

The background of the slide is a photograph of the interior of a grand, ornate dome, likely the U.S. Capitol. The dome features a central circular skylight with a radial pattern, surrounded by intricate architectural details, including decorative panels, murals, and classical columns. The lighting is warm and dramatic, highlighting the architectural grandeur.

# Principles of Regulatory Drafting

Legislative Reference Bureau  
May 7, 2024

# Principles of Statutory Construction

- The principles of statutory construction are codified in 1 Pa.C.S. Pt. V, 1 Pa.C.S.A. Pt. V and have been applied and amplified in Pennsylvania jurisprudence.
- The principles of statutory construction apply to administrative regulations.

# Purpose of regulation:

- Impose a burden; or
- Confer a benefit



## The Who:

- Identifies the person that gets the burden or benefit.
- This is the subject of the sentence.

## The What:

- Identifies the burden or benefit.
- This is the predicate of the sentence: verb and object or complement.

# The Who = The Subject

**Use the third person.**

## **Use the singular.**

- Avoids shifting.
- Is crisper.
- Covers each rather than a body.
- Singular includes plural and vice versa.

## **Identify the actor.**

- Use individual for human beings.
- Use person to include entities.
- Other terms:
  - Applicant.
  - Permittee.
  - Licensee.
  - Facility.

# Articles as Modifiers

Use **a** or **an** rather than **any** or **every**.

Exceptions:

- **A** couch, table or chair.
- **Any** couch, end-table or chair.
- **A** couch, **an** end-table or **a** chair.



Use each or every rather than a/an/any if there is a possibility of being underinclusive.

**No possibility of being underinclusive:**

The licensee shall comply with fire safety provisions at {a} {each} {every} location where it operates.

Illogical that this would require fire safety compliance at a single location, as opposed to all locations; therefore:

use a.

## Possibility of being underinclusive:

The licensee shall provide the department access for a site inspection at **{a}** **{each}** **{every}** location where it is operating.

Logical, depending on cost of access, timing, other inspection provisions, and so forth, that this would require the licensee to provide the department access for a site inspection at a single location, as opposed to site inspections at all locations; therefore:

use **each** or **every**.



## More than one usage:

First in structural provision: **a/an/any/each/every**.

**A/Each/Every** licensee may/shall/must/may not ....

Second in structural provision: **the**.

**The** licensee may/shall/must/may not ....

Use **the** rather than **such** or **said**.

Use **one** for only one.



# Pronouns.

- Avoid personal pronouns.
- Be sex neutral.
- For relative pronouns, use:
  - **who** for human beings,
  - **which** for things,
  - **that** for either.



## Multiple actors.

- Keep it to one or two subjects.
- If you need more:
  - Define term.  
“Facility.” ....
  - Make a list.
    - (a) This section applies to all of the following:
      - (1) \* \* \*
    - (b) A person listed in subsection (a) shall ....



**Save the negative for the action.**

Do not lead with **No.**



# The What = The Predicate

## Verbs

### **Use active voice.**

- Active voice expresses action performed by the subject.
  - Better identifies the actor.
  - Requires fewer words.
  - Is easier to understand.
- Passive voice expresses action performed upon the subject.

- Active voice is preferred unless:
  - Action is more important than actor.
    - **To ensure** correction of a violation, the department will perform testing every month.
    - **To ensure** correction of a violation, testing will be performed by the department every month.
  - The action of testing is more important than the identity of the tester.
- There are other exceptions which apply to statutory drafting as opposed to regulatory drafting.



# Use transitive verbs.

## Transitive verb:

- Describes action passing from a doer to a receiver.
- Needs object or complement.
- Example:

A licensee violates the public trust portion of the environmental rights amendment by doing any of the following:

## Intransitive verb:

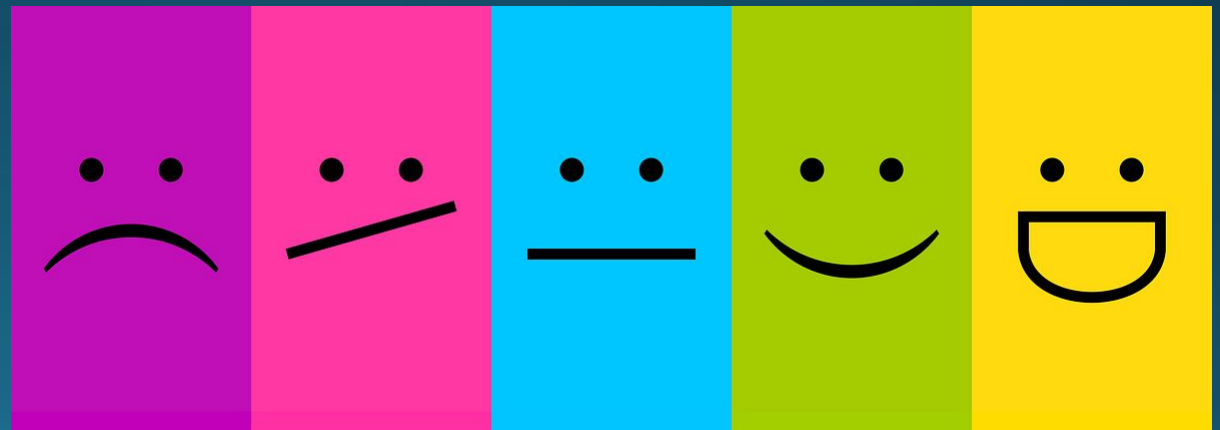
- Describes an action complete in itself.
- Does not need object or complement.
- Example:

The public trust portion of the environmental rights amendment is violated by any of the following:

## Mood.

For regulatory provisions:  
Use indicative mood.

