



Nevada Environmental Covenant FAQs

What is a Nevada environmental covenant?

An environmental covenant is a specific recordable interest in a real property. The state statute defines it as “*a servitude arising under an environmental response project that imposes activity and use limitations.*” An environmental covenant is a voluntary agreement signed by the parties of interest to a real property and the Nevada Division of Environmental Protection (NDEP) or the US Environmental Protection Agency (USEPA). By Nevada law, the agreement must provide a legally sufficient description of the property to the agreement and define the uses or activities that are constrained or prohibited on the subject site. These activities are constrained or prohibited because they would be inconsistent with or compromise the site remedy. The agreement will often identify the remedy used to mitigate the contamination on the site.

The document is generally filed as a perpetual record to run with the land, although in certain circumstances it may be filed with terms that define a limited duration of the agreement or upon reaching certain criteria defined in the agreement. There are other circumstances that may also lead to termination of the agreement and these circumstances are defined in Nevada Revised Statute (NRS) 445D.180. The environmental covenant must be filed with the recorder in every county in which the real property subject to the covenant is located.

What is the purpose of a Nevada environmental covenant?

In most cases where NDEP or USEPA requires a responsible party to take an action to mitigate contamination on a property, the contamination cannot be completely removed due to economic and/or technological constraints. The property is often cleaned-up to a level to which a scientific-based risk assessment can demonstrate that the remnant contamination will not pose a significant threat to human health and the environment. This is commonly termed a *risk-based remediation* or *clean-up*. In many of these *risk-based clean-ups*, the remedy or a part of the remedy is an engineering control that requires monitoring and maintenance in order to maintain its

effectiveness. Therefore, the environmental covenant serves to convey the requirements that will assure the remedy's effectiveness through time should the ownership of the property change hands or new parties of interest become involved with the site or other changes occur, such as the municipality re-zoning the property.

Who are the parties to a Nevada environmental covenant?

The request to enter into an environmental covenant will always be initiated by the NDEP or the USEPA. The other signatories to the agreement depend on the specific ownership and interests in the particular subject property. Nevada statute allows multiple “holders” or grantees to be identified as parties to the environmental covenant agreement. Possible parties of interest include the party responsible for the contamination, lenders holding interest in the real property, leasees of the real property, any owners of the fee simple of the real property, and other parties of interest that should be parties to the agreement as may be determined necessary. Nevada law requires that all holders be identified and sign the environmental covenant. Nevada law also requires that all owners of the fee simple be signatories to the document, unless that requirement is waived by the agency.

Why enter into a Nevada environmental covenant?

There are advantages to a responsible party and/or owner of real property that was subject to an environmental response or action under state or federal law in entering into an environmental covenant. The terms of the environmental covenant assure that the actions taken in the environmental response and the resources invested by the parties of interest are identified by the regulating agency and that they are maintained through time, thereby reducing the liability associated with an incomplete or compromised response action in the future. The environmental covenant also gives the holders of the covenant a legal document that indicates the acceptance of the completed response action performed by the responsible party from the regulating agency and defines any continuing conditions that must be satisfied in order to maintain that acceptance.

This is often a valuable instrument when selling or improving the property in the future, as it removes the question of what potential liabilities might arise from the impacted environmental conditions that exist or formerly existed on the site. In some cases, it may also protect the parties of interest in the site from having to take

additional action on the site due to zoning law changes or changes to law regulating the use of real property that might damage or otherwise compromise the conditions established in the environmental covenant. The environmental covenant holds primacy over zoning and land-use law changes in those circumstances. Additionally, with the option of being able to institute an environmental covenant on the property, the regulatory agency overseeing the site can consider a wider range of remedial action alternatives for a risk-based clean-up where long-term engineering controls can be used. This often provides more economically feasible clean-up alternatives for a site.

How is a Nevada environmental covenant filed?

Typically, the holders of the environmental covenant and their legal counsel draw up the preliminary document and submit it to regulatory agency responsible for oversight of the response action. The agency and their legal staff (the Nevada Attorney General's office, in the case of NDEP) review the submittal and any changes or modifications to the agreement are negotiated with the holders and their representatives. Once final terms for the environmental covenant have been agreed upon, the document is signed by all holders to the agreement and any other parties of interest as necessary and by the administrator of the regulatory agency entering the agreement. The document is then filed with the county recorder of the county (or counties) where the property is located, usually a nominal fee is charged for the filing. Any subsequent modifications to the document can be made as additional exhibits and those exhibits are attached to the primary environmental covenant by additional filings with the county recorder.

What laws govern Nevada environmental covenants?

Nevada environmental covenants were introduced as Senate Bill No. 263 and passed in June 2005. They have been promulgated in Nevada Revised Statutes as Chapter 445D.

How can I learn more about Nevada environmental covenants?

You can contact the NDEP Bureau of Corrective Action's Superfund branch at (775) 687-9381.