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SECTION III. RELATIONSHIP TO OTHER ENVIRONMENTAL STATUTES

Remediation under Act 2 sometimes involves relationships to other environmental statutes (e.g., groundwater pump and treat systems require NPDES permits). Although other Department programs (e.g., Water Quality Management) will be involved in requests and approvals, the regional Environmental Cleanup Program Manager will coordinate these activities. All paperwork should be sent to the regional Environmental Cleanup Program Manager.

A. Solid Waste Facilities

This section provides a general overview of the interface between Act 2 (the Land Recycling and Environmental Remediation Standards Act) and Act 97 (the Solid Waste Management Act of 1980). This discussion is meant to provide a broad overview and a general direction of the interrelationship between these statutes and programs. It is not meant to be used as a substitute for specific regulations that apply to solid waste processing or disposal facilities. Solid waste management facilities, including those facilities that process and dispose of municipal, residual, or hazardous wastes, are primarily regulated under Act 97. The permitting, bonding and compliance requirements of Act 97 are implemented through policies and regulations adopted as follows: Chapters 261(a) through 270(a) for hazardous waste, Chapters 271 through 285 for municipal waste, and Chapters 287 through 299 for residual waste. The Department will not require a permit for the movement onsite of residual waste encountered when performing a site remediation under the site-specific standard of Act 2, as referenced by Section 287.101.(e) of the residual waste regulations. Act 2 addresses the development of cleanup standards and the procedures, practices, and protocols for the remediation of contaminated media. Act 2 is implemented through policies and regulations contained in Chapter 250.

Remediation performed at a hazardous waste facility must comply with the requirements of the federal Resource Conservation and Recovery Act. Consultation with DEP staff would expedite and clarify obligations that could be satisfied by Act 2.

The following narrative describes the approach to follow in those situations and circumstances which the Land Recycling and Solid Waste Management programs interface.

1. Disposal Prior to September 7, 1980

Solid waste management facilities that were permitted under the Pennsylvania Solid Waste Management Act of 1968 (Act 241) or had an approved closure plan or consent order and agreement, that ceased disposal activities prior to September 7, 1980, are subject to the terms and conditions of their original

permit relating to closure or of the approved closure plan or consent order and agreement. The permittee may request approval from the Department for a modification of the permit or closure plan to be consistent with Act 2 standards for remediation of any release of a regulated substance to soil or groundwater.

Solid waste management areas or facilities that were not permitted or did not have an approved closure plan may remediate any release of a regulated substance under the provisions of Act 2. The covering, grading, revegetation, and related closure activities for waste left in place are to be consistent with best management practices to prevent pollution, odors, and other public nuisances. For clean closures where waste is removed, impacted soil and groundwater must meet an Act 2 standard.

Facilities or areas where waste disposal occurred prior to September 7, 1980 and are undergoing remediation under the provisions of Act 2 and applicable rules and regulations are eligible for liability relief under Act 2.

2. Disposal after September 7, 1980, for Residual waste and construction / demolition waste, and between September 7, 1980 and October 9, 1993 for municipal waste.

Municipal and residual waste disposal activities that occurred after September 7, 1980 are subject to Act 97, the terms and conditions of permits issued pursuant to Act 97 and to the municipal and residual waste regulations.

If disposal at a municipal waste landfill ceased prior to October 9, 1993 or disposal at a construction/demolition waste landfill, residual waste landfill or a disposal impoundment ceased after September 7, 1980, a release of a regulated substance must be remediated in accordance with either of the following:

- an approved closure plan, permit or administrative consent order, consent adjudication, judicially approved consent order or other settlement agreement entered into with the Department, or
- the background, Statewide health¹ or site-specific numeric standards found in Section 271.342(b)(4) and 287.342(c)(2).

Any spill or release of a contaminant to soil and/or groundwater that occurs subsequent to closure may be addressed using one of the cleanup standards identified by Act 2 and included in the final report. The cause of the release or

¹ The nonuse aquifer numbers are not applicable to releases from waste landfills.

spill must be addressed in accordance with the terms and conditions of the closure plan and/or permit. Any relief of liability afforded under the Act 2 program relates only to the regulated substances identified and in no way is meant or intended to supersede the terms and conditions of the closure plan and/or permit.

