



Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

September 13, 2021

Stephen Lindee, Watonwan County Attorney
Watonwan County Courthouse
710 Second Ave. S
St. James, MN 56081

Via USPS and email

Re: Request for investigation and potential prosecution of Butterfield Foods Co. and employees for cruelty to animals in your jurisdiction

Dear Mr. Lindee,

I write on behalf of the Animal Welfare Institute (AWI) to request that your office investigate and consider for prosecution or refer to local law enforcement the following repeated instances of animal cruelty:

On June 9, 2021, an incident involving cruelty to birds occurred at Butterfield Foods Company (“Butterfield”), located at 225 Hubbard Avenue, Butterfield, Minnesota. Because of Butterfield and its staff’s deliberate neglect, 2,552 birds—43% of the shipment—died from exposure to temperatures in excess of 90 degrees in a trailer that was abandoned overnight with no heat abatement (i.e., fans, shelter). Attachment 1. According to Minn. Stat. § 343.21, it is unlawful to deprive any animal of necessary food, water, and shelter. It is also unlawful to neglect or abandon any animal, or to keep any animal in an enclosure without providing change of air.

Butterfield and its employees have apparently failed to comply with Minnesota law on at least four other occasions in the past three and a half years:

- In August 2020, Butterfield allowed over 9,500 birds to suffer and die from exposure by forcing them to sit overnight in transport trailers during hot weather with no heat abatement. Attachment 2.
- In February 2020, Butterfield allowed more than 9,000 hens to freeze to death in trailers parked outside an unloading shed when wind chill fell to minus 32 degrees. In this incident, hens were found frozen solid and stuck to the cages. Attachment 3.
- In March 2018, Butterfield failed to provide shelter to chickens confined on a transport truck during freezing weather. This resulted in the death of at least 330 birds, many of which had large unfeathered areas indicating that the birds had experienced prolonged exposure to extreme temperatures. At least a dozen of the birds were “hard and non-flexible” and there was an excess of eggs and waste on the bed of the truck indicating a long, cold journey. Attachment 4.
- In February 2018, Butterfield allowed hens on a transport truck to be exposed to subfreezing temperatures (2–18 degrees) for 22–28 hours, resulting in the death of approximately half the birds. Attachment 5.

AWI was established in 1951 to reduce the suffering caused by humans to animals, including farm animals subject to transport and slaughter. AWI monitors transport and holding conditions faced by animals sent to slaughter facilities and engages in advocacy to help reduce the suffering experienced by these animals to the greatest extent possible. It is our opinion that the incident described above is particularly egregious, especially given the pattern of repeat offenses.

AWI obtained this information from U.S. Department of Agriculture inspection records. Although pursuant to the Poultry Products Inspection Act (21 U.S.C. §§ 451–472) the slaughter, sanitation, and inspection practices at poultry processing facilities are regulated by the USDA Food Safety and Inspection Service (“FSIS”), the department does *not* regulate the treatment of poultry waiting for slaughter in transport trailers. The FSIS acknowledges the authority of state officials in the treatment of birds at federal slaughterhouses and that, in some situations, incidents may violate a state’s animal cruelty code.¹

The documented incidents appear to constitute cruelty to birds under Minn. Stat. § 343.21. Prosecution should be strongly considered to avoid future incidents of this nature and to ensure those who engage in this kind of behavior are held responsible to the fullest extent of the law.

Thank you for your consideration. If you have any questions or would like to arrange a meeting, please contact me via email at erin@awionline.org or by phone at 202-446-2147.

Sincerely,


Erin Sutherland
Staff Attorney
Farm Animal Program

¹ FOOD SAFETY AND INSPECTION SERVICE, *Directive 6910.1: District Veterinary Medical Specialist (DVMS) – Work Methods*, 19–20 (2009) https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/6910.1.pdf.

