

PROPOSED RULEMAKING

CANINE HEALTH BOARD

[7 PA. CODE CHS. 28 AND 28a]

Canine Health Board Standards for Commercial Kennels

The Canine Health Board (Board), created under section 221 of the Dog Law (3 P. S. § 459-221) (act), through the Department of Agriculture (Department), as set forth under section 221(g) of the act, proposes to create Chapter 28a (relating to canine health board standards for commercial kennels). Section 221(f) of the act charges the Board with the duty to determine standards to provide for the health and well being of dogs in the specific areas of ventilation, lighting and floors in commercial kennels. The Board was required to and did issue temporary guidelines published at 39 Pa.B. 310 (January 17, 2009), which are to be promulgated as regulations by the Department as set forth in section 221(g) of the act. The Board proposes to create specific standards that will protect the health and well being of dogs in commercial kennels (Class C kennels).

Background

The proposed regulations are required under sections 207(h)(6), (7) and (8), (i)(3) and 221 of the act (3 P. S. §§ 459-207(h)(6), (7) and (8), (i)(3) and 459-221). The intent of the regulations is to create ventilation, lighting and additional flooring standards that will protect the health and well being of dogs housed in Class C kennels. These provisions are necessary as the act created the Board and directed it to address these limited issues.

The major features of the proposed regulations are summarized as follows:

Summary of Major Features

Section 28a.1. Definitions.

This section defines various terms utilized in the body of the regulations to further clarify the regulations.

Section 28a.2. Ventilation.

Standards are established to satisfy the directive of section 207(h)(6) and (7) of the act regarding ventilation. Specifically, the proposed regulation addresses poor ventilation conditions that cause health and welfare problems in dogs, by establishing specific ventilation standards that must be met to ensure that these health and welfare problems do not develop. The specifics include that ventilation must be achieved through a mechanical system that will allow for 8–20 air changes an hour, keep consistent moderate humidity, institute auxiliary ventilation when the temperature rises above 85° F, keep ammonia levels and particulate matter at established levels and keep odor minimized as it is a sign of disease and bacteria growth.

Section 28a.3. Lighting.

The proposed regulation delineates lighting standards of both natural and artificial light in accordance with the Board's duty and requirements set forth in section 207(h)(8) of the act.

Section 28a.4. Flooring.

The Board through this proposed regulation has approved solid flooring to be appropriate for use in Class C kennels as well as the flooring already approved in the

legislation in accordance with section 207(i)(3) of the act. The proposed regulation establishes the standards to be met if solid flooring is utilized.

Fiscal Impact

Commonwealth

The proposed regulation, once published as final-form regulations, would impose additional fiscal impacts upon the Department's Bureau of Dog Law Enforcement (Bureau). Once the final regulations are in place, additional fiscal impacts will be imposed. Those costs will be paid for entirely from the Dog Law Restricted Account. No general fund money will be used. The Department, in the Regulatory Analysis Form that accompanies the proposed regulation, has set forth an estimate of costs to the Bureau to enact and enforce the new regulatory standards that would be imposed by the final regulations.

Political Subdivisions

The addition of mechanical ventilation, additional artificial or natural lighting and flooring changes may require UCC permit and inspections. This should not specifically increase or decrease costs to local governments, however. Documentation from the Center for Local Government Services, Department of Community and Economic Development (DCED), confirms that municipalities are collecting fees to cover the expenses of Pennsylvania Uniform Construction Code (UCC) administration and enforcement, so that these proposed regulations will not have a fiscal impact on municipalities. Any additional workload generated by the regulation would be offset by the fees collected in association with the specific permit.

The enforcement of the regulations will neither increase nor decrease any costs to local governments. Compliance with the ventilation, lighting and additional flooring standards required of Class C kennels standards will be enforced solely by the Department. Local governments will have no role in enforcement or any other area associated with the regulations in the Commonwealth.

Most municipalities do not have commercial kennels. Nearly all are in 10 of the 67 counties—more than half are in Lancaster County. Commercial kennels represent about 15% of the total number of kennels regulated by the Department.

