

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency</p> <p>Environmental Protection</p>		
<p>(2) Agency Number: Identification Number: 7-538</p>		<p>IRRC Number:</p>
<p>(3) PA Code Cite:</p> <p>25 Pa. Code Chapter 250</p>		
<p>(4) Short Title:</p> <p>Administration of the Land Recycling Program</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, (717) 783-8727; ledinger@pa.gov Secondary Contact: Jessica Shirley, (717) 783-8727; jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The Department of Environmental Protection (DEP)'s Land Recycling Program implements standards for the cleanup of soil and groundwater contamination from releases of various toxic and carcinogenic chemicals. Corrections made as a result of this final-omitted rulemaking to the Land Recycling Program standards will correct errors in the transcription of toxicity values for Aldrin, beryllium, and cadmium and their associated medium-specific concentrations (MSCs) that are a part of the Statewide health standard and are calculated using these toxicity values.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This final-omitted rulemaking is being made under the authority of sections 104(a) and 303(a) of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.104(a) and 6026.303(a)), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20). Section 104(a) of the act authorizes the Board to adopt Statewide health standards and appropriate mathematically valid statistical tests to define compliance with the act. Section 303(a) of the act authorizes the Board to promulgate Statewide health standards for regulated substances for each environmental medium and methods used to calculate the standards. Section 1920-A of The Administrative Code of 1929 authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.</p>		

Notice of proposed rulemaking is omitted under section 204 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204), known as the Commonwealth Documents Law (CDL). Section 204 of the CDL provides that an agency may omit the notice of proposed rulemaking if “the agency for good cause finds... that the public notice and comment procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.” 45 P.S. § 1204(3). Public notice and comment are unnecessary and contrary to the public interest for the amendments included in this rulemaking. The relevant MSCs are a product of a standard method of calculation that is set out in Chapter 250. The Board sought comments on this method during the prior rulemaking and no comments were received on this method (46 Pa.B. 5655 (August 27, 2016)). This rulemaking does not change the method by which the calculation is made. Instead, the rulemaking corrects an error that the Department of Environmental Protection (Department) made in the transcription of the result of the Aldrin calculation and corrects the inputs to the beryllium and cadmium calculations. Additional public notice and comment would not alter the need to correct these errors and is therefore unnecessary. In addition, these corrections will ensure that any remediation of Aldrin, beryllium, or cadmium conforms to current science relating to the protection of human health and is consistent with the regulatory provisions in Chapter 250, which is in the public interest.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Section 303(a) of the Land Recycling Act (35 P.S. § 6026.101 et seq.) states: “The Environmental Quality Board shall promulgate Statewide health standards for regulated substances for each environmental medium.”

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Administration of the Land Recycling Program regulations provide standards used during the cleanup of contaminated sites in Pennsylvania. These standards apply to all releases of regulated substances that are addressed under the Land Recycling Act, the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101 et seq.), the Solid Waste Management Act (35 P.S. §§ 6018.101 et seq.), the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101 et seq.), and the Clean Streams Law (35 P.S. §§ 691.1 et seq.). Releases of regulated substances not only pose a threat to the environment, but also could affect the health of the general public if they are inhaled or ingested. It is necessary that the residents of Pennsylvania are adequately protected with site cleanup requirements based on accurate information. Correcting errors in the toxicity values and the MSCs in these amendments to Chapter 250 serve both the public and the regulated community as they provide accurate information needed for remediating contaminated sites. Having access to that information allows the public to know the acceptable level of contamination at a site based on the intended use of the property, and it provides remediators with a uniform endpoint to the remediation process.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No provisions are more stringent than federal cleanup standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The Chapter 250 regulations provide a uniform Statewide health standard that is not available in many other states. States that have a standard and the federal government require a site-specific risk analysis of each site to establish a numeric value that is used to determine the completion of soil and groundwater remediation. The Land Recycling Act provides for a generic Statewide health standard that can be used as an efficient way to clean up sites, particularly where small spills and releases contaminate soil. However, the ability to conduct a risk analysis to establish a cleanup value on an individual-site basis is also available through the site-specific cleanup standard under Land Recycling Act, providing an additional option. Correcting inaccurate toxicity values and MSC values allows for effective use of both the Statewide health and the site-specific standards.

