



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Application Restrictions Statutes & Regulations

Pennsylvania

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Application Restrictions

STATE OF PENNSYLVANIA

- 1) 3 Pa.C.S.A. § 507; Pa. Code §§ 83.294, 301, 342—344
- 2) 35 P.S. §§ 681.201, 202; 25 Pa Code 91.1, 91.36(b)
- 3) 35 P.S. § 6026.904(d); 7 Pa. Code Chapter 130d

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Pennsylvania Legislative Reference Bureau.

1) 3 Pa.C.S.A. § 507; Pa. Code §§ 83.294, 301, 342—344

§ 507. Manure application setbacks and buffers.

(a) *General rule.* — Unless the commission establishes a stricter requirement by regulation, no concentrated animal operation or other agricultural operation receiving manure from a concentrated animal operation directly or indirectly through a broker or other person may mechanically land apply manure within 100 feet of surface water unless a vegetated buffer no less than 35 feet in width and meeting standards established by the Natural Resources Conservation Service is used to prevent manure runoff into the surface water.

(b) *Definition.* — As used in this section, the term “surface water” means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

§ 83.294. Nutrient application procedures.

(a) *General.* Nutrients shall be applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater using BMPs as described in the plan.

(b) *Timing.* Intended target spreading periods for the application of manure shall be included in the plan.

(c) *Equipment capabilities.* Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of available application equipment.

(1) For existing operations using their own application equipment, the plan must include a statement indicating that the existing equipment has been calibrated to

ensure implementation of the application rates described in the plan, and that the equipment has the capacity to meet those application rates. The supporting documentation for this statement shall be available at the operation for inspection by the county conservation district and the Commission.

(2) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment calibration and capability verification prior to the first application of manure. The statement described in paragraph (1) shall be included in any necessary amendments to the plan. The supporting documentation of this statement shall be available at the operation for inspection by the Commission and delegated county conservation district.

(3) If a commercial manure hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate contained in the plan.

(d) *Irrigation systems.* If manure will be applied using an irrigation system, the following applies:

(1) Application rates for irrigated liquid manure shall be based on the lesser of the following:

(i) The planned application rates in gallons per acre determined in accordance with § 83.293(a) (relating to determination of nutrient application rates).

(ii) The combination of the following:

(A) The liquid application rate in inches per hour determined to be within infiltration capabilities of the soil.

(B) The liquid application depth in inches not to exceed the soil's water holding capacity within the root zone or any restricting feature at the time of application.

(2) The allowable liquid application rate and application depth shall be based on appropriate factors such as available water holding capacity of the soil, depth of the root zone, depth to a shallow impervious soil layer, soil infiltration rate, soil texture and drainage, vegetation and ground slope. Application BMPs that are consistent with the current versions of Penn State Fact Sheets F254 through F257, as applicable to the type of irrigation system planned to be used on the operation, and the *NRAES-89 Liquid Manure Application System Design Manual*, may be used to comply with this subsection. Other BMPs shall be approved by the Commission.

(3) The plan must include the computations for the application rate (in inches per hour) and application depth (in total inches) of the various application rates, and these applications may not exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(e) *Manure application at rates greater than 9,000 gallons per acre.* If liquid or semisolid manure is planned to be applied at rates greater than 9,000 gallons per acre at any one application time, the rates and amounts shall be limited based on the infiltration rate and water holding capacity of the application areas as described in subsection (d). In those instances, the plan must include the computations for the application rates in inches per hour, and in total inches, for the various application areas, and these applications may not be allowed to exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(f) *Setbacks and buffers.* Manure may not be mechanically applied in the following situations:

(1) Within 100 feet of the top of the bank of a perennial or intermittent stream with a defined bed and bank, a lake or a pond, unless a permanent vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into the stream, lake or pond.

(2) Within 100 feet of an existing open sinkhole unless a permanent vegetated buffer of at least 35 feet in width is used.

(3) Within 100 feet of active private drinking water sources such as wells and springs.

(4) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(5) On crop management units having less than 25% plant cover or crop residue at the time of manure application, unless:

(i) For fall applications, the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices. The *Pennsylvania Technical Guide* contains practices which may be used to satisfy this requirement. Other practices shall be approved by the Commission. The practices must be consistent with those in the agricultural erosion and sediment control plan.

(ii) For applications in the spring or summer, the crop management unit is planted to a crop that growing season.

(iii) For winter applications, the crop management unit is addressed under subsection (g).

(g) *Winter application.* For winter application of manure, the following apply:

(1) The application procedures shall be described in the plan.

(2) The plan must list the following:

(i) The crop management units where winter application is planned or restricted.

(ii) The application procedures that will be utilized at those crop management units.

(iii) The field conditions that must exist for winter application.

(3) Setbacks listed in subsection (f) shall be implemented. In addition, during winter manure may not be mechanically applied in the following situations:

(i) Within 100 feet of an above-ground inlet to an agricultural drainage system, if surface flow is toward the aboveground inlet.

(ii) Within 100 feet of a wetland that is identified on the National Wetlands Inventory Maps, if the following are met:

(A) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(B) Surface flow is toward the wetland.

(4) Fields where manure will be applied in winter must have at least 25% residue, or an established cover crop. The BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other practices shall be approved by the Commission.

(h) *In-field stacking.* In-field stacking of dry manure as a part of manure application is permissible on an NMP operation, and any importing lands governed by § 83.301 (relating to excess manure utilization plans), if the following requirements are met:

(1) The manure shall be land applied on the crop management unit within 120 days of stacking, or prior to the beginning of the next growing season, whichever is sooner.

(2) The stacks shall be constructed using appropriate BMPS such as:

- (i) Placement on appropriate soils.
- (ii) Proper consideration of slopes where stacks will be placed.
- (iii) Shaping that minimizes absorption of rainfall.
- (iv) Proper consideration of the size of the stack.
- (v) Use of setbacks
- (vi) Rotation of stack locations.

(3) If stacking occurs for a longer period than that described in paragraph (1), the stacks shall either be covered to keep rainwater from entering the stacks, or a waste stacking and handling pad shall be used. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(4) Locations for in-field stacking of dry manure shall be shown on the farm maps and the nutrient balance sheet maps required by this subchapter.

(i) *Commercial manure haulers.* If a commercial manure hauler will be used for the application of the manure on the agricultural operation, the commercial manure hauler shall meet the requirements of Act 49.

(j) *Pastures requiring phosphorus restrictions.* If a pasture has been determined to require total restriction of phosphorus application under § 83.293(c), the risk of phosphorus loss shall be addressed by the following BMPs in lieu of total restriction of phosphorus application:

- (1) Grazing may not be conducted within 50 feet of a perennial or intermittent stream, a lake or a pond.
- (2) A prescribed grazing system shall be used to maintain an established stand of forage on the pasture area.
- (3) The stocking rate shall be limited to ensure that the level of phosphorus deposited by the animals does not exceed the level of phosphorus removal from the soil by vegetation in the pasture.
- (4) BMPs contained in the *Pennsylvania Technical Guide* may be used to meet the requirements in paragraphs (1) and (2). Other BMPs shall be approved by the Commission.

§ 83.342. Recordkeeping relating to application of nutrients.

(a) Plans must be supported by the information required in this section and §§ 83.343 and 83.344 (relating to alternative manure utilization recordkeeping; and exported manure information packets).

(b) The NMP operation shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the NMP operation:

(1) Records of soil testing results shall be maintained consistent with § 83.292(e) (relating to determination of nutrients needed for crop production). Soil testing is required once every 3 years for each crop management unit.

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.291 (relating to determination of available nutrients). Manure testing is required once every year for each manure group, except manure groups associated with less than five AEUs and manure groups representing grazing consistent with § 83.291(c)(3)(iv) and (vi).

(3) Land application of nutrients on NMP operations shall be documented on an annual basis by recording the following information for each source of nutrients:

(i) The locations and number of acres of nutrient application.

(ii) The dates of nutrient application.

(iii) The rate of nutrient application for each crop management unit.

(iv) The number of animals on pasture, the number of days on pasture and the average number of hours per day on pasture.

(4) Approximate annual crop yield levels for each crop management unit.

(5) Annual manure production figures for each manure group.

