

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b>  2011/11/17 REVIEWED
(1) Agency  Commonwealth of Pennsylvania Department of Agriculture		IRRC Number: 2267
(2) I.D. Number (Governor's Office Use)  2-116		
(3) Short Title  Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands		
(4) PA Code Cite  7 PA Code Chapter 130d	(5) Agency Contacts & Telephone Numbers  Primary Contact: John C. Tancelosky (717) 772-5217 Secondary Contact: Vance R. Wagner (717) 772-5210	
(6) Type of Rulemaking (check one)  Proposed Rulemaking Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached?  No <input checked="" type="checkbox"/> Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The regulations specify general procedures and rules to apply soil and groundwater Contaminated with agricultural chemicals, generated as a result of remediation activities at Agricultural chemical facilities, to agricultural land. These regulations only apply to the application of soil and groundwater contaminated with agricultural chemicals, such as pesticides and fertilizer. The Department has no power to issue approval for other substances contained in the contaminated media, and the Department has no authority over actual remediation activities.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  Statutory authority is given under the Land Recycling and Environmental Remediation Standards Act (35 P.S. § 6026.904(d)).		

## Regulatory Analysis Form

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

Section 904(d) of the Act referenced previously directs the Department to “promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural land.”

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

These regulations provide agricultural chemical businesses and farmers with an effective alternative method to the treatment and disposal of soil and groundwater contaminated with agricultural chemicals. In addition, these regulations reduce the transportation to and handling of soil contaminated with agricultural chemicals at hazardous waste incinerators, landfills, and the need to treat contaminated groundwater prior to discharge. The reduction in materials transported to hazardous waste incinerators and landfills will help to mitigate the problems faced by this Commonwealth with regard to landfill space and expansion.

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

Several examples of public health, safety, environmental or general welfare risks include the unregulated application of pesticides and fertilizers, including banned pesticides to agricultural land. In addition, the techniques utilized to apply such contaminated media, if unregulated could lead to unproductive or spoiled agricultural land and environmental hazards. It could also serve to merely change the site of the contamination and spread the liability and clean-up problem from one industry to another. The unregulated application of these contaminated materials could lead to lost productivity and even problems with contamination of the food supply.

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

The general public will benefit through an alternative means of disposal of contaminated soil and groundwater and the ability to utilize what was once a contaminated “brownfields” site. In addition, the owner of the agricultural chemical facility undergoing remediation could benefit by having alternative disposal options for the contaminated soil and groundwater. The operators of overburdened landfills and incinerators in the Commonwealth as well as the general public will benefit from a decreased use and expansion of those facilities.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

A very limited number of participants may be affected by these regulations. Licensed hazardous waste haulers, treatment facility operators and landfill operators may be affected by these regulations due to the availability of other disposal options.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Persons who solicit approval from the Department to apply soil or groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities do so on a strictly voluntary basis. Proceeding under these regulations is not mandatory.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department solicited technical and professional assistance from representatives of Penn Ag Industries and John A. Nikoloff of Capital Associates, Incorporated. These professionals represent the majority of the regulated businesses that may be affected by the regulations. The Department of Environmental Protection (DEP) was also consulted. These regulations overlap with DEP's regulations regarding the application of residual waste to agricultural land (25 Pa. Code § 291.1 *et seq.*). In addition, input was received during the public comment period from industry members, such as Syngenta, CropLife America and DuPont Crop Protection. The Chesapeake Bay Foundation and several legislators also provided comments during the comment period for the proposed regulation. Finally, all commentators were sent a final version of the final-form regulation and given an additional 10-days to comment prior to the final-form regulation being submitted. No additional comments were received during this additional comment period.

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

Persons who solicit approval from the Department to apply soil or groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities will be required to provide laboratory test results setting forth the type and amount of agricultural chemical in the soil piles or groundwater sought to be land applied and also of the soil at the application site to determine background levels. The cost of the laboratory analysis could exceed several thousand US dollars per sample. In addition, consulting fees and the development of a remediation plan could increase the cost by an estimated ten thousand dollars per site.

### **Regulatory Analysis Form**

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

The propose regulations will impose no additional administrative costs – such as review and enforcement costs - on the local governments and will not increase legal costs to local governments. The regulation imposes no direct or mandatory fiscal impact upon local governments. In addition, the regulations would not impose any additional burden of enforcement, accounting or consulting procedures upon local governments.

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

The costs to the Department associated with the implementation and administration of these regulations are estimated at \$5,000 per case. This includes the time associated with the technical review of the application / remediation plan, meetings with consultants and correspondence between the Department and the persons involved with site remediation. Increased legal costs are possible, but are dependant upon the number of appeals filed from denials of land application proposals.



## Regulatory Analysis Form

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated Community</b>	0	\$7000/case	\$7350/case	\$7717/case	\$8103/case	\$8508/case
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	\$5000/case	\$5300/case	\$5500/case	\$5700/case	\$6000/case
<b>Total Costs</b>	0	\$12000/cs.	\$12650/cs.	\$13217/cs.	\$13803/cs.	\$14508/cs.
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

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

The cost estimates for the regulated community were derived from known laboratory fees for analytical work and consultation fees for the development of design plans, and the compilation of the remediation plan. The cost estimates for the state government, in this case, the Pennsylvania Department of Agriculture, include the allocation of time for the technical review of the remediation plans and all related correspondence, and the Agronomic Products Inspector times allotted for site visitation and inspection.

## Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
	0	0	0	0
	0	0	0	0
	0	0	0	0
	0	0	0	0

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

These regulations would provide options to agricultural chemical businesses and farmers involved in remediation activities. Land recycling of soil and groundwater contaminated with agricultural chemicals could be an effective alternative to treatment and disposal at United States Environmental Protection Agency (EPA) approved hazardous waste facilities. Specifically, these regulations would reduce transportation and handling by eliminating the need to dispose of the contaminated soil in EPA approved hazardous waste landfills and incinerators, and the need to treat groundwater contaminated with agricultural chemicals prior to discharge to the waters of the Commonwealth. It will also reduce the amount of materials, not considered hazardous wastes, being deposited in Commonwealth landfills.

No actual costs are presented above since no Department programs would be affected by these regulations.

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

There were no nonregulatory alternatives considered since the Land Recycling and Environmental Remediation Standards Act provided specific statutory authority for and the duty to promulgate these regulations.

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

These regulations have gone through numerous drafts (over 30 in the proposed stage) based on input from the regulated community, environmental community and the Department of Environmental Protection. In addition, numerous revisions were made to the final-form regulation due to comments received during the proposed stage of rulemaking. In particular, comments received from members of the industry and the Chesapeake Bay Foundation presented alternative regulatory schemes. The Department believes the final version of the regulation addresses concerns expressed by both sides and falls almost squarely in the middle of the alternative schemes suggested, while at the same time carrying out the duty of providing for the safe application of the contaminated materials and protecting the health, safety and welfare of the general public and the environment.

## Regulatory Analysis Form

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

There are no federal standards specifically for land application of soil and groundwater contaminated with agricultural chemicals. However, the Federal Insecticide, Fungicide and Rodenticide Act does establish labeling, registration and application requirements for pesticides. The provisions of the final-form regulation are consistent with and no more stringent than the provisions of that statute.

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

Very few states, and no adjacent states, have similar regulations in place. However, the regulation may place Pennsylvania at a competitive disadvantage due to the long drawn out process to obtain approval for site application activities. Illinois and Minnesota have land application regulations in place. Those regulations were reviewed and some sections of those regulations were used in these regulations. Those regulations are more streamlined because the equivalents of the Departments of Environmental Protection and Agriculture are either combined as one agency in those States or there appears to be no overlap in the regulations as there is in the Commonwealth. A major consideration in the promulgation of this regulation was to assure it was consistent with regulations - already in place - of the Pennsylvania Department of Environmental Protection concerning the application of residual waste to agricultural lands. In addition, because the soil and groundwater being applied contain pesticides the provisions of these regulations had to be consistent with the Pennsylvania Pesticide Control Act of 1973 (PPCA)(3 P.S. § 111.21 *et seq.*). The PPCA specifically references and requires conformity with the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (FIFRA)(7 U.S.C. § 136 *et seq.*) therefore, these regulations had to also address and assure conformity with FIFRA.

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

The regulation will not affect any other existing or proposed regulations of the Pennsylvania Department of Agriculture (Department). However, the Pennsylvania Department of Environmental Protection (DEP) has regulations in place concerning the remediation of industrial and commercial establishments, and the land application of residual waste (25 Pa.Code §§ 291.1 - 291.418), including regulations specifically regarding the application of residual waste to agricultural land (25 Pa.Code §§ 291.301 – 291.316). The Department corresponded with and sought the advise of the DEP throughout the promulgation of this regulation in order to assure the final-form regulation was consistent with the pertinent DEP regulations.

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

No public hearings or informational meetings will be scheduled regarding these regulations.

## Regulatory Analysis Form

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

This regulation will not change any existing reporting, record keeping, or other paperwork requirements. The regulations will require entirely new forms regarding recordkeeping, reporting and other paperwork requirements.

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

There were no special provisions that were required for this regulation. The regulation does include a provision that requires applicators to inform persons listed on the pesticide hypersensitivity list prior to application of the contaminated media. This provision is consistent with and references the provision in the Pennsylvania Pesticide Control Act of 1973 (PPCA)(3 P.S. § 111.21 *et seq.*), which requires such notice.

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

The anticipated effective date of this regulation is June, 2004.

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

The regulation will be reviewed on an annual basis in conjunction with the budget projections.

# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130d]

### Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands

[32 Pa.B. 1965]

The Department of Agriculture (Department), under the specific authority conferred by section 904(d) of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. § 6026.904(d)), proposes to establish Chapter 130d (relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands). Section 904(d) of the act delineates the duties of the Department and directs the Department to ". . . promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands." The regulations are required to ". . . provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application."

The proposed regulations specify general procedures and rules for persons who solicit or receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land. These proposed regulations apply only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of contaminated soil or groundwater generated as the result of remediation activities that were undertaken at an agricultural chemical facility, where the soil or groundwater is contaminated with chemicals or substances other than agricultural chemicals. The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals. Where the contaminated soil or groundwater contains chemicals or substances other than agricultural chemicals, the applicant must receive approval for land application of chemicals or substances from the appropriate regulatory agency or must proceed under the alternative provisions of the act, which include holding the soil and groundwater onsite under the regulations regarding onsite storage of waste or processing the soil and groundwater in a manner consistent with the type of waste contained in the soil pile or groundwater. The applicant is responsible for obtaining any additional permits or approvals necessary for the application of the contaminated media. The Department has no power to issue final approval for the land application of

contaminated soil or groundwater that was generated as the result of remediation activities that were not undertaken at an agricultural chemical facility or where the contaminated soil or groundwater will be applied to land other than agricultural land.

### *Background*

The act requires the Department to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. The Department takes very seriously its duty to protect the health and safety of the general public and to preserve the quality and productivity of agricultural lands in this Commonwealth. These proposed regulations are intended to address the safety of the application of soil and groundwater contaminated agricultural chemicals and to protect and assure the productivity and viability of the agricultural lands to which this media is applied.

In addition, the Department of Environmental Protection, under the Solid Waste Management Act (35 P. S. §§ 6018.101--6018.1003) has regulations in place concerning the land application of residual waste in 25 Pa. Code Chapter 291 (relating to land application of residual waste), including regulations specifically regarding application to agricultural land in 25 Pa. Code Chapter 291, Subchapter D (relating to additional requirements for the agricultural utilization of residual waste). "Residual waste" as defined by the Solid Waste Management Act includes agricultural waste. The act does not exempt the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands, from the regulations promulgated under the Solid Waste Management Act. Therefore, the Department has endeavored to assure these regulations are consistent with the residual waste regulations pertaining to application of residual waste to agricultural land.

In the interest of carrying out its statutory duties and providing a safe alternative use for soil and groundwater contaminated with agricultural chemicals the Department has promulgated these proposed regulations. The regulations are intended to establish safe standards, criteria and procedures for the application of the contaminated media to agricultural lands.

### *Summary of Major Features*

Section 130d.1 (relating to definitions) defines various terms to add clarity to the regulations. Although many of the terms are also defined in the act and the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.61), the Department included them in the proposed regulations to provide the regulated community and interested persons with easy and immediate access to definitions which clarify the regulations.

Section 130d.2 (relating to scope) details the narrow scope of the Department's authority, sets forth the Department's powers and duties and clarifies the type of contaminated material eligible for consideration to be applied to farm lands under the act and the proposed regulations.

Section 130d.3 (relating to continuing authority) delineates the intent that these proposed regulations do not amend, repeal or modify the provisions of any other act or the regulations promulgated thereunder and denotes the continuing authority of the Department to take

regulatory action under those statutes.

Section 130d.11 (relating to scope) sets forth the requirement that persons receiving approval to apply soil and groundwater contaminated with agricultural chemicals shall comply with the act, the regulations and the environmental protection acts.

Section 130d.12 (relating to reports) establishes the duty of applicators to file annual and final reports with the Department and sets forth the information which shall be contained in the reports.

Section 130d.13 (relating to chemical analysis of waste) creates the requirement for the detailed chemical analysis of soil and groundwater taken from the agricultural chemical facility and sought to be applied to agricultural lands. It defines the type of analysis that shall be done and sets forth testing requirements and protocols.

Section 130d.14 (relating to waste analysis plan) delineates the requirements for a waste analysis plan and what shall be included in that plan.

Section 130d.15 (relating to application site analysis) establishes the requirement for an application site analysis and sets forth the criteria for and procedures to be used in analyzing the site.

Section 130d.16 (relating to retained recordkeeping) details which records shall be retained and the retention time for the records.

Section 130d.17 (relating to public notice by applicant) denotes the requirement to comply with the notice provisions of the Pennsylvania Pesticide Control Act.

Section 130d.21 (relating to general requirements for land application proposal form) sets forth the requirements for submittal and delineates the documentation, information and affirmations which shall be contained in the application proposal.

Section 130d.22 (relating to insurance) establishes the insurance requirements for persons seeking to apply soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.23 (relating to right of entry and agreement with landowner) sets forth the requirements that the person seeking to apply soil and groundwater contaminated with agricultural chemicals to agricultural lands shall submit documents establishing their right to enter onto the land upon which the agricultural chemicals will be applied and a signed consent agreement. In addition, the landowner shall sign a form, prepared by the Department, authorizing the Department or its agents to enter onto the land.

Section 130d.24 (relating to identification of interest) details the type of information pertaining to the applicant which shall be contained in the land application proposal.

Section 130d.25 (relating to compliance information) the land application proposal shall contain proof that the proposed application will comply with the applicable Federal, State and local laws and regulations.

Section 130d.26 (relating to environmental assessment) sets forth the requirement for an environmental assessment to be included in the land application proposal. It delineates the criteria for the environmental assessment, including detailing the potential impact of the application of the soil and groundwater contaminated agricultural chemicals to the application site, potential harmful effects of the application and a mitigation plan.

Section 130d.31 (relating to criteria for approval and denial) establishes the criteria the Department will use and follow in evaluating a land application proposal.

Section 130d.32 (relating to receipt of land application proposal and completeness review) delineates the criteria to determine date of receipt and completeness of a land application proposal.

Section 130d.33 (relating to review period) establishes a time period for Department review of an administratively complete land application proposal and sets forth the procedures and process to be followed upon receipt of an incomplete land application proposal.

Section 130d.34 (relating to review process) sets forth the process which the Department will follow in reviewing land application proposals.

Section 130d.41 (relating to general) details terms, conditions and criteria which shall be met before, during and subsequent to land application of soil and groundwater contaminated with agricultural chemicals.

Section 130d.42 (relating to operating plan) sets forth the information which shall be included in the operating plan.

Section 130d.43 (relating to maps and related information) delineates the type of maps which shall be included in the land application proposal and the information which those maps shall contain.

Section 130d.51 (relating to general requirements) sets forth the general requirements for applying to the Department to use groundwater contaminated with agricultural chemicals as tank mix. It establishes the review procedures and delineates ongoing testing and cancellation requirements.

Section 130d.52 (relating to general exceptions) establishes the standards the Department will follow in determining whether groundwater contaminated with agricultural chemicals can be utilized as tank mix. In addition, delineates the Department's authority to waive certain other provisions of the proposed regulations, when the Department determines the groundwater contaminated with agricultural chemicals can be used as tank mix. It also sets forth certain provisions of the proposed regulations that will not be waived by the Department.

Section 130d.61 (relating to general provisions) sets forth the overall compliance criteria for application of the soil and groundwater contaminated with agricultural chemicals.

Section 130d.62 (relating to standards for land application of soil and groundwater contaminated with agricultural chemicals) delineates the general criteria and standards that



shall be accounted for and complied with when applying soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.63 (relating to land application rates and procedures) establishes application rates and procedures which shall be followed when applying soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.64 (relating to additional application requirements) sets forth some additional information that shall be contained in the operating plan, such as a projected 3-year crop rotation plan and information regarding any additional pesticides or fertilizers that will be placed on the application site.

Section 130d.65 (relating to limitations on land application of soil and groundwater contaminated with agricultural chemicals) delineates criteria and factors which shall be included in and accounted for in the applicant's operating plan. The Department will consider these criteria and factors in its review of the applicant's land application proposal. These criteria and factors establish limitations on how soil and groundwater contaminated with agricultural chemicals shall be applied to agricultural lands.

Section 130d.66 (relating to prohibited applications) establishes prohibitions on the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.67 (relating to nuisance minimization and control) establishes requirement for an approved applicant to minimize potential nuisances.

Section 130d.68 (relating to daily operational records) establishes the requirement to keep daily operational records during the application of the soil and groundwater contaminated with agricultural chemicals to agricultural lands and defines the information which shall be included in those records.

Section 130d.69 (relating to annual operational report) establishes the requirement to produce an annual operational report and defines the information which shall be included in that report.

Section 130d.71 (relating to site closure plan) establishes the requirement for a site closure plan and delineates what that plan shall include.

Section 130d.72 (relating to final report) establishes the requirement for a final report and the criteria for what shall be included in that report.

### *Fiscal Impact*

#### *Commonwealth*

The proposed regulations will impose additional administrative costs and have some fiscal impact upon the Commonwealth. The proposed regulations will require the Department to commit a substantial amount of time and manpower to review of applications and inspections of application sites.

### *Political Subdivisions*

The proposed regulations will impose no costs and have no fiscal impact upon political subdivisions. The proposed regulations do not impose any additional burden of enforcement of review on political subdivisions.

### *Private Sector*

For the most part the proposed regulations will impose minimal or no costs on the private sector. Companies wishing to apply soil and groundwater contaminated with agricultural chemicals, generated as the result of remediation activities undertaken at an agricultural facility, to agricultural lands will have to bear the costs of testing imposed by the regulations and the time and manpower costs of preparing the land application proposal. However, proceeding under the proposed regulations is not mandatory. The industry has other approved methods of disposing of soil and groundwater contaminated with agricultural chemicals, all of which impose costs on the industry. The industry seeking to proceed under the alternative presented by the act and these proposed regulations will have to determine whether or not it is the least cost alternative or is the best approach for them. The private sector will benefit through an alternative means of disposal, the liability protections for the remediated site in the act and the ability to utilize the land at the remediated site.

### *General Public*

The proposed regulations will impose no costs and have no fiscal impact on the general public. The general public will benefit through an alternative means of disposal of contaminated soil and groundwater and the ability to utilize what was once a contaminated "brownfields" site. The owner of the agricultural land upon which the contaminated soil and groundwater will be applied will have to weigh the benefits offered by the company seeking to apply the contaminated soil and groundwater against any potential harm the application could pose to the productivity of the agricultural land.

### *Paperwork Requirements*

The proposed regulations may result in a substantial increase of paperwork. The Department will have to develop application forms and review complicated proposals. The review and approval will have to be done by experienced Department staff and Department chiefs with expertise in the fields covered by the regulations.

### *Public Comment Period*

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 10, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In

addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Land Recycling and Environmental Remediation Standards Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: John Tancelosky, (717) 772-5217.

#### *Effective Date*

This proposed regulations will be effective upon final-form publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,  
Secretary

**Fiscal Note:** 2-116. (1) General Fund; (2) Implementing Year 2001-02 is \$0; (3) 1st Succeeding Year 2002-03 is \$50,000; 2nd Succeeding Year 2003-04 is \$53,000; 3rd Succeeding Year 2004-05 is \$55,000; 4th Succeeding Year 2005-06 is \$57,000; 5th Succeeding Year 2006-07 is \$60,000; (4) 2000-01 Program--\$n/a; 1999-00 Program--\$n/a; 1998-99--\$n/a; (7) General Government Operations; (8) recommends adoption.

### **Annex A**

## **TITLE 7. AGRICULTURE**

### **PART V. BUREAU OF PLANT INDUSTRY**

#### **CHAPTER 130d. APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LANDS**

##### **Subch.**

##### **A. GENERAL PROVISIONS**

##### **B. DUTIES OF APPLICATORS**

#### **GENERAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND**

- C. **GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND**
- D. **LAND PROPOSAL REVIEW PROCEDURES**
- E. **GENERAL REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS**
- F. **GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX**
- G. **GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS**
- H. **CLOSURE**

### **Subchapter A. GENERAL PROVISIONS**

Sec.

130d.1. Definitions.

130d.2. Scope.

130d.3. Continuing authority.

#### **§ 130d.1. Definitions.**

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

*Act*--The Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101--6026.908).

*Active ingredient*--

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest.

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

*Agricultural chemical*--A substance defined as a fertilizer, soil conditioner or plant growth substance under 3 Pa.C.S. Chapter 67 (relating to fertilizer) or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.60).

*Agricultural chemical facility*--A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by SIC 2879 (available from the Department of Agriculture, Bureau of Market Development, 2301 N. Cameron St., Harrisburg, PA 17110, (717) 787-6041) where agricultural chemicals are manufactured.

*Agricultural land or farmland*--Land in this Commonwealth that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

*Animal*--All vertebrate and invertebrate species, including man and other mammals, birds, fish and shellfish.

*Application site*--The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemicals and delineated in a final plan containing and detailing the exact location of the farmland upon which the soil or groundwater contaminated with the agricultural chemicals is to be applied, including the property boundaries of the farmland and each field upon which the contaminated soil or groundwater will be applied.

*Applicator*--A certified applicator, private applicator, commercial applicator or public applicator.

(i) *Certified applicator*. An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.

(ii) *Private applicator*. A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(iii) *Commercial applicator*.

(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.

(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.

(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of his employer as commercial applicators.

(iv) *Public applicator*. A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.

(v) *Pesticide application technician*. An individual employed by a commercial applicator

or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.

*Background*--The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

*Cleanup or remediation*--To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

*Contaminated media*--Soil and groundwater contaminated with agricultural chemicals and regulated substances or other chemicals generated as a result of remediation activities at agricultural chemical facilities.

*DEP*--The Department of Environmental Protection of the Commonwealth.

*Defoliant*--A substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

*Department*--The Department of Agriculture of the Commonwealth.

*Desiccant*--Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

*Environment*--Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

*Environmental protection acts*--Includes:

- (i) The Clean Streams Law (35 P. S. §§ 691.1--691.1001).
- (ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4001.101--4001.1904).
- (iii) The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101--6020.1305).
- (iv) The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101--7130.906).
- (v) The act of July 13, 1988 (35 P. S. §§ 6019.1--6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.
- (vi) The Air Pollution Control Act (35 P. S. §§ 4001--4015).
- (vii) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1--1396.31).
- (viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P. S. §§ 3301-

-3326).

- (ix) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1--693.27).
- (x) The Solid Waste Management Act (35 P. S. §§ 6018.101--6018.1003).
- (xi) The Nutrient Management Act (3 P. S. §§ 1701--1718).
- (xii) 3 Pa.C.S. §§ 6701--6725 (relating to Fertilizer Act).
- (xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.61).
- (xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136--136y).
- (xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901--6986)
- (xvi) Other State or Federal statutes relating to environmental protection or the protection of public health.

*Equipment--*

- (i) Any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any agricultural chemical on land and anything that may be growing, habituating or stored on or in the land.
- (ii) The term does not include any pressurized hand-sized household apparatus used to apply any agricultural chemical or any equipment or contrivance of which the person who is applying the agricultural chemical is the source of power or energy in pesticide application.

*General use pesticides--*A pesticide not classified as a restricted use pesticide.

*Groundwater--*Water below the land surface in a zone of saturation.

*HAL--*Health Advisory Level.

*Habitats of concern--*A habitat defined as one of the following:

- (i) Typical wetlands with identifiable function and value, except for exceptional value wetlands as defined in 25 Pa. Code § 105.17 (relating to wetlands).
- (ii) Breeding areas for species of concern.
- (iii) Migratory stopover areas for species of concern.
- (iv) Wintering areas for species of concern.
- (v) Habitat for State endangered plant and animal species.

(vi) Areas otherwise designated as critical or of concern by the Game Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.

*Incorporation*--Plowing or injecting contaminated media to a depth of up to 6 inches in a manner that ensures a uniform mixture of top soil and contaminated media.

*Label*--The written, printed or graphic matter on, or attached to the pesticide, agricultural chemical or device or any of its containers or wrappers.

*Labeling*--Pertaining to pesticide or other agricultural chemicals means all labels and all other written, printed or graphic matter which includes one of the following:

(i) That which accompanies the pesticide, agricultural chemical or device at any time.

(ii) To which reference is made on the label or in literature accompanying the pesticide, agricultural chemical or device, except to current official publications of the Federal Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides or agricultural chemicals.

*Land application proposal*--An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural facility, to agricultural land.

*MCL*--Maximum contaminant level.

*Person*--An individual, firm, corporation, association, partnership, consortium joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal government, State government, political subdivisions and Commonwealth instrumentalities.

*Pesticide*--A substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

*Plant regulator*--

(i) A substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(ii) The term does not include any of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants and are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.



*Prime farmland*--Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

*Secretary*--The Secretary of the Department.

*Tank mix or spray mix*--A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.

*Treatment*--The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).

*Under the direct supervision of a certified commercial or public applicator*--Unless otherwise prescribed by labeling, means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.

*Unreasonable adverse effects on the environment*--Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any pesticide or agricultural chemical.

## **§ 130d.2. Scope.**

(a) The Department has the powers and the duties set forth under section 904(d) of the act (35 P. S. § 6026.904(d)).

(b) This chapter specifies general procedures and rules for persons who solicit or receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.

(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of contaminated soil or groundwater generated as the result of remediation activities as follows:

(1) That were undertaken at an agricultural chemical facility, where the soil or groundwater is contaminated with chemicals or substances other than agricultural chemicals.

(i) The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals.

(ii) Where the contaminated soil or groundwater contains chemicals or substances other than agricultural chemicals, the applicant shall receive prior approval for land application of the chemicals or substances from the appropriate regulatory agency or shall proceed under

the alternative provisions of the act, which include holding the soil and groundwater onsite under the regulations regarding onsite storage of waste or processing the soil and groundwater in a manner consistent with the type of waste contained in the soil pile or groundwater.

(iii) The applicant is responsible for obtaining any additional permits or approvals necessary for the application of the contaminated media.

(2) That were not undertaken at an agricultural chemical facility.

(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.

### **§ 130d.3. Continuing authority.**

Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.

## **Subchapter B. DUTIES OF APPLICATORS**

Sec.

130d.11. Scope.

130d.12. Reports.

130d.13. Chemical analysis of waste.

130d.14. Waste analysis plan.

130d.15. Application site analysis.

130d.16. Retained recordkeeping.

130d.17. Public notice by applicant.

### **§ 130d.11. Scope.**

A person who solicits or receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall comply with the act, this chapter and the environmental protection acts.

### **§ 130d.12. Reports.**

(a) A person who solicits or receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall file an annual report and a final report with the Department. The annual report and the final report may be combined when the application of the contaminated soil or groundwater is completed in less than 1 year.

(b) The reports shall be submitted on forms prepared by the Department and shall contain the following:

(1) The name, mailing address, county and telephone number of the person applying the contaminated soil or groundwater.

(2) The name, mailing address, county and telephone number of the owner of the agricultural land upon which the contaminated soil or groundwater is being or has been applied.

(3) A copy of the daily and annual records required by this chapter.

(4) A spread sheet on each soil pile or quantity of groundwater applied documenting the following:

(i) The chemical analysis of each soil pile or quantity of groundwater applied.

(ii) The chemical analysis of each field or plot upon which a soil pile or quantity of groundwater was applied.

(iii) The specific field or plot upon which each soil pile or quantity of groundwater was applied.

(iv) The application method used for each soil pile or quantity of groundwater.

(v) The date of incorporation and depth of incorporation of each soil pile.

### **§ 130d.13. Chemical analysis of waste.**

(a) A person who seeks to apply soil or groundwater generated as a result of remediation activities at an agricultural chemical facility, to agricultural land shall perform a detailed analysis of the soil or groundwater that fully characterizes the physical properties and chemical composition of each type of waste that may have been generated at the remediation site.

(b) The analysis of the soil or groundwater sought to be applied to agricultural land shall encompass all types of wastes that are likely to be contained in the soil or groundwater at the remediation site. This includes wastes generated as the result of operations, manufacturing, mixing, storage, distribution and facility or machinery maintenance carried out at the remediation site. The types of wastes likely to be contained in the soil and groundwater shall be gleaned from information available regarding the person or facility at which the remediation activities are taking place and the remediation site including the following:

(1) Records, including sales records, memorandums, invoices, repair and maintenance documents and historical data, of the type of products produced, used and stored by the person or facility being remediated and at the remediation site.

(2) Material safety data sheets or similar sources that may help characterize the types of waste generated.

- (3) Notices of past violations or contamination, if applicable.
  - (4) Information regarding any by-product or chemical produced during or as a result of the manufacturing processes, mixing, storage or distribution of materials by the person or facility being remediated and at the site being remediated.
  - (5) A copy of the source reduction strategy of the person or facility at which remediation activities are taking place, if applicable.
- (c) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals and the by-products or derivatives thereof that were ever held, stored, formulated, sold or distributed by the agricultural chemical facility being remediated.
- (1) In addition, the person proposing to land apply the contaminated media shall test for any other chemicals or contaminants, such as petroleum products or manufacturing or cleaning solvents which are likely to be in soil or groundwater at the agricultural chemical facility being remediated.
  - (2) The tests shall be predicated on the manufacturing processes or business carried on by the agricultural facility being remediated and records obtained from that facility.
  - (3) A verified copy or synopsis of the records, a history of the products and manufacturing processes carried on by the agricultural facility being remediated and the final soil or groundwater, or both, test results shall be attached to and made part of the land application proposal submitted to the Department.
- (d) Soil or groundwater, or both, samples from each soil pile or quantity of groundwater sought to be applied to agricultural land shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results and a record of laboratory quality control procedures and the use of those procedures shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.
- (e) The chemical analysis of waste shall include the following:
- (1) A waste sampling plan, including quality assurance and quality control procedures. The plan shall ensure an accurate and representative sampling of the contaminated soil or groundwater, or both, the person seeks to apply to agricultural land.
  - (2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to leach into the environment.
  - (3) A demonstration that the contaminated soil or groundwater can be land applied to agricultural land without negatively affecting the productivity of the agricultural land or causing harm to the environment.

#### **§ 130d.14. Waste analysis plan.**

The applicant shall develop a waste analysis plan. The waste analysis plan shall cover each chemical, nutrient or constituent proposed to be applied to the agricultural land. The plan shall take into account the chemical analysis required by § 130d.13 (relating to chemical analysis of waste). At a minimum, the plan shall include:

(1) The type of chemicals, nutrients and constituents for which each soil pile or quantity of groundwater will be analyzed and the rationale for the selection of those chemicals, nutrients and constituents.

(2) The test methods that will be used to test for these chemicals, nutrients and constituents.

(3) An explanation of the sampling methods that will be used to obtain an accurate and representative sample of the contaminated soil and groundwater to be analyzed, including quality assurance and quality control procedures. The sampling method used shall assure at least one representative sample is taken from each soil pile or quantity of groundwater proposed to be applied to agricultural land.

(4) Individual soil piles and quantities of groundwater may contain different types and concentrations of chemicals, nutrients and constituents. Therefore, the plan shall include a method for labeling and managing the soil piles and quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site.

#### **§ 130d.15. Application site analysis.**

The applicant shall develop an application site analysis plan. The application site analysis plan shall cover soil samples taken from the proposed application site. The soil samples taken from the proposed application site shall be tested for each chemical, nutrient or constituent found in the soil or groundwater at the remediated sites that are proposed to be applied to the application site. In addition, the application site analysis shall delineate the soil types found within the proposed application area. The plan shall take into account the chemical analysis of waste required by § 130d.13 (relating to chemical analysis of waste) and the waste analysis required by § 130d.14 (relating to waste analysis plan). At a minimum, the application site analysis plan shall include:

(1) A chemical, nutrient and constituent analysis of each field or plot upon which a soil pile or quantity of groundwater from the remediated agricultural facility is to be applied.

(2) The test results from soil samples taken from each field at the proposed application sight where the contaminated media is to be applied.

(3) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals, the by-products or derivatives thereof, and each chemical, nutrient or constituent that was found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated which are to be applied at the proposed application site.

(4) Soil samples from each field or plot upon which the contaminated soil or groundwater, or both, from the remediated agricultural facility is to be applied shall be

tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results and a record of laboratory quality control procedures and the use of those procedures shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.

(5) Documentation of the soil types found within the proposed application area.

#### **§ 130d.16. Retained recordkeeping.**

(a) *General.* An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain the following records:

(1) The daily operation records required by § 130d.68 (relating to daily operational records).

(2) The annual operation records required by § 130d.69 (relating to annual operational report).

(3) The signed agreement between the person responsible for the land application and the owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.

(4) The right of entry agreement.

(b) *Inspection and audit.* The records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agents.

(c) *Retention time period.* The records and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were submitted and approved by the Department.

#### **§ 130d.17. Public notice by applicant.**

The applicant shall comply with the notice requirements established by the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.61) and the regulations in Chapter 128 (relating to pesticides).

**[Continued on next Web Page]**

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**NOTICE OF FINAL RULEMAKING**

**Title 7 - AGRICULTURE  
Part V. Bureau of Plant Industry  
7 Pa. Code Chapter 130.d  
Application of Soil and Groundwater Contaminated  
With Agricultural Chemicals to Agricultural Lands**



**TITLE 7 – Agriculture  
DEPARTMENT OF AGRICULTURE  
[7 PA. CODE CH 130d.]  
PART V. BUREAU OF PLANT INDUSTRY**

**Application of Soil and Groundwater Contaminated With Agricultural Chemicals  
To Agricultural Lands**

The Department of Agriculture ("Department"), under the specific authority conferred by section 904(d)(35 P.S. § 6026.904(d)) of the act of May 19, 1995, P.L. 4, No. 2, known as the Land Recycling and Environmental Remediation Standards Act ("Act") (35 P.S. § 6026.101 *et seq.*), hereby establishes Chapter 130d. (7 Pa.Code §§ 130d.1-130d.72) which shall be known as the Application of Soil and Groundwater Contaminated With Agricultural Chemicals To Agricultural Lands.

***Authority***

The Department has the power and authority to promulgate and adopt these regulations. This authority is established at section 904(d)(35 P.S. § 6026.904(d)) of the act of May 19, 1995, P.L. 4, No. 2, known as the Land Recycling and Environmental Remediation Standards Act ("Act") (35 P.S. § 6026.101 *et seq.*). Section 904(d) of the act delineates the duties of the Department and directs the Department to, "...promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands." The regulations are required to, "...provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application."

### ***Need for the Regulation***

The act requires the department to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. The department takes very seriously its duty to protect the health and safety of the general public and to preserve the quality and productivity of agricultural lands in this Commonwealth. These regulations are intended to address the safety of the application of soil and groundwater contaminated agricultural chemicals and to protect and assure the productivity and viability of the agricultural lands to which such media is applied. The act and regulations provide for an alternative approach – other than incineration or landfill disposal - to dispose of soil and groundwater contaminated with agricultural chemicals taken from an agricultural chemical facility being remediated under the act.

In addition, the Department of Environmental Protection, under the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003) has regulations in place concerning the land application of residual waste (25 Pa.Code §§ 291.1-291.418) including regulations specifically regarding application to agricultural land (25 Pa.Code §§ 291.301-291.316). Residual waste as defined by the Solid Waste Management Act includes agricultural waste. The Land Recycling and Environmental Remediation Standards Act does not exempt the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands, from the regulations promulgated under the Solid Waste Management Act. Therefore, the department has endeavored to assure

these regulations are consistent with the residual waste regulations pertaining to application of residual waste to agricultural land.

In the interest of carrying out its statutory duties and providing a safe alternative use for soil and groundwater contaminated with agricultural chemicals the department has promulgated this final rule. The regulations are intended to establish safe standards, criteria and procedures for the application of such contaminated media to agricultural lands.

