

SECTION I. OVERVIEW

A. What the Land Recycling Program Has to Offer

1. Benefits of Involvement Through the Land Recycling Program

The Land Recycling Program is the result of a bipartisan effort to solve the problem of unused and abandoned industrial sites within the Commonwealth. The program has three purposes: to clean up contaminated sites based on sound science, to return these sites to productive reuse, and to preserve farmland and greenspace. The Land Recycling Program promotes voluntary partnerships among local businesses, government, financial institutions and the Department of Environmental Protection (hereafter “Department” or “DEP”).

The four cornerstones of the program are uniform cleanup standards based on health and environmental risks, standardized review procedures, relief from liability, and financial assistance. The establishment of uniform standards enables the remediator to clearly understand the extent and cost of site cleanup. The selection of standards assures that a site is protective of its reuse. A property used for industrial development need not be as clean as a playground or residential site. Consistent reporting requirements and standardized review procedures provide a definite time frame for remediation. Relief from liability, which extends to future owners, addresses the concerns that previously inhibited site redevelopment and sale of properties. Financial assistance, available to those who did not cause or contribute to contamination at the site, reduces the cost of site assessment and remediation.

2. How to Use this Manual

The Department has developed this manual to assist ~~you~~ remediators in satisfying the requirements of Act 2 and the regulations, Chapter 250. The manual provides suggestions and examples of how to best approach site characterization and remediation. The manual is divided into ~~five~~ six sections:

- Section I provides an overview ~~for determining which standard or which other statutes may be applicable to your site.~~ of the program and summarizes the role of Central Office.
- Section II outlines the procedures for determining and meeting the requirements of each standard. As each standard is discussed, ~~you will be referred~~ references to other sections are provided for additional information or clarification.
- ~~Section III discusses the appropriate interfaces with other applicable statutes.~~
- Section III provides ~~G~~ general technical guidances augmenting the information in Section II, ~~are provided in Section IIIV.~~
- Section IV contains the Vapor Intrusion Assessment Guidance. ~~is provided in Section IV.~~

- [Section V discusses the appropriate interfaces with other applicable statutes.](#)
- [Hyperlinks-References](#) to other helpful documents are listed in Section VI.

~~This manual is available online at web site [LIST WEB ADDRESS], as an entire downloadable document, or for online use. Ease of use is facilitated in both versions of this manual by way of links to the section of interest, and cross links to other parts of the manual, or sections in the regulations, or statute.~~

The Department of Environmental Protection's staff is another valuable resource available to assist you. ~~We can clarify information provided herein or address any questions regarding issues specific to your site~~ in clarifying the information provided herein or in addressing any questions regarding issues specific to a certain site. Regional office contacts are provided ~~in Section V.I.2~~ on the Land Recycling webpage.

SECTION I - OVERVIEW

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B. The Voluntary Nature of Act 2

Act 2 establishes the environmental remediation standards for cleanups related to certain environmental laws (Act 2, Section 106). Remediation, and the resulting liability relief under Act 2, Chapter 5, is specific to the contamination identified as part of a specific site or sites in the approved final report. Thus, there may be multiple sites on a property, or a single site may include all or part of one or more properties. Examples of sites are an area of specific contamination related to a metal processing unit, or a specific environmental release such as a tank ~~spill~~release. Although the liability protection is NOT necessarily universal to the entire property, remediators may voluntarily submit multiple Notices of Intent to Remediate (NIRs), or amend the scope of a single NIR, to address any or all contamination they feel is present on their property. It is strongly advised that the remediator postpone drafting the NIR until enough characterization is completed on the property to distinguish the site or sites desired for inclusion in the NIR.

If the Department is aware of contamination on the property which is not part of a proposed remediation under a voluntarily submitted NIR, the Department may suggest that the remediator include that contamination as part of the NIR. However, if the remediator declines to include that contamination, the Department will still approve a final report for the contamination described in the NIR, if it otherwise meets the requirements of Act 2. The Department always reserves the right, as a separate action, to exercise its enforcement discretion under the environmental laws of the Commonwealth to require remediation of any known spill or release of a regulated substance on the property which was not addressed by voluntary cleanup through the Act 2 process or where the voluntary remediation fails to proceed through the Act 2 process.

The exercise of enforcement discretion is based on DEP's knowledge of site contamination that may represent a threat to human health and/or the environment, requiring Department oversight. This information may be obtained from a number of sources, including but not limited to citizen complaints, DEP inspections, sampling results, or spill reporting requirements under applicable regulation among other sources.

