

Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

March 29, 2011

STATE OF NORTH CAROLINA

COUNTY OF WAKE

N.C. DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES
VETERINARY DIVISION, ANIMAL
WELFARE SECTION,

Complainant

v.

LINCOLN COUNTY ANIMAL SHELTER

Respondent.

SETTLEMENT
AGREEMENT

RECITALS

The North Carolina Department of Agriculture and Consumer Services (the "Complainant") and Lincoln County Animal Shelter (the "Respondent") desire to fully and finally settle this and all other disputes and controversies surrounding the Complainant's issuance of a civil penalty suspension of the Respondent's certification privilege as a facility entitled to euthanize animals, and desire to affect a full and final settlement solely in order to avoid the burden and expense of continued litigation.

1. Whereas, on December 17, 2010, the Department's inspector, Gary Stamey, inspected the animal shelter facility operated by Lincoln County Animal Services, located at 650 John Howell Memorial Drive, Lincolnton, NC 28092 (hereinafter, "the shelter").
2. During the inspection Mr. Stamey inspected the shelter, its animals, its records, its references and manuals and its euthanasia equipment and procedures.
3. At the beginning of the euthanasia inspection, the shelter staff could not locate the policy and procedure manual, the carbon monoxide (CO) chamber operating manual, and monthly CO chamber inspection records. Later during the inspection the shelter staff found the CO chamber operating manual and monthly CO chamber inspection records.

4. Mr. Stamey reviewed shelter records starting with those dated after the date of the last inspection, January 25, 2010, through November and December, 2010. His inspection of the shelter's euthanasia drug logs, animal disposition records (aka "Shelter Information Sheets") and computer-generated information sheets revealed that it was impossible to cross-reference from the euthanasia drug logs to the shelter information sheets to determine:
 - a) when specific animals were euthanized;
 - b) what method was used to euthanize specific animals; and
 - c) who performed the euthanization of specific animals.

For nearly all of said records, these items of information were missing.

5. The shelter's administrative assistant, Kay Hice, informed Mr. Stamey that for any shelter information sheets (disposition records) that did not state that the method of euthanasia was by injection, it meant that the animal had been euthanized by using the CO chamber or, where indicated, had been 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.
8. The Complainant subsequently suspended the Respondent's privilege of operating its carbon monoxide chamber and equipment for euthanasia of cats and dogs in its animal shelter. Further, Complainant issued the Respondent a civil penalty of five thousand dollars pursuant to G.S. 19A-40 for the violations enumerated above.
9. Respondent has informed the Complainant that it placed its CO chamber out of service, effective December 17, 2010, removing the CO bottles and returning them to the supplier, and rendering the CO inoperable by padlocking it.
10. On January 24, 2011, the Lincoln County Board of Commissioners directed that Respondent permanently remove and render inoperable its CO chamber.
11. Respondent has reported that it has created a new Euthanasia Manual and updated its animal euthanasia policies, cancelling any provisions for using CO for animal euthanasia; Respondent further reports that said policies were submitted to, reviewed and approved by Dr. Karen Miller, DVM, and the Policy Section of the Humane Society of the United States.
12. As a result of this investigation, the Complainant alleged that the Respondent's 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.

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

NOW THEREFORE, the parties agree as follows:

14. Complainant agrees that, upon receiving the signed original of this Agreement from the Respondent and Respondent's check, payable to the North Carolina Department of Agriculture and Consumer Services, in the amount of ~~one thousand~~ ^{two thousand five hundred} dollars (\$2,500.00), it will stay imposition and all efforts to collect the balance of the civil penalty it imposed, two thousand five hundred dollars (\$2,500.00). This stay shall remain in place for twelve months beginning on that day. Complaint shall notify the Respondent by faxed memorandum that it has received said signed original of this Agreement.
15. Complainant further agrees to accept Respondent's surrender of its euthanasia privileges

utilizing CO.

