

PA UNIFORM ENVIRONMENTAL COVENANTS ACT

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Contents

- **UECA Statute**
- **PADEP Facts Sheet**
- **PADEP Frequently Asked Questions**
- **PADEP Model Covenant**
- **Excerpt From PADEP Data Base**

PADEP Web Site Address:

<http://www.depweb.state.pa.us/ocrlgs/cwp/view.asp?a=1459&Q=534040>

UECA Statute

SENATE AMENDED

PRIOR PRINTER'S NO. 68

PRINTER'S NO. 2870

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 43 Session of 2007

INTRODUCED BY RUBLEY, GEORGE, D. O'BRIEN, ARGALL, BASTIAN,
 CALTAGIRONE, FRANKEL, GEIST, GOODMAN, GRUCELA, HARPER,
 HENNESSEY, HERSHEY, LEACH, R. MILLER, MOUL, MUNDY, NICKOL,
 ROSS, SIPTROTH, SONNEY, STEIL, TANGRETTI, VEREB, WALKO,
 WATSON, MELIO, GALLOWAY AND FABRIZIO, JANUARY 30, 2007

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 19, 2007
 AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
 2 Consolidated Statutes, providing for uniform environmental
 3 covenants.

4 The General Assembly of the Commonwealth of Pennsylvania
 5 hereby enacts as follows:

6 Section 1. Title 27 of the Pennsylvania Consolidated
 7 Statutes is amended by adding a chapter to read:

8 CHAPTER 65

9 UNIFORM ENVIRONMENTAL COVENANTS

10 Sec.

11 6501. Short title of chapter.

12 6502. Definitions.

13 6503. Nature of rights; subordination of interests.

14 6504. Contents of environmental covenant.

15 6505. Validity.

16 6506. Relationship to other land-use law.

1 6507. Notice.

2 6508. Recording.

3 6509. Duration.

4 6510. Amendment or termination by consent.

5 6511. Enforcement of environmental covenant.

6 6512. Registry; substitute notice.

7 6513. Uniformity of application and construction.

8 6514. Relation to Electronic Signatures in Global and National

9 Commerce Act.

10 6515. Environmental Quality Board.

11 6516. Appealable actions.

12 6517. Relationship to other laws.

13 § 6501. Short title of chapter.

14 This chapter shall be known and may be cited as the Uniform

15 Environmental Covenants Act.

16 § 6502. Definitions.

17 The following words and phrases when used in this chapter

18 shall have the meanings given to them in this section unless the

19 context clearly indicates otherwise:

20 "Activity and use limitations." Restrictions or obligations
 21 with respect to real property created under this chapter. The
 22 term includes engineering controls and institutional controls.

23 "Agency." Any of the following:

24 (1) The Department of Environmental Protection of the
 25 Commonwealth.

26 (2) A Federal agency which determines or approves the
 27 environmental response project pursuant to which the
 28 environmental covenant is created.

29 "Board." The Environmental Hearing Board.

30 "Common interest community." A condominium, cooperative or
 20070H0043B2870 - 2 -

1 other real property, with respect to which a person, by virtue
 2 of ownership of a parcel of real property or of ownership of an
 3 interest in real property, is obligated to pay for property
 4 taxes, insurance premiums, maintenance or improvement of other
 5 real property described in a recorded covenant which creates the
 6 common interest community.

7 "Department." The Department of Environmental Protection of
 8 the Commonwealth.

9 "Engineering controls." Remedial actions directed
 10 exclusively toward containing or controlling the migration of
 11 regulated substances through the environment. The term includes
 12 slurry walls, liner systems, caps, leachate collection systems
 13 and groundwater recovery trenches.

14 "Environmental covenant." A servitude arising under an
 15 environmental response project which imposes activity and use
 16 limitations.

17 "Environmental response project." A plan or work performed
 18 for environmental remediation of real property, conducted:

19 (1) under a Federal program governing environmental
 20 remediation of real property;

21 (2) under a Commonwealth program governing environmental
 22 remediation of real property;

23 (3) incident to closure of a solid or hazardous waste
 24 management unit if the closure is conducted with approval of
 25 an agency; or

26 (4) under a Commonwealth voluntary cleanup program
 27 authorized by statute.

28 "Holder." A person that is the grantee of an environmental
 29 covenant as specified in section 6503(a) (relating to nature of
 30 rights; subordination of interests).

20070H0043B2870 - 3 -

1 "Institutional controls." Measures undertaken to limit or
 2 prohibit certain activities which may interfere with the
 3 integrity of a remedial action or result in exposure to
 4 regulated substances at a site. The term includes fencing and
 5 restrictions on the future use of the site.

6 "Land Recycling Act." The act of May 19, 1995 (P.L.4, No.2),
 7 known as the Land Recycling and Environmental Remediation
 8 Standards Act.

9 "Person." Any individual, corporation, partnership,
 10 association or other entity recognized by law as the subject of
 11 rights, duties or obligations. The term includes the United
 12 States of America, a Federal agency, the Commonwealth, an agency
 13 or instrumentality of the Commonwealth and a political
 14 subdivision.

15 "Record." Information which is:

16 (1) inscribed on a tangible medium or stored in an
 17 electronic or other medium; and

18 (2) retrievable in perceivable form.

19 "State." A state of the United States, the District of
 20 Columbia, Puerto Rico, the United States Virgin Islands or any
 21 territory or insular possession subject to the jurisdiction of
 22 the United States.

23 § 6503. Nature of rights; subordination of interests.

24 (a) Nature.--Any person, including a person that owns an
 25 interest in the real property, or an agency may be a holder. An
 26 environmental covenant may identify more than one holder. The
 27 interest of a holder is an interest in real property.

28 (b) Rights of agency.--The rights of an agency under this
 29 chapter or under an approved environmental covenant, other than
 30 as a holder, are not interests in real property.

20070H0043B2870

- 4 -

1 (c) Obligations.--An agency is bound by any obligation it
 2 assumes in an environmental covenant, but an agency does not
 3 assume obligations merely by signing an environmental covenant.
 4 Any person other than an agency that signs an environmental
 5 covenant is bound by the obligations the person assumes in the
 6 covenant; but signing the covenant does not change obligations,
 7 rights or protections granted or imposed under law other than
 8 this chapter except as provided in the environmental covenant.

