



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Steven Wells, DVM
Interim State Veterinarian

September 23, 2014

Rutherford County Animal Shelter
Attn: Lieutenant Leon Godlock
576 Laurel Hill Drive
Rutherfordton, North Carolina 28139

UPS Tracking:
1Z2A06172454641814

NOTICE OF CIVIL PENALTIES

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF ANIMAL WELFARE ACT, N.C. GENERAL STATUTE § 19A-40 AND TITLE 2, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0201, .0202, .0204, .0205 & .0207

Dear Lieutenant Godlock:

Pursuant to N.C. Gen. Stat. § 19A-40 I am issuing this notice to you that Rutherford County Animal Shelter is assessed a civil penalty of \$5,000.00, as provided in the enclosed Notice of Violations and Order.

With regard to the civil penalty, within 60 days from the date of receipt, you 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 NCOAH to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to Dr. Steven C. Wells, Interim State Veterinarian, Veterinary Division, 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. Steven C Wells
Interim 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. 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:

Ms. Tina Hlabse
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 "Steven C Wells, DVM". The signature is fluid and cursive, with the "DVM" part being more distinct and written in a slightly larger, bolder script.

Steven C Wells, DVM
Interim State Veterinarian

Attachment: Assessment Document

cc: Mr. Barry Bloch, Assistant Attorney General
Ms. Tina Hlabse, Legal Affairs

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION

IN THE MATTER OF
RUTHERFORD COUNTY ANIMAL
SHELTER

) NOTICE OF VIOLATIONS,
) ASSESSMENT OF CIVIL
) PENALTY
)
) For Violations Of:
) Animal Welfare Act
) N.C. General Statute § 19A-40
) 2 N.C. Administrative Code 52J
) .0201, .0202, .0204, .0205, & .0207

Acting pursuant to N.C. Gen. Stat. § 19A-40, Dr. Steven C. Wells, Interim State Veterinarian, Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter Rutherford County Animal Shelter ("RCAS" or the "shelter") is an animal shelter registered pursuant to N.C. Gen. Stat. § 19A-26.
2. The Animal Welfare Section, NCDA&CS ("AWS") received a complaint that kittens had been left in RCAS' surrender enclosures, aka "drop boxes," over a holiday weekend in excessive heat without food or water. The complaint also alleged that the shelter outdoor enclosures were not cleaned on the Monday of the Labor Day holiday weekend.
3. During an inspection and investigation on September 3, 2014, Animal Welfare Section Inspector Jay Blatche ("Inspector Blatche") learned that Sheriff's Department Cpl. Jones was responsible for the animal shelter as on-call animal control officer ("ACO") on August 30 and 31, 2014.
4. Cpl. Jones could not state what times he was at the shelter to clean and feed the animals on August 30 and 31, 2014.
5. Cpl. Jones stated that the shelter was at nearly full capacity for cats and he locked the "drop boxes" during his weekend visit to the RCAS.
6. Cpl. Jones stated that, on Sunday, August 31, 2014, he euthanized four cats that appeared to be sick, cleaned the enclosures and fed the animals. He stated that he checked the "drop boxes" and these were empty.
7. Inspector Blatche determined that Deputy Sara Hartman was the on-call ACO and

responsible for RCAS on Monday, September 1, 2014. He interviewed Deputy Hartman. She stated she received a call that there were kittens in the drop boxes. She reported that she arrived after receiving that call, after 2:00 p.m. She removed the kittens from the drop box, fed the animals, and cleaned all of the enclosures except for the drop boxes and left hand outside enclosure. She stated she could not clean these enclosures because the water hose on that side of the building was inoperable. She reported that, on September 1, 2014, RCAS had 20 dogs and 49 cats. She reported that she left RCAS at approximately 4:00 p.m.

8. Inspector Blatche determined that RCAS has no special written procedure for cleaning and animal feeding for weekends or holidays. The ACO who is "on-call" is authorized to perform these duties once per weekend day or holiday even when there are puppies or kitten present that must be fed twice daily.
9. RCAS shelter personnel keep no written records of when weekend or holiday cleanings or feedings are done or when the drop boxes are checked.
10. At 1:05 p.m. September 3, 2014, Inspector Blatche checked the inside temperature of the RCAS "drop box." The thermometer read 91.9 degrees F. Weather conditions at RCAS on September 3, 2014, were the same as those in that vicinity on August 31 and September 1, 2014.
11. Inspector Blatche examined the door to the opening of the "drop box" and determined that, even if it was locked, it could be forced open wide enough to allow a person to place a kitten, puppy or small animal inside.

