

<b>Regulatory Analysis Form</b>		<p style="text-align: center;">RECEIVED</p> <p><b>This space for use by IRRC</b></p> <p>2005 JUL -6 PM 3:05</p> <p>REVIEW DIVISION</p>  <p><b>IRRC Number: 2487</b></p>
<p>(1) Agency</p> <p>Pennsylvania Department of Agriculture</p>		
<p>(2) I.D. Number (Governor's Office Use)</p> <p>#2-143</p>		
<p>(3) Short Title</p> <p>Chemsweep Pesticide Disposal Program</p>		
<p>(4) PA Code Cite</p> <p>7 Pa. Code, Chapter 128b.1 – 128b.18</p>	<p>(5) Agency Contacts &amp; Telephone Numbers</p> <p>Primary Contact: Phil Pitzer 717-772-5206</p> <p>Secondary Contact: John C.R. Tacelosky 717-772-5217</p>	
<p>(6) Type of Rulemaking (check one)</p> <p>Proposed Rulemaking -X</p> <p>Final Order Adopting Regulation</p> <p>Final Order, Proposed Rulemaking Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p>No X</p> <p>Yes: By the Attorney General</p> <p>Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p>This regulation establishes criteria for the collection, packaging, transportation, and disposal of pesticide and crop production products held by or stored by Pennsylvania's citizens and businesses. The regulation sets forth procedures for notification, inventories, collection, and contracting for this disposal program. It also delineates the environmental concerns associated with these activities.</p>		
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>The Pennsylvania Pest control Act of 1973 (3 P.S. §§111.21 - 111.61). There are no State or Federal court decisions regarding this regulation.</p>		

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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.

This regulation is not mandated by any Federal or State law or court order or Federal regulation.

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

The compelling public interest in this regulation stems from the lack of an economical, effective, and environmentally safe method of disposal of pesticide and crop production products owned, held, or stored by the citizens of the Commonwealth. This Program offers these citizens the option to properly and safely dispose of these materials by a permitted hazardous waste contractor at no cost to the individual or business. If these products are not disposed of properly, they could be dumped into the existing waste disposal streams and possibly contaminate ground or surface water.

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

The labels of homeowner products allow for their disposal by wrapping in newspaper and placing into the solid waste trash system (land filling). There are no such options for agricultural or commercial products. All of these types of materials, if improperly disposed of, could contaminate water supplies, both ground and surface, within the Commonwealth and downstream. Most commercial businesses and agricultural entities have chosen to store banned, cancelled, or otherwise unusable products until an environmentally safe and economical method of disposal was available. However, storage methods and systems differ and could still cause exposure to the environment by leaking or leaching into water sources. All of these materials could cause harm if present in water resources and come into contact with humans or other animals, birds, or fish.

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

This regulation will benefit all citizens of Pennsylvania by removing the potential for ground or surface water contamination by improperly discarded or dumped pesticides. All agricultural entities, commercial businesses, and private citizens will have the opportunity to dispose of pesticides and crop production materials by an environmentally safe and economical method.

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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.)

This regulation will not adversely affect anyone or any business entity within the Commonwealth. The only effect could be a reduction in the amount of solid waste collected by trash collection businesses and deposited in landfills. However, this reduction will result in an increased safety factor for both collection employees and the environment.

(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.)

This is a voluntary program that has no requirements to participate in the program. All citizens and businesses within the Commonwealth are eligible for participation in the Program. The regulations do provide requirements and procedures for those participating Counties however.

(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 Pesticide Advisory Board (PAB) which consists of the Secretary of Agriculture, representatives of the Pennsylvania Fish and Boat Commission, Department of Transportation, Department of Health, Department of Environmental Protection, Game Commission, Conservation and Natural Resources, Pest Management Association, Pennsylvania State University, aerial applicators, farmers, nurseries, mushroom industry, chemical manufacturers, and pesticide applicators Have reviewed these proposed regulations. Also interested parties at PAB meetings and other members of the regulated community have commented on the regulations.

(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.

A specific estimate of the cost savings to the regulated community would be difficult to estimate, since the costs, contracted by the State, for collection, packing, transportation, and disposal are much less than individual costs. By offering the service at no cost to the regulated community, all such costs related to these functions constitute a major savings to that community.

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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 regulation will impose no costs and have no fiscal impact on local governments. There is no requirement to comply with the regulation. There could be a significant savings to the local government that subsidizes trash collection due to a drop in total collection amounts.

(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 estimates of savings and costs are quantified and explained in questions 20, 20a, and 20b.

The Program will impose little or no financial impact on the Commonwealth since all funds budgeted for this Program are derived from the Pesticide restricted Account (693). The funds in this account are obtained from licensing, permitting, and registration fees, and civil penalties placed upon pesticide manufacturers, dealers, and applicators doing business within the Commonwealth. There is no General Fund money associated with this Program. All administrative work for the Program is borne by the employees of the Bureau as part of their posted job description.

