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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 5:02 PM
To: dhain@pahouse.net; IRRC; kebersole@pasen.gov; Kennedy, David C. (AG); Kerry Golden; MULLER, JENNIFER; Smith, Jessie L; Thall, Gregory (GC); wgevans@pasenate.com
Subject: FW: PVMA Comments on the Canine Health Board Proposed Regulations #2-170
Attachments: PVMA CHB Regulation Comments 102709.pdf

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INDEPENDENT REGULATORY
COMMISSION

From: Charlene Wandzilak [mailto:cwandzilak@pavma.org]
Sent: Tuesday, October 27, 2009 4:59 PM
To: Smith, Jessie L; West, Susan; Redding, Russell
Cc: irrc@irrc.state.pa.us; mstephens@irrc.state.pa.us; jjewett@irrc.state.pa.us; AG, CHBcomments; 'Hain, Diane'; 'Hanna, Michael'; mbrubaker@pasen.gov; 'William Evans'; opake@pasenate.com; jmaher@pahousegov.com; 'Kerry Golden'; 'Kristin Crawford'
Subject: PVMA Comments on the Canine Health Board Proposed Regulations #2-170

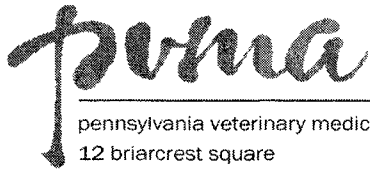
Dear Secretary Redding, Special Deputy Secretary Smith and Director West -

Please find the comments of the Pennsylvania Veterinary Medical Association on the proposed rulemaking 2-170 - Canine Health Board Standards from Commercial Kennels. If you have any questions, please let me know. Thank you for the opportunity to provide comments.

Sincerely yours,

Charlene Wandzilak
Executive Director
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October 27, 2009

Special Deputy Secretary Jessie Smith
and Director Susan West
Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

Re: #2-170

Dear Special Deputy Secretary Smith and Director West:

On behalf of the Pennsylvania Veterinary Medical Association (PVMA), I thank you for the opportunity to provide our comments on the Canine Health Board's standards for commercial breeding kennels. As the state organization representing over 1,900 veterinarians, including the members of the Board, we extend our appreciation to the Board for the expertise they provided and the commitment they have shown to the arduous process of developing these regulations. We also thank the Department for their concern regarding the health and welfare of the dogs housed in commercial breeding facilities. As you know, the health and the welfare of the dogs impacted by these regulations are of utmost concern and are the sole reasons for our comments today.

Previously, we submitted comments during the temporary guidelines comment period earlier this year. However, because our concerns with the temporary guidelines remain unaddressed, the comments below echo earlier concerns now that the proposed rulemaking has been promulgated.

Development of the Regulations

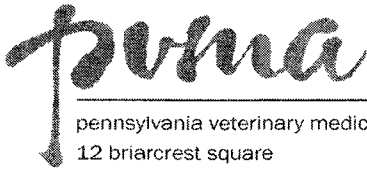
As you are aware, Section 221 of Act 119 of 2008 which establishes the Canine Health Board states that the Board's purpose is to determine the standards based on animal husbandry practices to provide for the welfare of dogs under section 207(h)(7) and (8) and (i)(3) of the Act. In addition, the Board was charged with the development of temporary guidelines and regulations under this section. The temporary guidelines issued were created within 45 days of the Board's first meeting which, in accordance with the provisions of Act 119, had to take place within 30 days of the effective date of the Act.

The 45-day timeframe allotted for the development of temporary guidelines was unreasonable. A 45-day turnaround time would be a major accomplishment for individuals who are knowledgeable about the subject matter and about how to develop regulatory language. Veterinarians, including the nine individuals on the Board, are highly-qualified and skilled people. However, their knowledge and expertise is in animal health and well-being, not in establishing engineering standards for ventilation, relative humidity, ammonia ranges, and lighting ranges or in writing regulatory language. In addition, the temporary guidelines to be established by the Canine Health Board were to: 1) determine auxiliary ventilation to be provided if the ambient air temperature is 85 degrees Fahrenheit or higher, 2) determine appropriate ventilation, relative humidity and ammonia ranges, and 3) appropriate lighting ranges.