16. Further, Complainant agrees to suspend its efforts to collect the remaining two thousand five hundred dollars of the civil penalty imposed upon the Respondent, subject to Respondent's full and complete compliance with this Settlement Agreement, as set forth below, for a period of twelve months beginning upon the date Complainant receives Respondent's signed original of this Agreement. Once said twelve month term expires, Complainant shall cancel and dissolve the remaining unpaid portion of the civil money penalty, two thousand five hundred dollars, and release the Respondent from its obligation to pay the same, unless Complainant has already cancelled the suspension and reinstated the balance of the civil penalty of two thousand five hundred dollars.
17. As further consideration for this Settlement Agreement, the Respondent shall:
 - (a) retrain all of its Certified Euthanasia Technicians and staff members on proper euthanasia laws, rules, policies, procedures and protocols;
 - (b) retrain all of its Certified Euthanasia Technicians and staff members on proper record keeping and documentation requirements and procedures for shelter records; and
 - (c) require all Lincoln County Animal Control officers to maintain, in good standing with the Complainant, certification as euthanasia technicians.
18. In the event that Complaint receives evidence that the Respondent, its employees, agents, volunteers or independent contractors have committed a new violation of the North Carolina Animal Welfare Act and/or the regulations promulgated there under during the twelve months following Respondent's agreement to and execution of this Agreement, Respondent shall be deemed to be in material breach of this Agreement. For purposes of this agreement, a new violation is understood to mean a violation of G.S. Article 19A and the regulations promulgated there under that has detrimentally affected the health and/or welfare of the animals held in Respondent's facility and cannot, in the sole discretion of the Complainant, be easily remedied by the Respondent in the course of daily operations of the facility. The Complainant reserves the

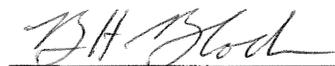
right to forego declaring the Respondent to be in breach of this agreement upon receiving evidence of any violation of G.S 19A or breach of this agreement, as a matter within its sole discretion. The parties further understand and agree that Complainant's decision not to declare the Respondent to be in breach of this agreement does not amount to a waiver of that right.

19. Respondent agrees that if Respondent fails to pay the total agreed upon sum of two thousand five hundred dollars (\$2,500.00) upon its acceptance of this agreement, said failure shall constitute a material breach of this Agreement and Complainant shall be entitled to receive the entire penalty of five thousand (\$5,000.00) dollars for violations of the above-stated North Carolina Animal Welfare Act and its Regulations;
20. As further valuable consideration Complaint grants to Respondent, Complaint agrees to rescind, cancel and forgive one-half of the civil penalty imposed upon Respondent's employee, Matthew Lovelace, in the sum of \$500.00, pursuant to a separate and independent settlement agreement to be established between Complainant and Mr. Lovelace. Complaint makes no other representations or promises concerning Mr. Lovelace's application for or status as a Certified Euthanasia Technician.
21. The Respondent hereby acknowledges its right to submit a petition for a formal hearing to the North Carolina Office of Administrative Hearings to resolve this matter and waives said right by consenting to the terms of this Agreement. The parties further agree that Respondent's waiver applies fully to the Suspension and Notice of Civil Penalty Complainant issued on January 4, 2011, and to any decision Complainant's Director of Animal Welfare makes subsequent to the execution of this Agreement as provided under paragraph 15, above.
22. The persons signing this Agreement 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.
23. The parties agree to act in good faith in the implementation of this agreement.
24. The parties agree to bear their own attorneys fees and costs.

25. 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.
26. The effective date of this Agreement will be the date on which it has been executed by the Respondent as shown on the signature lines below. However, the Complainant expressly retains the right to cancel this Agreement if, from the time this document is provided to Respondent, to the time this signed original Agreement is returned to the Complaint, Complainant finds evidence of new violations of the North Carolina Animal Welfare Act have been committed by the Respondent, its employees, agents, volunteers or independent contractors.
27. 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:


George A. Wood, County Manager Date: 4/12/11
For Lincoln County Animal Shelter
RESPONDENT


Date: 4/19/2011
Barry H. Bloch
Assistant Attorney General
N.C. Department of Justice
ATTORNEY FOR COMPLAINANT


Date: 4/19/2011
Lee Hunter, DVM, MPH
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumers Services
FOR COMPLAINANT

THIS CHECK IS NOT VALID UNLESS IT IS DEPOSITED AT THE BANK OF AMERICA

LINCOLN COUNTY, N.C.

286488

501

115 WEST MAIN STREET

LINCOLN NC 28042
(704) 786-6488

FIRST CITIZENS BANK & TRUST CO
LINCOLN NORTH CAROLINA

AMOUNT IN WORDS THREE THOUSAND DOLLARS AND 00 CENTS

NC Dept. of Agriculture & Consumer Service

285488

\$3,000.00

Attn: Dr. Lee Hunter, DMV Div
1030 Mail Service Center
Raleigh, NC 27699-1030



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