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REGULATORY
COMMISSION

OCT 23 PM 3: 58

RECEIVED

October 23, 2009

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

**Re: Canine Health Board Standards for Commercial Kennels – Proposed Regulations
(7 PA Code, Chapter 28a)**

Dear Secretary Smith:

On behalf of the over 100,000 members of The American Society for the Prevention of Cruelty to Animals (ASPCA) who are Pennsylvania residents, I respectfully submit the following comment in support of the Department of Agriculture’s proposed regulations to the Dog Law regulations regarding standards for commercial kennels. The notice was published in the September 12, 2009 issue of the Pennsylvania Bulletin (Vol. 39, No. 37).

Background:

The Bureau of Dog Law Enforcement within the Department of Agriculture is charged with implementing and enforcing the Dog Law, which was passed to ensure the humane care and treatment of dogs in the Commonwealth. In 2008, the Pennsylvania legislature passed significant amendments to the Dog Law and created the Canine Health Board to establish appropriate ventilation, humidity, ammonia, and lighting ranges for commercial kennels, as well as consider alternative flooring options to those set forth in the law. The proposed regulations are the result of the Canine Health Board’s recommendations for those standards.

Legal Authority:

Opponents to the proposed regulations have argued that the proposed language is beyond the scope of authority of the Canine Health Board, and therefore not legally permissible. However, it should be noted that it is the Department of Agriculture, and not the Canine Health Board that is proposing these regulations. The Canine Health Board was charged with determining appropriate ranges and standards for commercial kennels. It is, however, the job of the Department of Agriculture to promulgate regulations which demonstrate how licensees are to comply with the Dog Law and regulations. The Department of Agriculture is granted this authority through various sections of the Dog

Law (See *e.g.* 3 P.S. § 459-207, 3 P.S. § 459-200, *et. al.*). Therefore, the proposed regulations are well within the scope of authority of the agency setting them forth.

Furthermore, the proposed language is not beyond the scope of authority of the Canine Health Board. The proposed language setting specific guidelines for ventilation, humidity, ammonia levels, particulate matter, and temperature simply provide performance standards to help kennel owners meet the guidelines established by the Board. For example, the measure of particulate matter is how an inspector would determine if a kennel owner is within the acceptable ammonia range. The performance standards are in no way beyond the scope of authority of the Board. Temperature, humidity, and ventilation are often influenced by each other. As a result, it was necessary for the Board to address all of these standards in a comprehensive way that is both able to be implemented and able to be enforced. It would be senseless to mandate that the Board set these ranges but not allow them to provide a way to make the ranges enforceable for inspectors and realistic for kennel owners.

Ventilation:

The proposed regulations require that “ventilation be achieved through a mechanical system that will allow for 8 to 20 air changes per hour, keep consistent moderate humidity, keep the kennel from becoming too hot, keep ammonia levels and particulate matter low, and to keep odor minimized...” While generally we support these standards, it is well established that a minimum of 10 air changes per hour should be required in all animal spaces.¹ As a result, the ASPCA recommends that the required air changes per hour be changed to reflect this standard.

We commend the Department of Agriculture and the Canine Health Board for proposing a requirement that kennels use a mechanical ventilation system that provides ventilation, heating, and cooling. Such a system is imperative to ensure the health and comfort of dogs housed in kennel facilities.

Lighting:

We commend the Department of Agriculture and the Canine Health Board for acknowledging the importance of exposure to natural light and a diurnal cycle for dogs housed in a kennel environment. The ASPCA supports the lighting requirements proposed in these regulations.

Flooring:

The Canine Health Board was given the authority to approve “additional flooring options that meet the provisions of [the new law].” The newly amended Dog Law requires that flooring “shall not permit the feet of any dog...to pass through any openings, shall not be

¹ Miller, Lila and Stephen Zawistowski (ed.). Shelter Medicine for Veterinarians and Staff. Blackwell Publishing, 2004, p. 60.

metal strand whether or not it is coated, shall allow for moderate drainage of fluids, and shall not be sloped more than 0.25 inches per foot.” It further provides for acceptable specifications for a slatted flooring system. The proposed regulations list solid flooring as an acceptable system, provided that the flooring meets the specifications set forth in the regulations.

Tenderfoot flooring has been held out as an acceptable form of flooring by many kennel owners. However, Tenderfoot flooring is made of a “plastisol coating” bonded to steel.² This is precisely what the statute expressly prohibits, i.e. metal strand (in the form of steel) with a plastic coating. Therefore I urge the Department, Bureau, and Board to reject any recommendations to authorize this type of flooring system as an acceptable floor for use in commercial kennels.

The ASPCA fully supports the flooring requirements proposed in these regulations.

Conclusion:

Based on the foregoing comments, the ASPCA supports the proposed regulatory package presented by the Department of Agriculture with the recommended change, and encourages promulgation of the new regulations as expeditiously as possible. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Cori A. Menkin", with a long horizontal flourish extending to the right.

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Senior Director of Legislative Initiatives
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² See <http://www.tandemproducts.com/tenderfoot/DekCellent/DekCellent.htm>.

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From: Brownfield, Jill [jbrownfiel@state.pa.us] on behalf of AG, CHBcomments [CHBComments@state.pa.us]
Sent: Friday, October 23, 2009 3:44 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: Kennel Standards Regulations
Attachments: ASPCA Canine Health Board Regs Comment.pdf

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2009 OCT 23 PM 3:58
INDEPENDENT REGULATORY
REVIEW COMMISSION

From: corim@aspca.org [mailto:corim@aspca.org]
Sent: Friday, October 23, 2009 3:04 PM
To: AG, CHBcomments
Subject: Kennel Standards Regulations

Dear Secretary Smith,
Attached please find the ASPCA's official comment on the proposed Canine Health Board kennel regulations. Please do not hesitate to contact me with any questions or concerns you may have. Thank you.

Sincerely,

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