November 26, 2013

Mr. Rossie Hayes
Director, Columbus County Animal Shelter
288 Legion Drive
Whiteville, NC 28472

VIA UPS

Re: ASSESSMENT OF CIVIL PENALTY
Columbus County Animal Shelter

Dear Mr. Hayes:

This letter encloses an Order issued pursuant to N.C. Gen. Stat. §§ 19A-40. Investigation of a recent complaint into euthanasia practices and procedures in your animal shelter indicates that grounds exist for imposition of a civil penalty based upon violation(s) of the requirements set forth under the NC Animal Welfare Act establishing the minimum period a shelter must keep an animal before final disposition.

The attached Civil Penalty Assessment describes in detail the factual basis for this decision. You may contest this decision by filing a petition under the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, within five (5) days of your receipt of this Order. Please find enclosed information on filing said petition.

APPEAL INFORMATION

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 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. 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 919/733-0926. 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.

If you have any questions concerning the basis for this order or the terms of the proposed consent agreement, you may call me at the telephone number listed above.

Sincerely,

Lee Hunter, DVM, MPH
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

Enclosures: 1) Civil Penalty Assessment;

cc: Tina Hlabse, General Counsel, NCDA&CS
Dr. David Marshall, State Veterinarian, NCDA&CS
Barry Bloch, Assistant Attorney General, NCDOJ
STATE OF NORTH CAROLINA

COUNTY OF COLUMBUS

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

IN THE MATTER OF

COLUMBUS COUNTY ANIMAL SHELTER

) ) ) ) ) ) ) ) ) ) CIVIL PENALTY ASSESSMENT
) ) ) ) ) ) ) ) ) ) PURSUANT TO THE ANIMAL WELFARE ACT, N.C. GEN.
) ) ) ) ) ) ) ) ) ) STAT. § 19A-40

Acting pursuant to N.C. Gen. Stat. § 19A-40, Dr. Lee Hunter, Director, Animal Welfare Section, NCDA&CS makes the following:

I. FINDINGS OF FACT

1. On October 21, 2013, Ms. Pat Sholar, Inspector, with the North Carolina Department of Agriculture and Consumer Services, (NCDA&CS) Animal Welfare Section, conducted an inspection in response to a complaint about the euthanasia of thirteen dogs at Columbus County Animal Shelter (hereinafter “CCAS”), located on 288 Legion Drive, Whiteville, NC.

2. Inspector Sholar found that, on October 16, 2013, CCAS had accepted the surrender of thirteen dogs from the widow of the dogs’ deceased owner, Mr. Bill Parker.

3. CCAS’ shelter manager, Mr. Rossie Hayes, informed Inspector Sholar that Mr. Parker’s widow asked CCAS to come and take all thirteen dogs and asked her niece to fill out CCAS’ animal surrender forms.

4. CCAS’ manager, Mr. Hayes, initialed each of the surrender forms indicating that he witnessed completion and signing of each form for each dog surrendered.

5. Ms. Parker provided current rabies vaccination certificates for each dog to Mr. Hayes as proof of ownership.

6. Mr. Hayes told Inspector Sholar that he informed Ms. Parker of the likelihood that the dogs would be euthanized and that she made no comment in response or objection.

7. Inspector Sholar requested and received copies of the animal surrender/intake/disposition record forms (the “forms”) for the thirteen dogs Ms. Parker surrendered.

8. The forms are numbered sequentially from 27303 through 27315. They bear the signature of “Estina Thayer” as owner under the statement, “I surrender to Animal Control.”
9. The forms indicate that the dogs arrived at CCAS at 4:15 p.m. on October 16, 2013, and the date and time of “disposal” for all of the dogs was 4:30 p.m. on October 16, 2013. All of the dogs were euthanized.

10. Mr. Hayes provided no documentation tending to show that he informed Ms. Parker that the dogs would be euthanized before the end of the seventy-two hour period provided for under G.S. 19A-32.1.

11. Mr. Hayes provided no records tending to show that “Estina Thayer” signed on behalf of Ms. Parker or served as Ms. Parker’s authorized agent or attorney-in-fact for purposes of surrendering ownership of the thirteen dogs.

12. The records stated, “Hold for 72 Hours? Yes ( ) or No ( ) and a “check mark” had been marked for “No” on all of the forms for the dogs.

13. Mr. Hayes provided no records tending to show that the dogs’ owner had affirmed whether any of the dogs had bitten anyone within the ten days preceding their surrender to CCAS.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that you either by act or omission, violated the following provision of the North Carolina General Statutes:

§ 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.

(b) Before an animal may be euthanized or otherwise disposed of, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in the following cases:

(1) The animal has been found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament.
(2) The animal is seriously ill or injured, in which case the animal may be euthanized before the expiration of the minimum holding period if the manager of the animal shelter determines, in writing, that it is appropriate to do so. The writing shall include the reason for the determination.
(3) The animal is being held as evidence in a pending criminal case.
(g) An animal that is surrendered to an animal shelter by the animal's owner may be disposed of before the expiration of the minimum holding period in a manner authorized under subsection (f) of this section if the owner provides to the shelter (i) some proof of ownership of the animal and (ii) a signed written consent to the disposition of the animal before the expiration of the minimum holding period.

(h) If the owner of a dog surrenders the dog to an animal shelter, the owner shall state in writing whether the dog has bitten any individual within the 10 days preceding the date of surrender.

§ 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.)

II. CONCLUSIONS OF LAW

A. Columbus County Animal Shelter violated N.C. General Statute § 19A-32.1 and may be assessed a civil penalty of up to $5,000.00 per violation pursuant to N.C. Gen. Stat. § 19A-40.

B. The Director of the Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture and Consumer Services, pursuant to N.C. Gen.Stat. § 19A-40 has the authority to assess civil penalties in this matter.

III. DECISION

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 violation of N.C. Gen. Stat. § 19A-32.1.

Accordingly, Columbus County Animal Shelter is assessed a civil penalty of: $500.00 per violation of N.C. General Statute § 19A-32.1. Columbus County Animal Shelter euthanized thirteen dogs before expiration of the mandatory 72 hour holding period, without Ms. Parker’s consent; each dog is deemed to be one violation, for a total civil penalty of $6,500.00.

$6,500.00 TOTAL AMOUNT ASSESSED

11/26/13

Date

[Signature]

Dr. Lee Huater
Director of Animal Welfare