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October 4, 2000

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477



Re: Board Regulation No. 7-356: Administration of Land Recycling Program

VIA ELECTRONIC MAIL

Good afternoon:

Pursuant to Part I of the notice appearing in the August 5, 2000 issue of the Pennsylvania Bulletin (Page 3946, et seq.), as amended by the notice appearing in the August 5, 2000 issue of the Pennsylvania Bulletin (Page 4356), the Energy Association of Pennsylvania (the "Energy Association") submits the following comments via electronic mail.

The Energy Association commends the Board for proposing to clarify its land recycling regulations and update them to reflect current scientific information. For example, the Energy Association strongly supports Proposed Section 25 Pa. Code § 250.707(b)(1)(iii), which establishes generic attainment standards for remediating small petroleum releases where full site characterization has not been done. By allowing parties to demonstrate attainment through post-excavation samples, Proposed Section 25 Pa. Code § 250.707(b)(1)(iii) will save time and money for small petroleum cleanups that can be handled with a small excavation. This approach, excellent in itself, should be expanded to include all small spills that can reasonably be cleaned up through minimal efforts. By expanding the criteria beyond petroleum release, many other small spills can be rapidly cleaned up under Act 2.

A number of other proposed revision merit specific mention and support. The Energy Association applauds the proposed inclusion of "agricultural purposes" as a defined term, and its application in clarifying what groundwater usage is to be protected. We also support the proposed removal of "from within the property" in 25 Pa. Code § 250.303(b). Last, we appreciate the proposed clarification to 25 Pa. Code § 250.311(c), which would specify that the only relevant constituents of potential ecological concern are those associated with release at the site being remediated.

Even as we raise the various specific issues set out below, the Energy Association underscores that it intends no criticism of the general thrust of the Board's thinking or initiative.

#### Specific Comments

1. *The period for municipalities and community water suppliers to respond to a request for nonuse aquifer designation (Proposed Section 250.5(e)), should be 30 days, the period currently allowed for public comments to a Notice of Intent to Remediate ("NIR").*

While current regulations allow 30 days for the public and municipalities to respond to an NIR (25 Pa. Code § 250.5(a)), Proposed Section 250.5(e) would establish a 45-day period for municipalities and community water suppliers to respond to a request for nonuse aquifer designation. These two periods should be identical—each being 30 days. Consistency across review periods will allow remediating parties to better coordinate their activities, and the purposes of Act 2 will be better served by expediting the progression of sites to closure.

2. *To harmonize the requirements applicable to precertification requests and nonuse determinations, Proposed Section 250.6(e) should be expanded to allow public involvement plans to be developed by the parties remediating a site.*

Under Proposed Section 250.303(f), municipal authorities and political subdivisions are the only parties that can ask the Department of Environmental Protection ("DEP") for a nonuse determination. Accordingly, only these public bodies would be required to develop a public involvement plan under Proposed Section 250.6(e).

These provisions, while consistent between themselves, fail to address what would appear to be the most likely scenario: a remediating party's desire to obtain a nonuse determination. The standards for Department approval of a remediating party's request are laid out in 25 Pa. Code § 250.303(b). Under the proposed amendments, the approval standards would include satisfaction of the Section 250.6, a set of requirements that can only be satisfied by a municipal authority or political subdivision.

The disconnect between Proposed Section 250.303(b), as amended, and Proposed Sections 250.303(f) and 250.6(e) can be remedied by expanding Section 250.6(e) to allow a public involvement plan to be developed by the party remediating a site. This change would establish a direct link between remediating parties and the standards the Department will apply to such parties' requests for nonuse determinations.

3. *The 3-year "sunset" clause proposed for Section 250.303(f) should be rejected as inconsistent with the language and purpose of Act 2.*

Current regulations state that a nonuse aquifer determination must meet the requirements specified in 25 Pa. Code § 250.303(c). Proposed Section 250.303(f) would allow the 303(c) requirements to be met through citation to an appropriate local ordinance. This change, which would be a welcome advance standing on its own, is substantially negated by the last two sentences of Proposed Section 250.303(f). Under these sentences, nonuse determinations that are made in reliance on local ordinances expire automatically after three years, and may be renewed only if the applicant successfully requests Department renewal.

The proposed sunset provision is flawed on several counts. Under the proposed provision, a renewal request could be made only by "the applicant." It may well be the case, however, that after three years the applicant is no longer on the scene, and the current party in interest, the land owner, would have no apparent standing to seek Department renewal.

More importantly, however, the 3-year sunset provision runs counter to the purposes of Act 2 itself. By imposing a three-year sunset provision, the regulations will, in effect, be halting the redevelopment of countless properties. Many of the brownfield sites that are remediated under Act 2 are cleaned up under state-wide health standards where a nonuse aquifer determination is suitable and justified. The non-use aquifer status is crucial for redeveloping properties in settings where the groundwater is not used, nor likely to be used in the future. A landowner will not be as likely to undertake these efforts if the underlying nonuse determination will be automatically revoked after 3 years. Act 2 already provides for a "re-opener" if the site conditions, exposure

routes or other key factors change, and these statutory provisions are sufficient to be protective of human health and the environment now and in the future. The proposed sunset provision is unneeded and counterproductive, and it should be rejected in its entirety.

4. *The proposed Medium Specific Concentration ("MSC") for PCBs is incorrect in its basis and level, and should be revised accordingly.*

As proposed, the total PCBs, residential & non-residential 100x groundwater (GW) MSC and Generic Value standards would be 0.05 and 0.0056 mg/kg, respectively. The basis for these levels is unclear. The 100x GW MSC should calculate to 0.1 mg/kg, since the proposed GW MSC is 0.001 ppm. Furthermore, the generic value for the aroclor specific standard ranges between 5 and 2000 times **higher** than the 100x GW MSC values. For this total PCB soil-to-groundwater standard, the generic value is proposed at 10 times lower than the proposed 100x GW MSC. Since the generic value is calculated using equilibrium partitioning method, the total PCB and aroclor specific generic values should be similar as compared to the 100x GW MSCs, but instead they are ten times lower. It also appears the proposed state standards are inconsistent with and stricter than the federal counterparts (see, 40 C.F.R. § 761.61).

This may affect PCB site cleanups since industries have been only focusing on aroclor specific standards under Act 2 cleanups if the DEP would attempt to address the potential ground water impacts from PCB releases. In current regulations, the aroclor specific soil-to-groundwater standards that industries are typically concerned with range from 16 to 75 mg/kg, which is less than the typical direct contact cleanup standard. If these lower Total PCB soil-to-groundwater standards are accepted, they could change how the DEP views PCB site cleanups. This change in view is because a statewide health cleanup must meet the lower of the direct contact or soil-to-groundwater cleanup standards. With this lower total PCB soil-to-groundwater standard, the DEP will require PCB (total araclors) remediations to meet a 0.05 mg/kg standard to achieve a statewide residential health cleanup standard. Otherwise, the site remediator will be required to seek a site-specific standard that could require deed notices on the property in order to obtain an Act 2 release of liability (since the residential health bases cleanup standard was not met), or require a significantly greater excavation to meet the proposed statewide health standards. This would greatly increase the costs for PCB remediations and could make it much more difficult to cleanup PCB sites on properties not owned by the remediator, *i.e.* right-of-ways.

The Energy Association appreciates this opportunity to comment, and urges the Board to consider the points detailed above as it continues its deliberations. Please let me know if you require any further information.

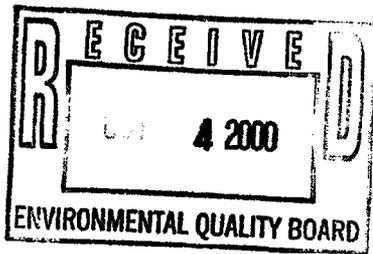
Respectfully submitted,

/s/

Dan Regan

Energy Association of Pa.  
800 North Third Street  
Harrisburg, PA 17102





**Lynn I. Ratzell**  
Manager – Environmental Management Division

**PPL Generation LLC**  
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October 4, 2000

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The Honorable James Seif  
Chairman  
Environmental Quality Board  
16<sup>th</sup> Floor Rachel Carson Building  
P.O. Box 8477  
Harrisburg, PA 17105-8477

VIA ELECTRONIC MAIL

**RE: Comments to Proposed Amendments to Act 2 Regulations  
As Adopted by the Board on June 20, 2000**

Dear Chairman Seif:

PPL is grateful for this opportunity to comment on the Department's proposed amendments to the regulations that implement the Land Recycling and Environmental Remediation Standards Act of 1995 ("Act 2"). The success of Pennsylvania's brownfield recycling program under Act 2 is important to PPL. Recycling and redevelopment of old industrial sites is important to the economic prosperity of businesses within PPL's service territories in Pennsylvania, which in turn significantly affects PPL's own economic prosperity.

