

Institutional Controls Program Guide



Office of Land Quality
Remediation Services Branch
2022

Disclaimer

This nonrule policy document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under Indiana Code (IC) 13-14-1-11.5. It is intended solely as guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules or laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to IC 13-14-1-11.5, this NPD will be available for public inspection for at least forty-five (45) days prior to presentation to the appropriate State Environmental Board and may be put into effect by IDEM thirty (30) days afterward. If the NPD is presented to more than one board, it will be effective thirty (30) days after presentation to the last State Environmental Board. IDEM also will submit the NPD to the Indiana Register for publication.

Contents

INTRODUCTION.....	1
RULES and LAWS	3
Indiana Statutes and Rules	3
Indiana Administrative Code	4
Indiana Nonrule Policies	5
ENVIRONMENTAL RESTRICTIVE COVENANTS	6
How Does a Site Obtain an ERC?.....	6
Process Overview	6
How is the Public Involved or Notified?	7
Virtual File Cabinet and Administrative Records.....	7
What’s in My Neighborhood?	7
Institutional Controls Registry	7
Community Involvement Plan	7
Off-Site Impact.....	8
ERC Modification and Termination	8
Cost Recovery	8
ERC Self-Audits	9
Self-Audits Mailed.....	9
Self-Audits as Part of Routine IDEM Inspections.....	9
Forms	9
Flow Charts.....	10
ENVIRONMENTAL RESTRICTIVE ORDINANCE	12
How Does a Site Obtain an ERO?	12
Process Overview	13
Enacted	13
Proposed.....	13
How is the Public Involved or Notified?	13
ERO Termination and Modification.....	14
Forms	14
LONG TERM STEWARDSHIP	15
How Does a Site obtain a LTS Plan?	16

Process Overview..... 16
LTS Plan..... 16
Financial Assurance 16
LTS Agreement..... 17
How is the Public Involved or Notified?17
Forms18
WHEN ISSUES ARISE..... 18
DOCUMENT AND ELECTRONIC DATA FILE SUBMITTAL GUIDELINES 18

INTRODUCTION

This Nonrule Policy Document (NPD) provides information about the administrative processes involved for the development, tracking, and maintenance of Institutional Controls in the Office of Land Quality (OLQ). It serves as a supplement to the [Risk-based Closure Guide \(WASTE-0046-R2\)](#).

The Institutional Controls Group (ICG) was created by the Indiana Department of Environmental Management (IDEM) in 2009 following enactment of HEA 1162, to assist in granting risk-based closure for properties with chemicals remaining in environmental media at concentrations that exceed unconditional remediation objectives.

The ICG is administered by the State, with no federal involvement or funding. Programs in the Office of Land Quality rely on the ICG to review, manage, and track institutional controls.

OLQ uses a risk-based approach to address hazardous substances and petroleum releases. When release-related chemicals remain at concentrations exceeding the [Risk-based Closure Guide](#) unconditional remediation objectives, an [institutional control](#) is required. An [institutional control](#), such as an environmental restrictive covenant (ERC) or an environmental restrictive ordinance (ERO), protects human health and the environment by applying administratively and legally enforceable land use restrictions and obligations to properties. These controls limit activity, use or access, or compel remedial measures, in order to reduce exposure to acceptable levels. Long term stewardship is another route to closure that relies upon active long term remedial measures. Table 1 shows the similarities and differences between the institutional control types IDEM relies upon for conditional closure.

Institutional controls allow properties with chemicals remaining in environmental media at concentrations that exceed unconditional remediation objectives to be safely reused or developed so long as the land use restrictions and obligations are maintained to protect human health. Table 1 outlines three primary types of institutional controls used to reduce exposure to acceptable levels: environmental restrictive covenants (ERCs), environmental restrictive ordinances (EROs), and Long Term Stewardship.

**TABLE 1
INSTITUTIONAL CONTROLS**

	Environmental Restrictive Covenant (ERC)	Environmental Restrictive Ordinance (ERO)	Long Term Stewardship
<i>Responsible Party?</i>	Private Property Owner	Unit Legislative Body	Party responsible for remediation
<i>Enforcement?</i>	IDEM enforceable	Unit Legislative Body	IDEM enforceable
<i>Duration?</i>	In perpetuity unless modified or terminated with IDEM approval	Until revoked	As agreed, upon by IDEM and the Responsible Party
<i>Land Use Restrictions?</i>	Site dependent	Only groundwater	Site dependent
<i>Properties?</i>	Single Deed	Multiple properties, entire municipalities, or counties	Site dependent

RULES and LAWS

Indiana Statutes and Rules

The legal authorities listed below for the ICG can be viewed at the Indiana General Assembly website (<http://iga.in.gov/>). Statutes are in the Indiana Code (IC).

