

**LAND RECYCLING PROGRAM
THREE-YEAR UNIFORM ENVIRONMENTAL COVENANTS ACT ("UECA")
REGULATORY FEE REPORT TO THE ENVIRONMENTAL QUALITY BOARD**

Established in 25 Pa. Code Chapter 253, the Department of Environmental Protection (DEP or the Department) is required to provide the Environmental Quality Board (EQB) with an evaluation of the fees established within this chapter and recommend regulatory changes to address any disparity between the program income generated by the fees and the Department's costs to administer the program.

Background and Purpose

The Uniform Environmental Covenants Act (UECA) was a model law developed by the National Conference of Commissioners on Uniform State Laws and subsequently signed into law on December 18, 2007. Environmental covenants are property interests granted to an individual to ensure the long-term stewardship of a remediated site. A property with an environmental covenant has Activity and Use Limitations (AULs) that are authorized under the Land Recycling and Environmental Remediation Standards Act (Land Recycling Act) (35 P. S. §§ 6026.101—6026.907) and the Storage Tank and Spill Prevention Act (Tank Act) (35 P. S. §§ 6021.101—6021.2103). AULs are restrictions on the use of a remediated property (institutional controls) or on the maintenance of a structure needed to control the movement of regulated substances through the environment (engineering controls).

Environmental Covenants can be transferred and enforced by multiple parties, including DEP. The county recorder of deeds maintains the covenant records, providing future landowners and developers with access to AUL notices.

2010 UECA Rulemaking – 25 Pa. Code Chapter 253

UECA contains detailed, procedural requirements and the Department determined that regulations under UECA are necessary to address ambiguities and to establish a procedural coupling with the Tank Act and the Land Recycling Act. The fee that remediators submit with their environmental covenant supports DEP's Land Recycling Program, which reviews and maintains an electronic registry for the environmental covenants. The Department is required to develop and maintain this formal registry under section 6512 of UECA.

DEP developed UECA regulations in 2009 and presented both the proposed and final-form rulemakings to the Cleanup Standards Scientific Advisory Board (CSSAB) and the Storage Tank Advisory Committee (STAC) prior to action by the EQB. Both advisory groups supported the proposed and final-form rulemakings.

On August 30, 2010, the EQB adopted the final-form *Administration of the Uniform Environmental Covenants Act (Chapter 253)* rulemaking. The provisions of Chapter 253 were published in the *Pennsylvania Bulletin* and became effective on November 20, 2010, 40 Pa.B. 6654.

Environmental Covenant Fees

Fees authorized by Section 6515 of UECA were codified in 25 Pa. Code § 253.7 (relating to fees). Subsection 253.7(c) requires DEP to evaluate the fees every three years and report its findings to the EQB and recommend regulatory changes as needed. Section 253.7 reads as follows:

- (a) *A nonrefundable fee of \$500 shall be submitted to the Department with each environmental covenant appropriately signed by all parties other than the Department.*
- (b) *A fee is not required for environmental covenants submitted under § 253.10 (relating to conversion and waiver of conversion) where the person submitting the environmental covenant did not cause or contribute to the contamination described in the environmental covenant.*
- (c) *At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department’s cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.*

The following is a summary of the costs associated with the review and registry of covenants, including annual IT maintenance, and fee collections based on the number of environmental covenants received during the last three fiscal years:

	FY 2015-16	FY 2016-17	FY 2017-18	3-Year Total
Number of Environmental Covenants Reviewed	189	226	179	594
Cost per Covenant for Technical Review*	\$288.36	\$288.36	\$288.36	\$288.36
Annual Cost of Covenant Review	\$54,500.04	\$65,169.36	\$51,616.44	\$171,285.84
Annual Total Fees Collected	\$94,500.00	\$113,000.00	\$89,500.00	\$297,000.00
Annual IT Expenses for Database and Registry	\$41,050.00	\$41,050.00	\$41,050.00	\$123,150.00
Annual Registry and Covenant Review Total Costs	\$95,550.04	\$106,219.36	\$92,666.44	\$294,435.84

***Cost-per-Covenant Calculation:**

- **\$288.36 Covenant Cost** = [\$35.96 Hourly Rate + 9.88 Indirect Costs (27.48%) + \$26.25 Benefit Costs (73%)] x 4 Hours/Covenant
For the last three fiscal years, costs specific to environmental covenants include the wages for personnel to review environmental covenants and add them to the registry. These personnel expenditures are calculated by the work hours that DEP staff code into the Commonwealth's Cross Application Time Sheet system specifically for their efforts under the Land Recycling Act. Additionally, the covenant costs include indirect expenditures such as benefits and annual IT database maintenance. Section 701 of the Land Recycling Act established the Industrial Land Recycling Fund (ILRF), from which DEP draws expenses to implement the provisions required in this Act. The calculated ILRF expenditures reported for the past three fiscal years has not included the cost for DEP personnel to review the supporting land recycling reports that enforce restrictions in the covenants. The average cost for review, input, and upkeep for environmental covenants over the last three fiscal years averages to approximately \$495.00 per covenant.

Conclusion and Recommendation

Established by UECA, remediators must pay a \$500 fee to DEP on submission of their environmental covenant. The remaining majority of the UECA expenditures are paid for through the Hazardous Sites Cleanup Fund (HSCF).

Both the Land Recycling Act and UECA continue to be effective statutes as enacted, and DEP does not recommend a UECA fee increase at this time.

While DEP does not recommend increasing fees, it should be noted that the source of a significant portion of UECA's funding is at risk. Historically, the HSCF has been funded through the Capital Stocks and Franchise Tax. Due to the phase-out of this tax, the HSCF will be insolvent by 2021 and unable to support the core responsibilities of the DEP's Land Recycling program unless a new source of reoccurring revenue is established.

The Land Recycling Program has continuously grown over the past 23 years and DEP anticipates the number of voluntary remediations to increase and the general program responsibilities to expand. While current projections show shrinking resources and growing responsibilities, this program, to the best of its ability, will continue to provide consistent services through public outreach, placing the voluntary cleanup of brownfields at the forefront.