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RECEIVED

Country View Family Farms, Inc.

REGULATORY  
REVIEW COMMISSION

Original: 2513

January 10, 2006

Johan Berger  
Department of Agriculture  
Commercial Manure Broker and Hauler Program  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

**Re: Commercial Manure Hauler and Broker Certification Regulations**

Dear Mr. Berger

On behalf of Country View Family Farms, we thank you for the opportunity to comment on the Commercial Manure Hauler and Broker Certification Regulations. Country View Family Farms represents a large segment of Pennsylvania's swine industry. The certification program is sure to have a great impact on numerous family farms in Pennsylvania.

**General Comments:**

**Time frame for comments:** There is inadequate time for the industry to evaluate the full scope of the proposed regulations. The department should provide addition time for public comments. The proposed regulations will affect a very large segment of the agriculture industry. The thirty-day comment period, over the holiday period, does not provide adequate time for the agriculture industry to comment on a regulation that will affect such a large segment of the agriculture industry. The regulations as proposed are also much more complex than expected or need to be. We suggest an addition 60 days be granted for comments.

**Cumbersome Regulations:** As written, these regulations are extremely cumbersome and difficult to interpret. Oftentimes references to requirements are made in sections that precede the section that defines and explains the requirement. The regulations should be as simple and easy to understand as possible in order for the manure hauler/ brokers to easily understand their requirements. A cumbersome regulation makes the regulated community uneasy about their requirements and may cause them to look for ways to circumvent the process.

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**Time frame for certification:** The proposed regulations were published in December of 2005 and comment period was open for 30 days and after the comments are received there are still several steps needed before the regulations are final. What does the Department intend to do; if the Act 49 requirement that certification must be obtained by February 26, 2006 cannot be met? Industry cannot be expected to complete comply with the certification requirements with the few days of training and testing currently proposed by the department. The Department needs to allow or provide a greater opportunity for the manure hauling industry to become certified.

**Industry Viability:** Country View Family Farms recognizes the importance of the certification regulations as it relates to assuring the public that manure is properly applied. However, the Commonwealth must understand that a certification program must be done in a way that allows the regulated industry to remain viable and productive. The agriculture industry is not prepared for the potential fallout that could happen if this program as written becomes effective. There is no doubt that people will leave the manure hauler/broker industry because of these burdensome and cumbersome regulations. The certification process should be made as streamlined as possible to assure that there is an adequate number of certified manure hauler/broker to handle the large volume of manure that is currently handled by the manure hauling / brokering industry.

**Fiscal Impact:** Very few in the agriculture industry will go without being impacted by this program. The hauling/brokering industry will have increased costs, as it relates to obtaining and maintaining certifications and the associated record keeping. The hauling/brokering industry will not bear these extra costs alone. The hauling/brokering industry will off set the additional cost by raising their rates. Most affected from these increased rates will be the agriculture community. What will be the affect of passing the increased cost along to the agriculture community, which already struggles to maintain profitability in an ever-changing market place? Has the Commonwealth completed any studies or estimates on the costs that the regulated community will have in complying with the proposed regulations? These regulations will place additional stresses on the operational budgets of Pennsylvania's agriculture operations that operations in other states will not have. This has the potential of making Pennsylvania's agriculture operations less competitive. Has the Commonwealth completed any studies or estimates on the additional cost that the regulations will impose on the agriculture industry? Especially affected will be smaller agricultural operations, which raise commercial livestock/poultry as a way to keep their farms financially viable.

**Paperwork requirements:** The Commonwealth has failed to identify the increased paper work that the regulated community will need to complete to obtain and maintain certification and the additional records the community will need to maintain to stay in compliance with the regulations. The Commonwealth has also failed to identify the paperwork the farming community using the commercial haulers and brokers will have in assuring that the haulers and broker that they are using are properly certified.

**Enforcement:** There is extreme concern, due to lack of staff and financial support, that enforcement of certification will not be accomplished at a level that will eliminate the creation

of an un-level playing field in the industry. It is foreseeable that there will be people providing hauler/broker services that do not get certified and will go unknown to enforcement agencies, therefore having the potential to be at a financial advantage over those who do get certified. Certified haulers and brokers will have to increase their fees in order to supplement the time and financial loss incurred in the certification process. Those who go uncertified have not had to bear these additional costs, therefore can charge their clients less than someone certified. In an economically burdened industry, there is the potential that a client will choose cost over whether or not their broker or hauler is certified.

