

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 253 ]

### Administration of the Uniform Environmental Covenants Act

The Environmental Quality Board (Board) proposes to add Chapter 253 (relating to Administration of the Uniform Environmental Covenants Act). The proposed regulations address ambiguities in 27 Pa.C.S. §§ 6501—6517 (relating to Uniform Environmental Covenants Act) (UECA) and establish procedural interfaces with other statutes.

This proposal was adopted by the Board at its meeting of December 15, 2009.

#### A. *Effective Date*

These regulations will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

#### B. *Contact Persons*

For further information, contact Troy Conrad, Director, Land Recycling Program, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 783-7816; or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site (<http://www.depweb.state.pa.us>).

#### C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 6515 of the UECA (relating to Environmental Quality Board), which grants the Board the power and the duty to promulgate regulations for the proper performance of the work of the Department under the UECA; and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department. Section 6515 of the UECA also explicitly grants the Board the power to develop fees by regulation for environmental covenants.

#### D. *Background and Purpose*

The UECA was signed into law in this Commonwealth 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 (35 P.S. §§ 6026.101—6026.908) (Act 2) or the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104) (Tank Act). These limitations are restrictions on the use of the remediated property (“institutional controls”) or the maintenance of a “structure” needed to

control the movement of regulated substances through the environment (“engineering controls”). The environmental covenant is a property interest with a holder and is capable of being transferred and may be enforced by multiple parties, including the Department. Finally, the environmental covenant is recorded with the county recorder of deeds where the property is located, giving future landowners and developers notice of the activity and use limitations. Once the Department develops a formal registry containing all covenants, as required under section 6512 of the UECA (relating to registry; substitute notice) of the UECA, only a simple notice will need to be recorded with the county recorder of deeds where the property is located.

Although the UECA does contain relatively detailed procedural requirements, the Department determined that regulations under the UECA would be necessary to address ambiguities in the statute and to establish procedural interfaces with the Tank Act and Act 2. Collection of the fee will support the Department's review of environmental covenants and the development and maintenance of the electronic registry of environmental covenants that section 6512 of the UECA requires the Department to develop and maintain.

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 Department presented the proposed rulemaking to the Cleanup Standards Scientific Advisory Board (CSSAB). The proposal was discussed and supported at the CSSAB board 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.

#### E. *Summary of Regulatory Requirements*

As noted, the proposed rulemaking is intended to supplement the UECA and tie the statute together with the Commonwealth's existing risk-based corrective action programs. The Department developed the proposed rulemaking to provide the regulated community and program staff a straightforward step-by-step outline of when environmental covenants are required to be used, how they are created, what they must contain and when they must be submitted to the Department. While there is some overlap with the UECA when necessary, the Department did not include those portions of the UECA that were clear in the statute and did not pertain to the process for creating and implementing an environmental covenant. Those items include enforcement of the environmental covenant and the various parts of the UECA outlining the legal effect of creating an environmental covenant.

The contents of the proposed rulemaking are discussed as follows, with special attention to those provisions that clarify a portion of the UECA.

##### § 253.1. *Definitions.*

This is the definitions section of the proposed rulemaking. For ease of understanding, the definitions from the UECA are included in this section. Several definitions not in the UECA are included in the proposed rule-

making, including “final report,” “instrument,” “political subdivision,” “remedial action completion report,” “storage tank act” and “UECA.”

§ 253.2. *Contents and form of environmental covenant.*

This section describes what must be included in an environmental covenant and what may be included as appropriate; it follows section 6504 of the UECA (relating to contents of environmental covenant). Subsection (c) affirms that the Department may require the permitted information from subsection (b) or other conditions appropriate to the remediation. Subsection (e) makes it clear that the Department’s model covenant should be used, although the Department will accept alternative language in the appropriate case. The model covenant is an evolving document drafted with a significant amount of input from the regulated community. Finally, subsection (f) allows for the special situation where an environmental covenant covers commonly owned property in a common interest community.

§ 253.3. *Notice of environmental covenant.*

This section describes who is to receive notice of the environmental covenant and when; it tracks section 6507 of the UECA (relating to notice). Subsection (c) allows for waivers of required notice and establishes a procedure for persons interested in receiving such a waiver.

§ 253.4. *Requirements for and waiver of environmental covenants.*

Section 253.4 outlines when environmental covenants are required as well as the procedures for the Department’s waiver of the requirement for an environmental covenant. The basic requirement for use of an environmental covenant is contained in section 6517(a) of the UECA (relating to relationship to other laws). The proposed rulemaking states that, “[u]nless 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.” 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. Subsection (a) goes on to note that although not required, an environmental covenant may be used with other types of environmental response projects.

