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**From:** Johnson, Leslie A. Lewis  
**Sent:** Tuesday, August 17, 2010 1:02 PM  
**To:** Wilmarth, Fiona E.; Kim Kaufman; Smith, James M.; Gelnett, Wanda B.; Outreach  
**Subject:** FW: IRRC Comments  
**Attachments:** FACTSHEET.docx

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**From:** MainLineRescue@aol.com [mailto:MainLineRescue@aol.com]  
**Sent:** Monday, August 16, 2010 10:58 PM  
**To:** Johnson, Leslie A. Lewis  
**Cc:** douglassnewbold@verizon.net; ngardner@pa.net; Rpatrickbaker@aol.com  
**Subject:** IRRC Comments

Ms Johnson -

As legal counsel for IRRC, you need to be aware that the proposed regulations submitted by the Department of Agriculture were not the regulations approved by the nine vets of the Canine Health Board. And according to Act 119, only regulations approved by the CHB can be submitted to IRRC. It is illegal for the Department of Agriculture to circumvent the directives of the CHB vets. If the Department claims that no one on the CHB voiced their concerns to Secretary Redding regarding the changing of their regulations, the PDA is not exactly being truthful. The vets are dismayed at the PDA's actions.

It is also illegal for the Department of Agriculture to add a section on flooring to the proposed regulations - a section that permits commercial breeders to use wire flooring on 50% of the flooring surfaces of their dogs' primary enclosures. Act 119 clearly states that dogs over the age of twelve weeks cannot be housed on wire flooring. If the Bureau of Dog Law wants puppies (who may be housed on wire flooring) to be with their mothers (who can only be housed on solid or slatted flooring), then the breeders can house both mothers and puppies on solid or slatted. As an attorney, you understand that a regulation (or policy) can never "trump" a law - a law passed by the House and the Senate, and signed by the governor. As an attorney, you are obligated to instruct your fellow members to consider the illegality of the regulations presented by the Rendell administration and the Department of Agriculture.

Thank you for your time. If you would like to discuss this matter with our attorney, please let me know. Our attorney has already contacted Secretary Redding.

Bill Smith  
Main Line Animal Rescue

## FACT SHEET

### ***DEPARTMENT OF AGRICULTURE'S NON-ENFORCEMENT OF THE NEW DOG LAW - PA ACT 119 of 2008***

#### **How is the Department subverting the new Dog Law?**

The new Dog Law requires adult dogs confined in cages at commercial breeding kennels to have access to an outside run. The new Dog Law also prohibits adult dogs to be housed on wire floors which are painful and harmful to the dogs. Unfortunately, the Department has carved out exceptions to these sections of the Dog Law.

#### **What specific provision of the law is being disregarded by the Department?**

3 P.S. 459-207 (i) (4) which states that all dogs over 12 weeks of age in a commercial kennel, "shall have an entry way that will allow the dog unfettered clearance out of the enclosure to an exercise area."

3 P. S. 459-207 (i) (6) reaffirms the above provision and states that the "exercise area must allow for unfettered clearance for dogs from their primary enclosures."

#### **What action has the Department taken to undermine the requirement that adult dogs have access to an exercise run?**

Secretary of Agriculture, Russell Redding, issued a "Statement of Policy" on July 16, 2010 stating that the "Bureau [of Dog Law] will consider a kennel owner to be compliant [with the law] if the nursing mother is provided daily access to an exercise area."

#### **Isn't it sufficient that there is an exercise area even if it is not attached to the primary enclosure housing the dog?**

No, as there is no way of enforcing such a provision and ensuring that the dogs are actually given an opportunity to leave their cages. The wardens have no way of determining if the dogs were removed from their cages and placed in a separate exercise area at any point in time during the day. The legislature specifically required that the dogs must have "unfettered access to an exercise area" in order to ensure compliance. The legislature recognized the need for dogs to have access to an exercise run as breeding dogs in commercial kennels spend their entire lives confined in a cage.

**Is there any other problem associated with mother dogs not being afforded access to an exercise run?**

Yes, such a policy contributes to unsanitary conditions and creates a health risk to puppies during a time when their immune systems are not fully developed. An exercise run, as required by law, would allow a mother dog to relieve herself away from her puppies. Under the policy adopted by the Department, the mother dog is now forced to relieve and eliminate inside the cage with her puppies.

**What other specific provision of this law is being thwarted by the Department?**

3 P.S. 459-207 (i) (3) (i) which states that flooring of primary enclosures housing dogs over 12 weeks of age in commercial kennels, "shall not be metal strand."

