



## USDA'S FAILURE TO ENFORCE THE ANIMAL WELFARE ACT

For many years, the Companion Animal Protection Society (CAPS) has watched over USDA APHIS Animal Care. Specifically, CAPS has monitored the agency's program for inspecting commercial dog/cat breeding and brokering facilities, also known as puppy mills and kitten mills. Time and again, CAPS' undercover investigations have revealed USDA to be extremely negligent in enforcing the Animal Welfare Act (AWA) at these facilities.

Our ongoing, in-depth research and investigations have demonstrated that USDA continues to have minimal concern for dogs and cats suffering in mills—and for puppies and kittens being transported to pet shops and sold online. Below are some examples of how USDA APHIS Animal Care favors the pet shop/breeding/brokering industry at the expense of animals suffering inside USDA-licensed facilities.

### **Failure of USDA to Comply with the Office of Inspector General (OIG) Report**

In May 2010, the OIG for USDA released a scathing 69-page report criticizing the USDA's breeder inspection program. This followed an audit and investigation prompted by a meeting that CAPS and Crowell & Moring attorneys (our pro bono lobbyists from 2002–2010) had with OIG officials in May 2006. We provided the OIG with compelling videos and reports from our undercover investigations of USDA-licensed breeders and brokers, detailing extreme levels of animal neglect.

**The OIG's subsequent report called for stronger enforcement of the Animal Welfare Act.** However, USDA has failed to comply with these recommendations. Instead, it has become more pro-industry: a response to the wave of pet shop regulations initiated by CAPS and other groups in many municipalities and states. A lax approach by USDA to the inspection of USDA-licensed facilities is one glaring example of this trend.

A CAPS review of hundreds of USDA inspection reports has shown that many USDA inspectors **continue to cite veterinary care AWA violations as indirect rather than direct**, even when the violations are cited as "repeat." Direct violations are those that directly impact the health and well-being of the animals. Some USDA inspectors have seen serious structural violations at breeding facilities, which could have harmed or killed the animals living there. But the inspectors have cited those violations as indirect. In addition, inspectors should be citing each veterinary care non-compliance as a separate violation but have been citing **one violation** for multiple sick animals. For example, if ten dogs need care (two with infected eyes, three with severe mats, three that are too thin, and two with untreated wounds from fighting), an inspector will cite just **one** veterinary care non-compliant item for them all.

### ***Case Study of Shocking USDA Inspection Reports — Amos and David Diener***

Amos and David Diener were USDA-licensed dog breeders in McLeansboro, Illinois (formerly 33-A-0525). Their USDA inspection reports are shocking and provide clear evidence of USDA's failure to enforce the AWA. Here are some excerpts, in which USDA inspectors failed to take appropriate actions:

**Inspection Report, 6/28/12:** *"This was a focused inspection on ventilation due to the extremely high temperatures in the area. The outside temperature was taken at 3:30 pm using a Kestrel device which registered 107degF in the sun and 105degF in the shade. The licensee has a sundowner building with indoor and outdoor accessibility, the indoor area registered a temperature of 99degF. The one small window was open; however, there was no fan or air conditioning available to cool the room to the required ambient temperature of 85degF."*

The inspector instructed the Dieners to correct this violation immediately, **but twelve days passed before the inspector returned to verify that it had been done.** The dogs were in serious risk of heat exhaustion and death; therefore, the inspector should have ordered the Dieners to buy AC units **right then**, and she should have stayed to watch them be installed. **She also should not have cited this violation as indirect.** The dogs were in immediate risk of harm, which is a *direct* violation. In addition, the Dieners were violating state cruelty and neglect laws. The inspector should have reported them to local law enforcement authorities—as per the OIG recommendations—but she didn't.

This is despite the fact that Dr. Chester Gipson, APHIS' longtime (and now former) deputy administrator of Animal Care, assured CAPS at a January 2014 meeting in his Washington, D.C. office that inspectors were reporting all acts of animal cruelty by USDA licensees to local law enforcement. Gipson was responsible for overseeing the inspections of commercial dog breeding and brokering facilities at the time.