Subsection (b) clarifies that where land use restrictions are to be used in special industrial area cleanups under section 305 of Act 2 (35 P. S. § 6026.305), they are to be in the form of an environmental covenant.

Subsections (c) and (d) establish requirements relating to the process for and timing of submission of requests for Department waiver of the requirement to use environmental covenants in Chapters 245 and 250 (relating to administration of the storage tank and spill prevention program; and administration of land recycling program) cleanups. Subsection (c) sets out requirements for remediations done to the background or Statewide health standard; Subsection (d) describes the requirements for site-specific standard cleanups. These subsections require requests to be in writing and establish that the Department will respond in writing as well.

Subsection (e) relates to a provision in section 6517(a)(3) of the UECA (relating to relationship to other laws). Section 6517(a)(3) establishes special provisions relating to the use of environmental covenants at Federally-owned property. Subsection (e) makes it clear

that the requirement to use environmental covenants at those properties is not waived by the UECA but delayed until such time as the property is transferred out of Federal government control. Until the time of transfer, the activity and use limitations must be memorialized in an installation’s master plan or similar remedial documentation. It also requires notification of the Department in the event of transfer.

§ 253.5. *Submission of environmental covenants and related information.*

This is an important section because it addresses ambiguities in the UECA in terms of establishing procedural interfaces between the statute and existing remedial action programs in this Commonwealth. This proposed section establishes the time frames for submission of draft and final signed environmental covenants to the Department.

It also clarifies that the remediator needs to develop and submit a list of all owners of prior interests in the property. This list is important in terms of who needs to receive notice of the environmental covenant (§ 253.3). It is also necessary so the Department can determine if subordination should be required (§ 253.8) as holders of prior interests are not subject to the environmental covenant under the UECA unless they agree to subordinate their interest to the covenant (see section 6503(d) of the UECA (relating to nature of rights; subordination of interests).

Subsection (a) relates to remediations under the background standard or the Statewide health standard that will include an environmental covenant, and requires submission of a draft covenant to the Department 30 days prior to the submission of the Final Report or Remedial Action Completion Report.

Subsection (b) relates to remediations under the site-specific standard that will include an environmental covenant. Because there is typically Department review of intermediate reports in these cleanups, the draft covenant shall be submitted to the Department 30 days prior to submission of those reports. This subsection also acknowledges that even with site-specific cleanups it is possible that there will be no intermediate reports submitted, and so in that case the proposed rulemaking requires submission of a draft covenant to the Department 30 days prior to the submission of the Final Report or Remedial Action Completion Report.

The Department believes that submission of the draft environmental covenants prior to the submission of these cleanup reports is critical to keeping the process moving smoothly, with the goal of attaining Act 2 standards at contaminated sites in this Commonwealth. By having the opportunity to review and discuss draft covenants with the remediator, the Department hopes that delay in approving Final Reports or Remedial Action Completion Reports due to problems with draft covenants can be minimized to the greatest extent possible.

Subsection (c) requires submission to the Department of information regarding each person occupying or otherwise in possession of the real property subject to the environmental covenant and each person holding a recorded interest in that property. Again, this information is important for meeting the notice requirements of the UECA as well as making sure that all persons occupying the property are aware of the activity and use limitations for the property.

Subsection (d) contemplates that the Department and remediator have worked out all issues with the covenant

prior to submission of the report demonstrating attainment of a cleanup standard and requires submission of final signed covenants with these reports.

Finally, subsection (e) makes it clear that the signed covenant shall be recorded with the recorder of deeds for the county where the property is located, as well as the time frame for providing the Department with proof of recordation. Because the environmental covenant is a property interest, recording is a crucial part of the process of creating an effective instrument for long-term stewardship of activity and use limitations on the property that is remediated.

§ 253.6. *Requirements for county recorder of deeds.*

This proposed section contains two provisions relating to the recordation of environmental covenants with county recorder of deeds. Subsection (a) requires the recorder of deeds to provide proof of recordation in a timely manner, and subsection (b) makes it clear that environmental covenants, as negative restrictions, generally have no or negative value and so should not be routinely subject to the Realty Transfer Tax.

§ 253.7. *Fees.*

This section establishes fees for the review of environmental covenants by the Department. This section also contains an exemption from the requirement to pay a fee for environmental covenants submitted to convert a prior instrument where the person submitting the environmental covenant did not cause or contribute to the contamination described in the environmental covenant. Finally, subsection (c) requires the Department to review the fee at least every 3 years and report to the Board as to whether the fee continues to meet the Department's cost of administering the program.

