

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency: *Agriculture*

(2) I.D. Number (Governor's Office Use)

2-155

IRRC Number: *2647.*

(3) Short Title

Odor Management Certification Program

(4) PA Code Cite

7 Pa Code, Chapter 130f.

(5) Agency Contacts & Telephone Numbers

Primary Contact: *Johan E. Berger, Bureau of Plant Industry, (717) 772-4189*

Secondary Contact: *Michael S. Aucoin, Bureau of Plant Industry, (717) 772-5218*

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation **X**

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

NO

(8) Briefly explain the regulation in clear and non-technical language.

The final-form regulations are provided to establish training, examination and certification criteria for odor management specialists. The final-form regulation defines the authority and duties of 'Commercial', 'Individual' and 'Public' odor management specialists and establishes education, training and certification requirements, fees, terms and conditions of certification consistent with the requirements of Act 38 of 2005 (3 Pa.C.S.A. §§311 - 522).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.
Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. § 508(a))

There are no relevant state or federal court decisions pertaining to the statutory authority or the regulation.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The regulation is mandated under Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)) (relating to the nutrient management certification program and odor management certification program) setting forth the specific duties and the authority of the Department with regard to promulgation of these regulations.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The promulgation and implementation of these regulations is necessary to comply with the mandates of Act 38 of 2005 (3 Pa.C.S.A. § 508(a)). The regulations ensure that all persons seeking certification as an odor management specialist are properly trained and can demonstrate the competency necessary to develop and/or review odor management plans consistent with provisions and criteria to be established in regulation at 25 Pa. Code, Chapter 83 subchapter G, pertaining to facility odor management. That regulation is being promulgated by the State Conservation Commission and is currently in the regulatory review process.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no known public health, safety, environmental or general welfare risks associated with non-regulation related to the Odor Management Certification program.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Farmers (agricultural operations), local government (county conservation districts) and private sector consultants will benefit from the final-form regulations. The final-form regulations establish education and certification standards and requirements for approximately 100 – 150 persons the Commission believes will seek certification as odor management specialists. The standards will enhance commercial consultant's and county conservation districts staff's knowledge of odor management principles and evaluation of odor impacts and best management practices that may be used to address potential odor impacts in the development of odor management plans. Farmers will benefit through the ability to develop odor management plans for their own operations upon successfully completing the individual odor management specialist certification program. In addition, the certification of commercial and public odor management specialists will make this industry more accessible to farmers who are required to develop a certified odor management plan in order to meet odor management requirements under Act 38 of 2005. Approximately 1,300 agricultural operations regulated under Act 38 of 2005 and approximately 340 CAFO operations regulated under the federal Clean Water Act will benefit by having a certified odor management specialist available to develop odor management plans meeting the facility odor management criteria established under Act 38 of 2005.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)
The final-form regulations will affect 'commercial' and 'public' Nutrient Management Specialists certified under the Department's Nutrient Management Certification Program (7 Pa Code, Chapter 130b) or private sector consultants intending to develop odor management plans for farmers, farmers seeking certification to develop an odor management plan for their operation or county conservation district staff employed to review odor management plans according to criteria established by regulations under Act 38 of 2005. Provisions of the final-form regulations will require certified Nutrient Management Specialists and other persons seeking status as certified odor management specialists to attend classes and pass an examination to become certified. The Department anticipates that approximately 30 farmers will seek an 'individual' certification; 75 county conservation district or state employees will seek a 'public' certification and 45 private sector consultants will seek a 'commercial' certification under the final-form regulations. Odor management specialists will also be required to attend continuing education programs to obtain continuing education credits to maintain a valid certification under the final-form Odor Management Specialist program. Persons seeking certification will be subject to payment of fees for examination and certification. Additionally, approximately 1,300 farms complying with the odor management provisions of Act 38 of 2005 and its regulations who intend to develop an odor management plan for their agricultural operation will be required to utilize an odor management specialist properly certified under the final-form regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)
This proposal will initially affect approximately 40 of the currently certified Commercial, Individual and Public nutrient management specialists and approximately 75 - 100 additional persons seeking certification status under the program over the next five years. Additionally, approximately 1,300 farms complying with the odor management provisions of Act 38 of 2005 and its regulations who intend to develop an odor management plan for their agricultural operation will be required to utilize an odor management specialist properly certified under the final-form regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.
The Nutrient Management Advisory Board and the State Conservation Commission reviewed and commented on drafts of the proposed regulations. The State Conservation Commission will be provided the final-form regulations for review, comment and approval prior to them being offered to the Committees and IRRC for final approval.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.
A fee schedule established through the final-form regulations is based on expenses to administer the program and will impose new costs on the regulated community in the form of examination and license fees. New costs to the regulated community are estimated to be \$30 for examination fees for 'commercial' and 'public' categories and a \$15, \$25, \$200 triennial license fee (every 3 years) for 'individual', 'public' and 'commercial' categories, respectively.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

Initially, in the first two to three years of the implementation of the Odor Management Specialist Certification program, the costs to local government (county conservation districts) will be minimal. Examination and licensure fees for certified public odor management specialists who are primarily employees of county conservation districts will occur only as the State Conservation Commission delegates implementation and administration of Odor Management Program activities of Act 38 of 2005 to conservation districts. The State Conservation Commission does not anticipate delegation of Odor Management Program implementation activities to conservation districts until the third and subsequent years of the program. Therefore, any costs to those entities will most likely be incurred in the second or third year of the Odor Management Certification Program as persons employed by the conservation districts attain a 'public' odor management specialist license to carry out delegated activities.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There will be increased costs to the state to administer and enforce these regulations through additional administrative expenses. Those expenses include estimated costs of materials and supplies for the initial phase of program implementation of approximately \$4,400 in 'Current FY', decreasing to approximately \$3,200 in FY+1 and subsequently increasing approximately 5.0% annually for program years, thereafter. Additional administrative expenses related to training and educational activities provided by a contracted third party are estimated at approximately \$9,900 in 'Current FY', increasing to \$19,000 for FY+1 and increasing approximately 5% annually for program years, thereafter. There will be no additional state government staff resources necessary to implement these regulations.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year (2007-08)	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated	600	4,300	1,225	1,225	4,750	2,420
Local Government	600	1,050	550	550	1,175	750
State Government	14,250	21,200	22,260	23,400	24,600	25,800
Total Costs	15,450	26,550	24,035	25,175	30,525	28,970
REVENUE LOSSES:						
Regulated	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA

(20a) Explain how the cost estimates listed above were derived.