§ 83.343. Alternative manure utilization record-keeping.

(a) *Recordkeeping for manure exports.* The following recordkeeping requirements apply to manure exported off of the NMP operation:

(1) A manure export sheet shall be used for all manure transfers from the operation.

(2) The Commission or delegated conservation district will make copies of the manure export sheet forms available to the operation.

(3) Computer-generated forms other than the manure export sheet forms provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(4) Recordkeeping related to the application of exported manure must comply with the following:

(i) The exporter is responsible for the completion of the manure export sheet, providing a copy to the importer and retaining a copy at the exporting operation.

(ii) When the exporter, or person working under the direction of the exporter, such as an employee or a commercial manure hauler, applies the manure to the land, the exporter is responsible for maintaining records of the actual application dates, application areas (including the observation of any relevant setback restrictions), application methods, and application rates for the exported manure.

(iii) When the manure is exported through a broker, the exporting operation is not responsible for obtaining records of actual application information for importing operations, unless the exporting operator manages the application of the manure. If the broker is responsible for applying the manure, the broker shall retain records of the application of all manure (including date, areas, methods and rates applied) and shall provide a copy of these application records to the importing operation for its records.

(b) *Recordkeeping for alternative manure utilization by means other than manure export.* Operators shall keep annual records of the amount and use of manure utilized in any manner other than through manure transfers.

§ 83.344. Exported manure informational packets.

(a) If manure is exported from an NMP operation, the exporter will provide the importer and any relevant manure hauler or brokers with a completed manure export sheet.

(b) If the manure is to be land applied at an importing operation, the exporter is required, except as provided in subsection (c), to provide the following information to the importer, as supplied by the Commission or its delegated agent:

(1) The relevant sections of the *Manure Management Manual* .

(2) A concise educational publication describing the key concepts of nutrient management.

(3) Additional informational items as supplied by the Commission for this purpose.

(c) If a broker will be responsible for applying the manure at the operation, the broker shall meet the requirements of subsection (b).

(d) The Commission or its delegated agent will provide the materials in subsection (b) for distribution by the exporter. The exporter is only required to provide those items in subsection (b) that have been made available to the exporter by the Commission or its delegated agent.

(e) The exporter is responsible for providing the informational materials described in subsection (b) only if the importer or commercial manure hauler does not already have a current copy of the informational materials.

2) 35 P.S. §§ 691.201, 202; 25 Pa. Code §§ 91.1, 91.36(b)

§ 691.201. Prohibition against discharge of sewage.

No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any sewage, except as hereinafter provided in this act.

§ 691.202. Sewage discharges.

No municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department. Such permit before being operative shall be recorded in the office of the recorder of deeds for the county wherein the outlet of said sewer system is located and in case the municipality or person fails or neglects to record such permit, the department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person. No such permit shall be construed to permit any act otherwise forbidden by any decree, order, sentence or judgment of any court, or by the ordinances of any municipality, or by the rules and regulations of any water company supplying water to the public, or by laws relative to navigation. For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.

§ 91.1. Definitions.

The definitions in section 1 of The Clean Streams Law (35 P. S. § 691.1) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

AEU – Animal equivalent unit – One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in 3 Pa.C.S. § 503 (relating to definitions).

Act – The Clean Streams Law (35 P. S. §§ 691.1—691.801).

Agricultural operations – The management and use of farming resources for the production of crops, livestock or poultry as defined in 3 Pa.C.S. § 503.

Agricultural process wastewater – Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

Application – The Department's form for requesting approval to construct and operate a wastewater collection, conveyance or treatment facility under a new water quality management permit, or the modification, revision or transfer of an existing water quality management permit.

CAFO – Concentrated animal feeding operation – An agricultural operation that meets the criteria established by the Department in § 92.1 (relating to definitions).

CAO – Concentrated animal operation – An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under 3 Pa.C.S. Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management).

Facility – A structure built to collect, convey or treat wastewater which requires coverage under a water quality management permit.

Federal Act – The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387).

General water quality management permit or general permit – A water quality management permit that is issued for a clearly described category of wastewater treatment facilities, which are substantially similar in nature.

Manure –

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding and raw materials which are commingled with that excrement.

Manure Management Manual – The guidance manual published by the Department that is entitled "Manure Management Manual for Environmental Protection," including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by § 91.36 (relating to pollution control and prevention at agricultural operations).

Manure storage capacity – The total volume in gallons of a manure storage facility, less any required freeboard, sufficient and available to contain all of the following:

(i) Accumulated manure and agricultural process wastewater during the storage period.

(ii) Normal precipitation less evaporation on the surface of the facility.

(iii) Normal runoff during the storage period.

(iv) The design storm precipitation and runoff (25 year or 100 year, as appropriate under § 91.36(a)).

(v) Solids remaining after liquids have been removed.

Manure storage facility – A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underbuilding structures, as well as earthen and synthetically-lined manure storage ponds.

NOI – Notice of Intent – A complete form submitted as a request for general water quality management permit coverage.

Operator – A person or other legal entity responsible for the operation or maintenance of a facility or activity subject to this chapter.

Owner – The person or other legal entity holding legal title to a facility or activity subject to this chapter.

Pennsylvania Technical Guide (Guide) –

(i) The Pennsylvania Soil and Water Conservation Technical Guide, including supplements and amendments, which is the primary technical guide published by the Pennsylvania office of the Natural Resources Conservation Service of the United States Department of Agriculture.

(ii) The Guide contains technical information, including design criteria, about conservation of soil, water, air, plant and animal resources specific to this Commonwealth.

(iii) The Guide is also referred to as the Field Office Technical Guide in Federal regulations and other documents.

Pollutant – A contaminant or other alteration of the physical, chemical or biological properties of surface water which causes or has the potential to cause pollution as defined in section 1 of the act (35 P. S. § 691.1).

Pollution prevention – Source reduction and other practices (for example – direct reuse or in-process recycling) that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Pollution prevention measures – Practices that reduce the use of hazardous materials, energy, water or other resources and that protect natural resources and human health through conservation, more efficient use, or effective pollutant release minimization prior to reuse, recycling, treatment or disposal.

Schedule of compliance – A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with effluent limitations, other limitations, prohibitions or standards.

Single residence sewage treatment plant – A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot which collects, disposes and treats solely direct or indirect sewage discharges from the residences into waters of this Commonwealth.

Stormwater – Runoff from precipitation, snow melt runoff and surface runoff and drainage.

Vegetated buffer – A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

Wastewater impoundment – A depression, excavation or facility situated in or upon the ground, whether natural or artificial and whether lined or unlined, used to store wastewater including sewage, animal waste or industrial waste.

Water quality management permit – A permit or equivalent document (Part II Permit) issued by the Department to authorize one of the following:

- (i) The construction, erection and location of a wastewater collection, conveyance or treatment facility.
- (ii) A discharge of wastewater to groundwaters of this Commonwealth.

§ 91.36. Pollution control and prevention at agricultural operations.

[. . .]

(b) Land application of animal manure and agricultural process wastewater; setbacks and buffers.

(1) The land application of animal manures and agricultural process wastewater requires a permit or approval from the Department unless the operator can demonstrate that the land application meets one of the following:

- (i) The land application follows current standards for development and implementation of a plan to manage nutrients for water quality protection, including soil and manure testing and calculation of proper levels and methods of nitrogen and phosphorus application. The Manure Management Manual contains current standards for development and implementation of a plan to manage nutrients for water quality protection which can be used to comply with the requirements in paragraph (1).
- (ii) For CAOs, the land application is in accordance with an approved nutrient management plan under Chapter 83, Subchapter D.
- (iii) For CAFOs, the land application is in accordance with a CAFO permit as described in § 92.5a (relating to CAFOs).

(2) Unless more stringent requirements are established by statute or regulation, the following agricultural operations may not mechanically land apply manure within 100 feet of surface water, unless a vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into surface water:

- (i) A CAO.
- (ii) An agricultural operation receiving manure from a CAO directly, or indirectly through a broker or other person.

(iii) An agricultural operation receiving manure from a CAFO directly, or indirectly through a broker or other person.

(3) CAFOs shall meet the setback requirements in § 92.5a(e)(1)(i).