If the Department determines that a spill or release occurs because the responsible party/permittee lacks the ability or intent to comply with the terms and conditions of the closure plan the Department will select the appropriate remediation remedy.

At properties where solid or liquid municipal or residual wastes were disposed, without permit, and became mixed with soil thereby becoming a part of the environmental media, the Act 2 program would govern remediation. The remediator would choose the best applicable management practices to include covering, grading, revegetation, and related activities to prevent pollution, odors and other nuisances that would apply to the remediation of mixed media. Liability relief afforded by Act 2 would only apply to the area characterized and to the contaminants identified in the Act 2 final report.² If the soil/waste mixture is moved offsite, the material must be managed as waste pursuant to 250.3 of the Act 2 regulations and the definition of waste in the residual waste regulations.

Some unpermitted waste management practices involved placement of waste in or on the surface of the ground (i.e., in a pile, a lagoon, etc.) and the waste is distinguishable from the soil. The closure and/or remediation of this waste will occur under Act 97 and its regulations relating to remediation and closure, or by using the Act 2 site-specific standard.²

3. Disposal of Municipal waste after October 9, 1993

At properties where disposal of municipal waste occurred after October 9, 1993, regardless of whether a permit or approval was obtained, the remediation and closure are governed by the appropriate Act 97 regulations.

If a municipal waste landfill received waste between October 9, 1993 and December 23, 2000, a release from the landfill of a regulated substance must be remediated in accordance with a closure plan approved prior to December 23,

² In each of these situations it is assumed that the Department would exercise its enforcement discretion. If the Department determines that the responsible party/property owner conducted the intentional culpable long-term practice of placing waste into the environment Act 97 would apply.

2000 or remediation standards in the municipal waste regulations that are similar to the federal requirements under Subtitle D of RCRA. (§271.342(b)(3).)

A release of a regulated substance from a municipal waste landfill permitted on or after December 9, 2000 must be remediated in accordance with the remediation standards in the municipal waste regulations that are similar to the Subtitle D requirements in. §271.342(b)(2).

4. Operating Municipal or Residual Waste Facilities

Permitted solid waste management facilities that received waste after September 7, 1980 and are continuing to receive waste must continue to comply with the permitting, operation, design, and closure requirements prescribed by the regulations adopted pursuant to Act 97, including Sections 271.342 and 287.342, as well as other relevant environmental protection acts and regulations. Any release of a regulated substance from a municipal or residual waste disposal facility currently receiving waste must be addressed in accordance with an approved assessment and abatement plan. The abatement of a regulated substance must meet the applicable **abatement** standard at the point of compliance.

It should be noted, however, that a spill or release at an operating permitted facility that occurs outside of a disposal or processing unit, including surface impoundments and waste storage areas, can be remediated under Act 2. For example, a leaking fuel tank, or a truck spill on an access road, can be remediated under Act 2 even if the permitted area includes the entire property.

B. Remediation of sites regulated under RCRA Subtitle C (Hazardous Waste)

Sites that have RCRA Subtitle C corrective action obligations may satisfy federal requirements by participating in the voluntary cleanup process provided in Act 2. Because Pennsylvania has chosen not to seek authorization to implement the RCRA Corrective Action Program, EPA Region III RCRA staff reserves the right to review and approve reports prepared as a part of an Act 2 cleanup. For RCRA facilities with “low” or “medium” priority corrective action obligations, Act 2 standards (excluding Statewide health nonuse aquifer standards and Special Industrial Area cleanups) and procedures may be applied to satisfy both state and federal requirements concurrently. For “high” priority RCRA corrective action facilities, Act 2 standards (excluding Statewide health nonuse aquifer standards and Special Industrial Area cleanups) and procedures could also be applied, but with greater interaction with EPA Region III RCRA staff. Copies of NIRs, remedial investigation reports, risk assessments, cleanup plans and final reports will be provided to EPA Region III staff by DEP ECP staff. In many cases, RCRA corrective action obligations may be satisfied through actions taken under the Land Recycling Program’s voluntary cleanup procedures.

B.C. Clean Streams Law Interface

Surface water discharges associated with contaminated sites are classified as point and non-point sources. A point source is a distinct discharge of industrial waste into a surface water such as a leachate discharge from a disposal unit. Such point source discharges are required to be permitted as an NPDES point source discharge. In other situations, runoff from a contaminated site discharges through a storm sewer. Such a discharge would also be classified as a point source of industrial waste subject to NPDES requirements.

