

**CHAPTER 128b. CHEMSWEEP PESTICIDE DISPOSAL
PROGRAM**

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

Authority

The provisions of this Chapter 128b issued under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), unless otherwise noted.

Source

The provisions of this Chapter 128b adopted August 20, 1993, effective August 21, 1993, 23 Pa.B. 3933, unless otherwise noted.

Cross References

This chapter cited in 7 Pa. Code § 138j.3 (relating to limitation on grants); and 7 Pa. Code § 138k.3 (relating to limitations on grants).

§ 128b.1. Authority and purpose.

(a) Under the authority granted it under the act, the Department establishes a pesticide disposal program to be designated as “CHEMSWEEP.” This Program will allow the Department to identify and quantify canceled, unused or suspended pesticides held, owned or possessed by citizens of this Commonwealth. The information derived from this inventory shall be used in the solicitation of bids from hazardous waste disposal contractors for the safe collection, transportation and disposal of the pesticides.

(b) This Program will be conducted within counties which are designated by the Department each year.

(c) By addressing the pesticide disposal needs of Commonwealth citizens, the Program addresses the needs of persons who have accumulated and stored chemi-

cals in this Commonwealth with the potential to affect the environment and human safety. Citizens of this Commonwealth currently lack an available, economical, environmentally sound, and effective means of disposing of potentially hazardous pesticides.

Authority

The provisions of this § 128b.1 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.1 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279355) to (279356).

§ 128b.2. Definitions.

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

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

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

Applicant—A person who owns, holds or possesses pesticides within a participating county and who has filed a Program preregistration application form with the Department.

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

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

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

Contractor—A person engaged in the business of collecting, packing, transporting and disposing of hazardous waste, who is contractually obligated, through the Program, to collect, pack, transport and dispose of the pesticide inventory of a participating county.

Department—The Department of Agriculture of the Commonwealth.

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

EPA—The Environmental Protection Agency of the United States.

Onsite pesticide collection—The collection by a contractor of a portion of the pesticide inventory of a participating county from the site, usually a farm, at which it is stored by a participant.

Participating county—A county designated by the Department to participate in the CHEMSWEEP Program.

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

Person—Any individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

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

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

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

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

Program—The CHEMSWEEP Pesticide Disposal Program.

Secretary—The Secretary of the Department.

USDA—The United States Department of Agriculture.

Authority

The provisions of this § 128b.2 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.2 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279356) to (279357).

§ 128b.3. Selection of participating counties.

(a) *County participation.* The Department will conduct the Program yearly in selected counties of this Commonwealth.

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

- (1) The amount of funds available for the use of the Program.
- (2) The availability of support from agricultural agencies and local governments within the county.
- (3) The proximity of the county to other counties selected to participate in the Program in that particular fiscal year.
- (4) The environmental or health risks posed by the pesticide inventory of a particular county.
- (5) Other factors relevant to the selection of the county on economic, environmental or safety grounds.

Authority

The provisions of this § 128b.3 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.3 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279357) and (279358).

Cross References

This section cited in 7 Pa. Code § 128b.1 (relating to authority and purpose).

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

The number of eligible counties participating during a particular fiscal year may not exceed 21 except when emergency situations arise.

Authority

The provisions of this § 128b.4 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.4 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279358).

§ 128b.5. Funding.

(a) *Principal source.* A portion of the annual fees collected by the Department with respect to the registration of pesticides distributed within this Commonwealth, as described at section 5.1(a) of the act (3 P. S. § 111.25a(a)) and § 128.3(i) (relating to fees), shall be the principal source of funding for the Program.

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

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

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

- (1) Hold, own or possess pesticides that are or have been registered for sale and use within this Commonwealth.
- (2) Hold, own or possess the pesticides within a participating county.

(b) *Exclusions.* Empty pesticide containers may not be accepted for disposal. Persons not located within this Commonwealth are not eligible for participation in the Program.

Authority

The provisions of this § 128b.6 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.6 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279358) to (279359).

§ 128b.7. Preregistration application.

