

1 AN ACT concerning the environment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Uniform Environmental Covenants Act.

6 Section 2. Definitions. In this Act:

7 (1) "Activity and use limitations" means restrictions or
8 obligations created under this Act with respect to real
9 property.

10 (2) "Agency" means the Illinois Environmental Protection
11 Agency or any other State or federal agency that determines or
12 approves the environmental response project pursuant to which
13 the environmental covenant is created.

14 (3) "Common interest community" means a condominium,
15 cooperative, or other real property with respect to which a
16 person, by virtue of the person's ownership of a parcel of real
17 property, is obligated to pay property taxes or insurance
18 premiums, or for maintenance, or improvement of other real
19 property described in a recorded covenant that creates the
20 common interest community.

21 (4) "Environmental covenant" means a servitude arising
22 under an environmental response project that imposes activity
23 and use limitations.

1 (5) "Environmental response project" means a plan or work
2 performed for environmental remediation of real property at the
3 following sites or facilities:

4 (A) all sites or facilities that are listed as
5 proposed or final on the National Priorities List
6 pursuant to Section 105 of the Comprehensive
7 Environmental Response, Compensation and Liability Act
8 of 1980, as amended (42 U.S.C. 9601 et seq.);

9 (B) all sites or facilities undergoing remediation
10 pursuant to an administrative order issued pursuant to
11 Section 106 of the Comprehensive Environmental
12 Response, Compensation and Liability Act of 1980, as
13 amended (42 U.S.C. 9601 et seq.);

14 (C) all sites or facilities that are owned or
15 operated by a department, agency, or instrumentality
16 of the United States that are undergoing remediation
17 pursuant to Section 120 of the Comprehensive
18 Environmental Response, Compensation and Liability Act
19 of 1980, as amended (42 U.S.C. 9601 et seq.);

20 (D) all sites or facilities undergoing remediation
21 pursuant to a settlement agreement pursuant to Section
22 122 of the Comprehensive Environmental Response,
23 Compensation and Liability Act of 1980, as amended (42
24 U.S.C. 9601 et seq.);

25 (E) all sites or facilities undergoing remediation
26 pursuant to Section 3008(h) of the Resource

1 Conservation and Recovery Act of 1976 (42 U.S.C. 6901
2 et seq.);

3 (F) all sites or facilities undergoing remediation
4 pursuant to Section 7003 of the Resource Conservation
5 and Recovery Act of 1976 (42 U.S.C. 6901 et seq.); or

6 (G) all sites or facilities undergoing remediation
7 pursuant to a court or board order issued pursuant to
8 the Illinois Environmental Protection Act (415 ILCS
9 5/1 et seq.) with the approval of the Agency.

10 (6) "Holder" means the grantee of an environmental covenant
11 as specified in Section 3(a).

12 (7) "Person" means an individual, corporation, business
13 trust, estate, trust, partnership, limited liability company,
14 association, joint venture, public corporation, government,
15 governmental subdivision, agency, or instrumentality, or any
16 other legal or commercial entity.

17 (8) "Prior interest" means a preceding or senior interest,
18 in time or in right, that is recorded with respect to the real
19 property, including but not limited to a mortgage, easement, or
20 other interest, lien, or encumbrance predating the recording of
21 an environmental covenant.

22 (9) "Record", used as a noun, means information that is
23 inscribed on a tangible medium or that is stored in an
24 electronic or other medium and is retrievable in perceivable
25 form.

26 (10) "State" means a state of the United States, the

1 District of Columbia, Puerto Rico, the United States Virgin
2 Islands, or any territory or insular possession subject to the
3 jurisdiction of the United States.

4 Section 3. Nature of rights; subordination of interests.

5 (a) An owner or owners of real property may voluntarily
6 enter into an environmental covenant, as a grantor of an
7 interest in the real property, with an agency and, if
8 appropriate, one or more holders. No owner, agency, or other
9 person shall be required to enter into an environmental
10 covenant as part of an environmental response project;
11 provided, however, that (i) failure to enter into an
12 environmental covenant may result in disapproval of the
13 environmental response project; and (ii) once the owner,
14 agency, or other person assumes obligations in an environmental
15 covenant they must comply with those obligations of the
16 environmental covenant in accordance with this Act.