For resolutions and petitions:  
Use subjunctive mood.





## Use base verbs.

Do not nominalize.

Use **consider** rather than **give consideration to**.



# Tense.

Use present tense.

- Speaks as of application.
- Is shorter.

Exception.

- Future action:  
    If ..., the agency will ....
- Commands.

Avoid past tense.

- Not necessary.
- Exception: recidivism.

Introductory clause will work:

    If a permittee has been sanctioned, ....



## Commands/Conditions/Prohibitions.

- Use **will** for statements of agency actions.
- Use **shall** for commands to regulated persons.
- Use **may** for permissive statements.
- Use **must** for conditions.
- Use **may not** for prohibitions.



## Multiple actions.

- One verb.
- List.

# Object or Predicate Nominative

- Same rules as subject.





# General Principles

Use only necessary words.

Regulations:

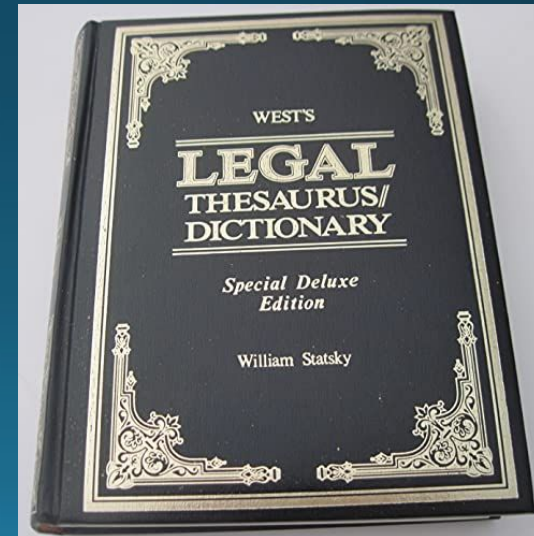
- have large audience;
- are effective for indeterminate time; and
- govern conduct of persons that did not draft them.

Keep it simple.

- Be brief and concise.

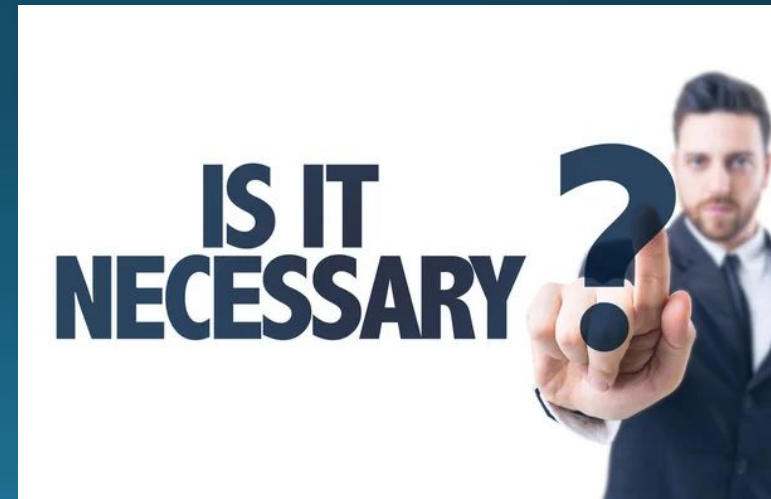
Avoid redundancy.

- Do not swallow a thesaurus.



Use adjectives and adverbs only if necessary for legal meaning.

- Reasonable/Reasonably.
- Initial/Initially.
- Subsequent/Subsequently.





## Use common words and phrases.

Only if possible:

There is no common phrase for:

- Public trust portion of the environmental rights amendment.
- Reid vapor pressure.

Avoid lawyerisms.

Duly.

Hereinafter.

Heretofore.

Wherefore.



**Be consistent.**

**Write short sentences.**

- Don't say everything every time.
  - Use definitions.
  - Use format.

## Arrange words carefully.

Lead with:

- Condition or exception.
  - If ..., the rule is....
  - Except for ..., the rule is....
- Actor.
- Action.

## Tabulate.

- Easy to understand.
- Easy to cite.
- Gives you a format.
  - You can use this format to avoid repetition.
- How to do it.



