

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VI. GENERAL HEALTH AND SAFETY

**CHAPTER 253, ADMINISTRATION OF THE UNIFORM
ENVIRONMENTAL COVENANTS ACT**

§ 253.1. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

Agency - Any of the following:

- (i) The Department of Environmental Protection of the Commonwealth.
- (ii) A federal agency which determines or approves an environmental response project pursuant to which the Environmental Covenant is created.

Board - The Environmental Hearing Board.

Common interest community - A condominium, cooperative or other real property, with respect to which a person, by virtue of ownership of a parcel of real property or of ownership of an interest in real property, is obligated to pay for property taxes, insurance premiums, maintenance or improvement of other real property described in a recorded covenant which creates the common interest community.

Department - The Department of Environmental Protection of the Commonwealth.

Engineering controls - 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.

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:

- (i) under a federal program governing environmental remediation of real property;
- (ii) under a Commonwealth program governing environmental remediation of real property;

- (iii) incident to closure of a solid or hazardous waste management unit if the closure is conducted with approval of an agency; or
- (iv) under a Commonwealth voluntary cleanup program authorized by statute.

Final Report - A report filed with the Department by a remediator documenting attainment of a standard under the Land Recycling Act pursuant to 25 Pa. Code § 250.204 (relating to final report, background standard), § 250.312 (relating to final report, Statewide health standard) or § 250.411 (relating to final report, site-specific standard).

Holder - A person that is the grantee of an Environmental Covenant as specified in section 6503(a) of UECA.

Institutional controls - Measures undertaken to limit or prohibit certain activities which may interfere with the integrity of a 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.

Instrument - A deed restriction, restrictive covenant or other similar document that imposes activity or use limitations filed or required by the Department to be filed with a Recorder of Deeds.

Land Recycling Act - The act of May 19, 1995 (P.L. 4, No. 2), known as the Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101 – 6026.908, including any amendments to that statute.

Person - Any individual, corporation, partnership, association or other entity recognized by law as the subject of rights, duties or obligations. The term includes the United States of America, a federal agency, the Commonwealth, an agency or instrumentality of the Commonwealth and a political subdivision.

Political subdivision - Any county, city, borough, township, or incorporated town.

Record - Information which is:

- (i) inscribed on a tangible medium or stored in an electronic or other medium; and
- (ii) retrievable in perceivable form.

Remedial Action Completion Report - A corrective action report filed with the Department by a remediator documenting attainment of a Land Recycling Act standard pursuant to the Storage Tank Act under either 25 Pa. Code § 245.310(b) (relating to site characterization report) or 25 Pa. Code § 245.313 (relating to remedial action completion report).

State - A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

Storage Tank Act - The act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, 35 P.S. §§ 6021.101-6021.2104, including any amendments to that statute.

UECA - The act of December 18, 2007 (P.L. 450, No. 68), known as the Uniform Environmental Covenants Act, 27 Pa. C. S. §§ 6501 – 6517, including any amendments to that statute.

§ 253. 2. Contents and Form of Environmental Covenant.

(a) An Environmental Covenant must contain:

- (1) a statement that the instrument is an Environmental Covenant executed pursuant to this chapter;
- (2) a legally sufficient description of the real property subject to the Environmental Covenant;
- (3) a brief narrative description of the contamination and the remedy;
- (4) a description of the activity and use limitations on the real property;
- (5) an identification of every holder;
- (6) signatures, with the formalities required for a deed, by:
 - (i) the agency, unless there is a deemed approval under subsection (c)(4);
 - (ii) every holder; and
 - (iii) every owner in fee simple of the real property subject to the Environmental Covenant, unless waived by the agency;
- (7) the name and location of any administrative record for the environmental response project reflected in the Environmental Covenant.

(b) An Environmental Covenant may contain other information, restrictions and requirements agreed to by the persons who signed it, including:

- (1) requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for or proposals for any site work affecting the contamination on the property subject to the Environmental Covenant;
- (2) requirements for periodic reporting describing compliance with the Environmental Covenant;
- (3) rights of access to the property granted in connection with implementation or enforcement of the Environmental Covenant;
- (4) restriction or limitation on amendment or termination of the Environmental Covenant in addition to those contained in sections 6509 (relating to duration) and 6510 of UECA (relating to amendment or termination by consent);
- (5) rights of the holder in addition to its right to enforce the Environmental Covenant under section 6511 of UECA (relating to enforcement of Environmental Covenant);
- (6) a detailed narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure and the location and extent of the contamination; and

(7) any limitations on the duration of the Environmental Covenant.

(c) Agency review.

(1) Prior to signing a covenant, an agency may review the covenant and provide its conditions for approval, including subordination under § 253.8 (relating to subordination).