In addition, PPL has been a leader within the state in utilizing the land recycling and environmental remediation standards by addressing over 100 sites under the Act 2 standards and under its multi-site agreements with DEP. PPL has sold over twenty of the sites for various redevelopment activities. Both PPL and the Department can take great pride in these accomplishments.

PPL is hopeful that it can continue to recycle brownfield sites under its agreements with the Department and Act 2. Several of the Department's proposed modifications are excellent and will serve to further improve the Act 2 program, provided the Department can rectify the problematic modifications noted below. Among the modifications that PPL strongly support, are: (1) the Department's clarification of the definition for "Agricultural purposes"; (2) the Department's proposal to clarify that only Constituents of Potential Ecological Concern associated with a release at a site will be considered in the ecological screen; (3) and the proposed simplified soil attainment determination procedures for small petroleum releases. PPL is deeply concerned, however, that if certain proposed modifications to the regulations are not changed, the Department's otherwise excellent efforts to recycle brownfield sites will be thwarted.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION  
REGULATORY COMMISSION

PPL's main concerns are as follows:

- The proposed 3-year re-certification of the non-use aquifer determination under Section 250.303(f) will pose a substantial disincentive to continue with Act 2 clean-ups and is unnecessary with the currently available "re-openers" provided for by Act 2 regulations. The 3-year re-certification is proposed as a requirement for the applicant to complete every three years. However, in many cases the applicant conducts the clean-up and then transfers the property for redevelopment with appropriate deed restrictions. Under the proposed modification to the regulations, the applicant will need to continue to be involved with the site forever. This is unworkable and unnecessary. Any change in site conditions, exposure routes, etc. is already sufficient to "re-open" a site. These current "re-openers", provided in the Act and the regulations, in combination with the deed restrictions imposed on the property, are sufficient to address any future change in groundwater use.
- The proposed new standards for ground water and soil for Total Polychlorinated Biphenyls contain typographical errors as explained in more detail in the attached comments. Those errors need to be corrected. In addition, the Department's proposal to establish MSCs for Total PCB in soil is unnecessary and confusing. The only way to determine the concentration of Total PCBs is to sum up the concentrations of individual aroclors. Often, this will result in a calculation of Total PCBs that exceeds the Total PCB standard even though each individual aroclor meets its MSC. This may lead to the inconsistent application of clean-up standards among the various regional offices and to confusion as to which standard or standards should be applied to a particular remediation project. Furthermore, this will not provide any more protection to human health or the environment than the aroclor specific standards already provide as those standards are based on the Department's risk calculations using the aroclor specific chemical and physical properties. PPL recommends that the MSC for Total PCBs in soil be deleted.
- Within these proposed regulations, DEP has corrected various typographical or calculation errors in the MSCs that were uncovered since the regulations were initially published in 1997. PPL favors these corrections. However, PPL has identified additional corrections that need to be made and we are sure that still other corrections will be identified in the future. PPL strongly encourages the Department to use the procedure it has used in other cases and make future corrections with a simple corrective amendment published in the Pennsylvania Bulletin. Until now DEP has required remediators to recalculate the correct standard in cases where there was an error in the MSC as stated in the regulations, and then to apply the corrected standard as a site-specific standard. This is unnecessarily cumbersome especially where the MSC is incorrectly stated simply due to a typographical error in publication or when performing the calculations.

PPL's detailed comments on the proposed rulemaking are attached.

PPL appreciates this opportunity to comment, and urges the Board to consider these points as it continues its deliberations on these proposed modifications. With the suggested changes to your proposed modifications, PPL believes that Pennsylvania will improve upon its nationally recognized land recycling program. We look forward to continuing our program to recycle our old sites in partnership with DEP.

Sincerely,

Lynn Ratzell  
Manager - Environmental Management.

CC:  
Craig Shamory

Attachment



**PPL**  
**COMMENTS REGARDING THE PROPOSED**  
**AMENDMENTS TO 25 PA CODE, CHAPTER 250**  
**Administration of PA Land Recycling Program**

250.1 Definitions

- PPL believes that the Department's clarification of the definition for "Agricultural purposes" is needed and fully agrees with it.

250.5 Public notice by applicant.

- PPL does not object to the additional requirements associated with the non-use aquifer determination and believes that the need to send a notice to the municipality and water supplier serving the affected area prior to seeking a non-use status will help to improve the process. However, PPL suggests that the proposed 45-day time frame for comments should be reduced to 30 days. This change would make the non-aquifer determination notice requirements consistent with those associated with the NIR for site-specific standards. PPL suggests that the comment and review periods should be as consistent as possible throughout the regulations. This consistency will aid in the timely progression towards remediation and closure of the sites.

250.303 Aquifer determination; current use and currently planned use of aquifer groundwater.

- (b) PPL agrees with the clarification provided regarding aquifer determinations and the insertion of the phrase "the site on the" when performing groundwater use calculations. This limitation will help further clarify the application of this section of the regulations to actual sites.
- (f) PPL understands that the current regulations state that any non-use aquifer determination that is made must meet the requirements as outlined in 250.303 subsection (c). Furthermore, PPL believes that the requirements of subsection (c) may be met through the use of local ordinances. The proposed changes state that a determination made under subsection (c), through the use of a local ordinance, would automatically expire after 3 years. Upon expiration, the applicant has to request a renewal of the determination from the DEP. PPL believes that the 3-year renewal period is unnecessary and counterproductive. The Act already provides for a "re-opener" if the conditions at the site change. In addition, the Act already requires deed notices for properties remediated under the non-use aquifer designation. This deed notice serves as the ongoing mechanism that restricts current and future property owners from undertaking any activities that would be inconsistent with the non-use aquifer designation. By mandating that the non-use aquifer determination is reapplied every three years, the Department will be effectively limiting the redevelopment of a countless number of properties. If the proposed language is finalized, landowners will

be reluctant to use the Act 2 process because of the conditions placed on the release, since it is automatically revoked after 3 years unless the renewal request is made by the applicant (who is often not the landowner), and granted by the DEP. The non-use aquifer status is crucial for redeveloping properties in settings where there are no current or potential uses for the groundwater. PPL believes that the regulations already protect against any potential changes in the groundwater usage at a site and that the current provisions are adequate for the protection of human health and the environment.

250.311 Evaluation of ecological receptors.

- PPL believes that the Department's clarification to 250.311 (c) and (d) that limits the applicability of Constituents of Potential Ecological Concern (CPEC) to the release at a particular site is warranted and will allow for more meaningful ecological evaluations.

250.707 Statistical tests.

- The Department is proposing new language to this section that will allow for simplified soil attainment determinations for small petroleum releases that can be easily cleaned up with a small excavation and where no prior site characterization is performed. This revision will allow for a cost-effective approach to securing an Act 2 release for small petroleum cleanups. It is PPL's opinion that this is an excellent idea and should be expanded to include all small spills that can reasonably be cleaned up. We see no logical reason to limit this cost-effective procedure to small releases of petroleum only. To allow for the expanded application of this process, PPL suggests that references to "petroleum" in §250.707(b)(1)(iii) be deleted and §250.707(b)(1)(iii)(B) be modified as follows:

**FOR SITES NOT COVERED BY CLAUSE (A) AND FOR THOSE SITES WHERE IMMEDIATE CLEANUP IS BEING PERFORMED AND THE FINAL REPORT DEMONSTRATING ATTAINMENT OF THE STATEWIDE OR BACKGROUND STANDARDS IS SUBMITTED WITHIN THE 90-DAYS OF THE SPILL, SAMPLES SHALL BE TAKEN FROM THE BOTTOM AND SIDEWALLS OF THE EXCAVATION IN A BIASED FASHION THAT CONCENTRATES ON AREAS WHERE ANY REMAINING CONTAMINATION ABOVE THE STATEWIDE HEALTH STANDARD WOULD MOST LIKELY BE FOUND.**

Tables 1 - MSCs for Organic Regulated Substances in Groundwater and Table 3B - MSCs for Organic Regulated Substances in Soil - Soil-to-Groundwater Numerical Values

- Comments Regarding Total PCB MSC's

The proposed new standards for ground water and soil for Total Polychlorinated Biphenyls were not correctly calculated and/or presented in the revised Tables. Specifically, the formula used to calculate the generic soil-to-groundwater standard requires a  $K_{oc}$  value. The  $K_{oc}$  values used by the Department to calculate these standards are listed in Table 5 of

Appendix A. There is no  $K_{oc}$  value proposed for Total PCB, however, it appears that the Department used a value of 0 to calculate the proposed generic soil-to-groundwater standard of 0.0056 mg/kg. It is well known that each aroclor exhibits a distinct  $K_{oc}$  value because of the physical characteristics of each congener, but the mathematical average of the  $K_{oc}$  values listed for the aroclors in Table 5 is approximately 400,000. Similarly, EPA Region III risk tables documents that a  $K_{oc}$  for Total PCB is 309,000. Applying this value to the Department's formula results in a soil-to-groundwater standard of ~39 mg/kg that is nearly 7,000 times higher than the proposed standard of 0.0056 mg/kg. Also, the 100 times the ground water MSC (100X GW) soil-to-groundwater standard is proposed at 0.05 mg/kg. However, the proposed groundwater total PCBs standard is listed at 0.001 mg/L. Using this number, the 100X GW soil-to-groundwater value should be proposed at 0.1 mg/kg.

