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INDEPENDENT REGULATORY
REVIEW COMMISSION

March 15, 2007

Mary Bender
Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Ms. Bender:

Pursuant to the provisions of the Regulatory Review Act, we submit the following comments on the Proposed Rulemaking published in the December 16, 2006 *Pennsylvania Bulletin* related to Dog Law Enforcement. Our following comments are highlights and should not be construed to be exhaustive of our concerns.

We have very serious concerns about the nature in which this proposal was developed. It became evident at the hearing held by the House Agriculture and Rural Affairs Committee on March 6, 2007 that many legitimate statewide-organized interest groups, all impacted by the proposal, had little to no involvement in creating it. We believe the regulated community would be better served by offering representatives of a broader group of interested parties the opportunity to collaborate and develop a proposal that is more conducive to serving all affected.

The costs imposed on the regulated community as a result of this proposal seem grossly underestimated by the department. Costs associated with labor needs for the additional recordkeeping and sanitation requirements and supervised exercise, in addition to the physical and structural changes to facilities could certainly be much higher than \$20,000, depending on the size of a kennel. Many existing and well-run facilities would be unable to meet the financial demands of this proposal.

There are some proposed penalties in Section 21.4 that we question. First, in section 211(a)(5) of the Dog Law (Act of December 7, 1982 (P.L. 784, No. 225), as amended, and hereinafter referred to as "act"), the secretary is authorized to revoke or suspend or refuse to issue a kennel license or out-of-state dealer license for a violation of any law relating to cruelty to animals. By specifically referencing Pennsylvania's cruelty to animals statute (18 PACS, Section 5511) in the proposed rulemaking, are you seeking to limit the penalty to only those convictions that occurred under Pennsylvania law? It seems that the language in the statute extends to convictions of similar laws in other states, a provision that we believe is important.

Second, we also question the proposed language that prohibits the secretary from issuing a kennel license or an out-of-state dealer license if the licensee has been convicted of 18 PACS, Section 5511 within the last 10 years, and the similar proposed provision that follows related to convictions that are more than 10 years old. It is our understanding that restrictions on convictions only extend to the length of time the convict is under the jurisdiction of the court. In

other words, limitations can only be imposed for the life of the sentence/parole of the convict. After serving the sentence, the citizen is considered to have paid the debt to society. Further, we question the language that suggests a crime was “so heinous that the person could not yet be rehabilitated or there is evidence the person has not been rehabilitated...” Again, who will make this type of determination?

In proposed section 21.14(a)(3)(i), the language seems to require a kennel to have the capacity to keep the total number of dogs that would be kept, harbored, boarded, sheltered, sold, given away or in any way transferred annually, even though the facility may never have that number of dogs physically present at any one time. For example, a kennel owner may handle over 150 dogs in a calendar year, but may only have 50 on the premises at any one time. There seems to be no practical reason for this proposal and the language should be revisited.

In proposed section 21.14(5), there are numerous requirements for keeping kennel records. Most are consistent with the provisions in section 207(c) of the act. However, we point out these inconsistencies:

1. The word “dispersed” is used throughout this subsection. The word in the law is “dispensed”. To avoid confusion, the word from the act should be used.
2. There are undefined terms of “stray dog” and “rescued dog” which should either be defined or the language should be revised.
3. Proposed language in (vii)(C) and (D) goes beyond the authority in the act for recordkeeping. We believe that the record keeping requirements in the act are straightforward as enumerated, and without an additional general provision for the secretary to require anything further, additional substantive recordkeeping requirements in the regulation are beyond the scope of authority.
4. Proposed subsection (viii) is written exactly as that provision appears in section 207(c)(8) of the act and we find that desirable. However, the definition in the current regulation, and with a proposed change, is “licensed veterinarian.” We suggest changing the definition in the regulation to that which appears in the act (“licensed doctor of veterinary medicine”) and using that term consistently throughout the regulation.

In proposed section 21.14(b) related to *prohibitions on dealing with unlicensed kennels*, the language imposes an enforcement burden on licensed kennels that belongs with the department. It is not the responsibility of the consumer to verify compliance with the law.

In proposed section 21.14(c) related to *health certificate requirement*, there is some language which could be construed to require a Rabies vaccination for a dog that is under three months of age. Since this is inconsistent with the provisions of the Rabies Prevention and Control in Domestic Animals and Wildlife Act, we suggest revising the language to be clearer.

In section 21.23 related to *space*, there is proposed language which would require double the amount of floor space currently required for a primary enclosure and a daily, supervised exercise requirement of 20 minutes per dog. Special Deputy Secretary Jessie Smith has stated that these proposals “will improve the quality of life, the health and behavior” of dogs in kennels. We would like to know how these provisions were established, and on what scientific basis.

Deputy Secretary Smith has also stated that the above-stated requirements are consistent with the provisions of the federal Animal Welfare Act. We disagree. The provisions found in section 3.8 of the *Code of Federal Regulations, Title 9, Chapter 1, Subchapter A - Animal Welfare*, authorized by the federal Animal Welfare Act and related to *exercise for dogs*, only require exercise if certain space requirements are not met. Further, the exercise requirement is not specific to any timeframe, but rather, is to be outlined in a written plan developed with the approval of an attending veterinarian. The areas in which exercise is to be conducted in the proposed regulation are unduly restrictive and go far beyond what appears in the federal code. We also question the authority for the proposed recordkeeping requirements related to exercise. The statutory recordkeeping requirements do not include anything related to exercise. In addition, we question the basis for the elimination of certain space exemptions for pet-shop kennels. The existing language seems to be sufficient since a veterinarian must be involved. We believe the provisions in the federal code are more reasonable than this proposed regulation and encourage more thought and discussion by the regulated community if new standards are to be developed.

Proposed section 21.23(f) related to *housing facilities—general*, paragraph (8) again requires more recordkeeping that we believe is beyond the statutory authority in the act.

In proposed section 21.23(f), there are physical facility requirements that seem to be unnecessary. Many kennel facilities have been constructed to meet existing kennel standards as well as local building code provisions. Will the proposed requirements be acceptable under local codes? In addition, we are curious to know on what basis the following specific provisions were developed:

1. Potable water is required for cleaning drains and gutters. We understand and agree with the provisions to provide potable water to each dog for drinking, but question the need to use potable water for cleaning.
2. Floor and surface drains and gutters must be at least six inches in diameter, as opposed to the current “adequate...to rapidly eliminate excess water” requirement. Why?
3. Washing facilities with both hot and cold potable water are required for animal caretakers if dogs are housed in an indoor kennel. We understand the idea related to cleanliness, but it may not be necessary to require such infrastructure if similar facilities are within walking distance to the kennel. Perhaps the language should be revisited.

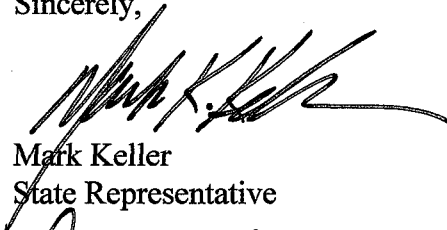
The proposed recordkeeping requirements in proposed section 21.41(e) again go beyond the statutory authority in the act.

We appreciate the opportunity to offer comments. Once again, we emphasize that the comments contained in this correspondence are only highlights of our concerns. Thank you for your consideration and we encourage you to revisit the proposed regulation to reflect the comments as described above.

Sincerely,



Bob Bastian
State Representative



Mark Keller
State Representative



Karen Boback
State Representative



Mike Fleck
State Representative

cc: Arthur Coccodrilli (IRRC)