

Original: 2513

Northwoods Office Center  
2215 Forest Hills Dr., Suite 39  
Harrisburg, PA 17112-1099

**PennAg Industries Association**

*Working to create and maintain an effective, viable, and competitive environment  
for Pennsylvania Agribusiness to grow and prosper.*

RECEIVED

Ph: 717-651-5920

Fx: 717-651-5926

E-Mail: pennag@pennag.com

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February 15, 2006

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Mr. Johan Berger  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110

**RE: Public Comments for Act 49 of 2004 Proposed Regulations (Manure Hauler/Broker Certification – 7 PA Code Chapter 130e; Published Pennsylvania Bulletin, Vol. 35, No. 51, December 17, 2005)**

Dear Mr. Berger:

On behalf of the members of PennAg Industries Association, which includes industries that will be directly and secondarily impacted due to the regulations and requirements developed under the Commercial Manure Hauler and Broker Certification Act (Act 49 of 2004), we appreciate the opportunity to submit the following comments. PennAg Industries Association is proud to represent the support and service sectors of agriculture including the: agronomic, animal production and manure hauling/application/brokering industries. This certification program is certain to have a great impact on a large percentage of the agriculture industry, including agribusiness and all sizes of producers and farms. As the regulatory development process takes place it must be kept in mind that requirements and a certification program that is difficult and not 100% achievable is unfair to the regulated industry charged with compliance. The final outcome of this program must not create a scenario where the industry will not be able to comply, and therefore cease serving our Commonwealth's livestock, poultry and equine producers. The elimination of this agribusiness industry and crucial service sector will unquestionably lead to increased risk to the environment and ultimately the end of Pennsylvania agriculture.

**PennAg Industries Association Background:** In 2004, the PennAg Manure Haulers/Applicators Council (MHAC) was formed to provide representation to this rapidly growing support and service sector of agriculture. The council was formed just as Act 49 of 2004 was being considered by the legislature. As with the other Councils within PennAg, the MHAC asked a staff member of the Department of Agriculture to serve as an advisor in order to create communication and dialogue between the industry and the regulatory agency. Timing of the council's creation was advantageous and the industry, in an organized fashion, was able to provide input and expertise to Department staff that would be responsible for administering the Certification Program. The Council appreciated the opportunity to provide input, answer questions and relay concerns during the preliminary development of proposed regulations. Unfortunately, this communication diminished in April, 2005 and since then the Council was not been directly consulted or asked to continue providing input. Some aspects of the Certification program, for example the level strategy, are consistent with what the MHAC suggested in order for the program to be consistent with the logistics and business practices of the manure hauling



and brokering industries. Other aspects, however, were unfortunately developed without consultation and input from the regulated industry.

### **General 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. Due to the structure of the manure hauler/broker industry it is likely that there will be a large number of different scenarios presented during the certification process. Department staff will get many phone calls that start with “I do this...” and ending with “Does that mean I have to be certified?” We hope the Department will be prepared to handle these variations and individualized scenarios and allow the industry some flexibility when achieving compliance.

**Use of Business Entity Certification:** Creating a definition of the term “person” to take place in the regulations has led to the strong and unreasonable interpretation that this program is meant for individuals and not business entities. Since “person” was not specifically defined in the Act, we support the original intent of this certification program, which was intended for business entities not individuals. The definition’s inclusion of “... sole proprietorship, partnership, association, firm, corporation, labor organization ... or other legal entity...” must be considered as a legitimate legal interpretation by the Department.

Allowing a business entity certification would streamline and simplify, both for the industry and the Department of Agriculture, many of the requirements and components of these regulations. For example, training and education, recordkeeping, display of certification on vehicle and supervision could all be performed more effectively by a Hauler Level 3 or Broker on behalf of a business entity. Any certification number assigned would represent and be maintained by the business entity. Furthermore, any employees working under a business entity would also refer to and utilize this number. This format puts liability, trust and responsibility on the highest level, which is commonsense business operation and something the industry is willing to accept.