Attachment 1
Butterfield June 2021

Table: MOIs in Response to FOIA2021-371

EstNbr	EstName	MOI #	Date	Task Code	TaskName	Status	MOI Agenda
M17250+ P6+V6	Tyson Foods, Inc.	UQI401104 1816G	16APR2021	04C05	Poultry Good Commercial Practices	Finalized	<p>On Friday, April 16, 2021 at approximately 1032 hours I, (b)(6), performed a good commercial practice verification task in the picking room. I positioned myself at a point where I can directly view both lines entering the scald vats. On picking line 1, within one minute of continuing my check I observed one live bird of average size, still breathing with no visible neck cuts, entering the scald vat. The bird was hanging normally with its head straight down blinking its eyes and still breathing. Approximately 5 birds later another live bird was observed of average size with no visible neck cuts, entering the scald vat and blinking its eyes while still breathing. I located (b)(6) who radioed for (b)(6) (b)(6). Once (b)(6) arrived in the picking room, I notified him of my observations. I performed a recheck observation of the line for compliance at approximately 1038 hours; I did not observe any live birds entering the scald vat at this time. After management assessed the incident, I had a brief discussion with (b)(6) (b)(6) and (b)(6) about their assessment and their further planned actions. I informed them again of my observations and of the forthcoming GCP MOI documenting these events. (b)(6) stated that monitoring for the remainder of the shift would be increased in addition to adding a third back up killer. Sincerely, (b)(6) (b)(6) cc (b)(6) (b)(6) Kermit Harvey, DVM – Deputy District Manager - AL</p>
M248B+P 215	Butterfield Foods Company	GXN391006 1209G	09JUN2021	04C05	Poultry Good Commercial Practices	Finalized	<p>On June 9, 2021, while conducting a GCP task in P215, I noticed a large number of dead birds on trailer 121. Most of the dead birds were on the right side of the trailer. When the trailer was unloaded there was a total of 2552 dead on arrival birds out of 6000 on the trailer. The temperature the day before was in the 90's degrees Fahrenheit. The company holds chickens both in a shed with fans on all sides and when that is full out on a dirt lot. When I left the premises the night before I noticed trailers parked on the lot without any heat abatement on them. I did not specifically see trailer 121 out there. This morning when I came in, I noticed trailer 121 was out on the dirt lot without any heat abatement on it. The company stated that the trailer came in the afternoon before, but they do not know for sure where it was held during that time. They were shifting trailers into the shed from the lot. With the way the trailers are placed on the dirt lot a higher number of DOA birds on the right side would indicate that they received more sun from the west and were likely on the dirt lot in the afternoon and overnight. The company stated that they would not be loading birds until the night until the heat subsides.</p>

Attachment 2
Butterfield August 2020

Table: MOIs in Response to FOIA2021-108

EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
M248B+P215	Butterfield Foods Company	GXN4912082 213G	13AUG2020	04C05	Poultry Good Commercial Practices	Finalized	<p>Est. P215, Butterfield Foods Co., August 11, 2020, 0900 hours. In attendance: (b)(6) (b)(6)</p> <p>(b)(6) (b)(6) At approximately 1200 hours on August 10 (b)(6) called to inform me that he had observed many deceased birds in the barrels in the unloading area. (b)(6) contacted me again at approximately 1300 hours to inform me there was a second trailer with many deceased birds. Upon review of the establishment's records on August 11, trailer 120 had 4,305 dead-on-arrivals and trailer 121 had 4,155. The total number of birds on these trailers was less than 9,000 each. The remaining seven trailers in the lot had 1,123 DOAs combined. At 0900 hours on August 11th, I met with (b)(6) to discuss trailers 120 and 121. Mr. (b)(6) informed me that the private company that drains the shed pit had left a large hose lying across the entrance of two spaces in the shed. When the two truck drivers saw the hose blocking the entrance, they left the trailers outside in the sun. The birds arrived between 1600 and 1900 hours on Sunday and were left outside until Monday morning. Six trailers arrived on Sunday, and all trailers should have been in the shed. (b)(6) said this has been addressed in the establishment's humane handling binder. He said they spoke with the owner of the private company and informed them that the hose was left out. The drivers were notified that they should call (b)(6) if they have any problems dropping off birds so an establishment employee can be sent to the premises. The birds were held on the premises for an extended period outside the holding shed and were not protected from the warm weather. The high temperature on Sunday was approximately 86 degrees Fahrenheit. The PPIA and Agency regulations require that live poultry be handled in a manner that is consistent with good commercial practices and that they not die from causes other than slaughter.</p>

Attachment 3
Butterfield February 2020

EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
M248B+P2 15	Butterfield Foods Company	GXN47160 25621G	21FEB2020	04C05	Poultry Good Commercial Practices	Finalized	<p>Est. P215, Butterfield Foods Co., February 21, 2020, 0915 hours. In attendance: Dr. Melissa Hlavacek, SPHV; (b)(6)</p> <p>(b)(6) At approximately 0800 hours on February 20, I was informed by (b)(6) (b)(6), that the first trailer from Lot 2 was in the unloading room and ready for antemortem inspection. Upon arrival to the unloading room, I observed many hens frozen to the metal cages in the trailer. I also observed significant numbers of dead hens. Nearly every hen visible from the outside of the trailer on the bottom two rows was frozen solid, as were many hens throughout the trailer on the outside layers. The hens throughout the trailer were quiet and still. Some birds were observed shivering. The hens had almost no feathers. I observed similar conditions on the second trailer. Following my observations, I spoke with (b)(6), who informed me that the birds had traveled from Ohio to Minnesota. (b)(6) said all three trailers in Lot 2 were in the shed when he arrived in the morning but were not present the night before. The shed is three-sided and is not temperature-controlled. The panels were on all trailers during transport and during the wait period. Upon further discussions with (b)(6) (b)(6), he informed me that the three trailers arrived at approximately midnight, 0200 hours, and 0400 hours. The air temperatures in Ohio were around 30-40°F. The hens were slaughtered between approximately 0900 and 1200 hours. During the period between arrival and slaughter, according to the National Weather Service, the outside temperature at the St. James Municipal Airport (17 miles from Butterfield Foods) was between -8 and -17°F with a wind chill between -21 and -32°F. Upon review of the establishment's records on February 21, Lot 2 had 9,150 DOAs of 25,867 total hens (35% DOAs). I spoke with (b)(6)</p>