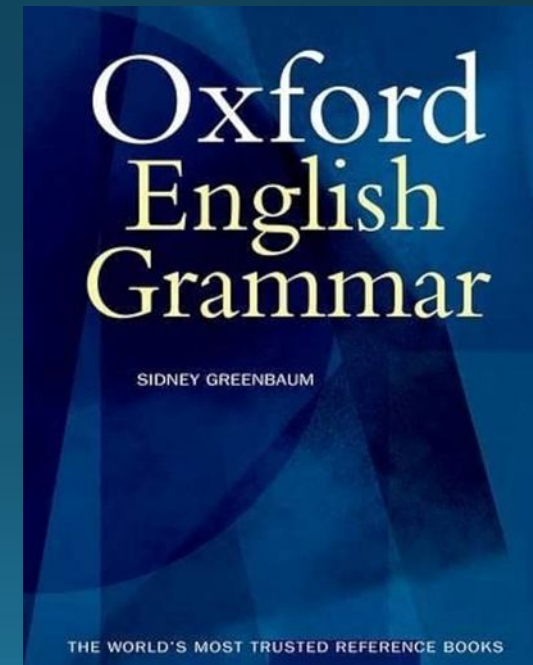
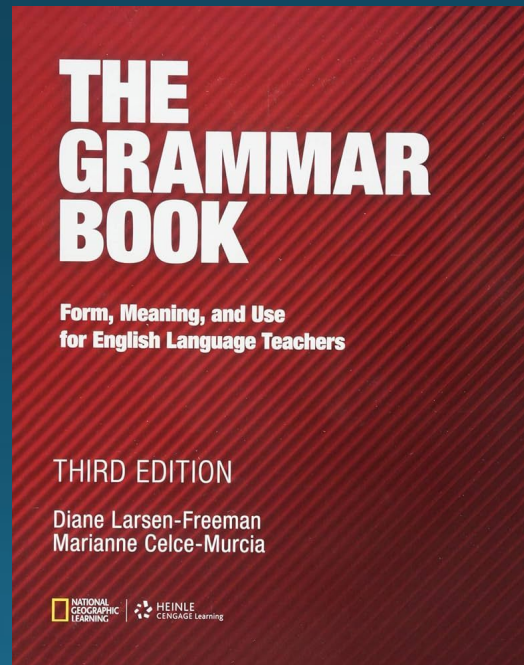
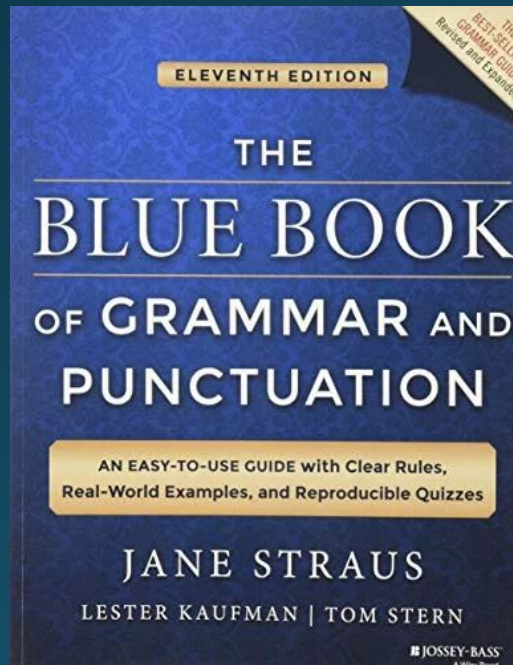
## Two choices.

- Lead with:
  - “all of the following:”
  - “any of the following:”
- Prepare list with capital letters and periods.
  - Lead with:
    - “:”
- Prepare list with semicolons.
  - After penultimate:
    - “and”
    - “or”

## How to choose:

- Generally caps and periods are better and preferred for regulations.

Punctuate properly.  
Get a grammar book.





## Exception.

- Rule of the Last Antecedent.
  - Unless plainly meant otherwise, a modifier operates only upon the term preceding it.
    - Goal: limit shipment of specified waste in unmarked containers to permittees.
    - Only a permittee may ship hazardous waste {defined term}, solid waste {defined term} and untreated waste {defined term} in unmarked containers.
    - This applies to all hazardous waste, all solid waste, and only untreated waste in unmarked containers.

## To avoid the rule, tabulate:

Only a permittee may ship any of the following in unmarked containers:

- (1) Hazardous waste.
- (2) Solid waste.
- (3) Untreated waste.

In regulatory drafting, we are sometimes forced to use an ungrammatical comma:

Only a permittee may ship, by ..., or transmit, by ..., hazardous waste, solid waste or untreated waste, in unmarked containers.



# Special Rules

# Definitions.

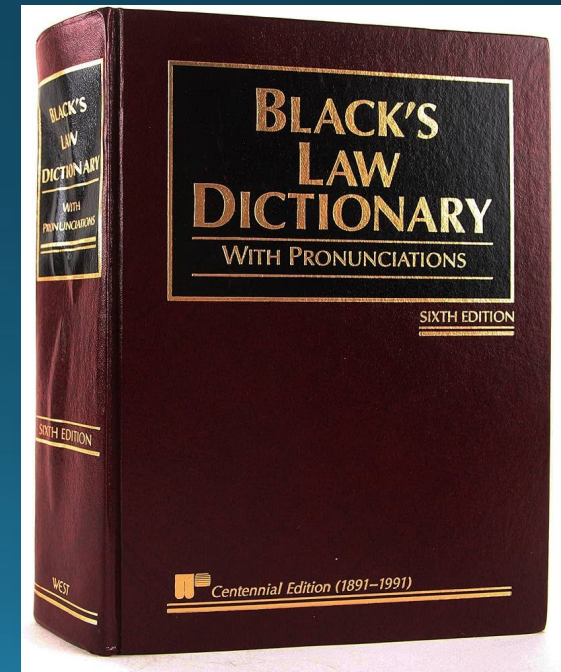
Important:

- More than one usage.
- Lists.



A statutory term is defined, in the following order, according to:

- the applicable statutory definition;
- the Statutory Construction Act definition;
- a legal dictionary; and
- a standard dictionary.



Since, as stated earlier, this principle applies to regulations, the hierarchy is:

- The unit: section and down.
- The larger unit: subchapter and up.
- Section 1991 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1991 (2017 Ed. and 2019 Sup.) § 1991, 1 Pa.C.S.A. § 1991 (2008 and 2023 P.P.).
- Legal dictionary.
- Standard dictionary.

- Make your cross references.
- Place early.
- Alphabetize but do not designate.