PPL recognizes the Department's obligation under the Act to use an MCL established by the EPA as an MSC for groundwater in aquifers used or currently planned to be used for drinking water or for agricultural purposes. However, PPL believes that the Department should reconsider its proposal for establishing MSC's for Total Polychlorinated Biphenyls in soils in light of several potential inconsistencies that will arise with its use within the Act 2 program.

The MCL proposed by the EPA for Total PCB is applicable to community and non-community drinking water systems. As such, PPL believes that the Department should limit the use of the proposed MCL to the establishment of a Total PCB MSC for groundwater only. The current aroclor specific MSC's for soil and soil-to-groundwater are aroclor-specific and are protective of the groundwater, based upon the risk model used by the Department. Using the proposed groundwater MSC for the calculation of a risk based value for direct contact and for soil-to-groundwater MSC would be neglecting many of the chemical and physical properties that were used to calculate the current aroclor-specific values. As noted above, the formula used to calculate the generic soil-to-groundwater standard requires a  $K_{oc}$  value. It is well known that each aroclor exhibits a distinct  $K_{oc}$  value because of the physical characteristics of each congener.

PPL is very concerned with the potential conflicts that will arise when the proposed Total PCB standards are applied to specific remediation projects. For instance, situations are very likely to arise where a soil analysis will result in the identification of one or more aroclors in the soil. The values reported for these aroclors may be well below the current standards for each particular aroclor, yet above the proposed value for Total PCB. More importantly, if the current values for the individual aroclors are considered to be protective of groundwater, then there will be a serious conflict when these values are compared to the proposed Total PCB values. In most instances the values proposed for Total PCB are well below the current values for each of the individual aroclors. This contradiction may lead to the inconsistent application of clean-up standards among the various regional offices and to confusion as to which standard or standards should be applied to a particular remediation project. Finally, to assume that the sum of the individual aroclors represents a Total PCB value, relies on the erroneous assumption that the risks are cumulative and that the solubility and therefore the physical mobility of the individual aroclors are the same. Current practical

quantification limits for each of the aroclors may also be incorrectly used to arrive at a Total PCB value, since this value is determined by merely adding the values of each individual aroclor. Instances where aroclor values are determined to be at or just below the PQL may be assigned "artificial" values, such as 1 mg/kg or 2 mg/kg, so that a Total PCB value can be calculated. These misapplications of the actual analytical data will result in costly and unnecessary remediation, without any additional protection of groundwater.

#### General Comment Regarding Future Changes to MSC's Tables

Within these proposed regulations, DEP has corrected various typographical errors and errors in calculation based on typographical errors. PPL thanks DEP for making these corrections. However, it took DEP more than three years to make these corrections. In the meantime, DEP required the remediator to recalculate the correct standard and apply it as a site-specific standard. The remediator was then forced to place deed restrictions on a parcel since a site-specific standard was met rather than the "corrected" statewide residential standard. DEP indicated that we could reapply for an Act 2 closure meeting the statewide standard once the regulations are changed to correct the typographical or calculation error; however, such delays in closure to the appropriate standard can dramatically limit land recycling opportunities.

PPL understands that with the large number of standards listed in Tables 1-4, both typographical and calculation errors can easily occur. However, PPL also believes that DEP can correct such errors without the delays and difficulties imposed on remediators to date. PPL recommends that any time DEP finds that a typographical error lead to the incorrect publication or calculation of a standard, DEP simply correct the error by publishing in the Pennsylvania Bulletin a coorrective amendment to its rules. DEP has used such a procedure in other cases and PPL believes the procedure is clearly appropriate under Section 204 (3) of the Commonwealth Documents Law (45 P.S. Section 1204 (3))

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REGULATORY  
REVIEW COMMISSION



October 4, 2000

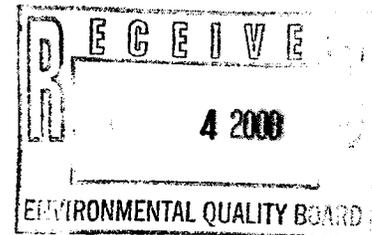
**Pennsylvania  
Electric  
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Pennsylvania Environmental Quality Board  
15<sup>th</sup> Floor, Rachel Carson State Office Building  
P.O. Box 8477  
Harrisburg, PA 17105-8477



**RE: Notice of Proposed Rulemaking  
Administration of Land Recycling Program**

Dear Board Members:

The Pennsylvania Electric Association (PEA) respectfully submits comments on the May 16, 2000 proposed rulemaking regarding the Land Recycling Program as it relates to amendments to Chapter 250 of *Pennsylvania Code Title 25, Environmental Protection*. PEA is the state trade association of the 10 investor-owned electric utilities in the Commonwealth. These comments are submitted on behalf of all of our member companies:

Allegheny Power  
Citizens' Electric Company  
Duquesne Light Company  
GPU Energy  
PPL Electric Utilities Corporation  
PECO Energy Company  
Pennsylvania Power Company  
Pike County Light & Power Company  
UGI Utilities, Inc.  
Wellsboro Electric Company

Together these companies deliver approximately 95 percent of the electricity consumed in Pennsylvania. While PEA lauds the efforts the Pennsylvania DEP to amend Land Recycling rulemaking in response to the 1998-99 Land Recycling Program evaluation, PEA believes that some changes to the proposed rulemaking are in order. Attached are

PEA's comments on the proposed rulemaking followed by a one-page summary of the comments.

PEA appreciates the opportunity to provide these comment to the EQB on the proposed rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Belko".

Wayne Belko, Chairman  
PEA Environmental Committee

**Pennsylvania Electric Association**  
**COMMENTS REGARDING THE PROPOSED**  
**AMENDMENTS TO 25 PA CODE, CHAPTER 250**  
**Administration of PA Land Recycling Program**

250.1 Definitions

- PEA believes that the Department's clarification of the definition for "Agricultural purposes" is needed and fully agrees with it.

250.5 Public notice by applicant.

- PEA does not object to the additional requirements associated with the non-use aquifer determination and believes that the need to send a notice to the municipality and water supplier serving the affected area prior to seeking a non-use status will help to improve the process. However, PEA suggests that the proposed 45-day time frame for comments should be reduced to 30 days. This change would make the non-aquifer determination notice requirements consistent with those associated with the NIR for site-specific standards. PEA suggests that the comment and review periods should be as consistent as possible throughout the regulations. This consistency will aid in the timely progression towards remediation and closure of the sites.

250.303 Aquifer determination; current use and currently planned use of aquifer groundwater.

- (b) PEA agrees with the clarification provided regarding aquifer determinations and the insertion of the phrase "the site on the" when performing groundwater use calculations. This limitation will help further clarify the application of this section of the regulations to actual sites.
- (f) PEA understands that the current regulations state that any non-use aquifer determination that is made must meet the requirements as outlined in 250.303 subsection (c). Furthermore, PEA believes that the requirements of subsection (c) may be met through the use of local ordinances. The proposed changes state that a determination made under subsection (c), through the use of a local ordinance, would automatically expire after 3 years. Upon expiration, the applicant and not the current landowner, has to request a renewal of the determination from the DEP. In addition, a deed notice is required for properties remediated under the non-use aquifer designation. This deed notice serves as the ongoing mechanism that restricts current and future property owners from undertaking any activities that would be inconsistent with the non-use aquifer designation. PEA believes that this 3-year renewal period is unnecessary, since the Act already provides for a "re-opener" if the conditions at the site change. By mandating that the non-use aquifer determination is reapplied for every three years, the Department will be effectively limiting the redevelopment of a countless number of properties. If the proposed language is finalized, landowners will be reluctant to use the Act 2 process because of the conditions placed on the release, since it is automatically revoked after 3 years unless the renewal request is made, and granted. The non-use aquifer status is crucial for redeveloping properties in settings where there are no current or potential uses for the groundwater. PEA

believes that the regulations already protect against any potential changes in the groundwater usage at a site and that the current provisions are adequate for the protection of human health and the environment.

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250.707 Statistical tests.

