

Draft Proposed Amendment to Chapter 250
For Discussion Purposes only at the December 16, 2004 Meeting of the
Cleanup Standards Scientific Advisory Board

§ 250.1. Definitions.

In addition to the words and terms defined in the act, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Heterogeneity—Nonhomogeneous structure, composition and physical properties.

MCL—Maximum contaminant level.

* * * * *

§ 250.5. Public Notice by Applicant.

(a) Public notice under the background, Statewide health or site specific standard and under a special industrial area cleanup shall be initiated by the applicant through **the filing of a completed NIR on a form provided by the Department. The applicant may define the site of a voluntary remediation in the NIR by identifying one or more releases within or about a property and within each identified release may select the media or contaminants of concern.** For remediations proposing the use of a site-specific standard or, for remediations under an SIA agreement, the public and the municipality where the site is located shall be provided a 30-day period, in the NIR, in which the municipality may request to be involved in the development of the remediation and reuse plans for the site.

* * * * *

§ 250.7. Fees.

(a) **The following fees are established for reports submitted for review under the Act and this chapter:**

(1) With the exception of persons covered by subsection (a)(2), a person utilizing the background or Statewide health standard for environmental remediation shall pay a fee of \$2,500 upon submission of the report certifying compliance with the standards.

(2) A person utilizing the Statewide health standard for environmental remediation of a site shall pay a fee of \$250 upon submission of the report certifying compliance with the standards where the following conditions are met:

(i) The residential Statewide health standard for used aquifers is attained

(ii) Groundwater is not impacted above the residential Statewide health standard for used aquifers.

(iii) The soil area impacted above Statewide health standard is less than 10,000 square feet and within the property boundary.

(3) A person utilizing site-specific standards for environmental remediation shall pay a fee of \$2,500 each upon the submission of a remedial investigation, risk assessment and cleanup plan and an additional \$5,000 at the time of submission of the final report certifying compliance with the standards.

(4) A person utilizing a combination of background, Statewide and site-specific standards shall pay the fees required by paragraphs (1) and (2), as applicable.

Draft Proposed Amendment to Chapter 250
For Discussion Purposes only at the December 16, 2004 Meeting of the
Cleanup Standards Scientific Advisory Board

(5) A person requesting a determination by the Department under section 250.303 that an aquifer is not used or currently planned for future use shall pay a fee of \$250 upon submission of the determination request.

[NOTE: This paragraph is contingent on passage of the Uniform Environmental Covenants Act in Pennsylvania.] **(6) A person requesting Department approval of an environmental covenant created pursuant to the Uniform Environmental Covenant Act, 27 Pa.C.S. §§ 6501-6514, shall submit a fee of [\$] at the time of submission of the environmental covenant for approval.**

(b) The fees imposed under subsection (a) shall be increased every three years after January 1, 2009, by the percentage, if any, by which the Consumer Price Index for calendar year 2008 exceeds the Consumer Price Index for calendar year 2005. Subsequent fee increases shall be by the percentage, if any, by which the Consumer Price index for the previous calendar year exceeds the Consumer Price Index for the calendar year of the previous fee increase. For purposes of this subsection:

(1) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the 12-month period ending on June 30.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 2005 shall be used.

The Department will publish the revised fee table in the *Pennsylvania Bulletin* not less than 90 days prior to the effective date of the revision.

(c) Resubmission of a cleanup plan, remedial investigation, risk assessment or final report will require payment of the appropriate fee identified in the act for each resubmission.

~~**(b)**~~ **(d)** The Department will disapprove a plan or report that is submitted without the appropriate fee.

§ 250.8. Publication.

The Department will publish a notice of its final action on plans, ~~and reports, in the *Pennsylvania Bulletin*~~ **actions involving institutional or engineering controls, and actions involving nonuse aquifer designations** in the *Pennsylvania Bulletin* **and on the Department's web site. Sites remediated in accordance with the requirements of section 303(h)(4) of the act (35 P.S. § 6026.303(h)(4)) will be published on the Department's web site.**

§ 250.9. Interaction with other environmental statutes.

* * * * *

(d) Clean Streams Law.

(d) Clean Streams Law. Conducting remediation, as defined in 35 P.S. § 6026.103, is not an accident, activity or incident that triggers obligations under 25 Pa. Code § 91.33 unless a new release of regulated substances occurs while conducting remediation.

* * * * *

§ 250.11. Professional requirements for preparing reports.

(a) Reports submitted pursuant to this Chapter containing information or analysis that constitutes professional geologic or engineering work as defined by the Engineer, Land Surveyor and Geologist Registration Law (63 P.S. §§ 148—158.2) shall be sealed by a professional geologist or engineer who is in compliance with the requirements of that statute.

(b) In addition to the requirements of subsection (a), the Department shall establish minimum professional qualification requirements for persons preparing reports or conducting remediation activities pursuant to the act or this Chapter. Qualifications shall be specific for each report or activity required under this rule.

§ 250.12. Deed Acknowledgement Requirements.

(a) A remediator shall record an acknowledgement on the deed for the property of a site being remediated under this chapter or Chapter 245 to any of the following standards:

(1) a Statewide health standard for nonuse aquifers or nonresidential use;

(2) a Statewide health standard for residential use when groundwater concentrations within the POC exceed the Statewide health standard for used aquifers with total dissolved solids less than 2500 mg/L;

(3) a site specific standard; or,

(4) a special industrial area.

(b) The deed acknowledgement shall:

(1) Identify the area of the release or site on a property map for which the liability protection of Act 2 applies for regulated substances above the residential Statewide health standard for used aquifers with total dissolved solids less than 2500 mg/l.