Attachment 4
Butterfield March 2018

Dist rict	EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
25	M248B	Butterfield Foods Company	GXN31070 32309G	2018-03-09	04C05	Poultry Good Commercial Practices	Finalized	<p>On March 8, 2018 at approximately 11:53 AM, while performing a Good Commercial Practices Verification Task I observed that the plant was experiencing a higher than normal amount of Dead on Arrival (DOAs) birds in the first load of Lot #2 (Truck #22). I requested (b) (6) accompany me to examine the truck and provide his impression of the condition of the birds on the trailer. Approximately 20 dead chickens were observed on the exterior two lower level cages of the trailer and on palpation approximately 12 were "hard" and "non-flexible". (b) (6) made the observation that here was what appeared to be a larger than "normal" quantity of eggs and waste on the bed of the truck indicating a possible longer amount of time in transit than usual accentuating the effects of the cold weather. While the plant staff went on beak and the truck was waiting to be unloaded, I requested (b) (6), and (b) (6), come to the unloading dock with me to examine the condition of the birds on the truck. Gross examination of these birds revealed no remarkable pathology indicating a flock disease. However, many birds had large unfeathered areas. The unfeathered areas revealed deeply reddened skin tissue suggestive of prolonged exposure to extreme temperatures. Many appeared to be dead, as they were not noticeably moving or breathing. Post-mortem pathology observed in live slaughtered birds from this lot was unremarkable. Cold weather protective panels on livestock haulers were in place during transport and holding until the birds were prepared for unloading. The plant ensured all dead birds were properly disposed of and the load was finished with no further incident. The plant subsequently reported that of the (b) (4) birds in lot #2, 330 were DOA. The DOA numbers from previously</p>

Table: MOIs in Response to FOIA2018-328

District	EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
								<p>unloaded trucks delivered prior to the unloading of Truck #22 ranged from 32 to 82 DOA per load. The establishment indicates they will fully employ humane methods of handling and slaughtering consistent with Good Commercial Practices in a way that minimizes injury to poultry. Poultry are to be handled in a manner that prevents needless injury and suffering. Employing humane methods of handling and slaughtering that are consistent with Good Commercial Practices increases the likelihood of producing unadulterated product. Similar GCP observations were made by (b) (6) on 2/23/2018 in an MOI, Subject: Poultry Good Commercial Practices / GXN5608022123I. We will discuss this situation during the weekly meeting on March 9, 2018 with establishment management to determine any additional corrective actions and/or preventive measures could be adopted in the future to minimize the possibility of a similar (or worse) incident happening in the future, especially when birds are held overnight in extreme weather conditions.</p>

Attachment 5
Butterfield February 2018

Table: MOIs in Response to FOIA2018-328

Dist rict	EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
25	M248B	Butterfield Foods Company	GXN19160 23523G	2018-02-23	04C05	Poultry Good Commercial Practices	Finalized	<p>On 2/21/18, I performed ante-mortem inspection on truck 12 for Lot 3 at approximately 1120 hours. I observed that approximately 50% of the hens on the truck were dead and the carcasses were frozen solid. The dead, frozen birds were focused on the bottom half of the truck (bottom four rows of cages). Evaluation of the rest of the live birds noted no overt signs of disease, but many of the birds were not well feathered and on the thinner side. As the live birds on the upper half of the truck appeared cold, but healthy, I ante-mortem passed the lot. The establishment appeared to be doing a good job ensuring the frozen birds were not entering the facility, to prevent adulterated product; this was achieved by hangers sorting out DOAs from live birds during the hanging process and directing the DOAs to the white, inedible barrels below and hanging live birds for slaughter. However, the concern is with the number of birds frozen upon arrival at the facility and while being held at the facility prior to slaughter. This issue was discussed with Mr. Juan Cervantes (Plant Manager) at approximately 1130 hours 2/21/18, as I observed approximately half a trailer of frozen DOA birds presented for ante-mortem inspection. I asked Mr. Cervantes where Lot 3 birds were from and when they arrived at the establishment; he stated they were transported approximately 2 hours and arrived the day before at approximately 1300 hours (on 2/20/18). The slaughter of Lot 3 started on 2/21/18, at approximately 1150 hours and ended at approximately 1630 hours. Thus, the birds from Lot 3 were held on establishment premise for approximately 22 to 28 hours prior to being slaughtered; the temperature on the morning of 2/21/18 was in the single digits, (approximately 2F) and had risen to the teens (approximately 18 degrees) in the afternoon (Fahrenheit). A weather archive of average high/low temperatures in for</p>

