

No. 2004-49

AN ACT

HB 1809

Providing for a commercial manure hauler and broker certification program; and establishing requirements.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Commercial Manure Hauler and Broker Certification Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“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.

“Board.” The Nutrient Management Advisory Board created under section 8 of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

“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 act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

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

“Concentrated animal operation” or “CAO.” An agricultural operation that meets the criteria established under the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, and implementing regulations.

“Department.” The Department of Agriculture of the Commonwealth.

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

“Nutrient.” A substance or recognized plant nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost used as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

“Nutrient balance sheet.” A written, site-specific document, meeting the requirements established by the State Conservation Commission under this act and the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, used to determine appropriate manure, fertilizer and other nutrient source application rates on importing operations.

“Nutrient management plan.” A written, site-specific plan which incorporates best management practices to manage the use of manure and other plant nutrients for crop production and water quality protection consistent with the criteria established under the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

“Secretary.” The Secretary of Agriculture of the Commonwealth.

“Volunteer operation.” An agricultural operation that voluntarily meets the requirements of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

Section 3. Commercial manure hauler and broker certification program.

(a) Duty and responsibility of the department.—

(1) The department shall establish, within 18 months of the effective date of this act, in consultation with the commission and the board, a commercial manure hauler and broker certification program for the purpose of certifying persons as certified manure haulers or brokers. The department shall by regulation establish such terms, conditions and fees for certification as it deems appropriate.

(2) For purposes of the certification program, the department shall develop, in consultation with the commission and the board, such training and educational requirements, testing and other criteria as it deems necessary for certification. Training shall at a minimum address the following topics:

(i) Laws and regulations pertaining to manure application.

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

(iii) Best management practices 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.

(iv) Recordkeeping by certified manure haulers or brokers necessary to meet all regulatory requirements of this act and the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

(v) Certified manure broker training shall include procedures necessary for the development and filing of a nutrient balance sheet.

(b) Training program approval.—The department shall have the authority to approve, for the purposes of training and education, programs developed by The Pennsylvania State University and other educational institutions or entities that meet the requirements of this section.

Section 4. Requirements for commercial manure haulers and commercial manure brokers.

(a) Prohibition.—No commercial manure hauler or 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:

- (1) successfully completed a manure hauler or broker certification program, as applicable, approved by the department;
- (2) received the appropriate certification by the department; and
- (3) maintained certification under the requirements of the certification program.

(b) Land-applying of manure.—All commercial manure haulers and commercial manure brokers shall, when land-applying manure on behalf of an agricultural operator required under the provisions of section 5 to use a certified manure hauler or certified manure broker, do so only in accordance with the provisions of an approved nutrient management plan or nutrient balance sheet.

(c) Records.—All commercial manure haulers and commercial manure brokers shall maintain such records of all manure they broker, transport or land-apply as the department, in consultation with the commission and the board, determines to be necessary to meet the requirements of this act and the regulations promulgated under the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

Section 5. Exporting requirements.

In order to export manure to other agricultural operations or other persons, all CAOs, CAFOs and volunteer operations shall do all of the following:

(1) No later than the time of transfer of the manure, provide a nutrient balance sheet to all importing operations receiving manure for land application from the CAO, CAFO or volunteer operation. If the CAO, CAFO or volunteer operation enters into a contract or other agreement with a commercial manure broker, the broker shall provide, no later than the time of transfer, a nutrient balance sheet to the importing operation, and copies of the nutrient balance sheet shall be provided to the county conservation districts in the counties in which the importing and exporting operations are located.

(2) When using a commercial manure hauler or commercial broker to export manure from an agricultural operation, utilize only certified manure haulers or certified manure brokers for the transport and land application of manure exported from the operation.

(3) Maintain records sufficient to meet all regulatory requirements with respect to manure export, transport and land application or other use at an importing operation established by the commission, in consultation with the department and the board, under the authority of this act and the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

(4) In the case of an agricultural operation designated as a CAFO, meet any additional requirements under the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

Section 6. Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of a provision of this act, a regulation promulgated under this act or an order issued under this act.

Section 7. Administrative penalties.

(a) Administrative penalty.—

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of this act, the department may assess an administrative penalty of not more than \$500 for the first day of each offense and \$100 for each additional day of continuing violation. The factors for consideration in determining the amount of the penalty are:

- (i) The seriousness of the violation.
- (ii) The potential harm to the public.
- (iii) The potential effect on the environment.
- (iv) The willfulness of the violation.
- (v) Previous violations.
- (vi) The economic benefit to the violator for failing to comply with this act.

