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**IN THE DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES  
FOR THE COMMONWEALTH OF VIRGINIA**

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NO KILL ADVOCACY CENTER

*Petitioner,*

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Removal of “Animal Shelter” Designation for People for the Ethical Treatment of Animals

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**PETITION OF THE NO KILL ADVOCACY CENTER**

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## **ACTION REQUESTED**

Pursuant to Chapter 65 of Title 3.2 of the Virginia Code, and implementing regulations of the Department of Agriculture and Consumer Services for the Commonwealth of Virginia (“VDACS”), the No Kill Advocacy Center (“NKAC”) submits this petition to request that VDACS take regulatory action to remove People for the Ethical Treatment of Animals’ (“PETA”) designation as a statutory shelter under Title 3.2, Chapter 65, § 3.2-6500.

PETA does not maintain a “facility” under the statutory definition of an animal shelter, nor is it substantially engaged in activities with the “purpose of finding permanent adoptive homes for animals,” as required for such designation (Chapter 65 § 3.2-6500). As such, its designation as a shelter is arbitrary, capricious, and contrary to law.

Since employees of animal pounds and animal shelters are the only non-veterinarians authorized by the Virginia Code to perform animal “euthanasia,” removing the designation will prevent PETA staff from putting to death thousands of animals every year which it does without making any effort to find them adoptive homes.

## **INTEREST OF PETITIONER**

NKAC is a national, non-profit organization dedicated to ending the unnecessary killing of dogs, cats, and other animals in our nation’s animal-sheltering system through the implementation of proven and cost-effective programs and policies that have ended unnecessary shelter killing in dozens of American communities—including several in Virginia. NKAC staff has held seminars, workshops and training for Virginia shelter staff and community advocates, has advised Virginia shelters on best practices, and has worked with shelters to improve

operations. In 2012, legislation written by NKAC, the Virginia Companion Animal Protection Act, was introduced in the Virginia Legislature. Likewise in 2012, NKAC successfully petitioned VDACS to alter its practice of killing healthy animals as part of state-mandated “euthanasia” training.

NKAC files this petition to lend a voice to the thousands of animals put to death by PETA every year.

### **STATEMENT OF GROUNDS**

In 2010, Dr. Dan Kovich, DVM, MPH, from the Office of Veterinary Services, Animal & Food Industry Services, VDACS, investigated PETA pursuant to an email forwarded by a citizen (not related or known to the NKAC) in which a representative of PETA indicated that the organization did not maintain a “physical” animal shelter. Specifically, VDACS correctly noted that its investigation was performed to determine if PETA met the statutory definition of a shelter; and it would only meet such a definition *“if the primary purpose of the [PETA] facility was to facilitate finding permanent adoptive homes for companion animals.”*

Chapter 65 of the Virginia Code, § 3.2-6500, defines a “facility” as “a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept” and further defines “animal shelter” as “a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other

*organization operating for the purpose of finding permanent adoptive homes for animals.”*

(Emphasis added.)

Thus, in order to maintain its designation as a shelter, PETA must meet three statutory requirements: 1. It must have a facility used to house or contain animals, 2. The facility must be operated by an animal welfare organization, and 3. The facility must be operated for the purpose of finding permanent adoptive homes for animals. According to VDACS’ own investigation and the analysis provided below, PETA does not meet the required conditions.

#### **I. PETA DOES NOT MAINTAIN A “FACILITY” WITHIN THE STATUTORY DEFINITION.**

PETA does not maintain a “facility” to adopt animals. There are no cages or kennel runs. According to VDACS, PETA “does not contain sufficient animal enclosures to routinely house the number of animals annually reported as taken into custody... The shelter is not accessible to the public, promoted, or engaged in efforts to facilitate the adoption of animals taken into custody.” Kovich, Dan, DVM, MPH, PETA Summary of Findings, July 7, 2010, attached (hereinafter “Kovich”).

