

**PENNSYLVANIA UNIFORM
ENVIRONMENTAL COVENANTS ACT**

As of February 19, 2008, the Pennsylvania Uniform Environmental Covenants Act (UECA) mandates the use of environmental covenants (ECs) on any property where engineering or institutional controls are used to demonstrate compliance with federal or state laws, including Pennsylvania Department of Environmental Protection's (PADEP's) Land Recycling and Environmental Remediation Standards Act (Act 2) and Storage Tank and Spill Prevention Act.

While the ideal goal is to remediate an environmentally impaired property such that it can be used safely for any purpose, this is not always technically or economically practicable. Engineering controls (e.g., paving, buildings, soil cover/berms, and fencing) and institutional controls help protect human health and the environment by imposing activity or use restrictions to limit exposure to residual contamination.

Prior to the UECA, placing language describing the nature of contamination and future use limitations in a deed constituted a valid institutional control in Pennsylvania. Practically, however, reliability and enforceability were limited. Now engineering and institutional controls must be described in an enforceable EC and recorded in a state registry. These measures are likely to promote adherence to restrictions in the future and protection of human health and the environment, and may even boost development as potential Brownfields buyers get a better handle on a property's situation.

The UECA is the first major legislation impacting Pennsylvania's remediation programs since Act 2 in 1995. The state joins New Jersey, West Virginia, Ohio, Delaware, Maryland, and 14 others with similar laws, all springing from a national effort to standardize the content and enforceability of activity and use limitations on contaminated sites. As with any new law, implementation will be a process and Cummings/Riter will track and provide additional information as it becomes available.

KEY PROVISIONS

- **Approval Process:** Instead of reviewing and approving deed restriction language via final reports, PADEP regional staff and counsel will now review and sign the EC. They recommend discussing the need for and contents of ECs early in the remediation process, and submitting draft ECs with remedial action or cleanup plans, **not** with final reports. Final EC approval is automatic if PADEP does not sign within 90 days.
- **Required Signatories:**
 - ✓ Property owner,
 - ✓ Responsible party (if different than owner), and
 - ✓ State/federal agency overseeing the remediation.
- **Recording:** Record ECs in the county in which the property is located within 30 days of PADEP approval, and in PADEP's electronic registry. Until the registry is ready, ECs will be listed on [PADEP's website](#).
- **Deed Restrictions, Notices, and ECs that Pre-Date UECA:** Existing instruments must be converted to comply within five years, i.e., by February 19, 2013. It would be prudent for landowners with a sizeable portfolio of remediated properties to begin developing an inventory of instruments that require conversion. Failure to meet UECA requirements will preclude obtaining a release of liability and may lead to enforcement actions.
- **Termination or Amendment:** In general, an EC remains with the land and is perpetual, but it may include a provision terminating itself upon a specific duration or event. Amending and terminating follow similar processes, the most common of which is by consent, which now requires the signature of all parties to the EC.
- **Enforcement:** Regulatory agencies, municipalities/counties, and parties to the EC have the right to sue for enforcement.
- **Required Information:** PADEP has developed a [model EC template](#) that requires a description of the following: property, pertinent contamination and remedy, activity and use limitations, and administrative record associated with the EC.