

March 10, 2006

Governor Edward G. Rendell  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

Dear Governor Rendell:

Thousands of dog lovers have waited for over three years for your administration to create new regulations that would provide more humane conditions for the dogs suffering in commercial kennels in Pennsylvania. The Coalition Against Misery has obtained a copy of proposed regulations that have finally been drafted by the Department of Agriculture. We have been told that the commercial kennels were provided an advance copy of the new regulations by the Department of Agriculture. We do not know if this is accurate or not.

Since we have obtained a copy of the proposed regulations, we have reviewed them and a copy of our analysis is attached. There are several provisions that are an improvement over the current regulations. In particular the sections pertaining to sanitation and drainage are greatly improved. However the sections regarding the size of the primary enclosures and temperature control have not been improved. These are two of the areas that are of particular importance to people who care about the dogs. Since the dogs are kept in the primary enclosures for years, it is essential that the primary enclosures be of a substantial size and that the number of animals kept in each one is limited. Additionally, there is a history in Pennsylvania of failing to provide temperature control for the dogs in commercial kennels. The current law is weak and the proposed law will continue the failure. We have proposed language that would clearly require temperature control so that no dog in a commercial kennel in Pennsylvania would suffer during temperature extremes.

Pennsylvania is known as the puppy mill capital of the East Coast, one of seven puppy mill states in this country. This is a profound embarrassment to the large majority of citizens in this Commonwealth. The Coalition Against Misery represents over 100,000 individuals and over 200 organizations that have joined to fight for the welfare of dogs in commercial kennels. We are very hopeful that you will insure that the changes we have proposed to the regulations will be favorably considered.

Thank you for your consideration.

Very truly yours,

Lee Wheeler

## Annex A 7 Pennsylvania Code Chapter 21

1. 21.1 Change the definition of Attending Veterinarian to be consistent with the Animal Welfare Act and specifically to delete the section regarding temporary permits.

PROPOSED LANGUAGE: “Attending veterinarian means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary.”

COMMENT: The proposed language deletes the section regarding temporary permits because the conditions in kennels are complicated and should be handled only by licensed veterinarians. Additionally, the proposed language provides consistency with the Animal Welfare Act.

2. 21.3 Revise the section to provide for enforcement by the State Police Officers and Humane Society Police Officers. And revise this section to provide for automatic revocation of any license if the licensee is convicted of cruelty to animals by any court in any state.

PROPOSED LANGUAGE: “Unless otherwise stated, only Employees of the Department , State Police Officers and Humane Society Police Officers shall be authorized to enforce this chapter. Noncompliance with any section of the act or of this chapter may result in the prosecution, revocation of the kennel license or nonapproval of the kennel license application. Any conviction for violation of any statute for cruelty to animals at any time, in any state shall result in the immediate and permanent revocation of the kennel license or nonapproval of the kennel license.”

COMMENT: This change would enable the State Police Officers and Humane Society Police Officers to better address issues of cruelty to animals in commercial kennels since these regulations would give them the ability to access the facilities. Without this change the animals in commercial kennels are denied the protection of the statutes pertaining to cruelty to animals. Additionally, providing more persons to enforce the law will insure greater compliance with the regulations and help reduce the budgetary pressure on the Department of Agriculture which is particularly important in this age of potential terrorism. This change would help insure more humane living conditions for the animals in kennels.

Persons who have been convicted of abuse should never be allowed to breed dogs. Additionally, Pennsylvania should not become a magnet for kennel operators from other states who have been convicted of abuses and cannot obtain a license in those states.

3. 21.4 (1)(iv) Revise this section to provide for automatic revocation of any license if the licensee is convicted of cruelty to animals by any court in any state. Delete 21.4(1)(iv)(E) and replace (v) with (vii).

PROPOSED LANGUAGE: “(v) Denial of kennel license. Consistent with section 211 of the act (3 P.S. Section 459-211), the Secretary shall revoke or refuse to issue a kennel license or an out-of-state dealer license if the person holding or applying for the license has been convicted of any law relating to cruelty to animals in any state.”

COMMENT: Persons who have been convicted of abuse should never be allowed to breed dogs. Additionally, Pennsylvania should not become a magnet for kennel operators from other states who have been convicted of abuses and cannot obtain a license in those states.

4. 21.4(v)(B) Put a period after the word “endangered” in the fourth line and delete the remainder of the sentence.

