



The Missouri Environmental Covenants Act

The Missouri Environmental Covenants Act, or MoECA, found in the Missouri Revised Statutes at sections 260.1000 to 260.1039, RSMo., creates a uniform standard for environmental covenants and directs the Missouri Department of Natural Resources to create a public database of properties that have restrictions provided for by this law. The law provides standards for and increases the reliability of covenants used as part of the cleanup of contaminated sites.

Environmental Covenants as a Risk-Based Corrective Action Tool

Risk-based corrective action, or RBCA, is an important tool in the state's efforts to see contaminated properties remediated and returned to beneficial use. The process allows a site to be cleaned up based on human health and environmental risks associated with current and future use of the site. This means some sites are cleaned up to standards that are not protective of all uses, such as residential use. Environmental covenants are used at these sites to help ensure the property is only used for purposes and activities appropriate for the cleanup standards attained. The most common environmental covenant prohibits residential or unrestricted use of a property cleaned up to commercial/industrial use standards. Under RBCA, an environmental covenant is not required at properties that have been remediated to unrestricted use standards.

To be effective, environmental covenants must be enforceable and durable for as long as the contamination on a property poses a potential risk. Before the act, environmental covenants were treated the same as other real estate covenants; this led to certain weaknesses in durability and enforceability. The act was part of a nationwide effort to address these issues. The act ensures environmental covenants run with the land, meaning a covenant remains in effect until actively removed, regardless of how many times the land is sold.

What Covenants Do

The act does not require the use of environmental covenants, but provides a statutory framework when they are used. Environmental covenants describe limitations on future land use and activities at a specific property in order to minimize or eliminate exposure to remaining contamination. Environmental covenants also specify how and by whom the limitations can be enforced. Property owners must follow the environmental covenants for as long as the contaminants present on the property pose a potential risk.

Environmental covenants are recorded in a property's chain of title and notify prospective buyers of specific limitations about land use and activities due to the environmental condition of the property. An environmental covenant can clearly explain the condition and acceptable uses of the property and the department's involvement in any cleanup or other environmental actions. Having this information documented can make the property more marketable. An environmental covenant might also limit the owner's environmental liability.

Public Access to Information

The act directed the department to create a public database for properties that have undergone risk-based cleanups that include activity and land use limitations provided for by this law. This information will be useful to property owners, neighbors, buyers and sellers, real estate and lending institutions, planning and zoning officials and building permit offices. The department is developing this database, which should be available on the department's website in late 2011. The database information will be regularly updated and readily accessible to the public.

Effective Date and Applicability to Prior Cleanups

The act became effective Jan. 1, 2008. Properties cleaned up to other than unrestricted use standards before the act was enacted are not required to have MoECA-compatible environmental covenants. Proactive site owners may voluntarily create and record MoECA-compatible environmental covenants in order to ensure institutional controls in use on those properties are more durable, enforceable and effective.

The act does not apply to above ground or underground storage tank sites, as defined in 319.100, RSMo.

MoECA Requirements

The act does not preempt local zoning or previously recorded instruments that establish activity and use limitations. It also does not limit the regulatory authority of the department under other Missouri laws. The act specifies the following:

- Which environmental projects may use the act covenants.
- The specific elements the act covenants must contain.
- The obligations of the department and other holders of interest in a property.
- How the covenant is to be recorded.
- Who receives a copy of the covenant.
- How the database is to be structured.
- The conditions under which a covenant may be amended or removed.
- The actions required to transfer a covenant to a new holder.
- The environmental covenant runs with the land.

Obtaining a copy of MoECA

Missouri Revised Statutes, including the Missouri Environmental Covenants Act, are available online through the Missouri General Assembly website at www.moga.mo.gov/statutes/c260.htm. Purchase copies from the Revisor of Statutes, 573-526-1288.

For More Information

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