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SECTION III. RELATIONSHIP TO OTHER ENVIRONMENTAL STATUTES

Remediation under Act 2 sometimes involves relationships to other environmental statutes (*e.g.*, closure of waste management facilities, groundwater pump and treat systems which discharge to a surface water and require an NPDES permit). Although other Department programs (*e.g.*, Water Quality Management) will be involved in requests and approvals, the regional Environmental Cleanup Program Manager will coordinate these activities. All paperwork should be sent to the regional Environmental Cleanup Program Manager.

A. Solid Waste Facilities

This section provides a general overview of the interface between Act 2 and Act 97 (the Solid Waste Management Act of 1980). This discussion is meant to provide a broad overview and a general direction of the interrelationship between these statutes and programs and is not meant to be used as a substitute for specific regulations that apply to solid waste processing or disposal facilities. Solid waste management facilities, including those facilities that process and dispose of municipal, residual, or hazardous wastes, are primarily regulated under Act 97. The permitting, bonding and compliance requirements of Act 97 are implemented through policies and regulations adopted as follows: Chapters [260\(a\) through 270\(a\)](#) for hazardous waste, Chapters [271 through 285](#) for municipal waste, and Chapters [287 through 299](#) for residual waste.

1. Movement of Excavated Contaminated Media and Other Solids

Under [Section 287.101\(e\)](#) the Department will not require a permit for the onsite movement of residual waste encountered when performing a remediation within a site for use in the remedy (*e.g.*, grading of the site, placement back into exploratory holes) so long as the site attains the site-specific standard of Act 2. Excavated hazardous waste should be removed for proper disposal under the hazardous waste generator requirements of [Chapter 262\(a\)](#). Movement of any contaminated media or solids offsite is the generation of waste under [Section 250.3](#). Under these circumstances, the remediator is subject to the generator requirements of the Solid Waste Management Act.

2. Disposal Prior to September 7, 1980

Solid waste management facilities that were permitted under the Pennsylvania Solid Waste Management Act of 1968 (Act 241), or had an approved closure plan or consent order and agreement, that ceased disposal activities prior to September 7, 1980, are subject to the terms and conditions of their original permit relating to closure or of the approved closure plan or consent order and agreement. The permittee may request approval from the Department for a modification of the permit or closure plan to be consistent with Act 2 standards for remediation of any release of a regulated substance to soil or groundwater.

Solid waste management areas or facilities that were not permitted or did not have an approved closure plan that ceased disposal prior to September 7, 1980, may be remediated under the provisions of Act 2 by either removing the non-media solids and using any combination of Act 2 standards or closing in place. Closing in place may be accomplished by covering the non-media solids with a suitable cover and using pathway elimination under the site-specific standard for the non-media solids and any combination of Act 2 standards for soils and groundwater outside the perimeter of the cover under [Section 250.9\(a\)](#). Liability protection afforded under [Section 501](#) of Act 2 would be provided upon approval of the final report by the Department. The covering, grading, revegetation, and related closure activities for waste left in place are to be consistent with best management practices to prevent pollution, odors, and other public nuisances.

3. Disposal after September 7, 1980, for Residual Waste and Construction /Demolition Waste, and between September 7, 1980 and October 9, 1993 for Municipal Waste.

Municipal and residual waste disposal activities that occurred after September 7, 1980 are subject to Act 97, the terms and conditions of permits issued pursuant to Act 97 and to the municipal and residual waste regulations including an approved closure plan. Permitted facilities that are closed (prior to October 9, 1993 for municipal waste facilities) may use any one or a combination of the remediation standards for releases into soils or groundwater under Sections [271.113\(g\)](#), [271.342\(b\)\(4\)](#) or [287.342\(c\)](#). In addition, the permitted facility may elect to proceed under Act 2 and upon approval of the final report obtain the liability protection afforded by [Section 501](#) of Act 2 for the release. The cause of the release or spill must be addressed in accordance with the terms and conditions of the closure plan or permit. Any relief of liability afforded under act 2 relates only to the regulated substances identified and in no way is to supercede the terms and conditions of the closure plan or permit.

An unauthorized municipal waste landfill that ceased disposal prior to October 9, 1993 or an authorized construction/demolition waste landfill, residual waste landfill or an unauthorized disposal impoundment that ceased after September 7, 1980, where the Department has not required removal of the solid waste on the ground and use of Act 2 to remaining contaminated media , must be remediated in accordance with the following¹:

- removal of the non-media solids and use of any one or a combination of Act 2 standards for the remaining contaminated media, or
- closing in place by applying the applicable closure standards of the regulated facility encountered specified in Chapters [271](#), [273](#), [287](#), [288](#) and [289](#) as

¹ In each of these situations it is assumed that the Department would exercise its enforcement discretion. If the Department determines that the responsible party/property owner conducted the intentional culpable long-term practice of placing waste into the environment Act 97 would apply.

required by [Section 250.9\(b\)](#) of the Act 2 regulations (unless applicable operational standards are specifically waived by the Department under the requirements of such waivers set forth at [Sections 271.113\(d\)](#), [287.117\(b\)](#) and [Section 902\(b\)](#) of Act 2) and pathway elimination under the site-specific standard for the non-media solids on the ground and any one or a combination of Act 2 standards for soils and groundwater outside the perimeter of the closure area.