IC 13-11-2-193.5	Definition of an ERC
IC 13-11-2-71.2	Definition of an ERO
IC 13-12-3-2	Remediation and closure goals, objectives, and standards for certain remediation projects
IC 13-14-2-6	Authorized IDEM's Commissioner to enforce ERCs as defined by IC 13-11-2-193.5
IC 13-14-2-8	IDEM approval of Land Use Restrictions
IC 13-14-2-9	Modification of Restrictive Covenants
IC 13-22	Hazardous Waste
IC 13-23	UST (Regulated)
IC 13-24	Petroleum Statute
IC 13-25	Hazardous Substances
IC 13-25-4-24(B)	Requirement to describe the identity, quantity, and location of every hazardous substance on the property for CERCLIS and RCRA
IC 13-25-4-5	Hazardous Substances Response Trust Fund (State Cleanup Program
IC 13-25-5	Voluntary Remediation Program
IC 13-25-5-8.5 (c)	Nature and extent
IC 13-25-5-8.5 (e)	The department shall consider and give effect to restrictive covenants and environmental restrictive ordinances in evaluating risk-based remediation proposals.
IC 13-25-5-8.5	VRP work plan objectives
IC 13-25-5-8.5(f)	Requires written notice of reliance on ERO to municipality
IC 36-1-2-4.7	Environmental restrictive ordinance means, with respect to land, any ordinance that (1) is adopted by a municipal corporation and (2) seeks to control the use of groundwater in a manner and to a degree that protects human health and the environment against unacceptable exposure to a release of hazardous substances or petroleum, or both.

[IC 36-1-6-11](#)

(Counties) Give written notice to the department 60 days before an amendment or repeal of an ERO and 30 days after an amendment or repeal of an ERO.

[IC 36-2-4-8](#)

(Counties) Give written notice to the department 60 days before an amendment or repeal of an ERO and 30 days after an amendment or repeal of an ERO.

[IC 36-2-7.5](#)

Social Security Number Redaction on ERCs

[IC 36-3-4-14](#)

(Marion County) Give written notice to the department 60 days before an amendment or repeal of an ERO and 30 days after an amendment or repeal of an ERO.

[IC 36-4-6-14](#)

(Cities) Give written notice to the department 60 days before an amendment or repeal of an ERO and 30 days after an amendment or repeal of an ERO.

[IC 36-5-2-10](#)

(Towns) Give written notice to the department 60 days before an amendment or repeal of an ERO and 30 days after an amendment or repeal of an ERO.

[IC 4-21.5](#)

Administrative Orders and Procedures

[IC 4-21.5-3-5](#)

Notice Required by IDEM for certain determinations

Indiana Administrative Code

ICG applicable rules are in the Indiana Administrative Code (IAC).

- [328 IAC 1-1-3](#) Corrective Action defined
- [329 IAC 1-2-7](#) Cost Recovery
 - (a) In accordance with IC 13-14-2-9(d) the applicant shall reimburse the department for the administrative and personnel expenses incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule.
 - (b) Administrative expenses must include any expenses to the department related to the review of the modification or termination request that would not have otherwise been incurred by the department.
 - (c) The department shall charge personnel expenses at 75 dollars per hour of time a department employee expends in evaluation the proposed modification or termination request.
 - (d) The department shall send an invoice to the owner for personnel and administrative costs to the department
 - (e) Failure to reimburse the department for expenses incurred by the department in evaluating a proposed modification of termination for a restrictive covenant under this rule may result in:
 - (1) Denial of the modification or termination
 - (2) Legal action under IC 13-14-2-6

- [329 IAC 7.1-4-1](#) Assessment of Hazardous Substance Response Sites
- [329 IAC 9-1-14.5](#) UST "Corrective action" means action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including emergency measures taken as part of an initial response to the release under 329 IAC 9-5-2.
- [329 IAC 10-21-12](#) Public notice for corrective action
- [329 IAC 10-22-8](#) Requirement of Solid Waste "Notation on the deed"
- [329 IAC 10-22-8 \(b\)\(4\)](#) A statement that no construction, installation of ground water monitoring wells, pipes, conduits, or septic systems, or any other excavation will be done on the property without approval of the commissioner.

Indiana Nonrule Policies

A nonrule policy document (NPD) is intended to interpret, supplement, or implement a statute or rule. It is not intended by the agency to have the effect of law, nor is it related solely to internal agency organization.

