



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

January 7, 2011

Ms. Lori Baxter
Robeson County Animal Shelter
205 Landfill Road
St. Pauls, NC 28384

HAND DELIVER

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: SUSPENSION OF SHELTER EUTHANASIA CERTIFICATION PRIVILEGE
AND ASSESSMENT OF CIVIL PENALTY
Robeson County Animal Shelter

Dear Ms. Baxter:

This letter is an Order issued pursuant to or pertaining to violations of N.C. Gen. Stat. §§ 19A-24, 19A-30, and 19A-40 and 02 NCAC 52J .0101 concerning your shelter's certification as an animal shelter in which animals may be lawfully euthanized by technicians or veterinarians employed by the shelter. Investigation of your practices and conduct of euthanasia at said animal shelter indicates that grounds exist for suspension of that privilege based upon violation(s) of the requirements set forth under the NC Animal Welfare Act and the rules for euthanasia in certified animal shelters promulgated under that law.

The attached Notice of Violation(s) describes in detail the factual basis for suspension of your shelter's privilege. Your shelter has failed to carry out animal euthanasia on its premises in accordance with the Animal Welfare Act and regulations promulgated there under, 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 euthanizing animals in Robeson County Animal Shelter. This Order to Cease and Desist shall be in full force and effect on the fifth (5th) business day after your receipt of this letter. If the Animal Welfare Section finds evidence indicating that you continued to euthanize animals on the premise of Robeson County Animal Shelter on the fifth business day 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) 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.

As Director, I have also determined that grounds exist justifying assessment of a civil penalty pursuant to N.C. Gen. Stat. § 19A-40. As required by that statute 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 and G.S. 19A-24.

Accordingly, Robeson County Animal Shelter is assessed a civil penalty of: two thousand dollars (\$2,000.00)

Final agency decisions may be appealed to the North Carolina Office of Administrative Hearings by filing a contested case petition and paying a filing fee. Please find enclosed information on how to appeal these decisions.

You may resolve this matter without resort to litigation by entering into a consent agreement with the NCDA&CS setting forth appropriate remediation and terms for lifting this suspension order and restoring your privileges. 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 your privilege to conduct euthanasia of animals in your facility has been reinstated and that this order of suspension has been cancelled.

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,
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

Enclosures: 1) Notice of Violation(s);
 2) Appeal Information
 3) Consent Agreement

cc: David McLeod, Assistant Commissioner, NCDA&CS
 David T. Marshall, DVM, State Veterinarian, NCDA&CS
 Barry Bloch, Assistant Attorney General, NCDOJ
 Pat Sholar, Animal Health Technician, 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.

NOTICE OF VIOLATION

Respondent's Name: Robeson County Animal Shelter

Address of Respondent: 205 Landfill Road
St. Pauls, NC 28384

Date(s) of Activity: December 21, 2010

Work Site: Robeson County Animal Shelter
205 Landfill Road
St. Pauls, NC 28384

Date of Inspection: December 21, 2010

Name of Animal Welfare Section
Investigator(s): Pat Sholar

The following statement includes facts upon which the Animal Welfare Section bases its conclusion that you have violated certain provisions of the North Carolina Animal Welfare Act and regulations promulgated there under. The facts may be based upon several sources including observations made by the investigator during her investigation, statements made to the investigator by a complainant or other individuals or property owners, documents, and/or analyses of records or photographs taken by the investigator.

1. The Animal Welfare Section received media reports that a live puppy was found at the refuse dump where this facility disposes of mortality from its euthanasia activities.
2. When questioned about this event, the shelter manager, Lori Baxter, reported that the facility's veterinarian, Dr. Locklear, had euthanized several animals by IV, between October 11, 2010 and December 21, 2010.
3. During that euthanization activity, the facility's veterinarian had worked very quickly, making it difficult for Ms. Baxter to maintain accurate drug administration records.
4. At the same time, Ms. Baxter observed that the facility's veterinarian was simply pressing his hand to the animals' bodies to detect respiration and heart beat, to confirm death after administration of the euthanasia agent.
5. Ms. Baxter stated that the puppy was found at the refuse dump because the facility's veterinarian had given it sedation drugs, but had forgotten to administer the euthanization agent, and had failed to adequately assess death.

Based on the results of our investigation, there is reason to believe that your acts and/or omissions violated the following provisions of the North Carolina Animal Welfare Act and/or the rules promulgated there under:

§ 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.