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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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>COSTS:</b>						
Regulated Community	-0-	-0-	-0-	-0-	-0-	-0-
Local Government	-0-	-0-	-0-	-0-	-0-	-0-
State Government	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE:</b>						
Regulated Community	-0-	-0-	-0-	-0-	-0-	-0-
Local Government	-0-	-0-	-0-	-0-	-0-	-0-
State Government	-0-	-0-	-0-	-0-	-0-	-0-

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

**Savings:**

Savings estimates associated with the regulation are based on Program costs to the contractor and budgeted costs associated with collections for the Program. Actual savings could greatly exceed these estimates because of the difference between the State's contracted expenses and expenses for the independent collection, packing, transportation, and disposal charged to a single entity.

**Costs:**

There are no costs associated with this regulation.

**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
CHEMSWEEP	\$145,878.00	\$140,783.00	\$183,809.00	\$190,500.00

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

The costs of administering this Program, projected at \$200,000.00 per year, would be cheaper than the cleanup costs associated with an environmental incident caused by an accidental (ie. Spill or leak) exposure or a purposeful (i.e. dumping) exposure. Also, many of the materials offered for disposal consist of banned or cancelled products for which there are no practical disposal options. Therefore, the costs associated with the remediation of a hazardous material or Superfund site far outweigh the costs associated with this Program. Furthermore, many county or community Household Hazardous Waste Collection programs do not address the issue of pesticides and crop production products.

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

No non-regulatory alternatives were considered for this program. The first regulations were promulgated following a one (1) year pilot to determine the necessity of such a program. As time passed, and the program evolved, the necessity to update the regulation became evident. These changes reflect the commitment to continue with this Program and address the disposal needs of other areas of pesticide and crop production use.

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

Other methods of dealing with pesticide disposal were never considered. Any method of disposal of these products, other than by a permitted disposal contractor, would most probably have resulted in increased expenses and possibilities of environmental pollution. The reason for consideration of such a program was the expressed need to have a safe and environmentally friendly method of such collection, packing, transportation, and disposal.

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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.

No, all provisions of this Program follow strict Federal and State regulations and guidelines.

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

This regulation is comparable to other State's program guidelines. Not all other States have such a program on a continuing basis and some States collect and dispose of materials other than those addressed in these regulations. The Pennsylvania Program has developed into a Program after which several other States are modeling proposed programs. The regulation actually places Pennsylvania in an increased competitive advantage since prospective contractors are able to access a complete historical narrative of this successful Program. Prospective contractors lists for the Pennsylvania Program have increased over the terms of prior contracts because of this fact.

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

This proposed regulation is simply changes and updates to existing regulation. The proposal will increase the usability, economy, and scope of these regulations and assure the safe and environmentally friendly collection, packing, transportation, and disposal of these banned, cancelled, or otherwise unusable materials. Other State agencies are in accord with the existing regulations and have allied their existing programs with this Program in order to assure a more effective and environmentally safe clean-up of potentially hazardous situations.

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

No. All informational and public meetings have been conducted through the Pesticide Advisory Board.

**Regulatory Analysis Form**

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

The changes in the regulation propose no changes in existing paperwork requirements. The changes make participation in the Program simpler and less complicated than prior regulation. There are no reports that the individual participants need to file, only an inventory form in order to express their desire to access the Program and participate in the collection, and disposal of their materials.

(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.

The ability to participate in the Program and dispose of unwanted chemicals meets the particular needs of all classes of participants, particularly small businesses and homeowners who had no access to this, or other types, of program in the past. Most homeowners particularly have had no opportunity to take part in any such program in the past and have had to place these potentially hazardous materials into the regular solid waste streams. This fact has led to the increased potential for contamination of ground and surface water supplies. Many of these people have stockpiled quantities of these materials until such a program could be accessed.

(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?

Upon completion of the regulatory review process, the regulation should take effect immediately. These changes should not be controversial and we expect that approval and implementation should take effect upon adoption.

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

This regulation will be reviewed annually following completion of the collection, packing, and transportation of the materials for the current year. The costs, availability, and manageability of the current collections will serve as a benchmark for further collections. It is believed that, over time, the Program will become more streamlined and user friendly through the input received from participants, the contractor, and PDA employees affiliated with the Program. For that reason, all such input will be reviewed following completion of the current years collections and alterations to better the future years collections will be incorporated.



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REVIEW DIVISION

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

By: *Amy M. Elliott*  
(Deputy Attorney General)

JUN 21 2005

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. 2-143

DATE OF ADOPTION 12/17/04

BY *D. Wynn*

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY: *[Signature]*

4.14.05

DATE OF APPROVAL

**EXEC.** (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 128b  
Chemsweep Pesticide Disposal Program**

## PROPOSED RULEMAKING

### TITLE 7 – PESTICIDE RULES AND REGULATIONS DEPARTMENT OF AGRICULTURE [7 Pa. Code, Chapter 128b] Chemsweep Pesticide Disposal Program

The Department of Agriculture (“Department”) proposes to amend Chapter 128(b) of the Pesticide Regulations (7 Pa. Code, Chapter 128(b)) as set forth in Annex A. This regulation is adopted under the specific authority of the Secretary of Agriculture to promulgate appropriate regulations for the safe handling, transportation, storage, display, distribution and disposal of pesticides as set forth in §7(b)(2) of act of March 1, 1974,(P.L. 90, No.24) known as the “Pesticide Control Act of 1973” (“Act”)(3 P.S. §111.27(b)(2)).

