

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130e]

Commercial Manure Hauler and Broker Certification

The Department of Agriculture (Department) amends Chapter 130e (relating to commercial manure hauler and broker certification) to read as set forth in Annex A.

Statutory Authority

The Department adopts this final-form rulemaking under the Commercial Manure Hauler and Broker Certification Act (act) (3 P. S. §§ 2010.1—2010.12) and under the specific authority of section 3 of the act (3 P. S. § 2010.3) regarding the commercial manure hauler and broker certification program.

Section 3(a)(1) of the act charges the Department, in consultation with the State Conservation Commission (Commission) and the Nutrient Management Advisory Board (Board), with the duty of establishing “. . . within 18 months of the effective date of this act . . . a commercial manure hauler and broker certification program The department shall by regulation establish such terms, conditions and fees for certification as it deems appropriate.” With regard to the certification program, the regulations are required, at a minimum, to address laws and regulations pertaining to manure application, information necessary for understanding and following a nutrient management plan and nutrient balance sheet, training in the development and filing of a nutrient balance sheet, best management practices with respect to manure hauling and application, safety procedures, calibration of application rates for various types of equipment, setback requirements, nutrient runoff concerns, incorporation techniques, recordkeeping requirements necessary to meet the act and 3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management). In addition, the Department has the authority to approve training and education programs developed by The Pennsylvania State University and other educational institutions or entities that meet the requirements of the act and this final-form rulemaking.

Purpose of the Final-Form Rulemaking

The final-form rulemaking is required to establish a certification program through which persons hauling or applying manure generated by an agricultural operator can obtain the certification required by the act. The final-form rulemaking sets forth procedures and requirements regarding the certification of commercial manure haulers and brokers; establishes fees and delineates course and certification requirements; provides for various levels of certification; denotes application, approval and appeal procedures for persons seeking certification; sets forth criteria for approval of training and education programs developed by The Pennsylvania State University and other educational institutions or entities; and details recordkeeping requirements necessary to meet the requirements of the Nutrient Management Act and the act. It must be noted that the Nutrient Management Act was repealed and replaced by the act of July 6, 2005 (P. L. 112, No. 38), codified at 3 Pa.C.S. Chapters 3 and 5, which took effect July 6, 2005.

Comment and Responses

The proposed rulemaking was published at 35 Pa.B. 6751 (December 17, 2005). Interested persons were originally invited to submit written comments regarding the proposed rulemaking within 30 days following publication. At the request of the regulated community, the Commission and the Board, the Department extended the comment period to 60 days. The extension was published at 36 Pa.B. 288 (January 21, 2006). In addition, the Department continued to meet with the Board and the Commission to illicit comments on subsequent drafts of the rulemaking. The Department also published an advanced notice of final rulemaking (ANFR) at 36 Pa.B. 4505 (August 12, 2006). Persons who commented during the proposed rulemaking stage were sent letters informing them of the ANFR and where to go to view the revised rulemaking. Comments received as a result of the ANFR and the Department's responses appear in a separate part of the Comment and Response document, which accompanies this final-form rulemaking.

Due to the length of the Comment and Response document (141 pages), this document will not be published in the *Pennsylvania Bulletin*. The Comment and Response document is available for review on the Department's website at www.agriculture.state.pa.us. To request a hard copy of the Comment and Response document, contact Johan Berger, Commercial Manure Broker and Hauler Program, (717) 772-4189.

Fiscal Impact

Commonwealth. The final-form rulemaking imposes additional fiscal impacts upon the Commonwealth for administration and enforcement. The final-form rulemaking requires the Department to commit an additional amount of time and manpower to the development or overview and approval, or both, of commercial manure broker and commercial manure hauler certification courses, training manuals, in-classroom and out of classroom examinations, development and review of continuing education courses, oversight of certification and recertification course providers, oversight of continuing education credit course providers and oversight and enforcement of the recordkeeping, certification, recertification and other general provisions of the final-form rulemaking.

Political subdivisions. The final-form rulemaking imposes no additional costs and has no fiscal impact upon political subdivisions. The final-form rulemaking does not impose additional burden of enforcement of review on political subdivisions.

Private sector. The final-form rulemaking imposes additional costs on the regulated community (commercial manure brokers and haulers). The additional costs to the regulated community will be certification fees necessary to obtain the certification requirements required by the act and the final-form rulemaking. In addition, the regulated community will be subject to the additional costs of attending continuing education courses and attaining the proper amount of continuing education credits required to comply with the commercial manure hauler and broker certification regulations. The regulated community will also face costs associated with the additional recordkeeping requirements established by the act and this final-form rulemaking.

General public. The final-form rulemaking imposes no costs and has no fiscal impact on the general public, except that agricultural operators or exporters of manure may be subject to increased costs charged by commercial manure haulers and brokers as a result of the certification requirements imposed by the act and the final-form rulemaking.

Paperwork Requirements

The final-form rulemaking will not result in a substantial increase of paperwork. The Department, through the interim certification program, already developed the necessary application forms, training courses and training course manuals, test booklets for every level of certification, nutrient balance sheet scenarios, sign-in forms for certification courses and testing and tests for all levels of certification. The Department will need to develop or approve continuing education credit courses as well as recordkeeping forms and notification letters and enforcement documents.

Effective Date

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

Additional Information

Further information is available by contacting the Department of Agriculture, Commercial Manure Broker and Hauler 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)), on December 7, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6751, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 29, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-form rulemaking.

Findings

The Department finds that:

- (1) Public notice of intention to adopt this final-form rulemaking 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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and the comments received were considered.
- (3) The revisions that were made to this final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 6751.

(4) The adoption of the final-form rulemaking 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 that:

(1) The regulations of the Department, 7 Pa. Code Chapter 130e, are amended by amending §§ 130e.1 and 130e.2 and by adding §§ 130e.3—130e.9, 130e.11, 130e.12, 130e.21, 130e.22, 130e.31, 130e.32, 130e.41, 130e.42, 130e.51, 130e.52, 130e.61 and 130e.71 to read as set forth in Annex A.

(2) The Secretary of Agriculture shall submit this order 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 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

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)

Fiscal Note: 2-150. (1) General Fund; (2) Implementing Year 2006-07 is \$37,000; (3) 1st Succeeding Year 2007-08 is \$37,000; 2nd Succeeding Year 2008-09 is \$38,500; 3rd Succeeding Year 2009-10 is \$40,000; 4th Succeeding Year 2010-11 is \$41,600; 5th Succeeding Year 2011-12 is \$43,300; (4) 2005-06 Program—N/A; 2004-05 Program—N/A; 2003-04 Program—N/A; (7) Department of Agriculture—General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 130e. COMMERCIAL MANURE HAULER AND BROKER CERTIFICATION

Subch.

- A. GENERAL PROVISIONS**
- B. CERTIFICATION**
- C. RECORDKEEPING**

Subchapter A. GENERAL PROVISIONS

- Sec.
- 130e.1. Scope.
- 130e.2. Definitions.
- 130e.3. Fees.
- 130e.4. Prohibition.
- 130e.5. Authority, duties and prohibitions.
- 130e.6. Possession of certificate and contracts.
- 130e.7. Notice of change in business or certification.
- 130e.8. General training requirements for certification.
- 130e.9. Approval of other training programs.

§ 130e.1. Scope.

This chapter prescribes procedures relating to the certification of commercial manure haulers and brokers. This chapter includes the establishment of fees, delineates the requirements for certification of commercial manure haulers and brokers, and sets forth criteria for approval of accredited certification programs.

§ 130e.2. Definitions.

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

Act—The Commercial Manure Hauler and Broker Certification Act (3 P. S. §§ 2010.1—2010.12).

Act 38 of 2005—The act of July 6, 2005 (P. L. 112, No. 38), known as Act 38 of 2005 (3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management)).

Act 38 of 2005 regulations—The regulations associated with Act 38 of 2005 found in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

Agricultural operation or operation—The management and use of farming resources for the production of crops, livestock or poultry.

Agricultural operator—A person that has management control of an agricultural operation.

BMP—Best management practice—A practice as defined by Act 38 of 2005 (see 3 Pa.C.S. § 503 (relating to definitions)) and its implementing regulations in 25 Pa. Code Chapter 83 (see 25 Pa. Code § 83.201 (relating to definitions)).

Board—The Nutrient Management Advisory Board created under section 10 of Act 38 of 2005. See 3 Pa.C.S. § 510 (relating to Nutrient Management Advisory Board).

CAFO—Concentrated animal feeding operation—An agricultural operation that meets the criteria established by the Department of Environmental Protection under 25 Pa. Code § 92.1 (relating to definitions).

CAO—Concentrated animal operation—An agricultural operation that meets the criteria established under the authority of Act 38 of 2005 (see 3 Pa.C.S. § 503) and its implementing regulations in 25 Pa. Code Chapter 83 (see 25 Pa. Code § 83.201).

Certificate year—The period from January 1—December 31.

Certification—The completion of all requirements of a commercial manure hauler or broker contained in this chapter and final approval of the Department.

Clean Streams Law—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Commerce—The exchange of goods, productions or property of any kind; the buying, selling and exchanging of articles. Intercourse by way of trade between different peoples or states and citizens or inhabitants thereof, including the purchase, sale and exchange of commodities and the instrumentalities by which commerce is promoted and carried on.