9 (d) Rules.--The following rules apply to interests in real
 10 property in existence at the time an environmental covenant is
 11 created or amended:

12 (1) An interest which has priority under law other than
 13 this chapter is not affected by an environmental covenant
 14 unless the owner of the interest subordinates its interest to
 15 the covenant.

16 (2) As a condition to approval of an environmental
 17 covenant an agency may require that an owner of a prior
 18 interest subordinate that interest to the environmental
 19 covenant.

20 (3) A subordination agreement may be contained in an
 21 environmental covenant covering real property or in a
 22 separate record. If the environmental covenant covers
 23 commonly owned property in a common interest community, the
 24 agreement or record may be signed by any person authorized by
 25 the governing board of the owners association.

26 (4) An agreement by a person to subordinate a prior
 27 interest to an environmental covenant affects the priority of
 28 that person's interest but does not by itself impose an
 29 affirmative obligation on the person with respect to the
 30 environmental covenant nor affect that person's existing

20070H0043B2870

- 5 -

1 environmental liability.

2 § 6504. Contents of environmental covenant.

3 (a) Required information.--An environmental covenant must:

4 (1) state that the instrument is an environmental
 5 covenant executed pursuant to this chapter;

6 (2) contain a legally sufficient description of the real
 7 property subject to the environmental covenant;

8 (3) contain a brief narrative description of the
 9 contamination and the remedy;

10 (4) describe the activity and use limitations on the
 11 real property;

12 (5) identify every holder;

13 (6) be signed, with the formalities required for a deed,

14 by:

15 (i) the agency, unless there is a deemed approval
 16 under subsection (c) (4);

17 (ii) every holder; and

18 (iii) every owner in fee simple of the real property
 19 subject to the environmental covenant, unless waived by
 20 the agency; and

21 (7) identify the name and location of any administrative
 22 record for the environmental response project reflected in
 23 the environmental covenant.

24 (b) Permitted information.--In addition to the information
 25 required by subsection (a), an environmental covenant may

26 contain other information, restrictions and requirements agreed
 27 to by the persons who signed it, including:

28 (1) requirements for notice following transfer of a
 29 specified interest in, or concerning proposed changes in use
 30 of, applications for building permits for or proposals for
 20070H0043B2870 - 6 -

1 any site work affecting the contamination on the property
 2 subject to the environmental covenant;

3 (2) requirements for periodic reporting describing
 4 compliance with the environmental covenant;

5 (3) rights of access to the property granted in
 6 connection with implementation or enforcement of the
 7 environmental covenant;

8 (4) restriction or limitation on amendment or
 9 termination of the environmental covenant in addition to
 10 those contained in sections 6509 (relating to duration) and
 11 6510 (relating to amendment or termination by consent);

12 (5) rights of the holder in addition to its right to
 13 enforce the environmental covenant under section 6511
 14 (relating to enforcement of environmental covenant); and

15 (6) a narrative description of the contamination and
 16 remedy, including the contaminants of concern, the pathways
 17 of exposure, limits on exposure and the location and extent
 18 of the contamination.

19 (c) Agency.--

20 (1) Prior to signing a covenant, an agency may review
 21 the covenant and provide its conditions for approval.

22 (2) In addition to other conditions for its approval of
 23 an environmental covenant, an agency may require those
 24 persons specified by the agency that have interests in the
 25 real property to sign the covenant.

26 (3) Except as set forth in paragraph (4), signature by
 27 an agency on an environmental covenant constitutes its
 28 approval of the environmental covenant.

29 (4) Failure of the department to approve or disapprove
 30 an environmental covenant within 90 days of receipt of all
 20070H0043B2870 - 7 -

1 information reasonably required by the department to make a
 2 determination shall be deemed an approval of the
 3 environmental covenant.

4 (5) The department's decision to approve or not approve
 5 an environmental covenant is appealable to the board.

6 § 6505. Validity.

7 (a) Nature.--An environmental covenant which complies with
 8 this chapter runs with the land.

9 (b) Impediments excluded.--An environmental covenant which
 10 is otherwise effective is valid and enforceable even if:

11 (1) it is not appurtenant to an interest in real
 12 property;

13 (2) it can be or has been assigned to a person other
 14 than the original holder;

15 (3) it is not of a character that has been recognized
 16 traditionally at common law;

17 (4) it imposes a negative burden;

18 (5) it imposes an affirmative obligation on a person
 19 having an interest in the real property or on the holder;

20 (6) the benefit or burden does not touch or concern real
 21 property;

22 (7) there is no privity of estate or contract;

23 (8) the holder dies, ceases to exist, resigns or is
 24 replaced; or

25 (9) the persons identified as owner and holder in the
 26 environmental covenant are the same person.

27 (c) Prior instruments.--

28 (1) An instrument which creates restrictions or

29 obligations with respect to real property which would, except
 30 for the fact that the instrument was recorded before the
 20070H0043B2870 - 8 -

1 effective date of this chapter, qualify as activity and use
 2 limitations is not invalid or unenforceable:

3 (i) by reason of the limitations on enforcement of
 4 interests described in subsection (b); or

5 (ii) because it was identified as an easement,
 6 servitude, deed restriction or other interest.

7 (2) This chapter does not apply in any other respect to
 8 an instrument referred to in paragraph (1).

9 (d) Other interests.--

10 (1) This chapter does not invalidate or render
 11 unenforceable any interest, whether designated as an
 12 environmental covenant or other interest, which is otherwise
 13 enforceable under the law of this Commonwealth.

14 (2) Nothing in this chapter shall be construed to
 15 restrict, affect or impair the rights of any person to enter
 16 into or record a restrictive covenant, institution control,
 17 easement, servitude or other restriction on the use of
 18 property permitted by law that does not satisfy the
 19 requirements of this chapter and does not have the
 20 permission, approval or consent of an agency, a political
 21 subdivision, a regulatory body or another unit of government.
 22 However, a restrictive covenant, institutional control,
 23 easement, servitude or other restriction on the use of
 24 property that does not satisfy the requirements of this
 25 chapter and does not have such permission, approval or
 26 consent is not subject to this chapter.

