

How To Counsel New York Livestock Producers Against Farm Animal Cruelty Charges

By Cari Rincker, Rincker Law, PLLC

In the wake of the ban on horse slaughter, there has been an increase of New York horse breeders and other livestock producers being prosecuted for the neglect of farm animals. This past spring, Ernest Paragallo, a thoroughbred breeder from Long Island, was indicted for 35 misdemeanor counts pursuant to Section 353 of the N.Y. Agriculture & Markets Law while 177 horses were seized from Brook Farm. He is still awaiting trial in Greene County, New York for his alleged neglect to provide necessary food, water, shelter and veterinary attention to horses under his care and management. Cases like this have induced fear in the minds of horse breeders and other livestock producers that they will be next. This article seeks to inform attorneys who counsel livestock producers in New York in preventing and mitigating animal cruelty liability.

New York Farm Animal Cruelty Law

The primary animal cruelty law in New York placing criminal liability on livestock producers for the neglect of their farm animals provides the following:

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or *deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink*, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or *to be deprived of necessary food or drink*, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a class A misdemeanor

See N.Y. Agric. & Markets Law § 353 (emphasis added). New York courts have interpreted the term “sustenance” to include shelter and veterinary care.

Buster’s Law, which places felony liability for animal cruelty, rarely applies to livestock producers. Buster’s Law defines “aggravated cruelty” as an action: (i) to cause “extreme physical pain” or (ii) that is “especially depraved or sadistic.” N.Y. Agric. & Markets Law § 353-a. Livestock producers should be primarily concerned with misdemeanor liability for the failure to provide “necessary” food, drink, shelter and veterinary care pursuant to section 353.

Under the New York Agriculture & Markets Law, duly incorporated animal societies, principally Society Preventing Animal Cruelty (“SPCA”) at the county level, are able to obtain warrants from a magistrate upon showing reasonable cause that farm animals are being potentially abused. With this warrant an animal society can search and seize livestock as “peace officers” and do not need a police officer present. During the search, the animal society is able to bring a video camera on the property. When New York livestock owners are faced with this situation, the farmers should fully cooperate and call an attorney *immediately*. Attorneys should encourage their clients to read the warrant and pay special attention that the search by SPCA is not being performed outside the scope of

that warrant.

Five Preemptive Moves

Attorneys in New York should encourage livestock producers to take the following five preemptive steps to mitigate the liability for farm animal cruelty:

1. Document Compliance With Animal Care Recommendations. New York livestock owners should have a good working relationship with Cornell University extension specialists, nutritionists, veterinarians, and other livestock experts. Encourage livestock owners to conduct regular farm visits with these experts to ensure their livestock is properly cared for. They should document these visits, any recommendations, and keep a record of noted improvements. Livestock producers should archive these records in a place that is protected against an Act of God.
2. Follow Animal Care Guidelines. Many livestock commodity groups have voluntary programs that livestock operations can participate in. The New York State Department of Agriculture and Markets also has some voluntary programs for horse breeders and other livestock producers. With the counsel of experts, livestock operations could also develop their own animal care handbook used internally on the farm. Furthermore, attorneys should encourage livestock owners to train farm employees on proper animal care and handling.
3. Prohibit Farm Employees from Using Video Cameras. In an employment contract, attorneys should pay special attention to the ability of farm employees to bring video cameras on the property. Livestock owners should require employees to agree that they will not bring any recording devices on the farm. This would help reduce the likelihood that undercover employees would distribute an edited video putting a livestock operation in false light while giving the producer legal recourse if the employee does so.
4. Use Media To Tell Your Story. Livestock attorneys should encourage farmers to tell their story to the American public to restore trust that they love and care for their livestock. Farmers are encouraged to participate in social media like Facebook, Twitter, and blogs and work with local radio stations and newspapers to help educate the public on proper farm animal care. The Ohio Farm Bureau Federation has an excellent guide to social media for farmers. Lawyers should encourage livestock operations to update their farm's website and post pictures and videos putting your livestock operation in a positive light.
5. Talk to Your Community About Your Livestock Operation. Livestock attorneys should encourage New York horse breeders and other livestock producers to get involved in their community and help educate the general public of their sound production practices.

Someone recently told me that “farmers should play a role to help balance zealotry with reason.” By following these recommendations, New York livestock producers can reduce the likelihood that they will be prosecuted criminally for farm animal neglect while helping bridge the gap of understanding.