

HB 43

AN ACT

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

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

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

CHAPTER 65
UNIFORM ENVIRONMENTAL COVENANTS

Sec.

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§ 6501. Short title of chapter.

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

§ 6502. Definitions.

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

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

"Agency." Any of the following:

- (1) The Department of Environmental Protection of the Commonwealth.
- (2) A Federal agency which determines or approves the

environmental response project pursuant to which the environmental covenant is created.

"Board." The Environmental Hearing Board.

"Common interest community." A condominium, cooperative or other real property, with respect to which a person, by virtue of ownership of a parcel of real property or of ownership of an interest in real property, is obligated to pay for property taxes, insurance premiums, maintenance or improvement of other real property described in a recorded covenant which creates the common interest community.

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

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

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

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

- (1) under a Federal program governing environmental remediation of real property;
- (2) under a Commonwealth program governing environmental remediation of real property;
- (3) incident to closure of a solid or hazardous waste management unit if the closure is conducted with approval of an agency; or
- (4) under a Commonwealth voluntary cleanup program authorized by statute.

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

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

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

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

"Record." Information which is:

- (1) inscribed on a tangible medium or stored in an electronic or other medium; and
- (2) retrievable in perceivable form.

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

the United States.

§ 6503. Nature of rights; subordination of interests.

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

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

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

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

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

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

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

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose an affirmative obligation on the person with respect to the 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 any site work affecting the contamination on the property subject to the environmental covenant;

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

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

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

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

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

(c) Agency.--

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

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

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

(4) Failure of the department to approve or disapprove 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 effective date of this chapter, qualify as activity and use limitations is not invalid or unenforceable:

- (i) by reason of the limitations on enforcement of interests described in subsection (b); or
- (ii) because it was identified as an easement, servitude, deed restriction or other interest.

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

(d) Other interests.--

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

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

§ 6506. Relationship to other land-use law.

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

- (1) zoning;
- (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 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 laws of this Commonwealth governing recording and priority of interests in real property. Recording of an environmental covenant pursuant to the laws 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
- (iii) the court determines, after hearing, that the

termination or modification will not adversely affect human health or the environment.

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

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

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

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

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

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

(1) issuance of a tax deed;

(2) foreclosure of a tax lien; or

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

§ 6510. Amendment or termination by consent.

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

(1) The agency.

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

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

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

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

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

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

(1) consents to the amendment; or

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

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

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

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

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

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

§ 6511. Enforcement of environmental covenant.

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

(1) a party to the environmental covenant;

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

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

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

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

(b) Regulatory authority.--

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

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

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

§ 6512. Registry; substitute notice.

(a) Registry.--The department shall establish and maintain a registry which contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them which the department considers appropriate. The registry is a public record for purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

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

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

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

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

(4) a statement that the environmental covenant, amendment or termination is available in a registry at a listed address of the department and a disclosure of the

method of any electronic access; and

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

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

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

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

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

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

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

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

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

§ 6513. Uniformity of application and construction.

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

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

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

(b) Exceptions.--

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

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

§ 6515. Environmental Quality Board.

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

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

§ 6516. Appealable actions.

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

§ 6517. Relationship to other laws.

(a) Prospective environmental response projects.--

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

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

(3) An environmental covenant shall not be required for property owned by the Federal Government prior to transfer of the property to a non-Federal entity or individual. Activity and use limitations on Federal property shall be incorporated into an installation's master plan or other similar and appropriate remedial documentation. Nothing in this paragraph shall limit any authority otherwise available to the department to enforce terms of an environmental response project at a Federal installation or on property owned by the Federal Government.

(b) Conversion to environmental covenant.--

(1) An instrument created prior to the effective date of this section which establishes activity and use limitations to demonstrate attainment or maintenance of a standard under the Land Recycling Act or to demonstrate satisfaction of a corrective action requirement under the Storage Tank and Spill Prevention Act shall be converted to an environmental covenant within 60 months of the effective date of this section unless conversion is waived by the department.

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

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

EDWARD G. RENDELL