

## ENVIRONMENTAL ALERT

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### **UNIFORM ENVIRONMENTAL COVENANTS ACT**

The Pennsylvania Department of Environmental Protection (DEP) is currently working to develop regulations in connection with the Uniform Environmental Covenants Act (UECA). The focus of these regulations is to set forth the procedure for converting previously recorded instruments in connection with activity and use limitations prior to the enactment of UECA, to the standard environmental covenant required by UECA. This conversion process must be completed by February 2013. This deadline and the anticipated regulations are crucial for any property owner whose property has been the subject of environmental remediation pursuant to the Land Recycling Act (Act 2) or the Storage Tank and Spill Prevention Act.

By way of background, UECA sets forth Pennsylvania's process for documenting and enforcing activity and use limitations on contaminated sites.<sup>1</sup> Under UECA an environmental covenant must be submitted to and approved by DEP whenever an engineering or institutional control is used to demonstrate attainment of an Act 2 remediation standard. Similar legislation has been enacted in approximately twenty (20) other states including Ohio, Maryland and Delaware. UECA became effective in Pennsylvania on February 19, 2008.

Prior to the enactment of UECA, property owners subject to activity and use limitations, for example pursuant to Act 2 remediation standards, were required to file a deed restriction or other similar instrument in connection with the applicable environmental limitations. UECA was developed to not only harmonize the manner in which states deal with these limitations, but to assure their enforceability. Indeed, UECA gives DEP as well as the local municipality the authority to seek injunctive relief for violations of the environmental covenant.

To further develop consistency across the state, as discussed above, UECA requires that all instruments recorded prior to its enactment be converted to meet the UECA standards. Specifically, UECA states:

An instrument created prior to the effective date of this section [February 19, 2008] which establishes activity and use limitations 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 and Spill Prevention Act shall be converted to an environmental covenant within 60 months of the effective date of this section unless conversion is waived by the Department.

In connection with UECA's conversion mandate, DEP is beginning the process of developing regulations setting forth the proper steps to convert these previously recorded "instruments." One of DEP's major tasks in developing these regulations is to define the term "instrument." The term, undefined by statute, will need to be clearly delineated so that affected parties can determine whether or not they are subject to

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<sup>1</sup> It should be noted that UECA does not displace deed acknowledgments (a/k/a deed notices) required pursuant to the Hazardous Sites Cleanup Act and the Solid Waste Management Act.

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the conversion requirement. DEP, who has enlisted a stakeholder group to assist in formulating the regulations, also faces the following challenges in finalizing the regulations:

- 1) Who is responsible for converting the prior instrument; and
- 2) Determining which sites across the state are subject to activity and use limitations.

Notably, DEP, at the present time, has made the affirmative statement that it is not looking to impose new obligations on property owners in connection with the conversion process under UECA. Rather, the new environmental covenant will adopt the same activity and use limitations that were part of the former instrument.

In connection with the looming conversion deadline, property owners who may be affected by this deadline must be diligent in reviewing their property records to determine if they may be subject to UECA. The Eckert Seamans Environmental Group has personally assisted clients in obtaining environmental covenants, and have the knowledge and experience to assist property owners through the conversion process as well. It is our experience that by working closely with DEP to reach agreement on the language of the covenant, particularly those relating to the activity and use limitations, a successful outcome is more likely than not. This may take several drafts and discussions with DEP, but these forward looking steps lead to solid results.

Once the covenant is formally submitted, DEP has ninety (90) days to approve or deny the proposed environmental covenant. If approved, the covenant must be recorded in the county (or counties) in which the property is located. Should it be denied, the owner may appeal the decision to the Environmental Hearing Board.

The Eckert Seamans Environmental Team will continue to monitor the development of these regulations and keep you informed. In the meantime, please contact us with any questions.

*The Environmental Alert is intended to keep readers current on matters affecting environmental issues and is not intended to be legal advice. For information or assistance regarding any of the information noted above, please contact Scott R. Dismukes at 412.566.1998 or [sdismukes@eckertseamans.com](mailto:sdismukes@eckertseamans.com), David A. Rockman at 412.566.1999 or [drockman@eckertseamans.com](mailto:drockman@eckertseamans.com), Erin W. McDowell at 412.566.6070 or [emcdowell@eckertseamans.com](mailto:emcdowell@eckertseamans.com), Jessica L. Sharrow at 412.566.5941 or [jsharrow@eckertseamans.com](mailto:jsharrow@eckertseamans.com) or any other attorney with whom you have been working.*

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