### **Comments**

Notice of Proposed Rulemaking was published at 32 *Pennsylvania Bulletin*, No. 16, 1965 (April 20, 2002) and provided for a 30-day public comment period. The Department received numerous comments regarding the proposed regulations and made extensive revisions to the proposed regulations based on those comments. Therefore, the Department decided to distribute the revised regulations to all commentators for their review prior to submitting the revised regulations into the final rulemaking process. The Department received no additional comments.

Comments were received from the Independent Regulatory Review Commission; the Honorable Raymond Bunt, Jr., Majority Chairman Agriculture and Rural Affairs Committee; the Honorable Peter J. Daley, Democratic Chairman Agriculture and Rural Affairs Committee; members and representatives of the regulated community Syngenta Crop Protection, CropLife America and DuPont Crop Protection who submitted their comments through the office of the Honorable Raymond Bunt, Jr.; and the Chesapeake Bay Foundation. The Department thanks all of those who commented on these regulations. The comments were insightful and helped the Department to clarify,

simplify and streamline the regulations and develop regulations that meet the parameters of the act.

## **Comments Received**

### **I. GENERAL, INDUSTRY, AND LEGISLATIVE COMMENTS**

#### **Category**

#### **A. Independent Regulatory Review Commission and Legislative Comment – Legislative Intent; Reasonableness; Jurisdiction**

#### **Commentator**

#### **Independent Regulatory Review Commission (IRRC)**

1. The Independent Regulatory Review Commission (IRRC) commented concerning remarks received from Representatives Raymond Bunt and Peter Daley, Majority and Democratic Chairmen of the House Agriculture and Rural Affairs Committee. IRRC set forth specific statements from Representatives Raymond Bunt and Peter Daley. IRRC focused on Representative Bunt's statements that the regulations, "unduly complicates...a very straightforward and scientifically defensible solution to a potential environmental problem" and that this complication was not envisioned when the legislation prompting these regulations was passed; and Representative Daley's statement that "...this regulation is far in excess of what the legislature intended in drafting the bill." In his statement, Representative Daley encourages the Department to change the regulations by simplifying the process. IRRC went on to state they agree the regulations, as drafted, establishes an overly complex manner of disposing of soil and groundwater contaminated with agricultural chemicals from the remediation of an agricultural chemical facility. IRRC is concerned the complicated procedure will impose such a burden that the option of applying soil and groundwater contaminated with agricultural chemicals to agricultural lands will not be utilized and "...thus the beneficial use of the contaminated material will not be achieved." IRRC goes on to direct the Department to address these concerns by "...creating a process that is less burdensome to those who may want to utilize the benefits of the regulation, but would not, due to its complexity."

**Honorable Raymond Bunt, Jr.**  
**Commonwealth of Pennsylvania**  
**House of Representatives**  
**Majority Chairman**  
**Agriculture and Rural Affairs Committee**

1. Representative Bunt commented that he was concerned the proposed regulations "...unduly complicates a provision that, when enacted, was looked upon as a very straightforward and scientifically defensible solution to a potential environmental problem." Representative Bunt goes on to point out that agricultural chemicals are highly regulated and proven safe when used according to label requirements. Representative Bunt states that as presented to the legislature, prior to the enactment of Act 2 of 1995 (the Land Recycling and Environmental Remediation Standards Act), it seemed that the "...remediation of contaminated soil and groundwater should be a matter of determining the level of contamination and then applying the contaminated material to the land at the same concentrations as the label limits." Therefore, Representative Bunt does not believe the "...additional and extensive testing for other chemicals, or the review of the entire history of the site for other potential contaminants as suggested by the proposal was ever envisioned when this legislation was passed. Rather, it was viewed as a relatively simple, logical and environmentally sound approach to remediation of *a specific accidental incident.*"

2. Representative Bunt commented that a specific concern is with respect to the definition of "agricultural chemical facility" which appears in the proposed regulations. Representative Bunt states, "I believe this it was the intent of the legislature that this program include individual farm operations and it is important that this definition be interpreted in that manner." Representative Bunt suggests that, for the sake of clarity, the Department should specifically address this in the regulations. He states the added clarity would, "...help ensure that the program has the greatest possible opportunity to successfully address *accidental spill remediation* in an environmentally safe manner."

3. Representative Bunt commented that he wished to incorporate by reference the more detailed comments from Crop Life America, Syngenta Crop Protection and DuPont Crop Protection, which were attached to his comments. Representative Bunt also commented "[T]hese are all responsible industry resources that will be directly involved in carrying out the provisions of the regulatory proposal and, significantly, have first hand experience with successful similar programs in other states. It is my recommendation that their observations and comments be given serious consideration."

**Honorable Peter J. Daley  
Commonwealth of Pennsylvania  
House of Representatives  
Democratic Chairman  
Agriculture and Rural Affairs Committee**

1. Representative Daley commented that while supports the Department's commitment to the safe reuse of soil and groundwater containing agricultural chemicals generated as a result of remediation activities, and he believes the Department is serious about protecting the environment from agricultural chemicals and accidental spills, he feels the regulations are "...far in excess of what the legislature intended in drafting the bill." Representative Daley is concerned the complicated procedure set forth in the proposed regulations will "...only result in farmers not reporting and not complying." Representative Daley believes the Department should simplify the process prior to submitting the regulations for final-form rulemaking.

**Response**

The Department appreciates the time and effort taken by the commentators to present their comments and concerns. The comments are well reasoned and will contribute to regulations that are more concise and responsive. In addition, the Department understands and respects the fiscal evaluations and concerns regarding accidental spills, especially at individual farms. The Department of Agriculture's authority is established at section 904(d) of the Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P.S. § 6026.904(d)). The Department's authority is limited to regulating the safe application of "soil and groundwater contaminated with agricultural chemicals generated as a result of remediation at agricultural chemical facilities" to agricultural lands (35 P.S. § 6026.904(d)). In order for the Department to gain jurisdiction over the material in question, and thereby regulate its application to agricultural land, an approved Act 2 remediation site must generate the contaminated soil or groundwater.

In response to concerns regarding the complexity of the application procedure and the land application proposal, the Department has reorganized the regulations to set forth a step by step approach, define the duties of the Department and the proponent of the land application proposal and has added further detail to exactly what information must be contained in a land application proposal. In addition, the reorganization more clearly establishes the review procedures of the Department and the timetables for such review. The regulations also more clearly define the standards for land application and the inspection and final closure criteria to be utilized by the Department. With regard to the comments that the definition of "agricultural chemical facility" which appears in the proposed regulations be changed to effectuate the intent that the program "...include individual farm operations..." and assure the "...definition be interpreted in that manner", the definition of "agricultural chemical" is set forth in and established by the statute (35 P.S. § 6026.103). The Department cannot change or modify that definition in

the regulations. However, the Department wishes to hereby inform the commentator that the Department does interpret the definition to include individual farm operations.

With regard to the comments regarding “accidental spills” and the concern that a quick response and inexpensive response is necessary the commentators should be made aware that such quick response mechanisms currently exist. The Department of Environmental Protection responds to and cleans up accidental spills under authority granted to them in several different statutes including, the Clean Streams Law (35 P.S. §§ 691.1-691.1001), the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101-6020.1305), the Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), the Act of July 13, 1988 (35 P.S. §§ 6019.1-6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law and the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003). Accidental spills by their nature are not addressed or cleaned up under the authority of Act 2. Although the cleanup of an Act 2 remediation site is regulated by the Department of Environmental Protection, in order to gain status as an Act 2 remediation site and thereby be shielded from liability under Act 2, applicants must first choose a remediation standard, set forth the contaminants for which they wish to remediate and provide notice of intent to remediate to the Department of Environmental Protection (35 P.S. § 6026.301 – 303). The process involves an extensive application and approval process. Accidental spills, by their nature, do not fit into this process. In addition, there is no language in Act 2 that could be construed to give the Department of Agriculture authority to regulate the application of contaminated soil and groundwater taken from accidental spill sites. The Department of Agriculture has jurisdiction only over soil and groundwater contaminated with agricultural chemicals and generated by an agricultural chemical facility approved for remediation under Act 2.

With respect to the comments expressing concern about the complexity of the regulations, the Department of Agriculture believes that changes effectuated in response to those concerns will better define and separate the authority of the Department of Agriculture and the authority of the Department of Environmental Protection. In addition, the Department has reorganized the regulations in order to better define the process for obtaining and filing a land application proposal and further detailed the information required in a land application proposal. Furthermore, the Department rescinded the requirement to test for chemicals other than agricultural chemicals. The Department does still require an affidavit or similar proof that all other necessary permits have been obtained. The Department requires such information as part of its duty to assure the safe application of the contaminated materials. The reason for the requirement of an affidavit or other proof that all necessary permits have been received is to assure contaminants in the soil and groundwater, other than the agricultural contaminants in the soil and groundwater generated as the result of remediation activities at an agricultural facility, would not have a deleterious effect on the agricultural land and that the application of such other contaminants will be done properly. This is in accordance with the Department’s duty to assure the farmland to which the contaminated materials will be applied will not suffer a deleterious effect. The very fact that the agricultural chemical facility in question is undergoing an Act 2 remediation is evidence the owner of the site believes contamination exists on the site. The soil piles and groundwater generated by

the remediation activities must necessarily contain those contaminants for the remediation effort at that site to be effective and successful. The soil and groundwater generated by the remediation activities at the agricultural chemical facility is classified as “waste” under the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003) and must receive the proper permits from the Department of Environmental Protection in order to be land applied. Therefore, it is absolutely necessary for the Department to require evidence such permits have been obtained and to impose stringent safeguards on the application of that contaminated material to agricultural land. Standards suggested by the commentators – that the regulations merely delineate the amount of each agricultural chemical that can be applied as set forth on the label of that agricultural chemical – simply does not provide the necessary oversight to assure the application of the contaminated soil and groundwater to the agricultural land is safe and would not merely transfer the contamination at the industry site to the agricultural land. The Department believes the regulations contain the minimum level of complexity necessary in order to safely apply contaminated soil and groundwater from agricultural chemical facilities to agricultural land. The Department has the duty to “prescribe appropriate operations controls and practices to protect the public health, safety and welfare, and the environment at the site of land application (35 P.S. § 6026.904(d))”

With regard to comments concerning the appropriate application rates, testing the incorporation techniques, the Department believes such information is necessary to assure the safe application of the soil and groundwater contaminated with agricultural chemicals. In order to determine the appropriate application rate and incorporation depth, the Department must understand exactly what agricultural chemicals, and the byproducts thereof, the soil contains. In order to fulfill its duty, to assure safe application of agricultural chemicals to agricultural land the Department must determine, from the array of chemicals set forth in the analysis of the soil and groundwater samples, the specific pesticide from which those chemicals came. Agricultural chemicals – specifically pesticides, are designed to break down into their individual components once they enter and spend a significant amount of time in the soil. While a specific pesticide might safely be applied according to the label for that chemical, its individual components might require an entirely different application rate in order to remain safe. Likewise, while one particular agricultural chemical might be the main contaminant addressed in the Act 2 application, over the years other agricultural chemicals produced, distributed, stored or mixed on the site will have filtered into the soil and possibly the groundwater at the agricultural chemical facility site undergoing remediation. This makes the historical analysis of the entire remediation site and its surrounding environment very useful in determining exactly what agricultural chemicals are likely to be contained in the soil and groundwater to be applied to the agricultural land. It also assures compliance with the Pennsylvania Pesticide Control Act of 1973 (3 P.S. § 111.21 *et seq.*) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended in 1972 (7 U.S.C.A. §§ 136-136y). Both statutes forbid the application of canceled or banned pesticides. The Department must assure no such pesticides are present in the soil or groundwater applied to agricultural lands. The historical data and testing requirements set forth in the regulations will accomplish this requirement. For the reasons set forth above the Department believes the extensive testing and site review called for in the regulations are



necessary and appropriate in order to protect the agricultural land application site and comply with existing laws.

**B. Industry and Environmental Comment – Stingency, Expense, Process, Clarity, Adequate Environmental and Public Health Protections**

**Commentator**

**Robert B. Fugitt  
Governmental Affairs Manager  
DuPont Crop Protection  
(Dupont)**

1. DuPont Crop Protection (DuPont) commented that it is concerned Pennsylvania's proposed regulations, "...may not be as 'user friendly' as those of other states. Consequently the program risks being underutilized, or possibly not utilized at all." DuPont sets forth two examples of what it characterizes as stringent and expensive requirements. The first example concerns the section of the proposed regulations, which "...requires a 'detailed analysis' that fully characterizes the physical properties and chemical composition of each type of waste that may ever have been present." DuPont states in part that this requirement, "...could easily exceed the logical responsibility of the business owner who wishes to clean up a mixing/loading site." DuPont believes, "...the proposal would be better received if it were to focus only on agricultural chemicals that were handled on the site in significant quantities within the past five or ten years." The second example concerns the section of the proposed regulations that prohibits grazing on any land to which soil or groundwater from a remediated site had been applied. DuPont points out, "...this may be an appropriate safeguard in some cases, [but] it ignores the fact that many agricultural chemicals have meat and milk tolerances established by the US EPA." DuPont further states, "[I]t seems inconsistent to allow grazing on land that is routinely treated with an agricultural chemical labeled for that crop [and] site, but to disallow grazing on land to which soil or water containing the same chemical has been applied."

2. DuPont commented that the proposed rule might be seen by some participants as "unreasonably intrusive". DuPont cites the requirement that the landowner, where the remediated soil and groundwater are to be applied, must provide irrevocable written consent for entry on his or her property by agents of the Commonwealth. DuPont goes on to state that it believes this is an appropriate requirement, but not necessarily so in such an unlimited capacity. DuPont suggests the Department narrow and clarify the requirement by stating the entry onto the property would be limited to the inspection of land or records associated with the land application process.

3. DuPont commented, “[T]he proposed rule does not appear to take into consideration the extraordinary health and safety database that supports the use of agricultural chemicals.” DuPont points out that agricultural chemicals, unlike non-agricultural chemicals, have been thoroughly studied and therefore, “...it is not a difficult task to establish safe or permissible levels for residues of these materials in a variety of media.”

4. DuPont commented it believes that, “...some of the apparent shortcomings of the proposed regulations are because they are subordinate to the Department of Environmental Protection’s Solid Waste Management Act and ...that act may appear to be a bit onerous to small agricultural chemical businesses.”

5. DuPont commented, “...it appears that anyone wishing to avail themselves of the program would be required to pursue permits from at least two state agencies...” DuPont believes this would be a disincentive to participation. DuPont further commented, “[I]t was our hope that the original legislation would allow an exemption from the Solid Waste Management Act for such small agricultural chemical businesses. Under this exemption the State Department of Agriculture would craft regulations specific to the remediation of agricultural chemical contamination at dealer sites that were consistent with the goals of the Solid Waste Management Act.”

**Ab Basu**  
**Senior Director of Government Affairs**  
**CropLife America**  
**(CropLife)**

1. CropLife America (CropLife) commented it is unclear which agency of the Commonwealth of Pennsylvania has clear jurisdiction over decisions. CropLife points out the language of the proposed regulations states that both agricultural and other chemicals should be tested for in samples taken from the site being remediated, but that the Department would have jurisdiction over only the agricultural chemicals found. CropLife further comments this will require an applicant to involve at least two agencies in the approval process and thus will be confusing, costly and cumbersome.

2. CropLife commented the program established by the regulations could be very costly to state agencies, due to its complexities, and does not appear to provide much in terms of resources allocated to the program. CropLife fears this could result in lengthy delays in the approval process.

3. CropLife commented, with regard to the regulatory analysis form, the cost estimates for the private sector are listed at “minimal or no cost”. CropLife states its disagreement with this cost estimate citing the “...number and scope of investigation and analyses implicated under the rule for just one remediation plan could easily be extremely expensive. CropLife believes this will act as a “...disincentive to those persons involved in an accident to try land spreading as a viable method of remediation.”

4. CropLife commented with regard to the language in the proposed regulations that requires a complete history of the chemicals processed, utilized, stored or distributed at the site being remediated. CropLife states, "...the location's entire history would have to be addressed and a search conducted for all [agricultural] chemicals and other chemicals that could possibly have been used on the site, even products used in the operation of machinery!" CropLife questions why such an extensive background analysis is necessary to the goals of effective remediation after "an accidental spill". CropLife points out in other states administering similar programs the applicant need only identify the actual spilled chemical. CropLife suggests the Department should either emulate practices in other states or list a finite time period for a location's history, "such as the past five years". In addition, he suggests the Department should only require testing for "registered agricultural chemicals".

5. CropLife commented, there are no background levels or other standards in the proposed regulations for discontinued agricultural chemicals or other types of chemicals that may be found in soil to be remediated. CropLife states that a zero-threshold for discontinued chemicals or compounds will lead to certain failure for some remediation plans (land application proposals), even where the concentration is so minute it will not cause harm to the environment. CropLife further states, the compound could have been discontinued as a marketing decision of the registrant and not because of any environmental harm it may cause.

**David Flakne**  
**State Government Relations Manager**  
**Syngenta Crop Protection**  
**(Syngenta)**

1. Syngenta Crop Protection (Syngenta) commented that, "...as written the rule will effectively prevent land-spreading from being a viable option for most facilities." Syngenta further commented, "[T]he language as written complicates a very simple and scientifically defensible approach to cleaning up agrichemical facilities. By having to sample for everything under the sun at these facilities the process can be effectively stopped due to an insignificant finding of some other chemical."

2. Syngenta attached a copy of certain sections of the proposed regulations and delineated suggestions for changes or deletions and additions to the language of the proposed regulations. We have attached a copy of Syngenta's suggested revisions and will address them in our response to this comment.

**Kelly M. O'Neill  
Agricultural Policy Specialist  
Chesapeake Bay Foundation  
(CBF)**

1. The Chesapeake Bay Foundation (CBF) commented that while they support and applaud the efforts of the Department to develop a comprehensive approval process which addresses issues of safely applying soil and groundwater contaminated with agricultural chemicals to agricultural land without negatively affecting the productivity of the farm land or causing harm to the environment, it is concerned the proposed rule does not: (1) Provide sufficient environmental and public health protections; (2) Contain provisions requiring monitoring or inspection of persons applying the contaminated soil and groundwater; (3) Contain a public notice and comment process; (4) Require the person applying the soil and groundwater contaminated with agricultural chemicals to obtain the assurance of the local municipality that the land application proposal is consistent with all local ordinances and zoning restrictions prior to the Department reviewing and approving the proposal; (5) Provide adequate protections for sensitive environmental amenities, such as state and federal threatened and endangered species, and high quality and exceptional value watersheds.
2. The CBF commented the proposed rulemaking gives the Department “indiscriminate authority” to “waive” requirements.
3. The CBF commented the proposed rulemaking allows the Department to consider social and economic costs to the “violator” when determining environmental impact. It states this should be irrelevant.
4. The CBF commented the proposed rulemaking only requires the land application proponent to address “known” and “likely” contaminants.
5. The CBF commented the proposed rulemaking only requires the land application proponent to “minimize” public nuisances. CBF believes the regulations should require that all nuisances be eliminated.
6. The CBF commented the proposed rulemaking contains vague and ambiguous language such as “minor” and “consider”.
7. The CBF commented the proposed rulemaking only requires the land application proponent to “consider” impacts on the environment.
8. The CBF commented that all applications of soil and groundwater contaminated with agricultural chemicals, “...should be no less than 1000 feet from any well, surface water, wetland, habitat of concern, or other ecologically sensitive areas.”
9. The CBF commented, “[A]pplications of soil and groundwater contaminated with agricultural chemicals should be prohibited within a hundred-year floodplain.”

10. The CBF commented, “[L]and that is frozen or lacks vegetative cover has limited ability to retain products applied to it. Application of soil and groundwater contaminated with agricultural chemicals should be prohibited on bare or frozen ground to prevent these chemicals from entering ground or surface water.”

11. The CBF commented that the proposed rule, “...does not state that there will actually be regular inspections and monitoring of the site, or that there is adequate staff to enforce the rule.” The CBF further commented that it believes frequent inspections – at least one per year – of the actual application are essential to ensure compliance with the techniques set forth in the approved land application proposal and to assure there is no harm to the environment or the public. In addition, the CBF states that the final rule should require monitoring of the surface water, groundwater and soil at and near the application site after the approval is granted. The CBF commented the final rule should require such monitoring and analysis to be conducted twice per year and should meet the same rigorous standards as the testing done prior to application.

12. The CBF commented the final rule should contain provisions which will assure public participation in the review land application proposals prior to the Department’s final approval. The CBF believes, “...the municipality where the contaminated soil or groundwater will be applied, and the citizens living near the application site, should have the opportunity to provide meaningful input and comment on the proposed application at a public meeting...following public notice of the proposal. The approval process should include a requirement that the local government certify that all the provisions are consistent with and comply with all local zoning and ordinances before the approval can be issued.”

### **Response**

The industry commented it believes that, “...some of the apparent shortcomings of the proposed regulations are because they are subordinate to the Department of Environmental Protection’s Solid Waste Management Act and ...that act may appear to be a bit onerous to small agricultural chemical businesses.” In addition, they commented, “...it appears that anyone wishing to avail themselves of the program would be required to pursue permits from at least two state agencies...” The industry believes this would be a disincentive to participation. “[I]t was our hope that the original legislation would allow an exemption from the Solid Waste Management Act for such small agricultural chemical businesses. Under this exemption the State Department of Agriculture would craft regulations specific to the remediation of agricultural chemical contamination at dealer sites that were consistent with the goals of the Solid Waste Management Act.” The Department appreciates the industry’s concern with regard to dual regulation and the confusion generated by the proposed regulations. In the proposed regulations, the Department was attempting to alert the regulated community that the contaminated soil and groundwater generated by the remediation efforts at an Act 2 approved site, are considered “waste” under the Solid Waste Management Act (35 P.S. §§ 6018.101-

6018.1003) and would require the appropriate permits to transport and land apply. Act 2 does not exempt such waste from the authority of the Department of Environmental Protection, nor does the Department believe it should exempt such waste. The waste generated will contain chemicals other than agricultural chemicals and therefore, must be subject to appropriate regulation by the Department of Environmental Protection in order to assess the appropriate application of such chemicals and assure the agricultural land to which it will be applied is adequately protected. However, by requiring testing for chemicals other than agricultural chemicals in its proposed regulations the Department extended its authority beyond that set forth at section 904(d) of Act 2 (35 P.S. § 6026.904(d)). In doing so, the Department was attempting to assure consistency between its regulations and the regulations already established by the Department of Environmental Protection, attempting to assure the contaminated soil and groundwater did not contain chemicals other than agricultural chemicals which would harm the agricultural land to which it was applied, and was attempting to assure the regulated community was aware that the Department's approval of land application of the agricultural chemicals in the contaminated soil and groundwater was not the only approval necessary. Therefore, in response to the concerns expressed by the industry and in an attempt to clarify the authority of the Department and the Department of Environmental Protection, the Department has significantly changed portions of the final-form regulations. The Department believes the changes will better define and separate the authority of the Department of Agriculture and the authority of the Department of Environmental Protection. The Department rescinded the requirement to test for chemicals other than agricultural chemicals. The Department does still require an affidavit or similar proof that all other necessary permits have been obtained. The Department requires such information as part of its duty to assure the safe application of the contaminated materials. The reason for the requirement of an affidavit or other proof that all necessary permits have been received is to assure contaminants in the soil and groundwater, other than the agricultural chemicals, generated as the result of remediation activities at an agricultural facility, would not have a deleterious effect on the agricultural land and that the application of such other contaminants will be done properly. This is in accordance with the Department's duty to assure the farmland to which the contaminated materials will be applied will not suffer a deleterious effect.

With regard to concerns about the stringency of the regulations and necessity to test the soil and groundwater generated as a result of remediation activities at an Act 2 site, the Department responds the very fact that the agricultural chemical facility in question is undergoing an Act 2 remediation, is evidence the owner of the site and the Department of Environmental Protection have concluded environmental degradation and contamination exists on the site. The soil piles and groundwater generated by the remediation activities must necessarily contain those contaminants for the remediation effort at the Act 2 site to be effective and successful. The soil and groundwater generated by the remediation activities at the agricultural chemical facility is classified as "waste" under the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003) and must receive the proper permits from the Department of Environmental Protection in order to be land applied. Therefore, it is absolutely necessary for the Department to require evidence such permits have been obtained and to impose stringent safeguards on the

application of the agricultural chemicals contained in the contaminated material to agricultural land. Standards suggested by the commentators – that the regulations merely delineate the amount of each agricultural chemical that can be applied as set forth on the label of that agricultural chemical – simply do not provide the necessary safety factors and oversight to assure the safe application of the soil and groundwater contaminated with agricultural chemicals to the agricultural land. Without adequate safeguards, the application of the contaminated materials taken from the Act 2 remediation site to agricultural land would merely transfer the contamination at the industry site to the agricultural land. The Department believes the regulations contain the minimum level of complexity necessary in order to safely apply contaminated soil and groundwater from agricultural chemical facilities to agricultural land. The Department has the duty to “prescribe appropriate operations controls and practices to protect the public health, safety and welfare, and the environment at the site of land application (35 P.S. § 6026.904(d)). The Department believes these regulations accomplish that duty with the least amount of complexity and cost to the industry.

With regard to comments suggesting the regulations establish a zero-tolerance for banned and cancelled pesticides which is too strict and comments suggesting the Department only require testing for “currently registered” agricultural chemicals and establish a “finite time period for a location’s history...such as five years”, or only require testing for agricultural chemicals handled in “significant quantities” at the Act 2 site being remediated, the Department responds that such a limitation would not assure the safe application of all agricultural chemicals contained in the contaminated soil and groundwater and in practice would circumvent the statutory requirements set forth in the Pennsylvania Pesticide Control Act of 1973 (3 P.S. § 111.21 *et seq.*) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended in 1972 (7 U.S.C.A. §§ 136-136y). The Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended in 1972, specifically forbid the application of banned or cancelled pesticides, in any amount, unless such pesticides are part of a current inventory. The Department believes that classifying pesticides contained in the contaminated soil and groundwater as “current inventory” would unduly stretch the meaning and intent of the exemption. The Department believes the historical analysis of the entire remediation site and its surrounding environment are essential to insure the Department and the land application proponent are in compliance with the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended in 1972. The Department did rescind the requirement to test for and delineate in the land application proposal, “...other chemicals that could possibly have been used on the site, even products used in the operation of machinery.”

The industry also questioned why such an extensive background analysis is necessary to the goals of effective remediation after “an accidental spill”. Once again, the remediation takes place at the Act 2 site and is not part of these regulations. These regulations set forth the parameters for land application of the contaminated media dug up or pumped out of the ground at the Act 2 site. In addition, as stated in a previous response, accidental spills by their nature are not addressed or cleaned up under the authority of Act 2. The cleanup of an Act 2 remediation site is regulated by the

Department of Environmental Protection. In order to gain status as an Act 2 remediation site and thereby be shielded from liability under Act 2, applicants must first choose a remediation standard, set forth the contaminants for which they wish to remediate and provide notice of intent to remediate to the Department of Environmental Protection (35 P.S. § 6026.301 – 303). The process involves an extensive application and approval process. Accidental spills, by their nature, do not fit into this process. In addition, there is no language in Act 2 that could be construed to give the Department of Agriculture authority to regulate the application of contaminated soil and groundwater taken from accidental spill sites. The Department of Agriculture has jurisdiction only over soil and groundwater contaminated with agricultural chemicals and generated by an agricultural chemical facility approved for remediation under Act 2.

In response to the opinion the Department should rescind the prohibition against grazing on agricultural land receiving soil and groundwater contaminated with agricultural chemicals from an agricultural facility being remediated under Act 2, the Department believes such safeguards are necessary, because the soil and groundwater containing the agricultural chemicals do not contain the pesticides in their original labeled state. The agricultural chemicals and pesticides will have broken down into individual component parts of that pesticide. The Department will be making educated guesses, from the chemicals present in the test results set forth in the land application proposal, as to what pesticide was spilled and is contained in the soil or groundwater to be applied. Dairy cattle and other animals grazing on such lands would ingest such chemicals which could then be passed through to the milk or meat supply. In the case of a dairy farmer, such a scenario would result in either the farmer's milk being rejected and require the farmer to "dump" that milk or if not caught, would allow the chemical to be passed through to the general public in the milk supply. In a related comment, the industry delineated its belief that the proposed rule does not appear to take into consideration the extraordinary health and safety database that supports the use of agricultural chemicals." The comment goes on to state, that agricultural chemicals, unlike non-agricultural chemicals, have been thoroughly studied and therefore, "...it is not a difficult task to establish safe or permissible levels for residues of these materials in a variety of media." The Department did consider the points set forth in the comment, however, the agricultural chemicals to be land applied in this case have been spilled and are contained within soil and groundwater along with other chemicals, including other agricultural chemicals. The agricultural chemicals to be land applied are not coming from existing containers, do not contain their original labels and are not in their original state of composition. The agricultural chemicals and pesticides will have broken down into individual component parts of that pesticide. The Department will be making educated guesses, from the chemicals present in the test results set forth in the land application proposal, as to what pesticide was spilled and is contained in the soil or groundwater to be applied. Therefore, the Department believes the additional safeguards are necessary and justified.



The industry suggested that the Department should narrow and clarify the right of entry requirement established in the regulations by stating the entry onto the property would be limited to the inspection of land or records associated with the land application process. The Department agrees with this suggestion and has made the necessary change to the language.

The Chesapeake Bay Foundation (CBF) submitted several comments stating the proposed regulations are not stringent enough, give the Department too much discretion in some areas such as the ability to waive certain procedural safeguards when the applicant seeks to utilize groundwater contaminated with agriculture chemicals as tank mix and do not provide for adequate safeguards, inspection schedules and public comment. In addition, the CBF commented the regulations do not require the person applying the soil and groundwater contaminated with agricultural chemicals to obtain the assurance of the local municipality that the land application proposal is consistent with all local ordinances and zoning restrictions prior to the Department reviewing and approving the proposal and do not provide adequate protections for sensitive environmental amenities, such as state and federal threatened and endangered species, and high quality and exceptional value watersheds.

The Department has a duty to balance safeguards to the environment with cost to the industry. The Department believes the stringent testing procedures required for both the contaminated media to be applied and for the farm land to which the contaminated media will be applied, along stringent application and reporting procedures and the requirement that the land application proponent provide proof (affidavit or actual permits) of compliance with all other environmental regulations and local ordinances certainly provides adequate safeguards to the environment and meets Department's statutory duty to provide for "...safely reusing soil and groundwater contaminated with agricultural chemicals...through the land application of these materials on agricultural lands." In addition, the regulations carry out the duty of the Department to, "...provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of the land application." The regulations prescribe very detailed and stringent permitting, application, reporting and set back requirements, many of which are consistent with other environmental regulations such as those pertaining to residual waste permitting requirements (25 Pa.Code §§ 287.101 *et seq.*), storage of residual waste (25 Pa.Code § 291.166) and application of residual waste to farm land (25 Pa.Code §§ 291.301 *et seq.*).

With regard to the ability to waive certain provisions of the regulations when contaminated groundwater is to be utilized as tank mix, the Department based this decision on the fact that water contaminated with agricultural chemicals from areas where agricultural chemical equipment is cleaned or mixed is already utilized as tank mix. The Department will carefully scrutinize the level of contamination in the groundwater prior to approving the waiver of some regulatory requirements.

The CBF commented that the proposed rule, "...does not state that there will actually be regular inspections and monitoring of the site, or that there is adequate staff to enforce the rule." The CBF further commented that it believes frequent inspections – at least one per year – of the actual application are essential to ensure compliance with the techniques set forth in the approved land application proposal and to assure there is no harm to the environment or the public. In addition, the CBF states that the final rule should require monitoring of the surface water, groundwater and soil at and near the application site after the approval is granted. The CBF commented the final rule should require such monitoring and analysis to be conducted twice per year and should meet the same rigorous standards as the testing done prior to application. In response these comments regarding inspection schedules, the regulations while not specifically prescribing the number of times a site will be visited, do provide the Department with authority to enter onto the premises at any time for purposes of inspecting and assuring all regulatory requirements are being met and all procedures approved are being implemented. The Department believes circumstances – such as the volume of contaminated media, types of agricultural chemicals present in the media, concentration levels of agricultural chemicals, overall complexity of the particular land application proposal approved and any complaints or problems that may arise in each situation – surrounding each approved land application proposal will dictate the number and frequency of inspections necessary at each site. The Department does not intend to limit its options by including specific provisions in the regulations. In addition, the Department does not believe it is necessary to require monitoring of the surface water, groundwater and soil at and near the application site after the approval is granted. The Nutrient Management Act does not even require such monitoring and many of the agricultural chemicals contained in the soil and groundwater will be nutrients. Furthermore, the chemicals comprising the pesticides are necessarily made to bond with and be up taken by the next crop to be applied. The set back requirements and incorporation and application requirements are intended in part to prevent such contamination. Therefore, the Department believes the cost of such monitoring is not justified, given the other controls established by the regulations.

The CBF believes, "...the municipality where the contaminated soil or groundwater will be applied, and the citizens living near the application site, should have the opportunity to provide meaningful input and comment on the proposed application at a public meeting...following public notice of the proposal. The approval process should include a requirement that the local government certify that all the provisions are consistent with and comply with all local zoning and ordinances before the approval can be issued." Concerning the necessity for public comment and input regarding each land application proposal, nothing in the Act requires or more importantly authorizes the Department to receive and consider such public input. In addition, the Department believes the regulations are comprehensive, specific and complex enough to assure it will meet its statutory duty to protect the health and safety of the general public and environment. Furthermore, nothing in the regulations prevents local municipalities from passing and enforcing their own ordinances with regard to the land application of soil and groundwater contaminated with agricultural chemicals, including requiring a public meeting or hearing prior to local approval of such media.

The regulations do address concerns expressed by the CBF regarding the necessity of the land application proponent to obtain the assurance of the local municipality that the land application proposal is consistent with all local ordinances and zoning restrictions prior to the Department reviewing and approving the proposal, as well as concerns regarding adequate protections for sensitive environmental amenities, such as state and federal threatened and endangered species, and high quality and exceptional value watersheds. The regulations require either an affidavit or actual permits evidencing the fact that the land application proponent has complied or will comply with all State, Federal and local regulations and ordinances. The regulations also list all State environmental statutes that may apply. The Department has no authority to impose or enforce the statutory duty or authority of another agency (State or Federal) or local municipality. The Department can only require the appropriate assurances that these other obligations will be met. The regulations specifically require such assurances.

The CBF commented the proposed rulemaking only requires the land application proponent to address “known” and “likely” contaminants. The Department believes this language encompasses the entire range of possible disclosure a land application proponent could give. The land application proponent must explore the history of the site being remediated and disclose likely contaminants based in part on past inventory, processes and chemicals manufactured, stored, distributed or mixed on that property.

With regard to CBF’s comment that the final rulemaking should require “all nuisances be eliminated,” the Department believes the current language is more reasonable and it is consistent with regulatory language in other environmental regulations. In a case where soil is being applied and incorporated into the ground on a farm site, the total elimination of “all nuisances” – including dust – would be unreasonable and would make compliance impossible.

The CBF commented the proposed rulemaking contains vague and ambiguous language such as “minor” and “consider”. The Department believes such language is necessary because of the fluid nature of the materials these regulations address. In addition, the regulations in total adequately address such language by setting forth more specific requirements such as label rates, application rates and set back requirements. With regard to the specific reference to the language in the regulations which requires the land application proponent to “consider” impacts on the environment, that language is in a provision of the regulations that requires the land application proponent to submit a written report addressing potential environmental effects resulting from the land application of the soil and groundwater contaminated with agricultural chemicals. The Department will review that report and may require additional information if it determines the report is not specific enough.

The CBF commented that all applications of soil and groundwater contaminated with agricultural chemicals, "...should be no less than 1000 feet from any well, surface water, wetland, habitat of concern, or other ecologically sensitive areas" and that "[A]pplications of soil and groundwater contaminated with agricultural chemicals should be prohibited within a hundred-year floodplain." The Department's setback and flood plain requirements are consistent with other environmental regulations. The CBF gives no explanation or supporting data for their requirements, which the Department believes would be found to be arbitrary and without basis if submitted for approval by the Independent Regulatory Review Commission.

The CBF commented, "[L]and that is frozen or lacks vegetative cover has limited ability to retain products applied to it. Application of soil and groundwater contaminated with agricultural chemicals should be prohibited on bare or frozen ground to prevent these chemicals from entering ground or surface water." The regulations require the land application proposal to set forth the crops to be grown on the land where the application will take place, in addition it restricts winter application. The regulations also require incorporation of the soil contaminated with agricultural chemicals. This is required in order to assure only a thin layer of subsoil associated with the soil contaminated with agricultural chemicals will be placed on the top-soil at the application site and that it will be incorporated into the soil to prevent uptake of volatile nutrients such as nitrogen and will help to assure bonding of nutrients such as phosphorous with the soil particle which can then be addressed through proper erosion and soil control plans. The incorporation into the soil prevents a cover crop from being present at the time of application, but it is absolutely necessary to assure the top-soil at the application site is not covered by subsoil and rock associated with the soil contaminated with agricultural chemicals. The Department considered "no-till" applications and rejected them for the above stated purpose.

