



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

October 30, 2015

Max and Della Fitz-Gerald, Owners
For the Love of Dogs
5146 Quaker Road
Wilson, North Carolina 278193

UPS Tracking Number Signature Required
1Z 210 617 42 5722 6546

NOTICE OF CIVIL PENALTY

**RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02, N.C.
ADMINISTRATIVE CODE, CHAPTER 52J, SECTION .0206
Facility: For the Love of Dogs Animal Shelter**

Dear Mr. and Mrs. Fitz-Gerald:

Pursuant to N.C. General Statute § 19A-40 I am issuing this notice to you that For the Love of Dogs Animal Shelter is assessed a civil penalty of \$10,800.00, 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 with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N.C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may present your offer to me. I can be contacted by telephone at (919) 707-3280. 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. Patricia Norris
Director, Animal Welfare Section
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. General Statute § 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 ("OAH"). 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 at 919-431-3000. 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, appearing to read 'Patricia Norris', written in a cursive style.

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION

IN THE MATTER OF
FOR THE LOVE OF DOGS
ANIMAL SHELTER

) NOTICE OF VIOLATIONS,
) ASSESSMENT OF CIVIL
) PENALTY
)
) For Violations Of:
) 02 N.C.A.C 52J .0206
)

Acting pursuant to N.C. General Statute §19A-40, Dr. Patricia Norris, Director of the Animal Welfare Section ("AWS"), 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 For the Love of Dogs Animal Shelter ("shelter") is an animal shelter registered pursuant to N.C. General Statute §19A-26.
2. On October 20, 2015, AWS Animal Health Technician Lisa Carlson ("Inspector Carlson") visited the shelter as a part of a complaint investigation.
3. During the course of this visit, Inspector Carlson viewed the animals in the three sections: the "Clinic", the "Sanctuary" and the "Family House." There was a total of 98 animals in these three areas. None of the 98 animals had water present in their primary enclosures.
4. The only water visible on the property was:
 - a) 2 horse-type troughs on the porch area in front of the Sanctuary building. The water in these 2 troughs covered approximately ¼ of the trough. The water was green in color; and
 - b) 1 horse-type trough in the play area adjacent to the Family House. The water filled approximately ¼ of the trough and was green in color. Two galvanized buckets of fresh clear water were present on either side of the entryway door.
5. Inspector Carlson reminded Mr. and Mrs. Fitz-Gerald of the N. C. Animal Welfare Act ("AWA") rules and regulations that require animals to be provided with continuous access to fresh water. She also provided them with a printed copy of the AWA rules and regulations with section 02 NCAC 52J .0206 highlighted.
6. Mr. Fitz-Gerald agreed to provide water to the animals out of respect for Inspector Carlson. Inspector Carlson observed water being provided to the animals while she was present.
7. As Inspector Carlson was leaving, Mr. Fitz-Gerald made comments which led Inspector Carlson to believe that Mr. Fitz-Gerald would remove the water from the animals once the Inspector had left the premises.
8. On October 22, 2015, Inspector Carlson and AWS Outreach Coordinator Joe Blomquist ("Coordinator Blomquist") returned for a follow-up visit for this complaint investigation.

9. During the course of this visit, Inspector Carlson and Coordinator Blomquist viewed the animals in the three sections: the "Clinic", the "Sanctuary" and the "Family House." There were a total of 92 animals in these three areas.
10. The findings for this visit on October 22, 2015 included:
- a) Clinic - There were 38 dogs present in this facility and each dog had fresh water in its primary enclosure;
 - b) Sanctuary - There were 28 dogs present in this facility and no dog had any water present in its primary enclosure. The two horse-type troughs were present on the porch area. They were filled with dirty water which was green in color;
 - c) Family House - There were 26 dogs present in this facility and no dog had any water present in its primary enclosure. The horse-type trough in the adjacent area was filled about ½ full of greenish water. Two buckets of clear water were present on the porch.

As a result of this investigation, AWS alleges that the shelter, either by act or omission, violated the North Carolina Administrative Code 52J .0206.

(See Appendix for text of cited General Statutes and Administrative Codes)

CIVIL PENALTIES

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.

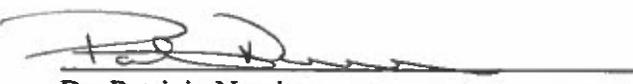
Accordingly, For the Love of Dogs Animal Shelter is assessed a civil penalty of \$200.00 for each of the 54 violations of North Carolina Administrative Code 52J .0206.

\$10,800.00 TOTAL AMOUNT ASSESSED

In addition, Max and Della Fitz-Gerald are directed to immediately comply with North Carolina Administrative Code 52J .0206 and provide animals with continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care. Watering receptacles shall be durable and kept clean and sanitized.

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.

10/30/2015
Date


Dr. Patricia Norris
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

§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 .0206 WATERING

Animals shall have continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care. Watering receptacles shall be durable and kept clean and sanitized. Damaged receptacles shall be replaced.

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