Private Sector

The regulations once published as final-form regulations will impose additional costs, at least for initial compliance, on the regulated community (Class C kennels). Class C kennels will likely have to make changes (some significant depending on the current state of their kennel operation) to comply with the ventilation and lighting provisions of the regulation. The flooring provisions of the regulation actually expand the type of flooring allowed under the act, in section 207(i)(3) and do not impose any new requirement. The costs to the regulated community will be varied, depending on the size and condition of the existing kennel. The Department has provided an estimate of costs to existing Class C kennels for compliance with the new standards in the Regulatory Analysis Form that accompanies these proposed regulations.

General Public

The regulations, once promulgated as final-form regulations, may raise the cost of purchasing a dog and

therefore may affect purchasers of dogs. However, the general public will benefit from the implementation of the standards in the regulations, as the standards are intended, as were the amendments to the Dog Law that precipitated the regulations, to improve the health and welfare of the dogs and puppies that are sold to the general public. There are no mandatory requirements imposed on the general public by the regulation.

Paperwork Requirements

The Department will not have to develop a large array of new application forms or review procedures, but in some cases may want to amend current forms. The Department will have to develop forms related to ventilation calculations.

Effective Date

The proposed rulemaking will be effective 90 days after publication in the *Pennsylvania Bulletin* as final-form rulemaking.

Sunset Date

There is no sunset date for the regulations. The Department will review the efficacy of this regulations on an ongoing basis.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed regulations within 45 days following publication in the *Pennsylvania Bulletin*. These comments are public documents that will be posted on the Independent Regulatory Review Commission (IRRC) web site. The comments may be mailed to the Canine Health Board, c/o Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Room 102, Harrisburg, PA 17110. The Bureau will forward the comments to the Board.

Regulatory Review

The Department submitted a copy of the proposed regulations to Independent Regulatory Review Act (IRRC) and to the House and Senate Standing Committees (Committees) on Agriculture and Rural Affairs on September 1, 2009, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees with a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulations, it must so notify the Department within 30 days of the close of the public comment period.

The notification must specify the regulatory criteria that have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

DENNIS C WOLFF,
Secretary

(Editor's Note: Effective _____ (The blank refers to a date 90 days after the publication of the final-form rulemaking in the Pennsylvania Bulletin, §§ 28.1—28.3 will be rescinded and deleted from the Pennsylvania Code.)

Fiscal Note: 2-170. (1) General Fund; (2) Implementing Year 2009-10 is \$94,775; (3) 1st Succeeding Year 2010-11 is \$675; 2nd Succeeding Year 2011-12 is \$675; 3rd

Succeeding Year 2012-13 is \$675; 4th Succeeding Year 2013-14 is \$675; 5th Succeeding Year 2014-15 is \$675; (4) 2008-09 Program—\$0; 2007-08 Program—\$0; 2006-07 Program—\$0; (7) Dog Law Restricted Account; (8) recommends adoption.

Annex A

TITLE 7. DEPARTMENT OF AGRICULTURE PART II. DOG LAW ENFORCEMENT BUREAU CHAPTER 28. (Reserved)

§§ 28.1—28.3. (Reserved).

CHAPTER 28a. CANINE HEALTH BOARD STANDARDS FOR COMMERCIAL KENNELS GENERAL PROVISIONS

Sec.	
28a.1.	Definitions.
28a.2.	Ventilation.
28a.3.	Lighting.
28a.4.	Flooring.

§ 28a.1. Definitions.

The following words and terms, when used in this chapter have the following meanings, unless the context clearly indicated otherwise.

ANSI/U.L. Standard 2034 and IAS 6-96—Independent laboratory testing standards for carbon monoxide detectors.

Excessive light—Direct, undiffused light, from either the sun or a lighting fixture placed in a manner that the light is shining directly into a primary enclosure of a dog.

Mechanical ventilation—Ventilation produced by operation of a machine. So long as its operation results in compliance with the standards established in this chapter, a mechanical ventilation system may range from very basic, such as an exhaust fan, to more sophisticated systems such as a HVAC system with temperature and humidity controls.

Primary enclosure—

(i) The primary structure that restricts a dog's ability to move in a limited amount of space, such as a room, cage or compartment.

(ii) The term does not include a run described in section 207(i)(6) of the act (3 P. S. § 459-207(i)(6)).

§ 28a.2. Ventilation.

