

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 128b]

CHEMSWEEP Pesticide Disposal Program

The Department of Agriculture (Department) proposes to amend Chapter 128b (relating to CHEMSWEEP Pesticide Disposal Program) to read as set forth in Annex A. Chapter 128b was adopted under the specific authority of the Secretary of the Department to promulgate appropriate regulations for the safe handling, transportation, storage, display, distribution and disposal of pesticides in section 7(b)(2) of the Pesticide Control Act of 1973 (act) (3 P. S. § 111.27(b)(2)).

Purpose

This proposed rulemaking will specifically amend and expand the existing CHEMSWEEP Pesticide Disposal Program (Program) to include the safe and effective disposal of canceled, unused or suspended pesticides held by all citizens of this Commonwealth. The Program as set forth in Chapter 128b 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 (see 23 Pa.B. 3933 (August 21, 1993)), the Program has had tremendous success in safely disposing of agricultural pesticides or other crop production chemicals in various counties throughout this 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 rulemaking 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 6th year of the Program, counties within this Commonwealth had had at 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 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 or disposal, or both, of pesticides.

DEP and the Department subsequently agreed 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 this 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 pounds of HHW, of which, 8,000 pounds were pesticides. In 2001, the combined programs included two additional counties, which collected over 30,000 pounds of HHW materials and over 7, 000 pounds of pesticides. In 2002, a total of 117,118 pounds of pesticides and HHW were collected in "farm to farm pickups." In 2003, a total of 107,744 pounds of pesticides and HHW were collected. The Program continues to increase its collection and disposal percentages yearly. By participating in this program, citizens of this 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 the 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 proposal has been discussed, commented upon and approved by the Pesticide Advisory Board, which consists of representatives from the Fish and Boar Commission, Department of Transportation, Department of Health, DEP, Game Commission, Department of 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 amendments to bring the regulations of the existing Program into compliance.

Overview of the Major Provisions of the Proposed Rule-making

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

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

Proposed § 128b.6 (relating to eligibility of persons to participate) would make all citizens of this 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 this Commonwealth to participate in the Program through county participation.

Fiscal Impact

Commonwealth: The Department has determined that the proposed rulemaking 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 this Commonwealth. However, there could be a significant savings since the costs associated with the remediation of an environmental spill or exposure far outweigh the cost associated with administering the Program.

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

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

General Public: The proposed rulemaking 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 or suspended pesticides presently in this Commonwealth.

Paperwork Requirements

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

Effective Date

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

Sunset Date

There is no sunset date for these regulations. The Department will review the efficacy of these regulations on an ongoing basis.

Contact Person

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

Regulatory Review

On June 6, 2005, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees with 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 rule-making, it must so notify the Department within 30 days of the close of the public 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 rulemaking.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-143. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 128b. CHEMSWEEP PESTICIDE DISPOSAL PROGRAM

§ 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 this 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 this

Commonwealth with the potential to affect the environment and human safety. **[The agricultural community]** Citizens of this Commonwealth currently **[lacks]** lack 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:

* * * * *

Applicant—A **[farmer]** person who owns, holds or possesses pesticides within a participating county and who has filed a Program preregistration 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.

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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.

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

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[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 [Onsite] 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—**[An individual]** A citizen of this Commonwealth, firm, corporation, association or another form of business entity **doing business in this Commonwealth.**

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

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

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§ 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 this Commonwealth.

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

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

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

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

[(5)] (3) * * *

[(6)] (4) * * *

[(7)] (5) * * *

§ 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 may not exceed 21 except when emergency situations arise.

§ 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) **Hold, own or possess pesticides that are or have been registered [as having agricultural applications] for sale and use within this Commonwealth.**

[(3)] (2) * * *

(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 this Commonwealth are not eligible for participation in the Program.**

§ 128b.7. Preregistration application.

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(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:

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(10) The **exact** location of the pesticide.

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(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 50 pounds or 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.

§ 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 **[Farmers' Association] Farm 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:

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(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] onsite** pesticide collection, the **[participating farmer shall retain sole responsibility] contractor is responsible** 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 2,000 pounds of pesticide for disposal from any one participant annually. The participant may pay the contractor directly for collection, transport and disposal of pesticides in excess of 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.

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(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 [disposing] collection, packing, transportation and disposal 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.

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(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] onsite 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] onsite 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] onsite 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] overpacked and collected [on-farm] onsite 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 trans-

ported by a **[participating farmer] participant** to a central site for collection shall be collected **[on-farm] onsite** 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] overpacked** and collected **[on-farm] onsite** 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.

[Pa.B. Doc. No. 05-1338. Filed for public inspection July 15, 2005, 9:00 a.m.]
