

STANDARD OPERATING PROCEDURE¹

FOR

IMPLEMENTATION of the
UNIFORM ENVIRONMENTAL COVENANTS ACT

LAND RECYCLING PROGRAM

BUREAU OF ENVIRONMENTAL CLEANUP AND BROWNFIELDS

MARCH 2013

¹ **DISCLAIMER:** Nothing in this Standard Operating Procedure (SOP) is intended to or affects any regulatory requirements. The process, procedures and interpretations (Statements) herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the Statements in this SOP that weight or deference. This SOP establishes the framework within which DEP will exercise its discretion in the future. When appropriate, DEP may deviate from this SOP.

PA Department of Environmental Protection Land Recycling Program

1.0 Purpose

This Standard Operating Procedure (SOP) describes the procedures by which the Department of Environmental Protection (department) will accept and review environmental covenants. The Uniform Environmental Covenants Act (UECA) and the Chapter 253 regulations provide a standardized process for creating, documenting and assuring the enforceability of activity and use limitations (AUL) on remediated sites that have residual contamination.

1.1 Applicability and Definitions

Pennsylvania enacted UECA in December 2007. Under UECA, an environmental covenant (EC) is required if an activity and use limitation is used to demonstrate the attainment of a remediation standard under Act 2 or the Storage Tank Act. Under UECA, an EC is defined as a “servitude arising under an environmental response project which imposes activity and use limitations.” In layman’s terms, an EC is the document used to memorialize activity and use limitations and ensure they are maintained for as long as they are necessary. Under UECA, AULs are defined as the “restrictions or obligations with respect to real property” and include engineering and institutional controls. Because of the possible ambiguity among these various terms, the department generally refers to AULs, rather than engineering or institutional controls, when addressing ECs. Annually, the department has been reviewing more than 200 ECs. Almost always, the ECs received by the department are for sites for which DEP has approved a Final Report under the Chapter 250 regulations or a Remedial Action Cleanup Report under the Chapter 245 regulations and AULs are necessary to preserve and/or maintain the protectiveness of the remedy.

1.2 Summary of Process

- A. Environmental Covenants (EC) should be submitted to the department AFTER the associated Final Report/Remedial Action Completion Report (FR/RACR) has been approved.
If an EC is received prior to the approval of a FR/RACR, the department will ask the remediator to withdraw the EC.
- B. A Post Remediation Care Plan contained in the FR/RACR must clearly describe any AUL that has or will be used as part of the remediation as well as any necessary inspection, maintenance and/or reporting activities.

- C. Upon department receipt/comment/execution of an EC, the regional office will add the appropriate data into eFACTS. The eFACTS data entry must include information that fully completes any remaining data fields within the Land Recycling Activities screen AND the AUL Module. The AUL Module is the data repository for the Pennsylvania Activity and Use Limitation Registry.
- D. FR/RACR approval letters should reiterate the remediator's obligation to submit an approvable EC within 30 days. The department WILL NOT condition its approval of the FR/RACR upon the submission of the EC.
- E. ECs may be submitted signed or unsigned. A \$500 fee is due upon submittal of a signed EC. The fee should be deposited into the Industrial Land Recycling Fund.
- F. Remediators should use the standard language in the department's Model EC to the maximum extent possible. Remediators should also use language from the approved FR/RACR in the EC. Significant changes from the Model EC or the approved FR/RACR will complicate the department's review and may lengthen the department's review time.
- G. The project manager or section chief will review the EC. The program manager or program counsel should review an EC only when it includes significant changes from the approved FR/RACR or Model EC.
- H. The department will complete its review of an EC within 30 days of its receipt. If an EC is found to be deficient or otherwise unapprovable, the department will communicate its concerns in writing by issuing a Deficiency letter [Attachment 1] or issuing a Disapproval letter [Attachment 2]. Deficiency correspondence will notify the remediator that the department intends to disapprove the EC if the remediator does not correct the deficiencies by a specified date. If the remediator does not submit a revised, acceptable EC by the specified date, the department will send a separate disapproval letter [Attachment 2]. If the initial review of an EC contains significant errors or problems, the department may move directly to a Disapproval letter.
- I. If the department finds the EC to be acceptable, the department will sign the EC and return the executed document to the person who submitted the EC [Attachment 3].