Regulated Community: The anticipated 70 - 80 persons (Individual and Commercial categories) that will be required to obtain a license over the next five-year period will incur new costs including an examination fee and a triennial license fee (every 3 years) depending on the category of certification sought. These same persons will be required to renew their license on a triennial basis depending on their certification category. Costs for examinations are \$30 per individual for the 'commercial' certification category. There is no examination for the 'individual' certification category in the final-form regulation. Costs for triennial licenses are \$15 for an 'individual' specialist certificate and \$200 for a 'commercial' specialist certificate. These fees are derived from estimated costs of administration and implementation of similar certification programs administered by the Department under Act 38 of 2005 with similar participant numbers.

Local Government Costs: There will be some costs to local government in the implementation of the regulations. Public specialists are employees of local government (county conservation district employees). The county employer of a public specialist will incur a costs pertaining to the examination and certification fees for a triennial certificate of \$30 and \$25, respectively. There will be an estimated 75 'Public' specialists seeking certification under the program over the next five-year period as the State Conservation Commission implements the Odor Management planning program. These fees are derived from estimated costs of administration and implementation of similar certification programs administered by the Department under Act 38 of 2005 with similar participant numbers.

State Government Costs: State government costs will increase to cover the administration and implementation costs of the certification program. There will be a need for additional administrative expenses to cover program education materials, supplies and contractual expenses for training and educational services provided by a third party. The cost for these administrative expenses is estimated to be approximately \$21,200 for Fiscal Year FY+1 and increase annually by approximately 5.0% beginning FY+2. State expenses do not include program staff resources. Current program staff in the Department will implement program activities.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

This is a new program with no available expenditure history.

Program	FY -3	FY -2	FY -1	Current FY
NA	NA	NA	NA	NA

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Certification of persons to develop and review odor management plans is a mandated provision of Act 38 of 2005, Section 508 (3 Pa.C.S.A. §508(a)). Persons seeking certification, as an odor management specialist must be knowledgeable and competent in the application of the criteria and provisions established under Act 38 of 2005 (3 Pa.C.S.A. §501-522) and Odor Management regulations and guidance established by the State Conservation Commission in order to be licensed to develop and review odor management plans. The answers to questions 13 and 14 of this document set forth the benefits and costs in a more specific manner.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives. These regulations are mandated by Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)). The final-form regulations establish the education and certification criteria key to the certification program. The final-form regulations are necessary to insure an adequate certification program and maintain conformity with Act 38 regulatory provisions established at 25 Pa Code Chapter 83, Subchapter G, currently under promulgation by the State Conservation Commission and with advancements in industry education standards and technologies.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There were no alternative regulatory schemes considered in the development of this proposal. These regulations are mandated by Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)) and are consistent with other certification program mandates, such as the Nutrient Management Specialist Certification regulations at 7 Pennsylvania Code, Chapter 130b. The proposed regulations were developed with input from the Nutrient Management Advisory Board and the State Conservation Commission. The lack of additional public comment during the proposed stage evidences there is no need for an alternative regulatory scheme to be considered.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions of the proposal that are more stringent than federal standards. There is no counterpart at the federal level.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

There are no certification programs for odor management specialists in neighboring state jurisdictions of Delaware, Maryland, New York, Ohio or Virginia. These regulations will create a certification program that will allow the regulated community, which includes private sector consultants, to attain credentials and expand their knowledge to provide support services to the agricultural community that meet the odor management criteria under Act 38 of 2005 (3 Pa.C.S.A. §501- 522).

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The State Conservation Commission is currently promulgating regulations (25 Pa. Code, Chapter 83 Subchapter G) under Act 38 of 2005 (3 Pa.C.S.A. §§ 504 and 509) pertaining to odor management standards. These regulations will implement and follow those criteria and provisions in training odor management specialists thereby assuring odor management specialists follow the mandates of the Act and Commission regulations. The final-form regulations will complement and support the implementation of certain provisions of the Commission's regulation.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department does not anticipate scheduling/conducting hearings or informational meeting related to the publication of the final-form regulations. However, the final-form regulations will be discussed by the Nutrient Management Advisory Board and the State Conservation Commission at scheduled public meetings as required under Act 38 of 2005.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

There are no reporting or record keeping requirements of the regulated community under the final-form regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The final-form regulations recognize the need to accommodate private sector consultants that are certified as nutrient management specialists under the Department's Nutrient Management Certification program (7 Pa Code, Chapter 130b). These persons may be available to assist the agricultural community in the implementation of the Odor Management Program. Provisions of the regulations provide the opportunity for certified nutrient management specialists to become certified as an Odor Management Specialist to develop odor management plans meeting requirements of Section 509 of Act 38 of 2005 (3 Pa.C.S.A. §509).

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The effective date of the regulations is expected to coincide with the date of publication of the final-form regulations, which is anticipated to be April or May of 2008. The Department expects to be able to offer certification training and testing between the effective date of these regulations and the effective date of regulations promulgated by the State Conservation Commission under 25 Pa Code, Chapter 83, subchapter G. The State Conservation Commission anticipates an effective date of its regulation to be approximately July 31, 2008.

(31) Provide the schedule for continual review of the regulation.

The Department will continually assess this regulation and make revisions when needed to address valid administrative concerns, changes in technology and changes or revisions to regulations promulgated under 25 Pa Code, Chapter 83, subchapter G.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

! Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-155

DATE OF ADOPTION 3-7-08

BY: D. Walff

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive for Independent Agencies

BY: _____
Andrew C. Clark
MAY 14 2008

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(~~Strike inapplicable title~~)

! Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

**Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130f.
Odor Management Certification Program**

FINAL RULEMAKING
DEPARTMENT OF AGRICULTURE
[7 PA. CODE CH. 130f]
Odor Management Certification

The Department of Agriculture (Department) hereby creates a regulation at 7 Pa. Code Chapter 130f (relating to Odor Management Certification) to read as set forth in Annex A.

Statutory Authority

The Department has authority to promulgate this final-form regulation as specifically set forth at section 508 of the act of July 6, 2005 (P. L. 112, No. 38) known as Act 38 of 2005 (Act) (3 Pa.C.S. § 508 (relating to nutrient management certification program and odor management certification program)), and hereby proposes regulations implementing the odor management certification program required by the Act.

