Steve Troxler
Commissioner

North Carolina Department of Agriculture and Consumer Services

Veterinary Division

David T. Marshall, DVM
State Veterinarian

May 15, 2012

Marsha Carroll
McDowell County Animal Outreach, Inc.
66 Highway 70 West
Marion, North Carolina 28752

VIA UPS

Re: ASSESSMENT OF CIVIL PENALTY
McDowell County Animal Outreach, Inc.
Animal Shelter Certification no. 131

Dear Ms. Carroll:

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.

Please note that, within thirty days of your receipt of this agency action but more than 15 days from the delivery of this letter, the Animal Welfare Section shall conduct another inspection to determine the extent of your compliance with the Animal Welfare Act the rules issued there under. If its inspectors find any of the violations described in the Civil Penalty Assessment have not been corrected or if the inspectors find any new conditions that violate the AWA and/or the regulations issued there under, I will determine whether to impose additional civil penalties.

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,

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

Enclosures: 1) Civil Penalty Assessment;

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

STATE OF NORTH CAROLINA

COUNTY OF MCDOWELL

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION ANIMAL WELFARE SECTION

IN THE MATTER OF	)	
	)	**CIVIL PENALTY ASSESSMENT**
McDowell County Animal Outreach, Inc.	)	
	)	**PURSUANT TO THE ANIMAL WELFARE ACT, N.C. GEN. STAT. §§ 19A-30 and -40, AND 02 N.C.A.C. 52J .0103, .0204, .0210**
	)	
	)	
	)	

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. The Animal Welfare Section's inspector conducted an inspection of the above-named animal shelter facility on April 10, 2012. This inspection was a "follow up" inspection done to determine whether this facility had corrected the violations found during the inspection conducted on March 8, 2012. Except for number 16, the conditions described in the following paragraphs are conditions found in the previous inspection and were not corrected.

2. The area behind the area where the adoptable cats are housed lacks adequate ventilation.

3. The floors in the area behind the area where the adoptable cats are housed are cracked and peeling.

4. The ventilation is inadequate in the area where the adoptable cats are housed, with only one ventilation unit present.

5. Animals are still being housed in the area behind the area where the adoptable cats are housed.

6. Medical logs lacked entries stating when medications had been given.

7. Cats are confined to crates that are stacked on top of each other without being secured to each other or any other means of support.

8. Those same cat crates are not arranged in such a way to prevent cross-contamination between and among the cats in the stacked crates.

9. Other cats are confined to crates that are stacked on unstable surfaces, including tires, pressboard tables, wooden tables, card tables, storage tubs and other surfaces.

10..The crates stacked on wooden, cardboard and pressboard surfaces also pose a strong likelihood of contamination since they are not impervious to moisture.

11. Areas in which animals are housed lacked thermometers.

12. Animal records lacked accurate origination information, accurate animal descriptions, accurate notations indicating where the animal could be found in the facility, accurate disposition information for animals that had left the facility, and accurate vaccination records.

13. Some animals' records lacked proof of rabies vaccination.

14. Several cats housed in the area behind the adoptable cat area that were reportedly adoptable were observed to have symptoms consistent with upper respiratory infections: runny eyes, sneezing and/or matted eyes.

15. The drains and grates in the canine adoption area had accumulations of hair, indicating that these were not being cleaned or rinsed daily.

16. A program of veterinary care was submitted with this facility's registration application for registration. That program was not in effect on April 10, 2012.

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;

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.

02 NCAC 52J .0103 INSPECTION OF RECORDS
All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers shall make all required records available to the director or his authorized representative on request, during the business and cleaning hours listed on the license application. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year after the animal is released.

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....
(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....
(g) Each facility shall have the ability to confirm ambient temperature.
(i) An adequate drainage system must be provided for the housing facility.

02 NCAC 52J .0202 INDOOR FACILITIES

(a) Indoor housing facilities for dogs and cats shall be adequately heated and cooled when necessary to protect the dogs and cats from cold and excessive heat and provide for their health and comfort. The ambient temperature shall not be allowed to fall below 50 degrees F. or exceed 85 degrees F.

(b) Indoor housing facilities for dogs and cats shall be adequately ventilated to provide for the health and comfort of the animals at all times. The facilities shall be provided with fresh air either by means of windows, doors, vents or air conditioning and shall be ventilated so as to minimize drafts. Air flow shall be adequate to minimize odors and moisture condensation.

(c) Indoor housing facilities for dogs and cats shall have adequate illumination to permit routine inspections, maintenance, cleaning and housekeeping of the facility and observation of the animals. Illumination shall provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the animal facilities.

(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.

(e) A suitable method of drainage shall be provided to rapidly eliminate excess water from an indoor housing facility. If closed drain systems are used, they shall be equipped with traps and installed to prevent odors and backup of sewage. The drainage system shall be constructed to prevent cross-contamination among animals.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures 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. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

02 NCAC 52J .0207 SANITATION

(a) Waste shall be removed from primary enclosures and exercise 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 must 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. When a hosing or flushing method is used for cleaning an enclosure, dogs or cats contained therein shall be removed during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes.

(b) 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 (b)(3) of this Rule.

(2) In addition to primary enclosures being properly cleaned a minimum of two times per day, enclosures and accessories shall be sanitized a minimum of once every seven days in the manner provided in Subparagraph (b)(3) of this Rule if the same animal is housed in the same enclosure more than seven days.

(3) Cages, rooms and hard-surfaced pens or 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) washing all soiled surfaces with a detergent solution to remove all organic matter followed by application of a safe and effective disinfectant; or

(C) cleaning all soiled surfaces with live steam.

(4) Food and water receptacles shall be sanitized daily with hot water, detergent, and disinfectant.

(5) Soiled linens and cloth products shall be mechanically washed with detergent and sanitized.

(6) Any area accessible to multiple animals shall be kept clean and sanitary.
(c) 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.
(d) An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

02 NCAC 52J .0210 VETERINARY CARE
(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

II. CONCLUSIONS OF LAW

A. McDowell County Animal Outreach violated N.C. General Statute § 19A-30 and 2 N.C. Administrative Code 52J .0101, .0103, .0201, .0204, .0207and .0210 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-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 .0103, .0204 and .0210.

Accordingly, McDowell County Animal Outreach, Inc., is assessed a civil penalty of:
$1,000.00

$1,000.00 for violating N.C. Gen. Stat. § 19A-30 and 2 N.C. Administrative Code 52J .0101, .0103, .0201, .0204, .0207and .0210.

$1,000.00 TOTAL AMOUNT ASSESSED

15 May 2012
Date

Dr. Lee Hunter
Director of Animal Welfare