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

(3) Except as set forth in paragraph (4), signature by an agency on an Environmental Covenant constitutes its approval of the Environmental Covenant. Disapprovals of an Environmental Covenant by the Department shall be made in writing to the person submitting the Environmental Covenant.

(4) Failure of the Department to approve or disapprove an Environmental Covenant within 90 days of receipt of all information reasonably required by the Department to make a determination shall be deemed an approval of the Environmental Covenant, unless the Department and the remediator agree to an extension of time.

(5) The date the Department receives all necessary copies of the signed final covenant, and all information reasonably required by the Department to make a determination concerning the approval or disapproval of the covenant, shall be designated as the “date of receipt” pursuant to section 6504(c)(4) of UECA.

(d) The Department may require the covenant to include any of the permitted items referenced in subsection (b) of this section or require other conditions referenced in section 6504(c) of UECA if the items or conditions are applicable to the implementation of a remedy including any post remediation care plan that is part of the remediation.

(e) An Environmental Covenant shall be in the form of the Model Covenant posted on the Department’s website or any other form acceptable to the agency.

(f) If the Environmental Covenant covers commonly owned property in a common interest community, the covenant may be signed by any person authorized by the governing board of the owners association.

§ 253. 3. Notice of Environmental Covenant.

(a) The Environmental Covenant shall indicate when copies of it will be provided and by whom. A grantor, a holder or any person who signed the Environmental Covenant may be designated as the individual responsible for distributing copies of the Environmental Covenant. File-stamped copies shall be provided no later than 60 days after the recording of the Environmental Covenant by the County Recorder of Deeds.

(b) . The Environmental Covenant shall indicate to whom copies of it will be provided. Unless waived by the Department in writing, copies shall be provided to the following persons:

(1) each person who signed the Environmental Covenant,

(2) each person holding a recorded interest in that portion of the real property subject to the Environmental Covenant,

(3) each person in possession of that property,

(4) each political subdivision in which that property is located, and

(5) any other person designated by the agency, based upon the rights or interests that such other persons have in receiving a copy of the Environmental Covenant.

(c) A person submitting an Environmental Covenant to an agency may request waiver of the requirement that copies of the Environmental Covenant be provided. Such request shall be in writing and shall include the reasons for the requested waiver. Such information shall be provided no later than the date the draft Environmental Covenant is submitted to the agency.

§ 253. 4. Requirements for and Waiver of Environmental Covenants.

(a) Unless waived by the Department, engineering controls or institutional controls used to demonstrate or maintain attainment of a remediation standard under the Land Recycling Act or the Storage Tank Act shall be implemented through an Environmental Covenant. An Environmental Covenant may be used with other types of environmental response projects.

(b) Remediation measures undertaken pursuant to the Special Industrial Area provisions of the Land Recycling Act which include land use restrictions limiting use of the property to the intended purpose shall implement those land use restrictions in the form of an Environmental Covenant.

(c) For remediations under the background standard or the Statewide health standard that require an Environmental Covenant, requests and justifications for waivers shall be submitted to the Department in writing at least 30 days prior to submission of the Remedial Action Completion Report or the Final Report. Any waivers that are granted by the Department shall be issued in writing.

(d) For remediations under the site specific standard that require an Environmental Covenant, requests and justifications for waivers shall be submitted to the Department in writing either as part of the Remedial Action Plan (under Chapter 245) or as part of the Cleanup Plan (under Chapter 250). Any waivers that are granted by the Department shall be issued in writing.

(e) An Environmental Covenant shall not be required, but may be used, for property owned by the federal government before transfer of the property to a non-federal entity or individual. At least 120 days before the transfer of a property owned by the federal government, at which engineering or institutional controls are used to demonstrate or maintain attainment of a remediation standard under the Land Recycling Act or the Storage Tank Act, the Department shall be notified of the proposed transfer of the property and be provided with a draft Environmental Covenant. The requirement for providing notice and a draft Environmental Covenant to the Department shall be incorporated into an installation's master plan or other similar and appropriate remedial documentation.

§ 253. 5. Submission of Environmental Covenants and Related Information.

(a) For remediations under the background standard or the Statewide health standard that will include an Environmental Covenant, the remediator shall draft the Environmental Covenant and provide an unsigned draft of the covenant at least 30 days prior to submission of the Remedial Action Completion Report or the Final Report to the Department. At the time the draft is submitted to the Department, the remediator shall also submit a separate document that identifies all owners of recorded interests in the property and the nature of their interest.

(b) For remediations under the site specific standard that will include an Environmental Covenant, the remediator shall draft the Environmental Covenant and provide an unsigned draft of the covenant either as part of the Remedial Action Plan (under Chapter 245) or as part of the Cleanup Plan (under Chapter 250). If no Remedial Action Plan or Cleanup Plan is required, the draft Environmental Covenant shall be submitted to the Department at least 30 days before submittal of the remedial Action Completion Report or the Final Report. At the time the draft is submitted the remediator shall also submit a separate document which identifies all owners of recorded interests in the property and the nature of their interest.

