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April 5, 2010

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Via Electronic Mail Only

Environmental Quality Board (RegComments@state.pa.us)
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301

Re: Proposed Rulemaking
Administration of the Uniform Environmental Covenants Act
25 Pa Code Chapter 253
Pa. Bulletin, Vol. 40, No. 10 (March 6, 2010)

To Whom It May Concern:

The Pennsylvania Counsel of Professional Geologists ("PCPG") is a diverse group of over 450 licensed professional geologists, geologists and allied scientists. As a professional organization, PCPG is committed to advocating the use of sound science in the (a) formulation of public policy; (b) protection of human health and the environment; (c) establishment of regulatory programs and enforcement procedures; and (d) development of educational programs and curricula for earth science and environmental education. Many of our members are routinely involved with site investigations and cleanups under Pennsylvania's award-winning Land Recycling Program and have a genuine professional interest in ensuring that investigations and cleanups are performed in an environmentally responsible and scientifically sound manner, are protective of human health and the environment and which avoid unnecessary costs and inefficiencies.

PCPG has the following comments concerning the above-referenced proposed Uniform Environmental Covenants Act rulemaking:

1. Section 253.2(6), Contents and form of an environmental covenant – the proposed regulation requires a "detailed" narrative description of the contamination and remedy. One of the purposes of the Environmental Covenant (EC) is to provide the average layperson with general notice of the contamination, the remedy and the use limitations that are required to achieve the remedy. Given that many sites can be complex with multiple areas of concern and multiple affected media, PCPG believes a detailed narrative would render the EC less readable and understandable by the average layperson and could essentially result in wholesale duplication of voluminous information already on file with the Department in the form of reports submitted under the Land Recycling Program. PCPG recommends that § 253.2 instead require a concise narrative providing a general

description of the contamination and remedy, including the regulated substances of concern, affected environmental media, general exposure assumptions and the general location and extent of the regulated substances.

2. Section 253.4(d), Requirements for and waiver of environmental covenants – the proposed regulation requires submission of a request and justification for a waiver of an EC for remediations under the site-specific standard to be submitted to the Department in writing either as part of the Remedial Action Plan (RAP) under Chapter 245 or as part of the Cleanup Plan under Chapter 250. PCPG believes that it is premature and inefficient to require specific requests for waiver of ECs at the RAP or Cleanup Plan stage as the final results of the remediation, and the standards that are ultimately achieved, are often several years beyond the RAP or Cleanup Plan stage. Furthermore, PCPG believes that often the Department will not have sufficient information to render an informed decision on the waiver request at the RAP or Cleanup Plan stage, and that such a decision is more properly made once the remediation is near completion and the remediator is preparing to draft the Remedial Action Completion Report (RACR) under Chapter 245 or the Final Report under Chapter 250. PCPG recommends that the regulation require, at the RAP or Cleanup Plan stage, only that the remediator indicate whether it intends to request a waiver of an EC and if so, for which properties and on what basis. That is sufficient information at that stage to give the Department the “game plan” for the remediation. Actual submittal of a written request for waiver and justification should then be required 30 days prior to submission of the (RACR) or Final Report, consistent with the timing for submittal for a remediation under the background or statewide health standards.
3. Section 253.5(b), Submission of environmental covenants and related information – the proposed regulation requires submission of a draft EC for remediations under the site-specific standard to be submitted to the Department in writing either as part of the RAP (Chapter 245) or the Cleanup Plan (Chapter 250). PCPG believes that (i) the ultimate requirements for the EC will not be known until the remediation is completed, i.e., at the Final Report or RACR stage; (ii) the DEP case manager will not have the information required to properly evaluate the draft EC until the Final Report or RACR is prepared; (iii) often, conditions change between the RAP/ Cleanup Plan stage and the Final Report or RACR submittal; and (iv) negotiating and drafting an EC takes time and money, and requiring it at the Cleanup Plan/RAP stage will result in duplicative work because it will likely need to be revised based on the remedial outcome. PCPG members have submitted draft ECs at the RAP/Cleanup Plan stage only to be advised by the Department staff that it is premature to review those ECs until the remediation is complete and the RACR or Final Report are being finalized for submittal. Additionally, PCPG members have frequently encountered situations where the conditions actually achieved were significantly different than anticipated at the RAP/Cleanup Plan stage, necessitating an additional round of revisions and

approvals to the draft EC.