In addition, the unauthorized facility can elect to proceed under Act 2 and upon approval of the find report obtain the liability protection afforded by Section 501 of Act 2 for the release.

At properties where solid or liquid municipal or residual wastes such as metal, brick, block or debris were disposed, without permit, and became mixed with soil thereby becoming a part of the environmental media, the Act 2 program would govern remediation. The remediator would choose the best applicable management practices to include covering, grading, revegetation, and related activities to prevent pollution, odors and other nuisances that would apply to the remediation of mixed media. Liability relief afforded by Act 2 would only apply to the area characterized and to the contaminants identified in the Act 2 final report. If the soil/waste mixture is moved offsite, the material must be managed as waste pursuant to [Section 250.3](#) of the Act 2 regulations and the definition of waste in the residual waste regulations.

4. Disposal of Hazardous Waste after September 7, 1980 or Municipal Waste after October 9, 1993 Subject to Federal Closure Requirements

To ensure primacy and program authorizations under RCRA at properties where disposal of hazardous waste occurred after September 7, 1980 or municipal waste disposal occurred after October 9, 1993, regardless of whether a permit or approval was obtained, the remediation and closure of such federally regulated waste management units are governed by the appropriate Act 97 regulations. Waivers of operational standards under [Section 902\(b\)](#) of Act 2 are generally not applicable unless approved by EPA. The Department will consult with EPA to ensure that federal closure requirements are properly applied.

Hazardous Waste sites that have RCRA Subtitle C corrective action obligations may satisfy federal requirements by also participating in the voluntary cleanup process provided by Act 2. For RCRA facilities with “low” or “medium” priority corrective action obligations, Act 2 standards may be applied as described below to satisfy both state and federal requirements concurrently. For “high” priority RCRA corrective action facilities, application of Act 2 standards as described below may also be used, but with greater interaction with EPA.

a) Hazardous waste

If hazardous waste was disposed before September 7, 1980 and continued after September 7, 1980 but before September 26, 1982 [see [40 CFR 270.1\(c\)](#) incorporated by reference in [Section 270a.1](#)] without interim status and the Department has not required removal of the hazardous waste and use of Act 2 to

remaining contaminated media, the remediator must close the “existing” facility under closure standards provided in [Chapter 265a](#) of the hazardous waste regulations for the facility unit encountered and upon approval of the final report by the Department obtain the liability protection afforded by [Section 501\(a\)](#) of Act 2.

As examples, typical units encountered are surface impoundments and waste piles. Closure requirements set forth in [40 CFR 265.228](#) (surface impoundment closure) and [40 CFR 265.258](#) (waste pile closure), incorporated by reference in Chapter 265a, require removal of the solids and contaminated subsoils. To attain clean closure, the remediator should remove solids and contaminated soils that are above the level of the listing; *i.e.*, characteristically hazardous solids and soils, and solids and soils contaminated by KPUF waste disposal above the residential Statewide health standard for used aquifers. Any soil or groundwater contamination remaining after clean closure must be remediated using any one or a combination of Act 2 standards. If clean closure is not attained, the remediator must close the hazardous waste regulated unit in place using the closure standards for landfills set forth in [40 CFR 265.310](#) and use the site-specific standard for the in-place closed area. Any release into groundwater or soil outside the approved in-place closure area is subject to any one or a combination of Act 2 standards (except the Statewide health nonuse aquifer standard, which has not been approved by EPA but which may be derived through use of the site-specific standard).

Hazardous waste facilities created after September 7, 1980 and hazardous waste facilities existing on September 7, 1980 which continued to receive waste after September 26, 1982 are subject to the closure, post-closure and corrective action requirements of [40 CFR Part 264](#), as incorporated by reference in Chapter 264a. As examples, a surface impoundment in this category is subject to the closure requirements of [40 CFR 264.228](#) and a waste pile in this category is subject to the closure requirements of [40 CFR 264.258](#). If clean closure is not attained, the remediator must close the regulated hazardous waste unit in place, using the closure standards for landfills set forth in [40 CFR 264.310](#) and use the site-specific pathway elimination standard for the in-place closed area. Any release into groundwater or soils outside the approved in-place closure area is subject to one or a combination of Act 2 standards (except the Statewide health nonuse aquifer standard as explained above) at a point of compliance for groundwater set forth in [40 CFR 264.95](#).

b) Municipal waste

If a permitted municipal waste landfill received waste between October 9, 1993 and December 23, 2000, a release from the landfill of a regulated substance must be remediated in accordance with a closure plan approved prior to December 23, 2000 or remediation standards in the municipal waste regulations that are similar to the federal requirements under Subtitle D of RCRA.