## Define:

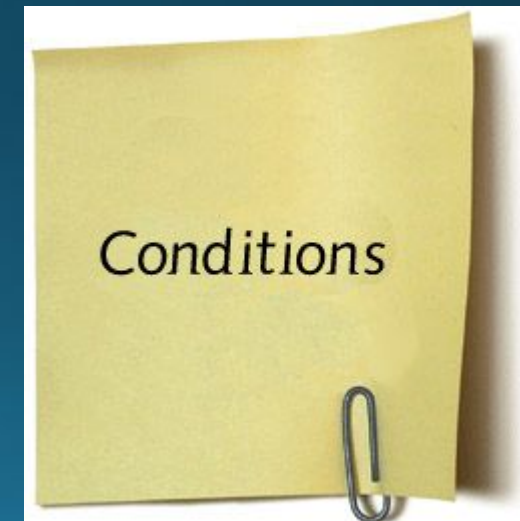
- For exhaustive definition:
  - Place an em-dash after the term and state the definition.
- For less than exhaustive definition:
  - Place an em-dash after the term, lead with the term “Includes” and follow with a list of the inclusions.
- Try to be exhaustive.
- Then make inclusions and exclusions.
  - The term includes ....
  - The term excludes ....

- Don't be wrong.
  - Dog includes cat.
- Equivalency.
- The definition should be substituted for the term with perfect grammar, punctuation, and understanding.
- No substantive provisions.
- Don't include the defined term in the definition.
- Exception for phrases.
  - Prepare last. Review each defined term to be sure it is used.

# Conditions.

A condition is a prerequisite, time period, or place for the applicability of a provision.

- Use:
  - **if** for a prerequisite;
  - **when** for a time period; and
  - **where** for a place.



## Exceptions.

An exception is a circumstance under which a provision does not apply.

- Use:
  - Except.



# Provisos. Avoid.

hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of sections 108 and 306, except for benefits payable under section 306(c) or 307. Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall also be credited against the amount of the payments made under sections 108 and 306, except for benefits payable under section 306(c): Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior

## Form.

Lead with condition or exception:

- **If/When/Where/Except:**
  - {state single condition or exception} ....
  - {refer to other unit}....

## Cross references.

- Be precise.
- Cite to the lowest unit.
- Applicability.
  - Reference speaks as of time of application. 1 Pa.C.S. (2017 Ed.) § 1937(a), 1 Pa.C.S.A. § 1937(a) (2008).
    - Pick date if necessary.

# Statutes.

A statute of a given date or freestanding statute.

- These statutes are contained in the Laws of Pennsylvania, commonly referred to as pamphlet laws.
- Most attorneys cite to the unofficial version in WestLaw or Purdon's Statutes Annotated.





- For unconsolidated statutes with a short title: in regulations, use the short title followed by the unofficial cite in parenthesis.
  - For example, Section 2015 of The Administrative Code of 1929 (71 P.S. § 525).

- Without a short title: in regulations, use the act of ... 2024 (P.L. , No. )( P.S. § ), known as ....
  - For example, the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1102 – 1208), known as the Commonwealth Documents Law.

## A provision of the consolidation.

- Title 18, Title 42.
- These provisions are contained in the Pennsylvania Consolidated Statutes.

Most attorneys cite to the unofficial version in WestLaw or Purdon's Pennsylvania Consolidated Statutes Annotated.

- In regulations, the official versions are used:
  - 71 Pa.C.S. § ... (relating to ...).

# Avoid citing amendatory acts.

ENVIRONMENTAL RESOURCES (27 PA.C.S.) - OMNIBUS AMENDMENTS  
Act of Jun. 29, 2002, P.L. 596, No. 90 Cl. 27  
Session of 2002  
No. 2002-90

HB 2044

## AN ACT

Amending Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, consolidating the Environmental Laboratory Accreditation Act; providing for whistleblower protection; establishing a waste transportation safety program, the Waste Transportation Safety Account and a disposal fee for municipal waste landfills; providing for deposit of the disposal fee, for surcharge and for allocation from Environmental Stewardship Fund; imposing penalties; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part IV heading of Title 27 of the Pennsylvania Consolidated Statutes is amended and the part is amended by adding a chapter to read:

PART IV  
ENVIRONMENTAL PROTECTION  
[(Reserved)]  
CHAPTER 41  
ENVIRONMENTAL LABORATORY ACCREDITATION

Sec.

- 4101. Scope of chapter.
- 4102. Definitions.
- 4103. Establishment of program.
- 4104. Powers and duties.
- 4105. Powers and duties of Environmental Quality Board.

## Numbers.

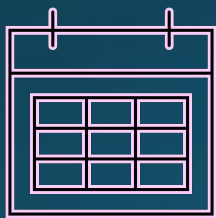
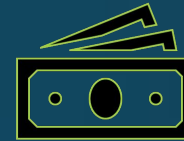
- Spell out ten and under.
  - Exception.
    - Series.
      - ✓ Any one 11 or more: use all figures.
  - Start sentence {including understood sentence} with a word.
  - For percentage, use sign: %.
- If there is more than one percentage, repeat sign with each figure.

## Money.

- Decimals only if needed:

\$18.75.

\$18.



## Date.

- December 25, 2024.

## Time.



- Use **before** and **after**.
- **After** December 31, 2024, and **before** January 1, 2025.