District	EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
								<p>these dates in Butterfield, MN, can be found at www.accuweather.com At approximately 1230 hours, I observed the rest of Lot 3 trucks in the holding shed (Trucks 13, 19, and 15; a total of 4 trucks for Lot 3). While being held at the establishment prior to slaughter, the trailers of birds were kept paneled in a 3-sided non-temperature controlled building. Trucks 13, 19, and 15 were all completely paneled with every fourth panel pulled up at the top approximately 8 inches to allow for ventilation. At this time I could not visualize any of the birds. As the trucks entered the hanging room, I observed each one as it was unpaneled. Although these trucks did not exhibit the excessive percentage of dead, frozen birds as truck 12, there were consistently dead, frozen birds in the bottom 1 to 2 rows of each battery on every truck in this lot. Evaluation of the health status of the live birds on these trucks was consistent with truck 12, and passed for slaughter. I observed excessive DOA carcasses piled up in the hang room throughout the live hang process of Lot 3 and did not observe any live birds in the inedible white barrels/floor. All DOAs were denatured and rendered per regulatory requirements. The issue was further discussed with Mr. Cervantes at approximately 1600 hours on 2/21/18. He asked what the health status of the birds were on inspection, and I reported a high number of condemn rates due to septicemia/toxemia (approximately 7.5% due to all condemnable conditions except contamination and plant rejects, calculated on 2/22/18). I also pointed out that the cages are slatted, as I observed the majority of egg white/yolk and fecal/urinary excrement accumulating on the bottom caged birds which also contributes to the freezing process. I discussed that the birds were on the thinner side and not well feathered, but I was also</p>

Table: MOIs in Response to FOIA2018-328

District	EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
								<p>concerned that they had been in very cold temperatures on site for over 24 hours prior to slaughter. It was discussed that multiple factors may have contributed to these birds in particular being more affected by the cold, but the percentage of DOAs in Lot 3 was concerning. Mr. Cervantes stated that they are going to aim for loading trucks with (b) (4) birds or more to help maintain heat of the lot during cold conditions, as he had noted from his records that trucks with fewer birds than that had increased DOA percentages. Mr. Cervantes had recorded the total number of birds on truck 12 from Lot 3 from the daily kill schedule which was determined to be approximately (b) (4) birds. He also stated they were going to monitor each truck when they arrive on premise to assess the status of the birds going forward. (b) (6)) discussed in the weekly meeting on 2/22/18 that the trucking company was also contacted by plant management to discuss the issue regarding Lot 3 DOA numbers slaughtered on 2/21/18. After reviewing the daily totals on 2/22/18, the establishment reported 9,750 DOA birds out of a total count of (b) (4) birds (approximately (b) (4) DOA rate).</p>

WATONWAN COUNTY ATTORNEY'S OFFICE

MEMORANDUM

TO: Investigator Adam Butler

FROM: Stephen J. Lindee, Watonwan County Attorney

RE: Butterfield Foods
ICR No: 21100219

DATE: October 29, 2021

DECLINED FOR PROSECUTION

I have reviewed the above-referenced matter and am declining prosecution. I do not believe that criminal charges are appropriate. As an initial matter, it is very clear from the information that the death of these birds was not intentional or malicious. The issue is one of negligence. I note the following:

1. Butterfield Foods is in the business of processing chickens. If the chickens they buy for processing are not usable by the time they enter the facility, the company loses money. Therefore, it is in the company's best interests to keep the birds in good shape before processing.
2. The company has a floor inspector, six line inspectors, and even a veterinarian on staff. This indicates that the company is taking steps to ensure the chickens are properly handled.
3. Butterfield Foods processes 21,000,000 chickens a year. Therefore, although the number of birds that died on June 9, 2021, (2,552) sounds very shocking at first, taken in context it represents only .0002% of the birds processed by Butterfield Foods in a year. This is important because it indicates that this incident is the exception, not the norm.
4. When these incidents do occur, the company examines the issue and takes remedial measures in an attempt to prevent them from happening again. This is indicated in your report as well as in the information supplied by the Animal Welfare Institute.

Looking at the totality of the circumstances, I don't believe a criminal charge is warranted. This decision is not an attempt to undermine the work that the Animal Welfare Institute and other similar organizations do; animal mistreatment, neglect, and cruelty is a real thing and is deplorable. My decision in this matter is based on an analysis of the evidence presented, and this particular situation does not strike me as being criminal in nature.