While PETA claims it has three rooms designated to house animals, during the inspection there were only three total animals at PETA: “one being held in conjunction with the [spay/neuter] clinic operations, one was being boarded for an indigent community member, and one on behalf of a PETA employee” (Kovich). No animals were being held “for the purpose of finding permanent adoptive homes.” In fact, prior inspections found “no animals to be housed in

the facility” (Kovich). As such, PETA headquarters is not a “facility” “used to house or contain animals.” At best, it is an office used to kill animals and for other purposes.

According to VDACS records, PETA puts to death roughly 90% to 97% of all animals it takes in every year. In 2011, for example, PETA acquired 1,992 animals, killed 1,911 of them, and sent the remaining 44 to killing shelters. Only 24 were adopted, the vast majority or all of them to PETA staff and affiliates. In 2010, PETA acquired 2,345 animals, killed 2,200 of them, and sent 65 to killing shelters. Only 44 were adopted, the vast majority or all of them to staff and affiliates. In 2009, PETA acquired 2,366 animals, killed 2,301 of them, and sent 31 to killing shelters. Only 8 were adopted, the vast majority or all of them to staff and affiliates. For the three year period of 2009-2011, PETA killed 6,412 of the 6,703 animals it acquired, a killing rate of 96 percent. It adopted out only 76 animals, or 1 percent of the total it took in. Over the last 11 years, PETA has killed 29,426 animals, while adopting out a negligible amount, the vast majority or all of them to staff and affiliates. By contrast, Virginia shelters as a whole adopt out roughly 60% of all animals they impound in any given year and several communities in Virginia have save rates in excess of 90%.

Given that PETA only adopts out about 1 percent of the animals it takes in, and most to employees and affiliates, adoption is at best an incidental use. The statutory definition of “animal shelter” presupposes that the facility is primarily or substantially used to house or contain animals for purposes of finding them permanent adoptive homes, which PETA admits it does not do (see below).

## II. PETA DOES NOT MAINTAIN A SHELTER “FOR PURPOSES OF FINDING ANIMALS PERMANENT ADOPTIVE HOMES.”

PETA staff admitted that PETA does not run a shelter: “The [PETA] receptionist stated that PETA did not operate an animal shelter” and “an additional staff member was called to the desk and reiterated that there was no shelter” (Kovich). Furthermore, Ingrid Newkirk, PETA’s president, admitted in an interview with the *Virginian-Pilot* that:

*"We are not in the home finding business, although it is certainly true that we do find homes from time to time for the kind of animals people are looking for. Our service is to provide a peaceful and painless death to animals no one wants."*<sup>1</sup>

As such, Newkirk admits that adoption is an incidental practice; that PETA takes in animals for the express purpose of killing them. In the face of mounting criticism for operating a pet killing facility, PETA more recently claimed it refers people with adoptable animals to other shelters because PETA exists solely to provide “euthanasia services” for irremediably suffering animals (see, e.g., Winograd, Nathan J., “Shocking Photos: PETA's Secret Slaughter of Kittens, Puppies,” *Huffington Post*, <http://huff.to/XZQ0n6>, April 2, 2013). Accepting their latest rationale at face value, PETA’s own admissions prove that it does not meet the statutory definition of “animal shelter.”

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<sup>1</sup> This, of course, begs the questions: How can people “want” animals whom PETA kills within 24 hours and often within minutes of taking custody of them, without ever making them available to the public for adoption? How can people “want” animals they do not know exist because PETA has no adoption hours, does little to no adoption promotion, and does not show animals for adoption, choosing to kill them instead?

NKAC does not believe, however, that all of the animals PETA takes in are irremediably suffering as PETA sometimes claims. Otherwise, PETA would do no adoptions, however incidental. Clearly, PETA is taking in animals who can be rehomed. In addition, PETA has admitted it kills “healthy” animals and admitted it has killed animals who are, in PETA’s own words, “adorable” and “perfect.” Confirming this, people have come forward to testify that they have given PETA “healthy” and “adoptable” animals after PETA promised to find those animals homes only to discover that PETA killed the animals instead without making any effort to adopt them out (see, e.g., “Testimony underway in PETA trial,” *Roanoke-Chowan News Herald*, <http://bit.ly/XCSdI3>, January 24, 2007).