- The Department is proposing new language to this section that will allow for small petroleum releases that can be easily cleaned up with a small excavation and where no prior site characterization is performed, to be completed under Act 2 by collecting post excavations samples that meet the statistical standards. This revision will allow for a cost effective approach to securing an Act 2 release for small petroleum cleanups. It is PEA's opinion that this is an excellent idea and should be expanded to include all small spills that can reasonably be cleaned up. By expanding the criteria beyond petroleum release, many other small spills can be readily cleaned up and an Act 2 release from liability can be afforded the remediator. To allow for the expanded application of this process, PEA suggests that references to "petroleum" in §250.707(b)(1)(iii) be deleted and §250.707(b)(1)(iii)(B) be modified as follows:

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Tables 1 - MSCs for Organic Regulated Substances in Groundwater and Table 3B - MSCs for Organic Regulated Substances in Soil - Soil-to-Groundwater Numerical Values

- Comments Regarding Total PCB MSC's

PEA recognizes the Department's obligation under the Act to use an MCL established by the EPA as an MSC for groundwater in aquifers used or currently planned to be used for drinking water or for agricultural purposes. However, PEA believes that the Department should reconsider its proposal for establishing MSC's for Total Polychlorinated Biphenyls in groundwater and soils in light of several potential inconsistencies that will arise with its use within the Act 2 program.

The MCL proposed by the EPA for Total PCB is applicable to community and non-community drinking water systems. As such, PEA believes that the Department should limit the use of the proposed MCL to the establishment of a Total PCB MSC for groundwater only. The current MSC's for soil and soil-to-groundwater are aroclor-specific and are protective of the groundwater, based upon the risk model used by the Department. Using the proposed groundwater MSC for the calculation of a risk based value for direct contact and for soil-to-groundwater MSC would be neglecting many of the chemical and physical properties that were used to calculate the current aroclor-specific values. For instance, the formula used to calculate the generic soil-to-groundwater standard requires a  $K_{oc}$  value. The  $K_{oc}$  values used by the Department to calculate these standards are listed in Table 5 of Appendix A. There is no  $K_{oc}$  value proposed for Total PCB, however, it appears that the Department used a value of 0 to calculate the proposed generic soil-to-groundwater standard of 0.0056 mg/kg. It is well known that each aroclor exhibits a distinct  $K_{oc}$  value because of the physical characteristics of each congener. The average of the  $K_{oc}$  values listed for the aroclors in Table 5 is approximately 400,000. Similarly, EPA Region III risk tables documents that a  $K_{oc}$  for Total PCB is 309,000. Applying this value to the Department's formula results in a soil-to-groundwater standard of ~39 mg/kg that is nearly 7,000 times higher than the proposed standard of 0.0056 mg/kg.

Several other inconsistencies also are apparent in the calculation of the soil-to-groundwater values for Total PCB. The 100X GW and Generic values are proposed at 0.05 mg/kg and 0.0056 mg/kg, respectively. However, the proposed groundwater standard is listed at 0.001 mg/L. Using this number, the 100X GW soil-to-groundwater value should be proposed at 0.1 mg/kg. In addition, the Generic values for the aroclor-specific standards range between 5 and 2000 times higher than the 100x GW Standard. The proposed Total PCB Generic value is 10 times lower than the proposed 100x GW Residential Standard for Total PCB. Since the Generic value is calculated using the equilibrium partitioning method, the order of magnitude difference between the Total PCB 100x GW and the Generic values should be similar to those established for the aroclor-specific 100x GW and Generic values.

PEA is very concerned with the potential conflicts that will arise when the proposed Total PCB standards are applied to specific remediation projects. For instance, situations are very likely to arise where a soil analysis will result in the identification of one or more aroclors in the soil. The values reported for these aroclors may be well below the current standards for each particular aroclor, yet above the proposed value for Total PCB. More importantly, if the current values for the individual aroclors are considered to be protective of groundwater, then there will be a serious conflict when these values are compared to the proposed Total PCB values. In most instances the values proposed for Total PCB are well below the current values for each of the individual aroclors. This contradiction may lead to the inconsistent application of clean-up standards among the various regional offices and to confusion as to which standard or standards should be applied to a particular remediation project. Finally, to assume that the sum of the individual aroclors represents a Total PCB value, relies on the erroneous assumption that the risks are cumulative and that the solubility and therefore the physical mobility of the individual aroclors are the same. Current practical quantification limits for each of the aroclors may also be incorrectly used to arrive at a Total PCB value, since this value is determined by merely adding the values of each individual aroclor. Instances where aroclor values are determined to be at or just below the PQL may be assigned "artificial" values, such as 1 mg/kg or 2 mg/kg, so that a Total PCB value can be calculated. These misapplications of the actual analytical data will

result in costly and unnecessary remediation, without any additional protection of groundwater.

#### General Comment Regarding Future Changes to MSC's Tables

Within these proposed regulations, DEP has corrected various typographical or calculation errors that were uncovered since the regulations were initially published in 1997. Prior to correcting such errors, DEP required remediators to recalculate the correct standard, which would effectively be the **correct** residential soil MSC, but the DEP required the remediator to apply the corrected standards as a site-specific standard. So the remediator would then be forced to place deed restrictions on a parcel since a site-specific standard was met rather than the "corrected" statewide residential standard. DEP indicated that we could reapply for an Act 2 closure meeting the statewide standard once the regulations are changed to correct the typographical or calculation error.

PEA understands that with the large number of standards listed in Tables 1-4, both typographical and calculation errors can easily occur. However, PEA also believes that a remediator should not be forced to use the more restrictive standard that can result from such errors. PEA recommends that DEP develop a provision to correct errors in a simplified and prompt fashion. Such a provision could allow a remediator to identify an error and submit a request to the Department in writing. The Department could then publish a notice in the *PA Bulletin*, within 90-days of receiving notice of the error, and the corrected value could then become the effective standard within 30 days of the *PA Bulletin* notice.

## One-Page Summary

### Pennsylvania Electric Association (PEA) Comments on the Proposed Amendments to 25 PA Code, Chapter 250, Pennsylvania Land Recycle Program

1. 250.1 Definitions

PEA concurs with the Department's clarification regarding "Agricultural purposes".

2. 250.5 Notice by applicant

PEA recommends that the 45-day comment period be amended to a 30-day comment period.

3. 250.303 Aquifer determination; current use and currently planned use of aquifer groundwater

PEA believes the 3-year renewal period for a non-use aquifer determination is redundant and should be eliminated.

4. 250.311 Evaluation of ecological receptors

PEA concurs with the Department limiting the applicability of Constituents of Potential Ecological Concern (CPEC).

5. 250.707 Statistical testing

PEA recommends eliminating the references to "petroleum" so that the statistical testing process may be applied to small spills of other constituents. PEA also recommends expanding the applicability to sites where immediate cleanup are undertaken to attain statewide or background standards within 90-days of the spill.

6. Comments Regarding Total PCB MSC's

PEA recommends that the Department limit the use of the MCLs to establish Total PCB MSC for groundwater only. PEA is concerned about the potential conflict between the application of specific PCB aroclor MSCs and the Total PCB MSC.

7. Corrections to MSC's Tables

PEA recommends that the Department develop provisions for correcting erroneous MSC determinations as depicted in the MSC's Tables

Sincerely,



Wayne A. Belko  
Chairman  
PEA Environmental Committee



Original: 2133



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A PROFESSIONAL CORPORATION

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REGULATORY  
REVIEW COMMISSION

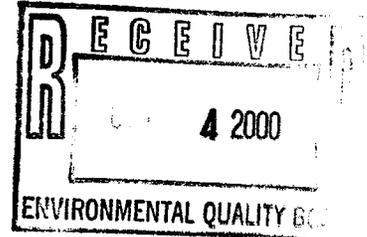


October 3, 2000

MONICA GAMBINO  
Attorney at Law  
T 412.394.5456  
mgambino@bccz.com

Via Federal Express

Environmental Quality Board  
Rachel Carson Office Building  
15<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17101-2301



Dear Sir or Madam:

On behalf of BP Exploration & Oil, Inc. ("BP"), Babst, Calland, Clements and Zomnir, P.C. is pleased to submit the enclosed comments to the Environmental Quality Board's proposed amendments to 25 Pa. Code Chapter 250. Should you have any questions or if you would like to meet with BP to discuss these comments, please do not hesitate to contact me.

Very truly yours,

Monica Gambino

Enclosures

cc: Susan Sharp  
Alan C. Seese  
Edward A. Merric  
Charles Pinzone, Esquire  
Caryn Barnes  
Richard Blackburn  
Joseph K. Reinhart, Esquire



**COMMENTS ON  
THE ENVIRONMENTAL  
QUALITY BOARD'S PROPOSED  
AMENDMENTS TO 25 PA. CODE CHAPTER 250  
ADMINISTRATION OF LAND RECYCLING PROGRAM**

**Submitted by  
BP Exploration & Oil Company**

**October 3, 2000**

## **I. Introduction**

BP Exploration & Oil Inc. ("BP") is pleased to present these comments on the Pennsylvania Environmental Quality Board's ("EQB's") proposed amendments to 25 Pa. Code Chapter 250 (relating to the administration of the Land Recycling and Environmental Remediation Standards Act ("Act 2")). BP has identified and provided comments on specific issues raised by the proposed amendments in Section II of these comments. In Section III, BP discusses issues that have not been specifically addressed in the proposed rule.