(4) For purposes of paragraph (2) only, "surface water" means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

[...]

3) 35 P.S. § 6026.904(d); 7 Pa. Code Chapter 130d

§ 6026.904. Relationship to Federal and State programs.

[...]

(d) **AGRICULTURAL CHEMICAL FACILITIES.** — The environmental remediation standards and procedures established under this act shall be used in any remediation undertaken at an agricultural chemical facility. The Department of Agriculture shall have the power and its duty shall be to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. Such regulations shall provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application.

[...]

§ 130d.1. Definitions.

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

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

Active ingredient –

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

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

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

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

Agricultural chemical – A substance defined as a fertilizer, under 3 Pa.C.S. § 6702 (relating to definitions), or a substance defined as a plant amendment, plant-amending ingredient, soil amendment or soil-amending ingredient under 3 Pa.C.S. § 6902 (relating to definitions) or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60).

Agricultural chemical facility – A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by the North American Industry Classification System (NAICS) in NAICS 325320 where agricultural chemicals are manufactured.

Agricultural land or farmland – Land in this Commonwealth that is currently being utilized for the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

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

Application site – The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemicals and delineated in the applicant's land application proposal containing and detailing the exact location of the farmland upon which the soil or groundwater contaminated with the agricultural chemicals is to be applied, including the property boundaries of the farmland and each field upon which the contaminated soil or groundwater will be applied.

Applicator – A certified applicator, private applicator, commercial applicator, public applicator or pesticide application technician.

(i) *Certified applicator.* An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.

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

(iii) *Commercial applicator.*

(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.

(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.

(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of their employer as commercial applicators.

(iv) *Public applicator.* A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.

(v) *Pesticide application technician.* An individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.

Background – The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

Cleanup or remediation – To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment in order to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

Contaminated media – Soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities.

DEP – The Department of Environmental Protection of the Commonwealth.

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

Department – The Department of Agriculture of the Commonwealth.

Desiccant – Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Environment – Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

Environmental protection acts – Includes:

- (i) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).
- (ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4001.101—4001.1904).
- (iii) The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).
- (iv) The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101—7130.906).
- (v) The act of July 13, 1988 (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.
- (vi) The Air Pollution Control Act (35 P. S. §§ 4001—4015).
- (vii) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).
- (viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P. S. §§ 3301—3326).
- (ix) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).
- (x) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

- (xi) The Nutrient Management Act (3 P. S. §§ 1701—1718).
- (xii) Sections 6701—6725 of 3 Pa.C.S. (relating to Fertilizer Act).
- (xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).
- (xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).
- (xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).
- (xvi) Sections 6901—6921 of 3 Pa.C.S. (relating to Soil and Plant Amendment Act).
- (xvii) Other State or Federal statutes relating to environmental protection or the protection of public health.

Equipment –

- (i) Any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any agricultural chemical.
- (ii) The term does not include any pressurized hand-sized household apparatus used to apply any agricultural chemical or any equipment or contrivance of which the person who is applying the agricultural chemical is the source of power or energy in pesticide application.

General use pesticides – A pesticide not classified as a restricted use pesticide.

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

HAL – Health Advisory Levels published by the United States Environmental Protection Agency for particular substances.

Habitats of concern – A habitat defined as one of the following:

- (i) Typical wetlands with identifiable function and value, except for exceptional value wetlands as defined in 25 Pa. Code § 105.17 (relating to wetlands).
- (ii) Breeding areas for species of concern.

- (iii) Migratory stopover areas for species of concern.
- (iv) Wintering areas for species of concern.
- (v) Habitat for State endangered plant and animal species.
- (vi) Areas otherwise designated as critical or of concern by the Game Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.

Incorporation – Plowing or injecting contaminated media to a depth of at least 6 inches and in a manner that ensures a uniform mixture of top soil and contaminated media.

Label – The written, printed or graphic matter on, or attached to the agricultural chemical or device or any of its containers or wrappers.

Labeling – Pertaining to agricultural chemicals, the term means all labels and other written, printed or graphic matter which includes one of the following:

- (i) That which accompanies the pesticide, agricultural chemical or device at any time.
- (ii) To which reference is made on the label or in literature accompanying the agricultural chemical, except to current official publications of the United States Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of agricultural chemicals.

Land application proposal – An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural chemical facility, to agricultural land.

MCL – Maximum contaminant level established for drinking water by DEP.

Person – An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal Government, State Government, political subdivisions and Commonwealth instrumentalities.

Pesticide – A substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

Plant regulator –

(i) A substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(ii) The term does not include any of those nutrient mixtures or soil amendments, commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants and not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

Prime farmland – Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

Secretary – The Secretary of the Department.

Tank mix or spray mix – A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.

Treatment – The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).

Under the direct supervision of a certified commercial or public applicator – Unless otherwise prescribed by labeling, the term means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if needed, even though the certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.

Unreasonable adverse effects on the environment – Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any agricultural chemical.

§ 130d.2. Scope.

(a) The Department has the powers and the duties set forth under section 904(d) of the act (35 P. S. § 6026.904(d)).

(b) This chapter specifies general procedures and rules for persons who solicit and receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.

(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of soil or groundwater generated as the result of remediation activities as follows:

(1) That are contaminated with chemicals or substances other than agricultural chemicals.

(2) That were not undertaken at an agricultural chemical facility.

(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.

(d) The applicant is responsible for obtaining any additional permits or approvals necessary for management of waste that contains agricultural chemicals and other chemicals or substances. The applicant shall submit an affidavit attesting to the fact that either no contaminants other than the agricultural chemicals tested for and set forth in its application are present in the soil or groundwater it seeks to apply to the agricultural land or if other contaminants exist, an affidavit stating what those contaminants are and attesting to the fact the applicant has received all permits or approvals necessary for the application of those contaminants to agricultural land. If the permits or approvals are obtained prior to submission of the land application proposal, the permits or approvals, or both, shall be attached to the land application proposal.

§ 130d.3. Continuing authority.

(a) Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.

(b) Nothing in this chapter may be construed to place any duty, responsibility or liability on the Department for contaminants in soil or groundwater other than agricultural chemicals that were tested for and approved by the Department. The applicant is solely responsible for all duties and liability related to all contaminants other than the

agricultural chemicals tested for, set forth in the applicant's land application proposal and approved by the Department.

§ 130d.4. Retained recordkeeping.

(a) *General.* An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain records in accordance with recordkeeping provisions of section 35 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.55) and in accordance with the appropriate recordkeeping provisions of §§ 128.11, 128.24, 128.35, 128.53, 128.65 and 128.88. In addition, an approved applicant shall keep the following records:

- (1) The daily operation records required by § 130d.46 (relating to daily operational records).
- (2) The annual operation report required by § 130d.48 (relating to annual operational report).
- (3) The final report required by § 130d.62 (relating to final report).
- (4) The right of entry agreement required by § 130d.27(b) (relating to right of entry and agreement with landowner).

(b) *Inspection and audit.* All records and documents shall be available for inspection or audit at reasonable times (such as regular operating hours of the Department) by the Department or its authorized agents.

(c) *Retention time period.* All records, reports and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were approved by the Department.

§ 130d.5. Public notice by applicant.

The applicant shall comply with the notice requirements established by section 25.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.45a) and §§ 128.81—128.89 (relating to prior notification) and § 128.112 (relating to notification of hypersensitive individuals).

§ 130d.21. General requirements for land application proposal form.

(a) *Submittal.* Land application proposals shall be submitted in writing, on forms provided by the Department. Persons submitting land application proposals shall submit them to the Department at the address which appears on the land application proposal form developed by the Department.

(b) *Documentation.* Each land application proposal shall include and have attached thereto, information, maps, plans, specifications, designs, analyses, test reports and other data as may be required by the Department to determine compliance with this chapter. The Department will notify the applicant in writing requesting any additional information.

(c) *Affirmation of chemical analysis of waste and sampling techniques and protocol and the waste sampling plan.* The chemical analysis of waste and sampling techniques and protocol and the waste sampling plan, required by §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan), shall be supported by an affidavit, signed by the applicant, affirming that all known and likely agricultural chemicals, nutrients and constituents at the remediation site were tested for and the tests were performed in accordance with this chapter and the applicant's land application proposal.