COMMENT: A verbal assurance from a person who has broken the law is not adequate protection for the animals. If the conditions at the time establish that the health, safety or welfare of the animals is in jeopardy, then the animals should be seized regardless of any assurances the licensee may make.

5. 21.14(a)(5) Change the time period for record retention to 6 years. Add Humane Society Police Officer to the list of employees who are allowed to access the records.

COMMENT: Two years is not long enough to maintain records that may be needed by consumers for information about a dog that develops medical problems.

6. 21.14.(c)(i) Change seven weeks to eight weeks to be consistent with AWA Section 2.130.

7. Sections 21.21, 21.22, and 21.24 often address similar issues with different language and terminology, occasionally duplicating language. This could lead to confusion and allow a licensee to allege that the regulation was not clear and therefore not enforceable as they have with the current regulation. For example, dog quarters is not a defined term. Neither is sheltered housing although it is used in several locations. It should be defined and used consistently. Outdoor facility is also used many times but not defined. Does it mean outdoor housing facility or outdoor primary facility. This is further confused by the overlap between the definition of housing facility that includes “or other structure or area housing or intended to house dogs” which seems to encompass the definition of primary enclosure. Apparently the use of the word “immediately” in the primary enclosure definition is intended to provide the distinction but it is not clear. The use of the word “immediately” is further confusing because the definition of primary enclosure is the same wording that is in the AWA except for the addition of the word “immediately.”

8. 21.22(d) This language should be deleted as temperature restrictions are covered in later provisions.

9. 21.23 Delete the last sentence of 21.23(b) and the subsections (1), (2), (3), (4), and (5) that follow and replace it with the following language:

PROPOSED LANGUAGE: "The primary enclosure shall meet the following requirements:

Each dog or cat housed in a primary enclosure, excluding puppies or kittens that are not weaned, shall have a minimum amount of floor space, calculated as follows: The square of the sum of the length of the dog or cat in inches, measured from the tip of its nose to the base of its tail, plus thirty-six inches; divided by one hundred forty-four. A primary enclosure shall not be less than four feet in width by four feet in length. There shall be a maximum of two dogs or cats, excluding puppies or kittens that are not weaned, housed in a primary enclosure."

COMMENT: The dogs are kept in the primary enclosures for their entire lives. The proposed size regulations would mean that a dog the size of a poodle would be confined to a cage that was only approximately 5 foot by 5 foot. This is clearly not sufficient since it's not a temporary situation. The large majority of citizens in Pennsylvania strongly object to putting dogs in small cages for their entire lives. Dogs confined to these living conditions develop mental conditions like going around in circling incessantly, biting their skin, barking at nothing and fighting with other animals in the cage. It is inconceivable that anyone fair minded person would consider these living conditions acceptable. Additionally, the proposed regulation does not clearly state whether the size requirements are cumulative for each dog in the kennel or not and does not limit the number of dogs per primary enclosure. That failure means that five or even ten poodles could be housed in one 5 by 5 kennel. These conditions do currently exist in Pennsylvania commercial kennels and the new regulations should be clearly drafted to prohibit such conditions.

10. 21.23(b) Delete the words "or shall be provided with twice the minimum amount of floor space."

COMMENT: While the language of section 21.23(e) is positive and would certainly be welcome by the people who care about the health and well being of dogs, it is completely negated by the the phrase outlined above that obviates it if the kennel size is doubled. This would mean that in the example of the ten poodles housed in a 5 x 5 kennel the exercise requirements would be completely eliminated for those dogs if the kennel was 10 x 10. No person who cares about the health and welfare of dogs would think that it was acceptable to put a dog in a cage for it's entire life and never let it out. This is further exacerbated by the fact that most of these kennels have wire floors so the dogs do not ever get to walk on a hard surface or run on grass.

11. 21.24(b) Delete the language after the first sentence and add the following language in it's place.

PROPOSED LANGUAGE:

“Dogs shall not be located outdoors in any primary enclosure or any outdoor housing facility when the temperature is below sixty-five degrees or above eighty degrees for more than one hour.”

12. 21.24(c) There should be a restriction on tethering dogs. This is prohibited in the Animal Welfare Act Section 3.6 (c)(1)(4) and has no place in the Pennsylvania regulations. It is clearly dangerous for the dogs.