27 § 6506. Relationship to other land-use law.

28 (a) Effect on unauthorized uses.--This chapter does not
 29 authorize a use of real property which is otherwise prohibited
 30 by:

20070H0043B2870 - 9 -

1 (1) zoning;

2 (2) law other than this chapter regulating use of real
 3 property; or

4 (3) a recorded instrument which has priority over the
 5 environmental covenant.

6 (b) Effect on authorized uses.--An environmental covenant
 7 may prohibit or restrict uses of real property which are
 8 authorized by zoning or by law other than this chapter.

9 § 6507. Notice.

10 (a) Recipients.--The owner or another person designated by
 11 the agency shall provide a copy of a signed environmental
 12 covenant as required by the agency to:

13 (1) all persons who signed the environmental covenant;

14 (2) all persons holding a recorded interest in the real
 15 property subject to the environmental covenant;

16 (3) all persons in possession of the real property
 17 subject to the environmental covenant;

18 (4) each political subdivision in which real property
 19 subject to the environmental covenant is located; and

20 (5) any other persons the agency requires.

21 (b) Effect.--Failure to provide a copy of the environmental
 22 covenant as required by the agency does not affect the
 23 environmental covenant's validity.

24 § 6508. Recording.

25 (a) Requirement.--An environmental covenant, any amendment
 26 or termination of the environmental covenant and a waiver under
 27 section 6510(a)(3)(i) or (b)(2) (relating to amendment or
 28 termination by consent) must be recorded in every county in
 29 which any portion of the real property subject to the
 30 environmental covenant is located. A recorded environmental

20070H0043B2870

- 10 -

1 covenant or a notice recorded under section 6512 (relating to
 2 registry; substitute notice) must be indexed in the grantor's
 3 index in the names of the owners of the real property subject to
 4 the environmental covenant and in the grantee's index in the
 5 name of the holder.

6 (b) Applicable law.--Except as otherwise provided in section
 7 6509(c) (relating to duration), an environmental covenant is
 8 subject to the law of this Commonwealth governing recording and
 9 priority of interests in real property. Recording of an
 10 environmental covenant pursuant to the law of this Commonwealth
 11 provides the same constructive notice of the environmental
 12 covenant as the recording of a deed provides of an interest in
 13 real property.

14 § 6509. Duration.

15 (a) Perpetual.--An environmental covenant is perpetual
 16 unless one of the following applies:

17 (1) It is limited by its terms to a specific duration or
 18 the occurrence of a specific event.

19 (2) It is terminated by consent under section 6510
 20 (relating to amendment or termination by consent).

21 (3) It is terminated under subsection (b).

22 (4) It is terminated by foreclosure of an interest which
 23 has priority over the environmental covenant.

24 (5) It is terminated or modified by judicial decree in
 25 an eminent domain proceeding, but only if:

26 (i) the agency which signed the environmental
 27 covenant consents to the judicial action;

28 (ii) all persons identified in section 6510(a) and
 29 (b) are given notice of the pendency of the eminent

30 domain proceeding; and

20070H0043B2870

- 11 -

1 (iii) the court determines, after hearing, that the
 2 termination or modification will not adversely affect
 3 human health or the environment.

4 (b) Judicial modification.--A court, in an action in which
 5 all persons identified in section 6510(a) and (b) have been
 6 given notice, may terminate or modify the environmental covenant
 7 on the real property subject to the environmental covenant if
 8 any of the following apply:

9 (1) The agency which signed an environmental covenant
 10 has determined that:

11 (i) the intended benefits of the environmental
 12 covenant can no longer be realized; or

13 (ii) changed circumstances indicate that the
 14 intended benefits can only be realized through
 15 modification of the environmental covenant.

16 (2) A standard allowing for a reopener of a completed
 17 environmental response project under section 505 of the Land
 18 Recycling Act is met.

19 (c) Other modifications.--Except as otherwise provided in
 20 subsection (a) or (b), an environmental covenant may not be
 21 extinguished, limited or impaired through:

22 (1) issuance of a tax deed;

23 (2) foreclosure of a tax lien; or

24 (3) application of the doctrine of adverse possession,
 25 prescription, abandonment, waiver, lack of enforcement or of
 26 a similar doctrine.

27 § 6510. Amendment or termination by consent.

28 (a) Signature.--An environmental covenant may be amended or
 29 terminated by consent only if the amendment or termination is
 30 signed by all of the following:

20070H0043B2870

- 12 -

1 (1) The agency.

2 (2) Unless waived by the agency, the current owner in
 3 fee simple of the real property subject to the environmental

4 covenant.
 5 (3) Each person that originally signed the environmental
 6 covenant or that person's successor in interest unless:
 7 (i) the person waived the right to consent in a
 8 signed record; or
 9 (ii) a court finds that the person no longer exists
 10 or cannot be located or identified with the exercise of
 11 reasonable diligence.
 12 (4) Except as otherwise provided in subsection (d)(2),
 13 the holder.
 14 (b) Effect upon property interests subject to environmental
 15 covenants.--If an interest in real property is subject to an
 16 environmental covenant, the interest is not affected by an
 17 amendment of the covenant unless the current owner of the
 18 interest:
 19 (1) consents to the amendment; or
 20 (2) has waived in a signed record the right to consent
 21 to the amendment.
 22 (c) Effect of assignment.--Except for an assignment
 23 undertaken pursuant to a governmental reorganization, assignment
 24 of an environmental covenant to a new holder is an amendment.
 25 (d) Assignment requirements.--Except as otherwise provided
 26 in the environmental covenant:
 27 (1) a holder may not assign its interest without consent
 28 of the other parties;
 29 (2) a holder may be removed and replaced by agreement of
 30 the other parties specified in subsection (a); and

