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## Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC15-90
VAC Chapter title(s)	Uniform Environmental Covenants Act Regulation
Date this document prepared	September 10, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

UECA - Uniform Environmental Covenants Act

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The Uniform Environmental Covenants Act (UECA) (Section 10.1-1238 et seq. of the Code of Virginia) provides a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA "environmental covenant." The UECA statute defines "environmental covenant" as "a servitude arising under an environmental response project that imposes activity and use limitations." Section 10.1-1250 directs the Department to adopt regulations, as necessary, to implement the provisions of the UECA. The Director of the Department of Environmental Quality adopted the initial UECA regulation in 2011.

## Alternatives to Regulation

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

State statute allows the Director the option of adopting a UECA regulation. (§10.1-1250 of the Code of Va.). One viable option explored was the removal of the regulation and the use of guidance to implement UECA. This option was rejected since guidance would not provide as much certainty to all parties participating in the program. The regulation establishes standard requirements that must be met pertaining to UECA covenants.

## Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

An informal advisory group was not formed as part of this review.

Commenter	Comment	Agency response
Linda L. Cole	Supports retaining this regulation as written for the protection of human health and the environment in the Commonwealth of Virginia. As organizations attempt to dispose of contaminated property, the UECA ensures that the location of the contamination and the recommended remediation of the contamination are properly identified and addressed.	The agency agrees this regulation should be retained.
Linda L. Cole	Questions the fee structure in this regulation. Based on fees alone, it is cheaper if the VDEQ is neither the holder nor the agency. VDEQ clearly has little desire to be the holder of the environmental covenant. It is unclear to this commenter when VDEQ would not be the agency. Perhaps examples would be appropriate. Is there any instances of a state quasi-governmental entity holding the lien? Are there memoranda-of-understanding with other state governmental entities	The commenter is correct that fees are lower if DEQ is not the holder or the agency. The regulation defines the “agency” as DEQ or another state or federal agency that determines or approves the environmental response project. This language provides for EPA to be identified as the “agency” for environmental response projects in which EPA has the oversight authority. If DEQ is not the agency, then less agency resources are expended on processing the environmental covenant; therefore, the fees are less. In some cases another state agency may be the owner or holder of the environmental covenant based on ownership of the property or other agreements. The current regulation has been written to be flexible in order to accommodate various property ownership situations. The fees in this regulation were established to cover all

	<p>of DEQ’s costs to implement the program. The established fees were developed based on estimated administrative, legal, and tracking costs to conduct this program.</p>
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**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The regulation is clearly written and easily understandable. This regulation contains a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA “environmental covenant.” Additionally, the regulation includes a template for the environmental covenant. This promotes consistency between all environmental covenants in Virginia.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

The agency is recommending the regulation stay in effect without change. The regulation is beneficial to both the regulated community and DEQ. The regulation details specific requirements for UECA environmental covenants.

**Small Business Impact**

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

The current regulation continues to be needed. The regulation contains a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA “environmental covenant.”

Public comment was received from one individual supporting retention of this regulation. The commenter also commented on the fees related to the environmental covenants. The fees in this regulation were established to cover all of DEQ’s costs to implement the program. The established fees were developed based on estimated administrative, legal, and tracking costs to conduct this program.

This regulation was adopted in 2011 to implement the Virginia Uniform Environmental Covenants Act and the content of the regulation continues to be consistent with state law. The regulations are explanatory in nature and do not place any additional regulatory burden on the regulated community including small businesses.

## Family Impact

*Please assess the potential impact of the regulation's impact on the institution of the family and family stability.*

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It is not anticipated that this regulation will have a direct impact on families.