- J. Within 90 days after the EC has been executed by the department, the person submitting the EC is required to provide the department with proof of recordation from the appropriate county recorder of deeds.
- K. If an EC has not been received within 30 days of the approval of a FR/RACR, the department will contact the remediator in writing and inquire as to its status [Attachment 4]. If the remediator is unresponsive, the regional office will inform the Land Recycling Program.
- L. If an EC is approved and submitted to DEP by an agency of the federal government, the department should enter all required eFACTS data required to complete the entry and have the data posted to the PA AUL Registry.
- M. If the department has been informed that a judicial proceeding has been or will be filed seeking the modification or termination of an EC at a RCRA Corrective Action facility, the department will inform EPA within 14 days after the department's receipt of the information.
- N. For the following circumstances, the request(s) should be forwarded to the Land Recycling Program for consultation, evaluation or decision.
 - a. A request to modify or terminate an EC associated with a PennDOT highway construction project.
 - b. A request by the department that an owner of a prior interest subordinate its interest to the environmental covenant.

The department will not waive the requirement to use an EC except in very limited circumstances. These circumstances are outlined on the Land Recycling Program webpage in the UECA Frequently Asked Questions and in §253.10(c). All waiver requests must be made in writing. Any approval or denial of a waiver request by the department will be issued in writing [Attachment 5].

References

UECA --The Uniform Environmental Covenants Act, Act 68 of 2007, codified at 27 Pa. C.S. §§ 6501-6517.

Act 2 -- The Land Recycling and Environmental Remediation Standards Act, Act 2 of 1995, codified at 35 P.S. §§ 6026.101-6026.908.

The Storage Tank Act -- The Storage Tank and Spill Prevention Act, Act 32 of 1989, codified at 35 P.S. §§ 6021.101-6021.2104.

The Storage Tank regulations -- 25 Pa. Code Chapter 245, titled "Administration of the Storage Tank and Spill Prevention Program."

The UECA regulations -- 25 Pa. Code Chapter 253, titled "Administration of the Uniform Environmental Covenants Act."

Model Environmental Covenant – the department-drafted document with that name on the department's UECA webpages.

Attachments

Attachment 1 – UECA Deficiency template

Attachment 2 – UECA Disapproval template

Attachment 3 – UECA Approval template

Attachment 4 – UECA Overdue template

Attachment 5 – EC Waiver Approval template

Attachment 1

UECA Deficiency template

ENVIRONMENTAL CLEANUP AND BROWNFIELDS PROGRAM

DATE

(NAME & ADDRESS of remediator/property owner)

Re: Letter of Environmental Covenant Deficiency

(SITE NAME)

eFACTS PF # (xxxxxxx)

Remediation or Activity ID#

(SITE ADDRESS, CITY)

(MUNICIPALITY), (CHOOSE) County

Dear (NAME):

The Department of Environmental Protection (department) has reviewed the (DATE) Environmental Covenant (EC) for the property located at (LOCATION ADDRESS OR DESCRIPTION). (OPTIONAL: one sentence describing release details) The EC was prepared by (NAME OF PREPARER, USUALLY THE CONSULTANT'S COMPANY NAME) and submitted to the department in accordance with Title 25, Chapter 253 of the PA Code, Administration of the Uniform Environmental Covenants Act (UECA). The EC is required to maintain the integrity of an approved Act 2 remedy at the property.

The department notes the following deficiencies in the referenced EC:

(DESCRIBE DEFICIENCIES AND NOTE REGULATORY CITATIONS).