Commercial—Relates to or is connected with trade or commerce in general; involving dealings between persons in the nature of purchase and sale. Normally the sale, exchange or purchase is intended for profit.

Commercial manure broker—A person that is not working for or under the control of an agricultural operator and that assumes temporary control or ownership of manure from an agricultural operation and arranges for transport to and utilization at an importing operation or other location.

Commercial manure hauler—A person that transports or land applies manure as a contract agent for an agricultural operator or commercial manure broker under the direction of the operator or broker.

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

Competency—Demonstrating a thorough level of knowledge and understanding of the requirements of the act and this chapter as evidenced by successfully meeting the applicable requirements of Subchapter B (relating to certification).

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

Department—The Department of Agriculture of the Commonwealth.

Importer or importing operation—A person who receives and utilizes or processes manure not produced by poultry or livestock under the management control of that person.

Manure—

(i) The excreta, in liquid or solid form, of livestock, including cattle, sheep, hogs, goats, horses, poultry and fur bearing animals with or without the bedding, litter, straw, washwater and other refuse materials, dirt and waste ordinarily mixed or commingled with it.

(ii) For purposes of this chapter, the definition does not include chemical fertilizers, plant or soil amendments, compost or biosolids.

Nutrient—

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

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

Nutrient balance sheet—A crop management BMP developed to protect surface and groundwater quality by providing the calculations for determining the appropriate rate, method and timing of application of manure to crop land, hayland and pasture, to meet the purposes of Act 38 of 2005.

Nutrient management plan—A written site-specific plan that incorporates BMPs to manage the use of manure and other plant nutrients for crop production and water quality protection consistent with the criteria established under Act 38 of 2005.

Nutrient management specialist—A person satisfying the requirements of the Department's Nutrient Management Certification Program in Chapter 130b (relating to nutrient management certification).

Person—An individual, sole proprietorship, partnership, association, firm, corporation, labor organization, trustee, receiver or other legal entity.

Recertification—The completion of all continuing education requirements and acquisition of the necessary continuing education credits in the manner and within the time frame set forth in this chapter.

Secretary—The Secretary of Agriculture of the Commonwealth.

Supervise or supervision—To be in contact with the Level 1 or Level 2 certified commercial manure hauler by means of a cell phone, two-way radio or other electronic device or means which allows direct communication between the Level 1 or Level 2 certified commercial manure hauler and the certified commercial manure broker of certified Level 3 hauler.

Volunteer operation—An agricultural operation that voluntarily meets the requirements of Act 38 of 2005.

§ 130e.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The following fees, which are calendar year fees, for each category and level of certification apply:

(1) *Level 1 commercial manure broker.* A triennial fee of \$325 for a Level 1 commercial manure broker certificate.

(2) *Level 2 commercial manure broker.* A triennial fee of \$350 for a Level 2 commercial manure broker certificate.

(3) *Level 1 commercial manure hauler.* An annual fee of \$10 for a Level 1 commercial manure hauler certificate.

(4) *Level 2 commercial manure hauler.* A triennial fee of \$60 for a Level 2 commercial manure hauler certificate.

(5) *Level 3 commercial manure hauler.* A triennial fee of \$300 for a Level 3 commercial manure hauler certificate.

(b) *Disposition of fees and penalties.* Fees and penalties collected under the act and this chapter will be utilized to pay for administration of the act and this chapter. Fees and penalties collected under the act and this chapter will be deposited into an account created within the Nutrient Management Fund established by section 512 of Act 38 of 2005 (relating to Nutrient Management Fund) (See 3 Pa.C.S. § 512.).

§ 130e.4. Prohibition.

(a) No commercial manure hauler or commercial manure broker may transport or land apply manure in this Commonwealth on behalf of an agricultural operation, regardless of where the manure is generated, unless the hauler or broker has satisfied the following requirements:

(1) Successfully completes the certification requirements established by this chapter.

(2) Receives the appropriate certification from the Department.

(3) Continues to maintain certification as required by the act and in this chapter.

(4) Continues to have a valid certification, which has not been suspended or revoked by the Department.

(5) Continues to operate within the confines and authority of the level of certification he has received.

(b) Only those persons involved in commercial manure hauling or brokering are required to be certified to transport and land apply manure. The following are examples of noncommercial activities that do not require a person to obtain certification under the act or this chapter:

(1) An agricultural operator or an employee hauling or land applying manure generated by animals on an agricultural operation owned or leased by that agricultural operator to land owned or leased by that agricultural operator or to land owned or leased by another agricultural operator when no financial compensation is involved.

(2) An agricultural operator or an employee hauling or land applying manure, generated on a farm owned by another agricultural operator, to land owned or leased by that agricultural operator, when no financial compensation is involved.

(3) An agricultural operator or an employee hauling or land applying manure, generated on a farm owned by another agricultural operator, onto land owned by another agricultural operator, when no financial compensation is involved.

(4) An agricultural operator utilizing the equipment of another agricultural operator or equipment owned or leased by a group of agricultural operators to haul or land apply manure to land owned or leased by that agricultural operator or by another agricultural operator, when no financial compensation is involved.

(5) A CAO, CAFO or volunteer operator or an employee hauling or land applying manure generated by animals to land owned or leased by that CAO or CAFO operator, so long as it is part of his approved nutrient management plan.

(6) A CAO, CAFO or volunteer operator or an employee hauling or land applying manure generated by animals on an agricultural operation owned or leased by that agricultural operator to land owned or leased by another agricultural operator or importing agricultural operator, so long as it is part of the CAO, CAFO or volunteer operator's approved nutrient management plan and there is no financial compensation involved.

§ 130e.5. Authority, duties and prohibitions.

(a) *Commercial manure broker.*

(1) *Authority.* A person certified as a commercial manure broker under this chapter is authorized to assume temporary control or assume ownership of manure from an agricultural operation and to perform the following duties and activities:

(i) *Level 1 certified commercial manure broker.* A person certified under this chapter as a Level 1 commercial manure broker is authorized to arrange transport of manure to and utilization of manure at an importing operation or other location. Utilization of manure at an importing operation or other location includes land application of manure on an importing operation or other location. A Level 1 certified commercial manure broker is authorized to direct and supervise a Level 1 certified commercial manure hauler under contract with the Level 1 certified commercial manure broker with regard to transportation and stacking of manure. A Level 1 certified commercial manure broker is authorized to direct and supervise a Level 2 certified commercial manure hauler, employed by or under contract with the broker, in the land application of manure.

(ii) *Level 2 certified commercial manure broker.* A person certified under this chapter as a Level 2 commercial manure broker is authorized to carry out all of the duties of a Level 1 commercial manure broker. A Level 2 certified commercial manure broker is further authorized to develop nutrient balance sheets for importing operations in accordance with this chapter and in accordance with the standards established by the State Conservation Commission under Act 38 of 2005 and 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

(2) *Duties.*

(i) In accordance with section 4(b) of the act (3 P. S. § 2010.4(b)), a commercial manure broker shall, when land-applying manure on behalf of an agricultural operator, required under section 5 of the act (3 P. S. § 2010.5) to utilize a certified manure hauler or certified manure broker, do so only in accordance with an approved nutrient management plan or nutrient balance sheet.

(ii) In accordance with section 5(2) of the act (3 P. S. § 2010.5(2)), a commercial manure broker that enters into a contract with a CAO, CAFO or volunteer operation shall provide, no later than the time of transfer of the manure, copies of the nutrient balance sheet to both the importing operation and to the county conservation districts in the counties in which the importing and exporting operations are located.

(3) *Prohibition.* Certification under this chapter does not bestow authority upon a commercial manure broker to develop a nutrient management plan for another person, review that plan or make recommendations with regard to manure application that are outside the manure application standards in the approved nutrient management plan or nutrient balance sheet for the particular importing operation or other location.

(b) *Commercial manure hauler.*

(1) *Authority.* A person certified as a commercial manure hauler under this chapter is authorized to transport or land apply, or both, manure as a contract agent for an agricultural operator or certified commercial manure broker under the direction of the agricultural operator or certified commercial manure broker and to perform the following duties and activities:

(i) *Level 1 commercial manure hauler.* A person certified under this chapter as a Level 1 commercial manure hauler is authorized to transport manure as a contract agent or employee of and under the direction and supervision of an agricultural operator or a certified commercial manure broker or a Level 3 certified commercial manure hauler.

(ii) *Level 2 certified commercial manure hauler.* A person certified under this chapter as a Level 2 commercial manure hauler is authorized to transport manure as a contract agent or employee of and under direction of an agricultural operator or a certified commercial manure broker or Level 3 commercial manure hauler. A Level 2 certified commercial manure hauler is authorized to land apply manure at an importing operation or other location only under the following conditions:

(A) As an employee or contract agent of and under the direction and supervision of a certified commercial manure broker, as set forth in subsection (a)(1).

(B) As an employee or contract agent of and under the direction and supervision of a Level 3 certified commercial manure hauler, as set forth in subparagraph (iii).

(iii) *Level 3 certified commercial manure hauler.* A person certified under this chapter as a Level 3 commercial manure hauler is authorized to transport and land apply manure as a contracted agent for and under the direction of an agricultural operator or certified commercial manure broker. A Level 3 certified commercial manure hauler has the authority to direct and supervise Level 1 and Level 2 certified commercial manure haulers.