Virginia law also specifically requires that an animal shelter “shall be accessible to the public at reasonable hours,” (Chapter 65 § 3.2-6548). PETA staff “confirmed that the shelter [sic] was not accessible to the public, and that most adoptions of animals were to PETA employees and affiliates” (Kovich). PETA has no adoption hours, it does not keep animals alive long enough to find homes, and it does no adoption promotion. Virginia statutes do not contemplate a pet killing facility to meet the statutory definition of a “shelter.”

### **III. VDACS OWN INVESTIGATION CONCLUSIVELY DETERMINED THAT PETA DOES NOT MEET THE STATUTORY DEFINITION OF AN ANIMAL SHELTER.**

Following its investigation, VDACS correctly concluded that PETA does not meet the statutory definition of a shelter:

1. “The shelter is not accessible to the public, promoted, or engaged in efforts to facilitate the adoption of animals taken into custody.”

2. “PETA reception has historically been unaware of the existence of an animal shelter, and has stated to enquiring members of the public that no such facility exists.”
3. “PETA has published suggested guidelines for animal shelters on their website that indicate their organizational preference for the operation of such facilities; their own facility does not satisfy many of the key recommendations.”<sup>2</sup>
4. “The agency is not aware of any substantive efforts to facilitate adoption of animals taken into custody.”
5. “Previous inspections of this office have found no animals to be housed in the facility, or few animals in custody.”

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<sup>2</sup> According to PETA, the ideal “animal shelter” “has kind, attentive, knowledgeable staff members, cruelty investigators, spacious indoor/outdoor housing for dogs and cats, a pre-release spay-and-neuter program, pre-adoption screening and follow-up programs, and a comprehensive humane education program. The staff is supplemented by active volunteers. Animals are provided with veterinary care, and there are sick wards and rooms for isolating newcomers...

“The ideal cat room has windowsills and various nooks and perches where cats can lounge, feel safe, or sleep. Cats are allowed to roam the room freely. They won’t fight because they know that no one cat “owns” this territory and because each adult is spayed or neutered before being introduced into the room. The ideal shelter also has areas for cats who must be confined because they need to be observed or because they feel more secure alone when they first arrive...

“The public is made to feel welcome, and there is a quiet room where people can be alone with the animal they are considering adopting...

“Through a strong publicity program, the public is made aware that the shelter is working to eliminate the companion animal overpopulation crisis, the primary cause of homelessness among animals, and that animals are available for adoption at the shelter. Sometimes, as a public service, local newspapers are willing to publish a notice or a list of animals who are available for adoption, along with the shelter’s public hours. They may also print a photo of one of the animals, which is a good way to attract attention. As a public service, local radio and television stations may also be willing to publicize the shelter. Notices and photos can also be posted in stores, animal hospitals, etc.

“The ideal shelter is open for redemption and adoption of animals during hours that are convenient for working people. It is open at least several evenings a week and at least several hours each weekend.”

PETA’s “shelter,” by contrast, is little more than a freezer to store the bodies of animals they have killed.



6. “Review of submitted annual animal record summaries by PETA and all reporting animal shelters for the past six years does not support the facility has a primary intent to find permanent adoptive homes for companion animals (Kovich).

#### **IV. VDACS’ REVERSAL OVERSTEPS ITS AUTHORITY BY CIRCUMVENTING VIRGINIA STATUTES.**

After PETA protested VDACS finding that PETA did not maintain a “facility” nor a “facility” “operating for the purpose of finding permanent adoptive homes for animals” (thereby precluding it from taking in and killing animals), VDACS reversed course. It did so based on an impermissible reinterpretation of Virginia law.

In its reversal, Dr. Kovich subsequently stated that “In reference to PETA,” the definition of an animal shelter “means a facility that is used to contain animals and is operated by an animal welfare organization.” (Email dated October 25, 2012.) This interpretation not only ignores years of VDACS practice that such a facility be “*operating for the purpose of finding permanent adoptive homes for animals,*” it also rewrites the express language of the statute.

