



Uniform Environmental Covenant Act “UECA”

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WHAT IS UECA?

New Legal Tool developed by the **National Conference of Commissioners on Uniform State Laws**.

Created a new **real property instrument**
“Environmental Covenant”

Used to implement **Institutional Controls (ICs)**

- Prohibition on groundwater use
- Prohibition on residential use
- Require vapor mitigation
- Follow soil management plans
- Does not allow any activity that will interfere with the remedy

UECA Calls ICs **“Activity and Use Limitations”**



WHY WAS IT NEEDED?

EPA had trouble **implementing and enforcing** institutional controls consistently across the States.

- Property law rules are very **old** and didn't envision environmental protection.
- Presumption against tying up property with **restrictions for long periods of time**.
- Judges created **legal requirements that are obstacles** to creating enforceable real estate ICs.



PROBLEMS SOLVED!

- Gave **enforcement rights** to others that traditionally did not have them before
 - ✓ Agency
 - ✓ Local government
 - ✓ Person with interest in the real property
 - ✓ Identified by UECA
- Cannot be **extinguished** if the grantee dies or ceases to exist
- Grantor and Grantee can be the **same**
- Anyone with an interest in the property is **bound to abide** by the activity and use limitations and follow the requirements of UECA
- Legal instrument- **runs with the land**

UECA & SOLID WASTE

VSWMR allows post-closure care (PCC) **requirements of a landfill to be decreased** if the Owner demonstrates that the reduced period is protective of human health and the environment.

UECA has been used to **terminate groundwater corrective action** early.

- 2 Municipalities have filed UECA's
 - Westmoreland County
 - Amelia County
- 1 Municipality is under review
 - City of Suffolk

BENEFITS OF UECA

- Provides assurance to the Agency
- Protects/limits future liability
- Attractive marketing tool for future owners
- Provides comfort to lenders
- An acceptable risk management tool



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Groundwater Monitoring at Solid Waste Management Facilities

DEQ Groundwater Frequently Asked Questions (FAQ)

management benefits.

Question #9a - What are the benefits to the owner/operator of using such a mechanism?

The UECA covenant allows the use of exposure controls and as a result may lessen liability concerns of future sellers and lenders associated with the redevelopment and purchase of a former landfill property which has otherwise been released from state regulatory oversight. This may be especially of interest to owners/operators of non-municipal landfills.

The UECA covenant helps fulfill the dual purposes of defining the activity and land use restrictions which will constitute protection of human health and the environment while at the same time allowing economically viable reuse of the property within a permanent legal infrastructure (covenant).

Implementing a UECA covenant may also strengthen an owner/operator's request for early termination of PCC.

UECA covenants as part of an approval to terminate PCC provide benefits because reliable long term controls reduce the risk that a future owner might (accidentally or deliberately) revive the first owner's environmental liability caused by exposure to the waste mass or impacted groundwater at the landfill after PCC has been terminated. Use of a UECA covenant can be thought of as a form of risk management to prevent inadvertent future exposures to the waste mass and groundwater which may no longer display the same characteristics as it did at the time of PCC termination.

Virginia UECA's

- Effective **November 9, 2011**
- Virginia's UECA is **Voluntary**
- Must have **3 parties**: Owner, Holder, and Agency
- **Fee** is based DEQ's Role
 - \$1,000- DEQ is not the Agency
 - \$4,000-DEQ is the Agency
 - \$24,000-DEQ is the Holder

Lessons Learned

- Pre-application meetings with DEQ staff are encouraged
- Use Virginia's template
- Provide a current title search with application
- Owner enter into discussions early with lien holders
- Provide as much detail in the covenant not through attachments/exhibits
- Not a good tool for short duration restrictions or are expected to change

Regulation Link: [LIS > Administrative Code > 9VAC15-90](#)

Agency Guidance LPR-REM-2011-07: [Virginia Regulatory Town Hall View Guidance Document](#)

DEQ Website under: Groundwater Monitoring at Solid Waste Management Facilities

Groundwater Frequently Asked Questions (FAQ)

<http://www.deq.virginia.gov/Portals/0/DEQ/Land/Guidance/UECA.pdf>

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