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REVIEW COMMISSION/SECRETARY

June 10, 2002

Mr. John Tacelosky
Pennsylvania Dept. of Agriculture
Land Recycling & Env. Remediation Program
2301 N. Cameron St.
Harrisburg, PA 17117-9408

Dear John:

We only recently learned of the proposed rules for Pennsylvania's Agricultural Chemical Site Remediation Program. Although we understand that the formal comment period has passed, I would like to provide you with our viewpoint on the proposed regulations.

It was encouraging to learn that implementing regulations had been proposed for the Ag-chemical Site Remediation bill which was passed several years ago. Several other states have put similar programs in place that permit the land spreading of soils contaminated with agricultural chemicals. These programs are well received and appear to offer a "win-win" solution for both the owner of the site and for the state as a solution to the problem of contaminated agricultural chemical dealer sites.

In reading Pennsylvania's proposed regulations, I am concerned that they may not be as "user friendly" as those of other states. Consequently the program risks being underutilized, or possibly not utilized at all.

As an example, the proposed rules require "detailed analysis" that fully characterizes the physical properties and chemical composition of *each* type of waste that *may ever* have been present. This is a stringent and expensive requirement that could easily exceed the logical responsibility of the business owner who wishes to clean up a mixing/loading site. This type of requirement is not likely to attract many participants especially in today's depressed agricultural economic environment. I believe the proposal would be better received if it were to focus only on agricultural chemicals that were handled on the site in significant quantities within the past five or ten years.

In a similar vein, the proposed rule would prohibit grazing on any land to which soil or groundwater from a remediated site had been applied. While this may be an appropriate safeguard in some cases, it ignores the fact that many agricultural chemicals have meat and milk tolerances established by the US EPA. It seems inconsistent to allow grazing on land that is routinely treated with an agricultural chemical labeled for that crop & site, but to disallow grazing on land to which soil or water containing the same chemical has been applied.

The proposed rules may be seen by some potential participants as unreasonably intrusive. For example, they require the landowner where remediated soils or water are to be applied to provide irrevocable written consent for entry on his or her property by agents of the Commonwealth. This is an appropriate requirement, but not necessarily so in such an unlimited capacity. The consent to enter the treated property should not be *carte blanche*, but should be limited to the inspection of land or records associated with the remediation process.

In general, the proposed rules do not appear to take into consideration the extraordinary health and safety database that supports the use of agricultural chemicals. Because these materials are so

thoroughly studied, it is not a difficult task to establish safe or permissible levels for residues of these materials in a variety of media. There is no similar database to facilitate establishing such levels for the majority of industrial non-agricultural chemicals.

I believe some of the apparent shortcomings of the proposed regulations are because they are subordinate to the Department of Environmental Protection's Solid Waste Management Act. Moreover, that act may appear to be a bit onerous to small agricultural chemical businesses.

This leads to another aspect of the proposed rules that I am afraid will limit their usefulness. As written, it appears that anyone wishing to avail themselves of the program would be required to pursue permits from at least two state agencies (Agriculture & DEP) and possibly more. Given the independent nature of farmers and small businessmen, this requirement may be seen as a disincentive to participation.

It was our hope that the original legislation would allow an exemption from the Solid Waste Management Act for such small agricultural chemical businesses. Under this exemption the State Department of Agriculture would craft regulations specific to the remediation of agricultural chemical contamination at dealer sites that were consistent with the goals of the Solid Waste Management Act..

In all fairness, John, I am not familiar with Pennsylvania's Solid Waste Remediation Act, and I may be missing some important elements as I write these comments. Nonetheless, I think we can all agree that the most preferred scenario is for the state to provide a mechanism whereby well intentioned businessmen are encouraged to apply for assistance to remediate any contamination that may be present on their site as a result of their prior activities. Properly executed, such an approach will serve the best interests of Pennsylvania's agricultural industry and the citizens of the state.

Sincerely,

Robert B. Fugitt
Governmental Affairs Manager
DuPont Crop Protection

CC: The Honorable Michael L. Waugh, Chairman
Committee on Agriculture and Rural Affairs

The Honorable Michael A. O'Pake, Minority Chairman
Committee on Agriculture and Rural Affairs

The Honorable Raymond J. Bunt, Jr., Chairman
Agriculture and Rural Affairs

The Honorable Peter J. Daily, Democratic Chairman
Agriculture and Rural Affairs

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission

ORIGINAL: 2267

syngenta

David Flakne
State Government Relations Manager

Syngenta Crop Protection
22 Bishops Hill Circle
Madison, WI 53717
Tel: 608-831-8599
Fax: 608-831-8990
Mobile: 336-255-0322
dave.flakne@syngenta.com

June 4, 2002

To: John Nikoloff

From: David Flakne

Subject: Comments on PA Land Application Rule.

Below you will find my comments on the Department of Agriculture's proposal to establish Chapter 130d, relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands.

I am very concerned that, as written, the rule will effectively prevent land-spreading from being a viable option for most facilities. Agricultural chemicals are unique. They have been thoroughly studied and have been determined to be safe when apply to agricultural lands at labeled rates. The legislature recognized this and has provided the department with the authority to facilitate the process of landspreading. The language as written complicates a very simple and scientifically defensible approach to cleaning up agrichemical facilities. By having to sample for everything under the sun at these facilities the process can be effectively stopped due to an insignificant finding of some other chemical. My comments on the rule itself are below...

PROPOSED RULEMAKING
DEPARTMENT OF AGRICULTURE
[7 PA. CODE CH. 130d]
Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands
[32 Pa.B. 1965]
The Department of Agriculture (Department), under the specific authority conferred by section 904(d) of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. § 6026.904(d)), proposes to establish Chapter 130d (relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands). Section 904(d) of the act delineates the duties of the Department and directs the Department to ''. . . promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands.'' The regulations are required to ''. . . provide for the appropriate application rates of such materials,either alone or in the combination with other agricultural chemicals,and prescribe appropriate operations

controls and practices to protect the public health, safety and welfare and the environment at the site of land application.''

