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REVIEW COMMISSION

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

January 13, 2006

The Honorable Arthur D. Hershey
Majority Chairman
Agriculture & Rural Affairs Committee
Suite 202, Room 214 Ryan Office Building
Harrisburg, PA 17120-2020

Dear Representative Hershey:

Thank you for your recent letter regarding the proposed regulations for the Commercial Manure Hauler and Broker Certification Act. This letter is written to address and respond to several recent comments the Department has received regarding the content and requirements of the proposed regulations.

All of the letters we have received will be fully considered as part of the formal comment, but in an effort to address several pressing concerns, I thought it was important to respond to several of the written responses now, given their significance and impact on the planned, training and regulation process.

At the request of the Nutrient Management Advisory Board, the Department has extended the public comment period for the proposed regulation for an additional 30 days. The original public comment period would have closed January 17, 2006. The extension will be published in the *Pennsylvania Bulletin* and will now close February 16, 2006. This will provide some additional time to gather input on this important regulation.

In addition, the Department has issued a Statement of Policy which will be published in the *Pennsylvania Bulletin* this Saturday, January 14, setting forth the Department's commitment to work with the regulated community to meet the February 27, 2006 certification requirements of the Act. This will allow the Department to implement a temporary certification program to ensure commercial haulers and brokers comply with the requirements of the law. It also states the Department will not enforce the Act until the final regulations are in place, as long as a good faith effort is being made by the regulated community to comply with the Act.

There have been several other issues raised that I would like to address:

1) *Involvement of the Nutrient Management Advisory Board and State Conservation Commission.*

While there has been some involvement of both these entities, the Department will consult with them in preparing the final regulations, as required by the Act. The timing and depth of consultation has generated some concern. This is more a result of where the proposed regulations were in the regulation process, and the timing of the meetings of the Commission and Board than intent by the Department to limit their participation. The Department values these two entities and will utilize their expertise through the final regulation development process. At the January 5, 2006, Nutrient Management Advisory Board meeting, they requested an extension of the comment period, which was granted as indicated earlier, for an additional 30 days. In addition, a work group of the Board will be meeting January 13, to further review the proposed regulations and begin preparing their formal comments.

2) *Certification Requirements.*

The Department has received several comments suggesting that we grant interim certification status to all those commercial manure brokers and haulers that have gone through the Penn State Manure Hauler voluntary program. While this program is very good, the Department is constrained by the Act, which sets forth minimum criteria, which must be included and addressed in the Department's certification. Two issues arise with this approach: (1) The voluntary program did not address all of the components outlined in the Act, and (2) A second group which has not participated in the voluntary program would receive a different level of training, creating the dilemma of treating the same regulated community differently. This would undoubtedly cause concern. The Department has prepared the interim certification training to contain a workbook instruction for Hauler Level 2 and classroom instruction for Hauler Level 3 candidates, respectively. However, what we are prepared to do is further streamline the Hauler Level 1 certification to help expedite the process. The new approach will be a worksheet with several questions, which will be signed by the applicant. In addition to the previously scheduled dates, we will have our Regional Directors prepared to schedule additional dates, times, and locations to help Hauler Level 1 applicants complete the certification process.

Our intent in designing the interim certification is to ensure that upon finalization of the regulation, the haulers and brokers could convert their certification and forgo any re-training until their certification expired in two or three years, depending on the level of certification. An important provision of Act 49 is that in return for certification, the Act provides for preemption of local ordinances and provides some limit to liability for a commercial manure hauler or broker certified under the Act. Again, we want to ensure the regulated community receives the full benefits and protection provided under the Act. The other modification we are making is to further define 'direct supervision' to mean accessibly by a direct line of communication, when needed.

3) *Record keeping Requirements.*

Regarding the record keeping requirements set forth in the regulations, for the most part those requirements mirror the record keeping provisions of the nutrient management

regulations, which is a requirement of the Act. The Act requires this type of record keeping be covered in the certification program and specifically requires such record keeping "...necessary to meet all regulatory requirements of...the Nutrient Management Act." While record keeping is required, they will no longer be sent to PDA, but simply maintained by the responsible party.

Another common concern or issue set forth in the comments is that of an exemption for a person who merely transports manure. Once again, the Department is constrained by the Act with regard to granting such an exemption. The Act specifically requires all commercial manure haulers or brokers who "...transport or land-apply manure..." to be certified.

There have also been comments expressing concern that all agricultural operators are required to be certified to haul or land-apply manure, even on their own operations. This is not true and nothing in the Act or the proposed regulations impose such a requirement. Only commercial manure haulers and brokers, as defined by the Act, are required to be certified. Even Concentrated Animal Operations (CAO) and Concentrated Animal Feeding Operations (CAFO) may haul and land-apply manure generated by their animals to land owned, rented or leased by the owner of the CAO or CAFO. In fact, a CAO or CAFO, if such information is set forth in an approved nutrient management plan, could utilize their own equipment and employees to apply manure generated by their animals to the land of an importing operation listed in the approved nutrient management plan, without being certified. The Act only requires that when an agricultural operator, CAO or CAFO utilizes a commercial manure hauler or broker, that hauler or broker be certified. The regulated entity and enterprise is the "commercial" manure hauler or broker. Additionally, neither the Act nor the proposed regulations impose any additional record keeping requirements on the agricultural producer, CAO, CAFO, or volunteer operation.

Finally, there are other issues, which have been raised, but these are recurring themes, which needed some immediate response. Please be assured that the Department will actively engage the Nutrient Management Advisory Board and State Conservation Commission and make every attempt to address industry concerns. We do not want to place any commercial manure hauler or broker in jeopardy, but simply address the requirements of the Act. You have my commitment to make Act 49 work for Pennsylvania agriculture.

I hope this letter helps to address some of the concerns expressed and clarifies some of the misunderstandings regarding the requirements of the Act and the proposed regulations.

Thank you for your thoughtful letter and guidance on Act 49.

Sincerely,



Dennis C Wolff

cc: Governor Ed Rendell
Secretary Donna Cooper
Secretary Steven Crawford
Senator Michael A. O'Pake
Senator Michael L. Waugh
Senator Noah W. Wenger
Representative Peter J. Daley
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