20070H0043B2870

- 13 -

1 (3) a court of competent jurisdiction may fill a vacancy
 2 in the position of holder.
 3 § 6511. Enforcement of environmental covenant.
 4 (a) Parties.--A civil action for injunctive or other
 5 equitable relief for violation of an environmental covenant may
 6 be maintained by:
 7 (1) a party to the environmental covenant;
 8 (2) the agency or, if it is not the agency, the
 9 department;
 10 (3) any other person to whom the environmental covenant
 11 expressly grants power to enforce;
 12 (4) a person whose interest in the real property or
 13 whose collateral or liability may be affected by the alleged
 14 violation of the environmental covenant; and
 15 (5) a political subdivision in which the real property
 16 subject to the environmental covenant is located.
 17 (b) Regulatory authority.--
 18 (1) This chapter does not limit the regulatory authority
 19 of the agency or the department under law other than this
 20 chapter.
 21 (2) In addition to bringing an action under subsection
 22 (a), the department may issue any order necessary to enforce
 23 section 6517(b) (relating to relationship to other laws).
 24 (c) Liability.--A person is not subject to liability for
 25 environmental remediation solely because the person has the
 26 right to enforce an environmental covenant.
 27 § 6512. Registry; substitute notice.
 28 (a) Registry.--The department shall establish and maintain a
 29 registry which contains all environmental covenants and any
 30 amendment or termination of those covenants. The registry may

20070H0043B2870

- 14 -

1 also contain any other information concerning environmental
 2 covenants and the real property subject to them which the
 3 department considers appropriate. The registry is a public
 4 record for purposes of the act of June 21, 1957 (P.L.390,
 5 No.212), referred to as the Right-to-Know Law.
 6 (b) Notice.--After an environmental covenant or an amendment

7 or termination of an environmental covenant is filed in the
 8 registry under subsection (a), a notice of the environmental
 9 covenant, amendment or termination which complies with this
 10 section may be recorded in the land records in lieu of recording
 11 the entire environmental covenant. The notice must contain:

12 (1) a legally sufficient description and any available
 13 street address of the real property;

14 (2) the name and address of the owner in fee simple of
 15 the interest in the real property, the agency and the holder
 16 if other than the agency;

17 (3) a brief narrative description of the contamination
 18 and the remedy;

19 (4) a statement that the environmental covenant,
 20 amendment or termination is available in a registry at a
 21 listed address of the department and a disclosure of the
 22 method of any electronic access; and

23 (5) a statement that the notice is notification of an
 24 environmental covenant executed under this chapter.

25 (c) Sample form.--A statement in substantially the following
 26 form, executed with the same formalities as a deed, satisfies
 27 the requirements of subsection (b):

28 1. This notice is filed in the land records of the
 29 (insert the name of the county in this Commonwealth in
 30 which the property is located) of Pennsylvania pursuant

20070H0043B2870 - 15 -

1 to 27 Pa.C.S. § 6512.

2 2. This notice and the covenant, amendment or
 3 termination to which it refers may impose significant
 4 obligations with respect to the property described below.

5 3. A legal description of the property is attached as
 6 Exhibit A to this notice. A brief narrative description
 7 of the contamination and the remedy is attached as
 8 Exhibit B to this notice. The address of the property
 9 that is subject to the environmental covenant is (insert
 10 address of property) (not available).

11 4. The name and address of the owner of the fee simple
 12 interest in the real property on the date of this notice
 13 is (insert name of current legal owner of the property
 14 and the owner's current address as shown on the tax
 15 records of the county in which the property is located).

16 5. The environmental covenant, amendment or termination
 17 was signed by (insert name and address of the agency).

18 6. The environmental covenant, amendment or termination
 19 was filed in the registry on (insert date of filing).

20 7. The full text of the covenant, amendment or
 21 termination and any other information required by the
 22 agency is on file and available for inspection and
 23 copying in the registry maintained for that purpose by
 24 the Department of Environmental Protection at (insert
 25 address and room of building in which the registry is
 26 maintained). (The covenant, amendment or termination may
 27 be found electronically at (insert web address for
 28 covenant).)

29 § 6513. Uniformity of application and construction.

30 In applying and construing this chapter as a uniform act,

20070H0043B2870 - 16 -

1 consideration must be given to the need to promote uniformity of
 2 the law with respect to its subject matter among states which
 3 enact it.

4 § 6514. Relation to Electronic Signatures in Global and
 5 National Commerce Act.

6 (a) General rule.--Except as set forth in subsection (b),
 7 this chapter modifies, limits or supersedes the Electronic
 8 Signatures in Global and National Commerce Act (Public Law 106-
 9 229, 15 U.S.C. § 7001 et seq.).

10 (b) Exceptions.--

11 (1) This chapter does not modify, limit or supersede
12 section 101(a) of the Electronic Signatures in Global and
13 National Commerce Act (15 U.S.C. § 7001(a)).

14 (2) This chapter does not authorize electronic delivery
15 of any of the notices described in section 103(b) of the
16 Electronic Signatures in Global and National Commerce Act (15
17 U.S.C. § 7003(b)).

18 § 6515. Environmental Quality Board.

19 (a) Regulations.--The Environmental Quality Board has the
20 power and duty to promulgate regulations for the proper
21 performance of work of the department under this chapter. This
22 subsection includes the establishment of fees under this
23 chapter.

24 (b) Fees.--Fees under subsection (a) shall be deposited into
25 the Industrial Land Recycling Fund.

26 § 6516. Appealable actions.

27 Actions of the department under this chapter shall be
28 considered appealable actions under the act of July 13, 1988
29 (P.L.530, No.94), known as the Environmental Hearing Board Act.

30 § 6517. Relationship to other laws.

20070H0043B2870 - 17 -

1 (a) Prospective environmental response projects.--

2 (1) Unless waived by the department, engineering
3 controls or institutional controls required to demonstrate
4 attainment of a remediation standard under the Land Recycling
5 Act or the act of July 6, 1989 (P.L.169, No.32), known as the
6 Storage Tank and Spill Prevention Act, shall be in the form
7 of an environmental covenant.