- [Risk-based Closure Guide \(Waste-0046-R2\)](#) provides technical guidance for release characterization, risk evaluation, and, when necessary, remedy selection and implementation.
- [Procedures for Gaining Access to Third Party Properties by Responsible Parties performing Remediation \(Waste-0065-NPD\)](#) provides steps to be taken and documentation to be provided by a responsible party who is attempting to access third party properties for the investigation or remediation of contamination in soil, groundwater, surface water, sediment and/or indoor air.
- [Community Involvement Plan \(Waste-0070-NPD\)](#) provides a systematic/tiered approach to community involvement for all remediation programs.

ENVIRONMENTAL RESTRICTIVE COVENANTS

OLQ uses a risk-based approach to address hazardous substances or petroleum releases. When chemicals remain on a site at concentrations exceeding unconditional remediation objectives, OLQ may consider the use of a legal or administrative measure called an environmental restrictive covenant (ERC). An ERC protects human health and the environment by applying land use restrictions and obligations to properties that limit activity, use, or access or compel remedial measures to minimize exposure to chemicals left in place. The ERC is attached to the deed in perpetuity (unless modified or terminated with IDEM approval) and the responsibility to maintain the land use restrictions and obligations is transferred to the current property owner.

How Does a Site Obtain an ERC?

ERCs are developed as a conditional remedy in the IDEM Office of Land Quality's Remediation Services Branch, Permits Branch, and Petroleum Branch. Specific programs that rely on ERCs include:

- *Voluntary Remediation Program*
- *Indiana Brownfields Program*
- *State Cleanup Program*
- *RCRA Corrective Action*
- *Petroleum Remediation*
- *Federal Programs (Superfund Program and Defense Environmental Restoration Program)*

Process Overview

ERCs can be considered as a component of closure only after IDEM approves that the site investigation is complete and adequate remedial actions have been considered.

A draft ERC and a copy of the property deed¹ are provided to the IDEM assigned Project Manager (PM). The ERC is reviewed for the following:

- to ensure the document meets the legal definition of an ERC² under IC 13-11-2-193.5,
- appropriate land use restriction and obligation language,
- verification of property ownership and legal description, and

¹ A copy of the property deed is required to ensure and document current site ownership and to create a GIS polygon from the legal description.

² IDEM has developed an ERC template that contains the language necessary for prompt IDEM review and approval should the correct land-use restrictions be utilized. Deviations from the ERC template will require a review from IDEM's Office of Legal Counsel and will cause delays.

- development of a geographic information system (GIS) polygon based on the legal description in the deed²

Once the ERC has been reviewed and the land use restrictions and obligations approved by IDEM, it is signed and notarized by the current property owner(s). Then the current owner(s), or an authorized representative, records the ERC in the recorder's office in the county where the property is located. A copy of the recorded ERC is submitted to IDEM for tracking purposes.

How is the Public Involved or Notified?

Virtual File Cabinet and Administrative Records

IDEM uses the web based [Virtual File Cabinet](#) (VFC) to house public documents related to facilities, sites and projects. IDEM considers the public records stored in [VFC](#) for a site to be the administrative record for completed projects and a public repository. Sites relying on ERCs as part of their closure have a copy of the ERC in the VFC.

What's in My Neighborhood?

In August 2021, IDEM launched What's in My Neighborhood, a [GIS interactive map that includes](#) an institutional controls layer depicting polygons of ERC restricted properties. When a polygon is clicked, a pop-up appears showing basic property information including the land use restrictions, chemicals of concern, and hyperlinks to the VFC.

Institutional Controls Registry

An Excel spreadsheet of all closures relying on ERCs³ is located on [IDEM's Institutional Controls](#) webpage. An updated spreadsheet is loaded onto the website the first Monday of every month. IDEM also provides a copy of the Institutional Controls Registry to every county health department once a month.

Community Involvement Plan

Public participation and involvement are a critical part of the closure process. Effective September 2021, OLQ follows the [Community Involvement Plan \(Waste-0070-NPD\)](#). The Community Involvement Plan (CIP) takes a proactive approach to ensure that community stakeholders are informed of site activities and encouraged to participate in the decision-making process. In addition, the CIP provides procedures and direction for disseminating information, working with affected parties in obtaining property access, and encouraging feedback.

² The legal description is used to create a polygon on IDEM's [What's in My Neighborhood](#), an interactive GIS map that provides a visual depiction of IDEM sites of interest and their associated information.

³ Deed Notices were used to notify future property owners of the presence of a landfill. ERCs are now used in-place of deed notices for solid waste landfills.

Community involvement is divided into three phases (Community Notification, Community Engagement, and Expanded Community Engagement) that increase in scope and involvement based on the level of impact and level of interest. The CIP must be used as a reference tool to guide responsible parties (RPs) through these three phases. Community involvement consists of a series of activities and actions over the full lifespan of a project to inform the public, obtain input, build consensus, and ultimately reach a conclusion. Public participation affords stakeholders the opportunity to be informed and participate in the decision-making process. The RP must work in collaboration with the assigned IDEM project manager to determine how frequently, and to what extent, tasks contained in the CIP should be implemented.