PCPG recommends that the regulation be revised to require that the remediator, in his/her report, identify whether they intend to rely on any activity and/or use limitations to achieve the selected remediation standard, and if so, to identify the properties that will require a covenant and to clearly indicate what activity and use limitations the remediator is proposing to achieve the selected standard. In so doing, the remediator is providing the DEP with the conceptual approach to the remediation, without wasting time drafting, negotiating and reviewing an EC that will most likely need to be revisited or may even prove unnecessary by the time the remediation is completed.

PCPG notes additionally that for the 90-day "deemed approved" provision under the proposed regulation (§ 253.2(5)), the "date the Department receives the necessary copies of the signed final covenant and the information reasonably required to make a determination concerning its approval or disapproval is the "date of receipt" for the start of the 90 day clock. PCPG contends that since the Department will not have the information required to make a determination on the EC until it has received the actual RACR or Final Report, and since the 90-day clock doesn't begin to run until a final signed EC is submitted to the Department, PCPG recommends that the regulation only require submittal of the draft EC concurrently with submittal of the RACR/Final Report.

4. Section 253.5(d), Submission of environmental covenants and related information – the proposed regulation requires submission of all necessary copies of the final EC, signed by all parties but the Department, with submission of the RACR or the Final Report. PCPG believes that it is premature and inefficient to submit the signed EC until the Department has received, reviewed and approved of the RACR or the Final Report and the draft EC. As noted above, from a practical standpoint, the Department cannot render a determination on the EC until it has reviewed and approved of the RACR or the Final Report because the RACR or Final Report will contain the information required by the Department to make that determination. PCPG contends that review of the RACR/Final Report and the draft EC are most efficiently performed concurrently.

Importantly, the Land Recycling Act does not require an EC in order to obtain the cleanup liability relief afforded by the Act. Rather, UECA requires that the activity and use limitations relied on to demonstrate attainment of the Act 2 standard be memorialized in an EC. Therefore, PCPG recommends that the regulation be revised to require concurrent or nearly concurrent submission of the draft EC with the RACR/Final Report and that once the Department reviews and approves of both the RACR/Final Report and the draft EC, the remediator then be notified of the approval and be given 30 days to submit all necessary signed originals of the EC for the Department's signature.

5. Section 253.2(5) – based on the above discussion, the “date of receipt” for the EC should be the date the Department receives the final draft EC and the RACR or the Final Report.

PCPG believes that the above comments, if adopted by the Department, will provide the Department with the information it needs to review the conceptual approach to the remediation at the RAP/Cleanup Plan stage, while making the process of EC review and approval more efficient for both the Department, the environmental professionals involved in cleanups and for the remediating parties.

Respectfully submitted,

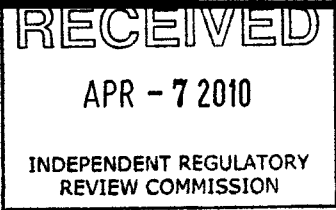
A handwritten signature in cursive script that reads "James LaRegina". The signature is written in black ink and is positioned above the printed name and title.

James LaRegina, P.G.
President, PCPG

cc: Independent Regulatory Review Commission (via email to irrc@irrc.state.pa.us)
#7-454 (IRRC #2824)

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From: LaRegina, James [jlaregina@hrg-inc.com]
Sent: Monday, April 05, 2010 3:50 PM
To: EP, RegComments; IRRRC
Cc: PCPG
Subject: PCPG Comments to Ch. 250 and 253 Proposed Rulemaking
Attachments: PCPGCh253.pdf; PCPGCh250.pdf



To Whom It May Concern:

On behalf of the Pennsylvania Council of Professional Geologists, PCPG respectfully submits the attached two letters with our comments to the above referenced rule making. Should you have any questions, please do not hesitate to call.

Sincerely

Jim LaRegina, PG
PCPG President

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Senior Project Manager

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Member of the PA Council of Professional Geologists

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