**Inspection Report, 6/11/13:** *“There was a female black poodle #262 that was found dead in the primary enclosure with 3 other dogs during the inspection. There was blood splattered on the back wall and pooling into the catchment below the outdoor run of the enclosure. Upon inspection of the animal, it appeared the dog was killed in an attack by at least one of the three dogs in the enclosure within approximately 1-2 hours of the inspection.”* [The inspector then describes the physical condition of the dog.] *“This appeared to be a very violent and probably painful attack. The 3 remaining dogs appeared to be stressed, as the Pekinese was drooling excessively, with saliva completely covering his mouth and chin. An employee stated that all dogs were alive in the morning during chores; however, he did see blood but did not investigate further.”*

*“There was a black/white beagle female (no ID) on the bottom row, NE side that appeared in distress and pain with labored breathing and an enlarged abdomen...It appeared the female was full of possible fluid due to an unknown cause as the employee and licensee were unaware if she was pregnant. After the inspection, the female delivered 4 dead pups. A veterinarian had not been contacted as her distress had not been observed and the licensee was unaware that the female had been pregnant.”*

The inspector listed **four serious veterinary care violations** on the 6/11/13 inspection form **but only cited them as one.** She also gave the Dieners **three entire days** to correct the violations. Once again, the inspector failed to report the Dieners to local law enforcement for violating state cruelty and neglect laws.

**Inspection Report, 7/9/13:** *“Within the past 3 weeks, 6–7 dogs were killed by the licensee using a metal pipe to strike the animal in the back of the head. This method of euthanasia is not in accordance to the PVC and was not done by a veterinarian. All regulated animals must be euthanized in accordance with the Program of Vet Care procedures under the direction of a veterinarian and according to the AVMA guidelines.”*

The inspector **failed** to report the Dieners to local law enforcement for violating state cruelty and neglect laws.

*“During an inspection at 1300 hrs, the temperature was 93degF with a Heat Index of 112degF inside the kennel. There is an air conditioner; however, it did not have fuel to operate.”*

The inspector instructed the Dieners to correct this violation that day, but she should have remained at the facility until they fixed the air conditioner. Because the dogs were in immediate risk of harm, she should have cited the violation as *direct*. She also should have reported the Dieners to local law enforcement authorities for violating state neglect and cruelty laws, especially given their history of failing to provide adequate cooling in extreme heat.

Thankfully, in January 2014, USDA reached an agreement with the Dieners to relinquish their license. But not before many dogs suffered and died. Six months passed from the time of their last inspection until this agreement was reached.

## **Helping Breeders Circumvent Pet Shop Ordinances**

USDA has, unfortunately, made the recent decision to help many substandard breeders circumvent pet shop ordinances to sell more puppies. USDA is working to increase the AWA compliance rate of its licensees so that, at least on paper, their facilities appear more humane. **But USDA is accomplishing this goal not by bringing puppy mills into AWA compliance but by avoiding writing citations.**

This is part of the agency's continuing effort to improve the reputation of commercial dog breeding. But these policies deceive consumers about the sources of commercially sold puppies. **USDA is, in effect, a willing collaborator in perpetrating consumer fraud on the American public through the sale of sick puppies.**

In a stunning policy reversal, USDA has now decided to **decrease enforcement of the Animal Welfare Act (AWA)**. USDA's stated goal for this policy is to reduce the regulatory burden on breeders. At a meeting of animal advocates in September 2015, Dr. Chester Gipson said that USDA needs to "enable breeders to sell their dogs to pet stores." Gipson pointed to the citation of non-compliances on inspection reports as an impediment to such sales. This new policy is largely due to the growing national movement of pet shop ordinances.