Off-Site Impact

In the event that contamination has migrated from a Site onto neighboring properties, it may be necessary to obtain an ERC for the neighboring property. IDEM encourages persons conducting remedial activities to involve such property owners early in the process, as such off-site property owners must agree to impose an ERC. When investigating at properties not owned or controlled by the responsible party and access is denied, refer to IDEM's [Procedures for Gaining Access to Third Party Properties by Responsible Parties Performing Remediation \(Waste-0065-NPD\)](#) to ensure adequate attempts are made to obtain access and document collection of adequate information. The assigned project manager and IDEM legal counsel may assist in attempting to obtain access as described in [Waste-0065-NPD](#).

ERC Modification and Termination

In compliance with IC 13-14-2-9, a current property owner may request a review for a modification to the land use restrictions and obligations, or a termination of the ERC in its entirety. The current property owner must demonstrate through either new data or a change in science or technology that some or all the land use restrictions and obligations are no longer necessary to prevent unacceptable risk. IDEM determines whether the request for modification or termination is acceptable. It is possible that during the review process additional land use restrictions may be required to mitigate newly identified unacceptable risk(s). An ERC modification/termination may only be initiated with the submission of [State Form 56082 ERC Modification or Termination Request](#).

Cost Recovery

ICG requires reimbursement for the administrative and personnel expenses associated with the review of ERC modifications and terminations and development of the written determination under [329 IAC 1-2-7](#). IDEM's hourly rate, posted on IDEM's [Institutional Controls website](#), is subject to change. Once a written determination is made on

whether a modification or termination to an ERC is appropriate, an invoice reflecting the actual number of hours spent on the review will be provided to the requestor.

Failure to pay these costs within 60 calendar days from the initial due date shown on the invoice may result in IDEM referring the balance (including late fees and a collection fee) to a collection agency or pursuing legal action through the Office of the Indiana Attorney General to compel payment of outstanding costs.

ERC Self-Audits

Beginning in January 2021, IDEM began a self-auditing process for recorded ERCs to ensure that property owners are aware of property restrictions and obligations and to ensure compliance necessary to protect human health. ERC self-audits are either mailed directly to the current property owner or included as part of routine IDEM facility inspections.

Self-Audits Mailed

IDEM will mail [State Form 55715 Institutional Controls Self Audit Checklist](#) directly to the current property owner of record along with a cover letter explaining the purpose of the attached self-audit form. The current property owner must submit a completed self-audit. Failure to provide a response to the form may result in additional IDEM actions required to assure the protection of human health is maintained.

Self-Audits as Part of Routine IDEM Inspections

IDEM routinely conducts inspections at solid waste, hazardous waste, industrial waste, and underground storage tank sites. For sites with institutional controls, IDEM inspectors will also audit the compliance of the ERC to ensure property owners are both aware of, and in compliance with, the ERC requirements.

Forms

Current State Forms that can be completed electronically are posted on the [IDEM Forms webpage](#) as PDF fillable forms, Microsoft Word documents or Excel documents. Links to those forms and checklists as well as other documents and websites have been provided where the document is discussed in the text.

- [ERC Template](#)
- [Self-Audit forms](#)
- [ERC Modification or Termination Request](#)
- [ERC Modification Template](#)
- [ERC Termination Template](#)

