



September 11, 2024

**Pennsylvania Department of Environmental Protection
Proposed Amendments to Chapter 250
Administration of the Land Recycling Program (Act 2)**

Public Comments submitted via eComment on September 10, 2024

On behalf of the Pennsylvania Chemical Industry Council (PCIC), I am submitting comments in response to the Pennsylvania Department of Environmental Protection's (PADEP) proposed amendments to Chapter 250 published in the Pennsylvania Bulletin on July 13, 2024. The amendments relate to the administration of the land recycling program and relevant updates to Statewide health standard medium-specific concentrations (MSC).

For over 30 years, PCIC has served as the industry trade group representing Pennsylvania chemical and plastics manufacturers. We represent 29 members who operate plants and employ thousands of workers throughout Pennsylvania, and additional associate members who supply materials and services to the industry. PCIC members are investing significantly in new and innovative technologies to improve efficiency and make manufacturing more sustainable.

PCIC and our member companies are committed to complying with all relevant federal, state, and municipal laws and regulations in Pennsylvania and throughout the United States. As such, our members have amassed significant knowledge and experience related to how policies impact economic growth, project timelines, resources needed, and cost impacts.

Our members have identified areas in the proposed amendments to the administration of the land recycling program where additional clarity is needed to support development and growth while protecting the environment based on sound science and available technology resources.

Compliance for Medium Specific Concentrations (MSCs) for Per- and Polyfluoroalkyl substances (PFAS)

On April 26, the US EPA established a National Primary Drinking Water Regulation (NPDWR) final rulemaking, establishing maximum contaminant levels (MCLs) and health-based Maximum Contaminant Level Goals (MCLGs) for six per- and polyfluoroalkyl substances (PFAS) in drinking water. This federal rulemaking postdated the development of the PADEP's proposed amendments to Chapter 250, as the proposed Chapter 250 Amendments were adopted by the Environmental Quality Board (EQB) at its March 12 meeting. The federal NPDWR final rulemaking is also relevant as the MCLs automatically became the MSCs for certain PFAS in groundwater 60 days after the final rule's publication, on June 25.

Therefore, our members believe the Department's review and proposed changes related to PFAS MSCs are incomplete and out of sync. A solution for this inconsistency is for the Department to amend the currently proposed MSC tables for PFAS to incorporate the new federal NPDWR MCLs as groundwater MSCs and to re-publish these changes in the *Pennsylvania Bulletin* for further public comment.

If finalized in their current form, the regulated community will be left with an outdated and incomplete set of MSC tables for PFAS that do not otherwise incorporate the latest relevant standards for groundwater.

The PADEP should update the Groundwater MSCs in the proposed changes to reflect the new federal PFAS MCLs and provide compliance and enforcement clarification. The publication of the federal NPDWR final rulemaking for PFAS was also unique in that the federal agency has exercised its authority under the Safe Drinking Water Act (SDWA) section 1412(b)(10) to implement a nationwide capital improvement extension to comply with the MCLs. This decision provided regulated public water systems (PWS) the flexibility of five years to comply with the MCLs, or by April 26, 2029. Additional flexibility was also provided to PWS such as initial monitoring, by April 26, 2027.

The basis for the extended compliance timeframes applicable to PWS is based on the US EPA's assumptions that significant capital improvements (i.e., installation of treatment technologies) for systems to comply with the rule will be necessary across the nation and are technically and economically feasible to be accomplished within the five-year timeframe from the date promulgated, or by 2029.

For incorporation of the federal MCLs for PFAS into the MSC tables, our members recommend that the Department consider a similar extended, or staggered compliance schedule for incorporation of PFAS MCLs and requests the use of Pennsylvania's currently effective MCLs for PFOA and PFOS to become the effective Groundwater MSCs rather than the federal MCL. Then the Groundwater MSCs based on the Pennsylvania MCLs should be utilized for the 100x MSC soil to groundwater MSC. This staggered approach should be in effect until the federal MCLs become enforceable. This approach aligns with the national timeline and provides the time required for regulated industries to adopt plans and comply with potentially more extensive remediation efforts.

To advance an effective collaborative approach, our members recommend that PADEP utilize the Cleanup Standards Science Advisory Board (CSSAB) to create a PFAS workgroup to establish clarity and uniformity related to the MSC and PFAS proposed changes. This PFAS workgroup should work with the PADEP to determine the required inputs to develop generic soil-to-groundwater MSCs.

To-date, the Department has not established generic soil-to-groundwater MSCs due to incomplete technical information. This is an important component of the MSC tables for soil-to-groundwater values and has significant ramifications for other Department programs, such as the Management of Clean Fill under the Solid Waste Management Act.

