pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

UNIFORM ENVIRONMENTAL COVENANTS ACT

The Uniform Environmental Covenants Act (UECA) was signed into law as Act 68 of 2007. UECA is codified at 27 Pa.C.S. §§ 6501-6517, and became effective on February 19, 2008. The law makes it easier for the Department of Environmental Protection (DEP) to track whether actions taken to remediate regulated substances at contaminated industrial, commercial, or residential sites to appropriate cleanup standards are maintained over time. This measure helps to protect the public health and gives investors the confidence they need to develop these sites and return them to productive use.

UECA grew out of a national effort to implement a standardized approach to creating, documenting, and assuring enforceability of activity and use limitations on contaminated sites. Act 68 represents an attempt to harmonize the national uniform law with Pennsylvania's existing remediation and corrective action regime, including the Land Recycling and Remediation Standards Act (Act 2), the Storage Tank and Spill Prevention Act (Tank Act), the Hazardous Sites Cleanup Act, the Clean Streams Law, and the Solid Waste Management Act. Some version of UECA has been enacted in more than 20 states including Ohio, Maryland, West Virginia, and Delaware.

Basic Requirements

Section 6517(a)(1) of UECA requires the use of environmental covenants whenever engineering controls or institutional controls are necessary to demonstrate attainment or assure maintenance of an Act 2 remediation standard for any cleanup conducted under any applicable Pennsylvania environmental law. The covenant provides a tool to ensure that the conditions allowing for a risk-based cleanup will continue in the future.

Contents, Recording, and Notice Requirements

Section 6504 of UECA outlines the form and content of an environmental covenant. Subsection (a) includes mandatory items, and subsection (b) contains optional items. A "holder" is the owner of the property interest created by the covenant and is a necessary signatory. The holder may be any person, including the current owner of the property or the remediator. DEP must approve the covenant for it to be effective and may impose conditions for approval. DEP, the current owner(s) of the property, the holder(s), and any other party specified by DEP must sign the covenant.

The approved environmental covenant must be recorded in the county in which the property is located. Within 60 days of recording, proof of recordation also must be provided to DEP. In addition, copies of the approved, recorded environmental covenant are provided to the entities listed in Section 6507 of UECA and in accordance with the terms of the environmental covenant.

Duration, Termination, and Amendment

An environmental covenant runs with the land and is perpetual unless it is terminated under UECA. The covenant can be written to include a self-terminating provision that limits its effect to a specific duration or provides for termination on the occurrence of a specific event. Otherwise, an environmental covenant can only be terminated by consent, by judicial decree, or by the foreclosure of an interest with priority over the covenant.

Environmental Covenant Process

DEP developed a model environmental covenant that is available on DEP's website. Remediators should use the standard language in the model to the maximum extent possible. Significant changes from the model can complicate DEP's review and may lengthen the review time.

DEP urges remediators to begin discussing the need for and contents of an environmental covenant with regional staff and counsel as early in the remediation process as possible. Within 30 days of the Final Report/Remedial Action Completion Report (FR/RACR) approval, the remediator must submit a proposed environmental covenant. If an environmental covenant has not been received within 30 days of the approval of a FR/RACR, DEP will contact the remediator in writing and inquire as to its status.

DEP will complete its review of an environmental covenant within 30 days of its receipt. If an environmental covenant is deficient or contains significant errors or problems, DEP will communicate its concerns in writing by letter. If the environmental covenant is acceptable, except for being unsigned, DEP will notify the person submitting the environmental covenant that he or she may sign and resubmit the environmental covenant to DEP. A nonrefundable fee of $500 must be submitted to DEP with each environmental covenant appropriately signed

by all parties other than DEP. After the environmental covenant has been approved and signed by DEP, it is to be recorded within 30 days in the county in which the property is located. Within 90 days after the environmental covenant has been approved and signed by DEP, the person submitting the environmental covenant is required to provide DEP with proof of recordation from the county recorder of deeds.

Under UECA, DEP has the authority to waive the environmental covenant requirement; however, DEP expects to exercise that discretion only in very limited circumstances. Any requests for a waiver of the environmental covenant requirement should be submitted to the appropriate DEP regional office along with a justification for the waiver. Requests for waivers will be evaluated and decided in consultation with DEP central office program staff and legal counsel. Any approval or denial of a waiver request will be issued in writing by DEP.

DEP is obligated under UECA to maintain a registry for the public display of covenants received. To meet that requirement, DEP developed the Pennsylvania Activity and Use Limitations (PA AUL) Registry - www.depgis.state.pa.us/pa-aul. The PA AUL Registry is a user-friendly, map-based website that allows users to identify properties within the commonwealth where any type of Activity and Use Limitation (AUL) has been imposed and of which DEP has been informed. AULs are restrictions or obligations with respect to real property. The term includes engineering controls and institutional controls.

Contact Information

For information concerning this initiative and the Pennsylvania Land Recycling Program, call 717-783-1566 or visit www.dep.pa.gov, under Businesses > Land > Land Recycling. Questions and comments should be sent to landrecycling@pa.gov.

Environmental Cleanup Programs	
Southeast Regional Office 2 East Main St. Norristown, PA 19401-4915 Phone: 484-250-5960 Fax: 484-250-5971 **Counties:** Bucks, Chester, Delaware, Montgomery, and Philadelphia	**Northeast Regional Office** 2 Public Square Wilkes-Barre, PA 18701-1915 Phone: 570-820-4902 Fax: 570-820-4907 **Counties:** Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne, and Wyoming
South-central Regional Office 909 Elmerton Ave. Harrisburg, PA 17110-8200 Phone: 717-705-4705 Fax: 717-705-4830 **Counties:** Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, and York	**North-central Regional Office** 208 West Third St., Suite 101 Williamsport, PA 17701-6448 Phone: 570-321-6525 Fax: 570-327-3420 **Counties:** Bradford, Cameron, Clearfield, Centre, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Snyder, Sullivan, Tioga, and Union
Southwest Regional Office 400 Waterfront Drive Pittsburgh, PA 15222-4725 Phone: 412-442-4091 Fax: 412-442-4328 **Counties:** Allegheny, Beaver, Cambria, Fayette, Greene, Somerset, Washington, and Westmoreland	**Northwest Regional Office** 230 Chestnut St. Meadville, PA 16335-3481 Phone: 814-332-6648 Fax: 814-332-6121 **Counties:** Armstrong, Butler, Clarion, Crawford, Elk, Erie, Forest, Indiana, Jefferson, Lawrence, McKean, Mercer, Venango, and Warren