

EXECUTIVE SUMMARY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Proposed Rulemaking
25 Pa. Code Chapter 253
(Administration of the Uniform Environmental Covenants Act)

The Uniform Environmental Covenants Act (27 Pa.C.S.A. §§ 6501-6517) (UECA) was signed into law in Pennsylvania on December 18, 2007. The UECA was based on a national model act developed by the National Conference of Commissioners on Uniform State Laws. The UECA provides for the creation of environmental covenants to ensure the long-term stewardship of activity and use limitations on property remediated under the Land Recycling and Environmental Remediation Standards Act (Act 2), the Storage Tank and Spill Prevention Act (Tank Act) and other state and federal statutes. Although the UECA contains procedural requirements, the Department of Environmental Protection (Department) determined that regulations under the UECA are necessary in order to address ambiguities in the statute and to establish procedural interfaces with the statute and Act 2 and the Tank Act.

The proposed regulations establish requirements for the submission of an environmental covenant to the Department as demonstration of attainment or maintenance of an environmental remediation standard under Act 2 or as part of a corrective action requirement under the Tank Act. The proposed regulations include provisions that clarify when an environmental covenant is required, how an environmental covenant should be created, what an environmental covenant must contain and when an environmental covenant must be submitted to the Department. Pursuant to authority contained in the UECA, the proposed rulemaking also establishes a fee to support Departmental review of environmental covenants that are submitted to the Department as part of a demonstration of attainment or maintenance of a remediation or corrective action standard. While there is some overlap with the proposed regulations and the UECA, the Department did not include those portions of the UECA that are clear and did not pertain to the process for creating and implementing an environmental covenant. Such items include enforcement of the environmental covenant and the various parts of the UECA which outline the legal effect of creating an environmental covenant.

The UECA does not require review of proposed regulations under the statute by any particular advisory committee. However, the Department has had discussions with several outside groups concerning the proposed rulemaking. The Program presented the proposed rulemaking to the Cleanup Standards Scientific Advisory Board (CSSAB). The proposal was discussed and supported at the CSSAB meeting held on September 1, 2009; no formal motion supporting the proposed rulemaking was considered due to a lack of a quorum at the meeting. The proposed rulemaking was also discussed with the Storage Tank Advisory Committee (STAC) on September 8, 2009. The STAC did not take any formal action on the proposed rulemaking at that meeting.

Companion federal regulations do not exist for this proposed rulemaking. The Department does not anticipate any increased costs to the regulated community as a result of the proposed rulemaking, except for the fee proposed in section 253.7 of the rulemaking. The activity and use limitations identified in an environmental covenant are necessary to demonstrate attainment or maintenance of an Act 2 standard and/or the attainment of corrective action under the Tank Act; however, the proposed rulemaking does not expand the use of such limitations. The obligation to

use environmental covenants to implement those activity and use limitations is established by the UECA and not these proposed regulations.

The Department recommends a 30-day comment period for this proposed rulemaking. Since the proposed rulemaking is not expected to be controversial, the Department is not recommending any public hearings.