Flow Charts

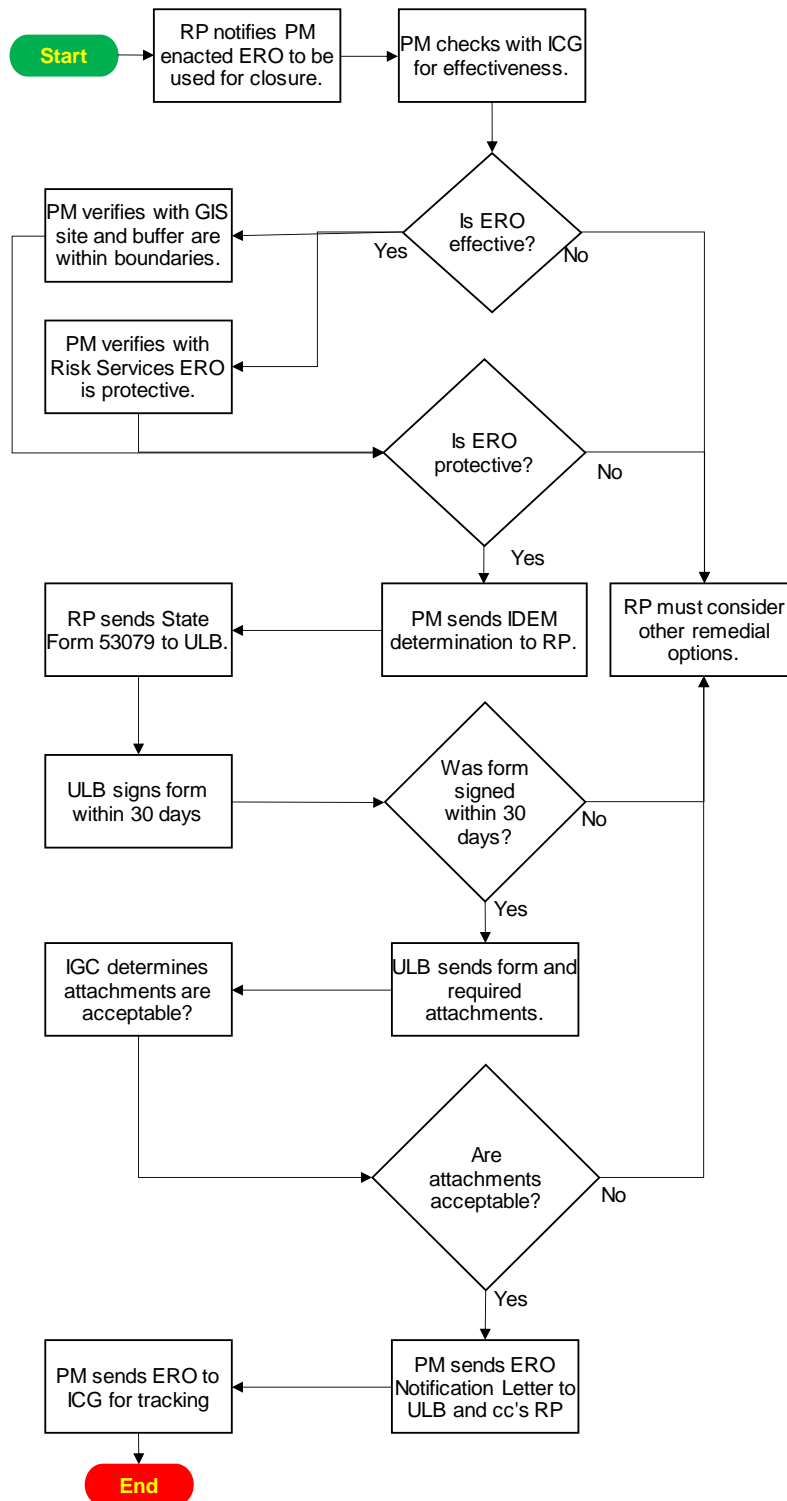


Figure 1 Enacted Environmental Restrictive Ordinance

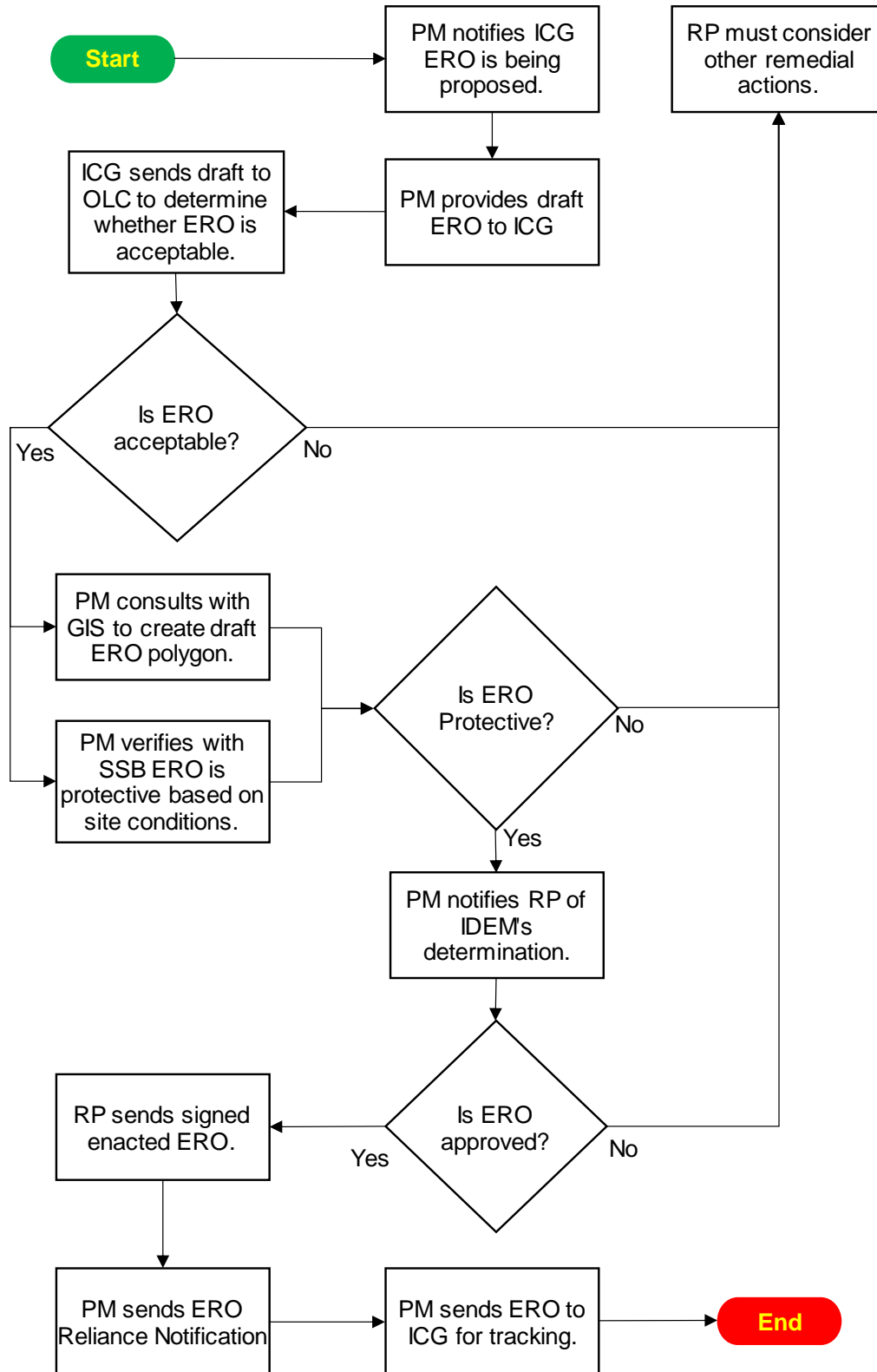


Figure 2 Proposed Environmental Restrictive Ordinance

ENVIRONMENTAL RESTRICTIVE ORDINANCE

Ordinances may be enacted at the discretion of a unit legislative body (ULB) such as a city council, town council, or county commissioners, to limit or prohibit the use of groundwater and groundwater wells. For an ERO to be eligible for consideration as an adequate exposure control, evidence that the ordinance has been passed by the ULB must be provided and IDEM must agree that the language of the ERO effectively seeks to control the use of groundwater in a manner and to a degree that protects human health and the environment against unacceptable exposure to release-related chemicals. IC 13-11-2-71.2. The RP must obtain written acknowledgement from the local government, in order for the site to rely upon the ERO to be used for closure of a particular site.

The RP shall notify the ULB and water utilities in writing of any formal proposal to use an ERO at a particular site; and will also request information from the ULB. The ULB's acknowledgment and a review of the ULB's information will help IDEM determine if the ERO is acceptable for use as a closure mechanism.

How Does a Site Obtain an ERO?

When a remedy will include the use of an ERO as an institutional control, it is important that the person seeking to use the ERO for closure initiates contact with local officials early in the process because input from the water utility and from the local government unit that has enacted (or that has proposed adoption of) the ERO will be required by IDEM. Consultants are encouraged to work directly with the local government unit because **IDEM does not take a position as to whether the local government should or should not enact an ERO**. Because IDEM must rely on local governments to enforce EROs, municipal involvement throughout the review process will help IDEM evaluate the effectiveness of proposed EROs and determine whether an ERO effectively manages risk. Local governments must be contacted for information including:

- Current and future local water resource planning
- Procedures for granting exceptions and variances to the ERO
- Local point of contact for ERO monitoring and compliance
- Notification provisions for EROs

Process Overview

A proposal to rely on an ERO to control risk must be developed in concert between the RP and the ULB. There are two pathways to ERO reliance; enacted and proposed.

Enacted

An enacted ERO may be used as a remedy component for a risk-based site closure. The person seeking use of an ERO for a closure must obtain the signature of an authorized representative of the ULB to use an enacted ERO as a means of managing risk to obtain closure. If an ERO is deemed legally sufficient by IDEM's Office of Legal Counsel (OLC), the RP may pursue the unit legislative body's acknowledgement that the ERO has been passed and is effective. The acknowledgement is shown by a signature on State Form 53079. In addition, State Form 53079 also requests the following information from the ULB;

- If there are any existing drinking water wells, production wells, or wellhead protection areas located within or adjacent to the boundaries of the ERO.
- Planned resource use of groundwater as a municipal water supply or other potable use supply, in or adjacent to the area covered by the ordinance.
- Provide the procedures and resources the ULB has in place to enforce the ERO and prevent the use of groundwater within the ERO area.
- Provide contact information for any relevant stakeholders. This may include the local water utility, county health department, economic development organization, permit authorities, or any other entity that may need to be made aware of the reliance on the ordinance.

