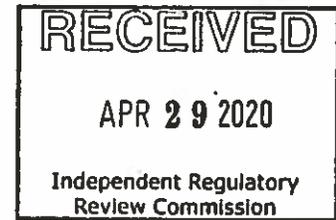


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April 30, 2020

Michael Maddigan
Environmental Group Manager, Land Recycling Program
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Comments on the Proposed Amendments to 25 Pa. Code Chapter 250, Relating to the Administration of Land Recycling Program) [25 PA. CODE CH. 250, 50 Pa.B. 1011] – submitted electronically via - <https://www.ahs.dep.pa.gov/eComment/>

Dear Mr. Maddigan,

The Marcellus Shale Coalition (“MSC”) was formed in 2008 and is comprised of approximately 150 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the safe development of natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission in the country, as well as the suppliers and contractors who partner with the industry.

The MSC appreciates the opportunity to comment on proposed amendments to regulations implementing the Pennsylvania Land Recycling and Environmental Remediation Standards Act (“Act 2”) set forth at 25 Pa. Code Chapter 250. The Environmental Quality Board (“EQB”) approved the amendments in proposed form at its meeting on November 19, 2019, and the proposed amendments were subsequently published in the Pennsylvania Bulletin on February 15, 2020. Due to the COVID-19 pandemic, the comment period regarding the proposed amendments was extended to April 30, 2020. The MSC has reviewed the proposed regulations and submits the following comments for consideration by the EQB and the Pennsylvania Department of Environmental Protection (PA DEP or Department).

Comments

1. The MSC supports the approach contained in the proposed regulations for addressing sulfate and chloride in a manner that is protective of human health and the environment under the statewide health standard of Act 2. Such an approach will enable the regulated community to use the statewide health standard where these substances are an issue in connection with a release and will conserve PA DEP’s administrative resources by not requiring such substances to be addressed using alternative cleanup standards such as the site-specific standard which are far more complex and time consuming to administer.
2. The Cleanup Standards Scientific Advisory Board (“CSSAB”) has been working with the Department regarding the proposed changes to 25 Pa. Code Chapter 250. According to a

letter¹ from the CSSAB to the Department dated November 4, 2019, the CSSAB raised concerns regarding the “underlying science on which the Medium Specific Concentrations for vanadium are based.” “Further, the residential soil Medium Specific Concentrations for vanadium is below background levels and will have a significant detrimental impact on the clean fill program.” The MSC agrees with the CSSAB’s recommendation that the medium specific concentrations for vanadium be modified or removed as part of the revisions to Chapter 250. In addition, the MSC agrees with the details provided in the letter providing the basis for this recommendation by the CSSAB.

3. The MSC has reviewed the Regulatory Analysis Form (“RAF”)² that was presented to EQB at the meeting on November 19, 2019. In the RAF, the Department states that the proposed amendments to Chapter 250 are not expected to increase costs or provide any significant savings for the regulated community. Chapter 250 contains medium specific concentrations for over 400 regulated substances.

According to the Department, the proposed amendments to the soil numeric values represent a reduction in the cleanup thresholds for approximately 83% of the values. For groundwater, the proposed changes reflect a reduction in the cleanup thresholds for approximately 92% of the values. Lowering the threshold values will necessarily result in more stringent cleanup activities being required at sites in order to attain the statewide health standard under Act 2. Moreover, sites that formerly could have been readily addressed under the statewide health standard may now need to utilize alternative cleanup standards due to the lower thresholds. The MSC questions how the Department concluded that these dynamics would not result in significant additional costs of compliance, given that reductions of cleanup standards will require the regulated community to perform additional sampling, analysis, earthmoving and remedial cleanup work to achieve these newly proposed standards. The Regulatory Review Act (“RRA”) clearly requires the promulgating agency to include “estimates of the direct and indirect costs... to the private sector.”³ The MSC recommends that the Department provide an analysis regarding the anticipated increase in the costs of compliance with Act 2 due to the proposed amendments to understand the impact on small businesses in the private sector, which is required under the RRA.