(2) *Duties.* In accordance with section 4(b) of the act, a commercial manure hauler shall, when land applying manure on behalf of an agricultural operator required under section 5 of the act to utilize a certified manure hauler or certified manure broker, do so only in accordance with an approved nutrient management plan or nutrient balance sheet.

(3) *Prohibitions.* Certification under this chapter does not bestow authority upon a commercial manure hauler to develop a nutrient balance sheet or nutrient management plan for another person, review that plan or make recommendations with regard to manure application that

are outside the manure application standards in the approved nutrient management plan or nutrient balance sheet for the particular importing operation or other location.

§ 130e.6. Possession of certificate and contracts.

(a) *Possession of certificate.* Certified commercial manure brokers and certified commercial manure haulers shall carry on their person or in the vehicle being utilized to transport or land apply, or both, manure, a copy of their current certificate.

(b) *Contracts.* The certification number of the commercial manure broker or commercial manure hauler entering into a contract or agreement with an agricultural operator shall be included in any contract or agreement entered into by that commercial manure broker or commercial manure hauler to transport or land apply, or both, manure.

§ 130e.7. Notice of change in business or certification.

Certified commercial manure brokers and certified commercial manure haulers shall notify the Department in writing of any anticipated or proposed change in duties or responsibilities which will require a higher level of certification. The notification shall be sent prior to the person engaging in the activities requiring a higher level of certification. The person shall meet all of the requirements of the higher level of certification prior to engaging in the activities associated with the higher level of certification.

§ 130e.8. General training requirements for certification.

(a) *General training criteria.* For purposes of certification, the training program developed and administered or approved by the Department will, at a minimum, address the following topics:

(1) Laws and regulations pertaining to manure application.

(2) Information necessary for understanding and following a nutrient management plan and nutrient balance sheet.

(3) BMPs with respect to manure hauling and application, transport safety procedures, calibration of application rates for various types of application equipment, setbacks from water sources and property lines, nutrient runoff concerns and incorporation techniques.

(4) Recordkeeping by certified manure haulers or brokers necessary to meet the regulatory requirements of the act and Act 38 of 2005.

(b) *Nutrient balance sheet.* Certified manure broker training must include procedures necessary for the development and filing of a nutrient balance sheet.

§ 130e.9. Approval of other training programs.

The Department may approve, for purposes of training and education, programs developed by The Pennsylvania State University and other educational institutions or entities that meet the requirements of the act and this chapter. The educational institution or entity shall submit an application developed by the Department, along with the specific criteria of the training program it has developed. An educational institution or entity may also submit an application, developed by the Department, to administer Department approved or developed training and testing for Level 2 commercial manure haulers.

**Subchapter B. CERTIFICATION
COMMERCIAL MANURE BROKERS**

- Sec.
130e.11. Determination of competence.
130e.12. Certification requirements.
- COMMERCIAL MANURE HAULERS—LEVEL 1**
- 130e.21. Determination of competence.
130e.22. Certification requirements.
- COMMERCIAL MANURE HAULERS—LEVEL 2**
- 130e.31. Determination of competence.
130e.32. Certification requirements.
- COMMERCIAL MANURE HAULERS—LEVEL 3**
- 130e.41. Determination of competence.
130e.42. Certification requirements.
- CONTINUING EDUCATION REQUIREMENTS**
- 130e.51. Commercial manure broker and hauler continuing education requirements.
130e.52. Continuing education credit course providers.
- DENIAL, SUSPENSION AND REVOCATION OF COMMERCIAL MANURE BROKER OR HAULER CERTIFICATES**
- 130e.61. Denial, suspension and revocation of certificates.

COMMERCIAL MANURE BROKERS

§ 130e.11. Determination of competence.

(a) *Commercial manure broker certification.* Determination of competence for Level 1 and Level 2 commercial manure brokers shall be based on the successful completion of the certification course and a proctored written examination as set forth in this section. Certification requirements for a commercial manure broker include a Department developed or approved certification course and proctored written examination, both of which shall be administered in a classroom setting. The certification course shall be completed prior to the applicant taking the written examination or the nutrient balance sheet writing course. A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management dual specialist under the Department's nutrient management certification regulations in Chapter 130b (relating to nutrient management certification), meets the requirements to be certified as a Level 1 commercial manure broker.

(b) *Additional requirements for a Level 2 commercial manure broker certification.* In addition to completing the requirements for and attaining a Level 1 commercial manure broker certification, an applicant for Level 2 commercial manure broker certification shall be required to attend appropriate nutrient management plan writing certification courses related to nutrient balance sheet development and then pass a proctored nutrient balance sheet examination administered or approved by the Department. The nutrient management plan writing courses have been developed under the Nutrient Management Certification Program in Chapter 130b. The nutrient balance sheet examination will be developed or approved by the Department and shall be administered as a proctored classroom examination. The applicant for a Level 2 commercial manure broker certification shall first complete the required nutrient management plan writing courses, before being eligible to take the Nutrient Balance Sheet Examination. The Nutrient Balance Sheet Examination must require the applicant for the Level 2 commercial manure broker certification to develop a nutrient balance sheet based on an importing farm scenario developed or approved by the Department. A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management dual specialist under the Department's nutrient management certification regulations in Chapter 130b, meets the

requirements to be certified as a Level 1 commercial manure broker and may be certified as a Level 2 commercial manure broker upon taking the necessary nutrient management plan writing courses, related to nutrient balance sheet development, and passing the appropriate testing criteria.

(c) *Certification course.* The certification course must, at a minimum, address the applicant's understanding, competence and proficiency with regard to the following topics:

(1) Laws and regulations pertaining to manure application, including pertinent provisions of Act 38 of 2005 and Act 38 of 2005 regulations. The Clean Streams Law and applicable regulations in 25 Pa. Code Chapter 102 (related to erosion and sedimentation control), the *Manure Management Manual* and the protection of agricultural operations from nuisance suits and ordinances under the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).

(2) Basic nutrient management and manure management protocols and requirements and soil fertility and management.

(3) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses must cover manure handling and testing, land application information, manure application setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.

(4) BMPs with respect to manure hauling and land application of manure, such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property lines, controlling nutrient runoff, installing riparian buffers, updating and following erosion and sedimentation control plans, seasonal manure application concerns and incorporation and no-till farming techniques.

(5) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of the act and Act 38 of 2005.

(6) Courses teaching development and filing of a nutrient balance sheet and appropriate manure production application and testing information, manure application setback requirements and maps contained in a nutrient management plan. These courses must cover the filing requirements set forth in the act and require the applicant to display competence in reading and properly interpreting the provisions of a nutrient management plan and nutrient balance sheet and actual development of a nutrient balance sheet.

(7) Community relations and public image awareness, to encourage dialogue and promote cooperation.

(8) Basic awareness of safety issues related to manure management, manure handling and biosecurity, as well as, transport safety procedures and highway and equipment safety.

(9) Understanding emergency action plans.

(10) Proper calibration techniques and requirements for all types of equipment normally utilized to land apply manure, to assure proper application rates.

(11) Understanding of land application issues, such as incorporation, compaction and winter application.

(12) Understanding the proper placement of stacking areas and temporary storage of manure.

(d) *Certification course and written examination.* The Department or an approved educational institution or entity, as provided for in the act, may develop and administer the training courses and proctor the written examinations. The certification courses and examinations will be offered at least twice per calendar year, or more often as deemed necessary by the Department. The certification courses and examinations will be offered at various locations across this Commonwealth in a manner that will insure Statewide coverage and access. At a minimum, the successful completion of the examination will demonstrate the applicant's understanding of transport and land application of manure on agricultural operations and the applicant's technical knowledge and proficiency relating to interpretation and implementation of nutrient management plans and nutrient balance sheets, as well as, the applicant's knowledge of recordkeeping requirements. The written examination must, at a minimum, address all topics and areas required to be addressed by the certification course, as set forth in subsection (c).

(e) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania Commercial Manure Broker and Hauler Examination, if the written examinations meet the requirements in subsection (d).

§ 130e.12. Certification requirements.

(a) *General.* The act and this chapter establish four general criteria for commercial manure brokers.

(1) A person acting as a commercial manure broker shall obtain certification as a commercial manure broker prior to assuming temporary control or ownership of manure from an agricultural operation or arranging for transportation to or utilization of manure at, or both, an importing operation or other location.

(2) A person acting as a commercial manure broker shall maintain certification under the requirements of the certification program.

(3) When acting as a contract agent for an agricultural operator required by section 5 of the act (3 P. S. § 2010.5) to use a certified commercial manure hauler or certified commercial manure broker, the commercial manure broker shall land apply the manure in accordance with and based upon an approved nutrient management plan or a nutrient balance sheet developed by a certified nutrient management specialist or a Level 2 certified commercial manure broker.

(4) Commercial manure brokers shall maintain the records of the manure they broker, transport or land-apply as required by this chapter and the recordkeeping requirements of the nutrient management regulations in 25 Pa. Code §§ 83.341—83.344 (relating to recordkeeping and informational requirements).

