

# Regulatory Analysis Form



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:  
Environmental Protection

(2) Agency Number:

Identification Number: #7-454

IRRC Number: 2824

(3) Short Title:

Administration of the Uniform Environmental Covenants Act

(4) PA Code Cite:

Title 25, Chapter 253

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, 783-8727, RCSOB, 400 Market St., 783-8926, mtate@state.pa.us

Secondary Contact: Kelly Heffner, 783-8727, RCSOB, 400 Market St., 783-8926, kheffner@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Environmental Quality Board

PO Box 8477

Harrisburg, PA 17105-8477

Phone: (717) 787-4526

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The 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. 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 by section 6512 of the UECA, only a Notice will need to be recorded with the County Recorder of Deeds where the property is located.

(9) Include a schedule for review of the regulation including:

- |   |                           |
|---|---------------------------|
| A. The date by which the agency must receive public comments:                               | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held:                     | N/A                       |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | December 2010             |
| D. The expected effective date of the final-form regulation:                                | Upon publication as final |
| E. The date by which compliance with the final-form regulation will be required:            | Upon publication as final |
| F. The date by which required permits, licenses or other approvals must be obtained:        | N/A                       |

(10) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

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### SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The proposed rulemaking is being made under the authority of section 6515 of the UECA, 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.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. Section 6517(b) of the UECA requires the conversion of “instruments created prior to the effective date of [the UECA] which establish activity and use limitations” prior to February 13, 2013. Because the proposed rulemaking applies to conversion, and in certain cases waives the requirement to convert prior instruments, the rulemaking should be completed in advance of that date.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Although the UECA does contain 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 pursuant to section 6512 of the UECA.

Because the UECA creates a legal instrument that will provide notice to future property owners and occupiers of activity and use limitations, as well as creating a legal obligation to maintain or not disturb such limitations, the proposed rulemaking should result in reduced exposure to regulated substances and continued protection of public health, welfare, safety and the environment.

It is difficult to quantify the benefits of the UECA and the proposed regulations because the choice of remediation standards is up to the remediator under Act 2. If, for example, every remediator chose to meet the residential statewide health standard in their cleanup, no activity and use limitations would be necessary and therefore no environmental covenant would be required. Because this factor is outside of the control of the Department, we cannot accurately estimate potential benefits.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Department does not expect any parties to be adversely affected by the proposed rulemaking creating Chapter 253.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The creation of this new Chapter 253 will affect owners and operators and purchasers of properties who volunteer to or are required to remediate contaminated sites, when the remediation is performed to attain or maintain an Act 2 standard that requires activity and use limitations.

### SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department is proposing a fee of \$350 for each signed environmental covenant submitted for review and approval.

The Department estimated that 300 environmental covenants will be submitted annually. Therefore, the total costs on the regulated community will be approximately \$105,000 per year.

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(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Chapter 253 will affect owners and operators and purchasers of properties who volunteer to or are required to remediate contaminated sites, when the remediation is performed to attain or maintain an Act 2 standard that requires activity and use limitations.

Local governments are not exempted from the requirements of Chapter 253 and they are not exempted from the fee \$350 fee. If a local government volunteers or is required to remediate a contaminated site, and the remediation is performed to attain or maintain an Act 2 standard that requires activity or use limitations then they would need to prepare an environmental covenant and pay the \$350 fee in accordance with the provisions of Chapter 253.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Chapter 253 will affect owners and operators and purchasers of properties who volunteer to or are required to remediate contaminated sites, when the remediation is performed to attain or maintain an Act 2 standard that requires activity and use limitations.

