

REPORT ON UNIFORM ENVIRONMENTAL COVENANTS ACT

By Roger D. Schwenke
August 4, 2005

In August, 2003, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Environmental Covenants Act ("UECA" or the "Act"). UECA, as adopted by the Commissioners, can be viewed on a Web site maintained by the National Conference. It can be located at "UNIV. ENVTL. COVENANTS ACT (Final Act—adopted at the 2003 Annual NCCUSL Meeting), available at <http://www.environmentalcovenants.org>." This same website provides a direct link to current newsletters, maps and charts showing the state-by-state consideration or enactment. The most current map, provided by the National Conference of Commissioners on Uniform State Laws, was prepared as of August 3, has been copied into the end of this report, and can also be viewed from this webpage. The August 3 NCCUSL UECA Newsletter also includes a legislative chart (which show specific legislative bill numbers, and in some cases also shows the status of committee action), and the webpage also includes a direct link to a copy of that newsletter and chart.

The American Bar Association and the Section were represented in the drafting process for the Uniform Act, through having a liaison who met with and worked with the Drafting Committee. I serve as that liaison. I continue to serve as a member of a UECA Task Force, established by the Conference, to assist in state evaluation and adoption of the Act.

The Uniform Act has now been adopted in 10 states. Most recently, on July 21, Delaware joined Ohio (which was the first state to adopt the Act), Iowa, Kentucky, Maine, Maryland, Nebraska, Nevada, South Dakota and West Virginia in enactment. NCCUSL reports that more than 20 other states have the Act on their legislative plans for consideration during 2006. In three states (Oregon, Texas and North Carolina) the Act is under current study and introduction is expected in 2007. The Council of State Governments has recently included UECA in its "Suggested State Legislation" for 2006. In some of the states that have adopted the Act there have been some, albeit limited, changes to the uniform proposal; however, in all of the adoptions thus far the basic Act structure and approach was adopted. In all of the adoptions thus far, the state enactments confirm the legal validity and enforceability of recorded use restrictions negotiated in connection with what are called "risk-based cleanups" of contaminated real estate.

Law Review comments are already beginning to focus on the Act. In addition to comments on it that appeared in my 2003 article in our Section's Journal entitled *Applying and Enforcing Institutional Controls in the Labyrinth of Environmental Requirements—Do We Need More Than the Restatement of Servitudes to Turn Brownfields Green?*, 38 REAL PROPERTY, PROBATE AND TRUST JOURNAL 295 (2003), a recent article examined in much greater detail some of the provisions and assumptions underlying the Act. *COMMENT: The Uniform Environmental Covenants Act - An Environmental Justice Perspective*, 31 ECOLOGY L. Q. 1007 (2004).

Anyone interested in learning more about the Act, or in participating in their state's evaluation of it, should feel free to contact Roger Schwenke at rschwenke@carltonfields.com, (813) 229-4152.