Proper ventilation helps ensure that dogs are healthy and not stressed. Each area of the kennel where dogs are present must utilize a functional, mechanical ventilation system that provides ventilation to satisfy the requirements of this section. The following standards shall be met at all times that a dog is present in the facility:

(1) When the ambient air temperature is 85° F, a form of mechanical ventilation capable of reducing air temperature shall be utilized to reduce air temperature where dogs are present. If the ambient air temperature in any portion of the facility is 86° F or higher, despite mechanical ventilation utilized, dogs may not be present in those portions of the facility. This paragraph does not apply to outdoor exercise areas.

(2) When the temperature is 50—75° F, the relative humidity shall be in the range of 40—60%. The relative humidity shall be measured at standing shoulder level of 10% of the dogs in the kennel, randomly selected from all rooms. Relative humidity may not be measured in a primary enclosure within 30 minutes of the completion of active cleaning of that primary enclosure.

(3) When the temperature is above 75° F, the relative humidity shall be 1%—50%. The relative humidity shall be measured at standing shoulder level of 10% of the dogs in the kennel, randomly selected from all rooms. Relative humidity may not be measured in a primary enclosure within 30 minutes of the completion of active cleaning of that primary enclosure.

(4) Ammonia levels must be less than 10 ppm. The ammonia level shall be measured at shoulder level of dogs housed in the primary enclosure of 10% of the dogs in the kennel at standing shoulder height, randomly selected from all rooms, as well as on the floor of the four corners of the housing facility and at least one location on the floor along each wall of the facility. Ammonia in a primary enclosure may not be measured within 30 minutes of the completion of active cleaning of that primary enclosure.

(5) The means of ventilation employed must ensure that carbon monoxide (CO) levels are maintained below detectable levels in all areas of the kennel. Kennels shall install and maintain CO detectors with the ability to monitor the CO level throughout the entire facility. The detectors must meet or exceed the UL standard 2034 or the IAS 6-96 standard, or its successor standards.

(6) In the event of a mechanical system malfunction, the kennel must have windows, doors, skylights, or other openings in the structure that are operable to maintain ventilation. In the event of a mechanical system malfunction, the kennel shall contact the Bureau of Dog Law and consult on the steps to be taken to protect the health and well being of the dogs and take steps to correct the malfunction immediately.

(7) The means of ventilation employed must ensure that particulate matter (PM) from dander, hair, food, bodily fluids, and other sources in a primary enclosure are below 10 milligrams per meter cubed. The PM shall be measured at shoulder level of dogs housed in the primary enclosure of 10% of the dogs in the kennel. The PM may not be measured within 30 minutes of the completion of active cleaning of that primary enclosure.

(8) The following requirements apply to air changes:

(i) The kennel shall provide between 8—20 air changes of 100% fresh air per hour in each room of the facility that houses dogs.

(A) The air changes shall be calculated using the following information supplied by the kennel to the Department:

- (I) The volume of the facility.
- (II) The linear dimensions of the facility.
- (III) The number of primary enclosures.
- (IV) The cubic feet occupied by each primary enclosure.
- (V) The dimensions of all intake or exhaust vents of any fans as well as their capacity, or other system specifications.

(B) The information shall be submitted to the Department by _____. (*Editor's Note:* The blank refers to a date after the regulations are published as final-form rulemaking in the *Pennsylvania Bulletin*.) and within 90 days of any change to the volume of the facility, the linear dimensions of the facility, the number of primary enclosures, or the dimensions of the opening and exhaust vents of any fans. The information submitted to the Department shall be kept as part of the kennel's records.

(ii) Air velocity measurements will be taken at all intake vents or exhaust vents and at shoulder level of dogs housed in the primary enclosure for 10% of the dogs in the kennel randomly selected from each room.

(iii) The kennel owner shall be in violation if one or more of the following apply:

(A) The computed air change rate based on the data submitted under subparagraph (i) is not 8—20 air changes per hour.

(B) If the air change rate as measured at the vents is not 8—20 air changes per hour, and there is a simultaneous noncompliance with any of the requirements in paragraphs (1)—(7), (9)—(12) or this paragraph.

(C) If the measured velocity reading at standing dog shoulder height does not result in a computation of 8—20 air changes in the primary enclosure and the air change in subparagraph (i) is satisfactory violation will not be issued unless there is a simultaneous noncompliance with any of the requirements in paragraphs (1)—(7), (9)—(12) or this paragraph.

(iv) If a computation or measurement under subparagraph (iii) is not satisfactory, the kennel owner shall take the necessary steps to meet the requirements.