**Regulated Community Input:** These regulations seem to have been developed with little input from the regulated community (the brokers and haulers) or those who will utilize the services of the regulated community (the agricultural operations in Pennsylvania). This is in stark contrast to the recently revised CAFO and Nutrient Management regulations that were developed with substantial input from the regulated community and the public.

**Direct Supervision:** Many agricultural operations have elected to use commercial haulers / brokers for their primary means of manure application instead of investing in high cost low use equipment. These operations have a high level of control over the land application event. This situation is very similar to a landowner hauling his own manure. These regulations will place that type of agricultural operation at an unfair disadvantage to agricultural operations that haul their own manure, who do not have to be certified. The requirement of direct supervision will require agricultural operations to hire the highest level of certified hauler / brokers or have two people involved in the land application event. No agricultural operation should be made to pay for someone who will do nothing but watch the application take place when they are already paying for the person performing the application. All references to "direct supervision" should be deleted. It is unrealistic and nonproductive to have a Broker or Level 3 hauler onsite supervising the land application of manure.

**Levels of Certification:** There is a large component in the Manure hauling industry that operated their businesses as part time or as sideline business. This component of the industry hauls at the direction of the agricultural operation producing the manure. This is very similar to a landowner hauling his own manure. There is a very little training or skills needed to properly land apply this manure. The current levels of certification do not provide a level of certification where an agricultural operation can direct the land application without hiring the highest level of certified haulers / brokers. The level of skills needed to be a Level 3 Hauler and Level 1 and 2 Brokers will necessitate that these haulers/brokers charge a higher rate. There is a need for a level of certification to be added to allow for an agricultural operation to direct the land application of manure without hiring the highest levels of certified haulers / brokers. Level 2 haulers should be allowed to apply manure at the direction of an agricultural operation without contracting with a level 3 hauler or broker.

**Education:** For the certification program to be effective agricultural operations must understand that haulers and brokers need to be certified. If an agricultural operation elects to use uncertified haulers or brokers that operation will have an unfair advantage over operations following the requirements. Has Department of Agriculture conducted or planned any

education opportunities for agricultural operations to gain an understanding of the new requirements? The skills needed to properly land apply manure are not extremely high. A person that can operate equipment and follow simple directions such as application amounts and read a simple map that shows the field name and associated set backs are all the skills needed to properly apply manure. A level of level of training is needed that allows a person, which can understand simple instructions, to become certified.

**Haulers/Brokers with Nutrient Management Specialist Certification:** Will there be any consideration or exemption given to those Haulers or Brokers who have completed and are in good standing, of the Pennsylvania Nutrient Management Specialist Certification program? Individuals should be exempt from redundant training requirements of this certification program since they already have the necessary training and expertise.

### **Comments by Section:**

Title 7. Agriculture; Part V. Bureau of Plant Industry  
Chapter 130e. Commercial Manure Hauler and Broker Certification

### **Subchapter A. General Provisions**

#### **Section 130e.2 Definitions**

The proposed regulations make numerous references to other regulations, Act 38 of 2005 regulations, are referenced quite often which have not been finalized. In order to completely understand the complete impact the Commercial Manure Hauler and Broker Certification Regulations one would need to guess what the final Act 38 of 2005 regulations require. It is almost impossible to completely understand the complete affect of the proposed Commercial Manure Hauler and Broker Certification Regulations with out finalized Act 38 of 2005 regulations.

BMP – Best management practice: We suggest “..., but not limited to: ...” be added at the end of the phrase “The term includes.” By adding this additional language, it allows the regulations to accept additional BMPs as they are developed and adopted by the agriculture industry. As published, the list of items (i) to (ix) has the potential to be incomplete and quickly out of date

Nutrient balance sheet: At this time the State Conservation Commission under the act and Act 38 has not developed and released a Nutrient Balance Sheet (NBS)? Without a NBS to review the one is unable to completely understand the scope of the proposed Commercial Manure Hauler and Broker Certification Regulations. What will be the exact components of this document and what sources of information will need to be consulted in order to complete this requirement?