Section 508(a) of the act, directs the Department to " . . . establish, in consultation with the commission, . . . an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The Department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and

conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations."

The Act requires the Department to promulgate regulations establishing certification categories and criteria. In addition, section 508(d) of the Act requires a person to satisfy the applicable requirements of the regulations prior to certifying an odor management plan or plan amendment. These regulations are therefore necessary to assure compliance with the edicts of the Act and to allow concentrated animal operations, concentrated animal feeding operations and volunteers to comply with the odor management plan requirements set forth at section 509 of the Act.

Purpose of the Final-Form Regulation

The regulations are required to establish a certification program through which persons drafting, reviewing and approving odor management plans may become certified and thereby meet the requirements of the Act. The regulation sets forth procedures and requirements related to the certification of Individual, commercial and public odor management specialists, establish fees and delineate course and certification requirements, denote application, approval and appeal procedures for persons seeking certification, set forth criteria for recertification of odor management specialists and approval of recertification training and education programs.

Comment and Responses

Interested persons were invited to submit written comments regarding the proposed regulation within 30 days following publication in the *Pennsylvania Bulletin* (37 *Pennsylvania Bulletin* 5793 (October 27, 2007)). Only one individual commented on the proposed regulation. The person who commented during the proposed stage of rulemaking was sent a letter informing him of his right to receive a copy of the final-form regulation. The Department also received comments from the Independent Regulatory Review Commission. The Comment and Response document is attached hereto and will be published in the *Pennsylvania Bulletin* with the final-form Preamble and Annex A. The Department will also make the regulation and comment and response document available for review on the Department's website at www.agriculture.state.pa.us. If you would like to request a hard copy of the Comment and Response document, please call the Department of Agriculture, Odor Management Certification Program contact, Johan Berger at (717) 772-4189.

FISCAL IMPACT

Commonwealth

The final-form regulations will not impose any appreciable additional fiscal impacts upon the Commonwealth. The regulations will require the Department to administer another certification training and recertification program and monitor and take appropriate State action when members of the regulated community are not complying with the statutory and regulatory

mandates. The cost of administering the mandates of the act and these proposed regulations will be covered by general government operating funds annually appropriated to the Department and augmented with the certification and testing fees set forth in the regulations.

Political Subdivisions

The final-form regulations will impose additional work and costs and have a fiscal impact upon county conservation districts that agree to certify public odor management specialists to draft or review, or both, odor management plans. The regulations will impose no additional burden of enforcement on political subdivisions.

Private Sector

The final-form regulations will impose additional costs on persons wishing to write or review and approve, or both, odor management plans, as required by the act. Those additional costs are in the form of the fees for certification, which are established in the regulations.

General Public

The final-form regulations will impose no direct costs and have no fiscal impact on the general public. Farmers required to have or seeking a voluntary odor management plan, will be affected by the mandates of the act, which requires the plans and the fees charged for attaining the required certification to

write or review, or both, those odor certification plans will most likely be a small part of the fee charged to the farmer for the development of odor management plans.

Paperwork Requirements

The final-form regulations will not result in a substantial increase in paperwork. The Department will have to develop new application forms, but they will be based on current certification program forms. Review and administrative procedures will also be very similar to existing certification programs overseen by the Department.

Effective date

The final-form regulation will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Additional Information

Further information is available by contacting the Department of Agriculture, Odor Management Certification Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Johan Berger (717) 772-4189.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking published at (37 *Pennsylvania Bulletin* 5793 (October 27, 2007) on October 15, 2007 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Committees) for review and comment.

In compliance with § 5(b), the Department also provided the Commission and the Committees with copies of all comments received during the public comment period. In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was deemed approved by the House Agriculture and Rural Affairs Government Committee on _____; was deemed approved by the Senate Agriculture and Rural Affairs Committee on _____ and was approved by IRRC on _____.

Findings

The Department finds that:

(1) Public notice of intention to adopt this final-form regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at *37 Pennsylvania Bulletin 5793* (October 27, 2007).

(4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statutes, orders the following:

(1) The Department of Agriculture created the regulations at 7 Pa. Code Chapter 130f (relating to Odor Management Certification) to read as set for in Annex A.

(2) The Secretary of Agriculture shall submit this order, (*37 Pennsylvania Bulletin 5793* (October 27, 2007) and Annex A to the Office of General Counsel and Office of Attorney General for approval as required by law.

(3) The Secretary of Agriculture shall certify and deposit this order, (*37 Pennsylvania Bulletin 5793* (October 27, 2007) and Annex A with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,

Secretary

**Odor Management Certification Program
7 PA. Code Ch.130f**

Comment and Response Document

I. IRRC Comments by Section

Commentator

**Independent Regulatory
Review Commission (IRRC)**

1. Section 130f.2. Definitions – Clarity

Comment: The IRRC provided comments regarding the following definitions contained in the proposed regulation:

“Impacts” - The IRRC commented that it is not clear what is intended by the exclusion of health effects and property values in Paragraph (ii) of the definition noting that statutory criteria regarding eligibility for financial assistance (3 Pa. C.S.A. § 511 (b)(1)) requires the State Conservation Commission to consider “... the health, safety or environment of the people...” and statutory provisions regarding civil penalties and remedies (3 Pa. C.S.A. § 514 (d)) also mentions public health. The IRRC further questioned whether the exclusion of health effects or changes in property value produce lingering “conflicts” as termed in the definition.

“Odor management regulations” - The IRRC stated, the definition is dependent upon the finalization of the State Conservation Commission [Facility Odor Management] regulations at 25 Pa Code Chapter 83, Subchapter G and should reference the final regulation codified by the State Conservation Commission.

Response: *In regards to the definition of “impacts”, the Department proposed the definition consistent with the definition of “impacts” in the Facility Odor Management regulations proposed by the State Conservation Commission at 25 Pa. Code Chapter 83; Subchapter G. The statute (Act 38 of 2005, 3 Pa. C.S.A. §§501–522) requires odor management plans that “manage the impact of odors,” but does not define the word “impact.” The State Conservation Commission has developed a use of that term*

that is consistent with the statute, based on consideration of several provisions in the statute, and the state of the science of odor management at agricultural operations in Pennsylvania. There is no indication in the statute that odor impacts should include mental and physical health affects, or changes in property values. The State Conservation Commission or the Department of Environmental Protection does not have scientific, peer-reviewed data related to lingering health affects or changes in property values caused by odor impacts from agricultural operations and facilities.

