

March 13, 2007

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

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INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: Comments on proposed amendments to the Dog Law regulations and in particular on the problems created by including in the definition of Establishment dog rescues that use foster homes to rehabilitate their dogs and do not operate kennels.

Dear Ms. Bender,

First, I would like to commend the Pennsylvania Department of Agriculture (the "**Department**") and the Bureau of Dog Law Enforcement for proposing amendments to the Dog Law Regulations to improve conditions for dogs housed and bred in Pennsylvania's commercial breeding facilities. One can only hope that with the passage of the portion of these amendments that regulates kennels, the commercial breeding facilities currently operating in Pennsylvania as puppy mills will reform their operations and start treating and housing their breeding dogs in a humane way, so that Pennsylvania can stop being known as the puppy mill capital of the Northeast.

I am an attorney and also volunteer as president of a national, all-volunteer dog rescue organization which is web-based and rehabilitates and rehomes dogs in the 48-contiguous states, including Pennsylvania. As such, I have a deep understanding of the operations of dog rescues that use foster homes to rehabilitate their dogs, and I am very concerned about the effect that the proposed amendments would have on these rescues and on the welfare of dogs in Pennsylvania that need the assistance and often also the breed-specific expertise of these rescues. I am therefore writing this letter to respectfully submit my comments on the proposed amendments to the Dog Law regulations and urge the Department to reconsider and not include dog rescues that use foster homes to rehabilitate their dogs in the definition of Establishment that is contained in the amendments. I will refer to these rescues in this letter as "**FH-based Rescues.**" I also note that the amendments use the defined term "**Temporary Homes**" to refer to foster homes and that this definition should also be eliminated from the final draft of the amendments.

My specific concerns with the proposed amendments to the regulations are the following:

- (1) The Department's inclusion of FH-based Rescues in the newly-created defined term Establishment has the effect of subjecting those rescues and the residents of Pennsylvania who volunteer to foster dogs for them to the same regulations that apply to commercial kennels and puppy mills, including inspection by the Department at any time and for any reason. Moreover, the inclusion of FH-based Rescues in the definition of Establishment cannot be characterized as clarifying existing law as the Department purports, since the existing law, namely the Dog Law, regulates as kennels only those dog rescues that operate a physical kennel and defines kennel with an everyday meaning that conforms to what most people would agree is a kennel. Making the private homes of citizens kennels

simply because they have volunteered to foster a dog for a rescue IS making NEW law and the Department has exceeded its rulemaking authority in doing so.

- (2) The record keeping, licensing, financial and administrative burdens that the Department is attempting to impose on all-volunteer dog rescues which lack a paid staff, in return for the "privilege" of allowing them to help mistreated and homeless dogs in Pennsylvania are burdensome and costly, and those intended for commercial kennels and breeding facilities are non-sensical when applied to foster homes. Foster homes are after all, private residences, not kennels or barns, and the fact that the Department is choosing to define them as kennels by including them in the definition of the term establishment in these amendments does not transform them into kennels or barns. The Department itself recognizes in its introduction to the amendments that the costs of complying with the kennel licensure and recordkeeping requirements imposed by the amended regulations will range from \$5,000 to \$20,000 per regulated entity. How will the FH-based Rescues bear these costs?
- (3) The attempt to make it illegal for licensed dog rescues and their representatives to accept dogs that are released to them in Pennsylvania by non-compliant kennels such as puppy mills and by unlicensed dog rescues contradicts the mission of most FH-based Rescues, which is to rescue homeless and needy dogs irrespective of where they come from. The prohibition also extends to providing transport assistance to non-licensed dog rescues. How is that in the best interest of Pennsylvania's dogs?
- (4) The requirement that all dogs entering Pennsylvania have a health certificate contradicts the exemptions provided by Sections 459-213 and 459-212 of the Dog Law for dogs being transported for humane purposes and for dogs that are brought into the state temporarily (which by definition means for a period of up to 30 days). As such, the Department has exceeded its authority in promulgating this requirement and without the exemptions provided in the Dog Law, the requirement would also violate the Commerce Clause of the U.S. Constitution. This requirement will also increase the cost of doing business for FH-based Rescues by \$50 per dog fostered in Pennsylvania, as that is the current rate charged by veterinarians in most states for issuing health certificates, with no added benefit. A less onerous approach would be to require that all dogs entering Pennsylvania have been examined by a veterinarian within the four months prior to the transport and that they be current on their rabies vaccine and have a rabies certificate to prove it.
- (5) Contrary to the Department's assertion that the amendments will have no financial impact on the General Public, they will result in increases of between \$50 and \$100 in the adoption fees charged by rescues for dogs fostered in Pennsylvania, as rescues that choose to continue operating here will need to recover their costs of complying with the burdensome rules and requirements being imposed on them by these amendments, which as noted above are estimated by the Department itself to range from \$5,000 to \$20,000 per regulated entity.

