

## CHAPTER 114E

### UNIFORM ENVIRONMENTAL COVENANTS ACT

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#### 114E.01 SHORT TITLE.

This chapter may be cited as the Uniform Environmental Covenants Act.

**History:** 2007 c 131 art 1 s 59

#### 114E.05 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the definitions in this subdivision have the meanings given.

Subd. 2. **Activity and use limitations.** "Activity and use limitations" means restrictions or obligations with respect to real property that are associated with an environmental response project.

Subd. 3. **Common interest community.** "Common interest community" means a common interest community as defined in chapter 515B.

Subd. 4. **Environmental agency.** "Environmental agency" means the Pollution Control Agency, Agriculture Department, or another state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

Subd. 5. **Environmental covenant.** "Environmental covenant" means a servitude created under this chapter that imposes activity and use limitations.

Subd. 6. **Environmental response project.** "Environmental response project" means a plan or work performed to clean up, eliminate, investigate, minimize, mitigate, or prevent the release or threatened release of contaminants affecting real property in order to protect public health or welfare or the environment, including:

(1) response or corrective actions under federal or state law, including chapters 115B, 115C, 115E, and 116, and the Comprehensive Environmental Response, Compensation and Liability Act, United States Code, title 44, section 9601, et seq.;

(2) corrective actions or response to agricultural chemical incidents under chapters 18B, 18C, 18D, and 18E; and

(3) closure, contingency, or corrective actions required under rules or regulations applicable to waste treatment, storage, or disposal facilities or to above or below ground tanks.

Subd. 7. **Holder.** "Holder" means any person identified as a holder of an environmental covenant as specified in section 114E.10, paragraph (a).

Subd. 8. **Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, political subdivision or special purpose unit of government, agency, or instrumentality of the state or federal government, or any other legal or commercial entity.

Subd. 9. **Record.** "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 10. **Recorded.** "Recorded" means recorded with the county recorder or registrar of title, as applicable, in each county where the real property is located.

Subd. 11. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**History:** 2007 c 131 art 1 s 60

#### **114E.10 NATURE OF RIGHTS; ROLE OF ENVIRONMENTAL AGENCY; SUBORDINATION OF INTERESTS.**

(a) Any person, including a person that owns an interest in the real property subject to the environmental covenant, the environmental agency, or any other political subdivision or unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property. The holder is the grantee of the real property interest conveyed under an environmental covenant.

(b) Unless an environmental agency is a holder, any right that the agency may have with respect to an environmental covenant does not constitute an interest in real property. Approval of an environmental covenant does not make the environmental agency a holder unless it has authority under law other than this chapter to acquire an interest in real property for purposes related to an environmental response project and it is expressly identified as a holder in the environmental covenant.

(c) An environmental agency is bound by any obligation it assumes in an environmental covenant, but an environmental agency does not assume obligations merely by signing an environmental covenant. As provided in section 114E.15, an environmental covenant is not valid

unless signed by the environmental agency and the environmental agency may set reasonable conditions for its approval of an environmental covenant. When the environmental agency is a federal agency, the covenant must also be approved and signed by the state environmental agency that has authority under state law to address the release or threatened release involved in the environmental response project. Any other person that signs an environmental covenant is bound by the obligations the person expressly assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) an interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant;

(2) this chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) a subordination agreement may be contained in an environmental covenant or in a separate record that is recorded. If the environmental covenant covers commonly owned property in a common interest community, the environmental covenant or the subordination agreement may be signed by any person authorized by the governing board of the owners' association; and

(4) an agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

**History:** 2007 c 131 art 1 s 61

#### **114E.15 CONTENTS OF ENVIRONMENTAL COVENANT.**

(a) An environmental covenant must:

(1) state on its first page that the instrument is an environmental covenant executed pursuant to this chapter;

(2) contain a legally sufficient description of the real property subject to the covenant;

(3) describe the activity and use limitations on the real property;

(4) identify every holder;

(5) be signed and acknowledged by the environmental agency, every holder, and every owner of the fee simple title to the real property subject to the covenant; and

(6) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by paragraph (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) requirements for notice of any transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination or the environmental response project on, the real property subject to the covenant;

(2) requirements for periodic reporting describing compliance with the covenant;

(3) rights of access to the real property granted in connection with implementation or enforcement of the covenant;

(4) a brief narrative description of the contamination and environmental response project, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) limitation on amendment or termination of the covenant in addition to those contained in sections 114E.40 and 114E.45;

(6) rights of the holder in addition to its right to enforce the covenant pursuant to section 114E.50; and

(7) waiver of a party's right to consent to the amendment or termination of a covenant under section 114E.45, paragraph (a), clause (3).