In regards to the definition “odor management regulations”, the Department is on a parallel track with the Facility Odor Management regulations proposed by the State Conservation Commission at 25 Pa. Code Chapter 83; Subchapter G. Upon final approval and promulgation of the Facility Odor Management regulations, the Department will establish language in this subchapter to assure consistency with the Facility Odor Management regulations.

2. Section 130e.3. Fees – Reasonableness: Clarity.

Comment: The IRRC noted that subsections 130f.11(i), (j) and (k) of the proposed regulations provided for dual certification as a odor management specialist and questioned why the Department has not proposed a fee for dual certification as it had in the nutrient management specialist regulations at 7 Pa. Code § 130b.3(a)(3)(ii).

Response: *The Department does not intend to propose “dual” certification for odor management specialists as is provided for nutrient management specialists under the Nutrient Management Certification program at 7 Pa. Code 130b, subsections 130b.2 (pertaining to ‘Definitions’) and 130b.5 (pertaining to ‘Certification Authority’). Provisions relating to “dual” certification under the Nutrient Management Certification program identifies specific roles and authority of persons employed by conservation districts that have delegated authority for nutrient management plan review and development from the State Conservation Commission. The language in subsections 130f.11(i), (j) and (k) of the proposed regulation is intended to establish the process and requirements which a certified commercial or public odor management specialist must*

complete in order to change their current odor management specialist category certificate to another odor management specialist category. This language is similar to provisions under the Nutrient Management Certification program at 7 Pa. Code 130b.11(h) and (j). The proposed provisions will allow a public odor management specialist who leaves employment at a county conservation district, intending to begin work as a commercial consultant, to obtain a commercial odor management specialist certificate; and allow a commercial odor management specialist to obtain a public odor management specialist certificate if the commercial odor management specialist changes employment to the public sector such as employment at a county conservation district. These provisions also define the requirements a certified nutrient management planner, under 7 Pa. Code Chapter 130b, must complete in order to perform odor management planning activities

Under the Nutrient Management Act Program (Act 38 of 2005, 3 Pa. C.S.A. §§501–522) administered by the State Conservation Commission, there is a necessity for certified public nutrient management specialists employed by a county conservation district to also develop nutrient management plans for farmers under authority of the State Conservation Commission. The Department consulted with the State Conservation Commission in regards to the need for a public odor management specialist to develop odor management plans as a “dual” odor management specialist under the authority of the State Conservation Commission and Act 38 of 2005 and determined that the need for a “dual” odor management specialist category is not necessary. Therefore, the Department does not propose a “dual” odor management specialists certification category in the proposed Odor Management Certification regulations and subsequently a fee is not proposed for a “dual” odor management specialist.

Comment: Regarding required fees, the IRRC noted that subsection 130f.3(a) does not clarify whether fees are required annually or whether they cover the entire three-year certification period and suggested the Department provide clarification as to how often fees are to be paid.

Response: *The Department, in the final-form regulation, has made the appropriate revisions to the proposed language to clarify this issue.*

3. 130f.11. Determination of competence – Reasonableness.

Comment: The IRRC stated that Paragraph (d)(11) requires training to include “[O]ther areas and course work related to requirements set forth in the odor management regulations, as determined appropriate by the Department” and questioned how a person or organization running the training program would have adequate notice of, and knowledge of, the determination by the Department.

Response: *The language in the proposed regulations is not meant to imply that another individual person or organization would be developing or administering training programs – other than recertification training courses as set forth under section 31 (§ 130f.31) of the regulations - other than the Department itself. The Department does not propose to provide the opportunity for an individual or organization to develop or administer a training program under this chapter. The Department is mandated, under Section 508 of the Act 38 of 2005 (3 Pa. C.S.A. § 508) pertaining to nutrient management certification and odor management certification program, to establish an odor management certification program containing educational and examination requirements that it deems appropriate to carry out its responsibilities under the Act. The Department has developed educational and examination requirements for the Nutrient Management Certification Program (7 Pa. Code § 130b.3) utilizing a workgroup of individuals from the Department, the State Conservation Commission, technical agencies and educational institutions that provide expertise in nutrient management education and planning. It is the Department’s intent to administer the Odor Management Certification program, under the proposed regulations, in a similar approach. Where ‘other areas and course work’ related to the Facility Odor Management regulations promulgated by the State Conservation Commission at 25 Pa. Code Chapter 83, Subchapter G, are necessary, the Department will utilize a similar workgroup to evaluate, develop and incorporate the necessary modifications into the educational and examination requirements of the*

certification program for consideration and determination by the Department, as appropriate, to meet the requirements of the Odor Management Certification Program proposed in this chapter. The Department has further attempted to clarify these issues as set forth in subsection 130f.11(c) of the proposed regulation.

4. 130f.21 Determination of competence. – Reasonableness; Clarity

Comment: The IRRC commented that Paragraph (c)(9) of this section pertaining to “[O]ther applicable law and regulations”, is overly broad and should clearly state what knowledge is required.

Response: *The Department recognizes the need for clarity and has made the appropriate changes to clarify this issue in the final-form regulation*

5. 130f.31. Recertification. – Reasonableness; Clarity.

Comment: Regarding fees, the IRRC stated that Subsection (a) does not require payment of a fee assuming a fee is required for recertification and suggested that Subsection (a) require the payment of a fee along with the submission of written documentation of continuing education and training.

Response: *The proposed regulation establishes the necessity for a final certified odor management specialist to obtain continuing education and training within a 3-year period and provide that documentation to the Department. Continuing education and training opportunities are offered on a calendar basis as sponsors or the Department develops the trainings. It is not expected that a certified specialist will obtain all the required continuing education credits offered through these trainings all at once but, periodically throughout the allowable 3-year period. Therefore, a specialist fulfilling his recertification requirements will not be assessed a recertification fee until such time the Department has confirmed that the recertification requirements established in 130f.31(b) of the proposed regulations have been. The Department recognizes the need for clarity and has made the appropriate changes to clarify this issue in the final-form regulation.*

6. Miscellaneous Clarity.

Comment: Regarding Section 130f.2, the IRRC recommended the definition of “BMP” should include a reference to the Act and regarding the exclusion of “coffee breaks” from the calculation of credit hours in Subsection 130f.31(c), delete the word “coffee” to clarify the exclusion of all breaks from credit hours.