(v) The Department may hire or consult with an engineer to recommend improvements be made to kennels to meet compliance with this paragraph.

(9) Dogs may not exhibit conditions or signs of illness or stress associated with poor ventilation, including the following:

- (i) Excessive panting.
- (ii) Elevated body temperature.
- (iii) Active avoidance of areas of the kennel.
- (iv) Shivering.
- (v) Huddling of dogs 12 weeks of age or older.
- (vi) Mucous dripping from the nose of a dog.
- (vii) Redness or crusting of eyes or nose.
- (viii) Runny eyes.
- (ix) Blindness.
- (x) Coughing or sneezing.
- (xi) Moist areas of hair.
- (xii) Diarrhea.
- (xiii) Bloody diarrhea.
- (xiv) Vomiting.
- (xv) Listlessness.
- (xvi) Presence of blood.
- (xvii) Death.

(10) The air in the facility may not have excessive dog odor, other noxious odors, stale air, moisture condensation on surfaces, or lack of air flow.

(11) When employing mechanical means of ventilation and recirculating air, the air shall be filtered with small particle, nonozone producing air filters.

(12) All ventilation systems must comply with the latest edition of applicable codes.

§ 28a.3. Lighting.

Natural lighting is important to the development of dogs. Each kennel shall have a mix of natural and artificial light, provided in the following manners:

(1) *Natural light.*

(i) Each dog shall have exposure to light from natural sources passing through external windows, external sky lights or other external openings.

(ii) The minimum combined total of net glazed area of external windows, external sky lights or area of other external openings through which natural light passes within each room where dogs are housed may not be less than 8% of the floor space. All external windows, external skylights and external openings must be transparent and unobstructed to satisfy this section.

(iii) Dogs shall be protected from excessive light.

(iv) Outdoor exercise areas shall provide an area of shade large enough to protect all the dogs utilizing the exercise area from the direct rays of the sun.

(v) If a kennel is granted a waiver for indoor exercise under section 207(i)(6)(x)(B) of the act (3 P.S. § 459-207(i)(6)(x)(B)), the primary enclosure must be configured to allow natural light to come into each primary enclosure.

(vi) If a kennel is granted a waiver for indoor exercise under section 207(i)(6)(x)(B) of the act (3 P.S. § 459-207(i)(6)(x)(B)), full spectrum lighting shall be provided for the entirety of the daytime cycles in areas that house dogs.

(2) *Artificial light.*

(i) Artificial, indoor, daytime lighting must provide full spectrum lighting between 50—80 foot candles at standing shoulder level of the dogs for daytime lighting.

(ii) Night time artificial lighting must be 1—5 foot candles at standing shoulder level of the dogs of lighting.

(iii) Artificial lighting provided must approximately coincide with the natural diurnal cycle.

(iv) Lighting sources may not have a visible flicker.

(v) Light sources, whether their primary purpose is to provide heat or light, shall be provided in a manner that prevents dogs from touching a light, fixture, bulb, switch or cord.

(3) *Applicable codes.* All lighting must comply with the latest edition of applicable codes.

§ 28a.4. Flooring.

Proper flooring is essential for normal behavior and proper orthopedic development of the dogs. For dogs over 12 weeks of age, the flooring must meet the standards in the act or as set forth as follows:

(1) In addition to the flooring already approved in section 207(i)(3) of the act (3 P.S. § 459-207(i)(3)), solid flooring is approved for use.

(2) Solid flooring must be sloped to a drain that is free of debris and in good repair.

(3) Drain covers shall be provided and shall be securely fixed and made of a noncorrosive substance.

(4) Flooring may not be metal nor any other material with high thermal conductance. This does not exclude the use of radiant heat flooring, or a flooring system to cool, provided that a dog has an area to escape the heat if it gets too warm or too cold.

(5) All floors and drains must comply with the latest edition of applicable codes.

(6) The surface of the flooring must provide the dogs with good footing. Examples include sealed concrete, painted concrete, epoxy flooring, sealed wood, textured and sealed tile.

(7) Flooring shall be cleaned in accordance with section 207(h)(14) of the act and may be subject to microbial assessment.

(8) Flooring may not be made of or coated with materials that are toxic to dogs.

