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SECTION I: OVERVIEW

A. What the Land Recycling Program Offers

1. Benefits of Involvement Through the Land Recycling Program

The Land Recycling Program is the result of a bipartisan legislative effort to solve the problem of unused and abandoned industrial sites within the Commonwealth. The program has three purposes: to clean up contaminated sites based on sound science, to return these sites to productive reuse, and to preserve farmland and greenspace. The Land Recycling Program (LRP) promotes voluntary partnerships among local businesses, government, financial institutions and the Department of Environmental Protection (Department or DEP).

The four cornerstones of the program are uniform cleanup standards based on health and environmental risks, standardized review procedures, relief from liability, and financial assistance. The establishment of uniform standards enables the remediator to clearly understand the extent and cost of site cleanup. The selection of standards assures that a site is protective of its reuse. A property used for industrial development need not be as clean as a playground or residential site. Consistent reporting requirements and standardized review procedures provide a definite time frame for remediation. Relief from liability, which extends to future owners, addresses the concerns that previously inhibited site redevelopment and sale of properties. Financial assistance, available to those who did not cause or contribute to contamination at the site, reduces the cost of site assessment and remediation.

2. How to Use this Manual

The Department has developed this manual to assist remediators in satisfying the requirements of the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101-6026.908), commonly known as Act 2, and the regulations at 25 Pa. Code Chapter 250 (regulations). The manual provides suggestions and examples of how to best approach site characterization and remediation. The manual is divided into six sections:

- Section I provides an overview of the program and summarizes the role of Central Office.
- Section II outlines the procedures for determining which cleanup standard may be applicable to your site and how to meet the requirements of each standard. As each standard is discussed, references to other sections are provided for additional information or clarification.
- Section III provides general technical guidance augmenting the information in Section II.
- Section IV contains the Vapor Intrusion Assessment Guidance.
- Section V discusses the appropriate interfaces with other applicable statutes.

- Section VI contains references to other helpful documents.

The Department of Environmental Protection staff is another valuable resource available to assist in clarifying the information provided herein or to address any questions regarding issues specific to a certain site. Regional office contacts are provided on the Land Recycling website.

B. The Voluntary Nature of Act 2

Act 2 establishes the environmental remediation standards for cleanups related to certain environmental laws (35 P.S. § 6026.106). Remediation and the resulting liability relief under Chapter 5 of Act 2 is specific to the contamination identified as part of a specific site or sites in the approved final report. Thus, there may be multiple sites on a property, or a single site may include all or part of one or more properties. Examples of sites are an area of specific contamination related to a metal processing unit, or a specific environmental release such as a tank release. Although the liability protection is NOT necessarily universal to the entire property, remediators may voluntarily submit multiple Notices of Intent to Remediate (NIRs), or amend the scope of a single NIR, to address any or all contamination they believe is present on the property. It is strongly advised that the remediator postpone drafting the NIR until sufficient characterization has been completed on the property to distinguish the site or sites desired for inclusion in the NIR.

If the Department is aware of contamination on the property which is not part of a proposed remediation under a voluntarily submitted NIR, the Department may suggest that the remediator include that contamination as part of a subsequent or amended NIR. However, if the remediator declines to include that contamination, the Department will still approve a final report for the contamination described in the NIR if it meets the requirements of Act 2. The Department always reserves the right, as a separate action, to exercise its enforcement discretion under the environmental laws of the Commonwealth to require remediation of any known spill or release of a regulated substance on the property which was not addressed by voluntary cleanup through the Act 2 process or where the voluntary remediation fails to proceed through the Act 2 process.

The exercise of enforcement discretion is based on DEP's knowledge of site contamination that may represent a threat to human health and/or the environment, requiring Department oversight. This information may be obtained from several sources, including but not limited to citizen complaints, DEP inspections, sampling results, or spill reporting requirements under applicable regulations. The execution of an enforcement action under Act 2 includes consultation and concurrence between Central Office and the regional office program managers and counsel.

C. Improving Service through Program Consistency

Despite more than 20 years of success, the LRP is always exploring additional ways to improve the program. The Department understands that the consistency of application of the program rules and regulations across its six regional offices is an important issue. The following sections describe the Department's approach to maintaining consistency within the program.