I believe that these regulations have been written without any understanding of how dogs rescue organizations operate and the role they play in rehabilitating and rehoming homeless dogs in partnership with Pennsylvania's municipal shelters and humane societies. They treat FH-based

Rescues as if they were either puppy mills or dog collectors in need of regulation and seem to assume that Pennsylvania residents who volunteer to foster rescue dogs are would-be collectors too.

Yet the reality is that FH-based Rescues work in partnership with municipal shelters and humane societies (collectively, "**Shelters**") to take dogs into their own rehabilitation and adoption programs and thereby reduce the number of dogs that need to be euthanized by the Shelters due to overcrowding. FH-based Rescues also often pull dogs from Shelters in rural areas where the location of the Shelters make it unlikely that their dogs will be seen and adopted by the public and which may also lack the financial and/or human resources to provide their dogs the veterinary and other care that they need. FH-based Rescues by definition rehabilitate their dogs in the private homes of their foster home volunteers, where the rescue dogs are socialized and taught skills by their temporary human family to help make them adoptable, and learn to live with other pets that the foster family may have. FH-based Rescues are often comprised almost, if not exclusively, of volunteers who also hold full time jobs elsewhere during the day, and are funded through private contributions. Due to the technological advances in communications of the past 10 years, particularly the internet, a large number of FH-based Rescues today, particularly the breed rescues, operate across state borders, either in a particular geographic area or even nationally, and do not fit neatly into the assumption made in Section 459-206 of the Dog Law that the 26 or more dogs transferred in any one calendar year (which is the trigger for when a Pennsylvania kennel license is required) were all transferred in the state of Pennsylvania. The cross-border nature of the FH-based Rescues also allows them to choose NOT to do business and not help the dogs in states that choose to become rescue-unfriendly, like Pennsylvania would become if the Department chooses to enact the amendments to the regulations as currently written.

In promulgating rules for the enforcement of a statute, the executive branch, in this case, the Department, is bound by the law as written by the legislature and cannot exceed its rule making authority by promulgating regulations that exceed the scope of the statute to which they relate or that contradict other provisions of the law. That the Pennsylvania legislature did not intend to regulate FH-based Rescues as kennels unless they operate a physical facility meeting the definition of kennel provided in the Dog Law is evident in Section 459-102 of the Dog Law, which defines "**Kennel**" as any establishment wherein dogs are kept for the purpose of breeding, hunting, training, renting, research or vivisection, buying, boarding, sale, show or any other similar purpose and is so constructed that dogs cannot stray therefrom, and defines "**Nonprofit kennel**" as any kennel operated by an animal rescue league, a humane society or association for the prevention of cruelty to animals or a nonprofit animal control kennel under sections 901 and 1002. These definitions also evidence the intent of the legislature to regulate only the type of premises that are normally thought of as kennels and not the private homes of Pennsylvania residents who choose to help homeless dogs by volunteering to foster them in the privacy of their own homes, nor the animal rescue leagues themselves (which are regulated elsewhere in the Dog Law as noted below), as the Department intends to do by making "establishment" a defined term and including FH-based Rescues in that definition. The fact that the Nonprofit kennel definition contemplates a physical kennel operated by an animal rescue league and that the Dog Law itself regulates the operations of animal rescue leagues in a separate chapter, namely in Sections 459-901A to 911A, is further evidence of the legislative intent. The Department thus has exceeded its authority and made new law instead of clarifying existing law as it purports to have done by including FH-based Rescues in the definition of Establishment contained in the proposed amendments. It should also be noted that an animal rescue league which operates its own kennel, such as North Shore Animal League of America and the ASPCA in New York, is a much more sophisticated organization with paid staff and is more likely to have the financial and