(b) *Application for Level 1 commercial manure broker certification.*

(1) *Submission of application.* Submission of the required examination for certification as a Level 1 commercial manure broker shall act as the application for a Level 1 commercial manure broker certificate. After receiving and scoring the examination, the Department will send written notice to the applicant. The written notice will

inform the applicant whether the applicant passed or failed the examination. If the applicant has passed the examination, the written notice will include a temporary certificate. The temporary certificate will be valid for 30 days from the date of receipt. The holder of the temporary certification shall forward the appropriate certification fees to the Department within the 30-day time period. Upon receipt of the appropriate certification fees, the Department will mail the final certification to the holder of the temporary certificate.

(2) *Certified nutrient management plan writer.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management dual specialist under the Department's nutrient management certification regulations in Chapter 130b (relating to nutrient management certification), meets the requirements to be certified as a Level 1 commercial manure broker and may be certified as a Level 2 commercial manure broker as set forth in § 130e.11(b) (relating to determination of competence). Upon receiving a letter requesting certification, along with the certification fee, the Department will verify the applicant's nutrient management plan writer certification and good standing. Upon verification of this criteria, the Department will issue the appropriate final certification.

(c) *Application for Level 2 commercial manure broker certification.*

(1) *Submission of application.* An applicant for a Level 2 commercial manure broker certification shall complete the appropriate nutrient management plan writing certification courses, related to nutrient balance sheet development, and then pass a proctored nutrient balance sheet examination administered or approved by the Department, as set forth in § 130e.11(b). Submission of the required examination for certification as a Level 2 commercial manure broker shall act as the application for a Level 2 commercial manure broker certificate. After receiving and scoring the examination, the Department will send written notice to the applicant. The written notice will inform the applicant whether he passed or failed the examination. If the applicant has passed the examination, the written notice will include a temporary certificate. The temporary certificate will be valid for 30 days from the date of receipt. The holder of the temporary certification shall forward the appropriate certification fees to the Department within the 30-day time period. Upon receipt of the appropriate fees, the Department will mail the final certification to the holder of the temporary certificate.

(2) *Certified nutrient management plan writer.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management dual specialist under the Department's nutrient management certification regulations in Chapter 130b, meets the requirements to be certified as a Level 1 commercial manure broker and may be certified as a Level 2 commercial manure broker, upon taking the necessary nutrient management plan writing courses related to nutrient balance sheet development, and passing the appropriate testing criteria. After receiving a letter requesting certification, along with the certification fee, the Department will verify the applicant's nutrient management plan writer certification and good standing and that the appropriate courses and tests have been taken and passed. Upon verification of this criteria, the Department will issue the appropriate final certification.

(d) *Denial of certification.*

(1) If an applicant for a Level 1 or Level 2 commercial manure broker certification is denied, the Department will notify the applicant, in writing and specifically set forth the reasons for the denial.

(i) When a Level 1 commercial manure broker applicant is denied, the applicant shall be allowed to take the next available Level 1 commercial manure broker written examination and submit an application, in the manner required by subsection (b), to the Department without having to repeat the certification course required by § 130e.11(a). If the applicant fails to pass the written examination for a second time, the applicant shall be required to again meet all of the requirements established under § 130e.11(a) and take the next available written examination, prior to resubmission of an application for certification as a Level 1 commercial manure broker.

(ii) When an applicant seeks a Level 2 commercial manure broker certification and fails the nutrient balance sheet examination, the applicant shall be allowed to take the next available nutrient balance sheet examination. If the applicant fails to pass the nutrient balance sheet examination for a second time, the Department will again notify the applicant, in writing of the denial and the reason for the denial. To again be considered for a Level 2 commercial manure broker certification, the applicant shall be required to satisfy the requirements in § 130e.11(b).

(e) *Level 1 commercial manure broker to Level 2 commercial manure broker.*

(1) A Level 1 certified commercial manure broker may attain a Level 2 commercial manure broker certification by meeting the requirements established under § 130e.11(b). To be eligible to apply, the applicant shall be currently certified as a Level 1 commercial manure broker or a commercial nutrient management specialist or a public nutrient management dual specialist and in good standing.

(2) The Department will notify an applicant in writing of approval or denial of an application as set forth in subsection (d).

COMMERCIAL MANURE HAULERS—LEVEL 1

§ 130e.21. Determination of competence.

(a) *Level 1 commercial manure hauler.* Determination of competence for a Level 1 commercial manure hauler shall be based on completion of a certification program developed or approved by the Department as set forth in section 3(a) and (b) of the act (3 P. S. § 2010.3(a) and (b)). The certification program must consist of a work sheet developed or approved by the Department. The work sheet shall be filled out and signed in the presence of a certified Level 3 commercial manure hauler or certified Level 1 or 2 commercial manure broker. The certified Level 3 commercial manure hauler or certified Level 1 or 2 commercial manure broker shall sign the work sheet along with the Level 1 commercial manure hauler. The work sheet must contain a verification statement whereby the certified Level 3 commercial manure hauler or certified Level 1 or 2 commercial manure broker attests that the person being certified has reviewed and understands the information in the work sheet, will be operating under the direction and supervision of the certified Level 3 hauler or certified Level 1 or 2 broker and that the certified Level 3 hauler or certified Level 1 or 2 broker accepts full responsibility for all actions of the person being certified as a Level 1 commercial manure hauler,

with respect to the transport and stacking of manure. A Level 1 certified commercial manure hauler shall also be given a training manual developed or approved by the Department. The training manual shall be kept in any vehicle utilized by a Level 1 commercial manure hauler. The work sheet and training manual will be available at the following locations: a county conservation district office, a location of the educational institution or entity that developed an approved course, the Department or a regional office location of the Department. In addition, the Department will make the work sheets and training manuals available to commercial manure hauling and brokering businesses upon request.

(b) *Certification course.* A Level 1 commercial manure hauler nonclassroom certification program and the work sheet must, at a minimum, address and determine the applicant's level of understanding, competence and proficiency with regard to the following topics:

(1) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of the act and Act 38 of 2005.

(2) The following matters pertaining to manure transport and stacking:

(i) Community relations and public image awareness, to encourage dialogue and promote cooperation.

(ii) Basic awareness and understanding of safety issues related to, manure handling and biosecurity, as well as, transport safety procedures and highway and equipment safety.

(iii) Understanding emergency action plans.

(iv) Understanding the proper placement of stacking areas and temporary storage of manure, such as set back requirements, placement and covering requirements and short and long-term stacking requirements.

(v) Certification requirements of the act.

§ 130e.22. Certification requirements.

(a) *General criteria for Level 1 commercial manure haulers.*

(1) A person acting as a commercial manure hauler shall obtain certification as a Level 1 commercial manure hauler prior to transporting manure.

(2) A person certified as a Level 1 commercial manure hauler shall be qualified to transport manure only.

(3) The transportation of manure shall be done as a contract agent for an agricultural operator or a certified commercial manure broker. A Level 1 certified commercial manure hauler, may transport manure as an employee or agent of a certified commercial manure broker or a Level 3 certified commercial manure hauler. A Level 1 certified commercial manure hauler may not land apply manure.

(b) *Application for Level 1 commercial manure hauler certification.* Submission of the completed, signed and verified work sheet, along with the appropriate certification fee, to the Department shall act as the application for a Level 1 commercial manure hauler certificate. A copy of the completed, signed and verified work sheet shall act as a temporary certificate. The Level 1 hauler shall keep that copy with him at all times until a final certification is issued by the Department. Upon completion of the work sheet, the commercial manure hauler or commercial manure broker verifying the work sheet shall fax or scan and e-mail the verified work sheet to the Department. The commercial manure hauler or broker verifying the work sheet shall be responsible for mailing

the original work sheet and the certification fee to the Department within 5 business days of its completion. Upon receiving the completed, signed and verified work sheet, along with the proper certification fee, the Department will mail a Level 1 hauler final certification to the holder of the temporary certificate.

COMMERCIAL MANURE HAULERS—LEVEL 2

§ 130e.31. Determination of competence.

(a) *Level 2 commercial manure hauler.* Determination of competence for a Level 2 commercial manure hauler shall be based on the successful completion of a certification course and a written examination as set forth in this section. Certification requirements for a Level 2 commercial manure hauler include a nonclassroom certification course developed or approved by the Department and a proctored examination. The nonclassroom certification course must include a training manual. The written examination shall be completed by the applicant without the aid or assistance of another person. The applicant for a Level 2 commercial manure hauler certification may utilize the training manual and his own notes when taking the written examination. The written examination shall be available at and shall be taken at one of the following:

- (1) A county conservation district office.
- (2) An educational institution or entity that developed an approved course or has been approved to administer Department-approved or developed training and testing for Level 2 commercial manure haulers.
- (3) The Department or a regional office location of the Department.

(b) *Certification course.* A Level 2 commercial manure hauler nonclassroom certification course and the written examination must, at a minimum, address and determine the applicant's level of understanding, competence and proficiency with regard to the following topics:

- (1) Laws and regulations pertaining to manure application, including pertinent provisions of Act 38 of 2005 and its attendant regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management), The Clean Streams Law and 25 Pa. Code Chapter 102 (related to erosion and sedimentation control), the *Manure Management Manual* and protection of agricultural operations from nuisance suits and ordinances provisions of the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).
- (2) Basic nutrient management and manure management protocols and requirements and soil fertility and management.
- (3) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses must cover manure handling and testing, land application information, manure application setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.
- (4) BMPs with respect to manure hauling and land application of manure, such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property

lines, controlling nutrient runoff, installing riparian buffers, updating and following erosion and sedimentation control plans, seasonal manure application concerns and incorporation and no-till farming techniques.