In closing, the Department believes the disparity in views evidenced by the comments of the industry and the CBF clearly indicate that the regulations properly balance the safe application of contaminated soil and groundwater with the burden and expense placed on the members of the industry who choose to apply the contaminated substances to farmland. The comments that we have received support this contention. The industry has generally commented that the regulations are overly complex, while the CBF seeks more stringent regulations in order to assure protection of the environment. Therefore, the regulations have appropriately taken a position that falls somewhere in the middle of the spectrum of views concerning the degree of Departmental involvement and regulatory oversight, while at the same time addressing and meeting the Department's duty as set forth in the Act.

### C. General Comments - Reasonableness and Clarity; Additional Notice.

#### Commentator:

#### Independent Regulatory Review Commission (IRRC)

1. *Reasonableness and Clarity*: The Independent Regulatory Review Commission (IRRC) commented it believes the Department can improve the reasonableness and clarity of the regulations by, "...adding some clarifying language and changing the way it is organized." The IRRC made two suggestions with regard to this comment.

a. The first suggestion stated the final-form rulemaking "...should provide the applicant with a clear understanding of how [the] regulation will interact with the requirements of the regulation of the Department of Environmental Protection."

b. The second suggestion concerned arranging the final rule in a "...streamlined, sequential manner that would mirror the requirements and duties of both the applicant and the Department." The IRRC set forth a model delineating Subchapter order and headings.

2. *Advanced Notice Of Final Rulemaking*: The IRRC commented that, because the comments received suggested major language and organization changes, the Department should issue an advance notice of final rulemaking.

#### Response

The Department has added clarifying language to the final-form rulemaking. The Department no longer requires testing for "all other chemicals". The other chemicals present would fall under the jurisdiction of the Department of Environmental Protection. Therefore, the final-form regulations merely require the land application proposal to include proof (actual permit approvals or an affidavit stating all other necessary approvals will be attained) the application of the soil and groundwater taken from the remediated site will meet all other Federal, State and local laws, regulations and ordinances. The Department's regulations now focus solely on the agricultural chemicals in the soil and groundwater taken from the site being remediated that is sought to be applied to farmland. The Department believes this should clarify the process. The Department believes it must still set forth the potential requirement of other permits to assure the land applied to farmland has cleared all other agency reviews as well. The Act does not provide an exemption from those other environmental regulations and therefore, the Department believes it has a duty to assure those requirements are met as well. This will assure the soil and groundwater from the remediated site is not contaminated with other chemicals that may be harmful to the farmland to which it is applied, the environment and the health and safety of the general public. In addition, it serves as notice to the proponent of the land application proposal that there are other rules and regulations that

may apply to the application of the soil and groundwater taken from the site being remediated.

With regard to IRRC's suggestion to "streamline" the final-form regulations, the Department reorganized the regulations in the manner suggested by IRRC. The Department believes IRRC's suggested revisions have improved the clarity of the regulations. In addition, the reorganization allowed the Department to eliminate some sections of the proposed regulations and combine other sections. These changes result in a step-by-step approach for the applicant that clearly defines the information the Department needs from the applicant, the manner of review and the role of the applicant and the Department with regard to each step of the land application proposal process, final approval and actual land application techniques and requirements to be followed.

The Department agrees with IRRC's suggestions to issue an advance notice of final rulemaking. The Department will reissue the final-form regulations to those persons who previously commented, prior to submitting them into the final rulemaking process. Because of time constraints regarding submission of the final-form regulations the Department provided all previous commentators 10-days for additional comments on the final-form regulations.

#### **D. Department Forms - Clarity**

##### **Commentator:**

##### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented the Department refers to "on forms prepared by the Department" in four sections of the proposed rulemaking (§130d.12(b); §130d.21(a); §130d.23(c); §130d.51(a)), however the Department has not developed these forms. The IRRC believes the forms will dictate how the regulations are implemented and therefore, commented the forms should be developed and the form names or numbers should be included in the final-form rulemaking.

##### **Response**

The Bureau developed a draft of the Land Application Proposal and accompanying forms and disseminated it with the advanced notice of final-form rulemaking.

## **E. Laboratories Approved by the Department – Need; Clarity**

**Commentator:**

### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that under two sections of the proposed rulemaking (§130d.13(d) and §130d.15(4)) the Department requires an applicant to use a laboratory approved by the Department and provide a record of the laboratory quality control procedures. IRRC expressed three concerns with this provision.

1. The first concern regards a question of how the applicant will know a laboratory has been approved by the Department.
2. The second concern expressed regards the necessity of the applicant to submit quality control procedures when the laboratory has already been approved by the Department.
3. The third concern expressed by the IRRC focuses on Act 25 of 2002, known as the Environmental Accreditation Act. According to the IRRC, that Act requires the Department of Environmental Protection (DEP) to accredit all laboratories that wish to provide testing services to DEP or those that are regulated by DEP. The IRRC asked whether the Department has considered allowing testing to be performed by laboratories that are accredited by DEP.

### **Response**

The Department agrees with the comments submitted by IRRC and has clarified the language regarding what constitutes an approved laboratory. Section 130d.22(d) sets for the standard and reads in pertinent part, "...a laboratory compliant with the United States Environmental Protection Agency's (EPA) good laboratory practices (GLP) program. A list of EPA GLP compliant laboratories is available on the Department's website."

In response to the second part of IRRC's comment regarding this issue, the Department has removed all language requiring the applicant to submit quality control procedures with regard to materials tested at approved laboratories because, as pointed out by IRRC, the Department has already approved the laboratories to be utilized and the techniques utilized by those laboratories.

Concerning the third comment relating to the issue of approved laboratories, the Department considered IRRC's suggestion to utilize DEP accredited laboratories, however the Department believes the EPA GLP laboratory standard is broader, gives land proposal applicants more choices of approved labs and incorporates more of the necessary testing techniques required for testing the soil and groundwater contaminated with agricultural chemicals.

## **F. Other Approvals by the Department – Clarity**

### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that, “[S]ections 130d.16(c), 130d.62(7), 130d.63(a)(4), 130d.63(c), 130d.65(d) and 130d.68(8) refer to approvals of the Department and Section 130d.66(a) refers to an authorization by the Department. The procedure for obtaining the approval or authorization of the Department is never specified.” They then ask and state,

1. Are the approvals or authorizations part of the application process?
2. If they are not the final-form regulations should specify how an applicant would obtain the necessary approval or authorization and the criteria the Department will use to determine whether to give such approval or authorization.

### **Response**

The approvals and authorizations are part of the application process. The land proposal application must be filled out and supplemented with all of the information required by the regulations. The Department will review the land proposal application for content and completeness and either approve, deny or request additional information from the land proposal applicant. The regulations as a whole set forth the criteria that will be evaluated. The land application proposal will also help to guide the land application proponent with regard to what information must be included. To give a general outline of the necessary information, the land application proponent must address all agricultural chemicals in the soil and groundwater from the site being remediated and in the soil at the proposed application site (type, quantity and concentration) the history of the site being remediated, the type of soils from the site being remediated and at the proposed application site, the proposed application techniques (assuring they comply with the regulations), the type of cover crops to be grown, location of the field on which each contaminated soil pile or container of contaminated groundwater will be applied, other permit requirements, approval from the owner of the proposed application site, qualification of the person or persons who will oversee the application, address potential environmental harms and closure requirements. In essence, the applicant must set forth a complete record of what is to be applied, how it is to be applied and how it will be monitored and closed down and set forth how the land application proposal meets all of the criteria of the regulations. Remember, failing to address all of the criteria in the initial land application proposal does not necessarily terminate the review process. The Department can request additional information if it believes the applicant has inadvertently missed or failed to address some of the criteria necessary for the Department to make a final decision on the land application proposal. In addition, the final-form regulations have been reformatted, following IRRC’s suggestions, to add clarity and sequence to the process.



## II. SPECIFIC COMMENTS: SUBCHAPTER A. GENERAL PROVISIONS

### A. Section 130d.1. Definitions – Clarity

**Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) made the following comments with regard to definitions included in the proposed rulemaking:

1. *Agricultural chemical* - This definition cites 3 Pa.C.S. Chapter 67. However, Chapter 67 was repealed, It appears that the appropriate citation would be 3 Pa.C.S. Chapter 68.
2. *Agricultural chemical facility* -
  - a. This definition includes an address where one can obtain copies of cited material. This should be deleted from the definition and moved to either the body of the regulations or mentioned in the Preamble.
  - b. IRRC stated that the U.S. Standard Industrial Classification (SIC) system has been replaced by the North American Industry Classification System (NAICS) and therefore, even though this definition comes directly from the Land Recycling and Environmental Remediation Standards Act, the Department should refine the definition in the final-form regulations to reference the NAICS number for affected businesses.
3. *Agricultural land or farmland* - The definition includes the term “Land...that is capable of supporting...” IRRC commented the phrase “capable of supporting” is too vague and may allow contaminated material to be applied to land not being used for farming. IRRC suggested the final-form regulations should provide a more specific definition of where contaminated material can be applied.
4. *Cleanup or remediation* - The words “in order” should be inserted between “environment” and “to” to be consistent with the definition in the Act.
5. *General use pesticides* - The phrase is not used in the regulations and therefore should be deleted.
6. *HAL* - The Department should define this phrase using the language from the definition in the Act.
7. *Land application proposal* - The phrase “agricultural facility” in the definition should be changed to “agricultural chemical facility” to be consistent with the defined term.

8. *MCL* - IRRC wants the Department to define what constitutes a maximum contaminant level.

### Response

In response to IRRC's concern regarding proper citations within the definition of "*Agricultural chemical*", the proper citations (3 Pa.C.S.A. § 6702 and 3 Pa.C.S.A. § 6902) are set forth. The Department has added the exact section citations to make it easier to cross-reference the definitions

The IRRC had two concerns relating to the definition of "*Agricultural chemical facility*". With regard to the first concern, the Department was required – by the Legislative Reference Bureau (LRB) – to include the address in the definition prior to the proposed regulations being printed. The address was not included in the original draft of the proposed regulations submitted to the LRB. The address is not included in the final-form regulations. Concerning the IRRC's second comment that the Department should amend the definition that appears in the Land Recycling and Environmental Remediation Standards Act by replacing the reference to the U.S. Standard Classification (SIC) system with the new North American Industry Classification System (NAICS), the Department will include both the old SIC and the cross-referenced NAICS listings to assure there is no misunderstanding or exclusion on businesses.

In response to the IRRC's comments regarding the definition of "*Agricultural land or farmland*" the Department replaced the phrase, "...capable of supporting..." with the phrase, "...currently being utilized for..."

In response to the IRRC's comment regarding the definition of "*Cleanup or remediation*", the Department inserted the words "in order" between "environment" and "to" in order to be consistent with the definition in the Act.

With regard to the IRRC's comment that the phrase "*General use pesticides*" is never utilized in the regulations and therefore does not need to be defined, the Department believes the phrase needs to be defined in order to provide general information to the regulated community and further clarify the regulations.

The Department responded to the IRRC's comment regarding the definition of "*HAL*" by utilizing the language of the definition in the Land Recycling and Environmental Remediation Standards Act. The Department added the word "chemical" to the phrase "agricultural facility" in order to be consistent with the phrasing at section 904(d) of the Land Recycling and Environmental Remediation Standards Act (35 P.S. § 6026.904(d)).

In order to address the IRRC's concerns regarding the definition of "*MCL*", the Department added language to further define and clarify the term. The new definition includes the phrase, "...established for drinking water by the Pennsylvania Department of Environmental Protection."

## B. Section 130d.2. Scope – Reasonableness; Need; Clarity

### Commentator:

#### Independent Regulatory Review Commission (IRRC)

The Independent Regulatory Review Commission (IRRC) stated they had two specific concerns regarding this subsection.

1. What is meant by the word “contaminated”? The final-form regulations should include a definition of the word “contaminated”.
  - a. Does the mere presence of substances other than agricultural chemicals constitute contamination?
  - b. If the non-agricultural chemicals detected are at a level less than the residential standards of the Land Recycling and Environmental Remediation Standards Act, is the material considered contaminated?
2. Subparagraphs 130d.2(c)(1)(i) and (ii) should be deleted from the final-form regulations.

### Response

In response to the IRRC’s comments regarding the definition of “contaminated” and whether the mere presence of substances other than agricultural chemicals constitute contamination, the Department believes there is no need to define “contaminated” and would refer the IRRC to section 904(d) of the Land Recycling and Environmental Remediation Standards Act (Act), which clearly sets forth the fact that soil or groundwater *containing* “agricultural chemicals” is considered contaminated. The section reads in pertinent part, “...duty shall be to promulgate regulations providing for the option of safely reusing soil and groundwater **contaminated with** agricultural chemicals...” In addition, the entire Act and this section is prefaced on the fact that any soil or groundwater removed from a site being remediated will be contaminated, otherwise there would be no need to remediate the site. Furthermore, it is not the mere presence of substances “other than” agricultural chemicals that constitutes contamination. The agricultural chemicals themselves are considered – according to the language of the Act – to constitute contamination, thus the necessity to regulate the application of soil or groundwater containing such contaminants.

With regard to the IRRC’s question regarding detection of “non-agricultural” chemicals, the final-form regulations puts such determination back in the hands of the agency or agencies with authority to regulate such substances. The final-form regulations merely require some “proof” that all other statutory and regulatory criteria regarding other substances have been met. The Department no longer makes any determination with regard to the levels of other substances or contaminants. The Department believes

this is more consistent with the powers granted to it under section 904(d) of the Act (3 P.S. § 6026.904(d)).

The IRRC stated subparagraphs 130d.2(c)(1)(i) and (ii) should be deleted from the final-form regulations. The Department has deleted these subparagraphs from the final-form regulations.

### **III. SPECIFIC COMMENTS: SUBCHAPTER B. DUTIES OF APPLICATORS**

#### **A. Section 130d.11. Scope – Need**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) commented the regulations already contain a “Scope” section and the contents of this section should be deleted or combined with section 130d.2.

**Response**

The Department agrees with the IRRC’s comment and has deleted section 130d.11 from the final-form regulations.

#### **B. Section 130d.12. Reports – Need; Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) had five concerns regarding this section of the regulations.

1. The section is out of sequence with other requirements of the regulations and therefore should be moved to a subchapter that follows the application requirements and the review process.
2. The section does not specify when the reports are to be submitted to the Department. The final-form regulations should include a time period for submitting the reports.

3. Subsection (a) requires a person who “solicits or receives approval from the Department” to file annual and final reports. These requirements should only apply to someone whose application is approved. Therefore, the phrase “solicits or” should be deleted.

4. Subsection (b)(3) should provide a citation to the appropriate section that deals with the daily and annual records that are required.

5. The information required in subsections (b)(4)(i) and (ii) is also required in the initial application and should therefore be deleted.

### **Response**

In response to the IRRC’s concerns that section 130d.12. (relating to reports) was out of sequence and should be move to a subchapter that follows the application requirements and the review process, the Department moved this section to section 130d.47, which is now part of subchapter D relating to General Operating Requirements. The language of this new section also addresses the IRRC’s second concern by specifying when the reports must be submitted to the Department. The Department addressed the IRRC’s third concern regarding old section 130d.12 by deleting the phrase “solicits or” from the final-form regulations. The Department addressed the IRRC’s fourth concern adding the appropriate cross-references to other sections. Finally, the Department deleted the language that was contained in subsections (b)(4)(i) and (ii) of the proposed regulations.

### **C. Section 130d.13. Chemical analysis of waste– Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission stated that this section contains information that must be included in the land application proposal form and therefore, should be moved to that section.

#### **Response**

The Department responded to the IRRC’s comment by moving section 130d.13 of the proposed regulations to section 130d.22 of the final-form regulations (relating to chemical analysis of waste and sampling techniques and protocol). Section 130d.22 of the final-form regulations is part of subchapter B (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land).

With regard to subsection (e)(3), the Independent Regulatory Review Commission had two questions.

1. Who decides that the material applied to the land at acceptable agronomic rates will not negatively affect productivity of the land or cause harm to the environment?
2. How does the applicant demonstrate this?

### **Response**

First it must be noted that subsection 130d.13(e)(3) of the proposed regulations is now subsection 130d.23(c) (relating to waste sampling plan) of the final-form regulations. Subsection 23(c) denotes the applicant must submit a narrative which sets forth “scientific evidence” that the contaminated media can be applied to agricultural land in a manner that will not effect productivity of the land or cause harm to the environment or animal or human health. The Department will review the information contained in the applicant’s proposal and make a final determination, based on the evidence presented, with regard to whether the material may be applied in the manner set forth in the land application proposal. The narrative is only one part of the Department’s consideration. The Department must review the entire land proposal application and determine the amounts and types of agricultural chemicals to be applied and that the application techniques and cover crops are suitable and meet all of the requirements of the regulations.

### **D. Section 130d.14. Waste analysis plan– Protection of public health; Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that sections 130d.13 and 130d.14 both address the analysis of waste and therefore should be combined to reduce repetition and improve clarity.

#### **Response**

Section 130d.13 of the proposed regulations is now 130d.22 in the final-form regulations and has been renamed “Chemical analysis of waste and sampling techniques and protocol”. It sets forth the sampling techniques and criteria that must be utilized when doing the required sampling of the soil and groundwater from the site being remediated and the farmland to which the contaminated soil or groundwater or both will be applied. Section 130.14 of the proposed regulations is now section 130d.23 of the final-form regulations and addresses the waste sampling plan that must be set forth in the applicant’s land application proposal. The waste sampling plan must be consistent with the requirements set forth in section 130d.22. The results of such testing must be included in the land application proposal. Section 130d.15 (relating to application site

analysis) of the proposed regulations was incorporated into sections 130d.22 and 130d.23 of the final-form regulations.

The IRRC commented that the proposed rulemaking sets forth extensive testing and analysis of the contaminated material taken from the site being remediated. The Department and IRRC both acknowledge that testing and analysis requirements for waste being applied to land and specifically to agricultural land, already exist in regulations promulgated by the Department of Environmental Protection (DEP). Therefore, the IRRC commented that the Department, in order to avoid duplication of and possible conflict with DEP regulations, in the final-form regulations, should cross reference the testing requirements of the relevant DEP regulations and then add any additional requirements that may be necessary.

#### **Response**

The final-form regulations have been changed. Sections 130d.22 and 130d.23 of the final-form regulations, while consistent with Department of Environmental Protection (DEP) regulations, are no longer duplicative of those regulations. The Department has set forth its own, more specific criteria, for testing and sampling. The final-form regulations are more specific and add clarity with regard to the exact techniques to be utilized and the information the Department requires.

The IRRC commented that “paragraph (3)” requires a sampling method to contain at least one sample from each soil pile or quantity of groundwater. IRRC stated that the DEP has sampling requirements in place, under Act 2 (the Land Recycling and Environmental Remediation Standards Act). Therefore, the IRRC suggests that “paragraph (3)” should be deleted and a cross-reference should be added to the appropriate section of DEP’s regulations.

#### **Response**

The final-form regulations have been changed. Sections 130d.22 and 130d.23 of the final-form regulations, while consistent with DEP regulations, are no longer duplicative of those regulations. The Department has set forth its own, more specific criteria, for testing and sampling. The final-form regulations are more specific and add clarity with regard to the exact techniques to be utilized and the information the Department requires.

**E. Section 130d.15. Application site analysis – Need ; Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that this section addressed information that must be included in the land application proposal form. Therefore, the IRRC suggests it should be moved to that section.

**Response**

The Department agrees with the IRRC comment that this section was duplicative. In the final-form regulations, elements of this section have been included in section 130d.22 (relating to chemical analysis of waste and sampling techniques and protocol) and section 130d.23 (relating to waste sampling plan).

The IRRC had several questions regarding the testing required by this section of the proposed rulemaking and suggested that in the final-form regulations the Department should further define the testing requirements and techniques to be utilized. The IRRC had the following questions regarding the testing requirements:

1. What is considered a “field” or a “plot”?
2. How many samples will be required?
3. Will more samples be required for larger “fields” or “plots”.
4. Are the “fields” or “plots” pre-determined before the results of the chemical analyses are obtained?
5. Can the dimensions of the “fields” or “plots” be altered to better accommodate the material that is to be applied?

**Response**

The Department has added language to section 130d.22 (relating to chemical analysis of waste and sampling techniques and protocol) of the final-form regulations that specifically addresses the concerns set forth in the above comment. Section 130d.22 of the final-form regulations sets forth specific criteria for sampling of the soil piles and groundwater taken from the remediated site and for soil samples taken from land upon which the soil and groundwater from the remediated site is to be applied. The sampling techniques are based on soil and groundwater sampling techniques set forth in the *Pennsylvania Agronomy Guide*. The final-form regulations assure the sampling techniques are the same for both the proposed application site and for the soil piles and water samples taken from the site being remediated.



The IRRC commented that paragraphs (1) and (2) of this section contain duplicate information and should be combined into one paragraph.

The IRRC commented that paragraphs (3) and (5) repeat information contained in the opening paragraph of this section and suggested the duplicative information should be removed from the opening paragraph.

The IRRC commented that paragraph (4) requires the submittal of the quality control procedures of a lab approved by the Department to both the Department and the landowner. The IRRC suggested that since the Department has approved the lab, this requirement is unnecessary and should be deleted.

### **Response**

The final-form regulations address the concerns set forth above. Language contained in section 130d.15 of the proposed regulations has been blended into sections 130d.22 and 130d.23 of the final-form regulations and all duplicative language has been removed.

### **F. Section 130d.16. Retained recordkeeping. – Need ; Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that paragraph (b) of this section states, “shall be available for inspection or audit **at reasonable times** by the Department or its authorized agents”. The IRRC questions what the Department considers a “reasonable time”.

### **Response**

The Department first notes this section of the proposed regulations has been moved to section 130d.4 (relating to retained recordkeeping) of the final-form regulations. The Department believes this adds clarity to the final-form regulations. With regard to the IRRC’s question concerning what the Department considers a “reasonable time”, section 130d.4(b) of the final-form regulations (relating to inspection and audit) adds the clarifying language - “(such as regular operating hours of the department)”.

The IRRC commented that paragraph (c) contains the phrase, “5 years after the date on which the site closure plan and final report were submitted and approved by the Department.” The IRRC states that this language would allow two different dates to be utilized to determine when the five-year clock begins and suggests the Department should clarify when the five-year period starts.

Related to this comment, the IRRC asks why the Department requires the retention of records for five years.

### **Response**

This language is now contained in section 130d.4(c) (relating to retention time period) of the final-form regulations and has been amended to read “...for 5 years after the date on which the site closure plan and final report **were approved by the Department.**” Therefore, the regulations now allow one date for determining the starting point of the five-year retention period. The Department believes a five-year record retention period is necessary, not overly burdensome and reasonable. The retention of records serves to protect all parties involved in the land application of the soil and groundwater contaminated with agricultural chemicals.

### **G. Section 130d.17. Public notice by applicant. – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The IRRC commented that this section contains public notification provisions as required by the Pennsylvania Pesticide Control Act. The IRRC suggests the citations to the applicable sections of that Act and its attendant regulations should be more specific.

### **Response**

The Department agrees with the IRRC’s suggestion and has set forth more specific citations in the final-form regulations. It must be noted the provisions of section 130d.17 of the proposed regulations have been moved to section 130d.5 (relating to public notice by applicant) of the final-form regulations.

**IV. SPECIFIC COMMENTS: SUBCHAPTER C. GENERAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND.**

**A. Section 130d.21. General requirements for land application proposal form – Need; Clarity**

**Commentator:**

**Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented the subsection (b) of the above referenced section contains the phrase, “and other data as may be required by the Department...” The IRRC questions what other data may be required by the Department that is not set forth in the regulations and states the final-form regulations should specify that any additional information needed by the Department will be requested in writing.

**Response**

The Department has included language in section 130d.21(b) of the final-form regulations stating that any request for additional information will be in writing. Any additional data would be data necessary to determine compliance with the regulations. While the Department has made every attempt to foresee all possible scenarios and set forth required information needed to address those scenarios in a responsible manner, the necessary complexity of these regulations and the myriads of circumstances that may arise, along with the possible combinations of agricultural chemicals contained in the soil piles and groundwater to be land applied present situations and scenarios the Department may not have specifically addressed. The Department believes the language is necessary to allow a complete review of all facts and circumstances that may present themselves and to help to assure the Department is able to carry out its duty under the Act to “...provide for the appropriate application rates of such materials...and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of the land application.” In addition, the Department believes the language of the regulations does constrain the information they may request, because it must be related to information necessary to carry out the provisions established in the regulations.

The IRRC commented that subsection (c) of the above referenced section contains requirements that are already listed in other sections of the regulations and therefore should be deleted from the final-form regulations.

#### **Response**

The Department has deleted the above referenced language from the final-form regulations.

The IRRC commented the requirements in subsection (d) of the above referenced section should be moved to section 130d.13 (relating to chemical analysis of waste) and section 130d.14 (relating to waste analysis plan) of the final-form regulations.

#### **Response**

Sections 130d.13 and 130d.14 of the proposed regulations have been revised and moved to section 130d.22 (relating to chemical analysis of waste and sampling techniques and protocol) and section 130d.23 (relating to waste sampling plan) respectively in the final-form regulations. Section 130d. 21(d) (relating to affirmation of chemical analysis of waste and sampling techniques and protocol and the waste sampling plan) now references sections 130d.22 and 130d.23. The Department moved sections 130d.13 and 130d.14 of the proposed regulations to sections 130d.22 and 130d.23 of the final-form regulations in order to further clarify the regulations as suggested by the IRRC in its earlier comments.

The IRRC commented the requirements set forth in subsection (e) of the above referenced section should be moved to section 130d.42 (relating to operating plan) of the regulations.

#### **Response**

Based on clarity concerns expressed by the IRRC, the Department moved section 130d.42 (relating to operating plan) of the proposed regulations to section 130d.24 (relating to operating plan) in the final-form regulations. Therefore, section 130d.21(e) (relating to affirmation of operation plan) is now in the proper section because it refers to a section within the same subchapter.

**B. Section 130d.22. Insurance – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission commented this section states an applicant must comply with the insurance requirements established by the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61) and the regulations in Chapter 128. The final-form regulations should include more specific citations to the relevant sections of the Pesticide Control Act and Chapter 128.

**Response**

Section 130d.22 (relating to insurance) of the proposed regulations has been moved to section 130d.26 and retitled “Financial responsibility” in the final-form regulations. The section change was necessary because of other sequential changes that have been made to the final-form regulations based on comments and suggestions received from the IRRC. The language of the section has been revised to include specific citations.

**C. Section 130d.23. Right of entry and agreement with landowner – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission had the following three comments with regard to the above referenced section of the proposed regulations:

1. The Independent Regulatory Review Commission (IRRC) commented that subsection (a) of the above referenced section requires that a land application proposal shall contain a description of certain documents. The IRRC commented that the final-form regulations should allow the applicant to submit either a copy or a description of the document. In addition, the IRRC commented that subsection (a) contains provisions that are repeated in subsection (b) and therefore the two subsections should be consolidated into one section for clarity and to avoid repetition.
2. With regard to subsection (b)(1) of the above referenced section, the IRRC commented this subsection does not address a situation where the applicator and the landowner are the same person. The IRRC then pointed out that section 130d.41(3) (relating to general requirements) states that when the person responsible for the land application is the landowner, then an agreement is not required. The IRRC suggests subsection (b)(1) should contain the same or similar clause.

## **Response**

Section 130d.23 of the proposed regulations is now section 130d.27 of the final-form regulations. The Department agrees with the IRRC's comments and has revised the language of the above referenced sections to address those comments. In addition, in the final-form regulations the Department amended and combined the language contained in subsections (a) and (b) of the proposed regulations.

3. The IRRC commented that subsection (c) of the above referenced section requires "irrevocable written consent" from the landowner allowing the Department and its authorized agents to enter the application site. The IRRC expressed three concerns with regard to this subsection.

1. Why must the landowner grant access to the land for "up to 3 years after the final closure"?
2. Would the irrevocable written consent enable the Department to enter the proposed application site if the land was sold?
3. If the land is sold, must the new owner be notified that agricultural chemicals from a remediation site were applied to the land?

## **Response**

The landowner must grant access to allow for monitoring, especially with regard to the crops planted on the farmland upon which the soil or groundwater contaminated with agricultural chemicals was placed. The language of the final-form regulations has been changed to state the irrevocable consent must be for not less than 1 year nor more than 3 years after final closure and is for the purpose of inspection and monitoring. Laws regarding "disclosure of information" already exist. The Department does not propose to insert itself into such a process. However, the requirement to record the consent decree will in essence give a prospective buyer notice of the land application.

### **D. Section 130d.25. Compliance information – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) expressed two concerns with regard to this section.

1. What sort of documentation or information does the Department require to prove the land application will comply with all Federal, State and local laws, rules and ordinances? The final-form regulations should require the applicant to attest or certify that they are in compliance with all applicable laws, rules and ordinances.

2. What are the applicable Federal, State and local laws? If the Department cannot specify them, then this provision should be deleted from the final-form regulations.

**Response**

The Department agrees with the IRRC's assertion that the final-form regulations should require the applicant to attest or certify that they are in compliance with all applicable laws, rules and ordinances. The final-form regulations contain specific language addressing the issue delineated above at section 130d.29 (relating to compliance information) and also addresses the issue with language set forth in section 130d.2(d) (relating to scope).

Laws and especially ordinances change and are different from municipality to municipality. The proponent of the land application is responsible for addressing these laws and ordinances whether they are or are not contained in the Department's regulations. The Department believes the language is absolutely necessary to assure it (the Department) receives reasonable assurance that the proponent of the land application has taken a responsible approach and received all necessary approvals prior to requesting review and approval from the Department.

**V. SPECIFIC COMMENTS: SUBCHAPTER D. LAND PROPOSAL REVIEW PROCEDURES.**

**A. Section 130d.31. Criteria for approval or denial – Clarity**

**Commentator:**

**Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) noted a typographical error in subsection (a) of the above referenced section. The second sentence currently reads, "...seek to apply soil of groundwater..." the word "of" should be "or".

**Response**

The typographical error has been corrected in the final-form regulations.

The IRRC commented that subsection (c) of the above referenced section, conflicts with the second paragraph of the Preamble which states, "[T]he Department will not approve the land application of soil and ground water contaminated with chemicals other than agricultural chemicals."

Additionally, with regard to subsection (c) the IRRC asked “who is the appropriate agency?” Is the Department referring to the Department of Environmental Protection or could there be some other agency that would qualify as an “appropriate agency”?

### **Response**

The Department has made significant amendments to the language of the preamble and this section in the final-form regulations. Those revisions include deleting any reference to the Department making any decision with regard to chemicals other than agricultural chemicals. The Department in section 130d.2 (relating to scope) now simply requires the land application proponent to provide an, “...affidavit attesting to the fact that either no contaminants other than the agricultural chemicals tested for and set forth in their application are present in the soil or groundwater they seek to apply to the agricultural land or if other contaminants exist, an affidavit stating what those contaminants are and attesting to the fact the applicant has received all permits or approvals necessary for the application of those contaminants to agricultural land.” The final-form regulations do not contain language referring to “appropriate agency”. It now focuses on proof that all other necessary permits and approvals have or will be received prior to land application. The Department seeks such assurances in order to carry out its duty under the Act to protect the public health, safety and welfare and the environment at the site of the land application. Other agencies, in most cases the Department of Environmental Protection, still have jurisdiction over other chemicals that may be contained in the soil or groundwater the land application proponent seeks to apply. The Department does not believe it was the intent of the General Assembly to allow the land application proponent to ignore or circumvent these additional regulatory constraints. The language serves as notice to the land application proponent that other regulatory requirements exist. The Department is willing to assist a land application proponent with regard to any questions concerning appropriate agencies to contact, but the Department is not the legal representative or advisor to the land application proponent and has no duty to set forth each and every potential agency, law, regulation or ordinance that may effect each land application of the materials generated as a result of remediation activities under the Act.

### **B. Section 130d.32. Receipt of land application proposal and completeness review – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that subsection (c) of the above referenced section states that an application is complete “if it contains all necessary information, approvals, maps and other documents required by this chapter.” The IRRC stated these requirements are stated throughout the proposed



regulations and therefore make it difficult for an applicant to determine if all forms, information, maps and other documents are included in the application. For clarity these requirements should be listed in one section.

### **Response**

Based on other comments received from the IRRC with regard to the overall organization of the proposed regulations, the Department has reorganized the final-form regulations. The final-form regulations, through the reorganization and some other amendments, more clearly address the matters and concerns expressed in the above comment. In addition, the Land Application Proposal form and accompanying documents, which will be provided by the Department, add further clarity with regard to the information that must be contained in the land application proposal.

### **C. Section 130d.33. Review period – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) noted that subsections (a) and (b) of the above referenced section set a 60-day period for the Department to review a land application proposal. They commented that subsection (c) then states, “[F]ailure of the Department to comply with the timetable established in this section will not be construed or understood to constitute grounds for an automatic approval of a land application proposal.” The IRRC asks what is the purpose of the 60-day review period set forth in subsections (a) and (b)?

#### **Response**

The Department has deleted all references to a set timetable for review of applications in the final-form regulations. The Department now specifically notes that there will be no set timetable for review of a land application proposal, however the Department will make every effort to complete a review of a land application proposal within 60 days of receipt of an administratively complete land application proposal. In addition, based on comments received from the IRRC regarding the overall organization of the regulations, this section has been moved and is now contained within section 130d.32(c) of the final-form regulations.

The IRRC commented that subsection (b) of the above referenced section is entitled “Incomplete land application proposal.” The IRRC states that for clarity, this subsection should be moved to section 130d.32 (relating to receipt of land application proposal and completeness).

### **Response**

The subsection regarding “Incomplete land application proposal” has been moved to section 130d.32 of the final-form regulations and is now set forth at subsection 130d.32(d).

### **D. Section 130d.34. Review process – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission commented that subsection (a)(2) of the above referenced section states that if other chemicals are present in the material, the Department will review the application, but “will not give final approval to the land application proposal.” The IRRC believes this conflicts with section 130d.31(c) of the proposed regulations which states “[W]here the soil and groundwater sought to be applied contains chemicals other than agricultural chemicals, the Department may approve the land application proposal contingent upon the applicant obtaining the necessary approvals or permits (when applicable) to land apply those chemicals from the appropriate agency.” The IRRC suggests the Department change the language to assure it is consistent throughout the regulations.

### **Response**

It should be noted that section 130d.34 does not exist in the final-form regulations. The Department, based on organizational and redundancy comments submitted by the IRRC, consolidated this section. Most of the language of old section 130d.34 can now be found in section 130d.33 or consolidated in section 130d.31 of the final-form regulations. The Department agrees with the comments and the changes suggested by the IRRC. As a result, the Department has made changes to the language of the final-form regulations to assure it is consistent. The new language can be found in revised sections 130d.31(d)(relating to criteria for affirmation or denial) and 130d.33(c) (relating to review process). These sections reference the other sections in the regulations (130d.2(d), 130d.21(d) and 130d.29) which pertain to affirmations of fact and other documents required to be submitted with the land application proposal.

The IRRC expressed three concerns with regard to subsection (a)(3) of the above referenced section.

1. The topics included in this subsection are different issues and should be in separate subsections.
2. How will the Department notify the applicant of its final decision regarding a land application proposal? Will the Department issue an approval letter or order? Will the Department of Environmental Protection be issuing a permit or approval in conjunction with Departmental approval?
3. If additional information is requested, does the applicant get 90-days to respond? Once the information is provided, does the Department get an additional 60-days to review the material?

### **Response**

First, it must be noted that because of consolidation of language for clarity reasons and concerns expressed by the IRRC, what was section 130d.34 of the proposed regulations is now section 130d.33 in the final-form regulations.

In response to the IRRC's first comment regarding subsection 130d.34(a)(3) of the proposed regulations, the Department agrees and has separated the subsections. In addition, subsection 130d.34(a)(3), was eliminated in the final-form regulations and some of the language of that subsection was consolidated into the language of subsection 130d.33(b) of the final-form regulations.

With regard to the IRRC's second comment regarding subsection 130d.34, there is language in section 130d.32(c) which states, "[T]he Department will mail the applicant a written notice of approval or disapproval. A notice of disapproval shall state the reasons for the Department's disapproval of the land application proposal." Subsection 130d.32(d) then sets forth the deadlines that land application proponent must meet if the land application proposal is incomplete. Such notice will also be by letter to the applicant. With regard to the issuance of permits or approvals by the Department of Environmental Protection, the Department does not address or become involved in this process other than to require the proponent of the land application proposal to meet the affidavit or other documentary requirements set forth in sections 130d.2, 130d.21(d) and 130d.29 of the final-form regulations. Review of the land application proposal can begin prior to all other approvals being granted, but the Department must receive affirmation that all Federal, State and local laws and regulations will be complied with and all necessary permits have been granted prior to final approval to land apply the contaminated soil and groundwater.