State government agencies are not exempted from the requirements of Chapter 253 and they are not exempted from the fee \$350 fee. If a state government agency volunteers or is required to remediate a contaminated site, and the remediation is performed to attain or maintain an Act 2 standard that requires activity or use limitations then they would need to prepare an environmental covenant and pay the \$350 fee in accordance with the provisions of Chapter 253.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						

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<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>		\$105,000	\$105,000	\$105,000	\$105,000	\$105,000
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>		\$105,000	\$105,000	\$105,000	\$105,000	\$105,000
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (2006-2007)	FY -2 (2007-2008)	FY -1 (2008-2009)	Current FY (2009-2010)
Environmental Protection Operations	\$89,847,000	\$98,574,000	\$98,544,000	\$85,069,000
Environmental Program Management	\$36,868,000	\$39,685,000	\$37,664,000	\$32,694,000
Industrial Land Recycling Fund	\$59,000	\$14,000	\$158,000	\$400,000
Hazardous Site Cleanup Fund	\$17,603,000	\$10,245,000	\$10,701,000	\$12,000,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Because the UECA creates a legal instrument that will provide notice to future property owners and occupiers of activity and use limitations, as well as creating a legal obligation to maintain or not disturb such limitations, the proposed rulemaking should result in reduced exposure to regulated substances and continued protection of public health, welfare, safety and the environment. The fees collected will be used to develop and maintain the Registry required by section 6512 of the UECA, which serves as an alternative land use record for persons wishing to purchase or develop real property in the Commonwealth. Having the Registry available should facilitate these transactions by allowing all parties involved to understand the activity and use limitations at a property with a minimal transaction cost. Therefore, the proposed rulemaking provides additional public health benefits at no net cost.

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(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

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.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Although the UECA does contain procedural requirements, the Land Recycling Program determined that regulations under the UECA would be necessary to address ambiguities in the statute and to establish procedural ties to the Tank Act and Act 2. The Department believes that the clear requirements in the proposed rulemaking will go a long way toward smoothing out the process of remediating contaminated sites in the Commonwealth.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

At the current time there are no federal standards for the long-term stewardship of activity and use limitations. Because the UECA takes a property law approach, and property law is mainly a state law matter, the federal requirements for remediation do not expressly consider restrictions on future land use at contaminated sites. It is worth noting, however, that the process for developing the UECA at the national level was initiated with funding from the United States Department of Defense.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

At this time approximately 24 other states (including the District of Columbia and the U.S. Virgin Islands) have adopted some form of the UECA.

<http://www.environmentalcovenants.org/ueca/DesktopDefault.aspx?tabindex=1&tabid=92>

Many of the jurisdictions that have not yet adopted the UECA have chosen not to do so because they

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believe their current regimes for the long-term stewardship of activity and use limitations are more effective and, in some cases, more stringent than the requirements of UECA. The Department does not anticipate that the proposed rulemaking will negatively affect Pennsylvania's ability to compete with other states. Rather, the use of environmental covenants will afford remediators certainty concerning the future use of remediated property and should therefore give the Commonwealth an advantage over other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, although the proposed rulemaking does reference the regulations of the Department implementing Act 2 (25 Pa.Code Chapter 250) and the Tank Act (25 Pa.Code Chapter 245), in terms of when environmental covenants must be submitted to the Department when conducting a cleanup pursuant to one of those Chapters.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

None.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None. The Department developed a "model" environmental covenant pursuant to the UECA that should allow the regulated community to draft environmental covenants with a minimal amount of effort.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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Copy below is hereby approved as to form and legality.  
Attorney General

By: Angela Elliott  
(Deputy Attorney General)

**FEB 17 2010**  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-454

DATE OF ADOPTION December 15, 2009

BY John Hanger

TITLE JOHN HANGER  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY Andrew C. Clark

