



The Office of Vince Ryan
County Attorney

February 29, 2012

County Judge Ed Emmett
Commissioner El Franco Lee
Commissioner Jack Morman
Commissioner Steve Radack
Commissioner R. Jack Cagle

RE: Harris County Attorney Report on Harris County Veterinary Public Health

Our office has completed a review of certain aspects of the operations within Veterinary Public Health (VPH) in response to requests received from Commissioners Court. The purpose of our review as the civil lawyers for Harris County was to identify those practices of VPH that may not have been in compliance with applicable law and to offer assistance to bring such practices into compliance.

Three attorneys, two paralegals, two investigators, and two law clerks spent considerable time reviewing the law, documents, and interviewing persons with firsthand knowledge of the facts. This work group was tasked with the responsibility to determine based on credible evidence what happened and when. Two other attorneys were assigned to assist VPH to help bring it into full compliance with the law.

We conclude that prior to August of 2011 VPH procedures relating to the euthanasia of animals did not meet applicable standards. VPH management has taken corrective measures and has instituted procedures to prevent a re-occurrence of these lapses.

Current budgetary constraints and space limitations create significant challenges for VPH in carrying out its mission to protect the health and safety of the residents and pets of Harris County. Our Office will continue to work with VPH and its employees as the department implements these changes.

Sincerely,

VINCE RYAN
County Attorney

Cc: William Jackson, Executive Director, Budget Management
Bill Moore, Chief, Public Integrity Division, Harris County District Attorney's Office
Dr. Hermina Palacio, Executive Director, Public Health Services

MEMORANDUM

TO: County Judge Ed Emmett
Commissioner El Franco Lee
Commissioner Jack Morman
Commissioner Steve Radack
Commissioner R. Jack Cagle

FROM: Vince Ryan, Harris County Attorney

IN RE: Harris County Attorney report on Harris County Veterinary Public Health

DATE: February 29, 2012

This report summarizes the civil review our Office has conducted concerning the operations of Harris County Veterinary Public Health (VPH) in response to a request from County Judge Ed Emmett, Commissioner Steve Radack, and former Commissioner Jerry Eversole. The purpose of the review was to identify those practices of VPH that may not have been in compliance with applicable law and to offer assistance to bring such practices into compliance.

Our Office has interviewed people with firsthand knowledge of the facts including seven former VPH employees, twenty-one current VPH employees, one Public Health Services employee, and one former member of the Friends of County Pets. Additionally, we have met with the directors and staff of four neighboring public animal shelters and two local area non-profit animal shelters, toured their facilities and obtained data from other neighboring shelters. Nine employees of the Office of the Harris County Attorney gathered information, interviewed witnesses, and conducted legal research and contributed to this report.

The following report is based on our review of past practices of VPH and includes information about the changes made after allegations of violations of state law.

I. BACKGROUND

Veterinary Public Health

Veterinary Public Health (VPH) is a division of the Harris County Public Health Services (PHS), a department of Harris County. The director of PHS is Herminia Palacio M.D., M.P.H., who is appointed by and reports to Harris County Commissioners Court. VPH is the animal control facility for the unincorporated area of Harris County. VPH enforces animal control laws, pet licensing, rabies vaccinations, rabies control and quarantine, animal bite cases, and the impoundment of stray dogs and cats. Tex. Health & Safety Code Ann. § 826.017 (Vernon 2009), Exhibit A3; Harris County Animal Regulation of Commissioner's Court effective October 1, 2007, Exhibit B; *see also* PHS VPH About Us, Harris County Public Health and Environmental Services, http://www.PHS.org/vph/About_Us/index.html (date last visited Jan. 10, 2012).

The stated mission of VPH is to protect the health and safety of the residents and pets of the unincorporated area of Harris County. *Id.* VPH's role is to prevent diseases and injuries that may be caused by animals. *Id.* When an animal enters VPH, it will leave the shelter through adoption, return to its owner, transfer to another animal facility, or be euthanized. *See* Leave Alive Strategic Plan, Exhibit L. VPH takes in approximately 25,000 dogs and cats each year. Over 80 percent are euthanized. *See* VPH Kennel Statistics (2007-2011), Exhibit K.