The final-form regulations, at subsection 130d.32(d), give the applicant 60-days to respond. The Department has no set time limit for review (see subsections 130d.32(c) and (d)), but will endeavor to review and issue a decision within 60-days after receipt of the requested information.

The IRRC commented that subsection (b) of the above referenced section states, “[T]he decision of the Department to approve or deny a land application proposal is final...” The IRRC noted there is not mention of an appeal process in this section of the proposed regulations and states the Department should set forth an appeal process in the final-form regulations.

#### **Response**

The Department will notify the proponent of the denied land application proposal of his right to appeal in the letter of denial. The standard administrative process followed by the Department will be utilized. The denial letter will set forth the appropriate citations.

### **VI. SPECIFIC COMMENTS: SUBCHAPTER E. GENERAL REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.**

#### **A. Section 130d.41. General – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that this section mirrors other sections in the regulations and should therefore be deleted in the final-form regulations.

#### **Response**

The Department has deleted this section in the final-form regulations. Some of the language contained in this section was added to Subchapter B in the final-form regulations. Subchapter B of the final-form regulations was completely reorganized based on the IRRC’s comments regarding overall organization of the proposed regulations. The section regarding the operating plan is now 130d.24 of the final-form regulations.

**B. Section 130d.42. Operating plan – Need; Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that the beginning of paragraph (3), which states, “[T]he general operating plan for the proposed operation, including...” is not needed because the heading already explains the category or information contained in this section. The IRRC suggests it should be deleted from the final-form regulations.

**Response**

Once again, some of the language contained in this section of the proposed regulations was added to Subchapter B in the final-form regulations. Subchapter B of the final-form regulations was completely reorganized based on the IRRC’s comments regarding overall organization of the proposed regulations. The language regarding the operating plan is set forth at section 130d.24 of the final-form regulations under Subchapter B pertaining to the land application proposal itself and what must be included in the land application proposal. In addition, in the final-form regulations the Department deleted the language cited by IRRC in the comment above.

The IRRC asked the Department to clarify the meaning of the phrase “proposed life of the operation”.

**Response**

The Department agrees with the IRRC’s comment regarding clarification of the above phrase and has set forth additional language at what is now subsection 130d.24(a)(3) of the final-form regulations. As noted previously, the language contained in what had been sections 130d.41, 130d.42 and 130d.43 of the proposed regulations is now included in Subchapter B of the final-form regulations and more specifically, language pertaining to the operating plan is at section 130d.24 of the final-form regulations. The phrase noted above has been clarified by adding the language “...from the time the first soil pile or quantity of groundwater arrives on the application site to the final closure of the application site.”

The IRRC stated they have two concerns regarding paragraph (8) which requires the applicant to address the use that will be made of the proposed application areas and the crops that will be planted on each application plot for a time period of 3 years following the application. The IRRC asks:

1. Will the Department monitor this to ensure compliance and what is the penalty for non-compliance?
2. Are there any prohibitions from the land being sold to a developer or rezoned for residential use?

### **Response**

With regard to the IRRC's first question, the Department does intend to monitor the application site during the 3-year time period. That is the reason for the 3-year provision in the Right of Entry Section of the regulations. With regard to the penalty for non-compliance, the Department has no authority under the Act to impose penalties and therefore, no authority to include penalty provisions in the regulations. The Department will have to enforce by enforcing provisions of other statutes under its purview (such as the Pesticide Control Act) or reporting potential violations of other Commonwealth statutes (such as the Nutrient Management Act, Clean Streams Law or the Solid Waste Act).

With regard to the second question, once again the Department has no pre-emption powers or other statutory authority under the Act, which would allow it to regulate such matters. The Department does require the land application of the contaminated soil or groundwater to be recorded in the Deed for the property affected.

### **C. Section 130d.43. Maps and related information – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that subsection (b) of the above referenced section contains the phrase "other reliable data". What does the Department consider to be "other reliable data"?

#### **Response**

The final-form regulations, now at section 130d.25(b), include language which makes it clear that "other reliable data" must be data that convey the same information the Department would be seeking with regard to the soils map, "...shows the location and types of soils within the proposed application area."

**VII. SPECIFIC COMMENTS: SUBCHAPTER F. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX.**

**A. Section 130d.51. General requirements – Clarity**

**Commentator:**

**Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission expressed three concerns with the above referenced section.

1. Must an applicant “seeking approval to utilize and apply groundwater contaminated with agricultural chemicals generated as the result of remediation activities at an agricultural facility as tank mix” comply with all other requirements of this chapter? If not, what requirements must be met?
2. How will the review process for this type of application work? Are the time frames and process the same as in Subchapter D (relating to land proposal review procedures)?
3. The word “with” should be inserted between the words “contaminated” and “agricultural” in subsection (b) of the above referenced section.

**Response**

The response to the IRRC’s first comment above is “yes” the applicant must comply with all other requirements of the chapter.

With regard to the second question, the time frames and the process for review of the application is the same as for all other land application proposals.

Concerning the third comment, the Department made the required change in the final-form regulations.

**B. Section 130d.52. General exceptions – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission commented the above referenced section allows the Department to waive certain requirements of this chapter. They state the Department fails to set forth the procedures that must be followed by the applicant to obtain a waiver and suggest specific procedures should be set forth in the final-form regulations.

**Response**

The applicant does not have any additional procedures to follow when applying to utilize water contaminated with agricultural chemicals as tank mix. The applicant must merely note the intended use and the Department will determine, based on the data provided in the land application proposal - such as concentration, types and amounts of agricultural chemicals and intended use and other required criteria - which exemptions to grant to the applicant. It should be noted the requirements and exemptions have been consolidated into subchapters in the final-form regulations (See Subchapter E, Sections 130d.51 and 130d.52)(relating to tank mix).

**VIII. SPECIFIC COMMENTS: SUBCHAPTER G. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.**

**A. Section 130d.61. General provisions – Need**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission commented that this section, which establishes the fact that the applicant must comply with "...the act and this chapter..." is not needed and should be deleted.

**Response**

First, based on comments received from the IRRC regarding general overall organization and clarity of the proposed regulations, all of the provisions of Subchapter G, Sections 130d.61-130d.69 of the proposed regulations have been moved to Subchapter D, Sections 130d.41-130d.48 in the final-form regulations. The language cited above, has been deleted from the final-form regulations.



**B. Section 130d.62. Standards for land application of soil and groundwater contaminated with agricultural chemicals – Need; Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) commented the introduction to this section begins, “[P]ersons seeking to apply...” but should be changed to “Persons approved to apply...” since in order for a person to apply the material, they must obtain the approval of the Department.

**Response**

Section 130d.62 of the proposed regulations and the language contained therein, has been moved to section 130d.41 of the final-form regulations and the changes to the language suggested in the above comment were made.

The IRRC commented that paragraphs (4), (9), (10) and (11) of the above referenced section contain criteria or provisions that will be used by the Department to determine whether a land application proposal will be approved or disapproved, therefore the requirements of these paragraphs should be moved to a section that addresses application requirements.

**Response**

As part of the overall reorganization of the regulations, based on the IRRC’s comments, this entire section was moved to Subsection D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land) and are part of section 130d.41. The language of the paragraphs in question was changed to make them criteria for land application rather than provisions the Department will consider as part of the land application proposal. Subchapter D and section 130d.41 of the final-form regulations address application requirements and prohibitions. For ease of reference what were sections 130d.62(4),(9),(10) and (11) in the proposed regulations are now sections 130d.41(d),(i),(j) and (k) of the final-form regulations.

The IRRC commented the requirements of paragraph (1) of the above referenced section are repeated in paragraphs (2) and (3) and therefore, paragraphs (2) and (3) should be deleted.

### **Response**

These paragraphs have been moved to section 130d.41 and are labeled subsections (a)(b) and (c). The Department believes it is necessary to make the distinction between individual affects of each pesticide or fertilizer found in the soil and groundwater taken from the site being remediated and the cumulative effect of all the different pesticides – and their active ingredients – and fertilizer components in the soil and groundwater.

The IRRC commented that paragraph (1) of the above referenced section states the “Department may require a safety factor of one-half the label application rate.” The IRRC asked, what factors will the Department consider when determining if one-half the label application rate would be appropriate?

### **Response**

The Department will look at the type of pesticide or combination of pesticides and active ingredients, the concentration of the pesticide or pesticides, or the nutrient values of the fertilizer residuals in the soil and groundwater to be applied, the application techniques and rates proposed, the type of soil at the application site and the residual pesticides or nutrients in the soil at the application site and the possibility of environmental harm posed by the application of pesticides or combination of pesticides at label rates.

The IRRC commented that paragraph (6) of the above referenced section requires the landowner to “account for the amount of nutrients being applied to the land as set forth in the *Pennsylvania Agronomy Guide*.” The IRRC stated this requirement is not clear. They ask for clarification on three issues:

1. Does the amount of nutrients refer to the material being land applied?
2. Does the amount of nutrients also include any additional nutrients that might be applied?
3. Is the landowner required to submit this information to the Department?

### **Response**

In retrospect, the Department believes this paragraph is unnecessary and impossible to properly regulate. Therefore, it has been deleted from the final-form regulations. For ease of reference this subsection if retained would have been subsection 130d.41(g) of the final-form regulations.

The IRRC requested clarification with regard to what the Department considers “minor amounts” in paragraph (8) of the above referenced section. The IRRC goes on to say the term is only used in this paragraph and therefore, should be defined in this paragraph.

### **Response**

The Department agrees that the term “minor amounts” is too vague. The language has been struck from the final-form regulations. For ease of reference this language would have appeared in what is now subsection 130d.41(g) of the final-form regulations.

The IRRC commented that paragraph (9) of the above referenced section refers to “any applicable nutrient management plan”. It goes on to state that if there are nutrient management plans that one is to comply with, then those plans should be cross-referenced in the regulations.

### **Response**

Nutrient management plans are individual plans required for Concentrated Animal Operations or voluntarily entered into by farmers under the provisions of the Nutrient Management Act (3 P.S. §§ 1701-1718). There is no specific plan to cross-reference. The Department has clarified the language by adding language to the statement “...any nutrient management plan.” The phrase now reads “...any nutrient management plan approved under the provisions of the Nutrient Management Act (3 P.S. §§ 1701-1718).” For ease of reference this subsection is now subsection 130d.41(h) of the final-form regulations.

The IRRC commented that the paragraph (12) of the above referenced section is similar to section 130d.25 (relating to compliance information) of the proposed regulations and suggests the Department should delete section 130d.25.

### **Response**

The Department agrees with the IRRC’s comment, but feels the language of this section is still essential as an application requirement. Therefore, the language of the final-form regulations has been revised to make it an application requirement. For ease of reference this is now subsection 130d.41(k) of the final-form regulations.

The IRRC states that paragraph (13) of the above referenced section repeats requirements found in section 130d.72 (relating to final reports) of the proposed regulations and therefore, should be deleted.

**Response**

The Department agrees this section was redundant and has deleted it from the final-form regulations. Because of the overall organizational revisions made to the final-form regulations, this provision would have been subsection 130d.41(l) if included in the final-form regulations.

**C. Section 130d.63. Land application rates and procedures – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that the methodology used to determine application rates, which is set forth in subsections (a)(7) and (8) of the above referenced section, is confusing and the variables used in the formulas should be explained and defined and a step-by-step process set forth in the final-form regulations.

**Response**

The Department believes an example of the calculation is more appropriate and effective if included in the Land Application Proposal. The applicant will have the necessary criteria to do the calculation without having to address the regulations. The Department will include an example or examples of the proper method of performing the calculation in the Land Application Proposal form provided by the Department. This information is now included as part of Subchapter B. (relating to land application proposal requirements) at subsection and paragraphs 130d.24(b)(7) and (8) of the final-form regulations. The revision was made based on comments provided by IRRC concerning the overall organization of the proposed regulations.

The IRRC commented that the provisions established in subsection (b) of the above referenced section address application rate considerations and procedures that are to be included in the applicant's operation plan and will be used by the Department to review all land application proposals. Therefore, the IRRC suggested that the requirements of this subsection should be moved to a section that addresses application requirements.

#### **Response**

The Department agrees with the IRRC's comment and has moved this subsection to subsection 130d.24(c) of the final-form regulations, under Subchapter B (relating to land application proposal requirements). However, the provisions set forth in this section are also land application requirements. Therefore, in the final-form regulations, the Department slightly modified the language of the proposed regulations and included these requirements as part of subsection 130d.42(b) (relating to application rates and procedures) of the final-form regulations.

The IRRC commented that subsections (b)(2) and (6) of the above referenced section both address the total amount of pesticides that may be present in material that is to be applied to agricultural land and therefore these two subsections should be consolidated.

#### **Response**

The Department agrees with the comment set forth above and has consolidated the two subsections at subsection 130d.42(b)(2) in the final-form regulations.

The IRRC had two points concerning subsection (b)(4) of the above referenced section that it suggests should be addressed in the final-form regulations:

1. What does the Department consider "valuable topsoil"?
2. How does one "...assure that valuable topsoil will not be lost..."?

#### **Response**

After reviewing the IRRC's first comment the Department believes the reference to "valuable" topsoil is redundant and not necessary, since all topsoil is valuable. Therefore, the reference to "valuable" has been deleted from the final-form regulations.

Topsoil is "lost" most frequently to erosion when there is no cover crop or after tillage. Therefore, a standard soil and erosion prevention plan will suffice as assurance against "loss" of topsoil. In addition, the topsoil may not be stripped or removed from the application site and may not be merely buried under the soil contaminated with agricultural chemicals.

**D. Section 130d.64. Additional application requirements – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) questioned whether the Department would monitor the landowner’s farming operation to ensure that the “crop rotation plan” and the “nutrient and pesticide management plan” are being followed? In addition, the IRRC asked what the penalty is for deviation from the plans and stated this should be set forth in the final-form regulations.

**Response**

In response to this comment and the IRRC’s general comments with regard to the overall organization of the proposed regulations, the provisions of this section were moved to Subchapter B. (relating to land application proposal requirements) at subsection 130d.24(d) (relating to additional requirements – to be included in the operating plan submitted with the land application proposal) of the final-form regulations. In addition, because the Department believes these are also application requirements, it revised the language and included these provisions in subsection 130d.43 of the final-form regulations, which merely cross-references the approved operation plan. The answer to the question presented above, is “yes”, the Department will continue to monitor the site, hence the provisions requiring access to the land for a period of time after final-closure. As set forth in the answer to a similar question regarding penalties, the Department has no statutory authority to impose penalties under the Act and therefore, may not provide for penalties in the regulations. However, the Department may take action under other statutory authority, as provided previously, or report potential violations of other statute to the proper agency.

**E. Section 130d.65. Limitations on land application of soil and groundwater contaminated with agricultural chemicals – Need; Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) questioned whether, under paragraph (6) of the above referenced section, an applicator who wants to employ spray irrigation equipment or aerial equipment must apply in writing as required for the application of contaminated groundwater via a tank mix process in Subchapter F of the proposed regulations.

### **Response**

This section is now section 130d.44 of the final-form regulations. The answer is “yes” the applicator must apply in writing – as part of the land application proposal – to employ such techniques. The Department will address and approve such a technique in writing when approving the land application proposal.

The IRRC commented that paragraph (8) of the above referenced section prohibits the grazing of livestock on application areas for five years. However, other commentators have noted that livestock are commonly grazed on land on which agricultural chemicals have been applied. The IRRC asked the Department to set forth the reason for this prohibition. In addition, the IRRC stated that paragraph (8) should be deleted from the final-form regulations, since paragraph (9) of the above referenced section requires that the application areas can only be used in a manner consistent with the labeling requirements of the pesticides contained in the contaminated material.

### **Response**

The United States Environmental Protection Agency (EPA) provides for no accepted tolerance for multiple chemical applications when the application is on or may affect food commodities.

### **F. Section 130d.66. Prohibited applications – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that the term “water source” in subsection (b)(2) of the above referenced section should be defined in section 130d.1 (relating to definitions).

### **Response**

This section of the proposed regulations is now contained at subsection 130d.45(b)(2) of the final-form regulations. In the final-form regulations, the Department has included a citation to the term.

The term “exceptional value wetland” in subsection (b)(4) of the above referenced section should be defined in section 130d.1 (relating to definitions).

**Response**

This section of the proposed regulations is now contained at subsection 130d.45(b)(4) of the final-form regulations. In the final-form regulations, the Department has included a citation to the term.

**G. Section 130d.68. Daily operational records – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) asked, with regard to subsection (a) of the above referenced section, what does the Department consider “generally accepted principles?” The IRRC pointed out that this phrase is also found in section 130d.69(a) of the proposed regulations.

**Response**

This subsection has been moved to subsection 130d.46(a) of the final-form regulations and the language has been revised to be more specific. In addition, the term “generally accepted principles” was removed. Subsection 130d.69(a) has been deleted from the final-form regulations.

The IRRC questioned who the Department would consider a “generator” as the term is used in subsection (b)(5) of the above referenced section. The IRRC commented that for clarity the term should be defined in section 130d.1 (relating to definitions). The IRRC pointed out that this term is also found in section 130d.69(b)(4) of the proposed regulations.

**Response**

This subsection has been moved to subsection 130d.46(b)(5) of the final-form regulations and the language was revised to be more specific. The term “generator” was deleted and replaced by the phrase, “...remediation site from which the contaminated media came and the specific soil pile or quantity of groundwater received from each remediation site.” Subsection 130d.69(b) has been deleted from the final-form regulations.



## **IX. SPECIFIC COMMENTS: SUBCHAPTER H. CLOSURE.**

### **A. Section 130d.71. Site closure plan – Clarity**

#### **Commentator:**

#### **Independent Regulatory Review Commission (IRRC)**

The Independent Regulatory Review Commission (IRRC) expressed two concerns regarding subsection (a) of the above referenced section.

1. The Department does not define the “parties involved”. IRRC wants the Department to clarify if this phrase refers to the landowner, the generator, the applicator and the hauler or the waste and define the phrase in this subsection.

2. Subsection (a) and subsection (b)(4) require the parties to report the results of the land application activity. The IRRC suggested the results to be reported should be moved from these two subsections to section 130d.72 (relating to final reports).

#### **Response**

Because of overall organizational changes made to the final-form regulations, based on comments from the IRRC, this section is now section 130d.61 in the final-form regulations. With regard to the IRRC’s first suggestion, the Department deleted the language “parties involved” and changed it to “[A]pplicant approved by the Department to land apply...” Concerning the IRRC’s second suggestion, the Department moved the language to what is now section 130d.62 of the final-form regulations.

The IRRC commented the above referenced section does not state when the site closure plan is to be submitted to the Department. The IRRC suggests the final-form regulations should set forth the time periods the parties have to complete all required testing.

#### **Response**

In response to the comment set forth above the Department added language to this section (now section 130d.61 of the final-form regulations) stating, “...the site closure plan and final report shall be filed with the Department within 60 days of final closure of the application site.” The applicant will determine the date of the final closure of the application site.

**B. Section 130d.72. Final report – Clarity**

**Commentator:**

**Independent Regulatory Review Commission  
(IRRC)**

The Independent Regulatory Review Commission (IRRC) commented that in the proposed regulations, the above referenced section does not state when the final report must be submitted or who is responsible for submitting the final report. The IRRC suggests the Department address these concerns in the final-form regulations.

**Response**

In response to the comment listed above, the Department added clarifying language to the final-form regulations similar to that set forth in section 130d.61(a) regarding final closure and the time period for filing the reports. This language is set forth at section 130d.62 of the final-form regulations.

**FISCAL IMPACT**

**Commonwealth**

The regulations will impose substantial costs and have a fiscal impact upon the Commonwealth. The regulations will add a new program and increase the regulatory workload of the Department. The regulations will require additional manpower for proper, meticulous and timely review of complex land application proposals and for inspections during land application and follow-up inspections after the land application is complete. In addition, denials may lead to appeals and further regulatory costs for the Department.

**Political Subdivisions**

The regulations will impose costs and have a fiscal impact upon political subdivisions to the extent they become involved in regulating, through imposition of additional regulatory requirements such as ordinances and public meetings, an activity –

the application of soil and groundwater contaminated with agricultural chemicals from an agricultural chemical facility to agricultural land - which was not allowed prior to the enactment of the Land Recycling and Environmental Remediation Standards Act and the acceptance of this final rulemaking. The Department's regulations however, do not require involvement of or regulation by political subdivisions.

#### **Private Sector**

The regulations only effect those private sector persons who choose to land apply soil and groundwater taken from an agricultural chemical facility being remediated under the act and contaminated with agricultural chemicals to agricultural land. For those members of the private sector that elect to follow such an approach, the regulations will impose substantial costs primarily related to the testing requirements for soil and groundwater contaminated with agricultural chemicals prior to their application to agricultural land. However, these costs are no more prohibitive than the cost of other means of disposal of that contaminated media, such as land-fill disposal or incineration, both of which have less potential to harm the environment or productive agricultural land.

#### **General Public**

The proposed amendments to the regulations will impose no additional costs and have no fiscal impact on the general public.

## **PAPERWORK REQUIREMENTS**

The regulations will result in an appreciable increase in paperwork. The Department will be required to review complex land application proposals and records generated as a result of the land application of soil and groundwater contaminated with agricultural chemicals. The Department has been required to generate a land application proposal setting forth a general outline for the applicant.

## **CONTACT PERSON**

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408; Attn: Vance Wagner (717) 787-4843.

## **REGULATORY REVIEW**

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§ 745.1-745.15), as amended by Act 24 of 1997 (P.L. 252, No. 24), the Department submitted a copy of the Notice of Proposed Rulemaking published at 32 *Pennsylvania Bulletin* 1965 (April 20, 2002), to the Independent Regulatory Review Commission and to the Chairpersons of the House Agricultural and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee for review and comment. In compliance with § 5(c) (71 P.S. 745.5(c)), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from the Commission, the Committees and the public.

These final-form regulations were (deemed) approved by the House Agriculture and Rural Affairs Committee on \_\_\_\_\_, were (deemed) approved by the Senate Agriculture and Rural Affairs Committee on \_\_\_\_\_ and were (deemed) approved by the Commission on \_\_\_\_\_.

## **FINDINGS**

The Department of Agriculture finds the following:

- (1) Public notice of its intention to adopt the regulations encompassed by this Order has been given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa.Code, Sections 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments received were considered.
- (3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 32 *Pennsylvania Bulletin* 1965 (April 20, 2002).
- (4) Prior to final submittal of the final-form regulations a draft of the final-form regulations and comment and response document were sent to all persons who commented during the proposed stage of rulemaking and those persons were given ten days to submit additional comments.

(5) The modifications that were made to these regulations in response to additional comments received do not enlarge the purpose of the proposed regulations published at 32 *Pennsylvania Bulletin* 1965 (April 20, 2002).

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

### **ORDER**

The Department of Agriculture, acting under authority of the authorizing statute, orders the following:

(1) The new regulations of the Department of Agriculture at 7 Pa. Code Chapter 130d.1-130d.62 (relating to Application of Soil and Groundwater Contaminated With Agricultural Chemicals To Agricultural Lands) is adopted as set forth in Annex "A" attached hereto.

(2) The Secretary of Agriculture shall submit this Order and Annex "A" to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Secretary of Agriculture shall certify this Order and Annex "A" and deposit them with the Legislative Reference Bureau, as required by law.

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

BY THE DEPARTMENT OF AGRICULTURE

DENNIS C WOLFF, SECRETARY

**FINAL FORM REGULATIONS**  
**LAND RECYCLING AND ENVIRONMENTAL REMEDIATION STANDARDS**  
**ACT**

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V. BUREAU OF PLANT INDUSTRY**

**CHAPTER 130d. APPLICATION OF SOIL AND GROUNDWATER**  
**CONTAMINATED WITH AGRICULTURAL CHEMICALS**  
**TO AGRICULTURAL LANDS**

**SUBCHAPTER A. GENERAL PROVISIONS.....**

~~**SUBCHAPTER B. DUTIES OF APPLICATORS .....**~~

~~**SUBCHAPTER C. B. GENERAL LAND APPLICATION PROPOSAL**~~  
**REQUIREMENTS FOR PERMISSION TO APPLY SOIL**  
**AND GROUNDWATER CONTAMINATED WITH**  
**AGRICULTURAL CHEMICALS TO AGRICULTURAL**  
**LAND.....**

~~**SUBCHAPTER D. C. LAND APPLICATION PROPOSAL FORM REVIEW**~~  
**PROCEDURES.....**

~~**SUBCHAPTER E. D. GENERAL OPERATING REQUIREMENTS FOR LAND**~~  
**APPLICATION OF SOIL AND GROUNDWATER**  
**CONTAMINATED WITH AGRICULTURAL CHEMICALS**  
**TO AGRICULTURAL LAND.....**

~~**SUBCHAPTER F. E. GENERAL REQUIREMENTS AND EXCEPTIONS FOR**~~  
**USE AND APPLICATION OF GROUNDWATER**  
**CONTAMINATED WITH AGRICULTURAL CHEMICALS**  
**AS TANK MIX.....**

~~**SUBCHAPTER G. GENERAL OPERATING REQUIREMENTS FOR LAND**~~  
**APPLICATION OF SOIL AND GROUNDWATER**  
**CONTAMINATED WITH AGRICULTURAL CHEMICALS**

~~**SUBCHAPTER H. F. CLOSURE.....**~~



## Subchapter A. GENERAL PROVISIONS

<b>Sec.</b>	
<b>130d.1.</b>	<b>Definitions.</b>
<b>130d.2.</b>	<b>Scope.</b>
<b>130d.3.</b>	<b>Continuing authority.</b>
<b>130D.4.</b>	<b>RETAINED RECORDKEEPING.</b>
<b>130D.5.</b>	<b>PUBLIC NOTICE BY APPLICANT.</b>

### § 130d.1. Definitions.

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

*Act* - The Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101-6026.908).

#### *Active ingredient* -

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest.

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

***Agricultural chemical*** - A substance defined as a fertilizer, ~~soil conditioner or plant growth substance~~ under 3 Pa.C.S. Chapter 67 (3 PA.C.S.A. § 6702)(relating to fertilizer ACT) OR A SUBSTANCE DEFINED AS A PLANT AMENDMENT, PLANT-AMENDING INGREDIENT, SOIL AMENDMENT OR SOIL-AMENDING INGREDIENT UNDER 3 PA.C.S.A. CHAPTER 69 (3 PA.C.S.A. § 6902)(RELATING TO SOIL AND PLANT AMENDMENT ACT) or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21 – 111.60).

***Agricultural chemical facility*** - A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by SIC 2879 (~~available from the Department of Agriculture, Bureau of Market Development, 2301 N. Cameron St., Harrisburg, PA 17110, (717) 787-6041~~) (THE SIC CODING SYSTEM HAS BEEN REPLACED BY THE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) AND THE CORRESPONDING NAICS NUMBER IS 325320) where agricultural chemicals are manufactured.

***Agricultural land or farmland*** - Land in this Commonwealth that is ~~capable of supporting~~ CURRENTLY BEING UTILIZED FOR the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

***Animal*** - All vertebrate and invertebrate species, including man and other mammals, birds, fish and shellfish.

***Application site*** - The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemicals and delineated in ~~a final plan~~ THE APPLICANT'S LAND APPLICATION PROPOSAL containing and detailing the exact

location of the farmland upon which the soil or groundwater contaminated with the agricultural chemicals is to be applied, including the property boundaries of the farmland and each field upon which the contaminated soil or groundwater will be applied.

**Applicator** - A certified applicator, private applicator, commercial applicator, or public applicator OR PESTICIDE APPLICATION TECHNICIAN.

(i) **Certified applicator.** An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.

(ii) **Private applicator.** A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(iii) **Commercial applicator.**

(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.

(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.

(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of his employer as commercial applicators.

**(iv) Public applicator.** A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.

**(v) Pesticide application technician.** An individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.

**Background** - The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

**Cleanup or remediation** - To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment IN ORDER to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

**Contaminated media** - Soil and groundwater contaminated with agricultural chemicals ~~and regulated substances or other chemicals~~ generated as a result of remediation activities at agricultural chemical facilities.

**DEP** – The Department of Environmental Protection of the Commonwealth.

**Defoliant** - Any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

**Department** - The Department of Agriculture of the Commonwealth.

**Desiccant** - Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

***Environment*** - Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

***Environmental protection acts*** - Includes:

- (i) The Clean Streams Law (35 P.S. §§ 691.1-691.1001).
- (ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4001.101-4001.1904).
- (iii) The Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101-6020.1305).
- (iv) The Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906).
- (v) The Act of July 13, 1988 (35 P.S. §§ 6019.1-6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.
- (vi) The Air Pollution Control Act (35 P.S. §§ 4001-4015).
- (vii) The Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1-1396.31).
- (viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P.S. §§ 3301-3326).
- (ix) The Dam Safety and Encroachments Act (32 P.S. §§ 693.1-693.27).
- (x) The Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003).
- (xi) The Nutrient Management Act (3 P.S. §§ 1701-1718).
- (xii) ~~3 Pa.C.S. §§ 6701-6725 (relating to Fertilizer Act)~~ THE FERTILIZER ACT (3 PA.C.S.A. §§ 6701-6725).
- (xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61).

(xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947  
(7 U.S.C.A. §§ 136-136y).

(xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§  
6901-6986)

(XVI) THE SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-  
6921).

~~(xvi)~~(XVII) Other State or Federal statutes relating to environmental protection  
or the protection of public health.

***Equipment -***

(i) Any type of ground, water or aerial equipment or contrivance using motorized,  
mechanical or pressurized power and used to apply any agricultural chemical ~~on land and~~  
~~anything that may be growing, habituating or stored on or in the land.~~

(ii) The term does not include any pressurized hand-sized household apparatus  
used to apply any agricultural chemical or any equipment or contrivance of which the  
person who is applying the agricultural chemical is the source of power or energy in  
pesticide application.

***General use pesticides*** - A pesticide not classified as a restricted use pesticide.

***Groundwater*** - Water below the land surface in a zone of saturation.

***HAL*** - Health Advisory Levels PUBLISHED BY THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY FOR PARTICULAR SUBSTANCES.

***Habitats of concern*** - A habitat defined as one of the following:

(i) Typical wetlands with identifiable function and value, except for exceptional  
value wetlands as defined in 25 Pa. Code §105.17 (relating to wetlands).

- (ii) Breeding areas for species of concern.
- (iii) Migratory stopover areas for species of concern.
- (iv) Wintering areas for species of concern.
- (v) Habitat for State endangered plant and animal species.
- (vi) Areas otherwise designated as critical or of concern by the Game

Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.

***Incorporation*** - Plowing or injecting contaminated media to a depth of ~~up to~~ NOT LESS THAN 6 inches AND in a manner that ensures a uniform mixture of top soil and contaminated media.

***Label*** - The written, printed or graphic matter on, or attached to the ~~pesticide,~~ agricultural chemical or device or any of its containers or wrappers.

***Labeling*** - Pertaining to ~~pesticide or other~~ agricultural chemicals means all labels and all other written, printed or graphic matter which includes one of the following:

(i) That which accompanies the pesticide, agricultural chemical or device at any time.

(ii) To which reference is made on the label or in literature accompanying the ~~pesticide,~~ agricultural chemical or device, except to current official publications of the Federal Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of ~~pesticides or~~ agricultural chemicals.

***Land application proposal*** - An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural CHEMICAL facility, to agricultural land.

***MCL*** - Maximum contaminant level ESTABLISHED FOR DRINKING WATER BY DEP.

***Person*** - An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal Government, State Government, political subdivisions and Commonwealth instrumentalities.

***Pesticide*** - Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

***Plant regulator*** -

(i) A substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(ii) The term does not include any of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for



improvement, maintenance, survival, health and propagation of plants and are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

***Prime farmland*** - Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

***Secretary*** - The Secretary of the Department.

***Tank mix or spray mix*** - A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.

***Treatment*** - The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.103).

***Under the direct supervision of a certified commercial or public applicator*** - Unless otherwise prescribed by labeling, means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.

***Unreasonable adverse effects on the environment*** – Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any pesticide or agricultural chemical.

§ 130d.2. Scope.

(a) The Department has such powers and the duties as are set forth under section 904(d) of the act (35 P.S. § 6026.904(d)).

(b) This chapter specifies general procedures and rules for persons who solicit ~~or~~ AND receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.

(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of ~~contaminated~~ soil or groundwater generated as the result of remediation activities as follows:

(1) That ~~were undertaken at an agricultural chemical facility, where the soil or groundwater is~~ ARE contaminated with chemicals or substances other than agricultural chemicals.

~~(i) The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals.~~

~~(ii) Where the contaminated soil or groundwater contains chemicals or substances other than an agricultural chemicals, the applicant shall receive prior approval for land application of the chemicals or substances from the appropriate regulatory agency or shall proceed under the alternative provisions of the act, which include holding the soil and~~

~~groundwater onsite under the regulations regarding onsite storage of waste or processing the soil and groundwater in a manner consistent with the type of waste contained in the soil pile or groundwater.~~

~~(iii) The applicant is responsible for obtaining any additional permits or approvals necessary for the application of the contaminated media.~~

(2) That were not undertaken at an agricultural chemical facility.

(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.

(D) THE APPLICANT IS RESPONSIBLE FOR OBTAINING ANY ADDITIONAL PERMITS OR APPROVALS NECESSARY FOR MANAGEMENT OF WASTE THAT CONTAINS AGRICULTURAL CHEMICALS AND OTHER CHEMICALS OR SUBSTANCES. THE APPLICANT SHALL SUBMIT AN AFFIDAVIT ATTESTING TO THE FACT THAT EITHER NO CONTAMINANTS OTHER THAN THE AGRICULTURAL CHEMICALS TESTED FOR AND SET FORTH IN THEIR APPLICATION ARE PRESENT IN THE SOIL OR GROUNDWATER THEY SEEK TO APPLY TO THE AGRICULTURAL LAND OR IF OTHER CONTAMINANTS EXIST, AN AFFIDAVIT STATING WHAT THOSE CONTAMINANTS ARE AND ATTESTING TO THE FACT THE APPLICANT HAS RECEIVED ALL PERMITS OR APPROVALS NECESSARY FOR THE APPLICATION OF THOSE CONTAMINANTS TO AGRICULTURAL LAND. IF SUCH PERMITS OR APPROVALS ARE OBTAINED PRIOR TO SUBMISSION OF

THE LAND APPLICATION PROPOSAL THE PERMITS OR APPROVALS OR BOTH SHALL BE ATTACHED TO THE LAND APPLICATION PROPOSAL.

§ **130d.3. Continuing authority.**

(A) Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.

(B) NOTHING IN THIS CHAPTER MAY BE CONSTRUED TO PLACE ANY DUTY, RESPONSIBILITY OR LIABILITY ON THE DEPARTMENT FOR CONTAMINANTS IN SOIL OR GROUNDWATER OTHER THAN AGRICULTURAL CHEMICALS THAT WERE TESTED FOR AND APPROVED BY THE DEPARTMENT. THE APPLICANT IS SOLEY RESPONSIBLE FOR ALL DUTIES AND LIABILITY RELATED TO ALL CONTAMINANTS OTHER THAN THE AGRICULTURAL CHEMICALS TESTED FOR, SET FORTH IN THE APPLICANT'S LAND APPLICATION PROPOSAL AND APPROVED BY THE DEPARTMENT.

§ **130D.4. RETAINED RECORDKEEPING.**

(A) *GENERAL.* AN APPLICANT RECEIVING PERMISSION TO APPLY SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND, SHALL MAINTAIN RECORDS IN ACCORDANCE WITH RECORDKEEPING PROVISIONS OF SECTION 55 OF THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.55) AND IN

ACCORDANCE WITH THE APPROPRIATE RECORDKEEPING PROVISIONS OF THE DEPARTMENT'S REGULATIONS IN CHAPTER 128 OF THE PENNSYLVANIA CODE (7 PA.CODE §§ 128.11, 128.24, 128.35, 128.53, 128.65, 128.88). IN ADDITION, AN APPROVED APPLICANT SHALL KEEP THE FOLLOWING RECORDS:

(1) THE DAILY OPERATION RECORDS REQUIRED BY §130D.46 OF THIS CHAPTER (RELATING TO DAILY OPERATIONAL RECORDS).

(2) THE ANNUAL OPERATION REPORT REQUIRED BY § 130D.48 OF THIS CHAPTER (RELATING TO ANNUAL OPERATIONAL REPORT).

(3) THE FINAL REPORT REQUIRED BY § 130D.62 OF THIS CHAPTER.

(4) THE RIGHT OF ENTRY AGREEMENT REQUIRED BY § 130D.27(B) OF THIS CHAPTER (RELATING TO RIGHT OF ENTRY).

(B) *INSPECTION AND AUDIT.* ALL RECORDS AND DOCUMENTS SHALL BE AVAILABLE FOR INSPECTION OR AUDIT AT REASONABLE TIMES (SUCH AS REGULAR OPERATING HOURS OF THE DEPARTMENT) BY THE DEPARTMENT OR ITS AUTHORIZED AGENTS.

