

8. VOLUNTARY REMEDIATION PROGRAM

8.1 Purpose and Scope

The Voluntary Remediation Program (VRP) (www.IN.gov/idem/4127.htm) provides a process for property owners, operators, potential purchasers, and third parties to voluntarily address (by *investigating and, if necessary, remediating*) property that is or that may be contaminated. Participants 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.

- VRP Participants who successfully implement a Remediation Work Plan (RWP) for a project receive a Certificate of Completion from IDEM and a Covenant Not To Sue (*for liability or claims resulting from the release of a hazardous substance or petroleum, where that release is address by a RWP approved by IDEM*) from the Governor. These assure that the participants and property will not become the subject of future IDEM enforcement action (*subject to certain exceptions*).
- *A Memorandum of Understanding between U.S. EPA and IDEM Resource Conservation and Recovery Act Corrective Action (RCRA) (September 3, 2004)* (www.IN.gov/idem/4127.htm) 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 between IDEM and U.S. EPA for the Indiana Voluntary Remediation Program (December 4, 1995)* (www.IN.gov/idem/4127.htm) provides that, under this MOA, 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 Superfund.

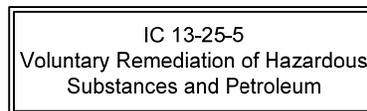
8.2 Rules and Laws

Indiana Statutory Authority (www.IN.gov/legislative/ic_iac)

Indiana Code (IC) 13-25-5 established requirements for VRP participation and established the Voluntary Remediation Agreement (VRA). Among other things, the statute addresses:

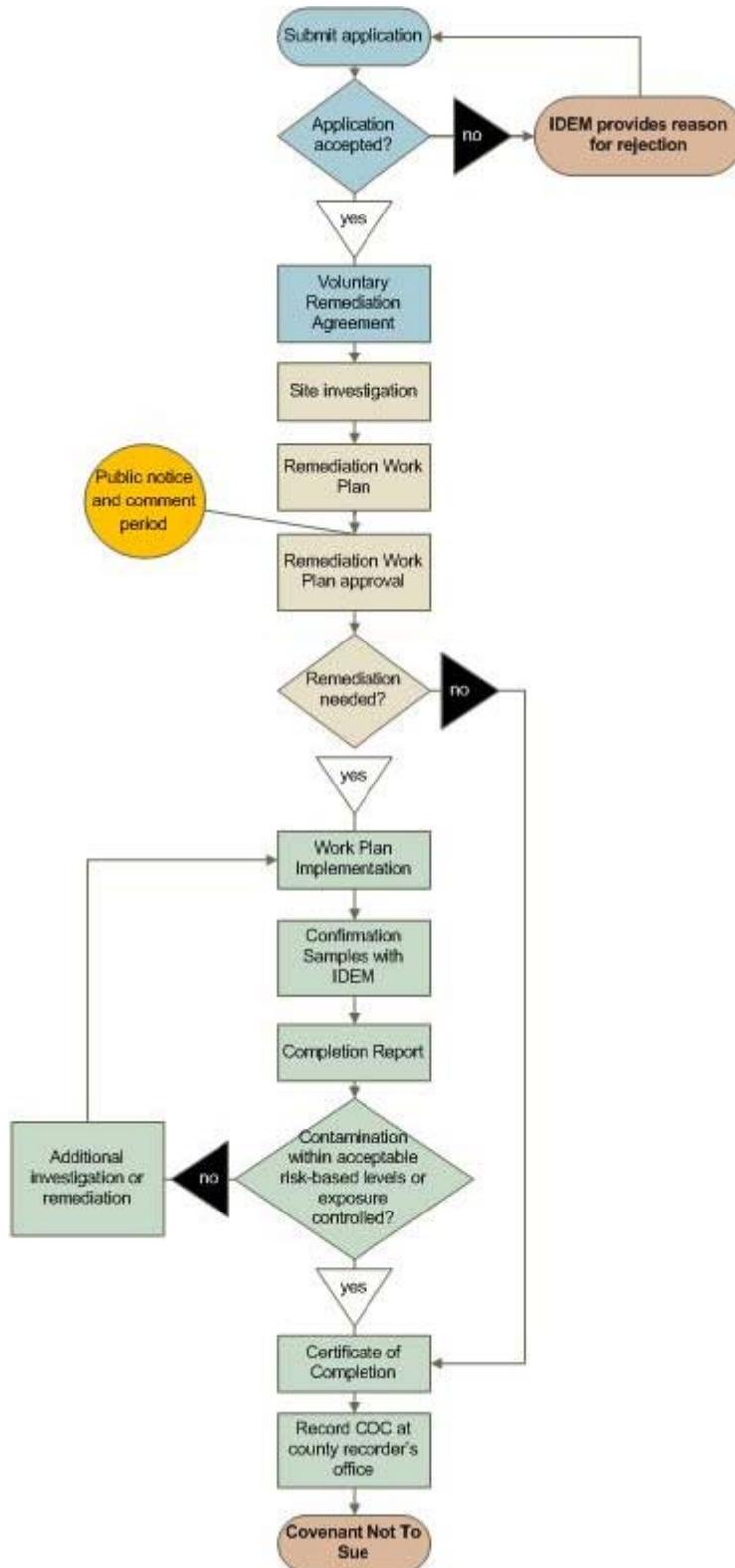
- The application process
- Eligibility criteria
- Document submittal timelines
- Remediation objectives, Remediation Work Plan contents, and how a work plan is accepted or rejected
- A public comment period
- Issuance of a Certificate of Completion and Covenant Not To Sue.

Figure 8.1 Laws and Rules Related to Voluntary Remediation



8.3 Process Overview

Figure 8.2 Voluntary Remediation Process Overview



8.4 *How Does a Site Enter the Program?*

8.4.1 Eligibility

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

- State or federal enforcement is pending concerning the remediation described in the application
- A federal grant requires an enforcement action
- The condition described in the application constitutes an imminent and substantial threat to human health or the environment
- The application form is not complete

If there is evidence of uncontrolled exposure pathways IDEM may determine that the site constitutes an imminent and substantial threat. Impacted drinking water wells, vapor intrusion into an occupied space, or direct exposure to highly impacted soil are examples of uncontrolled pathways.

Applicants that have already completed remediation also may be eligible to participate.

8.4.2 Voluntary Remediation Program Application

IDEM uses information provided on the VRP application (www.IN.gov/idem/5157.htm) to determine eligibility. The application information also identifies the applicant, provides an initial summary of site conditions, and defines the preliminary scope of the investigation and remediation.

- Participation begins by submitting an application on a form provided by IDEM. After receiving the application and fee, IDEM assigns a unique project number and performs an internal enforcement check.
- Multiple parties may apply as co-applicants.
- The application fee is \$1,000. The VRP cannot process the application until the fee is received. Political subdivisions are not required to submit a fee.
- The application is confidential until IDEM and the applicant sign the Voluntary Remediation Agreement (VRA).
- IDEM holds the application fee until the project is completed or terminated, at which time IDEM will either refund the fee or apply it toward any outstanding payments

The application must include an environmental assessment. The environmental assessment 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
 - The nature and extent of any relevant contamination and
 - Relevant releases
- Relevant information the applicant is aware of concerning the potential for human exposure to contamination at the site

IDEM has 30 days to determine eligibility. Incomplete applications are returned within 45 days of receipt with missing information identified. An applicant may revise and resubmit the application. A resubmitted application does not require an additional fee. 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.

8.4.3 Voluntary Remediation Agreement (VRA)

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

- After an application is accepted, the project manager will send the participant a standard VRA and a nonbinding VRP oversight cost estimate.
- The participant may sign the VRA and return it for final approval or suggest a modified VRA. Although many program aspects cannot be altered in the VRA, changes may be allowable and mutually beneficial. For example, language may be added to address specific circumstances for a RCRA Corrective Action site, or to address natural resource damages.
- The VRA requires the participant to submit a proposed Remediation Work Plan no later than 180 days after the VRA is signed unless the participant requests and IDEM grants a written extension. IDEM will not grant extensions without just cause.
- By signing a VRA, the participant agrees to reimburse IDEM for its administrative costs. Administrative costs are generally assessed at an hourly rate. Lab costs 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 site visits
 - Monitor compliance

IDEM provides an estimate of projected administrative cost with the VRA for the applicant's consideration. However, as IDEM cannot predict the level of effort over the life of a project based on the application information provided, the estimate does not bind IDEM to a maximum cost that IDEM is entitled to bill the participant under the agreement.

IDEM will not issue closure documents if administrative costs that have been invoiced are past due. If the agreement is terminated for any reason, the participant agrees to reimburse IDEM for all of its administrative costs incurred to the time of termination.

The VRA template is available on the IDEM VRP website (www.IN.gov/idem/4127.htm).

8.5 *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 RWP. If a spill occurs at a site participating in the VRP, the participant is responsible to follow all reporting requirements that otherwise apply, and to take appropriate action to respond to the release. The participant may need to coordinate activities with IDEM's Emergency Response section (www.IN.gov/idem/4155.htm). If the spill constitutes an imminent and substantial threat, IDEM may allow the site to remain in the VRP for any necessary long-term remedial actions after the participant has addressed the spill.

See Section 8.4.1 above for additional discussion of imminent and substantial threat.

8.6 How Is the Public Involved or Notified?

The participant and/or IDEM can open lines of communication with affected residents or businesses, and help reduce suspicion or confusion by holding informational meetings, or through effective written communication.

Community Relations Plan

VRP Participants are required to submit a Community Relations Plan (CRP) (www.IN.gov/idem/4127.htm). The CRP must identify property owners or occupants who are affected, or potentially affected, by contamination. When the RWP is made available for public comment, the participant must give written notice of the public comment period to the affected or potentially affected property owners or occupants identified in the CRP. The CRP may require the participant to post an informational sign at the site if certain conditions exist.

Before IDEM may approve or reject a proposed RWP, IDEM must:

1. Notify local governmental units located in the county affected by the proposed project of the Remediation Work Plan
2. Provide that a copy of the proposed Remediation Work Plan (RWP) be placed in a library in the county where the cleanup is taking place
3. Publish a notice (www.IN.gov/idem/5474.htm) requesting comments on the proposed RWP
4. 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 RWP

Use of an Environmental Restrictive Ordinance (ERO)

When a remedy will include the use of an Environmental Restrictive Ordinance (ERO), 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 should 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

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.

8.7 Investigation

VRP participants may choose to limit their project to specific releases rather than all known releases. However, the liability protection offered by the Covenant Not to Sue (CNTS) (www.IN.gov/idem/4127.htm) is limited to releases addressed in an approved Remediation Work Plan (RWP).

Participants are required to address all known contamination associated with the release(s), including evaluation of all potentially affected media. The investigation should evaluate all potential exposure pathways (*soil, ground water, surface water, air, ecological receptors*) based on the current and expected future use of the site and the affected area surrounding the site. For example, if the participant can adequately demonstrate that current or future residential exposure is unlikely on an industrial/commercial property, and that adjacent property is not affected by the release, delineation of contamination to residential standards may not be necessary. Site investigation activities should be consistent with the quality assurance project plan (QAPP). The *Remediation Closure Guide (Waste-0046-R1)* (www.IN.gov/idem/4694.htm) contains additional information about completing a site investigation.

Although not required, the VRP Participant is encouraged to submit an Investigation Work Plan (*Sampling and Analysis Plan*) prior to completing site characterization activities, to allow IDEM to provide feedback.