#### *Purpose*

This regulation will specifically amend and expand the existing Chemsweep Pesticide Disposal Program (“Program”) to include the safe and effective disposal of all canceled, unused or suspended pesticides held by all citizens of the Commonwealth. The Program as set forth in 7 Pa. Code, Chapter 128b.1 – 128b.18 is currently limited to agricultural production businesses and “agricultural pesticides.”

#### *Background*

Since its inception as a pilot program in 1992 and its subsequent promulgation as a regulatory program in 1993 (August 21, 1993, 23 Pa.B.3933), the Program has had tremendous success in safely disposing of agricultural pesticides or other crop production chemicals in various counties throughout the Commonwealth. Funding for the Program was authorized and continues to be authorized through the Pesticide Restricted Account. The express goal of the Program was the prevention of toxic environmental releases and pollution of ground and surface water. With each passing year and the Program’s documented successes, the Department received requests from pesticide dealers, distributors, commercial applicators and businesses for inclusion into the Program. These pesticide-regulated entities had larger inventories of pesticide products that were similar to, and in some cases, the same as agricultural products. Accordingly, the Department as a matter of policy, along with the recommendation from the Pesticide Advisory Board, decided to accept requests from the those entities which handled unused, banned or cancelled agricultural chemicals from their pesticide inventories. These entities however, were not necessarily “agricultural production businesses” (farms). Accordingly, this regulation is specifically designed to bring the existing Chemsweep Regulations into compliance with actual practice and procedures.

To that end, the Department concluded that as long as the products could be identified as having, or once having, a United States Department of Agriculture (“USDA”) or United State Environmental Protection Agency (“EPA”) registration number, the material was eligible for inclusion in the disposal efforts. At the conclusion of the sixth year of the Program, all counties within the Commonwealth had had a least one round of collections – some were beginning a second round. At that time, it was noted that inventories of cancelled, unused or suspended pesticides began to be significantly reduced and that participants were becoming more remote and scattered.

During the latter part of 1999, the Program was showcased at a "Solid and Hazardous Waste" conference in Tucson, Arizona. Individuals from various States were interested in creating similar pesticide disposal programs. Shortly after that conference, discussions were held between representatives of the Pennsylvania Department of Environmental Protection (DEP) and the Department to discuss the feasibility of coordinating a joint collection program for household hazardous waste materials and pesticides. It was determined that DEP's Household Hazardous Waste Program ("HHW") may or may not include the collection and/or disposal of pesticides.

DEP and the Department subsequently agree to link both collection programs, utilizing PDA's contractor. Specifically, pesticides would be included in all combined collections and that the Department would pay for all pesticides and DEP would cost share the other HHW materials with the entity sponsoring the collection event. This decision in effect, provided all citizens in the Commonwealth with an environmentally safe method for the disposal of household pesticide products. The combined HHW/Chemsweep program, which was conducted as a pilot in one county in the year 2000, proved to be an overwhelming success collecting over 50,000 lbs. of HHW, of which, 8,000 lbs. were pesticides. In 2001, the combined programs included two additional counties, which collected over 30,000 lbs. of HHW materials and over 7,000 lbs. of pesticides. In 2002, a total of 117,118 lbs of pesticides and HHW were collected in "farm to farm pickups". In 2003, a total of 107,744 lbs of pesticides and HHW were collected. The Program continues to increase its collection and disposal percentages yearly. By participating in this program citizens of the Commonwealth can legally dispose of waste pesticides at no cost. Approximately 90% of those waste pesticides collected are burned in EPA approved incinerators. The remaining pesticides are either offered for recycling or are treated and placed in hazardous waste landfills permitted by EPA.

Funding for the Program continues to be derived from the Pesticide Restricted Account upon the recommendation of the Pesticide Advisory Board. Additional grant funds were received from the EPA to assist the Program for the year 2003 and beyond. The expansion of the program to service additional pesticides and entities has not greatly increased the costs to the program since the totals of agricultural pesticide inventories have been significantly decreased since 1993. The advent of the DEP alliance created the need to update the Program regulations to more accurately reflect the ongoing process and procedures. This regulation has been discussed, commented upon and approved by the Pesticide Advisory Board, which consists of representatives from the Pennsylvania Fish and Boar Commission, Department of Transportation, Department of Health, Department of Environmental Protection, Game Commission, Conservation and Natural Resources, Pest Management Association, Penn State University and members of the pesticide regulated community.

