

EXECUTIVE SUMMARY
PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY
COMMENTS REGARDING PROPOSED REGULATIONS IMPLEMENTING THE
UNIFORM ENVIRONMENTAL COVENANTS ACT

As described in detailed comments submitted herewith regarding proposed regulations to implement Pennsylvania's version of the Uniform Environmental Covenants Act ("UECA"), 27 Pa.C.S. §§ 6501- 6517, the Pennsylvania Chamber of Business and Industry ("PCBI") has significant concerns pertaining to both the terms of the proposed regulations themselves and the manner in which the Pennsylvania Department of Environmental Protection ("PADEP") is implementing UECA. PADEP has used the passage of UECA as a pretext to make important substantive changes to Pennsylvania's vaunted land recycling program under the Pennsylvania Land Recycling and Environmental Remediation Standards Act ("Act 2"). For example, PADEP is now requiring that land use restrictions be imposed prohibiting in perpetuity the residential use of properties that are remediated in accordance with the nonresidential medium specific concentrations ("MSCs") under the statewide health standard of Act 2 despite the fact that such requirements conflict with Act 2 and were never imposed prior to UECA. The manner in which UECA is being implemented is unfortunately having a corrosive effect on the Act 2 program. With limited exceptions, the proposed regulations will further detract from the Act 2 program. PCBI therefore opposes finalizing the proposed regulations without significant changes. PCBI recommends that PADEP engage in further outreach and consultation with the regulated community to seek input into the regulatory development process and is ready to participate in such interactions if the opportunity is provided.

The structure and approach of the proposed regulations reflect a fundamental misperception by PADEP as to the limited but important objectives that UECA is designed to achieve. UECA is not designed to provide a new opportunity for "command and control" regulation in the context of land recycling and environmental cleanup projects. Instead, UECA is designed to create a framework for how activity and use limitations are to be created and not what those activity and use limitations are to include. Moreover, environmental covenants should be the very last step in the remediation process, prepared after final reports and remedial action completion reports are submitted and approved by PADEP.

Consistent with the foregoing, PCBI recommends that the proposed regulations be revised (1) to prohibit PADEP from requiring information, restrictions and provisions in environmental covenants beyond those specifically mandated by UECA, (2) to preserve the use of institutional controls such as ordinances and local regulations that are not in the form of activity and use limitations embodied in an environmental covenant, (3) to shift all requirements relating to the preparation of environmental covenants and requests for waivers to the period following submission and approval of final reports and remedial action completion reports, (4) to eliminate requirements mandating execution of environmental covenants prior to agreement by all parties concerning the terms of the environmental covenants, and (5) to include the numerous clarifying and substantive changes described in the detailed comments prepared by PCBI.