

**65-1,224. Environmental use control; application; requirements; approval or disapproval.** (a) An owner of property, with departmental approval, may restrict the use of the owner's property to mitigate the risk posed to human health and the environment by imposing on the property an appropriate environmental use control.

(b) (1) If the owner elects to voluntarily restrict use of or activities on the owner's property, the owner or the owner's authorized representative shall make application to the department for approval of an environmental use control. Such application shall be made on forms provided by the department and shall be completed and submitted to the department by the owner or the owner's authorized representative.

(2) Department approval of an application shall be subject to the application's containing the following components: Appropriate restrictions to protect public health and the environment from known contamination which exceeds department standards for unrestricted residential use; access to the subject property; an inspection schedule that is appropriate to monitor conditions at the subject property; and the availability of funds to administer the provisions of this act related to the subject property.

(3) The department may require the applicant to provide financial assurance for category 3 property as described in subsection (c)(3) of K.S.A. 2016 Supp. 65-1,226, and amendments thereto, based on the potential for long term maintenance cost of protective structures and the potential for release or migration of environmental contamination from the property. The applicant shall provide the financial assurance by one or more methods satisfactory to the department, including, but not limited to, environmental insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer or other demonstration of financial capability. The demonstration of financial capability must be adequate to provide remedies which are protective of human health and the environment should the proposed remedial activity fail.

(4) The application shall include an accurate legal description or survey of the portion of the property where an environmental use control is proposed.

(c) The department shall review the application. If the application is disapproved by the department, the applicant may modify the application in a manner necessary to obtain department approval and resubmit the application for the department's approval. If the application is approved by the department, the department shall provide the applicant a written approval.

(d) An environmental use control pursuant to this act may be approved by the department as part of the remedial activity for the property when residual contamination which exceeds department standards for unrestricted residential use on the subject property.

**History:** L. 2003, ch. 130, § 4; July 1.