**JAN 20 2010**  
DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

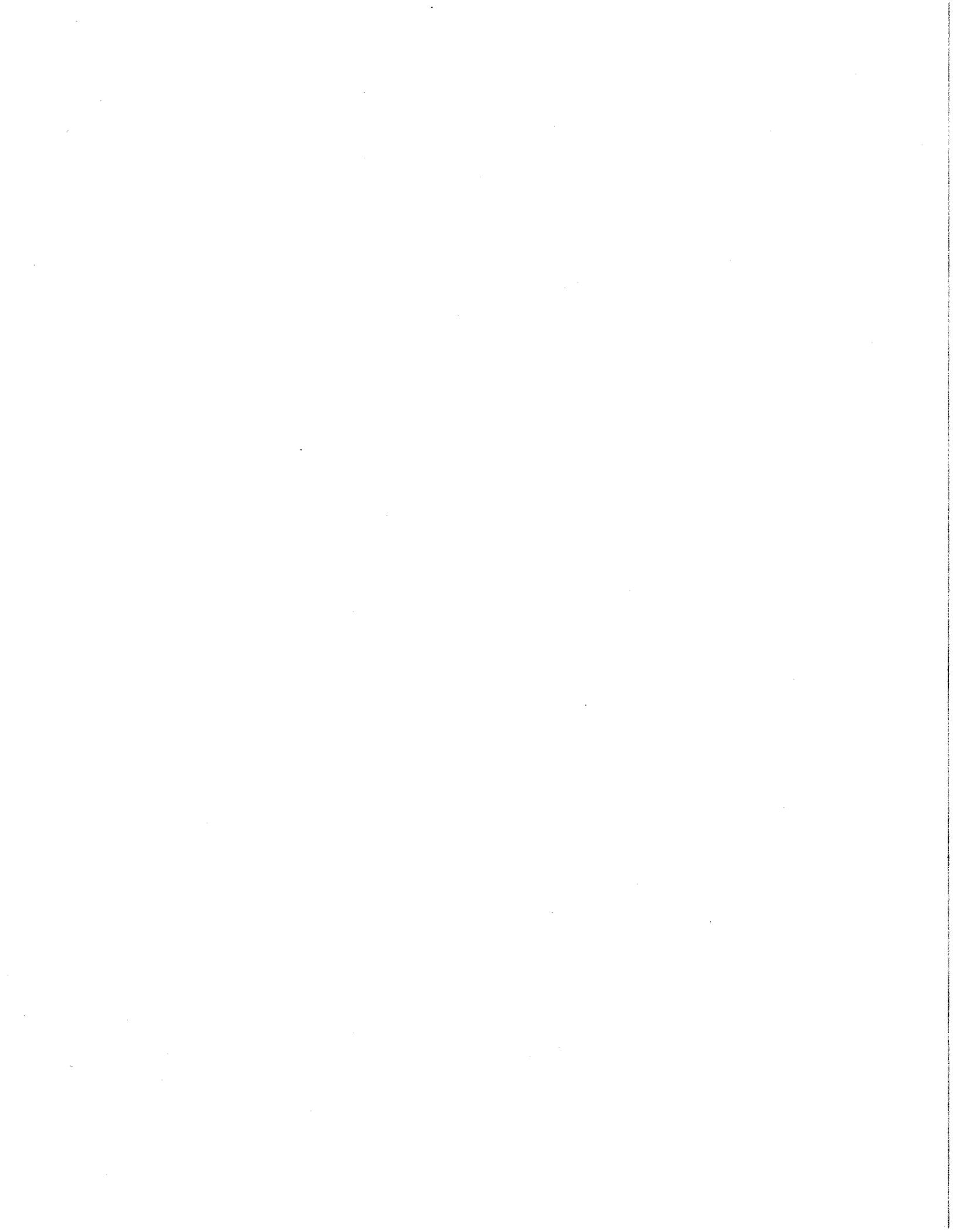
Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**ADMINISTRATION OF THE UNIFORM ENVIRONMENTAL COVENANTS ACT**

*25 Pa. Code, Chapter 253*



**Notice of Proposed Rulemaking  
Department of Environmental Protection  
Environmental Quality Board  
25 Pa.Code Chapter 253  
Administration of the Uniform Environmental Covenants Act**

**Preamble**

The Environmental Quality Board (Board) proposes to create 25 Pa. Code, Chapter 253 (relating to Administration of the Uniform Environmental Covenants Act). The proposed regulations address ambiguities in the Uniform Environmental Covenants Act 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 amendments 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 Klappowski, 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 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's website (<http://www.depweb.state.pa.us>).