(C) *RETENTION TIME PERIOD.* ALL RECORDS, REPORTS AND DOCUMENTS SHALL BE RETAINED BY THE PERSON RESPONSIBLE FOR THE APPLICATION OF THE SOIL AND GROUNDWATER FOR 5 YEARS AFTER THE DATE ON WHICH THE SITE CLOSURE PLAN AND FINAL REPORT WERE APPROVED BY THE DEPARTMENT.

**§ 130D.5. PUBLIC NOTICE BY APPLICANT.**

THE APPLICANT SHALL COMPLY WITH THE NOTICE REQUIREMENTS ESTABLISHED BY SECTION 45A OF THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.45A) AND THE REGULATIONS ESTABLISHED IN CHAPTER 128 OF THE PENNSYLVANIA CODE, SPECIFICALLY THOSE RELATING TO PRIOR NOTIFICATION (7 PA.CODE §§ 128.81-128.89) AND NOTIFICATION OF HYPERSENSITIVE INDIVIDUALS (7 PA.CODE § 128.112).

**~~Subchapter B. DUTIES OF APPLICATORS~~**

**Sec.**

- ~~130d.11. Scope.~~**
- ~~130d.12. Reports.~~**
- ~~130d.13. Chemical analysis of waste.~~**
- ~~130d.14. Waste analysis plan.~~**
- ~~130d.15. Application site analysis.~~**
- ~~130d.16. Retained recordkeeping.~~**
- ~~130d.17. Public notice by applicant.~~**

**~~§ 130d.11. Scope.~~**

~~A person who solicits or receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall comply with the act, this chapter and the environmental protection acts.~~

~~§ 130d.12. Reports.~~

~~(a) A person who solicits or receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall file an annual report and a final report with the Department. The annual report and the final report may be combined when the application of the contaminated soil or groundwater is completed in less than 1 year.~~

~~(b) The reports shall be submitted on forms prepared by the Department and shall contain the following:~~

~~(1) The name, mailing address, county and telephone number of the person applying the contaminated soil or groundwater.~~

~~(2) The name, mailing address, county and telephone number of the owner of the agricultural land upon which the contaminated soil or groundwater is being or has been applied.~~

~~(3) A copy of the daily and annual records required by this chapter.~~

~~(4) A spread sheet on each soil pile or quantity of groundwater applied documenting the following:~~

~~(i) The chemical analysis of each soil pile or quantity of groundwater applied.~~

~~(ii) The chemical analysis of each field or plot upon which a soil pile or quantity of groundwater was applied.~~

~~(iii) The specific field or plot upon which each soil pile or quantity of groundwater was applied.~~

(iv) ~~The application method used for each soil pile or quantity of groundwater.~~

(v) ~~The date of incorporation and depth of incorporation of each soil pile.~~

~~§ 130d.13. Chemical analysis of waste.~~

(a) ~~A person who seeks to apply soil or groundwater generated as a result of remediation activities at an agricultural chemical facility, to agricultural land shall perform a detailed analysis of the soil or groundwater that fully characterizes the physical properties and chemical composition of each type of, waste that may have been generated at the remediation site.~~

(b) ~~The analysis of the soil or groundwater sought to be applied to agricultural land shall encompass all types of wastes that are likely to be contained in the soil or groundwater at the remediation site. This includes wastes generated as the result of operations, manufacturing, mixing, storage, distribution and facility or machinery maintenance carried out at the remediation site. The types of wastes likely to be contained in the soil and groundwater shall be gleaned from information available regarding the person or facility at which the remediation activities are taking place and the remediation site including the following:~~

(1) ~~Records, including sales records, memorandums, invoices, repair and maintenance documents and historical data, of the type of products produced, used and stored by the person or facility being remediated and at the remediation site.~~



~~—— (2) Material safety data sheets or similar sources that may help characterize the types of waste generated.~~

~~—— (3) Notices of past violations or contamination if applicable.~~

~~(4) Information regarding any by product or chemical produced during or as a result of the manufacturing processes, mixing, storage or distribution of materials by the person or facility being remediated and at the site being remediated.~~

~~—— (5) A copy of the source reduction strategy of the person or facility at which remediation activities are taking place, if applicable.~~

~~(c) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals and the by products or derivatives thereof that were ever held, stored, formulated, sold or distributed by the agricultural chemical facility being remediated.~~

~~(1) In addition, the person proposing to land apply the contaminated media shall test for any other chemicals or contaminants, such as petroleum products or manufacturing or cleaning solvents which are likely to be in soil or groundwater at the agricultural chemical facility being remediated.~~

~~(2) The tests shall be predicated on the manufacturing processes or business carried on by the agricultural facility being remediated and records obtained from that facility.~~

~~(3) A verified copy or synopsis of such records, a history of the products and manufacturing processes carried on by the agricultural facility being~~

~~remediated and the final soil or groundwater, or both, test results shall be attached to and made part of the land application proposal submitted to the Department.~~

~~(d) Soil or groundwater, or both, samples from each soil pile or quantity of groundwater sought to be applied to agricultural land shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results and a record of laboratory quality control procedures and the use of those procedures shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.~~

~~—— (e) The chemical analysis of waste shall include the following:~~

~~(1) A waste sampling plan, including quality assurance and quality control procedures. The plan shall ensure an accurate and representative sampling of the contaminated soil or groundwater, or both, the person seeks to apply to agricultural land.~~

~~(2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to leach into the environment.~~

~~(3) A demonstration that the contaminated soil or groundwater can be land applied to agricultural land without negatively affecting the productivity of the agricultural land or causing harm to the environment.~~

~~§ 130d.14. Waste analysis plan.~~

~~—— The applicant shall develop a waste analysis plan. The waste analysis plan shall cover each chemical, nutrient or constituent proposed to be applied to the agricultural~~

~~land. The plan shall take into account the chemical analysis required by § 130d.13~~

~~(relating to chemical analysis of waste). At a minimum, the plan shall include:~~

~~(1) The type of chemicals, nutrients and constituents for which each soil pile or quantity of groundwater will be analyzed and the rationale for the selection of those chemicals, nutrients and constituents.~~

~~(2) The test methods that will be used to test for these chemicals, nutrients and constituents.~~

~~(3) An explanation of the sampling methods that will be used to obtain an accurate and representative sample of the contaminated soil and groundwater to be analyzed, including quality assurance and quality control procedures. The sampling method used shall assure at least one representative sample is taken from each soil pile or quantity of groundwater proposed to be applied to agricultural land.~~

~~4. Individual soil piles and quantities of groundwater may contain different types and concentrations of chemicals, nutrients and constituents. Therefore, the plan shall include a method for labeling and managing the soil piles and quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site.~~

~~§ 130d.15. Application site analysis.~~

~~The applicant shall develop an application site analysis plan. The application site analysis plan shall cover soil samples taken from the proposed application site. The soil samples taken from the proposed application site shall be tested for each chemical, nutrient or constituent found in the soil or groundwater at the remediated sites that are~~

~~proposed to be applied to the application site. In addition, the application site analysis shall delineate the soil types found within the proposed application area. The plan shall take into account the chemical analysis of waste required by § 130d.13 (relating to chemical analysis of waste) and the waste analysis required by § 130d.14 (relating to waste analysis plan). At a minimum, the application site analysis plan shall include:~~

~~(1) A chemical, nutrient and constituent analysis of each field or plot upon which a soil pile or quantity of groundwater from the remediated agricultural facility is to be applied.~~

~~(2) The test results from soil samples taken from each field at the proposed application sight where the contaminated media is to be applied.~~

~~(3) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals, the by products or derivatives thereof, and each chemical, nutrient or constituent that was found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated which are to be applied at the proposed application site.~~

~~(4) Soil samples from each field or plot upon which the contaminated soil or groundwater, or both, from the remediated agricultural facility is to be applied shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results and a record of laboratory quality control procedures and the use of those procedures shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. The submittal of~~

~~quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.~~

~~(5) Documentation of the soil types found within the proposed application area.~~

~~§ 130d.16. Retained recordkeeping.~~

~~(a) General. An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain the following records:~~

~~(1) The daily operation records required by §130d.68 (relating to daily operational records).~~

~~(2) The annual operation records required by § 130d.69 (relating to annual operational report).~~

~~(3) The signed agreement between the person responsible for the land application and the owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.~~

~~(4) The right of entry agreement.~~

~~(b) Inspection and audit. The records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agents.~~

~~(c) Retention time period. The records and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were submitted and approved by the Department.~~

~~§ 130d.17. Public notice by applicant.~~

~~The applicant shall comply with the notice requirements established by the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61) and the regulations in Chapter 128 (relating to pesticides).~~

**Subchapter C B. – GENERAL LAND APPLICATION PROPOSAL  
REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND  
GROUNDWATER CONTAMINATED WITH AGRICULTURAL  
CHEMICALS TO AGRICULTURAL LAND.**

Sec.

- 130d.21. **General requirements for land application proposal form.**
- 130D.22. **CHEMICAL ANALYSIS OF WASTE AND SAMPLING TECHNIQUES AND PROTOCOL.**
- 130D.23. **WASTE SAMPLING PLAN.**
- 130D.24. **OPERATING PLAN.**
- 130D.25. **MAPS AND RELATED INFORMATION.**
- 130d.2226. ~~Insurance.~~ **FINANCIAL RESPONSIBILITY.**
- 130d.2327. **Right of entry and agreement with landowner.**
- 130d.2428. **Identification of interest.**
- 130d.2529. **Compliance information.**
- 130d.2630. **Environmental assessment.**

§ 130d.21. **General requirements for land application proposal form.**

(a) *Submittal.* Land application proposals shall be submitted in writing, on forms provided by the Department. Persons submitting land application proposals shall submit them to the Department at the address set on the land application proposal form developed by the Department.

(b) *Documentation.* Each land application proposal shall include and have attached thereto, information, maps, plans, specifications, designs, analyses, test reports

and other data as may be required by the Department to determine compliance with this chapter. THE DEPARTMENT WILL NOTIFY THE APPLICANT IN WRITING REQUESTING ANY ADDITIONAL INFORMATION.

~~(e) *Information.* Information in the land application proposal shall be current, presented clearly and concisely and supported by appropriate references to technical and other written material made available to the Department.~~

~~(d) (C) *Affirmation of chemical analysis OF WASTE AND SAMPLING TECHNIQUES AND PROTOCOL and THE waste analysis SAMPLING plan.*~~

The chemical analysis of waste AND SAMPLING TECHNIQUES AND PROTOCOL and the waste ~~analysis~~ SAMPLING plan, REQUIRED BY § 130D.22 AND § 130D.23 OF THIS CHAPTER, shall be supported by ~~an affirmation of sworn statement~~ AN AFFIDAVIT, signed by the applicant, affirming that all known and likely AGRICULTURAL chemicals, nutrients and constituents at the remediation site were tested for and the tests were performed in accordance with the procedures and protocols in THIS CHAPTER AND the APPLICANT'S land application proposal.

(D) *AFFIRMATION OF COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND ORDINANCES.* THE APPLICANT SHALL SUBMIT A SIGNED AFFIDAVIT, AFFIRMING THEY HAVE RECEIVED THE PROPER PERMITS AND APPROVALS AND THAT THE REMOVAL, STORAGE, HANDLING AND APPLICATION OF THE CONTAMINATED SOIL OR GROUNDWATER IS IN COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND ORDINANCES.

~~(e) *Affirmation of operation plan.* The operating plan, setting forth the parameters, rates of application and methods to be employed for the land application of~~

~~the soil or groundwater contaminated with agricultural chemicals,~~ shall be SIGNED BY THE APPLICANT AND THE APPROPRIATE APPLICATOR VERIFYING THAT THE TECHNIQUES, METHODS AND RATES OF APPLICATION SET FORTH IN THE OPERATING PLAN WILL BE FOLLOWED ~~affirmed by an appropriate certified applicator.~~

**§ 130D.22. CHEMICAL ANALYSIS OF WASTE AND SAMPLING TECHNIQUES AND PROTOCOL.**

(A) GENERAL CRITERIA. A PERSON WHO SEEKS TO APPLY SOIL OR GROUNDWATER, GENERATED AS A RESULT OF REMEDIATION ACTIVITIES AT AN AGRICULTURAL CHEMICAL FACILITY, TO AGRICULTURAL LAND SHALL PERFORM A DETAILED ANALYSIS AND TESTING OF THE SOIL OR GROUNDWATER OR BOTH AT THE AGRICULTURAL CHEMICAL FACILITY SITE AND THE APPLICATION SITE. A VERIFIED COPY OF THE SAMPLING TECHNIQUES AND RESULTS SHALL BE SUBMITTED TO THE DEPARTMENT AS PART OF THE LAND APPLICATION PROPOSAL.

(B) ANALYSIS AND TESTING OF THE SOIL OR GROUNDWATER OR BOTH AT THE AGRICULTURAL CHEMICAL FACILITY SITE. THE ANALYSIS AND TESTING AT THE AGRICULTURAL CHEMICAL FACILITY SITE SHALL FULLY CHARACTERIZE THE PHYSICAL PROPERTIES AND CHEMICAL COMPOSITION OF EACH TYPE OF AGRICULTURAL CHEMICAL THAT WAS HELD, STORED, BLENDED, FORMULATED, SOLD, DISTRIBUTED, MANUFACTURED OR GENERATED BY THE AGRICULTURAL CHEMICAL FACILITY AND SHALL BE DONE IN ACCORDANCE WITH SUBSECTIONS (D)



AND (E)(1) AND (2) OF THIS SECTION. THE SUBSTANCES TESTED FOR SHALL BE PREDICATED ON THE MANUFACTURING PROCESSES AND BUSINESS CARRIED ON AT THE AGRICULTURAL CHEMICAL FACILITY SITE BEING REMEDIATED AND RECORDS OBTAINED FROM THAT AGRICULTURAL CHEMICAL FACILITY OR FACILITIES ON THAT SITE. THE TYPES OF AGRICULTURAL CHEMICALS LIKELY TO BE CONTAINED IN THE SOIL AND GROUNDWATER SHALL BE GLEANED FROM INFORMATION AVAILABLE REGARDING THE AGRICULTURAL CHEMICAL FACILITY SITE AT WHICH THE REMEDIATION ACTIVITIES ARE TAKING PLACE INCLUDING THE FOLLOWING:

(1) RECORDS, INCLUDING SALES RECORDS, MEMORANDUMS, INVOICES AND HISTORICAL DATA, OF THE TYPE OF PRODUCTS MANUFACTURED, HELD, STORED, FORMULATED, SOLD, DISTRIBUTED, PRODUCED OR USED.

(2) MATERIAL SAFETY DATA SHEETS OR SIMILAR SOURCES THAT MAY HELP CHARACTERIZE THE TYPES OF AGRICULTURAL CHEMICALS AND WASTE GENERATED.

(3) NOTICES OF PAST SPILLS, VIOLATIONS OR CONTAMINATION IF APPLICABLE.

(4) INFORMATION REGARDING ANY AGRICULTURAL CHEMICAL BY-PRODUCT OR AGRICULTURAL CHEMICAL PRODUCED DURING OR AS A RESULT OF THE MANUFACTURING PROCESSES, MIXING, STORAGE OR DISTRIBUTION OF MATERIALS.

(C) ANALYSIS AND TESTING OF SOIL AT THE PROPOSED APPLICATION SITE. THE ANALYSIS AND TESTING AT THE PROPOSED APPLICATION SITE SHALL COVER SOIL SAMPLES TAKEN FROM THE PROPOSED APPLICATION SITE AND SHALL BE DONE IN ACCORDANCE WITH SUBSECTIONS (D) AND (E)(3) OF THIS SECTION. THE SOIL SAMPLES TAKEN FROM THE PROPOSED APPLICATION SITE SHALL BE TESTED FOR EACH AGRICULTURAL CHEMICAL, NUTRIENT OR CONSTITUENT FOUND IN THE SOIL OR GROUNDWATER OR BOTH AT THE AGRICULTURAL CHEMICAL FACILITY SITE THAT IS PROPOSED TO BE APPLIED TO THE APPLICATION SITE. IN ADDITION, THE PROPOSED APPLICATION SITE ANALYSIS SHALL DELINEATE THE SOIL TYPES FOUND WITHIN THE PROPOSED APPLICATION AREA. THE TESTING AND ANALYSIS OF THE SOIL AT THE PROPOSED APPLICATION SITE, AT MINIMUM, SHALL INCLUDE:

(1) A CHEMICAL, NUTRIENT AND CONSTITUENT ANALYSIS OF EACH FIFTEEN (15) ACRE FIELD OR PLOT UPON WHICH A SOIL PILE OR QUANTITY OF GROUNDWATER FROM THE REMEDIATED AGRICULTURAL CHEMICAL FACILITY SITE IS TO BE APPLIED.

(2) TESTING FOR ALL AGRICULTURAL CHEMICALS, THE BY-PRODUCTS OR DERIVATIVES THEREOF, AND EACH AGRICULTURAL CHEMICAL, NUTRIENT OR CONSTITUENT THAT WAS FOUND TO BE PRESENT IN THE CONTAMINATED SOIL OR GROUNDWATER OR BOTH AT THE AGRICULTURAL CHEMICAL FACILITY BEING REMEDIATED WHICH ARE TO BE APPLIED AT THE PROPOSED APPLICATION SITE.

(3) DOCUMENTATION OF THE SOIL TYPES FOUND WITHIN THE PROPOSED APPLICATION AREA.

(D) APPROVED LABORATORY. SOIL OR GROUNDWATER SAMPLES OR BOTH FROM EACH SOIL PILE OR QUANTITY OF GROUNDWATER TAKEN FROM THE AGRICULTURE CHEMICAL FACILITY SITE BEING REMEDIATED AND SOUGHT TO BE APPLIED TO AGRICULTURAL LAND AND SOIL SAMPLES TAKEN FROM THE APPLICATION SITE SHALL BE TESTED ON A PARTS PER MILLION BASIS AND SHALL BE SUBMITTED FOR ANALYSIS TO A LABORATORY COMPLIANT WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S (EPA) GOOD LABORATORY PRACTICES (GLP) PROGRAM. A LIST OF EPA GLP COMPLIANT LABORATORIES IS AVAILABLE ON THE DEPARTMENT'S WEBSITE. A COPY OF THE TEST RESULTS SHALL BE SUBMITTED TO THE DEPARTMENT AS PART OF THE LAND APPLICATION PROPOSAL AND TO THE OWNER OF THE AGRICULTURAL LAND ON WHICH THE CONTAMINATED SOIL AND GROUNDWATER IS SOUGHT TO BE APPLIED.

(E) SAMPLING TECHNIQUES. SAMPLING TECHNIQUES SHALL BE CONSISTENT WITH THE SAMPLING PROCEDURES SET FORTH IN THE *PENNSYLVANIA AGRONOMY GUIDE* WHICH ARE SET FORTH HEREIN.

(1) SOIL PILE SAMPLES FROM THE AGRICULTURAL CHEMICAL FACILITY REMEDIATION SITE: SAMPLING OF SOIL PILES FROM AN AGRICULTURAL CHEMICAL FACILITY REMEDIATION SITE SHALL CONSIST OF ONE REPRESENTATIVE SAMPLE FROM EACH SOIL PILE

PROPOSED TO BE LAND APPLIED. A REPRESENTATIVE SAMPLE SHALL CONSIST OF FIFTEEN (15) CORE SAMPLES FROM EACH SOIL PILE AT THE REMEDIATION SITE WHICH IS PROPOSED TO BE LAND APPLIED TO AN AGRICULTURAL SITE. A SOIL PILE SHALL CONTAIN NO MORE THAN THIRTY-SIX THOUSAND (36,000) CUBIC YARDS OF SOIL, WHICH REPRESENTS THE CUBIC YARDS OF SOIL CONTAINED IN FIFTEEN (15) ACRES OF LAND AT A SIX INCH DEPTH AND IS CONSISTENT WITH THE STANDARDS ESTABLISHED IN THE *PENNSYLVANIA AGRONOMY GUIDE*. MULTIPLE SOIL PILES REQUIRE MULTIPLE SAMPLES. SAMPLES SHALL BE COLLECTED AND RECORDED IN THE FOLLOWING MANNER:

(i) FIFTEEN (15) CORE SAMPLES SHALL BE COLLECTED FROM EACH SOIL PILE PROPOSED TO BE LAND APPLIED.

(ii) EACH CORE SAMPLE SHALL BE COLLECTED FROM A DEPTH OF AT LEAST FOUR (4) TO SIX (6) INCHES.

(iii) THE CORE SAMPLES TAKEN FROM EACH SOIL PILE SHALL BE MIXED IN ORDER TO ACQUIRE A REPRESENTATIVE SAMPLE FROM THAT PARTICULAR SOIL PILE.

(iv) ROOTS, STONES AND OTHER DEBRIS NOT REPRESENTATIVE OF THE SUBSTRATE BEING SAMPLED AND PROPOSED FOR LAND APPLICATION SHALL BE REMOVED FROM THE CORE SAMPLES.

(v) THE MIXED SAMPLE FROM EACH SOIL PILE SHALL BE PLACED IN A CLEAN UNUSED CONTAINER AND MARKED IN A MANNER DELINEATING THE PARTICULAR SOIL PILE FROM WHICH THE SAMPLE WAS TAKEN. THE SAMPLE CONTAINER SHALL BE COMPLIANT WITH THE STANDARDS ESTABLISHED BY THE APPROVED LABORATORY TO WHICH THE SOIL SAMPLES WILL BE SUBMITTED FOR TESTING.

(vi) THE APPLICANT SHALL COMPLETE THE REQUIRED REPORT FORM, SET FORTH THE AGRICULTURAL CHEMICALS TO BE TESTED FOR, IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER, AND SUBMIT THE SAMPLE OR SAMPLES TO AN APPROVED LABORATORY.

(2) WATER SAMPLES FROM THE AGRICULTURAL CHEMICAL FACILITY REMEDIATION SITE: WHERE GROUNDWATER FROM AN AGRICULTURAL CHEMICAL FACILITY REMEDIATION SITE IS PROPOSED TO BE APPLIED TO AGRICULTURAL LAND, THE APPLICANT SHALL COLLECT ONE (1) PINT OF WATER FROM THE REMEDIATION SITE FOR EVERY 2,000 GALLONS OF WATER SOUGHT TO BE LAND APPLIED OR UTILIZED AS TANK MIX. SAMPLES SHALL BE COLLECTED AND RECORDED IN THE FOLLOWING MANNER:

(i) SAMPLES SHALL BE COLLECTED FROM RANDOM AND MIXED POINTS AND DEPTHS THROUGHOUT THE REMEDIATION SITE TO ASSURE A TRUE AND REPRESENTATIVE SAMPLING OF THE

WATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AT THE REMEDIATION SITE.

(ii) SAMPLES SHALL BE COLLECTED IN CLEAN UNUSED GLASS BOTTLES AND KEPT CHILLED DURING AND PRIOR TO DELIVERY TO AN APPROVED LABORATORY.

(iii) SAMPLES SHALL BE MARKED IN A MANNER DELINEATING THE PARTICULAR SITE LOCATION AND DEPTH FROM WHICH THE SAMPLE WAS TAKEN.

(iv) THE APPLICANT SHALL COMPLETE THE REQUIRED REPORT FORM, SET FORTH THE AGRICULTURAL CHEMICALS TO BE TESTED FOR, IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER, AND SUBMIT THE SAMPLE OR SAMPLES TO AN APPROVED LABORATORY.

(3) SOIL SAMPLES FROM THE PROPOSED APPLICATION SITE: SAMPLING OF SOIL FROM THE PROPOSED APPLICATION SITE SHALL CONSIST OF ONE REPRESENTATIVE SAMPLE PER EVERY 15 ACRES OF LAND UPON WHICH THE SOIL CONTAMINATED WITH AGRICULTURAL CHEMICALS FROM THE AGRICULTURAL CHEMICAL FACILITY IS PROPOSED TO BE LAND APPLIED. SAMPLES SHALL BE COLLECTED AND RECORDED IN THE FOLLOWING MANNER:

(i) A REPRESENTATIVE SAMPLE SHALL CONSIST OF FIFTEEN (15) CORE SAMPLES COLLECTED FROM FIFTEEN (15) DIFFERENT AREAS PER FIFTEEN (15) ACRE PLOT (ONE CORE

SAMPLE TAKEN FROM EACH ACRE ON THAT PLOT) OF LAND  
AREA PROPOSED TO RECEIVE SOIL OR WATER  
CONTAMINATED WITH AGRICULTURAL CHEMICALS, OR  
BOTH, FROM AN AGRICULTURAL CHEMICAL FACILITY BEING  
REMEDiated UNDER THE ACT.

(ii) CORE SAMPLES SHALL BE COLLECTED FROM A  
DEPTH OF AT LEAST FOUR (4) TO SIX (6) INCHES.

(iii) THE FIFTEEN CORE SAMPLES COLLECTED FROM  
EACH 15 ACRE PLOT SHALL BE THOROUGHLY MIXED TO GET  
A REPRESENTATIVE SAMPLE FROM THAT FIFTEEN (15) ACRE  
PLOT.

(iv) ROOTS, STONES AND OTHER DEBRIS NOT  
REPRESENTATIVE OF THE FIELD PLOT BEING SAMPLED SHALL  
BE REMOVED FROM THE CORE SAMPLES.

(v) THE MIXED SAMPLE FROM EACH FIFTEEN (15) ACRE  
PLOT SHALL BE PLACED IN A CLEAN, UNUSED CONTAINER  
AND MARKED IN A MANNER DELINEATING THE PARTICULAR  
FIFTEEN (15) ACRE PLOT FROM WHICH THE SAMPLE WAS  
TAKEN. THE SAMPLE CONTAINER SHALL BE COMPLIANT  
WITH THE STANDARDS ESTABLISHED BY THE APPROVED  
LABORATORY TO WHICH THE SOIL SAMPLE WILL BE  
SUBMITTED FOR TESTING.

(vi) THE APPLICANT SHALL COMPLETE THE REQUIRED REPORT FORM, SET FORTH THE AGRICULTURAL CHEMICALS TO BE TESTED FOR AND SUBMIT THE SAMPLE OR SAMPLES TO AN APPROVED LABORATORY.

**§ 130D.23. WASTE SAMPLING PLAN.**

THE APPLICANT SHALL DEVELOP A WASTE SAMPLING PLAN. THE WASTE SAMPLING PLAN SHALL BE ATTACHED TO AND MADE PART OF THE LAND APPLICATION PROPOSAL SUBMITTED TO THE DEPARTMENT. THE WASTE SAMPLING PLAN SHALL ENCOMPASS THE SAMPLING TECHNIQUES UTILIZED FOR THE SOIL OR GROUNDWATER FROM THE AGRICULTURAL CHEMICAL FACILITY SITE AND THE APPLICATION SITE. THE WASTE SAMPLING PLAN SHALL COVER EACH AGRICULTURAL CHEMICAL, NUTRIENT OR CONSTITUENT PROPOSED TO BE APPLIED TO THE AGRICULTURAL LAND. THE WASTE SAMPLING PLAN SHALL TAKE INTO ACCOUNT AND BE CONSISTENT WITH THE CHEMICAL ANALYSIS AND TESTING PROTOCOL REQUIRED BY § 130D.22 (RELATING TO CHEMICAL ANALYSIS OF WASTE AND SAMPLING TECHNIQUES AND PROTOCOL). AT A MINIMUM, THE PLAN SHALL INCLUDE:

(1) QUALITY ASSURANCE AND QUALITY CONTROL PROCEDURES. THE PLAN SHALL ENSURE AN ACCURATE AND REPRESENTATIVE SAMPLING OF THE CONTAMINATED SOIL OR GROUNDWATER OR BOTH THE PERSON SEEKS TO APPLY TO AGRICULTURAL LAND AND AN ACCURATE AND REPRESENTATIVE SAMPLING FROM EACH FIELD OR PLOT



AT THE APPLICATION SITE UPON WHICH THE CONTAMINATED MEDIA  
WILL BE PLACED. THE PLAN SHALL SET FORTH THE FOLLOWING:

(I) THE TYPE OF CHEMICALS, NUTRIENTS AND CONSTITUENTS  
FOR WHICH EACH SOIL PILE OR QUANTITY OF GROUNDWATER  
WERE TESTED AND ANALYZED AND THE RATIONALE FOR THE  
SELECTION OF THOSE CHEMICALS, NUTRIENTS AND CONSTITUENTS.

(II) THE NAME AND ADDRESS OF THE APPROVED  
LABORATORY THAT WAS USED TO TEST FOR THE CHEMICALS,  
NUTRIENTS AND CONSTITUENTS.

(III) INDIVIDUAL SOIL PILES AND QUANTITIES OF  
GROUNDWATER MAY CONTAIN DIFFERENT TYPES AND  
CONCENTRATIONS OF CHEMICALS, NUTRIENTS AND  
CONSTITUENTS. THEREFORE, THE PLAN SHALL INCLUDE THE  
METHOD UTILIZED FOR LABELING AND MANAGING THE SOIL PILES  
AND QUANTITIES OF GROUNDWATER TO ASSURE THEY ARE  
APPLIED AT THE PROPER RATES AND TO THE PROPER AREAS ONCE  
THEY REACH THE APPLICATION SITE.

(2) AN EVALUATION OF THE ABILITY OF THE AGRICULTURAL  
CHEMICALS AND CONSTITUENTS CONTAINED IN THE SOIL OR  
GROUNDWATER TO BE FULLY UTILIZED BY THE CROP TO BE GROWN ON  
THE APPLICATION SITE AND TO LEACH INTO THE ENVIRONMENT.

(3) A NARRATIVE DELINEATING THE SCIENTIFIC EVIDENCE  
SUPPORTING THE CONTENTION THAT THE CONTAMINATED SOIL OR

GROUNDWATER CAN BE LAND APPLIED TO AGRICULTURAL LAND WITHOUT NEGATIVELY AFFECTING THE PRODUCTIVITY OF THE AGRICULTURAL LAND OR CAUSING HARM TO THE ENVIRONMENT OR ANIMAL OR HUMAN HEALTH.

**§ 130D.24. OPERATING PLAN.**

THE LAND APPLICATION PROPOSAL SHALL CONTAIN AN OPERATING PLAN SETTING FORTH GENERAL INFORMATION AND LAND APPLICATION RATES AND PROCEDURES. INFORMATION IN THE OPERATING PLAN WILL BE CONSIDERED BY THE DEPARTMENT WHEN REVIEWING THE LAND APPLICATION PROPOSAL.

(1) *GENERAL INFORMATION.* THE OPERATING PLAN SHALL CONTAIN THE FOLLOWING GENERAL INFORMATION:

(I) THE ADDRESS AND A DESCRIPTION OF THE REMEDIATION SITE FROM WHICH THE CONTAMINATED SOIL OR GROUNDWATER TO BE APPLIED TO THE AGRICULTURAL LAND ORIGINATED OR WAS GENERATED.

(II) THE ADDRESS AND A DESCRIPTION OF THE AGRICULTURAL SITE TO WHICH THE CONTAMINATED SOIL OR GROUNDWATER WILL BE APPLIED.

(III) THE PROPOSED LIFE OF THE OPERATION FROM THE TIME THE FIRST SOIL PILE OR QUANTITY OF GROUNDWATER ARRIVES ON THE APPLICATION SITE TO FINAL CLOSURE OF THE APPLICATION SITE AND THE ORIGIN AND CHEMICAL, NUTRIENT AND

CONSTITUENT MAKE UP OF EACH SOIL PILE OR QUANTITY OF GROUNDWATER TO BE APPLIED.

(IV) THE PROPOSED APPLICATION RATE PER ACRE, WHICH SHALL BE CONSISTENT WITH STANDARDS ESTABLISHED BY THIS CHAPTER, AS WELL AS, THE NUTRIENT MANAGEMENT ACT (3 P.S. §§ 1701-1718), FERTILIZER ACT (3 PA.C.S.A. §§ 6701-6725), SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-6921, PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61) AND THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y).

(V) THE PROPOSED METHODS, TECHNIQUES AND TYPES OF APPLICATIONS, WHICH SHALL BE CONSISTENT WITH STANDARDS ESTABLISHED BY THIS CHAPTER AS WELL AS THE NUTRIENT MANAGEMENT ACT (3 P.S. §§ 1701-1718), FERTILIZER ACT (3 PA.C.S.A. §§ 6701-6725), SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-6921, PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61); AND FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y).

(VI) THE PROPOSED DATES OF APPLICATION.

(VII) THE EQUIPMENT TO BE USED FOR SITE PREPARATION, LAND APPLICATION OF THE CONTAMINATED SOIL AND GROUNDWATER AND INCORPORATION OF THE CONTAMINATED SOIL.

(VIII) THE USE THAT WILL BE MADE OF THE PROPOSED APPLICATION AREA AND THE CROPS THAT WILL BE PLANTED ON EACH APPLICATION PLOT FOR THREE YEARS FOLLOWING THE APPLICATION.

(IX) A PLAN TO CONTROL DRIFT OR MIGRATION OF THE CHEMICALS, NUTRIENTS AND CONSTITUENTS IN THE SOIL AND GROUNDWATER BEING APPLIED.

(X) INFORMATION NECESSARY TO SHOW COMPLIANCE WITH THIS CHAPTER SUCH AS THE CONTAMINANTS AND CONTAMINATION LEVELS IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER, THE SPECIFIC PLOT UPON WHICH EACH SOIL PILE OR QUANTITY OF GROUNDWATER WILL BE PLACED AND THE TECHNIQUES AND APPLICATION RATES TO BE UTILIZED.

(2) *APPLICATION RATE CALCULATION.* THE DEPARTMENT WILL REVIEW THE APPLICATION RATE PROPOSAL SET FORTH BY THE APPLICANT IN THE LAND APPLICATION PROPOSAL. THE DEPARTMENT WILL CONSIDER THE FOLLOWING, WHICH SHALL BE ADDRESSED IN THE APPLICANT'S OPERATION PLAN:

(I) THE TYPE AND CONCENTRATION OF EACH AGRICULTURAL CHEMICAL CONTAINED IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER REPORTED BY THE APPLICANT IN THE LAND APPLICATION PROPOSAL SUBMITTED TO THE DEPARTMENT.

(II) THE EXCAVATED SOIL TYPE INDICATED BY THE APPLICANT IN THE LAND APPLICATION PROPOSAL SUBMITTED TO THE DEPARTMENT.

(III) THE TOTAL VOLUME OF EXCAVATED SOIL OR CONTAMINATED GROUNDWATER IN EACH INDIVIDUAL SOIL PILE OR QUANTITY.

(IV) THE PROPOSED APPLICATION SITE CROP FOR THE UPCOMING GROWING SEASON AND A PROJECTED 3 YEAR CROP ROTATION PLAN INCLUDING THE USE OF THE LAND, TYPE OF CROP TO BE GROWN AND THE USE OF THE CROPS. THE SAME CROP MAY BE PLANTED YEAR AFTER YEAR WITH THE APPROVAL OF THE DEPARTMENT.

(V) THE CONCENTRATION, IN PARTS PER MILLION, OF THE ACTIVE INGREDIENTS IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

(VI) THE APPLICATION RATE FOR THE SELECTED SITE AND CROP BASED ON THE CURRENT LABELING FOR EACH PESTICIDE FOUND. IF FERTILIZERS ARE BEING APPLIED, THE APPLICANT SHALL FOLLOW THE RECOMMENDATIONS FOR FERTILIZER APPLICATIONS FOR SPECIFIC CROPS LISTED IN THE LATEST EDITION OF THE *PENNSYLVANIA AGRONOMY GUIDE*.

(VII) FOR AGRICULTURAL CHEMICALS OTHER THAN FERTILIZERS A CONVERSION FACTOR (37000) SHALL BE USED. THE CALCULATION CONSIDERS THE CONCENTRATION OF PARTS PER MILLION AND THE CONVERSION OF FT<sup>3</sup> TO YD<sup>3</sup>.

$$(3\text{FT})^3/\text{YD}^3 \div 1,000,000 = 1/37037.037$$

THE RESULT OF THE CALCULATION IS THE TOTAL ACREAGE REQUIRED FOR LAND APPLICATION FOR EACH INDIVIDUAL AGRICULTURAL CHEMICAL. A SAFETY FACTOR INCLUDED IN THIS CALCULATION CONSIDERS THE CUMULATIVE EFFECT OF ALL THE PESTICIDES DETECTED IN THE SOIL PILE OR QUANTITY OF GROUNDWATER. THE ACRES REQUIRED FOR EACH INDIVIDUAL CONTAMINANT FOUND IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS ARE SUMMED. THIS VALUE IS THE UNIFORM SOIL APPLICATION RATE. SOIL APPLICATION RATE (VOLUME OF EXCAVATED SOIL OR CONTAMINATED GROUNDWATER ÷ TOTAL ACRES REQUIRED) (YDS<sup>3</sup>/ACRE).

