Something Stinks: The Need for Environmental Regulation of Puppy Mills

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SOMETHING STINKS: THE NEED FOR ENVIRONMENTAL REGULATION OF PUPPY MILLS

I. INTRODUCTION: HOW MUCH IS THAT DOGGY IN THE WINDOW?¹

The overwhelming smell is always the first to hit you.² Next it is the sound; twenty-five to forty wire mesh cages, many containing multiple puppies, line the walls of this Conshohocken, Pennsylvania pet store. The cages have drip pans underneath, which are supposed to allow for easy clean up of waste, but the puppies are still covered in their own excrement and urine. When asked about the breeding information for a beautiful, friendly American-Eskimo Keeshond designer mix selling for five hundred dollars, the store employee gives a generalized description of “somewhere in Pennsylvania.”³ Skirting the identification of a puppy’s breeder can be a puppy mill warning signal.⁴

As you gaze into the sad, dark eyes of any one of these puppies, the strength it takes to turn your back on them is too much for

¹ The introductory paragraph is the author’s account of her experience in May 2008 at Playful Pets pet store in Conshohocken, Pennsylvania. Playful Pets has an active Pennsylvania Department of Agriculture, Bureau of Dog Law K5 License which allows them to sell 251 to 500 dogs through the retail pet store over the course of 12 months. BUREAU OF DOG LAW ENFORCEMENT, COMMW. OF PA., PLAYFUL PETS KENNEL INSPECTION REPORTS (2006-2008) (providing inspection results). According to the Bureau of Dog Law Enforcement, kennel inspectors for this facility found no significant violations from 2006 through 2008 and all reported complaints were unfounded. Id. Online reviews of Playful Pets, however, parallel the author’s experience and many people who purchased puppies from this location found that the puppies were sick or had genetic defects. See, e.g., Postings to Yellowpages.com, http://www.yellowpages.com/info-Y54949966/Playful-Pets/reviews (last visited Oct. 24, 2009) (posting customer experiences at Playful Pets).

² See, e.g., State v. Siliski, 238 S.W.3d 338, 338, 349 (Tenn. Crim. App. 2007) (describing smell upon entering puppy mill home). An animal control officer testified at defendant’s criminal trial that “the first thing that struck her about the residence was the ‘breathtaking, overwhelming’ smell of ammonia, which took her breath, burned her sinuses, lungs and throat, and left her with a sore throat for days afterwards.” Id. at 349. An industrial hygiene compliance officer measured the ammonia levels in the house at nine parts per million. Id. at 352. The short-term industrial exposure limit is thirty-five parts per million. Id.

³ See Alex Johnson, Damaged Dogs Plucked from the Assembly Line: Inhumane ‘puppy mills’ come under increasing state, local enforcement, MSNBC, Dec. 5, 2007, http://www.msnbc.msn.com/id/22100558/ (reporting that retail stores dealing with brokers often do not know where puppies were bred).

⁴ See id. (discussing interactions between puppy mill breeders and brokers); see also Posting by Tray Tray to http://local.yahoo.com/info-12306470-playful-pets-conshohocken (last visited Oct. 26, 2009) (stating similar experience of unwillingness by owner to divulge breeder information).
many dog lovers to bear.\textsuperscript{5} Those individuals sympathetic to the conditions in these pet store express the overwhelming need to save a dog from these places.\textsuperscript{6} Humane societies caution, however, that if you adopt a dog from a pet store that deals with commercial breeders, you must come to terms with the knowledge that saving this puppy creates a spot for another and continues to fuel the puppy mill machine.\textsuperscript{7}

Improving the conditions for dogs at puppy mills, euphemistically called commercial breeders, requires a multi-faceted attack from several state and federal agencies as well as continued assistance from humane societies.\textsuperscript{8} Section II of this Comment defines the current federal and state regulations targeting the commercial breeding industry.\textsuperscript{9} Section III critically examines the successes and failures of current legislation regulating commercial breeders.\textsuperscript{10} Section IV considers the environmental impacts of large commercial breeding facilities and suggest that these operations should be regulated as animal feeding operations (AFOs).\textsuperscript{11} Finally, Section V evaluates the need for further federal and state governmental regulation of commercial breeding facilities through pollution control and waste management, thereby ensuring the well-being of commercially-bred dogs as well as the local environment.\textsuperscript{12}

\textsuperscript{5} Posting of Anonymous to Insider Pages Reviews for Playful Pets, asdfasdf
http://www.insiderpages.com/b/3720546297 (Apr. 4, 2008) (reporting that she felt compelled to purchase older dog whose price had been reduced multiple times).

\textsuperscript{6} See id. (recounting, and acquiescing to, overwhelming urge to purchase a puppy because of deplorable conditions of store).


\textsuperscript{8} For a discussion of the state and federal regulatory framework for commercial dog breeding, see infra notes 57-57 and accompanying text.

\textsuperscript{9} For a discussion of background information on commercial dog breeding laws, see infra notes 13-36 and accompanying text.

\textsuperscript{10} For further discussion on a critical evaluation of current federal and state legislation aimed at regulating puppy mills, see infra notes 58-132 and accompanying text.

\textsuperscript{11} For a discussion of the environmental impact of puppy mills, see infra notes 133-70 and accompanying text.

\textsuperscript{12} For a discussion of the impact of pollution from puppy mills on the local environment, see infra notes 171-206 and accompanying text.
II. BACKGROUND

A. Genesis of the Puppy Mill Problem

After World War II, soldiers came home to a failing agricultural market in the United States. The U.S. Department of Agriculture suggested that farmers attempt to support their families by breeding pure-bred dogs. With no money and no experience in dog breeding, farmers made use of what they had, often putting dogs in rabbit hutches. In an attempt at increasing profits, farmers began “[b]uying cheap low quality dog food or feeding table scraps [to] increase[ ] the profits. The expense of proper veterinary care was a luxury they chose not to have. . . . Medical care was not provided and cleaning and sanitation was ignored.” When farmers turned the focus of the business to profits over the comfort of the breeding stock, the first puppy mills were spawned.

Today, a puppy mill is widely defined as a commercial dog breeding facility that maximizes profit at the expense of the health and well-being of the dogs. Commercial breeders are still concerned only about profits, not enhancing the overall stock of a particular breed or screening for genetic defects. The sheer number of dogs, and the desire to keep costs down and profits up, creates inhumane conditions and transmissions of dangerous illnesses.

14. See id. (discussing role of USDA).
16. Ruben, supra note 13 (summarizing ways that farmers sought to increase profits at expense of breeding stock).
17. See Smart, supra note 15 (outlining origins of puppy mills).
20. See What is a Puppy Mill, supra note 18 (stating particular diseases that affect puppy mill dogs). Puppy mills often stack dog crates on top of each other to maximize space, which allows for waste to accumulate on cages below. Id. Close
Further, commercial breeders see puppies as a cash crop, not future household companions to be treated with respect and dignity.\(^{21}\) Commercial breeders usually sell these mass produced puppies to retail pet stores or directly to the public through the internet.\(^{22}\)

Once a commercially bred puppy reaches a retail store, the ruse begins.\(^{23}\) Pet store employers may assert that their puppies are from "breeders, not puppy mills."\(^{24}\) As noted by the Humane Society of the United States (HSUS), however, "the word 'breeder' is not an exclusive term. . . . [A] responsible breeder would not sell her puppies to a pet store; she would want to meet you in person."\(^{25}\) Retailers attempt to assuage consumers concerns about puppy mills with guarantees of good health and American Kennel Club (AKC) registration papers.\(^{26}\) The AKC, however, is simply a registry for the quarters in kennels also promotes the spread of diseases, such as \textit{Giardia}, and various types of parasitic worms that are both environmental contaminants and transmittable to humans. \textit{Id.} For further discussion of zoonotic diseases and environmental contaminates, see \textit{infra} notes 133-46 and accompanying text.