(5) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of the act and Act 38 of 2005.

(6) The following matters pertaining to manure transport and land application:

- (i) Courses covering the filing requirements in the act.
- (ii) Basic awareness of safety issues related to manure management, manure handling and biosecurity, as well as, transport safety procedures and highway and equipment safety.
- (iii) Understanding emergency action plans.
- (iv) Proper calibration of application rates and techniques and requirements for calibrating all types of application equipment normally utilized to land apply manure.
- (v) Understanding of land application issues, such as incorporation, compaction and winter application.
- (vi) Understanding the proper placement of stacking areas and temporary storage of manure, such as set back requirements, placement and covering requirements and short and long term stacking requirements.
- (vii) Other areas and course work related to proper transport and land application of manure and recordkeeping as determined appropriate by the Department.

§ 130e.32. Certification requirements.

(a) *General.* General criteria for Level 2 commercial manure haulers are as follows:

- (1) A person shall obtain certification as a commercial manure hauler Level 2 prior to land-applying manure.
- (2) Manure land-applied by a Level 2 certified commercial manure hauler shall only be applied under the supervision of a Level 1 or Level 2 certified commercial manure broker or a Level 3 certified commercial manure hauler acting as a contract agent for an agricultural operator or commercial manure broker.
- (3) When acting as a contract agent for an agricultural operator required by section 5 of the act (3 P. S. § 2010.5) to use a certified commercial manure hauler or certified commercial manure broker, shall land apply the manure in accordance with and based upon an approved nutrient management plan or a nutrient balance sheet developed by a certified commercial nutrient management specialist or a Level 2 certified commercial manure broker.
- (4) The Level 2 manure hauler shall maintain the records of manure transported or land-applied as required by this chapter and the recordkeeping requirements of the nutrient management regulations in 25 Pa. Code §§ 83.341—83.344 (relating to recordkeeping and informational requirements).

(b) *Application for Level 2 commercial manure hauler certification.* To obtain a Level 2 commercial manure hauler certification, a person shall request and review the Level 2 certification course training manual and take and pass the Level 2 certification written examination. Submission of the required examination for certification as a Level 2 commercial manure hauler shall act as the application for a Level 2 commercial manure hauler certificate. Upon receiving and scoring the examination, the Department will send written notice to the applicant.

The written notice will inform the applicant whether he passed or failed the examination. If the applicant has passed the examination, the written notice will include a temporary certificate. The temporary certificate will be valid for 30 days from the date of receipt. The holder of the temporary certificate shall forward the appropriate certification fee to the Department within that 30-day time period. Upon receipt of the appropriate fee, the Department will mail the final certification to the holder of the temporary certificate.

(c) *Conditional certification.* This provision shall be utilized only under circumstances established in this subsection.

(1) *Qualifying conditions.* Conditional certification may be utilized to certify a person as a Level 2 commercial manure hauler to cover an unforeseeable circumstance or event which leaves the owner of the commercial manure hauler or commercial manure broker business without personnel to haul and apply manure during critical times, or when imminent environmental threat or harm exists.

(i) An unforeseeable circumstance or event includes:

(A) Failure of a certified employee to report to work because of illness.

(B) The resignation without notice of a certified employee.

(C) The unexplained absence of a certified employee.

(ii) An imminent environmental threat or harm exists when circumstances may cause a manure storage area to overflow or breach without prior warning. Circumstances include:

(A) A weather occurrence, such as unexpectedly high amounts of rain or a natural disaster such as a hurricane.

(B) Damage to the manure storage.

(2) *General procedure for conditional certification.* Applicants for conditional certification shall comply with the following procedures:

(i) *Notification.* Prior to allowing the employee to haul or land-apply manure, the owner of the commercial manure hauling or brokering business who wishes to have an employee conditionally certified as a Level 2 commercial manure hauler shall be required to contact the Department and notify the Department of the necessity of the conditional certification. The notification must set forth the qualifying condition necessitating conditional certification.

(ii) *Limitation on conditional approvals.* The Department will have the right to limit the number of employees for which it will grant a conditional certification and the number of times it will grant a conditional certification to a commercial manure hauler or brokering business. Prior to denying a request, the Department will notify a commercial manure hauler or broker that a future limitation will be imposed. Any oral notification will be followed by a written notification.

(iii) *Necessity of conditional certification.* The owner of the commercial manure hauling or brokering business shall set forth a reasonable and plausible explanation of why the triggering circumstance or event was unforeseeable or delineate the environmental harm or threat triggering the need for conditional certification. The owner shall provide specific information regarding the reason conditional certification is necessary.

(3) *Conditions and limitations of approval.* When conditional certification is utilized, the following apply:

(i) The Department will provide on-line and by means of fax the Level 2 workbook and a work sheet covering the information necessary to conditionally certify a Level 2 commercial manure hauler.

(ii) The employee who wishes to become conditionally certified shall review the Level 2 workbook and complete the work sheet.

(iii) The employee and the employer shall sign the work sheet and fax the verified and completed work sheet to the Department.

(iv) The work sheet shall be completed, signed and faxed or scanned and e-mailed to the Department prior to the conditionally certified person transporting or land applying manure.

(v) The employer shall mail the original copy of the completed and signed work sheet to the Department within the 5 business days for which the employee's conditional certification is valid.

(vi) The conditionally certified employee shall take and pass the Level 2 commercial manure hauler test within 5 business days of the employer notifying the Department of the conditional certification.

(vii) Conditional certification will be valid for 5 business days from the date of notification. The conditionally certified employee may not continue to operate under the conditional certification after the 5-day period has run and may not be granted any extension.

(viii) Conditional certification will be granted to a person only one time.

(ix) The owner of the commercial manure hauling or brokering business shall agree to a date and location where the conditionally certified employee will take the Level 2 commercial manure hauler examination. The date shall be within 5 business days of the notification of the conditional certification.

(4) *Land application conditions.* When the Department grants conditional certification, the conditionally-certified employee shall land apply manure under the supervision of a Level 3 certified commercial manure hauler or a Level 1 or 2 certified commercial manure broker. A conditionally certified employee may not land apply manure unless the conditions are met.

(d) *Denial of certification.* If an applicant for a Level 2 commercial manure hauler certification is denied, the Department will notify the applicant, in writing and specifically set forth the reasons for the denial. When a Level 2 commercial manure hauler applicant is denied, the applicant shall be allowed to take the Level 2 commercial manure hauler written examination again and submit it as set forth in subsection (b), to the Department. The applicant may not land-apply manure until certified as a Level 2 commercial manure hauler.

COMMERCIAL MANURE HAULERS—LEVEL 3

§ 130e.41. Determination of competence.

(a) *Commercial manure hauler Level 3 certification.* Determination of competence for a Level 3 commercial manure hauler shall be based on the successful completion of a Department-developed or approved certification course and a written examination meeting the requirements in this section. Both the certification course and the written examination shall be administered in a classroom setting. The certification course shall be completed prior to the applicant taking the written examination. A person certified and in good standing as a commercial nutrient management specialist or a public

nutrient management dual specialist under the Department's nutrient management certification regulations in Chapter 130b (relating to nutrient management certification), meets the requirements to be certified as a Level 3 commercial manure hauler.

(b) *Certification course.* The certification course must, at a minimum, address the applicant's understanding, competence and proficiency with regard to the following topics:

(1) Laws and regulations pertaining to manure application, including pertinent provisions Act 38 of 2005 and its attendant regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management), The Clean Streams Law and applicable regulations in 25 Pa. Code Chapter 102 (related to erosion and sedimentation control), the *Manure Management Manual* and protection of agricultural operations from nuisance suits and ordinances provisions of the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).

(2) Basic nutrient management and manure management protocols and requirements and soil fertility and management.

(3) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses must cover manure handling and testing, land application information, manure application setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.

(4) BMPs with respect to manure hauling and land application of manure, such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property lines, controlling nutrient runoff, installing riparian buffers, updating and following erosion and sedimentation control plans, seasonal manure application concerns and incorporation and no-till farming techniques.

(5) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of Act 38 of 2005.

(6) The following matters pertaining to manure transport and land application:

- (i) Courses covering the filing requirements in the act.
- (ii) Community relation and public image awareness, to encourage dialogue and promote cooperation.
- (iii) Basic awareness of safety issues related to manure management, manure handling and biosecurity, as well as, transport safety procedures and highway and equipment safety.
- (iv) Understanding emergency action plans.
- (v) Proper calibration of application rates and techniques and requirements for calibrating all types of application equipment normally utilized to land apply manure.
- (vi) Understanding of land application issues, such as, incorporation, compaction and winter application.
- (vii) Understanding the proper placement of stacking areas and temporary storage of manure, such as set back requirements, placement and covering requirements and short and long term stacking requirements.

(c) *Certification course and written examination.* The Department or an approved educational institution or entity, as provided for in the act, may develop and administer the training courses and proctor the written examinations. Certification courses and examinations for Level 3 commercial manure haulers will be offered at least twice per year, or more often as deemed necessary by the Department. The certification courses and examinations will be offered at various locations across this Commonwealth in a manner that will insure Statewide coverage and access. At a minimum, the successful completion of the examination will demonstrate the applicant's understanding of transport and land application of manure on agricultural operations and the applicant's technical knowledge and proficiency relating to interpretation and implementation of nutrient management plans and nutrient balance sheets, as well as, the applicant's knowledge of recordkeeping requirements. The written examination must, at a minimum, address the topics and areas required to be addressed by the certification course, as set forth in subsection (b).

