



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 27, 2023

Davin Madden
Lincoln County Manager
Lincoln County Government
353 N. Generals Blvd
Lincolnton, NC 28092

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0210(d); .0301(a); .0302(a)(1), and (d); and .0304(a).

AWS-CP-2023-14

**Facility: Lincoln County Animal Services Animal Shelter
Registration Number 76**

Dear County Manager Madden:

Pursuant to NCGS § 19A-40, I am issuing this notice that Lincoln County as the operator of the Lincoln County Animal Services Animal Shelter ("the shelter") is hereby assessed a civil penalty of \$1,400.00 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 black ink, appearing to read "Patricia Norris DVM, MS". The signature is fluid and cursive, with the initials "DVM, MS" written in a slightly more formal, blocky style at the end.

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

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 VIOLATION and
)	ASSESSMENT of CIVIL PENALTY
LINCOLN COUNTY)	for VIOLATIONS of TITLE 02 NC
)	ADMINISTRATIVE CODE (“NCAC”)
OPERATOR of)	CHAPTER 52J SECTIONS .0210(d);
)	.0301(a); .0302(a)(1) and (d); and .0304(a)
LINCOLN COUNTY ANIMAL)	
)	
SERVICES ANIMAL SHELTER)	

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 Lincoln County Animal Services Animal Shelter (“the shelter”), operated by Lincoln County, was an animal shelter registered pursuant to NCGS §19A-26.
2. On June 20, 2023, AWS received a complaint concerning the death of a dog named Dot (Animal # 014811) while in the care and custody of the shelter. 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 July 10, 2023, AWS Animal Health Technician Lindsey Harris (“Inspector Harris”) conducted the site visit portion of the investigation. The site visit and statements from the shelter staff and the spay/neuter staff revealed the following:
 - a. the shelter records for Dot show that blood was observed in her urine on June 7, 2023 and that no veterinary care was provided by the shelter to Dot for this condition from the first observation until her death on June 9, 2023;
 - b. the shelter’s Program of Veterinary Care submitted to AWS on June 15, 2022 as part of the Animal Shelter Registration renewal application stated that animals would be provided veterinary care by either the shelter’s veterinarian or by the local emergency clinic;
 - c. in June 2023, the shelter’s veterinarian ended her employment at the shelter. The shelter staff relayed that the shelter did not implement a plan for the provision for veterinary care of the animals in the interim while awaiting the hiring of a new veterinarian;
 - d. on June 9, 2023, Dot was one of the animals transported to the spay/neuter clinic. The spay/neuter clinic found a tattoo indicating a previous spay so no surgery was done. The staff at the clinic noted that Dot was breathing heavily throughout the day. She was examined by a veterinarian and placed in a kennel in front of a fan;
 - e. on the afternoon of June 9, 2023, the shelter staff picked up the animals that had been

previously transported to the spay/neuter clinic to return them to the shelter. Shelter staff relayed that approximately 20 plastic airline crates were loaded into the cargo van for transport that afternoon. These plastic airline crates have ventilation on the sides of upper half of the crate and the front doors are metal grates;

- f. statements of the driver and the staff of the clinic conflict as to where Dot was placed in the cargo van for transport. During the investigation, the AWS Inspector sat behind the driver's seat which is where the driver states Dot was placed. She asked the shelter staff to put the air conditioning fan controls at the maximum flow rate. She noted that behind the driver's seat, she could not feel any air movement. The clinic staff stated that they loaded Dot as the last dog in the back left side just in front of the back doors. With 20 crates in the cargo area, the air flow to this region would have been minimal to non-existent;
- g. the clinic staff stated that they told the driver that Dot had been having trouble breathing while in their care;
- h. the driver stated that he did not stop during transit to check on Dot's condition;
- i. the shelter staff said that Dot was one of the last dogs to be unloaded. When they went to unload her, they saw she was in distress. Dot was rushed into the treatment area and her temperature was found to be 108.4°F. Dot was agonal so the shelter staff euthanized her.

4. A review of the necropsy report for Dot shows that, while the conditions of the tissues precluded a definitive determination of the cause of death, the lesions and the history were consistent with hyperthermia. No contributory factors were present to explain the hyperthermia. The bladder showed evidence of a mild to moderate chronic infection.

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 concludes that the shelter has violated 02 NCAC 52J .0210(d); .0301(a); .0302(a)(1) and (d); and .0304(a).

AWS concludes that the shelter violated the following provisions:

02 NCAC 52J .0210(d) for failure to provide veterinary care for Dot from June 7 – 9, 2023

02 NCAC 52J .0301(a) for failure to provide a vehicle used to transport dogs and cat that was adequately equipped to provide fresh air to all animals transported on June 9, 2023

02 NCAC 52J .0302(a)(1) for failure to provide primary enclosures during transport that were ventilated to protect the health and safety of the animal so that each animal in the vehicle has adequate fresh air for normal breathing on June 9, 2023

02 NCAC 52J .0302(d) for failure to provide special provisions for Dot during transport so that she could maintain her normal body temperature on June 9, 2023

02 NCAC 52J .0304(d) for the failure of the driver of the shelter's transport van to inspect the animal in transit with adequate frequency to determine Dot's health and to obtain the emergency care she needed on June 9, 2023

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 violations listed above.

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

\$250.00 for violation of 02 NCAC 52J .0210(d) for failure to provide veterinary care for Dot from June 7 – 9, 2023

\$200.00 for violation of 02 NCAC 52J .0301(a) for failure to provide a vehicle used to transport dogs and cat that was adequately equipped to provide fresh air to all animals transported on June 9, 2023

\$200.00 for violation of 02 NCAC 52J .0302(a)(1) for failure to provide primary enclosures during transport that were ventilated to protect the health and safety of the animal so that each animal in the vehicle has adequate fresh air for normal breathing on June 9, 2023

\$250.00 for violation of 02 NCAC 52J .0302(d) for failure to provide special provisions for Dot during transport so that she could maintain her normal body temperature on June 9, 2023

\$500.00 for violation of 02 NCAC 52J .0304(d) for the failure of the driver of the shelter's transport van to inspect the animal in transit with adequate frequency to determine Dot's health and to obtain the emergency care she needed on June 9, 2023

\$1,400.00 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.

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

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 .0210 VETERINARY CARE

(d) Each dog and cat shall be observed daily by the animal caretaker who has been adequately trained or is experienced in animal care or is under the direct supervision of a person who has such training or experience. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with adequate veterinary care in a timely manner or be euthanized, provided that the euthanasia shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If an animal cannot be euthanized due to a required holding period and does not meet the criteria of G.S. 19A-32.1(b)(2), then adequate veterinary care shall be provided to the animal.

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 .0301 VEHICLES

(a) Vehicles used in transporting dogs and cats subject to the Animal Welfare Act shall be mechanically sound and equipped to provide fresh air to all animals transported.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Readopted Eff. October 1, 2022.

02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

(a) Primary enclosures such as compartments or transport cages, cartons, or crates used by persons subject to the Animal Welfare Act to transport cats and dogs shall be constructed, ventilated and designed to protect the health and ensure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

(1) Each animal in the vehicle has adequate fresh air for normal breathing.

(d) Special provisions during transport shall be provided to any animal that cannot maintain its normal body temperature during the transport. These special provisions shall be adequate for the animal to maintain its normal body temperature and shall be documented in the animal's record.

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 .0304 CARE IN TRANSIT

(a) Drivers or traveling attendants shall inspect each animal in transit with adequate frequency to determine the animal's comfort, health, and safety, and to obtain or provide relief or emergency care if needed.

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