

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 250)
(Administration of the Land Recycling Program)

Preamble

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 250 (relating to administration of the land recycling program). This rulemaking is proposed under 25 Pa. Code § 250.11 (relating to the periodic review of MSCs), which requires that the Department of Environmental Protection (Department) review new scientific information that relates to the basis of the Statewide health standard medium-specific concentrations (MSCs) at least 36 months after the effective date of the most recently promulgated MSCs and to propose to the Board any changes to the MSCs as necessary. In addition to updating the existing MSCs, the proposed rulemaking would add MSCs for three new contaminants, namely Perfluorooctanoic Acid (PFOA), Perfluorooctane Sulfonate (PFOS), and Perfluorobutane Sulfonate (PFBS). These contaminants are within the Per- and Poly-fluoroalkyl Acid (PFAS) family of compounds for which EPA has published toxicological data. This proposed rulemaking would also clarify several other regulatory requirements.

This proposal was adopted by the Board at its meeting on _____.

A. Effective Date

These amendments would go into effect upon publication in the *Pennsylvania Bulletin* as a final rulemaking.

B. Contact Persons

For further information contact Lee McDonnell, Program Manager, Land Recycling Program, P.O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 783-3006, or Robert Schena, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8072. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department's website at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

This proposed rulemaking is authorized under sections 104(a) and 303(a) of the Land Recycling and Environmental Remediation Standards Act (Act 2), (35 P.S. §§ 6026.104(a) -6026.303(a)), which direct the Board to adopt and amend periodically by regulation Statewide health standards for regulated substances for each environmental medium, including any health-based standards adopted by the Federal government by regulation or statute, and health advisory levels (HAL),

and which direct the Board to promulgate appropriate mathematically valid statistical tests to define compliance with Act 2, and other regulations as necessary to implement the provisions of Act 2; and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.

D. Background and Purpose

Section 250.11 of the Department regulations requires that the Department review new scientific information that is used to calculate MSCs under the Statewide health standard and propose appropriate changes at least every 36 months following the effective date of the most recently promulgated MSCs. See 25 Pa. Code § 250.11. The Board most recently promulgated MSCs became effective upon publication in the *Pennsylvania Bulletin* on August 27, 2016. See 46 Pa.B. 5655. These proposed changes, based on new information, would protect public health and the environment and would provide the regulated community with clear information regarding the requirements of Act 2 and Chapter 250 related to the remediation of contaminated sites.

In addition to updating Chapter 250 MSCs, this proposed rulemaking would include changes that would add groundwater and soil MSCs for three compounds in the PFAS family – PFBS, PFOS, and PFOA. The proposed standards for these three chemicals are based on data in toxicological studies published by the United States Environmental Protection Agency (EPA). Under Act 2, the Department has directly incorporated EPA’s 2016 HALs regarding PFOS and PFOA as groundwater MSCs and has used the data developed by EPA for those HALs to calculate soil MSCs for both compounds. With respect to PFBS, the Department is proposing soil and groundwater standards based on a 2014 EPA Provision Peer-Reviewed Toxicity Value (PPRTV).

Finally, this proposed rulemaking would clarify a number of procedural issues related to the administrative requirements of Act 2. In particular, this proposed rulemaking would clarify requirements for remediators and municipalities regarding public participation and public involvement plans, update requirements for acceptable “practical quantity limits” related to the precision of laboratory testing, update requirements for professional seals from professional geologists or engineers, provide resources to calculate MSCs, and clarify the proper submission of various reports related to the Act 2 Site-Specific Standard.

This proposed rulemaking would impact any person addressing a release of a regulated substance at a property, whether voluntarily or as a result of an order by the Department. This proposed rulemaking would not impact any particular category of person with additional or new regulatory obligations. Under Act 2, a remediator may select the standard to which to remediate. To complete a remediation, the remediator must then comply with all relevant remediation and administrative standards.

