

# **POSSIBLE REGULATORY REVISIONS**

**ACT 38**

**ACT 49**

**NM AND OM CERTIFICATION**

Conservation District Roundtable

September 2021



# APPROVAL TO LOOK AT A POSSIBLE UPDATE TO THE FOLLOWING REGULATIONS

- Approval was given at the July 13, 2021 SCC meeting to look at possible regulatory revisions for the following:
  - DEP Title
    - Chapter 83 State Conservation Commission; Subchapter D; Nutrient Management
    - Chapter 83 State Conservation Commission; Subchapter E; Nutrient Management Funding Program – Statement of Policy
  - PDA Title
    - Chapter 130e; Commercial Manure Haulers and Broker Certification
    - Chapter 130b, Nutrient Management Certification;
    - Chapter 130f, Odor Management Certification



# SUMMARY OF ACT 38

- In spring 1993, the Pennsylvania Nutrient Management Act (Act 6) became law.
- On October 1, 1997, the State Conservation Commission's regulations detailing the requirements under Act 6 went into effect in Pennsylvania.
- Before this legislation became effective, problems with nutrient pollution were handled primarily under the Clean Streams Law.
- Act 6 regulations require high-density animal operations to develop and implement approved nutrient management plans.
- In 2002, the State Conservation Commission (SCC) was required by law to review the Act 6 regulations. This extensive review along with a concurrent policy initiative known as Agriculture, Communities, and Rural Environment (ACRE) resulted in a new law (Act 38), which replaced Act 6, and in revised regulations,
- In October 2006, Act 38 regulations became effective.



# SUMMARY OF ACT 49

- As part of the 2002 review of Act 6, it was evident that more attention was needed on manure that was exported away from Nutrient Management Plan operation.
- The Commercial Manure Hauler and Broker Certification Act, Created under Act 49 of 2004, requires all owners and employees of a commercial manure hauler or broker business, that commercially haul, land-apply, or broker manure in Pennsylvania to hold a valid certificate issued by the Department of Agriculture (Department) in order to provide their services in Pennsylvania.
- The intent is to ensure that manure generated by agricultural operations is transported and applied in a safe manner. Commercial manure haulers or brokers handling or applying manure on behalf of agricultural operations in Pennsylvania must do so according to an Act



# SUMMARY OF CERTIFICATION

- On September 28, 1996, the Pennsylvania Department of Agriculture (PDA) regulations detailing the requirements of Nutrient Management Certification became effective.
- On October 25, 2008, the Odor Management Certification regulations became effective.
- PDA is mandated under Act 38 to establish a nutrient management and Odor Management certification programs. The requirements for the Certification Programs are created by regulation.
- Applicants for certification must attend a series of courses designed by PDA to address nutrient and odor management planning principles and technology and pass an examination administered by PDA.



# PURPOSE OF ACT 38, ACT 49, AND CERTIFICATION

- The purposes of the Act 38 regulations are to:
  - Assure the proper utilization and management of nutrients on Concentrated Animal Operations (CAOs), Volunteer Animal Operations (VAOs) and operations required to develop compliance plans.
  - Assure the proper utilization and management of nutrients when manure is exported off of the operations covered under Act 38.
  - Protect the quality of surface water and groundwater.
- The purpose of the Act 38 and Act 49 certification regulations are to:
  - prescribe procedures relating to the certification of nutrient and odor management specialists and commercial manure haulers and brokers.
  - delineates the requirements for certification of nutrient and odor management specialists and commercial manure haulers and brokers
  - establishment of fees,
  - establishment of recertification criteria, and
  - sets forth the conditions of denial, suspension and revocation of certification.



# REG REVISION SCHEDULE

**(NOTE IT'S A 2 ½ YEAR PROCESS)**

- July 2021: Ask the SCC for approval to look at the regulations and start to mark up.
- August 2021 to January 2022: Develop, work with, and presents draft regulation to advisory committees and boards
- February 2022: Prepare proposed rulemaking documents (Annex A (draft regulation), preamble and regulatory analysis form (RAF)) for preliminary review, which includes the Governor's Policy Director and the Office of General Counsel
- March 2022: SCC adopts the proposed regulation
- April 2022: Governor's Budget Office reviews and issues fiscal note and Office of General Counsel formally reviews and approves
- June 2022: Office of Attorney General (OAG) reviews the proposed rulemaking



# REG REVISION SCHEDULE

## (NOTE IT'S A 2 ½ YEAR PROCESS)

- August 2022: Preamble and Annex A are submitted to the Legislative Reference Bureau (LRB) for publication in the *Pennsylvania Bulletin*; also submitted, along with RAF, to the Independent Regulatory Review Commission (IRRC) and the House and Senate Ag & Rural Affairs Committees
- September 2022: LRB publishes the preamble and Annex A in *Pennsylvania Bulletin* for public comment
- December 2022: SCC reviews comments from the public, IRRC, and the House and Senate Ag & Rural Affairs Committees to develop the final rulemaking documents
- January 2023: SCC develops and presents the draft final regulation to advisory committees
- February 2023: SCC prepares final rulemaking documents (final Annex A, preamble, RAF and comment and response document) for preliminary review, which includes the Governor's Policy Director and the Office of General Counsel