8 (2) If a deed acknowledgment is required by section 405
9 of the act of July 7, 1980 (P.L.380, No.97), known as the
10 Solid Waste Management Act, or section 512(b) of the act of
11 October 18, 1988 (P.L.756, No.108), known as the Hazardous
12 Sites Cleanup Act, the requirement may be satisfied by
13 reference to an environmental covenant recorded pursuant to
14 this chapter.

15 (3) AN ENVIRONMENTAL COVENANT SHALL NOT BE REQUIRED FOR <--
16 PROPERTY OWNED BY THE FEDERAL GOVERNMENT PRIOR TO TRANSFER OF
17 THE PROPERTY TO A NON-FEDERAL ENTITY OR INDIVIDUAL. ACTIVITY
18 AND USE LIMITATIONS ON FEDERAL PROPERTY SHALL BE INCORPORATED
19 INTO AN INSTALLATION'S MASTER PLAN OR OTHER SIMILAR AND
20 APPROPRIATE REMEDIAL DOCUMENTATION. NOTHING IN THIS PARAGRAPH
21 SHALL LIMIT ANY AUTHORITY OTHERWISE AVAILABLE TO THE
22 DEPARTMENT TO ENFORCE TERMS OF AN ENVIRONMENTAL RESPONSE
23 PROJECT AT A FEDERAL INSTALLATION OR ON PROPERTY OWNED BY THE
24 FEDERAL GOVERNMENT.

25 (b) Conversion to environmental covenant.--

26 (1) An instrument created prior to the effective date of
27 this section which establishes activity and use limitations
28 to demonstrate attainment or maintenance of a standard under
29 the Land Recycling Act or to demonstrate satisfaction of a
30 corrective action requirement under the Storage Tank and

20070H0043B2870 - 18 -

1 Spill Prevention Act shall be converted to an environmental
2 covenant within 60 months of the effective date of this
3 section unless conversion is waived by the department.

4 (2) Failure to comply with this subsection does not
5 invalidate the existing engineering controls and
6 institutional controls described in paragraph (1) or preclude
7 the conversion of those engineering controls and
8 institutional controls to an environmental covenant at a
9 later date.

10 Section 2. This act shall take effect in 60 days.

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- 19 -

PADEP Facts Sheet

PENNSYLVANIA ENACTS UNIFORM ENVIRONMENTAL COVENANTS ACT

On December 18, 2007, Governor Rendell signed the Uniform Environmental Covenants Act (UECA) into law as Act 68 of 2007. Passage of UECA marks the first major legislative enactment impacting the Land Recycling Program and other remediation programs of the Department of Environmental Protection (Department) since the passage of the Land Recycling and Environmental Remediation Standards Act (Act 2) in 1995. UECA is codified at 27 Pa.C.S. §§ 6501-6517, with an effective date of February 19, 2008. Some version of UECA has been enacted in about 20 states including Ohio, Maryland, and Delaware.

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.

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 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

The Department has developed a model environmental covenant for use under PA's

UECA implementation. Section 6504 of UECA outlines the form of an environmental covenant. Subsection (a) includes mandatory items and subsection (b) contains optional items that may be included. 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. The Department must approve the covenant for it to be effective and the Department may impose conditions for approval. The Department, the current owner(s) of the property, the holder(s) and any other party specified by the Department must sign the covenant.

The approved environmental covenant or a notice of the environmental covenant that complies with Section 6512 (b) of UECA (Notice) must be recorded in the county in which the property is located. Within 90 days of the Department's approval of the environmental covenant, the remediator shall have the covenant recorded with the county Recorder of Deeds and provide proof of recordation to the Department. The remediator shall provide copies of the approved environmental covenant to the entities listed in Section 6507 of UECA and in accordance with the terms of the environment 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 which 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

The Department has developed a model environmental covenant, including instructions. The model environmental covenant is similar in format and function to the Department's Uniform Consent Order and Agreement form. Additionally, a model notice of the environmental covenant, including instructions, has been created. Both documents are posted on the Department's website.

The Department 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. The remediator should draft the environmental covenant and provide the covenant **before** submission of the final cleanup report to the Department, i.e. either as part of the Remedial Action Plan (under Chapter 245 of the Department's regulations) or as part of the Cleanup Plan (under Chapter 250 of the Department's regulations).

Under UECA, the Department has the authority to waive the environmental covenant requirement; however, the Department expects to exercise that discretion only in 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.

At least 2 copies of the proposed environmental covenant must be signed by all parties except for the Department and submitted to the appropriate DEP regional office with the Remedial Action Completion Report (Chapter 245) or Final Report (Chapter 250). The Department's program and legal staff will review the proposed environmental covenant. Deficiencies or other issues regarding the environmental covenant will be addressed in the same manner as other deficiencies or issues with final cleanup reports. The regional Environmental Cleanup Program Manager will

sign acceptable environmental covenants at the same time as the final cleanup report approval letter is signed.

One copy of the final signed environmental covenant will be retained in the Department's regional project files and one copy will be provided to the remediator. The final signed environmental covenant document will be scanned as a .pdf document in a Department regional office and sent by e-mail to the Department's central office. The proof of recordation will be handled in the same manner.

The Department has begun to develop the "Pennsylvania Environmental Covenant Registry" as described in Section 6512 of UECA. Until the registry is fully developed, the Department is maintaining on the department's website a listing of the environmental covenants including County, Municipality, other location information and the date the covenant was recorded by the County Recorder of Deeds. The listing will include links to the associated .pdf documents for each environmental covenant.

Other Information

Within 5 years, any instrument imposing an activity and use limitation that was created prior to the enactment of UECA to demonstrate attainment or maintenance of an Act 2 standard or to demonstrate satisfaction of a Tank Act corrective action requirement is required to be converted to an environmental covenant. All Department final actions under UECA are appealable to the Environmental Hearing Board. UECA also authorizes Pennsylvania's Environmental Quality Board to develop and promulgate regulations related to UECA.

Contact

Questions regarding Pennsylvania's Uniform Environmental Covenant Act and its implementation may be sent to Troy Conrad at tconrad@state.pa.us.