As noted above, this rulemaking will not singularly affect one specific industry or person. This proposed rulemaking will impact the owners and operators of storage tank facilities that have had a release of a petroleum or hazardous substance. There are approximately 12,000 storage facilities in the Commonwealth. Some of these facilities are owned and/or operated by small businesses. Because of the broad potential reach of this regulation, it is not possible to identify

specifics on the types and numbers of small businesses that could potentially be affected by property contamination. In addition, Act 2 and Chapter 250 are unique from other statutes and regulations because they do not create permitting or corrective action obligations. Instead, Act 2 and Chapter 250 provide remediators with options to address contamination and any associated liability that arises under other statutes. For example, adding PFOS to the Chapter 250 Appendix does not create any liability or obligation related to PFOS. Instead, a person's liability arises under the Clean Stream Law while Act 2 and Chapter 250 provide that person the means to resolve their Clean Streams law liability and to address the contamination. In this way, Act 2 and Chapter 250 do not create new obligations that will impact a particular category of person like a new permitting obligation or corrective action regulation would.

The soil numeric values represent a proposed decrease for approximately 83% of the values and an increase for 17% of the values. For groundwater, the proposed changes reflect a decrease for approximately 92% of the values and an increase in approximately 8% of the values. Lowering the values may indicate a more stringent cleanup is required at a site and increasing the values may indicate a less stringent cleanup is required at a site. These proposed changes reflect updated information related to exposure limitations to these substances and recognize that a higher or lower standard is better representative of those substances' exposure thresholds.

The number of completed remediations vary each year. On average, remediators apply the Act 2 remediation standard to approximately 800 contaminated properties across the Commonwealth. Generally, any cost related to a given site remediation depends in large part on which regulated substances are being remediated and what the specific soil and groundwater conditions are at the site.

The Department worked with the Cleanup Standards Scientific Advisory Board (CSSAB) during the development of this proposed rulemaking. The CSSAB, which was established by Section 105 of Act (35 P.S. § 6026.105), consists of persons representing a cross-section of experience, including engineering, biology, hydrogeology, statistics, medicine, chemistry, toxicology and other related fields. The purpose of the CSSAB is to assist the Department and the Board in developing Statewide health standards, determining the appropriate statistically and scientifically valid procedures and risk factors to be used, and providing other technical advice as needed to implement Act 2. During CSSAB meetings on August 1, 2018, February 13, 2019, June 12, 2019, and October 29, 2019, CSSAB members were given the opportunity to review and provide feedback on draft regulatory amendments to Chapter 250. The Department worked with the CSSAB to resolve concerns and agreed to evaluate additional suggestions during the next review cycle for this rulemaking. Following these presentations and discussions, the CSSAB issued a letter related to the proposed regulatory amendments included in this rulemaking. Specifically, the CSSAB noted concern related to the MSCs for vanadium.

A listing of CSSAB members and minutes of CSSAB meetings are available on the Department's website at www.dep.pa.gov (select "Public Participation," then "Advisory Committees").

E. Summary of Regulatory Requirements

§ 250.1. Definitions

This proposed rulemaking would add a definition for the term “MDL—Method detection limit” because both “method detection limit” and “MDL” are used in Chapter 250 but are not defined. The proposed definition is consistent with EPA’s definition in (U.S. EPA Office of Water Publication EPA 821-R-16-006, 2016).

This proposed rulemaking would amend the definition of “volatile compound” to match the description in Section IV, Appendix IV-A.1 of the Department’s Land Recycling Program Technical Guidance Manual (TGM) and to match EPA’s definition in their *OSWER* (Office of Solid Waste and Emergency Response) *Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air* (OSWER Publication 9200.2-154, 2015). The current definition excludes naphthalene as well as several other semi-volatiles that are considered volatiles in the vapor intrusion section of the TGM. The Department’s TGM is available at <https://www.dep.pa.gov/Business/Land/LandRecycling/Standards-Guidance-Procedures/Guidance-Technical-Tools/Pages/Technical-Guidance-Manual.aspx>.

§ 250.4. Limits related to PQLs.

Proposed amendments to this section would update the references and procedures for determining the practical quantitation limit (PQL) and would remove confusing and outdated language. Improvements in laboratory instrument technology and the removal of PQLs and estimated quantitation limits (EQLs) from revised laboratory methods resulted in the need to update this section.

§ 250.6. Public participation.

The proposed amendments to § 250.6(c) would clarify that if a public involvement plan (PIP) has been initiated, the public has a right to be involved in the development and review of the remedial investigation report, risk assessment report, cleanup plan and final report consistent with Section 304(o) of Act 2 (35 P.S. § 6026.304(o)) (relating to Community involvement) and outlines the necessary measures to involve the public.