# REG REVISION SCHEDULE

## (NOTE IT'S A 2 ½ YEAR PROCESS)

- May 2023: SCC adopts the final regulation presented by staff
- June 2023: Governor's Budget Office reviews and issues fiscal note and Office of General Counsel formally reviews and approves
- August 2023: Preamble, Annex A, RAF and comment and responses are submitted to IRRC for consideration; copies submitted simultaneously to the House and Senate Ag & Rural Affairs Committees
- House and Senate Ag & Rural Affairs Committees have until 24 hours prior to the start of the IRRC meeting to notify IRRC and the promulgating agency that the Committee(s) will require further review of the regulation after IRRC consideration or if they intend to issue a resolution disapproving the regulation.
- October 2023: IRRC approves or disapproves the regulation at its public meeting.
- November 2023: OAG reviews the final regulation approved by IRRC if it was not disapproved by the General Assembly
- January 2024: Preamble and final Annex A are submitted to LRB, which publishes them in *Pennsylvania Bulletin*



# **OUTREACH STRATEGY**

- SCC staff plan to include the NMAB and the AAB in all aspects of this proposed regulatory revision.
- SCC staff will also work with internal and external program partners from PSU College of Agricultural Sciences, DEP, delegated county conservation districts and PACD, and NRCS.
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- In addition, SCC staff would expect to rely on private and public sector planners, commercial manure hauler and brokers, and agricultural organizations, such as the PFB and PennAg Industries, to assist in development.



# **CHAPTER 83 / NUTRIENT MANAGEMENT /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

## ■ **83.261. General**

- Remove language on when NMPs are due based on the last regulatory revision, as they are no longer applicable.
- Add that NMPs can be submitted by the operator or their designated plan writer (which is how it is occurring now).
- Add identification if animal housing facilities are leased.



# **CHAPTER 83 / NUTRIENT MANAGEMENT /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- **83.262. Identification of CAOs.**
  - Update example CAO calculation to new animal weights
  
- **83.281. Identification of agricultural operations and acreage.**
  - Add that aerial photography must be used as an underlay for maps.
  
- **83.282. Summary of plan.**
  - Add grouping of Crop Management Unit. The need for plan flexibility is being asked for by the MNPTT and this may be a way to offer.



# **CHAPTER 83 / NUTRIENT MANAGEMENT /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- **83.291. Determination of available nutrients.**
  - Add mortality compost.
  - Add that only one manure sample may be needed from multiple storages of the multiple storages are managed the same (same animals treated the same, etc.).
  - Change soil sample date to season
  - Delete P-Index implementation schedule and dates, as no longer applicable.



# **CHAPTER 83 / NUTRIENT MANAGEMENT /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- **83.294. Nutrient application procedures.**
  - Update irrigation discussion to current PSU factsheet
  - Add language about the possible soil moisture chart we may develop for manure injection.
  
- **83.331. Implementation schedule.**
  - Add BMP language.
  
- **83.344. Exported manure informational packets.**
  - Update language to what the MMP is titled.



# **CHAPTER 83 / NUTRIENT MANAGEMENT /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- **§ 83.361. Initial plan review and approval.**
  - Update language that a disapproved NMP needs resubmitted within 30 days, versus the 90 days allowed now.
  
- **83.362. Plan implementation.**
  - Change language that NMPs need amended every 3 years. The 3-year review by the NMS is not occurring as it is.



# **CHAPTER 83 / NUTRIENT MANAGEMENT /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

## ■ **83.371. Plan amendments.**

- Delete that plan amendment is need if 3 years of crop yields are less then what was planned, as NMPs are being amended every 3 years due to a change noted above.
- Delete that a plan amendment is needed for bringing on additional lands. Moved this to plan updates.
- Delete need to amendment of the P-Index would require. No longer applicable as NMPs are being amended every 3 years due to a change noted above.



# **CHAPTER 83 / NM STATEMENT OF POLICY /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- Remove the statement of policy from regulation and offer as official policy, which is done with most other programs administered by the SCC
- If regulation is kept, provide the following:
  - Update language to refer to districts as conservation districts
  - Update quarterly reporting information.



# **NUTRIENT MANAGEMENT CERTIFICATION / PROPOSED REVISIONS (NOT LIMITED TOO)**

- Throughout
  - Added to the Department, or its designee
- 130f.3. Fees
  - Consider an increase to reflect current industry costs
- 130b.11. Determination of competence
  - Update to current list of coursework



# **NUTRIENT MANAGEMENT CERTIFICATION /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- 130b.21. Determination of competence.
  - Update to current list of coursework
  
- 130b.51. Denial, suspension and revocation of certificates
  - Add Penalties
  - Include clarifying language that would enhance PDA's authority to deny, revoke or suspend an individual's certification.



# **MANURE HAULER AND BROKER /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- Add record keeping and submission
  
- 130e.3. Fees
  - Consider an increase to reflect current industry costs
  
- 130e.22. Certification requirements
  - Consider a “grand fathered” provision for a Manure Hauler 1 who is trained in a similar program.



# **MANURE HAULER AND BROKER /** **PROPOSED REVISIONS (NOT LIMITED TOO)**

- 130e.61. Denial, suspension and revocation of certificates.
  - Add penalties
  - Include clarifying language that would enhance PDA's authority to deny, revoke or suspend an individual's certification
- 130e.71. Recordkeeping
  - Submission of records to verify haulers and brokers are meeting record keeping requirement and to improve tracking NBS.



# NEXT STEPS

- SCC and Partner (PSU, DEP, NRCS) staff will discuss changes we see appropriate
- Meet with workgroups:
  - NMAB members are needed
  - AAB members are welcome to join
  - PFB, PennAg, any other organizations to invite?
  - Private Sector Planners, whom?
  - Plan Reviewers, whom?
  - Hauler and Broker, whom?



# QUESTIONS

