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Commissioner

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and Consumer Services  
*Veterinary Division*

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State Veterinarian

February 20, 2023

Robin Jennings  
Owner  
Deep Creek Boarding Kennel  
1221 Deep Creek Lane  
Yadkinville, North Carolina 27055

**NOTICE of WARNING and NOTICE of VIOLATION**

**Re: Violations of Title 02 N.C. Administrative Code (“NCAC”) Chapter 52J, Sections 0202(d); .0203(a); .0204(a) and (b); .0206(d); .0207(d)(5) and .0209(8).**

**AWS-WL-2023-4**

**Boarding Kennel: Deep Creek Boarding Kennel  
License Number: 10326**

Dear Ms. Jennings:

The Animal Welfare Section (“AWS”) of the Veterinary Division of the N.C. Department of Agriculture and Consumer Services (“NCDA&CS”) conducted facility compliance inspections (“FCI”) of the Deep Creek Boarding Kennel (the “kennel”) on March 31, 2022, August 15, 2022, and January 31, 2023. Due to the number, severity, and repetitive nature of the violations of the N.C. Animal Welfare Act (“AWA”) and its associated regulations, these FCI reports were noted as “Disapproved.”

During the January 31, 2023 FCI, the following was noted:

- 1) a perimeter fence had been installed which allowed the kennel to be in compliance with 02 NCAC 52J .0201(h);
- 2) in violation of 02 NCAC 52J .0202(d) which requires that interior building surfaces with which animals come in contact to be constructed and maintained so that they are impervious to moisture and can be readily sanitized, the concrete walkways throughout the indoor portion of the facility do not appear to be impervious to moisture as defined in 02 NCAC 52J .0104(11);
- 3) in violation of 02 NCAC 52J .0203(a), which requires that primary enclosures and walkways with which an animal comes in contact in outdoor facilities to be sealed concrete or other surfaces that are impervious to moisture, the concrete flooring of the walkways and outdoor primary enclosures do not appear to be impervious to moisture. Biological growth is present on the concrete in numerous locations in the outdoor facility including the lower primary enclosures. This deficiency was noted in the courtesy inspection on March 31, 2022, and the

- FCI on August 15, 2022. This biological growth is also noted on the outdoor concrete walkways of the upper primary enclosures;
- 4) in violation of 02 NCAC 52J .0204(a) which requires that all surfaces within the primary enclosures to be impervious to moisture, the walls and floors of the lower primary enclosures do not appear to be impervious to moisture and the concrete in the upper and lower enclosures have holes and defects that are not impervious to moisture. This violation was cited in the March 31, 2022 FIC and the August 15, 2022 FCI;
  - 5) in violation of 02 NCAC 52J .0204(a) which requires that all surfaces within the primary enclosures to be impervious to moisture, a significant amount of rust was noted on the chain link and the chain link posts in the indoor and outdoor primary enclosures of the upper and lower kennels and in the exercise yards;
  - 6) although an attempt had been made to cover some of the wood in the lower enclosures, in violation of 02 NCAC 52J .0204(b) which requires that any damaged wood to be replaced in a manner that does not permit contact with wood by the animal, damaged wood is accessible to the animals in the lower primary enclosures. This violation was previously cited in the courtesy inspection on March 31, 2022, and the August 15, 2022 FCI;
  - 7) in violation of 02 NCAC 52J .0206(d) which requires watering receptacles be kept clean and sanitized and 02 NCAC 52J .0207(d)(5) which requires water receptacles to be sanitized daily with hot water, detergent, and disinfectant, the watering receptacles observed in the lower kennels did not appear clean or sanitized. A dead mouse was noted in one of the watering receptacles along with soiled water; and
  - 8) in violation of 02 NCAC 52J .0209(8) which requires that primary enclosures be inspected by AWS and in compliance with the rules of the Subchapter before an animal can be confined in the enclosure, during the January 31, 2022 FCI, the kennel owner relayed that the kennel was continuing to house boarding animals in the lower primary enclosures. These lower primary enclosures were found to be not in compliance with the AWA and its rules during previous FCIs conducted on February 24, 2022, March 31, 2022, and August 15, 2022. In addition, the AWS Director, in a letter dated April 4, 2022, directed the kennel owner to cease housing animals in the lower primary enclosures until these enclosures had been inspected and found to be in compliance with the AWA and its rules.

A review of previous FCI reports shows the following:

- 1) violations of 02 NCAC 52J .0201(h); .0203(a) and (b); .0204(a) and (b); and .0207(a) and (b) were cited in the March 31, 2022, Courtesy FCI report. This inspection was marked as "Disapproved" due to the number, severity, and repetitive nature of the violations; and
- 2) violations of 02 NCAC 52J .0102(3); .0103; .0201(h); .0202(b); .0203(a) and (b); .0204(a) and (b); .0206; .0207(a), (b) and (c); .0207(2); and .0210(d) were cited in the August 15, 2022, FCI report. This inspection was marked as "Disapproved" due to the number, severity, and repetitive nature of the violations.

The FCI reports noted in this Notice of Warning have been made available to the kennel and are posted on the AWS website.

This Warning Letter serves as written notice indicating in which respects the kennel has violated the N.C. Animal Welfare Act ("AWA") and the rules issued pursuant thereto. The facility owners are directed to immediately comply with the AWA and its associated rules.

The kennel is hereby notified that a boarding kennel license may not be renewed if there is not an "Approved" rating for at least one FCI in the fiscal year preceding the renewal application submission. To date, there has not been an "Approved" rating for this kennel for the 2022-2023 fiscal year. Therefore, should the kennel fail to correct these violations and fail to fully comply with the AWA and its associated rules, and thereby achieve an Approved rating on a FCI in the immediate future, the kennel's boarding kennel license renewal application may be denied.

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 license 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.

Your immediate attention to this matter is appreciated.

Sincerely,



Patricia Norris, DVM, MS  
Director of Animal Welfare Section  
Veterinary Division

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

## Appendix

### REFERENCED STATUTES AND REGULATIONS

#### **§ 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 .0202 INDOOR FACILITIES**

(d) Interior building surfaces of indoor facilities with which animals come in contact shall be constructed and maintained so that they are impervious to moisture and can be readily sanitized.

*History Note: Authority G.S. 19A-24; 19A-30(3);  
Eff. April 1, 1984;  
Amended Eff. January 1, 2005;  
Readopted Eff. September 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;
- (2) may use gravel for groundcover so long as it is maintained at a minimum depth of six inches and maintained in a sanitary manner as prescribed in Rule .0207 of this Subchapter.

*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.

(b) For primary enclosures and exercise areas placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures and exercise areas in use in a licensed or registered facility prior to January 1, 2005, any damaged wood shall be replaced in a manner that does not permit contact with wood by the animal.

*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 .0206 WATERING**

(d) Watering receptacles shall be durable and kept clean and sanitized.

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

**02 NCAC 52J .0207      SANITATION**

(d) Sanitation shall be as follows:

- (5) food and water receptacles shall be sanitized daily with hot water, detergent, and disinfectant. The disinfectant shall be used consistent with the manufacturer's directions;

*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 .0209      CLASSIFICATION AND SEPARATION**

Animals housed in the same primary enclosure or confined to an exercise area shall be maintained in compatible groups, with the following additional restrictions:

- (8) All animals shall be confined in primary enclosures or exercise areas. Primary enclosures and exercise areas shall be inspected by the Animal Welfare Section and in compliance with the rules of this Subchapter before an animal can be confined in the enclosure or area.

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