

# 2785

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**From:** Jewett, John H.  
**Sent:** Tuesday, October 27, 2009 4:13 PM  
**To:** Gelnett, Wanda B.; Stephens, Michael J.  
**Subject:** FW: Comments on Proposed Regulation ID No. 2-170  
**Attachments:** House Member Comments on 9-12-09 Proposed Rule ID 2-170.pdf

2009 OCT 28 AM 7:30

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Legislative comments on #2785

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**From:** Kerry Golden [mailto:Kgolden@pahousegop.com]  
**Sent:** Tuesday, October 27, 2009 4:12 PM  
**To:** suewest@state.pa.us  
**Cc:** mullerj104@aol.com; trishherr@aol.com; simmsj@cvn.net; ramsibhai@gmail.com; blanglois@humaneleague.com; IRRRC; Jewett, John H.; Stephens, Michael J.; overallk@mail.med.upenn.edu; dramysdogs@msn.com; dhain@pahouse.net; MHanna@pahouse.net; Kristin Crawford; mbrubaker@pasen.gov; mopake@pasenate.com; wgevans@pasenate.com; Jessie L Smith; rredding@state.pa.us; lbason@verizon.net; ceh@vet.upenn.edu  
**Subject:** Comments on Proposed Regulation ID No. 2-170

Dear Sue,

Attached are the comments submitted via the CHBcomments email address. By this email, I am including the folks cc'd on the letter, as well as appropriate staff.

Sincerely,

Kerry Golden, Executive Director  
Agriculture and Rural Affairs Committee (R)  
PA House of Representatives

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# 2785

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INDEPENDENT REGULATORY  
REVIEW COMMISSION



February 13, 2009

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

Dear Ms. West:

Pursuant to the invitation for public comment published with the Temporary Guidelines Standards for Commercial Kennels published in the January 17, 2009 *Pennsylvania Bulletin*, we submit the following comments. Our comments are highlights and should not be construed to be exhaustive of our concerns. Further, we look forward to the opportunity to provide more formal comment when the Department of Agriculture (department) publishes a proposed rulemaking, as required by the provisions in the Dog Law.

### ***Fiscal Impact***

We recognize that these temporary guidelines, *as such*, will not impose significant additional fiscal impacts to the Bureau of Dog Law Enforcement (Bureau), the regulated community, political subdivisions, or to consumers at large. However, should similar provisions be promulgated *as regulation*, we believe that significant financial burden will be placed on both the Bureau and the regulated community, and additional financial burden will likely be placed on affected political subdivisions and the general public.

For example, how many of and what specific equipment will be purchased by the Bureau to measure temperature, humidity levels, ammonia levels, carbon monoxide levels, particulate matter, air velocity and foot candles? How much will it cost to train each dog warden to use and calibrate/recalibrate this equipment? How many more dog wardens will need to be employed, since so much additional time will be needed to perform commercial kennel inspections? How much will it cost each commercial kennel owner to acquire/install, and be trained to use, the same equipment? We presume the

regulated community will need to take similar measurements to determine initial and continued compliance.

How often will an engineer consultant be hired by the Bureau, and at what cost? How much will it cost each commercial kennel to install a mechanical ventilation system? How much will it cost each commercial kennel to install additional windows necessary to "allow each dog an unobstructed view of the outdoor environment"? How much will the utility costs of each commercial kennel increase as a result of the requirements for lighting, ventilation and certain monitoring equipment?

The requirements for installation of mechanical ventilation systems, other physical changes to an existing structure, as well as the plans for new commercial kennel structures, will, in many cases, need to be reviewed by a local zoning board or other local body. How much will it cost for a commercial kennel owner to have the appropriate plans developed, submitted and reviewed by the applicable authorities? If a commercial kennel closes as a result of not being able to afford the required upgrades, how much tax revenue loss will that represent to affected taxing bodies? How much financial impact will the closing of a commercial kennel have on the industries that serve such a business? Since most businesses pass on costs of doing business to the consumers they serve, how much more will it cost for a consumer to purchase a dog? We realize that many of these costs will be variable, but they need to be considered nonetheless.

### ***Section 28.1. Ventilation.***

The requirement for a mechanical ventilation system goes beyond the authority in the law. Furthermore, the only type of ventilation that should be addressed by the Canine Health Board is "**auxiliary** ventilation" and only "if the ambient air temperature is 85 degrees or higher." (emphasis added; language cited is from Section 207(h)(7) of the act). The responsibility of the Canine Health Board is to determine a ventilation *range*, for limited circumstances.

Paragraph (2) limits the temperature in a commercial kennel to a maximum of 86 degrees Fahrenheit and goes beyond the authority of the Canine Health Board. In Section 207(h)(6) of the law, the General Assembly established a temperature range for commercial kennels of 50 to 85 degrees Fahrenheit, *unless* auxiliary ventilation is provided when the air temperature rises above 85 degrees Fahrenheit. The Canine Health Board has no authority whatsoever to address temperature.