CAPS is a leader in the pet shop ordinance movement, which seeks to prevent the commercial sale of mill animals. Most of the municipal ordinances we have assisted on have completely banned the local retail sale of dogs, cats, and rabbits. Some ordinances, however, have only been restrictive. For example, municipalities might prohibit pet shops from buying puppies or kittens from USDA-licensed facilities with violations on their records. The laws might also make it illegal for pet shops to get animals from brokers, or they may require pet shops to provide USDA inspection reports to customers upon request. **However, if USDA is not properly enforcing the AWA, the information on those reports will be misleading.**

Here are some recent actions USDA has taken to decrease AWA enforcement and deceive the American public:

### ***Online Inspection Database Removal***

In February 2017, USDA chose to shield from scrutiny those who neglect and abuse their animals. The agency barred the public from viewing its online database of licensed dog and cat breeding facilities. USDA also terminated public access to the inspection reports of those facilities. Without a database, the public cannot easily discover if a dog or cat breeder has been violating the Animal Welfare Act. In addition, cities and states that regulate animal sales cannot properly enforce their laws without timely access to USDA's information. Municipalities wishing to enact similar ordinances also need USDA's reports to see if their local pet shops are using breeders who violate the AWA.

### ***Failure to Comply with Freedom of Information Act***

Without access to the online database, concerned citizens are now forced to use Freedom of Information Act (FOIA) requests to obtain USDA inspection reports. This process can take many months, and the results are valueless: **USDA redacts all of the pertinent information.** USDA is violating FOIA by refusing to fully release inspection reports that identify breeders who are failing to meet humane standards of care. In addition, USDA inspectors have been instructed not to share any information with other federal agencies, state agriculture departments, or state and local law enforcement agencies concerning their findings during inspections—even when criminal abuse and gross neglect to animals have been discovered.

### ***Teachable Moments***

In 2014, at a dog breeders meeting put on by USDA, Western Regional Director Dr. Robert Gibbens discussed the agency's new "**teachable moments**" policy. CAPS Missouri Advisory Board Member Bob Baker, who is also the executive director of Missouri Alliance for Animal Legislation, was in attendance. At the meeting, Gibbens told the room that USDA had instructed its inspectors to **no longer cite breeders for "minor" non-compliances of the AWA.** Such documentation, he said, makes it difficult for breeders to sell their puppies and

kittens to pet shops in regulated municipalities. If an inspector sees a minor non-compliant item, rather than citing it on an official inspection report, the inspector can now write it in his notes as a “teachable moment.”

When Mr. Baker asked for USDA’s definition of “minor,” and about how many minor AWA violations will be ignored per facility and for how long, Dr. Gibbens responded that it would be left up to individual inspectors. Dr. Gibbens admitted that USDA had provided no guidance on the issue to its inspectors.

Gibbens told breeders at the meeting that “if, at any time, a violation has the potential of affecting your business, please call our office immediately and let us know.” He emphasized that USDA stands ready to enable breeders to market their dogs to pet shops. In other words, USDA has prioritized the protection of its licensees over the protection of the animals in USDA-licensed facilities.

After CAPS and others complained about USDA’s decision to ignore minor violations, USDA denied this policy and attempted to cover it up. Dave Sacks, communications officer for USDA, told Mr. Baker that Dr. Gibbens denied making such an announcement to dog breeders. Mr. Sacks assured Mr. Baker on several occasions that there was **no such policy and no one within USDA was familiar with the term “teachable moments.”**

When Mr. Baker later informed USDA that there had been a newspaper reporter at the breeder meeting (at the request of Mr. Baker) and that the reporter had taped the meeting, USDA was forced to come clean after six months of denying its new policy’s existence. Mr. Sacks, in an email to Mr. Baker dated 1/16/15, **finally confirmed** that USDA was ignoring “minor” violations, and he told Mr. Baker that “such ‘teachable moments’ are not something we utilize with licensees/registrants that have a poor compliance history.” As stated above, however, CAPS’ review of USDA inspection reports shows that USDA inspectors continue to cite **major violations** that affect the health and welfare of dogs as **“indirect.”** This means that under USDA’s new system, these “minor” violations can go completely unreported.