[Pa.B. Doc. No. 09-1682. Filed for public inspection September 11, 2009, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

Control of NOx Emissions from Glass Melting Furnaces

The Department of Environmental Protection (Department) is soliciting comments on changes it recommends be made to the glass melting furnaces proposed rulemaking published at 38 Pa.B. 1831 (April 19, 2008).

The draft final-form rulemaking establishes in 25 Pa. Code Chapter 129 (relating to standards for sources) NOx emission control requirements, emission limit standards, and emission limitations for glass melting furnaces and related administrative requirements for glass melting furnaces. The draft final-form rulemaking contains definitions of terms in Chapter 121 (relating to general provisions) including “blown glass,” “container glass,” “fiber-glass,” “flat glass,” “furnace rebuild,” “glass melting furnace,” “pressed glass,” “pull rate,” “rebricking,” “shut-down” and “start-up.” Compliance with the NOx emission limits may be demonstrated on a furnace by furnace basis, facility-wide emissions averaging or by system-wide emissions averaging among glass melting furnaces under common control of the same owner or operator in this Commonwealth. This draft final-form rulemaking to reduce NOx emissions from glass melting furnaces assures that the Commonwealth will continue to experience improved ozone, fine particulate and visibility benefits. NOx is a precursor to ozone and fine particulates, which in turn facilitate the formation of haze. Adoption of NOx emission limits for glass melting furnaces is part of the Commonwealth’s strategy, in concert with other Ozone Transport Region (OTR) jurisdictions, to reduce transport of ozone to attain and maintain the health-based 8-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, the adoption of this measure will improve public health and social well being by reducing emissions of NOx and the subsequent formation of ozone, fine particulates and haze and is reasonably necessary to attain and maintain the health-based ozone and fine particulate NAAQS. To the extent that this regulation is more stringent than any corresponding Federal requirements, it is reasonably necessary to achieve and maintain the health-based 8-hour ozone and the fine particulate NAAQS. This draft final-form rulemaking, if adopted as a final-form regulation, will also be submitted to the Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan (SIP).

A. Summary of the Advance Notice of Final-Form Rulemaking Changes

In response to comments received during the official public comment period on the proposed rulemaking for glass melting furnaces (38 Pa.B. 1831) and following the Department's review of other related information, the Department has prepared a draft final-form rulemaking for public comment. The draft final-form rulemaking contains significant changes in several areas. These changes include:

- The draft final-form rulemaking revises the definition of the term "glass melting furnace" to be consistent with the definition in EPA's final rule for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing (72 FR 73180, December 26, 2009).

- The draft final-form rulemaking adds the term "rebricking" in Chapter 121. The rebricking definition is consistent with the EPA's Standards of Performance for New Sources definition. (65 FR 61759, October 17, 2000). Furnace rebricking is an important distinction from a furnace rebuild in the glass melting industry, and therefore the draft final-form rulemaking adds the "rebricking" definition to address industry's concerns.

- The proposed rulemaking required compliance by May 1, 2009, for any owner or operator of a glass melting furnace that emits or has the potential to emit NO_x at a rate greater than 50 tons per year or 20 pounds per hour. The draft final-form rulemaking requires compliance by January 1, 2011.

- The NO_x surrender compliance option, which allowed for the purchase NO_x Clean Air Interstate Rule (CAIR) allowances, has been eliminated from the draft final-form rulemaking. The EPA held discussions with the Department subsequent to the closing of the public comment period on June 23, 2008, regarding the proposed rulemaking's option to demonstrate compliance with the emission limits through the purchase of NO_x CAIR allowances under the Federal CAIR regulation. During these discussions, the EPA indicated to the Department that providing a compliance option to purchase NO_x CAIR allowances in the final-form rulemaking would not result in the approval of a revision to the SIP because glass melting furnaces are not specifically included in the EPA CAIR program as a source category.

- The provision requiring compliance with the emission limits during the ozone season from May–September has been deleted. The draft final-form rulemaking requires compliance with the NO_x emission limits year-round because NO_x is a precursor to both the 8-hour ozone and fine particulate National ambient air quality standards. In addition, it is anticipated that EPA will extend the ozone season in this Commonwealth from March 1 to October 31, each year.

- The draft final-form rulemaking adds a NO_x emission limit applicable to a glass melting furnace that produces a glass product that is other than flat, container, fiberglass, pressed or blown. The Department considered commentators who suggested that their furnaces do not produce a glass product listed in the proposed rulemaking, and therefore an "other" category of glass product was added in the draft final-form rulemaking.

