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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 8, 2005

Honorable Dennis C. Wolff, Secretary  
Department of Agriculture  
211 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Regulation #2-147 (IRRC #2473)  
Department of Agriculture  
Nutrient Management Certification

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me at 783-5506.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Kaufman", with a long horizontal stroke extending to the right.

Kim Kaufman  
Executive Director

evp

Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Agriculture and Rural Affairs Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee  
Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee

# Comments of the Independent Regulatory Review Commission

on

## Department of Agriculture Regulation #2-147 (IRRC #2473)

### Nutrient Management Certification

June 8, 2005

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Agriculture (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 9, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### 1. Section 130b.2. Definitions. - Consistency with the statute; Clarity.

This section defines the terms, “BMP- Best management practice,” “Nutrient,” and “Nutrient management plan” differently than they are defined in the Nutrient Management Act (Act).

We question the need for the regulatory definitions of the above terms which differ from the definitions contained in the Act. If the Department does not reference the statutory definitions in the final regulation, it should justify the changes.

#### 2. Section 130b.3. Fees. - Fiscal impact; Consistency with the statute; Reasonableness.

Both Subsections (a) and (b) establish a process for the Department to set certification and examination fees by publishing notice of the fees or fee changes in the *Pennsylvania Bulletin*. This is contrary to Section 7(a) of the Act (3 P.S. § 1707(a)), which provides: “The Department of Agriculture shall **by regulation** establish such fees and terms and conditions of certification as it deems appropriate . . .” (emphasis added). We have three concerns.

First, establishing fees or fee changes merely by publication in the *Pennsylvania Bulletin* is not consistent with the clear statutory directive that fees be established by regulation. Therefore, the proposed regulation should follow the same approach as the existing regulation and include the fees.

Second, it is unnecessary to include the cost of “enforcing this chapter” as a basis for both the certification and examination fees. Therefore, the phrase “and enforcing this chapter” should be deleted from Section 130b.3(b).

Third, if the final-form regulation does not contain the specific fees, then there is no certainty concerning the fee levels for different types of certification. In the existing regulation, the fees vary depending on the type of certification (commercial, public or individual). Will the Department continue to apply different fee levels? Does the practice of charging different fee levels also coincide with the policy of basing fees on the costs of administering and enforcing the chapter? If specific fees are not set forth in the final-form regulation, then the formula or process used to apportion the fees for different types of certification should be included in the final-form regulation.

**3. Section 130b.11. Determination of competence. - Implementation procedure; Clarity.**

*Subsection (a) Commercial nutrient management specialist.*

*Subsection (b) Public nutrient management specialist.*

These subsections include the phrase: "It may also include other course work related to requirements set forth in the nutrient management regulations which are determined by the Department to be necessary and appropriate." These subsections also contain descriptions of requirements that are very similar to the requirements for each position in Subsection (g) (relating to final certification requirements). We have three concerns.

First, the final-form regulation should include examples of the types of "other course work" that would be necessary in response to changes in the science or technology of nutrient management. In addition, what process will be used to determine what is "necessary and appropriate"?

Second, to improve clarity, the word "It" should be replaced with the phrase: "The precertification requirements."

Third, it is unnecessary for these two subsections to include requirements similar to those set forth in Subsection (g). These requirements involve the development or review of nutrient management plans by certificate holders and determinations by the Department or its designee that these plans are adequate. It is our understanding that the successful development or review of these plans is a requirement for final certification, not for precertification. To improve clarity and avoid repetition, the descriptions of these final certification requirements should be deleted from Subsections (a) and (b).

*Subsection (d) Examination.*

The following phrase has been added to the areas of the examination administered by the Department:

- (9) Other areas related to requirements in the nutrient management regulations, as determined appropriate by the Department.

The concerns with this subsection are similar to those identified above in Subsections (a) and (b) regarding examples of "other areas" and determining what is "appropriate." In addition, the final-form regulation should specify that new "areas" added to the examination will also be included in the required course work in Subsections (a) and (b).

*Subsection (h) Public nutrient management specialist to commercial nutrient management specialist.*

The first sentence of this subsection should read, “The Commission with the consent of the Department . . . .”

**4. Section 130b.12. Final certification. - Clarity.**

Subsection (a) requires that, “[T]he appropriate fee shall accompany the application for final certification.” It is our understanding that an “appropriate fee” is a “certification fee.” Certification fees are described in Section 130b.3(a) as “nonrefundable” and as established by the Department for each level of certification via publication in the *Pennsylvania Bulletin*. The final-form regulation should include the word “certification” between “appropriate” and “fee” and a reference to Section 130b.3(a) in this subsection. If the final-form regulation includes a schedule of fees similar to the existing regulation as recommended in **Issue #2**, then this subsection should reference the provisions that set forth the appropriate certification fees.

**5. Section 130b.41. General. - Clarity.**

Subsection (c) stipulates the requirements a commercial nutrient management specialist must meet to have reciprocity in this Commonwealth. Is there a time frame in which an applicant must submit the required plans to the Department or its designee for approval? If so, the time frame should be included in this subsection.

Leo or Dave

Facsimile Cover Sheet

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Administrative Officer



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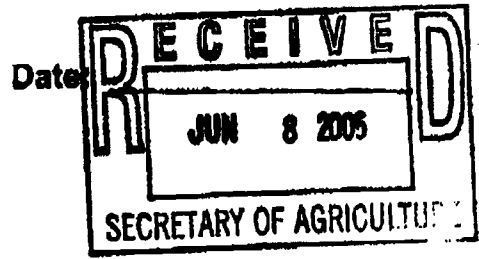
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To: Heidi Svonaves *Janna Ward*  
Agency: Department of Agriculture  
Phone: 2-2853  
Fax: 5-8402  
Date: June 8, 2005  
Pages: 5

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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-147 (IRRC #2473). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *J. A. Ward*



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