

Uniform Environmental Covenants Act (UECA)

- Historically, Minnesota has used restrictive covenants as institutional controls to assure long-term protection of health and environment at risk-based cleanup sites
- All new environmental covenants must conform to UECA in order to be approved by State
- Restrictive covenants under previous law remain legally valid
- MPCA and Minnesota Dept of Agriculture are using new templates for environmental covenants to conform to UECA

History of UECA

Initially promoted by EPA and DOD to encourage uniform national approach to institutional controls for risk-based cleanups

Developed by National Conference Of Commissioners Of Uniform State Laws

Uniform Law Commissioners are non-partisan group appointed by State legislatures to develop and promote uniformity of State law

UECA Approved by Uniform Law Commissioners in 2003

Adoption of Uniform Environmental Covenants Act

- Adoption in Other States
 - by 2007, 18 States and D.C. had adopted UECA
 - Uniform Law Commissioners continue to promote adoption in other states
- Adoption in Minnesota
 - enacted by Minnesota Legislature in 2007
 - codified at Minnesota Statutes Chapter 114E
 - effective July 1, 2007

Major Provisions of UECA

an “environmental agency” must approve covenant

covenant must be related to an “environmental response project” [cleanup or site closure]

covenant is interest in property and runs with the land [binds future land owners]

covenant may be “acquired” and held by environmental agency or may be held by the owner of property or other party

Major Provisions of UECA (continued)

covenants are perpetual

not automatically extinguished by "Marketable Title" laws, tax forfeiture, adverse possession, etc.

if property is condemned, court has limited authority to terminate or modify covenant

covenant enforceable by local units of government

also enforceable by person whose interest in property, collateral or liability is affected by violation

Major Provisions of UECA (continued)

two options for modifying or terminating a covenant

(1) by consent of the environmental agency, current owner and the original signers of covenant

or

(2) by court proceeding

Minnesota's Version of UECA

Minn. Stat. ch. 114E

- Legislation was not controversial
- Minnesota Uniform Law Commissioners asked for comments from MPCA and State Bar Association
- Legislature Modified UECA To Better Fit Minnesota's Environmental Laws and Practices

Modifications to UECA as Enacted in Minnesota

- broad definition of “environmental response project”
 - Superfund and petroleum cleanups, RCRA corrective action, facility closure and post-closure, agricultural chemical cleanup, and voluntary site investigations
- federal [EPA or DOD] covenants not effective without State approval
- state can use civil and administrative penalties to enforce covenants (in addition to injunctive orders)

Modifications to Minnesota UECA: Options for Terminating a covenant

- By consent:
 - environmental agency may require original owner to waive right to consent to termination
 - MPCA and MDA are exercising this authority

- By environmental agency, instead of court
 - agency proceeding with notice and comment
 - initiated by agency or affected party
 - decision based on protection of health and environment
 - subject to appeal like other agency decisions
 - court termination proceeding is available if MPCA declines to initiate an administrative proceeding

New UECA Templates Now Available from MPCA and MDA

- templates apply to Superfund cleanups (MPCA and MDA), voluntary cleanups and RCRA corrective actions
- EPA covenants in Minnesota will need to follow the Minnesota UECA template in order for State to approve them
- template available on MPCA website
- templates are similar to covenants used before UECA with some important differences

What is Different In UECA Covenant Template

- annual compliance report to State required
- original owner (grantor) must waive right to consent to covenant termination once owner transfers title to another person
- local governments are given access to inspect for violations in order to exercise enforcement authority granted by UECA
- grantor must disclose if other persons have interest in property [mortgages, easements, etc.] and mortgage holders must subordinate to covenant

Continuity with Past Covenants

- overall format generally follows prior covenants
- activity limitations are not absolute, but subject to prior State approval
- prior State approval not required to address emergency situations
- MERLA affidavit can be incorporated in covenant

Future use of UECA Covenants

- Can be used for “Environmental response projects” that are not “cleanup” projects
 - covenant as part of closure requirements for MPCA-regulated solid and hazardous waste facilities and tanks
- Covenant templates for these projects not yet developed