The proposed amendments to § 250.6(d) would help to ensure that the Department and the municipality requesting the PIP are notified of the submission of the PIP and receive copies of the PIP. These proposed amendments necessitate the removal of §§ 250.6(d)(1) and (2) because it no longer makes sense to include them in (d). These subsections were also removed because they are already discussed in Chapter 250 in the final report requirements section for the SSS (§ 250.411(e)) and remediation requirements section for SIA sites (§ 250.503(f)). Finally, these two subsections were removed because the current Chapter 250 regulations require that the public involvement plan be submitted with the remedial investigation report or baseline environmental report. The proposed change is necessary because DEP needs notice of PIPs *in advance* of receipt of those reports.

§ 250.10. *Measurement of regulated substances in media.*

The proposed amendments to § 250.10(d) would change the references from the Groundwater Monitoring Guidance Manual to reference to the most current version of Appendix A (relating to groundwater monitoring guidance) of the TGM or an alternative method that appropriately measures regulated substances in groundwater.

§ 250.12. *Professional seal.*

This proposed new section mirrors language from § 245.314 (relating to professional seals) of the storage tank regulations, requiring that reports submitted to the Department which include professional geologic or engineering work be sealed by a professional geologist or engineer.

§ 250.304. *MSCs for groundwater.*

Under subsection (c), the EPA publication number has been revised.

Under subsection (g), this proposed rulemaking would list additional sources of aqueous solubility information to support the new compounds proposed to be added to the MSC tables in this rulemaking. Thus, the following aqueous solubility sources are proposed be added to § 250.304(g):

19. ATSDR (Agency for Toxic Substances and Disease Registry). 2015. *Toxicological Profile for Perfluoroalkyls. Draft for Public Comment.* Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services, Atlanta, GA. Accessed May 2016. <http://www.atsdr.cdc.gov/ToxProfiles/tp200.pdf>.

20. Hekster, F.M., R.W. Laane, and P. de Voogt. 2003. *Environmental and toxicity effects of perfluoroalkylated substances. Reviews of Environmental Contamination and Toxicology* 179:99–121.

21. HSDB (Hazardous Substances Data Bank). 2012. U.S. National Library of Medicine, Bethesda, MD. Accessed May 2016. <http://toxnet.nlm.nih.gov/cgi-bin/sis/htmlgen?HSDB>.

22. Kauck, E.A., and A.R. Diesslin. 1951. *Some properties of perfluorocarboxylic acids. Industrial & Engineering Chemistry Research* 43(10):2332–2334.

23. SRC (Syracuse Research Corporation). 2016. PHYSPROP Database. Accessed May 2016. <http://www.srcinc.com/what-we-do/environmental/scientific-databases.html>.

24. OECD (Organisation for Economic Co-operation and Development). 2002. *Hazard Assessment of Perfluorooctane Sulfonate (PFOS) and its Salts.* ENV/JM/RD (2002) 17/FINAL. Report of the Environment Directorate, Joint Meeting of the Chemicals Committee and the

Working Party on Chemicals, Pesticides and Biotechnology, Co-operation on Existing Chemicals, Paris, November 21, 2002.

§ 250.305. MSCs for soil.

Under subsection (c), a minor correction to a cross-reference is proposed.

The proposed amendments to § 250.305(g) would alleviate confusion as to the need to evaluate the soil-to-groundwater pathway for compounds that have secondary maximum contaminant levels (SMCLs) and either a primary MCL or a HAL. These proposed changes would also allow for the determination of soil MSC values for substances with SMCLs but no toxicological information in Appendix A, Table 5B, of Chapter 250. This determination would be based on the physical capacity of the soil to contain a regulated substance as described in § 250.305(b). This proposed change, along with other proposed changes to subsection (g), would result in the ability of remediators to determine soil MSCs for chloride and sulfate that also incorporate impacts to ecological receptors as described in § 250.311(a) through (f) (relating to evaluation of ecological receptors).

§ 250.306. Ingestion numeric values.