This format would also relieve the high costs anticipated in an individual certification based program. Business certification equals less paperwork and administration on behalf of the department, which equals less cost to maintain the program, therefore allowing the ability for the certification program to be more affordable and the fees to be less cost prohibitive.

**Timeframe for certification:** Considering when these proposed regulations have been published and the remaining steps in the process toward final publication, when does the Department anticipate a final certification program will be in place? Industry must be given ample opportunity to achieve compliance.

**Industry Viability:** PennAg Industries Association understands the environmental control and responsibilities that are accepted by the manure hauling and broker industry and a certification program is one method of achieving regulatory control. However, the regulatory agency can not unnecessarily over-regulate and must understand that a program, while achieving the controls established, needs to be done in a way that allows the regulated industry to remain viable and

productive. The industry is prepared for the fallout that will occur when this program becomes effective. There is little doubt that people will leave the manure hauler/broker industry because of these requirements and thereby increase the burden on production agriculture and the risk to the environment.

**Cost Impact to Farmers:** Very few in the agriculture industry will go without being impacted by this program. Most affected will be the farmers, of all sizes, since they will be the ones who bear increased costs for the hauling and brokering of the manure/litter they export or import. The hauling and brokering industry can not be expected to bear the extra costs related to the certification application and exam process, as well as the cost associated with loss of productive work due to the time requirements of achieving the training and continuing education.

**Back Haul Industry:** A Manure Hauler/Broker certification program must be able to accommodate the back-haul industry. This industry is greatly utilized, especially for the transport of poultry litter. In many cases a hauler of this type may only be handling litter one time within a year or a truck provider may utilize a large pool (10 or greater) of drivers. The benefit of haulers willing to transport litter is an advantage to the goals of attaining better distribution of litter from areas of high concentration of animal production to areas with low animal concentration that can benefit from the availability of manure and litter. This aspect of the transportation industry does not need agriculture to sustain itself, unlike agriculture, which relies heavily on these service providers. They do not need the litter transport business to remain viable, therefore will likely not be willing to participate in a complicated, time consuming and non user-friendly certification program. There is concern that this industry will not want to comply with a manure transport certification program, therefore will all together stop serving the agriculture industry in this manner. Losing this distribution method will be extremely detrimental to the animal production industry.

**Enforcement:** We are concerned that due to the lack of staff and financial support of this program enforcement will lack uniformity and create an un-level playing field in the industry. The industry is being unfairly placed in a position where they will have to be self-policing. It is foreseeable that there will be people providing hauler/broker services that do not get certified and go unknown to the enforcement agency, therefore having the potential to be at a financial advantage over those who do get certified. It is realistic to believe that 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 and therefore can charge their clients less than someone who gets certified. In an already economically burdened industry, there is the potential that a client will choose cost over whether or not their broker or hauler is certified.

**Education:** The scenario expressed under "Enforcement" leads to the need for education of the farmer who will be using the certified hauler or broker. There are a great number of producers who are unaware of this requirement and/or process. The lack of education of a farmer on this matter could put the hauler/broker in an unfair position when faced with a situation where the farmer is giving instruction and the hauler/broker needs to do otherwise in order to eliminate a potential environmental risk or stay in compliance with the Act and Regulations. In order for farmers to understand that certification of commercial haulers or brokers is law, the industry

hopes the Department of Agriculture will be conducting farmer education so it is known that there is no choice in who will be a service provider if contracting of brokering or hauling is taking place.

An additional source of education to the farmer could also be Conservation Districts, if available. Due to their interaction with farmers and producers, they too could serve as educators to ensure greater compliance.

**Nutrient Balance Sheets:** How will nutrient balance sheets be developed for nonCAOs, farms with limited number of animals or the non-animal production industry (for example crop producers)? These sectors of agriculture do not have nutrient management plans in place and may not be familiar with this process. Further clarification is needed identifying exactly who a Nutrient Balance Sheet has to be developed for.