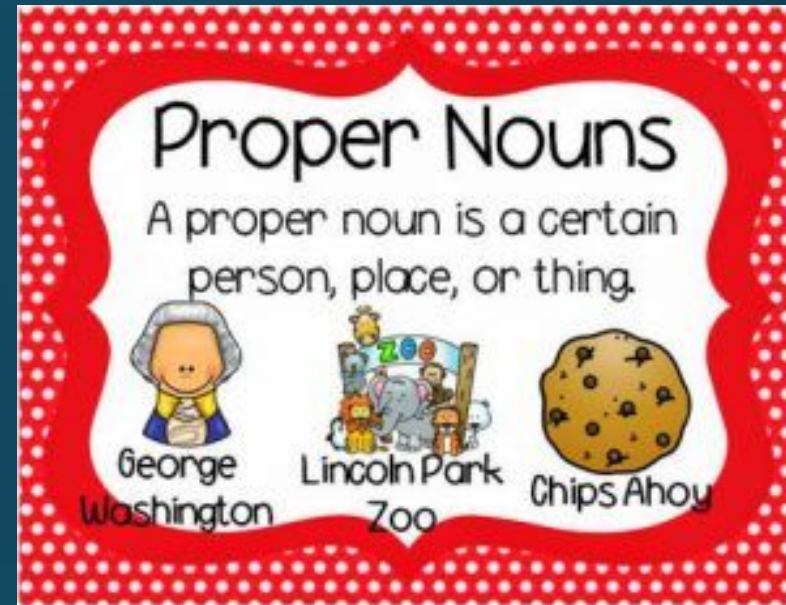
## Age.

- Starting point.
  - At least 18 years of age.
- Ending point.
  - Under 18 years of age.



## Capital letters.

- Proper nouns.



## Hyphens.

- Use for unit modifiers.



# Format

## Chapters:

- Centered.
- Designated with arabic numbers.

## Sections:

- Flush left.
- Designated with the chapter number followed by the point and section number (1.1, 1.2, 2.1, 2.2, 2.3).

## Subsections:

- Single indent.
- Designated by lowercase alpha in parenthesis.

## Paragraphs:

- Double indent.
- Designated by arabic in parenthesis.

## Subparagraphs:

- Triple indent.
- Designated by romanette in parenthesis.

## Clauses:

- Quadruple indent.
- Designated by uppercase alpha in parenthesis.

## Subclauses:

- Quintuple indent.
- Designated by roman number in parenthesis.

## Items:

- Sextuple indent.
- Designated by hyphen, lowercase alpha and hyphen in parenthesis.

## Avoid renumbering subdivisions:

- When adding a subdivision between existing subdivisions, use a period and Arabic numeral after the subdivision designation.
- When deleting a subdivision, reserve the subdivision rather than renumbering.

## CHAPTER 3. OPERATION

§ 3.1. Subject matter.

(a) Catch line.--Text carries over to the next line using this alignment.

(1) Text carries over to the next line using this alignment.

(i) Text carries over to the next line using this alignment.

(A) Text carries over to the next line using this alignment.

(I) Text carries over to the next line using this alignment.

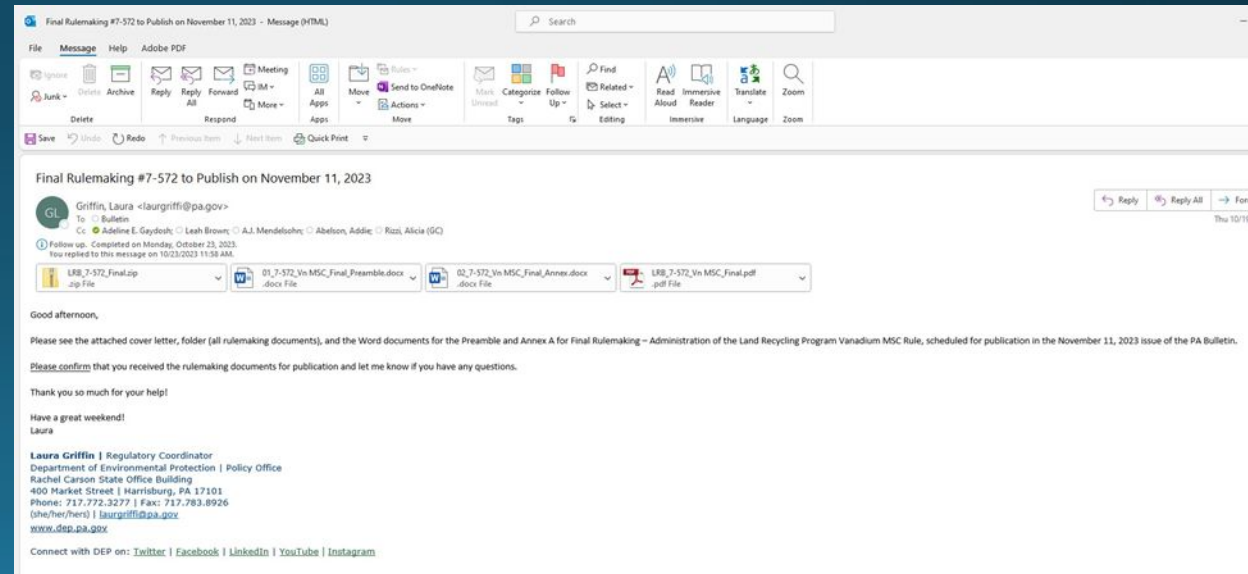
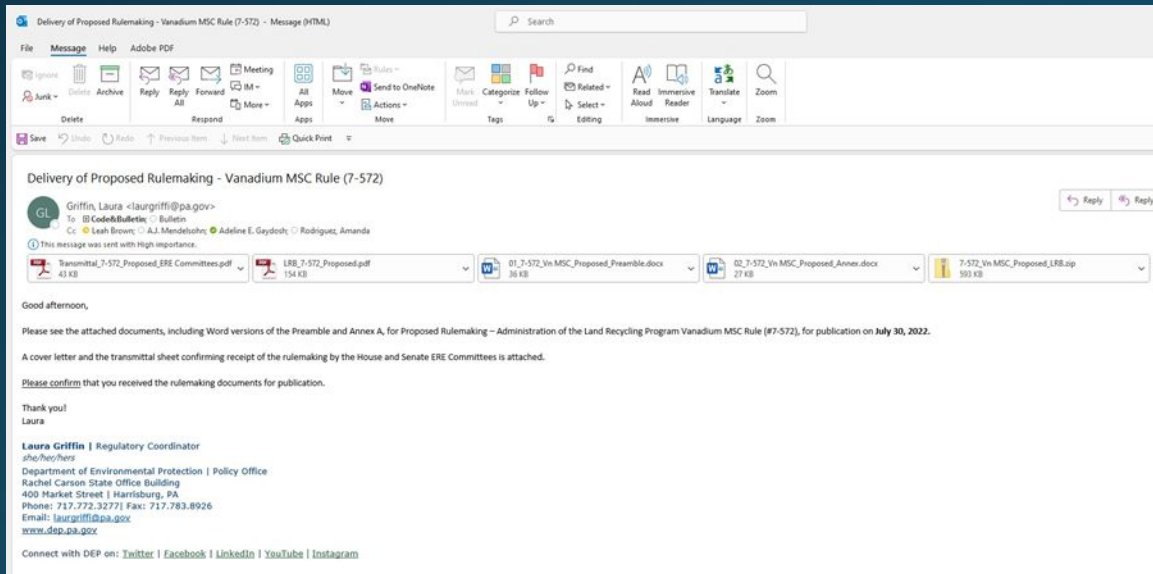
(-a-) Text carries over to the next line using this alignment.