The proposed regulations specify general procedures and rules for persons who solicit or receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land. These proposed regulations apply only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. ~~The Department has no power to issue final approval for the land application of contaminated soil or groundwater generated as the result of remediation activities that were undertaken at an agricultural chemical facility, where the soil or groundwater is contaminated~~ (Contaminated may be the operative term here… Is mere detection constitute contaminated… If so you will never be able to landspread under this rule because you will always be able to detect something else. May need to add language as to significance see below) ~~with chemicals or substances other than agricultural chemicals.~~ The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals. Where the contaminated soil or groundwater contains significant levels of chemicals or substances other than agricultural chemicals, the department will work with the other ~~applicant must receive approval for land application ofchemicals or substances from the~~ appropriate regulatory agencies~~y~~ to insure that insignificant levels or background levels of detected compounds do not prevent the use of the land application provisions provided for in the rule or the act. ~~or mustproceed under the alternative provisions of the act, which includeholding the soil and groundwater onsite under the regulations regardingonsite storage of waste or processing the soil and groundwater in amanner consistent with the type of waste contained in the soil pile orgroundwater.~~ The applicant may be ~~is~~ responsible for obtaining the ~~any~~ additional ~~permits or~~ approvals necessary for the application of the contaminated media which contain significant levels of contaminants other than agricultural chemicals. ~~The Department has no power to issue final approval for the landapplication of contaminated soil or groundwater that was generated as the result of remediation activities that were not undertaken at an agricultural chemical facility or where the contaminated soil or groundwater will be applied to land other than agricultural land.~~

Background

The act requires the Department to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. The Department takes very seriously its duty to protect the health and safety of the general public and to preserve the quality and productivity of agricultural lands in this Commonwealth. These proposed regulations are intended to address the safety of the application of soil and groundwater contaminated agricultural chemicals and to protect and assure the productivity and viability of the agricultural lands to which this media is applied. In addition, the Department of Environmental Protection, under the Solid Waste Management Act (35 P. S. §§ 6018.101--6018.1003) has regulations in place concerning the land application of

residual waste in 25 Pa. Code Chapter 291 (relating to land application of residual waste),including regulations specifically regarding application to agricultural land in 25 Pa. Code Chapter 291, Subchapter D (relating to additional requirements for the agricultural utilization of residual waste).

''Residual waste'' as defined by the Solid Waste Management Act includes agricultural waste. The act does not exempt the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands, from the regulations promulgated under the Solid Waste Management Act. Therefore, the Department has endeavored to assure these regulations are consistent with the residual waste regulations pertaining to application of residual waste to agricultural land.

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

Summary of Major Features

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

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

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

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

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

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

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

Section 130d.15 (relating to application site analysis) establishes the requirement for an application site analysis and sets forth the criteria
for and procedures to be used in analyzing the site.
Section 130d.16 (relating to retained recordkeeping) details which records shall be retained and the retention time for the records.
Section 130d.17 (relating to public notice by applicant) denotes the requirement to comply with the notice provisions of the Pennsylvania Pesticide Control Act.
Section 130d.21 (relating to general requirements for land application proposal form) sets forth the requirements for submittal and delineates the documentation, information and affirmations which shall be contained in the application proposal.
Section 130d.22 (relating to insurance) establishes the insurance requirements for persons seeking to apply soil and groundwater contaminated with agricultural chemicals to agricultural lands.
Section 130d.23 (relating to right of entry and agreement with landowner) sets forth the requirements that the person seeking to apply soil and groundwater contaminated with agricultural chemicals to agricultural lands shall submit documents establishing their right to enter onto the land upon which the agricultural chemicals will be applied and a signed consent agreement. In addition, the landowner shall sign a form, prepared by the Department, authorizing the Department or its agents to enter onto the land.
Section 130d.24 (relating to identification of interest) details the type of information pertaining to the applicant which shall be contained in the land application proposal.
Section 130d.25 (relating to compliance information) the land application proposal shall contain proof that the proposed application will comply with the applicable Federal, State and local laws and regulations.
Section 130d.26 (relating to environmental assessment) sets forth the requirement for an environmental assessment to be included in the land application proposal. It delineates the criteria for the environmental assessment, including detailing the potential impact of the application of the soil and groundwater contaminated agricultural chemicals to the application site, potential harmful effects of the application and a mitigation plan.
Section 130d.31 (relating to criteria for approval and denial) establishes the criteria the Department will use and follow in evaluating a land application proposal.

Section 130d.32 (relating to receipt of land application proposal and completeness review) delineates the criteria to determine date of receipt and completeness of a land application proposal.
Section 130d.33 (relating to review period) establishes a time period for Department review of an administratively complete land application proposal and sets forth the procedures and process to be followed upon receipt of an incomplete land application proposal.
Section 130d.34 (relating to review process) sets forth the process which the Department will follow in reviewing land application proposals.
Section 130d.41 (relating to general) details terms, conditions and criteria which shall be met before, during and subsequent to land application of soil and groundwater contaminated with agricultural chemicals.
Section 130d.42 (relating to operating plan) sets forth the information

which shall be included in the operating plan.
Section 130d.43 (relating to maps and related information) delineates the type of maps which shall be included in the land application proposal and the information which those maps shall contain.
Section 130d.51 (relating to general requirements) sets forth the general requirements for applying to the Department to use groundwater contaminated with agricultural chemicals as tank mix. It establishes the review procedures and delineates ongoing testing and cancellation requirements.
Section 130d.52 (relating to general exceptions) establishes the standards the Department will follow in determining whether groundwater contaminated with agricultural chemicals can be utilized as tank mix. In addition, delineates the Department's authority to waive certain other provisions of the proposed regulations, when the Department determines the groundwater contaminated with agricultural chemicals can be used as tank mix. It also sets forth certain provisions of the proposed regulations that will not be waived by the Department.
Section 130d.61 (relating to general provisions) sets forth the overall compliance criteria for application of the soil and groundwater contaminated with agricultural chemicals.
Section 130d.62 (relating to standards for land application of soil and groundwater contaminated with agricultural chemicals) delineates the general criteria and standards that shall be accounted for and complied with when applying soil and groundwater contaminated with agricultural chemicals to agricultural lands.
Section 130d.63 (relating to land application rates and procedures) establishes application rates and procedures which shall be followed when applying soil and groundwater contaminated with agricultural chemicals to agricultural lands.
Section 130d.64 (relating to additional application requirements) sets forth some additional information that shall be contained in the operating plan, such as a projected 3-year crop rotation plan and information regarding any additional pesticides or fertilizers that will be placed on the application site.
Section 130d.65 (relating to limitations on land application of soil and groundwater contaminated with agricultural chemicals) delineates criteria and factors which shall be included in and accounted for in the applicant's operating plan. The Department will consider these criteria and factors in its review of the applicant's land application proposal. These criteria and factors establish limitations on how soil and groundwater contaminated with agricultural chemicals shall be applied to agricultural lands.
Section 130d.66 (relating to prohibited applications) establishes prohibitions on the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands.
Section 130d.67 (relating to nuisance minimization and control) establishes requirement for an approved applicant to minimize potential nuisances.
Section 130d.68 (relating to daily operational records) establishes the requirement to keep daily operational records during the application of the soil and groundwater contaminated with agricultural chemicals to agricultural lands and defines the information which shall be included in those records.
Section 130d.69 (relating to annual operational report) establishes the requirement to produce an annual operational report and defines the information which shall be included in that report.
Section 130d.71 (relating to site closure plan) establishes the

