

Regulatory Analysis Form

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(1) Agency

Commonwealth of Pennsylvania
Department of Agriculture

REGULATORY
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

2-116

IRRC Number: 2267

(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. Tacosky 772-5217

Secondary Contact: Phillip M. Pitzer 772-5206

(6) Type of Rulemaking (check one)

Proposed Rulemaking X
Final Order Adopting Regulation
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification
Attached?

No X
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed 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 final approval if other substances are involved, and the Department has no authority over the 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. § 6026.101 *et seq.*).

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(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 lands.”

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

These regulations would provide options to agricultural chemical businesses and farmers involved in remediation activities. Land recycling of contaminated soil and groundwater could be a cheaper and cost effective alternative to treatment and disposal.

These regulations would reduce transportation and handling costs by eliminating the need to dispose of the contaminated soil in landfills and hazardous waste incinerators, and the need to treat contaminated groundwater prior to discharge.

(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 continued handling and transportation of hazardous waste over public roads to approved EPA incinerators, and the possible leaching of hazardous chemicals into the groundwater system if remediation is deferred. The high cost of actual disposal options for the types of hazardous waste which may be present at agricultural chemical facilities may preclude site remediation activities.

(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 and cost effective disposal options for the contaminated soil and groundwater.

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(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 PennAg Industries and John A. Nikoloff of Capital Associates, Inc. These professionals represent the majority of the regulated businesses which may be affected by the proposed regulations. The Department of Environmental Protection 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.*).

(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 of the products being land applied and also of the soil 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 to at least ten thousand dollars per site.

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(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 proposed regulations will impose no costs and have no 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 PDA associated with the implementation of these regulations are estimated at \$5000 per case. This includes the time associated with the technical review of the application / remediation plan, meetings with consultants and correspondence between PDA and the persons involved with site remediation.

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(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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	0	\$5000/case	\$5000/case	\$5500/cas	\$5500/cas	\$6000/cas
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	\$5000/case	\$5000/case	\$5500/cas	\$5500/cas	\$6000/cas
COSTS:						
Regulated	0	\$3000 /case	\$3200 /case	\$3500/cas	\$3700/cas	\$3900/cas
Local Government	0	0	0	0	0	0
State Government	0	\$5000 /case	\$5300 /case	\$5500/cas	\$5700/cas	\$6000 /cas
Total Costs	0	\$8000 /case	\$8500 /case	\$9000/cas	\$9400/cas	\$9900/cas
REVENUE LOSSES:						
Regulated	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	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 PA 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 a cheaper and cost effective alternative to treatment and disposal at EPA approved hazardous waste facilities. Specifically, these regulations would reduce transportation and handling costs 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.

No actual costs are presented above since no PDA 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 these proposed regulations.

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

There were no alternative regulatory schemes considered since the Land Recycling and Environmental Remediation Standards Act provided specific statutory authority for these proposed regulations.

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(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 set labeling and application requirements for pesticides.

(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 will 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.

(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 promulgating agency, the PA Department of Agriculture. However, the 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 applications to agricultural land (25 Pa. Code §§ 291.301 - 291.316).

(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.

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(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. In fact, all paperwork associated with this regulation is already being compiled under DEP guidelines.

(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.

(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 these regulations is December 31, 2002.

(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.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

MAR 14 2002

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-116

DATE OF ADOPTION _____

BY:
Samuel E. Hayes, Jr.

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY:

2/27/02

DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130d
Application of Soil and Groundwater Contaminated
with Agricultural Chemicals to Agricultural Lands**

TITLE 7 – Agriculture
DEPARTMENT OF AGRICULTURE
[7 PA. CODE CH 130d.]
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 proposes to establish 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. Section 904(d) of the act delineates the duties of the Pennsylvania Department of Agriculture ("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 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 a chemical(s) or substance(s) other than an agricultural chemical(s), the applicant must receive approval for land application of such chemical(s) or substance(s) from the appropriate regulatory agency or must proceed under the alternative provisions of the act, which include holding the soil and groundwater on site under the regulations regarding on site 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 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.

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 these proposed regulations. The regulations are intended to establish safe standards, criteria and procedures for the application of such contaminated media to agricultural lands.

The major features of the proposed regulation are summarized as follows:

SUMMARY OF MAJOR FEATURES

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

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 regulations.