The image shows the interior of a grand, ornate hall, likely a government building or a museum. The ceiling is a large dome with a fresco depicting several figures in a blue sky. The walls are decorated with intricate carvings and frescoes. Large, ornate chandeliers hang from the ceiling, casting a warm glow. The overall atmosphere is one of grandeur and historical significance.

# Practice Tips

# 1. Requirements for publication in the Bulletin

- Submit:
  - Word files of preamble and annex via email to **bulletin@palrb.us**.
  - PDF forms and Excel tables.
- Include:
  - Contact information for galley and requested publication date.
  - Fiscal note and face sheet





COMMONWEALTH OF PENNSYLVANIA

No statutes or acts will be found at this website.

The Pennsylvania Code website reflects the Pennsylvania Code changes effective through 53 Pa.B. 6812 (October 28, 2023).

The Pennsylvania Bulletin website includes the following: Rulemakings by State agencies; Proposed Rulemakings by State agencies; State agency notices; the Governor's Proclamations and Executive Orders; Actions by the General Assembly; and Statewide and local court rules.



SEARCH

CODE

Search input field

Refined Text Search (by Title)

BULLETIN

Search input field

Refined Text Search (by Agency, Issue, etc)

VIEW CURRENT ISSUE of the BULLETIN

Volume 54 Number 3
Saturday, January 20, 2024

The information for the Pennsylvania Code included at this website has been derived directly from the Pennsylvania Code, the Commonwealth's official publication of rules and regulations.

The information for the Pennsylvania Bulletin included at this website has been derived directly from the Pennsylvania Bulletin, the Commonwealth's official gazette for information and rulemaking.

BROWSE

CODE

- 1 GENERAL PROVISIONS
4 ADMINISTRATION
6 AGING
7 AGRICULTURE
10 BANKING AND SECURITIES

BULLETIN

- Volume 54
Volume 53
Volume 52
Volume 51

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PENNSYLVANIA BULLETIN
2024 Publication Schedule

Table with columns for Close, Issue, and Issue. Rows list dates for each month from January to December, including asterisks for early closes.

PLEASE NOTE—ALL SUBMISSIONS MUST BE RECEIVED IN OUR OFFICE BY 4:00 PM ON THE CLOSE DATE.

\* Denotes early close.

\*\*Denotes early close that may be adjusted based as announced on early close memo.

REVISED 12.21.2023

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Harrisburg, PA 17120
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# Standard Schedule

M	T	W	Th	F	S
		<b>1</b> 4 p.m. Deadline Documents from Agency to LRB	<b>2</b> 12 p.m. Deadline Documents from LRB to Publisher	<b>3</b>	<b>4</b>
<b>5</b>	<b>6</b> Agency Corrections Due to LRB	<b>7</b> Issue Sent to Print	<b>8</b> Issue Mails	<b>9</b> 9 a.m. Online Issue available	<b>10</b> Publication Date

## 2. Deadlines

- **Wednesday 4 p.m.** for non-holiday/standard weeks.
- Monday or Tuesday deadline for holiday weeks.
- Submit rulemakings > 10 pages prior to the deadline.

M	T	W	Th	F	S
		1 4 p.m. Deadline Documents from Agency to LRB	2 12 p.m. Deadline Documents from LRB to Publisher	3	4
5	6 Agency Corrections Due to LRB	7 Issue Sent to Print	8 Issue Mails	9 9 a.m. Online Issue available	10 Publication Date

- Edited rulemaking is due to publisher **Thursday at noon.**

M	T	W	Th	F	S
		1 4 p.m. Deadline Documents from Agency to LRB	2 12 p.m. Deadline Documents from LRB to Publisher	3	4
5	6 Agency Corrections Due to LRB	7 Issue Sent to Print	8 Issue Mails	9 9 a.m. Online Issue available	10 Publication Date

- Agencies may call to schedule publication for a future Bulletin issue and may request an advance galley.

# 3. Bulletin version of annex

- Use as the basis for final-form rulemakings.
- Includes the final edits made to the **proposed** rulemaking.