#### ***Need for the Proposed Rulemaking***

The Department is satisfied of the need for the proposed regulation to bring the regulations of the existing Program into compliance. The Department believes the document is consistent with the principles outlined in Executive Order 1996-1, "Regulatory Review and Promulgation" and has recommended the following modifications as set forth in Annex A.

### ***Overview of the Major Provisions of the Proposed Rulemaking***

Proposed §128b.2 (definitions) would modify the existing limitation from “farmer” to persons and/or participants within the Commonwealth.

Proposed §128b.3 (relating to selection of participating counties) would allow for yearly selection into the Program of certain counties of the Commonwealth.

Proposed §128b.6 (relating to eligibility of persons to participate) would make all citizens of the Commonwealth able to participate in the disposal of canceled, unused or suspended pesticides, which would otherwise be limited to agricultural businesses and agricultural pesticides.

### ***Affected Individuals and Organizations***

This is a voluntary program that has limited requirements for compliance. The proposed rulemaking therefore allows all citizens and businesses within the Commonwealth to participate in the Program through County participation.

### ***Fiscal Impact***

***Commonwealth:*** The Department has determined that the regulation will have little or no adverse financial impact on the Commonwealth since all funds budgeted for the Program are derived from the Pesticide Restricted Account. The funds in that account are obtained from licensing, permitting and registration fees and civil penalties placed upon pesticide manufacturers, dealers and applicators doing business within the Commonwealth. However, there could be a significant savings since the costs associated with the remediation of an environmental spill or exposure far outweighs the costs associated with administering the Program.

***Political Subdivisions:*** The regulation will impose no costs and have no adverse fiscal impact on political subdivisions.

***Private Sector:*** The proposed regulation will have no adverse fiscal impact on the private sector. However, the proposed regulations will likely reduce costs to the private sector for the individual disposals costs of canceled, unused and suspended pesticides within the Commonwealth.

***General Public:*** The proposed regulation will not impose any costs and will have no adverse fiscal impact on the general public. The Department believes there will be a positive impact upon the general public in that the Program will continue to help remove canceled, unused and/or suspended pesticides presently in the Commonwealth.

### ***Paperwork Requirements***

The proposed regulations would not appreciably increase the paperwork burden of the Department or other government units or citizens.

***Effective Date***

The proposed regulation will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

***Sunset Date***

There is no sunset date for the proposed regulation. The Department will review the efficacy of this regulation on an ongoing basis.

***Contact Person***

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*. Comment are to be submitted to the Department of Agriculture, Bureau of Plant Industry, 2301 N. Cameron Street, Harrisburg, Pennsylvania 17110-9408, Attention: Vance Wagner.

***Regulatory Review***

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on July 6, 2005, in accordance with §5(a) of the Regulatory Review Act (71 P.S. §745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request. If IRRC has an objection to any portion of the proposed regulation, it must so notify the Department within 10 days of the close of the Committees' review period.

The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

DENNIS C WOLFF,  
*Secretary*

ANNEX "A"  
CHAPTER 128b. CHEMSWEEP  
PESTICIDE DISPOSAL PROGRAM

Sec.

- 128b.1 Authority and purpose.
- 128b.2 Definitions.
- 128b.3 Selection of participating counties.
- 128b.4 Limitation of the number of participating counties.
- 128b.5 Funding.
- 128b.6 Eligibility of persons to participate.
- 128b.7 Preregistration application.
- 128b.8 Preregistration process.
- 128b.9 Inspection and verification.
- 128b.10 Responsibilities of applicant or participating farmer.
- 128b.11 Unidentified pesticides.
- 128b.12 [Pesticide labeling.] Limits to amounts of pesticide eligible for collection from one (1) participant.
- 128b.13 Pesticide inventory.
- 128b.14 Bid specifications.
- 128b.15 Notification of participants.
- 128b.16 Central-site.
- 128b.17 [Conditions requiring on farm pesticide collection.] Conditions requiring on-site pesticide collection.
- 128b.18 State and federal regulations.

**§ 128b.1. Authority and purpose.**

(a) Under the authority granted it under the act, the Department establishes a pesticide disposal program to be designated as [“Chemsweep.”] “CHEMSWEEP.” This Program, which is based upon the Chemsweep pilot pesticide disposal program described in Chapter 128a (relating to [Chemsweep] CHEMSWEEP pesticide disposal program— statement of policy), will allow the Department to identify and quantify canceled, unused or suspended pesticides held, owned or possessed by [the Commonwealth’s agricultural community] citizens of the Commonwealth. The information derived from this inventory

shall be used in the solicitation of bids from hazardous waste [disposers] disposal contractors for the safe collection, transportation and disposal of the pesticides.

(b) This Program shall be conducted within counties which are designated by the Department each year[, and shall continue until each county within this Commonwealth has had the opportunity to participate].