§ 130e.42. Certification requirements.

(a) *General.* The act and this chapter establish four general criteria for commercial manure haulers.

(1) A person acting as a commercial manure hauler shall obtain certification as a commercial manure hauler Level 3 prior to land applying manure without supervision and prior to supervising the land application of manure by another certified commercial manure hauler. A Level 3 certified commercial manure hauler may transport or land-apply, or both, manure as a contract agent for an agricultural operator or commercial manure broker and under the direction of that operator or broker.

(2) A person acting as a commercial manure hauler shall maintain certification under the requirements of the certification program.

(3) When acting as a contract agent for an agricultural operator required under section 5 of the act (3 P. S. § 2010.5) to use a certified commercial manure hauler or certified commercial manure broker, the commercial manure hauler shall land apply the manure in accordance with and based upon an approved nutrient management plan or nutrient balance sheet developed by a certified commercial nutrient management specialist or a Level 2 certified commercial manure broker. When acting as a contract agent for a certified commercial manure broker, that has assumed temporary control or ownership of manure from an agricultural operator required by section 5 of the act to use a certified commercial manure hauler or certified commercial manure broker, the commercial manure hauler shall land apply the manure in accordance with and based upon an approved nutrient management plan or nutrient balance sheet developed by a certified commercial nutrient management specialist or a Level 2 certified commercial manure broker.

(4) Commercial manure haulers shall maintain records of all manure they transport or land-apply as required by this chapter and the recordkeeping requirements of the nutrient management regulations in 25 Pa. Code §§ 83.341—83.344 (relating to recordkeeping and informational requirements).

(b) *Application for Level 3 commercial manure hauler certification.*

(1) *Submission of application.* Submission of the required examination for certification as a Level 3 commercial manure hauler shall act as the application for a Level 3 commercial manure hauler certificate. Upon receiving

and scoring the examination, the Department will send written notice to the applicant. The written notice will inform the applicant whether he passed or failed the examination. If the applicant has passed the examination, the written notice will include a temporary certificate. The temporary certificate will be valid for 30 days from the date of receipt. The holder of the temporary certification shall forward the appropriate certification fees to the Department within that 30-day time period. Upon receipt of the appropriate certification fees, the Department will mail the final certification to the holder of the temporary certificate.

(2) *Certified nutrient management plan writer.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management dual specialist under the Department's nutrient management certification regulations in Chapter 130b (relating to nutrient management certification), meets the requirements to be certified as a Level 3 commercial manure hauler. Upon receiving a letter requesting certification, along with the certification fee, the Department will verify the applicant's nutrient management plan writer certification and good standing. Upon verification of this criteria, the Department will issue the appropriate final certification.

(c) *Denial of certification.*

(1) If an applicant for a Level 3 commercial manure hauler certification is denied, the Department will notify the applicant, in writing and specifically set forth the reasons for the denial.

(2) When a Level 3 commercial manure hauler applicant is denied, the applicant shall be allowed to take the next available Level 3 commercial manure hauler written examination and submit an application, in the manner required by subsection (b), to the Department without having to repeat the certification course required by § 130e.41 (relating to determination of competence). If the applicant fails to pass the written examination for a second time, the applicant shall be required to repeat the certification course required by § 130e.41 prior to taking the written examination for a third time.

(e) *Level 3 commercial manure hauler to Level 2 commercial manure broker.*

(1) A Level 3 certified commercial manure hauler may attain a Level 2 commercial manure broker certification by meeting the requirements in § 130e.11(b) (relating to determination of competence). To be eligible to apply, the applicant shall be currently certified as a Level 3 commercial manure hauler and in good standing.

(2) The Department will notify an applicant in writing of approval or denial of an application as set forth in subsections (b) and (c). If the nutrient balance sheet is determined to be adequate, the written notice will include the Level 2 commercial manure broker certificate. If the Department rejects the application, the Department will notify the applicant in writing and set forth the reasons for the rejection. When the applicant wishes to reapply for a Level 2 commercial manure broker certification, the procedures and steps related to reconsideration for a Level 2 commercial manure broker certification, established under § 130e.12(d)(3)(ii) (relating to certification requirements) apply and shall be followed. When an applicant seeks a Level 2 commercial manure broker certification and fails the nutrient balance sheet examination, the applicant shall be allowed to take the next available nutrient balance sheet examination. If the applicant fails to pass the nutrient balance sheet exami-

nation for a second time, the Department will again notify the applicant, in writing of the denial and the reason for the denial. To again be considered for a Level 2 commercial manure broker certification, the applicant shall be required to repeat the appropriate nutrient management plan writing certification courses related to nutrient balance sheet development and then pass a proctored nutrient balance sheet examination administered or approved by the Department.

CONTINUING EDUCATION REQUIREMENTS

§ 130e.51. Commercial manure broker and hauler continuing education requirements.

(a) *Continuing education credit requirements.* To maintain certification, certified commercial manure brokers and commercial manure haulers shall be required to obtain continuing education credits. The number of continuing education credits required shall be based on the level of certification. The Department will develop or may approve continuing education credit courses for each level of certification.

(1) *Level 1 and 2 commercial manure brokers and Level 3 commercial manure haulers.* Every 3 calendar years, Level 1 and Level 2 commercial manure brokers and Level 3 commercial manure haulers, shall provide written documentation of completion of the required number of continuing education credits. Continuing education credits shall be received by attending and completing Department-developed or approved continuing education courses in the competency requirements set forth in the initial certification courses for the particular level at which the person is certified. Competency requirements for Level 1 and Level 2 commercial manure brokers are set forth in § 130e.11 (relating to determination of competence) and competency requirements for Level 3 commercial manure haulers are delineated in § 130e.41 (relating to determination of competence). Continuing education credit courses and credits offered in conjunction with the Department's nutrient management plan certification regulations meet the requirements for continuing education credits under this section.

(2) *Level 2 commercial manure haulers.* Every 3 calendar years, Level 2 commercial manure haulers shall provide written documentation of completion of the required number of continuing education credits. Continuing education credits shall be received by attending and completing Department-developed or approved continuing education courses in the competency requirements for a Level 2 commercial manure hauler, which are set forth in § 130e.31 (relating to determination of competence).

(3) *Level 1 commercial manure haulers.* Every calendar year, Level 1 commercial manure haulers shall complete an updated work sheet as set forth in subsection (b)(2)(ii)(d).

(b) *Continuing education courses and credits.*

(1) *Continuing education.* Continuing education credits shall be obtained through attendance at Department-developed or approved courses. The Department will develop or evaluate and approve continuing education courses for each level of commercial manure broker and commercial manure hauler. The Department will publish approved courses and the place, date and time for each course on the Department website and in the Department's quarterly newsletter. The Department will also notify certified commercial manure brokers and commercial manure haulers by e-mail or by fax, or both, if the commercial manure broker or commercial manure hauler has provided its contact information to the Department.

The Department will endeavor to hold continuing education courses in various regions across this Commonwealth to assure reasonable access to certified commercial manure brokers and haulers across this Commonwealth.

(2) *Continuing education credits.*

(i) *Rate of accrual.* Continuing education credits accrue at the rate of 1 credit per hour of applicable instruction. Participants shall be required to sign in and sign out of each continuing education course. Participants shall be required to attend the entire continuing education course. A participant leaving a continuing education course early shall receive no continuing education credits. The sign in and sign out sheets will be provided by the Department and shall be collected by the continuing education course provider at the end of each day of the continuing education course and mailed to the Department. The Department will record the name of each certified commercial manure broker and certified commercial manure hauler attending the continuing education course and assign the appropriate number of continuing education credits to the broker's or hauler's file. Break periods such as coffee breaks, lunches, visits to exhibits and the like will not be considered as part of the instruction period and shall be excluded from the applicable instruction hours. Question and answer sessions shall be considered part of the applicable instruction hours. Early dismissal is not allowed and credits will not accrue in any hour in which there was an early dismissal.

(ii) *Number of continuing education credit hours required.* Certified commercial manure brokers and certified commercial manure haulers shall be required to obtain the following amount of continuing education credits in Department-approved continuing education courses:

(A) Level 1 certified commercial manure brokers and Level 3 certified commercial manure haulers shall be required to attain 9 continuing education credits every 3 years.

(B) Level 2 certified commercial manure brokers shall be required to attain a total of 12 continuing education credits every 3 years, with 3 of those 12 continuing education credits pertaining to development of nutrient balance sheets.

(C) Level 2 certified commercial manure haulers will be required to attain 6 continuing education credits every 3 years.

(D) Level 1 certified commercial manure haulers will not be required to attain continuing education credits. Level 1 certified commercial manure haulers will be required to fill-out, sign and return an updated work sheet prior to the expiration of their certification period. The Department will mail an updated work sheet to each Level 1 certified commercial manure hauler at least 30 days prior to the expiration of the Level 1 commercial manure hauler's certification. Upon receipt of the completed and signed work sheet and the proper certification fee, the Department will issue an updated certification.