VPH's primary function is to act as the county's animal control authority. Unlike non-profit animal shelters whose focus is to promote adoption, save animals from abuse, and conduct public information sessions, VPH operates first to ensure public safety through proper animal control and rabies investigation. *See* Tex. Health & Safety Code Ann. § 826.017 (Vernon 2009), Exhibit A3; Harris County Animal Regulation of Commissioner's Court effective October 1, 2007, Exhibit B. A secondary goal is to provide animals for adoption by the public if possible prior to euthanasia.

VPH is located at 612 Canino Road, Houston, Texas 77076. The VPH animal shelter was opened in October 1986 and was approximately 12,500 sq. feet in size. In 2003, office additions were constructed adding 2,500 square feet. Finally, there are two trailers on the premises. One trailer is used as a training/meeting room and houses the office of the Education Outreach Coordinator. The other trailer is used for surgery and houses the office of the Veterinary Operations Supervisor.

VPH Organization

VPH's director is Dr. Dawn Blackmar, D.V.M. She is licensed in veterinary medicine. Her immediate supervisor is the director of PHS, Dr. Herminia Palacio, M.D., M.P.H.

Currently VPH has forty-two (42) employees and two (2) contract workers. VPH has twelve (12) employees and two (2) contract workers assigned to Veterinary Operations. There are three (3) licensed veterinarians on staff including, the Director, the Veterinary Operations Supervisor, and the Zoonosis Veterinarian. VPH has a total of seventeen (17) animal control officers whose territory covers 1,118 square miles in the unincorporated portions of Harris County.

II. EUTHANASIA

The Law

Title 10, Chapter 821 of the Texas Health and Human Safety Code broadly codifies the legal mandates for Veterinary Public Health shelter euthanasia practices effective September, 1, 2003, with few exceptions. *See* Tex. Health & Safety Code Ann. § 821 *et seq* (Vernon 2009), Exhibit A1. Title 25, Part 1, Chapter 169, Subchapter D of the Texas Administrative Code provides the mandates for permissible methods for euthanasia effective July 12, 2009. *See* 25 Tex. Admin. Code § 169 *et seq* (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2.

There are two legally permissible substances that may be used to euthanize a shelter animal. These substances are sodium pentobarbital and commercially compressed carbon monoxide. Tex. Health & Safety Code Ann. § 821.052 (Vernon 2009), Exhibit A1. VPH uses sodium pentobarbital injections for euthanasia.

The method of sodium pentobarbital injection is further narrowed statutorily in the order of preference as follows:

- (A) intravenous injection by hypodermic needle;
- (B) intraperitoneal injection by hypodermic needle; or
- (C) intracardiac injection by hypodermic needle.

25 Tex. Admin. Code § 169.84(b)(2)(A-C) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2.

The Texas Administrative Code requires that a shelter animal must first be heavily sedated, unconscious, or anesthetized in advance of any intracardiac injection. 25 Tex. Admin. Code § 169.84(b)(9) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2. This section became effective on July 12, 2009. *See id.*

Euthanasia at VPH

Public comments have been received noting the high euthanasia rates at VPH. The statistics provided by VPH report the following euthanasia rates for the preceding five year period:

2011: 17,340 total animals euthanized = 82.25% euthanasia rate.
(*As of October, 31, 2011).
2010: 20,450 total animals euthanized = 83.19% euthanasia rate.
2009: 18,601 total animals euthanized = 80.29% euthanasia rate.
2008: 19,313 total animals euthanized = 78.97% euthanasia rate.
2007: 21,030 total animals euthanized = 78.57% euthanasia rate.
See Exhibit K.

Euthanasia rates for other shelters range from a low of 7.5 per cent to a high of 74.8 percent:

VPH	82.25%
Dallas Animal Service & Adoption Center	74.8%
San Antonio Animal Care Services	67.5%
Houston BARC	53.4%
Fort Worth Animal Care & Control	50.2%
Austin Animal Center	7.5%
<i>See Exhibits N1, O1, P1, Q1, and R1</i>	

These rates are based on the most recent years reported by each facility.