4. These regulations include requirements for reporting and remediating both spills and releases of regulated substances at natural gas well sites and access roads as set forth at 25 Pa. Code 78a.66 and incorporate by reference both Act 2 remediation standards and the Chapter 250 cleanup thresholds.

¹http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/November%2019/01_7-552_Ch250_Proposed/05_7-552%20Ch%20250%20Proposed_CSSAB%20Letter_11-4-19.pdf

²http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/November%2019/01_7-552_Ch250_Proposed/04_7-552_Ch%20250%20Proposed_RAF.pdf

³ §5(a)(4) of Act 181 of 1982, known as the Regulatory Review Act

In 2019, according to the Department's own data housed on the Oil and Gas Compliance Reporting Website⁴, the Department issued 555 notices of violations for spill-related events that occurred at unconventional well sites. While the Department's Oil and Gas inspectors should only require that Act 2 remediation standards and Chapter 250 be followed for releases from well pads of 42 gallons or more in accordance with 25 Pa. Code § 78a.66, frequently inspectors request that this regulation is followed for small spills and those that are contained on the well pad by either primary or secondary containment. With this information in mind, the MSC would like to make two points:

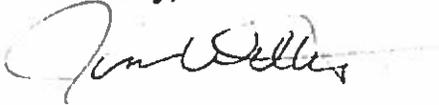
- a. We expect that the number of sites where remediators are applying the Act 2 remediation standards is much larger than 800 per year, based on the numbers of spill violations reported by the Oil and Gas Program, plus the 12,000 existing underground and aboveground storage facilities that the Department references in its proposal. The MSC recommends that the EQB and the Department update these numbers to be more reflective of what is being reported by the Oil and Gas Program and acknowledge that the impact of the reduction of the Chapter 250 cleanup standards will have a significant impact on the entire oil and gas industry.
 - b. The Department's Land Recycling Program should work with the Oil and Gas Program to ensure that Act 2 remediation standards and the proposed Chapter 250 cleanup thresholds are only required to be followed in the event of a spill and release larger than 42 gallons, in accordance with Chapter 78a.66. The MSC believes that Oil and Gas inspectors and supervisors are inappropriately requiring the unconventional industry to follow Act 2 and the cleanup thresholds for small spills and those contained on a well pad and within secondary containment.
5. In the proposed amendments to 25 Pa. Code Chapter 250, the EQB has proposed for the first time to include medium specific concentrations for perfluorobutane sulfonate ("PFBS"), perfluorooctane sulfonate ("PFOS") and perfluorooctanoic acid ("PFOA") in soils and groundwater. The MSC has concerns regarding future testing requirements that may be imposed by the Department in light of these standards. As stated above, any necessary testing and sampling requirements would have significant economic impacts to any potential remediator. The sampling and testing procedures for perfluoroalkyl and polyfluoroalkyl substances ("PFAS") are much different than other testing procedures used for more conventional substances. Significant decontamination safeguards need to be followed to ensure there is no question with regard to the validity of sampling results. It is highly recommended that the Department issue further technical guidance to ensure accurate and consistent sampling results are produced by any necessary investigation, characterization, and remediation efforts.
 6. The EQB has proposed to add 25 Pa. Code § 250.12 to the regulations under Act 2. The MSC suggests that there needs to be added clarity to this requirement. While there are

⁴ http://www.depreportingservices.state.pa.us/ReportServer/Pages/ReportViewer.aspx?/Oil_Gas/OG_Compliance

significant specific activities under Chapter 250 that would require an engineer, geologist or surveyor licensed in the Commonwealth, some consideration should be given to qualified environmental professionals being permitted for report submittals that may not have one of the above licenses, as long as the appropriate licensed activities are completed under the direction of licensed individuals.

The MSC appreciates the opportunity to comment and we remain committed to working with the EQB and Department on this topic and any others that may arise. Please let us know if you have any questions regarding these comments.

Sincerely,



Jim Welty
Vice President, Government Affairs