

UNIFORM ENVIRONMENTAL COVENANTS  
ACT MATERIALS

# DEP FACTS SHEET



**pennsylvania**

DEPARTMENT OF ENVIRONMENTAL PROTECTION

## **UNIFORM ENVIRONMENTAL COVENANTS ACT**

In December 2007, Governor Edward G. Rendell signed the Uniform Environmental Covenants Act (UECA) into law as Act 68 of 2007. UECA is codified at 27 Pa.C.S. §§ 6501-6517, and became effective on Feb. 19, 2008. The law makes it easier for the Department (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 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 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 has developed a model environmental covenant that is available on the DEP website. The model environmental covenant is similar in format and function to DEP's Uniform Consent Order and Agreement form.

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

Under UECA, DEP has the authority to waive the environmental covenant requirement; however, DEP 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.

The proposed environmental covenant must be signed by all parties except for DEP and submitted to the appropriate DEP regional office with the Remedial Action Completion Report (Chapter 245) or Final Report (Chapter 250). DEP'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 DEP's regional project files and the original will be provided to the remediator. The final signed environmental covenant document will be scanned as a pdf document in a DEP regional office and sent by e-mail to DEP's central office. The proof of recordation will be handled in the same manner.

DEP has begun to develop the "Pennsylvania Environmental Covenant Registry" as described in Section 6512 of UECA. Until the registry is fully developed, DEP is maintaining on its Web site 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**

By February 2013, 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 DEP 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](mailto:tconrad@state.pa.us) or by contacting DEP at 717-783-7816.

For more information, visit [www.depweb.state.pa.us](http://www.depweb.state.pa.us), keyword: 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 -