21. \textit{See} What is a Puppy Mill, \textit{supra} note 18 (outlining historical development of commercial dog breeding). The ASPCA asserts that puppy mills became popular after World War II to replace failing agricultural farms. \textit{Id.} The puppy mill movement pushed east and took root in largely rural counties. \textit{Id.} The ASPCA reports that farmers found commercial dog breeding appealing because "breeding dogs does not require the intense physical labor that it takes to produce edible crops, nor are dogs as vulnerable to unfavorable weather." \textit{Id.} Farmers were easily able to convert chicken coops and rabbit hutches to small pens for dog husbandry. \textit{Id.}


24. \textit{See id.} (discussing reasoning behind retailers statements regarding breeders). Further, sometimes retailers get puppies from brokers and never speak directly with the breeders. Johnson, \textit{supra} note 3.


26. \textit{See} ASPCA, Puppy Mill Glossary, http://www.aspca.org/fight-animal-cruelty/puppy-mills/puppy-mill-glossary.html (last visited Oct. 24, 2009) (defining AKC registration as only that puppy's parents were of same breed). The ASPCA reports that almost all puppy mill puppies are able to be registered with the AKC. \textit{Id.}
heritage of pure-bred dogs and does not guarantee the health of any particular registered dog.27

Consumers fall prey to commercially bred puppies sold in pet stores because these puppies are often sold at wholesale prices.28 In addition to being more expensive, a reputable breeder may even turn down interested patrons if the breeder believes the puppy is not a good fit with the customer's lifestyle.29 Pet stores, however, are interested primarily in making a sale, and the puppies are cute enough to practically sell themselves.30 The industry is built on impulse purchases and the desire to immediately take home a puppy the minute a pet store employee places one in the vulnerable customer's arms.31 This mentality provides the economic demand that fuels the supply of puppies from commercial breeders.32

In response to the animal cruelty concerns associated with puppy mills, federal and state legislatures have enacted increasingly stringent anti-cruelty and licensing statutes.33 These laws are designed to improve the living conditions at commercial breeding facilities and provide a more humane existence for the dogs that reside there.34 Licensing statutes also provide authorities with inspection power to enforce humane living conditions at breeding

27. See American Kennel Club (AKC), About Registration, http://www.akc.org/reg/about.cfm (last visited Oct. 24, 2009) (confirming that AKC does not ensure the quality of registered dogs). The AKC holds itself out as a non-profit organization simply for the purpose of registering pure-bred dogs; however, it also conducts regular inspections of kennels and reports animal cruelty to the proper authorities. AMERICAN KENNEL CLUB, DOC. NO. RREGS2 (4/08), AKC PROCEDURES FOR REGISTRATION MATTERS 15 (2008), available at http://www.akc.org/pdfs/rulebooks/RREGS2.pdf (discussing registration procedures including inspection powers). The APSCA asserts that "[w]hile there are some AKC regulations, they do not restrict puppy mills from producing AKC-registered dogs. The fact is, many AKC-registered dogs are born in puppy mills." Puppy Scams & Cons, supra note 22.


29. See id. at 264 (accentuating difference between puppy mill breeder and reputable breeder).

30. See id. at 263 (conveying idea that retail pet store employees facilitate impulse purchases).

31. See id. at 263-64 (discussing propensity to impulse purchase puppies).

32. See Puppy Buying Tips, supra note 7 (reminding readers that rescuing puppy mill dogs from pet stores creates spots for new puppy mill dogs). The Humane Society asserts that money spent at pet stores goes "[r]ight back to the puppy mill operator and ensures they can continue breeding and treating dogs inhumanely." Id.

33. For a discussion of federal and state animal cruelty laws, see infra notes 37-57 and accompanying text.

34. See id. (outlining goals of licensing laws).
facilities.\textsuperscript{35} While these laws are well-intentioned, they have proved difficult to enforce and prosecute.\textsuperscript{36}


Commercial dog-breeding facilities are regulated at the federal level under the Animal Welfare Act (AWA).\textsuperscript{37} Since its inception in 1966, the AWA has been the prevailing word from the federal government on the humane treatment of animals by dealers, exhibitors, and research facilities.\textsuperscript{38} The AWA specifically regulates "the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes."\textsuperscript{39} The main thrust of the AWA is to "insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment."\textsuperscript{40}

Through the United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), the AWA provides a mechanism for licensing animal dealers, exhibitors and research facilities.\textsuperscript{41} Commercial breeders that qualify for licensing under the AWA include those who sell puppies wholesale to brokers, research facilities or directly to pet stores.\textsuperscript{42} Retail pet stores, however, are expressly exempt from federal regulation

\textsuperscript{35} See id. (discussing enforcement powers and penalties for violations).
\textsuperscript{36} See Fumarola supra note 28, at 269-71 (recounting difficulties enforcing Animal Welfare Act because of compliance issues and minimal penalties).
\textsuperscript{37} See Animal Welfare Act, 7 U.S.C. §§ 2131-2159, 2132(f) (2006) (defining terms). A puppy mill usually falls under the definition of a dealer which is defined as:

[\text{Any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes.}

\textsuperscript{38} Id. § 2132(f).
\textsuperscript{40} Animal Welfare Act § 2131 (discussing particular areas of regulation under AWA).
\textsuperscript{41} Id. (stating anti-cruelty purpose).
\textsuperscript{42} See id. §§ 2133, 2134, 2136 (discussing various registration requirements).
under the AWA. Many puppy mills do not fall under the purview of the AWA because, like retail pet stores, they sell directly to the public and are subject to the retail exception loophole.


In Pennsylvania, the Dog Law regulates licensing of commercial breeders and provides enforcement under the Pennsylvania Department of Agriculture’s Bureau of Dog Law Enforcement. Sadly, Pennsylvania is widely characterized as the “Puppy Mill Capital of the East.” This unfortunate nickname is only the tip of the tale; before Pennsylvania’s Dog Law was amended in 2008, humane treatment of dogs by commercial breeders was practically nonexistent. For example, in July 2008, two Berks County commercial breeders shot and killed eighty of their own dogs to avoid making repairs and providing veterinarian checks pursuant to an inspection.

43. See id. § 2132(f)(i) (exempting retail pet stores from definition of dealer). Section 2133 further states:

[a]ny retail pet store or other person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility shall not be required to obtain a license as a dealer or exhibitor under this chapter.

Id. § 2133.


47. See Puppy Mills, supra note 46 (confirming that Pennsylvania has one of highest concentrations of puppy mills in country). PSPCA reports that Pennsylvania’s puppy mill problem is “a combination of outdated laws, unaware consumers and a lack of concern for animal welfare on the part of the operators of puppy mills.” Id.
by dog wardens.\textsuperscript{48} This extermination was perfectly legal under the previous version of the Dog Law.\textsuperscript{49} Under the amended law, however, a dog can only be euthanized by a licensed veterinarian.\textsuperscript{50}

Continued misfires at the Bureau of Dog Law Enforcement, and numerous complaints of impotent enforcement by dog wardens, prompted Pennsylvania Governor Ed Rendell to fire the entire Advisory Board of the Bureau of Dog Law Enforcement in October 2006.\textsuperscript{51} This bold move began Governor Rendell’s crusade to improve the lives of kennel dogs and enforce regulations against commercial breeders.\textsuperscript{52} Governor Rendell’s plan culminated in October 2008 when he signed the anticipated changes to the Dog Law.\textsuperscript{53}

The improvements enumerated in the new Dog Law include “increasing the cage size to ensure the dogs are reasonably comfortable, providing access to an exercise area, annual veterinary examinations, limiting the stacking of cages, establishing daily cleaning standards, creating reasonable temperature, lighting, and ventilation standards, and requiring fire extinguishers.”\textsuperscript{54} The Dog Law also requires a license for any commercial kennel, breeder or nonprofit rescue organization that maintains more than twenty-six dogs.

