

State Cleanup Program Guide



Office of Land Quality
Remediation Services Branch

Disclaimer

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

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INTRODUCTION

This Nonrule Policy Document (NPD) provides information about administrative processes involved in the investigation, remedy selection, and closure of hazardous substances and petroleum sites in the [State Cleanup Program](#) of the Remediation Services Branch, Office of Land Quality (OLQ). It serves as a supplement to the [Risk-based Closure Guide \(Waste-0046-R2\)](#). The State Cleanup Program (SCP) was created by the Indiana Department of Environmental Management (IDEM) in 1989 to manage the investigation and remediation of hazardous substances and petroleum sites which are not included in the federal Superfund Program. The SCP was modeled after the federal Superfund Program; however, the SCP differs from the Superfund Program in some respects. The SCP has jurisdiction over remediation of some petroleum releases at sites where there are also releases of hazardous substances. The SCP follows aspects of the [National Oil and Hazardous Substances Pollution Contingency Plan \(NCP\)](#), 40 Code of Federal Regulations (CFR), Part 300, as well as the IDEM [Risk-based Closure Guide \(Waste-0046-R2\)](#). By applying components of the NCP and the [Risk-based Closure Guide](#), and using a more streamlined approach, the SCP can handle sites which may potentially qualify for listing on the [Superfund Program National Priority List \(NPL\)](#). The IDEM Petroleum Remediation Section has jurisdiction over petroleum-release sites where hazardous substances have not been detected.

The SCP is administered by the State, with no federal involvement or funding. Funding for the SCP comes from the Hazardous Substances Response Trust Fund (Indiana Code (IC) [IC 13-25-4](#)) which primarily receives its revenue from taxes on disposal of hazardous wastes and recovery of IDEM oversight costs for sites that are in the SCP. Examples of remediation projects managed under the SCP include dry cleaning facilities, manufacturing facilities, metal plating facilities, auto salvage yards, petroleum refineries, petroleum storage terminals, abandoned landfills, and other industrial sites.

RULES and LAWS

The [Hazardous Substances Response Trust Fund](#) was established to provide a source of funds for cleaning up sites impacted from releases of hazardous substances and/or petroleum. The Hazardous Substances Response Trust Fund's statute also establishes liability (in [IC 13-25-4-8](#)), as provided under Section 107(a) of 42 United States Code (U.S.C.) 9607(a) (Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)), for potentially responsible parties/persons (RPs) to undertake investigation and remediation of hazardous substance releases. In addition, [IC 13-25-4](#) authorizes IDEM to recover the costs of removal or remedial actions when it performs such actions in a manner consistent with the NCP ([40 CFR Parts 300-399](#)). The Petroleum Statute ([IC 13-24-1](#)) authorizes IDEM to require cleanup of petroleum releases. Both [IC 13-25-4](#) and [IC 13-24-1](#) permit IDEM to enter into Agreed Orders (AOs) with RPs involved in releases of hazardous substances and petroleum.

Federal Laws

- [Section 107\(a\) of 42 U.S.C. 9607\(a\)](#) - Defines liability under the CERCLA.
- [40 CFR Parts 300-399](#) – The NCP identifies procedures for selecting and conducting response actions.

Indiana Statutes and Rules

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

- [IC 4-21.5](#) – Outlines administrative orders and procedures.
- [IC 13-12-3-2](#) – Remediation and closure goals, objectives, and standards for certain remediation projects.
- [IC 13-14-2-9](#) – Outlines modification of restrictive covenants procedures.
- [IC 13-14-10](#) – Authorization for emergency order procedures when contamination constitutes a clear and present danger.
- [IC 13-20-13-13](#) and [IC 13-20-13-14](#) – Authorization to access waste tire sites, conduct removal and remedial actions, and recover costs and damages.
- [IC 13-24](#) and [IC 13-25-4](#) - Permits IDEM to enter into AOs with responsible parties/persons. Provides actions to recover costs and damages.
- [IC 13-24-1](#) – The Petroleum Statute authorizes IDEM to require cleanup of petroleum releases that are not from an underground storage tank (UST) subject to [IC 13-23](#) (the UST Statute).
- [IC 13-25-4](#) – The Hazardous Substances Response Trust Fund statute authorizes IDEM to recover the costs of removal or remedial actions when such actions are performed in accordance with the NCP.
- [IC 13-25-5-8.5\(c\)](#) – Defines remediation objectives and is applied to all remediation programs per IC 13-12-3-2.