(VIII) THE APPLICATION CREDITS THAT SHALL BE TAKEN AND THE ADDITIVE LOADING EFFECT OF THE SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS. THE RATE WILL BE CALCULATED USING THE FOLLOWING FORMULA. (LAND REQUIRED FOR AN INDIVIDUAL

CONTAMINANT ÷ TOTAL ACRES REQUIRED) × PRODUCT LABEL  
RATE = ACTIVE INGREDIENT APPLICATION CREDIT (LBS/ACRES)).

(3) *APPLICATION RATE CONSIDERATIONS AND PROCEDURES.* THE  
FOLLOWING SHALL BE ADDRESSED IN THE APPLICANT'S OPERATION  
PLAN:

(I) *APPLICATION RATE.* THE APPLICATION RATE AS  
COMPARED TO THE LABEL RATES OF THE VARIOUS COMPOUNDS  
PRESENT IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER  
CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL ADHERE  
TO AND NOT EXCEED THE LABELING RATE FOR EACH COMPOUND  
PRESENT.

(II) *TOTAL LOADING.* ALL PESTICIDES DETECTED IN A SINGLE  
SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH  
AGRICULTURAL CHEMICALS SHALL BE CONSIDERED WHEN  
DEVELOPING SOIL APPLICATION RATES. THE CUMULATIVE EFFECT  
OF ALL THE PESTICIDES CAN BE CONSIDERED BY SUMMING THE  
ACREAGE NEEDED FOR EACH INDIVIDUAL PESTICIDE TO DEVELOP  
THE TOTAL ACREAGE REQUIRED. WHERE MORE THAN ONE  
PESTICIDE IS PRESENT IN A SOIL PILE OR QUANTITY OF  
GROUNDWATER THE SOIL PILE OR GROUNDWATER SHALL BE  
APPLIED AT THE MOST RESTRICTIVE LABELING RATE. NUTRIENTS  
SHALL BE CONSIDERED SEPARATELY FROM PESTICIDES WHEN  
DEVELOPING SOIL APPLICATION RATES. IN ADDITION, THE SUM OF

PESTICIDE ACTIVE INGREDIENT APPLIED THROUGH ANY LAND APPLICATION ACTIVITIES AND OTHER APPLICATIONS IN THE SAME SEASON (OR FOLLOWING SEASON, IN THE CASE OF FALL OR POST-HARVEST LAND APPLICATIONS) MAY NOT EXCEED LABELING RATE RESTRICTIONS FOR ANY PESTICIDE APPLIED.

(III) *INCORPORATION*. THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL BE APPLIED IN A MANNER THAT ASSURES AN EVEN DISTRIBUTION OF AGRICULTURAL CHEMICALS WITHIN THE SOIL PILE OR QUANTITY OF GROUNDWATER AND ENSURES THE APPLICATION RATE WILL BE UNIFORM ACROSS THE APPLICATION SITE. IN ADDITION, WHERE INCORPORATION IS NECESSARY, THE INCORPORATION TECHNIQUES USED FOR SOIL PILES CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL ACHIEVE A MIXTURE OF TOP SOIL AND CONTAMINATED MEDIA AND SHALL ENSURE THE CONTAMINATED MEDIA IS INCORPORATED TO A DEPTH OF ~~UP TO~~ NOT LESS THAN 6 INCHES. THE CONTAMINATED MEDIA SHALL BE INCORPORATED INTO THE SOIL AT THE APPLICATION SITE WITHIN 24 HOURS OF APPLICATION.

(IV) *TOP SOIL CONSIDERATIONS*. THE APPLICANT SHALL SET FORTH PROCEDURES (SUCH AS DEVELOPING A SOIL AND EROSION PREVENTION PLAN AND AN INCORPORATION PLAN) TO ASSURE



THAT TOPSOIL WILL NOT BE LOST, STRIPPED OFF THE LAND OR BURIED UNDER THE CONTAMINATED SOIL TO BE APPLIED.

(V) *UNIFORM APPLICATION RATE.* THE APPLICANT SHALL SET FORTH PROCEDURES TO ASSURE THE APPLICATION RATE WILL BE UNIFORM ACROSS THE FIELD APPLICATION AREA OR AS CLOSE TO UNIFORM AS IS POSSIBLE GIVEN THE CURRENT TECHNOLOGY, MACHINERY AND APPLICATION TECHNIQUES AVAILABLE.

(VI) *MULTIPLE APPLICATIONS OF NUTRIENTS.* THE TOTAL AMOUNT OF NUTRIENTS APPLIED THROUGH THE LAND APPLICATION PLUS OTHER COMMERCIAL FERTILIZERS, MANURE AND NUTRIENT APPLICATIONS SHALL BE SET FORTH IN THE OPERATION PLAN IN THE LAND APPLICATION PROPOSAL. IN ADDITION, IF THE NUTRIENTS ARE BEING APPLIED TO AN AGRICULTURAL SITE THAT IS REQUIRED TO HAVE A NUTRIENT MANAGEMENT PLAN, UNDER THE NUTRIENT MANAGEMENT ACT (3 P.S. §§ 1701-1718) THE APPLICANT SHALL ATTEST THAT THE APPLICATION OF THE ADDITIONAL NUTRIENTS CONTAINED IN THE SOIL PILES OR GROUNDWATER TO BE APPLIED CONFORM WITH AND DO NOT VIOLATE THE STANDARDS ESTABLISHED IN THE APPLICANT'S NUTRIENT MANAGEMENT PLAN. IF THE APPLICATION REQUIRES A REVISION TO THE NUTRIENT MANAGEMENT PLAN, THE APPLICANT SHALL ATTACH A NOTIFICATION FROM THE STATE CONSERVATION COMMISSION ATTESTING TO THE FACT THE

NUTRIENT MANAGEMENT PLAN HAS BEEN REVISED TO ACCOUNT FOR THE ADDITIONAL NUTRIENTS AND THE REVISED PLAN HAS RECEIVED FINAL APPROVAL.

(4) ADDITIONAL APPLICATION REQUIREMENTS.

THE OPERATING PLAN SHALL ALSO INCLUDE THE FOLLOWING INFORMATION:

(I) A PROJECTED 3-YEAR CROP ROTATION PLAN FOR EACH FIELD OR PLOT UPON WHICH SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS IS TO BE APPLIED, INCLUDING TYPE OF CROP TO BE GROWN, PLANTING SEQUENCE, CROP PLANTING TECHNIQUE TO BE USED, CROP AND LAND MANAGEMENT AND USE OF CROPS GROWN.

(II) A NUTRIENT AND PESTICIDE MANAGEMENT PLAN FOR THE SITE, INCLUDING:

(A) A DESCRIPTION OF THE KIND AND AMOUNT OF FERTILIZER, SOIL CONDITIONER OR PESTICIDE THAT WILL BE PLACED ON THE SITE IN ADDITION TO THE SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

(B) THE NUMBER AND KIND OF ANIMALS ON THE FARM OR PROPERTY AND THE TOTAL NUTRIENT VALUE OF THE MANURE PRODUCED BY THOSE ANIMALS, AND THE

LOCATION (FIELD OR PLOT) WHERE THE MANURE IS TO BE PLACED.

(C) AN EXPLANATION AND ANALYSIS OF THE EFFECT ON THE SOIL AND CROPS FROM THE ADDITIONAL NUTRIENTS, SOIL CONDITIONERS OR PESTICIDES THAT WOULD BE SUPPLIED BY THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

(D) THE BENEFIT TO THE SOIL, CROPS OR FARMING OPERATION THAT THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS WOULD PROVIDE.

**§ 130D.25. MAPS AND RELATED INFORMATION.**

(A) *BOUNDARY MAP.* A LAND APPLICATION PROPOSAL SHALL CONTAIN A DETAILED MAP OR MAPS INCLUDING NECESSARY NARRATIVE DESCRIPTIONS, WHICH SHOW THE FOLLOWING:

(1) THE BOUNDARIES AND THE NAMES OF THE PRESENT OWNERS OF RECORD OF THE LAND CONSTITUTING THE PROPOSED APPLICATION SITE AND A DESCRIPTION OF ALL TITLE, DEED OR USAGE RESTRICTIONS, INCLUDING EASEMENTS, RIGHT-OF-WAY, COVENANTS AND OTHER PROPERTY INTERESTS, AFFECTING THE PROPOSED APPLICATION SITE.

(2) THE BOUNDARIES OF THE LAND WHERE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL

CHEMICALS WILL BE APPLIED OVER THE ESTIMATED TOTAL LIFE OF THE PROPOSED APPLICATION, INCLUDING THE BOUNDARIES OF EACH PLOT OF LAND THAT WILL BE AFFECTED IN EACH SEQUENCE OF LAND APPLICATION ACTIVITY.

(3) THE MAP SHALL CONTAIN A GRID SHOWING THE EXACT FIELD OR LOCATION WHERE EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS WILL BE APPLIED.

(4) THE LOCATION AND NAME OF PUBLIC AND PRIVATE WATER SUPPLIES AND WELLS WITHIN THE PROPOSED APPLICATION SITE AND ADJACENT AREAS THAT ARE WITHIN THE SETBACK REQUIREMENTS SET FORTH IN SUBCHAPTER D (RELATING TO GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND).

(B) *SOILS MAP*. A LAND APPLICATION PROPOSAL SHALL CONTAIN A UNITED STATES DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE SOILS MAP OR OTHER RELIABLE DATA IF CURRENT SOILS MAPS ARE UNAVAILABLE, WHICH SHOWS THE LOCATION AND TYPES OF SOILS WITHIN THE PROPOSED APPLICATION AREA.

§ 130d.2226. ~~Insurance~~ **FINANCIAL RESPONSIBILITY.**

The applicant shall comply with the ~~insurance~~ FINANCIAL RESPONSIBILITY requirements established by the REGULATIONS PERTAINING TO THE Pennsylvania

Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61). ~~and its~~ THE FINANCIAL RESPONSIBILITY PROVISIONS OF THE regulations ARE SET FORTH AT TITLE 7 in Chapter 128.34 (relating to ~~pesticides~~ FINANCIAL RESPONSIBILITY) OF THE PENNSYLVANIA CODE (7 PA.CODE § 128.34). ~~The insurance policy shall be effective~~ THE APPLICANT SHALL BE IN COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY PROVISIONS prior to the initiation of the application of the soil or groundwater contaminated with agricultural chemicals to the agricultural land and shall remain ~~effective~~ IN COMPLIANCE until final CLOSURE OF THE APPLICATION SITE AS SET FORTH IN SUBCHAPTER F OF THIS CHAPTER (RELATING TO CLOSURE). ~~approval and implementation of the approved applicant's closure plan. See Subchapter H (relating to closure).~~ FAILURE TO COMPLY WITH THE FINANCIAL RESPONSIBILITY PROVISIONS SHALL RESULT IN A DENIAL OF THE LAND APPLICATION PROPOSAL OR A REVOCATION OF THE DEPARTMENT'S APPROVAL WHERE THE APPLICANT FAILS TO MAINTAIN CONTINUED COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY PROVISIONS.

**§ 130d.2327. Right of entry and agreement with landowner.**

(a) *CONSENT OF LANDOWNER.* WHERE THE LANDOWNER IS THE PERSON SUBMITTING THE LAND APPLICATION PROPOSAL AND RESPONSIBLE FOR THE APPLICATION OF THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS, NO RIGHT OF ENTRY OR OTHER AGREEMENT IS NECESSARY. IN ALL OTHER SITUATIONS, THE ~~Each~~ land application proposal shall contain a description OR COPIES of the LEGAL documents upon which the applicant bases his legal right to enter onto, operate on and

apply soil and groundwater contaminated with agricultural chemicals on the proposed application site. WHERE A DESCRIPTION IS GIVEN THE APPLICANT SHALL SIGN A VERIFIED STATEMENT ATTESTING TO THE FACT THE DOCUMENT EXISTS IN THE FORM DESCRIBED. THE DEPARTMENT WILL ACCEPT EITHER

~~(b)~~ The land application proposal shall provide one of the following LEGAL DOCUMENTS OR SUCH OTHER DOCUMENT THE DEPARTMENT MAY DETERMINE CONVEYS THE APPROPRIATE LEGAL RIGHT:

(1) A copy of a signed consent agreement between the applicant and the current owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the current land owner's property and an abstract of title relating the documents to the current landowner.

~~(e)~~ (B) *RIGHT OF ENTRY*. Each land application proposal shall contain, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Commonwealth and its authorized agents to enter the proposed application site. The consent SHALL BE OBTAINED PRIOR TO FINAL APPROVAL OF THE LAND APPLICATION PROPOSAL BY THE DEPARTMENT AND shall be applicable prior to the initiation of operations, for the duration of operations at the application site, and for ~~up to 3~~ NOT LESS THAN 1 years NOR MORE THAN 3

YEARS after final closure for the purpose of inspection and monitoring ~~and maintenance~~  
~~or abatement measures deemed necessary and ordered by the Department to carry out the~~  
~~purposes of the act and this chapter.~~ FAILURE OF THE LANDOWNER TO GIVE  
SUCH CONSENT SHALL RESULT IN DENIAL OF THE LAND APPLICATION  
PROPOSAL.

§ 130d.2428. **Identification of interest.**

(a) *GENERAL INFORMATION.* Each land application proposal shall contain the following information:

(1) The legal names, addresses and telephone numbers of:

(i) The applicant.

(ii) The ~~certified~~ applicator.

(iii) Any contractor, if the contractor is a person other than the applicant.

(2) The name, address and telephone number of the current owner of record of the agricultural land on which the applicant intends to apply the soil and groundwater contaminated with agricultural chemicals.

(b) *OWNERSHIP INFORMATION.* Each land application proposal shall contain a statement of whether the applicant is an individual, corporation, partnership, limited partnership, limited liability company, proprietorship, municipality, syndicate, joint venture or other association or entity. For applicants other than sole proprietorships, the land application proposal shall contain the following information, if applicable:

(1) The name and address of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant.

~~(2) For corporations, the names and addresses of the principal shareholders.~~

~~(3)~~ (2) For corporations, the names, principal places of business and the Internal Revenue Service tax identification numbers of the applicant corporation, United States parent corporations of the applicant, including ultimate parent corporations, and all United States subsidiary corporations of the applicant and the applicant's parent corporations.

~~(4)~~ (3) The names and addresses of other persons or entities having or exercising control over any aspect of the land application of the soil and groundwater contaminated with agricultural chemicals, including associates and agents. This shall include a description of the duties and responsibilities and the control to be exercised by these persons.

(c) *PERMITS AND APPROVALS*. Each land application proposal SUBMITTED TO THE DEPARTMENT shall list the additional permits or approvals necessary for the land application of the contaminated soil and groundwater to the proposed application site. The land application proposal shall set forth the status of those permits or approvals.

(d) *APPLICANT HISTORY*. Each land application proposal shall set forth any previous experience of the applicant with regard to land application of agricultural waste or soil or groundwater contaminated with agricultural or other chemicals. The applicant shall identify the location of the sites, the type of operation undertaken and ~~the ultimate~~



~~outcome of the operations~~ ANY ENVIRONMENTAL PROBLEMS OR CITATIONS DURING OR RESULTING FROM SUCH OPERATION.

§ **130d.2529. Compliance information.**

The land application proposal shall contain ~~proof~~ A VERIFIED STATEMENT ATTESTING that the proposed land application will comply with all ~~other~~ APPLICABLE Federal, State and local laws, rules, REGULATIONS and ordinances.

§ **130d.2630. Environmental assessment.**

(a) *Impacts.* The land application proposal shall include an environmental assessment setting forth a detailed analysis of the potential impact of the application of the soil and groundwater contaminated with agricultural chemicals to the proposed agricultural site,~~—The analysis shall consider the potential impact on the site itself,~~ INCLUDING POTENTIAL ENVIRONMENTAL HARMS OF THE PROPOSED LAND APPLICATION SUCH AS ANY SHORT TERM OR LONG TERM EFFECTS OR DEGRADATION TO THE FERTILITY OR QUALITY OF THE AGRICULTURAL LAND AT THE APPLICATION SITE, water uses and land uses, AND POTENTIAL DELETERIOUS EFFECTS ON contiguous land, the environment and the public health and safety. The applicant shall consider environmental features such as streams, wells, local parks,~~special protected watersheds, wetlands~~ and habitats of concern.

(b) *Harms.* ~~The land application proposal shall include an environmental assessment detailing known and potential environmental harms of the proposed land application including any short term or long term effects or degradation to the fertility or quality of the agricultural land upon which the soil or groundwater contaminated with~~

~~agricultural chemicals will be applied. The applicant shall consider drift and leaching of the agricultural chemicals to be applied.~~

(e)(B) *Mitigation.* The land application proposal shall include a mitigation plan. The mitigation plan shall delineate the steps the applicant will take in the event the application of the soil or groundwater contaminated with agricultural chemicals has a negative impact on the application site or the environment or causes harm or degradation to the application site OR CONTIGUOUS LAND OR BOTH.

~~(d) *Review.* The Department will review the environmental assessment and mitigation plans and determine whether there are additional harms and whether all known environmental harms have been assessed and will be mitigated. The Department will evaluate each mitigation measure and will collectively review mitigation measures to insure that individually and collectively they adequately protect the farmland to which the soil and groundwater contaminated with agricultural chemicals is being applied, the environment and the public health and safety.~~

#### **Subchapter D C. – LAND APPLICATION PROPOSAL REVIEW PROCEDURES**

Sec.

§ 130d.31. Criteria for approval or denial.

§ 130d.32. Receipt of land application proposal and completeness review.

~~§ 130d.33. Review period.~~

§ 130d.34-3. Review process.

**§ 130d.31. Criteria for approval or denial.**

(a) *Acceptance, approval, denial, modification and rescission.* In accordance with the authority set forth by section 904(b) of the act (35 P.S. § 6026.904(b)), the Department will accept and review only those proposals which seek to apply soil ~~or~~ OR groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, that are to be applied to agricultural land.

**(B) APPROVAL, DENIAL, MODIFICATION AND RESCISSION.**

(1) ~~To carry out the duties in section 904(d) of the act, the Department will~~ WHEN exerciseING its power to approve, deny or request modification of ~~any~~ A proposal to apply soil or groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities that is to be applied to agricultural land THE DEPARTMENT WILL FOLLOW THE PROVISIONS ESTABLISHED BY THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61), FERTILIZER ACT (3 PA.C.S.A. 6701-6725), SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-6921), NUTRIENT MANAGEMENT ACT (3 P.S. §§ 1701-1718) AND THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y). THE DEPARTMENT WILL DENY A LAND APPLICATION PROPOSAL THAT VIOLATES ANY PROVISION OF THE ACTS SET FORTH ABOVE.

(2) The Department may rescind an approval of a land application proposal if the person applying the contaminated soil or groundwater violates any provision of the PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61),

FERTILIZER ACT (3 PA.C.S.A. 6701-6725), SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-6921), NUTRIENT MANAGEMENT ACT (3 P.S. §§ 1701-1718), THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y) THE act or this chapter or if it discovers a mistake or falsification made in the land application proposal, the test results, the sampling techniques or any part of the operation and actual application of the soil or groundwater to the agricultural land.

(b) (C) *Affirmation of facts.* A land application proposal will not be approved unless the applicant affirmatively demonstrates to the Department's satisfaction that the following conditions are met:

(1) The land application proposal is complete, accurate and meets the standards established by the act and this chapter.

(2) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal can be feasibly accomplished, under the techniques and facts set forth therein and as required by the act and this chapter.

(3) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not cause harm to the environment, the health, safety and welfare of the general public, or degrade or pollute the agricultural land to which it will be applied.

(4) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not violate the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61), ~~3 Pa.C.S.~~

~~§§ 6701-6725 (relating to Fertilizer Act), FERTILIZER ACT (3 PA.C.S.A. 6701-6725, SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-6921), the Nutrient Management Act (3 P.S. §§ 1701-1718) or the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136-136y).~~

~~(e) (D) Soil or groundwater containing OTHER ~~contaminants other than~~ CHEMICALS IN ADDITION TO agricultural chemicals. Where the soil or groundwater sought to be applied contains OTHER chemicals ~~other than~~ IN ADDITION TO agricultural chemicals, the Department MAY BEGIN REVIEW OF THE LAND APPLICATION PROPOSAL FOR THE APPLICATION OF THE AGRICULTURAL CHEMICALS IN THE SOIL OR GROUNDWATER ~~may approve the land application proposal contingent upon the~~ BUT WILL NOT CONSIDER THE LAND APPLICATION PROPOSAL COMPLETE OR ISSUE AN APPROVAL UNTIL OR UNLESS THE applicant HAS ~~obtaining the necessary approvals or permits (when applicable) to land apply those chemicals from the appropriate agency~~ PROVIDED THE DEPARTMENT WITH THE INFORMATION REQUIRED BY SECTION 130D.2(D) (RELATING TO SCOPE), SECTION 130.D.21(D) (RELATING TO AFFIRMATION OF COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND ORDINANCES) AND SECTION 130.D.29 OF THIS CHAPTER (RELATING TO COMPLIANCE INFORMATION).~~

**§ 130d.32. Receipt of land application proposal and completeness review.**

(a) *Receipt of land application proposal and completeness review.* After receipt of a land application proposal, the Department will determine whether the land application proposal is administratively complete.

(b) *Receipt*. For purposes of this section, “receipt of application” does not occur until the land application proposal is deemed administratively complete.

(c) *Administratively complete land application proposal*. A land application proposal is administratively complete if it contains all the necessary information, approvals, maps and other documents required by this chapter.

~~§ 130d.33. Review period.~~

~~(a) *Administratively complete land application proposal*~~. THERE IS NO SET TIMETABLE FOR REVIEW OF A LAND APPLICATION PROPOSAL, HOWEVER, if the land application proposal is administratively complete, the Department will MAKE EVERY EFFORT TO RENDER A DECISION, within 60 days of receiving the administratively complete land application proposal, ~~render a decision~~ to approve, approve with modifications or deny the land application proposal. The Department will mail the applicant a written notice of approval or disapproval. A notice of disapproval shall state the reasons for the Department’s disapproval of the land application proposal.

~~(b)~~ (D) *Incomplete land application proposal*. When the land application proposal is not complete, the Department will send a written notice and a request for additional information and documentation to the applicant. Where additional information and documentation is requested, the Department’s review and consideration of the land application proposal will cease until the requested material is received. Upon receipt of all the additional information and documentation requested, the ~~Department’s 60-day review period begins~~. DEPARTMENT WILL RESUME ITS REVIEW OF THE LAND APPLICATION PROPOSAL. The Department will deny the land application proposal if

the applicant fails to provide the additional information and documentation within ~~90~~ 60 days of mailing of the request for additional information and documentation.

~~(e) Failure of Department to comply with review period. Failure by the Department to comply with the timetable established in this section will not be construed or understood to constitute grounds for an automatic approval of a land application proposal.~~

**§ 130d.34-3. Review process.**

(a) The Department will review all proposals for land application of soil or groundwater contaminated with agricultural chemicals, generated as the result of remediation activities at agricultural chemical facilities, to be applied to agricultural land.

~~(1)~~ (B) The Department will review all land application proposals with regard to the land application of agricultural chemicals only.

~~(2)~~ (C) IF WHERE CHEMICALS OTHER THAN AGRICULTURAL CHEMICALS ARE CONTAINED IN THE CONTAMINATED MEDIA, the laboratory chemical and waste analysis (required by sections 130d.13 and 130d.14 (relating to chemical analysis of waste; and waste analysis plan) results reveal the presence of chemicals other than agricultural chemicals, the Department will review the land application proposal (in accordance with this chapter) PROVISIONS SET FORTH AT SECTION 130D.2(D)(RELATING TO SCOPE) AND 130D.31(D) (RELATING TO SOIL OR GROUNDWATER CONTAINING OTHER CHEMICALS IN ADDITION TO AGRICULTURAL CHEMICALS) OF THIS CHAPTER. with respect to the approval or denial of the application of the agricultural chemicals contained in the soil or

~~groundwater sought to be applied, but will not give final approval to the land application proposal.~~

~~(3) The Department will issue a written notice and request for additional information and documentation. The notice will contain an opinion with regard to the application of the agricultural chemicals contained in the soil and groundwater sought to be land applied. The request for additional information and documentation will require the applicant to obtain documentation of the permits and approvals necessary for the land application of the chemicals other than the agricultural chemicals before the Department will issue a final approval of the land application proposal.~~

~~(b) (D) The decision of the Department to approve or deny a land application proposal is final with regard to that portion of the proposal that deals with application of the soil or groundwater contaminated with agricultural chemicals.~~

**Subchapter E-D. – GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND.**

Sec.

~~§ 130d.41. General.~~

~~§ 130d.42. Operating plan.~~

~~§ 130d.43. Maps and related information.~~

§ 130D.41. STANDARDS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

§ 130D.42. LAND APPLICATION RATES AND PROCEDURES.

§ 130D.43. ADDITIONAL APPLICATION REQUIREMENTS.

§ 130D.44. LIMITATIONS ON LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.



- § 130D.45. PROHIBITED APPLICATIONS.
- § 130D.46. DAILY OPERATIONAL RECORDS.
- § 130D.47. REPORTS.
- § 130D.48. ANNUAL OPERATIONAL REPORT.

~~§ 130d.41. General.~~

~~Soil or groundwater contaminated with agricultural chemicals may be land applied under the following terms and conditions:~~

- ~~(1) Written authorization from the Department.~~
- ~~(2) The soil and groundwater sought to be applied to agricultural land are contaminated with agricultural chemicals and result from the remediation of an agricultural chemical facility as defined under the act.~~
- ~~(3) A signed agreement between the person responsible for the land application and the owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied. Where the person responsible for the land application of the soil or groundwater contaminated with agricultural chemicals is the landowner, an agreement is not required.~~
- ~~(4) Proper right of entry authorization.~~
- ~~(5) Compliance with this subchapter.~~
- ~~(6) Compliance with Subchapter B (relating to duties of applicators).~~
- ~~(7) Compliance with Subchapter C (relating to general requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land).~~
- ~~(8) Compliance with Subchapter D (relating to land proposal review procedures).~~

~~(9) Submission of an operating plan complying with the standards of this subchapter.~~

~~(10) Submission of all maps and related information required by this subchapter.~~

~~(11) Compliance with the operating requirements established by Subchapter G (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals).~~

~~———— (12) Compliance with the closure requirements delineated in Subchapter H (relating to closure).~~

~~§ ——— 130d.42. Operating plan.~~

~~———— The land application proposal shall contain an operating plan setting forth the following information:~~

~~———— (1) The address and a description of the remediation site from which the contaminated soil or groundwater to be applied to the agricultural land originated or was generated.~~

~~———— (2) The address and a description of the agricultural site to which the contaminated soil or groundwater will be applied.~~

~~(3) The general operating plan for the proposed operation, including the proposed life of the operation, the origin and chemical, nutrient and constituent make up of each soil pile or quantity of groundwater to be applied.~~

~~———— (4) The proposed application rate per acre, which shall be consistent with standards established by this chapter, including standard established by the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003), Nutrient Management Act (3 P.S. §§~~

~~1701-1718), 3 Pa.C.S. §§ 6701-6725 (relating to Fertilizer Act), Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136-136y).~~

~~(5) The proposed methods, techniques and types of applications, which shall be consistent with standards established by this chapter, including standard established by the Solid Waste Management Act, Nutrient Management Act, Fertilizer Act, Pennsylvania Pesticide Control Act of 1973, Federal Insecticide, Fungicide and Rodenticide Act of 1947 and the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 301-392).~~

~~(6) The proposed dates of application.~~

~~—— (7) The equipment to be used for site preparation, land application of the contaminated soil and groundwater and incorporation of the contaminated soil.~~

~~—— (8) The use that will be made of the proposed application area and the crops that will be planted on each application plot for 3 years following the application.~~

~~—— (9) A plan to control drift or migration of the chemicals, nutrients and constituents in the soil and groundwater being applied.~~

~~—— (10) Information necessary to show compliance with Subchapter G (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals).~~

~~§ 130d.43. Maps and related information.~~

~~(a) *Boundary map.* A land application proposal shall contain a detailed map including necessary narrative descriptions, which show the following:~~

~~(1) The boundaries and the names of the present owners of record of the land constituting the proposed application site and a description of all title, deed or usage restrictions, including easements, right of way, covenants and other property interests, affecting the proposed application site.~~

~~(2) The boundaries of the land where soil and groundwater contaminated with agricultural chemicals will be applied over the estimated total life of the proposed application, including the boundaries of land that will be affected in each sequence of land application activity.~~

~~(3) The map shall contain a grid showing the exact field or location where each soil pile or quantity of groundwater contaminated with agricultural chemicals will be applied.~~

~~(4) The location and name of public and private water supplies and wells within the proposed application site and adjacent areas that are within the setback requirements in Subchapter G (relating to general operating requirements for land application of soil or groundwater containing agricultural chemicals).~~

~~—— (b) *Soils map.* A land application proposal shall contain a United States Department of Agriculture Soil Conservation Service soils map or other reliable data if current soils maps are unavailable, which shows the location and types of soils within the proposed application area.~~

**§ 130D.41. STANDARDS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.**

A PERSON APPROVED TO APPLY SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS RESULTING FROM THE REMEDIATION OF AN AGRICULTURAL FACILITY TO AGRICULTURAL LAND SHALL COMPLY WITH THE FOLLOWING:

(1) THE LAND APPLICATION AND APPLICATION RATE SHALL BE CONSISTENT WITH LABELING REQUIREMENTS FOR ANY AND ALL PESTICIDE ACTIVE INGREDIENTS FOUND IN THE SOIL OR GROUNDWATER BEING LAND APPLIED AND THE DEPARTMENT MAY REQUIRE A SAFETY FACTOR OF ONE-HALF THE LABEL APPLICATION RATE. WITH REGARD TO FERTILIZER FOUND IN THE SOIL OR GROUNDWATER BEING LAND APPLIED, THE APPLICATION SHALL BE CONSISTENT WITH LABELING AND STANDARDS ESTABLISHED BY THE *PENNSYLVANIA AGRONOMY GUIDE*.

(2) THE CUMULATIVE EFFECT OF ALL PESTICIDES FOUND IN THE SOIL OR GROUNDWATER BEING LAND APPLIED SHALL BE CONSISTENT WITH THE LABELING REQUIREMENTS FOR EACH PESTICIDE AND MAY NOT EXCEED THE LABELING RATE FOR ANY OF THE PESTICIDES CONTAINED IN THE SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

(3) THE CUMULATIVE EFFECT OF ALL FERTILIZERS OR SOIL AMENDMENTS OR BOTH FOUND IN THE SOIL OR GROUNDWATER BEING

LAND APPLIED SHALL BE CONSISTENT WITH AND NOT EXCEED THE STANDARDS ESTABLISHED BY THE *PENNSYLVANIA AGRONOMY GUIDE*.

(4) PROPER APPLICATION TECHNIQUES SET FORTH AND APPROVED BY THE DEPARTMENT IN THE APPLICANT'S OPERATIONAL PLAN SHALL BE FOLLOWED.

(5) CONSULTANTS OR OTHER INDIVIDUALS DIRECTING LAND APPLICATION ACTIVITIES SHALL BE CERTIFIED IN THE APPROPRIATE USE CATEGORY FOR THE PESTICIDES BEING APPLIED. A CERTIFIED APPLICATOR IS REQUIRED TO BE ON-SITE AT ALL TIMES DURING THE APPLICATION OF PESTICIDE CONTAMINATED SOILS.

(6) INDIVIDUAL SOIL PILES AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS MAY NOT BE CONSOLIDATED FOR APPLICATION WITHOUT PRIOR WRITTEN APPROVAL FROM THE DEPARTMENT AND THE LANDOWNER.

(7) THE DEPARTMENT MAY APPROVE THE APPLICATION OF ADDITIONAL AGRICULTURAL CHEMICALS, NOT FOUND IN BACKGROUND LEVELS AT THE PROPOSED APPLICATION SITE, TO THE PROPOSED APPLICATION SITE IN CASES WHERE THE APPLICATION RATE WILL NOT RESULT IN CROP INJURY, ILLEGAL CROP RESIDUES, POLLUTING OR FOULING OF THE AGRICULTURAL LAND OR CAUSE UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT. THE DEPARTMENT WILL NOT APPROVE AN APPLICATION OF CONTAMINATED SOIL OR GROUNDWATER WHERE THE APPLICATION IS LIKELY TO RESULT IN CROP INJURY, ILLEGAL

CROP RESIDUES, POLLUTING OR FOULING OF THE AGRICULTURAL LAND OR CAUSE UNREASONABLE ADVERSE AFFECTS ON THE ENVIRONMENT.

(8) THE APPLICATION OF AGRICULTURAL CHEMICALS SHALL BE IN COMPLIANCE WITH THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61), THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y), FERTILIZER ACT (3 PA.C.S.A. 6701-6725), SOIL AND PLANT AMENDMENT ACT (3 PA.C.S.A. §§ 6901-6921), THE *PENNSYLVANIA AGRONOMY GUIDE* AND ANY NUTRIENT MANAGEMENT PLAN APPROVED UNDER THE NUTRIENT MANAGEMENT ACT (3 P.S. §§ 1701-1718).

(9) BANNED, CANCELLED OR SUSPENDED AGRICULTURAL CHEMICALS SHALL NOT BE APPLIED. AS ESTABLISHED BY THE RULES AND REGULATIONS DELINEATED UNDER THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61), THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y) AND THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S.C.A. §§ 6901-6986).

(10) INCOMPATIBLE AGRICULTURAL CHEMICALS SHALL NOT BE APPLIED. THE LAND APPLICATION OF INCOMPATIBLE AGRICULTURAL CHEMICALS IS PROHIBITED BY THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61) AND THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y).

(11) THE PERSON RESPONSIBLE FOR THE LAND APPLICATION OF THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL COMPLY WITH ALL LOCAL ORDINANCES.

§ 130D.42. LAND APPLICATION RATES AND PROCEDURES.

(A) *APPLICATION RATE.* WHEN APPLYING soil and groundwater contaminated with agricultural chemicals, the APPROVED APPLICANT SHALL FOLLOW THE APPLICATION RATES SET FORTH AND APPROVED BY THE DEPARTMENT IN THE LAND APPLICATION PROPOSAL AND OPERATION PLAN.

(B) *APPLICATION RATES AND PROCEDURES.* THE APPROVED APPLICANT SHALL FOLLOW THE APPLICATION RATES, STANDARDS AND TECHNIQUES SET FORTH IN THE OPERATING PLAN AND APPROVED LAND APPLICATION PROPOSAL. THE APPLICANT SHALL ASSURE:

(1) THE APPLICATION RATE OF THE VARIOUS COMPOUNDS PRESENT IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL ADHERE TO AND NOT EXCEED THE LABELING RATE FOR EACH COMPOUND PRESENT.

(2) WHERE MORE THAN ONE PESTICIDE OR OTHER AGRICULTURAL CHEMICAL IS PRESENT IN A SOIL PILE OR QUANTITY OF GROUNDWATER, THE SOIL PILE OR GROUNDWATER SHALL BE APPLIED AT THE MOST RESTRICTIVE LABELING RATE.



(3) THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL BE APPLIED IN A MANNER THAT ASSURES AN EVEN DISTRIBUTION OF AGRICULTURAL CHEMICALS WITHIN THE SOIL PILE OR QUANTITY OF GROUNDWATER AND ENSURES THE APPLICATION RATE WILL BE UNIFORM ACROSS THE FIELD APPLICATION SITE. IN ADDITION, WHERE INCORPORATION IS NECESSARY, THE INCORPORATION TECHNIQUES USED FOR SOIL PILES CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL ACHIEVE A MIXTURE OF TOP SOIL AND CONTAMINATED MEDIA AND SHALL ENSURE THE CONTAMINATED MEDIA IS INCORPORATED TO A DEPTH OF ~~UP TO~~ NOT LESS THAN 6 INCHES. THE CONTAMINATED MEDIA SHALL BE INCORPORATED INTO THE SOIL AT THE APPLICATION SITE WITHIN 24 HOURS OF APPLICATION.

(4) THE APPLICANT SHALL UTILIZE TECHNIQUES AND PROCEDURES THAT ASSURE TOPSOIL WILL NOT BE LOST, REMOVED, STRIPPED OFF THE LAND OR BURIED UNDER THE CONTAMINATED SOIL TO BE APPLIED. IN ADDITION, THE TECHNIQUES AND PROCEDURES UTILIZED SHALL ASSURE THE APPLICATION RATE WILL BE UNIFORM ACROSS THE FIELD APPLICATION AREA OR AS CLOSE TO UNIFORM AS IS POSSIBLE GIVEN THE CURRENT TECHNOLOGY, MACHINERY AND APPLICATION TECHNIQUES AVAILABLE.

(5) THE TOTAL AMOUNT OF NUTRIENTS APPLIED THROUGH THE LAND APPLICATION PLUS OTHER COMMERCIAL FERTILIZERS, MANURE AND NUTRIENT APPLICATIONS SHALL NOT VIOLATE THE PROVISIONS OF ANY LABEL, THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y) OR THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61).