(c) *Failure to obtain continuing education credits.* If a commercial manure broker or commercial manure hauler allows his certification to expire and does not obtain the required number and types of continuing education credits in accordance with this chapter, the commercial manure broker's or commercial manure hauler's certification shall have lapsed and that person's privilege to broker or haul manure shall be suspended or revoked until the commercial manure broker or commercial manure hauler obtains the required continuing education credits and meets the recertification requirements of this

chapter. If the commercial manure broker or hauler has failed to obtain any of the required continuing education credits, that person shall again satisfy the full certification requirements established by this chapter for the level of certification sought to be retained. The Department will send a written notice of the lapse and of suspension or revocation of certification to the commercial manure broker or hauler. The act requires maintenance of certification and, therefore, a commercial manure broker or commercial manure hauler that has allowed his certification to lapse shall refrain from brokering, hauling or land applying manure until all delinquent continuing education credits are acquired or that person has again completed the appropriate certification requirements and received the Department's approval, has been removed from suspension and has been reissued a commercial manure broker or hauler certification. Failure to abide by the terms of this subsection is a violation of the act and this chapter and shall subject the violator and his employer to the penalties provisions in sections 6—9 of the act.

(d) *Revocation or suspension.* The Department's decision to revoke or suspend a commercial manure broker's or commercial manure hauler's certification will be based on the gravity of the offense. The Department will consider the willfulness of the violation, previous violations and whether the person in question has continued to operate despite not acquiring the required continuing education credits prior to lapse of his current level of certification.

(1) *Suspended certification.* A commercial manure broker or commercial manure hauler whose certification has been suspended may not operate until all continuing education credits have been met and approved by the Department or that person has again completed the appropriate certification requirements and received the approvals, as set forth in subsection (c).

(2) *Revoked certification.* A commercial manure broker or commercial manure hauler whose certification has been revoked, may not operate until the Department has issued a new certification. To obtain certification again, the person whose certification has been revoked shall again satisfy the full certification requirements established by this chapter for the level of certification sought to be obtained.

§ 130e.52. Continuing education credit course providers.

(a) *Approval, denial, suspension and revocation to provide a continuing education credit course.*

(1) *Eligibility.* To be eligible to apply for approval to conduct a continuing education credit course, the applicant shall be the Pennsylvania State University or other education institution or entity. Out-of-State educational institutions or entities may submit certification programs to the Department for approval. To obtain approval, any training and educational program must, at a minimum, meet the requirements established by section 3 of the act (3 P. S. § 2010.3).

(2) *Application content.* Persons developing and seeking approval of a continuing education credit course shall submit an application, containing details of the course components and topics, as well as, subject matter and topics and time allotted to each subject or topic. The application must include the name of the person developing and administering the course and a contact person. The application must state whether the courses will be open to the public and if a fee will be charged. The

application must set forth which of the various levels of certification the course provider intends to address and the overall length of the program and credit hours sought to be approved. Subsequent to receiving the approval or contingent approval of the Department, the course provider shall provide the specific locations, the names of speakers and the proposed dates and times the course will be offered at each location.

(3) *Submission of application.* The application shall be submitted to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(4) *Department approval, disapproval or modification.* An applicant shall receive approval from the Department prior to offering or administering a continuing education credit course. The Department will review and approve, disapprove or modify a request for approval within 30 days of receipt of an administratively complete application. An approval, denial or modification will be in writing. A denial or modification request will state the specific reasons for the denial or the specific modifications required and the reason for the modifications. An application for continuing education credit course approval shall be submitted to the Department and approved by the Department prior to the applicant advertising the course or setting a date, place and time for the course. Upon approval, the applicant may advertise the course and begin to take applications for the course. The Department will publish the approved course on the Department's website. The publication will include the course level, hours of credits to be received and the date, time and place the course will be offered.

(5) *Criteria for approval.* At a minimum, a continuing education credit course must address the areas of competence in § 130e.11, § 130e.21, § 130e.31 or § 130e.41, required for the level of certification the course provider intends to address.

(6) *Revocation of course or denial or revocation of credit hours.* The Department may revoke approval of a continuing education credit course or deny or revoke credit hours, or both. When the Department revokes approval of a course, the Department may also notify the course provider it is ineligible to provide continuing education credit courses for 12 months, or longer, from the date of the revocation. When the Department revokes approval of a continuing education course, any credit hours earned by a course attendee prior to the notice of revocation, will be honored and will not be forfeited. The following are the grounds for revocation of a course or denial or revocation of continuing education credits offered through that course:

(i) The applicant or approved continuing education credit course provider falsified or failed to disclose required information on the application or falsified or failed to disclose information with regard to course hours given or attended, type or content of material presented, attendance records of certified commercial manure brokers or haulers seeking continuing education credits or a violation of other criteria required under this section.

(ii) The approved continuing education credit course provider has failed to update materials and course content in a manner necessary to keep the course current with updates in statutes, regulations, technology or practices. In this situation, the Department will notify the course provider, in writing, of deficiencies prior to issuing a revocation. The course provider shall correct the deficiencies within 30 days. Failure to correct the deficiencies will result in a revocation of the Department's approval.

(iii) The course provider has violated or assisted a person in violating a provision of the act or this chapter.

(iv) The course provider modifies the approved course, with regard to course content or hours of credit offered, or modifies dates and times of courses offered without the approval of the Department.

(b) *Course monitoring.* If the Department or its designee is unable to personally monitor a continuing education credit course, the approved course provider shall be responsible for verifying attendance, including credit hours actually attended, and shall compile a list of the names of the individual certified commercial manure brokers and commercial manure haulers in attendance and their certification number. The list shall be compiled on a form provided by the Department. The forms shall be returned to the Department within 10 working days following the date the continuing education credit course was conducted.

DENIAL, SUSPENSION AND REVOCATION OF COMMERCIAL MANURE BROKER OR HAULER CERTIFICATES

§ 130e.61. Denial, suspension and revocation of certificates.

(a) *General power and authority.* The Department may, after notice, including a statement of the reasons therefore, deny, suspend or revoke the certification of a commercial manure broker or commercial manure hauler for one or more of the following reasons:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required continuing education credits in § 130e.51 (relating to commercial manure broker and hauler continuing education requirements).
- (3) Inconsistency and demonstration of a lack of knowledge or proficiency in the proper handling, transportation or land application of manure, including violations the act, Act 38 of 2005 or The Clean Streams Law.
- (4) Three or more occurrences within a 3-year period of noncompliance with recordkeeping requirements, including delay or noncommunication with an agricultural operator, a conservation district or the Department in providing requested or required information or recordkeeping documentation.
- (5) Falsifying information.
- (6) Allowing certification to lapse.

(b) *Notice of violation and orders.* The Department may issue notices of violation and orders necessary for the enforcement of the act and this chapter. An order will take effect upon notice unless the order specifies otherwise.

(c) *Procedure.* A person may appeal an action under this section to the Secretary as follows:

- (1) The appeal shall be filed within 30 days of the date of receipt of the order, revocation or suspension.
- (2) The Secretary will issue a decision on the appeal within 30 days of the filing of an appeal under paragraph (1). If the Secretary does not issue a decision within 30 days, the order, revocation or suspension will be deemed withdrawn.
- (3) This subsection is subject to 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7, Subchapter A (relating to Administrative Agency Law).

(4) The appeal must be in writing and set forth the specific reasons for the appeal. The appeal shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania, 17110.

Subchapter C. RECORDKEEPING

Sec.

130e.71. Recordkeeping.

§ 130e.71. Recordkeeping.

(a) *Commercial manure hauler.* A commercial manure hauler shall maintain the following records, which shall be open to inspection by the Department or its agents during regular business hours and shall be maintained for 3 years after the date of transport or land application of the manure, whichever is later in time. When a Level 1 or Level 2 commercial manure hauler is operating as the employee of or as a contract agent for a Level 3 commercial manure hauler, the records shall be the responsibility of and kept by the Level 3 commercial manure hauler.

(1) *Agreement.* A copy of the agreement or contract between the commercial manure hauler and each agricultural operator or commercial manure broker for which the commercial manure hauler is transporting or land applying manure, or both.

(2) *Records.* The following records shall be maintained:

(i) Records setting forth the name and address of each agricultural operator or commercial manure broker for which the commercial manure hauler has or is currently transporting or land applying, or both, manure.

(ii) Records for each load of manure transported or land applied, which must detail:

(A) The name and location of the agricultural operator or commercial manure broker from which the manure was obtained or on whose behalf the manure was transported or land applied, and the date and time of the transport or application, or both, of the manure.

(B) The name and location of the agricultural operator, commercial manure broker, importing operation or facility or all of the these entities if more than one is involved, to which the manure was transported or on whose property the manure was land applied, or both.

(C) The name, address and certification number of each person involved in the transport or application, or both, of the manure.

(iii) When the commercial manure hauler is land applying the manure the following additional recordkeeping requirements apply:

(A) The location of the field to which each load of manure was applied, as identified in an approved nutrient management plan or a nutrient balance sheet.

(B) The name, certification number and signature of each commercial manure hauler or broker that land applied the manure to each location.

(C) The date of the application.

(D) The total amount of manure applied to each field.

(E) The number of acres to which manure was applied.

(F) The rate of manure application for each field.

(G) The crop group or type of groundcover for each field to which manure was applied.