8.8 Remedy Decision

8.8.1 Remediation Work Plan (RWP)

The participant must submit a proposed RWP for IDEM's review and approval. The proposed RWP must be submitted within 180 days of when the VRA is signed, unless IDEM agrees in writing to an extension.

The proposed RWP must include:

- Detailed documentation of the investigation performed (*or to be performed*) to determine the nature and extent of the release
- A statement of work to accomplish the remediation 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

There also are provisions within the statute that vary slightly from the items listed above that allow the participant to submit an RWP for projects that are already completed (*See IC 13-25-5-7[c]*) (www.IN.gov/legislative/ic_iac).

The proposed RWP must identify the nature and extent of the releases being addressed, evaluate all potential exposure pathways, and explain how the participant intends to achieve the remediation objectives. IDEM recommends that information about the site be presented through a conceptual site model (CSM) as discussed in the *Remediation Closure Guide (Waste-0046-R1)* (www.IN.gov/idem/4694.htm). If institutional controls will be proposed as part of the remedy, IDEM recommends including draft copies of any environmental restrictive covenant (ERC) or environmental restrictive ordinance (ERO) in the proposed RWP.

8.8.2 Remediation Objectives

The RWP must specify the remediation objectives for 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:

- (1) Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.
- (2) Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.
- (3) 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:
 - (A) manage risk; and
 - (B) control completed or potential exposure pathways.

An RWP may propose more than one remediation objective. For example, the participant may show that most contaminants are at or below screening levels, and demonstrate that risk associated with contaminants exceeding screening levels will be effectively managed through institutional controls such as an environmental restrictive covenant (ERC) or an environmental restrictive ordinance (ERO) that control completed or potential exposure pathways. The *Remediation Closure Guide (Waste-0046-R1)* (www.IN.gov/idem/4694.htm) contains more information about remedy selection, ERCs, and EROs.

8.8.3 Evaluation of Proposed RWP

IDEM will evaluate proposals to ensure that they are accurate and thorough and comply with rules, laws and guidelines established by the department.

The participant must submit a complete RWP that complies with IC 13-25-5-7 within the established timeline. Complications (*such as property access or completion of a pilot study*) can prevent a complete understanding of site conditions and the submittal of a comprehensive document. If the participant cannot submit a final RWP as scheduled, the participant should submit an interim RWP that is as complete as possible in accordance with the timeline. This will allow IDEM to gain a general understanding of site conditions and evaluate progress at the site. If IDEM determines that the participant has not made a good-faith effort to submit a complete RWP, IDEM may reject the RWP as incomplete and terminate the VRA.

At any time during the evaluation of the work plan, IDEM may request that the participant submit additional or corrected information. IDEM typically requests items such as additional site 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 participant may 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 RWP and terminate the VRA. If the participant withdraws the RWP from consideration and does not resubmit in a timely manner, IDEM may consider this to be equivalent to failure to submit an RWP and terminate the VRA.

The VRP recommends that RWPs be developed in accordance with the Remediation Work Plan Completeness Checklist available on IDEM's Forms website (www.IN.gov/idem/5157.htm).

Use of the checklist should help the participant develop a comprehensive RWP and avoid unnecessary delays during the review process.

8.8.4 Agency Decision on RWP

IDEM must provide a public comment period of at least 30 days prior to any formal decision on the RWP. See Section 8.6 above.

Following its review of the RWP, IDEM may:

- Approve
- Modify and approve
- Reject the proposed work plan

If IDEM decides to reject an RWP, it must notify the participant and specify the reasons. The participant may appeal the decision. Typically, IDEM will work with the participant to resolve deficiencies in the RWP before rejecting a work plan.

IDEM must also notify the participant of its intent to approve, or modify and approve an RWP. The participant may appeal IDEM's decision.

8.8.5 Record of Remedy Selection

The participant should submit a Record of Remedy Selection or a Record of Site Closure (www.IN.gov/idem/5157.htm) with the proposed RWP.

The Record of Remedy Selection (RRS) presents the remedial action plan. It certifies that the remedy selection process was carried out properly; describes the technical parameters; specifies the remedy components and remediation goals; and provides a consolidated source of information - including the rationale behind the selection.

The Record of Site Closure (RSC) presents the site closure decision. In cases where IDEM can approve the remedy selection and site closure simultaneously, the RSC may present all information about the remedy selection and remedial action(s) performed, so an RRS would not be necessary. It describes the technical parameters; specifies the remedy components and remediation goals; and provides a consolidated source of information - including the rationale behind the selection.

IDEM staff will indicate approval by signing and returning the form to the requestor, or if a form is incomplete or inaccurate, provide comments.

8.9 Remedial Action

Remediation Work Plan Implementation

The VRP participant must notify IDEM of its intent to implement the RWP within 60 days of RWP approval. Failure to provide written notification may jeopardize IDEM's approval of the work plan. IDEM must oversee RWP implementation. This is typically done through review of written progress reports provided by the participant (*for example, ground water monitoring reports*) and IDEM field oversight.

A participant may commence the work contemplated in the RWP before the RWP is approved, at the participant's risk. If prompt action to mitigate risk or remove source material in advance of RWP approval is advisable, IDEM may provide a letter approving an interim action in advance of RWP approval.

8.10 Closure

8.10.1 Closure Samples

The participant must provide empirical evidence through sample data that site conditions are appropriate for closure. If active remediation (*for example, soil excavation, ground water pump and treat*) was implemented to meet a numeric standard, IDEM will require samples of the appropriate media to demonstrate compliance with the standard.

The purpose of confirmation sampling is to confirm previously submitted results. This may be achieved with a limited number of samples. The purpose is not to re-characterize the area. If a project enters the VRP after remediation is complete or after an investigation suggests that no further action is required, IDEM may still require confirmation samples to determine if remediation objectives were achieved.

IDEM may choose to split confirmation samples with the VRP participant to independently verify that site conditions meet the objectives approved in the Remediation Work Plan (RWP).

8.10.2 Completion Report and Record of Site Closure

The participant must submit a remediation completion report that will provide the basis for IDEM to determine if an approved RWP has been successfully implemented. The participant may use the Remediation Completion Report Completeness Checklist, (www.IN.gov/idem/5157.htm) to develop a comprehensive completion report.

The completion report may be a stand-alone document submitted after an approved remedy is completed. For a site with a completed remedy, or where no remedy is necessary, the completion report may be submitted as part of the RWP. The completion report should reflect the project as approved in the RWP, and demonstrate how the remediation objectives were met. If an institutional control (*ERC or ERO*) is part of the remedy, the participant must provide proof in the completion report that the control is in place. For an ERC, a copy of the signed and recorded

ERC must be included in the completion report. For an ERO, evidence that the ordinance has been passed by the local unit of government must be provided.

Participants must submit an RSC (www.IN.gov/idem/5157.htm) with the remediation completion report.

IDEM staff will review the completion report and the RSC, and will either indicate approval by signing and returning the form to the requestor, or provide comments on the form and/or completion report.

8.10.3 Certificate of Completion and Covenant Not to Sue (www.IN.gov/idem/4127.htm)

If IDEM determines that the RWP was successfully implemented, IDEM will issue a Certificate of Completion for the releases addressed in the approved work plan. If IDEM determines that the RWP was not successfully implemented, IDEM must notify the participant, and the participant may appeal this decision.

The participant must record the Certificate of Completion at the County Recorder's Office and provide evidence of the recording to IDEM. When that is accomplished the Governor will provide a Covenant Not to Sue (CNTS). IDEM will not issue the Certificate of Completion or CNTS until all billed oversight costs have been paid.

The Certificate of Completion and CNTS assure the participant and future land owners that the voluntary remediation has been performed properly and that associated future liability is limited. Closure may be concluded with contaminants left in place, in which case there may be conditions that must be maintained or performed subsequent to closure.

8.11 Conditions Subsequent

The VRP may include conditions that must be performed or maintained after closure in the Certificate of Completion and CNTS. Examples may include ongoing ground water monitoring, continued operation of a vapor mitigation system, or operation and maintenance of a ground water treatment system. IDEM will consider whether it is appropriate to approve closure at sites with active, ongoing obligations on a case-by-case basis. IDEM will not grant closure if the participant has not demonstrated that the proposed remedy is working properly and effective at controlling risk and preventing exposure. IDEM may require 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 CNTS 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 by IDEM against the recipient of the covenant. IDEM would not have to take action to void, rescind, or reopen the covenant—the shield from liability would simply no longer exist.

The provisions in this subsection are not intended to be a substitute for required institutional controls.

8.12 When Issues Arise

The VRA 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 participant should 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 participant agrees to continue to meet its responsibilities under the VRA that are not affected by the dispute. If IDEM and the participant are still unable to resolve the dispute, IDEM will respond in writing to the participant. IDEM also will send the response to the IDEM Commissioner along with the participant's written statement. The Commissioner will make a determination about the dispute and notify the participant in writing. The Commissioner's determination is considered to be final and conclusive. However, the participant may appeal the decision under the *Administrative Orders and Procedures Act* (AOPA), (IC 4-21.5) (www.IN.gov/legislative/ic_iac). The parties may mutually agree to submit the dispute to arbitration or mediation for a determination.

8.13 Forms and Checklists

Sample copies of many forms, templates and checklists discussed in this *Remediation Program Guide* (RPG) may be found at the end of each Chapter of this guide. **The sample forms, templates and checklists in this guide are images only, may not be current, and cannot be completed electronically.**

Current State Forms that can be completed electronically are posted on the IDEM Forms website (www.IN.gov/idem/5157.htm) as PDF fillable forms, Microsoft Word documents or Excel documents. Links to those forms and checklists as well as links to many other documents and websites have been provided where the document is discussed in the text.

- Sample 8.1 Voluntary Remediation Program Application and Instructions - State Form 47271 (*The instructions are not included in this sample*)
- Sample 8.2 Remediation Work Plan Completeness Checklist - State Form 53413
- Sample 8.3 Remediation Completeness Report Completeness Checklist - State Form 54168
- Sample 8.4 Certificate of Completion
- Sample 8.5 Environmental Restrictive Covenant VRP Template

Additional program documents:

- Sample 8.6 Voluntary Remediation Agreement Template
- Sample 8.7 Covenant Not to Sue Template

These forms appear in Chapter 1:

- Sample 1.1 Record of Remedy Selection - State Form 54471
- Sample 1.2 Record of Site Closure - State Form 54472

Sample 8.1 Voluntary Remediation Program Application and Instructions



Voluntary Remediation Program Application

State Form 47271 (R3/6-08)
Approved by State Board Accounts, 2008
Indiana Department of Environmental Management

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Cashier's Office, Mail Code 50-10C
100 N. Senate Ave.
Indianapolis, IN 46204

INSTRUCTIONS This application form shall be used to apply to the Voluntary Remediation Program pursuant to Indiana Code 13-25-5-2. When completed, please return this form and support documents to the address given in the box above.

CONFIDENTIAL

Project Number: 6 | | | | |

VRP Account #: 2680-110000-421400

Pursuant to Indiana Code 13-25-5-2, this application to the Voluntary Remediation Program (VRP) will remain confidential until the Voluntary Remediation Agreement (VRA) is signed by both parties. Neither this application nor any information which comes from this application will be made available to the public until the VRA is signed. However, any material submitted to or generated by the VRP including this application will be considered IDEM public record after the VRA is signed.