Due to new information published by EPA in Exposure Factors Handbook 2011 Edition, EPA/600/R-090/052F, the residential groundwater ingestion rate would increase from 2 liters a day (L/day) to 2.4 L/day. This proposed amendment would result in additional changes to other exposure factors listed in the table and footnotes in § 250.306(d). Formatting errors in the table footnotes in this section would also be corrected. Some of the equations in the footnotes contain brackets that should not be confused with brackets used to delineate changes proposed in the rulemaking. Bolded text within bolded brackets represents text to be removed while unbolded brackets encompass existing text not proposed for removal.

Proposed amendments to § 250.306(e) would update the models used to calculate blood lead levels that are applied to the corresponding lead numeric value calculations. The new model references would also be updated in this subsection.

§ 250.307. Inhalation numeric values.

A proposed amendment to the equation in § 250.307(g)(1) would add a “x 24 hr/day” multiplier to the numerator. This component was inadvertently omitted from this equation in the previous rulemaking.

§ 250.308. Soil to groundwater pathway numeric values.

In section § 250.308(a)(2)(ii), the word “standard” would be replaced with “generic numeric value” to avoid the implication that the 1/10th value is always the soil MSC for saturated soil and to avoid the implication that the comparison process should be bypassed.

§ 250.311. Evaluation of ecological receptors.

Amendments to § 250.311(b) are proposed to directly reference the proposed changes to § 250.305(g) and to reference the physical capacity of the soil to contain a regulated substance as described in § 250.305(b).

§ 250.402. Human health and environmental protection goals.

Proposed amendments to § 250.402(d) would resolve confusion and ensure the correct application of 250.311(e) to protect ecological receptors under the site-specific standard.

A proposed amendment to § 250.402(d)(3) would correct and replace the reference to § 230.311(f) with § 250.311(f).

§ 250.404. Pathway identification and elimination.

Under subsection (a), proposing to add the words “Department or” to allow for the use of Department guidance in identifying exposure pathways.

§ 250.409. Risk assessment report.

Proposed amendments to § 250.409(1) would clarify that an approved remedial investigation report is needed in advance of submitting an approvable risk assessment report when the reports are submitted separately. This proposed amendment is part of a clarification regarding the appropriate sequence of reports submitted under Subchapter D (relating to the site-specific standard), including a proposed new section for “combined reports”, § 250.412, described below.

§ 250.410. Cleanup plan.

A new proposed § 250.410(d) would remove any ambiguity regarding the need for a cleanup plan in situations in which a remedy is already present. The current language in § 250.410(d) would be moved into a newly created section § 250.410(e).

§ 250.412. Combined reports.

This newly proposed section would explain that prior approval of a remedial investigation report is not necessary when combined with either a risk assessment report or a cleanup plan. This proposed section is necessary as a result of the changes made to § 250.410 concerning cleanup plans.

§ 250.503. Remediation requirements.

The proposed amendments to § 250.503(e) would clarify that a revised baseline environmental report, not just a new remediation plan, may need to be submitted when land use changes from non-residential to residential at a special industrial area (SIA) site.

§ 250.603. Exposure factors for site-specific standards.

The proposed amendment to § 250.603(a) would update the citation of the 1992 version of EPA's Final Guidelines for Exposure Assessment to EPA's 2011 Exposure Factors Handbook.

§ 250.605. Sources of toxicity information.

The proposed updates to § 250.605(a)(3) would add EPA's Office of Pesticide Programs Human Health Benchmarks for Pesticides and EPA's Provisional Peer-Reviewed Toxicity Value Appendix databases to the toxicity value source hierarchy.

§ 250.707. Statistical tests.

The term "Statewide health standard" would be changed to "MSC" in the proposed amendment to § 250.707(b)(1)(ii) for clarification.

A new clause (D) would be added to § 250.707(b)(1)(iii) clarifying when or whether a vapor intrusion analysis is necessary for sites with small petroleum releases where full site characterization is not performed.

Appendix A, Tables 1-7

Proposed amendments to the "Medium-Specific Concentrations" tables would update the MSCs for certain regulated substances. Updates to footnotes would be necessary to help explain some of the changes to the MSCs. Numeric values would be calculated for several new substances, including PFOS, PFOA and PFBS in groundwater and soil, and total polychlorinated biphenyls in soil. Ingestion-based numeric values would all decrease slightly due to the proposed increase in water ingestion rate under section § 250.306(d) from 2 L/day to 2.4 L/day. Other proposed numeric value changes would mostly be attributed to updates in toxicity values in Tables 5A and 5B. However, proposed corrections to the numeric value calculation process would also cause some numeric values to change.