If you have any questions, please contact me.

SJL



Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

December 17, 2021

Stephen Lindee, Watonwan County Attorney
Watonwan County Courthouse
710 Second Ave. S
St. James, MN 56081

Via USPS and electronic mail

Re: Response to October 29, 2021, letter regarding decision to decline prosecution for repeated instances of mistreatment at Butterfield Foods Inc.

Dear Mr. Lindee:

Thank you for your letter, dated October 29. While the Animal Welfare Institute (AWI) is encouraged that you apparently discussed these incidents with representatives of Butterfield Foods (Butterfield), we are disappointed that your office has chosen not to pursue prosecution in this matter. We are aware that two other national animal protection organizations previously contacted your office about the pattern and practice of mistreatment of animals at Butterfield, and we had hoped that AWI's third attempt in this regard would have conveyed to your office the seriousness of these incidents.

My organization has prepared the attached memorandum, which contains an analysis of whether Butterfield's actions amount to mistreatment of animals under Minn. Stat. § 343.21. The circumstances at Butterfield, documented by the U.S. Department of Agriculture (USDA), indicate that the establishment has engaged in repeated acts of abandonment, failure to provide shelter, and unlawful enclosure in violation of the law. Contrary to your memorandum, intentionality is not a threshold requirement, and there is no exception to this law for negligent acts.

The various policy arguments provided in your memorandum disregard the fact that Butterfield operates its facility in contravention of the law and industry norms. While the number of birds that died during these incidents is small in comparison to the number of birds slaughtered at this facility annually, this is not an appropriate criterion to determine whether these incidents warrant prosecution. The law does not contain an exemption for an animal custodian that harms only a small percentage of animals in its care.

Further, even by comparison to industry guidelines, Butterfield's conduct is troublesome. The industry standard for dead on arrival birds (DOAs) is based on the number of birds dying during one week. The industry guidelines state that an average of more than 0.5% DOAs on a weekly

basis should result in an internal investigation and corrective action.¹ The USDA record for the 2021 incident shows a 43% DOA rate, and the two 2020 incidents involved DOA rates nearing 50% on two truckloads and 35% on another truckload, respectively. These DOA rates are exceptionally high. We do not know the weekly DOA averages at the facility that correspond to these incidents, but these extremely high numbers suggest it is very possible Butterfield exceeded industry standards for the respective weeks. Additionally, according to industry standards, holding times should be kept at a minimum, and the time from catching on the farm to slaughter should be no greater than 12 hours. This guideline appears to have been exceeded in all five of the incidents cited by AWI.²

Repeated incidents at Butterfield demonstrate that remedial measures taken by the establishment have been inadequate to address the problem(s). Butterfield has shown that it is not deterred by financial losses or the presence of government inspectors (which is required by law at *all federally inspected poultry slaughter facilities*). AWI fears similar incidents will occur in the future, as inaction by your office has, in effect, given Butterfield license to engage in continued mistreatment of birds.

Thank you for your consideration. I invite you to review the attached memorandum. Please contact me via email at erin@awionline.org or by phone at (202) 446-2147 if you have any questions.

Sincerely,


Erin Sutherland
Staff Attorney
Farm Animal Program

(enclosure)

¹ National Chicken Council, *Animal Welfare Guidelines and Audit Checklist for Broilers* at 17 (2020) https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines_Broilers_Sept2020.pdf.

² *Id.* at 15.



Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

MEMORANDUM

To: Stephen Lindee, Watonwan County Attorney
From: Erin Sutherland, Staff Attorney
Date: December 17, 2021
Re: Butterfield Foods: Mistreatment—Watonwan County Minnesota

QUESTION PRESENTED

Under Minnesota law, can Butterfield Foods Company (“Butterfield”) or its employees be convicted of animal mistreatment when it allowed birds to sit overnight in unprotected trailers during extreme weather without heat abatement, change of air, or shelter from cold, resulting in the death of thousands of birds?

BRIEF ANSWERS

Yes. Butterfield’s actions present violations of at three subdivisions of Minnesota Statute § 343.21 for the mistreatment of animals: failure to provide adequate shelter, inadequate change of air, and abandonment. First, for all three incidents, Butterfield failed to provide the birds with necessary shelter by leaving them unprotected from hot or cold weather. Second, for two incidents, Butterfield employees failed to provide a change of air for the birds and thus failed to provide adequate enclosure conditions. Third, for all three incidents, Butterfield abandoned the birds by leaving them overnight on a dirt lot during extreme weather. Butterfield’s actions caused the death of thousands of birds left in its care.