### **Section 130e.3 Fees**

*(a) Certification Fees.* Why do the fees range from biennial to triennial? For consistency and easy understanding, it would be more appropriate for all categories to have the same certification timing. We recommend that all certifications be three years.

The language of Act 49 of 2004 states: "The Department shall by regulation establish such ... fees for certification as it deems appropriate." The fees established in these regulations seem to be excessive and unnecessarily high considering the education portion of the program will be conducted by The Pennsylvania State University, therefore not causing the Department of Agriculture to incur any costs related to the training of individuals. There is tremendous concern that the Level 1 and level 2 Commercial Haulers will not accept such a high certification fee due to the structure of this sector. The members of this sector operate as part time or sideline business the fees for certification should reflect this lower level of precipitation. The agricultural industry cannot afford to lose this segment of the hauling industry.

*(b) Examination Fees.* The same issue of consistency and ease of understanding is raised by the establishment of two different fees. It would be much more reasonable if all examination fees were established at one cost. There is tremendous concern that the industry which would likely be the Level 1 and level 2 Commercial Hauler will not accept such a high examination fee due to the structure of this sector. The members of this sector operate as part time or sideline business the fees for examination should reflect this lower level of precipitation. The agricultural industry cannot afford to lose this segment of the hauling industry.

### **Section 130e.4. Prohibition**

Section 130e.4 (A) contains a double negative; the wording of this section should be modified to avoid any misunderstandings.

Section 130e.4 (b) this section goes well beyond the intent of the Commercial Manure Hauler and Broker Certification Act. This section expands the definition of a commercial manure hauler and broker to include any person hauling manure. The Act 49 of 2004 refers to only Commercial Manure Haulers and Commercial Manure Brokers the act does not refer to individual persons. Act 49 of 2004 defines a "Commercial manure broker." A person that is not working for or under the control of an agricultural operator and that assumes temporary control or ownership of manure from an agricultural operation and arranges for transport to and utilization at an importing operation or other location, and a "Commercial manure hauler." A person that transports or land-applies manure as a contract agent for an agricultural operator or commercial manure broker under the direction of the operator or broker. The proposed regulations define a "Person." An individual, sole proprietorship, partnership, association, firm, corporation, labor organization, trustee, receiver or other legal entity. We recommend it be deleted. As written the language leaves the opportunity for broad and variable interpretation. Due to lack of clarity, this wording could express the potential that any person, which could mean a farmer helping his neighbor, would have to be a certified

commercial hauler or broker. The extreme generalization and use of the term “person” goes beyond the intent of Act 49 of 2004 and the authority of these regulations.

### **Section 130e.5. Authority, duties and prohibitions.**

There is a large component in the manure hauling industry that operated their businesses as part time or as sideline business. This component of the industry hauls at the direction of the agricultural operation producing the manure. This is very similar to a landowner hauling his own manure. There is a very little training or skills needed to properly land apply this manure. The current levels of certification do not provide a level of certification where an agricultural operation can direct the land application without hiring the highest level of certified haulers / brokers. The level of skills needed to be a Level 3 Hauler and Level 1 and 2 Brokers will necessitate that these haulers/brokers charge a higher rate. Agricultural operation that have elected to use commercial halers / brokers for there primary means of manure application will place at an unfair disadvantage to agricultural operations that haul their own manure and do not have to be certified. There need to be a level of certification added to allows for the a agricultural operation to direct the land application of manure without hiring the highest levels of certified haulers / brokers.

(a)(1)(i) Level 1 Commercial Manure Broker. One of the purposes of the Commercial Manure Hauler and Broker Certification Act was to properly land apply manure. Therefore, all brokers should have the knowledge and understanding of Nutrient Balance Sheet development, independent of whether they choose to develop them or utilize a certified Nutrient Management Specialist to do so. There should be one level for brokers. The sections that relate to Level I Commercial Manure Brokers should be deleted.

(a)(1)(ii) Level 2 Commercial Manure Broker. With the deletion of a Level 1 Broker, this section would pertain to the only level of Broker; therefore the term should reflect “Commercial Manure Broker.” The sentence starting “Utilization of manure at an importing operation...” is redundant and understood, therefore can be deleted.

