

Kansas Administrative Regulations

Department of Health and Environment

Article 73.—Environmental Use Controls Program

28-73-7. Restrictions, prohibitions, and zoning requirements.

(a) Restrictions, prohibitions, and zoning requirements placed on an eligible property by a local, state, or federal government may be approved by the secretary in lieu of or in addition to one or more environmental use controls if the restriction, prohibition, or zoning requirement meets the following conditions:

- (1) Has been legally established;
- (2) is enforceable by a governmental entity; and

(3) is determined by the secretary to be in effect and applicable to the environmental contamination for which a particular environmental use control is otherwise considered to be a necessary component of an environmental use control agreement for the eligible property.

(b) Use of these restrictions, prohibitions, or zoning requirements in lieu of or in addition to an environmental use control may be considered in either of the following cases:

(1) For contamination that is contained exclusively within the boundaries of an eligible property; or

(2) for contamination that is both contained within and extends beyond the boundaries of an eligible property if the local, state, or federal governmental restriction, prohibition, or zoning requirement is in effect and applies to all of the following areas:

(A) All of those contaminated areas that are beyond the boundary of the eligible property; and

(B) All of those areas surrounding or extending beyond the contaminated areas for a distance that is determined by the secretary to be necessary to ensure the protection of public health and safety and the environment.

(c) Each applicant submitting an application for an environmental use control agreement shall submit to the secretary a copy of any existing local, state, or federal

governmental restrictions, prohibitions, or zoning requirements that are proposed for inclusion in the environmental use control agreement in lieu of or in addition to one or more of the proposed environmental use controls. Each applicant shall submit for the secretary's review documentation sufficient to demonstrate the applicant's compliance with each restriction, prohibition, or zoning requirement that is enforceable by a local, state, or federal governmental entity.

(d) If the secretary approves the inclusion of governmental restrictions, prohibitions, or zoning requirements in the environmental use control agreement, the agreement shall reference the appropriate local, state, or federal restriction, prohibition, or zoning requirement and shall identify the governmental unit establishing these requirements.

(e) Each owner who enters into an environmental use control agreement that incorporates local, state, or federal governmental restrictions, prohibitions, or zoning requirements in lieu of or in addition to one or more environmental use controls shall remain subject to all other applicable requirements of the act and these regulations.

(f) An environmental use control agreement that incorporates local, state, or federal governmental restrictions, prohibitions, or zoning requirements shall be considered not to be effectively implemented and shall be subject to appropriate enforcement action in accordance with K.S.A. 65-1,229, and amendments thereto, if the secretary determines that both of the following conditions exist:

(1) The local, state, or federal governmental restrictions, prohibitions, or zoning requirements have been modified by the governmental entity after the environmental use control agreement was approved by the secretary.

(2) These modifications reduce the effectiveness of the environmental use control agreement to the extent that public health and safety and the environment are not protected adequately.

(Authorized by K.S.A. 2005 Supp. 65-1,232; implementing K.S.A. 2005 Supp. 65-1,228; effective April 7, 2006.)