A release of a regulated substance from a municipal waste landfill permitted on or after December 23, 2000 must be remediated in accordance with the

remediation standards in the municipal waste regulations that are similar to the Subtitle D requirements in Section [271.342\(b\)\(2\)](#).

At properties where the unauthorized disposal of municipal waste occurred after October 9, 1993, remediation shall consist of removal of the non-media solids and the use of any one or a combination of Act 2 standards for the remaining contaminated media.

Where the Department determines that the removal of the waste, which was not authorized disposal, is impracticable or will cause unacceptable impacts to public health or the environment, the remediation shall consist of closing the facility in place by applying the applicable closure standards of the regulated facility encountered specified in Chapters [271](#) and [273](#), as required by [Section 250.9\(b\)](#) of the Act 2 regulations and by using pathway elimination under the site-specific standard for the non-media solids on the ground, and any one or a combination of Act 2 standards for soils and groundwater outside the perimeter of the closure area that is consistent with the applicable requirements for groundwater remediation standards and point of compliance set forth in [Section 271.342\(b\)](#).

B. Clean Streams Law Interface

1. Point Source Discharges

Surface water discharges associated with contaminated sites are classified as point and nonpoint sources. A point source is a distinct discharge of sewage or industrial waste into a surface water such as a leachate discharge from a disposal unit. Such point source discharges are required to be permitted as NPDES point source discharges. In other situations, runoff from a contaminated site discharges through a storm sewer. Such a discharge would also be classified as a point source of wastewater subject to NPDES requirements.

2. Nonpoint Source Discharges

Act 2 requires that any site selecting the statewide health or site-specific standard must also demonstrate compliance with surface water quality criteria when a nonpoint source discharge such as contaminated groundwater discharges into surface water.

The Department has developed a contaminant dependent hierarchical process described in [Section IV.A.3](#) of this manual for demonstrating attainment of surface water quality criteria.

3. Erosion and Sedimentation Control

In addition to evaluating the impact of discharges into surface water, the remediator must carefully evaluate remedial activities to minimize erosion and sedimentation in conformance with the requirements of [Chapter 102](#). In-place closures of unregulated and unauthorized disposal units will satisfy these requirements through the development, implementation, and maintenance of erosion and sediment control best management practices.

C. Clean Air Act and Air Pollution Control Act Interface

One area of interface is the case of applying remediation technologies (*e.g.*, air strippers or incineration units) which result in air emissions. In such a situation, a remediator may be required to obtain a general air quality plan approval and operating permit under [Chapter 127, Subchapter H](#).

In cases of interface other than remediation technology emissions, care should be taken to conduct the remediation such that odor nuisances will be addressed.

Asbestos is regulated as a hazardous air pollutant under Section 112 of the Clean Air Act. Guidance for the management of asbestos is available from EPA's web page at www.epa.gov/ebtpages/airairpoasbestos.html.

D. Regulated Storage Tank Release Sites

Storage tank cleanups conducted pursuant to the Storage Tank and Spill Prevention Act (Act 32 of 1989, as amended) which meet one or more of the standards under Act 2 are Act 2 cleanups. [Section 904\(c\)](#) of Act 2 preserved the corrective action process for the remediation of releases from storage tanks regulated by Act 32. Regulated storage tanks include a wide range of underground and aboveground tanks containing petroleum products and hazardous substances. Notable exceptions to the regulated tank community are tanks containing heating oil for consumptive use on the premises where stored, and hazardous waste tanks.

The corrective action process applies to releases from regulated tanks for which remediation (anything beyond notification) was initiated on or after August 5, 1989, the effective date of Act 32. Persons who take corrective action under Act 32, and can demonstrate attainment of one or more of the standards under Act 2, will be afforded liability protection. The three cleanup standards available are background, Statewide health and site-specific. Where Act 32 applies, persons cleaning up these releases are not subject to the notice, fee and approval provisions contained in Act 2. However, as discussed in [Section IV.E.2](#), Department review times and deemed approval provisions have been established for reports and plans submitted under the corrective action process.

Those persons who initiated cleanup prior to their tanks becoming deregulated by Act 16 of 1995 should continue to implement the corrective action process, along with use of the Act 2 remediation standards, to receive liability protection. This would include releases from commercial heating oil tanks provided the remediation was initiated before August 25, 1995. On this date, commercial heating oil tanks became deregulated.