**C. Statutory Authority**

The proposed rulemaking is being made under the authority of section 6515 of the Uniform Environmental Covenants Act (UECA) (27 Pa.C.S.A. § 6515), 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 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) or the Storage Tank and Spill Prevention Act (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 by section 6512 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 Pennsylvania’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. Such 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 below, 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 rulemaking, 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. 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. 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. The proposed rulemaking states that, "[u]nless waived by the Department, engineering controls or institutional controls used to demonstrate 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, 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 Chapter 245 and Chapter 250 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. 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 such properties is not waived by the UECA but delayed until such time as the property is transferred out of federal government control. Until such 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 the Commonwealth. This proposed section establishes the timeframes 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 interest in the property. This list is important in terms of who needs to receive notice of the environmental covenant (section 253.3). It is also necessary so the Department can determine if subordination should be required (section 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, 27 Pa.C.S.A. § 6503(d)).

Subsection (a) relates to remediations under 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 such cleanups, the draft covenant must 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 such a 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 the 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 such reports.

Finally, subsection (e) makes it clear that the signed covenant must be recorded with the Recorder of Deeds for the county where the property is located, as well as the timeframe 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 Pennsylvania 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 three 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 such Department action in an appropriate proceeding.

**§ 253.10. Conversion and Waiver of Conversion.**

In order for persons researching activity and use limitations at properties in the Commonwealth to have a clear understanding of the complete universe of properties with activity and use limitations, section 6517(b) 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 section 253.1 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 such 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 above. This subsection waives the requirement to convert the prior "instrument" until such time as 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 such a waiver will be issued in writing.

#### **§ 253.11. Assignment of Interest.**

Section 6510 of the UECA 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 such 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 purpose 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 section 253.7. 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 such 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., above, 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 amendments 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 multi-media pollution prevention approach.

## **H. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was 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 amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, 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 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 regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16<sup>th</sup> 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 regulation will be considered.

**Electronic Comments** – Comments may be submitted electronically to the Board at [RegComments@state.pa.us](mailto: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 two (2) working days, the comments should be retransmitted to ensure receipt.

BY:

John Hanger  
Chairperson  
Environmental Quality Board

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

§ 253.1. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

*Activity and use limitations* - Restrictions or obligations with respect to real property created under this chapter. The term includes engineering controls and institutional controls.

*Agency* - Any of the following:

- (i) The Department of Environmental Protection of the Commonwealth.
- (ii) A federal agency which determines or approves an environmental response project pursuant to which the Environmental Covenant is created.

*Board* - The Environmental Hearing Board.

*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.

*Department* - The Department of Environmental Protection of the Commonwealth.

*Engineering controls* - Remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment. 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:

- (i) under a federal program governing environmental remediation of real property;
- (ii) under 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; or
- (iv) under 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 pursuant to 25 Pa. Code § 250.204 (relating to final report, background standard), § 250.312 (relating to final report, Statewide health standard) or § 250.411 (relating to final report, site-specific standard).

*Holder* - A person that is the grantee of an Environmental Covenant as specified in section 6503(a) of UECA.

*Institutional controls* - 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. 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 act of May 19, 1995 (P.L. 4, No. 2), known as the Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101 – 6026.908, including any amendments to that statute.

*Person* - Any individual, corporation, partnership, association or other entity recognized by law as the subject of rights, duties or obligations. The term includes the United States of America, a federal agency, the Commonwealth, an agency or instrumentality of the 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; and
- (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 25 Pa. Code § 245.310(b) (relating to site characterization report) or 25 Pa. Code § 245.313 (relating to 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 act of July 6, 1989 (P.L. 169, No. 32), known as the Storage Tank and Spill Prevention Act, 35 P.S. §§ 6021.101-6021.2104, including any amendments to that statute.

