Eight Hour Law, and therefore the Attorney General's office must bring a civil proceeding to collect the fines provided for in the Act. As explained below, these animals were crammed into a semi-trailer and subjected to horrendous conditions for at least a 32-hour transport from Nebraska into California.

Attached please find evidence of this violation, including an Incident Statement, video, and still images.

Factual and Legal Background

Investigators from AO began following a truck at 3:10 pm local (Central) time on August 23, 2021 on I-80 westbound in Dawson County, Nebraska. The truck had US DOT # 952044 and VIN SD362059 painted below the driver-side door, and a Trailer Tag with Kansas license #683753.¹ The investigators quickly confirmed, on video, that the truck was carrying pigs.² They also confirmed on video that “Isaacson Truck Line, Inc.” and “Salina, Kansas” appeared on the fuel tank under the driver’s side door of the cab³, indicating that the truck was registered to Isaacson Truck Line, Inc., located at 2238 Wesley, Salina, KS 67401 and/or 9173 S. Ohio Street, Assaria, KS 67416.⁴ Isaacson’s phone number is 785-667-2265.⁵ The company’s email address is risaacson@hometelco.net, and its MC number is MD-407656.⁶

The investigators followed the truck for over 32 hours. At no point was the truck out of their sight for more than 45 minutes. At no point did the investigators witness the driver unloading the pigs, providing them food, or providing them water. During an approximately 10-hour stop at a Wyoming travel center, the investigators did not witness the driver unloading any live animals or providing them food or water. Instead, the pigs were left inside the truck for over 32 hours straight, enduring temperatures the investigators measured at up to 91 degrees Fahrenheit.⁷

That broke federal law. By its unambiguous terms, the Twenty-Eight Hour Law required that truck driver to unload the pigs for at least 5 hours for every 28 hours of transport and give them food, water, and rest. In pertinent part, the Act provides:

[e]xcept as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

49 U.S.C. § 80502(a)(1).

The Act provides limited exceptions to the general 28-hour rule which serve to extend the 28-hour confinement period to a maximum of 36 hours in some cases. 49 U.S.C. § 80502(a)(2). For example, animals may be confined for up to 36 hours if they cannot be unloaded due to

¹ Exhibit 1. All exhibits to this letter are located on Google Drive. An invitation to access the exhibit folder will be emailed to you separately.

² Exhibit 2.

³ Exhibit 1.

⁴ Isaacson Truck Line Inc., Truck Driving Jobs, <https://www.truckdrivingjobs.com/companies/54cace599dc5d72c3d08b579> (last viewed on 12/10/21).

⁵ Id.

⁶ Federal Motor Carrier Safety Administration Safety Measurement System, <https://ai.fmcsa.dot.gov/SMS/Carrier/952044/Overview.aspx?FirstView=True> (last viewed on 1/6/22).

⁷ Exhibit 3.

"accidental or unavoidable causes that could not have been anticipated or avoided when being careful." 49 U.S.C. § 80502(a)(2)(A).

As noted above, the Act imposes on the Attorney General a nondiscretionary duty to collect fines of at least \$100 and up to \$500 for each knowing and willful violation of the Act, including this one:

[a] rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation. **On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States for the judicial district in which the violation occurred or the defendant resides or does business.**

49 U.S.C. § 80502(d) (emphasis added).

For many decades, the Attorney General vigorously enforced the Twenty-Eight Hour Law and collected fines in the manner required by the Act. Indeed, there are dozens of reported federal court decisions involving execution of the duty an attorney general has to recover the civil penalties provided for by the Act between 1900 and 1950. See, e.g., *U.S. v. Oregon R. & Nav. Co.*, 163 F. 640 (1908); *U.S. v. Atlantic Coastline R. Co.*, 173 F. 764 (4th Cir. 1909); *U.S. v. Chicago, M. & St. P. Ry. Co.*, 250 F. 442 (8th Cir. 1918). Since the early 1960s, however, there are no reported instances of the Attorney General executing the duties imposed by the Act.

Legal Analysis

Isaacson Truck Line, Inc.'s confinement of pigs for over 28 hours in August was in patent violation of the Act.⁸ In this case, all of the pigs on the truck were confined for more than 28 hours while in interstate transport, in a vehicle by Isaacson Truck Line, a common carrier. As discussed in the U.S. Department of Agriculture's response to our⁹ 2005 petition for rulemaking¹⁰ (attached), transport trucks such as those involved in this incident are plainly "vehicles" and are therefore regulated by the Act.

