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August 6, 2010

The Honorable Arthur Coccodrilli, Chair
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Chairman Coccodrilli:

I am presenting the following comments related to proposed regulations from the Pennsylvania Department of Agriculture, Bureau of Dog Law Enforcement, Annex A, Title 7, Part II, Chapter 28a Sections 28.1, provided for in Act 119 Sections 207(g)(7) and (8) and (h)(9). I am providing these comments as a member of the Dog Law Advisory Board. While I do not operate a commercial kennel or presume to represent industry interests, I am concerned for the integrity of Act 119, especially as such regulations tend to be misapplied or drift to other segments of laws and regulations that may affect sporting kennels such as mine. It has been my observation that much of the intent of the first draft of these regulations has been directed at making the operation of a commercial kennel impossible by reasons of expense and logistics.

In general, the latest draft of commercial kennel regulations differs significantly from the initial draft, including new and additional definitions, standards, and requirements that it should be considered anew, and not as a revision. The regulatory review process for this draft should be restarted, not continued. Furthermore, this latest draft still exceeds the direction of the legislature outlined in Act 119 by including carbon monoxide monitoring, prescribing specific auxiliary ventilation systems, and requiring mechanical ventilation systems outside of the legislative mandate.

More specifically, I would forward the following comments by section in the draft regulations:

28a2(a) The legislature, as I recall, specifically removed language requiring mechanical ventilation systems for commercial kennels. The only requirement, to be implemented in regulation, was for auxiliary ventilation to be provided when temperatures exceeded 85 degrees Fahrenheit. Section 28a2(a) states, "Each area of a commercial kennel...shall utilize a functional, mechanical ventilation system....". This section also requires that, "The kennel owner or operator shall assure the mechanical ventilation system is functional, in operation at all times and meets the standards and requirements of this section." Again, the legislature specifically removed general requirements for mechanical ventilation from Act 119 and cautioned the Department when it proposed the first draft of these regulations. Furthermore, it may be unnecessary for a mechanical ventilation system to be "in operation at all times" to meet the requirements of this section. Is it really necessary to provide mechanical ventilation on a spring day with a gentle breeze when kennel windows could be opened to provide an even better effect? 28a2(a) also introduces the requirements for carbon monoxide detectors. While CO levels may be associated with adequate ventilation, there is no requirement for monitoring of CO in Act 119. I believe this requirement exceeds the Department's direction in the law to promulgate regulation.

28a.2(b) outlines requirements for a professional engineer's certification of a ventilation system. The engineer must certify that he is familiar with the requirements of the dog law and certify that the system, as built, meets all of the standards and requirements of the proposed regulations. It is doubtful that there are more than a handful of professional engineers in the entire country that would affix their seal to such a certification. In addition, PE certification is generally affixed to plan sets, not as-built plans. I think it would be extremely difficult and expensive to find a professional engineer to provide the services and certifications outlined here. Note that the Department did consult a professional engineer from outside the Commonwealth, but did not consult with local engineers or their trade groups regarding acquisition of such certificates as required in these proposed regulations.

28a.2(c) describes how the Department will perform inspections on commercial kennels. Again, the Department is requiring that the ventilation system be operational at all times. Act 119 only provided authority to require auxiliary ventilation. 28a.2(e) requires filtration of the air. Particulates were not mentioned as a standard for ventilation in Act 119. This section specifies that adequate equipment "includes: air handlers, roof top units, dehumidifiers, furnaces, unit heaters and heat pumps". Consequently the Department would then require specific equipment rather than require the kennel to meet specific conditions. There may be myriad systems that will satisfy the outlined conditions, so that it seems unreasonable to limit the types of equipment that may be used to meet required conditions.

28a.2(f)(2) states "Minimum circulation rates in each area or room of a kennel and housing facility, including primary enclosures, where a dog is housed, kept or present shall be maintained at all times at a total volumetric airflow of 100 cubic feet per minute (CFM) per dog". My reading of this formula for a kennel with 100 dogs would be : $100 \text{ CFM} \times 100 \text{ dogs} = 10,000 \text{ CFM}$. I would imagine that 100 CFM would produce a noticeable breeze or flow of air, and 10,000 CFM would be something akin to

gale forces. This section should be reworded to ensure that each dog gets 100 CFM, if that was the intent of the wording. Referring back to Act 119 which requires that dogs shall be protected from drafts, is this section contrary to the Act?

28a.2(f)4 requires at least 30 CFM per dog of the circulated air shall be fresh air, the rest may be re-circulated air. It seems reasonable that re-circulated air, especially re-circulated air that meets the filtration requirements set forth in these proposed regulations, may be of better quality than “fresh air” introduced from outside the kennel building. Consider that most of these commercial kennels are located in rural areas that are subject to seasonally high suspended particle counts (such as when a neighboring field is being harvested or plowed) or may be subject to other pollutants such as diesel exhaust from a poultry or milk truck being parked next to the kennel building. I know of no home or business construction requirements for continuous ventilation or continuous circulation of “fresh air”.