### ***Third Party Inspections***

In early 2018, USDA proposed that third parties—such as the American Kennel Club (AKC) or other industry groups—begin performing inspections of dog and cat breeders, supplementing and/or replacing USDA inspections. This proposal, however, was met with outcry. Animal advocates opposed it for its obvious conflict of interest. But dog breeders, also, were against it—fearful that a future USDA administration might allow animal rights groups to inspect their facilities. Because of this latter objection, USDA canceled the idea and is now considering another way to help the breeders increase their AWA compliance rate: announced inspections.

### ***Announced Inspections***

USDA recently announced a “Pilot Project,” where it will warn dog and cat breeders in advance of inspections. If these “announced inspections result in an increase in compliance during the Pilot Project,” USDA plans to frequently utilize them beginning in September 2018. Unfortunately, such a Pilot Project is a sham. Compliance rates will undoubtedly improve if breeders are warned in advance of inspections. Breeders will have time to hide away sick or injured dogs and clean or sanitize their kennels.

### ***Self-Reporting***

USDA has also implemented a new policy of “self-reporting.” Under this policy, USDA has agreed not to cite a breeder for any AWA violations that he has previously documented himself. In other words, if a facility is filthy and dogs are living in giant piles of feces, the breeder will not be cited by the inspector as long as the breeder has written down beforehand that he knows his facility has non-compliant items and that he intends to remedy them.

### ***Limited Inspections***

In addition, USDA has limited its own ability to inspect licensed breeders. It has reversed a policy that entitled its agents to inspect every animal and building on the premises. USDA will now only inspect those animals or

areas that a breeder permits. This policy allows breeders to prevent USDA from examining sick or injured dogs, and unsanitary or unsafe enclosures.

### ***Revised Animal Welfare Inspection Guide***

In May 2018, USDA revised its “Animal Welfare Inspection Guide,” omitting key provisions. The agency deleted thirty-one pages of inspector guidelines for identifying animals in need. The criteria for when to confiscate suffering animals was also removed, and veterinary care requirements were downgraded. The veterinary care changes, especially, are troubling. According to the revised guide: if a breeding facility animal is in need of care, USDA inspectors should contact that facility’s attending veterinarian—with whom the facility usually has a mutually beneficial business arrangement—and make the veterinarian aware of the issue. As long as this is done, the inspector should not cite the breeder for a veterinary care AWA violation.

The new guide also enumerates multiple excuses that a breeding facility owner can choose from to avoid a scheduled or unscheduled inspection: doctor appointments, personal events, etc. In addition, puppy mill owners are now allowed to challenge and/or weaken the findings of a USDA inspection before the reports are finalized. All of these changes protect USDA-licensed breeders; none protect those breeders’ animals.

### **USDA APHIS Strategic Plan 2015-2019**

APHIS currently operates under a five-year plan entitled “Safeguarding the Health and Value of American Agriculture Since 1972, Strategic Plan 2015-2019.” Under Goal 2, *Ensure the humane care and treatment of vulnerable covered animals*, is Objective 2.1: *Improve the welfare of animals covered under the AWA*.

Here are some of the 2.1 guidelines that prove USDA is enabling the industry and not enforcing the AWA:

- *Supplement the traditional inspection process with extensive consultation for struggling facilities. In limited cases, APHIS will offer facilities facing civil penalties the option of non-monetary settlement agreements.*
- *Facilitate outreach to dog breeder and dealer communities, encouraging education and discussion in more non-formal environments where topics can be freely discussed, experiences shared, and specific solutions to issues identified.*
- *Build trusting, collaborative partnerships with new and old partners such as the Amish and Mennonite communities that are entering the commercial dog breeder and dealer arena in greater numbers, leveraging relationships and resources to reach unlicensed facilities. Partnerships have focused on finding unlicensed kennels, licensing these kennels, and education. These partnerships highlight the shared goal of making sure that animals receive humane care and treatment. (See Amos and David Diener, above, as an example of how these “partnerships” aren’t working; Amish and Mennonite-run facilities have been among some of the worst puppy mills investigated by CAPS.)*
- *Partner with States or accredited professional or industry organizations...to reduce inspection frequency, within legal requirements, for facilities that have implemented and documented strong animal care and welfare programs. (This policy is unnecessary. APHIS already has a risk-based analysis program whereby facilities with few or no violations have less frequent inspections.)*

It is obvious from these tactics that APHIS is more interested in education than enforcement; the OIG’s mandate is being ignored. APHIS has a long history of being lenient with its licensees—trying to instead educate them. But licensees continue to commit serious and repeated violations. Education policies don’t work.

USDA Animal Care Inspectors (ACIs) and Veterinary Medical Officers (VMOs) are also reluctant to document violations or to follow-up on correct-by dates for violations. Even when an inspector cites numerous violations, APHIS rarely takes administrative action. When it does act, fines and suspensions are minimal; licensees typically consider these fines to be the cost of doing business. On the rare occasion where APHIS revokes a breeder's license, most of the sum of a larger fine is held in abeyance, meaning the revoked licensee only has to pay the rest of the fine if/when they violate the terms of the consent decree.

### **Hiring Strong Puppy Mill Industry Advocates**

In an effort to further aide substandard dog breeders, in 2014 USDA hired a long-time puppy mill lobbyist and advocate, **Julian Prager**, to be its "Canine Advisor." While at USDA, Mr. Prager assisted in training inspectors. However, Mr. Prager had a prior history of opposing the regulation of puppy mills. He was a longtime official with pro-industry organization such as the National Animal Interest Alliance and the American Kennel Club (AKC), and he vigorously opposed Pennsylvania's new puppy mill law. He also fought against implementation of USDA's regulation of online dog-and-cat sellers. And Mr. Prager opposed a law preventing puppy mill operators from performing surgeries—such as C-sections and debarking. Mr. Prager left USDA in 2016.

The same year, President Trump chose **Brian Klippenstein** to direct the USDA transition team. Mr. Klippenstein was the former executive director of Protect the Harvest, a nonprofit that supports protections of the pet shop/puppy mill industry. Once at USDA, Mr. Klippenstein ordered the removal of the online USDA APHIS database of licensees, which included their addresses, license numbers, and their complete, non-redacted inspection reports. As mentioned above, without access to the database, it's almost impossible for the public to discover if a dog or cat breeder has been violating the Animal Welfare Act. Klippenstein's father, former State Senator and Representative Glen Klippenstein, is still on the board of Protect the Harvest, another conflict of interest.

USDA hired Mr. Prager and Mr. Klippenstein to assist in enforcing the Animal Welfare Act—**which regulates the industry they had previously committed themselves to promoting and protecting**. Such blatant conflicts of interest are unacceptable.

### **Working with CAPS**

CAPS has a long history of working with USDA to help them enforce the Animal Welfare Act. In 2002, we began meeting with Dr. Gibson and Dr. Gerald Rushin at USDA. We also had a phone conference around 2005 that included Dr. Gibson, Dr. Rushin, Dr. Elizabeth Goldentyer, and Dr. Robert Gibbens. In this call, CAPS was instructed to begin delivering our investigatory evidence directly to Drs. Goldentyer, Gibbens, and Rushin. However, in the last couple years, USDA has changed its approach.

CAPS has lately been required to fill out the general complaint form when submitting our evidence. Often the receipts of these submissions are not acknowledged. While this general complaint form may be acceptable for the public, it is insufficient for the amount and type of materials gathered by CAPS. Our investigators go undercover inside USDA-licensed facilities, extensively documenting AWA violations.

