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October 26, 2009

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

Re: Proposed Rulemaking, Canine Health Board, [7 PA. CODE CHS. 28 AND 28a]
Canine Health Board Standards for Commercial Kennels, published in the Pennsylvania Bulletin
on September 12, 2009

To: Whom It May Concern:

The Pennsylvania Professional Dog Breeders Association submits the following comments on the above subject proposed rulemaking issued by the Department of Agriculture on behalf of the Canine Health Board. The regulation propose to establish minimum standards for ventilation, lighting and flooring for dog kennel operations regulated as commercial kennels under Pennsylvania's Dog law (as amended by Act 119 of 2008).

Our comments will illustrate how this proposed rulemaking will essentially force a number of small businesses out of business by making it economically impossible for these businesses to meet the requirements while placing them at an economic disadvantage to similar businesses in other states. If these rules are adopted without change Pennsylvania will lose these businesses and similar businesses in other states will meet the need by sending dogs raised in those states with less regulation into Pennsylvania to meet the need.

Initially, our comments are focused on the Regulatory Analysis Form completed by the Department for this proposed rulemaking. In that analysis the Department provides, in response to Question 17, a specific estimate of the costs and/or savings to the regulated community associated with compliance. We submit that those estimates are unrealistic and that they underestimate the costs to the regulated community by as much as ten-fold. For example, the Department's analysis estimates that most kennels are less than 5000 square feet and proceeds to use that square footage in developing estimated costs for compliance.

The analysis concludes by providing estimates as follows: 1) average optional cost of equipment to provide mechanical means of ventilation and recirculating air would be \$10,000; 2) the cost of meeting all applicable code upgrades would be \$5000; 3) the cost of purchasing equipment to assess temperature, humidity, ventilation, air velocity, ammonia, and particulates, while not

required, would be \$2995. It concludes with an estimate that the total optional cost would be \$12,995, assuming \$10,000 spent on a ventilation/filtration system.

We dispute these estimates without equivocation. A typical commercial breeding operation recently received an estimate from a licensed refrigeration business for one building with only 4000 square feet which is less than the size used in preparing the Department's estimate. This firm estimated that in order to meet all of the new requirements, the base bid for the HVAC system would be \$118,905 and additional circulating fans would be \$13,653. Further, heating costs would be \$14,022 and estimated electrical operating costs would be \$34,954. TOTAL - \$181,534.

In addition, the Department minimizes the need for kennel operators to purchase monitoring equipment similar to that used by the Department's kennel inspectors by stating that the equipment is not required. We question the Department's conclusion. If kennel operators are to achieve compliance, they must be in a position to make those readings on a frequent basis and to double check the readings obtained by the kennel inspectors when conducting their inspections. Therefore, this is really not an option.

In response to Question 23 of the Regulatory Analysis Form the Department responds that "the guidelines were published and comments were received from members of the regulated community and others". This is true. However, the Department acknowledged in at least one meeting with members of the regulated community that those comments, which the Department received, were not considered in developing the proposed rulemaking. We submit that had those comments been considered the proposed rulemaking would have been modified to bring them in compliance with the statute, which in many instances they are not, and would have been modified to make it possible for the regulated community to meet the requirements. As currently written these regulations are not realistic, they exceed the ability of most commercial kennel operators to meet them, and they will result in the loss of many kennel operators in this industry due to their inability to meet the new standards. The adoption of these regulations will have a devastating affect on agriculture in the Commonwealth.

The following are our comments regarding the proposed rulemaking on a Section by Section basis.

Section 28.1 Ventilation

Under Section 207 of the statute the Canine Health Board is authorized "to determine auxiliary ventilation to be provided if the ambient air temperature is 85 degrees Fahrenheit or higher". The proposed rulemaking exceeds the authority provided to the CHB by requiring a "mechanical" ventilation, heating and cooling system. Further, the proposed rulemaking exceeds the authority

in the statute by requiring that “cooling must be used to keep the temperature below 86 degrees Fahrenheit”.

The rulemaking further exceeds the statutory authority by requiring that “dogs may not be present when temperature in any portion of the facility is 86 degrees or higher” including those instances where a mechanical system malfunction might occur.

Temperature requirements for newborn puppies are ignored by the CHB’s proposed rulemaking. For example, the requirement that at no time may the temperature in the kennel exceed 85 degrees completely ignores the fact that newborn puppies cannot maintain their own body temperature until after 10 to 14 days of age. Supplemental radiant heat or heat lamps must be used to create an average air temperature between 91 and 96 degrees Fahrenheit during the first 10 to 14 days of a puppy’s life. The requirements of this section would expose newborn puppies to harsher conditions than is appropriate and increase the risk and danger to those puppies.

Please note our comments on the previous page as they relate to the costs of achieving compliance with the new requirements as they relate to heating and air conditioning. When relative humidity outside the kennel nears 100% during a rain event, requiring the kennel to achieve relative humidity in the 40-60% range while requiring 8-20 air exchanges per hour is not only nearly impossible but also is excessively costly to the kennel operator.

Regarding the requirement in subsection (4) of this section we question the scientific source of the requirement that “ammonia levels be less than 10ppm”. How was this standard determined?

In subsection (7) we believe that it would be impossible to meet the requirements that particulate matter be maintained below 10 milligrams per meter cubed when the bedding provided for dogs is a potential source of particulates. Wood shavings and shredded paper are routinely used as bedding and healthy dogs are constantly moving their bedding.