However, in the currently regulatory proposal, the Canine Health Board makes the following recommendations as standards:

- 8-20 air changes per hour
- Ambient air temperature in excess of 86 Fahrenheit will exclude dogs from that portion of the facility
- Relative humidity shall be 1-50% when the temperature is above 75 Fahrenheit
- Carbon monoxide levels below detectable levels
- Particulate matter below 10 mg/meter cubed
- Glazed window area may not be less than 8% of the floor space
- Night time lighting 1-5 foot candles
- Daytime lighting 50-80 foot candles
- Specified canine behavior which kennel dogs may not exhibit as these behaviors are presumed to be caused by unhealthy environmental conditions.

There is little relevant scientific basis for the measurements and parameters discussed in the regulations. It appears that most of the scientific data which was used came from resources for research facilities and shelters and was subjectively applied to "fit" a commercial breeding environment. Research facilities are incredibly controlled environments out of necessity for disease management, purity of the dog colony, etc. Commercial breeding facilities cannot be fairly regulated using the same standards because the dogs have access to outdoors at all times and the environment does not need to be as controlled for raising companion animals.



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The proposed standards need to be justified in order to make it clear how these standards were arrived at and what authoritative source was used to reach these values. Otherwise, the standards seem arbitrary and designed to make it difficult to conduct business as a Class C kennel and not in the best interest of the dogs in the kennel. The methods of measuring these standards also need to be defined. There should be standardization of the methods and tools used by both kennel operators and dog wardens so the assessments are accurate and everyone is using the same tools and units of measurement. This will allow for less subjectivity, easier compliance, and more accurate enforcement.

Because there is little to no scientifically-based data available for dogs in commercial breeding kennels, it is suggested that this data be collected prior to imposing ventilation, relative humidity, ammonia and lighting range standards on the regulated community. We are aware that the Canine Health Board did have individuals with agricultural engineering expertise address the group about standards. However, as stated by these agricultural experts, there is no scientifically-based data available for dogs in this environment. Therefore, it would make sense to survey commercial kennels rated as excellent, compliant, well-run operations with a track record of housing and breeding healthy dogs and assess their ventilation, relative humidity, ammonia and lighting ranges, and population and kennel sizes. This would provide baseline information to be used by the Board. With the assistance of kennel inspectors, breeders, and agricultural engineering, animal facility engineering, and ventilation experts familiar with animal husbandry practices and measurements used in large groups of animals (such as the standards established for swine, cattle, and other agricultural animals), the Board could develop accurate measurements and acceptable ranges.

In addition, most of these standards were not placed within the authority of the Canine Health Board by the Dog Law and represent an attempt to rewrite the law without authority. Examples are listed below:

Section 28a.2. Ventilation

In paragraph (1), the proposed regulation requires a mechanical ventilation system be used when the ambient temperature is 85 degrees Fahrenheit to reduce the temperature. This goes beyond the authority in the law. 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." The responsibility of the Canine Health Board is to determine an acceptable ventilation range. These requirements mandate mechanical ventilation even though kennels may function successfully with passive ventilation. The Dog Law, as passed by the Pennsylvania House and Senate, did not mandate mechanical ventilation and this was inserted by the Canine Health Board as an attempt to rewrite the law, exceeding their charter which was to set standards for the amount of ventilation, not how it was accomplished.

Paragraph (1) also limits the temperature in a commercial kennel to a maximum of 86 degrees Fahrenheit and appears to go beyond the authority of the Canine Health Board. In Section 207(h) (6) of the law, a temperature range for commercial kennels of 50 to 85 degrees Fahrenheit is established, unless auxiliary ventilation is provided when the air temperature rises above 85 degrees Fahrenheit. The proposed standard suggests that dogs cannot be inside when the temperature is 86 Fahrenheit or higher, even though the next sentence says that this restriction does not apply to outside areas. If a dog could be in air that is 86 Fahrenheit outside, the restriction for inside air seems arbitrary, especially in light of the ventilation requirement of 8-20 air changes per hour. The ambient air in Pennsylvania in the summer can exceed 86 Fahrenheit and is not considered unhealthy for animals or people as long as shade, ventilation, and access to water are provided.