Non-point source discharges are often associated with diffuse contaminated groundwater discharges to a surface water. The Act 2 regulations provide that a remediator model the diffuse discharge impact on a surface water and compare the model results with the applicable Chapter 16 and 93 Water Quality Standards.

~~If a modeled exceedance of the stream standard occurs, the remediator may elect to perform in-stream sampling to determine the validity of the model. Stream sampling should be conducted at stream transects above and below the diffuse groundwater discharge into the stream. Sufficient nodes should be sampled in each transect to determine the distribution of contamination in the surface water. The upstream transect will determine background (average of sample node results) and the downstream transect will determine the impact of the diffuse groundwater discharge on the receiving stream relative to background. Attainment of the Chapter 16 or 93 Water Quality Standard is demonstrated when 90% of the nodes in the downstream transect meet the higher of background or the applicable in-stream standard and the remaining 10% of the nodes are within a factor of two of the higher of background or the applicable in-stream standard.~~

In addition to evaluating the impact of discharges into surface water, the remediator should carefully evaluate remedial activities to minimize erosion and sedimentation in conformance with the requirements of Chapter 102. In addition, in-place closures of unregulated and unauthorized disposal units will satisfy these requirements by adequate maintenance of cover.

C.D. Clean Air Act and Air Pollution Control Act Interface

One area of interface is the case of applying remediation technologies (*e.g.*, air strippers or incineration units) which result in air emissions. In such a situation, a remediator may be required to obtain a general air quality plan approval and operating permit under Chapter 127, Subchapter H.

In cases of interface other than remediation technology emissions, care should be taken to conduct the remediation such that odor nuisances will be addressed.

Asbestos is regulated as a hazardous air pollutant under Section 112 of the Clean Air Act. Guidance for the management of asbestos is available from EPA's web page at www.epa.gov/ebtpages/airairpoasbestos.html. Selected guidance is included as Attachment O in Section V of this manual.

D.E. Regulated Storage Tank Release Sites

1. Interface With Act 2

Storage tank cleanups conducted pursuant to the Storage Tank and Spill Prevention Act (Act 32 of 1989, as amended) which meet one or more of the standards under Act 2 are Act 2 cleanups. Section 904(c) of Act 2 preserved the corrective action process for the remediation of releases from storage tanks regulated by Act 32. Regulated storage tanks include a wide range of underground and aboveground tanks containing petroleum products and hazardous substances. Notable exceptions to the regulated tank community are tanks containing heating oil for consumptive use on the premises where stored, and hazardous waste tanks.

The corrective action process applies to releases from regulated tanks for which remediation (anything beyond notification) was initiated on or after August 5, 1989, the effective date of Act 32. Persons who take corrective action under Act 32, and can demonstrate attainment of one or more of the standards under Act 2, will be afforded liability protection. The three cleanup standards available are background, Statewide health and site-specific. Where Act 32 applies, persons cleaning up these releases are not subject to the notice, fee and Department approval provisions contained in Act 2. Likewise, the mandatory Department review times and the “deemed approved” provisions of Act 2 are not available for cleanups involving these releases.

Those persons who initiated cleanup prior to their tanks becoming deregulated by Act 16 of 1995 should continue to implement the corrective action process, along with use of the Act 2 remediation standards, to receive liability protection. This would include releases from commercial heating oil tanks provided the remediation was initiated before August 25, 1995. On this date, commercial heating oil tanks became deregulated.

Where a tank is not governed by Act 32, adherence to the Act 2 process and cleanup standards will be required in order to receive liability protection. This would apply to releases from storage tanks for which remediation was initiated prior to August 5, 1989, and releases from unregulated storage tanks, including tanks formerly regulated as commercial heating oil tanks. Persons cleaning up releases from deregulated commercial heating oil tanks where the remediation was initiated on or after August 25, 1995, would have to adhere to the Act 2 process to receive liability protection.

