

MID ATLANTIC REAL ESTATE JOURNAL

NEW JERSEY-PENNSYLVANIA-DELAWARE-MARYLAND-VIRGINIA

February 22 - March 13, 2008

Volume 20, Issue 4

ASK AN EXPERT

Ask an Attorney

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What requirements does Pennsylvania's new Uniform Environmental Covenants Act place on my brownfields remediation project?

On December 19, 2007, the Commonwealth of Pennsylvania enacted the Uniform Environmental Covenants Act (UECA), which takes effect on February 19, 2008. UECA imposes various substantive and procedural requirements on the creation and recordation of instruments documenting engineering and institutional controls with which owners and developers of contaminated property will need to comply. While UECA was designed to create a standardized approach to creating and documenting activity and use limitations, it imposes several new legal requirements that will affect persons that own, remediate or redevelop land that already has or will need activity and use limitations. More specifically, UECA imposes new recording requirements where engineering or institutional controls are being used to demonstrate compliance with federal and state laws, including Pennsylvania's



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Land Recycling Act (Act 2) and Storage Tank and Spill Prevention Act (the Tank Act).

UECA establishes certain basic requirements that apply to "environmental covenants," defined to mean a servitude "arising under an environmental response project which imposes activity and use limitations." The phrase "activity and use limitations" is defined by UECA to include both engineering and institutional controls and apply to any environmental remediation performed under a state or federal program, including a cleanup performed under voluntary cleanup program. While UECA does not impose any substantive change on the type or extent of cleanup that must be

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performed, it establishes recording requirements with broad applicability. Even the erection of fencing to limit access and exposure to contamination on a property, when undertaken as part of a voluntary cleanup program, now are subject to the recording and content requirements imposed by UECA.

Within 5 years of the passage of UECA, any existing deed instrument imposing an activity and use limitation to demonstrate compliance with Act 2 or the Tank Act must be converted to an environmental covenant in accordance with UECA. In addition to reviewing and signing all of the environmental covenants prepared in compliance with UECA, the Pennsylvania Department of Environmental Protection (DEP) is also charged under UECA with creating a registry "which contains all environmen-

tal covenants and any amendment or termination of those covenants." Presumably at least in part because of the daunting amount of work associated with reviewing and signing all of these environmental covenants along with creating the registry, UECA includes a provision whereby DEP's failure to approve (e.g., by signing) or deny an environmental covenant within 90 days will result in a deemed approval thereof. The decision to approve or disapprove an environmental covenant, along with any other DEP action under the Act, may be appealed to Pennsylvania's Environmental Hearing Board.

On February 12, 2008, DEP published several documents to assist with the implementation of UECA, and also announced that it will maintain on its website an interim list of sites

burdened by an environmental covenant prior to the development of the Pennsylvania Environmental Covenant Registry, which UECA requires to be developed.

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