Please address the above summarized deficiencies within 30 days. If the deficiencies are not corrected within 30 days, the department will disapprove the EC in accordance with 25 Pa. Code §253.2(c)(3) of UECA.

If you wish to discuss these deficiencies, please contact (EC&B PROJECT MANAGER) at (PHONE NUMBER).

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section §7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717.787.3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800.654.5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717.787.3483. This paragraph does not, in and of

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itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the Board within 30 days. You do not need a lawyer to file an appeal with the Board.

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the Secretary to the Board (717.787.3483) for more information.

Sincerely,

(SIGNER)

Environmental Program Manager
Environmental Cleanup and Brownfields Program

cc: **(CONSULTANT)**
(MUNICIPALITY)
Troy Conrad, DEP
(REGIONAL FILE)

bcc: **(EC&B PROJECT MANAGER)**

typist's initials

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Attachment 2

UECA Disapproval template

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ENVIRONMENTAL CLEANUP AND BROWNFIELDS PROGRAM

DATE

(NAME & ADDRESS of remediator/property owner)

Re: Disapproval of Environmental Covenant

(SITE NAME)

eFACTS PF # (xxxxxxx)

Remediation or Activity ID#

(SITE ADDRESS, CITY)

(MUNICIPALITY), (CHOOSE) County

Dear (NAME):

The Department of Environmental Protection (department) has reviewed the (DATE) Environmental Covenant (EC) for the property located at (LOCATION ADDRESS OR DESCRIPTION). (OPTIONAL: one sentence describing release details) The EC was prepared by (NAME OF PREPARER, USUALLY THE CONSULTANT'S COMPANY NAME) and submitted to the department in accordance with Title 25, Chapter 253 of the PA Code, Administration of the Uniform Environmental Covenants Act (UECA). The EC is required to maintain the integrity of an approved Act 2 remedy at the property.

The department notes the following deficiencies in the referenced EC and disapproves it in accordance with 25 Pa. Code §253.2(c)(3) of UECA:

(INCLUDE ANY SPECIFIC INFORMATION NECESSARY ABOUT THE EC DISAPPROVAL).

If you wish to discuss the disapproval, please contact (EC&B PROJECT MANAGER) at (PHONE NUMBER).

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section §7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717.787.3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800.654.5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717.787.3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

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If you want to challenge this action, your appeal must reach the Board within 30 days. You do not need a lawyer to file an appeal with the Board.

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the Secretary to the Board (717.787.3483) for more information.

Sincerely,

(SIGNER)

Environmental Program Manager
Environmental Cleanup and Brownfields Program

cc: **(CONSULTANT)**
(MUNICIPALITY)
Troy Conrad, DEP
(REGIONAL FILE)

bcc: **(EC&B PROJECT MANAGER)**

typist's initials

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Attachment 3

UECA Approval template

ENVIRONMENTAL CLEANUP AND BROWNFIELDS PROGRAM

DATE

(NAME & ADDRESS of remediator/property owner)

Re: Approval of Environmental Covenant
(SITE NAME)
eFACTS PF # (xxxxxxx)
Remediation or Activity ID#
(SITE ADDRESS, CITY)
(MUNICIPALITY), (CHOOSE) County

Dear (NAME):

The Department of Environmental Protection (department) has reviewed the (DATE) Environmental Covenant (EC) for the property located at (LOCATION ADDRESS OR DESCRIPTION). (OPTIONAL: one sentence describing release details) The EC was prepared by (NAME OF PREPARER, USUALLY THE CONSULTANT'S COMPANY NAME) and submitted to the department in accordance with Title 25, Chapter 253 of the PA Code, Administration of the Uniform Environmental Covenants Act (UECA). UECA and accompanying regulations provide a standardized process for creating, documenting and assuring the enforceability of activity and use limitations on contaminated properties involving most engineering and institutional controls used to achieve Act 2 standards.

