

Notice of Proposed Rulemaking
Department of Environmental Protection (DEP)
Environmental Quality Board
(25 Pa. Code, Chapter 250)
(Administration of the Land Recycling Program)

Preamble

The Environmental Quality Board (EQB) proposes to amend 25 Pa. Code, Chapter 250 (relating to Administration of the Land Recycling Program). The amendments are intended to update the Statewide health standards based on current science, to correct errors and omissions, and to state how to provide DEP information about notification that remediators are required to provide to municipalities and the public.

This proposal was adopted by the EQB at its meeting of _____, 2014.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Troy Conrad, Program Manager, Land Recycling Program, P.O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 783-7816, or Susana Cortina de Cárdenas, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made primarily under the authority of sections 303(a) and 104(a) of the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101-6026.908) (Land Recycling Act, 35 P.S. § 6026.303(a) directs the EQB to promulgate health standards for regulated substances for each environmental medium, and the methods used to calculate the standards. 35 P.S. § 6026.104(a) authorizes the EQB to adopt and amend other regulations that may be needed to implement the Land Recycling Act.

D. Background and Purpose

25 Pa. Code § 250.11 requires the DEP to review new scientific information that is used to calculate Medium Specific Concentrations (MSCs) under the statewide health standard, and propose appropriate changes at least every 36 months. Such changes serve the public as they are based on the most up-to-date health and other scientific information available to protect human health. In addition, the changes in requirements serve the public and regulated community as they provide clear information on what is required to clean up contaminated sites. The proposal was reviewed by the Cleanup Standards Scientific Advisory Board (CSSAB). The proposal was discussed and supported unanimously, with one exception and one comment, at the CSSAB meeting held on October 23, 2013.

E. Summary of Regulatory Requirements

§ 250.5. Public notice by applicant.

Changes to this section would add the requirement that documented proof of the mailing of municipal notices and the arranging for publication of newspaper notices that are required by the Act be submitted at the same time the Notice of Intent to Remediate (NIR), plan, or report is submitted to DEP. This will assure that the municipality and the public are notified of the NIR, plan or report in a timely fashion.

§ 250.7. Fees.

Changes to this section would clarify that DEP may waive the fee for resubmission of a plan or report if the resubmission is related to correcting minor administrative or technical deficiencies.

§ 250.301. Scope.

Changes to this section would add certain regulated substances to the list of substances classified as mutagens based on recently published scientific information.

§250.304. MSCs for groundwater.

Prior to the January 2011 edition of the Drinking Water Standards and Health Advisories, EPA Office of Water Publication No. EPA 820-R-11-002 (January 2011), when EPA published both a lifetime Health Advisory Level (HAL) and a 10^{-4} Cancer Risk concentration for a chemical, the lifetime HAL concentration included an adjustment for cancer risk. Starting with the January 2011 edition of the Drinking Water Standards and Health Advisories, EPA changed its Cancer Classification system and started publishing Lifetime HALs that did not include adjustments for cancer risk, even when a 10^{-4} Cancer Risk concentration was also published.

Language in §250.304(c) would be added to clarify that a published Lifetime HAL concentration would not be used as the Medium-Specific Concentration (MSC) for substances that are designated as likely to be carcinogenic, if the Lifetime HAL does not include an adjustment for cancer risk. For these substances, the MSC would be calculated based on the equations in sections 250.306 and 250.307.

Section 250.304(g) would include additional references related to the determination of solubility values.

§ 250.306. Ingestion numeric values.

Due to new information about the toxicology of trichloroethylene (TCE), changes in this section would add values for oral cancer slope factors for TCE and revise the formula for calculating the Medium-Specific Concentration for TCE.

Due to new information published by EPA in the Exposure Factors Handbook 2011 Edition, EPA/600/R-090/052F, the average body weight and the associated ingestion factors would change.

§ 250.307. Inhalation numeric values.

Due to new information relating to the toxicology of TCE, changes in this section would add values for inhalation unit risk for TCE and make changes to the formula for calculating the MSC for TCE.

Appendix A, Tables 1-6

Changes to the MSCs' tables would update the same for certain regulated substances. Information also would be updated on the "Physical and Toxicological Properties" tables, and the "Threshold of Regulation Compounds" table.

F. Benefits, Costs and Compliance

Benefits

Consistent with 25 Pa. Code § 250.11, DEP needs to update the statewide health standard MSC values on a timely basis in order to assure that environmental response actions at contaminated sites are remediated using current EPA guidance and toxicological information. This will ensure the protection of the public health and environment from the exposure to regulated substances, where it has been determined that lower MSCs for regulated substances are required to meet the standards established by the statute. This will also avoid unnecessary expense for those remediating contaminated property for redevelopment, where it has been determined that higher MSCs for regulated substances are protective and meet the standards established by the statute.

Compliance Costs

These amendments to the regulations will affect owners, operators and purchasers of properties and facilities who volunteer, or are required to perform, remediation of contaminated sites. These changes are not expected to add any significant costs to the cleanup of contaminated sites under this program. Some cleanup standard concentration values will be lower and some will be higher. The net cost should be negligible.

Compliance Assistance Plan

The Land Recycling Program will disseminate information concerning these updates using the DEP's web site and e-mails to environmental consultants involved in the program.

Paperwork Requirements

No forms or reports are required beyond those established by Act 2.

G. Pollution Prevention (if applicable)

During remediation of a contaminated site, potential sources of pollution are often removed in order to attain the Act 2 standards, thus eliminating or minimizing the potential for continued migration.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by DEP to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on ___ (blank), DEP submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, DEP has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by DEP, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or

