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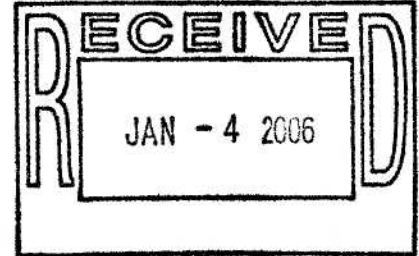


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December 27, 2005

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



Dear Sirs,

This is to comment on the Proposed Rulemaking for [7 PA. CODE CH. 130e] as published in PA Bulletin, Docs. 05-2313, 2313a, concerning the Commercial Manure Broker and Hauler Program. Although my business is not hauling or brokering manures, being in the commercial fertilizer and crop protection business, writing nutrient management plans and having the responsibility to maintain proper nutrient management levels, this proposed act has bearing on my business. Upon careful review, I feel there are several omissions and oversights that need to be addressed both for the clarification of the act, for the legal protection of the participants and to avoid possible future litigation. Although these may seem technical in nature, it is far easier to make the corrections now than after final passage of the proposed regulations.

Section 130e.2. Definitions. This section is to define key terms utilized in the regulation. Unfortunately there are some glaring omissions and by extension some troubling inclusions.

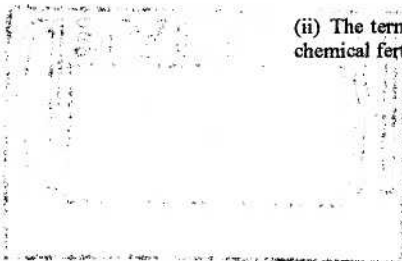
Nowhere in this proposed act is 'manure' defined.

Although most of us who have dealt with manure need little definition, from a technical legal standpoint it is a glaring oversight. The closest thing to a manure definition is 'Nutrient' and in several parts of this document, nutrient and manure can be conceived to be used very interchangeably. This nutrient definition, though taken nearly verbatim from the Nutrient Management Act, is far more inclusive than the scope of this proposed act is intended to include.

Nutrient--

(i) A substance or recognized plant nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value.

(ii) The term includes livestock and poultry manures, compost used as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.



Including the term 'commercially manufactured chemical fertilizers' within the nearest thing to the definition of manure, opens a Pandora's box of problems. Since these fertilizers already come under the prevue of the Pennsylvania Fertilizer, Soil Conditioner, and Plant Growth Substance Act, should it be included here for the purposes of this act or, if included in the nutrient definition, be given specific exclusion within the proposed act? If not, a shrewd lawyer might reasonably be able to extend manure to mean all nutrients and thus force commercial fertilizer businesses to come under the provisions of this act, a result that I feel is unintended.

Also included in the nutrient definition above is 'compost used as fertilizers'. This could radically expand the definition of brokers and manure haulers. Since completed compost derived from manure is used extensively on golf courses, sports fields, and is sold through lawn and garden shops, would each of these be considered importers or those that sell and transport fall under the categories of commercial manure brokers and manure haulers? Would the homeowner purchasing composted cow manure from the local Lowe's be considered an importer and the store a commercial manure broker? If left undefined or not specifically excluded, it is reasonable to assume that a shrewd lawyer may argue just such a relationship exists. Also is mushroom compost, which can include horse manure, within the scope of this act and would the transportation thereof constitute manure hauling?

To make things a bit more complicated, if undefined, at what point does manure being composted cease to be manure but compost? If a producer is making compost from his manure and then exports or sells it to others as compost, does that operation fall within the bounds of this act? If a producer of dry stable manure placed it on an outside pile to 'compost' until spring and then has a commercial hauler move that product for him, is that hauler moving manure or compost? To be even more technical, I know of a local poultry producer who now sells his raw chicken manure as 'fertilizer' and would undoubtedly use his definition of fertilizer as a loophole to skate around this act if it is not properly defined.

Although it may on the surface seem a bit silly, placing a clear definition of manure within the definitions section may avoid a huge amount of litigation down the road. Placing an exclusions section which more clearly defines the parameters of the act is also important. Failure to do so may lead a judge to throw out the entire act, or create so inclusive a regulation as to be unmanageable.

Ultimate Responsibility and Indemnity for Nutrient Management Plan Compliance.

I am not sure where this needs to be addressed, in what act or in what regulation, but commercial manure haulers and brokers and commercial fertilizer dealers are rapidly facing a serious legal problem. That problem is; who is ultimately responsible for making sure that the letter of the Nutrient Management plans and by extension the Clean Stream and other acts are adhered to?

Let me explain by example.

Let's suppose a farmer or importer has an independent consultant create a Nutrient Management Plan. Soil tests and the plan call for the limit of applications. The farmer or importer calls a commercial manure broker and/or hauler to have manure applied to his fields and it is done so within the confines of the Nutrient Management Plan and all appropriate records are accurately kept. Several months later, this same farmer or importer has another commercial manure broker and hauler also apply nutrients to this same piece of land and the proper records are kept by that commercial manure broker and hauler and the nutrient balance sheet is properly completed. Each application in itself is within the nutrient management plan but cumulatively and without the

knowledge of either commercial broker or hauler, the total nutrient needs are well exceeded and a problem develops.

Who is intimately to blame and is liable? If each commercial broker and/or hauler made an application in good faith that they believe to be within the scope of the Nutrient Management Plan and followed all of the provisions of this act to the letter, what indemnity do they have from fraud or deception on the part of a third party and how this may affect their licensing and ability to continue in business? This act in no way addresses the limits of liability to the commercial broker or hauler. For the legal protection of the persons falling under the provisions of this act, such responsibility and indemnity should be properly delineated and defined.

These comments are not intended as criticism of this act as a whole nor its intended result but as constructive issues that I feel need to be addressed.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Sands', written in a cursive style.

Kenneth E. Sands
President

Cc: Amy Bradfield PAPA