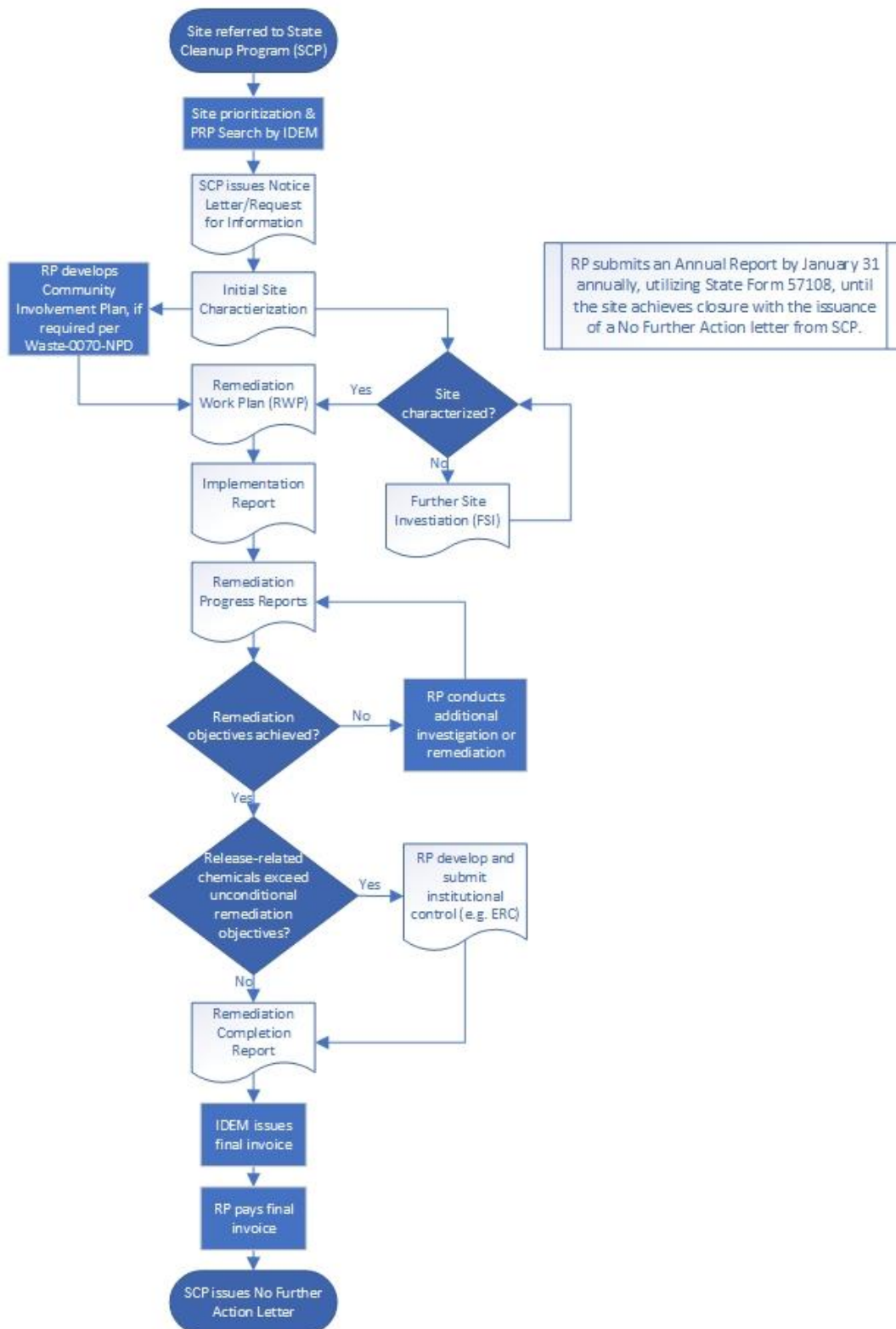
- [329 Indiana Administrative Code \(IAC\) 7.1](#) - The Priority Ranking System for Sites Subject to Remediation provides a method to prioritize hazardous substances and petroleum sites.

Indiana Nonrule Policies

- [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.