*UECA* - The act of December 18, 2007 (P.L. 450, No. 68), known as the Uniform Environmental Covenants Act, 27 Pa. C. S. §§ 6501 – 6517, including any amendments to that statute.

**§ 253. 2. Contents and Form of Environmental Covenant.**

(a) An Environmental Covenant must contain:

(1) a statement that the instrument is an Environmental Covenant executed pursuant to 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) signatures, with the formalities required for a deed, by:

(i) the agency, unless there is a deemed approval under subsection (c)(4);

(ii) every holder; and

(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:

(1) 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) requirements for periodic reporting describing compliance with the Environmental Covenant;

(3) rights of access to the property granted in connection with implementation or enforcement of the Environmental Covenant;

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

(5) rights of the holder in addition to its right to enforce the Environmental Covenant under section 6511 of 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; and

(7) any limitations on the duration of the Environmental Covenant.

(c) Agency review.

(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 shall 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 all necessary copies of the signed final covenant, and all 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" pursuant to section 6504(c)(4) of UECA.

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

(e) An Environmental Covenant shall be in the form of the Model Covenant posted on the Department's website 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 shall 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 shall 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, and
- (5) any other person designated by the agency, based upon the rights or interests that such 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. Such request shall be in writing and shall include the reasons for the requested waiver. Such 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 shall 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) or as part of the Cleanup Plan (under Chapter 250). Any waivers that are granted by the Department shall be issued in writing.

(e) An Environmental Covenant shall 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. Such 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 UECA.

### **§ 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 UECA, 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 Pennsylvania Realty Transfer Tax, set forth in 72 P.S. § 8102-C, unless the Environmental Covenant includes a Statement of Value in the form used by the Pennsylvania 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) No fee shall be required for Environmental Covenants submitted pursuant to § 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 three years, the Department will provide the Environmental Quality Board with an evaluation of the fees in this chapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering 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) An Environmental Covenant is perpetual unless terminated in accordance with section 6509 of UECA.

(b) Eminent Domain. Where the Department is the agency referenced in section 6509(a)(5) of UECA, notice and request for consent shall be made in writing and submitted to the Department no less than 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 UECA, the notice and request for determination shall be made in writing and submitted to the Department no less than 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 no later than 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 such time as 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, then the instrument shall be converted to an Environmental Covenant at the time of transfer of the property in accordance with UECA and this Chapter.

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

#### **§ 253. 11. Assignment of Interest.**

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

**FEE REPORT FORM**

Environmental Protection  
Agency

October 27, 2009  
Date

Troy Conrad  
Contact Person

(717) 783-9480  
Phone Number

	<u>Prior Year</u>	<u>Current Year</u>	<u>1<sup>st</sup> Future Year Projected</u>	<u>2<sup>nd</sup> Future Year Projected</u>
<b>FEE COLLECTIONS:</b>				
Current	\$0	\$0	\$0	\$0
Proposed	\$0	\$0	\$105,000	\$105,000

**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."

**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 initial staff review must be supervised by the ECP Environmental Group Manager. 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. The Department anticipates 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:**

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.

#### **RECOMMENDATION AND COMMENT:**

Establish the fee as proposed in section 253.7.



Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
February 24, 2010

Policy Office

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

Re: Proposed Rulemakings: Administration of the Land Recycling Program  
(25 Pa. Code, Chapter 250);  
*and*  
Administration of the Uniform Environmental Covenants Act  
(25 Pa. Code, Chapter 253)

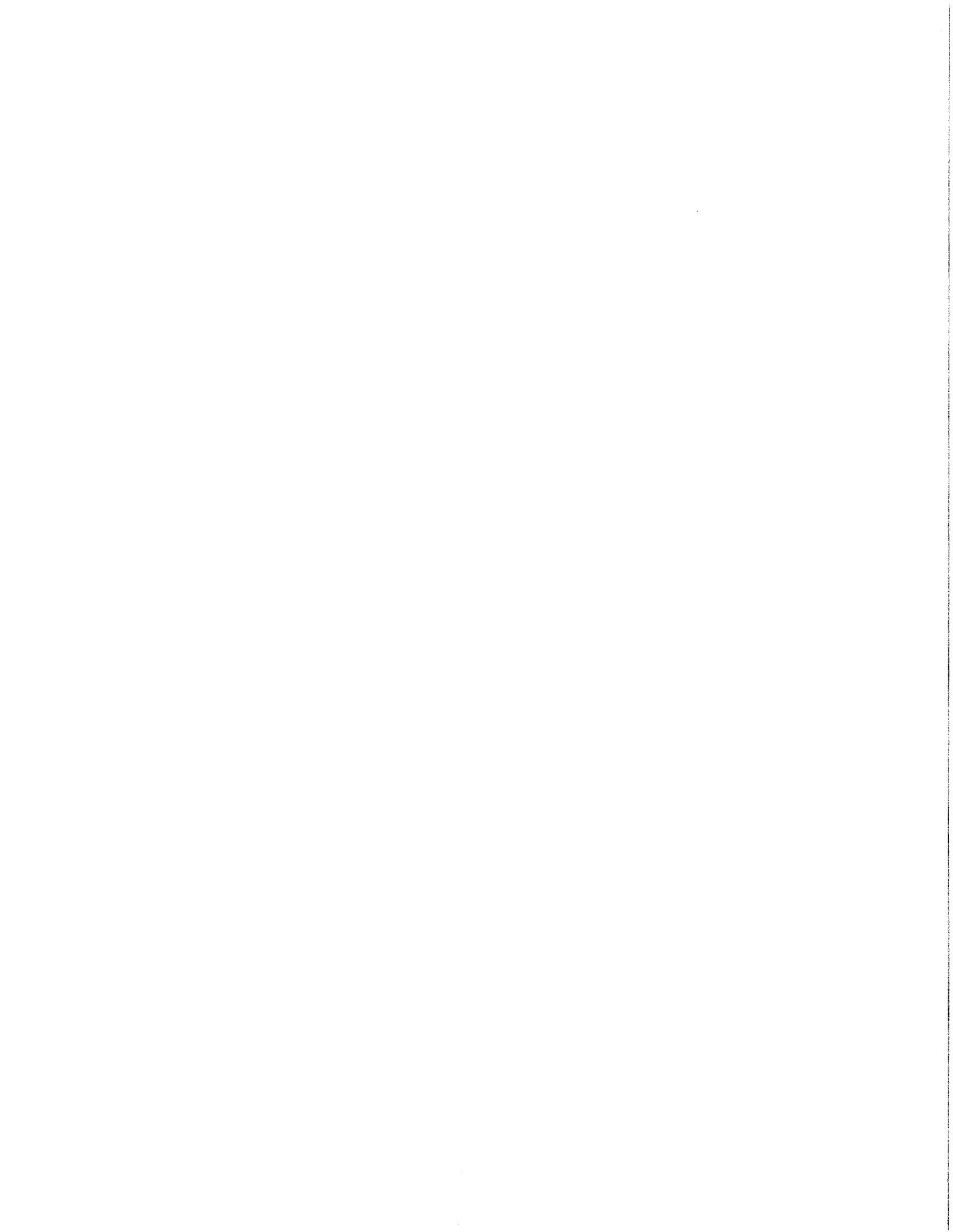
Dear Mr. Kaufman:

Enclosed are copies of two proposed rulemakings for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. The proposed rulemakings are scheduled for publication in the *Pennsylvania Bulletin* on March 6, 2010, with a 30-day public comment period for each rulemaking. The Environmental Quality Board (EQB) adopted these regulations on December 15, 2009.