The use of accurate toxicity and MSC values promotes and facilitates the remediation and redevelopment of idle and underutilized commercial and industrial sites while protecting the public health and the environment. The amendments included in this rulemaking will not affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. This regulation will not affect any other regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

This rulemaking was discussed with and received the support of the CSSAB at its November 16, 2016 meeting. Members of the Cleanup Standards Scientific Advisory Board (CSSAB) typically have a background in engineering, biology, hydrogeology, statistics, medicine, chemistry, toxicology, or other related scientific education or experience. Some members of the CSSAB represent small businesses and other members work as environment consultants and attorneys and represent small business clients.

As this is a final-omitted rulemaking, no public comment period was provided.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The corrections to the Land Recycling toxicity values and MSCs included in this rulemaking can affect property owners of contaminated sites, operators of commercial and industrial facilities where Aldrin, beryllium, and cadmium are released onto soil or are released into groundwater. These amendments will also impact purchasers of historically contaminated brownfield sites that are intended for redevelopment. Members of the public and the business community may also be affected as they may be threatened with exposure to releases and spills of these chemicals.

The types of businesses affected could include commercial facilities that use Aldrin, beryllium, or cadmium, manufacturing operations, and redevelopers of brownfield sites. Small businesses would also

make up some of the commercial facilities that use these substances. Because of the broad potential reach of the corrections included in this rulemaking, DEP is unable to identify exact types and numbers of small businesses that would potentially be affected if they contaminate a property by releasing these substances.

The corrections included in this rulemaking are not expected to add costs, overall, to the cleanup of contaminated sites under this program. These corrections may provide savings to remediators that would otherwise incur higher remediation costs when unnecessarily cleaning up properties to the incorrect, lower MSC values.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

The corrections to the Land Recycling toxicity values and MSCs included in this rulemaking will affect owners, operators and purchasers of properties and facilities who volunteer or are required to perform remediation of contaminated sites pursuant to Chapter 250 standards.

The types of businesses that may need to comply with the regulations include commercial facilities that use Aldrin, beryllium, and cadmium, manufacturing operations, and redevelopers of brownfield sites. Small businesses would also make up some of the commercial facilities that use Aldrin, beryllium, and cadmium. Not all of these facilities have releases or accidental spills that result in a cleanup obligation. The number of remediations completed can vary from year to year. The number of voluntary remediations completed each year is usually in the range of 200 - 400. The number of required remediations (mostly regulated storage tank sites) completed each year is usually in the range of 400-600. This rulemaking will affect a small subset of these sites, most likely in the range of 30-40.

This rulemaking may affect all types of responsible parties, including individual homeowners and small businesses, implementing a remediation under Chapter 250. No type of person or business is expected to be adversely affected by these regulatory amendments.

Please also see the response to item (15) above.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The corrections to the Land Recycling toxicity values and MSCs included in this rulemaking reflect the latest and most accurate toxicological data on human health effects when exposed to hazardous and toxic chemicals. This assures potentially affected citizens of the Commonwealth and persons interested in buying and redeveloping contaminated sites that the MSCs are protective of human health. This rulemaking is not expected to add costs, overall, to the cleanup of contaminated sites under this program. The decrease in the Aldrin MSC will only impact ten sites. Remediators of these sites can use either the background standard or the site-specific standard if the reduction in the Aldrin MSC impacts their project. The beryllium and cadmium corrections result in increases in their respective MSC values and are not anticipated to have an adverse impact on the regulated community

Persons conducting remediation under the Land Recycling Act can choose from three different cleanup standards: background, Statewide health or site-specific. Correcting Statewide health standard MSCs will not affect cleanup options available to remediators under other cleanup standards.

DEP does not anticipate that there will be an adverse impact to small businesses.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The corrections to the toxicity values and the Statewide health MSCs reflect the latest toxicological data on human health effects when exposed to hazardous and toxic chemicals. This assures potentially affected citizens of the Commonwealth and persons interested in buying and redeveloping contaminated sites that the MSCs are protective of human health.

