

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-486 (IRRC #3057)

Administration of the Land Recycling Program

July 17, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the May 17, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

- 1. Appendix A, Tables 1 and 3a. – Statutory authority; Determining whether the regulation is in the public interest; Protection of the public health, safety and welfare; Acceptable data.**

Methyl Tertiary-Butyl Ether (MTBE)

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the Regulatory Analysis Form (RAF).

The Department of Environmental Protection (Department) regulations require the Department to review new scientific information that is used to calculate Medium-Specific Concentrations (MSC) used to demonstrate the statewide health standard, and propose appropriate changes at least every 36 months.

The Department's Cleanup Standards Scientific Advisory Board (CSSAB), created for the purpose of assisting the Department and EQB in developing the statewide health standards, reviewed and approved the proposed regulation, with one exception. In its recommendation to EQB, CSSAB wrote that it does not support the MSCs for MTBE in proposed Tables 1 and 3a "because those MSCs are not calculated using specific health-based criteria available from authorized sources as required in Act 2 and the regulations promulgated thereunder." CSSAB stated that the proposed MSCs for MTBE are "based on aesthetic considerations . . . thereby treating MTBE differently than other regulated substances in contravention of the mandate of Act 2 to establish health-based cleanup standards through the application of sound science."

The Storage Tank Advisory Committee (STAC), which is authorized by the Pennsylvania Tank Act to provide advice to the Department on regulations related to the Storage Tank and Spill Prevention Act, also reviewed and approved the regulation with the exception of the proposed MTBE value in Table 1, Appendix A. STAC wrote that it “did not support using DEP’s interpretation of the MTBE drinking water advisory for odor, versus a more quantitative calculation in conjunction with EPA’s methodology.”

We ask EQB to address the advisory committees’ concerns related to the MSCs for MTBE in the Preamble and RAF of the final-form regulation. EQB should explain how the MTBE standards meet the criteria established in Act 2, and how the MTBE standards adequately protect the public health, safety and welfare. If the MSCs for MTBE are not calculated using health-based criteria as required by Act 2, then EQB should explain its statutory authority for its method of calculating the MTBE standards in the final-form regulation.

2. Appendix A, Table 4. – Economic or fiscal impacts; Protection of the public health, safety and welfare; Need for the regulation; Acceptable data.

Vanadium, Arsenic

A commentator raises concerns related to residential MSC for vanadium and arsenic. The commentator asserts that the decreased residential soil MSC for vanadium in Appendix A – Table 4 is overly restrictive and could result in nearly every property in Pennsylvania exceeding the residential MSC and clean fill limits for vanadium. The commentator states that this same problem exists with other metals in Pennsylvania that have MSCs below regional background conditions, such as arsenic.

EQB states in response to RAF #18 that it believes there will be little, if any, adverse effects from this regulation. In response to RAF #19, EQB states that the regulation is not expected to increase costs. We ask EQB to explain the scientific data that EQB relied on for lowering the MSCs for vanadium and arsenic, and to explain how the new standards are necessary to protect the public health. If the new standards are expected to impact a greater number of people, EQB should also explain why it believes the new standards should have no adverse effects, nor increase costs for the regulated community.