(c) By addressing the pesticide disposal needs of [the agricultural community, excluding counties which are designated in § 128b.3 (relating to selection of participating counties),] Commonwealth citizens, the Program addresses the needs of [farmers] persons who have accumulated and stored chemicals in the Commonwealth with the potential to affect the environment and human safety. [The agricultural community] Citizens of this Commonwealth currently lack[s] an available, economical, environmentally sound, and effective means of disposing of [large quantities of] potentially hazardous pesticides.

#### **§ 128b.2. Definitions.**

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

*Act*—The Pennsylvania Pesticide Control Act of 1973 (3 P. S. § § 111.21—111.61).

*Agricultural commodities*—Agricultural, horticultural, viticultural and dairy products,

livestock and the products thereof, ranch raised fur bearing animals and the products thereof, the products of poultry and bee raising, forestry and forestry products, and products raised or produced on farms intended for human consumption and the processed or manufactured products thereof intended for human consumption, transported or intended to be transported in commerce.

*Applicant*—A [farmer] person who owns, holds or possesses pesticides within a participating county and who has filed a Program pre-registration application form with the Department.

*Central-site pesticide collection*—The collection by a contractor of a portion of the pesticide inventory of a participating county from a site to which two or more [participating farmers] participants have transported their pesticides for collection.

*Certified applicator*—An individual who is certified by the Department under section 16.1, 17 or 17.1 of the [act] Act (3 P. S. § § 111.36a, 111.37 and 111.37a) as being competent to use or supervise the use or application of a pesticide.

*Commercial applicator*—A certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide on the property or premises of another, or on easements granted under State law, or an applicator who uses or supervises the use of a restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural commodity. The Secretary may deem certain types of applicators using a pesticide on their own property or that of their employers as commercial applicators.

*Contractor*—A person engaged in the business of collecting, packing, transporting and disposing of hazardous waste, who is contractually obligated, through the Program, to



collect, pack, transport and dispose of the pesticide inventory of a participating county.

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

*Emergency situation* – An unforeseen or unexpected circumstance involving pesticides that requires immediate action in order to protect the public health, safety, environment, or general welfare in the Commonwealth.

*EPA*—The Environmental Protection Agency of the United States.

[*Farmer*—A person who engages, but who need not engage exclusively, or has engaged in the production and preparation for market of agricultural commodities.]

*On-[farm] site pesticide collection*—The collection by a contractor of a portion of the pesticide inventory of a participating county from the site, usually a farm, at which it is stored by a [participating farmer] participant.

*Participating county*—A county designated by the Department to participate in the [Chemsweep] CHEMSWEEP Program.

[*Participating farmer*] Participant —An applicant whose application has been accepted by the Department and whose pesticides are the subject of a disposal contract between the Department and a contractor.

*Person*—A[n individual] citizen of the Commonwealth, firm, corporation, association or another form of business entity doing business in the Commonwealth.

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

*Pesticide dealer*—A person who [sells] distributes or offers for sale pesticides which are classified for restricted use under the [act] Act.

*Pesticide inventory*—The compilation of information with respect to the identification, quantification and safety of pesticides held by a [participating farmer] participant within a particular participating county.

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

*Program*—The [Chemsweep] CHEMSWEEP Pesticide Disposal Program.

*Secretary*—The Secretary of the Department.

*USDA*—The United States Department of Agriculture.

### **§ 128b.3. Selection of participating counties.**

(a) *County participation.* The Department will conduct the Program [a single time in each county of this Commonwealth, with the exceptions of Bedford, Fulton, Lebanon, Lehigh, Snyder and Union Counties, which are excluded from participation by virtue of the fact that each was a participating county in the Chemsweep Pilot Program. See Chapter 128a (relating to Chemsweep pesticide disposal program—statement of policy).] yearly in selected counties of the Commonwealth.

(b) *Selection criteria.* In selecting the counties to participate in the Program during a particular fiscal year, the Department may consider:

(1) The amount of funds available for the use of the Program.

[(2) The intensity of agricultural activity within the County.

(3) The diversity of the agricultural activity conducted within the county.]

[(4)] (2) The availability of support from agricultural agencies and local governments within the county.

[(5)] (3) The proximity of the county to other counties selected to participate in the Program in that particular fiscal year.

[(6)] (4) The environmental or health risks posed by the pesticide inventory of a particular county.

[(7)] (5) Other factors relevant to the selection of the county on economic, environmental or safety grounds.

**§ 128b.4. Limitation of the number of participating counties.**

[If, after having accepted a particular county to participate in the Program during a particular fiscal year, the Department determines that there is not sufficient funding available to fund the packing, transport and disposal of the pesticide inventory of that county, the Department may exclude that county from participation in the Program for that particular fiscal year.] The number of eligible counties participating during a particular fiscal year shall not exceed twenty-one (21) except where emergency situations arise.

**§ 128b.5. Funding.**

(a) *Principal source.* A portion of the annual fees collected by the Department with respect to the registration of pesticides distributed within this Commonwealth, as

described at section 5.1(a) of the [act] Act (3 P. S. § 111.25a(a)) and §128.3(i) (relating to fees), shall be the principal source of funding for the Program.