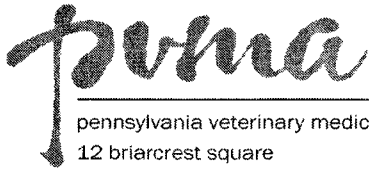
In Section 28a.2. Ventilation.(3) "When the temperature is above 75 Fahrenheit, the relative humidity shall be 1%-50%". This is not possible in Pennsylvania except in a hermetically sealed kennel. It is unreasonable to expect the humidity to be this low in any home or kennel without air conditioning. Also, it is well-recognized that humidity 30% or below dries out a dog's coat and skin and is not healthy.

Paragraph (5) requires a commercial kennel to install and maintain carbon monoxide detectors. The Canine Health Board has no authority to address carbon monoxide levels. Similarly, paragraph (7) establishes a limit for particulate matter. The limited scope of authority of the Canine Health Board does not cover particulate matter.

Section 28a.2. Ventilation. (9) identifies signs of illness associated with poor ventilation. This list of adverse clinical signs is not necessarily associated with poor ventilation and needs to be interpreted in light of breed, age, reproductive status, chronic disease, etc. It is unreasonable to state that dogs may not exhibit these signs in a kennel. There are many reasons why a dog may vomit, pant, or have nasal discharge that have nothing to do with ventilation.

Section 28a.2. Ventilation. (10) and (11) are standards which are subjective and vague as written. In addition, paragraph (11) requires air filters. The limited authority of the Canine Health Board to establish appropriate ventilation ranges does not include the authority to require air filters.

In paragraph (12), it states that all ventilation systems must comply with the latest edition of applicable codes. The Canine Health Board does not have the authority to establish the provision related to ventilation systems being compliant with the latest applicable codes. Their authority is to establish ventilation ranges.



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Section 28a.3. 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 this section appear to go beyond the authority of the Canine Health Board.

In 2. Section 28a.1 Definitions, the definition of "Excessive Light" is vague, suggesting that direct light shining, either from the sun or a light fixture, is prohibited. In contrast, in Section 28a.3, (1) "Natural Light," each dog is required to have exposure to natural light. Does this mean that the sun cannot shine on an indoor dog but can only reach an indoor dog by reflecting off of some surface? This seems arbitrary and designed to confuse kennel owners and kennel inspectors.

Section 28a.3. Lighting. (1). Natural Light. (ii). "The minimum combined total of net glazed area of external windows, external sky light or area of other external openings through which natural light passes within each room where dogs are housed may not be less than 8% of the floor space". This seems excessive. The number seems arbitrary and does not seem to hinge on the health of the dog.

Section 28a.3. Lighting. (1). Artificial Light. (i) (ii). 50-80 foot candles of light during the day seem arbitrary, especially when these proposed regulations prohibit direct sunlight or direct artificial light on the dog. In addition, the requirement of 1-5 foot candles of light at night time means that the dogs cannot sleep in the dark. This is unreasonable. Dogs should be allowed to have complete darkness for good rest, just like people.

Fiscal Impact

Financial feasibility is not our main concern but is interrelated to our overriding concern for the welfare of the dogs. As written, these regulations would result in the Department having to purchase the equipment used in the measurement of temperature, humidity levels, ammonia levels, carbon monoxide levels, particulate matter, air velocity and lighting. In addition, there would be costs associated with training dog wardens to properly use the equipment and regularly maintain and certify it for accurate measurements. Because of the additional time involved in each kennel inspection, more dog wardens may also be needed.