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.*

Each of the above violations of the North Carolina Animal Welfare Act is subject to a civil penalty or may serve as grounds for disciplinary action against your license, as follows:

§ 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:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) **Willful disregard or violation of this Article or any rules issued pursuant thereto;**
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 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 there under. 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.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

N.C. DEPARTMENT OF AGRICULTURE)
 AND CONSUMER SERVICES)
 VETERINARY DIVISION, ANIMAL)
 WELFARE SECTION,)
)
 Complainant)
)
 v.)
)
 ROBESON COUNTY ANIMAL SHELTER)
)
 Respondent.)
)

CONSENT
AGREEMENT

RECITALS

The North Carolina Department of Agriculture and Consumer Services (the “Complainant”) and Robeson County Animal Shelter (the “Respondent”) desire to fully and finally settle this and all other disputes and controversies surrounding the Complainant’s 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.

WHEREAS, on January ___, 2011, the fifth (5th) business date after Respondent received its Cease and Desist Order and Civil Penalty Assessment, Complainant suspended Respondent’s registration privilege to euthanize animals and assessed the Respondent a civil penalty in the amount of two thousand dollars (\$2,000.00) upon discovery of evidence indicating that the Respondent failed to exercise that privilege in accordance with applicable statutes and regulations, and issued the Respondent an Order to that effect and a Notice of Violation describing in detail the evidence supporting that conclusion, which are attached hereto and incorporated by reference.

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

NOW THEREFORE, the parties agree as follows:

1. Complainant agrees that, upon receiving the signed original of this Agreement from the Respondent, it will stay its suspension of the Respondent's registration euthanization privileges and restore all of the rights and privileges thereof, subject to the limitations set forth in this agreement. This stay shall remain in place for twelve months beginning on that day. Complainant shall notify the Respondent by faxed memorandum that it has received said signed original of this Agreement.

2. Before resuming routine euthanization of its animals, Respondent shall submit the names, addresses and telephone numbers of the Certified Euthanization Technicians and/or veterinarians whom it intends to employ to euthanize its animals. Further, Respondent shall not resume routine euthanization of animals using the services of those named Certified Euthanization Technicians and/or veterinarians before receiving acknowledgement and written consent from the Complainant.

3. Complainant further agrees to stay the enforcement of one-half of its civil penalty, the sum of one thousand dollars (\$1,000.00), against the Respondent so long as Respondent a) complies with this Agreement and b) Respondent commits no new violation of G.S. Article 19A and the regulations promulgated thereunder during the twelve months following Respondent's agreement to and execution 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 thereunder 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 the regulations promulgated there under, or any other 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.

4. Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of its acceptance of this Agreement;

5. Respondent agrees that if Respondent fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of 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 two thousand (\$2,000.00) dollars for violations of the above-stated North Carolina Animal Welfare Act and its Regulations;

6. The parties further agree that, if Respondent complies fully with this Agreement for twelve months following Complainant's receipt of the signed and executed original, the aforementioned suspension shall be lifted and dissolved.

7. The Respondent hereby acknowledges it's 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 ____, 2011, and to any decision Complainant's Director of Animal Welfare makes subsequent to the execution of this Agreement as provided under paragraph 3, above.

8. 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.

9. At all times the Respondent shall comply with the provisions of the North Carolina Animal Welfare Act, N.C. Gen. Stat. Chapter 19A, and the regulations promulgated there under. Should the Complainant find substantial and credible evidence while this Agreement is in effect that Respondent or individuals working under its direction and control have committed violations of the North Carolina Animal Welfare Act, N.C. Gen. Stat. Chapter 19A, or its regulations, Complainant's Director of Animal Welfare may, as a matter within his sole discretion, deem the Respondent to be in material breach of this Agreement and immediately lift any stay of the suspension and/or stay of the civil penalty, or any portion thereof, and impose any other sanction upon the Respondent as he is authorized to impose by law. In the event that Complainant's Director lifts the stay of any sanction against the Respondent, such decision may

not be subjected to a petition to the North Carolina Office of Administrative Hearings, as Respondent has fully waived that right under this Agreement. However, Respondent may petition the North Carolina Office of Administrative Hearings for review of any new sanction imposed by Complainant's Director of Animal Welfare. The parties expressly agree that, for purposes of this Agreement, a new sanction shall be any sanction imposed on the Respondent by the NCDA&CS subsequent to Respondent's execution of this Agreement, except for the Director of Animal Welfare's decision to lift the stays provided under paragraphs one (1) and three (3) of this Agreement.

10. The parties agree to act in good faith in the implementation of this agreement.

11. The parties agree to bear their own attorneys fees and costs.

12. 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.

13. 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 and arrives in the Complainant's office, Complainant finds evidence of new violations of the North Carolina Animal Welfare Act have been committed by the Respondent.

14. 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:

_____ Date: _____

RESPONDENT

_____ Date: _____

Barry H. Bloch
Assistant Attorney General
N.C. Department of Justice
ATTORNEY FOR COMPLAINANT

_____ Date: _____

Dr. Lee Hunter, DVM
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumers Services
FOR COMPLAINANT