PROCESS OVERVIEW

Figure 1 State Cleanup Program Process Overview



HOW DOES A SITE ENTER THE PROGRAM?

Site Referral

The SCP receives site referrals from IDEM Emergency Response, other IDEM Remediation Services Branch programs, other IDEM Offices, the IDEM Complaint Coordinator, citizens, and local health departments. Below are examples of site referrals to State Cleanup:

- By IDEM Emergency Response (ER)/Site Investigations (SI) – ER refers sites to the SI Program Gatekeeper when continued cleanup management and oversight are necessary. The SI Program Gatekeeper scores these sites utilizing the [Hazard Ranking System](#) (HRS) under [CERCLA](#). Sites that score 28.5 or above, are generally investigated through the SI Program for possible inclusion on the NPL. Sites that score less than 28.5 are typically referred to the SCP for oversight. As a site is investigated and more information becomes available, a site that initially scored 28.5 or above may have a lower score and not qualify for inclusion on the NPL, which will result in a referral to the SCP.
- By IDEM Voluntary Remediation Program (VRP) – The VRP refers sites to the SI Program Gatekeeper/SCP if the VRP applicant does not complete the obligations of the Voluntary Remediation Agreement and is terminated from VRP, if imminent threats to human health or the environment exist, or if a new source area of hazardous substances and petroleum impacts is found and determined to be unrelated to the existing VRP project.
- By Indiana Brownfields Program (Brownfields) – Brownfields refers sites to the SI Program Gatekeeper/SCP while in the process of Phase II activities and Comfort Letter review when off-site releases or emergency threats are encountered, or if it is determined that the applicant does not qualify for a Comfort Letter and further investigation is needed.
- By IDEM Office of Water Quality – The Drinking Water Section of the Office of Water Quality refers sites to the SI Program Gatekeeper/SCP when it is determined that a private or public drinking water source has been impacted above the federal maximum contaminant level (MCL) established under the [Safe Drinking Water Act](#).
- By IDEM Complaint Coordinator – The [IDEM Complaint Coordinator](#) is available to receive complaints from the public about polluting activities. The Complaint Coordinator refers sites to the SI Program Gatekeeper/SCP if the complaint involves historical releases, imminent threat to human health or the environment, or if a removal action may be warranted. SCP will investigate the site and evaluate the need for further action.

- By IDEM Petroleum Remediation Section – The Petroleum Remediation Section refers sites to the SI Program Gatekeeper/SCP to investigate and oversee mitigation of the risks when impacts from releases other than petroleum are encountered at existing petroleum release sites.
- By IDEM Compliance Programs – Compliance inspectors refer sites to the SI Program Gatekeeper/SCP to investigate further if evidence of historical releases of hazardous substances, or hazardous substances and petroleum are observed. However, if inspectors observe evidence of an ongoing release or have evidence that releases pose an acute or imminent threat, it is reported to the IDEM Emergency Spill Line.

Site Prioritization

The SCP uses the Priority Ranking System (PRS) rule ([329 IAC 7.1](#)) to prioritize hazardous substances and petroleum releases that are excluded from the NPL for state response actions. The PRS is IDEM’s management tool to address sites that pose a significant threat to human health and the environment, and to assure IDEM’s resources are allocated accordingly. IDEM assigns a priority status of low, medium, or high (depending on site and contaminant characteristics, and potential people or sensitive environments (targets) affected by the release) to hazardous substance sites evaluated utilizing the PRS. Priority ranking may change based upon additional site information or other relevant factors that become known to the SCP after site referral or release, or during site investigation.

Site Assignment and State Cleanup Project Oversight

The SCP provides oversight of work performed on behalf of RPs for the investigation and cleanup of sites that are impacted by the release(s) of hazardous substances, including hazardous substance sites where there have been releases of petroleum. Prior to 2020, the SCP oversaw the cleanup of petroleum sites that were subject to the Petroleum Statute ([IC 13-24](#)), while the Leaking Underground Storage Tank (LUST) Section oversaw the cleanup of petroleum sites subject to the UST Statute ([IC 13-23](#)). In 2020, the LUST Section was renamed the Petroleum Remediation Section and began providing oversight for sites subject to the Petroleum Statute in addition to the UST Statute. The SCP continues to have jurisdiction over the remediation of some petroleum releases at sites where there are also releases of hazardous substances.