Proposed

The person seeking to have an ERO enacted for the purpose of having an ERO control the groundwater ingestion or dermal exposure pathway will work directly with the ULB to develop and pass a legally sufficient ordinance. However, the person should first consult with their assigned remediation program PM. A draft of the ordinance should be reviewed by IDEM's OLC before passage to ensure the ordinance is legally sufficient as an ERO that controls the use of and exposure to potentially contaminated groundwater.

How is the Public Involved or Notified?

The degree to which the public is notified of the ERO is part of IDEM's assessment of the ERO's ability to manage risk. IDEM may not prescribe the method by which property owners and local government stakeholders are made aware of the ERO but if no plan for long term public awareness exists, the ERO may not effectively manage risk. Types of public awareness may include:

- Letters to public in ERO coverage area.
- Local government unit public awareness efforts (web posting, etc.).
- Formal notification to the local well permitting authorities

- Door to door contact with property owners.

ERO Termination and Modification

Under Indiana statute ([IC 36-1-6-11](#) (municipal corporation), [IC 36-2-4-8](#) (county), [IC 36-4-6-14](#), (city), and [IC 36-5-2-10](#) (town)), if an ERO is modified or terminated by the unit legislative body, and an IDEM site is relying on the ERO as part of their closure, the ULB is required to notify IDEM 60 days before and 30 days after a modification or termination of the ordinance. In turn, if such modification or termination of the ordinance means that the ordinance no longer effectively manages risk, IDEM will notify the RP that the closure of the release that relied upon the ERO may no longer be valid. The RP will then be required to determine another route to closure.

Forms

[State Form 53079 Acknowledgement of Reliance Upon Ordinance to Control Access to Groundwater](#) is available on the State Forms Online Catalog as a PDF fillable form.

LONG TERM STEWARDSHIP

IC 13-25-5-8.5 allows risk-based remediation objectives to be based on site-specific risk assessments that account for remedial measures that manage risk and control completed or potential future exposure pathways. Such measures might include institutional controls, engineering controls, and/or conditions that must be performed or maintained into the future. A Long Term Stewardship Plan (LTS Plan) may be developed to provide a single, concise resource for future stakeholders to understand the nature of remaining chemicals and the means to prevent exposure to those chemicals. LTS differs from ERCs in that the responsibility to maintain the land use restrictions and obligations remains with the party seeking closure. Under a Long Term Stewardship Plan, the responsibility to perform the obligations required to manage risk and control exposure pathways does not run with the land and transfer to future property owners.

Long term stewardship applies to sites where long term management of exposure risk is necessary to protect human health and the environment while providing conditional closure to RPs. Long term stewardship includes the establishment and maintenance of physical and legal controls, implementation entities, authorities, accountability mechanisms, information and data management systems, and resources that are necessary to ensure these sites remain protective of human health and the environment.

The development of a LTS Plan should be part of the remedial decision planning and implementation process. A LTS Plan template is available upon request from the IDEM [Institutional Controls](#) web page.

A site-specific LTS Plan developed in accordance with this guidance can be proposed at sites with conditional closures, for example:

- Sites with engineering controls that require monitoring, operation, or maintenance,
- Sites where contamination has migrated off-site affecting multiple parcels, and/or
- Sites where long term on-going monitoring is needed.

The LTS Plan should not duplicate the content of decision documents already submitted, such as a Remediation Work Plan or Remediation Completion Report but should be prepared at the end of the process when a site is nearing completion. An LTS Plan should clearly describe the magnitude and extent of remaining chemicals, potential exposure pathways, current and future management activities, and agreed upon roles and responsibilities as there may be multiple parties responsible for ensuring site management activities are performed (responsible party, property owner, lessee, developer, etc.) The LTS Plan should also identify all the properties affected by the remaining contamination.

How Does a Site obtain a LTS Plan?

Process Overview

LTS is made of three major components; the LTS Plan, financial assurance, and the LTS Agreement, described below in general terms. The use of LTS as a route to conditional closure is only appropriate after considering these requirements and their associated long term obligations and costs.

LTS Plan

The LTS Plan includes a general outline of the property history, relevant figures, surrounding property use, conceptual site model, key stakeholders and their roles and responsibilities, and information on how the LTS can be modified or terminated. The LTS Plan will also include one or more of the following Work Plans:

- Engineering Control Monitoring
- Vapor Mitigation Monitoring
- Land Activity Monitoring
- Groundwater Monitoring
- Soil Management Plan

IDEM has developed Work Plan templates available upon request from IDEM's Institutional Controls Group. Select and complete each work plan as applicable and incorporate them as an appendix to the project's LTS Plan. Attach a Cover Sheet & Report Format to each Work Plan. The Cover Sheet summarizes the annual (or other time duration as agreed) activities conducted to ensure that the release-related chemicals remaining at the Site that are being monitored or managed by the controls described in the LTS Plan continue to not present an unacceptable risk to human health. The Report Format is an outline of the annual (or other time duration as agreed to by IDEM) report that details the findings from the Cover Sheet.