PADEP Frequently Asked Questions

April 11, 2008

Uniform Environmental Covenants Act (UECA) Frequently Asked Questions (FAQs)

Remediators, consultants and real estate professionals have identified a number of questions concerning the provisions and implementation of the Uniform Environmental Covenants Act. The following list of “frequently asked questions” is the Department’s initial response to some of these key questions. In the upcoming weeks and months, the Department will add additional questions to this list and may revise some of its previous responses. The list of frequently asked questions will be used in conjunction with input and feedback from the Department’s many stakeholders and its Cleanup Standards Scientific Advisory Board to develop a formal technical guidance later this year. In the interim, questions and comments concerning the FAQs may be sent to Troy Conrad, Director of the Land Recycling Program at tconrad@state.pa.us

1. Are environmental covenants required in all cases when an engineering control is required to attain or maintain a standard under the Land Recycling Act (Act 2)?

All remediations that require an engineering control to attain or maintain compliance with the selected standard will require an environmental covenant, or a written waiver of the covenant by the Department. Engineering controls are defined as remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment. The term includes slurry walls, liner systems, caps, leachate collection systems and groundwater recovery trenches. The environmental covenant will include activity and use restrictions, limitations, and postremediation care obligations as appropriate.

For example, for remediations that seek to attain and maintain a site-specific standard by containing contamination using an engineering control such as a cap, an environmental covenant will be required for all properties where the engineering control exists.

The environmental covenant would be required for the source property and any adjacent non-source properties upon which the engineering control exists. The environmental covenant will restrict uses of the subject property to maintain and not interfere with the engineering control and will provide for postremediation care. As a general rule, the Department will not waive an environmental covenant based on an engineering control.

2. Are environmental covenants required in all cases when an institutional control is required to attain or maintain an Act 2 standard?

All remediations that require an institutional control to attain or maintain compliance with the selected standard will require an environmental covenant or a written waiver of the covenant by the Department. Institutional controls are defined as measures undertaken to limit or prohibit certain activities which may interfere with the integrity of the remedial action or result in exposure to regulated substances at a site. The term includes fencing and restrictions on the future use of the site. The environmental covenant will include land use restrictions and postremediation care obligations as appropriate.

3. Under what circumstances will the Department issue waivers?

As a general rule the Department will not waive an environmental covenant relating to an engineering control.

As a general rule the Department will not waive an environmental covenant relating to an institutional control except in limited specific circumstances. Some examples of the general applicability of environmental covenants for institutional controls and possible waivers are provided in these FAQs.

All requests for waivers must be made in writing. The Department will issue all waivers or denials in writing, and will include the specific bases for the decision.

4. Are environmental covenants required in all cases where the nonresidential Statewide health standard is utilized?

If the nonresidential Statewide health standard is selected by the remediator then it is necessary to maintain a land use that meets the definition of "nonresidential property" under Act 2. Maintaining the land use requires an "activity and use limitation" as defined by UECA. This land use limitation requires an environmental covenant on the properties remediated to the nonresidential Statewide health standard which limits the use of these properties to nonresidential uses. This would apply to both the remediated source property and all off-source properties subject to nonresidential remediations. The covenant could include a condition that the nonresidential land use limitation may be removed in accordance with UECA if a subsequent remediation demonstrates attainment of a residential standard.

As a general rule the Department will not waive this requirement. Even if sites are zoned commercial or industrial, the zoning can change. Moreover, definitions under zoning ordinances may not match the definition of nonresidential property under Act 2.

5. Are environmental covenants required in all cases where the site-specific standard based on nonresidential land use is utilized?

If a site-specific standard based on nonresidential land use is utilized by the remediator, an environmental covenant on the properties that are subject to the nonresidential land use limitation will be required. The covenant could include a condition that the nonresidential land use limitation may be removed in accordance with UECA if a subsequent remediation demonstrates attainment of a residential standard.

As a general rule, the Department will not waive the requirement for an environmental covenant for remediations seeking to attain and maintain a nonresidential site-specific standard. Even if sites are zoned commercial or industrial, the zoning can change. Moreover, definitions under zoning ordinances may not match the definition of nonresidential property under Act 2.

6. Are environmental covenants required in all cases using the Statewide health standard where a nonuse aquifer determination has been approved by the Department?

Chapter 250.303 provides that the Department may determine, based on a demonstration by the remediator, that groundwater is not used or planned to be used. The requirements for a nonuse aquifer determination under the Statewide health standard include a demonstration that groundwater is not used or planned to be used and that all downgradient properties are connected to a community water system. These requirements must be maintained by one of three methods:

(1) An environmental covenant which prohibits the future use of the groundwater on the source and other impacted downgradient properties. If an environmental covenant which prohibits the future use of groundwater is placed on all impacted properties then the Department will not require periodic monitoring and reporting to verify continued nonuse of the groundwater.

(2) A municipal ordinance that covers the area of the impacted properties that meets all of the requirements of TGM, Section II.C.9.c.iv, (Local ordinance). This includes the requirement that the ordinance will include a provision that provides for “notification to the Department if and when the ordinance is modified or eliminated.” When this option is selected, the Department will waive the environmental covenant.

(3) A postremediation care plan that includes periodic monitoring and reporting of the status of the impacted downgradient properties to verify continued nonuse of the groundwater in accordance with 250.303(d)(3). The postremediation care plan, with the monitoring and reporting obligations, must be included in an environmental covenant on the source property. When this option is selected, the Department will not waive the requirement for the covenant on the source property. The Department will waive the environmental covenants on the impacted downgradient properties.

7. Are environmental covenants required for all cases using the site-specific standard based on residential land use if the Department determines that there is a current or probable future use of the groundwater?

If the Department determines that there is a current or probable future use of the groundwater and the groundwater meets the site-specific health based concentration without engineering or institutional controls, then a covenant is not required.

If the Department determines that there is a current or probable future use of the groundwater and the groundwater exceeds the site-specific health based concentration, then a covenant that prohibits use of the groundwater generally will be required on all properties on which the groundwater exceeds that concentration. If an environmental covenant which prohibits the future use of groundwater is placed on all impacted properties, then the Department will not require periodic monitoring and reporting to verify continued nonuse of the groundwater.