(a)(1)(iii) All references (before and after this section) to “direct supervision” should be deleted. It is unrealistic and nonproductive to have a Broker onsite supervising the land application of manure when the Level 3 Commercial Manure Hauler, under which a Level 2 Commercial Manure Hauler will operate, is given the supervisory authority. Having a Broker on site to watch the land application will cause fees to have the application service performed to double, as well as it not being logistically possible for a person to be present during the land application of all the manure that they broker. Additionally, no farmer should be made to pay for someone who will do nothing but watch the application take place when they are already paying for the person performing the application.

#### (a)(2) Duties

(ii) The time frame defined as “no later than the time of transfer of manure” is unrealistic. Often manure export events take place over several days. The planned

Nutrient Balance Sheets can be completed before export event and used to direct the land application. After the export event take place time is need to provide the importer the actual applications rates and nutrients applied. We recommend the time frame be “within 15 (fifteen) business days.”

Why is a Broker required to provide a nutrient balance sheet to the county conservation district of which the exporting operation is located? What is the benefit of this office receiving this information? Will the county conservation district have enforcement powers?

(b) Commercial Manure Hauler (1) Authority

(i) Level 1 Commercial Manure Hauler it is recommended that the phrase “or Level 3 Commercial Manure Hauler” be added to the end of this section. This will provide consistency that a Broker may not be the only person utilizing someone that will be only transporting. It is reasonable that a Level 1 Hauler could be an employee of a Level 3 Hauler.

(ii) Level 2 Commercial Manure Hauler. To remain consistent with the previous recommendation, the phrase “or Level 3 Commercial Manure Hauler” should be added to the end of the first sentence in this section. All references to “direct supervision” in this section and subsections (A) – (C) should be deleted. There is no need to have an extra person on site specifically for watching the application take place. In an era of technology where applicators are commonly in communication with supervisors or an employer via cell phone or two-way radio, supervision “through delegation” is sufficient.

(C) This section should be deleted. It is not reasonable to assume a Level 2 Hauler will only work under a Broker. A Level 2 Hauler may also be an employee of a Level 3 Hauler, which would be providing the instructions and authority to the Level 2 Hauler. Level 2 haulers should be allowed to apply manure at the direction of an agricultural operation without contracting with a level 3 hauler or broker.

(iii) Level 3 Commercial Manure Hauler In order to make a stronger differentiation between Level 2 and Level 3 Haulers, the Level 3 must be considered the business unit or entity that oversees operation of all Haulers under their supervision. This person, business unit or entity will be the coordinator of all required paperwork and be responsible for providing all the information a Level 1 or Level 2 Hauler would need in order to perform the transport and/or land application.

As previously stated, requiring “direct supervision” is the misuse of personnel and unnecessary for proper and accurate land application to take place. Supervision can remain successful when given “through guidance.”

## **Section 130e.6. Display of certification.**

*(a) Vehicles* Why must a vehicle have identification that the person is a certified Hauler or Broker when verification of certification will be on the person or in the vehicle? This is an unreasonable request, especially for Level 1 and Level 2 Haulers who may drive numerous vehicles. It is illogical to require a Level 1 and Level 2 Hauler's equipment to have numbers displayed for each potential driver. It would be more logical for vehicles used under the responsibility of a Broker or Level 3 Hauler to be identified using the Brokers or Level 3 Hauler certification number.

*(b) Person.* Rather than require a Level 1 Hauler to display their certification number on their vehicle, they can be required to keep their certification documentation on their person or in their vehicle. The certification number of the Brokers or Level 3 Hauler should be displayed on the vehicle.

## **Subchapter B. Certification**

### **Section 130e.11 Commercial Manure Brokers. Determination of competence**

*(a) Commercial Manure Broker Certification* In order to be consistent with the earlier recommendation to eliminate two levels of Broker and maintain the requirements under the Level 2 Broker as applicable to all Brokers, language in this section will need to be amended.

*(b) Additional Requirements for Level 2.* In order to provide clarification that Brokers will not be required to attend all the courses of the Nutrient Management Plan Writing Certification program, language should be added to the first sentence so it reads "...shall be required to attend a Nutrient Management Plan Writing Certification course related to the Nutrient Balance Sheets ..." Will the Nutrient Balance Sheet course and exam be held within a reasonable time frame from the Broker certification course and exam, therefore not causing an extended period of time to elapse therefore causing a person unable to perform their job?

