



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

October 8, 2009

Ms. Deborah Steely, Manager
The SPCA of Wake County, Inc.
327 Highway 70, East
Garner, NC 27529

Certified Mail
Return Receipt Requested
7006 2760 0003 0472 1924

NOTICE OF CIVIL PENALTY

**RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF
N.C. ADMINISTRATIVE CODE CHAPTER 52J, SECTION .0402 et seq**

Dear Ms. Steely:

Pursuant to N.C. General Statute § 19A-40, I am issuing this notice to you that a civil penalty has been assessed against the SPCA of Wake County, Inc., by the North Carolina Department of Agriculture and Consumer Services, (NCDA&CS), Veterinary Division. The civil penalty assessment is attached.

Within 60 days from the date of receipt of this letter, the SPCA of Wake County, Inc., must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing in the Office Of Administrative Hearings (OAH) appealing the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, the parties may initiate settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to Dr. David T. Marshall, State Veterinarian, who may be contacted by telephone at 919-733-7601. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. David T. Marshall
State Veterinarian
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

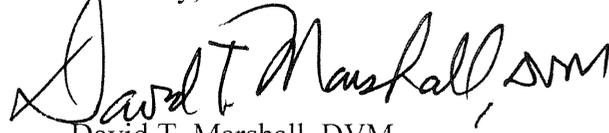
Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919-733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

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.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink that reads "David T. Marshall, DVM". The signature is written in a cursive style with a large, stylized initial "D".

David T. Marshall, DVM
State Veterinarian

DTM/mwb

Attachment: Assessment Document

cc: Mr. Barry Bloch, Assistant Attorney General
Mr. Howard Isley, Assistant Commissioner
Mr. Ray Starling, Legal Affairs
Mr. Joe Blomquist, Animal Health Technician
Ms. Dianne Whitman, Administrative Officer

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION

IN THE MATTER OF)

THE SPCA OF WAKE COUNTY, INC.,)

) CIVIL PENALTY ASSESSMENT
) PURSUANT TO THE ANIMAL
) WELFARE ACT, N.C. GEN. STAT.
) § 19A-20 et seq.
) 02 NCACA 52J .0402 et seq

Acting pursuant to N.C. Gen. Stat. § 19A-40 and 2 N.C. Administrative Code Sections 52J .0101, et. seq., Dr. David T. Marshall, State Veterinarian, NCDA&CS makes the following:

I. FINDINGS OF FACT

1. On Tuesday, 29 September 2009, Mr. Blomquist visited the SPCA of Wake County [hereinafter, "SPCA"] at 327 Hwy. 70 East, Garner, NC to perform an inspection.
2. During said inspection Mr. Blomquist reviewed animal final disposition records and found that animals were euthanized at SPCA during the period between the 23 August 2009 and 28 September 2009 by Amanda Lavigne and Raymond Kakeh.
3. On those dates between 32 August, 2009 and 28 September, 2009, neither Amanda Lavigne nor Raymond Kakeh was a Certified Euthanasia Technician, Probationary Euthanasia Technician or a licensed veterinarian.
4. Ms. Deborah Steely admitted to Mr. Blomquist that between 23 August 2009 and 28 September 2009 animal euthanasia at SPCA was performed by individuals that were not Certified Euthanasia Technicians, Probationary Euthanasia Technicians or licensed veterinarians were euthanizing animals.
5. Dr Lee Hunter, Director, Animal Welfare Section, held an informational session about the euthanasia rules on Monday 27 April 2009.
6. At said information session Dr. Hunter informed the attendees that the North Carolina Department of Agriculture and Consumer Services would begun active enforcement of the euthanasia rules, 02 NCAC 52J .0402 et seq., on 26 August 2009, in order to give certified facilities sufficient time in which to have employees and/or volunteers trained and certified as euthanasia technicians.
7. Ms. Deborah Steely was in attendance at the informational session held on Monday 27 April 2009 and provided her contact information on a sign-in sheet.

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

§ 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.)

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.

II. CONCLUSIONS OF LAW

- A. The SPCA of Wake County, Inc., violated N.C. General Statute § 19A-40 and 2 N.C. Administrative Code 52J .0402 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 N.C. Gen. Stat. § 19A-40 and 2 N.C. Administrative Code 52J .0402.

Accordingly, the SPCA of Wake County, Inc., is assessed a civil penalty of: \$500.00 for violating N.C. Gen. Stat. § 19A-40 and 2 N.C. Administrative Code 52J .0402

\$500.00 TOTAL AMOUNT ASSESSED

10/8/09
Date

David T. Marshall, DVM

David T. Marshall, DVM
State Veterinarian