

Commonwealth of Pennsylvania



**DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
DENNIS C WOLFF**

March 29, 2006

INDEPENDENT REGULATORY
REVIEW COMMISSION

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RECEIVED

The Honorable Arthur D. Hershey
Pennsylvania House of Representatives
House Post Office Box 202020
Suite 202, Room 214 Ryan Office Building
Harrisburg, PA 17120-2020

Dear Representative Hershey: *art*

Thank you for the letter expressing your concerns regarding the Department's proposed Commercial Manure Hauler and Broker Certification regulations. Although the Department will be responding to your letter through the formal comment and response document which accompanies the final-form regulation, I wanted to respond to you personally.

I am pleased to report that the Department's interim certification program has been attended, to date, by nearly 600 individuals – at all levels. The Department is continuing to certify Commercial Manure Haulers Levels 1 and 2 through outreach from our Regional Offices. The feedback from the course attendees has been extremely positive and helpful in shaping the training. Finally, many of the Level 1 Commercial Manure Brokers have expressed their intent to take the Department's nutrient balance sheet courses to become certified as Level 2 Commercial Manure Brokers.

Through the interim certification program, many of the suggestions we received from industry members and the General Assembly have already been implemented. The Department has scaled down the certification requirements for Level 1 Commercial Manure Haulers (requiring only a checklist to be completed), implemented an emergency certification provision for Level 2 Commercial Manure Haulers, and enlisted the assistance of Regional Directors and staff in administering the necessary training and testing for Level 1 and Level 2 Commercial Manure Haulers. The Department has made its Regional Directors and staff available to go directly to a Commercial Manure Hauler's place of business to review the checklist with Level 1 Commercial Manure Hauler applicants and to administer the test to Level 2 Commercial Manure Hauler applicants. In addition, because of the comments received, the Department intends to rewrite the recordkeeping provisions and scale down certification requirements for a Level 1 Commercial Manure Hauler. Further, the Department intends to significantly reduce the certification fee to a minimal amount, to cover its costs, and eliminate the testing fee for Level 1 Commercial Manure Haulers established in the proposed regulations.

While we have strived to address all possible issues raised by the members of the General Assembly and public, there is one issue set forth in your letter stating it was not the intent of the General Assembly that each individual employee of a Commercial Manure Hauling or Brokering business be certified. For both legal and applicability reasons, the Department does not believe the language of the Commercial Manure Hauler and Broker Certification Act can be interpreted in the manner you suggest. The proposed regulations were reviewed by attorneys from this Department, the Governor's Office of General Counsel, and the Office of Attorney General and none of them commented that they believed the Department had interpreted the language of the Act improperly. Although your intent was not to include all individuals hauling or applying manure on a commercial basis be certified, the Department is bound by the language of the Act and therefore is required to certify all persons, including individuals regardless of whether they are owners or employees of commercial manure haulers and brokers. If an individual transports or applies manure in the Commonwealth the law as written requires they be certified.

The legal rationale is that the language of the Act is clear and unambiguous with regard to whom the Department is required to certify. The definition of both a "Commercial manure hauler" and a "Commercial manure broker" references a "person" that transports or land applies manure. In addition, section 3 of the Act (which establishes the Department's duty to develop a certification program), states, "[T]he department shall establish...a commercial manure hauler and broker certification program for the purpose of certifying persons as certified manure haulers or brokers." Person is not defined by the Act; however, person is defined by the Statutory Construction Act of 1972. The SCA defines a person in a broad and inclusive manner. A person is defined as including, "...a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person." The common interpretation of statutes referring to persons is that such statute refers to and includes individuals, as well as, corporation, partnerships and businesses.

In reviewing the legislative history of the Act, the Department noted that the original House Bill (No. 1809, P.N. 2350) defined commercial manure haulers and brokers as an, "...individual or business entity" and section 3(a)(1) of that House Bill requires the Department to establish a certification program for the purpose of certifying "...individuals as certified manure haulers or brokers." The third version of the House Bill (No. 1809, P.N. 3458), which includes the Senate amendments, replaces the phrases individual or business entity with the more inclusive term person, thereby capturing individuals and business entities, as well as, corporations, partnerships, limited liability companies, business trusts and other associations, estates, trusts, foundation and government entities.

With regard to the argument that the definition of a commercial manure hauler includes the phrase "...as a contract agent for...", that phrase appears only in the definition of a commercial manure hauler and serves to distinguish a hauler from a broker. The definition of a commercial manure broker does not contain that phrase and therefore if the argument set forth in the comment letter is applied, the Department would be required to only certify the business entity where a hauler is involved, but would still be required to certify all individuals in the case of a commercial manure broker. I do not believe this interpretation would carry out the purpose of the Act or carry out the clear meaning of the words of the statute. I can see no reason why commercial manure haulers' employees should not be required to have the same training as employees of commercial manure brokers.

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The rules of statutory construction require that the "...object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly" and "...to give effect to all its provisions." Those rules go on to state, "[W]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Given the fact that the term person is so expansive and includes individuals, the Department believes the language of the Act is clear and free from ambiguity and therefore must be interpreted in that manner. The argument the Department would face in interpreting the term differently is that if the General Assembly intended to only certify the business entity, it could have narrowed the language of the Act to reflect and effectuate that intent.

Finally, requiring only the business entity to be certified would be extremely hard to administer and may be seen as circumventing the entire purpose of certification, which is education and prevention. Certifying a company official may solve the problem of tracking the manure for liability purposes, but it would do nothing to provide preventative measures. The training and testing associated with the certification process, if administered to those persons actually transporting and applying the manure will, in my opinion, better protect the public from the very concerns which prompted the passing of this legislation.

I appreciate your thoughtful letter and look forward to working with you through the regulatory process.

Sincerely,



Dennis C Wolff

cc: Senator Michael Waugh
Senator Michael O'Pake
Senator Noah Wenger
Senator Roger Madigan
Representative Peter Daley
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