

Voluntary Remediation Program Guide



Office of Land Quality
Remediation Services Branch

Disclaimer: *This nonrule policy document 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

The Voluntary Remediation Program (VRP) provides a process for property owners, operators, potential purchasers, and third parties with appropriate site access to voluntarily investigate and remediate the actual or threatened release of chemicals to environmental media. Applicants are typically current or past property owners, current or past lessees, and prospective purchasers. Local units of government who have obtained property by default or have an interest in developing property also may participate.

Successful completion of the VRP process can facilitate property transfers and limit future liability related to the chemicals and releases addressed in the voluntary remediation effort.

- VRP applicants who enter into a Voluntary Remediation Agreement (VRA) with IDEM and successfully implement an IDEM approved Remediation Work Plan for a project receive a Certificate of Completion from the Indiana Department of Environmental Management (IDEM) and Covenant Not to Sue (CNTS; *for liability or claims resulting from the release of a hazardous substance and/or petroleum, where that release is addressed by a Remediation Work Plan approved by IDEM*) from the Governor. These assure that the applicants and property will not become the subject of future IDEM enforcement action related to the release (*subject to certain exceptions*).
- *A Memorandum of Understanding between the United States Environmental Protection Agency (U.S. EPA) and IDEM Resource Conservation and Recovery Act (RCRA) Corrective Action program (September 3, 2004)* supports the use of the VRP (*at facilities where the remediation objectives are consistent with RCRA*) to implement RCRA Subtitle C Corrective Action requirements, and to facilitate brownfield redevelopment in Indiana.
- *A Memorandum of Agreement (MOA) between IDEM and U.S. EPA for the Indiana Voluntary Remediation Program (December 4, 1995)* provides that for any site receiving a Certificate of Completion from the Voluntary Remediation Program, the U.S. EPA will not plan or anticipate any federal action under the Superfund law, unless it poses an imminent and substantial threat to human health or the environment. This agreement does not apply to sites on the Superfund National Priorities List (NPL) or sites currently subject to orders of enforcement under EPA.

LAWS

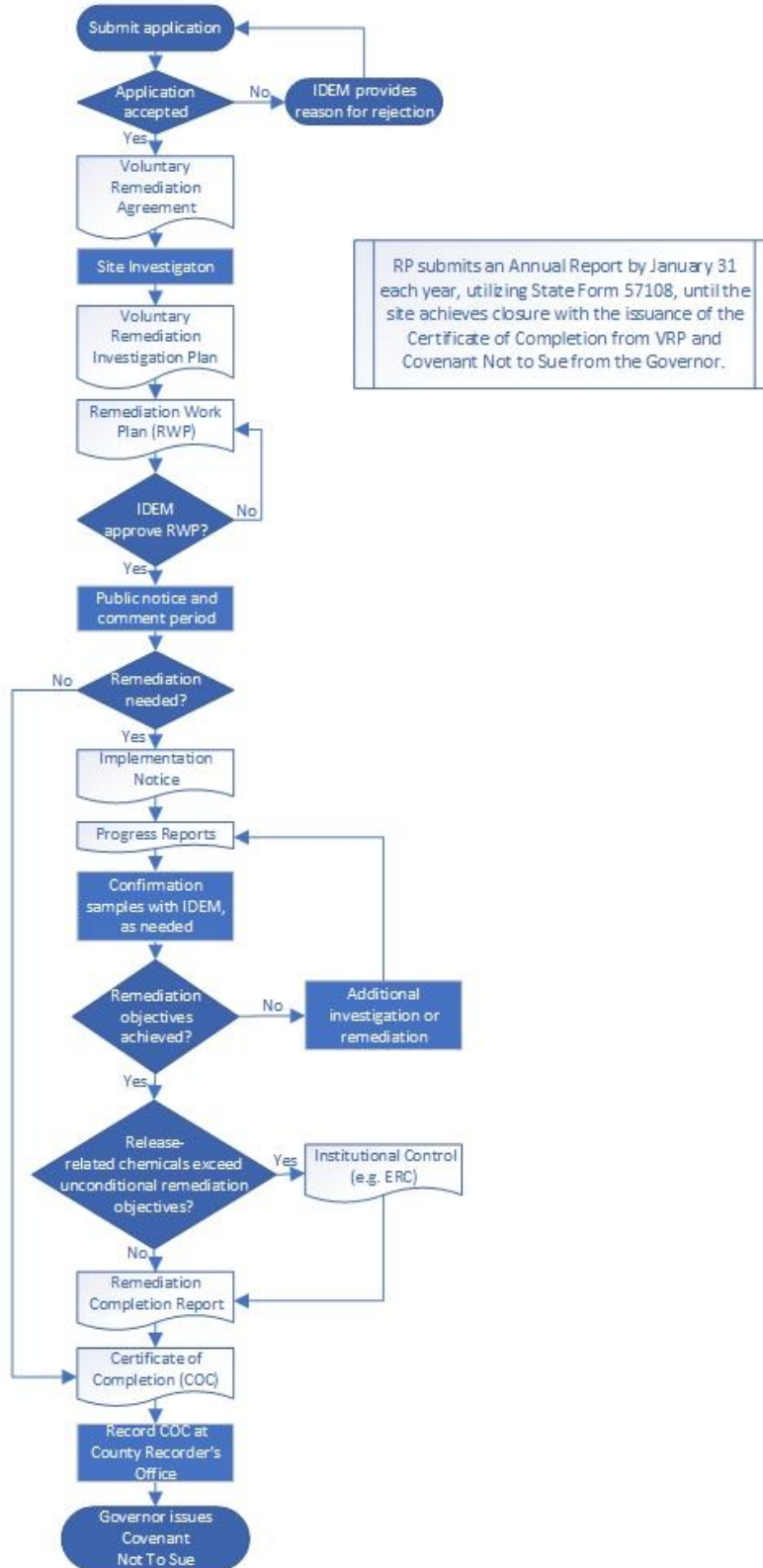
[Indiana Code \(IC\) 13-25-5](#) establishes requirements for VRP participation and the Voluntary Remediation Program. Among other things, the statute addresses:

- Application process
- Eligibility criteria
- Document submittal timelines
- Remediation objectives, Remediation Work Plan contents, and how a Remediation Work Plan is accepted or rejected
- Public comment period
- Issuance of a Certificate of Completion
- Issuance of a Covenant Not to Sue

[IC 13-11-2-203\(a\)](#) defines Site, for purposes of [IC 13-25-5](#), as a parcel of real property for which an application has been submitted under [IC 13-25-5-2](#).

PROCESS OVERVIEW

Figure 1 Voluntary Remediation Program Process Overview



HOW DOES A SITE ENTER THE PROGRAM?

Eligibility

Any person who has established property control or access and who wishes to investigate and remediate property contaminated with petroleum and/or hazardous substances is eligible to participate in the VRP unless one of the following conditions applies:

- State or federal enforcement is pending concerning the remediation described in the application
- A federal grant requires enforcement action
- The condition described in the application constitutes an imminent and substantial threat to human health or the environment
- The application is not complete
- If IDEM terminates the Applicant's participation in the VRP, the Applicant may reapply to the VRP. However, notwithstanding IC 13-25-5-5(a), IDEM may in its discretion use its basis for terminating the Applicant's participation in the VRP as a reason for rejecting the Applicant's reapplication to the VRP.

Applicants that have already completed remediation are also eligible to participate.

Voluntary Remediation Program Application

IDEM uses information provided on the VRP application to determine eligibility. The application identifies the applicant, provides an initial summary of project conditions, and defines the preliminary scope of the investigation and remediation.

- Participation begins by submitting a completed Voluntary Remediation Program Application ([State Form 47271](#)). After receiving the application and fee (if necessary), IDEM assigns a unique project number and performs an internal enforcement check.
- Multiple parties may apply as co-applicants.
- The application fee is currently \$1,000. The VRP cannot process the application until the fee is received. Applicants identified as political subdivisions are not required to submit a fee.
- The application is confidential until IDEM and the applicant sign the Voluntary Remediation Agreement. The [Voluntary Remediation Agreement template](#) is available on the [VRP Resource website](#).
- IDEM holds the application fee until the Voluntary Remediation Agreement is executed. If the applicant withdraws or IDEM withdraws from negotiations before the Agreement is executed as defined under [IC 13-25-5-6 or 8](#), any unexpended part of the fee will be refunded. Once the Agreement is executed, the fee will remain in the Voluntary Remediation Fund to support the VRP as required by [IC 13-25-5-21\(e\)\(1\)](#).