Response: *The Department maintains that the term ‘BMP’ and related references to the Act should not be included in the proposed regulation. The proposed regulation defines the term ‘odor best management practice’ consistent with the same term defined in the Facility Odor Management regulations proposed by the State Conservation Commission at 25 Pa. Code Chapter 83; Subchapter G. The State Conservation Commission has defined ‘odor best management practice’ to clarify the types of best management practice that are appropriate and relative to facility odor management activities. The term ‘BMP’, as defined in the Act, is applicable and appropriate to practices that are effective in the management of nutrients under a nutrient management plan that is developed to meet criteria under the Act. In addition, the Department has changed any reference to ‘BMP’, that occurred in the proposed regulations to “odor BMP” in the final-form regulation. Regarding the exclusion of the term ‘coffee’ from this subsection, the Department has taken the steps suggested by the IRRC to clarify this issue in the final-form regulation.*

II. Comments Received by Public Comment Deadline - Specific Sections

Section 130f.3. Fees

Comment: A commentator remarked that the [Facility] Odor Management Regulations (proposed by the State Conservation Commission at 25 Pa. Code Ch 83) only applies to new and expanding Concentrated Animal Operations and Concentrated Animal Feeding Operations that are a relatively small pool of operations requiring the services of an Odor Management Specialist. This small volume of needed services would not provide much financial opportunity for the Commercial Odor Management Specialist. An Odor Management Specialist will likely be a certified Nutrient Management Specialist and the commentator suggested creating a fourth level certification fee of \$100 for a certified Nutrient Management Specialist that completes the Odor Management Specialist certification process. A lower certification fee may make it more financially attractive for Nutrient Management Specialist to become an Odor Management Specialist.

Response: *The Department recognizes that a person certified as a Nutrient Management Specialist under the Nutrient Management Certification program (7 PA. Code Ch. 130b) could likely be the same individual seeking certification under the proposed Odor Management Certification Program (7 PA. Code Ch.130f). The Department also recognizes a person that is not a certified Nutrient Management Specialist may also seek certification under the proposed Odor Management Certification Program. Even though the proposed Odor Management Certification Program was patterned after the Nutrient Management Certification program, the authority and opportunities afforded a certified person under either program are separate and distinct. Therefore, the Department feels fees must be separate and equitable for each program. The Department also recognizes that any fee imposed on the regulated community may have a general financial impact on the regulated community. The development of fees is not intended to impose a financial burden on or negatively impact the financial opportunities made available to the regulated community but to reduce the general burden of the program on the Commonwealth. The Department developed a fee schedule based on the need to compensate for expenses to administer the*

program including annual cost of materials and supplies and expenses related to training and educational outreach activities. The Department believes this approach is rational and fiscally responsible since there was no appropriation of funds to the Department to cover the costs of developing and administering the program mandated by the Act.

Section 130f.11. Determination of Competence

Comment: A commentator remarked while the [proposed] regulations require a commercial Odor Management Specialist to develop two approved odor management plans (OMP) for final certification, the number of operations that will be required to develop an OMP would limit the ability of the specialist to meet the proposed two OMP requirement and suggests reducing the requirement to one OMP. The commentator suggested the Department provide simulated operations where the Odor Management Specialist would develop an OMP based on the simulated operation for review and credit towards final certification requirements.

Response: *The Department recognizes that there is uncertainty regarding the number of agricultural operations that would develop an odor management plan, which could potentially impact the ability of a person to meet the Odor Management Specialist final certification requirements. However, the State Conservation Commission anticipates that approximately 90 agricultural operations per year will develop odor management plans under the Facility Odor Management Regulations, proposed by the State Conservation Commission at 25 Pa. Code Ch 83 and the Department anticipated that approximately 40 persons will seek odor management specialist certification in the initial years of the program. The Department maintains that it is still appropriate to require a person seeking Odor Management Specialist certification to demonstrate his ability to apply odor management planning principles and regulatory requirements through development of two odor management plans. The Department has proposed in Section 130f.11 (h)(1) – “...One of the required odor management plans may be developed based on a scenario developed or approved by the Department...” - providing the opportunity to develop an odor management plan that would meet proposed requirements for odor management planning under the Facility Odor Management*

Regulations, proposed by the State Conservation Commission at 25 Pa. Code Ch 83. The Department maintains that an additional odor management plan developed utilizing information gathered from a functioning agricultural operation is necessary to demonstrate a person's ability to apply odor management principles and planning standards for variable circumstances outside of a controlled scenario.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

**CHAPTER 130f. ODOR MANAGEMENT
CERTIFICATION**

Subch.

- A. GENERAL PROVISIONS
- B. CERTIFICATION
- C. RECERTIFICATION
- D. DENIAL, SUSPENSION,
REVOCATION

Subchapter A. GENERAL PROVISIONS

Sec.

130f.1. Scope.

130f.2. Definitions.

130f.3. Fees.

130f.4. Certification authority.

§ 130f.1. Scope.

This chapter prescribes the procedures and qualifications related to certification of odor management specialists. This chapter includes the

establishment of fees, delineates the requirements for certification of odor management specialists, including recertification criteria and sets forth the conditions of denial, suspension and revocation of odor management certification.

§ 130f.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act--Act 38 of 2005 (3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management)).

[*BMP*--Best management practice.]

Certificate year--The period from January 1 to December 31.

Certification--The completion of the requirements of an odor management specialist contained in this chapter.

Commission--The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849--864).

Competency--Demonstrating a high level of technical or scientific knowledge as evidenced by successfully meeting the requirements of § 130f.11 (relating to determination of competence) for commercial and public odor management specialists, or meeting the requirements of

§ 130f.21 (relating to determination of competence) for individual odor management specialists.

Conservation district--A county conservation district established under the Conservation District Law.

Department--The Department of Agriculture of the Commonwealth.

Designee--A person chosen or appointed by the Secretary of the Department to carry out the Secretary's duties under this chapter.

Impacts--

(i) Conflicts arising from the offsite migration of odors from agricultural facilities.

(ii) The term does not include mental or physical health affects, or changes in property value.

Nutrient management specialist--A person satisfying the certification requirements of section 508 of the act (relating to nutrient management certification program and odor management certification program).

OMP--Odor management plan--A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

*Odor BMP--Odor best management practice--*A practice or combination of practices, technologies, standards and strategies to manage the potential for impacts from offsite migration of odors generated from animal housing facilities and manure management facilities that are subject to regulation under the act.