Where a person is responding to releases from tanks governed by Act 32 as well as releases from other tanks (which are then governed by Act 2), the person doing the remediation may elect to address the tanks together, or to address them separately on a dual track of the Act 2 and Act 32 processes. If

the person elects to address the tanks together, he or she may submit combined reports and notices that satisfy the requirements of each statute, as they apply to the particular tanks. ~~The same kind of document, that is now generated under the corrective action process, is contemplated for the requirements of Act 2 at tank sites.~~

For example, a person may submit a combined site characterization/remedial investigation report that contains the information required under the corrective action process and under the Act 2 process, and it will serve a dual function under both Act 32 and Act 2. It should be submitted on a time frame that meets both statutes; thus, if there is no specific time required to submit the remedial investigation under Act 2, but a site characterization report under Act 32 is required within 180 days of reporting the release, the site characterization/remedial investigation report should be submitted within 180 days. Compliance with Act 2 notice and public participation requirements will be necessary for liability protection for tanks governed by Act 2.

2. Corrective Action Process

While an informal corrective action process (CAP) existed upon the passage of Act 32, the existing CAP was established in regulation on August 21, 1993. These regulations represent a streamlined and flexible approach to corrective action, and a formalization of the “assessment/remedial” process utilized prior to August 21, 1993. For instance, in cases where interim remedial actions (*e.g.*, excavation of contaminated soil) can adequately address a release, the person performing the cleanup is required to submit only one report (site characterization) to the Department. Where there is limited contamination associated with the closure of an underground storage tank system, the Department has offered a standardized closure report form which may be used to satisfy the site characterization report requirements. The regulation is flexible in that it authorizes the Department to waive or combine elements of the corrective action process based on the complexity of the release. For example, a responsible party may submit the site characterization report and remedial action plan as one report.

The CAP regulations did not establish cleanup standards. With the passage of Act 2, persons can utilize the flexible corrective action process together with the Act 2 cleanup levels to accomplish their remediation goal. Further, in order to facilitate cleanups, the Department has identified those regulated substances or “chemicals of concern” that must be quantified by the laboratory for commonly encountered petroleum products. These substances and the accompanying methodologies are to be utilized to demonstrate attainment for storage tank remediations, as well as other remediations involving petroleum products. It is only these substances that need to be tested for when there is a

release of these products, uncontaminated by other sources. These analytical requirements appear in both the “Closure Requirements For Underground Storage Tank Systems” technical document and in this Technical Guidance Manual for Act 2 as Attachment V.C.3. The Department has moved away from requiring analysis for the indicator parameters TRPH and PHC, as they are not standards established by, or under, Act 2.

Where Act 2 and the substantive CAP regulations ~~are in conflict~~both address remediation standards and demonstration of attainment, the Act 2 requirements will apply. ~~Specifically, conflicts occur in two areas. First~~For example, Act 2 supersedes that part of Section 245.311(b) of the regulations which states “the Department will establish the level of cleanup necessary to remove or eliminate pollution or contamination resulting from the release...”. Similar language appears in other sections of the CAP regulations and is also ~~superseded~~superseded by Act 2. The person conducting the cleanup now has the option of choosing from among the three Act 2 standards. Second, part of Section 245.312(g) is superseded, regarding the requirement for four quarters of groundwater monitoring following attainment of the standard. In general, the final Act 2 regulations require eight quarters, with fewer being acceptable under certain conditions as outlined in Section 250.704(d). Finally, there have been many questions about the status of “No Further Action” (NFA) letters now that the Act 2 regulations are final. For remediations initiated or continuing after August 16, 1997 (the effective date of the Act 2 final rulemaking) under the CA process, the person conducting the remediation must demonstrate attainment of an Act 2 standard. Upon demonstration of attainment, liability protection is provided. NFA letters are not appropriate and will not be issued for doing less than is required under an Act 2 standard. Note, however, that NFAs may still be granted under the following circumstances:

- For cases where corrective action was completed prior to August 1, 1996, where the cleanup was based on PHC or TRPH, and
- For cases where corrective action was completed based on the August 1, 1996 closure document parameter list, and prior to the final Act 2 regulation effective date of August 16, 1997, where the interim Statewide health standard (but not the final Statewide health standard) was met.

3. Corrective Action Process Checklist

The flow chart in Attachment V.C.1 shows the major steps and the decision-making process that responsible parties must follow if a release from a regulated storage tank is confirmed to have occurred. This process was designed to be as flexible as possible to accommodate the wide range of specific circumstances that characterize releases.