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

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

- (1) The compound or trade name of the pesticide.
- (2) The active ingredient or common name of the pesticide.
- (3) The EPA registration number of the pesticide.
- (4) The United States Department of Agriculture (USDA) registration number of the pesticide.
- (5) The type of formulation of the pesticide.
- (6) The type of container of the pesticide.
- (7) The number of containers of the pesticide.
- (8) The condition of the container holding the pesticide.
- (9) The total quantity of the pesticide.
- (10) The exact location of the pesticide.
- (11) The name, address and telephone number of the applicant.

(c) *Incomplete information.* If an applicant cannot ascertain the identity of a particular pesticide in its possession, or provide other applicable information

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

(d) *Additional information.* The Department may require that an applicant provide additional information, which the Department deems relevant to its evaluation of a preregistration application.

(e) *Exception to preregistration.* A person who participates in a household hazardous waste jointly sponsored by the Department and DEP will be exempt from the preregistration portion of this section.

Authority

The provisions of this § 128b.7 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.7 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279359).

Cross References

This section cited in 7 Pa. Code § 128b.13 (relating to pesticide inventory).

§ 128b.8. Preregistration process.

(a) *Application period.* The Department will fix a 90 day period within which it will accept preregistration application forms within a particular participating county.

(b) *Dissemination of notice.* Prior to the commencement of the preregistration application period, the Department will publish notice of the Program and the preregistration period in either a newspaper of general circulation within the participating county or another publication of general circulation within a participating county. When practicable, the Department may enlist the assistance of entities such as the County Extension Service of the United States Department of Agriculture, the Pennsylvania Farmers' Union, the Pennsylvania Grange Association, the Pennsylvania Farm Bureau, County Conservation Districts and county and local governments in disseminating the notice and information.

(c) *Discretionary extension of application period.* In furtherance of the intent of the Program to arrange for the safe collection and disposal of pesticides within

a participating county, the Department has the discretion to accept a preregistration application form submitted to it beyond the 90-day preregistration application period.

Authority

The provisions of this § 128b.8 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.8 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279360).

Cross References

This section cited in 7 Pa. Code § 128b.13 (relating to pesticide inventory).

§ 128b.9. Inspection and verification.

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

- (1) Verify information contained on the preregistration application form.
- (2) Draw samples of unidentified pesticides for analysis at the Department's laboratories.
- (3) Ascertain the condition of pesticide containers and assess other factors relevant to the safe collection, packing, transport or disposal of the pesticides.

(b) *Contractor inspection.* A contractor or prospective contractor may physically inspect the premises at which a pesticide listed on a preregistration application is stored. An inspection shall be conducted at a time agreeable to both the contractor, or prospective contractor, and the applicant. The purpose of an inspection shall be to verify bid specification information and to otherwise assist the contractor or prospective contractor in its planning for the safe collection, packing, transport and disposal of the pesticide.

Authority

The provisions of this § 128b.9 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.9 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279360).

§ 128b.10. Responsibilities of applicant or participant.

(a) *Generally.* An applicant or participant is responsible for the safe storage of pesticides held, owned or possessed by the applicant or participant. This exclusive responsibility does not lapse with the filing of a preregistration application,

with an inspection of the pesticide or pesticide storage area or with the notice of acceptance of the pesticide for disposal through the Program as described in § 128b.15 (relating to notification of participants). Action by the Department does not relieve the applicant or participant of the responsibility to store pesticides in a safe and lawful manner. With respect to central-site pesticide collection, the participant shall retain sole responsibility for the safe transport of pesticides and for the cleanup, if necessary, of the site at which the pesticide was stored. With respect to onsite pesticide collection, the contractor is responsible for the cleanup, if necessary, of the site at which the pesticide was stored. The contractor is responsible for property damage, personal injuries and the cleanup of spills or other contamination which it causes. The contractor will not be responsible for the clean up of any areas outside of the site at which the pesticides are stored.

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

Authority

The provisions of this § 128b.10 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.10 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279360) to (279361).

§ 128b.11. Unidentified pesticides.