Section 130d.3. (relating to continued authority) delineates the intent that these 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 the scope of duties of applicators) sets forth the requirement that persons receiving approval to apply soil and groundwater contaminated with agricultural chemicals must comply with all the provisions of the act, the regulations and the environmental protection acts.

Section 130d.12. (relating to required reports) establishes the duty of applicators to file annual and final reports with the department and sets forth the information which must be contained in such 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 must be done and sets forth testing requirements and protocols.

Section 130d.14. (relating to a waste analysis plan) delineates the requirements for a waste analysis plan and what must 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 record keeping requirements) details which records must be retained and the retention time for such 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 (3 P.S. §§ 111.21-111.61).

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

Section 130d.22. (relating to insurance requirements) 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 must 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 must 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 must be contained in the Land Application Proposal.

Section 130d.25. (relating to compliance information) the Land Application Proposal must contain proof that the proposed application will comply with all 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 requirements for land application of soil and groundwater contaminated with agricultural chemicals) detailing terms, conditions and criteria which must 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 must be included in the operating plan.

Section 130d.43. (relating to maps and related information) delineates the type of maps which must be included in the Land Application Proposal and the information which those maps must contain.

Section 130d.51. (relating to general requirements and exceptions for use and application of groundwater contaminated with agricultural chemicals as tank mix) sets forth the general requirements for applying to the department to use groundwater contaminated with agricultural chemicals as tank mix. 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 regulations, where the department determines the groundwater contaminated with agricultural chemicals can be used as tank mix. It also sets forth certain provisions of the regulations that shall not be waived by the department.

Section 130d.61. (relating to general provisions for operating requirements) 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 must 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 must 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 must 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 must 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 must 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 control) establishes requirement for 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 must 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 must 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 must include.

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

FISCAL IMPACT

Commonwealth

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

Private Sector

For the most part the proposed regulation 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 bear the costs of testing imposed by the regulations and the time and manpower costs of preparing the Land Application Proposal. However, proceeding under these 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 Land Recycling and Environmental Remediation Standards Act and these 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 set forth in the Land Recycling and Environmental Remediation Standards Act and the ability to utilize the land at the remediated site.

General Public

The proposed regulation 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 such application could pose to the productivity of the agricultural land.

PAPERWORK REQUIREMENTS

The proposed regulation may result in a substantial increase of paperwork. The Department will have to develop application forms and review complicated proposals. Such 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, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§ 745.1 – 745.15), as amended by Act 24 of June 25, 1997 (P.L. 252, No. 24), the Department submitted a copy of the proposed regulation on April 10, 2002 to the Independent Regulatory Review Commission and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed regulation, the Department has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has an objection to any portion of the proposed regulation, it will notify the Department within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, 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, Pennsylvania 17110-9408; Attn: John Tacosky (717) 772-5217.

EFFECTIVE DATE

This proposed regulation is effective upon publication in the *Pennsylvania Bulletin*.

By the Department of Agriculture

SAMUEL E. HAYES, JR., SECRETARY

**PROPOSED 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. GENERAL REQUIREMENTS FOR PERMISSION TO
APPLY SOIL AND GROUNDWATER CONTAMINATED
WITH AGRICULTURAL CHEMICALS TO
AGRICULTURAL LAND.....**

SUBCHAPTER D. APPLICATION FORM REVIEW PROCEDURES.....

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

**SUBCHAPTER F. 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. CLOSURE.....

Subchapter A. GENERAL PROVISIONS

<u>Sec.</u>	<u>Title</u>
130d.1.	Definitions.
130d.2.	Scope.
130d.3.	Continuing Authority.

§ 130d. 1. Definitions.

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

Act - The act of May 19, 1995 (P.L. 4, No. 2) known as the Land Recycling and Environmental Remediation Standards Act (35 P.S. § 6026.101 *et seq.*).

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.