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

Fiscal Impact

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

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

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

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

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

Public Comment Period

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

Regulatory Review
Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 10, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, ''Regulatory Review and Promulgation.'' A copy of this material is available to the public upon request.
Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

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

Effective Date
This proposed regulations will be effective upon final-form publication in the Pennsylvania Bulletin.
SAMUEL E. HAYES, Jr., Secretary
Fiscal Note: 2-116. (1) General Fund; (2) Implementing Year 2001-02 is $0; (3) 1st Succeeding Year 2002-03 is $50,000; 2nd Succeeding Year 2003-04 is $53,000; 3rd Succeeding Year 2004-05 is $55,000; 4th Succeeding Year 2005-06 is $57,000; 5th Succeeding Year 2006-07 is $60,000; (4) 2000-01 Program--$n/a; 1999-00 Program--$n/a; 1998-99--$n/a; (7) General Government Operations; (8) recommends adoption.
Annex A
TITLE 7. AGRICULTURE
PART V. BUREAU OF PLANT INDUSTRY
CHAPTER 130d. APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LANDS
Subch.
A. GENERAL PROVISIONS
B. DUTIES OF APPLICATORS
C. GENERAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND
D. LAND PROPOSAL REVIEW PROCEDURES
E. GENERAL REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS
F. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF

GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX
G. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS
H. CLOSURE

Subchapter A. GENERAL PROVISIONS

Sec.

§ 130d.1. Definitions.

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

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

Active ingredient--

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

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

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

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

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

Agricultural chemical facility--A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed (we may want to add "mixed, loaded, and/or transported." This should then allow the department to address spills in or adjacent to fields or any transportation spills to and from the field. .

The term does not include facilities identified by SIC 2879 (available from the Department of Agriculture, Bureau of Market Development, 2301 N. Cameron St., Harrisburg, PA 17110, (717) 787-6041) where agricultural chemicals are manufactured.

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

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

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

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

(i) Certified applicator. An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P.

S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.
(ii) Private applicator. A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
(iii) Commercial applicator.
(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.
(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.
(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of his employer as commercial applicators.
(iv) Public applicator. A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.
(v) Pesticide application technician. An individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.
Background--The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.
Cleanup or remediation--To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.
Contaminated media--Soil and groundwater contaminated with agricultural chemicals and/or significant levels of other regulated substances or other chemicals above background levels that are generated as a result of remediation activities at agricultural chemical facilities.
DEP--The Department of Environmental Protection of the Commonwealth.
Defoliant--A substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.
Department--The Department of Agriculture of the Commonwealth.
Desiccant--Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.
Environment--Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these. Environmental protection acts--Includes:
(i) The Clean Streams Law (35 P. S. §§ 691.1--691.1001).
(ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53
P. S. §§ 4001.101--4001.1904).
(iii) The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101--6020.1305).
(iv) The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101--7130.906).

(v) The act of July 13, 1988 (35 P. S. §§ 6019.1--6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.
(vi) The Air Pollution Control Act (35 P. S. §§ 4001--4015).
(vii) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1--1396.31).
(viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P. S. §§ 3301--3326).
(ix) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1--693.27).
(x) The Solid Waste Management Act (35 P. S. §§ 6018.101--6018.1003).
(xi) The Nutrient Management Act (3 P. S. §§ 1701--1718).
(xii) 3 Pa.C.S. §§ 6701--6725 (relating to Fertilizer Act).
(xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21--111.61).
(xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136--136y).
(xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901--6986)
(xvi) Other State or Federal statutes relating to environmental protection or the protection of public health.
Equipment--
(i) Any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any agricultural chemical on land and anything that may be growing, habituating or stored on or in the land.
(ii) The term does not include any pressurized hand-sized household apparatus used to apply any agricultural chemical or any equipment or contrivance of which the person who is applying the agricultural chemical is the source of power or energy in pesticide application.
General use pesticides--A pesticide not classified as a restricted use pesticide.
Groundwater--Water below the land surface in a zone of saturation.
HAL--Health Advisory Level.
Habitats of concern--A habitat defined as one of the following:
(i) Typical wetlands with identifiable function and value, except for exceptional value wetlands as defined in 25 Pa. Code § 105.17 (relating to wetlands).
(ii) Breeding areas for species of concern.
(iii) Migratory stopover areas for species of concern.
(iv) Wintering areas for species of concern.
(v) Habitat for State endangered plant and animal species.
(vi) Areas otherwise designated as critical or of concern by the Game Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.
Incorporation--Plowing or injecting contaminated media to a depth of up to 6 inches in a manner that ensures a uniform mixture of top soil and contaminated media.
Label--The written, printed or graphic matter on, or attached to the pesticide, agricultural chemical or device or any of its containers or wrappers.
Labeling--Pertaining to pesticide or other agricultural chemicals means all labels and all other written, printed or graphic matter which includes one of the following:
(i) That which accompanies the pesticide, agricultural chemical or device at any time.
(ii) To which reference is made on the label or in literature accompanying the pesticide, agricultural chemical or device, except to current official publications of the Federal Environmental Protection

Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides or agricultural chemicals.
Land application proposal--An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural facility, to agricultural land.
MCL--Maximum contaminant level.
Person--An individual, firm, corporation, association, partnership, consortium joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal government, State government, political subdivisions and Commonwealth instrumentalities.
Pesticide--A substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
Plant regulator--
(i) A substance or mixture of substances intended, through physiological
action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.
(ii) The term does not include any of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants and are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.
Prime farmland--Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.
Secretary--The Secretary of the Department.
Tank mix or spray mix--A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.
Treatment--The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).
Under the direct supervision of a certified commercial or public applicator--Unless otherwise prescribed by labeling, means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.
Unreasonable adverse effects on the environment--Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any pesticide or agricultural chemical.
§ 130d.2. Scope.