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\item \textsuperscript{49} See id. (admitting that shooting kennel dogs as form of euthanasia was permissible under previous version of Dog Law).
\item \textsuperscript{50} See Dog Law §§ 459-101, 459-102, 459-302 (amending law regarding euthanizing kennel dogs). The Pennsylvania General Assembly has also provisionally approved amendments to the Animal Destruction Method Authorization Law, removing provisions for the destruction of animals by carbon monoxide poisoning and by firearm. H.B. 613, 193rd Gen. Assem., Reg. Sess. (Pa. 2009). The revisions were referred to the Committee on Agriculture and Rural Affairs on February 24, 2009. Id.
\item \textsuperscript{51} See Amy Worden, Dog Warden Transferred from Enforcement, PHILLY.COM, Oct. 11, 2008 (on file with author) (reporting on personnel issues at Bureau of Dog Law Enforcement).
\item \textsuperscript{52} See Press Release, Pa. Dep’t of Agric., Governor Rendell Acts to Strengthen State Dog Law; Protect Animals, Consumers (Oct. 17, 2006), available at http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=457152%20 (reporting governor’s plans for revamping state dog law). Wardens at the Bureau of Dog Law were transferred to administrative duty or fired outright because they gave facilities clean inspection reports that were later found to be in severe violation of animal cruelty laws. Worden, supra note 51.
\item \textsuperscript{54} Pa. DOG LAW ACTION, COMPREHENSIVE AMENDMENT TO THE PENNSYLVANIA Dog Law, available at http://www.agriculture.state.pa.us/doglawaction/lib/dog lawaction/pdfs/2525summary.pdf (explaining changes to bill); see also Dog Law § 459-101 (establishing more humane kennel standards).
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at any time.\textsuperscript{55} This law is one of the most comprehensive licensing statutes in the nation, incorporating elements of anti-cruelty laws specific to the commercial dog breeding context.\textsuperscript{56} It has been hailed across the country as pioneering legislation for the humane treatment of kennel dogs.\textsuperscript{57}

III. A Critical Analysis of Current Federal and State Commercial Breeding Laws

The biggest obstacles associated with current state and federal legislation are difficulties enforcing laws against puppy mills.\textsuperscript{58} Further, there is little that enforcement agencies can do about regulating unlicensed breeders.\textsuperscript{59} With the overlapping licensing regulations of the AWA and the Dog Law, as well as local humane societies enforcing criminal animal cruelty laws, it is a bureaucratic nightmare to determine the role of each agency in enforcing the various puppy mills laws.\textsuperscript{60}

\textsuperscript{55} See Dog Law §§ 459-102, 459-206 (defining terms and requiring licenses for specified classes of kennels). The licensing requirement based on number of dogs is derived from the definition of the term kennel which, according to section 459-102, is "any establishment in or through which at least 26 dogs are kept or transferred in a calendar year, or a boarding kennel as defined in this act." \textit{Id.} § 459-102. Section 459-206 of the Dog Law attributes licensing fees based on the type of kennel. \textit{Id.} § 459-206.

\textsuperscript{56} See generally Dog Law § 459-207 (stating humane conditions required for kennels). For example, section 459-207 requires that "all kennels shall be maintained in a sanitary and humane condition." \textit{Id.} § 459-207(b).


\textsuperscript{58} See Laws That Protect Dogs in Puppy Mills, \textit{supra} note 44 (reporting that puppy mills sometimes fall into legislative loopholes). The ASPCA reports that the loophole results from the federal definition of puppy mills as retailers, which exempts them from licensing under the AWA. \textit{Id.} Meanwhile, some states categorize puppy mills as simply breeders not retailers. \textit{Id.} The ASPCA summarizes "[t]he result is that no one regulates these facilities. There are no inspections, no standards that they are required to meet and no consequences for providing inadequate care." \textit{Id.}

\textsuperscript{59} See Smart, \textit{supra} note 15. The director of the Bureau of Dog Law Enforcement recently conceded that the only way for the agency to regulate unlicensed commercial breeders is if someone complains. \textit{Id.}

A. Licensing and Inspections

Commercial breeders in Pennsylvania are subject to inspections pursuant to the licensing provisions of the AWA and Dog Law.61 Under the AWA, inspectors are authorized to inspect facilities on an as-necessary basis.62 Inspectors prioritize facilities by evaluating the risk associated with the facility's ability to maintain compliance with the AWA.63 According to APHIS, facilities are categorized as having a low, moderate, or high risk of noncompliance.64 Compliance with certain objective criteria and the significance of any past AWA violations are factors in determining the frequency of inspections.65 Moderate-risk facilities are inspected approximately once each year and high-risk facilities are inspected more than each year.66 Inspections at low-risk facilities can be conducted more than a year apart.67 Regardless of a facility's risk factor, "inspectors have the option of inspecting as often as they feel necessary and resources allow."68 This likewise means that it is permissive under the AWA for inspectors to investigate as little as resources allow.69

Under the Pennsylvania Dog Law, licensing inspection authority lies with the Bureau of Dog Law Enforcement and is carried out by specially trained dog wardens.70 State dog wardens are authorized to inspect licensed kennels and unlicensed facilities that are

61. See Dog Law § 459-218 (emphasizing that state dog wardens have authority to inspect licensed kennels and unlicensed facilities acting as kennels); Animal Welfare Act, 7 U.S.C. §§ 2131, 2146 (2006) (enabling inspectors to investigate kennels).


63. See BASIC QUESTIONS AND ANSWERS, supra note 38 (responding to questions regarding AWA).

64. See id. (summarizing reasons for not inspecting more facilities).

65. See A NEW ERA IN ANIMAL WELFARE, supra note 62 (describing AWA risk-based inspection strategy).

66. See BASIC QUESTIONS AND ANSWERS, supra note 38 (estimating inspection frequency based on facility risk assessment).

67. See id. (stating that risk-based assessment program allows inspections to focus on problematic facilities).

68. Id. (confirming discretion of inspectors under risk-based system).

69. See, e.g., AUDIT REPORT, supra note 60 (showing weak enforcement of AWA against violators in Eastern Region).

operating as kennels. The Dog Law requires dog wardens to inspect and approve any facility requesting a kennel license. Under the new provisions of the Dog Law signed by Governor Rendell in 2008, dog wardens are now expected to inspect commercial breeders twice each year to ensure that the facilities comply with all regulations. Furthermore, in 2007, "the Bureau also committed to re-inspect unsatisfactory kennels within approximately two weeks and to require that two Dog Law Wardens be on site to inspect all kennels (other than pet stores) with a license to keep more than 150 dogs." Problems with state and federal inspection and licensing enforcement protocols range from lack of resources to inconsistent compliance by commercial breeders. AWA inspectors, for example, are responsible for inspecting commercial wholesale breeders, exhibitors and all research facilities in a given area. There are approximately seventy inspectors tasked with examining all AWA-licensed facilities in the entire United States, totaling over 8000 facilities. Moreover, these inspectors are not placed uniformly throughout the country, but are concentrated in strategic locations according to the risk-based inspection system.

The AWA risk-based inspection system was instituted in February 1998 under the guise of enabling inspectors the flexibility to

71. See id. (enabling dog wardens to inspect unlicensed facilities operating as kennels). For additional discussion on the statutory definition of a kennel, see supra note 55 and accompanying text.

72. See Dog Law § 459-207(a.1)(2) (mandating inspection before issuance of kennel license); see also 9 C.F.R. pt. 2.3 (2008) (promulgating requirement that initial applicant for AWA license must be inspected for compliance).


74. REPORT TO THE PENNSYLVANIA GENERAL ASSEMBLY, supra note 60, at 4 (committing to perform additional inspections).

75. See, e.g., Press Release, Pa. Dog Law Action, supra note 73 (stating that conditions between inspections can vary widely); Puppy Mills, supra note 46 (outlining costs of recovery operations when puppy mills are shut down); Laws that Protect Dogs in Puppy Mills, supra note 44 (discussing pitfalls of laws directed at commercial breeders and protection of consumers).