17 (b) Any person, including a person that owns an interest in
18 the real property, the agency, or a municipality or other unit
19 of local government, may be a holder. An environmental covenant
20 may identify more than one holder. The interest of a holder is
21 an interest in real property.

22 (c) A right of an agency under this Act or under an
23 environmental covenant, other than a right as a holder, is not
24 an interest in real property.

25 (d) An agency is bound by any obligation it assumes in an

1 environmental covenant, but an agency does not assume
2 obligations merely by signing an environmental covenant. Any
3 other person that signs an environmental covenant is bound by
4 the obligations the person assumes in the covenant, but signing
5 the covenant does not change obligations, rights, or
6 protections granted or imposed under law other than this Act
7 except as provided in the covenant.

8 (e) The following rules apply to interests in real property
9 in existence at the time an environmental covenant is created
10 or amended:

11 (1) An interest that has priority under other law is
12 not affected by an environmental covenant unless the person
13 that owns the interest subordinates that interest to the
14 covenant.

15 (2) This Act does not require a person that owns a
16 prior interest to subordinate that interest to an
17 environmental covenant or to agree to be bound by the
18 covenant.

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

25 (4) An agreement by a person to subordinate a prior
26 interest to an environmental covenant affects the priority

1 of that person's interest but does not by itself impose any
2 affirmative obligation on the person with respect to the
3 environmental covenant.

4 (f) Environmental covenants established under this Act
5 shall be subject to eminent domain or condemnation proceedings
6 by any agency of the State having a general grant of authority
7 to acquire property by the exercise of the right of eminent
8 domain under the laws of this State. No environmental covenant
9 established under this Act shall be terminated or modified
10 unless:

11 (1) The agency that signed the covenant is a party to
12 the proceeding;

13 (2) All persons identified in Section 10(a) and (b) are
14 given notice of the pendency of the proceeding; and

15 (3) The agency of the State exercising the right of
16 eminent domain or condemnation determines, after hearing,
17 that the termination or modification will not adversely
18 affect human health or the environment.

19 Section 4. Contents of environmental covenant.

20 (a) An environmental covenant must:

21 (1) State that the instrument is an environmental
22 covenant executed pursuant to this Act.

23 (2) Contain a legally sufficient description of the
24 real property subject to the covenant.

25 (3) Describe the activity and use limitations on the

1 real property.

2 (4) Identify every holder.

3 (5) Be signed by the agency, every holder, and unless
4 waived by the agency every owner of the fee simple of the
5 real property subject to the covenant.

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

9 (b) In addition to the information required by subsection
10 (a), an environmental covenant may contain other information,
11 restrictions, and requirements agreed to by the persons who
12 signed it, including any:

13 (1) Requirements for notice following transfer of a
14 specified interest in, or concerning proposed changes in
15 use of, applications for building permits for, or proposals
16 for any site work affecting the contamination on, the
17 property subject to the covenant.

18 (2) Requirements for periodic reporting describing
19 compliance with the covenant.

20 (3) Rights of access to the property granted in
21 connection with implementation or enforcement of the
22 covenant.

23 (4) A brief narrative description of the contamination
24 and remedy, including the contaminants of concern, the
25 pathways of exposure, limits on exposure, and the location
26 and extent of the contamination.

1 (5) Limitation on amendment or termination of the
2 covenant in addition to those contained in Sections 9 and
3 10.

4 (6) Rights of the holder in addition to its right to
5 enforce the covenant pursuant to Section 11.

6 (c) In addition to other conditions for its approval of an
7 environmental covenant, the agency may require those persons
8 specified by the agency who have interests in the real property
9 to sign the covenant.

10 Section 5. Validity; effect on other instruments.

11 (a) An environmental covenant that complies with this Act
12 runs with the land.

13 (b) An environmental covenant that is otherwise effective
14 is valid and enforceable even if:

15 (1) It is not appurtenant to an interest in real
16 property.

17 (2) It can be or has been assigned to a person other
18 than the original holder.

19 (3) It is not of a character that has been recognized
20 traditionally at common law.

21 (4) It imposes a negative burden.