8. Are environmental covenants required for all cases using the site-specific standard if the Department determines that there is no current or probable future use of the contaminated groundwater?

If the Department determines that there is no current or probable future use of the contaminated groundwater, a postremediation care plan will be required which includes periodic monitoring and reporting of the status of the impacted properties to verify continued nonuse of the groundwater. The postremediation care plan, with the monitoring and reporting obligations, must be included in an environmental covenant on the source property. As a general rule, the Department will not waive the requirement for the covenant on the source property. A waiver may be issued for the source property if the downgradient property is a railroad, highway, stream, etc. (TGM Section II.C.9.c.i) and the Department determines that future use of the groundwater is unlikely. The Department will waive environmental covenants on the impacted downgradient properties.

9. Are environmental covenants required for all cases using the site-specific standard with a pathway elimination remedy?

If the remediator implements a site-specific remedy using pathway elimination based on nonuse of the aquifer, then the remedy would essentially be the same as a Statewide health nonuse aquifer remedy. As a general rule a groundwater pathway elimination remedy requires a demonstration that all downgradient properties are connected to a community water system. As with the Statewide health nonuse aquifer cases the nonuse of the groundwater must be maintained by one of three methods.

(1) An environmental covenant which prohibits the future use of the groundwater on the source and other impacted downgradient properties. If an environmental covenant which prohibits the future use of groundwater is placed on all impacted properties then the Department will not require periodic monitoring and reporting to verify continued nonuse of the groundwater.

(2) A municipal ordinance that covers the area of the impacted properties that meets all of the requirements of TGM, Section II.C.9.c.iv, (Local ordinance). This includes the requirement that the ordinance will include a provision that provides for “notification to the Department if and when the ordinance is modified or eliminated.” When this option is selected, the Department will waive the environmental covenant.

(3) A postremediation care plan that includes periodic monitoring and reporting of the status of the impacted downgradient properties to verify continued nonuse of the groundwater in accordance with 250.303(d)(3). The postremediation care plan, with the monitoring and reporting obligations, must be included in an environmental covenant on the source property. When this option is selected, the Department will not waive the requirement for the covenant on the source property. The Department will waive the environmental covenants on the impacted downgradient properties.

10. Are environmental covenants required for cases meeting the background standard if contamination remains on the property above health based standards?

In some cases it is possible to demonstrate attainment of the background standard and still have soil or groundwater on the property contaminated above health based standards. In these situations, no engineering or institutional controls are needed to attain or maintain the background standard on the property and therefore no environmental covenant is required.

11. Are environmental covenants required for cases meeting the Statewide health standard if groundwater contamination remains on the property above health based standards?

Under the Statewide health standard, the point of compliance for groundwater is the property boundary and beyond. In some cases it is possible to demonstrate compliance with the Statewide health standard at the point of compliance, and based on fate and transport analysis demonstrate continued compliance in the future, even though groundwater on the source property is contaminated above the standard.

In these cases, no engineering or institutional controls are needed to attain or maintain the Statewide health standard for groundwater on the source property and therefore no environmental covenant is required.

12. How does UECA affect the HSCA and SWMA deed acknowledgement requirements?

The Hazardous Sites Cleanup Act (HSCA) and the Solid Waste Management Act (SWMA) include certain requirements for deed acknowledgements (a/k/a deed notices). These deed acknowledgements do not limit use of the property, and are not institutional controls pursuant to Act 2 or UECA.

UECA does not change these HSCA/SWMA deed acknowledgement requirements. If deed acknowledgements were previously required by HSCA or SWMA, they are still required. If deed acknowledgements were not previously required by HSCA or SWMA, or were exempted or excluded, then deed acknowledgments are not required now because of UECA.

UECA states that if an environmental covenant is required, that a reference to the environmental covenant fulfills the HSCA/SWMA deed acknowledgement requirement. Where a HSCA/SWMA deed acknowledgement is required, but no environmental covenant exists, the HSCA/SWMA deed acknowledgement must still be filed.

13. Will the Department require the conversion of existing deed restrictions to environmental covenants?

UECA requires that "An instrument created prior to the effective date of [UECA] which establishes activity and use limitations to demonstrate attainment or maintenance of a standard ... shall be converted to an environmental covenant within 60 months." 27 Pa.C.S. § 6517(b). The typical "instrument" used in the past that established "activity and use limitations" was the deed restriction. Deed restrictions have been used as part of certain remediations to establish an activity and use limitation to attain or maintain a standard. HSCA and SWMA deed acknowledgements are not instruments that establish activity and use limitations as part of a remediation and do not require conversion.

The Department has not yet developed final guidance relating to the conversion of existing instruments. However, remediators are encouraged to work with the Department to voluntarily convert existing instruments, such as deed restrictions and restrictions in Consent Orders and Agreements to environmental covenants.

14. Are environmental covenants required on Special Industrial Area (SIA) sites?

If the remediation measures to be undertaken include land use restrictions limiting use of the property to the intended purpose, then those land use restriction should be in the form of an environmental covenant. The environment covenant should be specified as one of the remediation measures in the SIA Consent Order and Agreement (CO&A).

If a SIA CO&A was executed at the time UECA became effective and the remediation measures specified in the CO&A included a deed restriction limiting use of the property to the intended purpose, then that deed restriction should be implemented in the form of an environmental covenant.

If a SIA CO&A was executed at the time UECA became effective and the remediation measures specified in the CO&A did not include a deed restriction limiting use of the property to the intended purpose, then no deed restriction or environmental covenant is required.

PADEP Model Covenant

Pa. Model Environmental Covenant

GRANTOR: _____
PROPERTY ADDRESS: _____

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed pursuant to the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 – 6517 (UECA). This Environmental Covenant subjects the Property identified in Paragraph 1 to the activity and/or use limitations in this document. As indicated later in this document, this Environmental Covenant has been approved by the Pennsylvania Department of Environmental Protection (Department).

1. **Property affected.** The property affected (Property) by this Environmental Covenant is located in _____ (name of municipality), _____ County.