The proposed update to the definition of a "volatile compound" would cause some of the values to change because the new definition would include the consideration of Henry's law constant and molecular weight. Additionally, some of the numeric values changes would be due to rounding adjustments. When the Department calculates the numeric MSC values for inclusion in Chapter 250, some values are rounded during one of the early calculation steps instead of at the end of the calculation. To be consistent, the rounding procedure would now be changed so that all rounding occurs at the final value calculation step. Elimination of the rounding of transfer factors would also cause changes to the numeric values. Transfer factors used for the calculation of inhalation numeric values from soil are calculated and listed in Table 5A. The transfer factors currently in Table 5A were rounded inconsistently. To be consistent with the other proposed rounding corrections, these values would no longer be rounded because they are calculated and used in the early stages of the numeric value calculation process.

In the proposed amendments, information would be updated on the “Threshold of Regulation Compounds” table (Table 6) by the removal of compounds that would have numeric values calculated on other tables.

Proposed amendments to the “Default Values for Calculating MSCs for Lead” table (Table 7) would update the input parameters for use in the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children for residential exposure. Proposed amendments for non-residential exposure would update the model input parameters for the Adult Lead Model (ALM). References for both models would also be updated. These proposed amendments would result in updates to the lead residential and nonresidential direct contact values provided in Table 4A.

F. *Benefits, Costs and Compliance*

Benefits

In enacting Act 2, the General Assembly found and declared among its policy goals that “[p]ublic health and environmental hazards cannot be eliminated without clear, predictable environmental remediation standards and a process for developing those standards,” that “[a]ny remediation standards adopted by this Commonwealth must provide for the protection of public health and the environment,” and that “[c]leanup plans should be based on actual risk that contamination on the site may pose to public health and the environment, taking into account its current and future use and the degree to which contamination can spread offsite and expose the public or the environment to risk.” See 35 P.S. 6026.102 (relating to declaration of policy).

To effectuate this, the General Assembly authorized the Board and the Department to develop standards and methods to effectuate those goals. 35 P.S. §§ 6026.104 and 6026.303. The Department’s regulatory structure, as authorized under Act 2 and as implemented by Chapter 250, provides those important benefits articulated in the General Assembly’s declaration of policy.

The amendments to the MSCs in this proposed rulemaking would serve both the public and the regulated community because they would provide MSCs based on the most up-to-date health and scientific information for substances that cause cancer or have other toxic effects on human health. The Board first published Chapter 250 regulations in 1997. 27 Pa.B. 4181. (August 16, 1997). The General Assembly recognized, in section 104(a) of Act 2 (35 P.S. 6026.104(a)), that these standards must be updated over time as better science becomes available and as the need for clarification or enhancement of the program becomes apparent.

Potential contamination of soil and groundwater from accidental spills and unlawful disposal can impact almost any resident of this Commonwealth. Many of the chemical substances addressed in this proposed rulemaking are systemic toxicants or carcinogens as defined under Act 2 and, in some cases, are widespread in use. Examples of substances that contain toxic or carcinogenic properties include gasoline and other petroleum products, solvents, elements used in the manufacture of metals and alloys, pesticides, and some dielectric fluids previously contained in transformers and capacitors. Releases of regulated substances not only pose a threat to the environment, but also could affect the health of the general public if inhaled or ingested. New

research on many of these substances is ongoing and provides the basis for protection of the residents of this Commonwealth through site cleanup requirements.

Although most of the changes to soil numeric values in this proposed rulemaking would decrease the numeric values, 17% of the values would increase. Increases in values reflect updated information related to exposure limitations to the substances and acknowledge that a higher standard is better representative of those substances' exposure threshold.