22 (5) It imposes an affirmative obligation on a person
23 having an interest in the real property or on the holder.

24 (6) The benefit or burden does not touch or concern
25 real property.

1 (7) There is no privity of estate or contract.

2 (8) The holder dies, ceases to exist, resigns, or is
3 replaced.

4 (9) The owner of an interest subject to the
5 environmental covenant and the holder are the same person.

6 (c) An instrument that creates restrictions or obligations
7 with respect to real property that would qualify as activity
8 and use limitations except for the fact that the instrument was
9 recorded before the effective date of this Act is not invalid
10 or unenforceable because of any of the limitations on
11 enforcement of interests described in subsection (b) or because
12 it was identified as an easement, servitude, deed restriction,
13 or other interest. This Act does not apply in any other respect
14 to such an instrument.

15 (d) This Act does not invalidate or render unenforceable
16 any interest, whether designated as an environmental covenant
17 or other interest, that is otherwise enforceable under the law
18 of this State, including but not limited to interests compliant
19 with 35 Ill. Adm. Code 742, Subpart J.

20 Section 6. Relationship to other land-use law. This Act
21 does not authorize a use of real property that is otherwise
22 prohibited by zoning, by law other than this Act regulating use
23 of real property, or by a recorded instrument that has priority
24 over the environmental covenant. An environmental covenant may
25 prohibit or restrict uses of real property which are authorized

1 by zoning or by law other than this Act.

2 Section 7. Notice.

3 (a) A copy of an environmental covenant shall be provided
4 by the persons and in the manner required by the agency to:

5 (1) Each person that signed the covenant.

6 (2) Each person holding a recorded interest in the real
7 property subject to the covenant.

8 (3) Each person in possession of the real property
9 subject to the covenant.

10 (4) Each municipality or other unit of local government
11 in which real property subject to the covenant is located.

12 (5) Any other person the agency requires.

13 (b) The validity of a covenant is not affected by failure
14 to provide a copy of the covenant as required under this
15 Section.

16 Section 8. Recording.

17 (a) An environmental covenant and any amendment or
18 termination of the covenant must be recorded in every county in
19 which any portion of the real property subject to the covenant
20 is located. For purposes of indexing, a holder shall be treated
21 as a grantee.

22 (b) Except as otherwise provided in Section 9(c), an
23 environmental covenant is subject to the laws of this State
24 governing recording and priority of interests in real property.

1 Section 9. Duration; amendment by court action.

2 (a) An environmental covenant is perpetual unless it is:

3 (1) By its terms limited to a specific duration or
4 terminated by the occurrence of a specific event.

5 (2) Terminated by consent pursuant to Section 10.

6 (3) Terminated pursuant to subsection (b).

7 (4) Terminated by foreclosure of an interest that has
8 priority over the environmental covenant.

9 (5) Terminated or modified in an eminent domain
10 proceeding, but only if:

11 (A) The agency that signed the covenant is a party
12 to the proceeding.

13 (B) All persons identified in Section 10(a) and (b)
14 are given notice of the pendency of the proceeding.

15 (C) The court determines, after hearing, that the
16 termination or modification will not adversely affect
17 human health or the environment.

18 (b) If the agency that signed an environmental covenant has
19 determined that the intended benefits of the covenant can no
20 longer be realized, a court, under the doctrine of changed
21 circumstances, in an action in which all persons identified in
22 Section 10(a) and (b) have been given notice, may terminate the
23 covenant or reduce its burden on the real property subject to
24 the covenant. The agency's determination or its failure to make
25 a determination upon request is subject to review pursuant to

1 the Administrative Review Law.

2 (c) Except as otherwise provided in subsections (a) and
3 (b), an environmental covenant may not be extinguished,
4 limited, or impaired through issuance of a tax deed,
5 foreclosure of a tax lien, or application of the doctrine of
6 adverse possession, prescription, abandonment, waiver, lack of
7 enforcement, or acquiescence, or a similar doctrine.

8 (d) An environmental covenant may not be extinguished,
9 limited, or impaired by application of any Illinois Law
10 concerning marketable title or dormant mineral interests.

11 Section 10. Amendment or termination by consent.

12 (a) An environmental covenant may be amended or terminated
13 by consent only if the amendment or termination is signed by:

14 (1) The agency.

