

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 43

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WATSON, MELIO, GALLOWAY AND FABRIZIO, JANUARY 30, 2007

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 19, 2007

AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
2 Consolidated Statutes, providing for uniform environmental
3 covenants.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 27 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 65

9 UNIFORM ENVIRONMENTAL COVENANTS

10 Sec.

11 6501. Short title of chapter.

12 6502. Definitions.

13 6503. Nature of rights; subordination of interests.

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9 Commerce Act.
10 6515. Environmental Quality Board.
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12 6517. Relationship to other laws.
13 § 6501. Short title of chapter.

14 This chapter shall be known and may be cited as the Uniform
15 Environmental Covenants Act.

16 § 6502. Definitions.

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

20 "Activity and use limitations." Restrictions or obligations
21 with respect to real property created under this chapter. The
22 term includes engineering controls and institutional controls.

23 "Agency." Any of the following:

24 (1) The Department of Environmental Protection of the
25 Commonwealth.

26 (2) A Federal agency which determines or approves the
27 environmental response project pursuant to which the
28 environmental covenant is created.

29 "Board." The Environmental Hearing Board.

30 "Common interest community." A condominium, cooperative or

1 other real property, with respect to which a person, by virtue
2 of ownership of a parcel of real property or of ownership of an
3 interest in real property, is obligated to pay for property
4 taxes, insurance premiums, maintenance or improvement of other
5 real property described in a recorded covenant which creates the
6 common interest community.

7 "Department." The Department of Environmental Protection of
8 the Commonwealth.

9 "Engineering controls." Remedial actions directed
10 exclusively toward containing or controlling the migration of
11 regulated substances through the environment. The term includes
12 slurry walls, liner systems, caps, leachate collection systems
13 and groundwater recovery trenches.

14 "Environmental covenant." A servitude arising under an
15 environmental response project which imposes activity and use
16 limitations.

17 "Environmental response project." A plan or work performed
18 for environmental remediation of real property, conducted:

19 (1) under a Federal program governing environmental
20 remediation of real property;

21 (2) under a Commonwealth program governing environmental
22 remediation of real property;

23 (3) incident to closure of a solid or hazardous waste
24 management unit if the closure is conducted with approval of
25 an agency; or

26 (4) under a Commonwealth voluntary cleanup program
27 authorized by statute.

28 "Holder." A person that is the grantee of an environmental
29 covenant as specified in section 6503(a) (relating to nature of
30 rights; subordination of interests).

1 "Institutional controls." Measures undertaken to limit or
2 prohibit certain activities which may interfere with the
3 integrity of a remedial action or result in exposure to
4 regulated substances at a site. The term includes fencing and
5 restrictions on the future use of the site.

6 "Land Recycling Act." The act of May 19, 1995 (P.L.4, No.2),
7 known as the Land Recycling and Environmental Remediation
8 Standards Act.

9 "Person." Any individual, corporation, partnership,
10 association or other entity recognized by law as the subject of
11 rights, duties or obligations. The term includes the United
12 States of America, a Federal agency, the Commonwealth, an agency
13 or instrumentality of the Commonwealth and a political
14 subdivision.

15 "Record." Information which is:

16 (1) inscribed on a tangible medium or stored in an
17 electronic or other medium; and

18 (2) retrievable in perceivable form.

19 "State." A state of the United States, the District of
20 Columbia, Puerto Rico, the United States Virgin Islands or any
21 territory or insular possession subject to the jurisdiction of
22 the United States.

23 § 6503. Nature of rights; subordination of interests.

24 (a) Nature.--Any person, including a person that owns an
25 interest in the real property, or an agency may be a holder. An
26 environmental covenant may identify more than one holder. The
27 interest of a holder is an interest in real property.

28 (b) Rights of agency.--The rights of an agency under this
29 chapter or under an approved environmental covenant, other than
30 as a holder, are not interests in real property.

1 (c) Obligations.--An agency is bound by any obligation it
2 assumes in an environmental covenant, but an agency does not
3 assume obligations merely by signing an environmental covenant.
4 Any person other than an agency that signs an environmental
5 covenant is bound by the obligations the person assumes in the
6 covenant; but signing the covenant does not change obligations,
7 rights or protections granted or imposed under law other than
8 this chapter except as provided in the environmental covenant.