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

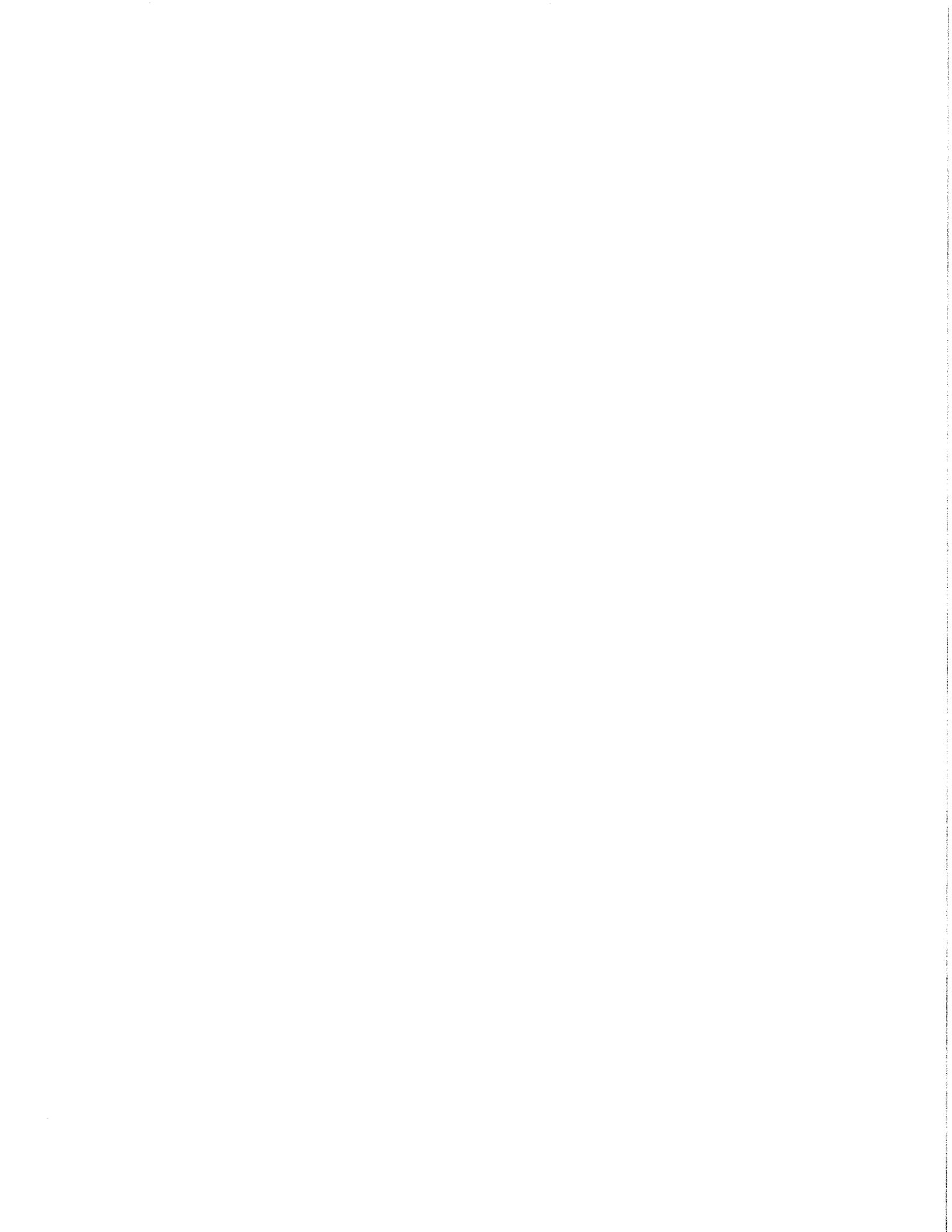
Agricultural Chemical - A substance defined as a fertilizer, soil conditioner or plant growth substance under the act of May 29, 1956 (1955 P.L. 1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law (3 Pa.C.S.A §6701 *et seq.*), or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21 *et seq.*).

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 where agricultural chemicals are manufactured.

Agricultural land or Farmland - Land in the 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.

Application site - The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemical(s) 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 chemical(s) 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.



(A) Certified applicator - Any 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.

(B) 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.

(C) Commercial applicator - Means a certified applicator (whether or not he 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, or any 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. 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.

(D) Public applicator - Any certified applicator who applies pesticides as an employee of the State or its instrumentality’s or any local agency.

(E) Pesticide application technician - Any 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,” (3 P.S. § 111.36a) is registered by the Secretary to apply any 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.

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

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

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

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) The Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law (3 Pa.C.S.A §6701 *et seq.*).
- (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, as amended in 1972 (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 - 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 such land, but 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 - Any pesticide not classified as a restricted use pesticide.

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

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 section 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.

HAL - Health Advisory Level.

Incorporation - Means plowing or injecting contaminated media to a depth of up to 6 inches in such a manner as to ensure a uniform mixture of topsoil 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:

- (i) Accompanying the pesticide, agricultural chemical or device at any time; or
- (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 Department of Health, Education and Welfare, 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 - 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 - Any 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. Also, the term "plant regulator" does not include any of such 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 as 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 at 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

Secretary - The Secretary of Agriculture of the Commonwealth.

