



UNIFORM ENVIRONMENTAL COVENANTS ACT

In December 2007, Governor Edward G. Rendell signed the Uniform Environmental Covenants Act (UECA) into law as Act 68 of 2007. UECA is codified at 27 Pa.C.S. §§ 6501-6517, and became effective on Feb. 19, 2008. The law makes it easier for the Department (DEP) to track whether actions taken to remediate regulated substances at contaminated industrial, commercial or residential sites to appropriate cleanup standards are maintained over time. This measure helps to protect the public health and gives investors the confidence they need to develop these sites and return them to productive use.

UECA grew out of a national effort to implement a standardized approach to creating, documenting and assuring enforceability of activity and use limitations on contaminated sites. Act 68 represents an attempt to harmonize the national uniform law with Pennsylvania's existing remediation and corrective action regime, including the Land Recycling and Remediation Standards Act (Act 2), the Storage Tank and Spill Prevention Act (Tank Act), the Hazardous Sites Cleanup Act, the Clean Streams Law and the Solid Waste Management Act. Some version of UECA has been enacted in more than 20 states including Ohio, Maryland, West Virginia and Delaware.

Basic Requirements

Section 6517(a)(1) of UECA requires the use of environmental covenants whenever engineering controls or institutional controls are necessary to demonstrate attainment or assure maintenance of an Act 2 remediation standard for any cleanup conducted under any applicable Pennsylvania environmental law. The covenant provides a tool to ensure that the conditions allowing for a risk-based cleanup will continue in the future.

Contents, Recording and Notice Requirements

Section 6504 of UECA outlines the form and content of an environmental covenant. Subsection (a) includes mandatory items, and subsection (b) contains optional items. A "holder" is the owner of the property interest created by the covenant and is a necessary signatory. The holder may be any person, including the current owner of the property or the remediator. DEP must approve the covenant for it to be effective and may impose conditions for approval. DEP, the current owner(s) of the property, the holder(s) and any other party specified by DEP must sign the covenant.

The approved environmental covenant must be recorded in the county in which the property is located. Within 60 days of recording, proof of recordation also must be provided to DEP. In addition, copies of the approved, recorded environmental covenant are provided to the entities listed in Section 6507 of UECA and in accordance with the terms of the environment covenant.

Duration, Termination and Amendment

An environmental covenant runs with the land and is perpetual unless it is terminated under UECA. The covenant can be written to include a self-terminating provision that limits its effect to a specific duration or provides for termination on the occurrence of a specific event. Otherwise, an environmental covenant can only be terminated by consent, by judicial decree, or by the foreclosure of an interest with priority over the covenant.

Environmental Covenant Process

DEP has developed a model environmental covenant that is available on the DEP website. The model environmental covenant is similar in format and function to DEP's Uniform Consent Order and Agreement form.

DEP urges remediators to begin discussing the need for and contents of an environmental covenant with regional staff and counsel as early in the remediation process as possible. The remediator should draft the environmental covenant and provide an unsigned draft of the covenant before submission of the final cleanup report to DEP, either as part of the Remedial Action Plan (under Chapter 245 of the DEP's regulations) or as part of the Cleanup Plan (under Chapter 250 of DEP's regulations).

Under UECA, DEP has the authority to waive the environmental covenant requirement; however, DEP expects to exercise that discretion only in limited circumstances. Any requests for a waiver of the environmental covenant requirement should be submitted to the appropriate DEP regional office along with a justification for the waiver. Requests for waivers will be evaluated and decided in consultation with DEP central office program staff and legal counsel.

The proposed environmental covenant must be signed by all parties except for DEP and submitted to the appropriate DEP regional office with the Remedial Action Completion Report (Chapter 245) or Final Report (Chapter 250). DEP's program and legal staff will review the proposed environmental covenant. Deficiencies or other issues regarding the environmental covenant will be addressed in the same manner as other deficiencies or issues with final cleanup reports. The regional Environmental Cleanup Program Manager will sign acceptable environmental covenants at the same time as the final cleanup report approval letter is signed.

One copy of the final signed environmental covenant will be retained in DEP's regional project files and the original will be provided to the remediator. The final signed environmental covenant document will be scanned as a pdf document in a DEP regional office and sent by e-mail to DEP's central office. The proof of recordation will be handled in the same manner.

DEP has begun to develop the "Pennsylvania Environmental Covenant Registry" as described in Section 6512 of UECA. Until the registry is fully developed, DEP is maintaining on its Web site a listing of the environmental covenants including county, municipality, other location information and the date the covenant was recorded by the County Recorder of Deeds. The listing will include links to the associated pdf documents for each environmental covenant.

Other Information

By February 2013, any instrument imposing an activity and use limitation that was created prior to the enactment of UECA to demonstrate attainment or maintenance of an Act 2 standard or to demonstrate satisfaction of a Tank Act corrective action requirement is required to be converted to an environmental covenant. All DEP final actions under UECA are appealable to the Environmental Hearing Board. UECA also authorizes Pennsylvania's Environmental Quality Board to develop and promulgate regulations related to UECA.

Contact

Questions regarding Pennsylvania's Uniform Environmental Covenant Act and its implementation may be sent to Troy Conrad at tconrad@state.pa.us or by contacting DEP at 717-783-7816.

For more information, visit www.depweb.state.pa.us, keyword: UECA.