The following are the major steps of the process:

ÿ If a reportable release is confirmed, owners or operators must notify, by telephone, the DEP regional office responsible for the county in which the release occurred within two hours of confirming a release. In addition to basic facility and owner information, the notice must describe, to the extent information is available:

- the regulated substance involved;
- the quantity of the regulated substance involved;
- when and where the release occurred;
- relevant, available information concerning the contamination of surface water, groundwater, soil or sediment; and
- interim remedial actions planned, initiated, or completed.

ÿ Within 15 days of the telephone notice, the owner or operator must follow up with a written notification to the appropriate DEP regional office and to the local municipality in which the release occurred. This written notice must include the same information as provided in the telephone notification and also should include any new information obtained within the 15 days.

The Department has prepared a form, "Notification of Reportable Release/ Notification of Contamination," which can be used to satisfy the written notification requirement. In situations where the release is small, contained and immediately cleaned up, this form may be all that is necessary to complete the corrective action process. A copy of the form can be found as Attachment V.C.2.

ÿ Also, upon confirmation of a release, responsible parties must immediately initiate interim remedial actions. These are required response actions from the time a release is confirmed until the time a formal long-term remedial action plan is implemented. Interim remedial actions help maintain or restore public health and safety and prevent the additional release of a regulated substance to the environment.

Interim remedial actions may be all that are necessary to adequately address certain releases. These releases may involve spills and overfills, and cases where a release is confined to the excavation zone of an underground tank.

While all appropriate interim remedial actions must be taken in order to bring a release under control, the first priority at any release site is to identify and eliminate any threat to the health and safety of on-site

personnel or nearby residents. See Section 245.306 for requirements for interim remedial actions. These interim actions can include:

- checking for and venting product vapors from sewer lines or buildings that have been impacted;
- calling emergency personnel such as local fire and public safety officials for assistance where fire, explosion or safety hazards exist;
- relocating residents until potentially explosive vapors have been reduced to safe levels;
- restricting access to the site by nonessential personnel and establishing a buffer area around the site;
- recovering free product leaking into subsurface structures such as basements and sewers.

Either concurrently with these emergency actions or as soon as any immediate threats to human health and safety have been eliminated or reduced to acceptable levels, attention should be turned to preventing any further release of the regulated substance to the environment. Depending on the circumstances of the release, this may involve:

- arranging for and conducting the necessary tests to identify and confirm all sources of the release;
- removing product from the storage tanks;
- removing the storage tanks;
- excavating product-saturated soils;
- recovering free product on the water table;
- recovering product from the excavation;
- establishing booms in or interceptor trenches along streams, gullies or drainageways where surface water has been or may be impacted.

In cases involving a reportable release, interim remedial actions planned, initiated or completed are to be indicated in the telephone and 15 day written notification. A more detailed discussion of interim remedial actions conducted at the site of the release is to be included in the site characterization report. This report is required to be submitted to the department within 180 days of reporting a reportable release.

ÿ Act 32 requires that any responsible party who affects or diminishes a water supply as a result of a release must restore or replace the affected or diminished water supply at no cost to the owner of the supply. A water supply is affected or diminished if there is a measurable increase in a

concentration of one or more contaminants (*e.g.*, benzene or MTBE) in the water supply or if the quantity of water provided by a water supply is decreased. A water supply well may lose flow as a result of groundwater pumping during a remediation effort.

The responsible party must provide a temporary water supply (*e.g.*, bottled water or water tank) to residents whose water supply is affected or diminished by the release no later than 48 hours after the responsible party receives information or is notified by the department that a water supply has been affected or diminished.

The responsible party must provide a permanent water supply within 90 days. A permanent water supply includes a well or hookup to a public water supply or treatment system. Where the responsible party provides the affected party with access to a public system, the responsible party is not required to pay for the quantity of water being supplied.

The requirement to restore or replace an affected or diminished water supply is strictly an Act 32 issue and remains with the responsible party whether or not liability protection has been afforded to the site for attainment of an Act 2 standard.

ÿ Responsible parties must properly handle, store and manage excavated contaminated soil which commonly results from tank closures and interim remedial actions. In general, petroleum contaminated soil is a residual waste and must:

- be stored in accordance with the Department's residual waste management regulations relating to standards for storage of residual waste;
- be completely and securely covered for the duration of the storage period, with an impermeable material of sufficient strength, anchoring or weighting to prevent tearing or lifting of the cover, infiltration of precipitation or surface water, and exposure of the soil to the atmosphere;
- be stored in a manner to deter public access to the storage area, including use of fencing, security patrols or warning signs;
- not present a threat to human health or the environment and must be either undergoing active treatment or disposed of within 90 days from the first day of storage. (Active treatment includes treatment methods such as enhanced bioremediation in piles, soil vapor extraction and low-temperature thermal desorption.)

