

EXECUTIVE SUMMARY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Final Rulemaking
25 Pa. Code Chapter 253
(Administration of the Uniform Environmental Covenants Act)

The Uniform Environmental Covenants Act (27 Pa.C.S. §§ 6501-6517) (UECA) was signed into law in Pennsylvania on December 18, 2007. UECA was based on a national model act developed by the National Conference of Commissioners on Uniform State Laws. UECA provides for the creation of environmental covenants to ensure the long-term stewardship of activity and use limitations on property remediated under the Land Recycling and Environmental Remediation Standards Act (Act 2), the Storage Tank and Spill Prevention Act (Tank Act) and other state and federal statutes. Although UECA contains procedural requirements, the Department of Environmental Protection (Department) determined that regulations under UECA are necessary in order to address ambiguities in the statute and to establish procedural interfaces with the statute and Act 2 and the Tank Act.

The final regulations establish requirements for the submission of an environmental covenant to the Department as demonstration of attainment or maintenance of an environmental remediation standard under Act 2 or as part of a corrective action requirement under the Tank Act. The final-form regulations include provisions that clarify when an environmental covenant is required, how an environmental covenant should be created, what an environmental covenant must contain and when an environmental covenant must be submitted to the Department. Pursuant to authority contained in UECA, the final rulemaking also establishes a fee to support Departmental review of environmental covenants that are submitted to the Department as part of a demonstration of attainment or maintenance of a remediation or corrective action standard. While there is some overlap with the regulations and UECA, the Department did not include those portions of UECA that are clear and did not pertain to the process for creating and implementing an environmental covenant. Such items include enforcement of environmental covenants and the various parts of UECA that outline the legal effect of creating an environmental covenant.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on March 6, 2010, with a 30-day public comment period. 40 Pa.B. 1379. The Board received 66 comments from 11 commentators, including the Independent Regulatory Review Commission. The statute does not require review of regulations under the statute by any particular advisory committee. However, the Department had discussions with several outside groups concerning the final-form rulemaking. The Department presented the draft final-form rulemaking to the Storage Tank Advisory Committee (STAC) on June 8, 2010, in substantially the same form as published today. The STAC approved a motion to recommend approval of the final-form rulemaking by the Board. The Department also presented the draft final-form rulemaking to the Cleanup Standards Scientific Advisory Board (CSSAB) on June 15, 2010. The CSSAB was supportive of the draft final-form rulemaking but did not take formal action on the rulemaking, pending resolution of several issues. The Department had further discussions with the CSSAB on June 28, 2010 resulting in the final-form rulemaking published today.

As a result of the comments received, discussions with commentators and the STAC and CSSAB, several changes were made to the proposed rulemaking. Many of the changes were editorial or corrective in nature, and did not alter the substantive requirements of the rulemaking. The most significant change involves the submission process for consideration of environmental

covenants by the Department and is primarily contained in section 253.4. The final-form rulemaking deleted all requirements to submit draft environmental covenants at early or interim moments in the remediation process, and instead only requires submissions after the Department has approved a Final Report or Remedial Action Completion Report demonstrating attainment of an Act 2 standard. A second significant set of changes in response to comments involved extending the time periods for compliance with requirements (*see, e.g.*, section 253.3(a)) and including explicit authority for the Department and remediator to agree to longer compliance timeframes when necessary. The final significant change was to add a mandatory provision regarding termination of covenants to section 253.2(a)(8). This provision is intended to address situations where the Pennsylvania Department of Transportation acquires property that is subject to an environmental covenant for use as a highway right-of-way.

Companion federal regulations do not exist for the topics addressed by this final-form rulemaking. The Department does not anticipate any increased costs to the regulated community as a result of the rulemaking, except for the review fee established by section 253.7 of the rulemaking. The activity and use limitations identified in an environmental covenant are necessary to demonstrate attainment or maintenance of an Act 2 standard and/or the attainment of corrective action under the Tank Act; however, the final-form rulemaking does not expand the use of such limitations. The obligation to use environmental covenants to implement those activity and use limitations is established by UECA and not this final-form rulemaking.