Steven W. Troxler
Commissioner

North Carolina Department of Agriculture and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

December 11, 2015

Renee Tomberlin
Shelter Director
Yancey County Humane Society
962 Cane River School Road
Burnsville, NC 28714

NOTICE OF CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF N. C. GENERAL STATUTE §19A-32.1(a) and TITLE 02 N. C. ADMINISTRATIVE CODE, CHAPER 52J, SECTIONS .0101(5) and .0209(5).

Facility: Yancey County Humane Society Animal Shelter

Dear Ms. Tomberlin:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that the Yancey County Humane Society is assessed a civil penalty of $1200.00 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 or 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,

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	)	NOTICE OF VIOLATIONS
	)	ASSESSMENT OF CIVIL PENALTY
YANCEY COUNTY HUMANE SOCIETY	)	FOR VIOLATIONS OF N. C. GENERAL
	)	STATUTE §19A-32.1(a) and 02 NCAC
ANIMAL SHELTER	)	52J .0101(5) and .0209(5)
	)	

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 27 and 28, 2015, AWS received complaints concerning the Yancey County Humane Society Animal Shelter ("the shelter").

2. AWS opened an investigation and on November 10, 2015, AWS Animal Health Technician Joshua James ("Inspector James") conducted a site visit of the shelter. As part of the site visit, Inspector James conducted staff interviews and a records review.

3. The investigation and interviews with the shelter staff revealed the following:

   a) At the time of the site visit, no cats or kittens were showing signs of illness;
   b) On October 27, 2105, the shelter director was removed from his position and an interim director was hired;
   c) No medication logs for treatments prior to October 27, 2015 could be located by the current staff;
   d) During their interviews, staff who were present during the time period mentioned in the complaint attested that there was an outbreak of disease in one of the communal rooms that lasted less than 30 days;
   e) Staff members indicated that it is standard procedure for animals showing signs of communicable disease to be moved into the isolation areas, but in this case, as all of the animals were deemed to have been exposed, the entire room was quarantined. The room was closed to new intakes and all exposed animals were placed on medications for upper respiratory infections; and
   f) The staff indicated that the windows of this communal room were covered during the quarantine period, but signage giving notice of a communicable disease was not posted.

4. The review of the shelter records revealed:
   a) 12 kittens were found dead in their kennel/enclosure between June 1, 2015 and November 10, 2015; and
   b) 6 stray cats were euthanized prior to the end of the 72 hour minimum holding period.

5. In animal shelters, it is not uncommon for a small number of animals to be found deceased in their kennel. A sharp increase in this number is expected in the event of a significant disease outbreak. The shelter records during the time period of the complaint do not indicate any such significant increase.

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 North Carolina General Statute §19A–32.1(a) and the provisions the North Carolina Administrative Code 52J .0101(5) and .0209(5).

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

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 Yancey County Humane Society Shelter is assessed a civil penalty for the following violations:

1) $600.00 for violation of 6 violations of North Carolina General Statute §19A-32.1(a)

2) $500.00 for violation of North Carolina Administrative Code 52J .0101(5)

3) $100.00 for violation of 52J .0209(5)

$1,200.00 TOTAL AMOUNT ASSESSED

12/11/2015
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.)

§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.

(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 72 hours, or for any longer minimum period established by a board of county commissioners, prior to being euthanized or otherwise disposed of.

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 .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

(5) All facilities shall designate an isolation area for animals being treated or observed for communicable diseases. Dogs or cats in isolation that are being treated for a communicable disease shall be separated from other dogs or cats and other susceptible species of animals in such a manner as to minimize dissemination of such disease. A sign shall be posted at the cage or isolation area when in use, giving notice of a communicable disease.

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