Intake at VPH exceeds the facility's structural capacity and therefore euthanasia of shelter animals has been, and is currently, performed every day of the week except Sunday. Only euthanasia certified staff may inject an animal. *See* Tex. Health & Safety Code Ann. § 821.055 (Vernon 2009), Exhibit A1. The kennel staff (which include animal technicians and kennel supervisors) are primarily responsible for euthanizing animals in addition to other duties including kennel maintenance and general animal care, upkeep, feeding and afternoon adoptions. Kennel supervisors decide which animals to hold for adoption and which animals will be euthanized following specified hold times.

Information provided by current and former employees describes euthanasia practices prior to October 2011 at VPH as an assembly line. Dogs scheduled for euthanasia were lined up outside the euthanasia room. The door to the euthanasia room was open and the activities therein visually accessible to the waiting dogs. The dogs were thereafter taken in one after the other and euthanized. Once injected, the dog would be stacked or placed on the floor next to the previously euthanized dogs, all of which was in view of waiting animals. These practices were in violation of state regulations that require the euthanasia procedure to be conducted out of public view and out of the view of other animals. *See* 25 Tex. Admin. Code § 169.84(b)(4) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2. The determination of whether such past practices warrant criminal prosecution is within the purview of the Office of the District Attorney.

Current and former staff stated that feline euthanasia prior to October 2011 occurred predominantly in the cat kennel area where multiple cats were housed and not in the euthanasia room in violation of 25 Tex. Admin. Code § 169.84(b)(4), (8) (2009) (Dep't of State Health Serv., Zoonosis Control), (Exhibit A2). The law mandates that "...each animal given sodium pentobarbital by intraperitoneal injection shall be placed in a quiet area, separated from physical contact with other animals during the dying process." Euthanasia of cats in the area where they lived was clearly contrary to the law. *See id.* The euthanasia process for cats prior to October 2011 was not in accordance with existing regulations. The determination of whether such past practices warrant criminal prosecution is within the purview of the Office of the District Attorney.

Current and former employees said that prior to October 2011, there were instances where euthanasia needles had been re-used. The law mandates that one new, undamaged, and sterilized hypodermic needle be used for each animal. 25 Tex. Admin. Code § 169.84(b)(3) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2. We find that the re-use of needles prior to October 2011 to have been contrary to applicable statutes. We found no evidence that this is a current practice of VPH. Again, the final determination of whether such past practices warrant criminal prosecution is within the purview of the Office of the District Attorney.

III. RE-ORGANIZATION AND NEW PROCEDURES

Management Organization

Prior to October 2011, VPH had five (5) departments that consisted of: Animal Control Education Coordinator, Shelter Operations Administrator, Veterinary Operations Supervisor, Field

Operations Manager, and Zoonosis Veterinarian. *See* VPH Division Organizational Chart before October 2011, Exhibit F. The Shelter Operations Administrator managed the kennel staff and the office staff. The kennel staff was in charge of feeding animals, kennel maintenance, euthanasia, and afternoon adoptions. The kennel staff were not directly supervised by a veterinarian during the period of time between 2003 and October 2011.

In October 2011 VPH was administratively restructured and management implemented new procedures. One major change included a re-organization of who supervised individuals that conducted the euthanasia process. *See* exhibits F and G. Dr. Erica Johnson, D.V.M., a licensed veterinarian, has now been designated as the supervisor of the kennel staff, removing this responsibility from the Shelter Operations Administrator who was not a veterinarian. Current VPH kennel staff report that having a veterinarian as their immediate supervisor has been beneficial to the communication process and has helped in understanding their challenges.

Dr. Johnson has developed standard operating procedures for infection control and kennel cleanliness. She has also worked to revise checklists and routine checks have also been implemented to ensure compliance with the law. Formal training was instituted and additional training has been planned to ensure proper compliance with the standard operating procedures and the applicable law.

VPH has implemented a plan for increasing the leave alive rate. *See* Exhibit L. Dr. Johnson has stated that she is committed to increasing the leave alive rate. She is currently working on a written euthanasia SOP to further address concerns over euthanasia practices. *See* PHS VPH: Sheltered Dog Euthanasia Documentation, Exhibit H.

