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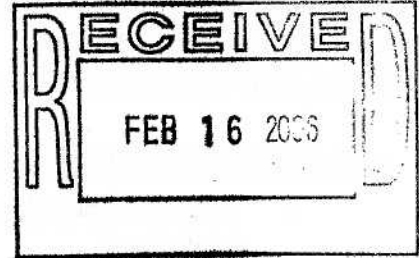


Commonwealth of Pennsylvania

2006 MAR -3 AM 9:27 Nutrient Management Advisory Board

INDEPENDENT REGULATORY  
REVIEW COMMISSION

February 16, 2006



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

Dear Mr. Berger:

The Nutrient Management Advisory Board (NMAB) has reviewed the proposed Manure Hauler and Broker Certification Regulations published by the Pennsylvania Department of Agriculture in the Pennsylvania Bulletin on December 17, 2005. The NMAB has developed the attached set of comments on the proposed regulations and is submitting them for consideration by the Department as it finalizes these regulations.

The attached comments were approved by the NMAB on February 10, 2006. The NMAB formed a committee of the Board that thoroughly reviewed the Department's proposed regulations. The committee reported their draft comments to the full Board where these issues were discussed at length. The result of this discussion is the attached set of Board approved comments on the proposed Manure Hauler and Broker Regulations.

The NMAB thanks the Department for the opportunity to comment on these regulations and for the Department's agreement to extend the comment period on the proposed regulations, in order to allow the Board adequate time to develop a thorough set of comments. The Board looks forward to working closely with the Department in the finalization of this regulatory package.

If you have any questions related to the comments provided, please do not hesitate to contact me and we can discuss them further.

Sincerely,

A handwritten signature in black ink that reads "John Fidler" with a stylized flourish at the end.

Dr. John Fidler, Chairman  
Nutrient Management Advisory Board

Attachment

## **Nutrient Management Advisory Board Comments concerning Act-49 (*Manure Haulers and Brokers Certification*)**

**Main Point:** It is the business entity's responsibility to ensure its employees are operating properly. The business should be required to get one certification for the business, and not make each one of its employees get certification. The business should be held responsible for ensuring the proper training and supervision of its employees and for the action of its employees.

### **A. Definitions and Prohibitions:** [130e.2; 130ee.4]

1. Need to clarify that neighbor-helping-neighbor arrangements do not require certification.
  - This includes allowing an operator to be able to haul his own manure to someone else's farm without being certified.
  - Suggest striking prohibition statement "(b)" from the definition. [PDA staff pointed out that the law cannot change a definition, but it can be farther defined.]
  - Not require certification for individuals using jointly owned or rented equipment even if operational expenses are exchanged.
2. Clarification is needed to allow a business to become certified, rather than require each individual to get certified. The individual drivers under the control of the owner will be overseen by the business, and the certified business entity will be responsible for their actions.
3. Eliminate the double negative in 130e.4(A) by deleting the word "not" in line 2.

### **B. Act-49 in general:**

1. The NMAB is disappointed that they were not more actively involved in the development of this regulation.
  - The general agricultural community needs to be more actively involved.
  - Act-49, Act-38, CAFO regulations, and the definitions used in these regulations need to be done in concert to assure uniformity.

### **C. Certification and Examination Fees:** [130e.3]

1. Fees are too high.
  - If definitions stay the same as they were proposed, the fees would pertain to individuals and not to a business, and we believe they are too high if they are to pertain to the individual. If this remains with the individual:
    - High fees could be detrimental to the goals of the program.
    - Some fees are understandable (even for re-certification) but current fees are too high for individuals.
  - For a business entity, the certification fee should be \$50/3 yrs.
  - If individuals need to be certified (which we do **NOT** recommend), it should not be more than \$10/3 yrs.
2. Fees need to be imposed per company (not per individual).

#### **D. Act-38 and Odor Management:**

1. Clarification is needed to differentiate between Act-38 nutrient management requirements and the odor management requirements in the law.
  - Current wording in the proposed regulations makes this confusing.
  - Act 49 requirements should link to the nutrient management requirements of Act 38, not the odor management requirements.

#### **E. Balance Sheets:**

1. Nutrient Balance Sheets need to be the same for Act-49 and Act-38, and any other program that is to use them such as the CAFO program.
  - Needs to be easy enough to understand by operators.
  - Should be developed in consultation with the NMAB.
  - Cannot allow balance sheet submission to bottleneck the ability to move manure.
    - We are concerned that the submission of this balance sheet may hold up the transfer of manure. We agree that it must be developed in time for transfer to be kept on site, but immediate submission to the district may hinder appropriate movement. The industry needs to be able to act within a small window of opportunity.

