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 INDEPENDENT REGULATION  
 (ADMINISTRATIVE)

**Comment on Proposed Rulemaking**  
**25 PA. Code Ch. 250 – Administration of Land Recycling Program**  
**[ref. 40 Pa.B. 1297, Saturday, March 6, 2010]**

In Appendix A, Table 1, the proposed health-based cleanup standard (used aquifers) for Methyl Tertiary Butyl Ether (MTBE) in groundwater is 20 micrograms per liter for both residential and non-residential uses. As stated in section D of the proposed rulemaking, this proposed standard value is actually equivalent to the current federal secondary maximum contaminant level for odor, but not the health-based standard derived based on the revised methodology for determining health-based levels proposed in the rulemaking to be consistent with the U.S. EPA Risk Assessment Guidelines for Superfund (RAGS). By that method the level should be 190 micrograms per liter (residential) and 960 micrograms per liter (non-residential). The proposed rulemaking regarding the MSC for MTBE should be revised for the following reasons:

1. PADEP has arbitrarily deviated from the statutory provisions in the Act 2 law which specifically embodies a scientific basis for calculating remediation standards protective of human health and the environment. Under Act 2, the hierarchy for establishing an MSC is (i) use the U.S. EPA Maximum Contaminant Level ("MCL") if one exists; (ii) in the absence of an MCL, use the U.S. EPA's lifetime Health Advisory Level ("HAL") if one exists; (iii) in the absence of an MCL or lifetime HAL, calculate the MSC using the risk-based equations set forth in the regulations. This process was not followed for MTBE here.
2. The Cleanup Standards Science Advisory Board unanimously endorsed the levels calculated using the updated U.S. EPA RAGS methodology. By disregarding the CSSAB, PADEP arbitrarily interpreted Act 2 to say in effect "...based on sound science, but only when it seems right." This reasoning degrades the purpose and value of the role of CSSAB, and discourages members of the public that have the necessary and valuable knowledge and wisdom of experience from willingness to volunteer their time to serve on the board for the benefit of the citizens of the Commonwealth.
3. U.S. EPA does not enforce National Secondary Drinking Water Regulations. They are established only as guidelines to assist public water systems in managing their drinking water for aesthetic considerations, such as taste, color and odor. These contaminants are not considered to present a risk to human health at the SMCL. Because PADEP has adopted a policy of consistency with U.S. EPA primary MCLs in Act 2, it is inconsistent and improper to enforce cleanup for just one substance based on this secondary standard that is odor-based.

The proposed MTBE standards apparently reflected PADEP's concern that if a person's groundwater supply, which had no odor of MTBE before, became impacted by a release, then it should be the responsibility of the person performing the cleanup to restore the quality of the water supply to pre-release condition. I agree that this is the ethically proper concern, but the question is the appropriate way to accomplish it. Arbitrarily "cherry-picking" the Act 2 rules is the incorrect approach and should be rejected in this instance. Act 2 regulations should include a narrative standard that addresses this situation. It is the right of the Commonwealth to include such standards to protect its citizens, even if federal rules don't require it. If adopted, such a requirement should be applicable to all secondary MCLs, not singly to MTBE.

**Comment on Proposed Rulemaking**  
**25 PA. Code Ch. 253 – Administration of the Uniform Environmental Covenants Act**  
**[ref. 40 Pa.B. 1379, Saturday, March 6, 2010]**

Section 253.5 (b) proposes that, for remediations under the site-specific standard that will include an environmental covenant (EC), the remediator shall draft the environmental covenant and provide an unsigned

draft of the covenant either as part of the Remedial Action Plan (under Chapter 245) or as part of the Cleanup Plan (under Chapter 250). It is overly burdensome to require a draft EC at this stage for site-specific cleanups because:

1. In the vast majority of cases, the ultimate requirements for the EC will not be known until the remediation is completed;
2. The PADEP case manager will not have the information required to properly evaluate the draft EC until the Final Report or Remedial Action Cleanup Report is prepared;
3. Conditions typically change between the Cleanup Plan/RAP stage and the Final Report or RACR submittal; and
4. A significant amount of time and cost is necessary to negotiate and draft an EC. By requiring it at the Cleanup Plan/RAP stage as proposed will result in repeating the work in large part, because it will likely need to be revised based on the remedial outcome.

Inasmuch as the Cleanup Plan/RAP is conceptual (typically 10 to 30% design stage), the regulation should instead require that the remediator identify whether they intend to rely on any activity and/or use limitations to achieve the selected remediation standard in the Cleanup Plan/RAP. If so, they then must identify the properties that will require an EC and clearly indicate what activity and use limitations are proposed to achieve the selected standard. In so doing, the remediator is providing the DEP with the conceptual approach to the remediation, without wasting time and resources drafting, negotiating and reviewing an EC that will most likely need to be revisited when the remediation is completed. PADEP would also be the beneficiary of resource conservation by significantly reducing the amount of time spent reviewing revised ECs.

Respectfully submitted,

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