Financial Assurance

The second component to LTS is Financial Assurance (FA). FA ensures that if the responsible party is unable to fulfill or maintain its LTS obligations, financial resources will be available for the State to ensure that those obligations (which are intended to protect human health and the environment) are met. The amount of financial assurance required is based on a cost estimate submitted to IDEM for approval. Once the cost estimate is approved by IDEM, the RP selects from the following FA instruments:

- Funded Trust
- Standby Trust
- Surety Bond
- Standby Letter of Credit

- Certificate of Insurance
- Financial Test
- Corporate Guarantee

Non-negotiable language for each Financial Assurance instrument will be available in the *Financial Assurance for Long Term Stewardship Standard Operating Procedure*.

Each Site's approved cost estimate is an appendix in the LTS Plan.

LTS Agreement

The third and final component of LTS is the LTS Agreement. In order to use LTS to obtain closure, a viable entity, typically the responsible party, must sign an LTS Agreement with IDEM. The LTS Agreement serves as a written understanding of expectations from both parties. The Responsible Party will work with IDEM's Office of Legal Counsel (OLC) to finalize and complete the LTS Agreement. The substance of the LTS Agreement is a general, non-site-specific template prepared and vetted by IDEM's OLC. Site-specific variations are contained in the LTS Plan, discussed above.

As LTS is an optional means of managing risk posed by release-related chemicals that remain on-site. Should the terms of the LTS Agreement be deemed unacceptable by any of the signing parties, IDEM recommends exploring other remedial options in the OLQ program in which the Site is currently enrolled.

How is the Public Involved or Notified?

The obligation to notify landowners that are part of LTS should be part of the Community Involvement Plan.

For sites with off-site contamination that will be managed by LTS, upon approval of the LTS, IC 4-21.5-3-5 states that IDEM must give notice to (among others) *"each person who has a substantial and direct proprietary interest in the subject of the order"* and to *"each person whose absence as a party in the proceeding concerning the order would deny another party complete relief in the proceeding or who claims an interest related to the subject of the order and is so situated that the disposition of the matter, in the person's absence, may: (A) as a practical matter impair or impede the person's ability to protect that interest; or (B) leave any other person who is a party to a proceeding concerning the order subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest."*

This statute, at IC 4-21.5-3-5(f), also allows IDEM to require the person seeking the LTS Agreement (e.g., the RP or participant) to provide a list of all persons who fit the quoted language above. Approval of a closure relying upon LTS will also require notification of all persons described by IC 4-21.5-3-5(f), which should include all persons owning property that overlies a contaminant plume that exceeds IDEM published levels for unrestricted land.

Forms

Forms associated with the LTS process are available upon request from IDEM's Institutional Controls Group.

WHEN ISSUES ARISE

When land use restrictions and obligations are not maintained with any institutional control, IDEM may issue a Demand for Compliance letter, an administrative order (Commissioner's Order), or go directly to court to seek a judicial order to compel a response and remediation. RPs have the right to appeal a Commissioner's Order to the Office of Environmental Adjudication, which will perform an administrative review of IDEM's Commissioner's Order. If an RP does not appeal a Commissioner's Order, IDEM may also go to court to seek judicial enforcement of the Commissioner's Order. If RPs do not comply with a judicial order, IDEM may request a court order for punitive damages (pursuant to [IC 13-25-4-10](#)) of up to three times the total costs incurred by IDEM as a result of the RP's failure to properly provide removal or remedial action upon order of the court.

DOCUMENT AND ELECTRONIC DATA FILE SUBMITTAL GUIDELINES

IDEM encourages electronic submittal (e-Submission) of documents to reduce the need to mail paper documents or submit documents via CD/DVD or flash drive. E-Submissions must be less than 75 megabytes (MB). If a file cannot be reduced to less than 75MB, it must be broken into multiple files per [OLQ's Document Submittal Guidelines](#). Electronic data files (GPS locations and sampling data) must also be submitted as an email attachment to olqdata@idem.in.gov per OLQ's [Electronic Data File Submittal Guidelines](#).

E-Submission access is available to individual email addresses and shared email accounts. To request or modify e-Submission access, IDEM's [e-Submission Enrollment form](#) must be completed. Once enrolled, instructions on how to submit documents will be provided.