(a) The Department has the powers and the duties set forth under section
904(d) of the act (35 P. S. § 6026.904(d)).
(b) This chapter specifies general procedures and rules for persons who solicit or receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.
(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of contaminated soil or groundwater generated as the result of remediation activities as follows:
(1) That were undertaken at an agricultural chemical facility, where the soil or groundwater is contaminated with ~~chemicals or substances~~ significant levels of contaminants other than agricultural chemicals.~~other than agricultural chemicals.~~
(i) The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals where these chemicals are determined to pose a significant threat to public health and are significantly above established standards or significantly above background levels typically found in agricultural areas.
(ii) Where the contaminated soil or groundwater are determined to contains significant levels of chemicals or substances other than agricultural chemicals, the applicant ~~shall receive prior approval for land application of the chemicals or substances from the appropriate regulatory agency or~~ may be required to ~~shall~~ proceed under the alternative provisions of the act. ~~, which include holding the soil and groundwater onsite under the regulations regarding onsite storage of waste or processing the soil and groundwater in a manner consistent with the type of waste contained in the soil pile or groundwater.~~
~~(iii) The applicant is responsible for obtaining any additional permits or approvals necessary for the application of the contaminated media.~~
~~(2) That were not undertaken at an agricultural chemical facility.~~
(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.
§ 130d.3. Continuing authority.
Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.
Subchapter B. DUTIES OF APPLICATORS
Sec.

§ 130d.11. Scope.

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

§ 130d.12. Reports.

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

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

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

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

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

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

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

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

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

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

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

§ 130d.13. Chemical analysis of waste.

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

(b) The analysis of the soil or groundwater sought to be applied to agricultural land shall include all compounds stored in bulk quantities or which have been mixed and loaded at the facility outside of impervious containment structures over the past ten years. Also any compound which was known to have been spilled at the facility should also be included in the analysis. ~~encompass all types of wastes that are likely to be contained in the soil or groundwater at the remediation site. This includes wastes generated as the result of operations, manufacturing, mixing, storage, distribution and facility or machinery maintenance carried out at the remediation site.~~ The list of analytes ~~types of wastes likely to be contained in the soil and~~

~~groundwater shall~~ should ~~be~~ developed ~~cleaned~~ from information available to ~~regarding~~ the person or facility ~~at which the remediation activities are taking place and the remediation site~~ using all available information including the following:

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

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

(2~~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.~~

(3~~5~~) A copy of the source reduction strategy of the person or facility at which remediation activities are taking place, if applicable.

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

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

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

(3) A verified copy or synopsis of the records, a history of the products and manufacturing processes carried on by the agricultural facility for the past ten years ~~being remediated~~ and the final soil or groundwater, or both, test results shall be attached to and made part of the land application proposal submitted to the Department.

(d) Soil or groundwater, or both, samples from the ~~each~~ soil ~~pile~~ or ~~quantity of~~ groundwater sought to be applied to agricultural land shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results ~~and a record of laboratory quality control procedures and the use of those procedures~~ (if it is a dept approved lab we should not need to provide further verification as to the quality of the processes used by the lab.. One would assume that the dept would only approve labs that follow standard QA/QC protocols.) shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. ~~The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.~~

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

(1) A ~~waste~~ sampling plan~~, including quality assurance and quality control procedures. The plan~~ shall ensure that an accurate and representative sampling of the contaminated soil or groundwater, or

both, has been collected and analyzed by the person seeks to apply the remediated soil or groundwater to agricultural land.
~~(2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to leach into the environment.~~ (This is not needed if one follows the label…
(3) A demonstration that the contaminated soil or groundwater will be applied to agricultural land at labeled or agronomic rates will be established. Any proposed application that falls outside of labeled or agronomic rates ~~can be land applied~~ to agricultural land should provide evidence that the application can e made without negatively affecting the productivity of the agricultural land or causing harm to the environment. (documentation that the application will be made at labeled rates should suffice here…)
§ 130d.14. Waste analysis plan.
The applicant shall develop an ~~waste~~ analysis plan. The ~~waste analysis~~ plan will outline ~~shall cover~~ each chemical, nutrient or constituent proposed to be applied to the agricultural land. The plan shall take into account the chemical analysis required by § 130d.13 (relating to chemical analysis of waste). At a minimum, the plan shall include:
(1) The type of chemicals, nutrients and constituents for which the ~~each~~ soil ~~pile~~ or ~~quantity of~~ groundwater will be analyzed and the rationale for the selection of those chemicals, nutrients and constituents.
(2) The test methods that will be used to test for these chemicals, nutrients and constituents.
(3) An explanation of the sampling methods that will be used to obtain an accurate and representative sample of the contaminated soil and groundwater to be analyzed~~, including quality assurance and quality control procedures.~~ The sampling method used shall assure at least one representative sample is taken from the ~~each~~ soil ~~pile~~ or quantity of groundwater proposed to be applied to agricultural land.
(4) ~~Individual~~ Individual Ssoils ~~piles and~~ or quantities of groundwater ~~may~~ may contain different types and concentrations of chemicals, nutrients and constituents. Therefore, the plan shall include a method for ~~labeling and~~ managing ~~the~~ soils ~~piles~~ and quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site.
§ 130d.15. Application site analysis.
The applicant shall develop an application site analysis plan. The application site analysis plan shall cover soil samples taken from the proposed application site. The soil samples taken from the proposed application site shall be tested for ~~each~~ the chemicals, nutrients or constituents which serve as the basis for the soil or groundwater land application rate. ~~found in the soil or groundwater at the remediated sites that are proposed to be applied to the application site.~~ In addition, the application site analysis shall determine ~~lineate~~ the soil types found within the proposed application area. ~~The plan shall take into account the chemical analysis of waste required by § 130d.13 (relating to chemical analysis of waste) and the waste analysis required by § 130d.14 (relating to waste analysis plan).~~ (not sure what the preceding requirements entail) At a minimum, the application site analysis plan shall include:

(1) A chemical, nutrient and constituent analysis of each field or plot upon which ~~a~~ soil ~~pile~~ or a quantity of groundwater from the remediated agricultural facility is to be applied.
(2) The test results from soil samples taken from each field at the proposed application sight where the contaminated media is to be applied.
(3) The person proposing to land apply the contaminated soil or groundwater shall test for all agricultural chemicals, ~~the by-products or derivatives thereof, and each chemical,~~ nutrient or constituent that ~~were~~as found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated and which will be applied to the proposed application site at a rate which is over 25 percent of the labeled or agronomic rate suitable for the ~~are to be applied at the proposed~~ soil types at the application site.
(4) Soil samples from each field or plot upon which the contaminated soil or groundwater, or both, from the remediated agricultural facility is to be applied shall be tested at a laboratory approved by the Department and shall be done on a parts per million basis. A copy of the test results ~~and a record of laboratory quality control procedures and the use of those procedures~~ shall be submitted to the Department and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied. ~~The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.~~
(5) Documentation of the soil types found within the proposed application area.
§ 130d.16. Retained recordkeeping.
(a) General. An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain the following records:
(1) The daily operation records required by § 130d.68 (relating to daily operational records).
(2) The annual operation records required by § 130d.69 (relating to annual operational report).
(3) The signed agreement between the person responsible for the land application and the owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.
(4) The right of entry agreement.
(b) Inspection and audit. The records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agents.
(c) Retention time period. The records and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were submitted and approved by the Department.
§ 130d.17. Public notice by applicant.
The applicant shall comply with the notice requirements established by the Pennsylvania Pesticide Control Act of 1973 (What does this entail???)(3 P. S. §§ 111.21--111.61) and the regulations in Chapter 128 (relating to pesticides).

Sincerely,
David Flakne

IRRC

Full Name:	David Flakne (E-mail)
Last Name:	Flakne
First Name:	David
Job Title:	State Government Relations Manager
Company:	Syngenta Crop Protection
Business Address:	22 Bishops Hill Circle Madison, WI 53717 United States of America
Business:	608-831-8599
Business Fax:	608-831-8990
E-mail:	dave.flakne@syngenta.com

IRRC ORIGINAL: 2267

From: dave.flakne@syngenta.com
Sent: Friday, June 07, 2002 9:53 AM
To: rbunt@pahousegop.com; jhowes@pahousegop.com; pdaley@pahouse.net; dcallen@pahouse.net; mwaugh@pasen.gov; kebersole@pasen.gov; opake@pasen.gov; IRRC
Subject: LAND APPLICATION REGULATIONS


PA Land Application Comments.d...


David Flakne (E-mail).vcf

John Nikoloff asked me to read and comment on the PA LAND APPLICATION REGULATIONS... I am sharing a copy with you for your information. If you have any question please call...

<<PA Land Application Comments.doc>>

David Flakne
State Government Relations Manager
Syngenta Crop Protection, Inc.
608-831-8599
<<David Flakne (E-mail).vcf>>

ORIGINAL: 2267

DuPont Crop Protection
Stine-Haskell Research Center
P. O. Box 30
Newark, DE 19714-0030

DuPont Crop Protection

June 7, 2002

Mr. John Tacelosky
Pennsylvania Dept. of Agriculture
Land Recycling & Env. Remediation Program
2301 N. Cameron St.
Harrisburg, PA 17117-9408

Dear John:

We only recently learned of the proposed rules for Pennsylvania's Agricultural Chemical Site Remediation Program. Although we understand that the formal comment period has passed, I would like to provide you with our viewpoint on the proposed regulations.

It was encouraging to learn that implementing regulations had been proposed for the Ag-chemical Site Remediation bill which was passed several years ago. Several other states have put similar programs in place that permit the land spreading of soils contaminated with agricultural chemicals. These programs are well received and appear to offer a "win-win" solution for both the owner of the site and for the state as a solution to the problem of contaminated agricultural chemical dealer sites.

In reading Pennsylvania's proposed regulations, I am concerned that they may not be as "user friendly" as those of other states. Consequently the program risks being underutilized, or possibly not utilized at all.

As an example, the proposed rules require "detailed analysis" that fully characterizes the physical properties and chemical composition of *each* type of waste that *may ever* have been present. This is a stringent and expensive requirement that could easily exceed the logical responsibility of the business owner who wishes to clean up a mixing/loading site. This type of requirement is not likely to attract many participants especially in today's depressed agricultural economic environment. I believe the proposal would be better received if it were to focus only on agricultural chemicals that were handled on the site in significant quantities within the past five or ten years.

In a similar vein, the proposed rule would prohibit grazing on any land to which soil or groundwater from a remediated site had been applied. While this may be an appropriate safeguard in some cases, it ignores the fact that many agricultural chemicals have meat and milk tolerances established by the US EPA. It seems inconsistent to allow grazing on land that is routinely treated with an agricultural chemical labeled for that crop & site, but to disallow grazing on land to which soil or water containing the same chemical has been applied.

The proposed rules may be seen by some potential participants as unreasonably intrusive. For example, they require the landowner where remediated soils or water are to be applied to provide irrevocable written consent for entry on his or her property by agents of the Commonwealth. This is an appropriate requirement, but not necessarily so in such an unlimited capacity. The consent to enter the treated property should not be *carte blanche*, but should be limited to the inspection of land or records associated with the remediation process.

In general, the proposed rules do not appear to take into consideration the extraordinary health and safety database that supports the use of agricultural chemicals. Because these materials are so

thoroughly studied, it is not a difficult task to establish safe or permissible levels for residues of these materials in a variety of media. There is no similar database to facilitate establishing such levels for the majority of industrial non-agricultural chemicals.

I believe some of the apparent shortcomings of the proposed regulations are because they are subordinate to the Department of Environmental Protection's Solid Waste Management Act. Moreover, that act may appear to be a bit onerous to small agricultural chemical businesses.

This leads to another aspect of the proposed rules that I am afraid will limit their usefulness. As written, it appears that anyone wishing to avail themselves of the program would be required to pursue permits from at least two state agencies (Agriculture & DEP) and possibly more. Given the independent nature of farmers and small businessmen, this requirement may be seen as a disincentive to participation.