(2) Identify the regulated substances remaining onsite at levels above the residential Statewide health standard as documented in the final report.

(3) Include notice of the requirements of subsection (c).

(4) Be placed on the deed and copy of which be submitted to the Department within 90 days of the approval of the final report

(c) The seller of property impacted by a release remediated to a standard subject to a deed acknowledgement under subsection (a) shall provide the Department with a copy of the deed of transfer within 30 days of conveyance of the property by deed.

(d) At such time that a site having an existing deed acknowledgement under (a) subsequently has a final report approved for remediation to a residential Statewide health standard, that acknowledgement may be removed from the deed for the area, media and regulated substances included in the existing deed acknowledgement.

§ 250.204. Final report.

* * * * *

(g) If engineering controls are needed to attain or maintain a standard, if institutional controls are needed to maintain a standard, if the fate and transport analysis indicates that the remediation standard may be

Draft Proposed Amendment to Chapter 250
For Discussion Purposes only at the December 16, 2004 Meeting of the
Cleanup Standards Scientific Advisory Board

exceeded at the point of compliance in the future, or, if the remediation relies on natural attenuation, a postremediation care plan shall be documented in the final report. The plan shall include the following:

* * * * *

(7) Submission of periodic reports to the Department at intervals approved by the Department containing:

(i) information required by paragraphs (1)-(6) of this subsection, as applicable;

(ii) any changes in groundwater use within the site; and,

(iii) any change in ownership of the site.

(8) Any failure of the remedy, and changes to institutional or engineering controls shall be reported to the Department as soon as the remediator or owner of the site becomes aware of the failure.

(h) The requirements of subsection (g) may be discontinued at such time as the requirements of section 250.12(d) (relating to deed acknowledgment requirements) are met.

* * * * *

§ 250.304. MSCs for groundwater.

* * * * *

(c) The MSCs for regulated substances contained in groundwater in aquifers used or currently planned to be used for drinking water or for agricultural purposes is the MCL as established by the Department or EPA **as established at 25 Pa. Code § 109.202 (relating to state MCLs, MRDLs and treatment technique requirements) (U.S. EPA 1996. Drinking Water Regulations and Health Advisories and Health Advisory Levels (HAL) set forth at EPA Office of Water publication No. EPA 822-R-96-001 No. EPA 822-02-038.** For a regulated substance where no MCL has been established, the MSC is the lifetime ~~health advisory level (HAL)~~ **health advisory level (HAL)** for that compound. For a regulated substance where neither an MCL nor a lifetime HAL ~~is has been~~ established, the MSC is the lowest concentration calculated using the appropriate residential and nonresidential exposure assumptions and the equations in §§ 250.306 and 250.307 (relating to ingestion numeric values; and inhalation numeric values). **In addition to meeting the MSC at the point of compliance, drinking water use of groundwater impacted by a release shall be made suitable by at least meeting the primary MCLs at all points of use and those secondary MCLs at the points of use where the impacts from the release are directly associated with the measured secondary MCL parameter.**

* * * * *

§ 250.308. Soil to groundwater pathway numeric values.

(a) A person may use the soil-to-groundwater pathway numeric values listed in Appendix A, Tables **3B and 4B**, as developed using the methods contained in paragraph (1), (2) or (4), may use a concentration in soil at the site which does not produce a leachate in excess of the MSC for groundwater contained in Appendix A, Tables 1 and 2, when subjected to the Synthetic Precipitation Leaching Procedure (Method 1312 of SW-846, Test Methods for Evaluating Solid Waste, promulgated by the U. S. EPA), or may use the soil-to-groundwater pathway soil buffer criteria in subsection (b) or may use the soil-to-groundwater pathway equivalency demonstration in subsection (d).

* * * * *

Draft Proposed Amendment to Chapter 250
For Discussion Purposes only at the December 16, 2004 Meeting of the
Cleanup Standards Scientific Advisory Board

§ 250.312. Final report.

(a) For sites remediated under the Statewide health standard, the person conducting the remediation shall submit a final report to the Department which documents attainment of the selected standard. This final report shall include site characterization information identified in 250.204(b)-(e) (relating to final report), **which identifies by sampling and/or fate and transport analysis areas where the concentrations of regulated substances are above the selected Statewide health standard within each media of concern.**

* * * * *

§ 250.407. Point of Compliance.

* * * * *

~~(c) For attainment of soil to groundwater standards in both residential and non-residential areas, the point of compliance is throughout the soil column.~~

~~(f)~~ (e) For the emission of regulated substances to outdoor air, the point of compliance for the air quality standard shall be as specified in the air quality regulations. See Article III (relating to air resources).

* * * * *

§ 250.410. Cleanup plan.

* * * * *

(e) Institutional controls and engineering controls may be used at the option of a remediator to eliminate a current or probable future pathway of exposure. Exposure pathways may include contaminated soil with no cap or contaminated groundwater for which drinking water use is possible. The cleanup plan shall include a detail description of any institutional or engineering controls to be used to eliminate current or future pathways of exposure, as well as the plan for maintenance of those controls.

* * * * *

§ 250.704. General attainment requirements for groundwater.

* * * * *

(d) For statistical methods under 250.707(b)(2)(i) (relating to statistical tests), the demonstration of attainment for groundwater shall be based upon at least 8 consecutive quarters of groundwater data **including characterization data, as appropriate under the requirements of this subsection. The Department may accept characterization data as demonstration of attainment, in whole or in part, if such data indicate that the concentrations of regulated substances in groundwater do not exceed the selected standard and are not likely to exceed the selected standard in the future.** As an alternative, the Department may accept four consecutive quarterly sampling events or less with written approval from the Department under the following conditions:

* * * * *