Will there be any consideration or exemption of Brokers or Level 3 Haulers that are already certified Pennsylvania Nutrient Management Specialists, therefore they have already completed the Nutrient Balance Sheet training?

*(d) Written Examination.* Administering the exam only twice a year is extremely limiting for an industry that relies on part time workers. Timing of the exams will have to be well thought out and considerate of the seasonality of hauling and application of manure. Our recommendation is that for the first two years of the program exams be held four times a year in order to accommodate the industries need to become compliant with this program.

*(e) Other examinations.* Please clarify what other examinations are being referred to in this section.



## **Section 130e.12 Certification requirements**

*(b) Application for certification.* The application process seems very confusing and illogical. Why must a person seeking certification submit an application after completion of the requirements? What is the process for the person to express their initial intent of becoming certified? Responsibility for the verification of requirement completion should not be one of the applicant's; rather it should be a responsibility of the Department, since they should have record of the applicant's progress and completion of the requirements.

*(d) Time period for submission of application.* Why is there a limited amount of time (ten days) in which an applicant has to complete their submission of paperwork to the Department after taking the exam?

*(e) Determination of competence and issuance of certification.* It seems unfair that an applicant has to fulfill their paperwork submission within ten days of an exam, however the Department has 30 days to even score the exam. This lengthy time frame granted to the Department causes the process to be drawn out, thus keeping a person from being able to do their job. There needs to be a provision for new hires that are need to fill the void if a hauler or broker lose an employee or have a unexpected work load. This provision should allow a employee to work under the supervision of the hauler or broker until certification can be issued.

- (2) To remain consistent with references earlier in the document a portion of this sentence should read "...attended the required Nutrient Management Plan Writing Certification course related to the Nutrient Balance Sheet ..."

Why must a person seeking to become a Broker take a separate exam to show competency of Nutrient Balance Sheet development if a requirement is to write and submit a Nutrient Balance Sheet for review and approval by the Department. Doesn't the submission and approval show the competency of the individual?

### **Commercial Manure Haulers – Level 1.**

#### **Section 130e.21. Determination of competence**

*(a) Level 1 Commercial Manure Haulers.* It was our understanding that the PennAg's Manure Haulers/Applicators Council recommended to the Department of Agriculture staff to create a simple worksheet of text identifying the priority issues and necessary items a Level 1 Hauler should know. This worksheet would be provided at the site of the load pick up; then reviewed and signed by the person seeking Level 1 Hauler certification, followed by verification by the agricultural operation, Broker or the Level 3 Hauler. The agricultural operation, Broker or Level 3 Hauler provides the Level 1 Hauler with a copy of the signed form, and then submit the original to the Department of Agriculture for documentation and administration. To do this the agricultural operation, Broker or Level 3 Hauler should be able to purchase a supply of the Level 1 Hauler forms in order to have them available when a new Level 1 Hauler is identified. The cost of these materials should be reasonable and

strictly reflect production costs. A system such as this eliminates complications created when a transport supplier may have multiple drivers on their crew that do not regularly perform the manure transport.

Have Conservation Districts been consulted about their involvement in this program? Will there be staffing available to serve as proctors and will a prospective Hauler be able to visit an office at any time during regular business hours to fulfill these responsibilities?

(b)(1) – (3) Certification orientation training course. If a Level 1 Hauler is certified to transport only, why must their education consist of topics related to land application, a service they are not eligible to perform?

(b)(5). Delete references to land application. [See comment for (b)(1) – (3)]

### **Section 130e.22. Certification Requirements.**

(b) Application for certification. To accommodate a previous recommendation of the Level 1 Hauler application format, language in this section would be changed to reflect that application for Level 1 Hauler would be completion of the worksheet. The provider of the worksheet would submit the required paperwork proving the completion of the requirements. There needs to be a provision for new hires that are need to fill the void if a hauler or broker lose an employee or have a unexpected work load. This provision should allow a employee to work under the supervision of the hauler or broker until certification can be issued.