An additional benefit of this proposed rulemaking would be the promulgation of soil and groundwater MSCs for PFOS, PFOA and PFBS. Establishing these MSCs would allow remediators to address groundwater and soil contamination and thereby lessen public exposure to the contaminants. This will also benefit remediators wishing to remediate contaminated sites, who tend to be owners, operators or purchasers – or their contractors – of properties and facilities including, or at or near, military bases, municipalities and other locations that used or stored fire-fighting foam. EPA reports that contamination from these chemicals has also been associated with manufacturing textiles, food packaging, personal care products, and other materials such as cookware that are resistant to water, grease and stains. See Fact Sheet, EPA, PFOA & PFOS Drinking Water Health Advisories (November 2016) (available at https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf).

Finally, remediators would benefit from the proposed amendments that clarify many of the administrative elements of Act 2, making for a more efficient and streamlined Act 2 remediation process.

The benefits of this proposed rulemaking are difficult to quantify because, unlike other statutory or permitting schemes, Act 2 does not prevent contamination but instead provides remediators with a variety of options to addresses sites that have already been contaminated. In that sense, the proposed rulemaking, consistent with Act 2, benefits the public because it can lead to more efficient and more expedient remediation and reuse of contaminated areas.

Compliance Costs

Financially and economically, the Department believes that any potential impact to the regulated community would be insignificant. Under this proposal, the MSC values for many regulated substances are being amended for a variety of reasons. The two most common reasons for amendments are federal agency (including EPA and U.S. Department of Health Agency for Toxic Substances and Disease Registry) changes in toxicity values that are used in calculating MSC and a change in the EPA's underlying assumption of a person's average daily consumption of water from 2L/day to 2.4L/day. The soil numeric values represent a decrease for approximately 83% of the values and an increase for 17% of the values. For groundwater, the proposed changes reflect a decrease for approximately 92% of the values and an increase in approximately 8% of the values. Lowering the values may indicate a more stringent cleanup is required at a site and increasing the values may indicate a less stringent cleanup is required at a site. The number of completed remediations vary each year. On average, remediators apply the Act 2 remediation standard to approximately 800 contaminated properties across the

Commonwealth. The Department does not expect that the proposed amendments would impact the number of remediations voluntarily completed or the number that must be completed as a result of Department enforcement actions.

The proposed updates to Statewide health standard MSCs would not affect the cleanup options available to remediators under other cleanup standards. Persons conducting remediation under Act 2 may choose from three different cleanup standards: background, Statewide health or site-specific.

The Department does not expect that this proposed rulemaking, as it relates to new MSCs for PFOA, PFOS, and PFBS, would create any additional costs. Act 2 does not create liability for, or the obligation to, address contamination for these and other chemicals. Instead, that obligation comes from other environmental statutes, including the Clean Streams Law (35 P.S. §§ 691.1-691.1001) and the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003). Act 2 provides remediators with options to remediate contamination. Having these new MSCs would allow remediators to address PFOS, PFOA and PFBS groundwater and soil contamination. This would benefit the public by lessening public exposure to these contaminants.

Compliance Assistance Plan

The Land Recycling Program would disseminate information concerning these updates using the Department website and e-mails to environmental consultants involved in the program.

Paperwork Requirements

This proposed rulemaking would not result in any additional forms or reports, beyond those that are already required by Act 2 and Chapter 250.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

Act 2 encourages cleanup plans that have as a goal remedies which treat, destroy or remove regulated substances whenever technically and economically feasible. This proposed rulemaking would provide the necessary statewide health standard MSCs for remediators to remove contamination or eliminate exposure, where appropriate. In particular, this proposed rulemaking reflects the most up-to-date science, especially as it relates to the characterization and removal of contamination that exceeds Act 2 MSCs. During the remediation of a contaminated site,

potential sources of pollution are often removed to attain the Act 2 standards, thus eliminating or minimizing the potential for continued migration of the sources of pollution to other areas.

H. *Sunset Review*

The Board is not establishing a sunset date for this proposed regulation because it is needed for the Department to carry out its statutory authority.

I. *Regulatory Review*

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Interested persons are invited to submit written comments, suggestions, support or objections regarding this proposed rulemaking to the Board. Comments, suggestions, support or objections must be received by the Board by **DATE**.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within two working days, the comments should be retransmitted to the Board to ensure receipt.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. *Public Hearings*

The Board will hold 2 public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held at [redacted] p.m. on the following dates:

[redacted] (blank)

[redacted] (blank)

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs

Patrick McDonnell
Chairperson