After referral to the SCP, the SCP Gatekeeper assigns the site to a project manager. All subsequent communication is directed to that project manager, who is responsible for ensuring that documents are reviewed. Some legal correspondences may be directed to IDEM’s legal counsel. Once assigned, the SCP project manager will send a Notice of Liability Letter to identified RPs. The Notice of Liability Letter serves the following basic functions:

- Provides general and site-specific information contained in the administrative record to assist the potential RP in its consideration of potential liability
- Serves as an official request for information
- Serves as a demand for implementation of response actions
- Serves as a formal demand for reimbursement of IDEM's costs incurred to date in investigation of the site and for reimbursement of costs that IDEM will incur during the oversight and administration of the site.

The SCP project manager may send a Request for Information Letter, instead of a Notice of Liability Letter, if additional information is needed to establish the source of a hazardous substances and/or petroleum release. A Request for Information Letter may be sent when IDEM is seeking to identify activities, materials, and parties that may have contributed to or may be contributing to hazardous substances and/or petroleum at the site.

Immediate Removal Actions

Immediate Removal Actions are response actions conducted by SCP when hazardous substance and/or petroleum releases, and certain solid waste materials, are considered an imminent and substantial threat to public health and/or the environment. For immediate removal purposes, a "time critical" action is defined as an interim action that needs to be initiated within six months to prevent further release or unacceptable exposure. The goal of the removal action is to separate the hazard from potential receptors. This action is intended to remove immediate dangers, not to perform a full-scale remediation.

The Immediate Removal Action typically addresses sites with miscellaneous abandoned drums/containers of hazardous substances and hazardous wastes, tire piles, and abandoned industrial and commercial facilities or with unaddressed soil, groundwater, or vapor impacts.

Actions conducted at these sites may include installation of fencing, sampling and disposing of drums/containers, and source removal. Source removal could include disposal of release-impacted soil, transformers, lab packs, contents of lagoons and other hazards. Removal Actions also commonly include providing an alternate drinking water supply or water filter systems for impacted residential drinking water wells and installing subslab depressurization systems on habitable structures with indoor vapor impacts exceeding indoor air action levels.

The Immediate Removal Action utilizes the same laws and rules that govern the SCP and seeks to recover removal action costs when an RP can be identified. In addition, [IC 13-14-10](#) is utilized for emergency order procedures and [IC 13-20-13-13](#) is utilized for waste tire removal and remedial actions.

If emergency actions are warranted, or if IDEM management determines that site conditions are extremely costly or complex and meet the federal United States Environmental Protection Agency (U. S. EPA) Superfund Emergency Response and Removal Program criteria, IDEM may refer the site to the U.S. EPA Region 5 Superfund Emergency Response and Removal Program.

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. IDEM considers the public records contained on the [VFC](#) for a site to be the administrative record for cleanup projects and a public repository.

Community Relations Plans

Public participation and involvement are critical for a successful remediation. Effective September 2021, the SCP follows the guidance of the Community Involvement Plans (CIP) presented in IDEM's Office of Land Quality [Community Involvement Plan \(Waste-0070-NPD\)](#). The CIP takes a proactive approach to ensure that community stakeholders are informed of site activities and encouraged to participate in the decision-making process. Community involvement is designed to build trust and credibility with the affected community. In addition, the CIP provides procedures and direction for disseminating information, working with affected parties in obtaining property access, and encouraging feedback.

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 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.

INVESTIGATIONS

Sites generally follow the process outlined in Figure 1. The process established in [IC 13-25-5-8.5\(c\)](#) is applicable to all remediation programs pursuant to IC [13-12-3-2](#) and requires adequate characterization of the nature and extents of release-related chemicals with respect to remediation objectives. As outlined in the [Risk-based Closure Guide](#), the present and likely future extents of release-related chemicals define the boundaries of the volumes of media

where one or more remedy decisions are necessary under [IC 13-25-5-8.5\(c\)](#). Remedies may be necessary to control risks associated with soil exposure, plumes of release-related chemicals in groundwater, leaching of release-related chemicals from soil to groundwater, or vapors arising from volatile release-related chemicals in soils, non-aqueous phase liquid (NAPL), or groundwater that enter or have the potential to enter occupied structures. For these reasons, an understanding of the present and likely future extents of release-related chemicals is necessary to protect human health and the environment.

