

3. Petitioner contends that efforts had been made between the September 12, 2012, inspection and the February 25, 2013, inspection to remedy the noted deficiencies.
4. The facility manager told Ms. Carlson that she "had no solution" for the problems described above.
5. Most of the dogs in the facility premises spend most of their time in the barren, hole-pocked areas.
6. Petitioner contends that almost all of the deviations are confined to a one-half acre area that the dogs favor and spend 2 to 3 hours in each day, resulting in the deviations noted in the inspector's reports.
7. As a result of this investigation, the Respondent alleged that the Petitioner, either by act or omission, violated the following provisions of the North Carolina General Statutes and the rules promulgated there under:

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply: ...

- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0201 GENERAL

(e) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.

02 NCAC 52J .0207 SANITATION

(c) Premises (buildings and grounds) shall be kept clean and in good repair in order to

protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

Further, Respondent issued and caused to be served upon the Petitioner a civil penalty assessment in the amount of one thousand dollars on April 11, 2013.

8. Petitioner has filed a petition with the North Carolina Office of Administrative Hearings on April 22, 2013, alleging that said civil penalty assessment was "inappropriate."
9. WHEREAS the parties desire to resolve this matter without further litigation and the parties agree as follows:
10. Respondent agrees that, upon receiving the signed original of this Agreement from the Petitioner, it will stay imposition and all efforts to collect the civil penalty it imposed, one thousand dollars (\$1,000.00). This stay shall remain in place for sixty days beginning on that day. Respondent shall notify the Petitioner by faxed memorandum that it has received said signed original of this Agreement.
11. Further, Respondent agrees that, conditioned upon and subject to Petitioner's full and complete compliance with this Settlement Agreement, as set forth below, for a period of six months beginning upon the date Respondent receives Petitioner's signed original of this Agreement, when said six month term expires, Respondent shall cancel and dissolve the unpaid civil money penalty, one thousand dollars, and release the Petitioner from its obligation to pay the same, unless Respondent has already cancelled the suspension and reinstated the civil penalty of one thousand dollars due to Petitioner's failure to comply with this Settlement Agreement and the North Carolina Animal Welfare Act, as set forth below.
12. As further consideration for this Settlement Agreement, the Petitioner shall:
 - (a) Within a period of sixty days, starting upon the date Respondent receives the original of this Agreement executed by the duly-authorized corporate officer, bring the Petitioner's shelter facility into full compliance with the minimum standards set forth in the North Carolina Animal Welfare Act and rule promulgated thereunder;
 - (b) Specifically, cure all violations, deviations and defects listed in the Respondent's inspection report, dated February 25, 2013;
 - (c) Submit to the Respondent a written, comprehensive plan for preventing violations, deviations and defects in Petitioner's facility from recurring; and
 - (d) File with the North Carolina Office of Administrative Hearings a Notice of Dismissal with Prejudice of the above-referenced Petition for a Contested Case Hearing, said Dismissal shall be filed no later than five business days following Petitioner's receipt of

the memo from Respondent, acknowledging receipt of Petitioner's signed original of this Settlement Agreement, and said Notice of Dismissal shall constitute Petitioner's full waiver of its right to contest Respondent's imposition of a civil penalty for the deviations noted above or any further violations of the North Carolina Animal Welfare Act as Respondent may discover at the Petitioner's facility during the six months following Respondent's receipt of Petitioner's executed original of this Settlement Agreement.

Respondent shall confirm that Petitioner has fulfilled these obligations by causing one of its inspectors to conduct an inspection of the Petitioner's animal shelter facility on a date of Respondent's choosing, without prior notice to the Petitioner, no earlier than the sixtieth (60th) date after Respondent's receipt of the original of this Agreement executed by Petitioner or the date Petitioner requests inspection, whichever is earlier.

13. In the event that Respondent receives evidence that the Petitioner, its officers, employees, agents, volunteers or independent contractors have committed a new violation of the North Carolina Animal Welfare Act and/or the regulations promulgated there under during the six months following Petitioner's agreement to and execution of this Settlement Agreement, Petitioner shall be deemed to be in material breach of this Agreement. Upon finding Petitioner in material breach of this Settlement Agreement, Respondent may:

a) Resume efforts to collect the civil penalty, one thousand dollars (\$1,000.00), including but not limited to resort to a court of competent jurisdiction to reduce the penalty to a judgment and execution on the judgment;

b) Issue Petitioner a new civil penalty;

c) Suspend Petitioner's animal shelter certification for such period of time as required to cure the breach; or

d) Revoke Petitioner's animal shelter certification.

14. For purposes of this agreement, a new violation is understood to mean a violation of G.S. Article 19A and the regulations promulgated there under that has detrimentally affected the health and/or welfare of the animals held in Petitioner's facility and cannot, in the sole discretion of the Respondent, be easily remedied by the Petitioner in the course of daily operations of the facility. The Respondent reserves the right to forego declaring the Petitioner to be in breach of this agreement upon receiving evidence of any violation of G.S. 19A or breach of this agreement, as a matter within its sole discretion. The parties further understand and agree that Respondent's decision not to declare the Petitioner to be in breach of this agreement does not amount to a waiver of that right.

15. The Petitioner hereby acknowledges its right to submit a petition for a formal hearing to the North Carolina Office of Administrative Hearings to contest Respondent's issuance of a civil penalty and waives said right by consenting to the terms of this Agreement. The parties further agree that Petitioner's waiver applies fully to the Notice of Civil Penalty Respondent issued to Petitioner on April 11, 2013, and to any decision Respondent's Director of Animal

Welfare makes subsequent to the execution of this Agreement as provided under paragraph 13, above.

16. If the Petitioner fully complies with the terms and obligations set forth in this Agreement for a period of six months from the date Petitioner submits the signed original of this Agreement to the Respondent, then Respondent shall cancel and waive its civil penalty in the amount of one thousand dollars (\$1,000.00).
17. The persons signing this Agreement represent that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties.
18. The parties agree to act in good faith in the implementation of this agreement.
19. The parties agree to bear their own attorneys fees and costs.
20. It is understood between the parties that this Agreement contains the entire agreement between the parties hereto regarding the matters set forth, and it supersedes all previous negotiations, discussions and understandings regarding such matters. Terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.
21. The effective date of this Agreement will be the date on which it has been executed by the Respondent as shown on the signature lines below. However, the Respondent expressly retains the right to withdraw its offer of this Agreement to the Petitioner if, from the time this Settlement Agreement document is provided to Petitioner, to the time Respondent signs and executes this Settlement Agreement, Respondent finds evidence of new violations of the North Carolina Animal Welfare Act have been committed by the Petitioner, its officers, employees, agents, volunteers or independent contractors.
22. North Carolina law shall govern the interpretation and enforcement of this Agreement.

IN TESTIMONY WHEREOF, the parties have set their hands and seals on the dates indicated below:

For the Love of Dogs
E. Maxwell Fitz-Gerald
For the Love of Dogs, a Not-For-Profit Corporation,
By E. Maxwell Fitz-Gerald, President
PETITIONER

Date: 5/9/2013

[Signature]
Dr. Lee Hunter, DVM
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumers Services
FOR RESPONDENT

Date: 5/17/2013