9 (d) Rules.--The following rules apply to interests in real
10 property in existence at the time an environmental covenant is
11 created or amended:

12 (1) An interest which has priority under law other than
13 this chapter is not affected by an environmental covenant
14 unless the owner of the interest subordinates its interest to
15 the covenant.

16 (2) As a condition to approval of an environmental
17 covenant an agency may require that an owner of a prior
18 interest subordinate that interest to the environmental
19 covenant.

20 (3) A subordination agreement may be contained in an
21 environmental covenant covering real property or in a
22 separate record. If the environmental covenant covers
23 commonly owned property in a common interest community, the
24 agreement or record may be signed by any person authorized by
25 the governing board of the owners association.

26 (4) An agreement by a person to subordinate a prior
27 interest to an environmental covenant affects the priority of
28 that person's interest but does not by itself impose an
29 affirmative obligation on the person with respect to the
30 environmental covenant nor affect that person's existing

environmental liability.

§ 6504. Contents of environmental covenant.

(a) Required information.--An environmental covenant must:

(1) state that the instrument is an environmental covenant executed pursuant to this chapter;

(2) contain a legally sufficient description of the real property subject to the environmental covenant;

(3) contain a brief narrative description of the contamination and the remedy;

(4) describe the activity and use limitations on the real property;

(5) identify every holder;

(6) be signed, 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; and

(7) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) Permitted information.--In addition to the information required by subsection (a), 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

1 any site work affecting the contamination on the property
2 subject to the environmental covenant;

3 (2) requirements for periodic reporting describing
4 compliance with the environmental covenant;

5 (3) rights of access to the property granted in
6 connection with implementation or enforcement of the
7 environmental covenant;

8 (4) restriction or limitation on amendment or
9 termination of the environmental covenant in addition to
10 those contained in sections 6509 (relating to duration) and
11 6510 (relating to amendment or termination by consent);

12 (5) rights of the holder in addition to its right to
13 enforce the environmental covenant under section 6511
14 (relating to enforcement of environmental covenant); and

15 (6) a narrative description of the contamination and
16 remedy, including the contaminants of concern, the pathways
17 of exposure, limits on exposure and the location and extent
18 of the contamination.

19 (c) Agency.--

20 (1) Prior to signing a covenant, an agency may review
21 the covenant and provide its conditions for approval.

22 (2) In addition to other conditions for its approval of
23 an environmental covenant, an agency may require those
24 persons specified by the agency that have interests in the
25 real property to sign the covenant.

26 (3) Except as set forth in paragraph (4), signature by
27 an agency on an environmental covenant constitutes its
28 approval of the environmental covenant.

29 (4) Failure of the department to approve or disapprove
30 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.

(5) The department's decision to approve or not approve an environmental covenant is appealable to the board.

§ 6505. Validity.

(a) Nature.--An environmental covenant which complies with this chapter runs with the land.

(b) Impediments excluded.--An environmental covenant which is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) the benefit or burden does not touch or concern real property;

(7) there is no privity of estate or contract;

(8) the holder dies, ceases to exist, resigns or is replaced; or

(9) the persons identified as owner and holder in the environmental covenant are the same person.

(c) Prior instruments.--

(1) An instrument which creates restrictions or obligations with respect to real property which would, except for the fact that the instrument was recorded before the

1 effective date of this chapter, qualify as activity and use
2 limitations is not invalid or unenforceable:

3 (i) by reason of the limitations on enforcement of
4 interests described in subsection (b); or

5 (ii) because it was identified as an easement,
6 servitude, deed restriction or other interest.

7 (2) This chapter does not apply in any other respect to
8 an instrument referred to in paragraph (1).

9 (d) Other interests.--

10 (1) This chapter does not invalidate or render
11 unenforceable any interest, whether designated as an
12 environmental covenant or other interest, which is otherwise
13 enforceable under the law of this Commonwealth.

14 (2) Nothing in this chapter shall be construed to
15 restrict, affect or impair the rights of any person to enter
16 into or record a restrictive covenant, institution control,
17 easement, servitude or other restriction on the use of
18 property permitted by law that does not satisfy the
19 requirements of this chapter and does not have the
20 permission, approval or consent of an agency, a political
21 subdivision, a regulatory body or another unit of government.
22 However, a restrictive covenant, institutional control,
23 easement, servitude or other restriction on the use of
24 property that does not satisfy the requirements of this
25 chapter and does not have such permission, approval or
26 consent is not subject to this chapter.

