§ 27-1318. Institutional and engineering controls.

(a) When the department approves a proposed remedial work plan that includes institutional controls and/or engineering controls as components of a proposed remedial program, such remedial work plan shall include:

(i) a complete description of any proposed use restrictions and/or institutional controls and the mechanisms that will be used to implement, maintain, monitor, and enforce such restrictions and controls;

(ii) a complete description of any proposed engineering controls and any operation, maintenance, and monitoring requirements, including the mechanisms that will be used to continually implement, maintain, monitor, and enforce such controls and requirements;

(iii) an evaluation of the reliability and viability of the long-term implementation, maintenance, monitoring, and enforcement of any proposed institutional or engineering controls and an analysis of the long-term costs of implementing, maintaining, monitoring and enforcing such controls, including costs that may be borne by state or local governments;

(iv) sufficient analysis to support a conclusion that effective implementation, maintenance, monitoring and enforcement of institutional and/or engineering controls can be reasonably expected;

(v) where required by the department, financial assurance to ensure the long-term implementation, maintenance, monitoring, and enforcement of any such controls; and

(vi) a requirement that any engineering control must be used in conjunction with institutional controls to ensure the continued integrity of such engineering control.

(b) Within one hundred eighty days of commencement of the remedial design, the owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter.

(c) The owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing the remedial program at such site where institutional or engineering controls are employed pursuant to

this title shall, unless otherwise provided in writing by the department, annually submit to the department a written statement by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering, or by such other expert as the department may find acceptable certifying under penalty of perjury that the institutional controls and/or engineering controls employed at such site are unchanged from the previous certification and that nothing has occurred that would impair the ability of such control to protect the public health and environment, or constitute a violation or failure to comply with any operation and maintenance plan for such controls and giving access to such real property to evaluate continued maintenance of such controls.