(b) *Additional sources.* Funds from sources other than the pesticide product registration fee described in this section may be used to defray the costs of the Program.

**§ 128b.6. Eligibility of persons to participate.**

(a) *Requirements.* To be eligible to be considered for participation in the Program, a person shall meet the following requirements:

[(1) Be a farmer.]

[(2)] (1) Hold, own or possess pesticides that are or have been registered [as having agricultural applications] for sale and use within the Commonwealth.

[(3)] (2) Hold, own or possess the pesticides within a participating county.

(b) *Exclusions.* [Commercial applicators of pesticides and holders of pesticides registered exclusively for residential or industrial applications are not eligible to participate in the Program. The inventory of a pesticide dealer may not be accepted for disposal.] Empty pesticide containers may not be accepted for disposal. Individuals, corporations, associations, or other forms of business entities not located within the Commonwealth are not eligible for participation in the Program.

**§ 128b.7. Preregistration application.**

(a) *Application required.* A person who seeks to participate in the Program shall complete and file with the Department a preregistration application form.

(b) *Mandatory information.* The Department will develop a Program preregistration application form, and will provide prospective applicants with the form upon their request. The form will require that an applicant provide the following information, when known and applicable, with respect to each pesticide for which disposal is sought:

- (1) The compound or trade name of the pesticide.
- (2) The active ingredient or common name of the pesticide.
- (3) The United States Environmental Protection Agency (USEPA) registration number of the pesticide.
- (4) The United States Department of Agriculture (USDA) registration number of the pesticide.
- (5) The type of formulation of the pesticide.
- (6) The type of container of the pesticide.
- (7) The number of containers of the pesticide.
- (8) The condition of the container holding the pesticide.
- (9) The total quantity of the pesticide.
- (10) The exact location of the pesticide.
- (11) The name, address and telephone number of the applicant.
- (12) Verification that the applicant is [a farmer] eligible for participation in the Program.

(c) *Incomplete information.* If an applicant cannot ascertain the identity of a particular pesticide in its possession, or provide other applicable information required by subsection (b), the applicant shall state on the preregistration application form as much information

relating to the particular pesticide as is known to the applicant. The Department will then endeavor to obtain the information which the applicant was unable to provide. If the applicable information required by subsection (b) cannot be readily obtained with respect to a particular pesticide, the Department [will have discretion as to whether it will accept that pesticide for disposal] may obtain a sample for analysis, providing that the quantity of pesticide exceeds either fifty (50) pounds or five (5) gallons. If no pesticides are found in the sample through analysis, the Department may refuse to accept the product for disposal.

- (d) *Additional information.* The Department may require that an applicant provide additional information, which the Department deems relevant to its evaluation of a preregistration application.
- (e) *Exception to Pre-registration.* A person who participates in a HHW jointly sponsored by PDA and DEP will be exempt from the pre-registration portion of this section.

**§ 128b.8. Preregistration process.**

- (a) *Application period.* The Department will fix a [120] 90 day period within which it will accept preregistration application forms within a particular participating county.
- (b) *Dissemination of notice.* Prior to the commencement of the preregistration application period, the Department will publish notice of the Program and the preregistration period in either a newspaper of general circulation within the participating county or [a newspaper or publication circulated primarily among the agricultural community of a] another publication of general circulation within a participating county.

When practicable, the Department may enlist the assistance of entities such as the County Extension Service of the United States Department of Agriculture, the Pennsylvania Farmers' Union, the Pennsylvania Grange Association, the Pennsylvania Farm[ers' Association] Bureau, County Conservation Districts and county and local governments in disseminating the notice and information.

(c) *Discretionary extension of application period.* In furtherance of the intent of the Program to arrange for the safe collection and disposal of pesticides within a participating county, the Department has the discretion to accept a preregistration application form submitted to it beyond the [120] 90 day preregistration application period.

**§ 128b.9. Inspection and verification.**

(a) *Department inspection.* The Department may physically inspect the premises at which a pesticide listed on a preregistration application is stored. The inspection will be conducted at a time agreeable to both the Department and the applicant. The purpose of an inspection will be to:

(1) Verify information contained on the preregistration application form.

(2) Draw samples of unidentified pesticides for analysis at the Department's laboratories.

(3) Ascertain the condition of pesticide containers and assess other factors relevant to the safe collection, packing, transport or disposal of the pesticides.

(b) *Contractor inspection.* A contractor or prospective contractor may physically inspect the premises at which a pesticide listed on a preregistration application is stored. An inspection shall be conducted at a time agreeable to both the contractor, or prospective

contractor, and the applicant. The purpose of an inspection shall be to verify bid specification information and to otherwise assist the contractor or prospective contractor in its planning for the safe collection, packing, transport, and disposal of the pesticide.

