



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

November 21, 2024

Angela MacDonald
Owner
PetSmart #2230
19601 N 27th Avenue
Phoenix, AZ 85027
businesslicensing@petsmart.com

NOTICE of WARNING and NOTICE of VIOLATION

Re: Violations of Title 02 N.C. Administrative Code (“NCAC”) Chapter 52J, Sections .0102(5); .0103; .0201(r); .0204(a); .0207(d)(2); and .0209(6) and (8).

AWS-WL-2024-9

Facility: PetSmart #2230
License Number: 11090

Dear Ms. MacDonald:

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 PetSmart #2230 (the “kennel”) on February 22, 2024, August 7, 2024, September 18, 2024, and November 12, 2024. Due to the number, severity, and repetitive nature of the violations of the N.C. Animal Welfare Act (“AWA”) and its associated regulations, the FCI report for February 22, 2024 was marked as “Contingently Approved” and the FCIs for August 7, 2024, September 18, 2024, and November 12, 2024 were noted as “Disapproved.”

During the November 12, 2024 FCI, the following was noted:

- 1) in violation of 02 NCAC 52J .0102(5), the kennel failed to keep an incident file for animals sustaining injury or illness requiring veterinary care, animal death and/or animal escape. This violation was previously cited during the FCIs conducted on February 22, 2024, August 7, 2024, and September 18, 2024;
- 2) in violation of 02 NCAC 52J .0103, the kennel failed to maintain records of animals for a period of one year from release as the records for 13 animals could not be produced upon request. In addition, as names instead of identification numbers were used and the names were repetitively used for multiple animals, the records could not be matched to individual animals.

- This violation was previously cited during the FCIs conducted on February 22, 2024, August 7, 2024, and September 18, 2024;
- 3) in violation of 02 NCAC 52J .0201(r), the kennel has failed to develop or maintain a plan of action for the continuity of care and/or evacuation of animals in the event of a natural or manmade disaster. This violation was previously cited during the FCIs conducted on February 22, 2024, August 7, 2024, and September 18, 2024;
 - 4) in violation of 02 NCAC 52J .0204(a), the surfaces within the primary enclosures were not impervious to moisture as the kennel allows cats to be present in the area around the cages and the surfaces in this area were not impervious to moisture. This violation was previously cited during the FCIs conducted on February 22, 2024, August 7, 2024, and September 18, 2024;
 - 5) in violation of 02 NCAC 52J .0207(d)(2), the primary enclosures were not properly sanitized as evidenced by the buildup of organic debris and litter on the enclosure doors and latches. This violation was previously cited during the FCIs conducted on February 22, 2024, and September 18, 2024;
 - 6) in violation of 02 NCAC 52J .0209(6), the kennel failed to designate an isolation area for animals being treated or observed for communicable diseases. This violation was previously cited during the FCI conducted on September 18, 2024; and
 - 7) in violation of 02 NCAC 52J .0209(8) the kennel failed to confine animals in primary enclosures or exercise areas that had been inspected by AWS and were found to be in compliance with the NC Animal Welfare Act rules. This violation was previously cited during the FCIs conducted on February 22, 2024, August 7, 2024, and September 18, 2024.

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 may have violated the N.C. Animal Welfare Act (“AWA”) and the rules issued pursuant thereto. The facility operator is 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 2024-2025 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 application for a boarding kennel license 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,

A handwritten signature in blue ink, appearing to read "Patricia Norris DVM MS".

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 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 .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (3) veterinary care provided while boarded, which shall include date, times of administration, description of medication and initials of person administering product or procedure. The description of the medication shall include the name, strength or concentration, dosage, and dosing regimen. The dosage regimen shall include the frequency and duration to include the number of dosages or days to be given and the reason for the administration;

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

02 NCAC 52J .0201 GENERAL

(a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.

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 .0202 INDOOR FACILITIES

(b) Ventilation of indoor facilities:

- (2) air vents and/or air filters shall be cleaned and/or changed as often as necessary to minimize buildup of debris, dust and biological material and as often as necessary to prevent inhibition or restriction of air flow; and

(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 .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.

(c) Primary enclosures and exercise areas for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out.

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

(a) Waste shall be removed from primary enclosures, exercise areas and common areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures

and exercise areas for dogs and cats shall be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris.

(d) Sanitation shall be as follows:

- (1) prior to the introduction of dogs or cats into empty primary enclosures previously occupied, enclosures and accessories shall be sanitized in the manner provided in Subparagraph (d)(3) of this Rule;
 - (3) primary enclosures, cages, rooms, hard-surfaced or artificial turf exercise areas, pens, and runs shall be sanitized by:
 - (A) washing them with hot water (180 degrees F.) and soap or detergent as in a mechanical cage washer; or
 - (B) removal of visible organic matter, precleaning all soiled surfaces with a detergent or degreaser solution, followed by the application, at the correct concentration, of an animal-safe disinfectant labeled to be effective against common pathogens. The disinfectant is to be left on the surfaces for the time indicated by the manufacturer. After such time, all surfaces shall be thoroughly rinsed to remove all residual chemicals and then the area dried prior to returning the animal(s) to this area; or
 - (C) cleaning all soiled surfaces with live steam. The area is to be cooled and dried prior to the return of the animal(s).
 - (4) common areas, any area accessible to multiple animals and exercise areas not covered by 02 NCAC 52J .0207(d)(3) shall be kept clean and sanitary. These areas are to be properly cleaned a minimum of two times per day. Hard and/or impervious surfaces of these areas shall be sanitized a minimum of once every seven days in the manner provided in Subparagraph (d)(3) of this Rule;
 - (7) any area accessible to multiple animals shall be kept clean and sanitary; and
- (e) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

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:

- (2) In boarding kennels, animals of different owners shall not have contact with other animals, unless written permission is obtained from the animal's owner. The documentation of this written permission shall be kept as part of the animal's record for one year and must be renewed yearly thereafter.

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