BP is performing corrective actions at numerous sites in Pennsylvania and has been active in numerous risk-based remediation efforts. BP supports the Pennsylvania Land Recycling Program and has commented on previous Department of Environmental Protection (the "Department" or the "DEP") documents relating to remediation, including the draft Act 2 Technical Guidance Manual. In addition, BP submitted comments to the EQB's proposed changes to the Pennsylvania Storage Tank and Spill Prevention Act regulations on September 27, 2000. BP requests that the EQB take those comments into consideration as they relate to the issues raised herein.

## **II. Specific Comments on the Proposed Revisions to the Land Recycling Program Regulations**

### **A. Aquifer Determination**

The EQB is proposing several changes to the procedure for obtaining non-use aquifer determinations. The proposal contains a new requirement that applicants publish newspaper and municipal notices when a request for determination of non-use aquifer is made. In addition, municipalities and public water suppliers will have an opportunity to comment on the non-use aquifer designations made by the Department. In fact, the proposed amendments state that "at the time the request for a non-use aquifer designation under the state-wide health standard ("SHS") is made to the Department," the remediator shall send notice to every municipality and community water supplier servicing the area requested for designation as non-use. 25 Pa. Code §250.5(d). The municipality and community water supplier are then provided forty-five days to indicate to the Department and the remediator any information relevant to the non-use status designation. Proposed 25 Pa. Code § 250.5.

BP recognizes that it may be useful to contact the municipality and local community water system suppliers regarding current and planned future use of groundwater. In fact, BP notes that the EQB has included within the proposed amendments to 25 Pa. Code §250.303, a discussion of methods appropriate for determining planned future use which include

verification with community water system suppliers. BP, however, believes that the approach under proposed § 250.5(d) creates a new requirement to obtain a non-use aquifer determination prior to completion of the final report. It has been BP's experience that obtaining a non-use aquifer determination has been very difficult and time-consuming. To the extent that a remediator must essentially secure the concurrence of both the municipality and community water supplier, the process is likely to become even more difficult and time-consuming. In general, the municipalities are ill-equipped to respond to such determinations and community water suppliers will be reluctant to state that groundwater will not be used as drinkable water in the future. Furthermore, we have identified no authority under Act 2 for DEP to defer such determinations to the local municipalities. BP recommends that the final rule clearly state that a non-use aquifer determination may be submitted prior to the submission of Act 2 reports, but that such a request is not required prior to submission of the final report. If the remediator can demonstrate that groundwater is not drinkable and that an ordinance is in place prohibiting its use as potable water or otherwise that the groundwater will not be used in the future as drinking water, the remediator's non-use aquifer determination should be approved in a timely manner by the DEP as part of its review of an Act 2 report.

B. Precertification Determinations

Another new provision being proposed by the EQB relates to the precertification determination that a specific geographic area meets the conditions of 25 Pa. Code § 303(c), thereby qualifying as a non-use aquifer. As proposed, the party requesting a non-use aquifer determination must submit a notice to a local newspaper of general circulation and provide the notice to the applicable municipality by letter. The municipality may request a precertification determination from the Department that a given area meets the requirements for a non-use aquifer designation.

The EQB believes that this process would expedite land reuse in urban areas where non-use aquifer criteria clearly apply. However, a public involvement plan ("PIP") is required as part of the process. A PIP "shall" be developed by the municipality or political subdivision and must include a ninety-day comment period. Moreover, the PIP must be developed in conjunction with all municipalities serving the proposed non-use aquifer area. Only after the ninety-day period is complete may the municipality or political subdivision submit a request to the Department for a non-use aquifer precertification. The precertification, if granted, will remain in place for a period of three years.

BP believes that this precertification procedure is time-consuming, cumbersome and unlikely to be implemented by municipalities as currently drafted. As an initial matter, municipalities and political subdivisions should be permitted to request precertification determinations irrespective of whether a remediator is relying on a non-use aquifer determination. As drafted, the responsible party would be required to make a "request," (see BP's comments at A. above) and wait at least ninety-days for any decision regarding the non-use aquifer. (This time period does not take into account the time required for the municipalities involved to develop a PIP.) In addition, the EQB provides no rationale for selecting ninety-days rather than a thirty-day comment period which is the required period of time for public participation under the current Act 2 regulations. Finally, once the responsible party requests a non-use aquifer determination, the process will move out of the responsible parties' control and into the municipalities' control. The responsible party will be at the mercy of the municipalities' competing demands with no assurance that the project will move forward.

In order to encourage municipalities to make pre-certification requests to expedite the Land Recycling and Reuse Program objectives, BP recommends that the Department separate the precertification request procedure from the remediator's non-use aquifer determination. In other words, a responsible party should be able to proceed with a non-use aquifer determination directly with the Department and the municipality should be free to pursue pre-certification absent a remediator's request for a non-use aquifer determination. If any person applying for a non-use aquifer determination can demonstrate the requirements of Subsection (c), the non-use aquifer determination should be granted. If municipalities find it in their interest to obtain precertifications, that process should proceed independently of individual requests for non-use aquifer determinations.

C. Changes to Medium-Specific Concentrations ("MSCs")

The EQB is proposing numerous changes to the listing of MSCs for regulated substances in Appendix A to the proposed rulemaking. The changes result from various factors, including the new hierarchy for the use of sources of data for aqueous solubility and the development of new toxicological information regarding the constituent that was not available when the 1997 rule was published.

The proposed revised MSCs, in most cases, reflect nominal changes as a result of the application of scientific updates and refinements. However, the MSCs for several constituents of interest to BP have become significantly more stringent. For example, the direct residential contact MSC for the 0-15 foot interval for naphthalene has been reduced from

8800 mg/kg to 4400 mg/kg based on a change in the oral reference dose (RfDi) from 0.0286 to 0.00086. The residential direct contact MSC for the 0-15 foot interval for 1, 1, 1-trichloroethane was reduced from 10,000 mg/kg to 4400 mg/kg based on a change in RfDo from 0.571 to 0.02 and a change in the inhalation reference dose of 0.571 to 0.29. Also, the residential direct contact MSC for xylenes in the 0-15 foot interval was reduced from 10,000 mg/kg to 8300 mg/kg based on a change in RfDi from 2 to 0.12.

The changes for these three compounds reflect changes of an order of magnitude or greater in the oral or inhalation reference doses. The Department does not explain, provide toxicological study references or provide any supporting rationale for such significant decreases. BP requests that the Department provide an explanation of the scientific basis for the amendments to the MSCs for xylenes, naphthalene and 1, 1, 1-trichloroethane and provide a methodology for peer review and peer approval of any toxicological studies and resulting data.

D. Attainment Demonstration for Underground Storage Tank (“UST”) Cleanups

1. Clarification of Attainment Sampling

The Department is proposing amendments to Section 250.703 to address small excavation cleanups of petroleum releases where no prior site characterization is performed. The proposed amendment provides that where the soil is to be removed from the site, attainment applies to “the base of the excavation outlined by that irregular surface.” Proposed 25 Pa. Code §250.703(b). The preamble to the proposed rule explains that the proposal amends this section to make it clear that attainment tests for soils are applied to the volume of soil initially found to be exceeding the selected standard unless the contaminated soil is removed from the site. If the contaminated soil is removed from the site, attainment sampling is applied to the base of the excavation outlined by that volume of soil.

To the extent that a remediator is only seeking a release of liability for the area subject to the excavation, the proposed sampling would appear to be appropriate. However, in circumstances where a site has been investigated and only a small portion of the property is subject to excavation, the remediator should be able to rely upon site characterization data from areas adjoining the excavation to demonstrate attainment for the site. It has been BP’s experience that the Department will not allow the use of “site characterization” data to demonstrate attainment. BP believes that in those cases where soil has been evaluated and shown not to have been affected by the remediation, it should be permissible to use the results of

the sampling to demonstrate attainment so long as the data are otherwise appropriate (*e.g.*, the proper test method was used).

## 2. Statistical Tests for Attainment

The EQB is amending the regulations at 25 Pa. Code § 250.707(b) specifically to address sites where a petroleum release has occurred. The proposed amendments delete the current reference to sites where localized contamination has occurred as described under the “Closure Requirements for Underground Storage Tank Systems” document. In its place, the amendments discuss sites with a petroleum release “*where full site characterization has not been done*” in association with an excavation remedy. For such sites, new requirements are presented for demonstration of attainment purposes.

It is unclear how the Department will implement this provision. First, the proposed amendment provides no definition or guidance regarding the extent of a site where “full characterization” has been done. This absence of guidance could lead to significant debate when applied in the field.