**What action has the Department taken to undermine the prohibition on metal strand and wire flooring?**

On Wednesday, July 14, 2010, the Department withdrew the proposed regulations of the Canine Health Board and added a provision 28a.8.(e) allowing 50% of the flooring of cages housing mother dogs to be exempt from the ban on wire flooring. The Department then resubmitted such regulations to the Independent Regulatory Review Commission. The Department did so without the consent and approval of the Canine Health Board and without even advising them of such action. It should be emphasized that the Department has no authority to draft and submit proposed regulations on behalf of the Canine Health Board.

**What consequences will this have on breeding dogs in commercial kennels?**

Dogs will be forced to walk on wire flooring which is not only uncomfortable but actually painful and causes injuries such as splayed feet, cysts on paws, and painful abrasions. The time spent on this wire flooring is only exacerbated due to the Department's decision to allow these dogs to be confined all day in their cage and not allowed a time out by access to an exercise run as required by law.

**What possible reason could the Department give for permitting dogs to be housed on wire flooring?**

The Department alleges that the wire flooring will keep the puppies cleaner as the wire floor will allow some of the waste to fall outside the cage. The Bureau has admitted that the majority of commercial breeders maintain their dogs in unsanitary conditions. Instead of enforcing the requirement for daily cleaning of cages, the Bureau has taken the approach of simply permitting the breeders to ignore the sanitation regulations and allow wire flooring in the hope that the waste falls through the cage floor. However, the puppies are not the cause of the sanitation problem since the mother dog, as per her nature, cleans up after her puppies, as dams have done for hundreds of years when they lived in dens and did not want the smell attracting predators. The Department has actually exacerbated the sanitation problem by denying the mother dog access to an outside run to relieve herself. Instead, the mother dog has no choice but to urinate and defecate in the same cage with her puppies.

**What possible reason could the Department give for permitting dogs to be confined in a cage without access to a run?**

The Department believes that the puppies might get trapped in the outside run and not be able to crawl back into the cage with the mother dog. However, there is simply no evidence of puppies being trapped in outside runs other than those with wire floors which are now banned in commercial kennels. The Department has no experience of this problem on which to base such a claim. If in fact, this was an occurring problem, why doesn't the Department simply require the run to be *indoors* rather than allowing the breeders to deny any run or opportunity for exercise for the dogs?

**Since this will only impact mother dogs with nursing puppies is it really that big of deal?**

The Director of the Bureau of Dog Law admitted that they will allow the breeders to keep mother dogs on wire floors and without access to a run for at least two weeks *prior* to actually having puppies. Outside of performing ultrasounds on the expectant dog, the wardens will have no way of determining when the dog is two weeks away from birthing and this two weeks exemption will actually result in a one month exemption in order to hold up in district court. While many puppies are weaned and taken away from the mother after 6 – 8 weeks, many commercial breeders leave unsold puppies with the dam for up to 12 weeks.

While the Department alleges that such exemption only applies to mother dogs with *nursing* puppies, the actual regulation drafted by the Department states that it applies to dams with puppies as old as 12 weeks of age regardless if they are nursing or not. Thus, one month prior to birthing plus 12 weeks with puppies and bred twice a year, adult dogs in commercial kennels will be living in tiny wire floor cages with no attached runs for 8 months of every year.

**Is this a result of a gray area of the law? Isn't the Department just attempting to work out a compromise of conflicting sections of the new Dog Law?**

The Department claims that this is a gray area of law as the prohibition on wire flooring and the requirement for access to an outdoor run is only required for dogs over 12 weeks of age. The Department claims that the law doesn't address what the requirements would be for an adult mother dog being housed with puppies less than 12 weeks of age. The Department maintains that since puppies are not covered by this provision of the law, then any adult dam housed with puppies should also be afforded an exemption from the law. However, this is a "shall" versus "may" issue. The law is clear that dogs over 12 weeks of age *shall* have access to a run and not be housed on wire floor whereas the puppies *may* be housed on wire floor without runs. The intent of the legislature was clear that this law was meant to address the mother dogs that are confined in these breeding kennels for their whole life. The entire focus during the legislative process was to protect the adult dogs as the puppies escape such rigorous confinement by 8 – 12 weeks of age. The intent was to exempt "weaned" puppies that were housed separate from the mother dogs. In fact, 3 P.S. 459-207 (i) defines all requirements for "dogs over 12 weeks of age" and specifically refers to nursing bitches and their puppies in subsection (6) (viii) requiring that they be separate from other dogs. If the legislature intended for mother dogs with nursing puppies to be exempt from the requirements of dogs over 12 weeks of age, why would the law specifically mention them ["nursing bitches and the puppies"] in 207 (i) which lists the specific requirements for dogs over 12 weeks of age?