PFAS Re-Openers: Requirements for PADEP to Reopen a Case

There is concern that overly stringent PFAS limits could lead to the unnecessary reopening of previously closed Act 2 or CERCLA sites. This could impose significant burdens on property owners, developers, and the regulatory agencies involved. Our members recommend enhanced legal language to protect against reopening Act 2 and

CERCLA sites that were previously closed. This could include a risk-based approach, contextual considerations, time limitations, or explicit reopener criteria. By considering these factors and incorporating legal language, PADEP can strike a balance between protecting public health and preventing unnecessary regulatory burdens.

Site-Specific Standard for PFAS

Our members seek to confirm that the Site-Specific Standard can be used for any PFAS with toxicity data listed in Chapter 250.605. This confirmation would provide a standardized approach for assessing PFAS contamination in soil and determining remediation needed.

Statewide Background Levels and Hazard Index Approach

We recommend establishing statewide background levels for PFAS in soils, which align with best practices established in several other states. This approach would provide a consistent baseline and avoid extensive and expensive site-specific background determinations for simple closures.

Additionally, PADEP should clarify how it will implement the Hazard Index (HI) approach for groundwater MSCs and in the future, for soil MSCs. Because the Hazard Index is the primary method for assessing the overall risk posed by multiple contaminants, more details regarding implementation will help regulated industries better understand PADEP's application.

As referenced above, the Department has recently laid out the approach for incorporation of the federal MCL into the MSC groundwater tables. The Department also incorporated the utilization of the HI approach for PFAS substances subject to the federal MCL and has published this approach on its Land Recycling MSC webpage. For groundwater, the Department states that in addition to meeting the individual MSC for relevant PFAS, if more than one of the marked compounds (Gen-X, PFBS, PFHxS, PFNA) is detected at any concentration in a sample, a Hazard Index (HI) must be calculated using a highly complex equation that has never been required of the regulated community in the context of MSCs.

Similar to the federal MCLs applicable to PWS, the HI approach is a brand-new concept under the SDWA and directly applicable to PFAS present in the water (or groundwater) matrix. These MCLs, including the HI approach, became the Statewide health standard medium-specific concentration (MSC) values for groundwater effective June 25, 2024. Due to the complexity of the HI approach for multiple PFAS and due to the lack of information regarding the use of the HI approach for PFAS in soils, PCIC again reiterates and recommends the need for the PADEP to utilize the Cleanup Standards Science Advisory Board (CSSAB) to create a PFAS workgroup to establish clarity and uniformity related to these proposed changes related to MSCs and PFAS.

Clean Fill Standards

As it relates to the Department's *Management of Fill Policy* (258-2182-773), established under the Solid Waste Management Act, the movement and placement of clean or regulated fill in the Commonwealth is directly impacted by the proposed changes to the MSC tables. The Department's regulatory analysis of the Benefits, Costs and Compliance associated with the proposed rulemaking does not account for significant impacts on the regulated community and the confusion created through the incorporation of the PFAS MCLs as MSCs, as well as the use of the HI approach for a combination of PFAS.

For example, when making clean or regulated fill determinations, the applicable numeric limit is determined by comparison of the published MSC tables and either the Generic Soil-to-Groundwater Value or the Direct Contact and selection of the lower of the two values. For purposes of PFAS MSCs (current and proposed), the lack of generic soil-to-groundwater values established in the MSC tables otherwise presumably defaults the person determining clean or regulated fill status to use the Direct Contact value published in the MSC tables. However, practical application of this analysis through the *Management of Fill Policy* has proven difficult, as Department staff have interpreted the lack of generic MSC values for PFAS as requiring a site-specific analysis of soils using the synthetic precipitation leachate procedure (SPLP) for derivation of a “generic” soil-to-groundwater value. It is unclear how the Department will incorporate the HI approach into future clean or regulated fill determinations.

These issues and the lack of analysis of their impact on the regulated community require further discussion with the Department. The EQB and Department should consider this and be aware of the potential impacts for the availability of clean or regulated fill across Pennsylvania that will likely be created due to the lack of generic soil-to-groundwater values.

PADEP should strengthen its due diligence component of the clean fill determination process to clarify that contaminants, including PFAS, do not need to be included in the suite of analytical parameters where they are not known or suspected to be present and to limit clean fill sampling analytes to parameters of potential concern identified during the due diligence process. Additionally, establishing a statewide background value would provide a more consistent baseline for assessing PFAS contamination in clean-fill materials, making it easier to determine whether they meet the necessary standards without conducting extensive and expensive background determinations at both the donor and receiving sites.

Polycyclic Aromatic Hydrocarbons (PAHs)

Our members support PADEP and SAB's approach to align with the EPA's approach for MSCs for carcinogenic PAHs, which is also used by several other states.

In closing, PCIC appreciates the opportunity to provide public comment. We respectfully request that the PADEP revisit the proposed policy changes to incorporate input from the regulated industry that protects the environment while not placing an additional burden that adds cost, time, and uncertainty.

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Pennsylvania Chemical Industry Council

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