STATEMENT OF FACTS

On June 9, 2021, August 11, 2020, and February 21, 2020, incidents of mistreatment of birds occurred at Butterfield, located at 225 Hubbard Avenue, Butterfield, Minnesota.¹ Butterfield's actions caused the death and needless suffering of over 21,000 birds from exposure to extreme weather conditions, insufficient shelter, and lack of proper ventilation.

While a U.S. Department of Agriculture (USDA) inspector documented the incidents during the course of verifying Good Commercial Practice compliance, the Poultry Products Inspection Act (PPIA) does *not* regulate the treatment of poultry awaiting slaughter in transport trailers. 21 U.S.C. §§ 451–472. Even though the USDA documents these occurrences, no enforcement actions are taken against the establishment, no matter how egregious the incident may be. However, the USDA acknowledges the authority of state officials in overseeing the treatment of birds at federal slaughterhouses and recognizes that some incidents may violate state or local animal cruelty codes.²

On the morning of June 9, 2021, a USDA inspector at Butterfield's establishment observed 2,552 of 6,000 birds on a trailer were dead. Attachment 1. The inspector further observed that this trailer was placed at this location the previous day with no fans or other mechanisms for heat abatement or change of air. *Id.* On the previous day temperatures reached above 90° F. *Id.* Furthermore, most of the bird deaths occurred on the right side of the trailer, indicating that it had

¹ According to Good Commercial Practices (GCP) records generated by the USDA, there have been at least two other incidents since 2018 involving similar mistreatment of birds. In March 2018, Butterfield failed to provide shelter during freezing weather, resulting in the death of at least 330 birds. Attachment 4. In February 2018, Butterfield exposed hens to temperatures between 2° F - and 18° F for 22 to 28 hours, resulting in the death of approximately half the shipment of the birds. Attachment 5.

² FOOD SAFETY AND INSPECTION SERVICE, *Directive 6910.1: District Veterinary Medical Specialist (DVMS) – Work Methods*, 19–20 (2009) https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/6910.1.pdf.

received more sun from the west than the other side of the trailer and that the trailer was in the exact location as it had been the afternoon before. *Id.*

In a nearly identical event, on August 11, 2020, Butterfield caused the death of over 9,500 birds. Attachment 2. The birds suffered and died from heat exposure after Butterfield abandoned the animals in three trailers overnight with no heat abatement as temperatures reached above 85° F. Attachment 2.

On February 21, 2020, Butterfield caused the death of over 9,000 hens. Attachment 3. During this incident, Butterfield left 9,150 hens overnight in a non-temperature controlled three-sided shed. The lack of shelter, subfreezing temperatures, and wind-chill of -32° F caused the animals to freeze to death. Attachment 3. When describing the incident, the USDA inspector noted that "the bottom two rows [of hens] were frozen solid" and that some were even "frozen to the metal cages in the trailer." Attachment 3.

DISCUSSION

1. Intent and the Statute of Limitations Do Not Preclude Prosecution

a. Intent is Not Required Under Minnesota's Animal Mistreatment Statute

Contrary to the "declination" letter,³ subdivisions 2, 3, and 5 of Minnesota's animal mistreatment statute do not contain an element of intent. Minn. Stat. § 343.21(2), (3), (5). Nor does negligence exempt conduct by persons who have mistreated animals in violation of the statute.

Subdivision 7 does, however, contain an element of intent. The provision reads, "[n]o person shall *willfully* instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals" (emphasis added). The canon of construction

³ Memorandum from Adam Butler to Stephen J. Lindee, Watonwan County Attorney (Oct. 29, 2021) ("[T]he death of these birds was not intentional or malicious. This issue is one of negligence.")

expressio unius stands for the concept that the inclusion of one is to the exclusion of the other.⁴ The Minnesota state legislature saw fit to include an element of intent for subdivision 7; therefore, in the legislature's failure to include a similar intent requirement in the remaining provisions of Minnesota Statute § 343.21, it provided that no intent element is needed to prosecute crimes under the remainder of the statute. Since there are no indicator words of intent within subdivisions 2, 3, and 5 of the Minnesota Statute § 343.21, no element of intent is required.

