

65-1,227. Same; term; removal or expiration; modification; liability. (a) An environmental use control may be granted either in perpetuity or for a term of years, as determined by the department. An environmental use control may not be approved for a term of years unless provisions are included that ensures the protection of human health and the environment beyond the expiration of the environmental use control. Upon expiration of the term if contamination remains above department standards, as set forth in the approved environmental use control, the department can require additional action.

(b) An environmental use control runs with the land and is binding on all successors in interest to property until the environmental use control is removed upon the department's approval or upon expiration of the term of the environmental use control.

(c) An environmental use control shall be removed if the property owner demonstrates to the department's satisfaction that the original risk to human health or the environment which created the need for the control is no longer present. An owner must submit a request to the department for approval to remove all or a portion of the environmental use controls from the property. The department shall review the request and provide the owner with the department's decision to approve or deny the request within 120 days after the department's receipt of the request. If the department denies the request, justification shall be provided to the owner with a written explanation of the denial, which may include that the applicant has not provided the documentation to demonstrate that the request is protective of human health and the environment, as determined by the department.

(d) If the department approves an owner's request to remove all or a portion of environmental use controls, the owner shall file the approval with the register of deeds in the county where the property is located.

(e) An environmental use control may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement or other common law principles relating to covenants or by the exercise of eminent domain.

(f) An environmental use control may be modified by mutual written agreement by the property owner and the department.

(g) The department shall not acquire any liability by virtue of approving an environmental use control or by approving removal of all or a portion of environmental use controls.

History: L. 2003, ch. 130, § 7; July 1.