

PA UNIFORM ENVIRONMENTAL COVENANTS ACT

**PA BROWNFIELDS 2008
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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.

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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
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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).

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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.

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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

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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
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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
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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
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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:

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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

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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

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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:

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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

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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

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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