77. See AUDIT REPORT, supra note 60, at 1-2 (reporting numbers and location of inspectors).

78. See id. at 2 (describing inspection and enforcement process). For a discussion of the risk-based assessment system, see supra notes 59-67.
focus on the quality, not quantity, of inspections. Unfortunately, the expansive discretion of this system facilitated severe under-enforcement of AWA violations. According to the USDA Office of the Inspector General 2005 Audit Report of APHIS, the Eastern Region “issued only 38 stipulated fines to violators for a total of $88,001, while the Western Region issued 143 stipulated fines for $187,060.” While the number of inspectors divided between the Eastern and Western Regions is roughly equal, the 2005 Audit Report also found that more facilities in the Eastern Region were repeat violators of the AWA due to ineffectual enforcement procedures of inspectors. The 2005 Audit Report concluded that from 2002 to 2004, the Eastern Region inspectors were not enforcing the AWA to the same extent as the Western Region.

The enforcement department of the Pennsylvania Dog Law, the Bureau of Dog Law Enforcement, also recognized flaws in the state’s regulatory enforcement framework, but has attempted to remedy problems through public participation and amendments to the Dog Law. When Governor Rendell began his campaign to overhaul Pennsylvania’s Dog Law, he continuously encouraged public participation in the process. Dog Law Advisory Board meetings remained open to the public, and Governor Rendell encouraged interested community members to comment on the pro-

79. See A New Era in Animal Welfare, supra note 62 (summarizing changes in inspection and enforcement strategy).

80. See Audit Report, supra note 60, at 4-8 (explaining several ways that Eastern Region failed to aggressively pursue enforcement of AWA).

81. Id. at 6 (showing inconsistent enforcement between regions without national guidelines).

82. See id. at 1, 7-8 (reporting that some inspectors found repeated violations by same facilities because inspectors failed to enforce regulations). When the Office of the Inspector General examined some of these cases in depth, it found that the failure of regional management to enforce penalties against offending facilities caused “public safety or animal health [to be] compromised.” Id. at 7. The Eastern Region employs forty-six inspectors and veterinarian medical officers, whereas the Western Region maintains a staff of fifty-four. Id. at 1. Pennsylvania is included in the Eastern Region that reports to the regional office in Raleigh, North Carolina. Id. Veterinarian medical officers are licensed veterinarians and capable of performing inspections. Id.

83. See id. at 4-8 (enumerating problems with enforcement of AWA among APHIS inspectors). The 2005 APHIS Audit Report also remarked that when a violation was reported to the Investigative and Enforcement Service, “the Eastern Region declined to pursue action against 126 of 475 violators (27 percent). In contrast, the Western Region declined action on 18 of 439 violators (4 percent).” Id. at 6.

84. See Fumarola, supra note 28, at 276-77 (asserting that public reporting of animal cruelty is most efficient way to get authorities involved).

posed changes. Governor Rendell stated publicly, "I encourage the public to play an active role in this important and ongoing process." While the Dog Law provides for twice yearly inspections, it is difficult for the Bureau to oversee commercial breeding facilities between inspections without assistance from the public. As a result, the reconstituted Bureau of Dog Law Enforcement created a toll-free tip line in July 2008 allowing any concerned citizen "to offer confidential tips about unsatisfactory kennels between inspections." By increasing the public's accessibility to report complaints, the Bureau of Dog Law Enforcement hopes to fill the resource gap that prevents dog wardens from inspecting facilities more often.

In addition to the tip line, the Bureau launched a publicly accessible online database in 2007 containing reports of all kennel inspections conducted under the Dog Law. This technology enables dog wardens to quickly analyze data from inspections and provides the public with an up-to-date source of information on kennel compliance. The ultimate goal of Governor Rendell's comprehensive regulation of puppy mills is to make "Pennsylvania... a leader in the treatment of dogs in commercial breeding kennels, [and] shed[] our shameful reputation. We want to provide a measure of reassurance that when a family welcomes these lovable pets into their home, the dogs are healthy and happy."

Incorporating public participation into enforcement of the Dog Law provides fur-

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86. See id. (continuing public meetings of Dog Law Advisory Board).
87. Id. (quoting Pennsylvania Governor's pledge to keep public involved in revamping Dog Law).
89. Id. (discussing toll-free phone number for reporting animal welfare complaints). The tip line has a memorable canine theme: 1-877-DOG-TIP1. Id.
90. See id. (stating that public can report Dog Law violations independent of dog warden investigations).
92. See id. (stating that new online system will help consumers make better choices when purchasing pets).
ther resources to the Bureau in its campaign to end Pennsylvania's reign as the "Puppy Mill Capital of the East."94

B. Animal Cruelty Laws

The authority to enter a licensed facility to conduct an inspection under the AWA or Pennsylvania Dog Law is firmly vested in USDA inspectors and dog wardens.95 The legal authority to remove animals based on allegations or direct observations of animal cruelty, however, is a more complicated undertaking.96 While federal and state licensing laws permit removal of animals in danger, the primary function of an inspector is licensing administration, not enforcing animal cruelty laws.97

The ASPCA reports that "the AWA is the closest thing we have to a federal cruelty law in the United States, but it does not make it illegal to perform individual acts of cruelty."98 The Congressional Statement of Policy for the AWA establishes Congress's power to regulate animal activities based on the impact these activities have on interstate commerce.99 The AWA simply sets minimum standards to protect the welfare of animals in research facilities and at the hands of dealers and exhibitors subject to interstate commerce.100 The crime of animal cruelty, however, is regulated by each state and has no federal criminal component.101

95. For a discussion of the inspection authority of USDA inspectors and dog wardens, see supra notes 61-74 and accompanying text.
96. For a discussion of laws on removing abused animals from a facility, see infra notes 102-16 and accompanying text.
97. See Dog Law §§ 459-101 to 459-1205, 459-102 (2006) (confirming duties of dog wardens); 9 C.F.R. pt. 1.1 (2008) (stating purpose of inspectors is to carry out the tenets of AWA). The Dog Law, interestingly, provides that "state dog wardens and employees of the department are considered to be police officers when enforcing any of the provisions of this act." § 459-401(b). The Dog Law, however, forbids dog wardens from carrying a gun while performing official duties. Id. § 459-901(b.2).
100. See Animal Welfare Act § 2131 (reciting purpose of Act).
101. See, e.g., 18 PA. CONS. STAT. § 5511 (2008) (criminalizing offense of animal cruelty and providing punishments); Ask the Lobbyist, supra note 98 (explaining why animal cruelty is only state crime). The ASPCA explains that because animal cruelty typically does not involve interstate commerce, regulation falls
Under the AWA, inspectors are authorized to remove animals from breeders, dealers, or exhibitors if they the animals are “found to be suffering as a result of failure to comply” with the provisions of the AWA. In these situations, an inspector has the authority to confiscate or humanely euthanize the suffering animal. The AWA defines suffering as “any condition causing pain or distress that is not alleviated.” This broad definition of suffering provides federal inspectors with the substantial latitude needed to remove kennel dogs from the abysmal conditions at some commercial breeders. Pennsylvania dog wardens are authorized to seize dogs under a similar provision of the Dog Law. Section 211 provides for the removal of dogs if there are reasonable grounds to believe that the dogs’ health, safety or welfare is in danger.

Local law enforcement and humane society special police officers possess the power to remove animals from commercial breeders by enforcing the anti-cruelty laws of Pennsylvania. The Pennsylvania state law that criminalizes animal cruelty authorizes

outside of the powers of the federal government. Id. Exceptions to this general rule, however, include federal laws that criminalize animal fighting, such as the Animal Fighting Prohibition Enforcement Act, 18 U.S.C. § 49 (2006). Id. The AWA also authorizes criminal prosecution of animal fighting that implicates interstate commerce under Section 2156, titled Animal Fighting Venture Prohibition. See Animal Welfare Act § 2156 (promulgating elements of offense).