It was our hope that the original legislation would allow an exemption from the Solid Waste Management Act for such small agricultural chemical businesses. Under this exemption the State Department of Agriculture would craft regulations specific to the remediation of agricultural chemical contamination at dealer sites that were consistent with the goals of the Solid Waste Management Act..

In all fairness, John, I am not familiar with Pennsylvania's Solid Waste Remediation Act, and I may be missing some important elements as I write these comments. Nonetheless, I think we can all agree that the most preferred scenario is for the state to provide a mechanism whereby well intentioned businessmen are encouraged to apply for assistance to remediate any contamination that may be present on their site as a result of their prior activities. Properly executed, such an approach will serve the best interests of Pennsylvania's agricultural industry and the citizens of the state.

Sincerely,

Robert B. Fugitt
Governmental Affairs Manager
DuPont Crop Protection

CC: The Honorable Michael L. Waugh, Chairman
Committee on Agriculture and Rural Affairs

The Honorable Michael A. O'Pake, Minority Chairman
Committee on Agriculture and Rural Affairs

The Honorable Raymond J. Bunt, Jr., Chairman
Agriculture and Rural Affairs

The Honorable Peter J. Daily, Democratic Chairman
Agriculture and Rural Affairs

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission

ORIGINAL: 2267

June 7, 2002

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Pennsylvania Dept. of Agriculture
Land Recycling & Env. Remediation Program
2301 N. Cameron St.
Harrisburg, PA 17117-9408

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Robert B. Fugitt
Governmental Affairs Manager
DuPont Crop Protection

CC: The Honorable Michael L. Waugh, Chairman
Committee on Agriculture and Rural Affairs

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Agriculture and Rural Affairs

The Honorable Peter J. Daily, Democratic Chairman
Agriculture and Rural Affairs

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission

ORIGINAL: 2267

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF PLANT INDUSTRY

May 20, 2002

The Independent Regulatory Commission
333 Market St.
14th Floor
Harrisburg, PA 17120

Re: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 130d
Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands
I.D. No. 2-116
Published at 32 *Pennsylvania Bulletin* 1965 (April 20, 2002)

Dear :

Pursuant to the requirements of the Regulatory Review Act (at 71 P.S. Section 745.5(c)), please find enclosed copy a copy of a public comment letter, or copies of multiple public comment letters, recently received at this office with respect to the referenced proposed regulation.

If I may be of further information, please advise.

Sincerely,

John C.R. Tacelosky
Chief, Division of Health & Safety

2301 NORTH CAMERON ST.
HARRISBURG, PA 17110-9408
717-787-4843
FAX: 717-783-3275

CropLife ☆AMERICA☆

June 5, 2002

Mr. John Tacelosky
Department of Agriculture
Land Recycling and Environmental Remediation
Standards Program
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

Dear Mr. Tacelosky:

CropLife America is a national trade association representing the manufacturers, formulators and distributors of virtually all of the crop protection and crop biotechnology products sold in the United States.

This letter is in response to the Department of Agriculture's proposal to establish Chapter 130d (relating to application of soil and groundwater containing agricultural chemicals to agricultural lands.) While we understand that the public comment period may already have expired, we hope that the Department will still be able to address our concerns. We understand that both the House and Senate Agriculture and Rural Affairs Committees do have more time for comment and so are copying the Committee Chairs to ensure they too have the ability to view industry's thoughts.

We applaud the Department for promulgating rules that could significantly aid in better overall stewardship practices in the handling of agricultural chemicals. In particular, your proposal attempts to establish a structure for the practice of land-spreading of agricultural soils containing spilled chemicals - something that has helped the environment in several other states with existing land spreading programs. These successful programs, in states such as Illinois, Minnesota, Kansas and Wisconsin, have numerous beneficial consequences not only for the retail sites in need of such assistance, but also for our members by ensuring a sound and reasonable process to address accidental spills of their products.

However, there are several points of concern we have with the proposed rule. Without significant modification, we believe that the intent of the rule will not be addressed, and that the ensuing structure will not have any positive impact on remediation of agricultural chemical spill sites. Instead, in the worst case scenarios, we fear that the proposal ironically could provide a disincentive for those responsible for accidental spills to effectively respond to an accident and to attempt remediation activities.

The following includes several of our concerns. To better discuss these concerns, we would welcome an opportunity to sit down with all affected parties and the Department.

- **It is unclear which agency of the Commonwealth of Pennsylvania has a clear jurisdiction over decisions**. The language of the proposed rule states that both ag chemicals and other chemicals should be searched for in soil samples from a site to be remediated and that the Department of Agriculture would only have jurisdiction over agricultural chemicals found. This process for approval for a remediation plan would thus be very cumbersome and confusing, and also could entail one, two or several agencies. This would be a time-consuming and costly endeavor for the company wishing to efficiently respond after an accidental spill.

- **This program could be very costly to state agencies, due to its complexities, and does not seem to provide much in terms of resources allocated for the program**. Again, this could mean lengthy delays in the approval process.

- **The cost estimates for the private sector are listed at "minimal or no cost." We disagree completely, as the number and scope of investigation and analyses implicated under the rule for just one remediation plan could easily be extremely expensive**. Again, could this factor serve as a disincentive to those persons involved in an accident to try land spreading as a viable method for remediation?

- **A location's entire history would have to be addressed and a search conducted for all ag chemicals and other chemicals that could possibly have been used on the site, even products used in the operation of machinery! Why is this necessary to the goals of effective remediation after an accidental spill?** In other states with successful land spreading programs, a retail site would have to identify the actual spilled chemical and then enter into application calculations with the amount of the spill. They would not have to spend time and resources

trying to identify literally anything else under the sun. It may be more workable to either emulate practices in other states, or at least list a finite time period for a location's history such as the past five years, and not require searching for anything other than registered agricultural chemicals.

- **There seems to be no background level or other standards in the proposal for discontinued agricultural chemicals or other types of chemicals that may be found in soil to be remediated.** For instance, a zero-threshold for certain compounds which may have been discontinued but still must be searched for, seems certain to lead to failure for some remediation plans. **A discontinued compound detected at the most minute of concentrations, posing absolutely no harm to the environment, could cause a denial.** The compound may have been discontinued because of marketing decisions made by the registrant, with no relevance to environmental factors. Regardless, its detection could still mean denial.