The department hereby approves the EC in accordance with the provisions of UECA. Enclosed is the signed environmental covenant that memorializes the activity and use restrictions described within the final report. The Grantor shall record the covenant within 30 days of receipt and notifications of recordation shall be sent to the department within 90 days of recordation according to Section 253.5(c) of the regulations.

If you have questions regarding this correspondence, please contact (EC&B PROJECT MANAGER) at (PHONE NUMBER).

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section §7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717.787.3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800.654.5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717.787.3483. This paragraph does not, in and of

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itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the Board within 30 days. You do not need a lawyer to file an appeal with the Board.

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the Secretary to the Board (717.787.3483) for more information.

Sincerely,

(SIGNER)

Environmental Program Manager
Environmental Cleanup and Brownfields Program

cc: **(CONSULTANT)**
(MUNICIPALITY)
Troy Conrad, DEP
(REGIONAL FILE)

bcc: **(EC&B PROJECT MANAGER)**

typist's initials

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Attachment 4

UECA Overdue template

ENVIRONMENTAL CLEANUP AND BROWNFIELDS PROGRAM

DATE

(NAME & ADDRESS of remediator/property owner)

Re: Environmental Covenant Overdue
(SITE NAME)
eFACTS PF# (xxxxxx)
Remediation or Activity ID#
(SITE ADDRESS, CITY)
(MUNICIPALITY), (CHOOSE) County

Dear (NAME):

The Department of Environmental Protection (department) recently approved a Final Report/Remedial Action Completion Report (FR/RACR) for the above referenced facility. Based on the remediation standard that you selected, and as indicated in your FR/RACR, an Environmental Covenant (25 Pa. Code §253.5; Administration of the Uniform Environmental Covenants Act) is required to maintain the integrity of the approved remedy. This Environmental Covenant was due to the department for review 30 days after approval of the FR/RACR, on (DATE). To date, that Environmental Covenant (EC) has not been received. We request that you notify us in writing no later than (DATE) as to the status of the covenant document.

Your EC may be submitted as a signed or unsigned document. However, a nonrefundable fee of \$500 must be submitted to the department with each environmental covenant appropriately signed by all parties other than the department. Further information about the Uniform Environmental Covenants Act may be found on the department's web site at <http://www.depweb.state.pa.us>, under the key word Land Recycling.

We appreciate your cooperation in this matter. If you have any questions concerning this letter, please feel free to contact (EC&B PROJECT MANAGER) at (PHONE).

Sincerely,

(SIGNER)

(TITLE)

Environmental Cleanup and Brownfields Program

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cc: (CONSULTANT)
(REGIONAL FILE)

bcc: (EC&B PROJECT MANAGER)

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Attachment 5

EC Waiver Approval template

ENVIRONMENTAL CLEANUP AND BROWNFIELDS PROGRAM

DATE

(NAME & ADDRESS of remediator/property owner)

Re: Environmental Covenant Waiver Request

(SITE NAME)

eFACTS PF # (xxxxxxx)

Remediation or Activity ID#

(SITE ADDRESS, CITY)

(MUNICIPALITY), (CHOOSE) County

Dear (NAME):

The Department of Environmental Protection (department) has reviewed the request to waive the requirement for an Environmental Covenant (EC) submitted on (DATE) for the property located at (LOCATION ADDRESS OR DESCRIPTION). The waiver request and the previously submitted (REPORT(S)) have demonstrated that (STATE FACTS SUPPORTING DECISION). Given the facts of this case, the department will grant a waiver of the requirements for an EC pursuant to the provisions contained in the Uniform Environmental Covenants Act for the above referenced facility.

Please feel free to contact (EC&B PROJECT MANAGER) at (PHONE NUMBER) with any questions or if further clarification is needed regarding this matter.

Sincerely,

(SIGNER)

Program Manager

Environmental Cleanup and Brownfields Program

cc: (CONSULTANT)
(MUNICIPALITY)
(REGIONAL FILE)

typist's initials

bcc: (EC&B PROJECT MANAGER)

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