ÿ At the same time as the interim remedial actions are taking place, responsible parties must conduct a site characterization to determine the extent and magnitude of contamination that has resulted from the release. Section 245.309 of the CAP regulations provides the objectives of any site characterization. This manual also provides information which should be considered when conducting site characterization work at storage tank release sites. A site characterization report must be submitted to the appropriate DEP regional office within 180 days of confirming the reportable release. Interpretations of geologic and hydrogeologic data shall be prepared by a professional geologist licensed in Pennsylvania.

Where interim remedial actions (*e.g.*, removal of contaminated soil) have removed the contamination resulting from the release, the responsible party may submit a (limited scope) site characterization report to DEP as the final corrective action report in accordance with Section 245.310(b). In this case, the site characterization report should describe the entire CAP from site characterization to demonstration of attainment of the standard(s), if applicable.

Where obvious, localized contamination is encountered during the closure of an underground storage tank, the responsible party may submit the closure report form (Attachment 4 in the "Closure Requirements for Underground Storage Tank Systems" document) to satisfy the requirements of the site characterization report identified in Section 245.310(b) of the CAP regulations. A completed closure report form including adherence to the confirmatory sampling protocol in the closure document will be adequate to demonstrate that the requirements of the Statewide health standard have been met. Note that the confirmatory sample locations in the closure document do not apply if the contamination has extended more than three feet from any part of the tank system. Also, because a limited site characterization is required to be conducted in localized contamination situations, the more conservative Statewide health standard must be met. For instance, in soil, the confirmatory sampling will be assumed to be conducted within 2 to 15 feet of the surface. Therefore, the more stringent of the direct contact or highest soil to groundwater numeric values will apply. Where the soil to groundwater values apply, it will be assumed that the aquifer is used with a TDS ≤ 2500 . More stringent standards may apply to samples collected at the soil/water interface [see Sections 250.308(a)(2) and 250.308(a)(4) of the regulations]. Where water is encountered, it will be assumed to be groundwater in a used aquifer with a TDS ≤ 2500 . All sample results must meet the Statewide health standard.

ÿ Where a site-specific standard is being pursued and a risk assessment report is required, the report should be submitted to the appropriate DEP

regional office within 180 days of confirming the reportable release. The report may be submitted with the site characterization report or as a separate report and should contain those elements as described under the site-specific standard of this manual.

- ÿ If the (comprehensive) site characterization report indicates that the interim remedial actions did not adequately address the release, responsible parties must develop and submit a remedial action plan to the appropriate DEP regional office within 45 days of submission of the site characterization report. The remedial action plan should include selection of the standard(s) to be met.
- ÿ Upon reasonable notice or approval of the remedial action plan by DEP, the responsible party shall implement the plan. Once the remedial action plan is implemented, remedial action progress reports must be submitted quarterly to the appropriate DEP regional office.
- ÿ When the standard(s) established in the remedial action plan has/have been achieved, the responsible party shall submit a remedial action completion report. The remedial action completion report shall demonstrate that the requirements of one or more of the Act 2 standards have been met and include, if applicable, a post remediation care plan.
- ÿ In order to demonstrate that a standard(s) under Act 2 has/have been met and receive the liability protection, the cleanup levels for all regulated substances identified in the list for the product stored must be achieved.

The first list of regulated substances appeared in the "Closure Requirements For Underground Storage Tank Systems" technical document, dated August 1, 1996 and later in the supplement to the Technical Guidance Manual for Act 2 issued in December 1996. The current list appears as Attachment V.C.3 to this manual and also in the closure document of April 1, 1998. A second (revised) list appears as Attachment V.C.3 to this manual and will also be included in a revision of the closure document. The revised list will have an effective date of February 1, 1998, but may be utilized immediately.