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 it in the act of October 18, 1988 (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101 *et seq.*).

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 Chapter 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) These 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:

(1) 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 a chemical(s) or substance(s) other than an agricultural chemical(s), the applicant must receive prior approval for land application of such chemical(s) or substance(s) from the appropriate regulatory agency or must proceed under the alternative provisions of the act, which include holding the soil and groundwater on site under the regulations regarding on site 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.

(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 these regulations is intended to nor shall 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

<u>Sec.</u>	<u>Title</u>
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 Record Keeping.
130d.17.	Public Notice.

§ 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 must comply with the provisions of 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 must file an

annual report and a final report with the Department. The annual report and the final report may be combined where the application of the contaminated soil or groundwater is completed in less than a 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 must 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 addition, the person proposing to land apply the contaminated media must 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. Such tests must be predicated on the manufacturing processes or business carried on by the agricultural facility being remediated and records obtained from that facility. 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 and/or groundwater test results must be attached to and made part of the Land Application Proposal submitted to the Department.

(d) Soil and/or groundwater samples from each soil pile or quantity of groundwater sought to be applied to agricultural land must 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 and/or groundwater 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 must 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 site(s) 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. and the waste analysis required by § 130d.14. 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 must 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 and/or groundwater 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 and/or groundwater from the remediated agricultural facility is to be applied must 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 Record Keeping.

(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 section 130d.59 of this chapter.

(2) The annual operation records required by section 130d.60 of this chapter.

(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. All records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agent(s).

(c) Retention time period. All 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 its attendant regulations.

**SUBCHAPTER C – GENERAL REQUIREMENTS FOR PERMISSION TO
APPLY SOIL AND GROUNDWATER CONTAMINATED WITH
AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND.**

- § 130d.21. **General Requirements For Land Application Proposal Form.**
- § 130d.22. **Insurance.**
- § 130d.23. **Right of entry and agreement with landowner.**
- § 130d.24. **Identification of Interest.**
- § 130d.25. **Compliance Information.**
- § 130d.26. **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 forth 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.

(c) 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) Affirmation of chemical analysis and waste analysis plan. The chemical analysis of waste and the waste analysis plan shall be supported by an affirmation of sworn statement, signed by the applicant, affirming that all known and likely chemicals, nutrients and constituents at the remediation site were tested for and the tests were

performed in accordance with the procedures and protocols set forth in the Land Application Proposal.

(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 affirmed by an appropriate certified applicator.

§ 130d.22. Insurance.

The applicant shall comply with the insurance requirements established by the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21-111.61) and its attendant regulations. The insurance policy shall be effective prior to the initiation of the application of the soil or groundwater contaminated with agricultural chemicals to the agricultural land and shall remain effective until final approval and implementation of the approved applicant's closure plan (required by Subchapter G relating to closure).

§ 130d.23. Right of entry and agreement with landowner.

(a) Each Land Application Proposal shall contain a description of the 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.

(b) The Land Application Proposal shall provide one of the following:

(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.

(c) 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 applicable prior to the initiation of operations, for the duration of operations at the application site, and for up to 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 these regulations.

§ 130d.24. Identification of Interest.

(a) Applicant information. Each Land Application Proposal shall contain the following information:

(1) The legal name(s), address(es) and telephone number(s) 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) 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) 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) 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 such persons.

(c) Each Land Application Proposal list all 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) 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 such sites, the type of operation undertaken and the ultimate outcome of such operations.

§ 130d.25. Compliance Information.

Proof of compliance. The Land Application Proposal shall contain proof that the proposed land application will comply with all other Federal, State and local laws, rules and ordinances.

§ 130d.26. 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, water uses and land uses, 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 chemical(s) to be applied.

(c) 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.

(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 – LAND PROPOSAL REVIEW PROCEDURES

§ **130d.31. Criteria For Approval or Denial.**

§ **130d.32. Receipt of Land Application Proposal and Completeness Review.**

§ **130d.33. Review Period.**

§ **130d.34. Review Process.**

§ **130d.31. Criteria For Approval or Denial.**

(a) Acceptance, Approval, Denial, Modification and Recitation. 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 groundwater contaminated with agricultural chemicals, generated as a result or remediation activities at agricultural chemical facilities, that are to be applied to agricultural land. In order to carry out the duties set forth at Chapter 904(d) of the Act, the Department will exercise its power to approve, deny or request modification of any 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 may rescind an approval of a Land Application Proposal if the person applying the contaminated soil or groundwater violates any provision of 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) 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, pursuant to 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, Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Act, Nutrient Management Act or the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended in 1972.