We encourage VPH to continue to develop methods to keep abreast of any changes in the law and to adopt procedures to ensure that these revisions are communicated to employees.

Visual Barriers

In August 2011, VPH hung a tarp inside the dog euthanasia room and a blanket in the cat euthanasia room to separate euthanized animals from those awaiting verification of death. Additionally, a blanket was placed at the entry of the dog euthanasia room to provide a visual barrier from awaiting dogs and the public. The use of the blankets and tarps meets the minimum requirements of the Texas Administrative Code that each animal be separated from other animals in a quiet area out of view of the public and any other animals during the dying process. *See* 25 Tex. Admin. Code § 169.84(b)(4), (8) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2.

Needles

Beginning in October 2011 procedures were put in place to inform and require the staff to exclusively use new needles during the euthanasia process. The use of a new, undamaged, sterilized hypodermic needle of suitable size for each instance of euthanasia, which is the current

practice, meets the requirements of the Texas Administrative Code. 25 Tex. Admin. Code § 169.84(b)(3) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2.

IV. SPECIFIC ALLEGATIONS REVIEWED

The following is a report on the specific allegations received by our office during the course of our review:

ALLEGATION: VPH staff did not verify the animal's death before disposing of the carcass in the freezer.

FINDING: Staff, both former and current, confirmed that in January 2010, there were two incidents of live animals being found in VPH freezers. In one instance, a dog was found alive in the VPH freezer post euthanasia. Approximately two weeks later, a cat was also found alive in the freezer.

RESPONSE: The employee who was responsible for verifying the death of the dog was terminated from employment. There was no known investigation or remedy with regard to the cat incident.

ALLEGATION: The Basset Hound nicknamed "Hope" made headlines when a rescue group tried unsuccessfully to obtain the injured dog for rescue and treatment prior to the three (3) day stray hold mandate. Concerns that the dog was not treated for its injuries during the three (3) day hold were also alleged.

FINDINGS: Dr. Herminia Palacio stated that Hope received three (3) days worth of oral antibiotics and three (3) days worth of oral pain medications. *See* VPH Responses to Allegations in the Media, Exhibit J; *See also* Reporter, Randy Wallace Investigative. "*Investigation into Animal Shelter Has Officials Considering Changes*, Houston Weather, MyFoxHouston.com, <http://www.myfoxboston.com/dpp/news/local/110518-investigation-into-animal-shelter-has-officials-considering-changes> (last visited Jan. 13, 2012). VPH medical records show that Hope was given a 227 mg Previcox for pain and inflammation on February 3, 2011. *See* VPH Medical Log for Hope the Basset Hound, Exhibit I. There is no other documentation regarding treatment for this dog.

RESPONSE: On June 7, 2011, Commissioner Court authorized Veterinary Public Health to implement a template animal temporary custody agreement to allow rescue groups that enter into the agreement to take custody of animals needing acute, urgent veterinary care before expiration of the three-day hold period mandated by the Harris County Animal Regulations." *See* Harris County Commissioner's Court. Agenda: 7 June 2011, Exhibit C.

ALLEGATION: The unlawful method of using heart sticks were regularly performed on alert and conscious cats, dogs, kittens, and puppies.

RESPONSE: The method of using heart sticks is an intracardiac puncture to an animal with Fatal Plus solution. This method is only allowed if the animal is already first heavily sedated, unconscious, or anesthetized in advance of any intracardiac injection. *See* 25 Tex. Admin. Code § 169.84(b)(9) (2009) (Dep't of State Health Serv., Zoonosis Control), Exhibit A2. This section became effective on July 12, 2009. *See id.*

FINDING: Two ex-employees said they witnessed the use of heart sticks during their employment but were unable to state whether these incidents occurred before or after the change in law. Current employees stated that the practice had not occurred after the change in law. We found no evidence that the practice was occurring at this time.

V. BUDGET & STATISTICAL INFORMATION

VPH must first fulfill obligations to provide proper animal control. A secondary goal of providing adoption services must be conducted with limited resources and may not be adequate to allow VPH to operate like similar animal shelters that have been able to increase adoption rates thereby significantly lowering euthanasia rates.