(c) The environmental agency may set reasonable conditions for its approval of an environmental covenant, including:

(1) requiring that persons specified by the agency that have interests in the real property also sign the covenant;

(2) requiring that a person who holds a prior interest in the real property subject to the covenant agree to subordinate that interest where applicable; and

(3) requiring the inclusion within the text of the covenant information, restrictions, or requirements as described in paragraph (b).

**History:** 2007 c 131 art 1 s 62

#### **114E.20 VALIDITY; EFFECT ON OTHER INSTRUMENTS.**

(a) An environmental covenant created under this chapter runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

- (4) it imposes a negative burden;
- (5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;
- (6) the benefit or burden does not touch or concern real property;
- (7) there is no privity of estate or contract;
- (8) the holder dies, ceases to exist, resigns, or is replaced; or
- (9) the owner of an interest in the real property subject to the environmental covenant and the holder are the same person.

(c) Any instrument that imposes activity and use limitations, including any conservation easement, declaration, restrictive covenant, or similar instrument created before July 1, 2007, remains valid and enforceable as provided in the law under which it was created. This chapter does not apply in any other respect to such an instrument.

(d) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

**History:** 2007 c 131 art 1 s 63

#### **114E.25 RELATIONSHIP TO OTHER LAND USE LAW.**

(a) This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant.

(b) An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

(c) An environmental agency that exercises authority under law other than this chapter to require as part of an environmental response project the performance of a response or corrective action that would not otherwise be an authorized use of real property under zoning or other real property law or prior recorded instruments may include such requirement as an affirmative obligation in an environmental covenant.

**History:** 2007 c 131 art 1 s 64

#### **114E.30 NOTICE.**

(a) A copy of an environmental covenant, and any amendments or notices of termination thereof, must be provided by the persons and in the manner required by the environmental agency to:

- (1) each person that signed the covenant or their successor or assign;

- (2) each person holding a recorded interest in the real property subject to the covenant;
- (3) each person in possession of the real property subject to the covenant;
- (4) each political subdivision in which real property subject to the covenant is located; and
- (5) any other person the environmental agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

**History:** 2007 c 131 art 1 s 65

#### **114E.35 RECORDING.**

(a) An environmental covenant and any amendment or termination of the covenant must be recorded with the county recorder or registrar of titles, as applicable, in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in section 114E.40, paragraph (f), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

**History:** 2007 c 131 art 1 s 66

#### **114E.40 DURATION; MODIFICATION OR TERMINATION BY ADMINISTRATIVE OR COURT ACTION.**

- (a) An environmental covenant is perpetual unless it is:
- (1) by its terms limited to a specific duration or terminated by the occurrence of a specific event;
  - (2) terminated by consent pursuant to section 114E.45;
  - (3) terminated pursuant to paragraph (b) or (e);
  - (4) terminated by foreclosure of an interest that has priority over the environmental covenant; or
  - (5) terminated or modified in an eminent domain proceeding, but only if:
    - (i) the environmental agency that signed the covenant is a party to the proceeding;
    - (ii) all persons identified in paragraph (c) are given notice of the pendency of the proceeding; and
    - (iii) the court determines, after hearing, that the activity and use limitations subject to termination or modification are no longer required to protect public health or welfare or the environment.

(b) The environmental agency that approved an environmental covenant may determine whether to terminate or reduce the burden on the real property of the covenant if the agency determines that some or all of the activity and use limitations under the covenant are no longer required to protect public health or welfare or the environment or modify the covenant if the agency determines that modification is required to adequately protect public health or welfare or the environment.

(c) The environmental agency shall provide notice of any proposed action under paragraph (b) to each person with a current recorded interest in the real property subject to the environmental covenant, each holder, all other persons who originally signed the environmental covenant, or their successors or assigns, and any other person with rights or obligations under the covenant. The environmental agency shall provide 30 days for comment on the proposed action by parties entitled to notice. Any person entitled to notice under this paragraph may request a contested case under chapter 14 by making the request in writing within the 30-day comment period. A determination by an environmental agency under this paragraph is a final agency decision subject to judicial review in the same manner as provided in sections 14.63 to 14.68 or under applicable federal law.

