

Draft Proposed Amendment to Chapter 250
For Discussion Purposes only at the September 24, 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:

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Heterogeneity—Nonhomogeneous structure, composition and physical properties.

Environmental professional—A person holding a current and valid license to practice professional geologic or engineering work as defined by the Engineer, Land Surveyor and Geologist Registration Law (63 P.S. §§ 148—158.2) or having qualification as provided by environmental professional organizations or otherwise determined as appropriate experience by the DEP.

MCL—Maximum contaminant level.

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§ 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.

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§ 250.7. Fees.

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

(1) A person utilizing the background or Statewide health standards for environmental remediation shall pay a fee of [\$] upon submission of the report certifying compliance with the standards.

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

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

(4) 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 [\$] upon submission of the report requesting that determination.

[NOTE: This paragraph is contingent on passage of the Uniform Environmental Covenants Act in Pennsylvania.] **(5) A person requesting Department approval of an environmental covenant created pursuant to the Uniform Environmental Covenant Act, 27 Pa.C.S. §§ 6501-6514,**

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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 in each year after [Editor's Note: The blank refers to the effective date of this rulemaking.], by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. For purposes of this subsection:

(1) The Consumer Price Index for a 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 August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(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.

(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.

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(d) Clean Streams Law.

[PLEASE NOTE: the following is a narrative description of an issue the Department is reviewing and NOT draft proposed rulemaking language.]

Following up on Administrative Action Item (4) in the Secretary's "Enhancements Report" from February 2004, the Department intends to address the issue of the interface between the Clean Streams Law and the Land Recycling Act. Of primary interest in this effort is the reporting of incidents or activities causing or threatening to cause pollution to the waters of the Commonwealth in the context of a Land Recycling Act remediation. One approach being discussed is to add clarifying language to 25 Pa. Code § 250.9. Although the Department has not reached a conclusion as to appropriate language that addresses all interested parties' concerns, we did want to include a "placeholder" in this draft proposed rulemaking package to highlight that the Department is considering this issue. Of course, any draft proposed rulemaking language amending Chapter 250 to address this issue will be shared with the CSSAB before formal consideration of the proposed rulemaking by the Environmental Quality Board.

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§ 250.11. Professional requirements for preparing reports.

The Department shall establish minimum professional qualification requirements for persons preparing reports required by Act 2 or Chapter 250. Such qualification shall be specific for each report 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 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. This acknowledgement shall also identify the regulated substances remaining onsite at levels above the residential Statewide health standard as documented in the final report.

(c) Upon conveyance of the property by deed to another, the remediator and subsequent owners of the property impacted by a release remediated to a standard subject to a deed acknowledgement under this section shall provide the Department with a copy of the deed of transfer within 30 days.

(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.

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(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 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:

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(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.

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

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§ 250.304. MSCs for groundwater.

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(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-96-004 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** for that compound. For a regulated substance where neither a 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 and secondary MCLs at all points of use.**

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§ 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).

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§ 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.**

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§ 250.407. Point of Compliance.

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~~(e) 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).

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§ 250.410. Cleanup plan.

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(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 institutional and engineering controls selected by the remediator in a cleanup plan will be reviewed by the Department to assure the implementation and maintenance of the selected controls. If the institutional or engineering controls require post remediation monitoring, the remediator will provide such assurance in the final report as required by § 250.411(d).

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§ 250.704. General attainment requirements for groundwater.

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(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 if such data indicate that the concentrations of regulated substances in groundwater do not exceed the selected standard.** As an alternative, the Department may accept four consecutive quarterly sampling events or less with written approval from the Department under the following conditions:

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