The Land Recycling and Environmental Remediation Standards Act (Act 2) requires the Board to establish by regulation uniform Statewide health-based standards for regulated substances for each environmental medium so that any substantial present or probable future risk to human health and the environment is eliminated. Section 104(a) of Act 2 also explicitly recognizes that such Statewide health-based standards would need to be updated over time as better science became available and as the need for clarification or enhancement of the program became apparent. The proposed Administration of the Land Recycling Program rulemaking updates numeric Statewide health-based standards in 25 Pa Code Chapter 250 relating to the cleanup of contaminated sites under Act 2. The proposed changes to the standards, which were first promulgated in 1997 and were most recently updated by the Board in 2001, use current EPA guidance and up-to-date scientific and toxicological information to revise the cleanup standards. The proposed technical amendments will affect owners, operators and purchasers of properties and facilities who volunteer or are required to perform remediation of contaminated sites.

Included in the proposed rulemaking are Statewide health standards for Methyl Tertiary Butyl Ether (MTBE); however, no changes are proposed to the standard from what is currently in effect in Chapter 250. The current Chapter 250 Statewide health cleanup standard for MTBE is 20 ug/l for groundwater used for drinking water. This 20 ug/l standard is the odor threshold for MTBE as published by the U.S. Environmental Protection Agency in the "2006 Edition of the Drinking Water Standards and Health Advisories" (EPA 822-R-06-013). During the development of the proposed rulemaking, the Department had considered revising the MTBE standard, which would have allowed for higher





concentrations of MTBE based on health-based calculations, but would have resulted in unacceptable taste and odor impacts on groundwater used for drinking water.

The Cleanup Standards Scientific Advisory Board (CSSAB) assisted with the development and review of the proposed rulemaking. While the CSSAB is supportive of the overall rulemaking, it opposes the standards for MTBE, as contained in the proposed regulations, because they do not reflect specific health-based criteria from Act 2.

The proposed Administration of the Uniform Environmental Covenants Act rulemaking establishes requirements for the submission of an environmental covenant to the Department of Environmental Protection (Department) as demonstration of attainment or maintenance of an environmental remediation standard under the Land Recycling and Environmental Remediation Standards Act (Act 2). The rulemaking is authorized by the Uniform Environmental Covenants Act (UECA), which was signed into law in Pennsylvania on December 18, 2007. UECA provides for the creation of environmental covenants to ensure the long-term stewardship of activity and use limitations on property remediated under Act 2, the Storage Tank and Spill Prevention Act (Tank Act), and other state and federal statutes. 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. 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. The Department discussed the proposed rulemaking with the Cleanup Standards Scientific Advisory Board (CSSAB), and the Storage Tank Advisory Committee (STAC).

The Department will provide the Commission with the assistance required to facilitate a thorough review of these proposals. Section 5(d) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendation or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