Even if this new interpretation were a valid exercise of its regulatory power, rather than an impermissible amendment of statutory law, VDACS would still be required to rescind PETA’s designation as an animal shelter that meets the state’s requirements for what a shelter must be because it does not meet the threshold definition of a “facility.”

## **CONCLUSION**

For all the foregoing reasons, VDACS actions in maintaining PETA's designation as an "animal shelter" pursuant to Virginia law, and therefore vesting it with the power to take in and "euthanize" animals, is arbitrary, capricious, and contrary to law. As such, NKAC respectfully requests that VDACS remove PETA's designation as an "animal shelter" that meets the state's requirements for what a shelter must be.

Respectfully submitted,

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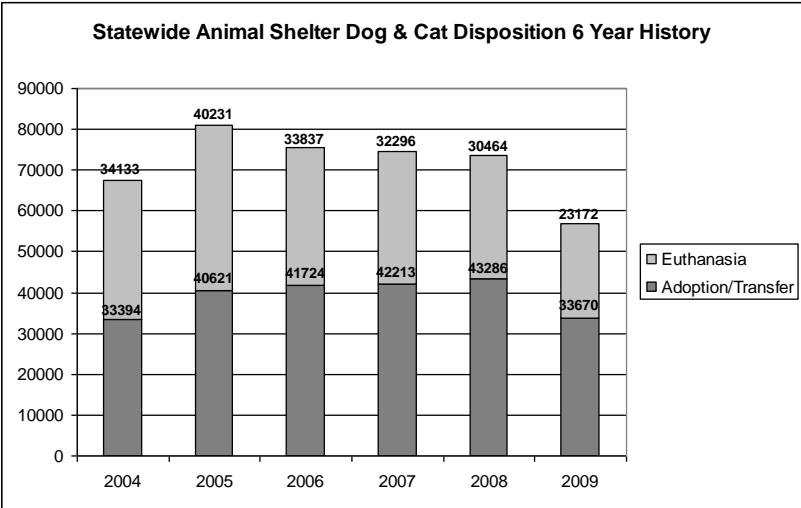
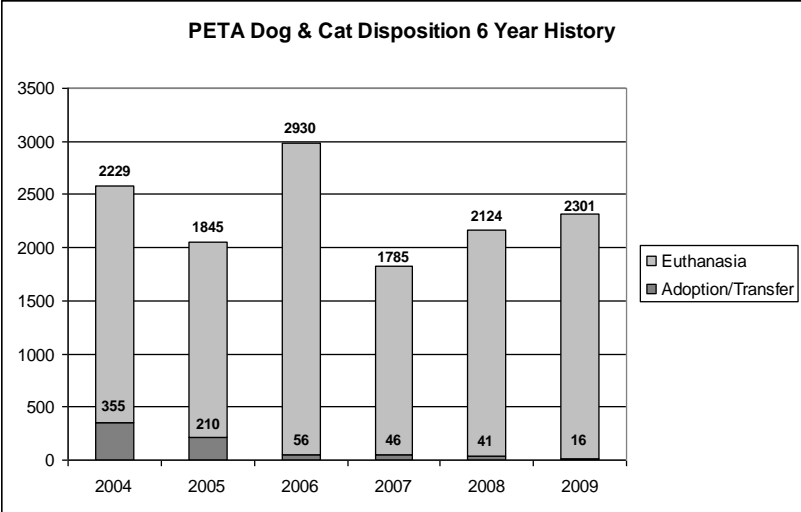
VIRGINIA DEPARTMENT  
OF AGRICULTURE AND  
CONSUMER SERVICES