Section 1 - VRP Project Information

Voluntary Remediation Applicant

Applicant Billing Contact

(IDEM's cost recovery invoices will be mailed to the individual/entity identified. The application will not be complete without this information)

Applicant Name: <small>Name to appear on the Coverpage Not To Sign</small>		Billed Company:	
Contact Person:		Contact Person:	
Mailing Address:		Mailing Address:	
City, State, ZIP:		City, State, ZIP:	
Phone & Fax:		Phone & Fax:	
E-Mail:		Federal Tax ID <small>(Required)</small>	

VRP Project Name and Location

Applicant's Registered Agent

person accepting responsibility for corporation

Facility Name:		Company:	
Site Address:		Company Address:	
City:		City, State, ZIP:	
County:		Phone & Fax:	
EPA ID Number:		E-Mail:	

Applicable Facility Standard Industry Code(s) & Description(s):

SIC Number: _____

Description: _____

*Please provide information on an additional page if there are not enough spaces for entries.

Anticipated Future Facility Use: <input type="checkbox"/> Residential <input type="checkbox"/> Recreational <input type="checkbox"/> Non-Residential <input type="checkbox"/> Currently Undetermined	Years of Current Facility Operation: _____ Years (Current Operation) <input type="checkbox"/> Unknown _____ Total years site has been in use (Current and Historic)
Current Site Status (Check all that apply) <input type="checkbox"/> Undergoing Property Transfer <input type="checkbox"/> Inactive Operations <input type="checkbox"/> Active Operations <input type="checkbox"/> Residential <input type="checkbox"/> Commercial/Industrial	Official State Use Only Date Stamp

Other IDEM Offices:

Does this site have a previous history with the Voluntary Remediation Program? No Yes (if yes, please attach appropriate page from Section 3 of this application)

Has a spill for this site been reported to IDEM's Emergency Response/Remedial Response Program? No Yes (if yes, please provide the incident number below and attach the appropriate page from Section 3 of this application)

Please be advised that if an appropriate remedial response is not completed in the Voluntary Remediation Program, IDEM will refer the site to the appropriate remedial program to determine if further action is required.

Emergency Response/ Remedial Response Program incident number: _____

Is this application the result of a referral from, or under the jurisdiction of, another IDEM office?

Yes (If yes, indicate which office and complete the appropriate page in Section 3.) No

Brownfields Program
 RCRA / Corrective Action
 Leaking Underground Storage Tanks (LUST) / Underground Storage Tanks (UST)
 State Cleanup Section
 Office of Enforcement
 Office of Waste (Landfill)
 Investigations (SI)
 Other IDEM Office: _____ (if applicable) Phone #: _____

<p>Current Source Size (defined to IDEM RISC Residential Closure Levels):</p> <input type="checkbox"/> Currently Undetermined <input type="checkbox"/> less than or equal to 0.50 acre <input type="checkbox"/> greater than 0.50 acre	<p>Project Investigation Status:</p> <input type="checkbox"/> Ongoing <input type="checkbox"/> Complete	<p>Project Remediation Status:</p> <input type="checkbox"/> None <input type="checkbox"/> Ongoing <input type="checkbox"/> Complete
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Known or Anticipated VRP Project Hazards/Conditions:

None Infectious Materials Radioactivity Confined Spaces Explosive Conditions
 Reactive Materials Known Off-Site Contamination Other: _____

<p>Documents Anticipated To Be Submitted for VRP Review: (Please check all that are expected)</p> <input type="checkbox"/> Phase II Investigation Work Plan <input type="checkbox"/> Phase II Investigation Report <input checked="" type="checkbox"/> Remediation Work Plan (VRP requirement) <input type="checkbox"/> Site Specific Risk Assessment <input checked="" type="checkbox"/> Remediation Completion Report (VRP requirement)	<p>Property Ownership</p> <p>Do you own this property? <input type="checkbox"/> Yes <input type="checkbox"/> No (If no, answer next question)</p> <p>If not, name of the current owner _____</p> <p>and, do you have legal access rights to this property from that owner?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No
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Local Drinking Water Supply: Surface Groundwater Municipal <input type="checkbox"/> <input type="checkbox"/> Private/Residential <input type="checkbox"/> <input type="checkbox"/>	Local Drinking Water Supply Distance From Facility: _____ Feet _____ Mile(s) Is the site in a designated Wellhead Protection Area? <input type="checkbox"/> Yes <input type="checkbox"/> No Is the site in a designated Sole Source Aquifer? <input type="checkbox"/> Yes <input type="checkbox"/> No
Local Surface Water Bodies Near Facility: (check closest) <input type="checkbox"/> Wetland(s) <input type="checkbox"/> Stream(s) <input type="checkbox"/> River(s) <input type="checkbox"/> Lake(s) <input type="checkbox"/> Pond(s)	Local Surface Water Bodies Distance From Facility: _____ Feet _____ Mile(s)
On-site Water Supply and Usage: <input type="checkbox"/> Well(s) - <input type="checkbox"/> Drinking <input type="checkbox"/> Production <input type="checkbox"/> Both <input type="checkbox"/> Municipal - <input type="checkbox"/> Drinking <input type="checkbox"/> Production <input type="checkbox"/> Both <input type="checkbox"/> No Water at Site <input type="checkbox"/> Agricultural	Site Specific Depth to Groundwater: _____ Feet <input type="checkbox"/> Currently Unknown Site Specific Principal Groundwater Flow Direction: <input type="checkbox"/> Unknown <input type="checkbox"/> NW <input type="checkbox"/> N <input type="checkbox"/> NE <input type="checkbox"/> E <input type="checkbox"/> SE <input type="checkbox"/> S <input type="checkbox"/> SW <input type="checkbox"/> W

Site History and Conditions

Facility Operational History:

Source Area/Contaminant Information:
Provide a description of the known or suspected source area that will be addressed by the project by reviewing the questionnaires. The project must address all source areas of media related to each source area, including the site of the actual source area, the property and the area that is appropriate to be investigated. RISC will require a liability release or covenant to be signed by the owner of the property and the this project. There may be duplicate source areas. Provide the information requested for each source area. If multiple source areas are being addressed in this project, the information may be duplicated to provide the information requested for each source area.

What is the known or suspected source area of contamination with the highest concentration of this contaminant?

Briefly describe any efforts undertaken to remediate contamination.

Soil Impacts:
What contaminants have been detected in soil, and what is the maximum concentration (or range of concentrations) detected? If several contaminants within the same class have been detected (VOCs, SVOCs, etc.), list the primary contaminants of concern within each class. A map showing boring locations is required in Attachment A.

Has the extent of soil contamination been defined to RISC Residential Closure levels?
Yes No

Groundwater Impacts:
What contaminants have been detected in ground water and what is the maximum concentration (or range of concentrations) detected? If several contaminants within the same class have been detected (VOCs, SVOCs, etc.), list the primary contaminants of concern within each class. A map showing groundwater sample locations is required in Attachment A.

Has the extent of ground water contamination been defined to RISC Residential Closure levels? Yes No

Is ground water contamination known or suspected to have migrated offsite? Yes No Uncertain
Describe any efforts to evaluate offsite contamination.

Are contaminants from this release believed to pose an imminent or substantial threat to human health or the environment? Yes No
If the answer is Yes, describe below and take immediate steps to mitigate the release.

Does contamination from the site have the potential for human exposure? Possible pathways include: drinking water wells, vapor intrusion into occupiable structures, and contaminated surface soil in occupied locations. Yes No Uncertain If yes, describe.

Does contamination from the site have the potential for ecological exposure? Yes No Uncertain

Is it likely contamination has extended to surface water, sediments, wetlands, karst bedrock, or any other sensitive area? Yes No Uncertain
If you answered yes to either question, describe potential exposure.

Past Spill History: Have there been any previous spills, releases, or incidents at the site? If so, describe the incident, including the date, location, and amount of release.

SAMPLE

Geologic Information:

Hydrogeologic Information:

Additional Environmental Information:

Previous Facility Studies (please include Title, Author & Date):

Other (please include Title, Author, and Date):

- U.S. Geological Survey State Reports Soil Conservation Service Past Voluntary Site Specific Data Collection
 Regulatory Reporting Other Governmental Agencies Other: _____

Section 2 - Statement of Certification

Pursuant to Indiana Code 13-25-5-2, this application to the Voluntary Remediation Program (VRP) will remain confidential until the Voluntary Remediation Agreement (VRA) is signed by both parties. Neither this application, nor any information which comes in addition to this application, will be made available to the public until the VRA is signed. However, material submitted to or generated by the VRP will be considered IDEM public record after the VRA is signed.

I, _____, certify that this document and all attachments were prepared under my direction
(Print or Type Name of Applicant)

or supervision by qualified personnel. Based on my inquiry of the persons who gathered the information, it is, to the best of my knowledge, true, accurate, and complete. I further certify that I am authorized to submit this information.

Applicant's Signature (see application instructions for appropriate signatory)

Date

By signing this Application, the Applicant understands and agrees that the entire VRP process must be completed to IDEM's satisfaction in order to remain an active participant in the VRP. Therefore, if IDEM determines that the Applicant has not made good faith efforts to execute the Voluntary Remediation Agreement, or fails to provide the required documents and information to IDEM for evaluation of the site and work done to determine whether or not the Remediation Work Plan has been successfully completed, the Voluntary Remediation Agreement will terminate.

Attachment Information:

This application **will not** be considered complete, and may be rejected, unless the following Attachments are included:

Attachment A: Please attach a *detailed* site map illustrating identified area(s) targeted for VRP efforts. For an explanation of a detailed site map, please see Attachment A instructions.

Attachment B: Legal Description-- Attach a copy of a warranty deed with a legal description and property owner's name. The deed must identify the owner AND the name of the JUST party of the current owner. If the deed does not match, additional information must be provided to clarify the discrepancy. For example, if a corporation owns the property, then proof that the corporation on the deed is the same as the current corporation must be submitted.

If the deed does not adequately describe the property due to the occurrence of multiple land transactions, a new legal description **MUST** be prepared by a professional land surveyor and the professional seal/certification must be stamped on the new legal description.

Attachment C: Please check Application Form Instructions and provide the pertinent Facility Universal Transverse Mercator (UTM) coordinates information and include as Attachment C.

Attachment D: Additional pages from Section 3 (if applicable).

Section 3- Application Attachment Pages

CO-APPLICANT ATTACHMENT

If more than one party is applying to the VRP, use this attachment to provide information about co-applicant(s). Please be advised that at the successful conclusion of this project, only applicants to the VRP will receive the Certificate of Completion and Covenant Not to Sue.

Pursuant to Indiana Code 13-25-5-2, this application to the Voluntary Remediation Program (VRP) will remain confidential until the Voluntary Remediation Agreement (VRA) is signed by both parties. Neither this application, nor any information which comes in addition to this application, will be made available to the public until the VRA is signed. However, material submitted to or generated by the VRP will be considered IDEM public record after the VRA is signed.

Section 1 - VRP Facility Declarations

Voluntary Remediation Applicant		Applicant's Registered Agent or person accepting service if not a corporation	
Applicant Name:		Company:	
Contact Person:		Contact Person:	
Mailing Address:		Mailing Address:	
City, State, ZIP:		City, State, ZIP:	
Phone & Fax:		Phone & Fax:	
Email:		Email:	

I, _____, certify that this document and all attachments were prepared under my direction
(Print or Type Name of Applicant)

or supervisory qualified personnel. Based on my inquiry of the person(s) who provided the information, it is, to the best of my knowledge, true, accurate, and complete. I hereby certify that I am authorized to submit this information.