~~However, the exercise of such enforcement discretion is intended to be based on DEP's knowledge derived from, for example, citizen complaints, DEP inspections, sampling results, or spill reporting requirements under applicable regulations of the degree to which the known contamination may represent a threat to human health and/or the environment, requiring Department oversight such as through contamination of public or private water supplies, degradation of surface waters or direct exposure to hazardous waste on the ground.~~

C. Improving Service through Program Consistency

With more than ~~six~~twenty years of success, the Land Recycling Program is still exploring additional ways to improve the program. ~~Our users~~Remediators ~~have~~continue to indicated ~~to us~~the Department that consistency of application of the program with the published rules and across the six Regional offices is an important issue ~~to them~~. ~~Therefore the program is instituting a number of changes intended to improve our service through consistency of program implementation. The seven changes below will be instituted immediately. The following sections describe the Department's approach to maintaining consistency within the program.~~

1. ~~DEP Implementation of the Permit Review Process and Permit Decision Guarantee~~ Standard Operating Procedures

Land Recycling Program staff will follow a Department-wide standard process for receiving, prioritizing, accepting, reviewing, denying, and approving any Act 2 submittal in order to achieve greater efficiency, clarity, and consistency across all regions.

1.2. ~~DEP Central Office Program to Approve Initiation and Final Execution of Remediation Agreements~~ and Enforcement Actions

The initiation of any ~~enforcement or~~ remediation agreements will require the approval of central office and program counsel. These agreements will include Consent Orders and Agreements (CO&As), buyer/seller agreements and Special Industrial Area (SIA) agreements. Both field and central office counsel will sign the final agreement. The initiation of any enforcement actions will require the approval of central office managers and both field and central office counsel will sign the final agreement. Both central office and regional office program managers and council will sign the applicable enforcement documents.

2. ~~DEP Central Office Program Collaboration on Regional Actions on Deed Restrictions~~

The Department will require both regional and central offices to approve the use of deed restrictions as part of either an on or off property remedy under Act 2. The Department believes this approval procedure will help maintain consistency in the use of deed restrictions as one of a number of institutional control measures which may be applied in conjunction with the Act 2 remediation (see Section II.C.9)

3. ~~DEP Central Office Program Collaboration on Report Disapprovals or Withdrawal Requests to Approve Initiation and Final Execution of Enforcement Actions~~

In an effort to meet the expectations presented by statutory review timeframes, the Department requires that regional Environmental Cleanup Program managers must collaborate with the central program office prior to denying or honoring requests to withdraw submitted reports for required Act 2 submissions. The Initiation of any enforcement actions will require the approval

~~of central office and program counsel. Both field and central office counsel will sign the final agreement.~~

4.3. Issue Review Panel **DEP Central Office Program to Approve Initiation and Final Execution of Reopeners**

~~An Issue Review Panel has been established to minimize program implementation and application inconsistencies. The panel is comprised of the Central Office Land Recycling Program Manager, a neutral regional ECP Manager, and a representative of the executive staff of the Department. The panel will meet as needed. To request panel review of an issue where the interpretation of the regional staff reviewer is inconsistent with the interpretation of the remediator, a description of the issue and department action must be provided to the central office program manager. A meeting of the panel will be scheduled if the manager is unable to resolve the interpretational disagreement. The documentation provided shall characterize the remediator's interpretation and shall cite the provision within the Act, regs or technical guidance manual that is the subject of the interpretational difference.~~

~~A meeting of the panel will be scheduled within two weeks of receipt of the written documentation of the issue. Every effort will be made to render a decision on the issue within the statutory review timeframes stipulated in Act 2. The person requesting the review may be present to address the panel, but attendance during the review session is not required. If the remediator chooses to be present, then regional staff associated with the project will also be requested to attend.~~

~~If the issue is raised late in the review period provided by Act 2, the remediator and the department may agree to an extension to accommodate the necessary review. The decision rendered by the panel is binding only on the department, not on the voluntary remediator. The panel will attempt to render a decision on the issue at the time of the meeting, or at least within a week after the meeting date. Additional time to review the issue may be mutually agreed to if objective technical review becomes necessary. The department's legal counsel for the program will provide advice on any matters involving legal interpretation or analysis. A reopener occurs when the department requires a remediator to undertake additional remediation actions after an Act 2 standard has been attained. liability has been granted. This only happens when the ~~d~~Department demonstrates that anyone of the reopener conditions in Section 505 of Act 2 are present at a site. The initiation and execution of a reopener will require consultation and concurrence between central office and the regional office program managers and counsel.~~