**Animal and Food Industry Services  
Office of Veterinary Services  
SUMMARY OF FINDINGS  
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<b>DATE</b>		Investigation	<b>X</b>	Site Visit
<b>07/07/10</b>		Inquest		Telephone Call
<b>NAME OF SUBJECT</b>		People for the Ethical Treatment of Animals (herein PETA)		
<b>CONTACT INFO (Address, Phone #, Fax #, Email)</b>		PETA attn: Ms. Daphna Nachminovitch 501 Front Street Norfolk, VA 23510 (757) 622-7382		
<b>DATE</b>	<b>FINDINGS</b>			
07/07/10	<p>A site visit was performed to the PETA headquarters building on July 7, 2010 to determine if the organization's current activities allowed for the continued inspection of the facility as an animal shelter; if the primary purpose of the facility was to facilitate finding permanent adoptive homes for companion animals. The following items were noted during the course of this visit:</p> <ol style="list-style-type: none"> <li>1. The receptionist stated that PETA did not operate an animal shelter. When I indicated that PETA did report to operate an animal shelter and that this office has inspected in it in the past, an additional staff member was called to the desk and reiterated that there was no shelter. At this point I asked for Ms. Nachminovitch. Ms. Nachminovitch was called and indicated that she would be at the facility shortly. No other staff was available to begin the inspection.</li> <li>2. The facility contains three rooms designated as animal enclosures. The rooms are not further subdivided into runs or cages. The three animals occupying the rooms were not being held for adoption purposes (one was being held in conjunction with the clinic operations, one was being boarded for an indigent community member, and one on behalf of a PETA employee). The facility does not contain sufficient animal enclosures to routinely house the number of animals annually reported as taken into custody.</li> <li>3. 290 2010 animal custody records were reviewed. 17 or 6% were recorded as adopted or in foster homes, 273 or 94% were recorded as euthanized. Of these, 245 or 90% were euthanized within the first 24 hours of custody.</li> </ol>			
<b>DATE</b>	<b>PREPARED BY</b>		Dan Kovich, DVM, MPH	
	<b>SIGNATURE</b>			

DATE	FINDINGS	
	<p>4. Ms. Nachminovitch indicated that the majority of the animals that were taken into custody by PETA were considered by them to be unadoptable. Adoptable animals were routinely referred to other area animal shelters; conversely PETA often took custody of animals denied admittance by other area shelters. Ms. Nachminovitch confirmed that the shelter was not accessible to the public, and that most adoptions of animals were to PETA employees and affiliates.</p> <p>The findings of this site visit support the assertion that PETA does not operate a facility that meets the statutory definition of an animal shelter as the primary purpose is not to find permanent adoptive homes for animals. This is further supported by other information gathered by or reported to this office summarized as follows:</p> <ol style="list-style-type: none"> <li>1. The shelter is not accessible to the public, promoted, or engaged in efforts to facilitate the adoption of animals taken into custody. PETA reception has historically been unaware of the existence of an animal shelter (Attachment 1), and has stated to enquiring members of the public that no such facility exists (Attachment 2). PETA has published suggested guidelines for animal shelters on their website that indicate their organizational preference for the operation of such facilities; their own facility does not satisfy many of the key recommendations (Attachment 3). The agency is not aware of any substantive efforts to facilitate adoption of animals taken into custody.</li> <li>2. Previous inspections of this office have found no animals to be housed in the facility, or few animals in custody.</li> <li>3. Review of submitted annual animal record summaries by PETA and all reporting animal shelters for the past six years does not support that the facility has a primary intent to find permanent adoptive homes for companion animals. The following data was compiled by this office concerning the reported dispositions of dogs and cats taken into custody over this period:</li> </ol>	
DATE		<p align="center"><b>PREPARED BY</b> Dan Kovich, DVM, MPH</p>
		<p align="center"><b>SIGNATURE</b></p>

DATE	FINDINGS
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Given the findings of the visit, it was determined that an inspection would not occur at present. It was indicated to Ms. Nachminovitch that no further action would be taken regarding this site visit until such point that she could respond with information supporting the legitimacy of PETA for consideration as an animal shelter.

<b>DATE</b>	07/09/10	<b>PREPARED BY</b>	Dan Kovich, DVM, MPH
		<b>SIGNATURE</b>	