The application must include a project description and an environmental assessment. These must include:

- A legal description of the site
- The physical characteristics of the site
- The operational history of the site to the extent the history is known by the applicant
- Information that the applicant is aware of concerning
 - Relevant releases
 - Nature and extent of relevant release-related chemicals at the site and immediately contiguous to the site
- Relevant information the applicant is aware of concerning the potential for human exposure to contamination at the site and immediately contiguous to the site.

IDEM has thirty (30) days to determine eligibility. Any enforcement actions will be discussed with the applicant(s) before a decision is made on acceptance.

If there is evidence of unacceptable risk, IDEM will evaluate the release to determine if it constitutes an imminent and substantial threat and is thus not eligible to participate in the VRP.

Typically, a single fact (*including soil gas concentrations that exceed screening levels*) is not enough to determine the existence of an imminent and substantial threat. Other lines of evidence IDEM will evaluate include, but are not limited to, are those described in the Code of Federal Regulations 40 CFR 300.415 (b)(1), or the following:

- **Nature, extent, and type of contamination:** Has the contamination migrated beyond the property boundaries, and if so, what is the proximity to the nearest receptors? What are the nearest receptors? Does the contamination consist of carcinogenic compounds or other compounds with serious health effects?
- **The magnitude of contaminant concentrations:** Do concentrations in affected media marginally exceed screening levels, or are they significantly elevated, perhaps orders of magnitude higher than the applicable receptor-based screening levels?
- **Preferential pathway investigation:** Is contamination present in preferential pathways (*such as utility conduits*) which could serve as transport mechanisms? This line of evidence is often particularly pertinent to vapor intrusion investigations where soil gas or sub-slab samples do not necessarily represent the actual exposure transport mechanism that would account for indoor air exposure.
- **Other factors leading to the likelihood that an exposure pathway is complete:** How long has the contamination been there? Has exposure been demonstrated at other nearby locations? How long has the receptor been there? Is it reasonable to suspect that exposure may be occurring based on the information collected (*or sometimes not collected*) to date?

IDEM must identify incomplete items within 30 days of receipt. If IDEM does not, the application will be automatically accepted. An application with missing items that is resubmitted does not require an additional fee but must be received within 45 days from the initial application date or the application will be rejected. Upon approval, the VRP will send a formal acceptance letter to the designated contact person in the application. That letter will identify the assigned VRP project manager.

If the department rejects an application, the VRP will notify the applicant that the department rejected the application and will explain the reason. The applicant may either appeal IDEM's decision to the Office of Environmental Adjudication, or, if the application is rejected because the application is not complete after 45 days as stated in per [IC 13-25-5-5\(b\)](#), submit a completed application with an additional application fee.

Voluntary Remediation Agreement

IDEM and the VRP applicant must enter into a Voluntary Remediation Agreement that defines the terms and conditions of participation and identifies the obligations of the applicant and IDEM. IDEM will not commit significant time and effort to a project until the Voluntary Remediation Agreement is fully executed. The Voluntary Remediation Agreement establishes deadlines to complete significant project milestones.

- After an application is accepted, the project manager will send the applicant a standard Voluntary Remediation Agreement and a nonbinding VRP oversight cost estimate.
- The applicant may sign the Voluntary Remediation Agreement (VRA) and return it for IDEM's signature and approval or may offer limited modifications to the standard VRA. However, many program aspects cannot be altered in the VRA, and IDEM will not expend significant time negotiating the terms of a VRA.
- The Voluntary Remediation Agreement requires that the applicant submit a proposed, or completed, Voluntary Remediation Investigation Plan no later than sixty (60) days after the Voluntary Remediation Agreement is executed by the Assistant Commissioner.
- The Voluntary Remediation Agreement requires that the applicant fully determine the nature and extent of release-related chemicals in accordance with the Voluntary Remediation Investigation Plan no later than two (2) years after the Voluntary Remediation Agreement is executed by the Assistant Commissioner unless an extension is mutually agreed upon.
- The Voluntary Remediation Agreement requires the applicant to submit a proposed Remediation Work Plan no later than sixty (60) days after IDEM notifies the applicant in writing that the nature and extent of release-related chemicals has been fully determined in accordance with the Voluntary Remediation Investigation Plan.
- By signing a Voluntary Remediation Agreement, the applicant agrees to reimburse IDEM for its administrative costs. Administrative costs are assessed at an hourly rate. Lab sampling costs, public notice bills and costs of any contractor hired by IDEM in connection with the project are billed to the applicant for the same amount at which

