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Senate of Pennsylvania

October 27, 2009

Sue West, Director
Department of Agriculture
Bureau of Dog Law Enforcement
Room 102
2301 North Cameron Street
Harrisburg, PA 17110

RECEIVED
2009 OCT 28 AM 9:14
INDEPENDENT REGULATORY
COMMISSION

Dear Ms. West:

This letter shall serve as my comments, as Chair of the Senate Agriculture & Rural Affairs Committee, on the Canine Health Board Standards for Commercial Kennels, as published in the Pennsylvania Bulletin on Saturday, September 12, 2009. These comments are general in nature and are not comprehensive. I have not commented on the actual ventilation, humidity, ammonia or lighting ranges established by the Canine Health Board (CHB), as I am not an expert in this area; I would encourage close scrutiny of these portions of the proposed regulation and strong consideration given to technical experts as well as those who have extensive experience operating kennels that have consistently produced healthy dogs.

I understand that the CHB was under a tremendous time constraint and is voluntary in nature, and I commend each of the members of the Board for his dedication to the improvement of the lives of dogs kept in breeding operations in the Commonwealth.

In numerous sections of the Guidelines, however, the CHB has exceeded their mandate under Act 225 of 1982. In addition, I do not believe the proposed regulations provide the clarity necessary for proper adherence to or enforcement of the law. The following are some of the major concerns I wish to identify:

Summary of Major Features: it is not appropriate for comments on the proposed regulation to be directed to the Canine Health Board as commenters are directed under the *Public Comment Period* section; as it states in section 221 (Canine Health Board) (g) of Act 225 of 1982, "...the department shall promulgate the temporary guidelines as a regulation concurrently with publication in the Pennsylvania Bulletin." Although the regulation was not published concurrently as a regulation by the department, as was required by the law, it was the legislative intent for the department to be in charge of the regulatory process, to develop the comment

response document and to make any and all revisions as necessary to the proposed regulation. The CHB is not a required part of the regulatory process.

Section 28a.2, Ventilation: the first sentence “Proper ventilation helps ensure that dogs are healthy and are not stressed.” serves no purpose other than commentary, and should be removed. Further, the section requires mechanical heating and cooling systems in each kennel and while mechanical ventilation is defined, I am concerned that it is subjective enough that an inspector may have the ability to demand air conditioning. Although the CHB has the authority to establish “auxiliary ventilation to be provided if the ambient temperature is 85 degrees F or higher,” it does not have the authority to require temperature reduction.

In the writing of this section of the law, the legislative intent was to allow for means of ventilation that did not require the use of air conditioning, and thus the CHB was charged with determining appropriate methods of ventilation to be used when the temperature exceeded 85 degrees F.

Section 28a.2(1): the CHB does not have the authority to establish a maximum temperature. As is established in §207(h)(7) of Act 225, the CHB was to determine “auxiliary ventilation to be provided if the ambient temperature is 85 degrees F or higher” but the law does not require that the temperature be kept below 86 degrees. Further, the CHB does not have the authority to require removal of dogs from a portion of the facility if the ambient temperature rises above 85 degrees. This paragraph should be removed.

Section 28a.2(5): the CHB is not authorized under the law to establish carbon monoxide levels in kennels, nor are they authorized to require the installation and maintenance of carbon monoxide detectors. This paragraph should be removed.

Section 28a.2(6): the requirement that a “kennel contact” the BDLE before acting on a mechanical failure is impractical and not in the best interest of the dogs (ie: what if the failure takes place on a Friday evening?). From a grammatical standpoint, the “kennel” will not contact the bureau. This paragraph should be removed.

Section 28a.2(7): the CHB is not authorized under the law to establish requirements for particulate matter. This paragraph should be removed.

Section 28a.2(8)(iv): this section states “If a computation or measurement under subparagraph 8(iii) *is not satisfactory* the kennel owner shall take the necessary steps to meet the requirements.” (emphasis added). The phrase “is not satisfactory” is subjective and should be removed or changed.

Section 28a.2(8)(v): permits the Department of Agriculture to hire or consult with an engineer to inspect kennels. This is not within the authority granted the CHB and according to §218(a) of Act 225, only State dog wardens and employees of the department are authorized to inspect kennels and enforce the provisions of the Act. This paragraph should be removed.

Section 28a.2(9): the CHB is not authorized under the law to establish conditions or signs that dogs may not exhibit; the conditions listed are very subjective and have numerous causes, only one of the many causes would be poor ventilation. This paragraph should be removed.

Section 28a.2(10): the CHB is not authorized under the law to establish restrictions on odor, stale air, moisture condensation or lack of air flow. Further, it is unclear what is meant by “excessive dog odor, other noxious odors, stale air” and “lack of air flow.” These provisions are unenforceable and do not provide clear requirements for kennel owners to comply with. This paragraph should be removed.

Section 28a.2(11): the provision for only one type of filter is unreasonably restrictive. This paragraph should be removed.