(d) *Affirmation of compliance with all applicable laws, rules and ordinances.* The applicant shall submit a signed affidavit, affirming it has received the proper permits and approvals and that the removal, storage, handling and application of the contaminated soil or groundwater is in compliance with applicable laws, regulations and ordinances.

(e) *Affirmation of operation plan.* The operating plan shall be signed by the applicant and the appropriate applicator verifying that the techniques, methods and rates of application set forth in the operating plan will be followed.

§ 130d.22. Chemical analysis of waste and sampling techniques and protocol.

(a) *General criteria.* A person who seeks to apply soil or groundwater, generated as a result of remediation activities at an agricultural chemical facility, to agricultural land shall perform a detailed analysis and testing of the soil or groundwater, or both, at the agricultural chemical facility site and the application site. A verified copy of the sampling techniques and results shall be submitted to the Department as part of the land application proposal.

(b) *Analysis and testing of the soil or groundwater, or both, at the agricultural chemical facility site.* The analysis and testing at the agricultural chemical facility site shall fully characterize the physical properties and chemical composition of each type of agricultural chemical that was held, stored, blended, formulated, sold, distributed, manufactured or generated by the agricultural chemical facility and shall be done in accordance with subsections (d) and (e)(1) and (2). The substances tested for shall be predicated on the manufacturing processes and business carried on at the agricultural chemical facility site being remediated and records obtained from that agricultural chemical facility or facilities on that site. The types of agricultural chemicals likely to be contained in the soil and groundwater shall be gleaned from information available regarding the agricultural chemical facility site at which the remediation activities are taking place including the following:

(1) Records, including sales records, memorandums, invoices and historical data, of the type of products manufactured, held, stored, formulated, sold, distributed, produced or used.

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

(3) Notices of past spills, violations or contamination if applicable.

(4) Information regarding any agricultural chemical byproduct or agricultural chemical produced during or as a result of the manufacturing processes, mixing, storage or distribution of materials.

(c) *Analysis and testing of soil at the proposed application site.* The analysis and testing at the proposed application site shall cover soil samples taken from the proposed application site and shall be done in accordance with subsections (d) and (e)(3). The soil samples taken from the proposed application site shall be tested for each agricultural chemical, nutrient or constituent found in the soil or groundwater, or both, at the agricultural chemical facility site that is proposed to be applied to the application site. In addition, the proposed application site analysis shall delineate the soil types found within the proposed application area. The testing and analysis of the soil at the proposed application site, at minimum, shall include:

(1) A chemical, nutrient and constituent analysis of each 15-acre field or plot upon which a soil pile or quantity of groundwater from the remediated agricultural chemical facility site is to be applied.

(2) Testing for all agricultural chemicals, the by-products or derivatives thereof, and each agricultural chemical, nutrient or constituent that was found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated which are to be applied at the proposed application site.

(3) Documentation of the soil types found within the proposed application area.

(d) *Approved laboratory.* Soil or groundwater samples, or both, from each soil pile or quantity of groundwater taken from the agriculture chemical facility site being remediated and sought to be applied to agricultural land and soil samples taken from the application site shall be tested on a parts per million basis and shall be submitted for analysis to a laboratory compliant with the United States Environmental Protection Agency's (EPA) Good Laboratory Practices (GLP) Program. A list of EPA GLP compliant laboratories is available on the Department's website. A copy of the test results shall be submitted to the Department as part of the land application proposal and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied.

(e) *Sampling techniques.* Sampling techniques shall be consistent with the sampling procedures set forth in the *Pennsylvania Agronomy Guide* which are set forth herein.

(1) *Soil pile samples from the agricultural chemical facility remediation site.* Sampling of soil piles from an agricultural chemical facility remediation site shall consist of one representative sample from each soil pile proposed to be land applied. A representative sample shall consist of 15 core samples from each soil pile at the remediation site which is proposed to be land applied to an agricultural site. A soil pile shall contain no more than 36,000 cubic yards of soil, which represents the cubic yards of soil contained in 15 acres of land at a 6-inch depth and is consistent with the standards established in the *Pennsylvania Agronomy Guide*. Multiple soil piles require multiple samples. Samples shall be collected and recorded in the following manner:

(i) Fifteen core samples shall be collected from each soil pile proposed to be land applied.

(ii) Each core sample shall be collected from a depth of at least 4 to 6 inches.

(iii) The core samples taken from each soil pile shall be mixed in order to acquire a representative sample from that particular soil pile.

(iv) Roots, stones and other debris not representative of the substrate being sampled and proposed for land application shall be removed from the core samples.

(v) The mixed sample from each soil pile shall be placed in a clean unused container and marked in a manner delineating the particular soil pile from which the sample was taken. The sample container shall be compliant with the standards established by the approved laboratory to which the soil samples will be submitted for testing.

(vi) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for, in compliance with the requirements of this chapter, and submit the sample or samples to an approved laboratory.

(2) *Water samples from the agricultural chemical facility remediation site.* Where groundwater from an agricultural chemical facility remediation site is proposed to be applied to agricultural land, the applicant shall collect 1 pint of water from the remediation site for every 2,000 gallons of water sought to be land applied or utilized as tank mix. Samples shall be collected and recorded in the following manner:

(i) Samples shall be collected from random and mixed points and depths throughout the remediation site to assure a true and representative sampling of the water contaminated with agricultural chemicals at the remediation site.

(ii) Samples shall be collected in clean unused glass bottles and kept chilled during and prior to delivery to an approved laboratory.

(iii) Samples shall be marked in a manner delineating the particular site location and depth from which the sample was taken.

(iv) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for, in compliance with this chapter, and submit the sample or samples to an approved laboratory.

(3) *Soil samples from the proposed application site.* Sampling of soil from the proposed application site shall consist of one representative sample per every 15 acres of land upon which the soil contaminated with agricultural chemicals from the agricultural chemical facility is proposed to be land applied. Samples shall be collected and recorded in the following manner:

(i) A representative sample shall consist of 15 core samples collected from 15 different areas per 15-acre plot (one core sample taken from each acre on that plot) of land area proposed to receive soil or water, or both, contaminated with agricultural chemicals from an agricultural chemical facility being remediated under the act.

(ii) Core samples shall be collected from a depth of at least 4 to 6 inches.

(iii) The 15 core samples collected from each 15-acre plot shall be thoroughly mixed to get a representative sample from that 15-acre plot.

(iv) Roots, stones and other debris not representative of the field plot being sampled shall be removed from the core samples.

(v) The mixed sample from each 15-acre plot shall be placed in a clean, unused container and marked in a manner delineating the particular 15-acre plot from which the sample was taken. The sample container shall be compliant with the standards established by the approved laboratory to which the soil sample will be submitted for testing.

(vi) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for and submit the sample or samples to an approved laboratory.

§ 130d.23. Waste sampling plan.

The applicant shall develop a waste sampling plan. The waste sampling plan shall be attached to and made part of the land application proposal submitted to the Department. The waste sampling plan shall encompass the sampling techniques utilized for the soil or groundwater from the agricultural chemical facility site and the application site. The waste sampling plan shall cover each agricultural chemical, nutrient or constituent proposed to be applied to the agricultural land. The waste sampling plan shall take into account and be consistent with the chemical analysis and testing protocol required by § 130d.22 (relating to chemical analysis of waste and sampling techniques and protocol). At a minimum, the plan shall include:

(1) *Quality assurance and quality control procedures.* The plan shall ensure an accurate and representative sampling of the contaminated soil or groundwater, or both, the person seeks to apply to agricultural land and an accurate and representative sampling from each field or plot at the application site upon which the contaminated media will be placed. The plan shall set forth the following:

(i) The type of chemicals, nutrients and constituents for which each soil pile or quantity of groundwater was tested and analyzed and the rationale for the selection of those chemicals, nutrients and constituents.

(ii) The name and address of the approved laboratory that was used to test for the chemicals, nutrients and constituents.

(iii) The method utilized for labeling and managing the soil piles and quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site, since individual soil piles and quantities of groundwater may contain different types and concentrations of chemicals, nutrients and constituents.

(2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to be fully utilized by the crop to be grown on the application site and to leach into the environment.