Volume 52 Issue 31 • 52 Pa.B. 4235 • Administration of the Land Recycling Program Vanadium MSC Rule

**PROPOSED RULEMAKING**

**ENVIRONMENTAL QUALITY BOARD**

[ 25 PA. CODE CH. 250 ]

**Administration of the Land Recycling Program Vanadium MSC Rule**

[52 Pa.B. 4235]  
[Saturday, July 30, 2022]

The Environmental Quality Board (Board) proposes to amend Chapter 250 (relating to administration of land recycling program). This rulemaking is proposed under § 250.11 (relating to periodic review of MSCs), which requires the Department of Environmental Protection (Department) to review new scientific information related to Statewide health standard medium-specific concentrations (MSC) at least 36 months after the effective date of the most recent promulgated MSCs and to propose to the Board any changes to the MSCs as necessary. This proposed rulemaking uses contemporary scientific information to update the toxicity value for vanadium, resulting in updates to the vanadium MSCs.

This proposed rulemaking was adopted by the Board at its meeting on May 18, 2022.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

## 4. Galleys – rulemaking/statement of policy

- LRB will provide the galley and edited Word document to the agency.

<p>JOBNAME: Pa Bulletin PAGE: 1 SESS: 1 OUTPUT: Tue Oct 24 11:47:23 2023 /orchid1/orchid1/391/2428/003</p> <p style="text-align: center;">1</p> <p><b>Title 25—ENVIRONMENTAL PROTECTION</b> <b>ENVIRONMENTAL QUALITY BOARD</b> [ 25 PA. CODE CH. 250 ]</p> <p>Administration of the Land Recycling Program Vanadium MSC Rulemaking</p> <p>The Environmental Chapter 250 (relating to program). This final-form § 250.11 (relating to program) requires the Department (Department) to review</p> <p>protective of human health and the environment and which consider future use. As authorized by Act 2 and its implementing regulations, the Commonwealth's Land Recycling Program provides potential land developers with clear cleanup standards based on risk and provides an end to liability when that cleanup standard is achieved.</p> <p>Act 2 and Chapter 250 do not create permitting or</p>	<p style="text-align: center;"><u>Summary of Comments on Pa Bulletin</u></p> <p style="text-align: center;">This page contains no comments</p>
<p>JOBNAME: Pa Bulletin PAGE: 4 SESS: 1 OUTPUT: Tue Oct 24 11:47:23 2023 /orchid1/orchid1/391/2428/003</p> <p style="text-align: center;">4</p> <p>(2) A public comment period was provided as required by law, and all comments were considered.</p> <p>(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 52 Pa.B. 4235.</p> <p>(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.</p> <p><b>L. Order of the Board</b></p> <p>The Board, acting under the authorizing statutes, orders that:</p> <p>(a) The regulations of the Department, 25 Pa. Code Chapter 250, are amended by amending Appendix A, Tables 2, 4A, 4B and 5B as set forth in Annex A.</p> <p>(b) The Chairperson of the Board shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.</p> <p>(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).</p> <p>(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.</p> <p>(e) This final-form rulemaking shall take effect immediately upon publication in the <i>Pennsylvania Bulletin</i>.</p> <p><b>RICHARD NEGRIN,</b> <i>Chairperson</i></p> <p><i>(Editor's Note: See 53 Pa. B. 6319 (October 7, 2023) for IRRC's approval.)</i></p> <p><b>Fiscal Note:</b> Fiscal Note 7-572 remains valid for the final adoption of the subject regulation.</p>	<p>Page: 4</p> <p>Number: 1 Author: laurgriffi Subject: Highlight Date: 11/7/2023 8:44:21 AM This should read "Jessica Shirley, Interim Acting Chairperson"</p>

- Agency should review edits and comments in the Word file (LRB's method of communicating changes to the rulemaking).

- Return in gallery corrections to LRB by date/time requested in schedule email (usually Tuesday).
- Bulletin sent to print on Wednesday of standard week.

DEP-final

**ENVIRONMENTAL QUALITY BOARD**

[ 25 PA. CODE CH. 250 ]

**Administration of the Land Recycling Program  
Vanadium MSC Rule**

The Environmental Quality Board (Board) proposes to amend Chapter 250 (relating to administration of land recycling program). This rulemaking is proposed under § 250.11 (relating to periodic review of MSCs), which requires the Department of Environmental Protection (Department) to review new scientific information related to Statewide health standard or site-specific concentrations (MSC) at least 36 months after the effective date of the most recent promulgated MSCs and to propose to the Board any changes to the MSCs as necessary. This proposed rulemaking uses contemporary scientific information to update the toxicity value for vanadium, resulting in updates to the vanadium MSCs.

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**A. Effective Date**

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

**B. Contact Persons**

For further information contact Michael Maddigan, Program Manager, Land Recycling Program, P.O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 772-3609, or Nikolina Smith, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8501. Information regarding submitting comments on this proposed rulemaking appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at [www.dep.gov](http://www.dep.gov) (select "Public Participation," then "Environmental Quality Board") and then navigate to the Board meeting of May 18, 2022.

**C. Statutory Authority**

This proposed rulemaking is authorized under sections 104(a) and 303(a) of the Land Recycling and Environmental Remediation Standards Act (Act 27) (35 P.S. §§ 6026.104(a) and 6026.303(a)), which direct the Board to adopt and amend periodically by regulation Statewide health standards for regulated substances for each environmental medium, including any health-based standards adopted by the Federal government, regulation or statute, and health advisory levels (HALs), and which direct the Board to promulgate appropriate mathematically valid statistical tests to define compliance with Act 2, and other regulations as necessary to implement the provisions of Act 2. The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.

