

# 2785

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**From:** Jewett, John H.  
**Sent:** Tuesday, September 22, 2009 1:54 PM  
**To:** Stephens, Michael J.; Wilmarth, Fiona E.; Johnson, Leslie A. Lewis; Cooper, Kathy; Geinett, Wanda B.; IRRC  
**Subject:** FW: Comments on Regulatory Addendum for Act 119 from Canine Health Board  
**Attachments:** CHB written comments.doc

This email and its attachment are "proposed comments" on #2785. Thanks!

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**From:** Gibble, John NAB02 [mailto:John.Gibble@usace.army.mil]  
**Sent:** Tuesday, September 22, 2009 1:47 PM  
**To:** James Scharberg; Julian Prager; Larry Breech; rsexton@ussportsmen.org; John Kline; Dick & Marge Bednarczyk; mg; Jewett, John H.  
**Subject:** Comments on Regulatory Addendum for Act 119 from Canine Health Board

Attached are my comments on the proposed regulations promulgated by the Canine Health Board. Hard copies will be forwarded to Ms. West, Secretary Redding, and the IRRC. John Gibble

<<CHB written comments.doc>>

RECEIVED  
2009 SEP 22 PM 2:16  
INDEPENDENT REGULATORY  
SERVICES DIVISION

September 23, 2009

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Elizabethtown, Pennsylvania 17022  
(717) 665-9448

Susan West, Director  
Bureau of Dog Law Enforcement  
2301 North Cameron Street  
Harrisburg, Pennsylvania 17110

Dear Ms. West:

Following are comments on the proposed regulations, developed by the Canine Health Board, to fulfill sections of Act 119 in the Dog Law. I am submitting these comments as a member of the Commonwealth's Dog Law Advisory Board. While I do not operate a licensed kennel, nor do I claim to represent commercial kennel interests, I am heartily concerned that the standards outlined in the proposed regulations would "drift" to affect non-commercial kennels, either officially or informally.

In the estimates for costs, I believe the Bureau has woefully underestimated the costs to the Bureau and the Dog Law Restricted Account. Not only will the Bureau need to purchase the necessary equipment to measure temperature, relative humidity, ammonia, airborne particulate matter, and air exchange, the Bureau will also need to train personnel to a reasonable level of competency in taking measurements, and maintain and regularly calibrate equipment. With numerous measurements required at each facility (eg. 10% of dogs in a facility) inspections could take a full day to several days to complete. With the numerous measurements also comes detailed recordation of results.

The regulation should cite research or regulation in establishing limits for relative humidity. These ranges of acceptable relative humidity appear arbitrary and at a(2) and a(3) the ranges overlap. Similarly, the limit for ammonia levels (10 ppm) seems arbitrary.

In requiring carbon monoxide detectors, the Canine Health Board exceeded its authority, as there is no mention of regulating carbon monoxide in Act 119.

At a(6) a commercial kennel operator is required to notify the Bureau in case of a malfunction in a mechanical ventilation system. It might be prudent if the failure resulted in the facility failing to meet temperature or air quality requirements to record such a failure. However, it seems arbitrary that a kennel operator would have to notify the

Bureau if a passing thunderstorm caused a temporary power outage. Will the Bureau maintain a 24-hour call-in number for notification or should there be a sufficient time period allowed prior to notification? Will the Bureau be sending out an HVAC technician to repair the problem, or should the kennel operator call his contractor before he calls the Bureau? If there is a power outage, would it not be difficult for a kennel operator to call the Bureau for notification, since it is likely that his telephone service would be down as well?

At a(7) the proposed regulations would require kennel operators to maintain less than 10 milligrams per meter cubed of particulate matter, including dander, hair, food, bodily fluids, and other sources from the primary enclosure. Again, there should be a reference or citation on the significance of 10 ppm. Further, it is confusing that the regulations should change up metrics from parts per million to milligrams per meter cubed. How will the Bureau determine the source of particulate matter? Will there be a means of distinguishing ambient particulate matter (for instance, if a farmer in the next field is harvesting soybeans, will the Bureau be able to determine the difference in that particulate matter from particulate matter originating from a primary enclosure)?

Paragraph a(8)i is particularly troubling. The proposed regulation would require 8 to 20 complete air changes of 100% fresh air each hour, in each room that houses dogs. It is doubtful that other requirements in Act 119 or the proposed regulations could be met with this rate of outside (assuming that is fresh) air exchange. Is it possible to maintain a required temperature of 50 degrees Fahrenheit in a building while the outside temperature is 15 degrees Fahrenheit and while importing eight air changes per hour? Is it possible to maintain a temperature of 85 degrees and a required range of relative humidity while completing eight or more air exchanges per hour when the outside temperature is 95 degrees and the relative humidity is 90%? Further, the velocities of air exchange at the upper end of the requirement may in fact be irritating. The regulation requires "fresh air" but does not describe what fresh air may be. Is fresh air allowed to be heated through a furnace or passed through a dehumidifier? Is fresh air to be circulated prior to being cooled? May fresh air be filtered to meet the particulate requirements? Is it possible for recirculated air to be of better quality than outside "fresh air"? Finally under this section, the Bureau wants information related to building sizes and dimensions and requires several measurements. The only measurements relevant to air exchange would be volume of the facility (length by width by height) and the volume of intake or exhaust.

The draft regulations propose that air velocity measurements shall be taken throughout the kennel building. The true measurement should be rate of air exchange as velocity is only one of the components in determining air exchange, volume being the other factor.