(3) A narrative delineating the scientific evidence supporting the contention that the contaminated soil or groundwater can be land applied to agricultural land without negatively affecting the productivity of the agricultural land or causing harm to the environment or animal or human health.

§ 130d.24. Operating plan.

The land application proposal shall contain an operating plan setting forth general information and land application rates and procedures. Information in the operating plan will be considered by the Department when reviewing the land application proposal.

(1) *General information.* The operating plan shall contain the following general information:

(i) The address and a description of the remediation site from which the contaminated soil or groundwater to be applied to the agricultural land originated or was generated.

(ii) The address and a description of the agricultural site to which the contaminated soil or groundwater will be applied.

(iii) The proposed life of the operation from the time the first soil pile or quantity of groundwater arrives on the application site to final closure of the application site and the origin and chemical, nutrient and constituent make up of each soil pile or quantity of groundwater to be applied.

(iv) The proposed application rate per acre, which shall be consistent with standards established by this chapter, as well as, the Nutrient Management Act (3 P. S. §§ 1701—1718), 3 Pa.C.S. §§ 6701—6725 (relating to Fertilizer Act), 3 Pa.C.S. §§ 6901—6921 (relating to Soil and Plant Amendment Act), the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

(v) The proposed methods, techniques and types of applications, which shall be consistent with standards established by this chapter as well as the Nutrient Management Act, the Fertilizer Act, the Soil and Plant Amendment Act, the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(vi) The proposed dates of application.

(vii) The equipment to be used for site preparation, land application of the contaminated soil and groundwater and incorporation of the contaminated soil.

(viii) The use that will be made of the proposed application area and the crops that will be planted on each application plot for 3 years following the application.

(ix) A plan to control drift or migration of the chemicals, nutrients and constituents in the soil and groundwater being applied.

(x) Information necessary to show compliance with this chapter, such as the contaminants and contamination levels in each soil pile or quantity of groundwater, the specific plot upon which each soil pile or quantity of

groundwater will be placed and the techniques and application rates to be utilized.

(2) *Application rate calculation.* The Department will review the application rate proposal set forth by the applicant in the land application proposal. The Department will consider the following, which shall be addressed in the applicant's operation plan:

(i) The type and concentration of each agricultural chemical contained in each soil pile or quantity of groundwater reported by the applicant in the land application proposal submitted to the Department.

(ii) The excavated soil type indicated by the applicant in the land application proposal submitted to the Department.

(iii) The total volume of excavated soil or contaminated groundwater in each individual soil pile or quantity.

(iv) The proposed application site crop for the upcoming growing season and a projected 3 year crop rotation plan including the use of the land, type of crop to be grown and the use of the crops. The same crop may be planted year after year with the approval of the Department.

(v) The concentration, in parts per million, of the active ingredients in each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(vi) The application rate for the selected site and crop based on the current labeling for each pesticide found. If fertilizers are being applied, the applicant shall follow the recommendations for fertilizer applications for specific crops listed in the latest edition of the *Pennsylvania Agronomy Guide* .

(vii) For agricultural chemicals other than fertilizers a conversion factor (37000) shall be used. The calculation considers the concentration of parts per million and the conversion of FT <3 >to YD <3 >.
$$(3FT) <3 >/YD <3 >/ 1,000,000 = 1/37037.037$$

The result of the calculation is the total acreage required for land application for each individual agricultural chemical. A safety factor included in this calculation considers the cumulative effect of all the pesticides detected in the soil pile or quantity of groundwater. The acres required for each individual contaminant found in each soil pile or quantity of groundwater contaminated with agricultural chemicals are summed. This value is the uniform soil application rate. Soil application

rate (volume of excavated soil or contaminated groundwater / total acres required) (yds ³ /acre).

(viii) The application credits that shall be taken and the additive loading effect of the soil or groundwater contaminated with agricultural chemicals. The rate will be calculated using the following formula:
(Land required for an individual contaminant / total acres required) x product label rate = active ingredient application credit (lbs/acres)).

(3) *Application rate considerations and procedures.* The following shall be addressed in the applicant's operation plan:

(i) *Application rate.* The application rate as compared to the label rates of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals shall adhere to and not exceed the labeling rate for each compound present.

(ii) *Total loading.* All pesticides detected in a single soil pile or quantity of groundwater contaminated with agricultural chemicals shall be considered when developing soil application rates. The cumulative effect of all the pesticides can be considered by summing the acreage needed for each individual pesticide to develop the total acreage required. Where more than one pesticide is present in a soil pile or quantity of groundwater the soil pile or groundwater shall be applied at the most restrictive labeling rate. Nutrients shall be considered separately from pesticides when developing soil application rates. In addition, the sum of pesticide active ingredient applied through any land application activities and other applications in the same season (or following season, in the case of fall or postharvest land applications) may not exceed labeling rate restrictions for any pesticide applied.

(iii) *Incorporation.* The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and shall ensure the contaminated media is incorporated to a depth of at least 6 inches. The contaminated media shall be incorporated into the soil at the application site within 24 hours of application.

(iv) *Top soil considerations.* The applicant shall set forth procedures (such as developing a soil and erosion prevention plan and an incorporation plan) to assure that topsoil will not be lost, stripped off the land or buried under the contaminated soil to be applied.

(v) *Uniform application rate.* The applicant shall set forth procedures to assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.

(vi) *Multiple applications of nutrients.* The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications shall be set forth in the operation plan in the land application proposal. In addition, if the nutrients are being applied to an agricultural site that is required to have a nutrient management plan, under the Nutrient Management Act, the applicant shall attest that the application of the additional nutrients contained in the soil piles or groundwater to be applied conform with and do not violate the standards established in the applicant's nutrient management plan. If the application requires a revision to the nutrient management plan, the applicant shall attach a notification from the State Conservation Commission attesting to the fact the nutrient management plan has been revised to account for the additional nutrients and the revised plan has received final approval.

(4) *Additional application requirements.* The operating plan shall also include the following information:

(i) A projected 3-year crop rotation plan for each field or plot upon which soil or groundwater contaminated with agricultural chemicals is to be applied, including type of crop to be grown, planting sequence, crop planting technique to be used, crop and land management and use of crops grown.

(ii) A nutrient and pesticide management plan for the site, including:

(A) A description of the kind and amount of fertilizer, soil conditioner or pesticide that will be placed on the site in addition to the soil or groundwater contaminated with agricultural chemicals.

(B) The number and kind of animals on the farm or property and the total nutrient value of the manure produced by those animals, and the location (field or plot) where the manure is to be placed.

(C) An explanation and analysis of the effect on the soil and crops from the additional nutrients, soil conditioners or pesticides that would be supplied by the soil and groundwater contaminated with agricultural chemicals.

(D) The benefit to the soil, crops or farming operation that the soil and groundwater contaminated with agricultural chemicals would provide.

§ 130d.25. Maps and related information.

(a) *Boundary map.* A land application proposal shall contain detailed maps including necessary narrative descriptions, which show the following:

- (1) The boundaries and the names of the present owners of record of the land constituting the proposed application site and a description of all title, deed or usage restrictions, including easements, right-of-way, covenants and other property interests, affecting the proposed application site.
- (2) The boundaries of the land where soil and groundwater contaminated with agricultural chemicals will be applied over the estimated total life of the proposed application, including the boundaries of each plot of land that will be affected in each sequence of land application activity.
- (3) A grid showing the exact field or location where each soil pile or quantity of groundwater contaminated with agricultural chemicals will be applied.
- (4) The location and name of public and private water supplies and wells within the proposed application site and adjacent areas that are within the setback requirements set forth in Subchapter D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(b) *Soils map.* A land application proposal shall contain a United States Department of Agriculture Soil Conservation Service Soils Map or other reliable data if current soils maps are unavailable, which shows the location and types of soils within the proposed application area.

§ 130d.26. Financial responsibility.

The applicant shall comply with § 128.34 (relating to financial responsibility). The applicant shall be in compliance with § 128.34 prior to the initiation of the application of the soil or groundwater contaminated with agricultural chemicals to the agricultural land and shall remain in compliance until final closure of the application site as set forth in Subchapter F (relating to closure). Failure to comply with § 128.34 shall result in a denial of the land application proposal or a revocation of the Department's approval when the applicant fails to maintain continued compliance with § 128.34.