These violations were committed "knowingly" and "willfully." Each of the pigs should have been offloaded pursuant to the Act before the driver passed the 28-hour point of the journey. Instead, the driver continued on. There can be no argument that Isaacson Truck Line and its driver did not knowingly carry these animals for more than 28 hours—our investigators documented that the animals were confined in the trailer for more than 32 consecutive hours; since the investigators

⁸ None of the Act's exceptions are relevant here. See 49 U.S.C. § 80502(a)(2).

⁹ Sub nom Compassion Over Killing, the former name of Animal Outlook, and submitted together with organizations including the Humane Society of the United States.

¹⁰ Exhibit 4.

did not witness the beginning or the end of the trip, the confinement had to be even longer than that. Additionally, there can be no argument that these animals were offloaded to rest, feed and drink for five hours as required. They were not.

The mental state element of the Act is satisfied here because Isaacson Truck Line and the driver either “purposely or intentionally” failed to do what the Act requires, and did so “having knowledge of the facts.” *Grand Trunk Ry. Co. v. U.S.*, 229 Fed. 116, 119–20 (7th Cir. 1915). To satisfy the “knowingly and willfully” mental state element of the Act, the government need only show “[a] simple purpose to do the act forbidden, in violation of the statute.” *U.S. v. Union Pac. R. Co.*, 169 Fed. 65, 67 (8th Cir. 1909); *see also Grand Trunk Ry. Co. v. U.S.*, 229 Fed. at 119 (“The word ‘willfully,’ as used in the act, has a number of times engaged the attention of the courts, and has quite uniformly been held not to require an evil intent, but only that the defendant should have purposely or intentionally failed to obey the statute, having knowledge of the facts.”); *St. Louis & S.F.R. Co. v. U.S.*, 169 F. 69, 71 (8th Cir. 1909).

A 1905 Opinion, authored by United States Attorney General W.H. Moody, demonstrates that the Attorney General's office has long considered the Act violated even in cases where carriers are unaware of how long animals in their care have been confined. 25 Op. Atty. Gen. 411 (1905). In this opinion, Attorney General Moody, later Supreme Court Justice Moody, answers an inquiry posed by the Secretary of Agriculture. The opinion addresses a factual scenario in which a company accepts animals who have already been confined in transit and transports them further without a break, such that their total time in confinement without rest, food, and water exceeds the 28-hour time limit. The opinion concludes that the recipient carrier is “undoubtedly liable for the penalty which the statute provides” even where the company accepts animals “without inquiry, and in fact without regard to the number of hours during which the stock has been confined in cars on connecting line or lines without rest, water, and feeding.” *Id.* Thus Attorney General Moody's reading of the Act is that a carrier incurs liability by either failing to learn of or by failing to track the number of hours animals have been confined, where confinement time exceeds the maximum limits imposed by the Act.

There can be no denying that the Department of Justice is legally bound to sue Isaacson Truck Line for this violation. Judicial construction of nearly identical mandatory enforcement language contained in the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, compels the conclusion that the enforcement language in the Twenty-Eight Hour Law imposes on the Attorney General a mandatory duty to enforce the Act. The Fair Housing Act allows a party to a housing discrimination complaint to elect to have the issues addressed in federal district court rather than in an administrative hearing. Where a party does so elect, the Fair Housing Act provides that:

the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection.

42 U.S.C. § 3612(o)(1).

Thus, once the statutory condition precedents have occurred, the Attorney General's duty to prosecute a civil action under 42 U.S.C. § 3612(o)(1) becomes mandatory. See *U.S. v. Forest Dale, Inc.*, 818 F. Supp. 954, 965 (N.D. Tex. 1993) ("once Defendants elected to litigate the discrimination claim in this court, the Attorney General was required to file suit within 30 days."); see also, Janet Reno, Memorandum For All United States Attorneys (Nov. 10, 1993) (describing Fair Housing election lawsuits as "nondiscretionary lawsuits" and noting that the Attorney General is "of course . . . required by statute to file these lawsuits."). The enforcement language—"shall commence and maintain, a civil action"—of 42 U.S.C. § 3612(o)(1) creates a nondiscretionary duty to file suit once election, the condition precedent, has occurred. The materially indistinguishable language in the Twenty-Eight Hour Law—"shall bring a civil action"—likewise imposes on the Attorney General's office the nondiscretionary duty to file suit when the statutory condition precedent—"learning of a violation"—has occurred.

For the reasons discussed above, Animal Outlook and the Animal Welfare Institute respectfully request that your office bring a civil action to collect penalties for the violations discussed above as required by the Act. Both groups are ready and willing to assist in this matter in any way that would be useful to your office. You can contact Piper Hoffman at 929-560-4006 or phoffman@animaloutlook.org.

Sincerely,



Piper Hoffman, Esq.
Senior Director of Legal Advocacy
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