(c) The person who submits the Environmental Covenant to the agency shall provide the agency with the name and current address of each person occupying or otherwise in possession of the real property subject to the Environmental Covenant and each person owning a recorded interest in that property. Such information shall be provided no later than when the unsigned draft of the Environmental Covenant is submitted to the agency.

(d) All necessary copies of the final Environmental Covenant shall be signed and submitted along with the Remedial Action Completion Report or the Final Report.

(e) Within 60 days after the Environmental Covenant has been approved and signed by the Department, the person who submitted the Environmental Covenant shall provide the Department with proof of recordation of either the approved Environmental Covenant or the substitute notice allowed by section 6512 (b) of UECA.

§ 253. 6. Requirements for County Recorder of Deeds

(a) Within 45 days after the filing of an Environmental Covenant, or the substitute notice allowed by section 6512 of UECA, with a county Recorder of Deeds, the Recorder of Deeds shall provide the person who filed the document with a copy of the recorded document which indicates where the Recorder has indexed the document.

(b) The county Recorder of Deeds may not require the payment of the Pennsylvania Realty Transfer Tax, set forth in 72 P.S. § 8102-C, unless the Environmental Covenant includes a Statement of Value in the form used by the Pennsylvania Department of Revenue that indicates that the Environmental Covenant has a specified dollar value.

§ 253.7. Fees.

(a) A nonrefundable fee of \$350 shall be submitted to the Department with each covenant appropriately signed by all parties other than the Department.

(b) No fee shall be required for Environmental Covenants submitted pursuant to § 253.10 (relating to conversion and waiver of conversion) where the person submitting the Environmental Covenant did not cause or contribute to the contamination described in the Environmental Covenant.

(c) At least every three years, the Department will provide the Environmental Quality Board with an evaluation of the fees in this chapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

§ 253.8. Subordination.

(a) As a condition of approving an Environmental Covenant, the Department may require that an owner of a prior interest subordinate its interest to the Environmental Covenant.

(b) If the Department requires subordination of a prior interest to the Environmental Covenant, it will notify the person submitting the draft Environmental Covenant and the owner of the prior interest of this condition in writing.

(c) A subordination agreement may be contained in the Environmental Covenant or in a separate record. If contained in a separate record, a copy of the subordination document and proof of recordation shall be provided to the Department prior to approval of the Environmental Covenant.

(d) An agreement to subordinate affects the priority of the person's interest but does not impose an affirmative obligation on the person with respect to the Environmental Covenant nor does it affect the person's existing environmental liabilities.

§ 253.9. Duration.

(a) An Environmental Covenant is perpetual unless terminated in accordance with section 6509 of UECA.

(b) Eminent Domain. Where the Department is the agency referenced in section 6509(a)(5) of UECA, notice and request for consent shall be made in writing and submitted to the Department no less than 30 days prior to commencement of the eminent domain proceeding.

(c) Judicial Termination or Amendment. Where the Department is the agency referenced in section 6509(b) of UECA, the notice and request for determination shall be made in writing and submitted to the Department no less than 90 days prior to commencement of the judicial proceeding.

§ 253.10. Conversion and Waiver of Conversion.

(a) An instrument created before February 18, 2008 to demonstrate attainment or maintenance of a standard under the Land Recycling Act or to demonstrate satisfaction of a corrective action requirement under the Storage Tank Act shall be converted to an

Environmental Covenant no later than February 18, 2013 unless waived by the Department or this section.

(b) The current owner of a property subject to an instrument covered in subsection (a) shall have the responsibility to convert the existing instrument to an Environmental Covenant in accordance with the requirements of the UECA and this Chapter. The Department will not require, but may allow, the Environmental Covenant to contain activity and use limitations not contained in the existing instrument or a Department-approved postremediation care plan.

(c) The obligation to convert an instrument covered in subsection (a) shall be waived until such time as the property is transferred if the current owner of the property requests the waiver in writing and provides the Department with proof of recordation of the instrument covered by subsection (a).

(d) If the conditions of subsection (c) are met, then the instrument shall be converted to an Environmental Covenant at the time of transfer of the property in accordance with UECA and this Chapter.

(e) The Department may waive the requirement to convert an instrument. Any waivers that are granted by the Department shall be issued in writing.

§ 253. 11. Assignment of Interest.

Where the Department's consent is required for a holder to assign its interest, or for the removal and replacement of a holder, request for such consent shall be made in writing and submitted to the Department at least 30 days prior to the assignment.