**Section 742.1010 Environmental Land Use Controls**

a) An Environmental Land Use Control (ELUC) is an institutional control that may be used under this Part to impose land use limitations or requirements related to environmental contamination. ELUCs are only effective when approved by the Agency in accordance with this Part. Activities or uses that may be limited or required include, but are not limited to, prohibition of use of groundwater for potable purposes, restriction to industrial/commercial uses, operation or maintenance of engineered barriers, indoor inhalation building control technologies, or worker safety plans. ELUCs may be used in the following circumstances:

1) When No Further Remediation Letters are not available, including but not limited to when contamination has migrated off-site or outside the remediation site; or

2) When No Further Remediation Letters are not issued under the program for which a person is undergoing remediation.

b) Recording requirements:

1) An ELUC approved by the Agency pursuant to this Section must be recorded in the Office of the Recorder or Registrar of Titles for the county in which the property that is the subject of the ELUC is located. A copy of the ELUC demonstrating that it has been recorded must be submitted to the Agency before the Agency will issue a no further remediation determination.

2) An ELUC approved under this Section will not become effective until officially recorded in the chain of title for the property that is the subject of the ELUC in accordance with subsection (b)(1) of this Section.

3) Reference to the recorded ELUC must be made in the instrument memorializing the Agency's no further remediation determination. Recording of the no further remediation determination and confirmation of recording must be in accordance with the requirements of the program under which the determination was issued.

4) The requirements of this Section do not apply to Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record land use limitations on the chain of title.

5) The requirements of this Section apply only to those sites for which a request for a no further remediation determination has not yet been made to the Agency by January 6, 2001.

c) Duration:

1) Except as provided in this subsection (c), an ELUC shall remain in effect in perpetuity.

2) *At no time shall any site for which an ELUC has been imposed as a result of remediation activities under* this Part *be used in a manner inconsistent with the land use limitation unless attainment of objectives appropriate for the new land use* is achieved *and a new* no further remediation determination has been *obtained and recorded in accordance with* the program under which the ELUC was first imposed or the Site Remediation Program (35 Ill. Adm. Code 740) [415 ILCS 58.8(c)]. In addition, the appropriate release or modification of the ELUC must be prepared by the Agency and filed on the chain of title for the property that is the subject of the ELUC.

A) For a Leaking Underground Storage Tank (LUST) site under 35 Ill. Adm. Code 731 or 734 or a Site Remediation Program site under 35 Ill. Adm. Code 740, an ELUC may be released or modified only if the NFR Letter is also modified under the Site Remediation Program to reflect the change;

B) For a RCRA site under 35 Ill. Adm. Code 721730, an ELUC may be released or modified only if there is also an amended certification of closure or a permit modification.

3) In addition to any other remedies that may be available, a failure to comply with the limitations or requirements of an ELUC may result in voidance of an Agency no further remediation determination in accordance with the program under which the determination was made. The failure to comply with the limitations or requirements of an ELUC may also be grounds for an enforcement action pursuant to Title VIII of the Act.

d) An ELUC submitted to the Agency must match the form and contain the same substance, except for variable elements (e.g., name of property owner), as the model in Appendix F and must contain the following elements:

1) Name of property owners and declaration of property ownership;

2) Identification of the property to which the ELUC applies by common address, legal description, and Real Estate Tax Index/Parcel Index Number;

3) A reference to the Bureau of Land LPC numbers or 10-digit identification numbers under which the remediation was conducted;

4) A statement of the reason for the land use limitation or requirement relative to protecting human health and the surrounding environment from soil, groundwater, and/or other environmental contamination;

5) The language instituting such land use limitations or requirements;

6) A statement that the limitations or requirements apply to the current owners, occupants, and all heirs, successors, assigns, and lessees;

7) A statement that the limitations or requirements apply in perpetuity or until:

A) The Agency determines that there is no longer a need for the ELUC;

B) The Agency, upon written request, issues to the site that received the no further remediation determination that relies on the ELUC a new no further remediation determination approving modification or removal of the limitations or requirements;

C) The new no further remediation determination is filed on the chain of title of the site subject to the no further remediation determination; and

D) A release or modification of the land use limitation is filed on the chain of title for the property that is the subject of the ELUC;

8) Scaled site maps showing:

A) The legal boundary of the property to which the ELUC applies;

B) The horizontal and vertical extent of contaminants of concern above applicable remediation objectives for soil, groundwater, and soil gas to which the ELUC applies;

C) Any physical features to which an ELUC applies (e.g., engineered barriers, monitoring wells, caps, indoor inhalation building control technologies); and

D) The nature, location of the source, and direction of movement of the contaminants of concern;

9) A statement that any information regarding the remediation performed on the property for which the ELUC is necessary may be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140] and rules promulgated thereunder; and

10) The dated, notarized signatures of the property owners or authorized agent.

(Source: Amended at 37 Ill. Reg. 7506, effective May 15, 2013)