§ 71-3605. Environmental easements; certain common law rules not applicable.

1. An environmental easement shall be granted by the title owners of the relevant real estate only by an instrument, that complies with the requirements of section 5-703 of the general obligations law.

2. The title owners shall furnish to the department abstracts of title and other documents sufficient to enable the department to determine that the easements shall be enforceable. An environmental easement shall be in a form prescribed by the department. An environmental easement shall describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor or, if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed, otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real property burdened by the environmental easement. An environmental easement shall:

(a) name the state, acting through the department, as grantee;

(b) contain a complete description of any use restrictions and/or engineering control to which the real property is subject;

(c) run with the land, binding the owner of the land and the owner's successors and assigns;

(d) include an acknowledgment by the commissioner of acceptance of the easement by the department; and

(e) include an agreement to incorporate, either in full or by reference, the environmental easement in any leases, licenses, or other instruments granting a right to use the property that may be affected by such easement.

3. Until such time as the environmental easement is extinguished, the property deed and all subsequent instruments of conveyance relating to the subject property shall state in at least fifteen-point bold-faced type: "This property is subject to an environmental easement held by the New York state department of environmental conservation pursuant to title 36 of article 71 of the environmental conservation law."

4. An environmental easement granted pursuant to this title shall be enforceable in perpetuity. After the recording of the easement, each instrument transferring an interest in the area affected by the easement shall include a specific reference to the recorded easement.

5. An environmental easement granted pursuant to this section may be extinguished or amended only by a release or amendment of the easement executed by the commissioner and filed with the office of the recording officer for the county or counties where the land is situated in the manner prescribed by article nine of the real property law.

6. For any person who intentionally violates an environmental easement the department may revoke the certificate of completion provided by section 27-1419 of this chapter as to the relevant real estate.

7. An environmental easement shall be held only by the state, except that the state shall not be authorized or empowered to acquire or hold any environmental easement which is subject to the provisions of article fourteen of the constitution.

8. An environmental easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law. The property deed and all subsequent instruments of conveyance relating to the property encumbered by the easement shall reference, by book and page number, the environmental easement. Such deed and instrument shall also specify that the eligible property is subject to the restrictions contained in such easement. An instrument for the purpose of creating, conveying, modifying, or terminating an environmental easement shall not be effective unless recorded.

9. The department shall include a copy of each environmental easement in the database created pursuant to section 27-1415 of this chapter and make such database readily searchable.

10. An environmental easement may be enforced in law or equity by its

grantor, by the state, or any affected local government as defined in section 71-3603 of this title. Such easement is enforceable against the owner of the burdened property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, reversion or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any environmental easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce an environmental easement that:

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

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

(c) it imposes a negative burden;

(d) it imposes affirmative obligations upon the owner of any interest in the burdened property;

(e) the benefit does not touch or concern real property;

(f) there is no privity of estate or of contract; or

(g) it imposes an unreasonable restraint on alienation.

11. Agents, employees, or other representatives of the state may enter and inspect the property burdened by an environmental easement in a reasonable manner and at reasonable times to assure compliance with the restriction.

12. The department may promulgate regulations establishing standards and procedures for environmental easements.