#### **F. Authority, Duties & Prohibitions:**

1. Level #1 Hauler should be dropped totally.
  - More hazardous materials (such as pesticides, fertilizer, asphalt) can be hauled without any certification.
  - If records are kept (as would currently be required) all the in-depth training and certification as proposed for a level #1 hauler is not needed.
2. If level #1 is not dropped, it needs to be much easier, and cheaper to obtain (in-house).
  - Eliminate training issues not related to hauling (such as application issues) for level #1 haulers.
3. Level #2 Haulers and throughout (such as with Brokers) should not require direct on-site supervision. We believe that this provision would be impossible to implement.
4. Drop the different levels.
  - The tiered system (even though it was thought to be a good idea) has been found to be overly cumbersome. Suggest using the word "applicator", rather than "hauler".
5. If the different levels are kept intact, there needs to be a decision tree to help the regulated community understand the different levels.
  - If a business could be certified (instead of individuals), then the certification process could be extensively simplified.
6. [Level #3, no comments.]

7. The manure broker section needs to be clarified.
  - Is someone (such as a feed or seed salesman) who does nothing more than get buyers and sellers of manure together (at no charge) considered a broker?
  - It is important for this free service to continue.

#### **G. Display of Certification:**

1. Certification numbers need to be assigned per business, not per person.
  - Individual numbers on trucks are not practical.
  - An owner would have to have the certification numbers of every driver in the company displayed on each truck and/or tractor.
  - This would be impractical to enforce.
2. A certified person or business should not need to display certification numbers on the vehicle, but they should be required to carry a copy of their certification documentation.

#### **H. Training and Examination Criteria:** [130e.11; 130e.21; 130e.31; 130e.41]

1. Too many time lines within the certification process, and too stringent.
  - Only 10 days to get certification application submitted to PDA.
  - PDA has 30 days to respond back on the application.
  - It could take too long from when you get hired to when you get an approved certification.
  - If the program allowed for certification of the business, this would not be an issue.
2. An applicant who fails the exam, should be able to re-take the exam, and not go back to the start of the process.
3. Training and testing must match what the applicant will be authorized to do and not include issues that the certification level does not authorize the person to perform.
4. Testing materials need to be available in Spanish, and orally (for those who cannot read well). Training materials need to be available in Spanish. This will be less of an issue if the certification is for the business.
5. If a certification is revoked, that individual should not be allowed easy re-certification. The person should not be able to apply again for certification within 1 year.
6. The appeal language should be written to allow an applicant to challenge having his/her certification refused or revoked; it should not provide the opportunity to general citizens to appeal the approval of a certification.
7. Do not require retesting for recertification. Only certified hauler/brokers in good standing and meeting the CEC requirements should be eligible for recertification.
8. The CEC classes need to be valuable. The number of CECs required for an applicator or a broker should be 6 credit hours per 3-year period.



9. The training program should be modeled after the Pesticide Training Program (for *private* pesticide applicators) by allowing for an open book exam which will demonstrate their ability to determine more complex issues dealing with the application of manure.

### **I. Other items addressed by the workgroup:**

1. For individuals who wish to change their certification category, PDA should track this change. It should not be the requirement of the hauler/broker to notify PDA that this change has been made.
2. No annual submission of records to PDA should be required.
3. Clarification is needed as to exactly who is required to be certified, and what they are authorized to do.
  - Does Act-49 apply to all farms, or just CAO's and CAFO's?
  - Haulers/Brokers not working with CAOs or CAFOs will fly under the radar and not be easily found under the system.
4. Who is enforced if a non-CAO uses a non-certified commercial manure hauler or broker?
5. Need to be able to take certification exam anytime throughout the year. If individual certification is required, then we would suggest the testing should be available in-house. Again, the Board strongly does not recommend individual certification.
6. The certification process needs to happen fast (in about two days)
7. If the certification is to be designed for individuals, then:
  - Suggest providing testing and training on-line;
  - Also, keep the workbook as an option
8. **Main Point:** It is the business entity's responsibility to ensure its employees are operating properly. The business should be required to get one certification for the business, and not make each one of its employees get certification. The business should be held responsible for ensuring the proper training and supervision of its employees and for the action of its employees.
  - The regulation needs to be simple and practical in order to be carried out successfully and to get maximum compliance by the farm community.

