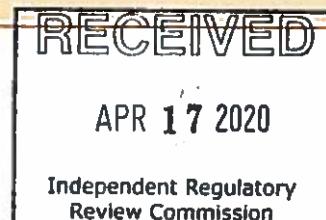


From: ecomment@pa.gov
Sent: Friday, April 17, 2020 12:35 PM
To: Environment-Committee@pasenate.com; IRRC; eregop@pahousegop.com; environmentalcommittee@pahouse.net; regcomments@pa.gov; ntrotman@pasen.gov
Cc: c-jflanaga@pa.gov
Subject: Comment received - Proposed Rulemaking: Administration of the Land Recycling Program (#7-552)

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Re: eComment System



The Department of Environmental Protection has received the following comments on Proposed Rulemaking: Administration of the Land Recycling Program (#7-552).

Commenter Information:

Nadia Brooks
Pitt Law Environmental Group (nab162@pitt.edu)
3900 Forbes Ave
Pittsburgh, PA 15260 US

Comments entered:

No text comments were provided as part of this comment submittal. Please refer to attachments below.

These links provide access to the attachments provided as part of this comment.

Comments Attachment: [Comments in Support of the Land Recycling Program Proposal.docx](#)

Please contact me if you have any questions.

Sincerely,
Jessica Shirley

Jessica Shirley
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063

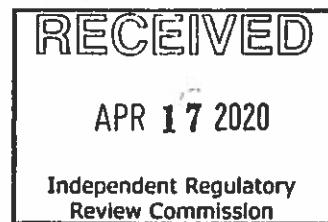
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To: Jessica Shirley
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Comments in Support of the Administration of the Land Recycling Program Proposal #7-

552 (IRRC #:3251) with Suggestions for Improvements

We are writing to comment on the proposed rule regarding the Land Recycling Program. Overall, our group is quite happy with the increase in stringency for clean-up measures involving the regulated chemicals and substances. We agree with the agency that these actions will assist in the modification of environmental standards for the better.

There are several points that need to be clarified, justified, or further explained before the agency will have a rule that fully encompasses the spirit of the regulation and continues to fulfill the agency's overall mission. First, there is a lack of consistency between prior environmental regulations and the current recycling program. Second, the study used to determine these toxicity levels fails to consider how the toxicity levels to plants or wildlife may ultimately have undesired health consequences on humans. Third, Pennsylvania should, in accordance with the reduced Federal levels, have a similar required implementation of a mandatory environmental impact risk assessment to evaluate toxicity. Fourth, more transparency is needed in the scientific studies used to determine the toxicity levels and in determining the sources of funding. Finally, the new proposal is insufficient to protect human health and safety.

I. There is a lack of consistency between prior environmental regulations and the current recycling program.

The portion of the proposed rulemaking that causes some concern is the portion that explains: "Although most of the changes to soil numeric values in this proposed rulemaking would decrease the numeric values, 17% of the values would increase. Increases in values reflect updated information related to exposure limitations to the substances and acknowledge that a higher standard is better representative of those substances' exposure thresholds."

This is immediately concerning based on the statutory language that allows the promulgation of this rule.

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

based standards adopted by the Federal government by the regulation or statute, and health advisory levels (HAL), and which direct the Environmental Quality Board to promulgate appropriate mathematically valid statistical tests to define compliance with Act 2, and other regulations necessary to implement the provisions of Act 2..."

Our concern for the health and wellbeing of human lives is our utmost priority, and we want it translated into the Land Recycling Program. What concerns us further is the lack of consistency between prior environmental regulations and the current recycling program. The Land Recycling and Environmental Remediation Standards act mandates that rules be promulgated to protect all of the interests listed in the statute. The spirit and purpose behind this regulation was to increase environmental protections for human safety but lessening some of the soil and water-based regulations goes directly against this purpose. Narrowly focused regulations fail to address this mandate in that they protect certain aspects of human health while ignoring other factors. The new soil and water toxicity levels are one such regulation. Previous commenters have already expressed legitimate concerns with some of the substances, most notably, lead, in the soil and water and the profound effects that this substance can have on human health through ingestion, especially for Pennsylvania's young children.

II. The study used to determine these toxicity levels fails to consider how the toxicity levels to plants or wildlife may ultimately have undesired health consequences on humans.

Another specific shortcoming with the new decreased toxicity levels is that the study used to determine these toxicity levels seems to focus narrowly on the ways in which soil contamination and groundwater contamination affect humans only through either direct physical exposure or ingestion, but fails to consider how the toxicity levels to plants or wildlife may ultimately have undesired health consequences on humans. For example, if one of the toxicity levels was determined to be lowered for humans but remained seriously toxic to birds or amphibians, this could have serious human health consequences. Deer ticks are a major problem in Pennsylvania, and the most recently recorded annual data from 2017 shows that there were over 11,000 new cases of Lyme disease reported. By eliminating their natural predators (songbirds and amphibians), the risk of deer tick overpopulation threatens to further increase the Lyme disease risk, especially in Pennsylvania's rural and suburban communities (Health.Pa.Gov). This is just one hypothetical example of why focusing only on toxicity levels based on human exposure or ingestion fail to capture the totality of environmental consequences on human health as a result of exposure to the regulated substances.