human resources necessary to comply with the administrative burdens that the Dog Law and its regulations impose on it, than an all-volunteer organization with no financial means to rent even a small office or pay the salary of even one staff member.

By including FH-based Rescues in the definition of Establishment, the new regulations as amended would also subject FH-based Rescues that fail to obtain a PA kennel license to a penalty of between \$100 and \$500 per day for EACH day that the FH-based Rescue has operated without a license. That fine would drive most FH-based Rescues out of business and certainly any risk evaluation analysis would suggest that a FH-based Rescue is better off not helping any dogs in Pennsylvania than to risk being fined by what appears to be a rescue-unfriendly Department, which is how the Department and the state of Pennsylvania as a whole would be perceived if it chooses to enact the rescue-unfriendly portions of these regulations.

In addition to the fines, amended Section 21.14(a)(3) provides that each foster home who volunteers for a FH-based Rescue is to be treated as a separate kennel location and will be subject to inspection by the Department if the FH-based Rescue adopts 26 or more dogs in a calendar year. As is, most FH-based Rescues have great difficulty finding and recruiting foster home volunteers for reasons that have nothing to do with privacy considerations. This new requirement which essentially means that a foster home must agree to an unreasonable and possibly unconstitutional search at any time by the Department, makes it even less likely that residents of Pennsylvania will agree to foster dogs for FH-based Rescues in the future. Moreover, as written, the 26 dogs that bring the FH-based Rescue within the scope of this Section need not all have been adopted or even fostered in Pennsylvania, which is likely to be the case for national and regional rescues.

The amendments also impose record-keeping requirements which make sense when applied to kennel environments and puppy mills, yet become non-sensical when applied to FH-based Rescues and their foster homes. Among them, the requirement in Section 21.23(d) that small dogs be exercised together and not be put in the same exercise area with medium, large or giant sized dogs. Whereas in a kennel environment that requirement makes sense, in a private foster home that is treated as a kennel solely because the Department says so, the requirement becomes absurd, as the exercise area is the foster home volunteer's backyard and to the extent that small foster dogs get along, live and play with the foster home's larger dogs, there is no reason to keep the dogs separated. For example, consider a foster home that has a Labrador Retriever and an Irish Wolfhound and is fostering a westie. Why should the westie be kept separated in the yard if all dogs get along and play together? The same Section 21.23(d) would also require that the foster home keep a log of each time the foster dog is allowed to go exercise in the yard. Similarly the record keeping requirements imposed by Sections 21.24(f)(8) and 21.41, while very sensible for kennels and puppy mills, make no sense when applied to foster homes where the housing facility and kennel IS the foster home's HOUSE. Under these sections, foster homes would be required to keep a log of the date and time when they clean and/or sanitize not a kennel but their house, the date and time when they clean the foster dog's food bowl and water bowl (i.e. every time the foster home serves the foster dog its meals and washes the dishes the FH would have to make a notation on this log), the date, time and details of daily feedings, the date, time and detail of exercise activity of the foster dog (i.e. the date and time that the dog was walked or allowed to play in the yard, etc., and what the activity consisted of), the date, time and detail of any medications administered to the foster dog and the date AND time that the dog saw a veterinarian (why is the time of the appointment important?). Likewise new Section 21.29(7) requiring that the entire kennel area be free of refuse and garbage that could attract rats, vermin,

insects and other vectors of disease while very sensible for kennels and puppy mills, makes no sense when applied to foster homes because the house itself constitutes the entire kennel area under these amendments and homes do produce garbage and there is generally a garbage can in the kitchen, the bathroom, the bedrooms, etc., all of which would be prohibited by these regulations.