Case law also supports this conclusion. *State v. Stolt*, 1992 WL 43316, *1 (Minn. Ct. App. 1992) (unpublished). In one case, a defendant alleged that the jury needed instruction that knowledge is an element of Minnesota Statute § 343.21 subdivisions 1 and 2. *Id.* The court responded that while knowledge is sufficient to satisfy the element of charge or control under subdivision 2, it is not a necessary element of a jury instruction. *Id.* Therefore, in the absence of indicator words, the Minnesota courts have not read an element of intent to be included in at least provision 2 of Minnesota Statute § 343.21.⁵

b. The Statute of Limitations Does Not Preclude Prosecution of the 2020 & 2021 Events

Minnesota Statute § 343.21 contains no provision limiting the period in which prosecutors must bring court cases. Minnesota law does, however, contain a generally applicable statute of limitation. Minnesota Statute § 628.26(j) provides that "indictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense." Despite the inclusion of the law in a separate chapter from Minnesota Statute § 343.21, the statute of limitation applies to the animal mistreatment statute because Chapter 628 of the Minnesota

⁴ Judge Russell E. Carparelli, *The Rehnquist Court's Canons of Statutory Construction*, NATIONAL CONFERENCE OF STATE LEGISLATURES (2005), https://www.ncsl.org/documents/lss/2013pds/rehnquist_court_canons_citations.pdf.

⁵ No court cases from Minnesota have addressed intent in relation to subdivisions 3 and 5 of Minn. State. § 341.21.

Statutes conveys the rules for criminal procedure in the State of Minnesota, and Minnesota Statute § 343.21 is a criminal statute. Therefore, the implication of the three-year statute of limitations for mistreatment of animals in Minnesota is that a few of the older offenses mentioned in the “Statement of Facts” section of this Memorandum likely cannot be prosecuted. The events from February and March 2018 are beyond the time when charges may be filed. Nevertheless, a prosecutor can still pursue the incidents from June 2021, August 2020, and February 2020.

3. Butterfield Violated Minn. Stat. § 341.21(2): Nourishment; Shelter Provision

Minnesota Statute § 343.21(2) provides that “[n]o person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter.” Butterfield’s conduct concerning the June 2021, August 2020, and February 2020 incidents meets the necessary elements needed to prosecute the failure to provide nourishment or shelter under Minnesota law.

The first element of this provision is charge or control of an animal. The Supreme Court of Minnesota has held that persons were in charge or control of animals when they held the animals on their property. *State v. Maguire*, 188 Minn. 627 (Minn. 1933); *State v. Klammer*, 230 Minn. 272 (Minn. 1950). The court held in these cases that possession of the animals within landowners’ property was sufficient to find charge or control for the purposes of the statute. For June 2021 and August 2020, Butterfield held the birds within their property on a dirt lot outside of their processing buildings. Attachment 1 & 2. And in February 2020, Butterfield held the birds in trailers inside a three-sided shed on the property. The physical possession of the birds during these incidents is sufficient to establish charge or control over the animals for the incidents taking place in June 2021, August 2020, and February 2020.

The second element of this provision is that the person in control of the animals deprived them of “necessary food, water, or shelter.” “Necessary” and “shelter” are not defined in the

statute. No cases from Minnesota provide a relevant definition for shelter. However, under Minnesota Statute § 645.08, the canons of construction provide that "words and phrases are construed according to . . . their common and approved usage." As such, courts can apply dictionary definitions to determine the common and approved meaning of words. Black's Law Dictionary defines shelter as a "place of refuge providing safety from danger, attack, or observation."⁶ Similarly, Cambridge English Dictionary defines shelter as "(a building designed to give) protection from bad weather, danger, or attack."⁷ From these definitions, shelter should protect animals from the danger of extreme weather conditions that would jeopardize their wellbeing.

The shelter provided to the birds at Butterfield was inadequate under these dictionary definitions. For the June 2021 and August 2020 incidents, Butterfield held the birds on transport trailers in plastic or wire cages, on a dirt lot. Attachments 1, 2. This is inadequate shelter to protect birds from the danger of extreme temperatures as they are merely intended to confine animals for a short time during transport. The birds were obviously insufficiently sheltered as there was a "high number of DOAs" on the side that received direct sun and "many deceased birds." *Id.* In fact, in the August 2020 incident, the USDA inspector noted, "the birds were held on the premises for an extended period outside the holding shed and were not protected from the warm weather." Attachment 2.

The February 2020 incident is another example of inadequate shelter. During this incident, Butterfield held the birds in a three-sided shed with no temperature control mechanisms, leading 9,150 birds to freeze to death. Attachment 3. These birds were "quiet and still . . . shivering . . .

⁶ *Shelter*, BLACK'S LAW DICTIONARY (11th ed. 2019).

⁷ *Shelter*, CAMBRIDGE ENGLISH DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/shelter> (last visited Nov. 11, 2021).

[and] had no almost no feathers.” *Id.* Further, the USDA inspector noted “the shed is three-sided and is not temperature controlled.” *Id.* Shelter that fails to protect against the elements like extreme heat or extreme cold obviously fails to meet the dictionary definition of the term.

