Steven W. Troxler
Commissioner

North Carolina Department of Agriculture and Consumer Services

Veterinary Division

David T. Marshall, DVM
State Veterinarian

October 10, 2011

CERTIFIED MAIL RETURN RECEIPT REQUESTED

7006 2760 0003 0472 2372

Mr. Mike Aldridge
County Manager
PO Box 910
Kenansville, NC 28349

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: ASSESSMENT OF CIVIL PENALTY
Duplin County Animal Shelter

Dear Mr. Aldridge:

This letter encloses an Order issued pursuant to N.C. Gen. Stat. §§ 19A-40. Inspections of the conditions and practices prevalent in your animal shelter indicates that grounds exist for imposition of a civil penalty based upon violation(s) of the requirements set forth under the NC Animal Welfare Act and the rules establishing minimum standards in certified animal shelters promulgated under that law.

The attached Civil Penalty Assessment describes in detail the factual basis for this decision. You may contest this decision by filing a petition under the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, within five (5) days of your receipt of this Order. Please find enclosed information on filing said petition.

APPEAL INFORMATION

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars ($20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. 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 919/733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

Mr. Ray Starling
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.

A proposed consent agreement has been enclosed. If you wish to resolve this matter in accordance with the terms set forth in the proposed consent agreement, you need simply sign and return it to me in the enclosed, self-addressed envelope. Upon receipt I will sign the original agreement and return a copy to you for your records.

When you have satisfied the terms and conditions set forth in the consent agreement to the Department's satisfaction, I will issue notice to you that this order has been cancelled as to any remaining terms or conditions.

If you have any questions concerning the basis for this order or the terms of the proposed consent agreement, you may call me at the telephone number listed above.

Sincerely,

Lee Hunter, DVM, MPH
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

Enclosures: 1) Civil Penalty Assessment;
2) Consent Agreement

cc: David McLeod, Assistant Commissioner, NCDA&CS
David T. Marshall DVM, State Veterinarian, NCDA&CS
Barry Bloch, Assistant Attorney General, NCDOJ

STATE OF NORTH CAROLINA COUNTY OF WAKE	NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION ANIMAL WELFARE SECTION
IN THE MATTER OF DUPLIN COUNTY ANIMAL SHELTER	))CIVIL PENALTY ASSESSMENT))PURSUANT TO THE ANIMAL)WELFARE ACT, N.C. GEN. STAT. §§ 19A-30 and)-40, AND 02 ,N.C.A.C. 52J .0201, .0202, .0203, .0204, 0205,).0206

Acting pursuant to N.C. Gen. Stat. § 19A-40, Dr. Lee Hunter, Director, Animal Welfare Section, NCDA&CS makes the following:

I. FINDINGS OF FACT

1. **On October 3, 2011, Ms. Pat Sholar, Inspector, with the North Carolina Department of Agriculture and Consumer Services, (NCDA&CS) Animal Welfare Section, conducted a follow up inspection of the facility premises of Duplin County Animal Shelter, located on 117 Middleton Cemetery Road, Kenansville, NC; the previous inspection took place on August 4, 2011.**

2. **Inspector Sholar found deficiencies:**

   a) In the veterinary care records (lack of a medical log);
   b) In the frequency of waste removal from litter boxes in the cat room;
   c) In the failure to provide one food bowl per adult dog;
   d) In the failure to properly maintain an automatic waterer and adequate water supply to dogs in one primary enclosure;
   e) In the failure to adequately clean and sanitize a cargo unit used as a dog's primary enclosure;
   f) In the failure to repair the latches and secure the welded wire to a cargo unit used as a primary enclosure (same unit as 2. e);
   g) In the failure to adequately clean, provide food and provide water to the dog kept in the cargo unit (same unit as 2. e) and f).

3. **Inspector Sholar observed that this inspection was the fifth consecutive inspection of this facility that had been disapproved.**

4. **Said shelter received a warning letter on August 25, 2011, requesting the registrant to provide a time line for plans to correct the deficiencies noted in the inspection report done on August 17, 2011.**

5. **To date the registrant has never complied with the request to provide its plan and time line for correcting those deficiencies.**

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that you either by act or omission, violated the following provision of the North Carolina General Statutes:

§ 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: ...

(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;

02 NCAC 52J .0101 **Records; animal shelters, etc.**

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

(5) Record of veterinary care including treatments, immunization and date, time, description of medication (including name and dosage), and initials of person administering any product or procedure.

02 NCAC 52J .0201 GENERAL

(e) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.

02 NCAC 52J .0205 FEEDING

(b) Food receptacles shall be accessible to all dogs or cats and shall be located so as to minimize contamination by waste. For every adult animal, there must be at least one food receptacle offered. Food receptacles shall be durable and shall be kept clean and sanitized. Damaged receptacles shall be replaced. Disposable food receptacles may be used but must be discarded after each feeding.

02 NCAC 52J .0206 WATERING

Animals shall have continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care. Watering receptacles shall be durable and kept clean and sanitized. Damaged receptacles shall be replaced.

02 NCAC 52J .0301 VEHICLES

(a) Vehicles used in transporting dogs and cats shall be mechanically sound and equipped to provide fresh air to all animals transported without harmful drafts.

(c) The interior of the animal cargo space shall be kept clean. It shall be sanitized as deemed necessary.

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 insure the safety of the animals.

(e) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

II. CONCLUSIONS OF LAW

A. **Duplin County Animal Shelter violated N.C. General Statute § 19A-30 and 2 N.C. Administrative Code 52J .0101, .0201, .0205, .0206, .0207, .0301 and .0302 and may be assessed a civil penalty of up to $5,000.00 per violation pursuant to N.C. Gen. Stat. § 19A-40.**

B. **The Director of the Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture and Consumer Services, pursuant to N.C. Gen.Stat. § 19A-30 has the authority to suspend or revoke a certificate of registration for any animal shelter found to have engaged in:**

(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;**

C. **The Director of the Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture and Consumer Services, pursuant to N.C. Gen.Stat. § 19A-40 has the authority to assess civil penalties in this matter.**

III. DECISION

As required by N.C. Gen. Stat. § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of N.C. Gen. Stat. § 19A-30 and 2 N.C. Administrative Code 52J .0101, .0201, .0205, .0206, .0207, .0301 and .0302.

Accordingly, Duplin County Animal Shelter is assessed a civil penalty of: $1000.00 for violating N.C. Gen. Stat. § 19A-30 and 2 N.C. Administrative Code 52J .0101, .0201, .0205, .0206, .0207, .0301 and .0302

$1,000.00 TOTAL AMOUNT ASSESSED

_____ _____

Date **Lee Hunter, DVM, MPH**
Director of Animal Welfare