IDEM is billed. IDEM administrative costs include, but are not limited to IDEM's time and effort to:

- Review documents
- Conduct meetings, public engagement and project visits
- Monitor compliance
- Necessary progress for participation in the VRP is contingent upon a reliable source of funding for investigation activities and implementation of an approvable remedial strategy, as well as the timely payment of IDEM oversight costs. Failure to pay IDEM oversight 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. Collection actions will result in IDEM withdrawing from the voluntary remediation agreement and terminating the project.
- Delays in payment of IDEM oversight costs or project progress delays caused by third parties, such as insurers, will not excuse any failure of the project to make progress. In the event that an applicant declares bankruptcy, the applicant 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.

IDEM provides an estimate of projected administrative cost with the Voluntary Remediation Agreement for the applicant's consideration. However, as IDEM cannot predict the total administrative costs over the life of a project based on the information provided in the application, the estimate does not bind IDEM to a maximum cost that IDEM is entitled to bill the applicant.

IDEM will not issue work plan approvals or closure documents if invoiced administrative costs are past due. Failure to keep accounts current will result in reviews being stopped and possible project termination. If the agreement is terminated for any reason, the applicant agrees to reimburse IDEM for all of its administrative costs incurred to the time of termination. In addition, terminated and withdrawn sites will be referred to another IDEM program for the follow-up of remaining environmental issues.

[Adding a Co-Applicant to an Existing VRP Project](#)

Per [IC 13-25-5-2\(a\)](#), "A person who desires to participate in the Voluntary Remediation Program under this chapter must submit an application and a fee to the department as described under [\[IC 13-25-5-2\(c\)\]](#)." Co-applicants need to submit the same type of application and undergo the same vetting as the original application, including the \$1,000 application fee. The fee covers the application process which occurs outside of the typical project review process. The reviewers involved, including administrative staff and management staff, do not typically cost recover their time spent on projects, and the application fee pays for their time. If the process does not result in an executed VRA with the parties, or if the VRA is not executed, then under [IC 13-25-5-](#)

[6 or 8](#), any unexpended part of the fee will be refunded. If the VRA is signed, the fee becomes a part of the Voluntary Remediation Fund and is not refunded to the co-applicant.

Once approved, a co-applicant may sign an addendum to the existing VRA, which will not be amended in any other way except to add the co-applicant.

Emergency or Immediate Actions

IDEM may reject the application if conditions constitute an imminent and substantial threat to human health or the environment. Regardless of whether IDEM has accepted an application, IDEM may determine later that an imminent and substantial threat exists and withdraw approval of the Remediation Work Plan. The criteria for an imminent and substantial threat are described above in the Voluntary Remediation Program Application section. If a spill occurs at a VRP project, the applicant is responsible to follow all reporting requirements that otherwise apply, and to take appropriate action to respond to the release. The applicant may need to coordinate activities with IDEM's Emergency Response Section. If the spill constitutes an imminent and substantial threat, IDEM may allow the applicant to remain in the VRP for any necessary long-term remedial actions to address unacceptable risks after the applicant has addressed the spill in a timely manner and with the cooperation of the Emergency Response Section.

HOW IS THE PUBLIC INVOLVED OR NOTIFIED?

The applicant should open lines of communication with affected residents or businesses early in the process to help reduce misperception or confusion by holding informational meetings, or through effective verbal or written communication. There is also a required public comment period as a part of the remediation work plan process discussed below.

Virtual File Cabinet and Administrative Records

IDEM uses the web based [Virtual File Cabinet](#) to house public documents. IDEM considers the public records contained on the Virtual File Cabinet for a project to be the administrative record for that project and a public repository.