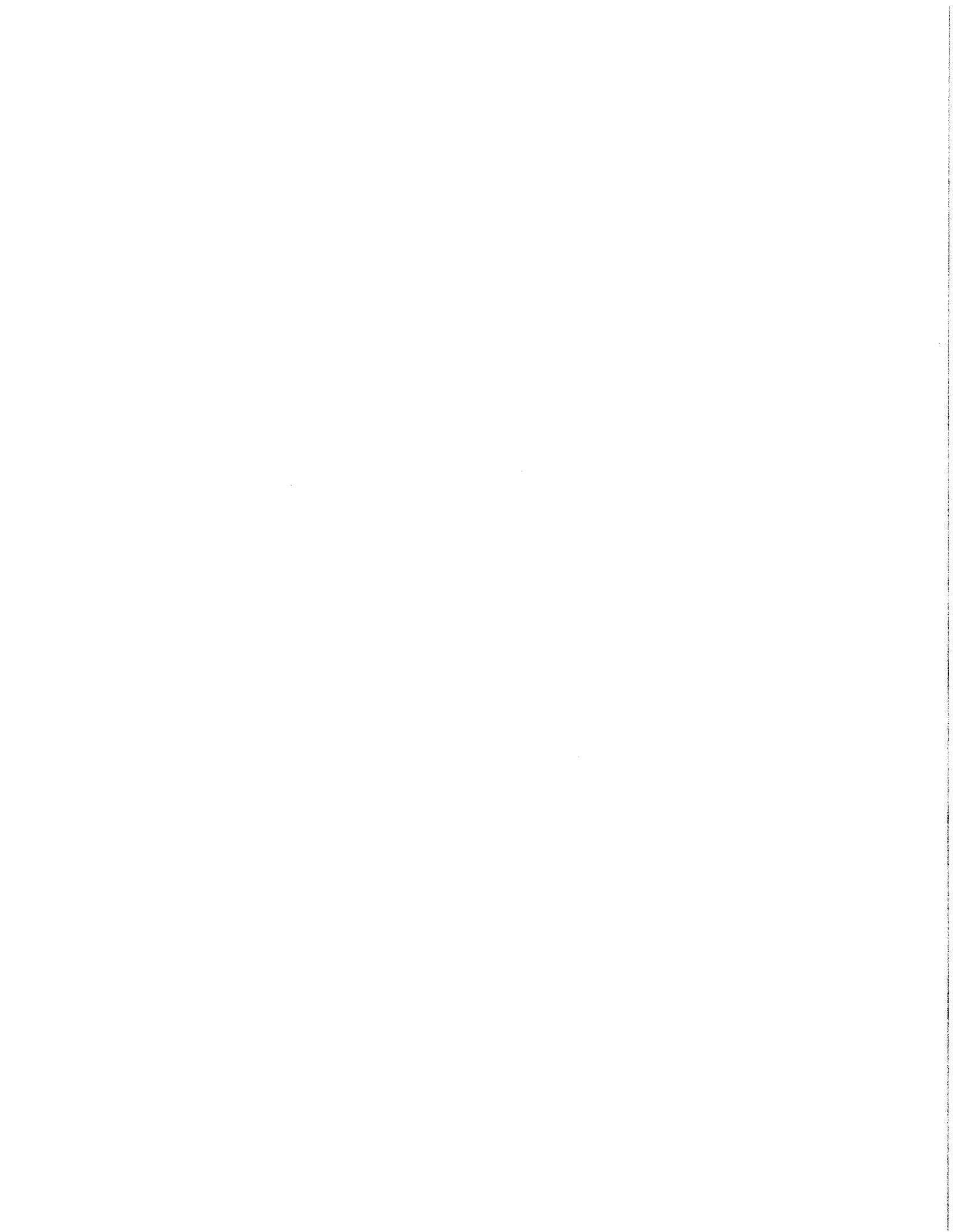
Please contact me at the number above if you have any questions or need additional information.

Sincerely,



Michele L. Tate  
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7- 454  
 SUBJECT: Administration of the Uniform Environmental Covenants Act  
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

Proposed Regulation  
 Final Regulation  
 Final Regulation with Notice of Proposed Rulemaking Omitted  
 120-day Emergency Certification of the Attorney General  
 120-day Emergency Certification of the Governor  
 Delivery of Tolled Regulation  
     a.  With Revisions                      b.  Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2-24-10	<i>P. Newton</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Camille George
2/24/10	<i>Jim Papp</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
2/24/10	<i>Donna Castelli</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Mary Jo White
2-24-10	<i>A. Rebarzst</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
2/24/10	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
2-24-10	<i>Maya Garas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

RECEIVED  
 2010 FEB 24 PM 3:17  
 INDEPENDENT REGULATORY REVIEW COMMISSION