§ 130d.27. Right of entry and agreement with landowner.

(a) *Consent of landowner.* When the landowner is the person submitting the land application proposal and responsible for the application of the soil and groundwater contaminated with agricultural chemicals, no right of entry or other agreement is necessary. In all other situations, the land application proposal shall contain a description or copies of the legal documents upon which the applicant bases his legal right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the proposed application site. When a description is given, the applicant shall sign a verified statement attesting to the fact the document exists in the form described. The Department will accept either one of the following legal documents or other document the Department may determine conveys the appropriate legal right:

(1) A copy of a signed consent agreement between the applicant and the current owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the current land owner's property and an abstract of title relating the documents to the current landowner.

(b) *Right of entry.* Each land application proposal shall contain, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Commonwealth and its authorized agents to enter the proposed application site. The consent shall be obtained prior to final approval of the land application proposal by the Department and shall be applicable prior to the initiation of operations, for the duration of operations at the application site, and for not less than 1 year nor more than 3 years after final closure for the purpose of inspection and monitoring. Failure of the landowner to give consent shall result in denial of the land application proposal.

§ 130d.28. Identification of interest.

(a) *General information.* Each land application proposal shall contain the following information:

(1) The legal names, addresses and telephone numbers of:

(i) The applicant.

(ii) The applicator.

(iii) Any contractor, if the contractor is a person other than the applicant.

(2) The name, address and telephone number of the current owner of record of the agricultural land on which the applicant intends to apply the soil and groundwater contaminated with agricultural chemicals.

(b) *Ownership information.* Each land application proposal shall contain a statement of whether the applicant is an individual, corporation, partnership, limited partnership, limited liability company, proprietorship, municipality, syndicate, joint venture or other association or entity. For applicants other than sole proprietorships, the land application proposal shall contain the following information, if applicable:

(1) The name and address of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant.

(2) For corporations, the names, principal places of business and the Internal Revenue Service tax identification numbers of the applicant corporation, United States parent corporations of the applicant, including ultimate parent corporations, and all United States subsidiary corporations of the applicant and the applicant's parent corporations.

(3) The names and addresses of other persons or entities having or exercising control over any aspect of the land application of the soil and groundwater contaminated with agricultural chemicals, including associates and agents. This shall include a description of the duties and responsibilities and the control to be exercised by these persons.

(c) *Permits and approvals.* Each land application proposal submitted to the Department shall list the additional permits or approvals necessary for the land application of the contaminated soil and groundwater to the proposed application site. The land application proposal shall set forth the status of those permits or approvals.

(d) *Applicant history.* Each land application proposal shall set forth previous experience of the applicant with regard to land application of agricultural waste or soil or groundwater contaminated with agricultural or other chemicals. The applicant shall identify the location of the sites, the type of operation undertaken and any environmental problems or citations during or resulting from the operation.

§ 130d.29. Compliance information.

The land application proposal shall contain a verified statement attesting that the proposed land application will comply with all applicable Federal, State and local laws, rules, regulations and ordinances.

§ 130d.30. Environmental assessment.

(a) *Impacts.* The land application proposal shall include an environmental assessment setting forth a detailed analysis of the potential impact of the application of the soil and groundwater contaminated with agricultural chemicals to the proposed agricultural site, including potential environmental harms of the proposed land application such as any short term or long term effects or degradation to the fertility or quality of the agricultural land at the application site, water uses and land uses, and potential deleterious effects on

contiguous land, the environment and the public health and safety. The applicant shall consider environmental features such as streams, wells, local parks and habitats of concern.

(b) *Mitigation.* The land application proposal shall include a mitigation plan. The mitigation plan shall delineate the steps the applicant will take in the event the application of the soil or groundwater contaminated with agricultural chemicals has a negative impact on the application site or the environment or causes harm or degradation to the application site or contiguous land, or both.

§ 130d.31. Criteria for approval or denial.

(a) *Acceptance.* In accordance with the authority in section 904(b) of the act (35 P. S. § 6026.904(b)), the Department will accept and review only those proposals which seek to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, that are to be applied to agricultural land.

(b) *Approval, denial, modification and rescission.* When exercising its power to approve, deny or request modification of a proposal to apply soil or groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities that is to be applied to agricultural land, the Department will follow the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), 3 Pa.C.S. §§ 6701—6725 (relating to Fertilizer Act), 3 Pa.C.S. §§ 6901—6921 (relating to Soil and Plant Amendment Act), the Nutrient Management Act (3 P. S. §§ 1701 -- 1718) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y). The Department will deny a land application proposal that violates any provision of the acts in this subsection. The Department may rescind approval of a land application proposal if the person applying the contaminated soil or groundwater violates any provision of the Pennsylvania Pesticide Control Act of 1973, the Fertilizer Act, the Soil and Plant Amendment Act, the Nutrient Management Act, the Federal Insecticide, the Fungicide and Rodenticide Act of 1947, the act or this chapter or if it discovers a mistake or falsification made in the land application proposal, the test results, the sampling techniques or any part of the operation and actual application of the soil or groundwater to the agricultural land.

(c) *Affirmation of facts.* A land application proposal will not be approved unless the applicant affirmatively demonstrates to the Department's satisfaction that the following conditions are met:

- (1) The land application proposal is complete, accurate and meets the standards established by the act and this chapter.
- (2) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal can be feasibly

accomplished, under the techniques and facts set forth therein and as required by the act and this chapter.

(3) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not cause harm to the environment, the health, safety and welfare of the general public, or degrade or pollute the agricultural land to which it will be applied.

(4) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not violate the Pennsylvania Pesticide Control Act of 1973, the Fertilizer Act, the Soil and Plant Amendment Act, the Nutrient Management Act or the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(d) Soil or groundwater containing other chemicals in addition to agricultural chemicals. Where the soil or groundwater sought to be applied contains other chemicals in addition to agricultural chemicals, the Department may begin review of the land application proposal for the application of the agricultural chemicals in the soil or groundwater but will not consider the land application proposal complete or issue an approval until the applicant has provided the Department with the information required by §§ 130d.2(d), 130d.21(d) and 130d.29 (relating to scope; general requirements for land application form; and compliance information).

§ 130d.32. Receipt of land application proposal and completeness review.

(a) Receipt of land application proposal and completeness review. After receipt of a land application proposal, the Department will determine whether the land application proposal is administratively complete.

(b) Receipt. For purposes of this section, "receipt of application" does not occur until the land application proposal is deemed administratively complete.

(c) Administratively complete land application proposal. A land application proposal is administratively complete if it contains all the necessary information, approvals, maps and other documents required by this chapter. There is no set timetable for review of a land application proposal. If the land application proposal is administratively complete, the Department will make every effort to render a decision, within 60 days of receiving the administratively complete land application proposal, to approve, approve with modifications or deny the land application proposal. The Department will mail the applicant a written notice of approval or disapproval. A notice of disapproval will state the reasons for the Department's disapproval of the land application proposal.

(d) Incomplete land application proposal. When the land application proposal is not complete, the Department will send a written notice and a request for additional information and documentation to the applicant. When additional information and documentation is requested, the Department's review and consideration of the land

application proposal will cease until the requested material is received. Upon receipt of all the additional information and documentation requested, the Department will resume its review of the land application proposal. The Department will deny the land application proposal if the applicant fails to provide the additional information and documentation within 60 days of mailing of the request for additional information and documentation.

§ 130d.33. Review process.

- (a) The Department will review all proposals for land application of soil or groundwater contaminated with agricultural chemicals, generated as the result of remediation activities at agricultural chemical facilities, to be applied to agricultural land.
- (b) The Department will review all land application proposals with regard to the land application of agricultural chemicals only.
- (c) Where chemicals other than agricultural chemicals are contained in the contaminated media, the Department will review the land application proposal in accordance with provisions set forth in §§ 130d.2(d) and 130d.31(d) (relating to scope; and criteria for approval or denial).
- (d) The decision of the Department to approve or deny a land application proposal is final.

§ 130d.41. Standards for land application of soil and groundwater contaminated with agricultural chemicals.