(H) The source—nutrient balance sheet or appropriate summary or nutrient application sections and maps of the approved nutrient management plan—followed to determine appropriate application rates for each field to which the manure was applied.

(I) When manure from a CAO, CAFO or volunteer operation is land applied on an importing operation, a copy of the nutrient balance sheet utilized for each land application.

(b) *Commercial manure broker.* A commercial manure broker shall maintain the following records, which shall be open to inspection by the Department or its agents during regular business hours and be maintained for 3 years after the date of transport or land application of the manure, whichever is later in time. When a Level 1, Level 2 or Level 3 commercial manure hauler is operating as the employee of or as a contract agent for a Level 1 or Level 2 commercial manure broker, the records shall be the responsibility of and kept by the Level 1 or Level 2 commercial manure broker.

(1) *Exporter agreement.* A copy of the agreement or contract between the commercial manure broker and each agricultural operator for which the commercial manure broker is transporting or land applying, or both, manure.

(2) *Importer agreement.* A copy of any agreement between the commercial manure broker and an agricultural operator to whose agricultural operation the manure will be applied.

(3) *Nutrient balance sheet.* A copy of the nutrient balance sheet required under section 5(1) of the act (3 P. S. § 2010.5(1)) to be provided to the importing operation and the date the nutrient balance sheet was provided to the importing operation.

(4) *Records.* The following records shall be maintained:

(i) Records setting forth the name and address of each agricultural operator or other person for which the commercial manure broker has or is currently transporting or land applying, or both, manure.

(ii) Records for each load of manure transported or land applied, which details:

(A) The name and location of the agricultural operator or person from which the manure was obtained or on whose behalf the manure was transported or land applied, or both, and the date and time of the transport or land application, or both, of the manure.

(B) The name and location of the agricultural operator or importing operation or person to which the manure was transported or on whose property the manure was land applied, or both.

(C) The name, address and certification number of each person involved in the transport or application, or both, of the manure.

(iii) When the certified commercial manure broker is land applying the manure or has contracted with another properly certified commercial manure broker or commercial manure hauler to land apply the manure, the following additional recordkeeping requirements apply:

(A) The field to which each load of manure was applied as identified in an approved nutrient management plan or a nutrient balance sheet.

(B) The name, certification number and signature of each commercial manure hauler or broker that land applied the manure to each location.

- (C) The date of the application.
- (D) The total amount of manure applied to each field.
- (E) The number of acres to which manure was applied.
- (F) The rate of manure application for each field.
- (G) The crop group or type of groundcover for each field to which manure was applied.
- (H) The source—nutrient balance sheet or appropriate summary or nutrient application sections and maps of the approved nutrient management plan—followed to determine appropriate application rates for each field to which the manure was applied.
- (I) When manure from a CAO, CAFO or volunteer operation is land applied on an importing operation, a copy of the nutrient balance sheet utilized for each land application.

[Pa.B. Doc. No. 07-38. Filed for public inspection January 12, 2007, 9:00 a.m.]

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 49]

Corrective Amendment to 22 Pa. Code § 49.65

The State Board of Education has discovered a discrepancy between the agency text of 22 Pa. Code § 49.65 (relating to out-of-State and Nationally-certified applicants), as deposited with the Legislative Reference Bureau, and published at 35 Pa.B. 3655 (July 15, 2006) and the official text published in the September 2006 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 382) and as currently appearing in the *Pennsylvania Code*. The text of this section omitted new subsections (d) and (e) when codified.

Therefore, under 45 Pa.C.S. § 901: The State Board of Education has deposited with the Legislative Reference Bureau a corrective amendment to 22 Pa. Code § 49.65. The corrective amendment to 22 Pa. Code § 49.65 is effective as of September 2, 2006, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 22 Pa. Code § 49.65 appears in Annex A.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart C. HIGHER EDUCATION

CHAPTER 49. CERTIFICATION OF PROFESSIONAL PERSONNEL

Subchapter A. GENERAL PROVISIONS

MISCELLANEOUS PROVISIONS

§ 49.65. Out-of-State and Nationally-certified applicants.

(a) The Department will issue the appropriate Commonwealth certificate to applicants who have:

- (1) Graduated from a State approved out-of-State college or university whose teacher education requirements are comparable to those of this Commonwealth.

(2) Completed the preparing institution's teacher education program.

(3) Received the recommendation of the preparing institution for the subject or area to be taught.

(4) Presented evidence of satisfactory achievement in assessments prescribed by the Department under § 49.18(a) (relating to assessment) and the requirements of Chapter 354 (relating to teacher preparation).

(b) The Department may enter into a reciprocal certification agreement with the appropriate authority of another state to recognize comparable certificates. A temporary teaching permit may be issued to educators prepared outside of this Commonwealth in accordance with the current reciprocity agreement with other states. It will be valid for 1 year to allow the teacher to meet the Commonwealth's requirements as out lined in the reciprocity agreement.

(c) Candidates certified by the National Board for Professional Teaching Standards will be granted the highest level certificate applicable.

(d) Candidates successfully completing other National teacher training programs that require a candidate to demonstrate mastery of the subject area to be taught and professional knowledge needed for classroom effectiveness as approved by the Board, will be certified to teach in this Commonwealth, provided the approved program includes 1 year of intensive supervision in an internship program approved by the Secretary and the teacher has satisfied the basic certification requirements of the act (see 24 P. S. §§ 12-1202 and 12-1209), such as having good moral character, being at least 18 years old and having a bachelor's degree.

(e) Candidates holding a valid and current instructional certificate issued by one of the states party to the Interstate Certification Agreement with Pennsylvania may be eligible for certification if they have taught on the out-of-State certificate for 3 of the past 7 years and have achieved the qualifying score on the appropriate content area test required by the Commonwealth and meet the requirements of § 49.12 (relating to eligibility). The out-of-State certificate must be comparable to the grade level and scope of the Pennsylvania certificate being requested, and the test must have been taken within 5 years of the date of application for the Pennsylvania certificate. In those cases, no other tests will be required.

[Pa.B. Doc. No. 07-39. Filed for public inspection January 12, 2007, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 126]

Pennsylvania Clean Vehicles Program

Corrective Amendment to 25 Pa. Code § 126.451

The Department of Environmental Protection (Department) has discovered a discrepancy between the agency text of 25 Pa. Code § 126.451 (relating to responsibilities of the Department) as deposited with the Legislative Reference Bureau (Bureau) and the official text published at 36 Pa.B. 7424, 7445 (December 9, 2006) and the text

which will be published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 387 (February 2007)). The text of the section contained inadvertent errors.

Therefore, under 45 Pa.C.S. § 901: The Department has deposited with the Bureau a corrective amendment to 25 Pa. Code § 126.451. The corrective amendment to 25 Pa. Code § 126.451 is effective as of December 9, 2006, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 126.451 appears in Annex A.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAM

Subchapter D. PENNSYLVANIA CLEAN VEHICLES PROGRAM

DEPARTMENT RESPONSIBILITIES

§ 126.451. Responsibilities of the Department.

The Department will do the following:

(1) Monitor and advise the EQB of any proposed or final-form rulemakings under consideration by CARB or its successor that amend the Title 13 CCR, Division 3, Chapter 1 and 2 requirements, incorporated by reference in this subchapter.

(2) The Department will:

(i) Prepare a Regulatory Analysis Form to be submitted to the EQB and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for each proposed or final CARB rulemaking amending the Title 13 CCR, Division 3, Chapter 1 and 2 requirements incorporated by reference in this subchapter. The Department will complete the relevant provisions of the

Regulatory Analysis Form as practical, including a cost/benefit analysis of the proposed or final CARB rulemaking.

(ii) Evaluate the estimated incremental cost to manufacture vehicles that comply with the California Low Emission Vehicle Program compared to the cost to manufacture vehicles that comply with the Federal Tier II vehicle emissions regulation, or its successor, promulgated under section 177 of the Clean Air Act (42 U.S.C.A. § 7507) to the extent data is available. This evaluation will be conducted on any proposed or final-form rulemakings under consideration by CARB or its successor amending the Title 13 CCR, Division 3, Chapter 1 and 2 requirements incorporated by reference in this subchapter and will be distributed to the EQB and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

(iii) Submit comments on proposed or final-form rulemakings amending the Title 13 CCR, Division 3, Chapter 1 and 2 requirements incorporated by reference in this subchapter to CARB on behalf of the residents of this Commonwealth.

(3) The Department, in conjunction with the Department of Transportation, will study and evaluate the feasibility of modifying the Pennsylvania vehicle emission inspection program. In performing the study and evaluation, the Department, in conjunction with the Department of Transportation, will consider the additional reductions in NO_x, VOCs and other pollutants to be achieved through implementation of the Title 13 CCR, Division 3, Chapter 1 and 2 requirements. The Department will submit the findings and recommendations to the EQB no later than September 10, 2007.

(4) As soon as possible, but no later than June 11, 2007, the Department will notify the EQB of the specific reductions in NO_x, VOCs, carbon monoxide and any other reductions approved by the EPA as a result of the incorporation of the Pennsylvania Clean Vehicles Program in the Commonwealth's SIP. The report must include a comparison of the incremental benefit reductions derived using EPA-approved methodology versus reductions which would have been achieved under the Federal Tier II vehicle emission standards.

[Pa.B. Doc. No. 07-40. Filed for public inspection January 12, 2007, 9:00 a.m.]