

FEE REPORT FORM

Environmental Protection
Agency

June 28, 2009
Date

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| | Prior Year | Current Year | 1st Future Year <u>Projected</u> | 2nd Future Year <u>Projected</u> |
|-------------------------|-----------------------|-------------------------|--|--|
| FEE COLLECTIONS: | | | | |
| Current | \$0 | \$0 | \$0 | \$0 |
| Proposed Regulations | \$0 | \$0 | \$105,000 | \$105,000 |
| Final Rulemaking | \$0 | \$0 | \$82,250 | \$82,250 |

FEE TITLE AND RATE:

| | |
|----------|--|
| Current | None |
| Proposed | Section 253.7 of the proposed rulemaking establishes the fee as follows: “A nonrefundable fee of \$350 shall be submitted to the Department with each covenant appropriately signed by all parties other than the Department.” |
| Final | Section 253.7 of the proposed rulemaking establishes the fee as follows: “A nonrefundable fee of \$500 shall be submitted to the Department with each covenant appropriately signed by all parties other than the Department.” |

FEE OBJECTIVE:

The Uniform Environmental Covenants Act (27 Pa.C.S.A. §§ 6501-6517) (UECA) was signed into law on December 18, 2007. The UECA places several obligations on the Department. Each environmental covenant must be reviewed and approved by the Department when one is required to be used, and the Department must develop and maintain an on-line Registry containing all covenants. Section 6515 of the UECA allows the Board to establish a fee relating to environmental covenants.

The objective is to establish a fee that bears a reasonable relationship to the costs of administering the Department's obligations under UECA.

FEE RELATED ACTIVITIES AND COSTS:

Environmental covenants are initially reviewed by Environmental Cleanup Program (ECP) staff in the Regional Office where the site is located, usually as part of the review of a Final Report or Remedial Action Completion Report. The covenant is a legal document creating a property interest; therefore, the covenant must also be reviewed by Regional Counsel. The final environmental covenant must be reviewed, approved, and signed by the ECP Environmental Program Manager. In some cases review and comment by Central Office staff and Regulatory Counsel may be needed. Under the proposed regulation the Department estimated reviewing between 250 and 350 environmental covenants per year, with an average of about 300 reviews per year.

Section 6512 of the UECA imposes an obligation on the Department to develop and maintain an on-line Registry of all approved environmental covenants. This on-line Registry serves as a land records repository similar to and parallel with the County Recorders of Deeds offices. The Department currently maintains a basic listing of all approved environmental covenants on the Department's website and plans to develop an improved on-line registry in the future.

ANALYSIS for PROPOSED REGULATIONS:

The complexity of the environmental covenants can vary from a simple case that follows the standard covenant language to a more complex case with unique provisions. The typical review times can range from one hour to several hours. It is estimated that on average that Department personnel will spend about three work-hours reviewing each environmental covenant. If the Department reviews 300 covenants per year, at 3 work-hours per covenant, that would require a total of 900 work-hours of staff time per year. Approximately half of these reviews relate to regulated storage tank sites. The Department staff costs related to work-hours spent on these regulated storage tanks sites are funded by the Underground Storage Tank Indemnification Fund (USTIF). Therefore, the total non-USTIF funded work-hours spent reviewing covenants not related to regulated storage tanks is 450 work-hours per year.

The estimated average hourly personnel cost (including salary, benefits, direct costs, and indirect costs) for DEP staff is approximately \$100 per work-hour. The funding for the 450 work-hours of non-USTIF funded reviews, at \$100 per hour, would require \$45,000 per year to cover DEP personnel costs.

The DEP Bureau of Information Technology estimates that the on-line registry will cost \$325,000 for the initial development or \$32,500 per year spread over 10 years. The Bureau estimates that it will cost \$25,000 per year for ongoing maintenance. The total annual cost for development and maintenance of the on-line registry would be approximately \$57,500 per year.

The total of the annual costs for personnel (\$45,000) combined with the total annual costs for the on-line registry (\$57,500) gives a grand total annual cost of \$102,500 per year for implementing the

UECA program. The total annual costs (\$102,500) divided by the estimated number of covenants per year which will be submitted for review (300) gives an estimated cost per covenant of \$342 per covenant. Based on this analysis the Department is proposing a fee of \$350 per covenant. The \$350 fee would cover the costs of administering the UECA program.

ANALYSIS for FINAL RULEMAKING:

The Preamble of the Proposed Regulations included the following language in Section 253.4 relating to requirements for and waiver of environmental covenants; “The Department’s position is that an environmental covenant must be used whenever a cleanup does not meet an unrestricted use cleanup standard, including the nonresidential Statewide health standard.” In the Final Regulations this position has been changed, so that an environmental covenant will not be required for cleanups that meet the nonresidential Statewide health standard, or the site specific standard based on nonresidential exposure assumptions.

Due to this change in position, the total number of environmental covenants that will need to be reviewed and approved by the Department staff will be reduced. This will reduce the total costs associated with conducting the reviews, but the on-line registry costs will remain the same and will need to be spread over a smaller number of covenants, which will increase the cost per covenant. The Department estimates that the numbers of covenants requiring review and approval will be reduced to about 165 covenants per year.

If the Department reviews 165 covenants per year, at 3 work-hours per covenant, that would require a total of 495 work-hours of staff time per year. Approximately half of these reviews relate to regulated storage tank sites. The Department staff costs related to work-hours spent on these regulated storage tanks sites are funded by the Underground Storage Tank Indemnification Fund (USTIF). Therefore, the total non-USTIF funded work-hours spent reviewing covenants not related to regulated storage tanks would be 247.5 work-hours per year.

The estimated average hourly personnel cost (including salary, benefits, direct costs, and indirect costs) for DEP staff is approximately \$100 per work-hour. The funding for the 248 work-hours of non-USTIF funded reviews, at \$100 per hour, would require \$24,750 per year to cover DEP personnel costs.

The DEP Bureau of Information Technology estimates that the on-line registry will cost \$325,000 for the initial development or \$32,500 per year spread over 10 years. The Bureau estimates that it will cost \$25,000 per year for ongoing maintenance. The total annual cost for development and maintenance of the on-line registry would be approximately \$57,500 per year.

The total of the annual costs for personnel (\$24,750) combined with the total annual costs for the on-line registry (\$57,500) gives a grand total annual cost of \$82,250 per year for implementing the UECA program. The total annual costs (\$82,250) divided by the estimated number of covenants per year which will be submitted for review (165) gives an estimated cost per covenant of \$498 per covenant. Based on this analysis the Department is proposing a fee of \$500 per covenant. The \$500 fee would cover the costs of administering the UECA program.

RECOMMENDATION AND COMMENT:

Establish the fee of \$500 in section 253.7.