



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

December 8, 2015

Kelly Atkins
Lincoln County Manager
115 W. Main Street
Lincolnton, NC 28092

NOTICE OF CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02 N. C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0101(5), .0205(a), .0207(a) and .0210(b) and (c).

Facility: Lincoln County Animal Services Shelter

Dear Mr. Atkins:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that the Lincoln County Animal Services Shelter is assessed a civil penalty of \$7,500.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N. C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may present your offer to me. I can be contacted by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment of filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statute § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings ("OAH"). Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Norris', with a long horizontal flourish extending to the right.

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF)
)
LINCOLN COUNTY ANIMAL SERVICES)
ANIMAL SHELTER)
)
)
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)

NOTICE OF VIOLATIONS
ASSESSMENT OF CIVIL PENALTY
FOR VIOLATIONS OF
02 NCAC 52J .0101(5), .0205 (a), .0207 (a)
and .0210 (b) and (c)

Acting pursuant to N.C. Gen. Stat. § 19A-30, Dr. Patricia Norris, Director, Animal Welfare Section (“AWS”), North Carolina Department of Agriculture and Consumer Services (“NCDA&CS”) makes the following:

FINDINGS OF FACT

1. On October 21, 2015, AWS received a complaint concerning the Lincoln County Animal Services Shelter (“the shelter”).
2. AWS opened an investigation and on October 27, 2015, AWS Animal Health Technician Jay Blatche (“Inspector Blatche”) conducted a site visit of the shelter. As part of the site visit Inspector Blatche conducted staff interviews and a records review.
3. The review of the animal records revealed the following:
 - a) In March 2015, two (2) animals were found dead in their kennels. Both of these animals were cats;
 - b) In April 2015, four (4) animals were found dead in their kennels. One (1) of these was a dog and three (3) were cats;
 - c) In May 2015, twenty-three (23) animals were found dead in their kennels. One (1) of these was a dog and twenty-two (22) were cats;
 - d) In June 2015, twenty-seven (27) animals were found dead in their kennels. All twenty-seven (27) of these animals were cats;
 - e) In July 2015 twenty-three (23) animals were found dead in their kennels. Three (3) of these were dogs and twenty (20) were cats;
 - f) In August 2015, forty-four (44) animals were found dead in their kennels. Five (5) of these were dogs and thirty-nine (39) were cats;
 - g) In September 2015, fifty-six (56) animals were found dead in their kennels. Six (6) of these were dogs and fifty (50) were cats; and
 - h) From October 1-27, 2015, thirty-seven (37) animals were found dead in their kennels. All thirty-seven (37) of these animals were cats;
4. Although it is not uncommon for a small number of animals to be found deceased in their kennel at a shelter, the large increase in this number starting in May 2015 as compared to March and April 2015 is consistent with a disease problem.

5. No written program for disease control written by a veterinarian could be located that addressed this apparent disease problem. The shelter manager acknowledged that no written recommendations for correcting the apparent disease problem had been prepared. The contract veterinarian stated that she was never notified of the deaths.
6. A review of the animal medical records of the shelter revealed multiple instances in which prescribed medications were not administered as directed by the veterinarian. In addition, more than twenty of the medication logs did not contain the information required by the Animal Welfare rules and regulations.
7. When asked about the AWA required twice daily cleaning of enclosures and the twice daily feeding of puppies and kittens, the shelter manager replied that the staff is only present from 7AM to 11AM on Sundays.

CONCLUSIONS

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, finds that you either by act or omission, violated the provisions the North Carolina Administrative Code 52J .0101(5), .0205 (a), .0207 (a) and .0210 (b) and (c).

(See Appendix for text of cited General Statutes and Administrative Codes)

CIVIL PENALTIES

As required by N.C. Gen. Stat. § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

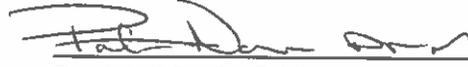
Accordingly the Lincoln County Animal Services Shelter is assessed a civil penalty for the following violations:

- 1) \$500.00 for violation of 52J .0101 (5) – failure to keep proper record of veterinary care;
- 2) \$500.00 for violation of 52J .0205 (a) – failure to feed puppies and kittens less than six months of age twice daily with an eight-hour interval between feedings;
- 3) \$500.00 for violation of .0207 (a) – failure to clean enclosures twice daily;
- 4) \$5,000.00 for violation of .0210 (b) – failure to obtain and follow a veterinarian’s written recommendation for a disease problem; and
- 5) \$1,000.00 for violation of .0210 (c) – failure to provide adequate veterinary care.

\$7,500.00 TOTAL AMOUNT ASSESSED

12/8/2015

Date



Patricia Norris, DVM
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

RELEVANT LAWS AND REGULATIONS

§ 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 .0101 RECORDS; ANIMAL SHELTERS, ETC.

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

- (5) record of veterinary care including treatments, immunization and date, time, description of medication (including name and dosage), and initials of person administering any product or procedure.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0205 FEEDING

(a) Dogs and cats shall be fed at least once each 24-hour period except as otherwise might be required to provide adequate veterinary care. Food shall be commercially prepared food which complies with laws applicable to animal feed or the food shall be provided by the owner. The food shall be free from contamination, wholesome, palatable, and of adequate quality and quantity appropriate for the given size, age, and condition of an animal to meet the daily requirements for nutritional value. Puppies and kittens less than six months of age shall be fed at least twice in each 24-hour period. An eight-hour interval between feedings is required if only two feedings are offered in a 24-hour period.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0207 SANITATION

(a) Waste shall be removed from primary enclosures and exercise areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures and exercise areas for dogs and cats must be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris. When a hosing or flushing method is used for cleaning an enclosure, dogs or cats contained therein shall be removed during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0210 VETERINARY CARE

(a) A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established with the assistance of a licensed veterinarian by any person who is required to be licensed or registered under the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes.

(b) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain and follow a veterinarian's written recommendations for correcting the problem.

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.