**§ 128b.10. Responsibilities of applicant or [participating farmer] participant.**

(a) *Generally.* An applicant or [participating farmer] participant is responsible for the safe storage of pesticides held, owned or possessed by the applicant or [participating farmer] participant. This exclusive responsibility does not lapse with the filing of a preregistration application, with an inspection of the pesticide or pesticide storage area or with the notice of acceptance of the pesticide for disposal through the Program as described in § 128b.15 (relating to notification of participants). Action by the Department does not relieve the applicant or [participating farmer] participant of the responsibility to store pesticides in a safe and lawful manner. With respect to central-site pesticide collection, the [participating farmer] participant shall retain sole responsibility for the safe transport of pesticides and for the cleanup, if necessary, of the [on-farm] site at which the pesticide was stored. With respect to on-[farm] site pesticide collection, the [participating farmer] contractor is responsible [shall retain sole responsibility] for the cleanup, if necessary, of the [on-farm] site at which the pesticide was stored. [, to the extent that the cleanup is not necessitated by spills or other contamination caused by the contractor.] The contractor is responsible for property damage, personal injuries and the cleanup of spills or other contamination which it causes. The contractor will not be responsible for the clean up of any areas outside of the site at which the pesticides are stored, unless otherwise specified by State or Federal regulation or law.



(b) *Right to withdraw.* An applicant or [participating farmer] participant may withdraw from the Program at any time.

**§ 128b.11. Unidentified pesticides.**

The Department will obtain a sample of an unidentified pesticide with respect to which disposal is sought through the Program. [A] The sample will be analyzed by the laboratories of the Department. If the Department is subsequently able to identify the previously unidentified pesticide, it will determine whether that particular pesticide container shall be placed on the pesticide inventory for the participating county in which the pesticide is located. The Department has discretion whether it will accept unidentified pesticides or substances for disposal through the Program.

**§ 128b.12. [Pesticide labeling.] Program limitations.**

[A pesticide may not be accepted for disposal through the Program unless it bears a legible, prominent label identifying the pesticide by active ingredient or common name and by the EPA or USDA registration number. Unidentified pesticides which are subsequently identified by the Department will be labeled by the Department in accordance with this chapter prior to being accepted for disposal.]

The Department will accept a maximum of two thousand (2,000) pounds of pesticide for disposal from any one (1) participant annually. The participant may pay the contractor directly for collection, transport and disposal of pesticides in excess of two thousand (2,000) pounds at the Commonwealth's contract price. The Department reserves the right

to accept any excess pesticides or renegotiate acceptable poundage when deemed necessary by the Department.

**§ 128b.13. Pesticide inventory.**

Following the expiration of the [120] 90 day preregistration application period in § 128b.8(a) (relating to preregistration process), the Department will compile an inventory of the pesticides which are located within a particular participating county and which are intended for collection and disposal under the Program. The sources of information for this pesticide inventory [shall] may include preregistration application forms, additional information requested from an applicant under § 128b.7(d) (relating to preregistration application), information obtained through interviews with applicants or physical inspection of pesticides, results of laboratory tests conducted by the Department and other sources of which the Department avails itself. The pesticide inventory shall include the information listed in § 128b.7(b) and other information the Department deems relevant to the bidding and contracting process set forth in § 128b.14 (relating to bid specifications).

**§ 128b.14. Bid specifications.**

(a) *General.* After the Department completes its compilation of the pesticide inventory for a particular participating county, it shall develop bid specifications for use in contracting for the disposal of the pesticide inventory. The Department may make the pesticide inventories of two or more participating counties the subject of a single disposal contract.

(b) *Contractor qualifications.* The bid specifications for the collection, packing, transportation, and disposal of a pesticide inventory shall require that the following requirements are met:

(1) A contractor shall be approved by the EPA to collect, handle, transport and dispose of hazardous materials.

(2) A contractor shall be approved by the Department of Environmental [Resources] Protection to collect, handle, transport and dispose of hazardous materials.

(3) A contractor shall provide a written, detailed description of the procedures which it would use in collection, packing, transportation, and disposal [disposing] of the pesticide inventory, including packing procedures, transportation methods, selection of pesticide collection sites, disposal sites and methods of disposal, including a description of required State and Federal permits and documentation necessary to accomplish disposal.

(4) A contractor shall handle, collect, pack, transport and dispose of pesticides, whether classified as hazardous, in accordance with applicable State and Federal law, and in compliance with the written description provided the Department.

(5) A contractor shall provide a specific time within which it shall complete its work under the contract.

(c) The bid specification in subsection (b) shall contain other requirements the Department deems appropriate.

(d) *Pesticide collection options.* The Department may solicit bids for several different pesticide collection options: The Department may require that [participating farmers] participants arrange for the safe transportation of their pesticides to a central site from which the contractor shall collect, pack, transport and dispose of the pesticides, or the

Department may require that the contractor collect, pack, transport and dispose of pesticides from the individual [farms or] storage locations throughout the participating county, or the Department may require that a contractor employ a combination of on-[farm] site pesticide collection and central-site pesticide collection. Regardless of the pesticide collection options with respect to which the Department solicits bids, the contractor shall perform on-[farm] site pesticide collection when required under § 128b.17 (relating to conditions requiring on-farm pesticide collection).