Community Relations Plans

VRP applicants are required to submit a Community Relations Plan as a part of the Remediation Work Plan. The information required in the plan is consistent with [IC 13-25-7\(b\)\(3\)\(D\)](#) and Remediation Work Plan Completeness Checklist available on [IDEM's Forms website](#). The Community Relations Plan must identify property owners or occupants who are affected, or potentially affected by the project, including at a minimum, owners of property where release-related chemicals from the site have come to be located. When the Remediation Work Plan is made available for public comment, the applicant must give written notice of the public comment period to the affected or potentially affected property owners or occupants identified

in the Community Relations Plan. The Community Relations Plan may require the applicant to post an informational sign at the site if certain conditions exist.

When IDEM issues a technical approval or rejects a proposed Remediation Work Plan, the Applicant must:

- Provide a copy of the proposed Remediation Work Plan to a library in the county where the project is taking place;
- Notify the potentially affected property owners or occupants by letter; and
- Post sign if needed.

When IDEM approves or rejects a proposed Remediation Work Plan, IDEM must:

- Notify local governmental units located in the county affected by the proposed project of the Remediation Work Plan;
- Publish a notice in a local newspaper requesting comments on the proposed Remediation Work Plan; and
- Provide a public comment period of at least 30 days following publication of the notice. Interested parties may submit written comments on the work plan and request a public hearing on the Remediation Work Plan. IDEM will respond to comments received.

If comments or a request for a public hearing are received, VRP will develop responses to the comments and determine if there is sufficient public interest to hold a hearing to receive additional comments. After consideration of any comments made in writing or during a public hearing, IDEM's decision along with responses to comments will be sent in a formal letter signed by the Assistant Commissioner of the Office of Land Quality.

Additional information and guidance on how to involve the community in a remediation plan can be found at NRPD-Waste-0070 and its attachment, Community Involvement Plan.

Remediation Work Plan decisions are subject to appeal under [IC 13-25-5-12](#) & [13](#).

ANNUAL PROGRESS REPORT

An applicant is required to provide an overview of completed and planned activities to IDEM in an annual report. The applicant shall submit the Remediation Program Annual Reports to VRP by January 31st. More frequent report submittals may be requested by IDEM. The purpose of progress reports is (a) to assure IDEM that work is progressing in line with the schedule provided in the Voluntary Remediation Agreement or in conjunction with the approved Remediation Work Plan pursuant to [IC 13-25-5-13\(2\)](#), and (b) so project completion can be reasonably assured within the agreed upon timeline.

INVESTIGATIONS

VRP projects are designed to investigate specific identified releases. Other releases could be subject to IDEM spill reporting requirements. However, the liability protection offered by the Covenant Not to Sue is limited to releases addressed in an approved Remediation Work Plan. Applicants are required to address all known release-related chemicals, including evaluation of all potentially affected media. The investigation must evaluate all potential exposure pathways (*soil, groundwater, surface water, air, ecological receptors*) to determine the nature and extent of release-related chemicals. Investigation activities must be consistent with the Quality Assurance Project Plan and current IDEM remediation guidance. The [Risk-based Closure Guide \(Waste-0046-R2\)](#) contains additional information about completing an investigation.

The current Voluntary Remediation Agreement requires VRP applicants to submit a Voluntary Remediation Investigation Plan (VRIP) within sixty (60) days of the IDEM Commissioner executing the Voluntary Remediation Agreement.

Spatial data, acquired by either by Global Positioning System (GPS) receivers (preferred) 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 the Office of Land Quality's [Electronic Data File Submittal Guidelines](#) so that it can be included in the Office of Land Quality's sampling database (SampDB).

Note that IDEM may conduct field audits or split samples 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 VRP project manager. IDEM will seek reimbursement of sampling costs from the applicant.

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.

REMEDY DECISION

Remediation Work Plan

Delineation of the identified releases must be complete before the applicant submits a Remediation Work Plan. The current Voluntary Remediation Agreement requires that the applicant fully determine the nature and extent of release-related chemicals within two (2) years after the Voluntary Remediation Agreement is executed by the Assistant Commissioner. The Voluntary Remediation Agreement requires the applicant to submit a proposed Remediation Work Plan no later than sixty (60) days after IDEM notifies the applicant that the nature and extent of release-related chemicals has been fully determined.