Here are a few examples of previous CAPS investigations that have aided USDA:

#### ***Gary Felts***

In 2015, CAPS investigated Gary Felts, a USDA-licensed dog breeder in Iowa. Our investigation led to the discovery that **Felts was concealing assets to avoid paying more than \$18,000 in fines for AWA violations**. The OIG and the U.S. Attorney relied on our undercover video, reports, and other findings in their case against Felts. Sadly, Felts was allowed to plead guilty to only one count of making false statements. But he was ordered to have no further AWA violations during his probation. However, CAPS discovered that he had serious AWA violations in January 2017, which his USDA inspector failed to tell the OIG. CAPS notified the U.S. Attorney

and OIG, and Felts' license was terminated. Unfortunately, the U.S. Attorney didn't seize Felts' dogs to place them in shelters. Instead, Felts auctioned them off to pay his fine. The U.S. Treasury was apparently more interested in settling Felts' debt than in the welfare of the dogs, which were in terrible condition.

### ***Claudia Obermiller***

USDA relied on our undercover video evidence in 2015 to levy a **\$5,000 fine on Claudia Obermiller**, a cat breeder in Nebraska whose breeding facility contained horrendous AWA violations. CAPS was pleased that a fine was issued; however, we believe Obermiller's level of animal neglect warranted a license termination.

### ***Randy Stoen***

Randy Stoen was a USDA-licensee in Iowa who was killing dogs by gunshot and threatening to harm inspectors who came onto his property. CAPS provided USDA with undercover video and reports that highlighted many of Stoen's AWA violations and showed him bragging about his crimes. USDA revoked Stoen's license in March 2017, but he is still selling puppies online through PuppyFind.com and through classified ads in Iowa. In these ads, he falsely states that he is USDA-licensed. CAPS filed an online complaint on 6/20/18 and copied this complaint in an email to Assistant Regional Director Dr. Elizabeth Meek.

### ***Kathy Bauck***

Notorious breeder/broker Kathy Bauck operated a horrid, large-scale facility in Minnesota for years. She would not have been shut down without the involvement of CAPS. In 2006, an undercover CAPS investigator spent six weeks working at Bauck's facility, gathering evidence of sick, wounded, and emaciated dogs. Based on this evidence, **Bauck was convicted of animal cruelty**. USDA relied on this conviction to terminate her license. When Bauck began secretly selling puppies under another name, CAPS discovered this and worked closely with USDA's counsel, providing them with new evidence. As a result of our cooperative efforts, USDA **permanently** revoked Bauck's license and banned her husband and daughter from ever obtaining licenses as well.

These cases are not isolated. CAPS has investigated hundreds of breeders, and we have given USDA the undercover evidence from many of these investigations. Sometimes USDA has taken action; other times they haven't—even when we believed the evidence clearly called for it.

Historically, CAPS has been the only nonprofit to investigate inside of USDA-licensed facilities and document the AWA violations we find there (in a sense, doing Animal Care's work when they fall short). We believe the results of these investigations have proven their worth, and we would like to once again give our evidence directly to Animal Care (without the use of the public complaint form). We would also like to have direct access to the appropriate employees in the Eastern and Western Sector offices.

## **Conclusion and Call to Action**

The evidence is clear: USDA APHIS Animal Care doesn't properly enforce the Animal Welfare Act at commercial breeding/brokering facilities for dogs and cats. This intentional negligence is a direct rejection of the OIG report from 2010, and it is part of a broader USDA policy to falsely inflate the reputation of commercial dog-and-cat breeding—at the expense of consumer awareness and animal welfare.

CAPS is calling on the House Committee on Oversight and Government Reform to hold hearings on USDA APHIS Animal Care's failure to enforce the AWA. We are also requesting that OIG conduct another audit and investigation of Animal Care's policies, programs, enforcement protocol, and compliance with the Freedom of Information Act and 18 U.S.C. § 1001. Public scrutiny such as this is the only way to resolve USDA's troubling and persistent patterns of behavior.