The draft proposes that the kennel operator shall be in violation if air exchange rates do not meet 8-20 required changes per hour. While a ventilation system may be designed by an HVAC technician to achieve the required air exchange, is it the operator's responsibility if the Bureau's technician observes an inadequate air exchange rate? We do not know what protocol or equipment the Bureau will be using to measure air

exchange (and based on the requirements to submit facility measurements, one is unsure if the Bureau understands the physics of air exchange). A conflict of interest may arise if the Bureau hires the same HVAC engineer as the facility operator, or even more likely if the Bureau hires a competing HVAC technician to measure or comment on air exchange in a facility. The draft proposes that the Bureau may hire an engineer but does not qualify that the engineer must be certified in HVAC or even hold a professional engineer certification. The draft does not require that the kennel operator conform to the recommendations of the engineer hired by the Bureau. How will a resolution be reached in the situation where a professional engineer retained by the kennel operator disagrees with an engineer hired by the Bureau?

Section 8(a) lists a broad range of symptoms which dogs shall not exhibit. These symptoms may have a variety of causes, only one of which may be poor ventilation. Anyone involved in animal husbandry realizes that animals (or humans) may become ill and display symptoms of illness. Sometimes those symptoms persist even with the best of professional treatment. It is unrealistic for the Bureau to simply mandate that dogs must be in good health and asymptomatic. If such a mandate were possible and practical, there would be no need for health care for animals or humans.

Section 8(a)10 states that the facility shall not have excessive dog odor. Excessive dog odor is a subjective description. What may be excessive to one individual may seem barely noticeable to another. This is unenforceable.

Section 8(a)11 requires "small particle, nonozone producing air filters". Punctuation needs amended to indicate if these are "small, particle filters" or "small-particle filters". Are there filters that produce ozone? Does Act 119 provide authority for the CHB to draft ozone regulations?

The draft regulations require that based on floor area, at least 8% glazed area shall be provided and that external openings shall be unobstructed. Is glass an obstruction to an external opening? Are shades permitted to assist in keeping temperatures down in hot, sunny weather? If shades are not permitted, how are dogs to be protected from "excessive light"? Must the primary enclosure be dark if it is to be protected from the direct light of the sun or a light bulb? May window panes be tinted to provide some reduction in "excessive light" and ensure privacy, or would tinting affect the requirement for "full spectrum" lighting? A specific definition of "full spectrum" should be required, citing the range of wavelengths expected, otherwise, full spectrum should be considered to approximate the range of light wavelengths from ultraviolet to infrared in ambient sunlight. There are no artificial lighting systems which provide such ranges of light.

Where did the foot-candles requirements come from? Is there a specific limiting factor in the growth, development, or behavior of dogs related to 50-80 foot candles? Is there a danger to dogs if lighting exceeds 80 foot candles? Considering the need for humans to visit with dogs or rectify emergencies during dusk or dawn hours, or even through the night, is 1-5 foot candles sufficient to ensure safety of the kennel operator,

his employees, or a veterinarian to enter the kennel facility and complete necessary duties?

The draft requires that lighting “must approximately coincide with the natural diurnal cycle”. At what latitude is the “natural diurnal cycle” supposed to coincide with provided lighting? Would it be better to require a certain number of hours of darkness or reduced light in the kennel, rather than expect the kennel operator to understand diurnal cycles and install a sophisticated lighting system to mimic changes in day length? Are there specific studies which indicate that a “natural diurnal cycle” is better for dogs than a set schedule of lighting? Lighting is considered one factor that triggers estrous in female dogs. How will approximating a natural diurnal cycle affect estrous cycles and the productivity of a kennel?

Section 28a(4) provides examples of flooring that are suitable for commercial kennels. Several examples are not necessarily good examples. Sealed tile and sealed concrete are poor choices for kennel flooring as they reduce traction, especially when wet. Imagine a kennel full of dogs at feeding time, jumping up and down on a sealed or painted concrete floor. It is not unreasonable to expect excited dogs to slip, fall, and sustain injuries. It has further been my experience that solid flooring, such as concrete or tile, leads to foot and leg degeneration, including arthritis before dogs reach advanced age.

This section also notes that flooring may be subject to “microbial assessment”. Again, the CHB may be exceeding its authority in trying to regulate “microbes”. What would be the standard for microbial populations? Are there specific microbes that are regulated or are all microbes proposed to be regulated? Who would make the “microbial assessment” and at what level or metric would a kennel be in violation?

In general, this draft of proposed regulations appears to be forwarded by persons who may be highly qualified in their particular field of expertise but have little specific knowledge outside of those fields. The minutes of the Canine Health Board meetings indicate widespread disagreement on these standards, and further indicate that the Board was unwilling to consult appropriate resources (in any field, including their own area of expertise) that would result in reasonable, practicable, consistent, or enforceable standards and regulations. The point of these regulations appears to be an effort to drive kennel operators out of business by instituting standards that cannot be met; not to promote and protect the health and well-being of individual animals.

The Department of Agriculture should be cautious about implementing such vague and ill-considered regulations as they are likely to become standards for other forms of agriculture, including dairy, swine, and poultry production. Kennel operators across the United States should also be concerned as we have seen the very same standards from drafts of Act 119 (some deleted) appear in new kennel laws and regulations in a large number of states. And since selling even one dog to a commercial kennel or person with a dealer license triggers these requirements for any individual, any citizen that owns and breeds dogs should be concerned.

**As for this draft, it is suggested that the Canine Health Board should be dismissed and new members should be screened for experience, competency, and willingness to work on a concise draft, within the limits of the enabling legislation to address the three distinct areas outlined in the regulatory product expected by Act 119.**

**Respectfully Submitted by**

**John Gible, Member  
Dog Law Advisory Board  
President, Elizabethtown Beagle Club  
Past President, Northeast Beagle Gundog Federation  
Past President, Pennsylvania Beagle Gundog Association**