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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 14, 2005

Honorable Dennis C. Wolff, Secretary  
Department of Agriculture  
211 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Regulation #2-143 (IRRC #2487)  
Department of Agriculture  
CHEMSWEEP Pesticide Disposal Program

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "Kim Kaufman", written over a horizontal line.

Kim Kaufman  
Executive Director

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Enclosure

cc: Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Arthur D. Hershey, Majority Chairman, House Agriculture and Rural Affairs Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee

# Comments of the Independent Regulatory Review Commission

on

## Department of Agriculture Regulation #2-143 (IRRC #2487)

### CHEMSWEEP Pesticide Disposal Program

September 14, 2005

We submit for your consideration the following comments on the proposed rulemaking published in the July 16, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

#### 1. Section 128b.1. Authority and purpose. - Clarity.

Subsection (a) contains the following phrase in its second sentence: “. . . which is based upon the Chemsweep pilot pesticide disposal program described in Chapter 128a (relating to Chemsweep pesticide disposal program—statement of policy) . . . .” The statement of policy in Chapter 128a was superseded by the existing regulations in Chapter 128b in 1993. Hence, Chapter 128a is obsolete and unnecessary. It is also our understanding that the Department will delete Chapter 128a since it has been replaced by the existing regulations. The proposed regulation deletes another existing reference to Chapter 128a in Section 128b.3(a). The reference to the other chapter in Section 128b.1(a) should also be deleted.

#### 2. Section 128b.2. Definitions. - Consistency with other regulations and statutes; Clarity.

This section includes a definition of “person” which is similar to the statutory definition of “person” in the Pennsylvania Pesticide Control Act (3 P.S. § 111.24(29)). The proposed regulation adds two new phrases that are not in the statutory definition. They are: “citizen of this Commonwealth” and “doing business in this Commonwealth.” Section 128b.6(b) (relating to exclusions and eligibility of persons to participate) includes new language which reads: “Individuals, corporations, associations, or other forms of business entities **not located within this Commonwealth** are not eligible for participation in the Program.” (Emphasis added) There are two concerns.

First, the two new substantive phrases in the definition of “person” are unnecessary since Section 128b.6(b) establishes the conditions for eligibility. We suggest that the definition of “person” in the proposed regulation should use the statutory definition at 3 P.S. § 111.24(29) via a reference, or by repeating it verbatim in the regulation.

Second, Section 128b.6(b) should use the word “person” and should not use words, such as “individuals, corporations, associations, or other forms of business entities,” that are already

included by the definition of the term “person.” In addition, the substantive requirements for eligibility should be listed in Section 128b.6(b).

**3. Section 128b.3. Selection of participating counties. - Clarity.**

Subsection (b) reads: “In selecting the counties to participate in the Program during a particular fiscal year, the Department **may** consider . . . .” (Emphasis added) This statement is followed by a short list of criteria that the Department considers in the selection process. In accordance with Section 6.8 of the *Pennsylvania Code & Bulletin Style Manual*, we suggest that the word “may” be replaced with the word “will.”

**4. Section 128b.4. Limitation of the number of participating counties. - Reasonableness; Clarity.**

The new language in this section reads: “The number of eligible counties participating during a particular fiscal year may not exceed 21 except when emergency situations arise.” It is our understanding that the maximum number of counties participating in the Program regularly exceeds 21 and may be as high as 40. The section should indicate that 21 is the minimum number of counties that the Department initially selects for participation in the Program each year.

**5. Section 128b.7. Preregistration application. - Reasonableness; Implementation procedure; Clarity.**

Subsection (b)(12) requires “verification that the applicant is eligible for participation in the Program.” In the final-form regulation, this subsection should provide examples of what documents or information could be used by an applicant to provide “verification.”

**6. Section 128b.8. Preregistration process. - Implementation procedures; Clarity.**

Subsection (c) states that the Department has the discretion to accept a preregistration application form submitted beyond the 90-day preregistration period. The final-form regulation should indicate whether an applicant may request an extension and, if so, when and how an applicant could make such a request.

**7. Section 128b.12. Program limitations. - Implementation procedure; Clarity.**

We have two concerns with this section. First, it states that the Department will accept 2,000 pounds of pesticide from a participant annually. It is our understanding that there is no charge to the participant for the first 2,000 pounds accepted by the Department. The final-form regulation should be amended to reflect this fact.

Second, the last sentence of this section reads: “The Department reserves the right to accept any excess pesticides or renegotiate acceptable poundage when deemed necessary by the Department.” We recognize that the Department has the authority to exercise discretion, but the section should include the criteria that the Department will consider in determining whether to accept additional pounds of pesticide for disposal beyond the maximum of 2,000 pounds.

**8. Section 128b.14. Bid specifications. - Implementation procedures.**

Subsection (b)(3) states, in part, the following: “A contractor shall provide a written, detailed description of the procedures which it **would** use in collection, packing, transportation and disposal of the pesticide inventory . . . .” (Emphasis added) The use of the term “would” is problematic because it allows the contractor to deviate from the written, detailed description required with the bid specifications. We recommend that this term be changed to “shall.” This would impose a requirement on the contractor to follow the plan submitted with the job specifications. If the Department decides to retain the term “would,” the final regulation should address the process to be followed if the submitted plan differs from the actual plan.

**9. References to other laws or regulations. - Need; Clarity.**

Sections 128b.10(a), 128b.14(b)(4) and 128b.16 include general references to laws or regulations that apply to contractors. It is our understanding that contractors must comply with these other laws and regulations to maintain their licensure and permit status with the Department of Environmental Protection (DEP) and U.S. Environmental Protection Agency (EPA). As long as approval by DEP and EPA is required for pesticide disposal contractors, what is the need for these references to other laws and regulations in this proposed regulation?

### Facsimile Cover Sheet

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Administrative Officer



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To: Janna Ward**  
**Agency: Department of Agriculture**  
**Phone: 2-2853**  
**Fax: 5-8402**  
**Date: September 14, 2004**  
**Pages: 5**

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-143 (IRRC #2487). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Janna Ward **Date:** 9/14/05

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