In addition to these requirements intended for kennels and puppy mills that become non-sensical when imposed on FH-based Rescues and their foster homes, Section 21.5 would turn FH-based Rescues and their foster homes into collectors for the state, requiring that prior to releasing a dog to an adoptive family, the FH-based Rescue issue the dog a license, collect the licensing fee and remit the licensing fee to the applicable county treasurer's office. The Department fails to take into account that FH-based Rescues for the most part lack a paid staff and that their foster homes are not equipped to be the government's collectors. It should continue to be the responsibility of the adoptive home, to the extent that the adoptive home resides in Pennsylvania, to comply with local licensing requirements and a covenant to that effect could easily be included in the adoption contract for the dog.

In addition, new Section 21.14(b) would prohibit licensed dog rescues and kennels from dealing with unlicensed dog rescues and kennels and specifically would prohibit that they accept dogs from unlicensed dog rescues and kennels. Similarly new Section 21.42 (b) would make it a violation of the law for any agent of a licensed rescue or kennel to transport a dog from an unlicensed dog rescue or kennel. This is all very problematic as the Department would be redefining the scope of the charitable mission of the dog rescues that choose to continue operating in Pennsylvania if these amendments become law, and limiting it to rescuing and helping only those dogs that come from rescues, puppy mills and/or kennels licensed by the Department rather than all dogs that need the rescue's help and services. The prohibition is even more problematic given the current practice of a large number of FH-based Rescues of accepting dogs released by Pennsylvania puppy mills on a no-name and no-questions-asked basis in order to save these dogs and keep them from being shot by the millers once their usefulness as breeding stock is gone, as the practice of accepting these dogs would be prohibited by these amendments.

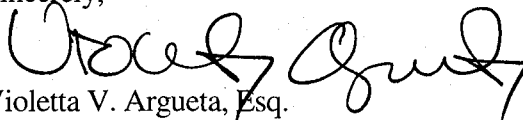
Finally, new Section 21.14(c), which would require that all dogs entering Pennsylvania from another state or country have a health certificate, fails to exempt from that requirement dogs that enter the state temporarily, even though it recognizes in its text that the Dog Law in Section 459-212 provides an exemption for dogs that are entering Pennsylvania temporarily (meaning for less than 30 days) and Section 459-213 provides an exemption for dogs that are being transported for humane purposes. As such, Section 21.14 contradicts the Dog Law itself and thus exceeds the rulemaking authority of the Department, and without the express exemptions provided in Sections 459-212 and 459-213 of the Dogs Law, Section 21.14(c) also violates the Commerce Clause of the U.S. Constitution. Health certificates also cost \$50 at most veterinarian practices, and thus would increase the cost of rescuing dogs for FH-based Rescues without any added benefit. The same result could be achieved by requiring that all dogs entering Pennsylvania be current on their rabies inoculation and have a rabies certificate issued as proof of vaccination and that they have been examined by a veterinarian within the 4 month period prior to entering Pennsylvania. Any added cost of doing business would have to be passed by the rescues to the general public as adoption fees, and higher adoption fees often result in less adoptions.

For all the reasons discussed above, I urge the Department to reconsider and remove FH-based Rescues from the proposed definition of Establishment contained in these amendments. Otherwise these amendments will drive FH-based Rescues out of business in Pennsylvania at a time when their assistance will be very much required to help rehabilitate and rehome the large number of dogs that we all expect will be dumped by the puppy mills as they bring their operations into compliance with the new structural, space and care requirements contained in the amendments, should these become law and go into effect.

Thank you for your time and consideration. Should you have any questions or wish to contact me, you may do so by email at Vva10967@aol.com.

For your convenience, I have included copies of the Dog Law and Dog Law regulations showing the proposed amendments as blacklined text.

Sincerely,



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