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From: Brownfield, Jill [jbrownfiel@state.pa.us] on behalf of AG, CHBcomments [CHBComments@state.pa.us]
Sent: Monday, October 26, 2009 2:56 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: Amended ASPCA Comment on Kennel Regulations

From: corim@aspca.org [mailto:corim@aspca.org]
Sent: Monday, October 26, 2009 1:59 PM
To: AG, CHBcomments
Subject: Amended ASPCA Comment on Kennel Regulations

Dear Secretary Smith,
Please disregard the comment that was submitted by me on October 24th, and replace it with the comment submitted below. Thank you.

October 26, 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, even if it were the Canine Health Board promulgating these regulations, 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, I support these standards, it is well established that a minimum of 10 air changes per hour should be required in all animal spaces. Miller, Lila and Stephen Zawistowski (ed.). Shelter Medicine for Veterinarians and Staff. Blackwell Publishing, 2004, p. 60. As a result, the ASPCA recommends that the required air changes per hour be changed to reflect this standard.

Additionally, I commend the Canine Health Board for requiring auxiliary ventilation that is capable of reducing temperature when the temperature is above 85 degrees. The Board was charged with determining what measures must be taken when the temperature rises to that level. The requirement for ventilation that is capable of reducing the temperature is critical to ensure the well-being of dogs in these conditions. Furthermore, a provision should be added to protect dogs from excessive wind generated from natural or artificial means (e.g. air tunnel ventilation system, air change system, etc.).

It is critical to recognize that temperature, humidity, and ventilation are linked to one another and determine the comfort level of the dogs. I commend the Department of Agriculture and the Canine Health Board for recognizing this reality and proposing regulations that address all in a comprehensive way. Requiring that kennels use a mechanical ventilation system that provides ventilation, heating, and cooling is critical to this end. Such a system is imperative to ensure the health and comfort of dogs housed in kennel facilities.

Lighting:

I 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. Once again, this measure

was fully within the authority of the Canine Health Board.

The temporary guidelines submitted by the Canine Health Board included a provision requiring that dogs being exercised in indoor runs have visual access to a window. I was disappointed to see this provision removed from the final regulations. The Board was charged with “determining the standards based on animal husbandry practices to provide for the welfare of dogs.” Visual stimulation is a critical form of enrichment for dogs housed in kennel environments. As a result, this provision should be reinstated to the regulations.

In all other respects, the ASPCA supports the lighting requirements proposed in these regulations.

Shade:

The temporary guidelines submitted by the Canine Health Board recommended that an area of shade be present in all outdoor exercise runs that is large enough to allow all animals in the enclosure to be in the shaded area simultaneously. It is important that during summer months, all animals have access to a shaded outdoor area.

As a result, I recommend that the requirement for a shaded area large enough to cover all dogs simultaneously be reinstated into the 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 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. See

<http://www.tandemproducts.com/tenderfoot/DekCellent/DekCellent.htm>. 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 changes, and encourages promulgation of the new regulations as expeditiously as possible. Thank you for your time and consideration.

Sincerely,

Cori A. Menkin, Esq.
Senior Director of Legislative Initiatives
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