Are the relative humidity and ammonia ranges prescribed in paragraphs (3) through (5) based on animal husbandry practices, as required by Section 221(f) of the law? While we recognize that little research has been published regarding the appropriate environmental conditions for dogs specifically, we do recognize that human standards should not be applied.

Paragraph (6) requires a commercial kennel to install and maintain carbon monoxide detectors. The Canine Health Board has no authority whatsoever to address carbon monoxide levels.

Paragraph (8) establishes a limit for particulate matter. The Canine Health Board has no authority whatsoever to address particulate matter.

Paragraph (9) addresses both air changes and air velocity. Is the prescribed range of air changes per hour based on animal husbandry practices, as required by Section 221(f) of the law? What is "fresh air"? Are the factors prescribed for making an air change calculation correct? What is the formula for calculating air change? Should the number of air changes vary, based on the size of the facility and number of dogs housed within it? What equipment will be used to measure air changes and air velocity? How will measurements be taken if intake or exhaust vents are at a height that cannot be sufficiently or safely reached by a dog warden?

Is the language at paragraph (9)(iii) construed to require simultaneous non-compliance with *one* of paragraphs (1) through (8) or (10) through (13), or *all* of paragraphs (1) through (8) or (10) through (13)?

Under what specific circumstances would the department hire or consult with an engineer, and to what conclusion? The provision at paragraph (9)(v) for an engineer to recommend improvements without requiring a kennel owner to incorporate them is meaningless at the least, and fiscally irresponsible at the most. Furthermore, a commercial kennel operator is under no obligation to permit anyone who is not an employee of the department to enter property or inspect kennels.

The list of signs of illness at paragraph (10) could exist in dogs independent of ventilation, and are not necessarily signs of poor ventilation. Many of the factors are subjective. What is "excessive" panting, "elevated" body temperature, "active" avoidance, and "huddling", and will a dog warden be able to properly evaluate and measure these factors, and to what standard? This provision has no basis within the limited authority of the Canine Health Board to establish appropriate ventilation ranges.

What standards are defined and measurable in paragraph (11), which prohibits "excessive dog odor, other noxious odors, stale air, moisture condensation on surfaces [and] lack of air flow"? Again, this provision has no basis within the limited authority of the Canine Health Board to establish appropriate ventilation ranges.

The requirements of paragraph (12) related to re-circulated air seem to contradict the requirement in paragraph (9)(i) for fresh air changes. Further, the limited authority of the Canine Health Board to establish appropriate ventilation *ranges* does not include the authority to require air filters.

Paragraph (13) is not clear. What are "applicable codes"? Regardless, the Canine Health Board does not have the authority to establish this provision.

Paragraph (14) is vague. What is "the higher end of the applicable temperature range"? What is the "applicable temperature range"? Regardless, the Canine Health Board has no authority whatsoever to address temperature.

### ***Section 28.2. Lighting.***

Section 207(h)(8) of the act establishes lighting requirements for commercial kennels, which authorizes either natural or artificial light. The only responsibility of the Canine Health Board is to establish "appropriate lighting ranges" for housing facilities of dogs. The provisions in paragraph (1) go beyond the authority of the Canine Health Board.

The provisions of paragraph (2) also go beyond the authority of the Canine Health Board, except for the lighting ranges established in subparagraphs (i) and (ii). However, the provisions in subparagraphs (i) and (ii) are unclear, and we therefore question their enforceability.

Paragraph (3) is unclear and furthermore, goes beyond the authority of the Canine Health Board to establish appropriate lighting ranges for housing facilities of dogs in commercial kennels.

### ***Section 28.3. Flooring.***

Section 207(i)(3)(iii) of the law permits the Canine Health Board to approve flooring options that meet the specifications of Section 207(i)(3)(i) of the law. The Canine Health Board chose to exercise this permission and approve solid flooring for primary enclosures in commercial kennels. We note that approval of type of flooring by the Canine Health Board is not a prerequisite for use by a commercial kennel. We further assert that solid flooring does not meet the provisions of Section 207(i)(3)(i).

We appreciate the tremendous amount of time and effort expended by the members of the Canine Health Board and understand that their service is voluntary. We recognize that the decisions made by the Canine Health Board were made by majority vote and that not all members of the board agreed with the decisions. We further recognize that several members of the board made repeated attempts to keep the deliberations and decisions made to those which are authorized by law. Unfortunately, the resulting temporary guidelines fail to meet that responsibility.

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 look forward to reviewing the associated proposed regulation.