Currently there is no program in place to provide the Nutrient Balance Sheet training. How will a Broker have the capability to comply with requirements for additional training, when such training is not in place? The Department must have the capability to provide the training opportunities before they implement such a requirement.

**Haulers/Brokers with Nutrient Management Specialist Certification:** Consideration, or exemption, should be given to those Haulers or Brokers who have completed the requirements, and are in good standing, of the Pennsylvania Nutrient Management Specialist Certification program. Due to the reality that there are fewer and fewer private industry members certified as Nutrient Management Specialists, Haulers or Brokers that have already completed the specialist certification should be exempt from pertinent requirements of this certification program since they already have the necessary training and expertise.

**Training by Manure Segment:** In many cases haulers and brokers specialize in a manure type (dry/poultry litter, equine or liquid.) To ensure training is being provided for all segments, training should not be focused on one manure type over another.

**Literacy Accommodations:** Those who do not use English as a primary language or have literacy difficulties must be accommodated for in every aspect of the training, examination and certification process. Specifically, materials need to be available in Spanish.

**Fiscal Impact:** We recommend re-evaluation of the fiscal impact these regulations, as written, will have. The Department has underestimated the impact, financially and otherwise, these regulations will have on the entire agriculture industry.

### **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

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: It is unfair to request public comment for a component that has not been established or exist. When will development and establishment take place? What will be the exact components of this document? What sources of information will need to be consulted in order to complete this requirement? How long will one be good for? What will cause a NBS to be revised or a new one developed? Will it be permissible to submit a NBS based on crop rotations?

### Section 130e.3 Fees

In order to reduce administrative costs of this program, we recommend the Department adopt Business entity certifications. The following comments are made because the proposed regulations unfortunately do not reflect a business entity format.

(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 carry the same length of time, such as three or five 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 industry, which would likely be our Level 1 Commercial Hauler will stop hauling manure rather than accept a high certification fee. Related preliminary concern was expressed under the General Comments – Back Haul Industry and will be discussed further under comments expressed for Section 130e.21.

The Pesticide Certification Program, already conducted by the Department of Agriculture, as a comparison, the fees is \$35 for a business entity annually and only \$10 triennially for a public or private applicator. Why must Act 49 fees be 15-30 fold when both programs include original and continued education, in addition to exams?

(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 the same level. There is tremendous concern that the industry which would

likely be our Level 1 Commercial Hauler will not accept such a high examination fee due to the structure of this sector. We recommend the Level 1 Commercial Hauler have no examination fee, since we are also recommending this level not have an examination requirement. Preliminary concern was expressed under the General Comments – Back Haul Industry and will be discussed further under comments expressed for Section 130e.21.

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

(b) We recommend that this statement be deleted. As written the language leaves the opportunity for broad and variable interpretation. Due to lack of clarity, this wording could be interpreted 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.**

The most effective and productive way to conduct this certification program would be to do so in a format that recognizes business entity certification. Levels, as discussed throughout these comments, should only be considered as a secondary certification program format.

(a)(1)(i) Level 1 Commercial Manure Broker. There seems no logical reason why there should be two levels of Commercial Manure Brokers, therefore this section should be deleted. The industry believes that 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.

(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.

How will the Nutrient Balance Sheet responsibility be handled in cases where the importing operation is not land applying the manure or litter and therefore does not have agronomic purpose or responsibility for the nutrient content, thus not having implications for water quality, which is the purpose of nutrient balance sheets. Will there be sign off capability for these instances?

(a)(1)(iii) All references, before and after this section, to “direct supervision” should be deleted. The interpretation of this term is not a normal business practice for any industry. 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. Producers should not be burdened with this additional financial commitment.

An alternative to using the term “direct supervision” should be “through delegation.”