In subsection (8) we believe that the requirement that “the kennel shall provide between 8–20 air changes per hour” is excessive and far exceeds the need for air changes. For the record, most regulatory laboratories of the Department of Agriculture, Penn State and the University of Pennsylvania probably do not meet this standard. This requirement, we believe, exceeds the requirement for BSL-3 laboratories which are the next to the highest level of biosecure laboratories.

Further, meeting this requirement would create drafts, which are prohibited under the Federal Animal Welfare Act. We recommend that this requirement not exceed three air exchanges per hour.

We believe that the requirements of subsection (9) are absurd since dogs may exhibit nearly any of these conditions for a variety of reasons having nothing to do with the conditions in the kennel. For example, diarrhea, bloody diarrhea, and vomiting may occur due to a change in diet or upset stomach or gastrointestinal irritation for any number of reasons. We submit that other mammals, including human beings, have these symptoms from time to time for a variety of reasons, which have nothing to do with the environment in which they live.

The same is true for the other conditions or signs of illness or stress, which the proposed rulemaking states are “associated with poor ventilation”. To impose penalties on kennel owners who have dogs that exhibit these conditions is unrealistic and excessively burdensome to the regulated community.

Section 28a.3. Lighting

This section requires that “each kennel shall have a mix of natural and artificial light”. This requirement exceeds the authority provided in the statute which states “Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light”. We recommend that this section be amended to read the same as the statute.

Subsection (1) (ii), we believe, exceeds the Department’s authority since such authority does not appear in the statute. It is unrealistic and economically burdensome to require retrofitting existing structures or requiring new structures to achieve the 8% of floor space requirement.

Subsection (2) Artificial Light, requires that daytime lighting must provide between 50–80 foot candles at standing shoulder level of the dogs. We have taken light readings in offices at the State Capitol and have found those readings to be in the 12-20 range. The same thing is true of the average home. We believe this requirement is in direct contradiction with the statute, which states “Primary enclosures must be placed so as to protect the dogs from excessive light.”

Further, the economic impact for purchasing light fixtures and retrofitting electrical circuits plus the additional cost of electricity is prohibitive to a small business. We recommend that this requirement be changed to coincide with lighting conditions in typical homes or offices.

Subsection (2) (ii) should be changed to read “Night time artificial lighting must be 1-5 foot candles of lighting at standing shoulder level of the dogs” rather than the way it currently reads.

Subsection (2) (iv) as currently written does not adequately define the term “visible flicker”. This term should either be defined or this subsection should be deleted.

Section 28a.4. Flooring

In Subsection (1) we believe that the addition of solid flooring increases the risk to the dogs of an unsanitary flooring environment. We recommend that this section be revised to eliminate the risk of an unsanitary condition for the animals.

In Subsection (2) we believe that it will be impossible to maintain a drain that is free of debris because dogs will continually track bedding particles and other materials to the drain area. We recommend that this problem be addressed and this subsection revised accordingly.

The standards established in Subsection (4) exceed those found in most biosecurity laboratories operated by the Department of Agriculture and its academic partners at Penn State and the University of Pennsylvania. This subsection should be revised to address these exorbitant and onerous standards.

In Subsection (5) the appropriate sources of the “latest edition of applicable codes” should be identified to properly clarify which codes this section is alluding to.

We believe that the standards established In Subsection (7) will be impossible to attain. When kennel owners clean the flooring in accordance with 207 (h)(14) of the statute, the floor condition may immediately be impacted by the urination and defecation of the dogs and thus not meet the standards for microbial assessment established in this subsection. We recommend that the potential for this condition to occur be addressed and this subsection be rewritten.

Regarding Subsections (6) and (8) we believe that the standards established in these two sections may be in conflict with one another. We recommend that this potential be eliminated and these two subsections be rewritten accordingly.

We recommend that the Department utilize additional expertise readily available from our land grant university and the animal scientists at that institution, as it works with the Canine Health Board to revise the regulations. The regulations as currently written illustrate the absence of input from animal scientists and agricultural engineers and therefore lack reasonable and realistic standards that can be achieved by the regulated industry. The costs to the regulated industry to meet the standards in the proposed rulemaking as currently written will essentially eliminate this important small business industry from Pennsylvania and the agricultural community.

In summary, it is also important to note that the requirements in the proposed rulemaking will force these small businesses to become large businesses and as a result may exceed what many local governments in Pennsylvania will consider as small businesses. This industry has always been considered as a small business and it may disappear if these rules and regulations are not modified. The costs associated with meeting these requirements will put the commercial

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breeding industry in Pennsylvania at an economic disadvantage with other states. The result will be the loss of Pennsylvania businesses and dogs will be coming from other states into Pennsylvania to meet the need.

The Pennsylvania Professional Dog Breeders Association appreciates the opportunity to offer comments on the proposed rulemaking.

Sincerely,



Walt Peechatka
Senior Consultant

cc: John Jewett, Independent Regulatory Review Commission ✓
Hon. Russell C. Redding, Acting Secretary, PA Department of Agriculture
Hon. Michael Brubaker, Chairman, Senate Agriculture & Rural Affairs Committee
Hon. Michael O'Pake, Minority Chairman, Senate Agriculture & Rural Affairs Committee
Hon. Mike Hanna, Chairman, House Agriculture & Rural Affairs Committee
Hon. John Maher, Minority Chairman, House Agriculture & Rural Affairs Committee