*Odor management regulations--*The regulations [which will be] codified in 25 Pa. Code Chapter 83, Subchapter G (relating to facility odor management). [(*Editor's Note:* See 37 Pa.B. 4780 (September 1, 2007).)]

*Odor management specialist--*A person satisfying the certification requirements of this chapter.

*Individual odor management specialist--*A person certified under this chapter to develop odor management plans for his agricultural operation.

*Commercial odor management specialist--*A private sector person certified under this chapter to develop odor management plans for another person's agricultural operation.

*Public odor management specialist--*A State, Federal or other public employee certified under this chapter to review odor management plans and make recommendations for approval or denial of odor management plans to a conservation district or the State Conservation Commission, or both.

Odor Site Index--The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, to determine the potential for impacts from the offsite migration of odors from agricultural operations.

Provisional certification--The level of certification obtained by an odor management specialist applicant who has successfully completed the required training and passed the written examination, but has not yet developed or reviewed the required number of odor management plans.

Recertification training--The completion of continuing education and training requirements in § 130f.31 (relating to recertification).

§ 130f.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The Department has established the following certification fees for each level of odor management specialist:

- (1) Individual odor management specialist—A triennial fee of \$15.
- (2) Commercial odor management specialist-- A triennial fee of \$200.
- (3) Public odor management specialist-- A triennial fee of \$25.

(b) *Examination fees.* Examination fees are nonrefundable. The Department has established the following examination fees for each level of odor management specialist:

(1) Individual odor management specialist--No charge.

(2) Commercial odor management specialist--\$30.

(3) Public odor management specialist--\$30.

§ 130f.4. Certification authority.

(a) *Individual certification authority.* A person certified under this chapter as an individual odor management specialist is authorized to develop odor management plans for his own agricultural operation. An individual odor management specialist has no authority to develop an odor management plan for another person or review and recommend action on an odor management plan.

(b) *Commercial certification authority.* A person certified under this chapter as a commercial odor management specialist is authorized to develop odor management plans for another person's agricultural operation. A commercial odor management specialist has no authority to review or recommend action on an odor management plan.

(c) *Public certification authority.* A person certified under this chapter as a public odor management [review] specialist is authorized to review

odor management plans and make recommendations for approval or denial of odor management plans.

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

Sec.

130f.11. Determination of competence.

130f.12. Final certification.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

130f.21. Determination of competence.

130f.22. Final certification.

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

§ 130f.11. Determination of competence.

(a) *Commercial odor management specialist.* Determination of competence for a commercial odor management specialist shall be based on the successful completion of provisional certification training and

examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a commercial odor management specialist include an orientation training course, an odor management plan writing course and a written examination approved by the Department.

(2) Final certification of a commercial odor management specialist requires the development of two approved odor management plans as set forth in subsection (h)(1). Odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(b) *Public odor management specialist.* Determination of competence for a public odor management specialist will be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a public odor management specialist include an orientation training course, an odor management plan review course, an odor management plan writing course and a written examination approved by the Department. Odor management plan reviews

completed and odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(2) Final certification of a public odor management specialist requires the approved review of one odor management plan and the development of one approved odor management plan as set forth in subsection (h)(2).

(c) *Future advancements.* As advancements in science and technology make new odor management techniques and Odor BMPs available and after these techniques and Odor BMPs are approved by the State Conservation Commission, the certification requirements may include other course work related to those techniques and best management requirements, as well as, any new requirements set forth in the odor management regulations, as part of the certification course and training requirements. The new techniques and Odor BMPs will not become part of the certification requirements until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and Odor BMPs.

(d) *Provisional certification training.* The provisional certification training courses must, at a minimum, consist of the following areas of odor management planning:

(1) Understanding an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

- (i) Completion and application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.
- (ii) Mapping principles and requirements.
- (2) Understanding odor generation and transmission principles.
- (3) Understanding environmental and economic impacts associated with odor management.
- (4) Understanding and awareness of land use issues related to odor impact and management.
- (5) Understanding OMP components and content.
- (6) Understanding the technology, application and implementation of Odor BMPs.
- (7) Understanding regulatory requirements of agricultural operations.
 - (i) Types of agricultural operations or activities/technologies that may require OMPs.
 - (ii) How to submit an OMP.
 - (iii) Other applicable laws and regulations related to or conjoined with odor management.
- (8) Recordkeeping requirements.

(9) Proper odor management plan review procedures (public odor management specialists only).

(10) Proper odor management plan writing procedures (commercial and public odor management specialists only).

(11) Other areas and course work related to requirements [set forth] in the odor management regulations, [as] and determined appropriate by the Department in the manner delineated in subsection (c) of this section.

(e) *Examination.* The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:

(1) Application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

(2) Odor generation and transmission principles.

(3) Environmental and economic impacts associated with odor management.

(4) Land use issues related to odor impacts and management.

- (5) OMP components and content.
 - (6) Technology, application and implementation of Odor BMPs.
 - (7) Odor management regulatory requirements of agricultural operations.
 - (8) Recordkeeping requirements.
 - (9) Other applicable laws and regulations related to or conjoined with odor management.
 - (10) Other areas related to new technology and Odor BMPs that become available and are approved by the State Conservation Commission, as well as, new requirements in the odor management regulations. These other areas will not become part of the final certification requirements until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and Odor BMPs.
- (f) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examinations meet the requirements in subsection (e).
- (g) *Provisional certification.* Upon the successful completion of the requirements in subsections (d) and (e), the applicant for certification as a commercial or public odor management specialist will be issued the

appropriate provisional certification. The holder of a provisional certification is qualified, dependent on the type of provisional certification attained, to develop or review [, or both,] odor management plans for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 2 years ending on the last day of the month from the date of issuance.

(h) *Final certification requirements.* Once provisional certification has been granted, the provisionally certified specialist shall complete one of the following dependent on the type of provisional certification granted and final certification sought:

(1) *Commercial odor management specialist.* To attain final certification, a provisionally certified commercial odor management specialist shall develop two odor management plans [,] which meet the requirements of section 509 of the act (relating to odor management plans). One of the required odor management plans may be developed based on a scenario developed or approved by the Department. Odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public odor management specialist.* To attain final certification, a provisionally certified public odor management specialist shall successfully review one odor management plan and develop one odor management plan which meets the requirements of section 509 of the act.