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

Authority

The provisions of this § 128b.11 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.11 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279361).

§ 128b.12. Program limitations.

(a) The Department will accept a maximum of 2,000 pounds of pesticide for disposal from any one participant annually. The participant may pay the contrac-

tor directly for collection, transport and disposal of pesticides in excess of 2,000 pounds at the Commonwealth's contract price. The Department reserves the right to accept any excess pesticides or renegotiate acceptable poundage when deemed necessary by the Department.

(b) Criteria for acceptance or renegotiation of excess acceptable poundage when deemed necessary by the Department will include the following:

- (1) Quantity of excess over 2,000 pounds.
- (2) Condition of pesticides or containers to be collected.
- (3) Location and condition of storage area.
- (4) Ability of participant to pay for excess poundage.

Authority

The provisions of this § 128b.12 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.12 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279361).

§ 128b.13. Pesticide inventory.

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

Authority

The provisions of this § 128b.13 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.13 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279361) to (279362).

§ 128b.14. Bid specifications.

(a) *General.* After the Department completes its compilation of the pesticide inventory for a particular participating county, it shall develop bid specifications

for use in contracting for the disposal of the pesticide inventory. The Department may make the pesticide inventories of two or more participating counties the subject of a single disposal contract.

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

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

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

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

(4) A contractor shall handle, collect, pack, transport and dispose of pesticides, in compliance with the written description provided the Department.

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

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

(d) *Pesticide collection options.* The Department may solicit bids for several different pesticide collection options: The Department may require that participants arrange for the safe transportation of their pesticides to a central site from which the contractor shall collect, pack, transport and dispose of the pesticides, or the Department may require that the contractor collect, pack, transport and dispose of pesticides from the individual storage locations throughout the participating county, or the Department may require that a contractor employ a combination of onsite pesticide collection and central-site pesticide collection. Regardless of the pesticide collection options with respect to which the Department solicits bids, the contractor shall perform onsite pesticide collection when required under § 128b.17 (relating to conditions requiring on-farm pesticide collection).

Authority

The provisions of this § 128b.14 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.14 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial pages (279362) to (279363).

128b-10

Cross References

This section cited in 7 Pa. Code § 128b.13 (relating to pesticide inventory).

§ 128b.15. Notification of participants.

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

Authority

The provisions of this § 128.15 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.15 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279363).

Cross References

This section cited in 7 Pa. Code § 128b.10 (relating to responsibilities of applicant or participating farmer).

§ 128b.16. Central-site.

Although the Department will assist the contractor in obtaining a central site for pesticide collection prior to transportation and disposal, the decision whether to use a particular site for pesticide collection is exclusively the contractor's. The contractor is responsible for establishing, insuring and operating the site and is responsible in the event of a pesticide spill or other environmentally-impacting incident which gives rise to legal liability.

Authority

The provisions of this § 128b.16 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.16 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279363).

§ 128b.17. Conditions requiring on-site pesticide collection.

A leaking, deteriorated or otherwise unsafe container of pesticide may not be transported by a participant to a central site for collection by a contractor, but

shall be over packed and collected onsite by the contractor. Quantities of pesticide that are too large, too heavy, too unwieldy, in excess of allowable quantities for waste transport or otherwise incapable of being safely transported by a participant to a central site for collection shall be collected onsite by a contractor. If either the contractor or the participant makes the determination that a pesticide container is leaking, deteriorated or otherwise unsafe, or that a pesticide container is too large, too heavy, too unwieldy or otherwise incapable of being safely transported by a participant to a central site for collection, the pesticide container shall be over packed and collected onsite by the contractor.

Authority

The provisions of this § 128b.17 amended under section 7(b)(2) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128b.17 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279363).

Cross References

This section cited in 7 Pa. Code § 128b.14 (relating to bid specifications).

§ 128b.18. State and Federal regulations.

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

Source

The provisions of this § 128b.18 amended June 30, 2006, effective July 1, 2006, 36 Pa.B. 3231. Immediately preceding text appears at serial page (279364).

[Next page is 129-1]