102. Animal Welfare Act § 2146(a) (addressing circumstances authorizing removal of suffering animals).

103. See id. (setting forth authority of inspectors to confiscate animals from licensed facilities).

104. Basic Questions and Answers, supra note 38 (defining suffering under AWA).


[T]he department may order the seizure of any dog from that kennel if the department determines, based on the conditions found at that kennel, there are reasonable grounds to believe the dog’s health, safety or welfare is endangered because of neglect of duty of care, deprivation of necessary sustenance, water, shelter or veterinary care or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal’s body heat and keep it dry or other conditions which a veterinarian determines pose a serious health risk to the dog. The seizure may occur immediately upon notice, whether personal or otherwise, and shall be followed by service of the order.

Id. § 459-211(d)(1).

107. See id. (stating statutory standard required for removal of kennel dogs).

seizure of animals subsequent to a search warrant investigating cruelty violations. Under this law, it is a crime to kill, maim or poison a domestic animal belonging to another person or one that is in captivity. Criminal acts of cruelty to animals include physical abuse, neglect, abandonment and deprivation of food and water. Violations of the Pennsylvania state animal cruelty law can be enforced by police officers as well as "any agent of any society or association for the prevention of cruelty to animals." A humane society must apply to the county court of common pleas on behalf of an individual seeking to be appointed as a special police officer. An appointee must meet certain qualifications, including residency, training and criminal background checks. The Pennsylvania Department of Agriculture is also responsible for maintaining a registry of the humane society police officers. The use of special police officers is another step Pennsylvania has taken to support enforcement efforts against commercial breeders.

While the system of appointing special police officers from local humane societies seems like an effective method of buttressing state and federal inspections, the process is not without flaws. For example, the Pennsylvania Society for the Prevention of Cruelty....

109. See id. § 5511 (establishing requirements for search and seizure pursuant to investigation).
110. See id. (criminalizing cruelty to animals and related crimes).
111. See id. § 5511(c) (describing crime of animal cruelty and penalties).
112. Id. § 5511(i) (providing humane societies with authority to enforce statute). The relevant portion of the statute that empowers local humane societies is:
(i) Power to initiate criminal proceedings — An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of the Commonwealth, shall have the same powers to initiate criminal proceedings provided for police officers by the Pennsylvania Rules of Criminal Procedure. An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have standing to request any court of competent jurisdiction to enjoin any violation of this section.

Id.

113. See 22 Pa. Cons. Stat. §§ 3702-3718 (2008) (providing that humane society special officers are authorized to carry out statutory functions in county where they were appointed).
114. See id. § 3705 (creating requirements for humane society police special appointment).
117. For a discussion of various challenges encountered by humane society officers, see infra notes 117-23 and accompanying text.
to Animals (PSPCA) raided the Almost Heaven Kennels in October 2008 after a two-month undercover investigation stemming from reports by customers that the breeders were selling sick and underage puppies.118 Just six weeks prior to the raid, state dog wardens had reported no violations.119 Further, as echoed by Ann Church, director of the Humane Society's Eastern Region, one of the biggest challenges of a puppy mill rescue “in general, is getting law enforcement on board.”120

Another challenge facing humane society special officers is the larger issue of funding for nonprofit organizations.121 Many humane societies, like PSPCA, are nonprofit organizations and rely heavily on donations from the public in order to carry out their mission of preventing animal cruelty.122 The PSPCA reported on its website that “puppy mill initiatives are necessary—and costly. From transporting dogs to providing medical care for animals that are almost all sickly, as well as feeding, grooming, and rehabilitating the dogs, the expenses the PSPCA incurs are great.”123

Without humane societies and their appointed police officers, however, the enforcement of animal cruelty laws would be near impossible.124 For example, when a puppy mill is raided pursuant to an investigation or inspection, a task force of veterinarians, humane society police, as well as federal and state inspection officials, must assist with the cataloging, treatment and removal of each dog.125 Further, because many of the commercial breeding facilities contain hundreds of abused and neglected animals, humane societies

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119. See id. (remarking on faulty inspection procedure).
120. Julie Hauserman, Director Reflects on Year of Puppy Mill Rescues in Eastern Mountain Region, The Humane Society of the United States, Sept. 8, 2008, http://www.hsus.org/about_us/offices_and_affiliates/regional_offices/eastern_regional_office/qa_puppy_mill_rescues_090808.html (remarking on difficulties of actions against puppy mills). Church states that law enforcement’s reluctance to get involved in puppy mill raids is changing as puppy mill cases become higher profile. Id.
121. See Puppy Mills, supra note 46 (requesting donations for puppy mill programs).
122. See id. (stating need for public involvement in puppy mill actions).
123. Id. (detailing cost of puppy mill projects).
124. For a discussion of the vital role played by local and national humane society in the protection of puppy mill dogs, see infra notes 124-29 and accompanying text.
125. See Hauserman, supra note 120 (conversing about extensive efforts required from multiple sources to shut down puppy mills).
are an instrumental component in the dogs' immediate and long-
term placement, recovery and adoption after the initial removal.\textsuperscript{126}

The importance of humane society involvement was evident
during a recent puppy mill rescue operation in Hillsville, Vir-
ginia.\textsuperscript{127} The county administrator of Hillsville was forced to de-
clare the small town a disaster area so that he could call on
assistance from the Red Cross and state emergency officials.\textsuperscript{128} Over a dozen rescue organizations, in conjunction with the HSUS
and local animal control officers, confiscated in excess of one thou-
sand adult dogs and puppies from this single puppy mill.\textsuperscript{129}

Through the ongoing efforts of humane societies, from
spearheading rescue operations to educating the public about the
deplorable conditions at puppy mills, legislators have responded to
the call for improved standards at commercial breeding facili-
ties.\textsuperscript{130} In particular, the Pennsylvania Dog Law made significant steps to-
ward protecting puppy mill dogs from the cruel conditions of com-
mercial facilities, but most laws still lack sufficient protection
against the severe environmental consequences of large-scale com-
mercial dog breeding facilities.\textsuperscript{131} Dogs raised in puppy mills are at
risk from the poor environmental practices of breeders, but the sur-
rounding community can be adversely affected as well.\textsuperscript{132}

\textsuperscript{126} See Press Release, The Humane Soc’y of the U.S., Dogs Rescued from
hsus.org/press-and_publications/press_releases/dogs_from_nc_puppy_mill_sur-
rendered_021009.html (citing support from several humane societies in closing
puppy mill).

\textsuperscript{127} See id. (discussing town administrator’s decision to call in reinforcements
to assist with closing puppy mill).

\textsuperscript{128} See Johnson, supra note 3 (describing difficulty of lack of resources con-
fronting small towns when they close puppy mills).

\textsuperscript{129} See id. (showing support from rescue organizations across country in clos-
ing puppy mill and rescuing dogs).

\textsuperscript{130} See, e.g., Press Release, Pa. Dep’t of Agric., supra note 94 (responding to
need for improved litigation for kennel dogs).

\textsuperscript{131} See Pacashcrop.com, Take Action, http://www.pacashcrop.com/Take
%20action.html (last visited Oct. 24, 2009) (urging Pennsylvania residents to con-
tact legislators to improve environmental regulation of puppy mills).

\textsuperscript{132} See id. (reporting on negative effects puppy mills have on local environ-
ment); see also What is a Puppy Mill, supra note 18 (listing diseases commonly af-
fecting puppy mill dogs).
IV. THE IMPACT OF PUPPY MILLS ON THE ENVIRONMENT

A. Public Health and Water Quality Concerns in the Commercial Breeding Context

Not only are puppy mills notorious for inhumane housing and breeding practices, but the high concentration of dogs in a small facility creates significant risks for disease transmission and pollution from poor waste management practices. Transmission of parasites and other diseases between animals is likely in such close quarters. Studies show that "animals are more likely to shed pathogens because of stress induced by . . . confinement [and] crowding. Commingling increases the probability that animals shedding organisms will infect other animals." The practices by commercial breeders of stacking crates and putting multiple dogs in one crate to maximize space also increases the likelihood that diseases will proliferate among the breeding population.