Budgets

The budget for VPH is lower than those of other shelters in Texas.

	FY 2011-12	FY 2010-11	FY 2009-10	FY 2008-09	FY 2007-08
VPH	\$2,232,199	\$2,465,057	\$2,857,828	\$2,746,565	\$2,445,268
BARC ¹	\$8,137,727	\$6,121,549	\$5,265,201		
Austin Animal Center	\$7,612,186	\$6,503,439	\$5,481,547	\$5,368,265	\$4,755,182
Dallas Animal Service & Adoption Center	\$6,537,550	\$7,056,654	\$7,729,841	\$7,814,843	\$7,030,726
San Antonio Animal Care Services	\$9,446,275	\$8,618,366	\$7,516,035	\$10,075,095 ²	\$8,052,829 ³
Fort Worth Animal Care & Control ⁴	\$4,339,909	\$3,830,169	\$3,347,835	\$3,146,734	\$3,030,413

¹BARC is researching their budget data for FY2009 and FY2008

²included \$1,046,000 for capital projects

³included \$942,000 for capital projects

⁴Data for FWACC reflects the total budget amounts for field (including capital outlay amounts) and shelter operations

-Budget data gathered from Exhibits M, N2, O2, P2, Q2, R2

Animal Statistics

The charts below provide public shelter statistics on dogs and cats in Harris County and other shelters. Each shelter has slight variations in their reporting format. Not all shelters have implemented the Asilomar Accords¹ although there is a nationwide trend moving towards this method of reporting.

Veterinarian Public Health (VPH) – Harris County

	2011*	2010	2009	2008	2007
Dog/Cat Intake	20,933	24,381	22,914	24,086	26,400
Euthanasia	17,334	20,434	18,584	19,294	21,021
Adoption	1,259	1,323	1,706	1,975	2,322
Redemption	1,164	1,471	1,527	1,600	1,649
Transfer	889	821	638	840	912

*Jan 2011 – Oct 2011

- Exhibit K

Bureau of Animal Control – BARC – Houston

	2011*	2010	2009	2008	2007
Dog/Cat Intake	21,964	**	**	**	**
Euthanasia	11,720	**	**	**	**
Adoption	5,268	**	**	**	**
Redemption	1,137	**	**	**	**
Transfer	3,000	**	**	**	**

*Jan 2011 – Nov 2011

**Per BARC, data not reliable

-Exhibit N1

Dallas Animal Services and Adoption Center

	2011	2010	FY 09-10*	FY 08-09	FY 07-08
Dog/Cat Intake			23,065	33,264	67,239
Euthanasia			17,253	26,305	55,707
Adoption			2,110	2,577	3,665
Redemption			1,198	2,107	3,861
Transfer			1,898	1,697	2,623

*Jan 2010 – Sept 2010

-Exhibit P1

¹ “The Asilomar Accords are a set of Guiding Principles, standardized definitions, a statistics table for tracking shelter populations and a formula for determining shelter live release rates. The purpose of the definitions, table, and live release rate formula is to produce a uniform system so that shelters and other stakeholders can get a better understanding of lifesaving progress nationwide.” See also "Frequently Asked Questions." *Asilomar Accords Home*. Web. 10 Jan. 2012. <http://www.asilomaraccords.org/frequently_asked_questions.html>.

Austin Animal Center

	2011	2010	2009	2008	2007
Dog/Cat Intake	18,783	23,336	21,487	22,328	26,037
Euthanasia	1,418	5,281	6,192	8,698	13,138
Adoption	7,654	6,743	5,191	4,733	4,465
Redemption	3,406	3,799	3,497	3,561	3,792
Transfer	4,514	5,203	4,745	3,728	3,109

- Exhibit O1

San Antonio Animal Care Services

	FY 2011 ¹	FY 2010 ²	FY 2009 ³	2009 ⁴	2008 ⁵	2007 ⁶
Dog/Cat Intake⁷	29,115	25,183	22,152	21,928	32,735	40,572
Euthanasia⁸	19,645	18,457	15,559	15,318	23,016	33,400
Adoption	4,337	2,940	2,749	2,702	3,381	2,831
Redemption	1,695	1,526	1,219	1,255	1,622	2,157
Transfer	2,939	1,930	2,341	2,574	3,858	1,484

