

UNIFORM ENVIRONMENTAL COVENANT GUIDANCE

This guidance describes the Sections of the Environmental Covenant (EC), requirements for each section, and the process for negotiating, executing, and recording the document. If you have questions after reviewing this guidance, please contact the regulatory compliance officer for the site.

STEP 1: Identify the appropriate EC template (developed in accordance with the Georgia Uniform Environmental Covenants Act (UECA), O.C.G.A. § 44-16-1 et seq.) on EPD's website and create a draft in accordance with the guidance herein. The draft must include all exhibits and associated supporting documentation, including the Annual Certification Form or Monitoring & Maintenance Plan if applicable.

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- Changes may not be made to any portion of the EC template without EPD approval. All proposed changes must be sent to EPD in an unsigned draft showing the requested change(s) in redline/blackline or Track Changes format clearly delineating any additions or deletions.

STEP 2: Identify all parties with an interest in the property and all parties that will be signing the EC. Note that a title search may be necessary.

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- The Act dictates which parties are required to sign the Environmental Covenant. These parties are also identified on the first page of the Covenant.
 - Note that the Act requires that people or entities with certain types of interests (e.g., lessee in possession of the Property) or status (e.g., priority over Environmental Covenant) agree to and sign the Environmental Covenant or subordinate their interests. Such persons or entities must be listed in the Environmental Covenant as “Persons with Interests other than Fee Simple.”
 - The Grantor(s) must (1) identify all persons with interests other than fee simple in the Property; (2) determine the type and status of those interests; (3) determine whether the type and/or status of a person's interest requires signature or the person's subordination of the interest; and (4) provide that information to EPD before the Environmental Covenant is signed.
 - EPD requires that an entity other than EPD with power and authority to enforce the Covenant be named as Grantee and execute the Covenant. Examples of potential Grantees include parent or subsidiary companies of the fee owner or a local governmental authority.

STEP 3: Identify the property(ies)/parcel(s) subject to the EC and determine if separate ECs will be necessary, and/or determine if a “Restricted Use Zone” will need to be established.

- **Property Subject**

- If there is more than one Fee Simple Owner/Grantor of the Property, information regarding conveyance of the Property to each Fee Simple Owner/Grantor must be included.
- If only a portion of the Property was subject to corrective action and/or will be subject to all or some of the activity and use restrictions described in the Environmental Covenant, that portion must be identified as the “Restricted Use Zone” (“RUZ”).
 - A survey performed by a licensed surveyor, prepared in accordance with the standards specified by the American Land Title Association, must be prepared that shows the RUZ as located within the Property. The survey must be attached to the Environmental Covenant. EPD may also require a legal description of the RUZ.
 - Groundwater use restrictions should apply to the entire Property, and not be placed only on the RUZ unless EPD has given its express approval to do so.
 - EPD reserves the right to review and approve the use of and description of the Restricted Use Zone.

- **Environmental Covenant Runs with the Land and is Perpetual**

- An Environmental Covenant that complies with the provisions of the Georgia Uniform Environmental Covenants Act runs with the land, and is perpetual, unless terminated pursuant to terms in the Covenant or terminated in accordance with provisions of the Act.
- If EPD approves or requires, the Covenant may include an additional termination or amendment provision. Examples of such provisions include:
 - Termination or Amendment. Upon EPD’s determination that the Property is in compliance with the Type 1, 2, 3, or 4 Risk Reduction Standards, as defined in Georgia Rules for Hazardous Site Response (Rules), Chapter 391-3-19, a proposal may be made to terminate or amend this Environmental Covenant.
 - (For sites under RCRA) Termination or Amendment. Upon EPD’s determination that the Property meets the residential clean-up standards derived in accordance with the Georgia Environmental Protection Division Guidance for Selecting Media Remediation Levels at Solid Waste Management Units, November 1996 (or such applicable updated version of the same), a proposal may be made to terminate or amend this Environmental Covenant.

- **Administrative Records.** The Environmental Covenant must identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.
- **Notice.** Pursuant to Code Section 12-8-97(b) and Rule 391-3-19-.08(1)(a), the following statement must be included for HSI sites:
 - This Property <or A portion of this Property or this Property is a portion of a tract that> has been listed on the State’s Hazardous Site Inventory at HSI # [redacted] and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the Property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.
 - A similar description is not currently required by state law for sites undergoing corrective action under other programs and therefore is not necessary. If the Grantor and/or EPD wishes to include a description of contamination and the corrective action conducted for such sites, the parties will agree to that language before the Environmental Covenant is executed.

STEP 4: Identify all applicable Activity and Use Limitations.

- **Activity and Use Limitations.** The Environmental Covenant must describe the activity and use limitations. Examples of activity and use limitations include, but are not limited to:
 - Real Property (e.g., “The Property shall be used only as non-residential property as defined in Rule 391-3-19-.02(2)(r). Use of the Property as residential property, as defined in Rule 391-3-19-.02(2)(r), is prohibited.”).
 - Groundwater (e.g., “The use or extraction of groundwater beneath the Property for drinking water or any other non-remedial purpose is prohibited.”).
 - Interference with Remedy (e.g., “Activities on the Property that may interfere with the remedy required by corrective action are prohibited, except for activities for inspection and maintenance, repair and/or replacement of required engineering controls and other proposed activities that have been approved in advance by EPD; approval of such other proposed activities must be requested from EPD in writing at least thirty (30) days prior to the start of such activity. Activities prohibited include, but are not limited to, drilling, digging, bulldozing, earthwork and/or placement of objects and/or equipment on or near the capped area(s) that deforms, stresses, breaks and/or pierces the capped area(s)”).