While Minnesota Statute § 343.21(2) does not define “necessary,” the Minnesota Court of Appeals interpreted the word in an unpublished opinion. *State v. Holseth*, 1992 WL 189427, *3 (Minn. Ct. App. 1992). The judges found that “necessary” was included by the legislature to “prohibit animal owners from exposing their animals to conditions likely to result in needless suffering.” *Id.* The court rejected the defendant’s arguments that the inclusion of the word “necessary” meant the statute was intended only to punish food, water, and shelter deprivation when it results in loss of life. *Id.* Therefore, the death of animals is sufficient evidence to find deprivation of necessary food, water, or shelter, but it is not necessary to find such violations of the Minnesota Statute.

Regardless, tens of thousands of birds died under Butterfield’s care due to its failure to provide shelter. In June 2021, 6,000 birds died from exposure to extreme heat because Butterfield failed to provide necessary shelter; therefore, the deaths are sufficient evidence that Butterfield deprived the birds of “necessary” shelter. In August 2020, the birds’ deaths were at least partly attributable to Butterfield’s failure to provide shelter to protect the birds from the sweltering heat. Additionally, Butterfield’s treatment of the birds in February 2020, leaving them in a three-sided shed with no protection from the elements and no heating during below-freezing temperatures, amounts to a failure in providing necessary shelter. The law requires adequate shelter for animal survival and to protect animals against needless suffering; therefore, the death of the animals in all three incidents is sufficient evidence for a court to find that Butterfield deprived the birds of necessary shelter required by Minnesota Statute § 343.21(2).

4. Butterfield Violated the Minn. Stat. § 341.21 Subdivision 3: Enclosure Provision

Minnesota Statute § 343.21(3) provides that "[n]o person shall keep any . . . animal in any enclosure without providing wholesome exercise and change of air." To show a violation of the act, a prosecutor must demonstrate that (1) the person charged kept the animal in an enclosure and (2) failed to provide a change of air. No cases within the Minnesota courts have interpreted subdivision 3. Butterfield employees' behavior during the June 2021 and August 2020 incidents meets both elements given the deprivation of ventilation aids during high heat conditions.

First, during both incidents, Butterfield kept the birds enclosed overnight in transport trailers. Attachments 1, 2. Second, Butterfield failed to provide a change of air. Attachment 1. For the June 2021 incident, the record stated that the trailer was parked on the lot "without any heat abatement," (on a day where temperatures exceeded 90° F) as opposed to keeping the trailer in sheds with "fans on all sides." Attachment 1. Butterfield's callousness is further noted in the inspector's record: "[Butterfield] stated that they would not be loading birds until the night until the heat subsides[,]” meaning the company knew these birds would continue sitting in the hot sun with no ventilation. For the August 2020 incident, the trailers were left in direct sunlight instead of the shaded, ventilated sheds in which they were supposed to be placed during hot weather. Attachment 2.

By not providing the birds with ventilation, such as fans, Butterfield failed to provide a change of air required by Minnesota Statute § 343.21(3). As a consequence of Butterfield's failure to provide fresh air to the birds, over ten thousand birds suffered and perished during the two incidents due at least in part to the resulting heat stress caused by lack of fresh air.

5. Butterfield Violated the Minn. Stat. § 341.21 Subdivision 5: Abandonment Provision

Minnesota Statute § 343.21(5) provides that "[n]o person shall abandon any animal." However, there is no statutory definition for abandon/abandonment in the Minnesota statutes on animal mistreatment or even the larger animal cruelty chapter. According to Minnesota Statute § 645.08, when laws fail to define words, they should be "construed according to . . . their common and approved usage." The Cambridge English Dictionary defines abandon to mean "leav[ing] a place, thing, or person."⁸ In all three incidents from June 2021, August 2020, and February 2020, Butterfield abandoned these birds in transport trailers overnight.

As to the June 2021 and August 2020 incidents at Butterfield Foods, the employees abandoned the birds in the transport trailer by leaving them outside on a dirt lot overnight.⁹ Attachments 1, 2. Regarding the February 2020 incident, Butterfield abandoned the birds overnight in transport containers located in a three-sided shed without protection from the elements. Attachment 3. Due to Butterfield's abandonment, countless birds needlessly suffered and over 21,000 perished from lack of shelter and change of air.

⁸ *Abandon*, CAMBRIDGE ENGLISH DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/abandon> (last visited Nov. 11, 2021).

⁹ One court in Minnesota has applied the Common Law of property abandonment (which includes an element of intent in addition to the act of leaving the property) to a dispute over dog ownership but the case is distinguishable from the events at Butterfields. First, the case involved a different Minnesota Statute within a separate chapter of the Minnesota Code, and second, the case sought a civil remedy of replevin (return of the dog) whereas the issues for Butterfield Foods are criminal matters. *Zephier v. Agate* 957 N.W.2d 866 (Minn. 2021). The *Zephier* case was brought under the abandonment of tangible personal property statute (Minn. Stat. § 345.75) rather than under the animal mistreatment statute at issue related to Butterfield.