§ 253.8. *Subordination.*

This section tracks the UECA language regarding subordination, and is included for reference.

§ 253.9. *Duration.*

In two situations an environmental covenant can be terminated through action outside of the specific terms of the covenant—eminent domain and judicial termination. In both instances, a Department determination is required for the termination to occur. This section establishes a process for requesting the Department action in an appropriate proceeding.

§ 253.10. *Conversion and waiver of conversion.*

For persons researching activity and use limitations at properties in this Commonwealth to have a clear understanding of the complete universe of properties with activity and use limitations, section 6517(b) of the UECA requires an instrument that establishes activity and use limitations under Act 2 or the Tank Act created prior to February 2008 to be converted to an environmental covenant by February 2013. By converting these prior instruments to covenants and including them in the Department's registry, the limitations will have the legal protection afforded by the UECA and be readily available and transparent to property developers with a minimum of effort on their part. The term "instrument" is defined in § 253.1 (relating to definitions) as 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."

The Department is conducting an internal review to identify all sites and anticipates targeted outreach to owners of property identified as being subject to a prior "instrument."

This proposed section establishes requirements related to this conversion requirement and provides a temporal waiver for a certain class of prior instruments. Subsection (b) requires the current property owner to convert the prior instrument and states that the Department will not require (but may allow) the new environmental covenant to contain activity and use limitations not contained in either the existing instrument or a "Department-approved postremediation care plan."

Subsections (c) and (d) contain the conditional temporal waiver noted previously. This subsection waives the requirement to convert the prior "instrument" until the current property owner transfers the property, so long as the owner requests the waiver and provides the Department with proof that the prior instrument was recorded with the recorder of deeds in the county where the property is located.

Finally, proposed subsection (e) notes that the Department may waive the requirement to convert a prior instrument outright, and that a waiver will be issued in writing.

§ 253.11. *Assignment of Interest.*

Section 6510 of the UECA (relating to amendment or termination by consent) requires the Department to consent to several categories of changes relating to the holder, or grantor, of the environmental covenant. This proposed section outlines the requirements applicable to a request.

F. *Benefits, Costs and Compliance*

*Benefits*

The proposed rulemaking will assist the Department and the regulated community in implementing the UECA and will serve the dual purposes of enhancing the protection of human health and the environment, while promoting the safe reuse of contaminated brownfields sites. Brownfield redevelopment in this State has been successful largely because regulators, property owners, and communities have accepted that contamination can be left in place with the proper land use controls to allow redevelopment—without presenting any significant risk to human health or the environment.

The proposed rulemaking provides better legal tools to ensure that future generations understand the reasons why land use restrictions have been imposed and why certain long-term maintenance/monitoring might be needed. Regulators and the community can have confidence that environmental land use restrictions will be enforced in perpetuity. The proposed rulemaking allows all parties to have a clear understanding of how the UECA will be implemented going forward.

*Compliance Costs*

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 § 253.7 (relating to fees). The activity and use limitations are necessary to demonstrate attainment or maintenance of an Act 2 standard; the proposed rulemaking does not expand the use of the limitations. The obligation to use environmental covenants to implement those activity and use limitations is established by the UECA and not these proposed rules.

Based on historical data developed in administering the UECA program since February 2008 (the effective date of the UECA), the Department projects that approximately 300 environmental covenants will be submitted for review

and approval annually. Therefore, the fees collected under the regulation are projected to be around \$105,000 per year.

#### *Compliance Assistance Plan*

It is not anticipated that the Commonwealth will provide sources of financial assistance to aid in compliance with this proposed rulemaking. As noted in Section E, of this preamble, the Department will target outreach to property owners whose properties are identified as being subject to the conversion requirement in section 6517(b) of the UECA. Finally, the Department developed a model environmental covenant and will develop policies, guidance and factsheets as needed to explain particular aspects of how implementation of the UECA fits in with other parts of the remediation process.

#### *Paperwork Requirements*

The proposed rulemaking does not establish any new paperwork requirements. Submission of the various documents is required by the UECA; the proposed rulemaking merely formalizes the manner and timing of those submissions along with the Department's responses.

#### *G. Pollution Prevention*

The proposed regulations relate to pollution that has already been released into the environment. The use of environmental covenants should ensure long-term stewardship of activity and use limitations, however, helping to ensure that existing problems do not get worse through inattention or further spread of pollution through the environment. The proposed regulation does not directly promote a multimedia pollution prevention approach.

