

**Testimony of Julian Prager
on behalf of the
Pennsylvania Federation of Dog Clubs
On Regulation #2-170
Canine Health Board Standards for Commercial Kennels**

The Pennsylvania Federation of Dog Clubs will comment on one issue unresolved in the regulations. Then we will comment on the Regulatory Review Process and suggest solutions to resolve issues we identified in this process. Please forgive references to statutory language of which you are well aware, but we want to ensure that the record is clear for the public.

You have seen our comments on the final-form regulations, they have been considered by you and it is not necessary to repeat them. However, it is clear from the legislative history and the comments received in response to the final-form regulations that Act 119 is ambiguous in that it does not directly and specifically address the issue of housing dams with their puppies during nursing. Groups that normally have consistent positions have diverse interpretations of the statutory requirements. We believe there is agreement that both before and after nursing, the statute specifies general housing requirements for dogs and special provisions for puppies. By not addressing housing requirements when puppies and dams are housed together during nursing, the legislature left open to interpretation what those requirements are.

Chapter 19 of the Pennsylvania Consolidated Statutes sets the rules for statutory construction that are reflected in the Regulatory Review Act. Specific factors have to be considered to determine legislative intent and when general provisions in a statute conflict with a special provision, statutory construction should give effect to both, if possible. Where it is not possible to reconcile the two, the special provision shall be given effect over the

general provision, with very limited exceptions. It is also well settled that some deference be accorded to the statutory interpretation of the agency charged with enforcement of the statute.

With respect to the housing standards for puppies with their dams while nursing, we believe the statutory language supports the interpretation proffered in the final-form regulations. Furthermore, as implied by the comments of the PFDC, the PVMA and the ASPCA, to find otherwise would run counter to the specific legislative purpose of Act 119 to provide for the welfare of dogs and puppies in commercial kennels.

We believe people have an obligation to understand their government and are disturbed at the lack of understanding of the IRRC process revealed in many of the comments received for this regulation, which seem to believe that you can accept or reject the regulations by section rather than as a single document.

The Regulatory Review Act provides clear guidelines for your decision. You must first determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation is consistent with the intent of the legislature. You must then determine whether the regulation is in the public interest, taking a variety of factors into account. Having made those evaluations, your only choice is either to approve the entire regulation or to reject it with comments. Arguments can, and have been, made on both sides, but under the current circumstances, yours is the only interpretation that counts and we are confident you will make an appropriate decision. It requires the skills of Solomon to weigh the factors involved. We are glad that responsibility is yours and not ours.

This was a time-consuming process that took significantly longer than the period provided for by the legislature in Act 119. The Canine Health Board had a complex set of issues to resolve in establishing the preliminary regulations and the extensive public response led to further delays as comments were considered, the comment-response document was

compiled and the preliminary regulations were revised in the final-form regulations. We commend the Canine Health Board and the Department on including responses addressing many of the comments in their revised document.

However, the process has revealed two issues with the Regulatory Review Act. It does not provide an adequate mechanism for legislative input when final-form regulations are filed while the legislature is in recess during the comment period and it does not adequately address a situation like this, where the final-form regulation is significantly different from the preliminary regulation.

The Act provides for tolling of the time period for several reasons, including the ending of the legislative session. However, it does not toll if the legislature is in recess. In that case, the committees do not meet and the legislature has no opportunity to formally comment. We believe that this omission is not in the public interest since silence by the legislature is deemed to be consent. Therefore the legislature should consider amending the Act to toll the time for legislative comment when the legislature is in recess to provide an opportunity for the committees to act. For non-emergency regulations, legislative intent is best understood when the legislature has an opportunity to speak for itself.

It is desirable for agencies to incorporate reasonable comments on their regulations in an effort to improve them, as the CHB and the Department did here. However, in this situation, it led to a final-form regulation that is not only improved, but that the public has not had a chance to comment on. Many of the Federation's concerns fall in this area. We believe that the lack of an opportunity for public comment on extensive new provisions in a final-form regulation may subvert the implicit intent of the legislature in insuring public input into regulatory language. The process provided in the Act may not be in the best interests of the public.

To improve the regulatory process, we believe that it is in the public interest to amend the statutory language to require some form of public comment period, perhaps without the need for a formal comment-response document, when regulations are sufficiently amended that the public has not had an opportunity to comment on significant portions of the revised document. With respect to these regulations, the same result could be achieved by using the Dog Law Advisory Board to review the preliminary final-form regulations to ensure some level of informal, time-delimited, public input for consideration of further amendment prior to publication of the final-form regulation.

The Federation will be discussing these issues with the legislature and the Department to see if they can be addressed. We do not believe this should influence your actions in the present situation since the legislature has not had an opportunity to consider this issue. As the agency involved, we hope that you will support these suggested changes to the Act to further the public interest and clarify legislative intent to assist in improving the process of reviewing future regulatory submissions.