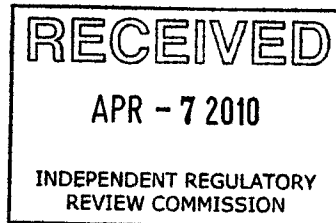


2824

April 5, 2010

Environmental Quality Board  
P.O. Box 8447  
Harrisburg, PA 17105-8477

Re: Comments Proposed Rulemaking [25 PA. Code CH. 253]  
Administration of the Uniform Environmental Covenants Act

To Whom It May Concern:

The following comments on the proposed regulations in Chapter 253 Administration of the Uniform Environmental Covenants Act (PA Bulletin, Vol. 40, No.10, 3/06/2010) are being submitted on behalf of Pennsylvania Power Company, Pennsylvania Electric Company, and Metropolitan Edison Company, subsidiaries of FirstEnergy Corp. (FirstEnergy). Together, these three companies are involved in the transmission and distribution of electricity, as well as energy management and other energy-related services. These three electric utility operating companies serve approximately 1.3 million customers in 49 Pennsylvania counties.

We compliment the Department on moving forward with issuing regulatory rules to implement the requirements established in the Uniform Environmental Covenants Act (UECA) enacted into law on December 18, 2007. We respectfully submit the following comments on the proposed rules:

1. **Compliance Costs.** The Department makes the statement that they "do not anticipate any increased costs to the regulated community as a result of the proposed rulemaking, except for the fee proposed in subsection 253.7 (relating to fees)." We respectfully disagree with this statement, and ask that the Department appropriately acknowledge that additional costs will be incurred by the regulated community for the following reasons:
  - a. The development of a site-specific environmental covenant will require additional labor or contracting costs by the regulated community as their staff will either have to develop and file a covenant themselves, or in many cases, contract out the development of a covenant to an environmental consultant.
  - b. Additional costs associated with the review of a covenant by in-house or external legal staff will be required.
  - c. Additional administrative and legal costs will be required to demonstrate that an environmental covenant on a property can be removed (e.g., attainment of a groundwater standard).

2. Chapter 253.2. Contents and form of environmental covenant. While it is recognized that the UECA outlines what an environmental covenant must contain, we believe the Department should identify that a site-specific environmental covenant must include language discussing under what conditions (e.g., attainment of residential soil or drinking standards) a covenant can be terminated or amended. At a minimum, the Department should put increased emphasis on the importance and benefits of putting such language into the covenant under what "may" go into a covenant (included under 253.2(b) (4)). As property transfers from one entity to another, the new landowner may be willing to conduct additional remediation at the site to a residential soil or drinking water medium-specific concentration (MSC). By not putting such language into the original signed covenant, existing or new property owners will only be able to amend such a covenant through legal proceedings, thus discouraging entities from remediating to an unrestricted land use standard or demonstrating a standard has been obtained (e.g., through groundwater monitoring) in the future.
3. Chapter 253.2(b) (4), amendment or termination language included in an environmental covenant. We encourage the Department to provide additional language in the rules pertaining to occurrences or actions that could be included in the development of an environmental covenant with regards to its amendment or termination. For example, the demonstration of attainment of a residential soil or drinking water MSC through additional remediation or monitoring should be mentioned.
4. Chapter 253.4(c), clarification of need for environmental covenant when a background standard is obtained. It is currently unclear in the proposed rules if or when an environmental covenant is required when a background standard is demonstrated by the regulated community at their remediation site. For example, naturally occurring arsenic in soil is known to exceed the residential soil MSC (i.e., 12 mg/kg) in various geological formations across Pennsylvania. Therefore, arsenic might be left in-place at a remediation site above the residential soil MSC, but below the established site-specific background standard for the site. Based on the Department's "Uniformed Environmental Covenants Act (UECA) Frequently Asked Questions (FAQs)" document, Question 10, if this situation occurred, and the Department concurred with the attainment of the background standard, an environmental covenant would not be required. Therefore, we encourage the department to add additional clarification in the rules on when an environmental covenant is or is not needed when the regulated community is able to demonstrate the attainment of a background standard at their site.
5. Chapter 253.6(a) should address whether a regulated entity must request an extension from the Department regarding the submittal of proof of recordation of the covenant (if unable to submit within 60 days according to 253.5(e)) in the event a recorder of deeds does not timely provide a copy of the recorded document pertaining to a filed environmental covenant.

We appreciate the opportunity to review and provide comments to the Department on the proposed Chapter 253 rules, Administration of the Uniform Environmental Covenants Act. If you should have any questions regarding the comments we have submitted, please do not hesitate to contact me at (610) 921-6935.

Sincerely,

A handwritten signature in black ink that reads "Jason A. Speicher". The signature is fluid and cursive, with the first name "Jason" and last name "Speicher" clearly legible.

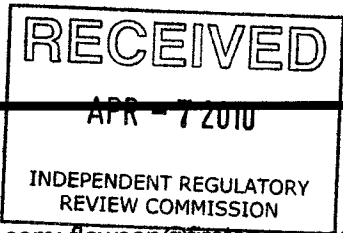
Jason A. Speicher  
Advanced Environmental Scientist

c: A. Skicki – (FirstEnergy Corp.)  
H. Slagle – (FirstEnergy Corp.)  
F. Lawson – (FirstEnergy Corp.)  
S. Fulton – (FirstEnergy Corp.)  
D. Weber (FirstEnergy Corp.)  
R. Evans – (FirstEnergy Corp.)

File: Regulatory Comments

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Chapter 253\_April 2010\_DJW.DOC

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**From:** jspeicher@firstenergycorp.com  
**Sent:** Monday, April 05, 2010 11:28 AM  
**To:** EP, RegComments  
**Cc:** askicki@firstenergycorp.com; hslagle@firstenergycorp.com; flawson@firstenergycorp.com; srfulton@firstenergycorp.com; djweber@firstenergycorp.com; rlevans@firstenergycorp.com; haneyg@firstenergycorp.com  
**Subject:** Proposed Ruled: 25 PA. Code CH 253 - Administration of the Uniform Environmental Covenants Act  
**Attachments:** FE Comments on Proposed UECA Rules Chapter 253\_April 2010\_.pdf

To whom it may concern:

Please find the attached comments respectfully submitted by FirstEnergy Corp. and its distribution companies on the subject proposed rules. If the Department should have any questions regarding these comments they can contact me at the information provided below.

Thank You,  
Jason Speicher

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 FirstEnergy Corp.  
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