#### *H. Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 24, 2010, the Department submitted a copy of the notice of proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

#### *J. Public Comments*

*Written Comments:* Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulations to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments,

suggestions or objections must be received by the Board by April 5, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 5, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

*Electronic Comments:* Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by April 5, 2010. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,  
*Chairperson*

**Fiscal Note:** 7-454. No fiscal impact; (8) recommends adoption.

### **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**

Sec.	
253.1.	Definitions.
253.2.	Contents and form of environmental covenant.
253.3.	Notice of environmental covenant.
253.4.	Requirements for and waiver of environmental covenants.
253.5.	Submission of environmental covenants and related information.
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253.7.	Fees.
253.8.	Subordination.
253.9.	Duration.
253.10.	Conversion and waiver of conversion.
253.11.	Assignment of interest.

#### **§ 253.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

##### *Activity and use limitations—*

- (i) Restrictions or obligations with respect to real property created under this chapter.
- (ii) The term includes engineering controls and institutional controls.

##### *Agency—Any of the following:*

- (i) The Department.
- (ii) A Federal agency which determines or approves an environmental response project pursuant to which the environmental covenant is created.

*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.

*Engineering controls—*

(i) Remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment.

(ii) 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 under one of the following:

(i) A Federal program governing environmental remediation of real property.

(ii) 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.

(iv) 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 under § 250.204, § 250.312 or § 250.411 (relating to final report).

*Holder—*A person that is the grantee of an environmental covenant as specified in section 6503(a) of the UECA (relating to nature of rights; subordination of interests).

*Institutional controls—*

(i) 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.

(ii) 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 Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).

*Person—*

(i) Any individual, corporation, partnership, association or other entity recognized by law as the subject of rights, duties or obligations.

(ii) The term includes the United States of America, a Federal agency, the Commonwealth, an agency or instrumentality of this 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.

(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 § 245.310(b) or § 245.313 (relating to site characterization report; and 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 Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

*UECA—*The Uniform Environmental Covenants Act (27 Pa.C.S. §§ 6501—6517).

**§ 253.2. Contents and form of environmental covenant.**

(a) An environmental covenant must contain the following:

(1) A statement that the instrument is an environmental covenant executed under 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) The signatures, with the formalities required for a deed, by the following:

(i) The agency, unless there is a deemed approval under subsection (c)(4).

(ii) Every holder.

(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 the following:

(1) The 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) The requirements for periodic reporting describing compliance with the environmental covenant.

(3) The rights of access to the property granted in connection with implementation or enforcement of the environmental covenant.

(4) The restriction or limitation on amendment or termination of the environmental covenant in addition to those contained in sections 6509 and 6510 of the UECA (relating to duration; and amendment or termination by consent).

(5) The rights of the holder in addition to its right to enforce the environmental covenant under section 6511 of the 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.

(7) Any limitations on the duration of the environmental covenant.

(c) Agency review will be as follows:

(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 will 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 the necessary copies of the signed final covenant, and the 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" under section 6504(c)(4) of the UECA (relating to contents of environmental covenant).

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

(e) An environmental covenant will be in the form of the Model Covenant posted on the Department's web site 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 will 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 will 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.

(5) Other persons designated by the agency, based upon the rights or interests that the 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. The request must be in writing and include the reasons for the requested waiver. The 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 will 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 (relating to administration of the storage tank and spill prevention program)) or as part of the Cleanup Plan (under Chapter 250 (relating to administration of land recycling program)). Waivers that are granted by the Department will be issued in writing.

(e) An environmental covenant will 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. The 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 the UECA (relating to registry; substitute notice).

**§ 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 the UECA (relating to registry; substitute notice), 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 Realty Transfer Tax, set forth in section 1102-C of the Tax Reform Code of 1971 (72 P. S. § 8102-C), unless the environmental covenant includes a statement of value in the form used by the 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) A fee is not required for environmental covenants submitted under § 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 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administer-

ing 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) *Duration of covenant.* An environmental covenant is perpetual unless terminated in accordance with section 6509 of the UECA (relating to duration).

(b) *Eminent domain.* When the Department is the agency referenced in section 6509(a)(5) of the UECA, notice and request for consent must be made in writing and submitted to the Department at least 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 the UECA, the notice and request for determination must be made in writing and submitted to the Department at least 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 by 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 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, the instrument shall be converted to an environmental covenant at the time of transfer of the property in accordance with the UECA and this chapter.

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

**§ 253.11. Assignment of Interest.**

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

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