If IDEM agrees, the applicant may submit a proposed Remediation Work Plan for IDEM's review and approval within one hundred eighty (180) days of when the Voluntary Remediation Agreement is executed without first submitting a Voluntary Remediation Investigation Plan. This would likely occur when the project is coming to the VRP from another program and the nature and extent of the release or releases is well understood or with the agreement of the VRP project manager.

The proposed Remediation Work Plan must include:

- [Remediation Work Plan Checklist](#), State Form 53413
- Detailed documentation of the investigation performed to determine the nature and extent of the release
- Remediation objectives for all affected source areas, decision units, media, release-related chemicals, and exposure pathways
- A statement of work to adequately control risk in accordance with agency guidelines
- A quality assurance project plan
- A health and safety plan
- A community relations plan
- A data management plan
- A proposed schedule to implement the work plan

If a project has already been completed, see [IC 13-25-5-7\(c\)](#) for the requirements that must be submitted.

A proposed Remediation Work Plan must identify the nature and extent of the releases being addressed, evaluate all potential exposure pathways, and explain how the applicant intends to achieve the remediation objectives. IDEM recommends that information about the release and its environs be presented through a conceptual site model as discussed in the [Risk-based Closure Guide \(Waste-0046-R2\)](#). If institutional controls will be proposed as part of the remedy, IDEM requires the draft language of any property use restrictions to be used in future environmental restrictive covenants or environmental restrictive ordinances be included in the Remediation Work Plan.

Remediation Objectives

The Remediation Work Plan must specify the remediation objectives for the site and the affected area surrounding the site. In accordance with [IC 13-25-5-8.5](#), remediation objectives for each hazardous substance and any petroleum on the site shall be based on:

- Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.
- Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.
- Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that:
 - Manage risk; and
 - Control completed or potential exposure pathways.

A Remediation Work Plan may propose more than one remediation objective. For example, the applicant may show that most release-related chemicals are at or below unconditional remediation objectives and demonstrate that risk associated with those chemicals exceeding the unconditional remediation objectives will be effectively managed through institutional controls such as an environmental restrictive covenant or environmental restrictive ordinance that adequately control risk. The [Risk-based Closure Guide \(Waste-0046-R2\)](#) contains more information about remedy selection, environmental restrictive covenants, and environmental restrictive ordinances. The decision unit use for all off-site properties is assumed to be residential.

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, an [institutional control](#) is required. The [institutional control](#), such as an environmental restrictive covenant or environmental restrictive ordinance, 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 applicant must provide proof in the remediation completion report that the control is in place. Before recording an environmental restrictive covenant and submitting a remediation completion report, the draft environmental restrictive covenant(s) restrictions must be submitted in the Remediation Work Plan for approval of restriction language and verification of property ownership and legal description.

See Appendix E of the [Risk-based Closure Guide](#) for detailed guidance on the use of environmental restrictive covenants. A copy of all signed and recorded ERCs related to the affected properties must be included in the Remediation Completion Report.

An environmental restrictive covenant must remain in effect until the current property owner submits a request for a termination and demonstrates that the restrictions in the ERC are no longer necessary to prevent unacceptable risk, and IDEM agrees that the ERC may be terminated. Restrictions provided by an environmental restrictive covenant 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 environmental restrictive ordinance, IDEM will require acknowledgement of the use of the ERO from the water utility and from the local government unit that has enacted it or that has proposed adoption of the environmental restrictive ordinance. Consultants are encouraged to work directly with the local government unit. Because IDEM must rely on local governments to enforce risk based environmental restrictive ordinances, municipal involvement throughout the review process will help IDEM evaluate the effectiveness of proposed environmental restrictive ordinances. Local governments must be contacted for information including:

- Current and future local water resource planning
- Procedures for granting exceptions and variances to the environmental restrictive ordinance
- Local point of contact for environmental restrictive ordinance monitoring and compliance
- Notification provisions for environmental restrictive ordinances

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 applicant must obtain written acknowledgement from the local government that the environmental restrictive ordinance 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 environmental restrictive ordinance for a particular project; 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 implementation of the ordinance effectively manages risk, IDEM will provide notice to the local government that it has approved its use as an ERO.

