

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1249 Session of
2005

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AND WATSON, MARCH 31, 2005

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 31, 2005

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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15 6505. Validity.

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1 6507. Notice.
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3 6509. Duration.
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7 6513. Uniformity of application and construction.
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9 Commerce Act.
10 6515. Environmental Quality Board.
11 6516. Appealable actions.
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

1 environmental liability.

2 § 6504. Contents of environmental covenant.

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

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

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

8 (3) describe the activity and use limitations on the
9 real property;

10 (4) identify every holder;

11 (5) be signed, with the formalities required for a deed,
12 by:

13 (i) the agency unless there is a deemed approval
14 under subsection (c)(4);

15 (ii) every holder; and

16 (iii) every owner in fee simple of the real property
17 subject to the environmental covenant, unless waived by
18 the agency; and

19 (6) identify the name and location of any administrative
20 record for the environmental response project reflected in
21 the environmental covenant.

22 (b) Permitted information.--In addition to the information
23 required by subsection (a), an environmental covenant may
24 contain other information, restrictions and requirements agreed
25 to by the persons who signed it, including:

26 (1) requirements for notice following transfer of a
27 specified interest in, or concerning proposed changes in use
28 of, applications for building permits for or proposals for
29 any site work affecting the contamination on the property
30 subject to the environmental covenant;

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

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

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

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

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

17 (c) Agency.--

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

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

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

27 (4) Failure of the department to approve or disapprove
28 an environmental covenant within 90 days of receipt of all
29 information reasonably required by the department to make a
30 determination shall be deemed an approval of the

1 environmental covenant.

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

4 § 6505. Validity.

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

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

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

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

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

15 (4) it imposes a negative burden;

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

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

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

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

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

25 (c) Prior instruments.--

26 (1) An instrument which creates restrictions or
27 obligations with respect to real property which would, except
28 for the fact that the instrument was recorded before the
29 effective date of this chapter, qualify as activity and use
30 limitations is not invalid or unenforceable:

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

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

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

7 (d) Other interests.--

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

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

25 § 6506. Relationship to other land-use law.

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

29 (1) zoning;

30 (2) law other than this chapter regulating use of real

property; or

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

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

§ 6507. Notice.

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

(1) all persons who signed the environmental covenant;

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

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

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

(5) any other persons the agency requires.

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

§ 6508. Recording.

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

1 index in the names of the owners of the real property subject to
2 the environmental covenant and in the grantee's index in the
3 name of the holder.

4 (b) Applicable law.--Except as otherwise provided in section
5 6509(c) (relating to duration), an environmental covenant is
6 subject to the law of this Commonwealth governing recording and
7 priority of interests in real property. Recording of an
8 environmental covenant pursuant to the law of this Commonwealth
9 provides the same constructive notice of the environmental
10 covenant as the recording of a deed provides of an interest in
11 real property.

12 § 6509. Duration.

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

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

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

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

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

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

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

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

29 (iii) the court determines, after hearing, that the
30 termination or modification will not adversely affect

1 human health or the environment.

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

7 (1) The agency which signed an environmental covenant
8 has determined that:

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

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

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

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

20 (1) issuance of a tax deed;

21 (2) foreclosure of a tax lien; or

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

25 § 6510. Amendment or termination by consent.

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

29 (1) The agency.

30 (2) Unless waived by the agency, the current owner in

1 fee simple of the real property subject to the environmental
2 covenant.

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

5 (i) the person waived the right to consent in a
6 signed record; or

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

10 (4) Except as otherwise provided in subsection (d)(2),
11 the holder.

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

17 (1) consents to the amendment; or

18 (2) has waived in a signed record the right to consent
19 to the amendment.

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

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

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

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

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

1 § 6511. Enforcement of environmental covenant.

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

5 (1) a party to the environmental covenant;

6 (2) the agency or, if it is not the agency, the
7 department;

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

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

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

15 (b) Regulatory authority.--

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

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

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

25 § 6512. Registry; substitute notice.

26 (a) Registry.--The department shall establish and maintain a
27 registry which contains all environmental covenants and any
28 amendment or termination of those covenants. The registry may
29 also contain any other information concerning environmental
30 covenants and the real property subject to them which the

1 department considers appropriate. The registry is a public
2 record for purposes of the act of June 21, 1957 (P.L.390,
3 No.212), referred to as the Right-to-Know Law.

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

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

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

15 (3) a statement that the environmental covenant,
16 amendment or termination is available in a registry at a
17 listed address of the department and a disclosure of the
18 method of any electronic access; and

19 (4) a statement that the notice is notification of an
20 environmental covenant executed under this chapter.

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

24 1. This notice is filed in the land records of the
25 (insert the name of the county in this Commonwealth in
26 which the property is located) of Pennsylvania pursuant
27 to 27 Pa.C.S. § 6512.

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

1 3. A legal description of the property is attached as
2 Exhibit A to this notice. The address of the property
3 that is subject to the environmental covenant is (insert
4 address of property) (not available).

5 4. The name and address of the owner of the fee simple
6 interest in the real property on the date of this notice
7 is (insert name of current legal owner of the property
8 and the owner's current address as shown on the tax
9 records of the county in which the property is located).

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

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

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

23 § 6513. Uniformity of application and construction.

24 In applying and construing this chapter as a uniform act,
25 consideration must be given to the need to promote uniformity of
26 the law with respect to its subject matter among states which
27 enact it.

28 § 6514. Relation to Electronic Signatures in Global and
29 National Commerce Act.

30 (a) General rule.--Except as set forth in subsection (b),

1 this chapter modifies, limits or supersedes the Electronic
2 Signatures in Global and National Commerce Act (Public Law 106-
3 229, 15 U.S.C. § 7001 et seq.).

4 (b) Exceptions.--

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

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

12 § 6515. Environmental Quality Board.

13 (a) Regulations.--The Environmental Quality Board has the
14 power and duty to promulgate regulations for the proper
15 performance of work of the department under this chapter. This
16 subsection includes the establishment of fees under this
17 chapter.

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

20 § 6516. Appealable actions.

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

24 § 6517. Relationship to other laws.

25 (a) Prospective environmental response projects.--

26 (1) Unless waived by the department, engineering
27 controls or institutional controls required to demonstrate
28 attainment of a remediation standard under the Land Recycling
29 Act or the act of July 6, 1989 (P.L.169, No.32), known as the
30 Storage Tank and Spill Prevention Act, shall be in the form

1 of an environmental covenant.

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

9 (b) Conversion to environmental covenant.--

10 (1) If an environmental response projected to be
11 completed prior to the effective date of this section
12 requires establishment of an engineering control or an
13 institutional control, then the engineering control or
14 institutional control, unless waived by the department, shall
15 be converted to an environmental covenant within 60 months of
16 the effective date of this section.

17 (2) Failure to comply with this subsection does not
18 invalidate the existing engineering controls and
19 institutional controls described in paragraph (1) or preclude
20 the conversion of those engineering controls and
21 institutional controls to an environmental covenant at a
22 later date.

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