Where a person has been in the process of demonstrating attainment of a standard and the list is revised, they need only look to the revised list to complete their attainment demonstration. For example, if a person is required to conduct eight consecutive quarters of groundwater monitoring to demonstrate attainment, and has conducted five quarters of groundwater monitoring (prior to February 1, 1998) using the first list of regulated substances current at the time, then the remaining three quarters of groundwater monitoring needs to be performed using the revised list.

Further, if seven quarters have been conducted, then the revised list is to be used for the last quarter.

- ÿ Petroleum contaminated media and debris (material outside the tank, *e.g.*, soil and groundwater) that fail the test for D018-D043 TCLP only, and are subject to the federal corrective action regulations under 40 CFR Part 280, are specifically excluded as hazardous waste. This exclusion does not apply to contaminated media and debris from, for example, aboveground tanks, farm and residential motor fuel underground storage tanks of less than 1,100-gallon capacity, and heating oil underground storage tanks. Petroleum contaminated media and debris that are classified as hazardous waste are subject to the deed notice requirements of the Solid Waste Management Act.
- ÿ While the CAP regulations specify when the department is to receive the site characterization report, remedial action plan and remedial action progress reports; the regulations also provide the department with the flexibility to shorten or extend the time frames based on the particular release situation.

E.F. HSCA/CERCLA Remediation

1. Hazardous Sites Cleanup Act (HSCA) Sites

HSCA is the state Hazardous Sites Cleanup Act (P.L. No. 108 of 1988; 35 P.S. Sections 6020.101-6020.1305). HSCA is the state cleanup law that provided for the remediation of sites contaminated with hazardous substances. HSCA provides the Department with enforcement authorities to encourage parties who are responsible for the release of hazardous substances to conduct the necessary response actions. HSCA also provides the Department with the funding and the authority to conduct response actions when the responsible parties are unwilling or unable to conduct the appropriate response action. The responsible parties can then be held liable for those response costs.

HSCA sites are a limited set of sites that have been officially designated by the Department as meeting the criteria for response action under HSCA. Some HSCA sites are listed on the state priority list for remedial response pursuant to Section 502 of HSCA. These are the HSCA sites where the response is expected to cost more than \$2 million or take more than one year to conduct. Pursuant to Section 904(b) of Act 2, "any remediation on a site included on the state priority list established under ... [HSCA], shall be performed in compliance with the administrative record and other procedural and public review requirements of ... [HSCA]." For these listed sites, a party interested in conducting a remedial response can submit a proposal to the Department and work with the Department to reach a settlement. A proposal to conduct a remedial response should be in the form of a letter to the Environmental Cleanup Program Regional Manager, not an NIR. Responsible parties under HSCA are encouraged to propose an Act 2 remedy they would like to perform on the HSCA site. The proposal will be evaluated and published in accord with HSCA. The Department is responsible for choosing a remedy that satisfies Act 2, and that considers public comments and the Department's analysis of the alternatives, pursuant to Section 506(e) of HSCA. It is possible that the Department will select an Act 2 remedy other than that proposed by a responsible party based upon these considerations. Persons who wish to conduct the remediation may follow the settlement procedures established under HSCA. The settlement process would follow the procedures established under HSCA. This would result in a binding settlement agreement which would be subject to the public notice and comment provisions of HSCA.

Most HSCA sites are not listed on the state priority list for remedial response. These are sites where a HSCA site study or a HSCA interim response is planned. For these HSCA sites where the Department has not yet taken an interim response action or committed to a remedy for the site, a party interested in conducting a voluntary response can submit a NIR and proceed

using the normal Act 2 procedures. The Department would monitor the progress of the voluntary response action. If the Department determined that the pace and the scope of the voluntary response was acceptable then no further action pursuant to HSCA would be required. If the Department determined that the pace or the scope of the voluntary response was not acceptable then the Department could proceed with further action pursuant to HSCA.

2. CERCLA Sites

CERCLA is the federal Superfund law. Under CERCLA the U.S. Environmental Protection Agency (EPA) can place sites on the National Priority List (NPL) "Superfund List" for remedial response. For sites listed on the NPL, EPA requires that all remedial response actions be conducted pursuant to the procedural requirements of CERCLA. As a state law, Act 2 does not waive or supersede the procedural requirements of the federal law, and therefore the Act 2 liability relief cannot automatically confer release from CERCLA liability. EPA also has authority under CERCLA to conduct removal response actions or take enforcement actions at sites that are not listed on the NPL list.