**D. Background and Purpose**

The Commonwealth's land recycling program, established by Act 2 (35 P.S. §§ 6026.101—6026.308), encourages the voluntary cleanup and reuse of contaminated commercial and industrial sites. It sets standards that are protective of human health and the environment and

which consider future use. It provides potential land developers with clear cleanup standards based on risk and provides an end to liability when that cleanup standard is achieved.

Act 2 and Chapter 250 do not create permitting or corrective action obligations; rather, they provide remediators with options to address contamination and any associated liability that arises under other statutes. To take advantage of the liability protection provided in Act 2, a person must remediate their site by selecting and attaining compliance with one or any combination of the following three environmental standards: background standard, Statewide health standard or site-specific standard. Chapter 250 contains tables of numeric values for contaminants in each environmental medium, including soil and groundwater. These numeric values are used by remediators to determine the MSCs at their sites and account for used and unused groundwater, as well as residential and nonresidential exposure factors. If the Statewide health standard is selected to attain compliance, the remediator must use the applicable MSCs to demonstrate attainment of the standard at the point of compliance.

Section 250.11 requires the Department to review new scientific information used to calculate MSCs under the Statewide health standard and propose appropriate changes at least every 36 months following the effective date of the most recently promulgated MSCs. The Board most recently promulgated MSCs that became effective upon publication of the final-form rulemaking at 51 Pa.B. 7173 (November 20, 2021). Based on new scientific information, this proposed rulemaking would update the vanadium toxicity value and the resulting Statewide health standard MSCs for vanadium.

This proposed rulemaking would impact any person addressing a release of vanadium at a property, whether voluntarily or by order of the Department. This proposed rulemaking would not add or create new regulatory obligations for any particular category of person. Under section 301(a) of Act 2 (35 P.S. § 6026.301(a)), a remediator has the authority to select a remediation standard of choice. To receive cleanup liability protection, remediators must comply with all of the applicable technical and administrative requirements of the selected remediation standard in accordance with section 301(a) of Act 2 (35 P.S. § 6026.501(a)).

As noted previously, this proposed rulemaking would not singularly affect one specific industry or person. This proposed rulemaking would impact the owners and operators of properties throughout this Commonwealth where vanadium has been released. Some of these properties may be owned or operated, or both, by small businesses. Because of the application of this proposed rulemaking, it is not possible to identify specifics on the types and numbers of small businesses that could potentially be affected by vanadium contamination. In addition, Act 2 and Chapter 250 are unique from other statutes and regulations because they do not create permitting or corrective action obligations. Rather, Act 2 and Chapter 250 provide remediators with options to address contamination and any associated liability that arises under other environmental statutes. Making changes to the MSCs in the Chapter 250 Appendix A does not create liability or obligations related to vanadium. Instead, a person's liability arises under other statutes, while Act 2 and Chapter 250 provide that person the means to resolve their liability imposed by these statutes and to address the contamination. In this way, Act 2 and Chapter 250 do not

instead provides remediators with a variety of options to address sites with existing contamination. In that sense, this proposed rulemaking, consistent with Act 2, benefits the public because it may reduce harmful exposure and result in efficient and expedient remediation and reuse of contaminated sites.

**Compliance costs**

The Department believes this proposed rulemaking will result in positive economic impacts because the proposed MSCs more accurately align with exposure risk and prevent impracticable remediation requirements for a site where existing standards for sites where existing vanadium concentrations are lower than naturally occurring concentrations. The number of completed remediations varies each year but on average, remediators apply the Act 2 remediation standards to approximately 800 contaminated properties across the Commonwealth per year. The Department does not expect that the proposed amendments would impact the number of remediations voluntarily completed or the number that must be completed as a result of Department enforcement actions.

The proposed updates to the vanadium Statewide health standard MSCs would not affect the cleanup options available to remediators under other cleanup standards. Persons conducting remediation under Act 2 may choose from three different cleanup standards: background, Statewide health or site-specific.

**Compliance assistance plan**

The Land Recycling Program disseminates information related to these updates using the Department web site and e-mails to environmental consultants and stakeholders involved in the program.

**Paperwork requirements**

This proposed rulemaking would not result in any additional forms or reports, beyond those already required by Act 2 and Chapter 250.

**G. Pollution Prevention**

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

Act 2 encourages cleanup plans with remedy goals which treat, destroy or remove regulated substances whenever technically and economically feasible. This proposed rulemaking provides the necessary Statewide health standard MSCs for remediators to remove, contain or eliminate exposure, where appropriate. In particular, this proposed rulemaking reflects the most up-to-date science, especially as it relates to the characterization and removal of contamination that exceeds Act 2 MSCs. During the remediation of a contaminated site, potential sources of pollution are often removed to attain the Act 2 standards, thus eliminating or minimizing the potential for continued migration of the sources of pollution to other areas.

**H. Sunset Review**

The Board is not establishing a sunset date for this proposed regulation because the requirements are needed for the Department to carry out its statutory authority.

**I. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 12, 2022, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly, and the Governor prior to final publication of the regulations.

**J. Public Comments**

Interested persons are invited to submit written comments, suggestions, support or objections regarding this proposed rulemaking to the Board. Comments, suggestions, support or objections must be received by the Board by August 29, 2022.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at <http://www.ubs.de/pa.gov/eComment>. Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading for this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgment of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2201.

**K. Public Hearings**

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled to receive additional comments.

RAMEZ ZIADEH, PE  
Acting Chairperson

Fiscal Note: 7.572. No fiscal impact; (8) recommendations adopted.

Annex A  
**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart D. ENVIRONMENTAL HEALTH AND SAFETY**  
**ARTICLE VI. GENERAL HEALTH AND SAFETY**

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