



# DUPLIN COUNTY LEGAL DEPARTMENT



County Attorney

Wendy L. Sivori

423 N. Main Street  
PO Box 969  
Kenansville, NC 28349  
Telephone (910) 296-2362, Facsimile (910) 296-1879

August 13, 2012

Dr. Lee Hunter, DVM  
N.C. Department of Agriculture & Consumer Services  
Veterinary Division  
1030 Mail Service Center  
Raleigh, NC 27699-1030

Re: 11 DAG 12433  
(County of Duplin v. N.C. Department of Agriculture)

Dear Dr. Hunter:

Enclosed please find the original Stipulation of Settlement and Consent Order in the above-referenced case. Also enclosed please find a check in the amount of \$200.00 as requested under said Stipulation Settlement. Once I receive a copy of the approved minutes from the Duplin County Board of Commissioners showing that the \$500.00 has been budgeted to the animal control department, I will send a copy to your attention. I expect those minutes should be sent no later than the end of the month.

Thank you for your attention to this matter.

Very truly yours,

Wendy L. Sivori

WLS/chg

Cc: Mike Aldridge, County Manager

Enc.

STATE OF NORTH CAROLINA  
COUNTY OF DUPLIN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
11 DAG 12433

COUNTY OF DUPLIN )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 N.C. DEPARTMENT OF )  
 AGRICULTURE AND CONSUMER )  
 SERVICES, VETERINARY DIVISION )  
 )  
 Respondent. )

**STIPULATION OF SETTLEMENT**

**AND CONSENT ORDER**

RECITALS

Duplin County (the "Petitioner") and the North Carolina Department of Agriculture and Consumer Services (the "Respondent") desire to fully and finally settle this and all other disputes and controversies surrounding the Petitioner's operation of an animal shelter, and desire to affect a full and final settlement solely in order to avoid the burden and expense of continued litigation.

1. WHEREAS, 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. WHEREAS, 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. WHEREAS, Inspector Sholar observed that this inspection was the fifth consecutive inspection of this facility that had been disapproved.

4. WHEREAS, Said shelter received a warning letter from the Respondent on August 25, 2010, requesting that the Petitioner provide a time line for plans to correct the deficiencies noted in the inspection report done on August 17, 2010.

5. The registrant attempted to comply with the request to provide its plan and time line for correcting those deficiencies by requesting sixty days to remedy the deficiencies.

6. After the warning letter was issued, the Petitioner requested a reinspection of its facility.

7. As a result of this investigation, the Respondent alleged that the Petitioner either by act or omission, violated the following provision of the North Carolina General Statutes and the regulations promulgated thereunder:

§ 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.

8. Whereas, the Respondent concluded that the Petitioner 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.

9. Whereas, Respondent's 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.
10. WHERE AS, the Respondent exercised his authority to impose a civil penalty in the amount of one thousand dollars (\$1,000.00) pursuant to G.S. § 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. (1995, c. 516, s. 6; 1998-215, s. 3.)

WHEREAS the parties desire to resolve this matter without further litigation.

NOW THEREFORE, the parties agree as follows:

1. Petitioner agrees that, when Respondent files the attached Consent Order with the assigned Administrative Law Judge (ALJ) of the N.C. Office of Administrative Hearings, and said ALJ signs and files this Agreement and Consent Order, this Agreement and Consent Order shall constitute a full and final dismissal of the above-captioned matter, with prejudice.
2. Petitioner further agrees that the agreements, promises and commitments set forth below constitute full and fair consideration for resolution and settlement of its petition before the North Carolina Office of Administrative Hearings in the matter captioned above though Petitioner does not admit any of the alleged violations as stated in this Agreement.
3. Petitioner has provided and the Respondent has approved a plan for ensuring its animal shelter facility is in compliance with the minimum standards for such facilities set forth in 02 NCAC chapter 52J. Said plan lists each of the conditions described in the Respondent's last

inspection report and provides both the dates and a description of the means by which Petitioner will come into compliance, including the sums to be spent in doing so. This compliance plan is attached hereto as Exhibit A, and incorporated herein by reference.

4. In consideration of Petitioner's having budgeted the sums set forth in its compliance plan for bringing its facility into compliance, the Respondent agrees to stay imposition of the civil penalty assessed against the Petitioner in the amount Petitioner has agreed to spend in Exhibit A, five hundred dollars (\$500.00). The Petitioner hereby agrees and represents that this amount is over and above its normal operating expenses for its facility for the period in which Exhibit A will be carried out. The Petitioner shall pay against the balance of civil penalty the sum of two hundred dollars (\$200.00) within thirty days of the date it executes this Stipulation of Settlement and the Consent Order has been signed by the ALJ and filed with the Clerk of the N.C. Office of Administrative Hearings. When Petitioner has spent the sums budgeted as set forth in Exhibit A, Respondent shall waive collection of the remaining balance of the original civil penalty of one thousand dollars (\$1,000.00).

5. In the event that the Respondent finds that:

- a) The Petitioner has failed to ensure that its shelter facility is in compliance with the minimum standards set forth in 02 NCAC Ch. 52J, as Petitioner has agreed in Exhibit A, including the dates set forth therein; or
- b) The Petitioner has committed a new violation of the North Carolina Animal Welfare Act or the rules promulgated thereunder; or

c) The Petitioner closes its animal shelter facility within the period of 365 days starting on the day the Respondent signs this settlement agreement, and the Respondent fails to open, lease or acquire another animal shelter facility within ten days of closing.

6. The persons signing this Stipulation of Settlement represent that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties, the parties represent to each other that they have full power and all requisite authority to execute and perform this Agreement.

7. The parties agree to act in good faith in the implementation of this Agreement.

8. The parties agree to bear their own attorneys fees and costs.

9. It is understood between the parties that this Agreement contains the entire agreement between the parties hereto regarding the matters set forth, and it supersedes all previous negotiations, discussions and understandings regarding such matters. Terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.

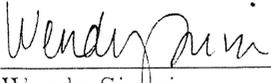
10. The effective date of this Agreement will be the date on which it has been executed by all parties as shown on the signature lines below.

11. North Carolina law shall govern the interpretation and enforcement of this Agreement.

IN TESTIMONY WHEREOF, the parties have set their hands and seals on the dates

indicated below:

FOR PETITIONER



Wendy Sivori  
Duplin County Attorney

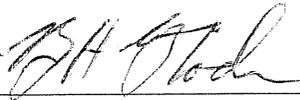
Date: 8-8-2012



Mike Aldridge  
Duplin County Manager

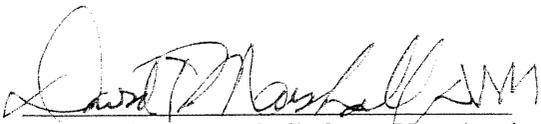
Date: 8-7-12

FOR RESPONDENT:



Barry H. Bloch  
Assistant Attorney General  
N.C. Department of Justice  
ATTORNEY FOR RESPONDENT

Date: 8/23/2012



Dr. David T. Marshall, State Veterinarian  
North Carolina Department of Agriculture & Consumers Services

Date: 8/23/12

\_\_\_\_\_  
Augustus B. Elkins, II  
Administrative Law Judge Presiding

Date: \_\_\_\_\_

Filed: \_\_\_\_\_