DEP does not anticipate adverse effects as a result of this rulemaking. Please also see the response to item (15) above.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking is not expected to add costs, overall, to the cleanup of contaminated sites under this program. The decrease in the Aldrin MSC will only impact ten sites. Remediators of these sites can use either the background standard or the site-specific standard if the reduction in the Aldrin MSC impacts their project. The beryllium and cadmium corrections result in increases in their respective MSC values and are not anticipated to have an adverse impact on the regulated community. Please also see the response to item (15) above.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking is not expected to add costs, overall, to the cleanup of contaminated sites under this program for local governments. In some cases, local governments are remediators so the corrections included in this rulemaking may provide savings to local governments that are remediating sites for beryllium or cadmium that would otherwise incur higher remediation costs when unnecessarily cleaning up properties to the incorrect, lower MSC values. Please also see the response to item (15) above.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking is not expected to add costs, overall, to the cleanup of contaminated sites under this program for state government. In some cases, state government is the remediator so the corrections included in this rulemaking may provide savings if state government is remediating sites for beryllium or cadmium that would otherwise incur higher remediation costs when unnecessarily cleaning up properties to the incorrect, lower MSC values. Please also see the response to item (15) above.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork,

including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This rulemaking will not require any additional recordkeeping or paperwork.

(22a) Are forms required for implementation of the regulation?

No forms are required to implement this regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

This rulemaking is not expected to impact costs or savings.

	Current FY 2017/18	FY +1 2018/19	FY +2 2019/20	FY +3 2020/21	FY +4 2021/22	FY +5 2022/23
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0

Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 2014-15	FY -2 2015-16	FY -1 2016-17	Current FY 2017-18
Environmental Protection Operations 160-10381	\$84,438,000	\$87,172,000	\$86,462,000	\$90,841,000
Environmental Program Management 161-10382	\$28,517,000	\$28,277,000	\$26,885,000	\$30,054,000
Industrial Land Recycling Fund 689-60080	\$212,000	\$301,000	\$296,000	\$300,000
Hazardous Site Cleanup Fund 202-20070	\$18,546,000	\$26,900,000	\$25,677,000	\$24,000,000
Storage Tank Fund 210-20073	\$6,883,000	\$7,161,000	\$8,654,000	\$5,000,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

The corrections to the Land Recycling toxicity values and MSCs included in this rulemaking 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 costs, overall, to the cleanup of contaminated sites under this program. These corrections may provide savings to remediators that would otherwise incur higher remediation costs when unnecessarily cleaning up properties to the incorrect, lower MSC values.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The corrections to the Land Recycling toxicity values and MSCs included in this rulemaking do not add any new procedures, recordkeeping or compliance efforts.

(c) A statement of probable effect on impacted small businesses.

This rulemaking is not expected to add costs, overall, to the cleanup of contaminated sites under this program. The corrections included in this rulemaking may provide savings to remediators that would otherwise incur higher remediation costs when unnecessarily cleaning up properties to the incorrect, lower MSC values.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

DEP is unaware of any less intrusive or less costly alternative methods of achieving the correction of the toxicity values and associated MSCs for Aldrin, beryllium, and cadmium.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The corrections included in this rulemaking do not include special provisions developed to meet the needs of any groups listed because they are not expected to adversely affect any listed group. Please see the responses to items (15), (17) and (24) above.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions that have been considered for this rulemaking.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The amendments are not expected to have any adverse impact on small businesses; therefore, no regulatory methods were considered to minimize any adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data; explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please

provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Land Recycling Act and the Chapter 250 regulations require the Statewide health standard MSCs to be based on nationally recognized, peer-reviewed toxicological data, including cancer slope and unit risk factors, reference dose values, and reference concentrations published under the Integrated Risk Information System (IRIS), the National Center for Environmental Assessment, Provisional Peer-Reviewed Toxicity Values (PPRTV), the Health Effects Assessment Summary Tables, Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profiles, and California EPA Cancer Potency Factors and Chronic Reference Exposure Levels.

This information is extensively published by the United States Environmental Protection Agency ([IRIS: https://www.epa.gov/iris](https://www.epa.gov/iris), [PPRTV: https://hhpprtv.ornl.gov/](https://hhpprtv.ornl.gov/)), California EPA (<https://oehha.ca.gov/chemicals>), and the United States Centers for Disease Control ([ATSDR: https://www.atsdr.cdc.gov/toxprofiles/index.asp](https://www.atsdr.cdc.gov/toxprofiles/index.asp)) and is used by all state environmental and health departments in the country for conducting risk assessments for potential exposure to contaminants in soil and groundwater.

29) Include a schedule for review of the regulation including:

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|---|------------------------|
| A. The length of the public comment period: | <u>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 1, 2018</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 1, 2018</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Quarter 1, 2018</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

DEP evaluates the effectiveness of the Land Recycling Program and the 25 Pa. Code Chapter 250 regulations on an ongoing basis. The efforts include ongoing tracking of remediation actions completed under the program and preparation of an annual program report. Further, DEP is required to review the MSCs and update, if necessary, within three years.