



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

January 4, 2011

Mr. Ron Rombs
Lincoln County Animal Services
650 John Howell Memorial Drive
Lincolnton, NC 28092

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

7006 2760 0003 0472 2303

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: SUSPENSION OF EUTHANASIA PRIVILEGES; CARBON MONOXIDE
CHAMBER OPERATION; IMPOSITION OF CIVIL MONEY PENALTY

Dear Mr. Rombs:

This letter encloses an Order issued pursuant to N.C. Gen. Stat. §§ 19A-24 and 19A-40 and 02 NCAC 52J concerning your animal shelter's certification for operation of a carbon monoxide chamber for euthanasia of animals in your animal shelter from the Animal Welfare Section of the North Carolina Department of Agriculture and Consumer Services ("NCDA&CS"). Inspection of your facilities indicated that grounds exist for suspension of this privilege under your certification based upon violations of the requirements set forth under the NC Animal Welfare Act and the rules for operation of carbon monoxide chambers for euthanasia of animals in animal shelters promulgated under that law. This order includes a civil money penalty imposed pursuant to authority vested in me under N.C. Gen. Stat. § 19A-40.

The attached Notice of Violation(s) describes in detail the factual basis for the suspension of this privilege. You have failed to carry out the duties imposed upon animal shelter operators, demonstrated by the acts and/or omissions described in said Notice.

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.

Therefore, you are notified to CEASE AND DESIST from operating your carbon monoxide chamber and equipment for euthanasia of cats and dogs in your animal shelter. If the certified euthanasia technicians you employ are certified in any other euthanasia techniques, they and licensed veterinarians may continue to euthanize dogs and cats in your animal shelter. If the Animal Welfare Section finds evidence indicating that you have operated your carbon monoxide chamber to euthanize a dog or cat following your receipt of this letter, the NCDA&CS has the authority to impose a civil penalty of up to five thousand dollars (\$5,000.00) per violation pursuant to:

§ 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.

Your suspension is effective immediately upon receipt of this letter. You may resolve this matter without resort to litigation by immediately remedying the conditions cited as a violation, described in the Notice of Violation. If you believe you have done so, please notify this office immediately to allow us to take appropriate steps to verify your actions. Once we have been able to do so, I will issue notice to you that your shelter's privilege to use its carbon monoxide chamber for euthanasia of dogs and cats has been reinstated and that this order of suspension has been cancelled.

If you have any questions concerning the basis for this order, 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) Notice of Violations;
2) Appeal Information

cc: David McLeod, Assistant Commissioner, NCDA&CS
David T. Marshall, DVM, State Veterinarian, NCDA&CS
Barry Bloch, Assistant Attorney General, NCDOJ
Howard Isley, Assistant Commissioner, NCDA&CS
Brian Long, Director of Public Affairs, NCDA&CS
Ray Starling, Legal Affairs, NCDA&CS

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.

adopted.

6. One disposition record indicated that a pregnant dog had been euthanized on July 26, 2010. This record did not list the amount of drug administered, nor did it state that the CO chamber had been used.

7. Mr. Stamey's inspection of the shelter information revealed that Matthew Lovelace had euthanized approximately thirty-five animals after being hired to work in the shelter. At that time Matthew Lovelace was not a certified euthanasia technician.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that your animal shelter, either by act or omission, violated the following provisions of the N.C. General Statute and/or 02 NCAC 52J:

§ 19A-24. Powers of Board of Agriculture.

(a) The Board of Agriculture shall:

- (1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.
- (2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.
- (3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.
- (4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.
- (5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process.

(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture may adopt rules on the euthanasia of animals for:

- (1) Written and practical examinations for persons who perform euthanasia.
- (2) Issuance of certification to persons who have successfully completed both training and examinations to become a euthanasia technician.
- (3) Recertification of euthanasia technicians on a periodic basis.
- (4) Standards and procedures for the approval of persons who conduct training of euthanasia technicians.
- (5) Approval of materials for use in euthanasia technician training.
- (6) Minimum certification criteria for persons seeking to become euthanasia technicians including, but not limited to: age; previous related experience; criminal record; and other qualifications that are related to an applicant's fitness to perform euthanasia.

- (7) Denial, suspension, or revocation of certification of euthanasia technicians who either violate any provision of the Animal Welfare Act pursuant to Article 3 of Chapter 19A of the General Statutes or otherwise become ineligible for certification.
- (8) Provision of the names of persons who perform euthanasia at animal shelters and for the animal shelter to notify the Department when those persons are no longer affiliated, employed, or serving as a volunteer with the shelter.
- (9) Certified euthanasia technicians to notify the Department when they are no longer employed by or are serving as a volunteer at an animal shelter.
- (10) The duties, responsibilities, and standards of conduct for certified euthanasia technicians. (1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62; 2004-199, s. 12; 2005-276, s. 11.5(b); 2005-345, s. 22; 2008-198, s. 2(a).)

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:

- (1) origin of animals (including names and addresses of consignors) and date animals were received;
- (2) description of animals including species, age, sex, breed, and color markings;
- (3) location of animal if not kept at the licensed or registered facility;
- (4) disposition of animals including name and address of person to whom animal is sold, traded or adopted and the date of such transaction; in the event of death, the record shall show the date, signs of illness, or cause of death if identified; if euthanized, the record shall show date and type of euthanasia; and
- (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.

History Note: Authority G.S. 19A-24;

Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician, Probationary Euthanasia Technician, or a veterinarian licensed to practice veterinary medicine in North Carolina may euthanize an animal in a certified animal shelter. A Certified Euthanasia Technician shall not euthanize animals using a method for which he or she is not currently certified except as specified in 02 NCAC 52J .0700.

History Note: Authority G.S. 19A-24;

Eff. March 23, 2009.

02 NCAC 52J .0602 PROHIBITED USES

Carbon monoxide may not be used to euthanize animals in certified facilities in any manner inconsistent with guidelines for the use of carbon monoxide approved by the entities referenced in 02 NCAC 52J .0401. Additionally, carbon monoxide shall not be used to euthanize the following animals in certified facilities:

- (1) Animals that appear to be less than 16 weeks of age;
- (2) Animals that are pregnant;
- (3) Animals that are near death.

II. CONCLUSIONS OF LAW

- A. Lincoln County Animals Services violated N.C. General Statute § 19A-24 and 2 N.C. Administrative Code 52J .0101, .0402 and .0602 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, 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 2 N.C. Administrative Code 52J .0101, .0402 and .0602.

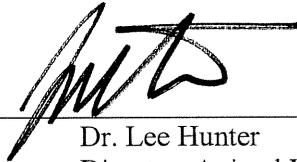
\$5,000.00 for violating N.C. General Statute § 19A-24 and 2 North Carolina Administrative Code 52B .0101, .0402 and .0602.

\$5,000.00 TOTAL AMOUNT ASSESSED

Further, Lincoln County Animal Services' privilege to operate and certification for operation of its carbon monoxide chamber for animal euthanasia is hereby suspended. Therefore, you are notified to CEASE AND DESIST from operating your carbon monoxide chamber and equipment for euthanasia of cats and dogs in your animal shelter. If the certified euthanasia technicians you employ are certified in any other euthanasia techniques, they and licensed veterinarians may continue to euthanize dogs and cats in your animal shelter. If the Animal Welfare Section finds evidence indicating that you have operated your carbon monoxide chamber to euthanize a dog or cat following your receipt of this order, the NCDA&CS has the authority to impose a civil penalty of up to five thousand dollars (\$5,000.00) pursuant to N.C. Gen. Stat. § 19A-40.

1/4/11

Date



Dr. Lee Hunter
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services