13. 21.25 Revise to provide that the temperature in the primary enclosure must not be under 65 degrees or over 80 degrees. Additionally, it should state that no kennel shall be granted a license unless there is an hvac system installed that is sufficient to maintain the temperature at the level prescribed in the regulations. Delete 21.25(d) since it is confusing. In 21.25 (e) delete the words “and the sheltered part of sheltered housing facilities” because it is not a defined term and therefore creates confusion. Delete 21.25(e)(1) and (2) and replace it with the following.

PROPOSED LANGUAGE:

“Every indoor housing facility shall provide a heating, air conditioning, and ventilation system that is adequately sized for each housing facility. The ambient temperature in the housing facility or any primary enclosure located inside a housing facility shall not fall below sixty-five degrees or rise above eighty degrees for more than one hour when a dog or cat is present. Under no circumstances shall propane be used to fuel any heating, air conditioning or ventilation system.

(f) No license shall be granted or renewed unless the State Dog Warden or Employee determines that there are heating, air conditioning and ventilation systems in place that insure the provisions in this regulation can be met.”

COMMENT:

There is long history of failure to protect the dogs in commercial kennels in Pennsylvania from excessive heat and cold. The current regulation includes the same language as the proposed regulation with regard to dogs who cannot tolerate the cold, and according to our information it has never been enforced. Although the regulation says that short haired dogs cannot be maintained in outdoor kennels unless approved by a veterinarian, short hair dogs have been kept in outdoor kennels through out Pennsylvania. The kennels do not obtain approvals by veterinarians and the State Department of Agriculture Dog Wardens who inspect the kennels do not ask for the approvals. Additionally the new regulations would not even require such approvals to be maintained in the records.

It is clearly understood through out the world of dog lovers and quality dog breeders that it is inappropriate to house dogs outside during the extremes of temperatures. Although they may live through the experience, they will certainly suffer during the times of temperature extremes. Dogs like dachshunds, chihuahuas, poodles, maltese, greyhounds, pugs and others are never going to be acclimated to cold temperature extremes. And dogs like Huskies, Pugs, Bulldogs, Bernese Mountain Dogs and others are never going to be acclimated to hot temperature extremes. The regulations should require humane conditions and it is ludicrous to think that a dachshund outside in a rabbit hutch type box when it's 20 degrees Fahrenheit outside is humane.

14. 21.24, 21.25, 21.26, 21.27, 21.28, 21.29 The term "kennel" is used in these regulations but it is not defined.

15. This section should be added to the regulations:

PROPOSED LANGUAGE: "21.31 Breeding Conditions A kennel shall not: allow any female dog or cat to be bred until the female dog or cat reaches the age of two years; allow any female dog or cat to be bred after the female dog or cat reaches the age of five years; allow any female dog or cat to be bred more than one time in a twelve-month period; or allow any female dog or cat that has undergone two or more cesarean sections to be bred. A kennel shall maintain records of the breeding history of every female dog or cat owned or harbored by the kennel. Such records shall be subject to review by the Department, State Police Officers and Humane Society Police Officers."

COMMENT: Every quality breeder and breed club including the American Kennel Club has set standards for breeding dogs. None of them would allow for the breeding of a dog who was less than two years old. It is far too harmful to the dog and it's too early to know whether the dog has genetic problems that would be passed on to the puppies and on to unknowing consumers who purchase the puppies. Additionally, the breeding of older dogs is dangerous to their health as is the breeding of a dog more than once a year. Their bodies just cannot take the stress. And more than two cesarean sections causes damage to the internal organs of the dogs often causing them to grow together and causing massive hernias. (This language assumes that there will be a definition for the word "kennel" in the final regulations.)

16. 21.41(e) Add this language.

PROPOSED LANGUAGE "(8) A complete reproductive record for every female dog, including every heat cycle, every breeding attempt, every pregnancy, and every litter including the date, number, and sexes of the puppies."

17. The following language should be added to the definitions.

"Ambient temperature - the air temperature surrounding the animal."

“Indoor housing facility - any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements: (1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).”

“Impervious surface - a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.”

“Outdoor housing facility - any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of indoor housing facility provided in the regulations, and in which temperatures cannot be controlled within set limits.”

“Person - any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.”

“Humane society police officer - any natural person who is duly employed, either part time or full time, by a society or association for the prevention of cruelty to animals, to act as a police officer for a society or association for the prevention of cruelty to animals and who holds a current appointment under the applicable Pennsylvania statutes.”