The Center for Disease Control (CDC) reports that numerous zoonotic diseases can be transmitted from dogs to humans through improper waste handling as well as soil and water contamination. For example, the parasite Cryptosporidium is found in the feces of infected dogs and can cause the disease cryptosporidiosis in humans. Symptoms of this illness include diarrhea and abdominal cramps. Cryptosporidium parasites can be transmitted from an animal to humans through contact with infected feces, eating un-
cooked food that has been contaminated, or ingesting contaminated water. 140 This parasite is troublesome from a public health perspective because the Cryptosporidium oocyst (outer shell) is resistant to standard disinfecting techniques and some filtration systems. 141 The CDC cautions owners of a sick puppy exhibiting symptoms of cryptosporidiosis to seek medical attention for the dog to prevent transmission of the disease to human members of the family. 142

Commercially bred dogs also frequently have various types of fungal infections or worms, including ringworm, hookworm and roundworm. 143 These pathogens can contaminate the soil and be transmitted to humans through direct contact with the skin, such as by walking barefoot through affected dirt. 144 The CDC reports that the popularity of dogs as pets and the failure of pet owners to properly clean up pet waste have led to widespread contamination of soil in the United States by hookworm. 145 One can only imagine the content of the soil at a puppy mill if the CDC is cautioning the regular two- or three-dog household about zoonotic transmission of these parasites. 146


141. See Public Health Handbook, supra note 139, at 7-2 (proposing that parasite’s virulence is related to hearty outer shell, or oocyst). Cryptosporidium is also resistant to chlorine, which is a commonly used disinfectant. Id. at 4-1.

142. See Cryptosporidium Infection and Animals, supra note 137 (advising pet owners on what to do if dog is sick with transmittable disease).

143. See What is a Puppy Mill, supra note 18 (listing intestinal parasites and chronic diarrhea as common ailments of puppy mill dogs).


145. See Div. of Parasitic Diseases, Ctr. for Disease Control, Guidelines for Veterinarians: Prevention of Zoonotic Transmission of Ascarids and Hookworms of Dogs and Cats, http://www.cdc.gov/ncidod/dpd/parasites/ascarids/prevention.pdf (last visited Oct. 25, 2009) (discussing prevention methods). The CDC counsels pet owners to immediately remove dog feces from the ground because “[h]ookworm eggs can develop into infective stage larvae in the soil in as little as 5 days.” Id.

146. See id. (reciting contamination problem associated with parasites). The CDC illustrates the ability of these parasites to contaminate the environment, explaining how in “one infected puppy, a single female ascarid can produce more than 100,000 eggs/day, resulting in millions of potentially infective ascarid eggs per day spread throughout the area the puppy is allowed to roam. Once the eggs
Not only can diseases be passed from puppy mill dogs to their new owners, but poor waste management practices at puppy mills have recently been recognized as an environmental hazard. In Parkersburg, West Virginia, residents complained to environmental authorities about excessive dog feces in a local creek bed. After investigating these complaints, environmental authorities and humane society officials discovered that the source of the discharge was an unlicensed puppy mill operating deep in the woods. The puppy mill was inspected pursuant to a search warrant and a deputy sheriff present at the scene stated, “you simply can’t describe the overwhelming smell of the ammonia [and] feces . . . the smell was just horrible.”

Other communities have challenged the building of a purported puppy mill based on the negative effect it may have on the local environment. A study of diseases present among the dog population of the McDuffee commercial breeding facility in Minnesota found that over twenty percent of samples taken from the 300 adult dogs and 100 puppies were likely infected with the diseases caused by the parasites *Giardia, Clostridium,* and *E. coli.* The McDuffee facility was also spreading the contaminated waste of the become infective, they can remain infective in the environment for years." Id. (citations omitted).


148. See Animal Abuse Case Details for ID 14422, supra note 147 (describing environmental complaints from local residents).

149. See id. (explaining how authorities became aware of unlicensed puppy mill in West Virginia).


151. See Petitioners’ Brief and Appendix I at *28-36, In re Block, Nos. A06-0387, A06-0518, (Minn. Ct. App. May 30, 2006), 2006 WL 4091694 (appealing to rescind conditional use permit of puppy mill based on environmental concerns). The appeal by the commercial breeding facility’s neighbors was ultimately denied. See In re Block, 727 N.W.2d 166, 182 (Minn. Ct. of App. 2007).

152. See SUMMARY OF VETERINARY INSPECTION, supra note 133, at 6-7 (summarizing findings of study conducted at McDuffee Breeding Facility). Dr. Wolff stated that the contamination of *Giardia* in the general population of the breeding facility is probably higher than she reported because of the small sample of her study. *Id.* at 7. The diseases referenced in Dr. Wolf’s report are all transmittable to humans and can severely contaminate the water and soil supply. *Id.* at 4.
dogs, some twelve gallons per day, on a local field. The study concluded that if this puppy mill operated at its licensed level of 800 dogs, over 70,000 pounds of contaminated waste would be spread over this field each year and would potentially contaminate the local water supply.

After the McDuffee facility study results were publicized, local residents petitioned the Minnesota Environmental Quality Board (EQB) to require the breeder to complete an Environmental Assessment Worksheet (EAW). The EQB forwarded the request to the county commissioner per statutory requirements of the assessment program, but the petition was denied and the breeder was not required to complete the EAW. The Minnesota Supreme Court ultimately denied review of the dismissal, despite several judicial appeals by residents.

B. The Missing Link in Puppy Mill Laws

The McDuffee litigation shows the flaw typical to many licensing systems—failure to adequately take into account the effects that a large-scale commercial breeding facility will have on the local environment. The Pennsylvania Dog Law, for example, addresses cleaning and sanitizing used dog enclosures to protect the health

153. See id. at 8 (deploring disposal mechanisms at facility). Dr. Wolff was concerned not only about the amount of feces disposed onto local fields, but also the disposal of "contaminated paper that is being placed into regular garbage collection and disposal." Id.

154. See id. (extrapolating environmental hazards). Dr. Wolff opined that the McDuffee breeding facility "is a highly significant potential public health problem." Id.

155. See Petitioners' Brief and Appendix I, supra note 151, at *7-8 (outlining process residents took to petition county commissioner for environmental review of proposed puppy mill).

156. See id. at *8 (arguing that county failed to address concerns of Soil and Water Conservation Manager or local residents).


158. See Petitioners' Brief and Appendix I, supra note 151, at *7-8 (emphasizing county's lack of attention to environmental and public health concerns). The residents appealing the conditional use permit (CUP) cited the local zoning ordinance that requires officials to take into account the effect of the CUP on the local environment and issue appropriate findings. Id. at *5-6. The scant findings of the board in favor of the CUP, however, were upheld on appeal as sufficient. In re McDuffee, No. A07-1053, 2008 WL 2499232, at *6-8 (Minn. Ct. App. Sept. 23, 2008) (upholding board's decision to grant commercial breeder CUP). On appeal, the local realtors were unable to prove that the actions of the county board were unreasonable, arbitrary, or capricious. Id. The appeals court refused to substitute its own discretion in place of the zoning board. Id.
and wellness of kennel dogs. The Dog Law provides that cages must be cleaned of all debris daily, including dirt, feces and hair, and sanitized once every two weeks using live steam under pressure, water over 180 degrees, or with disinfectant. The Dog Law, however, fails to instruct kennel owners on the proper waste management disposal of the fecal-contaminated run-off or other fecal-contaminated cleaning supplies.

The relevant Pennsylvania law that provides some guidance regarding waste management in the commercial breeding context is the Disposal of Dead Domestic Animals and Animal Waste Law (Disposal Law). This statute gives the Pennsylvania Department of Agriculture the authority to regulate the disposal of dead domestic animals, animal products and waste “to prevent the spread of transmittable diseases . . . or the spread of contamination by hazardous substances.” The Disposal Law provides for removal of deceased animals by incineration, burial or composting. Animal waste disposal is regulated under this statute only if it is “known or suspected to have been exposed to dangerous transmittable disease or hazardous substance.” It is well-established, however, that “[a]nimals that appear to be healthy often shed pathogens that contaminate the environment.”

