

455H.206 Institutional and technological controls.

1. In achieving compliance with the cleanup standards under this chapter, a participant may use an institutional or technological control. The director may require reasonable proof of financial assurance where necessary to assure a technological control remains effective.

2. An institutional or technological control includes any of the following:

a. A state or federal law or regulation.

b. An ordinance of any political subdivision of the state.

c. A contractual obligation recorded and executed in a manner satisfying chapter 558.

d. A control which the participant can demonstrate reduces or manages the risk from a release through the period necessary to comply with the applicable standards.

e. An environmental protection easement.

3. If the department's determination of compliance with applicable standards pursuant to subchapter 3 is conditioned on a restriction in the use of any real estate in the affected area, the participant must utilize an institutional control. If the restriction in use is to limit the use to nonresidential use, the participant must use an environmental protection easement as the institutional control. Environmental protection easements may also be used to implement other institutional or technological controls. An environmental protection easement must be granted by the fee title owners of the relevant real estate. The participant shall furnish to the department abstracts of title and other documents sufficient to enable the department to determine that the easements will be enforceable. An environmental protection easement shall be in a form provided by rule of the department. An environmental protection easement must provide all of the following:

a. The easement names the state, acting through the department, as grantee.

b. The easement identifies the activity either being restricted or required through the institutional or technological control.

c. The easement runs with the land, binding the owner of the land and the owner's successors and assigns.

d. The easement shall include an acknowledgment by the director of acceptance of the easement by the department.

e. The easement is filed in the office of the recorder of the county in which the real estate is located and in any central registry which may be created by the director.

4. If the use of an institutional or technological control is confirmed in a no further action letter issued pursuant to section 455H.301, the institutional or technological control may be enforced in district court by the department, a political subdivision of this state, the participant, or any successor in interest to the participant. An environmental protection easement granted pursuant to subsection 3 shall be enforceable in perpetuity notwithstanding sections 614.24 through 614.38. After the recording of the easement, each instrument transferring an interest in the area affected by the easement shall include a specific reference to the recorded easement. If a transfer instrument fails to include a specific reference to the recorded easement, the transferor may lose any of the benefits provided by this chapter.

5. An institutional or technological control, except for an environmental protection easement, may be removed, discontinued, modified, or terminated by the participant or a successor in interest to the participant

upon a demonstration that the control no longer is required to assure compliance with the applicable standard. Upon review and approval by the department, the department shall issue an amendment to its no further action letter approving the removal, discontinuance, modification, or termination of an institutional or technological control which is no longer needed.

6. An environmental protection easement granted pursuant to subsection 3 may be released or amended only by a release or amendment of the easement executed by the director and filed with the county recorder. The department may determine that any person who intentionally violates an environmental protection easement or other technological or institutional control contained in a no further action letter loses any of the benefits provided by this chapter as to the affected area. In the event the technological or institutional controls fail to achieve compliance with the applicable standards, the participant shall undertake an additional response action sufficient to demonstrate to the department compliance with applicable standards. Failure to proceed in a timely manner in performing the additional response action may result in termination of the participant's enrollment in the land recycling program.

97 Acts, ch 127, §13