A person approved to apply soil or groundwater contaminated with agricultural chemicals resulting from the remediation of an agricultural facility to agricultural land shall comply with the following:

- (1) The land application and application rate shall be consistent with labeling requirements for the pesticide active ingredients found in the soil or groundwater being land applied and the Department may require a safety factor of 1/2 the label application rate. With regard to fertilizer found in the soil or groundwater being land applied, the application shall be consistent with labeling and standards established by the *Pennsylvania Agronomy Guide* .
- (2) The cumulative effect of all pesticides found in the soil or groundwater being land applied shall be consistent with the labeling requirements for each pesticide and may not exceed the labeling rate for any of the pesticides contained in the soil pile or quantity of groundwater contaminated with agricultural chemicals.
- (3) The cumulative effect of all fertilizers or soil amendments, or both, found in the soil or groundwater being land applied shall be consistent with and not exceed the standards established by the *Pennsylvania Agronomy Guide* .

(4) Proper application techniques set forth and approved by the Department in the applicant's operational plan shall be followed.

(5) Consultants or other individuals directing land application activities shall be certified in the appropriate use category for the pesticides being applied. A certified applicator is required to be onsite at all times during the application of pesticide contaminated soils.

(6) Individual soil piles and groundwater contaminated with agricultural chemicals may not be consolidated for application without prior written approval from the Department and the landowner.

(7) The Department may approve the application of additional agricultural chemicals, not found in background levels at the proposed application site, to the proposed application site in cases when the application rate will not result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse effects on the environment. The Department will not approve an application of contaminated soil or groundwater where the application is likely to result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse effects on the environment.

(8) The application of agricultural chemicals shall be in compliance with the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y), sections 6701—6725 of 3 Pa.C.S. (relating to Fertilizer Act), sections 6901—6921 of 3 Pa.C.S. (relating to Soil and Plant Amendment Act), the *Pennsylvania Agronomy Guide* and any nutrient management plan approved under the Nutrient Management Act.

(9) Banned, cancelled or suspended agricultural chemicals may not be applied, as established by the regulations under the Pennsylvania Pesticide Control Act of 1973, the Federal Insecticide, Fungicide and Rodenticide Act of 1947 and the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

(10) Incompatible agricultural chemicals may not be applied. The land application of incompatible agricultural chemicals is prohibited by the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(11) The person responsible for the land application of the soil and groundwater contaminated with agricultural chemicals shall comply with all local ordinances.

§ 130d.42. Land application rates and procedures.

(a) *Application rate.* When applying soil and groundwater contaminated with agricultural chemicals, the approved applicant shall follow the application rates set forth and approved by the Department in the land application proposal and operation plan.

(b) *Application rates and procedures.* The approved applicant shall follow the application rates, standards and techniques in the operating plan and approved land application proposal. The applicant shall assure:

(1) The application rate of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals adheres to and does not exceed the labeling rate for each compound present.

(2) Where more than one pesticide or other agricultural chemical is present in a soil pile or quantity of groundwater, the soil pile or groundwater shall be applied at the most restrictive labeling rate.

(3) The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the field application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and ensure the contaminated media is incorporated to a depth of at least 6 inches. The contaminated media shall be incorporated into the soil at the application site within 24 hours of application.

(4) The applicant shall utilize techniques and procedures that assure topsoil will not be lost, removed, stripped off the land or buried under the contaminated soil to be applied. In addition, the techniques and procedures utilized shall assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.

(5) The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications may not violate the provisions of any label, the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y) or the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

(c) *Timetable for land application of soil and groundwater contaminated with agricultural chemicals.* Land application of soil and groundwater contaminated with agricultural chemicals shall be applied between April 1 and September 30 of each year, unless otherwise approved in writing by the Department.

(d) *Federal Insecticide, Fungicide and Rodenticide Act of 1947 and Pennsylvania Pesticide Control Act of 1973.* Application, application rates and application techniques

used to land apply soil piles and quantities of groundwater contaminated with agricultural chemicals may not violate the Federal Insecticide, Fungicide and Rodenticide Act of 1947 or the Pennsylvania Pesticide Control Act of 1973.

§ 130d.43. Additional application requirements.

The approved applicant shall follow the crop rotation and nutrient and pesticide management plans in the approved operating plan. The Department will monitor the operation to assure the plans are being followed.

§ 130d.44. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.

When applying soil and groundwater contaminated with agricultural chemicals the approved applicant shall assure the following:

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

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

(3) *Postharvest application.* If land application is conducted in the fall or postharvest, the crop following the application shall be suitable for the labeling requirements of the agricultural chemicals contained in the soil and groundwater to be land applied.

(4) *Site suitability.* Site suitability will be based on the land application proposal. The information contained within the land application proposal shall evidence that the rates of application of the soil and groundwater contaminated with agricultural chemicals will comply with labeling requirements, will not exceed labeling rates, will not exceed additivity requirements and will not cause damage to the proposed application site or adjacent land or water. General slope, drainage characteristics, presence of shallow groundwater, distance to surface waters and suitability for agricultural purposes are some of the characteristics that will be considered.

(5) *Application of soil piles.* To allow for proper incorporation of contaminated soil piles, the soil piles may not be applied overtop of the soil at the application site at a thickness greater than 1/2 inch. The soil piles shall be incorporated into the soil at the application site to a depth of at least 6 inches, unless otherwise authorized by the Department.

(6) *Application techniques.* Soil and groundwater contaminated with agricultural chemicals may not be applied by any type of spray irrigation equipment or by aerial equipment or any other technique that may cause or lead to excessive drift

of the agricultural chemicals contained in the soil or groundwater unless the person has demonstrated in the land application proposal the equipment or technique will not cause aerosol transport offsite or onto a field that will contain an incompatible crop, and the Department has approved in writing this machinery or technique.

(7) *Ponding and standing accumulations.* Soil and groundwater contaminated with agricultural chemicals shall be applied to the soil surface and incorporated in a manner that prevents ponding or standing accumulations of contaminated soil or groundwater, or both, on or overtop of the topsoil at the application site.

(8) *Pasturing or grazing.* Livestock may not be pastured or allowed to graze on areas where soil and groundwater contaminated with agricultural chemicals has been applied for at least 3 years subsequent to the application, unless otherwise approved by the Department in writing.

(9) *Land use and crops.* The use that will be made of the proposed application area and the crops that will be grown on the site subsequent to the application of the soil and groundwater contaminated with agricultural chemicals shall be consistent with the labeling requirements of the pesticides contained in the soil piles or groundwater to be applied.

§ 130d.45. Prohibited applications.

(a) *General.* The following applications of soil or groundwater contaminated with agricultural chemicals are prohibited, unless specifically authorized by the Department in writing:

(1) An application which would violate any provisions of the act, the environmental protection acts or this chapter.

(2) An application to any "preserved farmland" as defined in 4 Pa. Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).

(3) An application to soil designated as "prime farmland" as defined under 7 CFR 657 (relating to prime and unique farmland).

(4) An application which would render the farmland unusable for agricultural purposes or would cause unreasonable adverse effects on the environment.

(5) An application to a site which would cause the total annual application amounts of an agricultural chemical to exceed its respective labeling application rate.

(6) An application that does not comply with existing laws and regulations.

(7) An application where the soil or groundwater contaminated with agricultural chemicals contains a constituent in such high concentrations that it requires a loading rate which would give the media little or no nutrient or soil conditioning value or little or no pesticide value when applied to the proposed application site.

(b) *Setback areas where land application is prohibited.* The operation plan shall address how the applicant intends to comply with this subsection. Soil and groundwater contaminated with agricultural chemicals may not be applied in the following areas:

(1) Within 100 feet of an intermittent or perennial stream as defined in 25 Pa. Code § 271.1 (relating to definitions).

(2) Within 300 feet of a water source, as defined in 25 Pa. Code § 271.1, unless the current owner of the water source has provided a written waiver consenting to the activities closer than 300 feet.

(3) Within 100 feet of a sinkhole or diversion ditch.

(4) Within 100 feet of an exceptional value wetland, as defined in 25 Pa. Code § 105.17 (relating to wetlands).

(5) Within 100 feet measured horizontally from an occupied dwelling, unless the current owner thereof has provided a written waiver consenting to the activities closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

§ 130d.46. Daily operational records.