Applicant's Signature (see application instructions for appropriate signature) _____ Date _____

By signing this Application, the Applicant understands and agrees that the entire VRP process must be completed to IDEM's satisfaction in order to remain an active participant in the VRP. Therefore, if IDEM determines that the Applicant has not made good faith efforts to execute the Voluntary Remediation Agreement, or fails to provide the required documents and information to IDEM for evaluation of the site and work done to determine whether or not the Remediation Work Plan has been successfully completed, the Voluntary Remediation Agreement will terminate.

VOLUNTARY REMEDIATION PROGRAM

1. Does this site currently have any other VRP applications submitted/approved for this same site?

Yes No

If yes, VRP Project Number(s) _____

VRP Project Manager(s): _____

2. Was this site the subject of a VRP project at anytime in the past? Yes No

If yes, VRP Project Number(s): _____

VRP Project Manager(s): _____

3. Please provide details below explaining why another application for this same site is/was necessary:

SAMPLE

RCRA / CORRECTIVE ACTION

1. Are you interested in addressing RCRA Corrective Action Requirements for this source area through this VRP Project? Yes No
2. Has the RCRA Corrective Action Project Manager been notified in writing that a VRP application has been submitted to address this contamination? Yes No
3. What is the facility EPA ID number? _____
4. What is the date of Notification of Hazardous Waste Activity? _____
5. Have you submitted a RCRA Part A application for Interim Status? Yes No
If Yes, date: _____
6. Have you lost Interim Status or gone through an EPA Policy 121 closure for Mistaken and Protective Filings? Yes No
If Yes, please attach a copy of the letter.
7. Does this facility have a RCRA Part B Operating Permit? Yes No
If Yes, date issued: _____
Expiration date: _____
8. Have any permitted units undergone closure? Yes No
Were those units cleaned up? Yes No
Are any landfills used in closed place? Yes No
If Yes, check boxes that are applicable:
 Lined (describe type of liner-____)
 Unlined
 Capped (describe type of cap-____)
 Not Capped
9. Is this facility currently under any enforcement action, Agreed Order, Commissioner's Order, or any other type of required action by any government agency? Yes (if Yes, describe below) No

SAMPLE

EMERGENCY RESPONSE / REMEDIAL RESPONSE PROGRAM

1. Has this spill / release been reported to IDEM? Yes No

 If yes, what is the Spill Incident Number(s): _____

 IDEM contact person(s): _____

 Contact's telephone number: _____

2. Is this spill / release to be addressed in the VRP? Yes No

3. Has the IDEM contact person been notified in writing that this spill / release will be addressed in the VRP?

Yes (if yes, please attach copy of the letter) No

4. If this spill / release is to be addressed in the VRP, please provide a summary of the spill / release below:

SAMPLE

LEAKING UNDERGROUND STORAGE TANKS (LUST) & UNDERGROUND STORAGE TANKS (UST)

1. Is the UST(s) the source of the contamination to be addressed as part of the VRP? Yes No
2. Did / Does the UST contain petroleum products? Yes No
3. Is the UST regulated? Yes No
4. Has the regulated UST been registered with IDEM? Yes No N/A
If yes, indicate the UST Facility I.D. Number: _____
5. Has a UST petroleum release ever been reported to IDEM? Yes No N/A
If yes, indicate the LUST Incident Number: _____
6. Has the LUST section been notified in writing that you are applying to the VRP?
 Yes (if yes, please attach copy of the letter) No
7. Do you intend to apply for Excess Liability Trust Fund (ELTF) reimbursement with respect to this cleanup?
 Yes No N/A
8. If you have already applied for ELTF reimbursement, indicate ELTF number. _____
9. Please provide a summary of the site issues to be addressed below:

SAMPLE

STATE CLEANUP SECTION

1. Is this site under an Agreed Order or Commissioner Order with IDEM? Yes No
2. What is the State Cleanup Project I.D. Number? _____
3. Is this State Cleanup site to be addressed in the VRP? Yes No
4. If this site is to be addressed in the VRP, has the State Cleanup Project Manager been notified in writing?
 Yes (if yes, please attach copy of the letter) No
5. Who is the State Cleanup Project Manager and what is their telephone number?
Project Manager: _____
Telephone Number: _____
6. Provide a summary of the site issues below:

SAMPLE

OFFICE OF ENFORCEMENT (OE)

1. Is the site / facility that is subject to enforcement to be addressed in the VRP?
 Yes No (if No, skip all other questions on this page)

2. Is the site under any of the following types of enforcement:

- | Formal | Informal |
|---|---|
| <input type="checkbox"/> Notice of Violation | <input type="checkbox"/> Violation Letter |
| <input type="checkbox"/> Agreed Order | |
| <input type="checkbox"/> Commissioner's Order | |

3. What is the Case Number(s)? _____

4. Who is the OE contact person and what is their telephone number?

Contact Name: _____

Telephone Number: _____

5. If this enforcement site is to be addressed in the VRP, has the OE contact person been notified in writing?

- Yes (if yes, please attach copy of the letter) No

6. Provide a summary of the site issues for address below.

SAMPLE

OFFICE OF SOLID WASTE (Landfills and Processing Facilities)

(Due to IDEM requirements, it is unlikely that facilities with significant amounts of waste left in place will receive a Covenant Not to Sue as a closure mechanism)

1. Is this a solid waste landfill Site? Yes No (If No, skip to question #7)
2. Is this landfill active? Yes No
If Yes, what year did the landfill begin accepting waste? _____
3. Is this landfill inactive? Yes No
If Yes, what year did the landfill begin accepting waste? _____
If Yes, what year did the landfill cease accepting waste? _____
4. Is the landfill lined? Yes No
If Yes, what type of liner does it have? _____
5. Is the landfill capped? Yes No
If Yes, what material(s) is the cap constructed of? _____
6. Were hazardous or petroleum constituents placed into the landfill at any time? Yes No
7. What type of solid waste site is it and what does it contain?

8. Is this a solid waste permitted facility? Yes (If Yes, provide following information) No
Provide the facility identification number: _____
Permit type: _____
Permit number: _____
Date issued: _____
Date it expires: _____
IDEM Solid Waste Contact (Name and Telephone number) _____
9. Is this facility being required to conduct a cleanup by or under an enforcement action with any government agency? Yes No
If Yes, provide details:

10. Has the solid waste contact person been notified in writing that a VRP application for this facility has been submitted? Yes (If Yes, attach a copy of this letter) No

SITE INVESTIGATIONS (SI)

1. Is this site currently in IDEM's Site Investigation Program? Yes No
2. Has this site previously been in IDEM's Site Investigation Program? Yes No
3. Is this Site Investigation issue to be addressed in VRP? Yes No
4. If this site is to be addressed in the VRP, has the Site Investigation Project Manager been notified in writing?
 Yes (if yes, please attach copy of the letter) No
5. What is the EPA ID Number for this site (if applicable)? _____
6. What is the name and address of this site?

7. Who is the IDEM contact person and their telephone number?
IDEM Contact: _____
IDEM Telephone Number: _____
8. Please provide summary of the Site Investigation issues below: (If applicable)

SAMPLE

Sample 8.2 Remediation Work Plan Completeness Checklist



**REMEDIAL ACTION PLAN
COMPLETENESS CHECKLIST**
State Form 53413 (9-07)
INDIANA DEPARTMENT OF ENVIRONMENTAL

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY
VOLUNTARY REMEDIATION SECTION
100 N. Senate Avenue
Indianapolis, IN 46204-2251

INSTRUCTIONS This checklist shall be completed and returned for all remediation work plan (RWP) submittals required under IC 13-25-5-7. When completed, please return this form and support documents to the address given in the box above.

The RWP provides the basis for IDEM to evaluate the proposed remedy for each VRP site. All of the following information is required to evaluate the selected remedy's effectiveness and to demonstrate that it is the most effective remedy for the site. The remediation work plan must provide a complete description of the past operations, the site investigation and the selected remedy for the site.

I. INTRODUCTION

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Sources of contamination		
1. Site name, address, and telephone		
2. Current owner and contact information		
3. Historical summary of site ownership		
4. Type of facility, past and present operations		
5. Site contact responsible for VRP process		
6. Overview of initial discovery of contamination, spill history, & previous investigations conducted at the site		
B. Supporting Documents		
1. Discussion of relevant previous reports		
2. Other documents regarding the site		
C. Remedial Action Objectives		
1. Remediation and clean-up objectives, all remedial measures, sampling, and exposure provisions		
2. Work items, plan, and schedule		

II. INVESTIGATION ACTIVITIES

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Summary of Information Used to Select Remedy		
1. Baseline assessment and literature search		
a. Geologic and hydrogeologic summary		
b. Physical and political geo information		
2. Extent of subsurface work, including:		
a. Copies of boring logs and monitoring well construction logs		
b. Boring and well location maps		
c. Field screening results for soils		
d. Sample location map		
B. Summary of Site Investigation		
1. Identification of all contaminants		
a. Chemical and physical properties		
b. Contaminant toxicological data		
c. Potential effects of residual contamination		
2. Summary of site-specific Geology & Hydrogeology		
3. Discussion of Sources of Contamination		
4. Summary and Map of Extent of Contamination		
a. Impacted environmental media, such as soil, sediment, groundwater, surface water, and air		
b. Concentrations of contaminants		
c. Concentration trends		

Report/Plan Element	Present (Y,N, or NA)	Location in Document
C. Summary of Risks Associated with Site		
1. Human, ecological, and environmental risks for each contaminant & impacted media, including discussion of long and short-term risks, environmentally sensitive areas, and endangered species		
2. Impact of current and future land-use issues, if applicable, including need for environmental notice & deed restrictions		
D. Background Concentration Assessment		
1. Summary of naturally occurring site contaminants		
2. Background data in tabular format & background sampling location map		
3. Statistical comparison of background concentrations to concentrations in potentially contaminated media		
4. Reliability and applicability of background data		
E. Additional Field Investigation Requirements		
1. Additional investigations required to effectively complete the design or the installation of the selected remedial method		
2. Description of additional investigations		
3. Description of additional work to be completed		

VAPOR INTRUSION

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Discussion of ground water results compared with the Appendix VIII Tables in the IDEM Draft Vapor Intrusion Pilot Program Guidance.		
B. Description of further investigation required under Draft Vapor Intrusion Pilot Program Guidance.		

TOTAL PETROLEUM HYDROCARBONS

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Discussion of Total Petroleum Hydrocarbons results compared with the Chapter 8 in the IDEM RISC Technical Resources Guidance Document.		
B. Description of further actions under Chapter 8 if needed.		