(C) *TIMETABLE FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.* LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL BE APPLIED BETWEEN APRIL 1 AND SEPTEMBER 30 OF EACH YEAR, UNLESS OTHERWISE APPROVED IN WRITING BY THE DEPARTMENT.

(D) *FIFRA AND PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973.* APPLICATION, APPLICATION RATES AND APPLICATION TECHNIQUES USED TO LAND APPLY SOIL PILES AND QUANTITIES OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS MAY NOT VIOLATE THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT OF 1947 (7 U.S.C.A. §§ 136-136Y) OR THE PENNSYLVANIA PESTICIDE CONTROL ACT OF 1973 (3 P.S. §§ 111.21-111.61).

§ **130D.43. ADDITIONAL APPLICATION REQUIREMENTS.**

THE APPROVED APPLICANT SHALL FOLLOW THE CROP ROTATION AND NUTRIENT AND PESTICIDE MANAGEMENT PLANS SET FORTH IN THE APPROVED OPERATING PLAN. THE DEPARTMENT WILL MONITOR THE OPERATION TO ASSURE THE PLANS ARE BEING FOLLOWED.

§ **130D.44. LIMITATIONS ON LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.**

WHEN APPLYING SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS THE APPROVED APPLICANT SHALL ASSURE THE FOLLOWING:

(1) *LABELING RATES.* PESTICIDE CONTAMINATED SOIL AND GROUNDWATER SHALL BE APPLIED TO A SITE OR CROP, OR BOTH, IN A MANNER CONSISTENT WITH LABELING DIRECTIONS AND REQUIREMENTS FOR THAT PESTICIDE.

(2) *ANNUAL CROPS.* IN THE CASE OF ANNUAL CROPS, THE CROP SHALL BE GROWN ON THE APPLICATION AREA DURING THE SEASON THAT THE APPLICATION IS MADE.

(3) *POSTHARVEST APPLICATION.* IF LAND APPLICATION IS CONDUCTED IN THE FALL OR POST HARVEST, THE CROP FOLLOWING THE APPLICATION SHALL BE SUITABLE FOR THE LABELING REQUIREMENTS OF THE AGRICULTURAL CHEMICALS CONTAINED IN THE SOIL AND GROUND WATER TO BE LAND APPLIED.

(4) *SITE SUITABILITY*. SITE SUITABILITY WILL BE BASED ON THE LAND APPLICATION PROPOSAL. THE INFORMATION CONTAINED WITHIN THE LAND APPLICATION PROPOSAL SHALL EVIDENCE THAT THE RATES OF APPLICATION OF THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS WILL COMPLY WITH LABELING REQUIREMENTS, WILL NOT EXCEED LABELING RATES, WILL NOT EXCEED ADDITIVITY REQUIREMENTS AND WILL NOT CAUSE DAMAGE TO THE PROPOSED APPLICATION SITE OR ADJACENT LAND OR WATER. GENERAL SLOPE, DRAINAGE CHARACTERISTICS, PRESENCE OF SHALLOW GROUNDWATER, DISTANCE TO SURFACE WATERS AND SUITABILITY FOR AGRICULTURAL PURPOSES ARE SOME OF THE CHARACTERISTICS THAT WILL BE CONSIDERED.

(5) *APPLICATION OF SOIL PILES*. TO ALLOW FOR PROPER INCORPORATION OF CONTAMINATED SOIL PILES, THE SOIL PILES MAY NOT BE APPLIED OVERTOP OF THE SOIL AT THE APPLICATION SITE AT A THICKNESS GREATER THAN ½ INCH. THE SOIL PILES SHALL BE INCORPORATED INTO THE SOIL AT THE APPLICATION SITE TO A DEPTH OF NOT LESS THAN 6 INCHES, UNLESS otherwise authorized by the Department.

(6) *APPLICATION TECHNIQUES*. SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS MAY NOT BE APPLIED BY ANY TYPE OF SPRAY IRRIGATION EQUIPMENT OR BY AERIAL EQUIPMENT OR ANY OTHER TECHNIQUE THAT MAY CAUSE OR LEAD TO EXCESSIVE DRIFT OF THE AGRICULTURAL CHEMICALS CONTAINED IN THE

SOIL OR GROUNDWATER UNLESS THE PERSON HAS DEMONSTRATED IN THE LAND APPLICATION PROPOSAL THE EQUIPMENT OR TECHNIQUE WILL NOT CAUSE AEROSOL TRANSPORT OFFSITE OR ONTO A FIELD THAT WILL CONTAIN AN INCOMPATIBLE CROP, AND THE DEPARTMENT HAS APPROVED IN WRITING SUCH MACHINERY OR TECHNIQUE.

(7) *PONDING AND STANDING ACCUMULATIONS.* SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL BE APPLIED TO THE SOIL SURFACE AND INCORPORATED IN A MANNER THAT PREVENTS PONDING OR STANDING ACCUMULATIONS OF CONTAMINATED SOIL OR GROUNDWATER OR BOTH, ON OR OVERTOP OF THE TOPSOIL AT THE APPLICATION SITE.

(8) *PASTURING OR GRAZING.* LIVESTOCK MAY NOT BE PASTURED OR ALLOWED TO GRAZE ON AREAS WHERE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS HAS BEEN APPLIED FOR A PERIOD OF AT LEAST 3 YEARS SUBSEQUENT TO THE APPLICATION, UNLESS OTHERWISE APPROVED BY THE DEPARTMENT IN WRITING.

(9) *LAND USE AND CROPS.* THE USE THAT WILL BE MADE OF THE PROPOSED APPLICATION AREA AND THE CROPS THAT WILL BE GROWN ON THE SITE SUBSEQUENT TO THE APPLICATION OF THE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS SHALL BE CONSISTENT WITH THE LABELING REQUIREMENTS OF THE PESTICIDES CONTAINED IN THE SOIL PILES OR GROUNDWATER TO BE APPLIED.

§ 130D.45. PROHIBITED APPLICATIONS.

(A) *GENERAL.* THE FOLLOWING APPLICATIONS OF SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS ARE PROHIBITED, UNLESS SPECIFICALLY AUTHORIZED BY THE DEPARTMENT IN WRITING:

(1) AN APPLICATION WHICH WOULD VIOLATE ANY PROVISIONS OF THE ACT, ENVIRONMENTAL PROTECTION ACTS OR THIS CHAPTER.

(2) AN APPLICATION TO ANY "PRESERVED FARMLAND" AS DEFINED IN 4 PA.CODE CHAPTER 7, SUBCHAPTER W (RELATING TO AGRICULTURAL LAND PRESERVATION POLICY).

(3) AN APPLICATION TO SOIL DESIGNATED AS "PRIME FARMLAND" AS DEFINED UNDER 7 CFR 657 (RELATING TO PRIME AND UNIQUE FARMLAND).

(4) AN APPLICATION WHICH WOULD RENDER THE FARMLAND UNUSABLE FOR AGRICULTURAL PURPOSES OR WOULD CAUSE UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT.

(5) AN APPLICATION TO A SITE WHICH WOULD CAUSE THE TOTAL ANNUAL APPLICATION AMOUNTS OF AN AGRICULTURAL CHEMICAL TO EXCEED ITS RESPECTIVE LABELING APPLICATION RATE.

(6) AN APPLICATION THAT DOES NOT COMPLY WITH EXISTING LAWS AND REGULATIONS.

(7) AN APPLICATION WHERE THE SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS CONTAINS A CONSTITUENT IN SUCH HIGH CONCENTRATIONS THAT IT REQUIRES A LOADING RATE WHICH WOULD GIVE THE MEDIA LITTLE OR NO NUTRIENT OR SOIL CONDITIONING VALUE OR LITTLE OR NO PESTICIDE VALUE WHEN APPLIED TO THE PROPOSED APPLICATION SITE.

(B) *SETBACK AREAS WHERE LAND APPLICATION IS PROHIBITED.* THE OPERATION PLAN SHALL ADDRESS HOW THE APPLICANT INTENDS TO COMPLY WITH THIS SUBSECTION. SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS MAY NOT BE APPLIED IN THE FOLLOWING AREAS:

(1) WITHIN 100 FEET OF AN INTERMITTENT OR PERENNIAL STREAM AS DEFINED IN 25 *PENNSYLVANIA CODE*, CHAPTER 271.1 (RELATING TO DEFINITIONS).

(2) WITHIN 300 FEET OF A WATER SOURCE, AS DEFINED IN 25 *PENNSYLVANIA CODE*, CHAPTER 271.1 (RELATING TO DEFINITIONS), UNLESS THE CURRENT OWNER OF THE WATER SOURCE HAS PROVIDED A WRITTEN WAIVER CONSENTING TO THE ACTIVITIES CLOSER THAN 300 FEET.

(3) WITHIN 100 FEET OF A SINKHOLE OR DIVERSION DITCH.

(4) WITHIN 100 FEET OF AN EXCEPTIONAL VALUE WETLAND, AS DEFINED IN 25 *PENNSYLVANIA CODE*, CHAPTER 105.17 (RELATING TO WETLANDS).

(5) WITHIN 100 FEET MEASURED HORIZONTALLY FROM AN OCCUPIED DWELLING, UNLESS THE CURRENT OWNER THEREOF HAS PROVIDED A WRITTEN WAIVER CONSENTING TO THE ACTIVITIES CLOSER THAN 100 FEET. THE WAIVER SHALL BE KNOWINGLY MADE AND SEPARATE FROM A LEASE OR DEED UNLESS THE LEASE OR DEED CONTAINS AN EXPLICIT WAIVER FROM THE OWNER.

§ **130D.46. DAILY OPERATIONAL RECORDS.**

(A) *GENERAL.* THE APPLICANT APPROVED TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND SHALL MAKE AND MAINTAIN AN OPERATIONAL RECORD FOR EACH DAY THAT THE CONTAMINATED SOIL OR GROUNDWATER IS APPLIED. THESE RECORDS SHALL BE MAINTAINED IN DATED FILES AND MADE ACCESSIBLE TO THE DEPARTMENT UPON REQUEST.

(B) *CONTENTS OF DAILY OPERATIONAL RECORD.* THE DAILY OPERATIONAL RECORD SHALL INCLUDE THE FOLLOWING:

(1) THE SPECIFIC SOIL PILES OR QUANTITIES OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS APPLIED THAT DAY, INCLUDING WEIGHT OR VOLUME AND TYPES AND LEVELS OF PESTICIDES, FERTILIZERS, SOIL



CONDITIONERS, NUTRIENTS AND OTHER CHEMICALS IN EACH SOIL PILE OR QUANTITY OF GROUNDWATER APPLIED.

(2) THE TECHNIQUE AND EQUIPMENT USED TO APPLY AND INCORPORATE EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS, AS WELL AS THE DEPTH OF INCORPORATION.

(3) THE APPLICATION RATE AND CALCULATIONS EVIDENCING THE APPLICATION RATE FOR EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS ARE IN COMPLIANCE WITH THIS CHAPTER.

(4) THE SPECIFIC LOCATION OF THE APPLICATION OF EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

(5) THE NAME, MAILING ADDRESS, COUNTY AND STATE OF EACH REMEDIATION SITE FROM WHICH THE CONTAMINATED MEDIA CAME AND THE SPECIFIC SOIL PILE OR QUANTITY OF GROUNDWATER RECEIVED FROM EACH REMEDIATION SITE. THE RECORDS SHALL CROSS-REFERENCE THE SPECIFIC LOCATION OF THE APPLICATION OF EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS.

(6) A RECORD OF ANY DEVIATIONS FROM THE APPROVED LAND APPLICATION PROPOSAL OPERATING PLAN.

(7) THE GENERAL WEATHER CONDITIONS DURING APPLICATION.

(8) A RECORD OF ACTIONS TAKEN TO CORRECT DEVIATIONS FROM THE OPERATING PLAN OR VIOLATIONS OF THE ACT, THE ENVIRONMENTAL PROTECTION ACTS OR THIS CHAPTER.

(C) *RETENTION*. DAILY OPERATIONAL RECORDS SHALL BE MAINTAINED AND RETAINED UNTIL FINAL APPROVAL OF THE SITE CLOSURE PLAN REQUIRED BY SUBCHAPTER F (RELATING TO CLOSURE) BY THE DEPARTMENT. THESE RECORDS SHALL BE AVAILABLE TO THE DEPARTMENT UPON REQUEST.

**§ 130D.47. REPORTS**

(A) A PERSON WHO RECEIVES APPROVAL FROM THE DEPARTMENT TO APPLY SOIL OR GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS, GENERATED AS A RESULT OF REMEDIATION ACTIVITIES AT AGRICULTURAL CHEMICAL FACILITIES, TO AGRICULTURAL LAND SHALL FILE AN ANNUAL OPERATIONAL REPORT OR A FINAL REPORT OR BOTH WITH THE DEPARTMENT. THE ANNUAL OPERATIONAL REPORT REQUIRED BY § 130D.48 OF THIS CHAPTER (RELATING TO ANNUAL OPERATIONAL REPORT) SHALL BE FILED WITH THE DEPARTMENT WITHIN 60 DAYS OF THE END OF THE ONE YEAR TIME PERIOD RUNNING FROM THE BEGINNING OF APPLICATION OF THE SOIL

AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO THE APPLICATION SITE AND EACH YEAR OF OPERATION THEREAFTER. THE FINAL REPORT REQUIRED BY §130D.62. OF THIS CHAPTER (RELATING TO FINAL REPORT) SHALL BE FILED WITH THE DEPARTMENT ALONG WITH THE SITE CLOSURE PLAN REQUIRED BY § 130D.61 OF THIS CHAPTER (RELATING TO SITE CLOSURE PLAN) WITHIN 60 DAYS OF FINAL CLOSURE OF THE APPLICATION SITE. THE ANNUAL REPORT AND THE FINAL REPORT MAY BE COMBINED WHERE THE APPLICATION OF THE CONTAMINATED SOIL OR GROUNDWATER IS COMPLETED IN 1 YEAR OR LESS.

(B) THE RECORDS AND REPORTS SHALL BE SUBMITTED ON FORMS PREPARED BY THE DEPARTMENT AND SHALL CONTAIN THE FOLLOWING:

(1) THE NAME, MAILING ADDRESS, COUNTY AND TELEPHONE NUMBER OF THE PERSON APPLYING THE CONTAMINATED SOIL OR GROUNDWATER.

(2) THE NAME, MAILING ADDRESS, COUNTY AND TELEPHONE NUMBER OF THE OWNER OF THE AGRICULTURAL LAND UPON WHICH THE CONTAMINATED SOIL OR GROUNDWATER IS BEING OR HAS BEEN APPLIED.

(3) A COPY OF THE DAILY RECORDS AND ANNUAL OPERATIONAL REPORT REQUIRED BY § 130D.46 (RELATING TO DAILY OPERATIONAL RECORDS) AND § 130D.48 (RELATING TO ANNUAL OPERATIONAL REPORT) OF THIS CHAPTER.

(4) A SPREAD SHEET ON EACH SOIL PILE OR QUANTITY OF GROUNDWATER APPLIED CROSS-REFERENCING THE FIELD TO WHICH IT WAS APPLIED AND DOCUMENTING THE FOLLOWING:

(I) THE CHEMICAL ANALYSIS OF THE SPECIFIC SOIL PILE OR QUANTITY OF GROUNDWATER APPLIED.

(II) THE APPLICATION METHOD USED FOR EACH SOIL PILE OR QUANTITY OF GROUNDWATER.

(III) THE DATE OF INCORPORATION AND DEPTH OF INCORPORATION OF EACH SOIL PILE.

§ **130D.48. ANNUAL OPERATIONAL REPORT.**

(A) *GENERAL.* THE APPLICANT APPROVED TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND SHALL MAKE AND MAINTAIN AN ANNUAL OPERATIONAL RECORD. THESE RECORDS SHALL BE MAINTAINED ACCORDING TO GENERALLY ACCEPTED PRINCIPLES.

(B) *CONTENTS OF ANNUAL OPERATIONAL REPORT.* THE ANNUAL OPERATIONAL RECORD SHALL BE A COMPILATION OF THE DAILY RECORDS MADE AND MAINTAINED BY THE APPROVED APPLICANT. THE ANNUAL OPERATIONAL RECORD SHALL BE A SYNOPSIS OF THE DAILY RECORDS AND SHALL INCLUDE THE FOLLOWING:

(1) A SYNOPSIS OF THE WEIGHT OR VOLUME AND TYPES AND LEVELS OF PESTICIDES, FERTILIZERS, SOIL CONDITIONERS

NUTRIENTS AND OTHER CHEMICALS APPLIED TO EACH FIELD OR PLOT AT THE APPLICATION SITE.

(2) A SYNOPSIS OF THE TECHNIQUES AND EQUIPMENT USED TO APPLY AND INCORPORATE EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO EACH FIELD OR PLOT AT THE APPLICATION SITE AND THE DEPTH OF INCORPORATION AT EACH FIELD OR PLOT.

(3) A SYNOPSIS OF THE APPLICATION RATE AND CALCULATIONS EVIDENCING THE APPLICATION RATE TO EACH FIELD OR PLOT FOR EACH SOIL PILE OR QUANTITY OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS IS IN COMPLIANCE WITH THIS CHAPTER.

(4) A FINAL LIST CONTAINING THE NAME, MAILING ADDRESS, COUNTY AND STATE OF EACH REMEDIATION SITE FROM WHICH CONTAMINATED MEDIA CAME THAT WAS APPLIED TO THE SITE. THIS LIST SHALL IDENTIFY EACH SOIL PILE AND QUANTITY OF GROUNDWATER RECEIVED FROM EACH REMEDIATION SITE.

(5) A FINAL LIST, INCLUDING DATES, OF ANY DEVIATIONS FROM THE LAND APPLICATION PROPOSAL OPERATING PLAN.

(6) A FINAL LIST, INCLUDING DATES, OF ACTIONS TAKEN TO CORRECT DEVIATIONS FROM THE OPERATING PLAN OR VIOLATIONS OF THE ACT, THE ENVIRONMENTAL PROTECTION ACTS OR THIS CHAPTER.

(7) A CURRENT CERTIFICATE OF INSURANCE, AS SPECIFIED IN § 130D.22. (RELATING TO INSURANCE), EVIDENCING CONTINUOUS COVERAGE FOR COMPREHENSIVE GENERAL LIABILITY INSURANCE.

(8) A MAP OF THE SAME SCALE AND TYPE REQUIRED BY § 130D.43. (RELATING TO MAPS AND RELATED INFORMATION), SHOWING THE FIELD BOUNDARIES WHERE SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS WAS APPLIED, AND THE VOLUME AND TYPE OF AGRICULTURAL CHEMICALS AND CONTAMINATED MEDIA APPLIED TO EACH FIELD OR OTHER APPROVED APPLICATION AREA.

**Subchapter F. E. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX**

**Sec.**

**§ 130d.51. General requirements.**

**§ 130d.52. General exceptions.**

**§ 130d.51. General requirements.**

(a) *Special land application proposal form.* A person seeking approval to utilize and apply groundwater contaminated with agricultural chemicals generated as a result of remediation activities at an agricultural chemical facility as tank mix, shall apply in writing on a special land application proposal form prepared by the Department. The person seeking such permission shall ~~attach the chemical and waste analysis required by this chapter to the special land~~

~~application proposal form~~ FOLLOW THE LAND PROPOSAL APPLICATION PROCEDURES SET FORTH IN SUBCHAPTER B (RELATING TO LAND APPLICATION PROPOSAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND) AND SUBCHAPTER D (RELATING TO GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND).

(b) *REVIEW AND approval of special land application proposal form.* THE DEPARTMENT WILL FOLLOW THE REVIEW PROCESS SET FORTH IN SUBCHAPTER C (RELATING TO LAND APPLICATION PROPOSAL REVIEW PROCEDURES) WHEN REVIEWING AN APPLICATION FOR USE OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX. When the Department permits groundwater contaminated WITH agricultural chemicals, generated as a result of remediation activities at an agricultural chemical facility, to be applied AS TANK MIX to agricultural land, the applicant shall comply with ALL PROVISIONS OF this chapter except those expressly waived IN WRITING by the Department in its letter of approval.

(c) *Denial of special land application proposal form.* When the Department denies a request to utilize and apply groundwater contaminated with agricultural

chemicals as tank mix, the person seeking approval may still submit a land application proposal form under the standard provisions of this chapter. The Department's letter of denial will set forth the reasons for the denial.

(d) *Ongoing testing and monitoring requirement.* When the Department approves the ~~utilization and~~ application of groundwater contaminated with agricultural chemicals, AS TANK MIX, the approved applicant shall be required to conduct ~~ongoing~~ QUARTERLY testing and monitoring of the groundwater ~~and to submit chemical and waste analysis plans~~ AND SUBMIT THE RESULTS OF THE TESTS TO THE DEPARTMENT. ~~on an annual basis, unless testing is required by the Department on a more regular basis,~~ THE TESTING SHALL BE DONE IN ACCORDANCE WITH SECTIONS 130D.22 (RELATING TO CHEMICAL ANALYSIS OF WASTE AND SAMPLING TECHNIQUES AND PROTOCOL) AND 130D.23 (RELATING TO WASTE SAMPLING PLAN) OF THIS CHAPTER, SHALL TEST AND MONITOR FOR THE AGRICULTURAL CHEMICALS SET FORTH IN THE APPLICANT'S APPROVED LAND APPLICATION PROPOSAL AND SHALL BE CONSISTENT WITH THE LAND APPLICATION PROPOSAL APPROVED BY THE DEPARTMENT. THE APPROVED APPLICANT SHALL CONTINUE TO MONITOR AND TEST until a final closure plan has been submitted to AND APPROVED BY the Department and pumping and application of the groundwater contaminated with agricultural chemicals has ceased. This requirement applies to each well or other source ~~at the site being remediated,~~ from which the groundwater contaminated with agricultural chemicals to be utilized as tank mix is being drawn or pumped. BASED ON THE QUARTERLY TEST RESULTS AND CONSISTENT



WITH THE RATES AND PROCEDURES SET FORTH IN SECTIONS 130D.61 THROUGH 130D.66 OF THIS CHAPTER THE DEPARTMENT MAY ALLOW OR REQUIRE THE APPROVED APPLICANT TO CHANGE THE RATES OF APPLICATION.

(e) *Cancellation of approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix.* The Department will cancel the approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix if the groundwater contamination levels rise above the ~~Environmental Protection Agency~~ (EPA) DEP published MCL and HAL standards or new contaminants are found. The utilization and land application of the contaminated groundwater as tank mix shall immediately cease. The previously approved applicant/~~applicator~~ will SHALL no longer fall under the exception established by this subchapter and delineated in the Department's letter of approval. The PREVIOUSLY APPROVED applicant/~~applicator~~ shall be required to EITHER CEASE AND DESIST OR, WHERE POSSIBLE, comply with the standard land application requirements of this chapter. Land application of the groundwater contaminated with agricultural chemicals may not resume until the PREVIOUSLY APPROVED applicant/~~applicator~~ can demonstrate compliance with this chapter.

§ 130d.52. General exceptions.

(a) When the chemical and waste analysis results manifest that the types and concentrations levels of agricultural chemicals contained in the quantity of groundwater, generated as a result of remediation activities at an agricultural chemical facility, sought to be land applied are at levels below ~~Environmental Protection Agency (EPA)~~ DEP published MCL and HAL standards, the Department may allow the groundwater to be utilized as tank mix.

(b) When the Department permits groundwater contaminated with agricultural chemicals to be utilized as tank mix, the Department may waive certain provisions of this chapter. THE DEPARTMENT WILL DETERMINE WHICH PROVISIONS TO WAIVE BASED ON THE INFORMATION CONTAINED IN THE LAND APPLICATION PROPOSAL, WITH SPECIAL ATTENTION TO THE TYPES, LEVELS AND CONCENTRATIONS OF AGRICULTURAL CHEMICALS IN THE GROUNDWATER THE APPLICANT IS SEEKING TO APPLY. The Department will set forth the waivers specifically in its letter of approval.

(c) The Department will not waive the following provisions:

(1) THOSE SET FORTH IN SUBCHAPTER B (RELATING TO LAND APPLICATION PROPOSAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND).

(2) THOSE SET FORTH IN SUBCHAPTER C (RELATING TO LAND APPLICATION PROPOSAL REVIEW PROCEDURES).

(3) THOSE SET FORTH IN SUBCHAPTER D (RELATING TO GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND.

(4) THOSE SET FORTH IN SUBCHAPTER F (RELATING TO CLOSURE).

~~(1) Section 130d.13 (relating to chemical analysis of waste).~~

~~(2) Section 130d.14. (relating to waste analysis plan).~~

~~(3) Section 130d.21. (relating to general requirements for land application proposal form).~~

~~(4) Section 130d.22. (relating to insurance).~~

~~(5) Section 130d.23. (relating to right of entry and agreement with landowner).~~

~~(6) Section 130d.24. (relating to identification of interest).~~

~~(7) Section 130d.25. (relating to compliance information).~~

~~(8) The provisions in Subchapter D (relating to land proposal review procedures).~~

~~(9) Section 130d.61. (relating to general provisions).~~

~~(10) Section 130d.62. (relating to standards for land application of soil and groundwater contaminated with agricultural chemicals).~~

~~(11) Section 130d.66. (relating to prohibited applications).~~

**~~Subchapter G. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS~~**

**See.**

~~§ 130d.61. General provisions.~~

~~§ 130d.62. Standards for land application of soil and groundwater contaminated with agricultural chemicals.~~

~~§ 130d.63. Land application rates and procedures.~~

~~§ 130d.64. Additional application requirements.~~

~~§ 130d.65. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.~~

~~§ 130d.66. Prohibited applications.~~

~~§ 130d.67. Nuisance minimization and control.~~

~~§ 130d.68. Daily operational records.~~

~~§ 130d.69. Annual operational report.~~

~~§ 130d.61. General provisions.~~

~~— An approved applicant shall comply with the act and this chapter and shall comply with the land application standards, rates, procedures, limitations and prohibitions in this subchapter and the applicant's approved land application proposal.~~

~~§ 130d.62. Standards for land application of soil and groundwater contaminated with agricultural chemicals.~~

~~Persons seeking to apply soil or groundwater contaminated with agricultural chemicals resulting from the remediation of an agricultural facility to agricultural land shall comply with the following:~~

~~(1) The land application and application rate shall be consistent with labeling requirements for all pesticide active ingredients found in the soil or groundwater being land applied and the Department may require a safety factor of one half the label application rate. With regard to fertilizer found in the soil or groundwater being land~~

~~applied, the application shall be consistent with labeling and standards established by the *Pennsylvania Agronomy Guide*.~~

~~(2) The cumulative effect of all pesticides applied may not exceed the labeling rate for any of the pesticides contained in the soil pile or quantity of groundwater contaminated with agricultural chemicals.~~

~~(3) The cumulative effect of all fertilizer found in the soil or groundwater being land applied shall be consistent with and not exceed the standards established by the *Pennsylvania Agronomy Guide*.~~

~~(4) Proper application techniques (as suggested by the manufacturer and as set forth in this subchapter) shall be set forth in the applicant's operational plan and followed.~~

~~(5) Consultants or other individuals directing land application activities shall be certified in the appropriate use category to apply pesticides. A certified applicator is required to be on-site at all times during the application of pesticide contaminated soils.~~

~~(6) The landowner shall account for the amount of nutrients being applied to the land as set forth in the *Pennsylvania Agronomy Guide*.~~

~~(7) Individual soil piles and groundwater contaminated with agricultural chemicals may not be consolidated for application without prior written approval from the Department and the landowner.~~

~~(8) The Department may approve the application of minor amounts of additional agricultural chemicals, not found in background levels at the proposed application site, to the proposed application site in cases where the application rate will not result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause~~

~~unreasonable adverse effects on the environment. The Department will not approve an application of contaminated soil or groundwater where the application is likely to result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse affects on the environment.~~

~~(9) The application of agricultural chemicals shall be in compliance with the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61), the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136-136y), the *Pennsylvania Agronomy Guide* and any applicable nutrient management plan.~~

~~(10) With regard to the approval or denial of the land application of agricultural chemicals which have been banned, cancelled or suspended the Department will follow the criteria and rules and regulations established under the Pennsylvania Pesticide Control Act of 1973, the Federal Insecticide, Fungicide and Rodenticide Act of 1947 and the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901-6986).~~

~~(11) Land application of incompatible agricultural chemicals is prohibited as required by the Pennsylvania Pesticide Control Act and the Federal Insecticide, Fungicide and Rodenticide Act.~~

~~(12) The person responsible for the land application of the soil and groundwater contaminated with agricultural chemicals shall attest that all local ordinances and issues have been complied with and resolved before the Department will issue its approval of the land application.~~

~~(13) Upon completion of an approved land application project, a final report, containing information required by this chapter, shall be submitted to the Department.~~

~~§——130d.63. Land application rates and procedures.~~

~~(a) General provisions for application rate. When reviewing a land application proposal to determine if the applicant properly calculated the application rate and acreage needed to properly apply soil and groundwater contaminated with agricultural chemicals, the Department will consider the following, which shall be addressed in the applicant's operation plan:~~

~~(1) The type and concentration of each agricultural chemical contained in each soil pile or quantity of groundwater reported by the applicant in the land application proposal submitted to the Department.~~

~~(2) The excavated soil type indicated by the applicant in the land application proposal submitted to the Department.~~

~~(3) The total volume of excavated soil or contaminated groundwater in each individual soil pile or quantity.~~

~~(4) The proposed application site crop for the upcoming growing season and a projected 3-year crop rotation plan including the use of the land, type of crop to be grown and the use of the crops. The same crop may be planted year after year with the approval of the Department.~~

~~(5) The concentration, in parts per million, of the active ingredients in each soil pile or quantity of groundwater contaminated with agricultural chemicals.~~

~~(6) The application rate for the selected site and crop based on the current labeling for each pesticide found. If fertilizers are being applied, the Department will follow the recommendations for fertilizer applications for specific crops listed in the latest edition of the *Pennsylvania Agronomy Guide*.~~

~~(7) A conversion factor (37000) shall be used. The calculation considers the concentration of parts per million and the conversion of ft<sup>3</sup> to yd<sup>3</sup>.~~

$$\text{(3ft)}^3/\text{yd}^3 \div 1,000,000 = 1/37037.037$$

~~The result of the calculation is the total acreage required for land application for each individual agricultural chemical. A safety factor included in this calculation considers the cumulative effect of all the pesticides detected in the soil pile or quantity of groundwater. The acres required for each individual contaminant found in each soil pile or quantity of groundwater contaminated with agricultural chemicals are summed. This value is the uniform soil application rate. Soil application rate (Volume of excavated soil or contaminated groundwater ÷ Total acres required) (Yds<sup>3</sup>/Acre).~~

~~(8) The application credits that shall be taken and the additive loading effect of the soil or groundwater contaminated with agricultural chemicals. The rate will be calculated using the following formula. (Land required for an individual contaminant x Total acres required) ÷ Product label rate = Active ingredient application credit (lbs/Acres).~~

~~(b) Application rate considerations and procedures. The following shall be addressed in the applicant's operation plan and will be considered by the Department when reviewing all land application proposals:~~

~~—— (1) Application rate. The application rate as compared to the label rates of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals shall adhere to and not exceed the labeling rate for each compound present.~~



~~(2) *Total loading.* All pesticides detected in a single soil pile or quantity of groundwater contaminated with agricultural chemicals shall be considered when developing soil application rates. The cumulative effect of all the pesticides can be considered by summing the acreage needed for each individual pesticide to develop the total acreage required. Where more than one pesticide is present in a soil pile or quantity of groundwater the soil pile or groundwater shall be applied at the most restrictive labeling rate. Nutrients shall be considered separately from pesticides when developing soil application rates.~~

~~(3) *Incorporation.* The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the field application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and shall ensure the contaminated media is incorporated to a depth of up to 6 inches.~~

~~(4) *Top soil considerations.* The applicant shall set forth procedures to assure that valuable topsoil will not be lost, stripped off the land or buried under the contaminated soil to be applied.~~

~~(5) *Uniform application rate.* The applicant shall set forth procedures to assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.~~

~~(6) Multiple applications of pesticides.~~ The sum of pesticide active ingredient applied through any land application activities and other applications in the same season (or following season, in the case of fall or post-harvest land applications) may not exceed labeling rate restrictions for any pesticide applied.

~~(7) Multiple applications of nutrients.~~ The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications shall be set forth in the operation plan in the land application proposal. In addition, if the nutrients are being applied to an agricultural site that is required to have a nutrient management plan, under the Nutrient Management Act (3 P.S. §§ 1701-1718) the applicant shall attest that the application of the additional nutrients contained in the soil piles or groundwater to be applied conform with and do not violate the standards established in the applicant's nutrient management plan. If the application requires a revision to the nutrient management plan, the applicant must attach a notification from the State Conservation Commission attesting to the fact the nutrient management plan has been revised to account for the additional nutrients and the revised plan has received final approval.

~~(c) Timetable for land application of soil and groundwater contaminated with agricultural chemicals.~~ Land application of soil and groundwater contaminated with agricultural chemicals must be applied between April 1 and September 30 of each year, unless otherwise approved in writing by the Department.

~~(d) FIFRA and Pennsylvania Pesticide Control Act of 1973.~~ Application, application rates and application techniques used to land apply soil piles and quantities of

~~groundwater contaminated with agricultural chemicals may not violate the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136-136y) or the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61).~~

~~§ 130d.64. Additional application requirements.~~

~~— In addition to the application requirements in §§ 130d.62 and 130d.63 (relating to standards for land application of soil and groundwater contaminated with agricultural chemicals; and land application rates and procedures) the operating plan shall include the following:~~

~~(1) A projected 3-year crop rotation plan for each field or plot upon which soil or groundwater contaminated with agricultural chemicals is to be applied, including type of crop to be grown, planting sequence, crop planting technique to be used, crop and land management and use of crops grown.~~

~~(2) A nutrient and pesticide management plan for the site, including:~~

~~(i) A description of the kind and amount of fertilizer, soil conditioner or pesticide that will be placed on the site in addition to the soil or groundwater contaminated with agricultural chemicals.~~

~~(ii) The number and kind of animals on the farm or property and the total nutrient value of the manure produced by those animals, and the location (field or plot) where the manure is to be placed.~~

~~(iii) An explanation and analysis of the effect on the soil and crops from the additional nutrients, soil conditioners or pesticides that would be supplied by the soil and groundwater contaminated with agricultural chemicals.~~

(iv) ~~The benefit to the soil, crops or farming operation that the soil and groundwater contaminated with agricultural chemicals would provide.~~

~~§ 130d.65. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.~~

~~When reviewing a land application proposal the Department will consider the following which shall be addressed in the applicant's operation plan:~~

~~(1) Labeling rates. Pesticide contaminated soil and groundwater shall be applied to a site or crop, or both, in a manner consistent with labeling directions and requirements for that pesticide.~~

~~(2) Annual crops. In the case of annual crops, the crop shall be grown on the application area during the season that the application is made.~~

~~(3) Postharvest application. If land application is conducted in the fall or post harvest, the crop following the application must be suitable for the labeling requirements of the agricultural chemicals contained in the soil and ground water to be land applied.~~

~~(4) Site suitability. Site suitability will be based on the land application proposal. The results of the reports contained within the land application proposal will be combined and shall evidence that the rates of application of the soil and groundwater contaminated with agricultural chemicals will comply with labeling requirements, will not exceed labeling rates, will not exceed additivity requirements and will not cause damage to the proposed application site or adjacent land or water. General slope, drainage characteristics, presence of shallow groundwater, distance to surface waters and suitability for agricultural purposes are some of the characteristics that will be considered.~~

~~(5) Application of soil piles.~~ To allow for proper incorporation of contaminated soil piles, the soil piles may not be applied overtop of the soil at the application site at a thickness greater than ½ inch. The soil piles shall be incorporated into the soil at the application site to a depth of up to 6 inches, unless otherwise authorized by the Department.

~~(6) Application techniques.~~ Soil and groundwater contaminated with agricultural chemicals may not be applied by any type of spray irrigation equipment or by aerial equipment or any other technique that may cause or lead to excessive drift of the agricultural chemicals contained in the soil or groundwater unless the person has demonstrated in the land application proposal the equipment or technique will not cause aerosol transport offsite or onto a field that will contain an incompatible crop, and the Department has approved such machinery or technique.

~~(7) Ponding and standing accumulations.~~ Soil and groundwater contaminated with agricultural chemicals shall be applied to the soil surface and incorporated in a manner that prevents ponding or standing accumulations of contaminated soil overtop of the topsoil at the application site.

~~(8) Pasturing or grazing.~~ Livestock may not be pastured or allowed to graze on areas where soil and groundwater contaminated with agricultural chemicals has been applied 5 years subsequent to the application, unless otherwise approved by the Department in writing.

~~(9) Land use and crops.~~ The use that will be made of the proposed application area and the crops that will be grown on the site subsequent to the application of the soil and groundwater contaminated with agricultural chemicals, shall be consistent with the

labeling requirements of the pesticides contained in the soil piles or groundwater to be applied.