The developed odor management plan may be based on a scenario developed or approved by the Department. Odor management plan reviews completed and odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(i) *Public odor management specialist to commercial odor management specialist.* A certified public odor management specialist may obtain certification as a commercial odor management specialist. To attain this certification, a certified public odor management [review] specialist shall develop one additional odor management plan in accordance with section 509 of the act. The certified public odor management specialist seeking this certification shall submit the odor management plan to the Department or its designee for review and approval.

(j) *Commercial odor management specialist to public odor management specialist.* A certified commercial odor management specialist who wishes to obtain certification as a public odor management specialist shall complete an odor management plan review course covering proper odor management plan review procedures and shall successfully review one odor management plan in accordance with section 509 of the act. The applicant seeking to attain this certification shall submit the odor management plan review to the Department or its designee for review and approval.

(k) *Nutrient management specialist to odor management specialist.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management specialist under the Department's nutrient management certification regulations (See Chapter 130b (relating to nutrient management certification)) may obtain certification as a commercial or public odor management specialist upon meeting the requirements of this chapter for the level of certification sought.

§ 130f.12. Final certification.

(a) *Application for final certification.* Upon completion of all the provisional certification requirements of this chapter, a provisionally certified commercial odor management specialist or public odor management specialist may submit an application to the Department for final certification. The appropriate certification fee, as set forth in § 130f.3(a) (relating to fees) must accompany the application for final certification.

(b) *Eligibility for final certification.* A person is eligible to apply for final certification as a commercial or public odor management specialist upon fulfilling the applicable requirements established under § 130f.11 (relating to determination of competence). An application for final certification may be obtained from the Department.

(c) *Time period for filing application.* An application for final certification shall be filed with the Department within 120-calendar days of notification by the Department of meeting the appropriate requirements in § 130f.11. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130f.11.

(d) *Time period final certification is valid.* Final certification is valid for 3 years ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

§ 130f.21. Determination of competence.

(a) Determination of competence for an individual odor management specialist shall be based on the completion of required training which includes an orientation training course and a competency evaluation developed or approved by the Department.

(b) The orientation training course shall at a minimum consist of the same requirements as in § 130f.11 (relating to determination of competence).

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:

(1) Application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

(2) Odor generation and transmission principles.

(3) Environmental and economic impacts associated with odor management.

(4) Land use issues related to odor impacts and management.

(5) Odor management plan components and content.

(6) Technology, application and implementation of Odor BMPs.

(7) Odor management regulatory requirements of agricultural operations.

(8) Recordkeeping requirements.

(9) Other applicable laws and regulations related to or conjoined with odor management.

(d) The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examination meets the requirements in subsection (c).

(e) Individual odor management specialists are exempt from the odor management plan preparation requirements.

§ 130f.22. Final certification.

(a) A person is eligible to apply for final certification as an individual odor management specialist upon fulfilling the requirements under § 130f.21 (relating to determination of competence). An application for certification may be obtained from the Department. The appropriate fee must accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than 120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130f.21.

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will

authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

Subchapter C. RECERTIFICATION

Sec.

130f.31. Recertification.

§ 130f.31. Recertification.

(a) At intervals of 3 years, final certified commercial, public or individual odor management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in odor management planning and odor management plan development. Training must address the specific areas in § 130f.11 (relating to determination of competence) for commercial and public odor management specialists and § 130f.21 (relating to determination of competence) for individual odor management specialists.

(b) A person is eligible to apply for recertification as an odor management specialist upon fulfilling the requirements under § 130f.31(c) for the appropriate certification level. An application for recertification may be obtained from the Department. The appropriate fee for the level of

certification sought as set forth in section § 130f.3 shall accompany the specialist's application for recertification.

([b]c) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public odor management specialists are required to obtain six credits during the recertification interval. Individual odor management specialists are required to obtain three credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified odor management specialists, in addition to the required training in §§ 130f.11 and 130f.21. The Department will provide written notification to the certified odor management specialists of specifically required training.

([c]d) Training will be approved for recertification credits at the rate of one credit per hour of applicable instruction, exclusive of [coffee] breaks, lunches, visits to exhibits, and the like. Credits will be assigned to each training session based upon the subjects covered and the amount of time expended on each subject. Credits assigned may be modified if either the content or length of the training substantially differs from the originally approved course.

([d]e) Sponsors of recertification training shall first submit a written request for course approval to the Department of Agriculture, Bureau of

Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania
17110-9408. A request shall be submitted to the Department at least 15
working days prior to the training date and include the following
information:

- (1) The name and phone number of the contact person who is
coordinating the training.
 - (2) The specific location of the training.
 - (3) The date of the training.
 - (4) A list of the speakers, subject matter and time allotted to each
subject.
 - (5) A statement whether the training is open to the public and if there is
a charge to attend.
- ([e]f) A recertification training course will be approved if at a minimum
it consists of the same requirements as set forth in § 130f.11(d) and (e) and
is conducted or sponsored by an educational institution, an association, a
business, a governmental agency or other qualified source. Preapproval of
recertification courses is vested solely with the Department.
- ([f]g) Falsification by a course sponsor of information required under
this section may result in the withdrawal of credits or course approval, or
both.

([g]h) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania-certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and include the name of each person attending and their certification number.

([h]i) If an odor management specialist allows final certification to expire and does not obtain recertification in accordance with this chapter, the final certification will be suspended and the specialist shall refrain from all duties relating to his certification until all delinquent recertification credits are acquired as described in [subsection (b)] subsections (a) through (d) of this section.

([i]j) If an odor management specialist whose final certification has been suspended as set forth in subsection ([h]i) fails to complete delinquent recertification credits within 1 year from the expiration date of the final certification, the final certification will be revoked and that person shall again satisfy the requirements of § [4]130f.11 and § 130f.12 (relating to final certification) for commercial and public specialists, or § 130f.21 and § 130(f).22 (relating to final certification) for individual specialists, whichever is applicable.

**Subchapter D. DENIAL, SUSPENSION AND REVOCATION
OF CERTIFICATES**

Sec.

130f.41. Denial, suspension and revocation of certificates.

§ 130f.41. Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reason therefore, deny, suspend or revoke a commercial, public or individual odor management specialist certification for any of the following:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required recertification credits.
- (3) Inconsistency or demonstration of a lack of knowledge of odor management plan writing and review skills.
- (4) Three or more occurrences within a 3-year period of delay or noncommunication with a landowner or review agency during plan development or review.
- (5) Falsifying information.