(c) Soil or groundwater containing contaminants other than agricultural chemicals. Where the soil or 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 (where applicable) to land apply those chemicals from the appropriate agency.

§ 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. If the Land Application Proposal is administratively complete, the Department will, 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 reason(s) for the Department’s disapproval of the Land Application Proposal.

(b) Incomplete Land Application Proposal. Where 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 shall begin. The Department will deny the Land Application Proposal if the applicant fails to provide the additional information and documentation within 90 days of mailing of the request for additional information and documentation.

(c) 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. Review Process.

(a) Scope. 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. The Department will review all Land Application Proposals with regard to the land application of agricultural chemicals only. If the laboratory chemical and waste analysis (required by sections 130d.13 and 130d.14) results reveal the presence of chemicals other than agricultural chemicals, the Department will review the Land Application Proposal (in accordance with the provisions 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. 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) The decision of the Department to approve or deny a Land Application Proposal shall be final with regard to that portion of the proposal that deals with application of the soil or groundwater contaminated with agricultural chemicals.

**SUBCHAPTER E – GENERAL REQUIREMENTS FOR LAND APPLICATION
OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL
CHEMICALS**

- § 130d.41. General.
- § 130d.42. Operating Plan.
- § 130d.43. Maps and Related Information.

§ 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 land owner, such agreement is not required.

(4) Proper right of entry authorization.

(5) Compliance with the provisions of this Subchapter.

(6) Compliance with the provisions of Subchapter B (relating to duties of applicators).

(7) Compliance with the provisions of Subchapter C (relating to general requirements for permission to apply)

(8) Compliance with the provisions of Subchapter D (relating to land application proposal review procedures).

(9) Submission of an operating plan complying with the standards set forth in 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.

§ **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 , Nutrient Management Act, Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, Pennsylvania Pesticide Control Act of 1973and the Federal Insecticide, Fungicide and Rodenticide Act.

(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, Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, Pennsylvania Pesticide Control Act of 1973, Federal Insecticide, Fungicide and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act.

(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 three 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) Such information as is 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 set forth 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.

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

§ 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.

(b) Approval of special land application proposal form. Where the Department permits groundwater contaminated agricultural chemicals, generated as a result of remediation activities at an agricultural chemical facility, to be applied to agricultural land, the applicant must comply with all provisions of this chapter except those expressly waived by the Department in its letter of approval.

(c) Denial of special land application proposal form. Where the Department denies a request to utilize and apply groundwater contaminated with agricultural chemicals as tank mix, the person seeking such approval may still submit a land application proposal form under the standard provisions of this Chapter. The Department's letter of denial shall set forth the reasons for such denial.

(d) Ongoing testing and monitoring requirement. Where the Department approves the utilization and application of groundwater contaminated with agricultural chemicals, the approved applicant shall be required to conduct ongoing testing and monitoring of the groundwater and to submit chemical and waste analysis plans on an annual basis, unless testing is required by the Department on a more regular basis, until such time as a final closure plan has been submitted to the Department and pumping and application of the groundwater contaminated with agricultural chemicals has ceased. This requirement shall apply 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.

(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 EPA 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 shall no longer fall under the exception established by this subchapter and delineated in the Department's letter of approval. The applicant/applicator shall be required to comply with the standard land application requirements of this chapter. Land application of the groundwater contaminated with agricultural chemicals may not resume until the applicant/applicator can demonstrate compliance with all provisions of this chapter.

§ 130d.52. General Exceptions.

(a) Where 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 EPA published MCL and HAL standards, the Department may allow such groundwater to be utilized as tank mix.

(b) Where 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 set forth such waivers specifically in its letter of approval.

(c) The Department will not waive the following provisions:

- (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) All provisions set forth 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

- § 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 provisions of the Act and this Chapter and shall comply with the land application standards, rates, procedures limitations and prohibitions set forth in this Subchapter and their approved Land Application Proposal.

§ 130d.62. Standards for Land Application of Soil and Groundwater Contaminated With Agricultural Chemicals.

General standards. 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 must 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 must 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 must 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 these regulations) must be set forth in the applicant's operational plan and followed.

