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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	A.Q. Docket No. 06-0001
John R. Malouff d/b/a M&M Livestock,	)	
	)	
Respondent	)	Consent Decision

This proceeding was instituted under the Commercial Transportation of Equines for Slaughter Act (7 U.S.C. § 1901 note) (the Act) by a complaint filed by the Acting Administrator of the Animal and Plant Health Inspection Service alleging that respondent violated the Act and regulations promulgated thereunder (9 C.F.R. §§ 88 et seq.). The complainant and respondent have agreed that this proceeding should be terminated by entry of this Consent Decision.

For the purposes of this Consent Decision only, respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, and admits to the Findings of Fact set forth below.

Respondent waives:

- (a) Any further procedure;
- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;
- (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision; and
- (d) Any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by respondent in connection with this proceeding.

Findings of Fact

1 John R. Malouff d/b/a M&M Livestock is a resident of the state of Colorado with a mailing address of 0754 Lariat, Monte Vista, Colorado 81144.

2 (a) On or about March 10, 2003, 45 horses were shipped in commercial transportation for slaughter but USDA back tags were not applied to each horse in the shipment.

(b) On or about March 10, 2003, 45 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

(c) On or about March 10, 2003, 45 horses were shipped in commercial transportation for slaughter, but the shipment included approximately 17 stallions which were not completely segregated from the other horses to prevent each stallion from coming into contact with any other horse on the conveyance.

3. On or about July 12, 2003, 28 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

4. On or about August 24, 2003, 46 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

5. On or about November 17, 2003, 15 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

6. On or about November 18, 2003, 63 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

7. On or about November 23, 2003, 36 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

8. On or about November 30, 2003, 44 horses were shipped in commercial transportation for slaughter without USDA back tags.

9. On or about December 19, 2003, 40 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

10. On or about January 22, 2004, 37 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

11. On or about March 9, 2004, 24 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

12. On or about March 17, 2004, 40 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

13. On or about March 28, 2004, 25 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

14. On or about April 4, 2004, 26 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

15. On or about April 25, 2004, 13 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

16. On or about May 23, 2004, 33 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

17. On or about June 14, 2004, 34 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

18. On or about June 18, 2004, 33 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

19. On or about June 27, 2004, 40 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

20. On or about July 4, 2004, 33 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

21. On or about July 18, 2004, 35 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

22. On or about July 25, 2004, 37 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

23. On or about August 1, 2004, 37 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

24. On or about August 8, 2004, 37 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

25. On or about August 15, 2004, 44 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

26. On an unknown date, 35 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

27. (a) On or about September 5, 2004, 38 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

(b) On or about September 5, 2004, 34 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

28. On or about September 12, 2004, 24 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

29. On or about September 19, 2004, 34 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

30. On or about September 21, 2004, 35 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

31. On or about October 3, 2004, 38 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

32. On or about October 6, 2004, 34 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

33. On or about October 10, 2004, 56 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

34. On or about October 11, 2004, 32 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

35. On or about October 17, 2004, 42 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

36. On or about November 14, 2004, 41 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

37. On or about November 17, 2004, 42 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

38. On or about November 21, 2004, 30 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

39. (a) On or about December 13, 2004, 46 horses were shipped in *commercial transportation* for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

(b) On or about December 13, 2004, 46 horses were shipped in *commercial transportation* for slaughter, but one of the horses in the shipment was blind in both eyes such that it could not walk without being led, thereby causing it unnecessary discomfort, stress, physical harm or trauma.

40. On or about December 15, 2004, 42 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

41. On or about December 19, 2004, 37 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

42. (a) On or about February 23, 2005, 33 horses were shipped in commercial transportation for slaughter without a properly completed owner-shipper certificate, VS Form 10-13.

(b) On or about February 23, 2005, 33 horses were shipped in commercial transportation for slaughter and delivered to the slaughter facility outside normal business hours, when no USDA representative was present, but no one remained at or returned to the slaughter facility to meet the USDA representative upon his arrival there.

#### Conclusions

Respondent has admitted the jurisdictional facts and has agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

#### Order

Respondent John R. Malouff d/b/a M&M Livestock is assessed a civil penalty of forty thousand six hundred dollars (\$40,600.00). Respondent shall send a certified check or money order for fifteen hundred dollars (\$1,500.00), payable to the Treasurer of the United States, to United States Department of Agriculture, APHIS, Accounts Receivable, P.O. Box 3334, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding. Payment of the remaining thirty nine thousand one hundred dollars (\$39,100.00) of the civil penalty shall be suspended and held in abeyance for so long as the conditions set forth below are met:

1. For a period of three (3) years from the effective date of this Order, respondent, his employees, and/or contractors

(a) shall not purchase or sell, offer to purchase or sell, arrange the purchase or sale, or in any way facilitate the purchase or sale of horses which respondent, his employees, and/or contractors know or have reason to believe are intended or destined for slaughter at any facility that engages in or otherwise conducts the commercial slaughter of horses in the United States, Canada, or Mexico; and

(b) shall not engage in the commercial transportation of horses to slaughter, offer horses for commercial transportation to slaughter, arrange the commercial transportation of horses to slaughter, or in any way facilitate the commercial transportation of horses to slaughter at any facility that engages in or otherwise conducts the commercial slaughter of horses in the United States, Canada, or Mexico.

2. If respondent, his employees, and/or contractors violate the terms and provisions listed in paragraph 1 of this Order and/or engage in any activity that violates the provisions of 7 U.S.C. § 1901 note and/or 9 C.F.R. §§ 88 et seq. at any time during the three (3) year period in which this Order shall have effect, respondent shall become immediately liable for payment of the thirty nine thousand one hundred dollars (\$39,100.00) portion of the civil penalty previously held in suspension and abeyance, following notice of said violation, but without a requirement for hearing. Respondent also will be liable for any additional penalties sought for the violation(s) of the terms and provisions in paragraph 1 of this Order or the provisions of 7 U.S.C. § 1901 note and/or 9 C.F.R. §§ 88 et seq., but only after notice of said violation and opportunity for hearing.

3. If respondent, his employees, and/or contractors comply with the terms and provisions of paragraph 1 of this Consent Decision and Order for three (3) years after the entry of this Order,

the thirty nine thousand one hundred dollars (\$39,100.00) portion of the civil penalty previously held in suspension and abeyance shall be canceled.

4. If any provision of this Order is declared to be invalid, such declaration shall not affect the validity of any other provision herein.

5. This Order shall become effective when served on respondent.

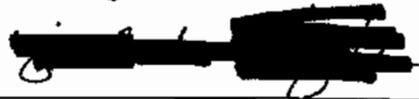


JOHN R. MALOUFF  
d/b/a M&M LIVESTOCK  
Respondent



THOMAS NEIL BOLICK  
Attorney for Complainant

Issued this 15 day of May, 2006  
at Washington, D.C.



Administrative Law Judge  
Jill S. CLIFTON