Sincerely,



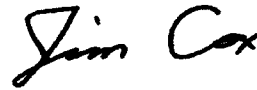
Sam Smith  
Republican Leader



Jerry A. Stern  
Republican Caucus Secretary



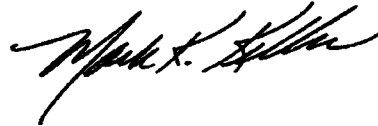
Samuel E. Rohrer  
Republican Chairman  
Agriculture and Rural Affairs Committee



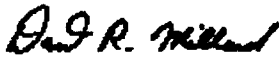
Jim Cox  
State Representative



Gordon R. Denlinger  
State Representative



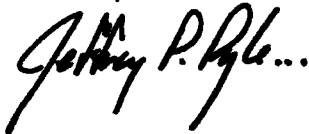
Mark K. Keller  
State Representative



David R. Millard  
State Representative



Tina Pickett  
State Representative



Jeffrey P. Pyle  
State Representative



Michele Brooks  
State Representative

cc: Hon. Dennis Wolff  
Hon. Jessie Smith  
Arthur Coccodrilli (IRRC)



October 27, 2009

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

Dear Ms. West:

Pursuant to the invitation for public comment published with the proposed rulemaking I.D. No. 2-170, Canine Health Board Standards for Commercial Kennels published in the September 12, 2009 *Pennsylvania Bulletin*, we submit the following comments. This proposal is largely unchanged from the Canine Health Board's Temporary Guidelines Standards for Commercial Kennels published in the January 17, 2009 *Pennsylvania Bulletin*. The attached February 13, 2009 letter sent in response to the temporary guidelines highlighted significant departures from statutory authority in the hope that the defects would be cured before the department published a proposed rulemaking. Instead, the current proposal suffers from the same statutory departures and dishonors the legislative authority and intent. Therefore, our collective comments to this proposed rulemaking incorporate the attached letter to the temporary guidelines.

We are concerned that public comments are being directed to the Canine Health Board instead of to the Department of Agriculture. The Canine Health Board did nothing with the public comments submitted in response to the temporary guidelines. Section 221(g) of the Dog Law (Act 225 of 1982) clearly requires, and it was the legislative intent for, the Department of Agriculture to promulgate the regulation. We recognize that the department was restricted to promulgating the content of the Temporary Guidelines as developed and published by the Canine Health Board, but it is now the department's responsibility to receive public comments and develop the required comment/response document. Now that the department (agency) has published the proposed rulemaking, the Canine Health Board no longer has a role in this regulatory review process.

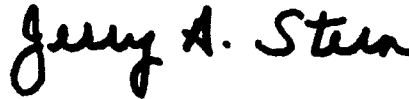
In addition, we are aware that seven of the nine Canine Health Board members have formally recommended to the department that this proposed rulemaking be suspended and that the board reconvene under specific organizational parameters to develop a new set of guidelines, presumably for the department to publish as a proposed rulemaking. Since the proposed rulemaking is such a broad departure from the statutory authority provided, we endorse that sentiment, and encourage the department to develop a proposed regulation that complies with the legislative authority and intent, using whatever resources it finds most appropriate.

Once again, we appreciate the opportunity to offer comments. We emphasize that the comments contained in this correspondence, which include those in the attachment, are only highlights of our concerns, and would welcome the opportunity to work with the department in developing an appropriate regulation. Thank you for your consideration.

Sincerely,



Sam Smith  
Republican Leader



Jerry A. Stern  
Republican Caucus Secretary



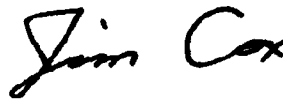
John A. Maher  
Republican Chairman  
Agriculture and Rural Affairs Committee



Samuel E. Rohrer  
State Representative



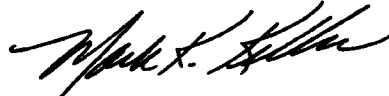
Scott E. Hutchinson  
State Representative




Jim Cox  
State Representative



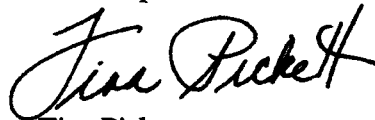
Gordon R. Denlinger  
State Representative



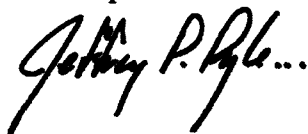
Mark K. Keller  
State Representative



David R. Millard  
State Representative



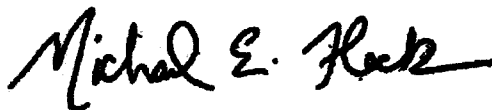
Tina Pickett  
State Representative



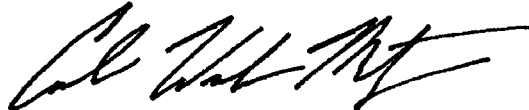
Jeffrey P. Pyle  
State Representative



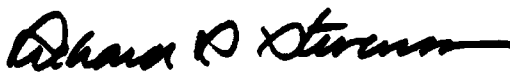
Michele Brooks  
State Representative



Michael E. Fleck  
State Representative



Carl Walker Metzgar  
State Representative



Richard R. Stevenson  
State Representative



Martin T. Causer  
State Representative



**Enclosure: February 13, 2009 letter in response to Temporary Guidelines**

**cc: Hon. Russell Redding  
Hon. Jessie Smith  
Arthur Coccodrilli (IRRC)  
Hon. Mike Hanna  
Hon. Mike Brubaker  
Hon. Mike O'Pake  
Members of the Canine Health Board**