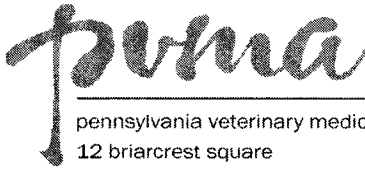
The regulated community will also need to purchase this equipment and be trained on proper use and maintenance. There will be significant costs associated with installation of mechanical ventilation systems, additional windows, and utility costs. These costs are in addition to the significant financial investments that kennel operators need to make to comply with the new provisions of the Dog Law such as creating unfettered access to outdoor exercise areas and larger primary enclosure spaces. Another concern is whether or not compliance could even be possible and, if so, how costly compliance would be to have a ventilation system that works according to the guidelines when a facility has multiple, uncovered openings to outside exercise areas. Fairness should be used in the expectations of kennel operators if they are adhering to standards that ensure the health and welfare of the dogs and are acting responsibly.

If a person looks at the "big picture", fiscal feasibility, ability to comply with regulations, and proper enforcement are all crucial elements to the welfare of the dogs we are all seeking to protect. If responsible commercial kennel operators find it impossible to comply with these regulations and the other requirements of the law, it could result in commercial kennel operations ceasing altogether in the Commonwealth. In fact, this is already occurring. While some may argue that this would be a good result, the kennels will simply take residence in states with far fewer regulatory standards than Pennsylvania, a scenario that is likely to seriously impede and endanger the health and welfare of the dogs that Act 119 of 2008 and these regulations seek to protect.

Canine Health Board Member Concerns

Finally, a majority of the members of the Canine Health Board have expressed sincere concerns with the final work product that was developed and serious flaws with the process used to develop the current proposed rulemaking. Their concerns are based on the final regulatory proposal exceeding their scope of authority and the lack of relevant scientific basis for the facilities in question. The regulations as proposed may result in major difficulties in complying with the regulations and in enforcing them. These concerns and other administrative process concerns have been shared with the Department in writing as you are aware.

Those concerned members of the Canine Health Board, and we as an association, are very apprehensive that if the proposed rulemaking moves forward, it may not be in the best interest of the dogs it aims to protect, may result in kennels being unable to comply, wardens unable to enforce the regulations, the closing of legitimate kennels, and dogs being moved and bred in states that have far worse conditions and substandard laws (or no laws at all) to ensure the welfare of the dogs. It would be much better for the dogs, for which we all share concern, if Pennsylvania kennels can comply with reasonable requirements that still provide a suitable, healthy environment for the dogs housed in commercial kennels.



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The Canine Health Board members who have expressed concerns have recommended that the current regulatory process be halted and that the Board be reconvened. The Board members also expressed a desire to develop a new regulatory proposal in concert with experts in the areas of agricultural engineering and ventilation, kennel inspectors, and in consultation with owners of model kennels. We support their recommendations.

In closing, we sincerely appreciate the time, effort, and expertise given by each member of the Canine Health Board, especially in light of their own personal and professional commitments outside of their voluntary service on this Board. However, as an organization, we are concerned that the final decisions made were: 1) largely outside the scope of authority of the Board, and 2) subjective and not based on animal husbandry practices nor relevant scientifically-based data or measurements. Because of this, we ask that serious consideration to be given to delaying promulgation of the regulations until more scientifically-based information can be established for dogs housed in commercial breeding kennels. We would be willing to assist the Board in development of scientifically-supportable kennel standards that are responsive to the welfare needs of dogs in kennels.

If you have any questions, please feel free to contact our Executive Director Charlene Wandzilak at 1-888-550-7862 or cwandzilak@pavma.org.

Sincerely yours,

Lisa A. Murphy, VMD, DABT
President

Cc: The Honorable Russell Redding, Pennsylvania Department of Agriculture
Mr. Arthur Coccodrilli, Chair, Independent Regulatory Review Commission
Mr. John Jewett, Independent Regulatory Review Commission
Mr. Michael Stephens, Independent Regulatory Review Commission
Mr. William McLaughlin, Independent Regulatory Review Commission
House Agricultural and Rural Affairs Committee
Senate Agricultural and Rural Affairs Committee