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

18 (3) Each person that originally signed the covenant,
19 unless the person waived in a signed record the right to
20 consent or a court finds that the person no longer exists
21 or cannot be located or identified with the exercise of
22 reasonable diligence.

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

25 (b) If an interest in real property is subject to an

1 environmental covenant, the interest is not affected by an
2 amendment of the covenant unless the current owner of the
3 interest consents to the amendment or has waived in a signed
4 record the right to consent to amendments.

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

8 (d) Except as otherwise provided in an environmental
9 covenant:

10 (1) A holder may not assign its interest without
11 consent of the other parties.

12 (2) A holder may be removed and replaced by agreement
13 of the other parties specified in subsection (a).

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

16 Section 11. Enforcement of environmental covenant.

17 (a) A civil action for injunctive or other equitable relief
18 for violation of an environmental covenant may be maintained
19 by:

20 (1) A party to the covenant.

21 (2) The agency or, if it is not the agency, the
22 Illinois Environmental Protection Agency.

23 (3) Any person to whom the covenant expressly grants
24 power to enforce.

25 (4) A person whose interest in the real property or

1 whose collateral or liability may be affected by the
2 alleged violation of the covenant.

3 (5) A municipality or other unit of local government in
4 which the real property subject to the covenant is located.

5 (b) This Act does not limit the regulatory authority of the
6 agency or the Illinois Environmental Protection Agency under
7 law other than this Act with respect to an environmental
8 response project.

9 (c) A person is not responsible for or subject to liability
10 for environmental remediation solely because it has the right
11 to enforce an environmental covenant.

12 Section 12. Registry; substitute notice.

13 (a) The Illinois Environmental Protection Agency shall
14 establish and maintain a registry that contains all
15 environmental covenants and any amendment or termination of
16 those covenants. The registry may also contain any other
17 information concerning environmental covenants and the real
18 property subject to them which the Illinois Environmental
19 Protection Agency considers appropriate. The registry is a
20 public record for purposes of the Freedom of Information Act.

21 (b) After an environmental covenant or an amendment or
22 termination of a covenant is filed in the registry established
23 pursuant to subsection (a), a notice of the covenant,
24 amendment, or termination that complies with this Section may
25 be recorded in the land records in lieu of recording the entire

1 covenant. Any such notice must contain:

2 (1) A legally sufficient description and any available
3 street address of the real property subject to the
4 covenant.

5 (2) The name and address of the owner of the fee simple
6 interest in the real property, the agency, and the holder
7 if other than the agency.

8 (3) A statement that the covenant, amendment, or
9 termination is available in a registry at the Environmental
10 Protection Agency at its office in Springfield, which
11 discloses the method of any electronic access.

12 (4) A statement that the notice is notification of an
13 environmental covenant executed pursuant to this Act.

14 (c) A statement in substantially the following form,
15 executed with the same formalities as a deed in this State,
16 satisfies the requirements of subsection (b):

17 (1) This notice is filed in the land records of (insert
18 name of county in which the real property is located)
19 pursuant to Section 12 of the Uniform Environmental
20 Covenants Act.

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

24 (3) A legal description of the property is attached as
25 Exhibit A to this notice. The address of the property that
26 is subject to the environmental covenant is (insert address

1 of property).

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

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

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

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

21 Section 13. Uniformity of application and construction. In
22 applying and construing this uniform Act, consideration must be
23 given to the need to promote uniformity of the law with respect
24 to its subject matter among states that enact it.

1 Section 14. Relation to Electronic Signatures in Global and
2 National Commerce Act. This Act modifies, limits, or supersedes
3 the federal Electronic Signatures in Global and National
4 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not
5 modify, limit, or supersede Section 101 of that Act (15 U.S.C.
6 Section 7001(a)) or authorize electronic delivery of any of the
7 notices described in Section 103 of that Act (15 U.S.C. Section
8 7003(b)).

9 Section 15. Severability. If any provision of this Act or
10 its application to any person or circumstance is held invalid,
11 the invalidity does not affect other provisions or applications
12 of this Act which can be given effect without the invalid
13 provision or application, and to this end the provisions of
14 this Act are severable.