Second, it is unclear whether subparagraph 250.707(b)(1)(iii)(B) is intended to cover any site of a petroleum release or only UST sites which would otherwise be considered “extensively contaminated” under the DEP’s current storage tank guidance. Third, the proposed regulations do not explain why a remediator of a petroleum release site able to demonstrate that no sample exceeds statewide standards must nevertheless undertake a statistical analysis. Specifically, the proposed subparagraph 250.707(b)(iii)(C) applies only where “full site characterization” has not been done. Presumably, if an adequate site characterization has been performed and all soil samples meet statewide standards, a statistical analysis would be unnecessary. BP requests that the DEP clarify each of these points prior to final rulemaking.

BP supports the proposed subparagraphs in 250.707(b)(1)(iii) which relate to: (a) attainment demonstrations at “localized contamination” sites (see § 250.707(b)(1)(iii)(A)) and (b) attainment demonstrations covered by the procedures in § 250.707(b)(1)(iii)(B). The use of the attainment demonstrations in these circumstances has been proven to be appropriate and cost effective at UST sites and should be appropriate at any petroleum release site.

### III. Comments on Issues Not Addressed in the Proposed Amendments to the Act 2 Regulations

#### A. Points of Compliance

The EQB has proposed to revisions to the language of 25 Pa. Code §250.303(b). The revisions would mandate that the requirements for a non-use aquifer determination of subsection (c) are met within “the site on” the property rather than within the property. The EQB explains that this wording is needed because large properties could be disqualified even though the plumes are relatively small in comparison. Although BP understands the EQB’s position on this issue, we question whether by designating the “site” within the property, the Department will be establishing points of compliance internal to the property boundary. BP would oppose any effort to impose points of compliance within the property boundary. Section 103 of Act 2 expressly defines the point of compliance for groundwater as “the property boundary ... or some point beyond.” 35 P.S. § 6026.103. It would be inappropriate to establish a point of compliance by regulation that conflicts with the statutory definition. BP does, however, support a mechanism whereby, on a case-by-case basis, a responsible party could request that the point of compliance be established within the boundary to accommodate issues that might arise, including issues related to non-use aquifer designation.

#### B. Release Associated with the Site

Under proposed 25 Pa. Code §§ 250.311(c) and (d), the EQB is proposing to clarify that the evaluation of constituents of potential ecological concern on a site includes those “*associated with the releases at a site*” and not background or naturally occurring constituents. BP believes that the EQB should further define the constituents of potential ecological impact to mean only those constituents that originate from the release being addressed by the remediator as opposed to any historical release at the site. A responsible party has discretion under Act 2 to identify the scope of the remediation and in some situations, may not wish to address historic contamination that may be present at a site. The release from liability, likewise, is limited to those constituents identified in reports submitted to and approved by the Department. 35 P.S. 6026.501. Therefore, it should be clear in §§ 250.311(c) and (d), that the constituents of potential ecological impact are those constituents that the remediator has identified as originating from the release that is being remediated under the Act 2 program.

#### **IV. Conclusions**

The success of the Act 2 program has been demonstrated by the significant incentives it has created for responsible parties to remediate impacted sites in Pennsylvania. BP has gained extensive experience with risk-based decisionmaking for cleanups under the Act 2 program. BP supports the Act 2 program and supports the EQB and the Department's efforts to both strengthen and streamline the program. The Department, however, should carefully consider any proposed amendments to the Act 2 regulations that would result in impediments to achieving the Act 2 objectives. BP believes that some of the proposed amendments to the Act 2 regulations would impede progress, including the requirement for a separate request for a non-use aquifer determination and any new provisions that would move the point of compliance for groundwater within the site boundary. BP requests that the Department consider the issues raised in these comments and would be happy to meet with the Department to address the issues discussed or to provide any additional information.

REPLY TO:  
ENGINEERING DIVISION  
BOX 584  
BRISTOL, PA 19007  
(215) 785-7000 FAX (215) 785-7458

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October 2, 2000 2000 OCT -6 PM 2:46

REGULATORY  
REVIEW COMMISSION



Original: 2133

Mr. James Seif, Chairperson  
Environmental Quality Board  
Rachel Carson State Office Building, 15th Floor  
400 Market Street  
Harrisburg, PA 17101-2301

**RE: Comments on Proposed Rulemaking, Title 25, Part I., Subpart D., Article VI., Chapter 250: Administration of Land Recycling Program.**

Dear Mr. Seif:

Rohm and Haas Company is pleased to provide the attached comments on the proposed changes to 25 PA. Code Chapter 250, Administration of Land Recycling Program regulations.

In the attached comments we support our request that the EQB disapprove the proposed amendments related to nonuse certification under sections § 250.5 and 250.6. The rationale for this recommendation include:

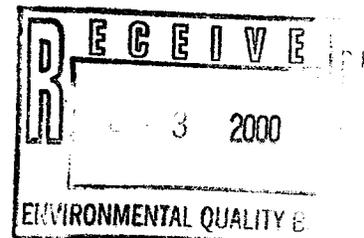
- Public participation for statewide remediation standards and criteria were purposely not authorized by Act 2.
- The existing rules provide appropriate public notice and participation.
- The proposed rules will impose more than 90 additional days to the remediation process which is detrimental to program effectiveness.

The concept of providing municipalities with the mechanism to obtain pre-certifications of nonuse groundwater included in 250.6 (f) is supported. This should be of significant advantage to our major urban areas, areas previously impacted by mining, agriculture or other activity, and areas where natural conditions limit water quality use.

We hope our comments help maintain the Act 2 process as one deserving award winning status.

Sincerely,

A. L. Holmstrom  
Corporate Remediation Manager



**Comments on Proposed Rulemaking  
Chapter 250: Administration of Land Recycling Program**

**§ 250.5 (d), (e) Public notice by applicant  
§ 250.6 (e) Public participation.**

The proposed rule changes set out new process requirements for obtaining a nonuse groundwater determination. These changes should be rejected in entirety for the reasons outlined below.

Additional public notice is not authorized by Act 2.

A reading of the statutory language at Section 303, paragraph (h), does not authorize a public participation process for statewide standards. There was a deliberate act of the legislature to require public participation only at site specific cleanups. The statewide standards and nonuse criteria have been proposed under the administrative process for regulations and an additional public process is not necessary for each cleanup under statewide standards. The statute does provide for public notice through the filing and various publishings of a Notice of Intent to Remediate (NIR) and distributions to municipalities.

It is clear that the proposed changes cannot be allowed to stand under the provisions of Act 2.

The remediation process is delayed 90+ days.

The proposed changes create a new process step for statewide standard cleanups conducted under § 303 that was not envisioned under Act 2 or under the original Chapter 250 regulations. Under the proposed § 250.6 (e) (2), the new process will require a delay of at least 90 days, but more likely 120 days or more before the nonuse designation can be received.

It was the standards and the process that won awards for the land recycling program. The § 303 cleanup was envisioned as being able to go from start to finish in a relatively short period of time, without repeated reviews and approvals from PADEP officials. This change will have a negative impact on the process efficiency of the program. It is unnecessary to include this delay into the process.

An acceptable alternate process is currently available.

PADEP can employ current procedures to accomplish the same ends as is proposed in this rulemaking. Specifically, the following steps would be used.

An NIR, including the intent to use the nonuse aquifer statewide standards, would be submitted to PADEP. Public notice is provided both through its publication in the PA Bulletin, and through the requirement to provide copies to all municipalities effected. In addition, there is a requirement for a newspaper notice. PADEP could change its recommended standard notice language guidance to be more explicit about the request for a nonuse aquifer determination.

The remediator should have the option of when in the remediation process to seek the nonuse determination from the Department. In order for PADEP to make a nonuse determination, a groundwater assessment must be completed. The remediator can do that early in the process, at an appropriate time during the process, or where confident of the groundwater data, as part of the attainment approval at the end of the process. Where time is not critical, remediators would have less risk in obtaining the approval prior to actual remedial action.

Because the NIR reflects the intended use of the nonuse aquifer provision, the Department would have ample time to assure that community water suppliers were not affected currently or with currently planned uses of the aquifer. The Department issues permits to community water suppliers and therefore is best suited to assure these providers are contacted during the review period and their input is understood and incorporated into the Department's determination.

The NIR and any other submission to the Department is a public record and obtainable by the public from the Department. In addition, the NIR provides the contact name for the remediation and the public can obtain information directly from the remediator.

The need to contact community water suppliers is a sound addition to the review process. The remediator, should not be in the middle of this process and there is no justification for the added requirements of this proposal. It would be reasonable to include a requirement that the remediator provide a copy of the NIR to the community water suppliers if PADEP would maintain the geographical listing of such suppliers and make it publicly available.

**§ 250.303 (b); (c) (4); (g) Aquifer determination; current use and currently planned use of aquifer groundwater.**

Consistent with the above discussion, the public participation related proposed language change should be deleted.

