

ADMINISTRATION OF UECA, 25 Pa.Code Ch. 253  
SUMMARY OF COMMENTS OF BP PRODUCTS NORTH AMERICA INC. ("BP")

To date, BP has submitted over 30 draft covenants to the Department under a Multi-Site Agreement signed on March 14, 2001 covering the remediation of hundreds of sites in Pennsylvania. BP provides these comments based upon its experience with the UECA program:

**1. BP suggests that Section 253.5(b) of the proposed rule be amended so that, for remediations using the site-specific standard, the final rule will (1) require the submission of draft environmental covenants at least 30 days prior to the submission of the Remedial Action Completion Report ("RACR") or Final Report, rather than when the Remedial Action Plan or Cleanup Plan is submitted, and (2) require that the list of "all owners of recorded interests in the property and the nature of their interest" be submitted at the same time as the draft environmental covenant. This would be conceptually similar to the timing that the proposed rule adopts in Section 253.5(a) for remediations under the background standard or the Statewide health standard.**

Under the proposed rule, a draft covenant is required when the Remedial Action Plan ("RAP") or Cleanup Plan is submitted. A RAP or Cleanup Plan is submitted before remediation has been undertaken and the necessary use restrictions have been identified. It is very likely that a draft covenant submitted with the RAP or Cleanup Plan will have to be substantially amended later. Further, under the current proposed rule, two title searches will have to be conducted: one when the draft covenant is submitted with the RAP to identify existing legal interests, and another one when the final covenant is prepared (perhaps years later), to determine if additional interests have been recorded in the intervening time. Thus, the proposal is wasteful of resources and will result in increased costs for remediators, owners, and USTIF, which covers such costs. The proposed revision reflects the Department's current practice, in which the draft covenant is submitted shortly before, after, or at the time of the submittal of the RACR or Final Report, thereby avoiding the waste of resources and making the rules for remediations under the statewide health standard and site-specific standard more consistent.

**2. BP suggests that Section 253.5(d) of the proposed rule be amended to retain the Department's current practice under which draft environmental covenants are submitted shortly before or concurrently with the RACR or Final Report, and the Department does not issue its letter approving the Report until the signed covenant is received and executed by the Department. This will address the reluctance of many owners to sign an environmental covenant relating to a Report that has not even been submitted to the Department, and will eliminate the possibility of having to go back to the owner to sign a revised covenant if the Department requires changes based upon its review of the Report.**

BP rarely owns the sites it remediates. Based upon BP's experience, the proposed rule will make it more difficult to obtain an owner's signature on an environmental covenant if the final report relating to the covenant has not even been submitted to the Department or reviewed by the Department. This will also delay the submission of final reports, making site closure more difficult. BP suggests that the final rule retain the Department's current practice, as explained above.

**3. BP suggests that the words "unless waived by the Department" be added to the end of proposed Section 253.11 regarding approval of assignments so that flexibility with the 30-day rule will be available by waiver where the Department agrees to grant it.**

BP's proposal would provide flexibility in appropriate cases where a request for approval of an assignment is not, or cannot be, provided 30 days before the assignment.

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Submitted April 1, 2010 on behalf of BP Products North America Inc. by John C. Laager, Esq.  
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