27 § 6506. Relationship to other land-use law.

28 (a) Effect on unauthorized uses.--This chapter does not
29 authorize a use of real property which is otherwise prohibited
30 by:

1 (1) zoning;

2 (2) law other than this chapter regulating use of real
3 property; or

4 (3) a recorded instrument which has priority over the
5 environmental covenant.

6 (b) Effect on authorized uses.--An environmental covenant
7 may prohibit or restrict uses of real property which are
8 authorized by zoning or by law other than this chapter.

9 § 6507. Notice.

10 (a) Recipients.--The owner or another person designated by
11 the agency shall provide a copy of a signed environmental
12 covenant as required by the agency to:

13 (1) all persons who signed the environmental covenant;

14 (2) all persons holding a recorded interest in the real
15 property subject to the environmental covenant;

16 (3) all persons in possession of the real property
17 subject to the environmental covenant;

18 (4) each political subdivision in which real property
19 subject to the environmental covenant is located; and

20 (5) any other persons the agency requires.

21 (b) Effect.--Failure to provide a copy of the environmental
22 covenant as required by the agency does not affect the
23 environmental covenant's validity.

24 § 6508. Recording.

25 (a) Requirement.--An environmental covenant, any amendment
26 or termination of the environmental covenant and a waiver under
27 section 6510(a)(3)(i) or (b)(2) (relating to amendment or
28 termination by consent) must be recorded in every county in
29 which any portion of the real property subject to the
30 environmental covenant is located. A recorded environmental

covenant or a notice recorded under section 6512 (relating to registry; substitute notice) must be indexed in the grantor's index in the names of the owners of the real property subject to the environmental covenant and in the grantee's index in the name of the holder.

(b) Applicable law.--Except as otherwise provided in section 6509(c) (relating to duration), an environmental covenant is subject to the law of this Commonwealth governing recording and priority of interests in real property. Recording of an environmental covenant pursuant to the law of this Commonwealth provides the same constructive notice of the environmental covenant as the recording of a deed provides of an interest in real property.

§ 6509. Duration.

(a) Perpetual.--An environmental covenant is perpetual unless one of the following applies:

(1) It is limited by its terms to a specific duration or the occurrence of a specific event.

(2) It is terminated by consent under section 6510 (relating to amendment or termination by consent).

(3) It is terminated under subsection (b).

(4) It is terminated by foreclosure of an interest which has priority over the environmental covenant.

(5) It is terminated or modified by judicial decree in an eminent domain proceeding, but only if:

(i) the agency which signed the environmental covenant consents to the judicial action;

(ii) all persons identified in section 6510(a) and (b) are given notice of the pendency of the eminent domain proceeding; and

1 (iii) the court determines, after hearing, that the
2 termination or modification will not adversely affect
3 human health or the environment.

4 (b) Judicial modification.--A court, in an action in which
5 all persons identified in section 6510(a) and (b) have been
6 given notice, may terminate or modify the environmental covenant
7 on the real property subject to the environmental covenant if
8 any of the following apply:

9 (1) The agency which signed an environmental covenant
10 has determined that:

11 (i) the intended benefits of the environmental
12 covenant can no longer be realized; or

13 (ii) changed circumstances indicate that the
14 intended benefits can only be realized through
15 modification of the environmental covenant.

16 (2) A standard allowing for a reopener of a completed
17 environmental response project under section 505 of the Land
18 Recycling Act is met.

19 (c) Other modifications.--Except as otherwise provided in
20 subsection (a) or (b), an environmental covenant may not be
21 extinguished, limited or impaired through:

22 (1) issuance of a tax deed;

23 (2) foreclosure of a tax lien; or

24 (3) application of the doctrine of adverse possession,
25 prescription, abandonment, waiver, lack of enforcement or of
26 a similar doctrine.

27 § 6510. Amendment or termination by consent.

28 (a) Signature.--An environmental covenant may be amended or
29 terminated by consent only if the amendment or termination is
30 signed by all of the following:

1 (1) The agency.

2 (2) Unless waived by the agency, the current owner in
3 fee simple of the real property subject to the environmental
4 covenant.

5 (3) Each person that originally signed the environmental
6 covenant or that person's successor in interest unless:

7 (i) the person waived the right to consent in a
8 signed record; or

9 (ii) a court finds that the person no longer exists
10 or cannot be located or identified with the exercise of
11 reasonable diligence.