Investigation of the full nature and extent of potential and observed hazardous substances and petroleum releases is a required first step when completing response and remediation under SCP oversight. Investigation must delineate the nature and extent of releases to unconditional remediation objectives (e.g., residential published levels) described in the [Risk-based Closure Guide](#) or risk-based remediation objectives agreed upon by the SCP before the site investigation begins. Full nature and extent delineation must include:

- Evaluation and sampling of all potentially affected media
- Evaluation and sampling of all migration pathways and exposure points
- Evaluation of fate and transport of release-related chemicals

These investigation elements are necessary to develop an accurate conceptual site model (CSM) – a comprehensive understanding of the release, including its setting, characterization, an evaluation of risks associated with the release, and any remedy proposed and implemented to address those risks. Historically collected environmental data and operational information must be included in site investigation reports and considered when evaluating risk-based exposures or developing a remediation strategy. Historically collected data should be reconfirmed during the site investigation process if the quality of the data is in question. The [Risk-based Closure Guide](#) provides a model for investigating and remediating all sites, including those in the SCP.

Spatial data, acquired by either Global Positioning System (GPS) receivers or traditional land surveying techniques, must be collected in accordance with IDEM's [Spatial Data Collection Standards](#) to ensure data quality and consistency. The electronic copy of spatial data and sampling results must be formatted consistent with OLQ's [Electronic Data File Submittal Guidelines](#) so that it can be included in OLQ's sampling database (SampDB).

Note that IDEM may conduct field audits during any sampling event. For this reason, IDEM must be provided a minimum of two weeks advance notice for field activities. IDEM may collect samples (including split samples) whenever necessary, at the discretion of the SCP project manager. IDEM will seek reimbursement of sampling costs from the RP.

When investigation is warranted at properties not owned or controlled by the responsible party and access is not readily acquired, 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 SCP project manager and IDEM legal counsel may assist in attempting to obtain access as described in [Waste-0065-NPD](#). Property owners of sites where releases of hazardous substances have occurred must provide cooperation, assistance, and access requested by other responsible parties who are performing investigation or remediation under IDEM oversight in order to maintain any liability protection those property owners might claim. Failure to cooperate with work done under IDEM oversight may result in being named a potentially responsible party.

The following reports must be submitted to document the completion of an investigation under SCP oversight:

[Initial Site Investigation Report and Interim Remedies](#)

SCP considers the initial site investigation (ISI) report as a combination Phase I Environmental Site Assessment and Phase II Site Investigation. Details of historical operations and timelines, chemical use and waste management practices, and details about potential release locations or source areas must be included in the ISI Report. The scope of work for the ISI must include data collection sufficient to screen potential source areas and potential migration pathways and to develop the initial CSM. The ISI Report should include information sufficient to show the extent of the environmental problem.

It is sometimes immediately apparent that a chemical release poses an unacceptable risk (e.g., impacted drinking water supply well or vapor exposure), and that it is necessary to implement a remedy as soon as possible (e.g., provide an alternate water supply, install a vapor mitigation system). In other cases, responsible parties may opt to implement an interim remedy (e.g., removal or treatment of known source material) before completing characterization, provided the interim remedy does not create an unacceptable risk. In many instances, implementation of an interim remedy may significantly reduce overall remedy cost and timeframes. The [Risk-based Closure Guide](#) includes discussion of interim remedies and other remedy options.

If an interim remedy was necessary to prevent unacceptable risk, the RP must provide documentation to SCP that release-related chemical concentrations have been reduced to levels that no longer require an interim remedy and receive written SCP approval prior to terminating the interim measure.

Annual Progress Report

An Annual Report, utilizing [Remediation Services Branch Annual Report \(Indiana State Form 57108\)](#), is due by January 31 of each year until the site achieves closure with the issuance of a No Further Action (NFA) letter from SCP. The purpose of the Annual Report is to assure SCP that work is progressing in a timely manner and that completion of the project can reasonably be assumed to be on, or near, the scheduled date. The two-page form prompts RPs to inform SCP about what was accomplished in the last year and what is planned for the coming year. It should be a big picture assessment of site progress. This form does not take the place of the need for submittal of other work plans and reports, which are required per the response actions outlined in the Notice of Liability Letter.

