



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

December 31, 2024

David Cotton
Cleveland County Manager
311 E Marion St
Shelby, NC 28150
Via hand delivery

NOTICE of CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (“NCAC”) CHAPTER 52J SECTION 0.0201(m) and 0.0203(d)(2) and NOTICE of WARNING for VIOLATION OF 02 NCAC 52J .0201(l).

AWS-CP-2024-26

**Facility: Cleveland County Animal Services Animal Shelter
Registration Number 75**

Dear County Manager Cotton:

Pursuant to NCGS § 19A-40, I am issuing this notice that Cleveland County as the operator of the Cleveland County Animal Services Animal Shelter (“the shelter”) is hereby assessed a civil penalty of \$1,100.00 as provided in the enclosed Notice of Violation.

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 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
Samuel Gray, Assistant Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

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

IN THE MATTER of)	NOTICE of VIOLATION and
CLEVELAND COUNTY)	ASSESSMENT of CIVIL PENALTY
OPERATOR of)	for VIOLATIONS of TITLE 02 NC
CLEVELAND COUNTY)	ADMINISTRATIVE CODE (“NCAC”)
ANIMAL SERVICES)	CHAPTER 52J SECTIONS .0201(m) and
ANIMAL SHELTER)	.0203(d)(2) and NOTICE of WARNING for
)	VIOLATION of 02 NCAC 52J .0201(l)
)	

Acting pursuant to NCGS § 19A-40, 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. At all times pertinent to this matter, the Cleveland County Animal Services Animal Shelter (“the shelter”), owned and operated by Cleveland County was an animal shelter registered pursuant to NCGS §19A-26.
2. On November 27, 2024, AWS received a complaint alleging that the shelter was improperly housing dogs outside when the nighttime low temperatures were forecasted to be from the low 20’s to the mid 30’s °F. Based on this information, AWS opened an investigation. The investigation centered on possible violation(s) of the N.C. Animal Welfare Act (“AWA”) as these statutes and associated regulations are the extent of the jurisdiction of AWS.
3. On November 27, 2024, given the potential for significant harm to animals based on the allegations AWS Animal Health Technician James (“Inspector James”) arrived at the shelter at approximately 7 PM. From his position outside of the shelter, he did not see any animals housed in the outside runs.
4. On December 1, 2024, Inspector James arrived at the shelter at approximately 5 PM to view the outside enclosures. The following was observed during this visit:
 - a. the shelter was closed when he arrived;
 - b. 3 dogs were housed in the outdoor enclosures. In violation of 02 NCAC 52J .0203(d)(2), 2 of the primary enclosures housing 2 of the dogs were noted to not contain the required dog houses. No dog house was observed in the third enclosure, but this enclosure could not be visualized in its entirety from Inspector’s vantage point outside of the shelter.
5. On December 2, 2024, Inspectors James and Eudy arrived at the shelter to continue the investigation. This site visit revealed the following:
 - a. the 3 dogs were observed from outside of shelter and noted to be housed in the same enclosures that they were housed in noted during the December 1, 2024 visit;
 - b. observation of the enclosures from within the shelter showed that none of the enclosures housing these 3 dogs had the dog houses required by 02 NCAC 52J .0203(d)(3)

- c. the runs on the inside of the shelter for the 3 outdoor enclosures were housing dogs and had signage reading “Dogs On Backside;”
- d. when Inspectors James and Eudy asked the Interim Shelter Director about the 3 dogs being housed outside, she relayed that the dogs had just arrived that day. Review of the intake information showed that two of the dogs (Animal ID No. A008495 and A008496) arrived on November 30, 2024 and the third dog with Animal ID No. A008497 arrived on December 1, 2024. Therefore, her assertion that the dogs had just arrived was in violation of 02 NCAC 52J .0201(m);
- e. when informed of the intake dates for these 3 dogs, the Interim Shelter Director relayed that the housing of these 3 dogs outside was a one-time occurrence because of the shelter was full and it was the holiday weekend. As the reason for the site visit was a complaint alleging the improper housing of shelter dogs outside, this assertion also appeared to be in violation of 02 NCAC 52J .0201(m); and
- f. when asked if the housing of animals outside without proper housing was a violation of Cleveland County ordinances, she admitted that this was true. A review of Cleveland County ordinances shows that Section 3-34(a) states that “It shall be unlawful for any person owning, possessing or harboring an animal to negligently or willfully fail to provide an animal he owns possesses, or harbors: . . . (4) Adequate shelter and protection from the weather. . . Therefore, the shelter violated 02 NCAC 52J .0201(l) by failing to comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.

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 the AWS investigation, AWS finds that the shelter violated the following provisions:

02 NCAC 52J .0201(l) for failure to comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility

02 NCAC 52J .0201(m) for failure to be truthful with NCDA&CS employees during all phases of an investigation

02 NCAC 52J .0203(d)(2) for failure to provide 3 dogs housed in outside enclosures with a (dog) house for each animal within each (outside) primary enclosure

Pursuant to NCGS §§ 19A-30 and 19A-40, these violations can result in the suspension, revocation or refusal to renew a registration for any animal shelter and/or the assessment of a civil penalty of up to \$5,000 per violation.

CIVIL PENALTIES

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 violation listed above.

Accordingly, Cleveland County as the owner and operator of the Cleveland County Animal Services Animal Shelter is hereby assessed a civil penalty for the following violations:

\$200.00 for violation of 02 NCAC 52J .0201(m) for failure to be truthful with NCDA&CS employees during all phases of an investigation

\$900.00 for 3 violations (\$300.00 for each violation) of 02 NCAC 52J .0203(d)(2) for failure to provide dogs housed in outside enclosures with a (dog) house for each animal within each (outside) primary enclosure

\$1,100.00 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 registration 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 violation of 02 NCAC 52J .0201(l), this Warning Letter serves as written notice indicating in which respects the shelter 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 a 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)

December 31, 2024
Date



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

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-26. Certificate of registration required for animal shelter.

No person shall operate an animal shelter unless a certificate of registration for such animal shelter shall have been granted by the Director. Application for such certificate shall be made in the manner provided by the Director. No fee shall be required for such application or certificate. Certificates of registration shall be valid for a period of one year or until suspended or revoked and may be renewed for like periods upon application in the manner provided.

§ 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

- (l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.
- (m) A licensee or registrant and all agents of the facility shall be truthful with NCDA&CS employees during all phases of inspections or investigations.

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

- (d) Dogs and cats in outdoor primary enclosures shall be provided housing to allow them to remain dry and comfortable during inclement weather:
 - (2) one house shall be available for each animal within each primary enclosure. The house(s) shall be of adequate size for the animal housed in the enclosure. In the case of a mother and her unweaned offspring, one house of adequate size to comfortably house the mother and all the offspring together must be provided;

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