The postal street address of the Property [if any] is: _____.
The County Parcel Identification No. of the Property is: _____.
The latitude and longitude of the center of the Property affected by this Environmental Covenant is: _____.
The Property has been known by the following name(s): _____

A complete description of the Property is attached to this Environmental Covenant as Exhibit A. A map of the Property is attached to this Environmental Covenant as Exhibit B.

2. **Property Owner / GRANTOR.** _____ is/are the owner(s) of the Property. The mailing address(es) of the Owner(s) is/are: _____.

3. **Holder(s)** [if any other than Owner] / **GRANTEE.** The following is/are a “holder,” as that term is defined in 27 Pa. C.S. § 6501, of this Environmental Covenant: _____ (name & address information).

4. **Description of Contamination & Remedy.** [as required by 27 Pa. C.S. § 6504(a)(3) and (a)(7) and as allowed by 27 Pa. C.S. § 6504(b)(6), briefly describe the contamination of the Property before remedy implementation; the remedy/corrective action undertaken; any administrative record for the environmental response project relating to the Environmental Covenant; the Land Recycling and Remediation Standards Act (Act 2) standard(s) attained; and any other important information, including the name and date of the Final Act 2 or Remedial Action Completion Report approved by the Department. Reference Act 2 and UECA definitions as necessary; e.g., “nonresidential

property” excludes schools, nursing homes or other residential-style facilities or recreational areas.]

5. **Activity & Use Limitations.** The Property is subject to the following activity and use limitations, which the Owner and each subsequent owner of the Property shall abide by: [describe each specific restriction on land use, such as whether the property can be used only for non-residential purposes or whether the groundwater may be used as potable water; describe each obligation, such as groundwater monitoring, maintenance of a fence or cap.]

6. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant.

7. **Compliance Reporting.** By the end of [insert interval for reporting determined to be necessary by the Department; e.g., “every January following the effective date of this Environmental Covenant” or “every third January following the effective date of this Environmental Covenant”], the Owner and each subsequent owner shall submit, to the Department and any Holder listed in Paragraph 3, written documentation stating whether or not the activity and use limitations in this Environmental Covenant are being abided by. The Owner and each subsequent owner shall submit, to the Department and any Holder listed in Paragraph 3, written documentation following transfer of the property, concerning proposed changes in use of the property, filing of applications for building permits for the property or proposals for any site work affecting the contamination on the property subject to this Environmental Covenant.

8. **Access by the Department.** In addition to any rights already possessed by the Department, this Environmental Covenant grants to the Department a right of access of the Property in connection with implementation or enforcement of this Environmental Covenant.

9. **Recordation & Proof & Notification.** Within 30 days after the date of the Department’s approval, the Owner(s) shall file this Environmental Covenant with the Recorder of Deeds for each County in which the Property is located, and send a file-stamped copy of this Environmental Covenant to the Department within 60 days of recordation. Within that time period, the Owner(s) also shall send a file-stamped copy to each of the following: each Municipality and County in which the Property is located; any Holder identified in this Environmental Covenant; each person holding a recorded interest in the Property; each person in possession of the Property; and ____ (other persons as required by the Department).

10. **Termination or Modification.** This environmental covenant may only be terminated or modified in accordance with Section 9 of UECA, 27 Pa. C.S. § 6509, including as follows: [In some circumstances, it may be appropriate for the covenant to

be limited to a specific duration or the occurrence of a specific event. If so, specify those conditions which must occur for the covenant to be terminated, and also indicate that the Department must approve, in writing, of the termination.]

11. **Department's address.** Communications with the Department regarding this Environmental Covenant shall be sent to: [name, address and title of regional Environmental Cleanup Manager or designee.]

ACKNOWLEDGMENTS by Owner(s) and any Holder(s), in the following form:

Date: [Name of Owner] "Grantor"
By: _____
Name: _____
Title: _____

[Name of Holder], Grantee
By: _____
Name: _____
Title: _____

[REPEAT AS NECESSARY]

APPROVED, by Commonwealth of Pennsylvania,
Department of Environmental Protection
Date: By: _____
Name: _____
Title: _____

COMMONWEALTH OF PENNSYLVANIA) [other state, if executed outside PA]
)
COUNTY OF _____) SS:

On this ___ day of _____, 20__, before me, the undersigned officer, personally appeared _____ [Owner, Grantor] who acknowledged himself/herself to be the person whose name is subscribed to this Environmental Covenant, and acknowledged that s/he executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

COMMONWEALTH OF PENNSYLVANIA) [other state, if executed outside PA]

COUNTY OF _____)
) SS:

On this ___ day of _____, 20___, before me, the undersigned officer, personally appeared _____ [Holder, Grantee] who acknowledged himself/herself to be the person whose name is subscribed to this Environmental Covenant, and acknowledged that s/he executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

[REPEAT AS NECESSARY]

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF _____) SS:

On this ___ day of _____, 20___, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ [Title] of the Commonwealth of Pennsylvania, Department of Environmental Protection, _____ [insert name of regional office], whose name is subscribed to this Environmental Covenant, and acknowledged that s/he executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

Excerpt From PADEP Data Base



Department of
Environmental Protection

List of Sites with Environmental Covenants.

	Client Name	Primary Facility	PF ID	County
View Details	YOOKEL INC	US STEEL FAIRLESS LOT 5	695137	Bucks
View Details	US STEEL	US STEEL FAIRLESS WORK	706624	Bucks
View Details	UNION TANK CAR CO	UNION TANK CAR	623418	Blair
View Details	TEXTRON	TOWNSEND TEXTRON FAC	703267	Beaver
View Details	SUBURB HEAT OIL PARTNER LANCASTER	SUBURBAN HEATING OIL	671863	Lancaster
View Details	SMITH LAND & IMPROVEMENT CORP	LB SMITH PROPERTY LOT 2	618674	Montgomery

[First](#)
[Prev](#)
[Next](#)
[Last](#)

[Return to Land Recycling Home](#)
[Page](#)

[Listing for Storage Tank Sites with Environmental](#)
[Covenants](#)