



PCPG

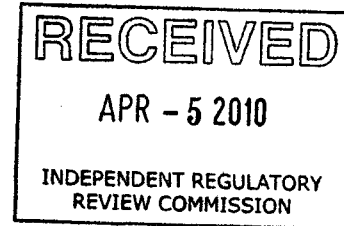
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2823

April 5, 2010

Via Electronic Mail Only

Environmental Quality Board (RegComments@state.pa.us)
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301



Re: Proposed Rulemaking
Administration of the Land Recycling Program
25 Pa Code Chapter 250
Pa. Bulletin, Vol. 40, No. 10 (March 6, 2010)

To Whom It May Concern:

The Pennsylvania Counsel of Professional Geologists ("PCPG") is a diverse group of over 450 licensed professional geologists, geologists and allied scientists. As a professional organization, PCPG is committed to advocating the use of sound science in the (a) formulation of public policy; (b) protection of human health and the environment; (c) establishment of regulatory programs and enforcement procedures; and (d) development of educational programs and curricula for earth science and environmental education. Many of our members are routinely involved with site investigations and cleanups under Pennsylvania's award-winning Land Recycling Program and have a genuine professional interest in ensuring that investigations and cleanups are performed in an environmentally responsible and scientifically sound manner, are protective of human health and the environment and which avoid unnecessary costs and inefficiencies.

PCPG generally supports the above-referenced proposed rulemaking, including the updated Statewide Health Standard medium-specific concentration ("MSC") tables as, with but one exception, they have been derived in accordance with the risk-based criteria mandated by the Land Recycling Act. PCPG strenuously objects, however, to the Department of Environmental Protection's ("DEP's") arbitrary, and singularly unique, treatment of Methyl Tertiary Butyl Ether ("MTBE") in the proposed rulemaking. PCPG believes the MSC for MTBE should be calculated in accordance with the risk-based criteria as required by, and in accordance with, the Land Recycling Act.

PCPG understands that the current MTBE MSC is based on conservative factors because, at the time of its initial inclusion on the MSC tables, the DEP and the Cleanup Standards Scientific Advisory Board ("CSSAB") believed there were insufficient toxicological data available to generate a risk based number as required by the Land Recycling Act. However, the

initial MSC tables were published in 1997. Since that time, we understand the CSSAB has determined that sufficient toxicological data now exist to calculate an MSC based on the Land Recycling Act's toxicological hierarchy and in accordance with the Land Recycling Act's criteria.

The policy behind the Land Recycling Act is clear—cleanups should be based on the *actual risk* that contamination may pose to public health and the environment taking into account a site's current and future use and the degree to which contamination can expose the public or the environment to risk.¹

Statewide Health Standards are meant to achieve a uniform Statewide *health-based* level so that any *substantial present or probable future risk* to human health of the environment is eliminated.² Where the U.S. EPA has established a maximum contaminant level ("MCL") or a health advisory level ("HAL") for drinking water, the Land Recycling Act requires use of the MCL or HAL as the groundwater MSC for used aquifers.³ In the absence of an MCL or HAL, the Land Recycling Act requires that the Department calculate the MSC *using valid scientific methods* that are no more stringent than the standard default exposure factors established by the U.S. EPA *based on a level of risk* that represents an upper bound lifetime cancer target risk of between 1×10^{-4} and 1×10^{-6} for carcinogens or, for non-carcinogens, the concentration to which humans can be exposed on a daily basis *without appreciable risk of deleterious effects*.⁴

The U.S. EPA has not established either an MCL or a HAL for MTBE.⁵ In the absence of an MCL or a HAL, the Department is statutorily required to calculate the MSC *using valid scientific methods that are no more stringent than the health-based criteria set forth in Section 303 of the Land Recycling Act*. The Department readily acknowledges in its proposed rulemaking that it selected an odor threshold, an aesthetic criteria, to use as the MSC for MTBE in groundwater. The odor threshold is more stringent than the Land Recycling Act health-based mandates.

PCPG understands that the CSSAB unanimously opposed the Department's arbitrary treatment of MTBE in the proposed rulemaking, noting that many other regulated substances have taste and odor thresholds well below, sometimes thousands of times below, their current MSCs. PCPG concurs with the CSSAB and objects to the arbitrary establishment of an MSC for any regulated substance on any criteria other than those set forth in the Land Recycling Act. PCPG views the selective and unique treatment of MTBE as a real threat to the credibility and integrity of the Land Recycling Program. To disregard the legislative mandate for calculating

¹ 35 P.S. § 6026.102(6)

² 35 P.S. § 6026.301

³ 35 P.S. § 6026.303(b)(3)

⁴ 35 P.S. § 6026.303(c)

⁵ See the 2009 edition of the U.S. EPA's Drinking Water Standards and Health Advisories, <http://www.epa.gov/waterscience/criteria/drinking/dwstandards2009.pdf>, where a health-based value is "not available."

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MSCs and to supplant sound science with a "selected" standard based on any criteria other than those criteria specifically set forth in the Land Recycling Act creates a dangerous precedent and subjugates objective science to the whim of personal, poorly defined and subjective criteria.

PCPG therefore asks that the Department derive an MSC for MTBE in groundwater using scientifically valid methods in accordance with the health-based criteria required by the Land Recycling Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James LaRegina". The signature is fluid and cursive, with the first name "James" and last name "LaRegina" clearly distinguishable.

James LaRegina, P.G.
President, PCPG

cc: Independent Regulatory Review Commission (via email to irrc@irrc.state.pa.us)
#7-453 (IRRC #2823)

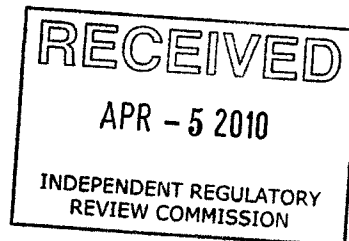
From: LaRegina, James [jlaregina@hrg-inc.com]
Sent: Monday, April 05, 2010 3:50 PM
To: regcomments@state.pa.us; IRRC
Cc: PCPG
Subject: PCPG Comments to Ch. 250 and 253 Proposed Rulemaking
Attachments: PCPGCh253.pdf; PCPGCh250.pdf

To Whom It May Concern:

On behalf of the Pennsylvania Council of Professional Geologists, PCPG respectfully submits the attached two letters with our comments to the above referenced rule making. Should you have any questions, please do not hesitate to call.

Sincerely

Jim LaRegina, PG
PCPG President



Jim LaRegina, P.G.
Senior Project Manager

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Member of the PA Council of Professional Geologists

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