Section 28a.2(12): The CHB is not authorized under the law to require the ventilation system be in compliance with “the latest edition of applicable codes” and further, it is unclear what codes are being referenced and whose responsibility it is to ensure that the ventilation system is in compliance. This paragraph should be removed.

Section 28a.3, Lighting: the first sentence of this section: “Natural lighting is important to the development of dogs; each kennel shall have a mix of natural and artificial light, provided in the following means:” is part commentary, is not supported by the law, and should be removed.

Section 28a.3(1): the requirement for a natural diurnal light cycle is in direct contradiction to the law at §207(h)(8), which states “Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light” (emphasis added). Any reference to a requirement for natural lighting must be removed from the proposed regulation, including §28a.3(1)(i), (ii) and (v).

Further, only “appropriate lighting ranges” for “housing facilities” (§207(h)(8) of Act 225) are to be determined by the CHB; therefore, the requirement for shading of the outdoor exercise area, subsection (iv), area must be removed, as it is outside the scope of the CHB’s authority.

Under (vi), “full spectrum lighting” is required; this term must be defined.

Section 28a.3(2)(i): again, the term “full spectrum lighting” must be defined.

Section 28a.3(2)(iv): prohibiting “a visible flicker” in an artificial light source is not within the scope of the law, which is to establish “the appropriate lighting ranges....” This paragraph should be removed.

Section 28a.3(2)(v): this provision, which prohibits light sources from being provided in a manner which allows the dog to touch a light, fixture, bulb, switch or cord, is outside the scope of the law, which is to establish “the appropriate lighting ranges....” This paragraph should be removed.

Section 28a.4 Flooring: the first sentence of this section: "Proper flooring is essential for normal behavior and proper orthopedic development of the dogs." is commentary, not appropriate, and should be removed.

Section 28a.4 (1), (2) and (3): the charge under this section of the law was to approve additional flooring options that meet the requirements of the law; solid flooring is approved under (1) and the language regarding drainage in (2) and (3) should be included in (1) so that we know it is in reference to drains in solid floors.

Section 28a.4(4): prohibiting flooring options is not within the charge of the CHB. This paragraph should be removed in its entirety.

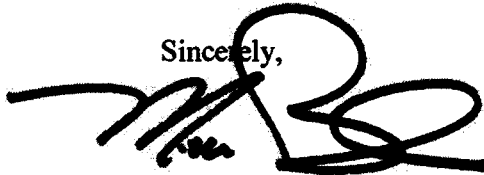
Section 28a.4(5): it is unclear what codes are being referenced and whose responsibility it is to ensure that the flooring and drains are in compliance.

Section 28a.4(6): under this paragraph, the CHB is requiring that the surface of the flooring provide "good footing"; the term "good footing" is unclear and subjective, and goes beyond the scope of authority of the CHB. If it is the intent of the CHB to describe what types of solid flooring (which it approves under (1)) are appropriate, the description should be included under that same paragraph.

Section 28a.4(7): this section establishes cleaning requirements and states that the flooring "may be subject to microbial assessment." This statement is unclear and is beyond the scope of authority of the CHB; cleaning requirements are already established under the law. This paragraph should be removed in its entirety.

I wholeheartedly support a high level of regulatory control of commercial dog breeding in Pennsylvania. However, these regulations must be clearly stated, must be within the confines of the law and must be written so that enforcement is not arbitrary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Brubaker', with a large, stylized flourish extending to the right.

Mike Brubaker
Chairman,
Senate Agriculture & Rural Affairs Committee

MWB/kjc

cc: Members of the Canine Health Board
Independent Regulatory Review Commission
Members, Senate Agriculture & Rural Affairs Committee
The Honorable Michael Hanna, Chair, House Agriculture & Rural Affairs Committee

**The Honorable John Maher, Minority Chair, House Agriculture & Rural Affairs
Committee**

**The Honorable Russell C. Redding, Acting Secretary of Agriculture
Special Deputy Secretary for Dog Law, Jessie Smith**

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From: Brownfield, Jill [jbrownfiel@state.pa.us] on behalf of AG, CHBcomments [CHBComments@state.pa.us]
Sent: Tuesday, October 27, 2009 4:55 PM
To: dhain@pahouse.net; IRRRC; kebersole@pasen.gov; Kennedy, David C. (AG); Kerry Golden; MULLER, JENNIFER; Smith, Jessie L; Thall, Gregory (GC); wgevans@pasenate.com
Subject: FW: Comment from Senator Mike Brubaker
Attachments: Senate Comments 10_27_09.PDF

From: Crawford, Kristin [mailto:kebersole@pasen.gov]
Sent: Tuesday, October 27, 2009 2:36 PM
To: AG, CHBcomments
Cc: West, Susan; Smith, Jessie L; Redding, Russell; Crawford, Kristin
Subject: Comment from Senator Mike Brubaker

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LEGISLATIVE REGISTRY
PENNSYLVANIA

Attached please find comments from Senator Mike Brubaker on the proposed Standards for Commercial Kennels

Kristin Crawford
Legislative Director
Executive Director,
Senate Agriculture & Rural Affairs Committee
Senator Mike Brubaker

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