**§ 128b.15. Notification of participants.**

After the Department awards a pesticide disposal contract with respect to a participating county, [it] the contractor will notify each selected applicant holding, owning or possessing pesticides to be disposed of under the disposal contract that his preregistration application has been accepted and that he shall be a [participating farmer] participant in the Program. The notice will be in writing, by regular United States mail, addressed to the same address as appears on the preregistration application. The notice will also inform the [participating farmer] participant of obligations with respect to either transporting his pesticides to a central site for collection or otherwise making pesticides available for on-[farm] site collection by the contractor.

**§ 128b.16. Central-site.**

Although the Department will assist the contractor in obtaining a central site for pesticide collection prior to transportation and disposal, the decision whether to use a particular site for pesticide collection is exclusively the contractor's. The contractor is

responsible for establishing, insuring and operating the site in compliance with applicable laws, and is responsible in the event of a pesticide spill or other environmentally-impacting incident which gives rise to legal liability.

**§ 128b.17. Conditions requiring on-farm pesticide collection.**

A leaking, deteriorated or otherwise unsafe container of pesticide may not be transported by a [participating farmer] participant to a central site for collection by a contractor, but shall [instead] be [overpacked] over packed and collected on-[farm] site by the contractor. Quantities of pesticide that are too large, too heavy, too unwieldy, in excess of allowable quantities for waste transport or otherwise incapable of being safely transported by a [participating farmer] participant to a central site for collection shall be collected on-[farm] site by a contractor. If either the contractor or the [participating farmer] participant makes the determination that a pesticide container is leaking, deteriorated or otherwise unsafe, or that a pesticide container is too large, too heavy, too unwieldy or otherwise incapable of being safely transported by a [participating farmer] participant to a central site for collection, the pesticide container shall be [overpacked] over packed and collected on-[farm] site by the contractor.

**§ 128b.18. State and Federal regulations.**

To the extent that a conflict is subsequently found to exist between this chapter and other regulations of the Commonwealth or the United States pertaining to the collection, packing, transport, storage or disposal of hazardous waste, or pertaining to the qualification, authorization or licensure of persons to perform the foregoing activity, or

**pertaining to insurance or other surety requirements of persons performing the foregoing activities, other regulations of the Commonwealth or the United States supersede this chapter.**

COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL

DEPARTMENT OF AGRICULTURE

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July 6, 2005

Independent Regulatory Review Commission  
333 Market Street, 14<sup>TH</sup> Floor  
Harrisburg, PA 17120

**RE: NOTICE OF PROPOSED RULEMAKING**  
**Department of Agriculture**  
**Bureau of Plant Industry**  
**7 Pa. Code Chapter 128b**  
**Chemsweep Pesticide Disposal Program**  
**I.D. No. 2-143**

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced notice of proposed rulemaking (Preamble and Annex "A"), together with a copy of the appropriate Regulatory Analysis Form. This material was delivered to the Legislative Reference Bureau on this date, and the notice of proposed rulemaking will be published in the July 16, 2005 edition of the *Pennsylvania Bulletin*. The public comment period with respect to this notice of proposed rulemaking will expire **August 15, 2005**.

The enclosed material is submitted to you in accordance with the requirements of § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). Section 5(d) of the Regulatory Review Act (71 P.S. § 745.5(d)) affords the standing committee 20 calendar days from the closing date of the public comment period within which to consider the proposed rulemaking and convey to this Department a summary of any objections, a statement of the reasons for any objection and copies of any staff reports deemed pertinent.

The Department of Agriculture will provide you with any assistance you require to facilitate a thorough review of this proposed regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jorge M. Augusto".

Jorge M. Augusto  
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-143  
 SUBJECT: Chemsweep Pesticide Disposal Program  
 AGENCY: DEPARTMENT OF AGRICULTURE

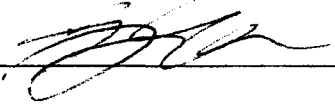

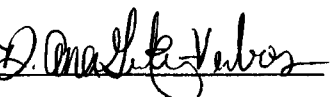
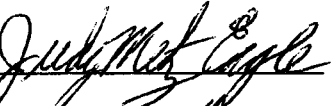
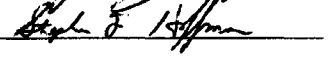
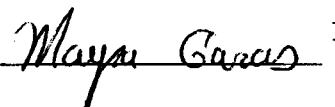
# 2487

**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  
 2005 JUL -6 PM 3:05  
 Illinois Department of Agriculture

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7-6-05		HERSHEY HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
7-6-05		DALEY
7-6-05		WAUGH SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
7-6-05		O'PAKE
7-6-05		IRRC INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
7-6-05		LRB LEGISLATIVE REFERENCE BUREAU (for Proposed only)