

Pennsylvania's Uniform Environmental Covenants Act: New Responsibilities for Landowners Affected by Environmental Cleanups

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Background

- Signed by Governor Rendell on December 18, 2007
- Effective on February 19, 2008
- Based on a “uniform act” drafted by the National Conference of Commissioners on Uniform State Laws
- The uniform act is intended to provide “long term certainty” and address 4 main legal problems:
 - ✓ Creation of an Environmental Covenant
 - ✓ Legal problems in making the Covenant valid and permanent
 - ✓ Modifying the Covenant
 - ✓ Enforcing the Covenant

Key Terms

Environmental Covenant – A servitude arising under an environmental response project which imposes activity and use limitations

Environmental Response Project – A plan or work performed for environmental remediation of real property, conducted:

1. Under a federal program governing environmental remediation of real property
2. Under a Commonwealth program governing environmental remediation of real property
3. Incident to closure of a solid or hazardous waste management unit if the closure is conducted with approval of an agency
4. Under a Commonwealth voluntary cleanup program authorized by statute

Key Terms – Cont'd

Activity and Use Limitations – Restrictions or obligations with respect to real property created under the Act – the term includes engineering controls and institutional controls

Holder – A person that is the grantee of an Environmental Covenant

Signatories to the Covenant

1. The Agency approving the Environmental Response Project (unless the Covenant is “deemed approved” – 90 days of receipt)
2. Every holder
3. Every owner of fee simple of the real property subject to the Environmental Covenant (unless waived by the Agency)
4. Any other persons with “interests in the property” and required by the Agency to sign

NOTE: Pre-Existing interests with priority under other laws are **not** affected by the Environmental Covenant

Use of the Covenant

- **Required** for engineering or institutional controls used to demonstrate attainment of a remediation standard under:
 - ✓ The Land Recycling and Environmental Remediation Standards Act
 - ✓ The Storage Tank and Spill Prevention Act
- **May be used** referenced to satisfy a deed acknowledgement requirement under:
 - ✓ The Solid Waste Management Act
 - ✓ The Hazardous Sites Cleanup Act
- Previous restrictions under the Land Recycling Act or the Storage Tank Act must be “converted” by February 19, 2013

Contents

Required Information:

- ✓ Statement that the instrument is an Environmental Covenant
- ✓ Legally sufficient description of the property
- ✓ Brief description of contamination and remedy
- ✓ Description of the activity and use limitations on the real property
- ✓ Identify every holder
- ✓ Be signed, with formalities required for a deed, by the Agency (unless deemed approved), every holder, and every owner of fee simple interests (unless waived)

Contents – Cont'd

Permitted Information (if agreed to by the signatories)

- ✓ Required notice for transfer, change of use, building permits, or site work
- ✓ Requirements for periodic reporting
- ✓ Access rights regarding implementation or enforcement
- ✓ Limitations on amendment or termination
- ✓ Additional rights of the holder
- ✓ Expanded description of the contamination, including contaminants of concern, pathways of exposure, limits on exposure, and location and extent of contamination

Duration

Environmental Covenant is perpetual unless:

- ✓ Limited by terms to a specific duration or occurrence of a specific event
- ✓ Terminated by consent per § 6510
- ✓ Terminated per judicial modification per § 6509(b)
- ✓ Terminated by foreclosure on an interest with priority
- ✓ Terminated or modified by judicial decree in an eminent domain proceeding, if Agency consents and parties identified in § 6510(a) are provided notice

Enforcement

A civil action for equitable relief may be maintained by:

- ✓ Any party to the Environmental Covenant
- ✓ The Agency (or the Department, if it is not the Agency)
- ✓ Any other person to whom the Covenant expressly grants enforcement power
- ✓ Any person whose interest in real property **or** collateral **or** liability may be affected by the alleged violation
- ✓ Any political subdivision in which the real property is located

➔ The Department retains all authorities under other laws

Other

- Department to develop and maintain a “registry” of Covenants, amendments, and terminations
- Covenants or notices (and any amendments or terminations) must be recorded in every county in which a portion of the real property is located
- Department has developed a model Environmental Covenant, which along with “Frequently Asked Questions” and other additional information is available online at:

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



List of Sites with Environmental Covenants.

	<u>Client Name</u>	<u>Primary Facility</u>	<u>PF ID</u>	<u>County</u>
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

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

Regional Administrative Process

- When Are the Covenants Due?
- Exhibit Size
- How Many Originals Are Needed?
- Who Needs to Sign?
- Recordation Process
- Can a Covenant Delay Cause a Disapproval Letter? -- YES!

Long-Term Stewardship in Pennsylvania

- Risk Based Corrective Action – activity and use limitations
- UECA
 - ✓ Better legal instrument
 - ✓ Model environmental covenant
 - ✓ Frequently asked questions
 - ✓ Stakeholder group
 - ✓ Proposed rulemaking
- Self Reporting
- Information Management
- Public Registry
- PA One-Call



DISCUSSION



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