Further Site Investigation Report(s)

SCP will require one or more phased further site investigations (FSIs) if the ISI did not fully delineate the nature and extent of release-related chemicals and fully evaluate migration pathways and receptor risks. For each successive FSI, it may be most efficient for the RP to submit an FSI work plan for IDEM review that establishes the scope, goals, and procedures for the FSI. Submitting a work plan for approval allows for agreement between IDEM and the RP on the details of the project before the investigation is implemented and can eliminate unnecessary expenditure of time and money.

REMEDY DECISION

Remediation Work Plan

If the documentation gathered during site investigations indicates that a remedy is necessary to reduce unacceptable risk arising from the release-related chemicals, a Remediation Work Plan (RWP) must be submitted for SCP's review and approval. A remedy design must be selected that controls risk, taking into account the present and likely future extents of release-related chemicals, their concentrations, their overlap with potential receptors, land-use specific remediation objectives, and proposed controls, if any.

The following must be included in the RWP:

- Detailed summary and documentation of the results of the site investigation
- A statement of work to accomplish the remediation in accordance with agency guidelines
- Detailed summary of the results of any pilot study conducted
- A Quality Assurance Project Plan (QAPP)
- An operation, maintenance, and monitoring plan
- A health and safety plan

- A community relations plan (if warranted as described in [Community Involvement Plan \(Waste-0070-NPD\)](#))
- A proposed schedule to implement the work plan

The proposed RWP must identify the nature and extent of the releases being addressed in the project, evaluate all potential exposure pathways, and explain how the RP intends to achieve the remediation objectives. Information about the site must be presented through a CSM, as discussed in the [Risk-based Closure Guide](#). The RP may use the Remediation Work Plan Completeness Checklist (Form 53413), available in the VRP section of the [IDEM Forms webpage](#), as a cover letter to the RWP.

REMEDIAL ACTION

Remediation Implementation Report

In instances where the RWP includes implementation of an engineered remedy that requires long-term operation and maintenance, an implementation report must be submitted to SCP documenting that construction occurred in a manner consistent with the approved RWP and that implementation included quality assurance procedures and met quality control specifications.

Remediation Progress Report

Progress reporting is required for long-term remediation projects to demonstrate to SCP that the remedy is progressing towards the remedial objectives presented in the RWP. During long-term remediation projects, progress reports are submitted on a quarterly schedule, or an alternate schedule approved by the SCP project manager. Long-term progress is typically shown through monitoring of release-related chemical concentrations and system evaluation (if applicable). Remediation progress reports submitted for an active engineered treatment must detail operational history of the system, maintenance activities required, total treatment or recovery volumes, and disposal records.

Environmental Restrictive Covenants and Environmental Restrictive Ordinances

The Office of Land Quality (OLQ) uses a risk-based approach to address releases of hazardous substances and petroleum. When release-related chemicals remain at concentrations exceeding the [Risk-based Closure Guide](#) unconditional remediation objectives after remediation is complete, an [institutional control](#) is required. The [institutional control](#), such as an environmental restrictive covenant (ERC) or environmental restrictive ordinance (ERO), protects human health and the environment by applying administratively and legally enforceable land use restrictions to properties that limit activity, use or access, or require operation of an engineered control, such as a cap, in order to minimize exposure to release-related chemicals.

If an institutional control is part of the remedy, the RP must provide proof in the remediation completion report that the control is in place. Before recording an ERC and submitting a remediation completion report, the draft ERC(s) must be submitted to SCP for approval of restriction language and verification of property ownership and legal description. A copy of all signed and recorded ERCs related to the site must be included in the completion report.

An ERC must remain in effect until the owner at the time submits a request for a termination and demonstrates that the restrictions it contains are no longer necessary to prevent unacceptable risk, and IDEM agrees that the ERC may be terminated. Restrictions provided by an ERC may only be modified with the submission of a modification request and written approval from [IDEM's Institutional Controls Group](#). See [IC 13-14-2-9](#).