(2) If the department finds that a violation did not cause harm to human health or an adverse effect on the environment, the department may issue a warning in lieu of assessing a penalty if the agricultural operator, commercial manure broker or commercial manure hauler, upon notice, takes immediate action to resolve the violation and come into compliance.

(3) A person may appeal a penalty under this subsection to the secretary as follows:

- (i) The appeal must be filed within 30 days of the date of the penalty assessment.
- (ii) The secretary shall issue a decision on the appeal within 30 days of the filing of an appeal under subparagraph (i). If the secretary does not meet the time period under this subparagraph, the assessment of the penalty shall be deemed withdrawn.

(4) This subsection is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(b) Collection.—In cases of inability to collect the administrative penalty or failure of a person to pay all or a portion of the penalty, the department may refer the matter to the Office of General Counsel or the Office of Attorney General, which shall be authorized to institute an action in the appropriate court to recover the penalty. A penalty assessed shall operate as a lien on the property of the person against whom the penalty has been assessed.

Section 8. Civil remedies.

(a) Law.—The General Counsel may institute an action at law in a court of competent jurisdiction to recover damages for a violation of this act, a regulation promulgated under this act or an order issued under this act.

(b) Equity.—The General Counsel may institute an action in equity in a court of competent jurisdiction to restrain a violation of this act, a regulation promulgated under this act or an order issued under this act.

(1) The court may fix a reasonable time during which the person responsible for the violation may make provision for the abatement of the violation.

(2) In cases where the circumstances require it or the public health is endangered, the court may issue a preliminary injunction, special injunction or temporary restraining order.

(3) In a proceeding under this subsection:

(i) The Commonwealth shall not be required to furnish bond.

(ii) The court shall issue a preliminary injunction if it finds that the defendant is engaging in unlawful conduct as proscribed by this act or is engaged in conduct which is causing immediate and irreparable harm to the public.

(4) Equitable relief under this subsection may be in addition to damages under subsection (a).

Section 9. Enforcement orders; revocation or suspension of certification.

(a) Orders.—The department may issue orders necessary for the enforcement of the provisions of this act. An order issued under this section shall take effect upon notice unless the order specifies otherwise.

(b) Revocation or suspension of certification.—The department may suspend or revoke a certification granted under this act if it finds that the broker or hauler has failed or continues to fail to comply with a provision of this act, the certification criteria, the regulations promulgated under this act or an order of the department under this act.

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

(1) The appeal must be filed within 30 days of the date of the order, revocation or suspension.

(2) The secretary shall issue a decision on the appeal within 30 days of the filing of an appeal under paragraph (1). If the secretary does not meet the time period under this paragraph, the order, revocation or suspension shall be deemed withdrawn.

(3) This subsection is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 10. Powers reserved under existing laws.

(a) Reservation.—Nothing in this act shall limit the powers conferred upon the department, the State Conservation Commission, the Department of Environmental Protection or a county conservation district under laws other than this act, including the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and common law. These powers are preserved.

(b) Exhaustion.—A court exercising equitable jurisdiction in accordance with section 8(b) shall not be deprived of jurisdiction even though a nuisance or condition detrimental to public health is subject to regulation or other action by the department under this act.

Section 11. Preemption of local ordinances.

(a) General rule.—This act and its provisions are of Statewide concern and occupy the whole field of regulation regarding the certification and regulation of commercial manure brokers and commercial manure haulers, the transportation of animal manure by commercial manure haulers and commercial manure brokers and the exporting of animal manure from agricultural operations to importing operations, to the exclusion of all local regulations. Except as otherwise specifically provided in this act, no ordinance or regulation of a political subdivision may prohibit or attempt to regulate the certification or operations of commercial manure brokers and commercial manure haulers, the transportation of animal manure by brokers and haulers or the exporting of animal manure from agricultural operations to importing operations.

(b) Local power.—

(1) Except as set forth in paragraph (2), nothing in this act shall prevent a political subdivision from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the regulations promulgated under this act.

(2) No penalty shall be assessed under a local ordinance or regulation for a violation for which a penalty has been assessed under this act.

Section 12. Limitation of liability.

If a person operating as a commercial manure hauler or commercial manure broker is properly certified under this act and has complied with this act in the transportation, utilization, land application and activities related to the management of animal manure, certification and compliance shall be given appropriate consideration as a mitigating factor in an action arising from the management or utilization of nutrients transported or land applied by the hauler or broker.

Section 30. Effective date.

This act shall take effect as follows:

- (1) Section 4(a) shall take effect in 18 months.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 28th day of June, A.D. 2004.

EDWARD G. RENDELL