As written, this section eliminates the use of a training manual during the examination process. Having a training manual available and for use is not detrimental to assessing someone's knowledge. It simply accentuates the person's ability to reference resources, which ensures use of correct information. Additionally, the language places tremendous liability on the proctor to properly provide all the materials to the department within a very limited (five days) amount of time. The status of a person's application and certification should not be placed on an uninvolved third party.

### **Commercial Manure Haulers – Level 2.**

#### **Section 130e.31. Determination of competence**

(a) Level 2 Commercial Manure Haulers. The Level 2 Hauler may also receive their training at the location of a Level 3 Hauler. In addition to a workbook-style training manual and exam, as suggested by the proposed regulations, a video may be used as a training tool to educate the Level 2 Hauler applicant. By offering the training and exam at the business, new employees can receive immediate attention, therefore not causing any reason for delays in their ability to perform their job. This format also relieves the staff at the Conservation Districts, which already have many responsibilities.

(b) Certification orientation training course.

(5) Record keeping requirements should be coordinated by the agricultural operation, Broker or Level 3 Hauler making organization and inspection simpler.

(b)(6)(i). Courses teaching development and filing of a nutrient balance sheet is unnecessary at this level because a Level 2 Hauler does not have nutrient balance sheet writing responsibilities. They would be provided the information from a nutrient balance sheet through the guidance of the Level 3 Hauler or the Manure Broker.

**Section 130e.32. Certification Requirements.**

(a) General. Once again we raise concern for requiring direct supervision. A Level 2 Hauler can be sufficiently "supervised" through delegation and information supplied by agricultural operation, Broker or the Level 3 Hauler that is available for consultation without needing to be on site of the land application. Direct supervision is misuse of manpower and unnecessary.

(b) Application for certification. For use in this section, proctor could refer to the Level 3 Hauler, which employs the Level 2 Hauler applicant. As stated under comments for Section 130e.22b, this section eliminates the use of a training manual during the examination process. Having the manual as an aid is not detrimental to accessing the applicant's competency of the subjects. It simply accentuates the person's ability to reference resources, which ensures use of correct information. Additionally, there are concerns regarding the liability on a third party proctor, other than the Level 3 Hauler, to complete the application submission time frame. There needs to be a provision for new hires that are need to fill the void if a hauler or broker lose an employee or have a unexpected work load. This provision should allow a employee to work under the supervision of the hauler or broker until certification can be issued.

(b) Determination of competence. Again, the Department seems to be providing itself lengthy time frames for notifying the applicant of their acceptance. This section states a 15-day period for the review and scoring of the exam, but does not identify the time period for when an applicant will be notified if they have been approved or rejected.

**Commercial Manure Haulers – Level 3.**

**Section 130e.41. Determination of competence**

(b) Certification orientation training.

(6)(i). Why are components of nutrient balance sheet development and filing a component of training when a Level 3 Hauler will not have the ability or authority to write a nutrient balance sheet. The only person under this certification program with that authority is a Broker.

Please clarify what is being referred to by the text "...appropriate manure production application and testing information..."

*(c) Written examination.* We recommend that four exams be given per a year for the first two years of this certification program in order to accommodate the needs of the industry to comply.

*(d) Other examinations.* What does the Department anticipate will be "other examinations?"

#### **Section 130e.42. Certification Requirements.**

*(b) Application for certification.* The entire application process seems illogical and difficult to understand. It is confusing that an application gets submitted after requirements are completed. For comparison, you do not submit an application for employment after you are already awarded the job.

*(c) Time period for filing application.* The Level 3 Hauler is the only category with this type of section. There is strong concern with a ten-day filing deadline. We understand the need for a deadline and feel a 30-day filing deadline is more reasonable. More importantly, it does not seem appropriate that if you do not fulfill the deadline you must repeat the competency requirements. Not fulfilling a deadline, even when extended to 30 days, does not reflect the lack or loss of competency of an applicant.

*(d) Determination of competence and issuance of certification.* In previous sections, the Department has provided itself with either 15 or 30 days to verify the application and score the exam. Why the inconsistency? We would appreciate the Department being expedient in notifying the applicant in order for business to take place.

*(e) Level 3 Commercial Manure Hauler to Level 2 Commercial Manure Broker.* Delete this section. The presence of this section shows that the Department has assumed that a Level 1 Broker has the same training and responsibilities as a Level 3 Hauler, therefore our recommendation that there only be one Level of Broker should be supported.

