

FACT SHEET



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Institutional Controls Office of Land Quality

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Description:

- Institutional controls (ICs) are non-engineered, administratively and legally enforceable measures that limit human exposure to environmental chemicals of concern at properties seeking closure under Indiana Department of Environmental Management (IDEM) review.
- Institutional controls serve the purpose of notifying current and future land owners about environmental conditions and restrict certain uses of property that could result in unacceptable exposures to receptors.
- The most common type of IC approved by IDEM is an Environmental Restrictive Covenant (ERC). Others types of ICs that have been utilized include deed notices and some local ground water ordinances.
- ERCs may be used for any remediation program under IDEM's Office of Land Quality (OLQ) when approved as part of a site's remedial work plan.

Environmental Impact:

- An institutional control protects human health and the environment in cases where risk-based cleanups have resulted in known levels of contamination being left on site in soil, ground water or both.
- ICs minimize the potential for human exposure to residual contamination by restricting site activities, property use and/or site access. As an example, a landowner may promise or "covenant" not to develop a site for residential use and to use it only for commercial or industrial purposes.

IDEM's Role:

- IDEM is responsible for protecting human health and the environment while providing for safe industrial, agricultural, commercial and governmental operations vital to a prosperous economy.
- IDEM has the authority to enforce ERCs that are created in connection with any remediation, closure, cleanup or corrective action approved by IDEM per Indiana Code 13-14-2-6.
- In accordance with Indiana Code 13-11-2-193.5, IDEM ensures that ERCs meet the following criteria:
 - limit land use type (i.e., non-residential, industrial or commercial), restrict activities or list engineering controls to protect human health and the environment;
 - be recorded in the county recorder's office where the site is located;
 - be designed to obligate future property owners ('run with the land'); and,
 - explain how the ERC may be modified or terminated.
- IDEM's Office of Land Quality maintains a complete listing of all sites closed with the use of institutional controls under a data base and provides to the public a listing known as the *Institutional Controls Registry REMEDIATION SITES REPORT*. An additional report containing solid waste sites subject to 329 IAC 10 deed notice requirements is also available under the Solid Waste Sites Report. IDEM posts a copy of these lists on its website at http://www.in.gov/idem/files/institutional_controls_registry_report.pdf.
- *The Institutional Controls Registry* contains all sites where IDEM has approved a risk-based closure with some type of land use restrictions or engineering controls.

- IDEM's Office of Land Quality updates the *Institutional Controls Registry* on a monthly basis. IDEM's Office of Land Quality has begun implementation of an Institutional Control Audit Program whereby ICs are checked by IDEM staff.

Citizen's Role:

- Property owners are responsible for compliance with any land use restrictions regardless of when the property was obtained, unless another party has a legally enforceable responsibility to do so.
- If the property changes ownership, the obligations typically transfer over to the new property owner.
- Environmental Restrictive Covenants (ERCs), the most common type of IC, are designed to obligate future property owners. The Indiana Code defines restrictive covenant at IC 13-11-2-193.5 and addresses interests and defects affecting marketable record title at IC 32-20-3-2(6).

More Information:

- For additional general information and frequently asked questions regarding institutional controls, please visit IDEM's Institutional Controls webpage at www.IN.gov/idem/5959.htm.
- For any specific questions concerning institutional controls, please contact staff with IDEM's Office of Land Quality at (317) 234-1957 or InstitutionalControls@idem.IN.gov (via e-mail).
- To view, print or download a copy of the IDEM *Institutional Control Registry REMEDIATION SITES REPORT*, visit IDEM's website at www.IN.gov/idem/files/institutional_controls_registry_report.pdf.
- To view the Indiana Code online, visit the Indiana General Assembly's website at <https://iga.in.gov/legislative/laws/2014/ic/>.
 - For IC 13-14-2-6, visit <https://iga.in.gov/legislative/laws/2014/ic/titles/013/articles/014/chapters/002/>.
 - For 13-11-2-193.5, visit <https://iga.in.gov/legislative/laws/2014/ic/titles/013/articles/011/chapters/002/>.
 - For IC 32-20-3-2(6), visit <https://iga.in.gov/legislative/laws/2014/ic/titles/032/articles/020/chapters/003/>.