



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Michael Martin, DVM
State Veterinarian

July 25, 2024

Eric Mitchell
Owner
Animal House
2235 Statesville Blvd
Salisbury, NC 28147
and via email
animalhouseenc23@gmail

NOTICE of CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for VIOLATION of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTION .0201(h) and NOTICE of WARNING for VIOLATIONS of 02 NCAC 52J .0202(d); .0203(a)(1) and (b)(1); .0204(a) and (d); and .0207(f).

AWS-CP-2024-12

Facility: Animal House
License Number: 20869

Dear Mr. Mitchell:

Pursuant to NCGS § 19A-40, I am issuing this notice that you as owner and operator of Animal House (“the kennel”) are hereby assessed a civil penalty of \$1,000.00 as provided in the enclosed Notice of Violation.

With regard to the civil penalty, within 60 days from the date of this letter, 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 NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me 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 NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings (“OAH”) within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). 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:

Mr. Jonathan Lanier
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 blue ink, appearing to read "Patricia Norris DVM MS".

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: Michael Martin, DVM, State Veterinarian
Jonathan Lanier, General Counsel, NCDA&CS
Christina L. Waggett, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Special Deputy Attorney General

the May 23, 2024 site visit. The requirement for supervision of animals in the outdoor exercise areas, unless the areas were surrounded by a separate five foot perimeter fence, was discussed with the kennel owner during the initial FCI on September 14, 2023;

- d. in violation of 02 NCAC 52J .0202(b)(3), the air flow within the kennel was not adequate to minimize odors and moisture condensation;
- e. in violation of 02 NCAC 52J .0203(b)(1), that requires the flooring of outdoor exercise areas to be constructed of sealed concrete or other surfaces impervious to moisture, the pavers were not sealed as they had significant algae-type growth on them;
- f. in violation of 02 NCAC 52J .0204(a) multiple surfaces within the primary enclosures were not impervious to moisture;
- g. in violation of 02 NCAC 52J .0204(f), the height of some of the primary enclosures was less than five feet;
- h. in violation of 02 NCAC 52J .0207(e), the yards at the front and side of the house were overgrown with weeds and grasses; and
- i. Inspector Shore directed the kennel to submit a timeline with details of how and when the violations noted during the May 23, 2024 site visit and FCI would be remedied. As of the date of this Notice of Civil Penalty and Notice of Warning, the kennel has failed to provide this information.

4. On July 15, 2024, Inspector Shore conducted a follow-up FCI at the kennel. This FCI revealed the following information:

- a. in violation of 02 NCAC 52J .0201(h), 2 dogs were in the turf exercise area without employee supervision and this area was not surrounded by separate five-foot perimeter fence;
- b. in violation of 02 NCAC 52J .0201(h), 1 dog was in the carport exercise area without employee supervision and this area was not surrounded by separate five-foot perimeter fence;
- c. in violation of 02 NCAC 52J .0202(d), walls were damaged exposing surfaces that were not impervious to moisture;
- d. in violation of 02 NCAC 52J .0203(a)(1) that requires the common areas such as walkways to be constructed of sealed concrete or other surfaces impervious to moisture, the pavers were not sealed as they had significant algae-type growth on them;
- e. in violation of 02 NCAC 52J .0203(b)(1) that requires the flooring of outdoor exercise areas to be constructed of sealed concrete or other surfaces impervious to moisture, the pavers were not sealed as they had significant algae-type growth on them;
- f. in violation of 02 NCAC 52J .0204(a) multiple surfaces within the primary enclosures were not impervious to moisture;
- g. in violation of 02 NCAC 52J .0204(d), 2 dogs were housed in primary enclosures that were too small and did not allow them to sit or stand up with ears/tails fully erect without touching the top of the cage;
- h. in violation of 02 NCAC 52J .0207(f), numerous cobwebs were noted throughout the carport exercise area; and
- i. in reviewing the incident log, a death of a dog occurred at the facility on July 7, 2024 which involved a dog killing a smaller dog while they were confined together unsupervised in the grass exercise area. A staff person was nearby and tried to separate the dogs, but the larger dog grabbed the smaller dog again. The small dog died on the way to the veterinary clinic. The grass exercise area was not surrounded by a separate five-foot perimeter fence and the dogs were not being supervised by an employee within the enclosure.