(d) Any person entitled to notice under paragraph (c) may apply in writing to the environmental agency for a determination under paragraph (b) that an existing covenant be terminated, that the burden of a covenant be reduced, or that the covenant be modified. The application must specify the determination sought by the applicant, the reasons why the environmental agency should make the determination, and the information which would support it. If the environmental agency fails to commence a proceeding under paragraph (b) within 60 days of receipt of the application, the applicant may bring a de novo action in the district court for termination, reduction of burden, or modification of the environmental covenant pursuant to paragraph (e).

(e) The district court for the county in which the real property subject to an environmental covenant is located may, under the doctrine of changed circumstances, terminate the covenant, reduce its burden on the real property, or modify its terms in a de novo action if an environmental agency fails to commence a proceeding within 60 days as provided under paragraph (d). The applicant under paragraph (d), any party to the environmental covenant, or any other person identified in paragraph (c) may commence an action under this paragraph. The person commencing the action shall serve notice of the action on the environmental agency and any person entitled to notice under paragraph (c). The court shall terminate, reduce the burden of, or modify the environmental covenant if the court determines that the person bringing the action shows that some or all of the activity and use limitations under the covenant do not, or are no longer required to, protect public health or welfare or the environment.

(f) An environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(g) An environmental covenant may not be extinguished, limited, or impaired by application of section 500.20 or 541.023.

**History:** 2007 c 131 art 1 s 67

#### **114E.45 AMENDMENT OR TERMINATION BY CONSENT.**

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

- (1) the environmental agency;
- (2) the current owner of the fee simple title to the real property subject to the covenant;
- (3) every other original signatory to the covenant, or their successor or assign, unless:

(i) the person waived the right to consent to termination or modification in the environmental covenant or another signed and acknowledged record that is recorded;

(ii) the person fails to object to the amendment or termination within 60 days after a notice requesting the person's consent to amendment or termination was mailed by certified mail, return receipt requested, to the person's last known address, as obtained from the United States Postal Service; or

(iii) a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

- (4) each holder, except as otherwise provided in paragraph (d).

Any person may establish that the notice described in clause (3), item (ii), was properly mailed by recording an affidavit to that effect from a person having knowledge of the facts, and a certified copy of the recorded affidavit shall be prima facie evidence of the facts stated therein.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in the environmental covenant or other signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, or as otherwise provided in the environmental covenant, assignment of an environmental covenant to a new holder is an amendment.

- (d) Except as otherwise provided in paragraph (c) or in an environmental covenant:



(1) a holder may not assign its interest without consent of the other parties specified in paragraph (a);

(2) a holder may be removed and replaced by agreement of the other parties specified in paragraph (a); and

(3) a court of competent jurisdiction may fill a vacancy in the position of holder.

**History:** 2007 c 131 art 1 s 68

#### **114E.50 ENFORCEMENT OF ENVIRONMENTAL COVENANT.**

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) a party to the covenant, including all holders;

(2) the environmental agency that signed the covenant;

(3) any person to whom the covenant expressly grants power to enforce;

(4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) a political subdivision in which the real property subject to the covenant is located.

(b) The state environmental agency that signed the covenant may use any remedy or enforcement measure provided in section 115.071, subdivisions 3 to 5, or 116.072 to remedy violations of a covenant. This paragraph does not limit the state environmental agency from taking action to enforce the terms of a covenant against a person required to comply with the covenant in connection with that person's obligation to perform response actions or as a condition of receiving a liability assurance with respect to a release or threatened release of contaminants.

(c) This chapter does not limit the regulatory authority of the environmental agency under law other than this chapter with respect to an environmental response project.

(d) A person is not responsible for or subject to liability arising from a release or threatened release of contamination into the environment, or for remediation costs attendant thereto, solely because it has signed, holds rights to, or otherwise has the right to enforce an environmental covenant.

**History:** 2007 c 131 art 1 s 69

#### **114E.60 UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History:** 2007 c 131 art 1 s 70

**114E.65 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not modify, limit, or supersede section 101 of that act, United States Code, title 15, section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, United States Code, title 15, section 7003(b).

**History:** *2007 c 131 art 1 s 71*