- Monitoring and Maintenance plans (e.g., either attach as an exhibit to the Environmental Covenant a copy of the relevant Monitoring and Maintenance Plan or identify, specifically, where such Plans will be located for the duration of the Environmental Covenant)
- Other (e.g., measures required by corrective action).
- **Other Requirements.** The Environmental Covenant may also contain other agreed upon requirements in addition to the three included in the template. Examples of other requirements include, but are not limited to:
 - Annual certification of compliance. (e.g., “Annually, but not later than January 30 beginning the first January following the effective date of this Environmental Covenant, the owner of the Property must submit a certification stating that the activity and use limitations in this Environmental Covenant are being abided by, accompanied by the site inspection checklist(s) and Annual Property Evaluation Form in the form of those attached to this Environmental Covenant at Exhibits [redacted] and [redacted].”)
 - Notification of noncompliance (e.g., requiring written notice to EPD within ten (10) days of discovery of noncompliance with the activity and/or use limitations and/or other requirements herein, including the steps taken or to be taken to correct).
 - Semi-annual or annual reporting. (e.g., “Semi-annually, but not later than the fifteenth (15th) of April, and October, the owner shall submit to EPD a Semi-annual Report < *if appropriate – as specified in the EPD approved [NAME OF] Plan* > that includes the following information for the previous calendar half: < *groundwater detection-monitoring report results, maintenance and inspection activities* >”)
 - Permanent markers (e.g., “A sign and a permanent marker shall be installed and maintained at the primary points of entry to the Property specifying the restricted area and its boundaries. Disturbance or removal of such markers is prohibited during the effective term of this Environmental Covenant.”)

*STEP 5: Once the Draft EC is accepted by EPD, the document will be sent back with tracked changes to the responsible party(s) for signature. Submit the original executed EC to EPD with documentation regarding Representation & Warranties (if requested) and signatories confirming that a copy of the EC has been provided to all parties listed in 44-16-7(a) of the UECA (i.e. certified mail receipt, federal express tracking number, etc.). These parties include: each person that signed the covenant; each person in possession of the real property subject to the covenant; each municipality, county, consolidated government, or other unit of local government in which the property subject to the covenant is located; each owner whose property abuts the property subject to the covenant; and any other person the agency requires. **The Director must wait 30-days from the date that the EC was provided to these parties prior to signing such covenant.***

- **Rights of Access and Enforcement.** Parties that have a right to enforce the Environmental Covenant are listed in O.C.G.A. § 44-16-11(a).
- **Recording of Environmental Covenant and Service on Other Persons.** This section describes when and how the Environmental Covenant must be recorded and sent to specified individuals or entities.
- **Representations and Warranties of Grantor.**
 - EPD may require that the Grantor provide documentation establishing to EPD’s satisfaction that the Grantor’s representations and warranties are true and correct.
 - Such documentation could take the form of, for example, a letter from an attorney opining as to the Grantor’s representations and warranties, stating the basis for such opinion, and including, as appropriate, citation(s) to law, documentation, etc.
 - In the event that there are specific exclusions to the representations and warranties, they must be enumerated on a schedule of disclosures attached to and incorporated into the Environmental Covenant, subject to EPD’s review and approval.
- **EPD’s Environmental Covenants Registry.** The Environmental Covenant and any related amendment or termination may be contained in EPD’s registry for environmental covenants. *See* O.C.G.A. § 44-16-12.
- **Signature Requirements.** An Environmental Covenant is an interest in real property, and therefore execution must comply with the Act as well as any laws governing conveyance of an interest in real property.
 - Any entity or individual executing the Environmental Covenant must provide documentation establishing to EPD’s satisfaction that they possess the authority to do so. For example, a corporation may require a board resolution authorizing execution.
 - Such documentation could take the form of, for example, a letter from an attorney opining as to the same, stating the basis for such opinion, and including, as appropriate, citation(s) to law, documentation, etc.
 - Any individual executing the Environmental Covenant on behalf of a corporation, a partnership, other entity, or another individual must provide documentation establishing to EPD’s satisfaction that they possess the authority to do so.
 - Such documentation could take the form of, for example, a letter from an attorney (1) opining that the individuals signing the Environmental Covenant on behalf of a corporation, etc., have the authority to do so; (2) including signature block language for those individuals that the attorney opines

establishes their authority and (3) stating the basis for such opinions, including, as appropriate, citation(s) to law, documentation, etc.

- **Execution Requirements.** The name and address of the natural person to whom the Environmental Covenant is to be returned must be legibly printed, typewritten or stamped upon the top of the first page of the Environmental Covenant. See O.C.G.A. § 44-2-14(b). The Environmental Covenant must be an original, in writing, signed by the maker, attested by an officer authorized to attest registerable instruments and attested by one other witness.

STEP 6: Within thirty (30) days after the date of the EPD Director's signature, the Owner shall:

- a. File the EC with the Recorder of Deeds for the County in which the Property is located.*
- b. Send a file-stamped copy of the EC to EPD, including a statement confirming that the following step (6c) was completed.*
- c. Send a file-stamped copy to each of the parties identified in accordance with 44-16-7 of the UECA. Note, the owner may choose to address this requirement by including the following verbiage in the cover letter of the Draft EC that is provided to these identified parties:*

“Once the covenant is executed and filed, a final copy will be posted on the GA EPD website (<https://epd.georgia.gov/uniform-environmental-covenants>), or can be made available to you upon request from the undersigned.”