¹Fiscal Year (Oct 1, 2010 – Sep 30, 2011)

²Fiscal Year (Oct 1, 2009 – Sep 30, 2010)

³Fiscal Year (Oct 1, 2008 – Sep 30, 2009)

⁴Calendar Year (Jan 2009 – Dec 2009)

⁵Calendar Year (Jan 2008 – Dec 2008)

⁶Calendar Year (Jan 2007 – Dec 2007)

⁷Total intake including owner/guardian requested euthanasia

⁸Total euthanasia including owner/guardian request euthanasia

-Exhibit Q1

Fort Worth Animal Care and Control

	2011	2010	2009	2008	2007
Intake¹	19,306	19,353	21,794	22,180	25,529
Euthanasia²	9,689	12,433	14,436	14,593	17,690
Adoption	2,805	1,970	1,669	1,999	2,055
Redemption³	1,358	1,158	1,321	1,543	1,531
Transfer	1,707	1,492	1,674	1,494	1,820

-Exhibit R1

¹FWACC reports that their intake numbers include approximately 2% of “Other” animals in addition to cats and dogs. “Other” animals generally refer to wildlife.

²According to FWACC, the inclusion of “Other” animals/wildlife in their intake data would only affect their euthanasia rate and even then, it would be at a minimal percentage since they release most of their wildlife.

³Referred to by FWACC as “Reclaimed”

VI. FACILITIES

VPH management faces significant challenges because of the increasing demand and limitations on facilities. Current facilities are approximately 15,000 square feet in size. This compares to other animal shelter facilities as follows:

	Sq Ft
VPH	15,000
BARC ¹	50,000
Austin Animal Center	40,000
Dallas Animal Service & Adoption Center	52,000

The VPH facility was originally built in 1986. Office space was added in 2003 and two portable buildings have been purchased since that time.

Currently, VPH's main kennel has eighty-one (81) runs, the cat room has forty-five (45) cages, the puppy room has twenty-five (25) cages, and the dog quarantine room has forty (40) runs. The adoption room has twenty (20) cages and is capable of housing cats, puppies, and toy breeds of dogs. There is an additional room with thirty-three (33) cages capable of housing cats, puppies, and small dogs. The limited space coupled with the continuous intake of animals strains the facility and staff.

A study dated January 2, 2008 conducted by Jackson & Ryan Architects estimated that by the year 2020 shelter demand would be 22,791 for dogs and 21,800 for cats, an 82 percent increase over current demand.

Land adjacent to the shelter was purchased in 1975 for possible expansion. The Jackson & Ryan study recommended a facility that would add 46,349 square feet and allow VPH to accommodate the quantity of animals expected for an entity the size of Harris County. See "Harris County Public Health & Environmental Services, Veterinary Public Health Program" (selected pages). Exhibit S.

Included in the study were recommendations calling for kennels in the canine animal holding area to include a total of 140 kennels for full size dogs (56 quarantine/isolation kennels and 84 general stray dogs kennels) and 28 cages specifically identified for small dogs. *Id.* There would be 360 cages for the quarantining/isolation of cats as well as strays. *Id.* In addition, separate areas would be provided for those animals eligible for adoption including 60 kennels for average size canines and 7 small pens for puppies. *Id.* Finally, 96 cages would be available for cats offered for adoption. *Id.*

The projected cost of these improvements in 2008 was \$20,292,800.

SUMMARY

VPH's procedures before October 2011 included practices that failed to fully comply with applicable law. However, VPH management has taken corrective measures to ensure future compliance and has instituted training programs to prevent the reoccurrence of lapses. Administrators continue to develop standard operating procedures and are conducting inspections to ensure the center operates as required by law.

Our office has forwarded our findings to the Office of the District Attorney to take such action as it deems appropriate.

Budgetary constraints and limitations of the current facilities result in significant challenges to VPH staff in fulfilling the center's mandate to protect the health and safety of the public while facilitating a successful adoption program simultaneously. We encourage VPH management to continue to work with volunteer organizations and others within county government to develop methods and ideas to improve the facilities.