III. REMEDIATION PLAN

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Evaluation of Remedial Alternatives		
1. The remedial alternatives evaluated must be identified, and the rationale for their selection must be provided. In addition, the remediation work plan should describe parameters evaluated for each of the selected alternatives. The parameters should include, but not necessarily be limited to, the following: <ul style="list-style-type: none"> a. Extent of remediation effort b. Technical feasibility to address physical and chemical characteristics of media c. Projected contamination removal & treatment rates d. Protectiveness of human health e. Cleanup criteria f. Ability of each alternative to achieve cleanup criteria g. Community acceptance h. Anticipated volume of contaminated materials to be treated i. Ease of technology application or implementation j. Dimensions of major technologies & space limitations k. Process parameters l. Clean up time frames m. Contamination distribution n. O&M Costs o. Other special considerations 		
2. Summarize conclusions for each of the technologies evaluated, and provide the reasons each technology should or should not be appropriate.		
3. Need for treatability study or pilot test. Describe the treatability study or pilot test and the reasons it is required, and provide the following information: <ul style="list-style-type: none"> a. Proposed study methodology b. Clear statement of treatability study or waste characterization objectives c. Proposed scale of study (e.g., bench, pilot, etc.) d. Data requirements and evaluation e. Pilot plant startup and O&M f. Schedule for pilot study g. Remedial technologies to be tested & equipment required h. Treatability assessment and waste characterization i. Proposed disposal arrangements for wastes caused during remediation, plus approvals & necessary documentation j. Installation and startup procedures, including: <ul style="list-style-type: none"> - Data requirements and analytical methods - Pilot Plant O&M requirements - Data analysis & interpretation of results to be used - Full-scale technology application requirements and notation of limitations & optimum operating conditions 		

Report/Plan Element	Present (Y,N, or NA)	Location in Document
<p>B. Selected Remediation Technology – If more than one remedial alternative will be used to address different on-site areas, the remediation work plan must describe how the remediation system, as a whole, will work. A flow diagram, conceptual sketch, or other approach should be used to illustrate the components of the remediation system. Major equipment, such as pumps, air strippers, and in-situ treatment equipment, must be indicated. The work plan should include a site map showing areas to be remediated and proposed locations of major equipment.</p> <ol style="list-style-type: none"> 1. Identify which evaluated technology or combination of technologies will be implemented at the site, including the technical, economic and social acceptance rationales for the final selection. 2. Identify the need for risk assessment and provide: <ol style="list-style-type: none"> a. Parameters to be addressed b. Proposed risk assessment methodologies c. Potential exposure pathways d. Exposure assumptions e. Environmental fate and transport data f. Tabulated parameters and resulting cleanup levels 3. Provide a detailed description of the selected technology and system setup, including the following information: <ol style="list-style-type: none"> a. Technical specifications of all equipment & processes b. Proposed locations of remediation equipment on a scale site map showing piping routes and electrical wiring where applicable c. Waste disposal permit requirements for the system d. Waste disposal approvals needed to implement system 		
<p>C. Monitoring and Sampling Plan</p> <ol style="list-style-type: none"> 1. Sampling plan details, including: <ol style="list-style-type: none"> a. Sampling and monitoring parameters b. Sampling and monitoring frequency c. Schedule for submitting results to IDEM for review and evaluation (quarterly progress reporting is minimum requirement) <p>Provide data management details, including a discussion of how the monitoring & confirmation sampling data will be documented & reported, & proposed progress reports format</p>		
<p>D. Project Work Schedule</p> <ol style="list-style-type: none"> 1. Projected installation and startup 2. Sampling and monitoring schedule 3. Contaminant removal & treatment rates, including remediation progress milestones & projected completion dates 4. O&M Plan, including: <ol style="list-style-type: none"> a. Optimal operating conditions b. Necessary O&M tasks, their frequency, replacement schedule & planned O&M replacement events c. Proposed inspection schedule 		

SAMPLE

Report/Plan Element	Present (Y,N, or NA)	Location in Document
d. Potential problems and their remedies		
e. Contingency plan indicating how the applicant plans to respond in the event of a system failure, including the following information: - Description of alternate operation procedures to prevent undue hazards if the system fails - Notification procedure for system shutdown or failure - System modification procedures		
5.0 RISK ASSESSMENT (if applicable, attach to the Remediation Work Plan)		
A. List of parameters to be addressed by Risk Assessment		
B. Description of proposed Risk Assessment methodologies (e.g., types of modeling)		
C. Identification of potential pathways of exposure		
D. Identification of exposure assumptions		
E. Environmental Fate and Transport data development procedures		
F. Summary table listing parameters and calculated cleanup levels		

IV. REFERENCES

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. References used to prepare remediation work plan should be cited, including author, full name, publisher, company, date, etc.		

V. APPENDICIES

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. A QAPP is required for the remediation work plan. The QAPP should contain all elements discussed in Chapters 3 and 4 of the RISC Technical Guide. If a QAPP was submitted as part of the investigation report, it need not be re-submitted.		
B. A site Health and Safety Plan is required.		

VI. ENVIRONMENTAL RESTRICTIVE COVENANT

Report/Plan Element	Present (Y,N, or NA)	Location in Document
Text of environmental restrictive covenant		
Table of Last Known Concentrations of COC's and the closure standard		
Site Plan showing areas containing COCs with coordinates		

OTHER VRP REQUIREMENTS

COMMUNITY RELATIONS

MAILING LISTS

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Mailing list of affected residents; interested community groups; and local, state, and national officials (e.g., mayor, local newspaper, county health department, representatives, and senators).		
B. Name and address of local library that will be the repository for the Remedial Work Plan during the public notice period.		

PUBLIC MEETINGS

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Discussion of plans to hold public informational meetings about the proposed remediation process.		
B. Format of meetings.		
C. Proposed public meeting schedule and notification procedures.		

INFORMATION BULLETINS

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Discussion of plans to prepare and distribute information bulletins regarding the remediation process.		
B. Description of the format and types of information included in information bulletins.		

MEDIA

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Description of the types of media that will be used to inform the general public (newspaper, radio, etc.).		
B. Description of the type of information that will be released to the media.		

COMPLETION OF REMEDIAL ACTION

COMPLETION REPORT

Report/Plan Element	Present (Y,N, or NA)	Location in Document
A. Statement that a Completion Report detailing the remediation system and confirmation sampling will be submitted upon completion of the remediation to the cleanup criteria.		

Sample 8.3 Remediation Completeness Report Completeness Checklist



**REMEDIAL COMPLETION REPORT
COMPLETENESS CHECKLIST**
State Form 54168 (1-10)
INDIANA DEPARTMENT OF ENVIRONMENTAL

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY
VOLUNTARY REMEDIATION SECTION
100 N. Senate Avenue
MC 66-30, IGCN 1101,
Indianapolis, IN 46204-2251

INSTRUCTIONS This checklist shall be completed and returned for all remediation completion report (RCR) submittals for review under IC 13-25-5-16. When completed, please return this form and support documents to the address given in the box above.

The primary purpose of the remediation completion report is to document the completion of activities identified in the remediation work plan (see RISC User's Guide – Appendix 1 Dated February 15, 2001 A.1-30 Appendix A1.2). The RCR also provides information about the performance of the remediation measures and indicates how the site was or will be restored following remediation.

I. INTRODUCTION

Report/Plan Element	Location in Document
A. Project Identification and Site Background	
1. Site name, facility identification number(s), address, and telephone number	
2. Current owner and operator, mailing address, and telephone number	
3. Site contact person or group responsible for guiding the remediation project(s)	
4. Historical summary of site ownership	
5. Type of facility, including description of past and current operations	
6. Site location map and site layout drawing showing the following:	
a. Property boundaries, roads, loading and unloading areas, and building outlines	
b. Locations of treatment or disposal areas, remediated areas, ground water monitoring wells, ground water production wells, sampling points, and major remediation equipment	
c. Materials and hazardous waste storage areas	
7. Overview of the initial discovery of contamination, spill history, investigations conducted at the site, and remedial action history	
8. List of previously completed reports concerning the site, including a discussion of whether data is readily available to the site	
B. Remedial Action	
1. Description of the remediation system, including a block flow diagram or other conceptual illustration of the system as installed, and major equipment used or installed	
2. Evaluation of overall system performance, including discussion of procedures used to measure and document system performance, significant problems that occurred, and how the problems were addressed	
3. Description of remedial action(s) undertaken at the site, including the following:	
a. Summary of remedial activities performed	
b. Description of wastes generated during remedial activities, including total volumes or amounts and final disposition	
c. Description of time required to achieve full remediation	

II. Confirmation Sampling

IDEM must receive advance notice before any confirmation sampling is conducted so that the sampling activities can be observed and duplicate samples can be collected, if appropriate. IDEM will not evaluate any requests for a Covenant Not to Sue, or other actions until the final report has been approved and confirmation monitoring and sampling have been completed.

The closure report must describe confirmation sampling procedures as they were actually implemented. The actual numbers and locations of confirmation samples must be shown on a map. Analytical results must be presented in tabular form, addressing all sampling locations, affected media, and contaminants. The name, address, and telephone number of the laboratory or (laboratories) that performed the analyses must also be identified. Copies of laboratory reports and chain-of-custody forms must be provided in Appendices A and B.

<p>A. The confirmation monitoring portion of the closure report must include the information below.</p> <ol style="list-style-type: none"> 1. Data from most recent monitoring and sampling event 2. Graphical display of data to show remediation effectiveness and trends, including historical comparison with previous sampling results 3. Summary of O&M problems or downtime experienced during current reporting period, including the following: <ol style="list-style-type: none"> a. Reasons for O&M problems or downtime b. Length of downtime c. Corrective measures taken to repair the system 4. Recommendations concerning need for additional monitoring and sampling events, including the following: <ol style="list-style-type: none"> a. Continued monitoring and sampling if cleanup criteria have not been achieved, including re-evaluation of time required to achieve cleanup criteria and revised monitoring and sampling schedule b. Final closure report submittal if cleanup criteria have been achieved, including the following: <ul style="list-style-type: none"> - Final confirmation monitoring and sampling report - Information that demonstrates that cleanup criteria have been achieved - Clear statement of expected future uses of the site after remediation is completed (such as residential or nonresidential) - Discussion of deed restrictions, land-use restrictions, or environmental notice requirements (See Section IV) 	
<p>B. Completed Field Work and Laboratory Analysis</p> <ol style="list-style-type: none"> 1. Summary of confirmation sampling performed, including the following: <ol style="list-style-type: none"> a. Confirmation sampling procedures b. Confirmation sampling locations on a plan view map c. [Redacted] 2. Confirmation sampling results, including the following: <ol style="list-style-type: none"> a. [Redacted] b. Laboratory reports [Redacted] c. All chain-of-custody forms in Appendix B 	
<p>C. Evaluation of Confirmation Sampling Results</p> <ol style="list-style-type: none"> 1. Comparison of confirmation sampling results with the agreed upon cleanup levels 2. Comparison of IDEM's split confirmation sampling results with the applicant's confirmation results and the agreed upon cleanup levels 3. Acceptable cleanup criteria for all contaminants of concern and for all affected media 4. Demonstration that acceptable cleanup criteria have been met 	
<p>D. Final Site Restoration</p>	
<p>A description of work required to restore the site after remediation is required. Issues such as monitoring well abandonment and equipment dismantling must be addressed.</p>	
<p>1. Summary of site restoration work, including the following:</p>	
<p>a. Description of how disturbed areas have been or will be restored</p>	
<p>b. Completion schedule for restoration activities</p>	
<p>2. Description of remediation equipment dismantling and removal, including the following:</p>	
<p>a. Description of decontamination procedures</p>	
<p>b. Description of decontamination verification sampling</p>	
<p>c. Description of waste disposal activities conducted</p>	

III. Appendices

A. Copies of Laboratory Reports	
B. Chain-of-Custody Forms	

IV. Environmental Restrictive Covenant

Report/Plan Element	Location in Document
A. Text of environmental restrictive covenant	
B. List of activity restrictions	

SAMPLE

Sample 8.4 Certificate of Completion

**INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
CERTIFICATE OF COMPLETION**

ISSUED TO: **VRP Applicant**

FOR: The successful completion of the Voluntary Remediation Work Plan for the **facility name**, IDEM #**VRP Number** located at **street address, city, (County County)**, Indiana, as more specifically described in the attached Exhibits 1-X (**enter number of exhibits**), which are incorporated herein by reference. The issuance of a Certificate of Completion under IC 13-25-5 is a final agency action for purposes of IC 4-21.5.