**§ 250.303 (f) Aquifer determination; current use and currently planned use of aquifer groundwater.**

The concept of granting municipal authorities and political subdivisions the mechanism to separately seek precertification of a nonuse groundwater classification is a sound public policy option to offer. It should, however, be recognized that the creation of a municipal ordinance is in itself a public process and there does not seem to be justification for EQB to establish a separate process. Most certainly the municipality

would need to demonstrate to the Department that the municipality met all the applicable requirements of § 250.303 as an a priori requirement to accept existence of such an ordinance as a basis of certifying attainment of the remediation standards.

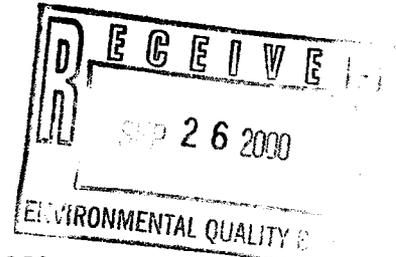
Limiting such certifications to a period of 3 years is a very short period of time. The EQB should consider a period of not less than 5 years unless there are known changes in the basis for approval.

**METHACRYLATE PRODUCERS ASSOCIATION, INC.**  
**1250 Connecticut Avenue, N.W., Suite 700, Washington, D.C. 20036**  
**Office: (202) 637-9040 • Facsimile: (202) 637-9178**

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September 26, 2000

Pennsylvania Environmental Quality Board  
400 Market Street, 15<sup>th</sup> Floor  
Harrisburg, PA 17101-2301



Original: 2133

Re: Comments on Proposed Amendments to Chapter 250  
(Land Recycling Program)

To The Pennsylvania Environmental Quality Board:

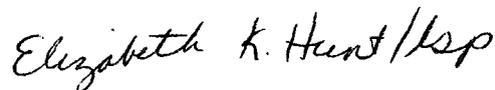
The Methacrylate Producers Association, Inc. ("MPA") welcomes this opportunity to comment on the proposed amendments to the Pennsylvania statutes governing land recycling. MPA is an association of domestic manufacturers of methyl methacrylate, whose members include: Atofina Chemicals, Inc., Cyro Industries, Ineos Acrylics, Inc., and Rohm and Haas Company. MPA was formed to facilitate the collection, evaluation, and dissemination of health, safety and environmental information on methyl methacrylate and other methacrylate compounds.

MPA has two main comments. First, MPA endorses the Environmental Quality Board's efforts to modify and update the Chapter 250 requirements concerning the medium specific concentrations (MSCs) permitted for various chemical substances. These requirements are dependent on the available data concerning the fate and effect of various chemicals. Revisions that update the regulations to reflect the latest information and that reflect current scientific understanding regarding the reduced risks associated with methacrylate compounds allows resources to be directed in the most cost-effective manner.

The second MPA comment concerns the actual MSC values proposed for methyl methacrylate and ethyl methacrylate. The MSC values proposed by the Environmental Quality Board represent reasonable values that more accurately reflect the relatively low risk that these chemicals present in the environment. The increased MSC levels for proposed methyl methacrylate, and the new values being added for ethyl methacrylate, are not overly conservative and will prevent resources from being expended in unnecessarily reducing levels of these chemicals which are relatively benign. The revised MSC values are the result of conservative, yet reasonable assumptions, regarding the relatively limited effect that these chemicals can have in the environment. These values are also not inconsistent with the preliminary values that have been calculated for methyl methacrylate by EPA in its current rulemaking to determine the maximum concentrations that will be permitted in waste that can be exempted from the RCRA program requirements. See 63 Fed. Reg. 44491 (July 18, 2000).

In summary, MPA concludes that the proposed changes to Chapter 250 should be adopted. Please contact me at (202) 637-9040 if you have any questions regarding MPA's comments on the proposed changes to Chapter 250 of Title 25 of the Pennsylvania Code (Land Recycling Program).

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth K. Hunt /esp".

Elizabeth K. Hunt  
Executive Director  
Methacrylate Producers Association, Inc.

**Trostle, Sharon F.**

---

**From:** Melissa Fredrick [mfredrick@mbakercorp.com]  
**Sent:** Wednesday, September 27, 2000 3:12 PM  
**To:** Regcomments@dep.state.pa.us  
**Subject:** Proposed changes to 25 PA Code Chapter 250 as listed in PA Bulletin 30(32) August 5, 2000,

Original: 2133

To: PADEP Environmental Quality Board Members

In response to the proposed changes to 25 PA Code Chapter 250 as listed in PA Bulletin 30(32) August 5, 2000, I have prepared a few minor comments for your consideration.

1. Appendix A Table 5 lists the toxicity criteria and physical properties used to develop the MSCs. I would recommend providing a reference or source for each value (i.e. IRIS, NCEA). For example, the values listed for TCE are not recommended by either IRIS or NCEA.
2. The inhalation reference dose (RfDi) is listed as mg/m<sup>3</sup>. Reference doses are typically stated as mg/kg/day. Mg/m<sup>3</sup> indicates references an inhalation reference concentration (RfC), rather than a dose. I would recommend changing this value to mg/kg/day in the table, and verify that the values listed are in mg/kg/day.
3. Beryllium is no longer considered an oral carcinogen by the USEPA. Thus the oral CsFo should be removed from Table 5B for beryllium. Please refer to the Integrated Risk Information System ([www.epa.gov/iris](http://www.epa.gov/iris)).
4. Changes to the RfDo and RfDi were made for Methyl Methacrylate, but changes to the Direct Contact MSC for residential exposures were not. This direct contact MSC should be adjusted or clarification for not be provided.
5. The RfDo and RfDi for vinyl chloride has been update since August 5, 2000. Please refer to [www.epa.gov/iris](http://www.epa.gov/iris) for the most accurate reference doses provided by EPA.

I appreciate the opportunity to review and comment on the proposed changes. If you have any questions regarding my comments I can be reached at 412.269.2007.

Sincerely,

Melissa M Fredrick  
Environmental Scientist  
Michael Baker Corporation  
Airport Office Park, Bldg 3  
420 Rouser Road  
Coraopolis, PA 15108  
412.269.2007  
mfredrick@mbakercorp.com

Original: 2133

**IRRC**

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**From:** Allan\_L\_Holmstrom@RohmHaas.Com  
**Sent:** Friday, October 20, 2000 1:37 PM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Chapter 250: Land Recycling Administrative Regulation



MS Word document

Mr. Nyce,

Thanks for your help contacting your web site. Attached please  
find our comments on the subject regulation for IRRC's review.

RECEIVED  
2000 OCT 20 PM 3:39  
REVIEW COMMISSION

October 20, 2000

Mr. Robert Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, Pennsylvania 17101

**RE: Title 25, Part I, Subpart D., Article VI, Chapter 250: Administration of  
Land Recycling Program.**

Dear Mr. Nyce:

The comment period on the referenced Administrative Regulation for EQB closed on October 2, 2000. I am herewith forwarding the comments of Rohm and Haas Company on the referenced proposed regulatory package for review by the Commission at the appropriate time.

This appears to be one of those instances for which the Commission was clearly created to identify and remedy administrative actions outside statutory bounds. This administrative rulemaking attempts to create a new 90 day public participation step in the statewide health standard remediation process that clearly is not contained in the highly praised Act 2 statute.

I would be pleased to discuss this issue with IRRC staff at their convenience. I can be contacted at 215-785-7527.

Sincerely,

A.L. Holmstrom  
Corporate Remediation Manager  
Rohm and Haas Company

October 2, 2000

Mr. James Seif,  
Chairperson, Environmental Quality Board  
Rachel Carson State Office Building, 15th Floor  
400 Market Street  
Harrisburg, PA 17101-2301

**RE: Comments on Proposed Rulemaking, Title 25, Part I., Subpart D., Article VI., Chapter 250: Administration of Land Recycling Program.**

Dear Mr. Seif:

Rohm and Haas Company is pleased to provide the attached comments on the proposed changes to 25 PA. Code Chapter 250, Administration of Land Recycling Program regulations.

In the attached comments we support our request that the EQB disapprove the proposed amendments related to nonuse certification under sections § 250.5 and 250.6. The rationale for this recommendation include:

- Public participation for statewide remediation standards and criteria were purposely not authorized by Act 2.
- The existing rules provide appropriate public notice and participation.
- The proposed rules will impose more than 90 additional days to the remediation process which is detrimental to program effectiveness.

The concept of providing municipalities with the mechanism to obtain pre-certifications of nonuse groundwater included in 250.6 (f) is supported. This should be of significant advantage to our major urban areas, areas previously impacted by mining, agriculture or other activity, and areas where natural conditions limit water quality use.

We hope our comments help maintain the Act 2 process as one deserving award winning status.