(5) Consultants or other individuals directing land application activities must 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 such 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 must be in compliance with the Pennsylvania Pesticide Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, 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, the Federal Insecticide, Fungicide and Rodenticide Act and the Resource Conservation and Recovery Act of 1976.

(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 must 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 such information as is 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 in order 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 must 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 ft³ to yd³.

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

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) (Yds³/Acre).

(8) The application credits that must 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)).

(b) Application rate considerations and procedures. The following must 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 must 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 must 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(s) or quantity of groundwater the soil pile(s) or groundwater must 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 must 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 technique(s) used for soil piles contaminated with agricultural chemicals must achieve a mixture of top soil and contaminated media and must ensure the contaminated media is incorporated to a depth of up to 6 inches.

(4) Top soil considerations. The applicant must 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 must 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) must 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 *et seq.*) the applicant must 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 his nutrient management plan. If such 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 Act. Application, application rates and application techniques used to land apply soil piles and quantities of groundwater contaminated with agricultural chemicals may not violate any provisions of the Federal Insecticide, Fungicide and Rodenticide Act or The Pennsylvania Pesticide Control Act of 1973, as amended.

§ 130d.64. **Additional application requirements.**

In addition to the application requirements set forth in section 130d.62 (relating to standards for land application of soil and groundwater contaminated with agricultural chemicals) and section 130d.63 (relating to 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.

Land application limitations. When reviewing a Land Application Proposal the Department will consider the following which must be addressed in the applicant's operation plan:

(1) Labeling rates. Pesticide contaminated soil and groundwater must be applied to a site and/or crop in a manner consistent with labeling directions and requirements for that pesticide.

(2) Annual crops. In the case of annual crops, the crop must be grown on the application area during the season that the application is made.

(3) Post-harvest 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 must 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, such soil piles may not be applied overtop of the soil at the application site at a thickness greater than ½ inch. All 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 via 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 such a manner as to prevent 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 for a period of 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 crop(s) 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 pile(s) 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 Executive Order 1997-6, 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 which would cause the total annual application amount(s) of an agricultural chemical(s) 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 pile(s) or quantity(s) 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 such application rate for each soil pile or quantity of groundwater contaminated with agricultural chemicals are in compliance with the provisions of 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 act 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 G 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 the provisions of 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 section 130d.22. (relating to insurance), evidencing continuous coverage for comprehensive general liability insurance.

(8) A map of the same scale and type required by section 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. CLOSURE

<u>Sec.</u>	<u>Title</u>
130d.71.	Site Closure Plan.
130d.72.	Final Report.

§ 130d.71. Site Closure Plan.

(a) General. The parties involved in the land application of soil and groundwater contaminated with agricultural chemicals shall report the results of the land application activity to the Department upon completion of the application and treatment.

(b) Contents of plan. The Site Closure Plan shall include the following:

(1) A proposed post application field soil sampling and analysis plan which shall be consistent with the procedures for soil sampling and analysis set forth in sections 130d.13. (relating to chemical analysis of waste), 130d.14. (relating to waste analysis plan) and 130d.15. (relating to 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.72. Final Report.

The final report 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 name of the person(s) supervising the application.
- (2) The total acreage on which the soil and/or groundwater 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 and/or quantity of groundwater was applied.
- (10) A discussion of any problems that occurred and actions taken to correct such problems.

COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE
2301 N. Cameron Street • Room 201
Harrisburg, Pennsylvania 17110-9408

OFFICE OF CHIEF COUNSEL

April 10, 2002

Tel: 717-787-8744
Fax: 717-787-1270

The Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code, Chapter 130d
Application of Soil and Groundwater Contaminated with
Agricultural Chemicals to Agricultural Lands
I.D. No. 2-116

Dear Sir or Madam:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the April 20, 2002 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

A handwritten signature in cursive script that reads "David C. Kennedy".

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

- X Proposed Regulation
- 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
2002 APR 10 PM 3:25
INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
4/10	<i>Amy Bunt</i>	Bunt	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
4/10/02	<i>Jamie Kramer</i>	Daley	
4/10	<i>Cecilia M. Boyer</i>	Waugh	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
4/10	<i>Rebecca Spangler</i>	O'Pake	
4/10/02	<i>Elena Pagan</i>		INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL
4/10	<i>Chris Brown</i>		LEGISLATIVE REFERENCE BUREAU

March 18, 2002