If a commercial breeder is unable to tell which kennel dogs are sick, then disposal of waste by acceptable methods under the Disposal Law can still lead to contamination of soil and local water supplies. Further, disposal of animal waste by composting, incinerating or burying may not always get rid of potentially dan-

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160. See id. (describing various sanitization procedures).
161. See, e.g., Press Release, Pa. Dep’t of Agric., supra note 94 (describing changes to new Dog Law directed at health and safety of dogs, but with no mention of protecting environment); see also SUMMARY OF VETERINARIAN INSPECTION, supra note 133, at 8 (expressing concerns over puppy mill’s waste contaminated paper being disposed of in regular garbage cans).
163. Id. § 2351 (providing Commonwealth’s authority to regulate).
164. See id. § 2352(a)(4) (establishing mechanisms for proper disposal of dead animals).
165. Id. § 2353 (restricting disposal of animal waste to those with known diseases).
166. COMPENDIUM OF MEASURES TO PREVENT DISEASE, supra note 135, at 2 (disseminating information regarding transmission of intestinal diseases from asymptomatic animals to humans).
167. See id. at 3 (reviewing various national outbreaks of zoonotic diseases from contaminated water and soil).
gerous organisms in the environment. If pathogens enter the environment, for example by soil composting, they can persist and cause infections in humans months later, even if there is no contact with infected animals. The Disposal Law does not provide specific provisions for how a commercial breeding facility can establish a proper long-term plan for domestic animal waste management.

V. ENVIRONMENTAL REGULATION OF PUPPY MILLS

To fill the missing environmental link in puppy mill legislation and provide an additional layer of regulatory supervision, commercial dog breeding facilities should be characterized as animal feeding operations (AFOs) or concentrated animal feeding operations (CAFOs) under Environmental Protection Agency (EPA) regulations. Classification as a CAFO would require qualifying commercial breeders to apply for Clean Water Act permits through the National Pollution Discharge Elimination System (NPDES) and maintain proper waste management and application procedures by creating a Nutrient Management Plan (NMP). Application of the NPDES system to CAFOs would invoke the inspection and supervisory powers of the EPA and state authorities as well as further improve the environment for kennel dogs and the surrounding community.

A. Similarities between Puppy Mills and AFOs

In response to increases in the concentration of animals in agricultural farming practices, the EPA has developed and revised regulations to protect public health and water quality from waste and

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168. See id. (discussing persistence of enteric pathogens for years in environment).

169. See id. (reporting case of E. coli infections from animal housing area absent direct contact with infected animals).


171. ANGELLA BOWMAN ET AL., NEB. CTR. FOR RURAL HEALTH RES., INCREASED ANIMAL WASTE PRODUCTION FROM CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) 1 (Occasional Paper Series No. 2, 2000) (stating that "[s]ome of the concerns may not be unique to CAFOs, but may be exacerbated by virtue of the fact that a large amount of manure is stored or spread in a concentrated and/or confined space").


nutrient discharges by concentrated animal feeding operations.\textsuperscript{174} An AFO is defined as a lot or facility where animals are confined for forty-five days out of twelve months and crops or vegetation do not grow where the animals are housed.\textsuperscript{175} A CAFO "refers to a farm where large quantities of livestock or poultry are housed inside buildings or in confined feedlots."\textsuperscript{176} By these definitions, most commercial dog breeding facilities qualify as an AFO and, in some circumstances, as a CAFO.\textsuperscript{177} Classification of a puppy mill as a CAFO would depend on the number of dogs at the facility as well as


\textsuperscript{175} See 40 C.F.R. pt. 122.23(b)(1) (defining terms relevant to animal feeding operations and pollution permits).

\textsuperscript{176} Understanding CAFOs, supra note 173 (summarizing regulations for AFOs and CAFOs). The preliminary statutory definition of a CAFO is "an AFO that is defined as a Large CAFO or as a Medium CAFO . . . ." 40 C.F.R. pt. 122.23(b)(2). To qualify as a large or medium CAFO, an AFO must have a certain number of livestock, a factor called the animal unit. Id. pts. 122.23(4),(6). The animal unit (AU) is "determined by multiplying the number of animals of each species . . . by an equivalency factor and adding the totals." OFF. OF WASTEWATER MGMT, ENVTL. PROT. AGENCY, EPA No. 833/F-96-005, CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) AND THEIR EFFECTS ON WATER POLLUTION (1996), available at http://www.epa.gov/npdes/pubs/fact11.pdf (providing basic facts and definitions on CAFO rules). An AFO can also be defined as a CAFO if:

(6)(ii) Either one of the following conditions are met:

(A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

40 C.F.R. pt. 122.23(b)(6)(ii). Finally, an AFO can be declared a CAFO if it is found to be a "significant contributor of pollutants to the waters of the United States." Id. pt. 122.23(c). This determination can only be made after an on-site investigation by the permitting authority (EPA or state-run NPDES permitting agency) and the following factors must be considered:

(i) The size of the AFO and the amount of wastes reaching waters of the United States;

(ii) The location of the AFO relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and

(v) Other relevant factors.

Id. pt. 122.23(c)(2).

\textsuperscript{177} See What is a Puppy Mill, supra note 18 (recounting high concentration of dogs in commercial kennels).
certain physical characteristics of the facility and its current discharges, such as its proximity to a local water supply.\textsuperscript{178}

Commercial dog breeding facilities and CAFOs also share the same risks of disease transmission and environmental contamination.\textsuperscript{179} Like puppy mills, animals kept in CAFOs can contaminate soil and water with transmittable parasites, bacteria and viruses through improper waste management.\textsuperscript{180} Studies of CAFOs have shown that "[p]athogens, such as Cryptosporidium, have been linked to impairments in drinking water supplies and threats to human health. Pathogens in manure can also create a food safety concern if manure is directly applied to crops at inappropriate times."\textsuperscript{181} The parasites Cryptosporidium and Giardia are both found in livestock waste, as well as dog waste, and can remain viable in the environment over long periods of time.\textsuperscript{182} These findings support statements by the CDC that household dog waste is a significant source of environmental pollution and a public health concern.\textsuperscript{183} It follows, therefore, that a commercial breeding facility containing hundreds of dogs that does not have a proper waste management plan could be a public health disaster requiring further regulations.\textsuperscript{184}

B. Regulating Discharges from CAFOs and AFOs: The Clean Water Act and USDA-EPA Unified National Strategy

The primary goal of the Clean Water Act (CWA) at its inception was to regulate, and eventually eliminate, all discharges of pol-

\textsuperscript{178} See 40 C.F.R. pt. 122.23(c)(3) (promulgating specific criteria making AFOs into CAFOs). The Unified National Strategy for Animal Feeding Operations suggests that AFOs not meeting animal unit requirements as CAFOs, should still be required to have NPDES permits because of: (1) significant manure production; (2) unacceptable conditions; or (3) significant contributions to impaired water quality. U.S. DEP’T OF AGRIC., U.S. ENVTL. PROT. AGENCY, UNIFIED NATIONAL STRATEGY FOR ANIMAL FEEDING OPERATIONS 4.5 (1999), available at http://www.epa.gov/npdes/pubs/finafost.pdf (establishing strategy for confronting AFO pollution).

\textsuperscript{179} Compare What is a Puppy Mill, supra note 18 (listing common diseases-afflicting puppy mill dogs), with Bowman, supra note 171 (recounting various pathogens that leach into the environment from animal feeding operations).

\textsuperscript{180} See Bowman, supra note 171, at 11 (describing pathogens in manure).

\textsuperscript{181} Unified National Strategy, supra note 178, at 2.2 (reciting particular water quality and public health concerns related to AFOs); see also, Cryptosporidium Infection and Animals, supra note 137 (identifying dogs as source of transmission of disease to humans).

\textsuperscript{182} See Bowman, supra note 171 (discussing pathogens).