CONCLUSIONS

To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. Based on the findings of this investigation, AWS concludes that the kennel violated the following provisions:

02 NCAC 52J .0201(h) for failure to supervise animals confined to an outdoor exercise area without a separate five-foot perimeter fence. This violation occurred multiple times as noted on May 23, 2024 (three separate and sequential violations), July 7, 2024, and July 15, 2024 (2 separate violations). The violation of this rule on July 7, 2024 resulted in a death of a dog

02 NCAC 52J .0202(d) for failure to maintain interior surfaces impervious to moisture as noted on July 15, 2024

02 NCAC 52J .0203(a)(1) for failure to maintain common area walkways with surfaces that were impervious to moisture as noted on July 15, 2024

02 NCAC 52J .0203(b)(1) for failure to maintain flooring of outdoor exercise areas with surfaces that were impervious to moisture as noted on July 15, 2024

02 NCAC 52J 02 NCAC 52J .0204(a) for failure to maintain multiple surfaces within the primary enclosures impervious to moisture as noted on July 15, 2024

02 NCAC 52J .0204(d) for housing 2 dogs within primary enclosures that were not of sufficient size to allow the dogs to sit or stand up with ears/tails fully erect without touching the top of the cages as noted on July 15, 2024

02 NCAC 52J .0207(f) for failure to establish and maintain an effective program for the control of insects as noted on July 15, 2024

CIVIL PENALTY

As required by NCGS § 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, Eric Mitchell, as owner and operator of Animal House, is hereby assessed a civil penalty for the following violations:

\$1,000.00 for multiple violations of 02 NCAC 52J .0201(h) for failure to supervise animals confined to an outdoor exercise area without a separate five-foot perimeter fence. The violation of this rule on July 7, 2024 resulted in the death of a dog

\$1,000.00 TOTAL AMOUNT ASSESSED

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

NOTICE of WARNING

As to the remaining violations of 02 NCAC 52J .0202(d); .0203(a)(1) and (b)(1); .0204(a) and (d); and .0207(f), this Warning Letter serves as written notice indicating in which respects the kennel may have violated the NC Animal Welfare Act and the rules issued pursuant thereto.

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's registration pursuant to N.C. General Statute § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C. General Statute § 19A-40.

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

July 25, 2024

Date



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

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 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:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (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;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final

judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 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.

02 NCAC 52J .0201 GENERAL

(h) A separate five-foot tall perimeter fence is required if any animal(s) has/have unsupervised access to an outdoor primary enclosure, common area, and/or exercise area. Supervision of animals is required for any animal(s) within any outdoor enclosure, common area, or exercise area without a separate five-foot tall perimeter fence.

History Note: Authority G.S. 19A-24; 19A-30(3); Eff. April 1, 1984; Amended Eff. January 1, 2005; Readopted Eff. October 1, 2022.

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures, common areas and walkways with which an animal comes in contact:

(1) shall have groundcover constructed of sealed concrete or other surfaces so long as it is impervious to moisture, and/or;

(b) Exercise areas of outdoor facilities:

(1) shall have flooring or groundcover constructed of sealed concrete or other surfaces impervious to moisture; and/or

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005; Readopted Eff. September 1, 2022.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(a) Primary enclosures and exercise areas shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture excluding the ground cover options of gravel and grass allowed for in Rule .0203 of this Section.

(d) Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, turn about freely, and to stand with their tails erect, sit, or lie in a natural position with their limbs extended without touching other animals within the enclosure or the sides or top covering of the enclosure.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985; Readopted Eff. September 1, 2022.

02 NCAC 52J .0207 SANITATION

(f) An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained

*History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005;
Readopted Eff. September 1, 2022.*