(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an operational record for each day that the contaminated soil or groundwater is applied. These records shall be maintained in dated files and made accessible to the Department upon request.

(b) *Contents of daily operational record.* The daily operational record shall include the following:

(1) The specific soil piles or quantities of groundwater contaminated with agricultural chemicals applied that day, including weight or volume and types and levels of pesticides, fertilizers, soil conditioners, nutrients and other chemicals in each soil pile or quantity of groundwater applied.

(2) The technique and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals, as well as the depth of incorporation.

(3) The application rate and calculations evidencing the application rate for each soil pile or quantity of groundwater contaminated with agricultural chemicals are in compliance with this chapter.

(4) The specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(5) The name, mailing address, county and state of each remediation site from which the contaminated media came and the specific soil pile or quantity of groundwater received from each remediation site. The records shall cross-reference the specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(6) A record of any deviations from the approved land application proposal operating plan.

(7) The general weather conditions during application.

(8) A record of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts or this chapter.

(c) *Retention.* Daily operational records shall be maintained and retained until final approval of the site closure plan required by Subchapter F (relating to closure) by the Department. These records shall be available to the Department upon request.

§ 130d.47. Reports.

(a) A person who receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall file an annual operational report or a final report, or both, with the Department. The annual operational report required by § 130d.48 (relating to annual operational report) shall be filed with the Department within 60 days of the end of the 1-year time period running from the beginning of application of the soil and groundwater contaminated with agricultural chemicals to the application site and each year of operation thereafter. The final report required by § 130d.62 (relating to final report) shall be filed with the Department along with the site closure plan required by § 130d.61 (relating to site closure plan) within 60 days of final closure of the application site. The annual report and the final report may be combined when the application of the contaminated soil or groundwater is completed in 1 year or less.

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

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

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

(3) A copy of the daily records and annual operational report required by § 130d.46 (relating to daily operational records) and § 130d.48.

(4) A spread sheet on each soil pile or quantity of groundwater applied cross-referencing the field to which it was applied and documenting the following:

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

(ii) The application method used for each soil pile or quantity of groundwater.

(iii) The date of incorporation and depth of incorporation of each soil pile.

§ 130d.48. Annual operational report.

(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an annual operational record. These records shall be maintained according to generally accepted principles.

(b) *Contents of annual operational report.* The annual operational record shall be a compilation of the daily records made and maintained by the approved applicant. The annual operational record shall be a synopsis of the daily records and shall include the following:

(1) A synopsis of the weight or volume and types and levels of pesticides, fertilizers, soil conditioners nutrients and other chemicals applied to each field or plot at the application site.

(2) A synopsis of the techniques and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals to each field or plot at the application site and the depth of incorporation at each field or plot.

(3) A synopsis of the application rate and calculations evidencing the application rate to each field or plot for each soil pile or quantity of groundwater contaminated with agricultural chemicals is in compliance with this chapter.

(4) A final list containing the name, mailing address, county and state of each remediation site from which contaminated media came that was applied to the

site. This list shall identify each soil pile and quantity of groundwater received from each remediation site.

(5) A final list, including dates, of any deviations from the land application proposal operating plan.

(6) A final list, including dates, of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts or this chapter.

(7) A current certificate of insurance, as specified in § 130d.26 (relating to financial responsibility), evidencing continuous coverage for comprehensive general liability insurance.

(8) A map of the same scale and type required by § 130d.25 (relating to maps and related information), showing the field boundaries where soil and groundwater contaminated with agricultural chemicals was applied, and the volume and type of agricultural chemicals and contaminated media applied to each field or other approved application area.

§ 130d.51. General requirements.

(a) *Special land application proposal form.* A person seeking approval to utilize and apply groundwater contaminated with agricultural chemicals generated as a result of remediation activities at an agricultural chemical facility as tank mix, shall apply in writing on a special land application proposal form prepared by the Department. The person seeking permission shall follow the land proposal application procedures in Subchapters B and D (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land; and general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(b) *Review and approval of special land application proposal form.* The Department will follow the review process in Subchapter C (relating to land application proposal review procedures) when reviewing an application for use of groundwater contaminated with agricultural chemicals as tank mix. When the Department permits groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at an agricultural chemical facility, to be applied as tank mix to agricultural land, the applicant shall comply with the provisions of this chapter except those expressly waived in writing by the Department in its letter of approval.

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

(d) *Ongoing testing and monitoring requirement.* When the Department approves the application of groundwater contaminated with agricultural chemicals, as tank mix, the approved applicant shall be required to conduct quarterly testing and monitoring of the groundwater and submit the results of the tests to the Department. The testing shall be done in accordance with §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan), shall test and monitor for the agricultural chemicals set forth in the applicant's approved land application proposal and shall be consistent with the land application proposal approved by the Department. The approved applicant shall continue to monitor and test until a final closure plan has been submitted to and approved by the Department and pumping and application of the groundwater contaminated with agricultural chemicals has ceased. This requirement applies to each well or other source from which the groundwater contaminated with agricultural chemicals to be utilized as tank mix is being drawn or pumped. Based on the quarterly test results and consistent with the rates and procedures in §§ 130d.41—130d.45, the Department may allow or require the approved applicant to change the rates of application.

(e) *Cancellation of approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix.* The Department will cancel the approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix if the groundwater contamination levels rise above the DEP published MCL and HAL standards or new contaminants are found. The utilization and land application of the contaminated groundwater as tank mix shall immediately cease. The previously approved applicant shall no longer fall under the exception established by this subchapter and delineated in the Department's letter of approval. The previously approved applicant shall be required to either cease and desist or, where possible, comply with the standard land application requirements of this chapter. Land application of the groundwater contaminated with agricultural chemicals may not resume until the previously approved applicant can demonstrate compliance with this chapter.

§ 130d.52. General exceptions.

(a) When the chemical and waste analysis results manifest that the types and concentrations levels of agricultural chemicals contained in the quantity of groundwater, generated as a result of remediation activities at an agricultural chemical facility, sought to be land applied are at levels below DEP published MCL and HAL standards, the Department may allow the groundwater to be utilized as tank mix.

(b) When the Department permits groundwater contaminated with agricultural chemicals to be utilized as tank mix, the Department may waive certain provisions of this chapter. The Department will determine which provisions to waive based on the information contained in the land application proposal, with special attention to the types, levels and concentrations of agricultural chemicals in the groundwater the applicant is seeking to apply. The Department will set forth the waivers specifically in its letter of approval.

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

- (1) Subchapter B (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land).
- (2) Subchapter C (relating to land application proposal review procedures).
- (3) Subchapter D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).
- (4) Subchapter F (relating to closure).

§ 130d.61. Site closure plan.

(a) *General.* The applicant approved by the Department to land apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall submit a site closure plan and final report delineating the results of the land application activity to the Department. The site closure plan and final report shall be filed with the Department within 60 days of final closure of the application site.

(b) *Contents of plan.* The site closure plan shall include the following:

- (1) A proposed postapplication field soil sampling and analysis plan which shall be consistent with the procedures for soil sampling and analysis in §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan).
- (2) The compounds analyzed for and the methods of analysis. This should be consistent with the initial background components analyzed and the methods used.
- (3) A discussion of any problems encountered during the project and actions taken to correct any problems or violations.

§ 130d.62. Final report.

The applicant approved by the Department to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall submit a final report to the Department. The final report shall be submitted to the Department within 60 days of final closure of the application site and shall contain the final results of the site closure plan, a narrative describing both positive and negative results of the land application and the following information:

- (1) The names of the persons supervising the application.

- (2) The total acreage on which the soil or groundwater, or both, contaminated with agricultural chemicals was applied.
- (3) The dates of each application.
- (4) The start and stop time of each application.
- (5) The weather conditions during each application.
- (6) The calibration measures used.
- (7) The type of equipment used.
- (8) The type of incorporation method used and the date of incorporation.
- (9) The types and concentrations of agricultural chemicals present in each soil pile or quantity of groundwater and the specific field to which each soil pile or quantity of groundwater, or both, was applied.
- (10) A discussion of any problems that occurred and actions taken to correct the problems.
- (11) The analytical results of both the original application site analysis and the field closure soil sampling plan.