

**REAL PROPERTY VOLUNTARY
ENVIRONMENTAL RESTRICTIVE COVENANTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

This act modifies the Environmental Quality Code by creating a new chapter, "Environmental Institutional Control Act." The act allows for creation of environmental institutional controls which limit or otherwise affect the use of real property which has been affected by a cleanup or risk assessment. The act includes procedures for establishment and enforcement of the institutional controls, removal of the controls, and appeal of the executive director's decision regarding the controls.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

19-9-101, Utah Code Annotated 1953

19-9-102, Utah Code Annotated 1953

19-9-103, Utah Code Annotated 1953

19-9-104, Utah Code Annotated 1953

19-9-105, Utah Code Annotated 1953

19-9-106, Utah Code Annotated 1953

19-9-107, Utah Code Annotated 1953

19-9-108, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-9-101** is enacted to read:

CHAPTER 9. ENVIRONMENTAL INSTITUTIONAL CONTROL ACT

19-9-101. Title.

This chapter is known as the "Environmental Institutional Control Act."

Section 2. Section **19-9-102** is enacted to read:

19-9-102. Definitions.

As used in this chapter:

(1) "Environmental institutional control" or "institutional control" means with respect to real property, any deed restriction, restrictive covenant, easement, reservation, environmental notice, engineering control, or other restriction or obligation that is designed to protect human health or the environment and:

(a) is established in connection with a cleanup or risk assessment that is reviewed, overseen, conducted, or administered by the department; and

(b) (i) limits the use of the real property, groundwater, or surface water;

(ii) limits activities that may be performed on or at the property; or

(iii) requires maintenance of any engineering or other control.

(2) "Executive director" means the executive director of the state Department of Environment Quality or the executive director's designated representative.

Section 3. Section **19-9-103** is enacted to read:

19-9-103. Establishment of environmental institutional controls.

An owner of real property may, with the approval of the executive director, restrict the use of the real property by imposing on the real property appropriate environmental institutional controls to mitigate the risk posed to the public health, safety, or welfare, or the environment.

Section 4. Section **19-9-104** is enacted to read:

19-9-104. Requirements for creation of institutional control.

An environmental institutional control shall:

(1) be in writing and shall be recorded by the owner of the real property in the county recorder's office in the county where the real property is located;

(2) contain a legal description of the area of the real property that is subject to the institutional control;

(3) include a statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect the public health, safety, or welfare, or the environment;

(4) include a statement that the institutional control runs with the land and is binding on all successors in interest unless or until the institutional control is removed as provided in

Section 19-9-105:

(5) include a statement acknowledging the department's right of access to the property at all reasonable times to verify that the institutional controls are being maintained;

(6) include a statement explaining how the institutional control can be modified or terminated and stating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the executive director pursuant to this chapter;

(7) include a notarized signature of the executive director indicating approval of the environmental institutional control; and

(8) include the notarized signature of the property owner indicating approval of the environmental institutional control.

Section 5. Section **19-9-105** is enacted to read:

19-9-105. Termination of institutional control.

(1) An owner may request in writing that the executive director approve termination or modification of the environmental institutional control.

(2) An environmental institutional control may be terminated or modified, in whole or in part, if the executive director determines an unacceptable risk is not posed to public health, safety, or welfare, or the environment.

(3) (a) The executive director shall review the request and provide to the owner a written decision approving or denying the request within 120 days from the executive director's receipt of the request.

(b) If the executive director denies the request, the executive director shall send the owner a written explanation for the denial.

(c) If the executive director approves an owner's request to terminate or modify all or a portion of the environmental institutional controls, the owner shall file the approval with the county recorder in the county in which the real property is located.

Section 6. Section **19-9-106** is enacted to read:

19-9-106. Enforcement and inspection regarding institutional controls.

(1) An environmental institutional control may be enforced or protected by a temporary restraining order or an injunction obtained in a court of competent jurisdiction by the department or other affected parties.

(2) In addition to injunctive relief, the department is entitled to recover costs for actions which, in its discretion, it may take in enforcing and protecting the institutional controls.

(3) The department may enter the property at reasonable times to ensure compliance with the environmental institutional controls.

Section 7. Section **19-9-107** is enacted to read:

19-9-107. Records regarding institutional controls.

The department shall maintain a record of the properties subject to environmental institutional controls established under this chapter. The department may archive the records.

Section 8. Section **19-9-108** is enacted to read:

19-9-108. Appeals of institutional control decisions.

Any determination by the executive director under this chapter may be appealed as provided in Title 63, Chapter 46b, Administrative Procedures Act.