(6) Misrepresentation associated with the act or its attendant regulations.

(7) A violation of program policy established by the Department, its designee or the Commission.

(b) An applicant or odor management specialist may request a hearing, in writing, within 15 days of receipt of a notice of denial, suspension or revocation from the Department. The request shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

List of Commentators

COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE
2301 N. Cameron Street • Room 201
Harrisburg, Pennsylvania 17110-9408

OFFICE OF CHIEF COUNSEL

Tel: 717-787-8744
Fax: 717-787-1270

May 28, 2008

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: NOTICE OF FINAL REGULATION
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130f.
Odor Management Certification Program
I.D. No. 2-155
Proposed Rulemaking: 37 Pennsylvania Bulletin 5793 (October 27, 2007)
Approved by Office of General Counsel: May 14, 2008

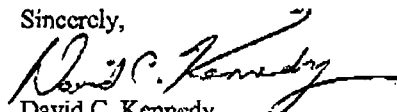
Dear Sir or Madam:

Please find attached a copy of the List of Commentators for the above-referenced final-form regulation and the actual comment submitted. This was inadvertently left out of the final-form regulation package you received this morning (Preamble, Comment and Response document and Annex "A"). Please be aware that the Department, on this same date, sent a copy of the final-form regulation to all commentators pursuant to 71 P.S. § 745.5a(b).

I have also faxed a copy of attached List of Commentators to the Majority and Minority Chairman of the House and Senate Agriculture and Rural Affairs Committees on this date and the Department will hand deliver the List of Commentators as well.

I apologize for the inadvertent omission.

Sincerely,


David C. Kennedy
Assistant Counsel

Attachment

List of Commentators

Final Form Regulation

Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130f.
Odor Management Certification Program

There was one commentator for this regulation, listed below. We have attached a copy of the actual comment to this document.

Commentator:

William C. Fink
Country View Family Farms
6360 Flank Drive, Suite 100
Harrisburg, PA 17112-2766
(717) 725-0105

November 21, 2007

Johan E. Berger
Department of Agriculture
Bureau of Plant Industry
2301 North Cameron Street
Room G 11
Harrisburg, PA 17110-9408

Mr. Berger

Thank you for the opportunity to comment on the proposed odor management certification program regulations. The regulations seem to be workable because the proposed odor management certification process is similar to the successful nutrient management certification program.

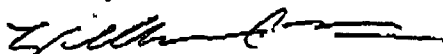
Comments on the proposed odor management certification program regulations:

§ 130f.3. Fees. The Odor Management Regulations only apply to New and Expanding Concentrated Animal Operation (CAOs) and Concentrated Animal Feeding Operation (CAFOs) and Voluntary agricultural operation. This is a relatively small pool of operations requiring the services of an Odor Management Specialist thus not provide much financial opportunity for the Commercial Odor Management Specialist. The current pool Nutrient Management Specialists have the most experience working with CAO and CAFO and will likely be the future Odor Management Specialist (OMS). In order to make becoming an OMS more attractive to NMS it is suggested that fourth level of certification fees be added. It is suggested that a \$100 fee for NMS that complete the OMS certification process. All the certification requirements would remain the same just a lower fee would be charged to NMS who are already in the Departments administrative system. The lower certification fee may make it more finically attractive for NMS to become OMS.

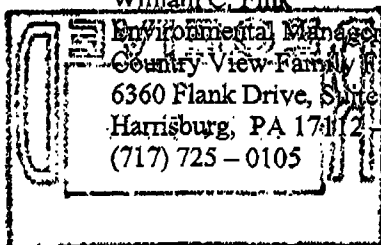
§ 130f.11. Determination of competence. The regulations require that for final certification, a commercial odor management specialist is required to development two approved odor management plans. Duc to the number of operations that will be required to develop Oder Management Plans (OMPs) it is suggested the Department consider dropping this requirement to One. Another alternative could be that the Department provides certification training program with simulated operations. The commercial odor management specialist would then develop an OMPs for these simulated operations, the simulated OMPs could then be reviewed and if developed correctly would count toward final certification.

Once again, thank you for the opportunity to comment on these regulations.

Sincerely



William C. Fink
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Country View Family Farms
6360 Flank Drive, Suite 100
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(717) 725-0105



COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE
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May 28, 2008

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: NOTICE OF FINAL REGULATION
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130f.
Odor Management Certification Program
I.D. No. 2-155
Proposed Rulemaking: 37 Pennsylvania Bulletin 5793 (October 27, 2007)
Approved by Office of General Counsel: May 14, 2008

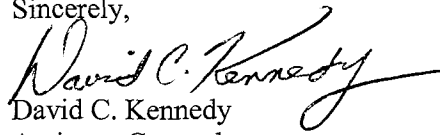
Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Preamble, Comment and Response document and Annex "A"). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)).

The Department's responses to the comments received with respect to the proposed version of this regulation are set forth in the Preamble, the Comment and Response document and Annex "A" of the final-form regulation. Please be aware that the Department, on this same date, sent a copy of the final-form regulation to all commentators pursuant to 71 P.S. § 745.5a(b). Copies of the final-form regulation have been delivered to the appropriate Legislative Committees (the House & Senate Agricultural and Rural Affairs Committees) on this date.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Sincerely,


David C. Kennedy
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**


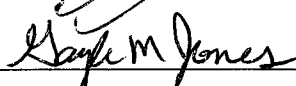
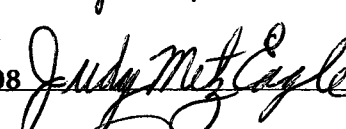
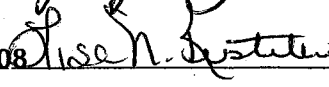
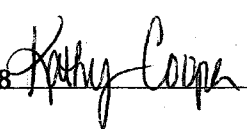
I.D. NUMBER: 2-155
 SUBJECT: ODOR MANAGEMENT CERTIFICATION PROGRAM
 AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2008 MAY 28 PM 3:25
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/28/08		Hershey HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
5/28/08		Hanna MAJORITY CHAIRMAN <u>Hanna</u>
5/28/08		O'Pake SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
5/28/08		Brubaker MAJORITY CHAIRMAN <u>Brubaker</u>
5/28/08		Kelly Cooper IRRC
		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 14, 2008