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ORIGINAL: 2130

February 8, 2001

To: Robert Nyce, Director IRRC

FROM: Ken Brandt 

RE: Regulation # 2-132 (#2130), Dog Shelters
Department of Agriculture

On behalf of our client, The Professional Pet Association, we support the final form of the above mentioned.

The changes embodied in the final form were suggested and developed from comments offered at the public hearing held on October 12/2000.

I call your attention to the comments offered by our association and the Commercial Breeders at that hearing (pages 23&24 of final form)

The comments at this hearing from Dr. Knauff, (page22&23) along with the comments provided by the representative of the Pennsylvania Veterinary Medical Association (PVMA) page 25 provide additional reasons for these changes.

Your consideration and support of this final form will be much appreciated.

Copies to: House & Senate Agriculture and Rural Affairs Committee
Senator Noah Wenger
Dr. Richard Knauff
Richard Hess, Director, Bureau of Dog Law Enforcement
Amos Zimmerman

ORIGINAL: 2130

RECEIVED

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REVIEW COMMISSION

FAX COVER LETTER

DATE: _____

TO: John H. Jewett

FAX #: _____

FROM: Ken Brandt

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER LETTER: 2

MESSAGE: Following re Dog Shelter Reg-

Any Follow-ups--

Please Advise


Thanks

Ken Brandt

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Hearts United  *No-kill shelter, sanctuary & animal welfare organization*
for Animals *Long distance adoption specialists*

Original: 2130

Pennsylvania Office
HUA
Box 565
Westtown, PA 19385

March 5, 2001

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
33 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Proposed Regulations #2-132

Dear Mr. Nyce:

I am an attorney representing Hearts United for Animals and the Coalition Against Pennsylvania Puppymills. On behalf of these organizations, I am submitting comments with regard to the regulations proposed by the Department of Agriculture/Bureau of Dog Law Enforcement (the "Department") pertaining to rest boards in kennels. The file reference number is #2-132.

1. The Pennsylvania statute that sets forth the enabling provisions for the Dog Law states that the Department is to promulgate regulations to insure that "all kennels shall be maintained in a sanitary and humane condition." (3 P.S. Section 459-101) The statute states that the Department has the **duty** to assure the proper and humane care of the dogs kept in captivity. The proposed regulations do not meet that duty. Allowing kennels to keep dogs on wires for any significant period of time and most certainly for their entire life is not humane and therefore inconsistent with the statutory direction.
2. The comments provided by the Department state that the reason for these regulatory changes is because "The Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards." I have reviewed the testimony and documentation pertaining to this issue and have not found any substantiation of these complaints. I have not seen any scientific evidence either supporting or discounting these complaints. We maintain that it is inappropriate to remove the rest boards without

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first conducting tests and gathering information to confirm or deny the truth of the complaints. It is the position of the organizations that I represent, that the kennels and the organizations affiliated with the kennels have requested that the rest boards be removed from kennels because they want to reduce the amount of work required to clean the kennels. If the kennels were properly cleaned, there would be no concern about the feces or urine on the rest boards.

3. I attended the meeting of the Dog Law Advisory Board where these changes were discussed. It was evident that there were several members of the Rest Board Committee who thought that the recommendation of the Committee had been misrepresented. The "agreement" that was reached in these meetings was either not accurately reported to the Department or not accurately reported from the Department, consequently the proposed regulations that were published in Pennsylvania Bulletin did not reflect the recommendations made by the Committee. Despite the concerns over misrepresentation raised by members of the Rest Board Committee, the Department still cited the "agreement" of the Rest Board Committee its comments. Additionally the Department represented in the Pennsylvania Bulletin that the proposed regulations had the "agreement" of the parties. This misrepresentation has clouded the debate over these regulations and given a false impression to the public who may have reacted differently if the accurate information had been portrayed. If the Department chooses to disregard the recommendation of the Rest Board Committee that was established pursuant to the Dog Law Advisory Board, it should be clear about what it is doing and the reasons for such actions. The way this has been handled appears to be a backroom deal providing favoritism to those parties who support the kennels.
4. The Department states several times in their responses that the comments made by some of the commentators would go further than the United States Department of Agriculture in the Animal Welfare Act and implementing regulations. The state has the right to choose to hold kennels in this state to a higher standard than kennels governed by the AWA. To the extent that decisions have been based on that logic, they are flawed and should be disregarded.
5. The regulations as drafted are confusing in that they give no guidance on the definition of the words "metal strand". This lack of definition will lead to confusion in interpretation and enforcement. Confusion could potentially cause the regulation to be unconstitutional. According to the dictionary, a strand is a thread, filament, fiber, or string. It is clearly not necessarily a strong substantial material. If the words chosen were "metal rod", that would be a far different interpretation. In the metal industry there is a specific difference between metal strand and metal rod. The failure of the Department to incorporate the wording that would have required the metal to be more than 1/8 of an inch allows the kennels to use flimsy wire in the kennels as long as it is coated. The Department states in response to such concerns that the regulations require that the floors do not sag. The current regulations require that the floors be kept in good repair. I have personally been to kennels where the floors were sagging. In fact at one