#### **Certification Time Frames and Recertification Requirements**

##### **Section 130e.51. Certification Time Frames and Recertification Requirements**

Why are the certification time frames different between categories? For consistency and ease of understanding the program, we recommend all categories have a three-year time frame.

Why do recertification requirements include repeating original certification training and exam requirements? This seems extremely unnecessary and contradictory to what the purpose of recertification is. Recertification should be the assessment of an individual's continued understanding of current and up-to-date information. By requiring the repetitiveness of the original training and exam, you are not expanding a person's knowledge base; you are simply

making them spend extra time sitting through presentations of information they already know. We are not aware of any other Department certification program that requires reexamination for recertification. Why begin implementing such a philosophy with this program?

(1) Brokers and Level 3 Haulers. Why is the responsibility of the Hauler or Broker to provide the written documentation of completion of continuing education credits? Won't the Department have this type of record keeping? It would be logical for the continuing education portion of this program to be similar to the procedures of the continuing education components other Department programs such as Pesticide and Nutrient Management. In these programs, participants complete a Continuing Education Credit slip at the conclusion of the course and the Department receives a copy of the documentation.

- (i) Who will be the person making the inspection and determination of competency? Will this be the responsibility of a PDA Inspector or Conservation District staff person? What will be the competency of the person making the inspection? Will these people have also completed the training courses for this certification program to ensure they have an understanding of the manure hauling/brokering industry?

(2) Continuing education credits.

(ii) Number of continuing education credits hours required. Why are the credit hours required inconsistent between categories? For clarity, it would be beneficial for all applicable Brokers and Haulers to be required to attain nine hours in three years.

Not knowing who will step forward and provide the credit opportunities, will the Department be required to conduct a specific number of courses to ensure enough credits are offered and accommodate the industry in fulfilling the requirements?

(C) As previously explained, because of the structure of the sector of the industry likely to be Level 1 Haulers, it is impractical to assume these individuals will be able to complete the required continuing education. With the format of certification suggested within these comments, achieving assurance of competency can be done by having Level 1 Haulers complete a new worksheet each year, assuming that the Department would update the information it contains each year in order to reflect the most current information they wish to ensure the Hauler has knowledge of.

(c) Additional certification requirements.

- (1) This section should be deleted. It is inappropriate for the Department to request a Broker or Hauler submit an annual summary of work performed in order to obtain recertification. The purpose of recertification is to ensure competency. In no way does providing an annual summary of a person's work load express level of knowledge. Additionally, there are concerns with making this type of information available for public record and access since it would be submitted to the

Department, rather than available for inspection or review. We question that this type of information release follows the original intent of Act 49 of 2005.

(d) Failure to obtain continuing education credits. Will there be consideration of any leniency policy for credits, where as an individual would have the opportunity to make a number of credits within the first year of a new cycle? The individual would then be responsible for fulfilling the number of credits they lack, in addition to the number of credits required for the new cycle. It is our understanding that the Pesticide program and the nutrient management certification program allow for this leniency.

**Section 130e.53. Continuing Education Credit Course Providers.**

(a)(1) Eligibility. What types of organization or associations will be an acceptable provider of continuing education courses? The language as written in the proposed regulations do not mirror the language in Act 49 of 2004. There needs to be consistency between the two documents, particularly in relation to the term "entity."

**Subchapter C. Record Keeping**

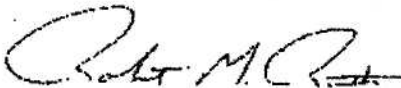
**Section 130e.71. Record keeping.**

We ask that the Department remain aware and considerate of insuring confidentiality of all information made available to inspection through the record keeping process.

(a) Commercial Manure Hauler. In order to ensure accurate and complete records are available for inspection, we recommend that the agricultural operation, Broker or Level 3 Hauler be given the authority to maintain the records for himself and those haulers working under his supervision. This allows records to be reflective of all activity-taking place within the business entity.

(b)(5) Annual records. As written, these regulations will require the submission of two annual reports – one for recertification and one within this section. This requirement is extremely redundant and can be considered unnecessary duplication of paperwork.

Sincerely



Robert M. Ruth  
President  
Country View Family Farms