When a remedy will include the use of an ERO as an institutional control, it is important to obtain feedback from the water utility and from the local government unit that has enacted or that has proposed adoption of the ERO. Consultants are encouraged to work directly with the local government unit. 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. 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

For an ordinance to be used, evidence that the ordinance has been passed by the local unit of government must be provided. IDEM must approve the use of the ordinance as an ERO and as adequate to prevent unacceptable risk to potential receptors. The RP must obtain written acknowledgement from the local government that the ERO is requested to be used as part of the remediation strategy at a site. IDEM will notify local government units and water utilities in writing of any formal proposal to utilize an ERO at a particular site; and will request input on the items listed above if the information has not already been provided in the work plan. If IDEM decides that the ordinance is adequate, IDEM will provide note to the local government that it has approved its use as an ERO.

Remediation Completion Report

The RP must submit a remediation completion report once the remediation objectives established in the RWP have been achieved. As outlined in the [Risk-based Closure Guide](#), demonstrating remediation effectiveness generally requires collection and analysis of samples from relevant media, and the submission of those results to IDEM per the [OLQ's Document Submittal Guidelines](#). The analytical results are compared to the approved remediation

objectives to determine whether the goals of the RWP were achieved. The RP may use the Remediation Completion Report Completeness Checklist (Form 54168), available on the [IDEM Forms webpage](#) under VRP, to develop a comprehensive remediation completion report.

The completion report is a stand-alone document submitted after an approved remedy is implemented and remediation objectives are met. The completion report must reflect the project as approved in the RWP and demonstrate how the remediation objectives were met and how risks to human health and the environment were mitigated. A request for site closure may be included in the completion report or may be submitted as a separate document.

An ERC or other institutional control is necessary if release-related chemicals remain at concentrations exceeding the [Risk-based Closure Guide](#) unconditional remediation objectives (e.g., residential published levels) unless convincing lines of evidence (further discussed in the [Risk-based Closure Guide](#)) demonstrate otherwise. Documentation that the institutional control is in place must be submitted with the remediation completion report.

CLOSURE

The [Risk-based Closure Guide](#) explains in detail appropriate technical procedures and approaches to achieve site closure. The SCP issues closure in the form of a NFA letter. Indiana law allows parties to select the type of remedy that best achieves remediation objectives. IDEM can modify an NFA decision if additional data or new information indicates that a site may become a risk to human health or the environment.

No Further Action Letter

SCP will issue an NFA letter to approve closure upon successful completion of site investigation and implementation of the RWP (including post-remedial monitoring and confirmation sampling, and implementation of any necessary institutional controls). SCP also requires that any unpaid invoices for oversight cost recovery are paid in full before an NFA letter will be issued. An NFA determination will remain in effect provided that: 1) conditions are unchanged; and 2) no new or incorrect information is found that may alter the CSM or require additional corrective action(s) to eliminate hazards to human health. Institutional controls must be complied with and engineering controls must be maintained and in continual effect for an NFA determination to remain valid.

An NFA letter is a determination of status that is subject to administrative review under [IC 4-21.5-3-5](#). IDEM must give written notice of the NFA letter to each person who has a substantial and direct proprietary interest in the subject of the order. When an RP requests an NFA letter, it must provide IDEM a list of all persons who may have a substantial and direct proprietary

interest in the subject of the order. This must include all parties who participated in any community involvement activities related to the site and requested notice of determinations; owners of properties where release-related chemicals remain at concentrations above unconditional remediation objectives, including those with an institutional control such as an ERC; and owners of properties where engineered controls will remain after an NFA letter is received.

Conditions Subsequent

The approved RWP or Long-Term Maintenance or Monitoring Plan must address any release-related chemicals that remain subsequent to remediation and closure. In that case, SCP may grant a conditional closure by issuing an NFA letter with conditions subsequent to closure that must be monitored and maintained to ensure the continued effectiveness of the remedy. A Long-Term Stewardship Plan and Agreement, including financial assurance, is necessary to describe the conditions and ensure long-term effectiveness of any remedies. The NFA letter will identify these conditions. An ERC will also detail any condition that requires monitoring or maintenance. SCP will not agree to closure where conditions pose a potential or ongoing threat to human health or the environment.