~~§ 130d.66. Prohibited applications.~~

~~(a) General. The following applications of soil or groundwater contaminated with agricultural chemicals are prohibited, unless specifically authorized by the Department in writing:~~

~~(1) An application which would violate any provisions of act, environmental protection acts or this chapter.~~

~~(2) An application to any "preserved farmland" as defined in 4 Pa.Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).~~

~~(4) An application to soil designated as "prime farmland" as defined under 7 CFR 657 (relating to prime and unique farmland).~~

~~(4) An application which would render the farmland unusable for agricultural purposes or would cause unreasonable adverse effects on the environment.~~

~~(5) An application which would cause the total annual application amounts of an agricultural chemical to exceed the respective labeling application rate on any application site.~~

~~(6) An application that does not comply with existing laws and regulations.~~

~~(7) An application where the soil or groundwater contaminated with agricultural chemicals contains a constituent in such high concentrations that it requires a loading rate which would give the media little or no nutrient or soil~~

~~conditioning value or little or no pesticide value when applied to the proposed application site.~~

~~—— (b) *Setback areas where land application is prohibited.* The operation plan shall address how the applicant intends to comply with this subsection. Soil and groundwater contaminated with agricultural chemicals may not be applied in the following areas: ——~~

~~(1) Within 100 feet of an intermittent, ephemeral or perennial stream.~~

~~(2) Within 300 feet of a water source, unless the current owner of the water source has provided a written waiver consenting to the activities closer than 300 feet.~~

~~(3) Within 100 feet of a sinkhole or diversion ditch.~~

~~(4) Within 100 feet of an exceptional value wetland.~~

~~(5) Within 100 feet measured horizontally from an occupied dwelling, unless the current owner thereof has provided a written waiver consenting to the activities closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.~~

~~§ —— 130d.67. **Nuisance Minimization and Control.**~~

~~—— The approved applicant shall control and minimize conditions not otherwise prohibited by this Chapter that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.~~

~~§ —— 130d.68. **Daily operational records.**~~

~~(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an operational~~

record for each day that the contaminated soil or groundwater is applied. These records shall be maintained according to generally accepted principles.

~~—— (b) *Contents of daily operational record.* The daily operational record shall include the following:~~

~~(1) The specific soil piles or quantities of groundwater contaminated with agricultural chemicals applied that day, including weight or volume and types and levels of pesticides, fertilizers, soil conditioners, nutrients and other chemicals in each soil pile or quantity of groundwater applied.~~

~~(2) The technique and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals.~~

~~(3) The application rate and calculations evidencing the application rate for each soil pile or quantity of groundwater contaminated with agricultural chemicals are in compliance with this chapter.~~

~~(4) The specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.~~

~~(5) The name, mailing address, county and State of each generator of the contaminated media.~~

~~(6) A record of any deviations from the land application proposal operating plan.~~

~~(7) The general weather conditions during application.~~

~~(8) A record of actions taken to correct deviations from the operating plan or violations of the acts the environmental protection acts and this chapter.~~



~~—— (c) *Retention.* Daily operational records shall be maintained and retained until final approval of the site closure plan (required by Subchapter H (relating to closure)) by the Department. These records shall be available to the Department upon request.~~

~~§ 130d.69. Annual operational report.~~

~~—— (a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an annual operational record. These records shall be maintained according to generally accepted principles.~~

~~(b) *Contents of annual operational report.* The annual operational record shall be a compilation of the daily records made and maintained by the approved applicant. The annual operational record shall be a synopsis of the daily records and shall include the following:~~

~~(1) A synopsis of the weight or volume and types and levels of pesticides, fertilizers, soil conditioners nutrients and other chemicals applied to each field or plot at the application site.~~

~~(2) A synopsis of the techniques and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals to each field or plot at the application site.~~

~~(3) A synopsis of the application rate and calculations evidencing the application rate to each field or plot for each soil pile or quantity of groundwater contaminated with agricultural chemicals are in compliance with this chapter.~~

~~(4) A final list containing the name, mailing address, county and State of each generator of contaminated media that was applied to the site. This list shall identify each soil pile and quantity of groundwater received from each generator.~~

~~(5) A final list, including dates, of any deviations from the land application proposal operating plan.~~

~~(6) A final list, including dates, of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts and this chapter.~~

~~(7) A current certificate of insurance, as specified in § 130d.22. (relating to insurance), evidencing continuous coverage for comprehensive general liability insurance.~~

~~(8) A map of the same scale and type required by § 130d.43. (relating to maps and related information), showing the field boundaries where soil and groundwater contaminated with agricultural chemicals was applied, and the volume and type of agricultural chemicals and contaminated media applied to each field or other approved application area.~~

## Subchapter H. F. CLOSURE

### Sec.

130d.7 61. Site closure plan.

130d.7 62. Final report.

### § 130d.7 61. Site closure plan.

(a) *General.* ~~The parties involved in the land application of~~ APPLICANT APPROVED BY THE DEPARTMENT TO LAND APPLY soil and groundwater contaminated with agricultural chemicals TO AGRICULTURAL LAND shall SUBMIT A SITE CLOSURE PLAN AND FINAL report ~~the~~ DELINEATING THE results of the land application activity to the Department ~~upon completion of the application and treatment.~~ THE SITE CLOSURE PLAN AND FINAL REPORT SHALL BE FILED WITH THE DEPARTMENT WITHIN 60 DAYS OF FINAL CLOSURE OF THE APPLICATION SITE.

(b) *Contents of plan.* The site closure plan shall include the following:

(1) A proposed postapplication field soil sampling and analysis plan which shall be consistent with the procedures for soil sampling and analysis in §§ 130d.13—130d.15 130D.22 AND 130D.23 (relating to chemical analysis of waste; AND waste analysis SAMPLING plan; ~~and application site analysis~~).

(2) The compounds ~~to be~~ analyzed for and the methods of analysis. This should be consistent with the initial background components analyzed and the methods used.

(3) A discussion of any problems encountered during the project and actions taken to correct any problems or violations.

~~(4) The analytical results of both the original application site analysis and the field closure soil sampling plan.~~

**§ 130d.7 62. Final report.**

The APPLICANT APPROVED BY THE DEPARTMENT TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND SHALL SUBMIT A final report TO THE DEPARTMENT. THE FINAL REPORT shall BE SUBMITTED TO THE DEPARTMENT WITHIN 60 DAYS OF FINAL CLOSURE OF THE APPLICATION SITE AND SHALL contain the final results of the site closure plan, a narrative describing both positive and negative results of the land application and the following information:

- (1) The nameS of the persons supervising the application.
- (2) The total acreage on which the soil or groundwater, or both, contaminated with agricultural chemicals was applied.
- (3) The dates of each application.
- (4) The start and stop time of each application.
- (5) The weather conditions during each application.
- (6) The calibration measures used.
- (7) The type of equipment used.
- (8) The type of incorporation method used and the date of incorporation.
- (9) The types and concentrations of agricultural chemicals present in each soil pile or quantity of groundwater and the specific field to which each soil pile or quantity of groundwater, or both, was applied.

(10) A discussion of any problems that occurred and actions taken to correct the problems.

(11) THE ANALYTICAL RESULTS OF BOTH THE ORIGINAL APPLICATION SITE ANALYSIS AND THE FIELD CLOSURE SOIL SAMPLING PLAN.



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To: John Nikoloff

From: David Flakne

Subject: Comments on PA Land Application Rule.

Below you will find my comments on the Department of Agriculture's proposal to establish Chapter 130d, relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands.

I am very concerned that, as written, the rule will effectively prevent land-spreading from being a viable option for most facilities. Agricultural chemicals are unique. They have been thoroughly studied and have been determined to be safe when apply to agricultural lands at labeled rates. The legislature recognized this and has provided the department with the authority to facilitate the process of landspreading. The language as written complicates a very simple and scientifically defensible approach to cleaning up agrichemical facilities. By having to sample for everything under the sun at these facilities the process can be effectively stopped due to an insignificant finding of some other chemical. My comments on the rule itself are below...

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130d]

Application of Soil and Groundwater Contaminated with Agricultural  
Chemicals to Agricultural Lands

[32 Pa.B. 1965]

The Department of Agriculture (Department), under the specific authority conferred by section 904(d) of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. § 6026.904(d)), proposes to establish Chapter 130d (relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands). Section 904(d) of the act delineates the duties of the Department and directs the Department to ". . . promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands." The regulations are required to ". . . provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations

controls and practices to protect the public health, safety and welfare and the environment at the site of land application."

The proposed regulations specify general procedures and rules for persons who solicit or receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land. These proposed regulations apply only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. ~~The Department has no power to issue final approval for the land application of contaminated soil or groundwater generated as the result of remediation activities that were undertaken at an agricultural chemical facility, where the soil or groundwater is contaminated (Contaminated may be the operative term here... Is mere detection constitute contaminated... If so you will never be able to landspread under this rule because you will always be able to detect something else. May need to add language as to significance see below) with chemicals or substances other than agricultural chemicals.~~ The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals. Where the contaminated soil or groundwater contains significant levels of chemicals or substances other than agricultural chemicals, the department will work with the other applicant ~~must receive approval for land application of chemicals or substances from the~~ appropriate regulatory agencies to insure that insignificant levels or background levels of detected compounds do not prevent the use of the land application provisions provided for in the rule or the act. or must proceed under the alternative provisions of the act, which include holding the soil and groundwater onsite under the regulations regarding onsite storage of waste or processing the soil and groundwater in a manner consistent with the type of waste contained in the soil pile or groundwater. The applicant may be ~~is~~ responsible for obtaining the any additional permits or approvals necessary for the application of the contaminated media which contain significant levels of contaminants other than agricultural chemicals. ~~The Department has no power to issue final approval for the land application of contaminated soil or groundwater that was generated as the result of remediation activities that were not undertaken at an agricultural chemical facility or where the contaminated soil or groundwater will be applied to land other than agricultural land.~~

#### Background

The act requires the Department to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. The Department takes very seriously its duty to protect the health and safety of the general public and to preserve the quality and productivity of agricultural lands in this Commonwealth. These proposed regulations are intended to address the safety of the application of soil and groundwater contaminated agricultural chemicals and to protect and assure the productivity and viability of the agricultural lands to which this media is applied. In addition, the Department of Environmental Protection, under the Solid Waste Management Act (35 P. S. §§ 6018.101-6018.1003) has regulations in place concerning the land application of

residual waste in 25 Pa. Code Chapter 291 (relating to land application of residual waste), including regulations specifically regarding application to agricultural land in 25 Pa. Code Chapter 291, Subchapter D (relating to additional requirements for the agricultural utilization of residual waste).

'Residual waste' as defined by the Solid Waste Management Act includes agricultural waste. The act does not exempt the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands, from the regulations promulgated under the Solid Waste Management Act. Therefore, the Department has endeavored to assure these regulations are consistent with the residual waste regulations pertaining to application of residual waste to agricultural land.

In the interest of carrying out its statutory duties and providing a safe alternative use for soil and groundwater contaminated with agricultural chemicals the Department has promulgated these proposed regulations. The regulations are intended to establish safe standards, criteria and procedures for the application of the contaminated media to agricultural lands. (Where are the standards... They should be labeled application rate based standards for soil containing agricultural chemicals)

#### Summary of Major Features

Section 130d.1 (relating to definitions) defines various terms to add clarity to the regulations. Although many of the terms are also defined in the act and the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.61), the Department included them in the proposed regulations to provide the regulated community and interested persons with easy and immediate access to definitions which clarify the regulations.

Section 130d.2 (relating to scope) details the narrow scope of the Department's authority, sets forth the Department's powers and duties and clarifies the type of contaminated material eligible for consideration to be applied to farm lands under the act and the proposed regulations.

Section 130d.3 (relating to continuing authority) delineates the intent that these proposed regulations do not amend, repeal or modify the provisions of any other act or the regulations promulgated there under and denotes the continuing authority of the Department to take regulatory action under those statutes.

Section 130d.11 (relating to scope) sets forth the requirement that persons receiving approval to apply soil and groundwater contaminated with agricultural chemicals shall comply with the act, the regulations and the environmental protection acts.

Section 130d.12 (relating to reports) establishes the duty of applicators to file annual and final reports with the Department and sets forth the information which shall be contained in the reports.

Section 130d.13 (relating to chemical analysis of waste) creates the requirement for the detailed chemical analysis of soil and groundwater taken from the agricultural chemical facility and sought to be applied to agricultural lands. It defines the type of analysis that shall be done and sets forth testing requirements and protocols.

Section 130d.14 (relating to waste analysis plan) delineates the requirements for a waste analysis plan and what shall be included in that plan.



Section 130d.15 (relating to application site analysis) establishes the requirement for an application site analysis and sets forth the criteria

for and procedures to be used in analyzing the site.

Section 130d.16 (relating to retained recordkeeping) details which records shall be retained and the retention time for the records.

Section 130d.17 (relating to public notice by applicant) denotes the requirement to comply with the notice provisions of the Pennsylvania Pesticide Control Act.

Section 130d.21 (relating to general requirements for land application proposal form) sets forth the requirements for submittal and delineates the documentation, information and affirmations which shall be contained in the application proposal.

Section 130d.22 (relating to insurance) establishes the insurance requirements for persons seeking to apply soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.23 (relating to right of entry and agreement with landowner) sets forth the requirements that the person seeking to apply soil and groundwater contaminated with agricultural chemicals to agricultural lands shall submit documents establishing their right to enter onto the land upon which the agricultural chemicals will be applied and a signed consent agreement. In addition, the landowner shall sign a form, prepared by the Department, authorizing the Department or its agents to enter onto the land.

Section 130d.24 (relating to identification of interest) details the type of information pertaining to the applicant which shall be contained in the land application proposal.

Section 130d.25 (relating to compliance information) the land application proposal shall contain proof that the proposed application will comply with the applicable Federal, State and local laws and regulations.

Section 130d.26 (relating to environmental assessment) sets forth the requirement for an environmental assessment to be included in the land application proposal. It delineates the criteria for the environmental assessment, including detailing the potential impact of the application of the soil and groundwater contaminated agricultural chemicals to the application site, potential harmful effects of the application and a mitigation plan.

Section 130d.31 (relating to criteria for approval and denial) establishes the criteria the Department will use and follow in evaluating a land application proposal.

Section 130d.32 (relating to receipt of land application proposal and completeness review) delineates the criteria to determine date of receipt and completeness of a land application proposal.

Section 130d.33 (relating to review period) establishes a time period for Department review of an administratively complete land application proposal and sets forth the procedures and process to be followed upon receipt of an incomplete land application proposal.

Section 130d.34 (relating to review process) sets forth the process which the Department will follow in reviewing land application proposals.

Section 130d.41 (relating to general) details terms, conditions and criteria which shall be met before, during and subsequent to land application of soil and groundwater contaminated with agricultural chemicals.

Section 130d.42 (relating to operating plan) sets forth the information

which shall be included in the operating plan.

Section 130d.43 (relating to maps and related information) delineates the type of maps which shall be included in the land application proposal and the information which those maps shall contain.

Section 130d.51 (relating to general requirements) sets forth the general requirements for applying to the Department to use groundwater contaminated with agricultural chemicals as tank mix. It establishes the review procedures and delineates ongoing testing and cancellation requirements.

Section 130d.52 (relating to general exceptions) establishes the standards the Department will follow in determining whether groundwater contaminated with agricultural chemicals can be utilized as tank mix. In addition, delineates the Department's authority to waive certain other provisions of the proposed regulations, when the Department determines the groundwater contaminated with agricultural chemicals can be used as tank mix. It also sets forth certain provisions of the proposed regulations that will not be waived by the Department.

Section 130d.61 (relating to general provisions) sets forth the overall compliance criteria for application of the soil and groundwater contaminated with agricultural chemicals.

Section 130d.62 (relating to standards for land application of soil and groundwater contaminated with agricultural chemicals) delineates the general criteria and standards that shall be accounted for and complied with when applying soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.63 (relating to land application rates and procedures) establishes application rates and procedures which shall be followed when applying soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.64 (relating to additional application requirements) sets forth some additional information that shall be contained in the operating plan, such as a projected 3-year crop rotation plan and information regarding any additional pesticides or fertilizers that will be placed on the application site.

Section 130d.65 (relating to limitations on land application of soil and groundwater contaminated with agricultural chemicals) delineates criteria and factors which shall be included in and accounted for in the applicant's operating plan. The Department will consider these criteria and factors in its review of the applicant's land application proposal. These criteria and factors establish limitations on how soil and groundwater contaminated with agricultural chemicals shall be applied to agricultural lands.

Section 130d.66 (relating to prohibited applications) establishes prohibitions on the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands.

Section 130d.67 (relating to nuisance minimization and control) establishes requirement for an approved applicant to minimize potential nuisances.

Section 130d.68 (relating to daily operational records) establishes the requirement to keep daily operational records during the application of the soil and groundwater contaminated with agricultural chemicals to agricultural lands and defines the information which shall be included in those records.

Section 130d.69 (relating to annual operational report) establishes the requirement to produce an annual operational report and defines the information which shall be included in that report.

Section 130d.71 (relating to site closure plan) establishes the

requirement for a site closure plan and delineates what that plan shall include.

Section 130d.72 (relating to final report) establishes the requirement for a final report and the criteria for what shall be included in that report.

#### Fiscal Impact

##### Commonwealth

The proposed regulations will impose additional administrative costs and have some fiscal impact upon the Commonwealth. The proposed regulations will require the Department to commit a substantial amount of time and manpower to review of applications and inspections of application sites.

##### Political Subdivisions

The proposed regulations will impose no costs and have no fiscal impact upon political subdivisions. The proposed regulations do not impose any additional burden of enforcement of review on political subdivisions.

##### Private Sector

For the most part the proposed regulations will impose minimal or no costs on the private sector. Companies wishing to apply soil and groundwater contaminated with agricultural chemicals, generated as the result of remediation activities undertaken at an agricultural facility, to agricultural lands will have to bear the costs of testing imposed by the regulations and the time and manpower costs of preparing the land application proposal. However, proceeding under the proposed regulations is not mandatory. The industry has other approved methods of disposing of soil and groundwater contaminated with agricultural chemicals, all of which impose costs on the industry. The industry seeking to proceed under the alternative presented by the act and these proposed regulations will have to determine whether or not it is the least cost alternative or is the best approach for them. The private sector will benefit through an alternative means of disposal, the liability protections for the remediated site in the act and the ability to utilize the land at the remediated site.

##### General Public

The proposed regulations will impose no costs and have no fiscal impact on the general public. The general public will benefit through an alternative means of disposal of contaminated soil and groundwater and the ability to utilize what was once a contaminated "'brownfields'" site. The owner of the agricultural land upon which the contaminated soil and groundwater will be applied will have to weigh the benefits offered by the company seeking to apply the contaminated soil and groundwater against any potential harm the application could pose to the productivity of the agricultural land.

##### Paperwork Requirements

The proposed regulations may result in a substantial increase of paperwork. The Department will have to develop application forms and review complicated proposals. The review and approval will have to be done by experienced Department staff and Department chiefs with expertise in the fields covered by the regulations.

##### Public Comment Period

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the Pennsylvania Bulletin.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 10, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

#### Contact Person

Further information is available by contacting the Department of Agriculture, Land Recycling and Environmental Remediation Standards Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: John Tacelosky, (717) 772-5217.

#### Effective Date

This proposed regulations will be effective upon final-form publication in the Pennsylvania Bulletin.

SAMUEL E. HAYES, Jr., Secretary

Fiscal Note: 2-116. (1) General Fund; (2) Implementing Year 2001-02 is \$0; (3) 1st Succeeding Year 2002-03 is \$50,000; 2nd Succeeding Year 2003-04 is \$53,000; 3rd Succeeding Year 2004-05 is \$55,000; 4th Succeeding Year 2005-06 is \$57,000; 5th Succeeding Year 2006-07 is \$60,000; (4) 2000-01 Program--\$n/a; 1999-00 Program--\$n/a; 1998-99--\$n/a; (7) General Government Operations; (8) recommends adoption.

#### Annex A

##### TITLE 7. AGRICULTURE

##### PART V. BUREAU OF PLANT INDUSTRY

##### CHAPTER 130d. APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LANDS

##### Subch.

##### A. GENERAL PROVISIONS

##### B. DUTIES OF APPLICATORS

##### C. GENERAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND

##### D. LAND PROPOSAL REVIEW PROCEDURES

##### E. GENERAL REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS

##### F. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF

GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX  
G. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND  
GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS

H. CLOSURE

Subchapter A. GENERAL PROVISIONS

Sec.

- 130d.1. Definitions.  
130d.2. Scope.  
130d.3. Continuing authority.

§ 130d.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:  
Act--The Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101--6026.908).

Active ingredient--

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest.

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

Agricultural chemical--A substance defined as a fertilizer, soil conditioner or plant growth substance under 3 Pa.C.S. Chapter 67 (relating to fertilizer) or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.60).  
Agricultural chemical facility--A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed (we may want to add "mixed, loaded, and/or transported." This should then allow the department to address spills in or adjacent to fields or any transportation spills to and from the field.

The term does not include facilities identified by SIC 2879 (available from the Department of Agriculture, Bureau of Market Development, 2301 N. Cameron St., Harrisburg, PA 17110, (717) 787-6041) where agricultural chemicals are manufactured.

Agricultural land or farmland--Land in this Commonwealth that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

Animal--All vertebrate and invertebrate species, including man and other mammals, birds, fish and shellfish.

Application site--The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemicals and delineated in a final plan containing and detailing the exact location of the farmland upon which the soil or groundwater contaminated with the agricultural chemicals is to be applied, including the property boundaries of the farmland and each field upon which the contaminated soil or groundwater will be applied.

Applicator--A certified applicator, private applicator, commercial applicator or public applicator.

(i) Certified applicator. An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P.

S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.

(ii) Private applicator. A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(iii) Commercial applicator.

(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.

(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.

(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of his employer as commercial applicators.

(iv) Public applicator. A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.

(v) Pesticide application technician. An individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.

Background--The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

Cleanup or remediation--To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

Contaminated media--Soil and groundwater contaminated with agricultural chemicals and/or significant levels of other-regulated substances or other chemicals above background levels that are generated as a result of remediation activities at agricultural chemical facilities.

DEP--The Department of Environmental Protection of the Commonwealth.

Defoliant--A substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

Department--The Department of Agriculture of the Commonwealth.

Desiccant--Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Environment--Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these. Environmental protection acts--Includes:

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

(ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53

P. S. §§ 4001.101--4001.1904).

(iii) The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101--6020.1305).

(iv) The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101--7130.906).

(v) The act of July 13, 1988 (35 P. S. §§ 6019.1--6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.

(vi) The Air Pollution Control Act (35 P. S. §§ 4001--4015).

(vii) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1--1396.31).

(viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P. S. §§ 3301--3326).

(ix) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1--693.27).

(x) The Solid Waste Management Act (35 P. S. §§ 6018.101--6018.1003).

(xi) The Nutrient Management Act (3 P. S. §§ 1701--1718).

(xii) 3 Pa.C.S. §§ 6701--6725 (relating to Fertilizer Act).

(xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.61).

(xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136--136y).

(xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901--6986)

(xvi) Other State or Federal statutes relating to environmental protection or the protection of public health.

Equipment--

(i) Any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any agricultural chemical on land and anything that may be growing, habituating or stored on or in the land.

(ii) The term does not include any pressurized hand-sized household apparatus used to apply any agricultural chemical or any equipment or contrivance of which the person who is applying the agricultural chemical is the source of power or energy in pesticide application. General use pesticides--A pesticide not classified as a restricted use pesticide.

Groundwater--Water below the land surface in a zone of saturation.

HAL--Health Advisory Level.

Habitats of concern--A habitat defined as one of the following:

(i) Typical wetlands with identifiable function and value, except for exceptional value wetlands as defined in 25 Pa. Code § 105.17 (relating to wetlands).

(ii) Breeding areas for species of concern.

(iii) Migratory stopover areas for species of concern.

(iv) Wintering areas for species of concern.

(v) Habitat for State endangered plant and animal species.

(vi) Areas otherwise designated as critical or of concern by the Game Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.

Incorporation--Plowing or injecting contaminated media to a depth of up to 6 inches in a manner that ensures a uniform mixture of top soil and contaminated media.

Label--The written, printed or graphic matter on, or attached to the pesticide, agricultural chemical or device or any of its containers or wrappers.

Labeling--Pertaining to pesticide or other agricultural chemicals means all labels and all other written, printed or graphic matter which includes one of the following:

(i) That which accompanies the pesticide, agricultural chemical or device at any time.

(ii) To which reference is made on the label or in literature accompanying the pesticide, agricultural chemical or device, except to current official publications of the Federal Environmental Protection

Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides or agricultural chemicals.

Land application proposal--An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural facility, to agricultural land.

MCL--Maximum contaminant level.

Person--An individual, firm, corporation, association, partnership, consortium joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal government, State government, political subdivisions and Commonwealth instrumentalities.

Pesticide--A substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

Plant regulator--

(i) A substance or mixture of substances intended, through physiological

action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(ii) The term does not include any of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants and are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

Prime farmland--Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

Secretary--The Secretary of the Department.

Tank mix or spray mix--A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.

Treatment--The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).

Under the direct supervision of a certified commercial or public applicator--Unless otherwise prescribed by labeling, means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.

Unreasonable adverse effects on the environment--Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any pesticide or agricultural chemical.

§ 130d.2. Scope.



(a) The Department has the powers and the duties set forth under section

904(d) of the act (35 P. S. § 6026.904(d)).

(b) This chapter specifies general procedures and rules for persons who solicit or receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.

(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of contaminated soil or groundwater generated as the result of remediation activities as follows:

(1) That were undertaken at an agricultural chemical facility, where the soil or groundwater is contaminated with ~~chemicals or substances~~ significant levels of contaminants other than agricultural chemicals. ~~other than agricultural chemicals.~~

(i) The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals where these chemicals are determined to pose a significant threat to public health and are significantly above established standards or significantly above background levels typically found in agricultural areas.

(ii) Where the contaminated soil or groundwater are determined to contains significant levels of chemicals or substances other than agricultural chemicals, the applicant ~~shall receive prior approval for land application of the chemicals or substances from the appropriate regulatory agency or may be required to~~ shall proceed under the alternative provisions of the act. ~~which include holding the soil and groundwater onsite under the regulations regarding onsite storage of waste or processing the soil and groundwater in a manner consistent with the type of waste contained in the soil pile or groundwater.~~

~~(iii) The applicant is responsible for obtaining any additional permits or approvals necessary for the application of the contaminated media.~~

~~(2) That were not undertaken at an agricultural chemical facility.~~

(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.

§ 130d.3. Continuing authority.

Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.

Subchapter B. DUTIES OF APPLICATORS

Sec.

- 130d.11. Scope.
  - 130d.12. Reports.
  - 130d.13. Chemical analysis of waste.
  - 130d.14. Waste analysis plan.
  - 130d.15. Application site analysis.
  - 130d.16. Retained recordkeeping.
  - 130d.17. Public notice by applicant.
- § 130d.11. Scope.

A person who solicits or receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall comply with the act, this chapter and the environmental protection acts.

§ 130d.12. Reports.

(a) A person who solicits or receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall file an annual report and a final report with the Department. The annual report and the final report may be combined when the application of the contaminated soil or groundwater is completed in less than 1 year.

(b) The reports shall be submitted on forms prepared by the Department and shall contain the following:

- (1) The name, mailing address, county and telephone number of the person applying the contaminated soil or groundwater.
- (2) The name, mailing address, county and telephone number of the owner of the agricultural land upon which the contaminated soil or groundwater is being or has been applied.
- (3) A copy of the daily and annual records required by this chapter.
- (4) A spread sheet on each soil pile or quantity of of soil or groundwater applied

documenting the following:

- (i) The chemical analysis of the each soil pile or quantity of groundwater applied.
- (ii) The chemical analysis of each field or plot upon which the a-soil pile or or quantity of groundwater was applied.
- (iii) The specific field or plot upon which the each soil pile or quantity of groundwater was applied.
- (iv) The application method used for the each soil pile or quantity of groundwater applied.
- (v) The date of incorporation and depth of incorporation of the each soil pile.

§ 130d.13. Chemical analysis of waste.

(a) A person who seeks to apply soil or groundwater generated as a result of remediation activities at an agricultural chemical facility, to agricultural land shall perform a detailed analysis of the soil or groundwater ~~to that fully~~ characterizes the physical properties and chemical composition of the soil or groundwater each type of waste that may have been generated at the remediation site which is subject to disposal.

(b) The analysis of the soil or groundwater sought to be applied to agricultural land shall include all compounds stored in bulk quantities or which have been mixed and loaded at the facility outside of impervious containment structures over the past ten years. Also any compound which was known to have been spilled at the facility should also be included in the analysis. encompass all types of wastes that are likely to be contained in the soil or groundwater at the remediation site. This includes wastes generated as the result of operations, manufacturing, mixing, storage, distribution and facility or machinery maintenance carried out at the remediation site. The list of analytes types of wastes likely to be contained in the soil and

~~groundwater shall should~~ be developed gleaned from information available to regarding the person or facility at which the remediation activities are taking place and the remediation site using all available information including the following:

(1) Records, including sales records, memorandums, invoices, repair and maintenance documents and historical data, of the type of products produced, used and stored by the person or facility being remediated, and at the remediation site.

~~(2) Material safety data sheets or similar sources that may help characterize the types of waste generated.~~

~~(23) Notices of past violations or contamination, if applicable.~~

~~(4) Information regarding any by-product or chemical produced during or as a result of the manufacturing processes, mixing, storage or distribution of materials by the person or facility being remediated and at the site being remediated.~~

~~(35) A copy of the source reduction strategy of the person or facility at which remediation activities are taking place, if applicable.~~

(c) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals and the by-products or derivatives thereof that were ever held, stored, formulated, sold or distributed by the agricultural chemical facility being remediated in bulk quantities over the past ten years.

(1) In addition, the person proposing to land apply the contaminated media shall test for any other chemicals or contaminants, such as petroleum products or manufacturing or cleaning solvents which have been spilled and are therefore, likely to be present in soil or groundwater at the agricultural chemical

facility being remediated.

(2) The tests shall be predicated on the manufacturing processes or business carried on by the agricultural facility being remediated and records obtained from that facility.

(3) A verified copy or synopsis of the records, a history of the products and manufacturing processes carried on by the agricultural facility for the past ten years being remediated and the final soil or groundwater, or both, test results shall be attached to and made part of the land application proposal submitted to the Department.

(d) Soil or groundwater, or both, samples from the each soil pile or quantity of groundwater sought to be applied to agricultural land shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results and a record of laboratory quality control procedures and the use of those procedures (if it is a dept approved lab we should not need to provide further verification as to the quality of the processes used by the lab... One would assume that the dept would only approve labs that follow standard QA/QC protocols.) shall be submitted to the Department and to the owner of the

agricultural land on which the contaminated soil and groundwater is sought to be applied. The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.

(e) The chemical analysis ~~of waste~~ shall include the following:

(1) ~~A waste sampling plan, including quality assurance and quality control procedures. The plan shall ensure that an accurate and representative sampling of the contaminated soil or groundwater, or~~

both, has been collected and analyzed by the person seeks to apply the remediated soil or groundwater to agricultural land.

~~(2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to leach into the environment. (This is not needed if one follows the label...~~

(3) A demonstration that the contaminated soil or groundwater will be applied to agricultural land at labeled or agronomic rates will be established. Any proposed application that falls outside of labeled or agronomic rates can be

land applied to agricultural land should provide evidence that the application can be made without negatively affecting the productivity of the agricultural land or causing harm to the environment. (documentation that the application will be made at labeled rates should suffice here...)

§ 130d.14. Waste analysis plan.

The applicant shall develop an waste analysis plan. The waste analysis plan will outline ~~shall cover~~ each chemical, nutrient or constituent proposed to be

applied to the agricultural land. The plan shall take into account the chemical analysis required by § 130d.13 (relating to chemical analysis of waste). At a minimum, the plan shall include:

(1) The type of chemicals, nutrients and constituents for which the each

soil pile or quantity of groundwater will be analyzed and the rationale for the selection of those chemicals, nutrients and constituents.

(2) The test methods that will be used to test for these chemicals, nutrients and constituents.

(3) An explanation of the sampling methods that will be used to obtain an accurate and representative sample of the contaminated soil and groundwater to be analyzed, ~~including quality assurance and quality control procedures.~~ The sampling method used shall assure at least one representative sample is taken from the each soil pile or quantity of groundwater proposed to be applied to agricultural land.

(4) ~~Individual~~ Individual ~~Soils piles and or~~ quantities of groundwater ~~may may~~ contain different types and concentrations of chemicals, nutrients and

constituents. Therefore, the plan shall include a method for ~~labeling and managing the soils piles and~~ quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site.

§ 130d.15. Application site analysis.

The applicant shall develop an application site analysis plan. The application site analysis plan shall cover soil samples taken from the proposed application site. The soil samples taken from the proposed application site shall be tested for each the chemicals, nutrients or constituents which serve as the basis for the soil or groundwater land application rate. found in the soil or groundwater at the remediated sites

~~that are proposed to be applied to the application site. In addition, the application site analysis shall determine~~ lineate the soil types found

within the proposed application area. ~~The plan shall take into account the chemical analysis of waste required by § 130d.13 (relating to chemical analysis of waste) and the waste analysis required by § 130d.14 (relating to waste analysis plan).~~ (not sure what the preceding requirements entail) At a minimum, the application site analysis plan shall include:

(1) A chemical, nutrient and constituent analysis of each field or plot upon which a soil ~~pile~~ or a quantity of groundwater from the remediated agricultural facility is to be applied.

(2) The test results from soil samples taken from each field at the proposed application sight where the contaminated media is to be applied.

(3) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals, ~~the by-products or derivatives thereof, and each chemical,~~ nutrient or constituent that ~~were~~ found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated and which will be applied to the proposed application site at a rate which is over 25 percent of the labeled or agronomic rate suitable for the are to be applied at the proposed soil types at the application site.

(4) Soil samples from each field or plot upon which the contaminated soil or groundwater, or both, from the remediated agricultural facility is to be applied shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results and ~~a record of laboratory quality control procedures and the use of those procedures~~ shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. ~~The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.~~

(5) Documentation of the soil types found within the proposed application area.

§ 130d.16. Retained recordkeeping.

(a) General. An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain the following records:

(1) The daily operation records required by § 130d.68 (relating to daily operational records).

(2) The annual operation records required by § 130d.69 (relating to annual operational report).

(3) The signed agreement between the person responsible for the land application and the owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.

(4) The right of entry agreement.

(b) Inspection and audit. The records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agents.

(c) Retention time period. The records and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were submitted and approved by the Department.

§ 130d.17. Public notice by applicant.

The applicant shall comply with the notice requirements established by the Pennsylvania Pesticide Control Act of 1973 (What does this entail???) (3 P. S. §§

111.21--111.61) and the regulations in Chapter 128 (relating to pesticides).

Sincerely,  
David Flakne

COMMONWEALTH OF PENNSYLVANIA



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DEPARTMENT OF AGRICULTURE  
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May 17, 2004

Independent Regulatory Review Commission  
333 Market Street, 14<sup>TH</sup> Floor  
Harrisburg, PA 17120

**RE: FINAL-FORM REGULATION**  
**Department of Agriculture - Bureau of Plant Industry**  
**I.D. No. 2-116**  
**7 Pa. Code Chapter 130.d**  
**Proposed Rulemaking: 32 Pa. Bulletin 1965 (April 20, 2002)**  
**Approved by Office of General Counsel: May 17, 2004**


Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Preamble and Annex "A"). Copies of the Notice of Proposed Rulemaking and Regulatory Analysis Form are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)). The Department's responses to comments received with respect to the proposed version of this regulation are set forth in the Preamble and Annex "A" of the final-form regulation. Please be aware the Department, on this same date, sent a copy of the final-form Preamble and Annex "A" to all commentators regardless of whether a copy was requested.

The Regulatory Review Act (at 71 P.S. § 745.5a (j.1)) provides the Committee 20 days from receipt of the enclosed material within which to convey its approval or disapproval of the final-form regulation to the Independent Regulatory Review Commission. Failure to disapprove the final-form regulation within that 20-day period would constitute approval.

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

Sincerely,

  
David C. Kennedy  
Assistant Counsel

Enclosures

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

**I.D. NUMBER:** 2-116

**SUBJECT:** Application of Soil & Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands

**AGENCY:** DEPARTMENT OF AGRICULTURE

**TYPE OF REGULATION**

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

RECEIVED  
 DEPARTMENT OF AGRICULTURE  
 MAY 17 2004

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
5/17/04	<i>Jeanne E. Berger</i>	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
5-17-04	<i>Cindy Zinn</i>	
5/17/04	<i>W. K. Hoff</i>	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
05/17/04	<i>Judy Met Eagle</i>	
5/17/04	<i>G. Bennett</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 17, 2004