N.C. Gen. Stat. § 19A-40 provides that any violation of the regulations in 02 NCAC Chapter 52J authorizes the Director of Animal Welfare to impose a civil penalty of up to \$5,000.00 per violation. As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that RCAS, either by act or omission, violated the following five provisions of the N.C. Administrative Code:

- a) North Carolina Administrative Code 52J .0201
- c) North Carolina Administrative Code 52J .0202
- d) North Carolina Administrative Code 52J .0204
- e) North Carolina Administrative Code 52J.0205
- f) North Carolina Administrative Code 52J .0207

(See Appendix for text of cited Ch. 52J regulations)

§ 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.)

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 violations listed above.

Accordingly, RCAS is assessed a civil penalty of: \$5,000.00 for violating N.C. General Statute § 19A-40 and 2 North Carolina Administrative Code 02 NCAC 52J .0201, .0202, .0204, .0205, and .0207.

\$5,000.00 TOTAL AMOUNT ASSESSED

9-24-2014

Date

Steven C Wells, DVM

Steven C Wells, DVM
Interim State Veterinarian
North Carolina Department of
Agriculture & Consumer Services

Appendix

SUBCHAPTER 52J - ANIMAL WELFARE SECTION

SECTION .0200 - FACILITIES AND OPERATING STANDARDS

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.
- (b) All light fixtures and electrical outlets in animal areas shall be in compliance with the State Building Code.
- (c) Facilities shall have reliable and safe electric power as necessary to comply with the Animal Welfare Act.
- (d) Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin and insects. All open bags of food shall be stored in airtight containers with lids. Refrigeration shall be provided for supplies of perishable food.
- (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.
- (f) Hot and cold running, potable water must be available. Facilities such as washroom, basin or sink shall be provided to maintain cleanliness among animal caretakers, animals, and animal food and water receptacles.
- (g) Each facility shall have the ability to confirm ambient temperature.
- (h) A separate five-foot perimeter fence is required if any animals have access to an outdoor enclosure, including unsupervised exercise areas.
- (i) An adequate drainage system must be provided for the housing facility.
- (j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday through Friday).
- (k) All animals in a facility are subject to the requirements of the Animal Welfare Act, regardless of ownership.
- (l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.
- (m) No dog or cat shall be in a window display except during business hours and then only in compliance with standards set forth in this Section.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005.

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.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005.

Appendix

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(a) Primary enclosures shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture. For primary enclosures placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures in use in a licensed or registered facility prior to January 1, 2005, any damaged wood must be replaced in a manner that does not permit contact with wood by the animal.

(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.

(c) Each primary enclosure shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time. All resting surfaces must be of a non-porous or easily sanitized material, such as a towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

(d) In addition to Paragraph (b) of this Rule, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144. The calculation is: $(\text{length of dog in inches} + 6) \times (\text{length of dog in inches} + 6) = \text{required floor space in square inches}$. $\text{Required floor space in square inches} \div 144 = \text{required floor space in square feet}$. The calculation shall be expressed in square feet. Not more than four adult dogs shall be housed in the same primary enclosure without supervision.

(e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.

(f) In addition to Paragraph (b) of this Rule, each feline older than six months housed in any primary enclosure shall be provided a minimum of four square feet of floor space which may include elevated resting surfaces. Each feline younger than six months shall be provided 1.5 square feet. Not more than 12 cats shall be housed in the same primary enclosure.

(g) In all cat enclosures, a receptacle containing clean litter shall be provided for waste. A minimum of one receptacle per three cats is required.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0205 FEEDING

(a) Dogs and cats shall be fed at least once each 24-hour period except as otherwise might be required to provide adequate veterinary care. Food shall be commercially prepared food which complies with laws applicable to animal feed or the food shall be provided by the owner. The food shall be free from contamination, wholesome, palatable, and of adequate quality and quantity appropriate for the given size, age, and condition of an animal to meet the daily requirements for nutritional value. Puppies and kittens less than six months of age shall be fed at least twice in each 24-hour period. An eight-hour interval between feedings is required if only two feedings are offered in a 24-hour period.

(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.

(c) Food and water receptacles in outdoor facilities shall be protected from the elements.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

Appendix

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.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.