12 (4) Except as otherwise provided in subsection (d)(2),
13 the holder.

14 (b) Effect upon property interests subject to environmental
15 covenants.--If an interest in real property is subject to an
16 environmental covenant, the interest is not affected by an
17 amendment of the covenant unless the current owner of the
18 interest:

19 (1) consents to the amendment; or

20 (2) has waived in a signed record the right to consent
21 to the amendment.

22 (c) Effect of assignment.--Except for an assignment
23 undertaken pursuant to a governmental reorganization, assignment
24 of an environmental covenant to a new holder is an amendment.

25 (d) Assignment requirements.--Except as otherwise provided
26 in the environmental covenant:

27 (1) a holder may not assign its interest without consent
28 of the other parties;

29 (2) a holder may be removed and replaced by agreement of
30 the other parties specified in subsection (a); and

1 (3) a court of competent jurisdiction may fill a vacancy
2 in the position of holder.

3 § 6511. Enforcement of environmental covenant.

4 (a) Parties.--A civil action for injunctive or other
5 equitable relief for violation of an environmental covenant may
6 be maintained by:

7 (1) a party to the environmental covenant;

8 (2) the agency or, if it is not the agency, the
9 department;

10 (3) any other person to whom the environmental covenant
11 expressly grants power to enforce;

12 (4) a person whose interest in the real property or
13 whose collateral or liability may be affected by the alleged
14 violation of the environmental covenant; and

15 (5) a political subdivision in which the real property
16 subject to the environmental covenant is located.

17 (b) Regulatory authority.--

18 (1) This chapter does not limit the regulatory authority
19 of the agency or the department under law other than this
20 chapter.

21 (2) In addition to bringing an action under subsection
22 (a), the department may issue any order necessary to enforce
23 section 6517(b) (relating to relationship to other laws).

24 (c) Liability.--A person is not subject to liability for
25 environmental remediation solely because the person has the
26 right to enforce an environmental covenant.

27 § 6512. Registry; substitute notice.

28 (a) Registry.--The department shall establish and maintain a
29 registry which contains all environmental covenants and any
30 amendment or termination of those covenants. The registry may

1 also contain any other information concerning environmental
2 covenants and the real property subject to them which the
3 department considers appropriate. The registry is a public
4 record for purposes of the act of June 21, 1957 (P.L.390,
5 No.212), referred to as the Right-to-Know Law.

6 (b) Notice.--After an environmental covenant or an amendment
7 or termination of an environmental covenant is filed in the
8 registry under subsection (a), a notice of the environmental
9 covenant, amendment or termination which complies with this
10 section may be recorded in the land records in lieu of recording
11 the entire environmental covenant. The notice must contain:

12 (1) a legally sufficient description and any available
13 street address of the real property;

14 (2) the name and address of the owner in fee simple of
15 the interest in the real property, the agency and the holder
16 if other than the agency;

17 (3) a brief narrative description of the contamination
18 and the remedy;

19 (4) a statement that the environmental covenant,
20 amendment or termination is available in a registry at a
21 listed address of the department and a disclosure of the
22 method of any electronic access; and

23 (5) a statement that the notice is notification of an
24 environmental covenant executed under this chapter.

25 (c) Sample form.--A statement in substantially the following
26 form, executed with the same formalities as a deed, satisfies
27 the requirements of subsection (b):

28 1. This notice is filed in the land records of the
29 (insert the name of the county in this Commonwealth in
30 which the property is located) of Pennsylvania pursuant

1 to 27 Pa.C.S. § 6512.

2 2. This notice and the covenant, amendment or
3 termination to which it refers may impose significant
4 obligations with respect to the property described below.

5 3. A legal description of the property is attached as
6 Exhibit A to this notice. A brief narrative description
7 of the contamination and the remedy is attached as
8 Exhibit B to this notice. The address of the property
9 that is subject to the environmental covenant is (insert
10 address of property) (not available).

11 4. The name and address of the owner of the fee simple
12 interest in the real property on the date of this notice
13 is (insert name of current legal owner of the property
14 and the owner's current address as shown on the tax
15 records of the county in which the property is located).

16 5. The environmental covenant, amendment or termination
17 was signed by (insert name and address of the agency).

18 6. The environmental covenant, amendment or termination
19 was filed in the registry on (insert date of filing).