WHEN ISSUES ARISE

When RPs do not agree to perform the investigations and/or cleanup upon formal request by SCP through a Notice Letter, IDEM may issue a Demand for Compliance letter, an administrative order (Commissioner's Order), or may go directly to court to seek a judicial order to compel a response and remediation. RPs have the right to appeal or to request administrative review of a Commissioner's Order by the Office of Environmental Adjudication, who will review IDEM's decision to issue a Commissioner's Order. If an RP does not appeal a Commissioner's Order the order becomes effective and the RP must comply with it. If the Commissioner's Order becomes effective and the RP still fails to conduct the necessary response actions, IDEM may go to court to seek a judicial order to compel a response and remediation. 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. If a judicial order is entered, an RP can appeal as provided in the Indiana Trial Rules or Indiana Appellate Rules.

During some remediation projects, technical disagreements between IDEM staff and RPs may arise. These disputes can cause project delays and frustration on both sides of the issue. The SCP requests that the RP or consultant first discuss project-specific disagreements with the project manager and IDEM technical staff since most disagreements can be resolved. IDEM has developed a mechanism for settling technical disagreements called the [Technical Review Panel](#) (Panel) if technical disputes still remain. The Technical Review Panel is not available to parties

that have filed a Petition for Review with the Office of Environmental Adjudication. IDEM assembled a pool of IDEM scientists from outside OLQ, each having expertise applicable to the technical issues commonly encountered. When the Panel is needed, IDEM will assemble a small group of those scientists with the appropriate expertise to help settle the dispute.

The resolution process is as follows: If the SCP project manager and the external party cannot agree on a technical issue within a reasonable time, the project manager will elevate the dispute to their section chief and senior Science Service technical staff for review and resolution. If the dispute remains, the external party may contact the Remediation Services Branch Chief directly and request the issue be reviewed by the [Panel](#). Each side will provide the Panel a short written summary of their technical view point prior to participating in an informal discussion with the Panel. The Panel will then provide written recommendations to both parties.

Any decision produced by the Technical Review Panel is not an agency action as defined in [IC 4-21.5-1-4](#) or an order as defined in [IC 4-21.5-1-9](#). This decision is not subject to administrative review because it is not a determination of any legal rights, duties, privileges, immunities, or other legal interests, and because it is issued pursuant to an informal procedure for dispute resolution as allowed by [IC 4-21.5-3-34 \(a\)](#).

IDEM's goal in creating the Technical Review Panel was to enable remediation sites to move forward in a timely manner and to provide external entities a forum outside the OLQ to help resolve technical disagreements.

COST RECOVERY

SCP seeks recovery of its costs incurred in overseeing response actions taken at SCP sites. IDEM oversight costs to be paid by RPs include costs associated with site specific review of environmental investigation, remediation, and closure documentation, including site visits, data collection, meetings, technical review, legal review, and other tasks necessary to manage a site to closure.

IDEM oversight costs will be billed on a monthly or quarterly basis. IDEM's oversight cost hourly rate, posted on [State Cleanup's website](#), is subject to change. RPs shall pay SCP project oversight costs to the Hazardous Substances Response Trust Fund as provided in [IC 13-25-4-2](#) and [IC 13-24-1-4](#) and shall pay in full before receiving a No Further Action status from IDEM for the Site. 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 project oversight costs.

In the event that an RP declares bankruptcy, the RP must include IDEM as a creditor and provide notice of the bankruptcy to IDEM, because IDEM has a potential claim. IDEM reserves the right to file a proof of claim or an application for administrative expenses in any bankruptcy proceedings.

Costs associated with investigation and cleanup of the site may be covered by current or past insurance policies that were in effect at the time of ownership of the site or during the period of operation of the facility by the RP or its predecessor companies. Most insurance companies require notice to the carrier of a claim in a timely manner, often based upon receipt of SCP Notice of Liability Letter. RPs may want to review current and past policies to evaluate whether they have coverage. Coverage depends on many factors such as the language of the policy and which state's laws will apply. Not having insurance or not having coverage under a policy does not prevent RPs from being responsible for all response actions. Furthermore, SCP will not excuse delays associated with third parties, such as delays caused by negotiations between RPs and their insurance carriers.

DOCUMENT AND ELECTRONIC DATA FILE SUBMITTAL GUIDELINES

IDEM now 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 the [OLQ's Document Submittal Guidelines](#). Electronic data files (GPS locations and sampling data) must also be submitted as separate attachments to the program's e-Submission site in the format provided in 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.

FORMS and CHECKLISTS

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 many other documents and websites have been provided where the document is discussed in the text.