Overall, we strongly support the Pennsylvania Department of Agriculture's commitment to establish a process for safely reusing soil and groundwater containing agricultural chemicals generated as a result of remediation activities. The more that state governments across the country can do in this regard, the better off agriculture and the environment will be in terms of better stewardship practices and abilities to effectively address accidents. We have supported robust and successful programs in other states and hope we can work with your Department, the legislature, producers and others in the agricultural community to ensure a similarly successful program in Pennsylvania.

Sincerely,

Ab Basu
Senior Director of Government Affairs
(202) 872-3841 tel
(202) 463-0474 fax

Cc: Hon. Michael L. Waugh, Chairman
Senate Committee on Agriculture and Rural Affairs
Hon. Michael A. O'Pake, Minority Chairman
Hon. Raymond J. Bunt, Jr., Chairman
House Committee on Agriculture and Rural Affairs
Hon. Peter J. Daley, Minority Chairman
John R. McGinley, Jr. Chairman, IRRC

CropLife America State Affairs Committee

IRRC ORIGINAL: 2267

From: Ab BASU [abasu@croplifeamerica.org]
Sent: Thursday, June 06, 2002 2:42 PM
To: John@capitalassoc.com; opake@dem.pasen.gov; IRRC; dcallen@pahouse.net; pdaley@pahouse.net; Steve Crawford; jhowes@pahousegop.com; rbunt@pahousegop.com; kebersole@pasen.gov; mwaugh@pasen.gov
Subject: CLA Comments to PA Department of Ag on Land Spreading

palandspreadingfinal06062002.d...

Please see attached document reflecting CropLife America's comments to the Pennsylvania Department of Agriculture regarding the application of soil and groundwater containing agricultural chemicals to agricultural lands.

Unfortunately, we missed the public comment deadline which was last Friday. However, we understand that the House and Senate Agriculture and Rural Affairs Committees also has a chance to comment. Please view these attached comments as points to ponder from the manufacturers as you arrive in turn at your comments.

If you have any questions, please feel free to contact John Nikoloff in Harrisburg, or me at (202) 872-3841.

Thank you for the opportunity to comment. Hard copies of this text will be sent to you shortly.

cc: State Affairs Committee

Ab Basu
Senior Director, Government Affairs
CropLife America
(202) 872-3841 TEL
(202) 463-0474 FAX
1156 Fifteenth Street, NW
Suite 400
Washington, D.C. 20005

CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

ORIGINAL: 2267

May 20, 2002

Department of Agriculture
Land Recycling and Environmental Remediation Standards Program
2301 North Cameron Street
Harrisburg, PA 17110-9408
Attn: John Tacelosky

Re: Proposed Rule for Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands

To Whom It May Concern:

The Chesapeake Bay Foundation provides these comments on the Proposed Rule for Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands.

The Chesapeake Bay Foundation (CBF) would like to thank the Pennsylvania Department of Agriculture for this opportunity to submit comments regarding the Proposed Rule for Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands, published in the Pennsylvania Bulletin, Vol. 32, No. 15, April 20, 2002. The Chesapeake Bay Foundation is a nonprofit conservation organization, established in 1967 and dedicated to the restoration and protection of the Chesapeake Bay and its tributaries. We have offices in three states, sixteen environmental education-training centers and a staff of more than 200 employees working across the watershed. Our support comes from 100,000 members, several hundred foundations and over a thousand corporations. CBF's mission is to restore and sustain the Bay's ecosystem by substantially improving the water quality and productivity of the watershed, with respect to water clarity, resilience of the system, and diversity and abundance of living resources, and to maintain a high quality of life for the people of the Chesapeake Bay region.

CBF applauds the efforts to develop a thorough, comprehensive approval process for the application of groundwater and soil contaminated with agricultural chemicals, especially the requirements for accurate testing of contaminated soil and/or groundwater, and the land to which it/they will be applied. CBF appreciates that the entity spreading the contaminants is responsible for demonstrating that the contaminated soil or groundwater will be

applied to agricultural land without negatively affecting the productivity of this land or causing harm to the environment, prior to receiving the approval.

Although we support several aspects of the proposal, we are concerned that the proposal does not provide sufficient environmental and public health protections, and contains no provisions that require monitoring or inspection of land appliers of contaminants. We are very concerned that the regulations lack a public notice and comment process. CBF is troubled by the lack of language in the regulations providing that a person proposing to land apply contaminated soil and groundwater must obtain the assurance of the local municipality that the proposal is consistent with all local ordinances and zoning before PDA approval is given for the land application can commence.

Many sensitive environmental amenities, such as state and federal threatened and endangered species, and High Quality and Exceptional Value Waters, do not receive adequate protection under the regulations. Also, the regulations give indiscriminate authority for PDA to "waive" requirements. The proposal contains language that allows for determinations of environmental impact to be made by considering social and economic costs to the violator, which should be irrelevant. Additionally, the proposal only requires applicants to address, and PDA to approve, "known" and "likely" contaminants. Moreover, we find it problematic that the proposal only requires that public nuisances be "minimized", instead of requiring that they not exist and be eliminated. Finally, several vague and ambiguous uses of language in the proposal cause concern. For example, what do "minor" and "consider" mean?

Our specific concerns follow.

Application setbacks
The proposed rule only requires that applicants "shall consider" impacts on environmental features such as streams, wells, local parks, special protected watersheds, wetlands and habitats of concern. In addition, all applications should be no less than 1,000 feet from any well, surface water, wetland, habitat of concern, or other ecologically sensitive areas.

Floodplains
Application of soil and groundwater contaminated with agricultural chemicals should be prohibited within a hundred-year floodplain.

Application to bare and frozen ground
Land that is frozen or lacks vegetative cover has limited ability to retain products applied to it. Application of soil and groundwater contaminated with agricultural chemicals should be prohibited on bare or frozen ground to prevent these chemicals from entering ground or surface water.