\textsuperscript{183} See GUIDELINES FOR VETERINARIANS, supra note 145 (discussing environmental and public health problems associated with intestinal parasites in pet dog).

\textsuperscript{184} See Petitioners’ Brief and Appendix I, supra note 151, at *34-35 (arguing that the misapplication of dog waste risks contaminating local groundwater).
SOMETHING STINKS

pollutants into the navigable waters of the United States. Through the NPDES permit program, the EPA or a state-run agency administers permits to pollutant dischargers based on industry-specific technical standards. Section 502 of the CWA includes agricultural waste in the definition of pollutant, thereby making NPDES permits applicable to CAFOs.

The Office of Wastewater Management reports that “[p]ublic concern over the contamination of surface and ground water from animal agriculture waste is currently renewing interest on the part of both the livestock industry, the public and regulatory agencies in developing strategies for reducing and eliminating this source of water pollution.” CAFOs are regulated by pollution permits because the practice of housing a significant number of animals in a small location creates a significant, sometimes definitive, risk of environmental contamination from discharges. The common agricultural scheme of CAFOs “[c] ongregate[s] animals, feed, manure and urine, dead animals, and production operations on a small land area.” Research demonstrates that without proper waste management planning and techniques, the risk that animal manure from these operations will pollute the local environment is a practical certainty.

A CAFO is required to file for an NPDES permit if it discharges pollutants into navigable waters or proposes to make such discharges. Under the revised 2008 CAFO regulations for NPDES permits, qualifying CAFOs are required to file a nutrient management plan concurrent with a Notice of Intent (NOI) for a general or individual permit. After the EPA reviews the CAFO’s submissions, the NOI and nutrient management plan are made public for

187. See Clean Water Act § 1362 (defining applicable terms).
188. CAFOs AND THEIR EFFECT ON WATER POLLUTION, supra note 176 (stating purpose behind concerns over CAFOs and pollution).
189. See UNIFIED NATIONAL STRATEGY, supra note 178, at 2.1 (reporting on joint agency effort regarding procedures for regulation of AFOs).
190. Id. (stating practices that contribute to environmental pollution from AFOs).
191. See id. at 2.2 (citing water quality and public health risks associated with AFOs).
192. See 40 C.F.R. pt. 122.23(d) (stating duty to file permit application requirements for CAFOs).
Once a permit is approved, the EPA or state permitting authority is able to monitor the CAFO for compliance with all permit terms, as well as procedures enumerated in the nutrient management plan, including "information, protocols, best management practices (BMPs) and other conditions in the NMP necessary to meet the NMP requirements." Under the NPDES program, CAFOs are also expected to conduct internal monitoring of waste management activities, keep adequate records and report any problems to the appropriate authorities.

Under the Unified National Strategy for Animal Feeding Operations established between the USDA and EPA, AFOs not defined as CAFOs (and therefore not required to obtain pollution permits) are encouraged to voluntarily create a Comprehensive Nutrient Management Plan (CNMP). A CNMP for animal waste management is the "overall conservation system that addresses all aspects" of an AFO, including manure handling and storage, land application of manure, and nutrient management practices. The Unified National Strategy enumerates several benefits for AFOs who voluntarily establish these plans. Through the USDA-EPA joint effort, "a variety of voluntary programs provide the technical and financial assistance to help producers meet technical standards and remain economically viable."

See id. at 3 (confirming that nutrient management plans must be approved and provided for public comment under new rule). The public can also request a hearing with the appropriate regulatory agency before the permit is granted to the CAFO. See 40 C.F.R. pt. 122.25(h) (setting forth procedures for CAFOs seeking general permits).

CAFO FINAL RULEMAKING Q & A, supra note 193, at 4 (restating requirements of nutrient management plan that are incorporated into permit).

See UNDERSTANDING CAFOs, supra note 173 (summarizing compliance and enforcement mechanisms of CAFO permits).


NATURAL RES. CONSERVATION SERV., COMPREHENSIVE NUTRIENT MANAGEMENT PLANS (defining elements of CMNP for animal feeding operations) (on file with author). Nope. I can give you a copy if you need it.

See UNIFIED NATIONAL STRATEGY, supra note 178, at 4.0 (recounting voluntary programs for CAFOs establishing CNMPs).

Id. (introducing technical and financial assistance programs). Some of the strategic goals addressed in the Unified National Strategy include voluntary programs to train AFO operators on modern waste treatment systems, several sources of financial assistance from federal agencies and grant programs, as well as tax incentive proposals. Id. at 4.1.
The bifurcated system of AFO and CAFO pollution regulation is well-suited for the commercial dog breeding context.\textsuperscript{201} The system would target the largest of the polluting puppy mills, classified as CAFOs, through required permit programs.\textsuperscript{202} Smaller operations, classified as AFOs, but still with the power to cause serious pollution problems, would be given numerous incentives to modernize waste management practices.\textsuperscript{203} Further, the element of open public comment on permit applications is particularly important to the commercial dog breeding context.\textsuperscript{204} As evidenced by the McDuffee case, community zoning boards are not always responsive to public concerns regarding the environmental impact of a planned commercial breeding facility.\textsuperscript{205} Finally, the required record keeping, reporting and additional inspection authority granted by the NPDES program may be the final push needed to institute positive and lasting changes in the daily lives of kennel dogs.\textsuperscript{206}

VI. CONCLUSION: PROTECTING THE LAND FOR TOMORROW'S PETS AND OWNERS

As the phenomenon of puppy mills arose in response to developments in agriculture, the solution to the puppy mill problem can be found in the field of agriculture.\textsuperscript{207} Evoking the rhetoric of land stewardship, the USDA-EPA Unified National Strategy sought to reinforce “[a] sustainable society [which] requires a sustainable environment — one depends on the other.”\textsuperscript{208} Commercial breeders continue to see puppy mill dogs simply as a cash crop or means to a

\textsuperscript{201} For a discussion of similarities between puppy mills and AFOs, see supra notes 174-84 and accompanying text.

\textsuperscript{202} For a discussion of statutory definition of AFOs and CAFOs, see supra notes 175-78 and accompanying text.

\textsuperscript{203} For a further discussion of incentive programs for AFOs see supra notes 197-200 and accompanying text.

\textsuperscript{204} For a discussion of the community problems associated with the McDuffee commercial breeding facility, see supra notes 155-57 and accompanying text.

\textsuperscript{205} For a discussion of pollution associated with the McDuffee commercial breeding facility, see supra notes 151-54 and accompanying text.

\textsuperscript{206} For a discussion of the benefits of record keeping in the commercial breeding context, see supra notes 195-96 and accompanying text.

\textsuperscript{207} For a discussion of the feasibility of applying agricultural laws to puppy mills, see supra notes 185-206 and accompanying text.

\textsuperscript{208} Unified National Strategy, supra note 198, at 4.1 (evoking stewardship ethic to encourage voluntary compliance with CNMPs by AFOs).
financial end; anti-cruelty laws, though well-intentioned, have not changed that mentality.\footnote{209}

Appealing to the roots of the puppy mill problem - to breeders as stewards of the land for future generations - may finally have the desired effect of improving conditions for kennel dogs.\footnote{210} Commercial breeders have a responsibility to treat the future companion pets of Americans humanely, but they also “have the responsibility to be good stewards of the land under their care.”\footnote{211} Regulation of puppy mills under the CWA pollution permit program and “voluntary development and implementation of CNMPs provide AFO operators with a way to embrace agricultural sustainability and this stewardship ethic.”\footnote{212}

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\footnote{209. See What is a Puppy Mill, supra note 18 (discussing inception of puppy mills as cash crop for failing farms).}

\footnote{210. For a discussion of applying a stewardship thematic to CAFO and AFO operators to entice compliance, see supra notes 207-09 and accompanying text.}

\footnote{211. \textit{UNIFIED NATIONAL STRATEGY}, supra note 198, at 4.1 (discussing values behind voluntary participation).}

\footnote{212. \textit{Id.} (proffering ethical considerations for adopting voluntary CNMPs).}

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