5.4. Focused Outreach to Consultants **DEP Central Office Program to be Consulted on Non-Routine Waivers**

~~The program will provide greater focus for outreach to consultants who have demonstrated problems in submitting reports consistent with program rules and guidance. Such outreach may be counseling, initiation of scheduled training sessions or possibly individualized training. Having our rules and guidance~~

~~understood and used in a consistent manner will help our users and save time and money. The Department may waive various certain requirements based on site specific circumstances. An example would be the Department waiving the need for an environmental covenant requiring a groundwater use restriction on a downgradient property if that downgradient property is a railway, highway, or stream. More common waiver requests are handled directly by the regional office. Unusual or complex waiver requests under Section 902 of Act 2, 25 Pa. Code § 250.406, or 25 Pa. Code § 253.4 require the regional office Environmental Cleanup and Brownfields Program staff to consult with central office prior to issuance or denial of the waiver decision request.~~

~~6.5. Brownfield Action Teams Issue Resolution~~

~~The Land Recycling Program will offer optional technical assistance on site characterization and cleanup plan development through the establishment of brownfield action teams. These teams will be put together on an as-needed basis and will include a mix of field office and central office staff. Their goal will be to provide consistent and time-critical decisions and advice on projects where such help is warranted. If you would like your site to be considered for such a team, contact Tom Fidler, Chief of the Land Recycling and Cleanup Program (tfidler@state.pa.us) When a remediator disagrees with the decisions of the regional case manager, the proper procedure for resolving the issue is to go through regional office staff hierarchy first. The issue should be brought to the attention of the regional Land Recycling Program Group Manager. If the issue cannot be resolved at that level, the issue may be taken to the regional Environmental Cleanup and Brownfields Program Manager. If an agreement still cannot be reached, the Environmental Cleanup and Brownfields Program Manager remediator can then bring the issue to the attention of central office program manager for resolution. By following this orderly progression it will be possible to get issues resolved in the most timely timeliest manner possible.~~

~~7.6. FAQ Posted on Website~~

~~The Land Recycling Program website will include Frequently Asked Questions and a process whereby persons can submit questions via the web. This mechanism will provide guidance and interpretation of the regulations and help fill the gap by providing answers to questions that may not be directly addressed in guidance and regulation. The Department realizes that the Land Recycling Program is not static and that from time to time the answers to technical issues that arise will be of general interest to the regulated community. The program will continue to periodically post such Frequently Asked Questions and their answers to the Land Recycling Program website to provide this information to as wide an audience as possible.~~

D. Resources and Assistance

1. Program Contacts

~~Information on contacts within the Department of Environmental Protection and the Department of Community and Economic Development is listed in Section V.I. This attachment provides a good source of general information and is a good starting point for finding specific information on any DEP program. In addition, Section V.I.3 provides a listing of contacts for the various enterprise zones that have been established across the Commonwealth by the Department of Community and Economic Development. Section V.I.4. identifies sources for obtaining technical publications cited in this manual. Information on contacts within the Department of Environmental Protection and is listed on the Land Recycling Program web-site under "How to Contact Us".~~

Also, various links in Section V of this manual also provide information on contacts that are particularly applicable to the technical area being discussed.

2. Financial Assistance

Act 2 established an account known as the Industrial Sites Cleanup Fund. The purpose of this fund is to provide financial assistance to persons assessing and remediating property used for industrial activity, and who did not cause or contribute to the contamination. Act 4, titled the Industrial Sites Environmental Assessment Act, was created concurrently with Act 2 and provides money for environmental assessments of industrial sites.

Act 2 provides financial assistance to municipalities, authorities, development agencies, and eligible members of the public for assessment and remediation of contaminated sites. Applicants may be eligible for a grant and/or loan from the fund up to 75% of the site characterization and remediation costs, subject to additional eligibility requirements established by Act 2 and the Department of Community and Economic Development. Act 4 provides grants to municipalities, local authorities, and economic development agencies for sites located in distressed communities, and specified classes of cities for environmental assessment of industrial sites. The maximum amount of any assessment project under Act 4 will be up to 75% of the total cost of assessment, or \$200,000, in a single fiscal year, whichever is less. To qualify, a party must not have caused or contributed to the contamination on the property and be performing a voluntary cleanup. For the purpose of administrating these funds, the requirements of the two acts were combined by the Department of Community and Economic Development (DCED) into the Industrial Sites Reuse Program (ISRP) and this program is administrated by DCED. Grant and loan eligibility requirements are specified in Chapter 7 of Act 2, in Act 4, and eligibility and application procedures are also specified in the Industrial Sites Reuse Program guidelines in Section V.E of this manual.