Enforcement of regulations and inspection of land application after approval is granted
The proposed rule requires that each land application proposal shall contain the "irrevocable written consent by the landowner to the Commonwealth and its authorized agents to enter the proposed application site," prior to and throughout the application period, and for up to three years after final closure, for the purpose of inspection, monitoring and maintenance or abatement

measures. However, the rule does not state that there will actually be regular inspections and monitoring of the site, or that there is adequate staff to enforce the rule. Frequent inspections (at least twice per year) of the actual application are essential to ensure that it is done according to the proposal and that there is no harm to the environment or public health and safety.

Monitoring of surrounding environment once approval is granted

The rule does not mention any monitoring of the surface water, groundwater and soil at and near the application site after the approval is granted. CBF encourages amendment to the rule to require that these analyses be conducted twice per year to ensure that there is no drift or leaching of the contaminants applied. The testing should meet the same rigorous standards as the testing done prior to application.

No public participation

CBF believes that the municipality where the contaminated soil or groundwater will be applied, and the citizens living near the application site, should have the opportunity to provide meaningful input and comment on the proposed application at a public meeting, such as a regularly scheduled meeting of the township supervisors, borough council or city council, following public notice of the proposal. The approval process should include a requirement that the local government certify that all the provisions are consistent with and comply with all local zoning and ordinances before the approval can be issued.

We hope that these comments are useful to your efforts. The Chesapeake Bay Foundation looks forward to seeing regulations that ensure the public groundwater and soil contaminated with agricultural chemicals will only be applied in a manner that protects "the public health, safety and welfare and the environment at the site of land application."

Thank you for this opportunity to comment. If you have any questions about our comments please do not hesitate to contact us at 717-234-5550.

Sincerely,

Kelly M. O'Neill

Kelly M. O'Neill
Agricultural Policy Specialist

ORIGINAL: 2267

CropLife ★AMERICA★

June 5, 2002

Mr. John Tacelosky
Department of Agriculture
Land Recycling and Environmental Remediation
Standards Program
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

Dear Mr. Tacelosky:

CropLife America is a national trade association representing the manufacturers, formulators and distributors of virtually all of the crop protection and crop biotechnology products sold in the United States.

This letter is in response to the Department of Agriculture's proposal to establish Chapter 130d (relating to application of soil and groundwater containing agricultural chemicals to agricultural lands.) While we understand that the public comment period may already have expired, we hope that the Department will still be able to address our concerns. We understand that both the House and Senate Agriculture and Rural Affairs Committees do have more time for comment and so are copying the Committee Chairs to ensure they too have the ability to view industry's thoughts.

We applaud the Department for promulgating rules that could significantly aid in better overall stewardship practices in the handling of agricultural chemicals. In particular, your proposal attempts to establish a structure for the practice of land-spreading of agricultural soils containing spilled chemicals - something that has helped the environment in several other states with existing land spreading programs. These successful programs, in states such as Illinois, Minnesota, Kansas and Wisconsin, have numerous beneficial consequences not only for the retail sites in need of such assistance, but also for our members by ensuring a sound and reasonable process to address accidental spills of their products.

However, there are several points of concern we have with the proposed rule. Without significant modification, we believe that the intent of the rule will not be addressed, and that the ensuing structure will not have any positive impact on remediation of agricultural chemical spill sites. Instead, in the worst case scenarios, we fear that the proposal ironically could provide a disincentive for those responsible for accidental spills to effectively respond to an accident and to attempt remediation activities.

The following includes several of our concerns. To better discuss these concerns, we would welcome an opportunity to sit down with all affected parties and the Department.

- **It is unclear which agency of the Commonwealth of Pennsylvania has a clear jurisdiction over decisions**. The language of the proposed rule states that both ag chemicals and other chemicals should be searched for in soil samples from a site to be remediated and that the Department of Agriculture would only have jurisdiction over agricultural chemicals found. This process for approval for a remediation plan would thus be very cumbersome and confusing, and also could entail one, two or several agencies. This would be a time-consuming and costly endeavor for the company wishing to efficiently respond after an accidental spill.

- **This program could be very costly to state agencies, due to its complexities, and does not seem to provide much in terms of resources allocated for the program**. Again, this could mean lengthy delays in the approval process.

- **The cost estimates for the private sector are listed at "minimal or no cost." We disagree completely, as the number and scope of investigation and analyses implicated under the rule for just one remediation plan could easily be extremely expensive**. Again, could this factor serve as a disincentive to those persons involved in an accident to try land spreading as a viable method for remediation?

- **A location's entire history would have to be addressed and a search conducted for all ag chemicals and other chemicals that could possibly have been used on the site, even products used in the operation of machinery! Why is this necessary to the goals of effective remediation after an accidental spill?** In other states with successful land spreading programs, a retail site would have to identify the actual spilled chemical and then enter into application calculations with the amount of the spill. They would not have to spend time and resources

trying to identify literally anything else under the sun. It may be more workable to either emulate practices in other states, or at least list a finite time period for a location's history such as the past five years, and not require searching for anything other than registered agricultural chemicals.

- **There seems to be no background level or other standards in the proposal for discontinued agricultural chemicals or other types of chemicals that may be found in soil to be remediated.** For instance, a zero-threshold for certain compounds which may have been discontinued but still must be searched for, seems certain to lead to failure for some remediation plans. **A discontinued compound detected at the most minute of concentrations, posing absolutely no harm to the environment, could cause a denial.** The compound may have been discontinued because of marketing decisions made by the registrant, with no relevance to environmental factors. Regardless, its detection could still mean denial.

Overall, we strongly support the Pennsylvania Department of Agriculture's commitment to establish a process for safely reusing soil and groundwater containing agricultural chemicals generated as a result of remediation activities. The more that state governments across the country can do in this regard, the better off agriculture and the environment will be in terms of better stewardship practices and abilities to effectively address accidents. We have supported robust and successful programs in other states and hope we can work with your Department, the legislature, producers and others in the agricultural community to ensure a similarly successful program in Pennsylvania.

Sincerely,

Ab Basu
Senior Director of Government Affairs
(202) 872-3841 tel
(202) 463-0474 fax

Cc: Hon. Michael L. Waugh, Chairman
Senate Committee on Agriculture and Rural Affairs
Hon. Michael A. O'Pake, Minority Chairman
Hon. Raymond J. Bunt, Jr., Chairman
House Committee on Agriculture and Rural Affairs
Hon. Peter J. Daley, Minority Chairman
John R. McGinley, Jr. Chairman, IRRC

CropLife America State Affairs Committee