- The draft final-form rulemaking deletes the exemption from the NO_x emission limits for a glass melting furnace where the heat is supplied solely by an electric current from electrodes submerged in the molten glass. The Department believes that for furnaces that supply

heat from solely electrical electrodes will not emit NO_x emissions greater than 50 tons per year or 20 pounds per hour, and therefore the exemption is unnecessary.

- The draft final-form rulemaking adds an exemption from the NO_x emission limits for a glass melting furnace during idling. The Department concurred with commentators who requested the exemption because during an idling scenario, a glass melting furnace would be producing at less than 25% of the permitted production capacity or fuel use capacity in accordance with the applicable requirements in a Federally-enforceable plan approval or operating permit. When technologically feasible, controls must be operated to minimize emissions during idling.

- The draft final-form rulemaking adds a petition process for an alternative compliance deadline for any glass melting furnace that demonstrates to the Department's satisfaction that it is economically or technologically infeasible to meet the January 1, 2011, compliance deadline. The Department considered public comments which suggested that some furnaces cannot meet the emission limits without furnace rebuilds or furnace rebricks, and the furnaces are not anticipated to do rebuilds or rebricks before 2011, so allowing for an alternative compliance deadline is reasonable.

- The draft final-form rulemaking provides a petition process for alternative emission limitations for glass melting furnaces that produce a glass product other than flat, container, fiberglass, pressed or blown glass. The furnaces that produce a glass product other than flat, container, fiberglass or pressed and blown glass were not considered during the glass melting furnaces control measures strategy and planning within the Ozone Transport Commission, so providing them an alternative emission limitation is also reasonable.

- The draft final-form rulemaking adds a longer furnace start-up exemption time for furnaces that install NO_x controls that are not in common use or are not readily available from a commercial supplier. The approach is consistent with other states' glass melting furnace's regulations and affords the same flexibility for owners and operators installing NO_x controls in the Commonwealth.

- The draft final-form rulemaking provides an owner or operator of a glass melting furnace the option to demonstrate compliance with the emission limits on a furnace-by-furnace basis, facility-wide averaging basis, or a system-wide averaging basis among glass melting furnaces under common control of the same owner or operator in this Commonwealth. The draft final-form rulemaking includes a prohibition against demonstrating compliance using emissions averaging if an owner or operator of a glass melting furnace, having been granted approval by the Department, has voluntarily opted into a market-based program. The draft final-form rulemaking stipulates that an emission reduction obtained by emissions averaging to demonstrate compliance with the emission limits will not be considered surplus for emission reduction credit purposes. This prohibition is required to ensure that actual emission reductions due to the implementation of the rulemaking are occurring, and not being traded in a market-based NO_x program promulgated in the future as part of a Federal CAIR replacement rule. (CAIR was remanded to the EPA on December 23, 2008, by the United States Court of Appeals for the District of Columbia Circuit. The final rule which is expected in 2011, must be revised to be consistent with

the Court's July 11, 2008, decision in *State of North Carolina v. Environmental Protection Agency*, No. 05-1244 (D.C. Cir.).)

- The draft final-form rulemaking requires a demonstration of compliance with the emission limits on a 30-day rolling averaging basis. Use of an arithmetic average of the daily emissions over a contiguous 30-day period to demonstrate compliance with the NOx emission limitations is consistent with the OTC's model rule and rulemakings adopted or proposed by other OTR jurisdictions.

While there is no legal requirement to provide an opportunity to comment upon the Department's recommendations for final-form rulemaking, the Department believes further discussion would serve the public interest in this instance.

B. *Contact Persons*

For further information or to request a copy of the draft final-form rulemaking, contact Jane Mahinske, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17101-8468, (717) 783-8949,

jmahinske@state.pa.us; or Robert Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The draft final-form rulemaking is available electronically through the Department's web site (<http://www.dep.state.pa.us>), (Quick Access Keyword: Public Participation).

Written or electronic comments should be sent to Jane Mahinske at the previous address. Comments must be received by October 14, 2009. A subject heading of the rulemaking and a return name and address must be included in each letter or transmission. Comments will not be accepted by facsimile or voice mail.

JOHN HANGER,
Secretary

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