28a.2(f)5 requires a filtration systems with disposable filters changed quarterly. Again, rather than simply set a viable standard, the Department is attempting to require specific equipment that may not now be the best available technology or may be out of date within a few months or years. 28a.6 requires that “...the ventilation system shall be designed and placed in such a manner that each dog is in the moving air stream....” Again, this requirement disagrees with Act 119 prohibitions on drafts. Furthermore, at cooler temperatures, dogs may try to avoid “the moving air stream”; how would that be possible?

28a.2(g)2 requires that the kennel veterinarian be notified if a failure of the ventilation system occurs when temperatures exceed 85 degrees F. I doubt the kennel veterinarian will be able to help with repairing the ventilation system. If after 24 hours the problem is not repaired the Department is to be notified. Again, I doubt the Department is going to be able to retain a qualified HVAC repairman to send to the kennel. It would make more sense if there were requirements to remove the dogs from a kennel when dangerous conditions exist for a prolonged period.

28a.3 details auxiliary ventilation systems. Act 119 provided authority for auxiliary ventilation when temperatures exceed 85 degrees F. It did not provide authority for the Department to promulgate regulations for ventilation (as in 28a.2). Some of the requirements from 28a.2 would more appropriately be included under 28a.3. As auxiliary ventilation standards were to be the primary focus of these regulations, this section seems rather sparse.

28a.4(2) introduces the concept of “Heat Index” and requires a Heat Index value of 85 or lower. The comment response document notes a “Tufts” animal safety index and references a study on beagles using Heat Index as a measure of conditions. The Department is commended for seeking out research on the effects of heat and humidity on dogs for which to base their regulation. Still, I am uncomfortable with the heat index scale being used in this context. This section of regulations does not accurately account for the differences in human and canine physiology. While supporting narrative provides some discussion, the Heat Index is a measure of human comfort, not canine response. As a professional biologist with academic experience in ecological physiology, I feel the Department has only skimmed the surface of available research to establish a standard that may be too high or too low. The study

referenced by the Department had a relatively small sample size (6); and we do not know the conditions (diet, acclimation, hydration) of that sample. Generally, limits of cold and heat tolerance are measured through respiration which is directly related to energy expended beyond maintenance needs to heat or cool the body. With such testing limits of tolerance may be inferred. Such tests and records are available for such a variety of wild animals (microtine rodents, lagomorphs, etc...) it is assumed that supporting data could be found for canines. Note, too, that acclimation plays an important role in how an organism, in this case a dog, responds to high or low temperatures. I have seen the same dog nearly pass out from heat exhaustion during a training session on an 80 degree day in April then energetically trail a rabbit for over an hour in July with temperatures over 90 degrees. If a kennel is kept at 70 degrees year-round it may be more difficult for a dog to endure a 90 degree spell than if the kennel were kept at 82 degrees.

28a.4(b)(2) describes monitoring equipment that shall be installed by the Department in commercial kennels. The regulations do not specify the model or brand of monitor, so there may be different brands or models being used by the Department. Such variations may produce variable readings. The Department does not explain where or how it will acquire funds to purchase over 100 of these monitors. Of late, the Bureau of Dog Law Enforcement has projected a budget shortfall and is considering requesting an increase in license fees in the near future. It would be most unfair if the 50% or less of dog owners who actually purchase licenses for their dogs (see the Bureau's annual report) would be required to subsidize equipment purchases to monitor commercial kennels. Further, installation of such monitors may be contrary to the 4th and 5th amendments to the U.S. Constitution related to warrantless searches and self-incrimination.

28a.4(b)3 and 4 again specify the types of equipment necessary for a commercial kennel to comply. Again, the Department should only be concerned with meeting the standards that are optimum for the health and welfare of dogs in a kennel, not with the means by which the standards are accomplished.

28a.5 sets appropriate ammonia levels in commercial kennels. The maximum acceptable level, 15 parts per million, seems very low, especially where dogs are kept on solid flooring to comply with Act 119.

28a.6. discusses Carbon Monoxide Detectors. I believe requirements for CO monitoring are outside of the Department's mandate in Act 119. If the legislature intended for CO monitoring it would have provided such in the Act.

28a.7. Deals with lighting. 28a.7a(2) requires that lighting shall be uniformly diffused throughout the kennel and housing facility, including the primary enclosure. I would exempt the primary enclosure from the requirement as many dogs seek out darker places to rest during the day. Act 119 encouraged the Department to establish suitable ranges of lighting. 28a.7(a)(5) states that dogs shall be placed or located in a manner that protects each dog from exposure to excessive light. The Department does not propose what excessive light is.

28a.8 simply restates what is in Act 119 and does not provide for alternative types of flooring as required by Act 119. 28a.8(d)(6) requires that flooring “will provide dogs with footing that is not slippery or slick” but does not indicate what slippery or slick can be.

In sum, the Department has done much of its homework with this draft, but again, it misses the mark in addressing the Legislature’s wishes and limits. The differences between this draft and the initial draft are significant and warrant restarting the regulatory review process.

John Gible

Member, Dog Law Advisory Board

Copies Provided:

Representative Michael Hanna, Chair, House Agriculture and Rural Affairs Committee

Senator Michael Brubaker, Chair, Senate Agriculture and Rural Affairs Committee

Jill Brownfield, Bureau of Dog Law Enforcement