20 7. The full text of the covenant, amendment or
21 termination and any other information required by the
22 agency is on file and available for inspection and
23 copying in the registry maintained for that purpose by
24 the Department of Environmental Protection at (insert
25 address and room of building in which the registry is
26 maintained). (The covenant, amendment or termination may
27 be found electronically at (insert web address for
28 covenant).)

29 § 6513. Uniformity of application and construction.

30 In applying and construing this chapter as a uniform act,

1 consideration must be given to the need to promote uniformity of
2 the law with respect to its subject matter among states which
3 enact it.

4 § 6514. Relation to Electronic Signatures in Global and
5 National Commerce Act.

6 (a) General rule.--Except as set forth in subsection (b),
7 this chapter modifies, limits or supersedes the Electronic
8 Signatures in Global and National Commerce Act (Public Law 106-
9 229, 15 U.S.C. § 7001 et seq.).

10 (b) Exceptions.--

11 (1) This chapter does not modify, limit or supersede
12 section 101(a) of the Electronic Signatures in Global and
13 National Commerce Act (15 U.S.C. § 7001(a)).

14 (2) This chapter does not authorize electronic delivery
15 of any of the notices described in section 103(b) of the
16 Electronic Signatures in Global and National Commerce Act (15
17 U.S.C. § 7003(b)).

18 § 6515. Environmental Quality Board.

19 (a) Regulations.--The Environmental Quality Board has the
20 power and duty to promulgate regulations for the proper
21 performance of work of the department under this chapter. This
22 subsection includes the establishment of fees under this
23 chapter.

24 (b) Fees.--Fees under subsection (a) shall be deposited into
25 the Industrial Land Recycling Fund.

26 § 6516. Appealable actions.

27 Actions of the department under this chapter shall be
28 considered appealable actions under the act of July 13, 1988
29 (P.L.530, No.94), known as the Environmental Hearing Board Act.

30 § 6517. Relationship to other laws.

1 (a) Prospective environmental response projects.--

2 (1) Unless waived by the department, engineering
3 controls or institutional controls required to demonstrate
4 attainment of a remediation standard under the Land Recycling
5 Act or the act of July 6, 1989 (P.L.169, No.32), known as the
6 Storage Tank and Spill Prevention Act, shall be in the form
7 of an environmental covenant.

8 (2) If a deed acknowledgment is required by section 405
9 of the act of July 7, 1980 (P.L.380, No.97), known as the
10 Solid Waste Management Act, or section 512(b) of the act of
11 October 18, 1988 (P.L.756, No.108), known as the Hazardous
12 Sites Cleanup Act, the requirement may be satisfied by
13 reference to an environmental covenant recorded pursuant to
14 this chapter.

15 (3) AN ENVIRONMENTAL COVENANT SHALL NOT BE REQUIRED FOR <—
16 PROPERTY OWNED BY THE FEDERAL GOVERNMENT PRIOR TO TRANSFER OF
17 THE PROPERTY TO A NON-FEDERAL ENTITY OR INDIVIDUAL. ACTIVITY
18 AND USE LIMITATIONS ON FEDERAL PROPERTY SHALL BE INCORPORATED
19 INTO AN INSTALLATION'S MASTER PLAN OR OTHER SIMILAR AND
20 APPROPRIATE REMEDIAL DOCUMENTATION. NOTHING IN THIS PARAGRAPH
21 SHALL LIMIT ANY AUTHORITY OTHERWISE AVAILABLE TO THE
22 DEPARTMENT TO ENFORCE TERMS OF AN ENVIRONMENTAL RESPONSE
23 PROJECT AT A FEDERAL INSTALLATION OR ON PROPERTY OWNED BY THE
24 FEDERAL GOVERNMENT.

25 (b) Conversion to environmental covenant.--

26 (1) An instrument created prior to the effective date of
27 this section which establishes activity and use limitations
28 to demonstrate attainment or maintenance of a standard under
29 the Land Recycling Act or to demonstrate satisfaction of a
30 corrective action requirement under the Storage Tank and

1 Spill Prevention Act shall be converted to an environmental
2 covenant within 60 months of the effective date of this
3 section unless conversion is waived by the department.

4 (2) Failure to comply with this subsection does not
5 invalidate the existing engineering controls and
6 institutional controls described in paragraph (1) or preclude
7 the conversion of those engineering controls and
8 institutional controls to an environmental covenant at a
9 later date.

10 Section 2. This act shall take effect in 60 days.