

## **Pennsylvania's Uniform Environmental Covenants Act**

by  
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Finally the cloudy skies of Pennsylvania's environmental land use restriction requirements are beginning to clear. On December 18, 2007, Governor Rendell signed Pennsylvania's version of the Uniform Environmental Covenants Act into law as Act 68 of 2007 ("Act 68" or "PAUECA"). Since the enactment of the Land Recycling and Environmental Remediation Standards Act ("Act 2") of 1995, the PAUECA is the first statute that has significant impact on the Department of Environmental Protection's remediation program

Effective February 19, 2008, the PAUECA resembles similar uniform statutes enacted in several neighboring states, including Ohio, Maryland, and Delaware. The UECA grew out of a national effort to implement a standardized approach to creating, documenting and assuring enforceability of activity and use limitations on contaminated sites. PAUECA represents an attempt to harmonize the national uniform law with Pennsylvania's existing remediation and corrective action regime, including the Act 2, the Storage Tank Act, the Hazardous Sites Cleanup Act, the Clean Streams Law and the Solid Waste Management Act.

### **OVERVIEW**

PAUECA requires the use of environmental covenants whenever engineering or institutional controls are necessary to demonstrate attainment of an Act 2 remediation standard for any cleanup conducted under any applicable Pennsylvania environmental law. The covenant provides a tool to ensure that the conditions allowing for a risk-based cleanup will continue in the future.

### **GENERAL REQUIREMENTS**

UECA provides an outline of the ideal form of an environmental covenant. As defined, a holder is the owner of the property interest created by the covenant and is a necessary signatory. The holder may be any person, including the current owner of the property, or the remediator. The Department must approve the covenant for it to be effective and the Department may impose conditions for approval. The Department, the current owner(s) of the property, the holder(s) and any other party specified by the Department must sign the covenant. The approved environmental covenant, or a notice of the environmental covenant that complies with UECA must be recorded in the county in which the property is located. The remediator must have the environmental covenant or the notice recorded within 30 days of Department approval, and must provide proof of recordation with the county. The remediator must provide copies of the approved environmental covenant to the entities listed in PAUECA and in accordance with the terms of the environment covenant.

### **LIFE OF THE COVENANT**

An environmental covenant under PAUECA runs with the land and is perpetual unless it is terminated under the specific provisions of PAUECA. The covenant can be written to include a self-terminating provision which limits its effect to a specific duration or provides for termination on the occurrence of a specific event. Otherwise, an environmental covenant can only be terminated by consent, by judicial decree, or by the foreclosure of an interest with priority over the covenant.

### **PROCESS**

The Department has urged remediators to begin discussing the need for and contents of an environmental covenant early in the remediation process. The Department would like the remediator to draft the covenant and provide the covenant language **before** submission of the final cleanup report to the Department, as part of either a Remedial Action Plan or as part of the Cleanup Plan.

After submission and review by the Department, deficiencies or other issues regarding the environmental covenant will be addressed in the same manner as other deficiencies or issues with final cleanup reports. The regional Environmental Cleanup Program Manager will sign acceptable environmental covenants at the same time as the final cleanup report approval letter is signed.

### **WAIVER, CONVERSION AND APPEALABILITY**

The Department does have limited discretion to waive the environmental covenant requirement, however the regulated community should not expect that such a waiver would be the rule, but rather the rare exception.

Within 5 years, any instrument imposing an activity and use limitation that was created prior to the enactment of PAUECA to demonstrate attainment or maintenance of an Act 2 standard or to demonstrate satisfaction of a Tank Act corrective action requirement is required to be converted to an environmental covenant.

All final actions taken by the Department under PAUECA are appealable to the Environmental Hearing Board.

### **WHO DOES THIS APPLY TO?**

If you or your business are considering a property remediation, or if you were a party to a remediation in the past, you may have obligations with respect to the PAUECA. You should contact an experience environmental professional to determine what those obligations may be and how to meet them.

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