(a)(2) Duties

*(i)* This section should be deleted since as written under “Section 130e.2 Definitions” a Manure Hauler/Broker is not given the authority to land-apply manure. Since this person can not perform this duty, why have specifications for an authorized action been developed?

*(ii)* Due to the nature of the manure hauling industry and the frequency that manure needs to be transported or applied at times with little notice, which in some instances is done to reduce the potential of an environmental hazard, the time frame defined as “no later than the time of transfer of manure” is unrealistic and impractical. Whether an opportunity arises where a truck becomes available at last minute to provide transport, or in cases where producers would like immediate export of manure, flexibility must be available to accommodate the parties involved. We recommend the time frame be “within 5 (five) 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? We recommend deleting this requirement.

(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. Using the comparison of this certification program to the already established Pesticide License Program administered by the Department of Agriculture, a licensed applicator is able to act “... under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied...”

(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.

(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 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.**

We recommend this section be deleted. The fact that this requirement has been created through the regulation process, and not the Act, supports the frustration that the proposed regulations go beyond the original intent of the Act. In the unfortunate event that deletion does not occur, our concerns with this requirement as written are noted below.

(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 Haulers who may drive numerous vehicles. It is illogical to require a Level 1 Hauler’s truck to have numbers displayed for each potential driver. Permitting the use of business entity certification would easily streamline this requirement. It would be more logical for vehicles used under the responsibility of a Level 3 Hauler to be identified using the Level 3 Hauler’s business entity’s certification number. This format would also make it easier for the Department to ensure businesses that have their certification revoked have been notified and removed their certification numbers from vehicles. If done as an individual, in businesses with multiple employees and vehicles, how will enforcement be effectively performed?

(b) Person. Rather than require a Level 1 Hauler to display their certification number on their vehicle, it can be required that they carry on their person or in their vehicle documentation of all the Brokers or Level 3 Haulers they transport for.

(c) Contract. Requiring a certification number to be noted on a contract is only reasonable if the number represents a business entity. Requiring every number of every hauler that could potentially be involved in a contract is unrealistic and unachievable.



## 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 Sheet ...". 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 to be 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 expected to comply with unreasonable certification deadlines. Timing of the exams will have to be well thought out and considerate of the seasonal nature of hauling and application of manure and litter. Our recommendation is that for the first two years of the program exams be held four times a year in order to accommodate the industry's need to become compliant with this program.

*(e) Other examinations.* 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.

*(c) Application for Level 2 Commercial Manure Broker Certification.* This section is unnecessary considering the recommendation to have only one Broker level.

*(d) Time period for submission of application.* Why the 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. The more time an applicant has to wait on the Department, the less manure and litter will be distributed.

(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.* In many cases a hauler of this type may only be handling manure or litter one time per year or a truck provider may utilize a large pool (10 or greater) of drivers. It will be a tremendous burden in both time and money for this provider to have all the drivers with potential to only transport manure or litter once a year to be certified. Manure Brokers who deal with this aspect of the trucking industry have already received feedback that complying with such requirements will not be worth the money they would receive for providing the transportation, therefore will no longer choose to serve the Broker.

Suggestions provided by the PennAg Manure Haulers/Applicators Council during initial discussions with Department of Agriculture staff was 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 Level 3 Hauler (or Broker) on location. The Level 3 Hauler (or Broker) provides the Level 1 Hauler with a copy of the signed form, as well as submitting the original to the Department of Agriculture for documentation and administration. This process would be sufficient for determining competence. A thorough checklist is sufficient and no exam is necessary.

In order to supplement the costs for this certification and materials, the Council recommended that the Level 3 Hauler be able to download the documents at no cost from the Department of Agriculture web site or request 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, affordable 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/litter transport. In addition to in-house capabilities, these procedures may also take place at the locations determined in the proposed regulations.

This philosophy at some level is currently in practice via the interim program. The industry has appreciated the Department of Agriculture implementing this format for this critical industry segment and believes this sensible type of training and measurement of competency has allowed for higher compliance and acceptance by industry. We hope this “interim program” format will be reflected in the final program format for this Hauler level.

