

Fact Sheet
April
2003

FACT SHEET

Recorded Land Use Covenants (Assembly Bill 2436) and Regulations



*DTSC is one of six
Boards and
Departments within
the California
Environmental
Protection Agency.
The Department's
mission is to restore,
protect and enhance
the environment,
to ensure public health,
environmental
quality and
economic vitality,
by regulating
hazardous waste,
conducting and
overseeing
cleanups, and
developing
and promoting
pollution prevention.*

State of California



California
Environmental
Protection Agency



BACKGROUND

Utilizing land use covenants is one of the methods that the Department of Toxic Substances Control (DTSC) uses to protect the public from unsafe exposures to residual contamination that is left in place upon closure of a hazardous waste disposal facility, as part of either a short or long-term stabilization action, a corrective action, or a planned removal or remedial action. The term "land use covenants," as used in this fact sheet includes: written instruments and agreements restricting land uses, easements, servitudes, and land use restrictions. Recorded land use restrictions (or covenants) are provisions set forth in a document which can specify requirements on real property and affect the title, which is the evidence of ownership, to property. Land use covenants are recorded at the county recorder's office so that they will be found during a title search of the property deed. Land use covenants entered into or required by DTSC "run with the land," i.e., are binding on current and subsequent property owners, and remain in effect until they are formally removed or modified, pursuant to Health and Safety Code sections 25233, 25234, and 25398.7.

Previously enacted legislation, Assembly Bill (AB) 871 (Chapter 430, Stats. 1998) required DTSC to maintain a list of all land use covenants recorded pursuant to Health and Safety Code sections 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7. At a minimum, this list must provide the street address, or if a street address is not available, an equivalent description for a rural location or the latitude and longitude of each property. DTSC is also required to update the list as new land use covenants are recorded, make the list available to the public, upon request, and shall place the list on DTSC's Internet website. The list, and a fact sheet describing AB 871, is available on DTSC's website at: www.dtsc.ca.gov/Mandated_Postings.html#deed.

RECORDED LAND USE COVENANTS POSTED ON DTSC'S WEBSITE

DTSC's Recorded Land Use Covenants List To Be Expanded

AB 2436 (Chapter 592, Stats. 2002), effective January 1, 2003, directs DTSC to include within its list of recorded land use covenants (and also includes land use

(This fact sheet updates the December 2002 version: Recorded Land Use Covenants)

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covenants recorded pursuant to Civil Code section 1471) all of the following:

1) a description of the location for each property that includes the address and assessor's parcel number, or if a street address or assessor's parcel number is not available, the list must include a description of the location or the location's geographic coordinates; 2) a description of any restricted uses of the property and any contaminants known to be present; and 3) any remediation, if known, that would be required to allow for its unrestricted use. The bill also allows for the posting of the entire land use covenant document in lieu of providing the latter two descriptions.

In addition to providing the required listing of covenants, DTSC is posting the entire land use covenant document on its Internet website. The requirements of AB 2436 are prospective, effective after January 1, 2003; however, DTSC has placed on the website any current and previously recorded land use covenants that it has entered into under the listed statutory authorities.

New Requirements For County Recorder's Offices

Pursuant to AB 2436, county recorders are authorized to send a copy of any land use covenant, recorded pursuant to Civil Code section 1471, to Cal/EPA for posting on its Internet website, unless the recorded land use covenant is entered into with either DTSC, California Integrated Waste Management Board, State Water Resource Control Board, or a Regional Water Quality Control Board. County recorders have immunity from liability if they do not send the land use covenant to Cal/EPA, and are permitted to assess a reasonable fee to cover the costs associated with sending land use covenants to Cal/EPA. A recorded land use covenant imposed due to the presence of a hazardous material must remain with the property when it is sold or otherwise transferred, unless the land use covenant states otherwise.

DTSC'S LAND USE COVENANT REGULATIONS

DTSC has adopted regulations to add section 67391.1 to title 22, division 4.5, chapter 39, California Code of Regulations. These regulations apply only to DTSC and specify that a land use covenant imposing appropriate limitations on land use shall be executed and recorded when hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land. The regulations require DTSC to clearly set forth and define land use limitations or covenants in a remedy selection or response action decision document prior to approving or concurring with a facility closure, corrective action, remedial or removal action, or other response actions undertaken pursuant to chapter 6.5, 6.8, or 6.85 of division 20 of the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code when contamination will remain at the property at levels which are unsuitable for unrestricted use of the land.

Additionally, the regulations delineate various circumstances under which DTSC will or will not make decisions related to land use covenants. The final (approved) regulations and a fact sheet describing these regulations will soon be accessible on DTSC's homepage at: www.dtsc.ca.gov/LawsRegulationsPolicies/index.html.

AVAILABILITY

For more information regarding land use restrictions and land use covenant agreements, please see DTSC's fact sheets entitled "Land Use Covenant Agreements In California," and "Recorded Land Use Restrictions (AB 871)," as well as DTSC's Official Policy and Procedure #87-14 entitled "Development and Implementation of Land Use Covenants (1990)," which includes a revised Model Deed Restriction Document dated August 7, 1998. In addition, Management Memo #EO-02-002-MM entitled "Response Actions for Sites Where Future Use May Include Sensitive Uses" are on DTSC's website. These documents are available by connecting to DTSC's home page at: www.dtsc.ca.gov/SiteCleanup/index.html. You may also obtain a copy of DTSC's Site Mitigation and Brownfields Reuse Program's list of recorded land use covenants by contacting the office listed below.

Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
Planning and Policy Unit
P.O. Box 806
Sacramento, CA 95812-0806
(916) 327-4258