kennel shortly after the Department granted a license to the kennel, the police department obtained a search warrant and removed 61 dogs on cruelty charges. The primary enclosures in this location had sagging wires despite the fact that the kennel had been inspected and granted a license just a few months earlier. At another kennel the beams under the wires were rotten and despite the fact that I notified the Department of the condition, no citation for the condition was issued. In all of the year 2000 there were no citations issued in Lancaster County to any kennel for sagging floors and there was only one citation for a floor in disrepair. There is no reason to think that enforcement after the removal of rest boards will be any greater for sagging floors than it has been in past.

6. Several commentators stated that the rest boards should still be required for kennels that house small and toy breed dogs and for puppies. The Department's basis for the denial of these comments was that it would not provide more health, safety and comfort for the dogs and therefore there was no reason to "place such an additional burden on the regulated community." The obligation to have rest boards currently exists so it is not an additional burden. The responsibility of the Department is supposed to be to protect the dogs not to assist the regulated community. Nowhere in the statute does it say that the regulations should be revised to make it less of a burden for the regulated community. Additionally, the Department gives no substantiation for the statement that rest boards provide no additional comfort to the dogs. Small and toy breed dogs appreciate having a spot to lie where their legs and tiny body parts do not fall through the wires. Chihuahuas, Yorkies, Maltese and other small dogs have great difficulty walking on wires. It is terrible to think that these little dogs will never be able to walk on a solid surface. In written comments the Department constantly states that one reason why they are disregarding the comments from the commentators who want rest boards is because the regulations states that the dogs' feet cannot fall through the wire. The regulations currently state that the dogs' feet cannot fall through the wire, but I have personally seen kennels where the dogs' feet are falling through the wires and the Department has not issued citations to those kennels. In all of the year 2000 there was only one citation issued in Lancaster County for wire that allowed the dog's feet to fall through. There is no reason to expect that enforcement will be any greater once the resting boards are gone.
7. I have worked for Hearts United for Animals for twelve years. In that period of time I have been involved in the rescue and rehabilitation of hundreds of dogs from commercial breeding kennels. Many of these dogs have serious injuries that were caused from the wires. Johnny, a Maltese puppy, lost his foot when it was caught and twisted in the wires. Tabitha, a 4 month old, Sheltie lost her leg up to the knee when it was caught in the wires. Storey, a 7-year-old Lhasa Apsa, lost his foot. Dixie, Otto, Georgia and Pearl were all lame from spending their entire lives on wires. Dixie had huge cysts between her toes because her toes were splayed from walking on wires. I cannot even count the numbers of dogs with sores from lying on the wires. I could go on with dog after dog who has been injured from living on wires. The stated purpose of the regulations is to protect

the safety, health and comfort of the dogs and create kennels that are humane. These proposed regulations are not humane and do not protect the safety, health and comfort of the dogs.

I suggest that it would be appropriate to reject these proposed regulations and send them back to the Department of Agriculture for reconsideration of the entire regulatory structure.

Respectfully submitted,



Lee Wheeler

cc: John Jewett
Richard Hess