GIVEN UNDER MY HAND IN THE CITY OF INDIANAPOLIS
THIS _____ DAY OF _____, 2007

SAMPLE

Thomas W. Mastery, COM
Department of Environmental Management

Recycled Paper

Sample 8.5 Environmental Restrictive Covenant, VRP Template

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this _____ day of [month], 20____, by [insert name and address of property owner].

WHEREAS: Owner is the fee owner of certain real estate in the County of _____, Indiana, which is located at [insert address of site] and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on _____, and recorded on _____, as Deed Record _____, in the Office of the Recorder of _____ County, Indiana. The Real Estate consists of approximately _____ acres and has also been identified by the county as parcel identification number[s] [insert 18-digit parcel identification number(s) as described in 50 IAC 23-8-1].

[Optional: The Real Estate, to which this Covenant applies, is depicted on a map attached hereto as Exhibit _____.]

WHEREAS: [insert name of owner and address of site] applicant, if different from [insert name of owner and address of site] into Indiana's National Remediation Program ("NRP") to address releases of hazardous substances and petroleum ("contaminants of concern") relating to the Real Estate. The Indiana Department of Environmental Management ("IDEM" or the "Department") assigned the project number _____. A remediation work plan was prepared in accordance with IC 13-25-5, which was approved by the Department on _____.

WHEREAS: IDEM approved the remediation work plan, which allows certain contaminants of concern to remain in the [select appropriate media: soil, groundwater, or groundwater and soil], provided that certain land use restrictions are implemented [if applicable, insert and engineering controls maintained] to protect human health. The remaining contaminants of concern are listed in Exhibit _____, which is attached hereto and incorporated herein.

WHEREAS: The remediation work plan and completion report are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently www.in.gov/idem/).

NOW THEREFORE, [insert name of Owner] subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner: *[Select from the list below those restrictions that are applicable to the site. Delete those that are not applicable and renumber list. Additional site specific restrictions may be appropriate based on site conditions, and are to be negotiated between the property owner and the Department.]*

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall not use the Real Estate for any agricultural use.

[Include the following soil disturbance restriction if COCs remain in soil at levels above residential land use criteria]

- (d) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Risk Integrated System of Closure ("RISC") Technical Guidance Document. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal, state, and local laws and regulations. Such soils must also be in accordance with all applicable federal and state laws.

[In addition to the preceding general soil disturbance restriction, the following restrictions may be appropriate for high levels of contamination and should be tailored accordingly. The following is an example restriction illustrating the case where COCs remain in soil at levels above construction worker criteria.]

- (e) Shall neither engage in nor allow excavation of soil [at depths greater than ____ feet] in the area identified via *[choose* GPS coordinates *or* legal survey, *as applicable*] as the "Construction Worker Restriction Area" on the attached Exhibit ____ (which is incorporated herein), unless the soil disturbance obligations listed in the preceding paragraph are followed. In addition, the Owner shall provide written notice to the Department in accordance with paragraph 14 below *[edit as necessary* at least ____ days *[before or after]* the start of soil disturbance activities]. The owner, upon the Department's request, shall provide the Department evidence showing the excavated and restored area does not represent a threat to human health or the environment.

[Include the following if there is a potential future vapor intrusion threat at undeveloped or unoccupied sites; sites that are already occupied and have vapor intrusion issues should instead include the restriction below requiring operation and maintenance of an engineered control.]

- (f) Shall not construct or allow occupancy of a dwelling or work space on the Real Estate unless a vapor mitigation system is installed, operated, and maintained within the dwelling or work space. IDEM may waive this restriction in writing if the Owner has provided data and analysis demonstrating to IDEM's satisfaction that there is no unacceptable risk to human health via the vapor intrusion exposure pathway.

[Include if an active engineered control (e.g., vapor mitigation system, etc.) has been implemented at the site]

- (g) Shall operate and maintain the *[list engineered control, depicted in Exhibit ____]* so as to protect its functional integrity *[in accordance with insert title and date of the document containing operations and maintenance requirements]*. Owner shall notify the Department in writing at least fifteen (15) days in advance of conducting any construction or excavation work that may impact an engineered control, unless an emergency exists. Owner shall ensure that the integrity of the *[list the engineered control]* is restored immediately after disturbance by any construction or excavation work. Upon IDEM's request, the Owner shall provide written evidence showing the engineered control has been restored to its complete integrity.

[Include if pavement or a building serves as a passive engineered control or barrier and modify as appropriate]

- (h) Shall maintain the integrity of the existing *[insert asphalt pavement or building, as appropriate]*, which is depicted on Exhibit ____ via *[choose GPS coordinates or legal survey, as appropriate]*; the *[insert asphalt pavement or building]* serves as an engineered control to prevent contact with the underlying soils and must not be excavated, removed, disturbed, demolished or otherwise altered in any way that would result in a disturbance of the underlying soils.

[Include if monitoring or well monitoring is being conducted]

- (i) Shall prohibit any activity on the Real Estate that may interfere with the monitoring or well network.

- (j) *[Insert other site specific restriction(s) here.]*

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.

3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records.
5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF _____ COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

SAMPLE

Notice to Department of Conveyance of Interest in Real Estate. Owner agrees to provide notice to the Department of any conveyance of any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within _____ days of the conveyance and (a) include a certification that the instrument conveying any interest in any portion of the Real Estate; (b) if it has been recorded, its recording reference; and (c) the name and business address of the transferee.

7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of _____ County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term of or the Covenant.

SAMPLE

Conflict and Compliance with Laws. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidance, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable law.

13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidance, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner: *[insert owner's name and address]*

_____, Notary Public

Residing in _____ County, _____

My Commission Expires:

This instrument prepared by:

[insert name and address]

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law:

[insert name and address]

SAMPLE

EXHIBIT A
LEGAL DESCRIPTION OF REAL ESTATE

SAMPLE

EXHIBIT ____

Instructions: Attach separate sheets as necessary, labeled as 'Exhibit B', 'Exhibit C', etc. The following are some examples of additional Exhibits.

1. A scaled map of the site (optional).
2. List, description, or table of COCs (optional for non-CERCLIS sites and non-hazardous waste facilities).
3. Scaled map(s) with GPS coordinates¹ showing the location of engineered barriers or other engineering controls.
4. Scaled map(s) with GPS coordinates showing the location of contamination above construction worker levels, identifying the relevant area as the "Construction Worker Restriction Area" (requested if contaminant concentrations remain above that level).
5. Scaled map(s) showing the legal boundary (by survey, GPS coordinates, etc.) of areas within a property (i.e. "carve outs") subject to specific restrictions or obligations (required if such areas exist).
6. CERCLIS sites and current and former hazardous waste facilities (defined in IC 13-1-100 to mean a plant, site, or other facility where, or where treatment, storage, or disposal) are required by IC 13-2-2-1(c) to describe the identity, quantity, and location of hazardous substances remaining on the property. (Note: CERCLIS sites and hazardous waste facilities generally in the State are not exempt from the above requirements.) Two methods of displaying this information include the following exhibit options:
 - a. Scaled map(s) identifying the location of contamination exceeding residential land use criteria for each contaminant of concern. For clarity purposes, it is recommended that analytical information (identification and quantity of hazardous substances) be shown separately in a table.
 - b. A narrative summary of the identity, quantity, and location of hazardous substances remaining on the property.

¹ The presence of any of the following will likely necessitate the collection of GPS data: engineered barriers or controls; a restriction that applies to only a portion of the site; and areas labeled 'construction worker restriction area.' GPS data should be collected with a mapping or survey-grade GPS receiver, and data deliverable information should be submitted in accordance with the document *IDEM Office of Land Quality Spatial Data Collection Standards*, which is available on IDEM's Website.

Sample 8.6 Voluntary Remediation Agreement Template

Voluntary Remediation Agreement Relating to [Enter VRP Facility Name] Site #XXXXXXX

This Voluntary Remediation Agreement (the "Agreement"), entered into by and between the Indiana Department of Environmental Management (the "IDEM") and [VRP Applicant Name] (the "Applicant"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

WHEREAS, the IDEM, by its Commissioner or his designee (the "Commissioner"), and the Applicant (the "Parties"), hereby enter into this Agreement pursuant to IC 13-25-5-8 for the purposes of remediating the release of hazardous substances or petroleum at [Site name, site address, city, county] County, Indiana by entering into the Voluntary Remediation Program (the "VRP"). The activities conducted by the Applicant under this Agreement are subject to approval by the IDEM.

WHEREAS, the Commissioner has determined that the Applicant is eligible to participate in the VRP as established under IC 13-25-5. However, neither this determination nor the entry into this Agreement precludes any determination by the Commissioner at a later date that the Site poses an imminent and substantial threat to human health or the environment within the meaning of IC 13-25-5. The Commissioner may terminate this Agreement and the Applicant's participation in the VRP if the Commissioner determines at a later date that the Applicant withholds or misrepresents information to the Applicant's including, but not limited to, information described in paragraph [] of the Agreement.

Properties of Applicant. The Applicant shall perform all work related to this Agreement:

in accordance with the attached Exhibit A, Scope of Work; Exhibit B, Schedule for Project Tasks, and Exhibit C, Special Conditions.

2. Term. This Agreement shall become effective on the date of execution by the Commissioner and shall remain in effect until the earlier of: (1) issuance of the Covenant not to Sue, (2) termination of the Agreement by the Commissioner, or (3) withdrawal from the VRP by the Applicant.

3. Access to Records. The Applicant shall ensure that all books, documents, papers, accounting records, and other evidence pertaining to the subject matter covered under this Agreement are maintained. The records to be maintained by the Applicant include all records created by any contractors or subcontractors who perform work related to the remediation of the Site which is the subject to this Agreement. The Applicant shall make such materials available during the term of this Agreement and for six (6) years from the date of the termination or satisfaction of this Agreement for inspection by the State or its authorized designees; these materials shall be made available within a reasonable time frame as requested by IDEM at the Applicant's office in Indiana or at IDEM's office. Copies shall be furnished at no cost to the State if requested. After the six (6) year period, the Applicant shall notify the IDEM in writing thirty (30) days prior to the destruction of any such documents. At that time, if the IDEM request that some or all documents be preserved for a longer period of time, the Applicant shall provide the IDEM with the documents that the IDEM wishes to preserve. If the Applicant claims any document is not subject to IDEM's review because it is confidential, then the Applicant shall provide IDEM with a privilege log describing any document or record that is withheld and the basis of the privilege

asserted; the date the document was created; and the document's author(s), recipients(s), and subject matter. Any dispute concerning invocation of the privilege shall be resolved pursuant to the dispute resolution provision under this Agreement.

4. Assignment; Successors. This Agreement is binding upon the Applicant's successors and assignees. No change in ownership, corporate, or partnership status of the Applicant shall in any way alter its status or responsibilities under this Agreement unless the Applicant withdraws or the IDEM terminates this Agreement. The Applicant shall provide a copy of this Agreement to the next subsequent owner or successor before ownership rights are transferred.

5. Audits. The Applicant acknowledges that it may be required to submit to an audit to ensure compliance with any of the terms of this Agreement. The Applicant has granted access to the IDEM for this purpose as specified in the attached Exhibit C, Special Conditions, Access.

6. Authority to Bind Applicant. The signatory for the Applicant represents that he/she has been duly authorized to execute this Agreement on behalf of the Applicant and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Applicant when his/her signature is affixed, and certifies that this Agreement is not subject to further acceptance by the Applicant when accepted by the IDEM.

7. Changes in Work. The Applicant shall not commence any additional work or significantly change the scope of the work under this Agreement until notification is provided to the IDEM.

