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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 26, 2007

Honorable Dennis C. Wolff, Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: Regulation #2-155 (IRRC #2647)
Department of Agriculture
Odor Management Certification Program

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

wbg

Enclosure

cc: Honorable Michael W. Brubaker, Chairman, Senate Agriculture and Rural Affairs
Committee
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs
Committee
Honorable Michael K. Hanna, Sr., Majority Chairman, House Agriculture and Rural Affairs
Committee
Honorable Arthur D. Hershey, Minority Chairman, House Agriculture and Rural Affairs
Committee

Comments of the Independent Regulatory Review Commission

on

Department of Agriculture Regulation #2-155 (IRRC #2647)

Odor Management Certification Program

December 26, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the October 27, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

1. Section 130f.2. Definitions. – Clarity.

Impacts

This term is defined as:

- (i) Conflicts arising from the offsite migration of the odors from agricultural facilities.
- (ii) The term does not include mental or physical health affects (sic), or changes in property values.

It is not clear what is intended by the exclusion of health effects and property values in Paragraph (ii). In the statutory criteria for eligibility for financial assistance, the State Conservation Commission (SCC) must consider whether a project will “improve the health, safety or environment of the people....” (3 Pa. C.S.A. § 511(b)(1)). Public health is also mentioned in civil penalties and remedies (3 Pa. C.S.A. § 514(d)). Moreover, what “conflicts” remain after the exclusion of health effects or changes in property value? Why would an odor that caused the health effect of loss of appetite be excluded from impacts? The Department needs to explain why Paragraph (ii) is appropriate in the definition of “impacts.”

Odor management regulations

This definition is dependent upon the SCC regulation which is not yet final as of the date of these comments. If possible, this final regulation should reference the final regulation by the SCC.

2. 130f.3. Fees. – Reasonableness; Clarity.

Fees for dual certification

We note that the nutrient management specialist regulations (7 Pa. Code §130b.3(a)(3)(ii)) impose a fee for dual certification. Subsections 130f.11(i), (j) and (k) provide for dual certification as an odor management specialist. Why didn't the Department include a fee for dual certification as an odor management specialist in Section 130f.3?

Fees required

Subsection (a) does not state whether fees are required annually or whether they cover the entire three-year certification periods specified in Sections 130f.22(c) and 130f.31(a). The regulation should clearly state how often fees are required to be paid to maintain certification.

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

Other areas and course work

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.” How will the person or organization running the training course have adequate notice of an area determined to be appropriate by the Department and where could they find this determination by the Department?

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

Other applicable laws and regulations

Paragraph (c)(9) is overly broad by requiring knowledge in “[O]ther applicable laws and regulations.” The regulation should clearly state what knowledge is required.

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

Fees

Related to our concern with Section 130f.3 regarding *Fees*, this section does not require payment of a fee. Assuming a fee is required for recertification, Subsection (a) should require payment of the fee along with the written documentation of continuing education and training.

6. Miscellaneous Clarity.

- In Section 130f.2, the definition of “BMP” should include a reference to the Act.
- Subsection 130f.31(c) excludes “*coffee breaks*” from the calculation of credit hours. We recommend deleting the word “coffee” so that all breaks would be excluded from credit hours.

Facsimile Cover Sheet



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Agency: Department of Agriculture
Phone: 2-2853
Fax: 5-8402 787-1247
Date: December 26, 2007
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-155 (IRRC #2647). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Stephanie Warden* Date: *Dec. 26.07*