[Evaluation of Proposed Remediation Work Plan](#)

IDEM will evaluate proposed Remediation Work Plans to ensure that they are accurate and thorough and comply with laws and guidelines established by the department. The applicant must submit a complete Remediation Work Plan that complies with [IC 13-25-5-7](#) by the deadline established in the VRA. Complications (such as property access or completion of a pilot

study) can delay development of a complete understanding of project conditions and the submittal of a comprehensive RWP. If IDEM determines that the applicant has not made a good-faith effort to submit a complete Remediation Work Plan, IDEM may reject the Remediation Work Plan as incomplete and possibly withdraw from the Voluntary Remediation Agreement to terminate the project.

At any time during the evaluation of the work plan, IDEM may request that the applicant submit additional or corrected information. IDEM typically requests items such as additional characterization, clarification, or refinement of the statement of work to accomplish remediation objectives. IDEM may also request additional information about quality assurance, health and safety, or community relations plans.

The applicant must comply with the request for additional information or withdraw the proposed work plan from consideration. If responses are not provided in a timely manner, IDEM may reject the Remediation Work Plan and terminate the Voluntary Remediation Agreement. If the applicant withdraws the Remediation Work Plan from consideration and does not resubmit in a timely manner, IDEM may consider this to be equivalent to failure to submit a Remediation Work Plan and could withdraw from the Voluntary Remediation Agreement.

The VRP requires that Remediation Work Plans be developed in accordance with the *Remediation Work Plan Completeness Checklist* available on [IDEM's Forms website](#). Use of the checklist will help the applicant develop a comprehensive Remediation Work Plan and avoid unnecessary delays during the review process.

Agency Decision on Remediation Work Plan

IDEM must provide a public comment period of at least thirty (30) days prior to any formal decision on the Remediation Work Plan. See the section titled *How is the Public Involved or Notified?* above.

Following its review of the Remediation Work Plan, IDEM may:

- Approve
- Ask for additional information
- Modify and approve
- Reject the proposed work plan

If IDEM decides to reject a Remediation Work Plan, it must notify the applicant and specify the reasons. IDEM typically works with the applicant to resolve deficiencies in a Remediation Work Plan before rejecting it. IDEM must also notify the applicant of its intent to approve or modify and approve a Remediation Work Plan. The applicant may appeal IDEM's decision to reject, approve, or modify and approve a proposed Remediation Work Plan to the Office of Environmental Adjudication. IDEM will not approve a Remediation Work Plan until all billed oversight costs have been paid.

REMEDIAL ACTION

Remediation Work Plan Implementation

The VRP applicant must notify IDEM within 60 days of the RWP approval of its intent to implement the Remediation Work Plan. IDEM is charged with oversight and review of the Remediation Work Plan implementation. This is done through review of annual reports, written progress reports provided (e.g., groundwater monitoring reports) and IDEM field oversight.

An applicant may commence work contemplated in a Remediation Work Plan before it is approved, at the applicant's risk of IDEM determining that the work is incomplete or inappropriate. However, if prompt action to mitigate risk or remove source material in advance of Remediation Work Plan approval is advisable, IDEM may provide a letter approving an interim remedy in advance of Remediation Work Plan approval.

CLOSURE

Closure Samples

The applicant must provide empirical evidence through sample data that unacceptable risk has been addressed prior to closure. If active remediation (e.g., soil excavation, ground water pump and treatment, etc.) was implemented, samples of the appropriate media are required to be analyzed to demonstrate compliance with the remediation objectives from the approved remediation work plan and to demonstrate that exposure pathways are not complete.

IDEM must be provided a minimum of two weeks advance notice for field activities. IDEM may choose to split samples with the VRP applicant to independently compare with the objectives approved in the Remediation Work Plan. If split samples are taken, IDEM will seek reimbursement of sampling and analysis costs from the applicant.

Remediation Completion Report

The applicant must submit a Remediation Completion Report that provides the basis for IDEM to determine whether the approved Remediation Work Plan has been successfully implemented. The applicant must use the [Remediation Completion Report Completeness Checklist](#), to develop a comprehensive completion report.