Sincerely,

A. L. Holmstrom  
Corporate Remediation Manager

**Comments on Proposed Rulemaking  
Chapter 250: Administration of Land Recycling Program**

**§ 250.5 (d), (e) Public notice by applicant**

**§ 250.6 (e) Public participation.**

The proposed rule changes set out new process requirements for obtaining a nonuse groundwater determination. These changes should be rejected in entirety for the reasons outlined below.

Additional public notice is not authorized by Act 2.

A reading of the statutory language at Section 303, paragraph (h), does not authorize a public participation process for statewide standards. There was a deliberate act of the legislature to require public participation only at site specific cleanups. The statewide standards and nonuse criteria have been proposed under the administrative process for regulations and an additional public process is not necessary for each cleanup under statewide standards. The statute does provide for public notice through the filing and various publishings of a Notice of Intent to Remediate (NIR) and distributions to municipalities.

It is clear that the proposed changes cannot be allowed to stand under the provisions of Act 2.

The remediation process is delayed 90+ days.

The proposed changes create a new process step for statewide standard cleanups conducted under § 303 that was not envisioned under Act 2 or under the original Chapter 250 regulations. Under the proposed § 250.6 (e) (2), the new process will require a delay of at least 90 days, but more likely 120 days or more before the nonuse designation can be received.

It was the standards and the process that won awards for the land recycling program. The § 303 cleanup was envisioned as being able to go from start to finish in a relatively short period of time, without repeated reviews and approvals from PADEP officials. This change will have a negative impact on the process efficiency of the program. It is unnecessary to include this delay into the process.

An acceptable alternate process is currently available.

PADEP can employ current procedures to accomplish the same ends as is proposed in this rulemaking. Specifically, the following steps would be used.

An NIR, including the intent to use the nonuse aquifer statewide standards, would be submitted to PADEP. Public notice is provided both through its publication in the PA Bulletin, and through the requirement to provide copies to all municipalities effected. In addition, there is a requirement for a newspaper notice. PADEP could change its recommended standard notice language guidance to be more explicit about the request for a nonuse aquifer determination.

The remediator should have the option of when in the remediation process to seek the nonuse determination from the Department. In order for PADEP to make a nonuse determination, a groundwater assessment must be completed. The remediator can do that early in the process, at an appropriate time during the process, or where confident of the groundwater data, as part of the attainment approval at the end of the process. Where time is not critical, remediators would have less risk in obtaining the approval prior to actual remedial action.

Because the NIR reflects the intended use of the nonuse aquifer provision, the Department would have ample time to assure that community water suppliers were not affected currently or with currently planned uses of the aquifer. The Department issues permits to community water suppliers and therefore is best suited to assure these providers are contacted during the review period and their input is understood and incorporated into the Department's determination.

The NIR and any other submission to the Department is a public record and obtainable by the public from the Department. In addition, the NIR provides the contact name for the remediation and the public can obtain information directly from the remediator.

The need to contact community water suppliers is a sound addition to the review process. The remediator, should not be in the middle of this process and there is no justification for the added requirements of this proposal. It would be reasonable to include a requirement that the remediator provide a copy of the NIR to the community water suppliers if PADEP would maintain the geographical listing of such suppliers and make it publicly available.

**§ 250.303 (b); (c) (4); (g) Aquifer determination; current use and currently planned use of aquifer groundwater.**

Consistent with the above discussion, the public participation related proposed language change should be deleted.

**§ 250.303 (f) Aquifer determination; current use and currently planned use of aquifer groundwater.**

The concept of granting municipal authorities and political subdivisions the mechanism to separately seek precertification of a nonuse groundwater classification is a sound public policy option to offer. It should, however, be recognized that the creation of a municipal ordinance is in itself a public process and there does not seem to be justification for EQB to establish a separate process. Most certainly the municipality would need to

**demonstrate to the Department that the municipality met all the applicable requirements of § 250.303 as an a priori requirement to accept existence of such an ordinance as a basis of certifying attainment of the remediation standards.**

**Limiting such certifications to a period of 3 years is a very short period of time. The EQB should consider a period of not less than 5 years unless there are known changes in the basis for approval.**

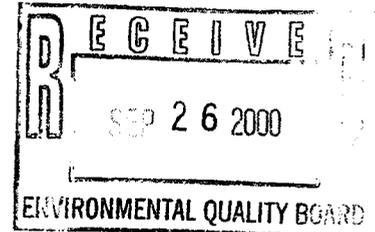
**Basic Acrylic Monomer Manufacturers, Inc.**  
**1250 Connecticut Avenue, N.W., Suite 700, Washington, D.C. 20036**  
**Office: (202) 637-9040 • Facsimile: (202) 637-9178**

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Original: 2133

September 26, 2000

Pennsylvania Environmental Quality Board  
400 Market Street, 15<sup>th</sup> Floor  
Harrisburg, PA 17101-2301



Re: Comments on Proposed Amendments to Chapter 250  
(Land Recycling Program)

To The Pennsylvania Environmental Quality Board:

The Basic Acrylic Monomer Manufacturers, Inc. ("BAMM") welcomes this opportunity to comment on the Pennsylvania Environmental Quality Board's proposed amendments to Chapter 250 (land recycling requirements) of the Pennsylvania Code. BAMM is an association of domestic manufacturers of acrylic acid and the acrylate esters, whose members include: BASF Corporation, Atofina Chemicals, Inc., Celanese Corporation, Rohm and Haas Company, and Union Carbide Corporation. BAMM was formed to facilitate the collection, evaluation, and dissemination of health, safety and environmental information on acrylic acid and basic acrylate monomers.

These comments address the Pennsylvania Environmental Quality Board's proposed amendments to Chapter 250 (land recycling requirements) of the Pennsylvania Code. These amendments revise or establish medium-specific concentrations (MSCs) that serve as maximum concentration levels for chemical substances, below which a site does not require remediation. The MSCs take into account the medium (example: groundwater, soil) in which the chemical is present and the relative effect of the chemical on human health and the environment.

**Comment A:**

BAMM believes the approach of the Environmental Quality Board in establishing the revised MSCs is correct. In general, the MSC values represent a judgment about the relative seriousness of a chemical's effect on the environment and human health, its fate and effect when released, and the appropriate margin of safety that should be applied to ensure the remediation levels dictated by the MSCs are adequate.

During the process of determining a numerical MSC value it is important that any assumptions used in generating the final MSC not be overly conservative. If overly conservative assumptions are made, the resulting MSC values will be far lower than necessary. If this occurs, the cost of remediating a site could increase dramatically. High remediation costs have the perverse effect of deterring "recycling" and reuse of contaminated sites that can be remediated and returned to productive use. These high remediation costs create an incentive to locate facilities on new or "green field" sites, potentially increasing the extent of future contamination.

BAMM member companies participated in the rulemaking activities related to these revisions and it is our understanding that the MSC values represent the result of reasonably conservative assumptions about the fate and effect of chemicals combined with an adequate safety margin. Based on this approach, BAMM concludes that the MSC values being proposed for the chemicals of interest to BAMM members are reasonable. Of particular interest to BAMM members are the values being proposed for methyl acrylate. These new values are the result of the balanced approach used to develop realistic MSC values and also apparently recognize new data sources that confirm the lack of serious human health and environmental effects associated with many of these chemicals. The proposed values for methyl acrylate appear reasonable and are not inconsistent with recent EPA proposals for similar chemicals as part of the ongoing Hazardous Waste Identification Rule (HWIR). The EPA values are being developed to determine the level below which wastes need no longer be treated as hazardous.

**Comment B:**

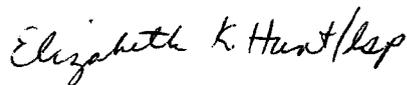
An important feature of the regulations is the retention of requirements that permit use of site-specific MSC values. Site-specific MSCs can be appropriate when the particular characteristics of a site do not conform to the assumptions used in generating the default MSC values. In these cases it may be inappropriate to require the site to attain the default MSC values if they result in unrealistic assumptions regarding the potential for chemicals to actually reach groundwater or to otherwise come in contact with the general environment or humans.

Site-specific MSC values serve a valuable purpose in that they can be used to address the many potential situations that cannot be anticipated when a regulation is drafted. In the future, it is quite likely that there will be remediation conditions that do not conform to the standard scenarios and for which a different MSC may be appropriate. Bamm agrees that these requirements should be retained.

**Conclusion**

Bamm supports the proposed amendments to the Chapter 250 land recycling requirements of the Pennsylvania Code. These amendments will increase the flexibility available to remediators and will encourage the restoration of potentially useful sites that might otherwise be left in an unproductive state. Please contact Bamm at (202) 637-9040 if you have any questions or concerns regarding our comments.

Sincerely,



Elizabeth K. Hunt  
Executive Director  
Basic Acrylic Monomer Manufacturers, Inc.

