

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-552 (IRRC #3251)

Administration of the Land Recycling Program

June 1, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the February 15, 2020 *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 (Board) to respond to all comments received from us or any other source.

1. Section 250.4. Limits related to PQLs. – Clarity and lack of ambiguity.

Under subsection (a), practical quantitation limits (PQL) are selected from PQLs or estimated quantitation limits “specified by the [United States Environmental Protection Agency (EPA)] in the most current version of EPA’s drinking water or solid waste analytical methods.” The Board states in the Preamble to the proposed regulation that the amendments “update the references and procedures for determining” PQLs. However, the current reference to a specific EPA manual is replaced with general EPA analytical methods. We ask the Board to clarify references to these methods in the final-form regulation or explain in the Preamble to the final-form regulation why it is unnecessary to do so.

2. Section 250.10. Measurement of regulated substances in media. – Clarity and lack of ambiguity.

Under subsection (d), samples of groundwater from monitored drinking water wells are required to be field acidified and unfiltered in accordance with a Department of Environmental Protection (Department) technical guidance manual or “an alternative sampling method that accurately measures regulated substances in groundwater.” What alternative sampling methods are acceptable? We ask the Board to specify sampling methods in the final-form regulation or explain in the Preamble to the final-form regulation why it is unnecessary to do so.

3. Appendix A, Tables 1, 3A, 3B and 5A – Possible conflict with or duplication of statutes or existing regulations.

Polychlorinated biphenyls (PCB) (Aroclor)

PCB-1221 (Aroclor), PCB-1232 (Aroclor), PCB-1242 (Aroclor), PCB-1248 (Aroclor) and PCB-1260 (Aroclor) are not listed in Appendix A, Table 5A. However, these five regulated substances are contained in Appendix A, Tables 1, 3A and 3B. As described in § 250.301(a) (relating to scope), Appendix A, Table 5 contains “the toxicological and physical parameters used to calculate the medium-specific concentrations (MSC) in Appendix A, Tables 1 – 4.” Why did the Board delete these regulated substances from Appendix A, Table 5A? We ask the Board to revise the final-form regulation so that Appendix A, Tables 1, 3A and 3B do not conflict with the regulations of the Department.

4. Appendix A, Tables 2 and 4B – Fiscal impact; Reasonableness; Whether the regulation is supported by acceptable data.

Vanadium

The Cleanup Standards Scientific Advisory Board (CSSAB), established to provide technical and scientific advice and assist the Department and the Board with developing statewide health standards, does not endorse MSCs for vanadium and “recommends revision or removal of the MSCs for vanadium that are included in the proposed regulations.” CSSAB states that the residential soil MSC for vanadium is “well below naturally occurring background levels” and “appears to be substantially lower than any published federal or state value.” CSSAB also details limitations of the database used by the Department to determine the MSCs. Commentators also raise these issues and support CSSAB. A commentator also states that MSCs for vanadium will impact “the cost and timeliness of cleanup activities under Act 2.” We ask the Board to respond to the concerns of CSSAB and commentators in the Preamble of the final-form regulation by explaining why the MSCs for vanadium are reasonable, the appropriateness of the data used to determine the MSCs and the fiscal impact to attain compliance with the MSCs for vanadium. Further, we ask the Board to consider revising the MSCs for vanadium as suggested by CSSAB.

5. Appendix A, Tables 4A and 7 – Determining whether the regulation is in the public interest; Protection of the public health, safety and welfare; Whether the regulation is supported by acceptable data; Legislative intent.

Lead

Section 250.306(e) (relating to ingestion numeric values) describes the development of the residential ingestion numeric value for lead in soil using the Integrated Exposure Uptake Biokinetic (IEUBK) model and the Adult Lead Methodology (ALM). Appendix A, Table 7 identifies the input values used in the IEUBK model for lead in children for residential exposure and the ALM for non-residential exposure. This table corresponds to the numeric values for residential and non-residential soil MSCs for lead in Appendix A, Table 4A. Commentators

have numerous concerns regarding the non-residential soil MSC for lead given the potential for significant health problems due to lead exposure, especially in children. A commentator questions why the ALM was used to calculate non-residential soil, noting that “lead in soil is blown and tracked off site onto roads, sidewalks and then into yards and homes where children play.” A commentator adds that “there is no guarantee that a site will remain non-residential.” Several commentators advise that the non-residential soil MSC for lead of “2,500 [parts per million (ppm)] is based on outdated guidance from the Centers for Disease Control and Prevention,” specifying that the current recommendation of “5 [micrograms per deciliter (µg/dL)] is the threshold blood lead concentration for higher risk in children and fetuses, not 10 µg/dL as the proposed rule implies.” Commentators urge the Board to retain the numeric value of 1,000 ppm for lead in non-residential soil.

We have three concerns with Appendix A, Tables 4A and 7. First, why does Appendix A, Table 7 include two instances of “TBD” in the value column? Second, is the Board using acceptable data to calculate the numeric values in Appendix A, Table 4A? Third, does the potential for non-residential soil contaminated with lead to migrate to residential areas meet the standard in Section 102(6) of Act 2 (35 P.S. § 6026.102(6)) that cleanup plans shall take “into account its current and future use and the degree to which contamination can spread offsite and expose the public or the environment to risk”? We ask the Board to address in the Preamble to the final-form regulation these questions about the data used to establish the MSCs for lead. We also ask the Board to explain in the Preamble to the final-form regulation how the non-residential soil MSC for lead will adequately protect the public health, safety and welfare.

We will review the Board’s responses to these questions and concerns as part of this Commission’s determination of whether the regulation is in the public interest.