8. Compliance with Laws.

All work undertaken by the Applicant pursuant to this Agreement shall be performed in compliance with applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to, the Occupational Safety and Health Administration, Department of Transportation, and Resource Conservation and Recovery Act regulations. In the event of a conflict in the application of federal, state, or local laws, nothing in this Agreement shall be construed as eliminating the Applicant's obligation to comply with the most stringent law

B. The Applicant shall be responsible for obtaining all necessary permits on a timely basis. However, if the Applicant wishes to utilize the permit waiver provisions under IC 13-25-4-26, the Applicant shall identify the specific permit(s) that the Applicant is seeking to have waived. The Applicant agrees to satisfy all requirements that would have been imposed on the Applicant under a permit but for IC 13-25-4-26; these requirements shall be determined by the IDEM and set forth in the Remediation Work Plan (RWP). In the event the Applicant does not wish to abide by those requirements, it may withdraw its request or terminate its participation in the VRP. If the Applicant undertakes an activity for which a permit is required without first obtaining a valid permit or approval of a permit waiver request or the Applicant fails to meet the requirements set forth in the RWP, the Applicant shall be subject to appropriate enforcement action.

C. Nothing in this Agreement relieves the Applicant of its obligations or responsibilities under the Resource Conservation and Recovery Act, 42 USC 6901 et seq., including, but not limited to, the duty to meet any permit conditions financial responsibility, closure, post closure or corrective action, regardless of whether the RWP addressed the contaminants or property at issue.

D. Nothing in the Agreement, the Certificate of Completion, or the Covenant Not To Sue shall be construed to relieve the Applicant of any natural resource damage liability arising from contaminants, even if addressed by the RWP, including under the following authorities: 42 USC

9601 et seq. (CERCLA), 33 USC 2701 et seq., IC 13-25-4-8, or any common law theories of public trust doctrine in Indiana. Applicant agrees that the period from the Effective Date of this Agreement until the Agreement is terminated or satisfied shall toll all statutes of limitations pertaining to any cause of action arising under Title 13 of the Indiana Code and relating to the release or threatened release that is the subject of this Agreement.

9. Administrative Costs.

A. Pursuant to IC 13-25-5-8, the Applicant agrees to reimburse the IDEM for all of its reasonable Administrative Costs associated with implementation of this Agreement. Administrative Costs may include, but are not limited to, costs for compliance monitoring (such as the collection and analysis of split or duplicate samples, inspection of the Applicant's activities, and Site visits), discussions regarding disputes, review and approval or disapproval of reports, environmental restrictive covenants, the costs of dispute resolution, copying of documents, travel, laboratory or sampling costs, and retention of a qualified person to oversee the work performed under this Agreement. Invoices of the IDEM's Administrative Costs shall be sent to the Applicant. Administrative Costs for salary, benefits and indirect costs of the IDEM personnel shall be calculated at a rate of \$69.11 (sixty-nine dollars and eleven cents) per hour or fractional rate thereof. Laboratory costs and the cost of any contractor hired by IDEM to assist it in connection with the remediation of this Site (including, e.g., the evaluation of any proposed RWP, oversight of the work conducted, or implementation of this Agreement) shall be charged at a rate of \$100.00 per hour. As authorized by IC 13-25-5-9, the IDEM may consider this rate to be an estimate of the necessary and effective cost of implementation of the Voluntary Remediation Program and the Applicant agrees that the IDEM's obligations are not limited to the expenses. The IDEM reserves the right to increase the rate for Administrative Costs under this Agreement in accordance with the Consumer Price Index (CPI), per calendar year (effective every February 1st), for the most recent Urban Zone in the State of Indiana that the IDEM decides to implement the program. The IDEM will effectively and efficiently implement the VRRP. (Information about the CPI may be obtained at <http://www.bls.gov/cpi/>.) Exhibit D contains an itemized list of estimated Administrative Costs that the IDEM expects to incur under this Agreement. This estimate does not bind the IDEM to a maximum cost that the IDEM is entitled to bill the Applicant under this Agreement.

B. The Applicant shall pay these reasonable Administrative Costs within thirty (30) days of the due date of the invoice. In the event that payments are not made within thirty (30) days of the due date of the invoice, the Applicant shall pay interest on the unpaid balance at an annual rate of eight (8) percent pursuant to IC 24-4.6-1. The interest shall begin to accrue on the due date of the invoice and shall continue to accrue until the date of payment. The IDEM will not issue the Certificate of Completion nor will the Covenant Not To Sue be issued until the IDEM receives full payment of all reasonable Administrative Costs invoiced and due. Further, Applicant understands that a full accounting of all Administrative Costs incurred by the IDEM cannot be completed before the Certificate of Completion and Covenant Not To Sue have been issued; therefore, Applicant agrees to pay IDEM's reasonable Administrative Costs invoiced after the Certificate of Completion and Covenant Not To Sue have been issued.

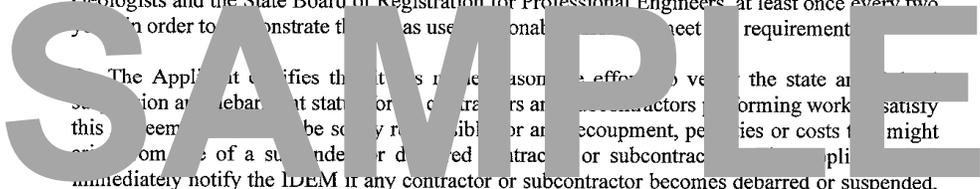
C. Checks shall be made payable to the Voluntary Remediation Fund and be mailed, along with a transmittal letter stating the Site name, number, and address, to the Indiana Department of Environmental Management; Attention: Cashier; 100 North Senate Avenue, Mail Code 50-10C; Indianapolis, Indiana 46204.

D. In the event that this Agreement is terminated for any reason, the Applicant agrees to reimburse IDEM for all of its reasonable Administrative Costs incurred to the time of termination.

10. Confidentiality Claim. The Applicant may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to this Agreement, pursuant to applicable laws and rules including IC 13-14-11, IC 5-14-3, and 329 IAC 6.1-3. The Applicant shall adequately substantiate any assertion of confidentiality when the assertion is made. Information determined to be confidential by IDEM shall be disclosed only to the extent permitted by law. If no such confidentiality claim accompanies the information when it is submitted to the IDEM, it may be made available to the public by the IDEM without further notice to the Applicant. The Applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data.

11. Debarment and Suspension.

A. The Applicant certifies by entering into this Agreement that it will make reasonable efforts to ensure that none of its contractors or principals of its contractors, including subcontractors and any principals of the subcontractor, that are to perform work to satisfy this Agreement are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into a contract to perform work to satisfy this Agreement. The Applicant shall consult with the appropriate licensing boards, including the Indiana Board of Licensure for Professional Geologists and the State Board of Registration for Professional Engineers, at least once every two years in order to demonstrate that it has used reasonable efforts to meet the requirement.



The Applicant certifies that it has made reasonable efforts to verify that the state and local debarment and suspension status of its contractors and subcontractors performing work to satisfy this Agreement will be solely responsible for any debarment, penalties or costs that might be incurred as a result of a suspension or debarred contractor or subcontractor. The Applicant shall immediately notify the IDEM if any contractor or subcontractor becomes debarred or suspended, and shall, at the IDEM's request, take any steps required by IDEM to terminate its contractual relationship with the contractor or subcontractor for work to be performed under this Agreement.

12. Disputes.

A. Should any disputes arise with respect to this Agreement, the Applicant and the IDEM agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Applicant agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should the Applicant fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional reasonable costs incurred by the IDEM or additional costs incurred by the Applicant as a result of such failure to proceed shall be borne by the Applicant, and the Applicant shall make no claim against the IDEM for such costs.

C. The Applicant shall provide the IDEM with a written statement identifying the specific matters in dispute and providing the legal and technical bases for the Applicant's position. If the IDEM and the Applicant cannot resolve the dispute within fifteen (15) working days following the IDEM's receipt of the Applicant's written statement, then the parties agree to resolve the dispute by submitting it to the Commissioner pursuant to the following procedure:

1. The IDEM shall submit a written response to the Applicant's statement within twenty-five (25) working days of its receipt of Applicant's statement; this response shall also be provided to the Commissioner, along with a copy of the Applicant's statement. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Applicant within thirty (30) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless the Applicant invokes the Administrative Orders and Procedures Act ("AOPA"), IC 4-21.5. The parties may mutually agree to submit the dispute to arbitration or mediation for a determination.

The above timeframes may be extended by agreement of the parties as specified in the attached Exhibit C, Special Conditions, Extension of Time Periods.

D. If either Party determines or the mediator declares that the dispute cannot be resolved through the mediation process, the Parties retain all rights under the Indiana Administrative Orders and Procedures Act, IC 4-21.5 ("IAOPA"). All deadlines and times for filing a petition for review, petition for stay, or any other redress or remedy under IAOPA shall be tolled during the mediation process and shall not begin to run until the aggrieved or affected party receives notice from the other Party or the mediator that the dispute cannot be resolved through the mediation process. The cost of the mediator shall be included in the administrative costs paid by the Applicant. IDEM's costs of mediation shall be included in the administrative costs paid by the Applicant, except to the extent that the mediator or IDEM acted unreasonably. The Applicant shall pay the Applicant's costs of mediation.

13. **Force Majeure.** In the event the Applicant is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disasters or other governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the Applicant shall immediately give notice to the IDEM project manager and shall do everything possible to resume performance. Increase of costs shall not be considered a Force Majeure Event. The Applicant shall have the burden of demonstrating that the event is a Force Majeure Event, and the Commissioner shall make the decision of whether an event is a Force Majeure Event subject to the dispute resolution provisions in paragraph 12. If the period of nonperformance exceeds beyond any written extension granted by the IDEM, upon giving written notice, the IDEM may terminate this Agreement.

14. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the Office of Environmental Adjudication. Further, the Applicant consents to personal jurisdiction in an Indiana state court and the Office of Environmental Adjudication, agrees to accept service of process in Indiana, and has designated [Insert Name and address of Registered Agent (or Person Accepting Service for non-corporate applicants)] for this purpose. Applicant agrees to always have a registered agent in Indiana (if Applicant is a corporation) or person accepting service (for non-corporate applicants) and provide IDEM with notice of any change in its registered agent or designated person within thirty (30) days of such change.

15. **Indemnification.** The Applicant agrees to indemnify, defend, and hold harmless the IDEM, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the IDEM and the Applicant and/or its contractors and subcontractors, if any, in the performance of this Agreement.

16. Key Person(s)/Designated Project Manager.

A. On or before the Effective Date of this Agreement, the Applicant and the IDEM shall each designate a Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Agreement. The IDEM Project Manager will be the designated IDEM representative at the Site. To the maximum extent possible, communications between the parties and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party has the right to change its respective Project Manager, which party shall notify the other party of the change in writing and in a timely fashion.

B. The IDEM shall have the authority to halt, conduct, or direct any work required by this Agreement and/or any response actions or portions thereof if Site conditions present an imminent and substantial threat to human health or the environment. In the event that the IDEM Project Manager halts work pursuant to this paragraph, the schedule of work described in the RWP and this Agreement shall be modified accordingly, or the IDEM may withdraw its approval of the RWP pursuant to the terms of this Agreement.

C. The absence of either party's Project Manager from the Site shall not be cause for the stoppage of work. The Applicant's Project Manager or his or her supervisor shall reasonably be available by telephone while work is being performed at the Site. The Applicant's Project Manager shall designate a person to be in charge of the work and this person will be available at the Site when work is being performed at the Site.

