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December 6, 2012

By Facsimile and First Class Mail

Honorable C. Berkeley Bell  
District Attorney General, 3<sup>rd</sup> Judicial District  
124 Austin St., Suite 3  
Greenville, TN 37745

Re: Foreign Substance Swabbing Conducted at 2012 Horse Shows in Tennessee

Dear District Attorney Bell:

On behalf of The Humane Society of the United States and our nearly 200,000 members and supporters in Tennessee, I am writing to ask that your office formally request all foreign substance swab samples taken from the pasterns of show horses by the Walking Horse Trainers Association Enforcement Initiative (WHTA) or WHTA Enforcement, LLC at Walking Horse shows held in your jurisdiction at least since July 1, 2012. In addition, we encourage your office to request all test results of swab samples taken by the United States Department of Agriculture (USDA) at any Walking Horse show held in your jurisdiction during the same time period. The samples, which are intended to detect the presence of chemicals on the horses' legs, may provide evidence as to whether horse show entrants have violated Tennessee's new felony aggravated cruelty to livestock law, or its longstanding misdemeanor cruelty to animals law, and should be used by your office to investigate such violations.

Soring involves the application of painful chemicals to horses' pasterns or the use of other painful training methods to force the horses to perform an artificially high-stepping gait for show competitions.<sup>1</sup> Soring is prohibited under certain circumstances by Tennessee's animal cruelty statute, which, since July 2012, makes it a Class E felony for any person to apply "acid or other caustic

<sup>1</sup> Foreign substances are also used for the purpose of masking the evidence of soring, or numbing the pastern to evade detection of a pain response during examination.

substance or chemical to any exposed area of an animal or forcing the animal to ingest the substance,” if such activity is carried out in a “depraved and sadistic manner.” Tenn. Code §§ 39-13-217(j); 39-14-217(c)(7); 39-14-217(b). It is also a Class A misdemeanor for any person to intentionally or knowingly inflict “burns, cuts, lacerations, or [to cause] other injuries or pain, by any method, including blistering compounds, to the legs or hooves of horses in order to make them sore for any purpose including, but not limited to, competition in horse shows and similar events.” Tenn. Code §§ 39-14-202 (g)(1); 39-14-202 (a)(5).<sup>2</sup>

The WHTA purported to take swab samples in 2012 from horses at every show affiliated with Horse Industry Organizations that participated in its swabbing program. See <http://www.walkinghorsetrainers.com/about-us/news--press-releases/83-initiative-enforcement.html>. Because these samples may contain evidence of unlawful activities, they may be requested in furtherance of your duty to “investigate and prosecute criminal activity that occurs within [your] district.”<sup>3</sup>

The USDA also took random foreign substance swab samples from horses’ pasterns at all of the shows it attended in an oversight capacity this year, including the 2012 Tennessee Walking Horse National Celebration, and other major Walking Horse shows. Those samples were taken pursuant to the protocol that the agency publishes on its website. See [http://www.aphis.usda.gov/animal\\_welfare/hp/downloads/gcms\\_collection\\_protocol.pdf](http://www.aphis.usda.gov/animal_welfare/hp/downloads/gcms_collection_protocol.pdf). The HSUS is also seeking the results of these samples through a Freedom of Information Act request to the USDA, although it is likely that your office could obtain the results more quickly.<sup>4</sup>

Any and all swab samples taken at horse shows in Tennessee this year that tested positive for caustic chemicals would indicate that a violation of the animal cruelty law may have been

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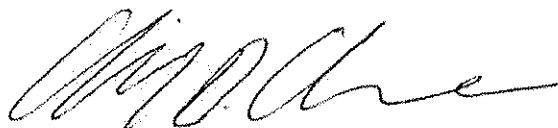
<sup>2</sup> The federal Horse Protection Act and regulations also prohibit, inter alia, the application at a horse show, exhibition, sale or auction of any substance on any limb of a horse if, as a result of such application, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving. 15 U.S.C. §§ 1821(3)(D), 1823-1824; 9 C.F.R. 11.1(4), 11.2(c). Since 2007, USDA has conducted random swabbing of horses’ pasterns at shows the agency attends, to test for and detect the presence of prohibited foreign substances. [http://www.aphis.usda.gov/animal\\_welfare/hp/hp\\_foreign\\_substance.shtml](http://www.aphis.usda.gov/animal_welfare/hp/hp_foreign_substance.shtml).

<sup>3</sup> Tenn. Op. Atty. Gen. No. 12-10 at 3. See also State ex rel. Swann v. Pack, 527 S.W.2d 99, 112 (Tenn. 1975) (“The right of the District Attorney General to institute and maintain such an action inheres in his office. It is his duty to investigate, prosecute and insure against all infractions of the public peace and all acts which are against the peace and dignity of the state.”)

<sup>4</sup> In addition to taking swab samples, USDA Veterinary Medical Officers inspect horses at horse shows in TN to detect soring through methods other than swab samples. The agency performs these inspections pursuant to its jurisdiction over the Horse Protection Act. Thus, we recommend that in addition to USDA’s positive swab test results, your office request copies of any reports prepared by the agency to document soring violations it identifies at shows in Tennessee, which would provide further evidence of violations of state law.

committed, and would be grounds for possible enforcement action.<sup>5</sup> We therefore respectfully urge you to request, obtain, and test all such samples taken by the WHTA or WHTA Enforcement, LLC at any 2012 horse shows held in your jurisdiction, including the Greene County Charity Show. We also encourage you to obtain the results from the swabs taken by the USDA at any of these shows, and to take steps to investigate and prosecute individuals who appear to have violated Tennessee law. We encourage you to make these requests and take these steps not only this year, but on a regular basis going forward, in an effort to finally eliminate the illegal use in your jurisdiction of painful chemicals to sore horses.

Sincerely,



Kimberly D. Ockene  
Senior Attorney  
Animal Protection Litigation  
The Humane Society of the United States

cc: The Honorable Robert E. Cooper, Jr.  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207

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<sup>5</sup> Notably, data released by USDA's Animal and Plant Health Inspection Service in 2011 showed that 97.6 percent of the samples taken at various Tennessee Walking Horse competitions in 2011 tested positive for illegal foreign substances, and 86 percent tested positive in 2010. See Attachment 1.