The Remediation Completion Report may be a standalone document submitted after an approved remedy is completed. For a project with a completed remedy, or where no remedy is necessary, the completion report may be submitted as part of the Remediation Work Plan. The Remediation Completion Report must reflect the project as approved in the Remediation Work Plan and demonstrate how the remediation objectives were met. If an institutional control (e.g., *environmental restrictive covenant or environmental restrictive ordinance*) is part of the remedy and has been reviewed and accepted by IDEM, the applicant must provide documentation in the Remediation Completion Report that the institutional control is in place

(e.g. the ERO has been promulgated or the ERC has been recorded). A public comment period will still be required.

IDEM staff will review the Remediation Completion Report and will either approve or will provide comments requiring additional information to show that implementation of the approved RWP has been completed. A Remediation Completion Report will not be approved until all billed oversight costs have been paid. If IDEM determines that the Remediation Work Plan was not successfully implemented, IDEM will notify the applicant, and the applicant may appeal this decision to the Office of Environmental Adjudication.

Certificate of Completion and Covenant Not to Sue

If IDEM determines that the Remediation Work Plan was successfully implemented by approving the Remediation Completion Report, IDEM will issue a Certificate of Completion for the releases addressed in the approved work plan.

The property owner must record the Certificate of Completion with the Exhibits at the County Recorder's Office in association with the recorded deed for the property on which the remediation took place. Once the applicant provides evidence of the recorded Certificate of Completion to IDEM, the Governor will provide a Covenant Not to Sue. IDEM will not issue the Certificate of Completion or Covenant Not to Sue until all of IDEM's billed oversight costs have been paid. The Certificate contains a project summary as Exhibit 1; a list of the release-related chemicals addressed under the project as Exhibit 2; a map of the site, the VRP project area(s) and any institutional controls as Exhibit 3. The VRP project area depicts the areas that have been sampled and either met unconditional remediation objectives or have administratively and legally enforceable land use restrictions such as environmental restrictive covenants and environmental restrictive ordinances.

The Certificate of Completion and Covenant Not to Sue assure the applicant and future landowners that the voluntary remediation has been performed properly and that associated future liability is limited with regard to the release that was the subject of the remediation work plan. Closure may be concluded with release-related chemicals left in place, in which case, there may be conditions that must be maintained or performed subsequent to closure to maintain the closure and Covenant Not to Sue.

CONDITIONS SUBSEQUENT

There may be conditions that require ongoing maintenance and/or monitoring to be performed after closure is granted with the issuance of the Certificate of Completion and Covenant Not to Sue. Examples include ongoing ground water monitoring, continued operation of a vapor mitigation system, or maintenance of use restrictions. IDEM will evaluate whether it is appropriate to approve closure for projects that rely on active, ongoing obligations on a case-by-case basis. IDEM will not grant closure if the applicant has not demonstrated that the

proposed remedy is working properly and effective at adequately controlling risk by preventing unacceptable exposure. IDEM may require a Long Term Stewardship Plan and Agreement, including financial assurance, if it determines such assurance is necessary to ensure the continued effectiveness of the remedial action.

If closure is approved with ongoing obligations, the Certificate of Completion and Covenant Not to Sue will be conditioned on the continuing performance or maintenance of the ongoing obligations such that the remedy continues to be effective. If the conditions are not performed or maintained, then the covenant would no longer bar an action against the recipient of the covenant.

WHEN ISSUES ARISE

The Voluntary Remediation Agreement contains provisions for dispute resolution. The parties are encouraged to make a good- faith effort to resolve disagreements informally. To begin a formal dispute resolution process the applicant must provide a written statement to IDEM identifying the specific matters in dispute and include the legal and technical basis for their position. While the dispute is being considered, the applicant agrees to continue to meet its responsibilities under the Voluntary Remediation Agreement that are not affected by the dispute. If IDEM and the applicant are still unable to resolve the dispute, IDEM will respond in writing to the applicant. The applicant may appeal under the *Administrative Orders and Procedures Act*, ([IC 4-21.5](#)).

DOCUMENT AND ELECTRONIC DATA FILE SUBMITTAL GUIDELINES

IDEM now requires electronic submittal (e-Submission) of documents to reduce the need to mail paper documents or submit documents via CD/DVD or flash drive. 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 website](#) as PDF fillable forms, Microsoft Word documents or Excel documents.