Where a tank is not governed by Act 32, adherence to the Act 2 process and cleanup standards will be required in order to receive liability protection. This would apply to releases from storage tanks for which remediation was initiated prior to August 5, 1989, and releases from unregulated storage tanks, including tanks formerly regulated as commercial heating oil tanks. Persons cleaning up releases from deregulated commercial heating oil tanks where the remediation was initiated on or after August 25, 1995, would have to adhere to the Act 2 process to receive liability protection.

Where a person is responding to releases from tanks governed by Act 32 as well as releases from other tanks (which are then governed by Act 2), the person doing the remediation may elect to address the tanks together, or to address them separately on a dual track of the Act 2 and Act 32 processes. If the person elects to address the tanks together, he or she may submit combined reports and notices that satisfy the requirements of each statute, as they apply to the particular tanks.

For example, a person may submit a combined site characterization/remedial investigation report that contains the information required under the corrective action process and under the Act 2 process, and it will serve a dual function

under both Act 32 and Act 2. It should be submitted on a time frame that meets both statutes; thus, if there is no specific time required to submit the remedial investigation report under Act 2, but a site characterization report under Act 32 is required within 180 days of reporting the release, the site characterization/remedial investigation report should be submitted within 180 days. Compliance with Act 2 notice and public participation requirements will be necessary for liability protection for tanks governed by Act 2.

E. HSCA/CERCLA Remediation

1. Hazardous Sites Cleanup Act (HSCA) Sites

HSCA is the state Hazardous Sites Cleanup Act (P.L. No. 108 of 1988; 35 P.S. Sections 6020.101-6020.1305). HSCA is the state cleanup law that provides for the remediation of sites contaminated with hazardous substances. HSCA provides the Department with enforcement authorities to encourage parties who are responsible for the release of hazardous substances to conduct the necessary response actions. HSCA also provides the Department with the funding and the authority to conduct response actions when the responsible parties are unwilling or unable to conduct the appropriate response action. The responsible parties can then be held liable for those response costs.

HSCA sites are a limited set of sites that have been officially designated by the Department as meeting the criteria for response action under HSCA. Some HSCA sites are listed on the state priority list for remedial response pursuant to Section 502 of HSCA. These are the HSCA sites where the response is expected to cost more than \$2 million or take more than one year to conduct. Pursuant to [Section 904\(b\)](#) of Act 2, "any remediation on a site included on the state priority list established under ... [HSCA], shall be performed in compliance with the administrative record and other procedural and public review requirements of ... [HSCA]." For these listed sites, a party interested in conducting a remedial response can submit a proposal to the Department and work with the Department to reach a settlement. A proposal to conduct a remedial response should be in the form of a letter to the Environmental Cleanup Program Regional Manager, not an NIR. Responsible parties under HSCA are encouraged to propose an Act 2 remedy they would like to perform on the HSCA site. The proposal will be evaluated and published in accord with HSCA. The Department is responsible for choosing a remedy that satisfies Act 2, and that considers public comments and the Department's analysis of the alternatives, pursuant to Section 506(e) of HSCA. It is possible that the Department will select an Act 2 remedy other than that proposed by a responsible party based upon these considerations. Persons who wish to conduct the remediation may follow the settlement procedures established under HSCA. The settlement process would follow the procedures established under HSCA. This would result in a binding settlement agreement which would be subject to the public notice and comment provisions of HSCA.

Most HSCA sites are not listed on the state priority list for remedial response. These are sites where a HSCA site study or a HSCA interim response is planned. For these HSCA sites where the Department has not yet taken an interim response action or committed to a remedy for the site, a party interested in conducting a voluntary response can submit a NIR and proceed using the normal Act 2 procedures. The Department would monitor the progress of the voluntary response action. If the Department determined that the pace and the scope of the voluntary response was acceptable then no further action pursuant to HSCA would be required. If the Department determined that the pace or the

scope of the voluntary response was not acceptable then the Department could proceed with further action pursuant to HSCA.

2. CERCLA Sites

CERCLA is the federal Superfund law. Under CERCLA the U.S. Environmental Protection Agency (EPA) can place sites on the National Priority List (NPL) "Superfund List" for remedial response. For sites listed on the NPL, EPA requires that all remedial response actions be conducted pursuant to the procedural requirements of CERCLA. As a state law, Act 2 does not waive or supersede the procedural requirements of the federal law, and therefore the Act 2 liability relief cannot automatically confer release from CERCLA liability. However, the Act 2 remediation standards are considered applicable standards for remediations conducted at CERCLA sites. EPA also has authority under CERCLA to conduct removal response actions or take enforcement actions at sites that are not listed on the NPL.