III. Pennsylvania should, in accordance with the reduced Federal levels, have a similar required implementation of a mandatory environmental impact risk assessment to evaluate toxicity.

If Pennsylvania chooses to adopt the Federal chart, it does so without the matching Federal precautions that accompany the lower toxicity levels. Pennsylvania should, in accordance with the reduced Federal levels, have a similar required implementation of a mandatory environmental impact risk assessment to evaluate toxicity on a case by case basis. The public policy implications when considering the effects on human safety should outweigh any concerns of over-regulation.

The Federal chart was intentionally left as a very basic guideline purposefully in accordance with the 1976 Resource Conservation and Recovery Act (RCRA), which directs the EPA to delegate primary responsibility to individual states when it comes to implementing federal hazardous waste regulations to the individual states. States such as Wisconsin have recently developed water standards that are stricter than Federal levels, showing that states with similar climate, industry, political persuasion, and USDA agricultural hardiness zoning to Pennsylvania can effectively increase safety for human consumers and the environment alike while keeping everyone's interests considered.

"The two most common reasons for the proposed changes are Federal agency (including EPA and U.S. Department of Health Agency for Toxic Substances and Disease Registry) changes in toxicity values that are used in calculating MSC values and change in the EPA's underlying assumption of a person's average daily consumption of water from 2 liters a day (L/day) to 2.4 L/day. The soil numeric values represent a decrease for approximately 83% of the values and an increase for 17% of the values. For groundwater, the proposed changes reflected a decrease for approximately 92% of the values and increase in approximately 8% of the values. Lowering the values may indicate that a less stringent cleanup is required at a site."

Again, the lessening in stringency regarding the 17% of soil-based substances and the 8% of water-based substances is not correctly modeled after the Federal system because there is no requirement for an independent risk assessment.

IV. More transparency is needed in the scientific studies used to determine the toxicity levels and in determining the sources of funding.

Separately on this section, our group is seeking more transparency in the scientific studies used to determine the toxicity levels and, most importantly, the sources of funding for these studies. Although the EPA and The United States Department of Health Agency for Toxic Substances and Disease Registry should serve as generally trustworthy sources, instances where protections regarding human health are being relaxed rather than strengthened should trigger an immediately higher level of research and discussion. This can only be done by thoroughly examining the funding sources of the studies used to make the stated conclusions regarding toxicity levels. It is important to remember consequences such as the 2002 E.coli Outbreak that occurred as a direct result of the U.S. Department of Agriculture directors accepting subsidies from agricultural producers who stood to lose profits over the increased reporting standards (*Monsanto v. US Farmers: A report by the Center For Food Safety*, available at <https://www.centerforfoodsafety.org/files/cfsmonantovsfarmerreport11305.pdf>). If this is still unconvincing, simply examine the legislative history of the FDAs approval of aspartame (an artificial substance banned from inclusion in food products for being a known carcinogen in most of the modernized world) as a safe food ingredient in the United States (Turner, James. "Aspartame/NutraSweet: The History of the Aspartame Controversy" National Institute of Science, Law, and Public Policy.) Pennsylvania cannot afford to prioritize profits over human health, safety, or the protection of our beautiful natural environment.

V. Finally, the new proposal is insufficient to protect human health and safety.

A final issue with the newly proposed regulation is the following passage pertaining to the minimum threshold MSCs that may be used only when no toxicological data is available.

The minimum threshold MSCs may be used only when no toxicological data is available for the regulated substance. If the minimum threshold MSC concentration is attained and impacts to ecological receptors are addressed in accordance with § 250.310, the Department will provide a release of liability. Under Act 2, the Department may require additional remediation for the regulated substances that meet a minimum threshold MSC if new chemical-specific toxicological information is obtained which revises the exposure assumptions beyond the acceptable risk. The Department is seeking comment on providing a release of liability for compliance with these standards.

This proposal is insufficient to protect human health and safety, especially with new and developmental stage chemicals that have not undergone rigorous testing to be included in the guidelines. Given the challenge of human interaction with hazardous chemicals, higher safeguards must be put into place. If anything, chemicals and substances that have questionable potential of being carcinogenic should have increased levels of precautions rather than waivers of liability. When revising your regulations, we request that you address our various comments. The lower toxicity listings should not be implemented without additional safeguards, the examination of toxicity should not be limited to ingestion or direct human exposure, and the studies and their funding sources on which the new levels were based need to be available to the public. Please do not hesitate to contact our environmental advocacy group to provide further information.

Sincerely,

The Pitt Law Environmental Group
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Nadia Brooks, nab162@pitt.edu
Marie Lester, meh9744@gmail.com
Kendra Campbell, kmc176@pitt.edu