1. DEP Implementation of Standard Operating Procedures (SOPs)

LRP staff follow a Department-wide standardized process for receiving, prioritizing, accepting, reviewing, denying, and approving any Act 2 submittal in order to achieve greater efficiency, clarity, and consistency across all regions. This process, known as the SOPs, was adopted in response to the DEP's goal of standardizing all regulatory procedures for timely, efficient, and consistent operations across all programs. This endeavor was collectively known as the Permit Decision Guarantee. SOP manuals were generated to detail all aspects of the LRP process and expected responses by LRP staff.

2. Initiation and Final Execution of Reopeners

A reopener occurs when the Department requires a remediator to undertake additional remediation actions after an Act 2 (35 P.S. § 6026.505) standard has been attained. This only happens when the Department demonstrates that one of the reopener conditions in Section 505 of Act 2 are present at a site. The initiation and execution of a reopener includes consultation and concurrence between Central Office and the regional office program managers and counsel. The reopener conditions in Section 505 of the Act include the following:

- Fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further cleanup of the site.
- New information confirms the existence of an area of previously unknown contamination which contains regulated substances that have been shown to exceed the standards applied to previous remediation at the site.
- The remediation method failed to meet one or a combination of the three cleanup standards.
- The level of risk is increased beyond the acceptable risk range at a site due to substantial changes in exposure conditions, such as in a change in land use from nonresidential to a residential use, or new information is obtained about a regulated substance associated with the site which revises exposure assumptions beyond the acceptable range.
- A release occurred after the effective date of the Act on a site not used for industrial activity prior to the effective date of the Act; the remedy relied in whole or in part upon institutional or engineering controls instead of treatment or removal of contamination; and treatment, removal, or destruction has become technically and economically feasible on that part.

3. Non-Routine Waivers

The Department may waive certain requirements based on site-specific circumstances. An example would be the Department waiving the need for an environmental covenant requiring a groundwater use restriction on a downgradient property if that downgradient property is a railway, highway, or stream. More common waiver requests are handled directly by the regional office. Unusual or complex waiver requests under Section 902 of Act 2 (35 P.S. § 6026.902) or 25 Pa. Code §§ 250.406 and 253.4 include the regional office program staff consulting with and potentially obtaining concurrence from Central Office prior to issuance or denial of the waiver request.

4. Issue Resolution

When a remediator disagrees with the decisions of the regional case manager, the proper procedure for resolving the issue is to go through the regional office staff management hierarchy first. The issue should be brought to the attention of the regional LRP Group Manager. If the issue cannot be resolved at that level, the issue may be taken to the regional Environmental Cleanup and Brownfields Program Manager. If an agreement still cannot be reached, the remediator can then bring the issue to the attention of the Central Office Program Manager for resolution. Following this orderly progression will result in issue resolution in the timeliest manner possible.

5. Frequently Asked Questions (FAQs)

The Department realizes that the LRP is not static and that from time to time the answers to technical issues that arise will be of general interest to the regulated community. The program periodically posts such FAQs and their answers to the LRP website to provide this information to a wide audience.

D. Resources and Assistance

1. Program Contacts

Information on contacts within DEP is listed on the LRP website under “How to Contact Us.”

2. Financial Assistance

Act 2 established an account known as the Industrial Sites Cleanup Fund. The purpose of this fund is to provide financial assistance to persons assessing and remediating property used for industrial activity and who did not cause or contribute to the contamination. The Industrial Sites Environmental Assessment Act 35 P.S. §§ 6028.1-6028.5 (Act 4 of 1995), was enacted concurrently with Act 2 and provides money for environmental assessments of industrial sites.

Act 4 provides financial assistance to municipalities, municipal authorities, redevelopment authorities, economic authorities, development agencies, and eligible members of the public for assessment and remediation of contaminated sites. Applicants may be eligible for a grant and/or loan from the fund for up to 75 percent of the site characterization and remediation costs, subject to additional eligibility requirements established by Act 2 and the Department of Community and Economic Development (DCED). Act 4 provides grants to municipalities, local authorities, and economic development agencies for sites located in distressed communities and provides grants to specified classes of cities for environmental assessment of industrial sites. The maximum amount to be awarded for any remediation project will not exceed 75 percent of the total cost of remediation or \$1,000,000 for grant recipients, whichever is less, in a single fiscal year. To qualify, a party must not have caused or contributed to the contamination on the property and must be performing a voluntary cleanup. To administer these funds, DCED created the Industrial Sites Reuse Program (ISRP). Grant and loan eligibility requirements are specified in Section 702 of Act 2 and in Act 4. Eligibility and application procedures are also specified in the ISRP guidelines on the DCED website.