Have Conservation Districts been consulted about their involvement in this program? We are concerned these requirements will most certainly add unnecessary burdens to Conservation District staff. Will Districts have 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)(1). Delete references to Act 38. [See comment for (b)(1) – (3)]

(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.

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 there to be a delay in their ability to perform their job. This format also relieves the staff at the Conservation Districts, which already have many responsibilities.

We appreciate the Department realizing need for ease of training in order to allow employees to become eligible to work as soon as possible. Accepting the use of a workbook and on-site training, and we hope eventually on-site testing, allows the industry to continue servicing farmers and producers without any down time.

(b) Certification orientation training course.

(4) Why must a manure hauler/applicator know how to install riparian buffers? This is not a responsibility of a person doing the work of this Act.

(5) Under a business entity certification, these recordkeeping requirements could be coordinated by the 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.

**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 the Level 3 Hauler that is available for consultation without needing to be on site of the land application. Direct supervision is a misuse of manpower, is costly and is 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.

(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 development and filing nutrient balance sheets components 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 have already been 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 meet 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 operate efficiently.

*(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**

As written, these recertification requirements are difficult to understand, time consuming and burdensome. Because of this there are concerns that people will not maintain continuing education credits and rather will just submit themselves to taking the original training and exam each certification cycle. It is not productive to have a recertification process that is more cumbersome than the original certification process.

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.

Does the term “recertification” also mean “renewal?” 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. Hence the reason for continuing education. 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? We recommend recertification/renewal be based solely on successful achievement of the necessary continuing education.

(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 recordkeeping? 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 (except for Hauler Level 1) 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? How will continuing education credit courses be publicized? Will there be online mechanisms developed to allow certified haulers and brokers to go online and check their credit status and find out the dates and locations of continuing education opportunities?

(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. We recommend this hauler level not be required to obtain continuing education credits. Otherwise, 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 that 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 2004.

(d) Failure to obtain continuing education credits. Will there be consideration of any leniency policy for credits, whereas 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 allows for this leniency.

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

(a)(1) Eligibility. We recommend that an organization like PennAg Industries Association be an acceptable provider of continuing education courses. This is possible under the Pesticide Act and is extremely beneficial to industry. 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."

**Denial, Suspension and Revocation of Commercial Manure Broker or Hauler Certificates**

**Section 130e.61. Denial, Suspension and Revocation of Commercial Manure Broker or Hauler Certificates.**

(c) We recommend that the appeal process be reserved strictly for individuals who have applied for certification and been denied. This process should not be used in any other fashion by any individuals other than those it is intended for.

**Subchapter C. Record Keeping**

**Section 130e.71. Recordkeeping.**

We feel several components of the proposed recordkeeping are unnecessary and irrelevant requirements. It is not necessary for the Department to require records contain the address, level of certification and signature of the Hauler or Broker. This information will already be on file at the Department through the application process. Additionally, it is unrealistic and unnecessary departmental oversight to require a verification statement signed by all involved parties. We recommend these requirements be deleted. Additionally, we ask that the Department remain

aware and considerate of insuring confidentiality of all information made available to inspection through the recordkeeping process.

(a) Commercial Manure Hauler. In order to ensure accurate and complete records are available for inspection, we recommend that the 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. As written, these requirements would be time consuming, potentially requiring an additional employee in a hauling or brokering business, which is additional and unnecessary expense.

Thank you for the opportunity to submit these comments.

Sincerely,



Amy M. Bradford  
Assistant Vice President

Cc:

Rene Lavoie, President, PennAg Industries Association

Steve Lehman, Chairman, PennAg Industries Association Manure Haulers/Applicators Council  
IRRC

Representative Art Hershey, Chairman, House Agriculture and Rural Affairs Committee

Senator Michael Waugh, Majority Chairman, Senate Agriculture and Rural Affairs Committee