The party's Designated Project Manager/Key Person(s) on this Agreement is specified in the attached Exhibit C, Special Conditions, *Notice to Key Person(s)/Designated Project Manager*.

17. Licensing Standards. The Applicant and its contractors and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Applicant pursuant to this Agreement. If any licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken concerning the applicable licensure, certification or accreditation, the Applicant shall notify the IDEM within 30 (thirty) days of Applicant's becoming aware of such action, and the IDEM, at its option, may terminate this Agreement.

18. Merger & Modification. This Agreement constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

19. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, as specified in the attached Exhibit C, Special Conditions, *Notice to Key Person(s)/Designated Project Managers*.

20. Progress Reports. The Applicant shall submit progress reports to IDEM upon request. The report shall be written, unless otherwise approved by the State. The progress reports shall serve the purpose of assuring the IDEM that work is progressing in line with the schedule provided for in the approved RWP, and that completion can be reasonably assured on the scheduled date.

21. Reservation of Rights.

A. IDEM and the Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

B. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action, or demands, in law or in equity, that the parties may have against any person, firm, partnership, or corporation, not a party to this Agreement, for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered in this Agreement.

C. The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than the IDEM found to be responsible or liable for contributions, indemnity, or otherwise for amounts which have been or will be expended by the Applicant in connection with the Site.

Pursuant to 42 U.S.C. 9601(a)(1) and 42 U.S.C. 9601(a)(25)-(28), the parties to this Agreement agree to an administrative settlement for purposes of 42 U.S.C. 9613(f)(2), under which the Applicant, upon payment of all reasonable Administrative and Remedial Costs due under the Agreement and the issuance of a Covenant Not to Sue, will have resolved all claims to the extent provided in the Covenant Not to Sue, to the State. The parties also agree that this Agreement constitutes an administrative settlement for purposes of 42 U.S.C. 9613(f)(3)(B), under which the Applicant has resolved the liability it may have to the State to the extent provided in the Covenant Not to Sue.

E. The IDEM reserves the right to bring an action, including an administrative action, against the Applicant for any violations of statutes or regulations except, subject to IC 13-25-5-18(c), for any claim arising under Title 13 in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the approved RWP.

F. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. The Applicant agrees to waive its rights to administrative and judicial review of the following issues: the binding effect and enforceability of the Agreement and the authority of IDEM to enter into this Agreement.

G. The Applicant agrees not to assert any claim or cause of action under any common law theory or any statute against IDEM and the State of Indiana, its agencies, departments, instrumentalities, authorized officers, employees, contractors or representatives for any action taken by IDEM in connection with this Agreement.

22. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

23. Termination and Satisfaction.

A. Pursuant to IC 13-25-5-8 and IC 13-25-5-19, the IDEM may make a determination to withdraw its approval of a RWP and/or terminate this Agreement and the Applicant's participation in the VRP. This determination may be made for (but not limited to) any of the following reasons: 1) the Applicant fails to timely submit a proposed RWP that meets the requirement of IC 13-25-5 or this Agreement; 2) the Applicant fails to substantially comply with the terms and conditions of the approved RWP and/or this Agreement; 3) the Applicant fails to implement the RWP after being notified of its approval by IDEM; and 4) the IDEM, at a later date, determines that the Site poses an imminent and substantial threat to human health or the environment pursuant to IC 13-25-5-19.

B. In the event that the IDEM makes a determination to terminate this Agreement and terminate Applicant's participation in the VRP for any reason, all protection provided under IC 13-25-5-18(e) is extinguished and IDEM may bring any action to enforce any statute or regulation under Title 13 of the Indiana Code, including an action regarding the violations that arose from a release subject to this Agreement, and the Applicant shall remain responsible for administrative costs. Additionally, the Applicant shall remain responsible for all costs related to responding to the release which was the subject of this Agreement.

C. Further, upon termination of this Agreement by the IDEM, the Applicant is removed from the VRP. If the Applicant's termination occurs for failure to timely submit a RWP, the Applicant may reapply to the VRP. However, subsequent guidance, rules or other documents approved or required by IDEM, as well as any subsequent modifications to the IDEM's RWP non-compliance document or change in departmental policy, may be required for any future RWP submitted to IDEM. By reapplying to VRP, the IDEM is in no manner bound to accept the new Application submitted by the Applicant. A reapplication is deemed a new application and, if accepted, the RWP shall be designed and reviewed in accordance with the guidelines established by the Department at the time of reapplication.

D. The provisions of this Agreement shall be satisfied when the IDEM issues a Certificate of Completion to the Applicant. The Parties understand that the IDEM will issue the Certificate of Completion to the Applicant only. Termination or satisfaction of this Agreement does not end the obligations found in paragraph 3 (Access to Records) and paragraph 9 (Administrative Costs).

E. Nothing in this Agreement shall restrict the IDEM from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.

F. After the IDEM issues the Certificate of Completion, the Governor's Office shall provide Applicant with a Covenant Not To Sue pursuant to IC 13-25-5-18. The Covenant Not To Sue shall contain a listing of the specific work and contaminants covered. The parties understand that the Governor's Office will issue the Covenant Not To Sue to the Applicant only. The Applicant agrees and understands that the covenant shall be conditioned upon and limited to Site conditions described in the approved RWP, provided that the information submitted by the Applicant was complete and accurate.

G. The Applicant agrees and understands that the obligation to pay reasonable Administrative Costs pursuant to paragraph 9 of this Agreement shall survive termination of this Agreement.

24. Work Standards. The Applicant shall execute its responsibilities by exercising the professional and technical standard of care that is customary in the field. If the IDEM becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, the IDEM may request in writing the replacement of any or all such individuals.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Applicant, that he/she has not, nor has any other member, employee, representative, agent or officer of the Applicant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Application other than that which appears upon the face of this Application.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SAMPLE

**SIGNATURE PAGE FOR VRA
BETWEEN IDEM AND _____ [ENTER APPLICANT NAME]**

In Witness Whereof, the Applicant and the State have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

For the Applicant: _____
By _____ Attested By: _____
Printed Name: _____
Title: _____
Date: _____

For the Indiana Department of Environmental Management

Thomas W. Easterly, Commissioner

Date: _____

SAMPLE

Richard Harris, Section Chief
Voluntary Remediation Program

Date: _____

**EXHIBIT A
SCOPE OF WORK**

The Applicant shall perform the following tasks and provide the requested information relative to this Agreement for the specific purpose of evaluation and implementation of the RWP for the remediation of the release or threatened release of petroleum or hazardous substances from the Site.

Task: A The Applicant shall conduct a full investigation and delineation of the nature and extent of the actual or threatened release being addressed under this Agreement, and the investigation must include any off-site migration of such releases. This requirement is subject to the provision in Exhibit C, Part I, General Special Conditions, Access, concerning areas owned or controlled by entities other than the Applicant.

Task: B The Applicant shall submit a proposed RWP that meets the requirements of IC 13-25-5 as discussed in Task C and Task D not later than 180 days after the execution date of this Agreement. The proposed RWP shall clearly state that the Applicant conducted an investigation of the nature and extent of the actual or threatened release being addressed under this Agreement, including any off-site migration of such releases.

Task: C Pursuant to IC 13-25-5-7, the Applicant shall provide the following items in its proposed RWP: 1) a detailed documentation of the investigation conducted when preparing the proposed RWP, and a description of the work that was performed to determine the nature and extent of the actual or threatened release; 2) a proposed schedule of work to accomplish remediation in accordance with the guidelines established by the IDEM; 3) project plans concerning the following: a) quality assurance plan; b) monitoring and analysis plan; c) a health and safety plan; d) a community relations plan; e) a change management plan; f) a record keeping plan; g) a schedule of completion of implementation of tasks set forth in the proposed RWP. The proposed RWP shall specify the remedial actions assumed in determining the RWP and the institutional engineering, or other control, to be used to reduce the risk at the Site. The activities conducted by the Applicant shall be consistent with this Agreement, and all applicable laws and regulations, and appropriate guidance documents as described in the attached Exhibit C, Special Conditions.

Task: D Pursuant to IC 13-25-5-8.5, the proposed RWP must specify the remediation objectives for remediation of hazardous substances or petroleum that are based on background levels or an assessment of risks posed by the hazardous substances and petroleum, taking into consideration the expected future use of the Site and measurable risks to human health, natural resources, or the environment. Risk based objectives shall be based on one of the following: 1) levels of hazardous substances and petroleum calculated by the IDEM using standard equations and default values for that particular contaminant; 2) levels of hazardous substances and petroleum calculated using Site specific data for the default values in IDEM's standard equations; or, 3) 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 environment restrictive ordinances that: (a) manage risk; and (b) control completed or potential exposure pathways. IDEM shall consider and give effect to restrictive covenants as defined in IC 13-11-2-193.5 (also referred to as "Environmental Restrictive Covenants" or "ERCs") and environmental restrictive ordinances as defined in IC 13-11-2-71.2 ("EROs") in evaluating risk based remediation proposals. The proposed RWP, including the format, shall be developed in accordance with guidance documents as specified in the attached Exhibit C, Special Conditions.

Task: E The proposed RWP shall be subject to review and evaluation by the IDEM for 120 days after receipt. Should the IDEM fail to act on the proposed RWP within that timeframe, its failure to act shall not constitute its acceptance of the RWP. The IDEM may request the Applicant to supply additional information or corrected information, and the Applicant may comply with the request or withdraw the proposed RWP from consideration. If the Applicant fails to make a good faith effort to respond to the IDEM's request to supply additional information, the IDEM may determine that the Applicant failed to timely submit a RWP that meets the requirements of IC 13-25-5 and reject the proposed RWP. Upon the rejection of the proposed RWP, this Agreement shall be terminated and the IDEM reserves the right to bring any action to enforce any statute or regulation under Title 13 of the Indiana Code, including an action regarding the violations or releases that were the subject of the Agreement.

Task: F If the Applicant has submitted a proposed RWP that meets the requirements of IC 13-25-5-7, the IDEM will follow the public notice provisions of IC 13-25-5-11 for the proposed RWP, which include: notification to local officials; providing for placement of a copy of the proposed RWP in a local library; publication of a notice requesting comments on the proposed RWP; and at least a 30-day public comment period.

Task: G Following the public comment period, the IDEM will approve, modify and approve, or reject the proposed RWP pursuant to IC 13-25-5-10. If IDEM rejects the proposed RWP, IDEM shall notify the Applicant of the rejection and specify the reasons for the rejection pursuant to IC 13-25-5-12. If the IDEM approves, or modifies and approves, the proposed RWP, the Applicant shall be notified of the decision, and the IDEM will provide a date by which the Applicant may begin implementation of the RWP and the time by which the work must be completed pursuant to IC 13-25-5-13. (If the approved RWP is incorporated by reference the time table set forth in the proposed RWP.)

Task: H The Applicant shall notify the IDEM Project Manager within 60 days of the IDEM's approval of its intent to proceed with implementation of the approved RWP. The Applicant shall provide to the IDEM Project Manager the start and completion dates approved by the IDEM. In addition, prior to starting the work to be performed to remediate the Site, the Applicant shall notify the IDEM, in writing, the name, title, and qualifications of any contractors and/or subcontractors to be used in carrying out the terms of this Agreement. If the contractors or subcontractors to be used to carry out the terms of this Agreement are changed or additional contractors or subcontractors are used, the Applicant shall notify the IDEM Project Manager, and provide the name, title and qualification of that contractor or subcontractor prior to their involvement in the remediation of the Site.

Task: I The IDEM will oversee and review the implementation of the approved RWP and request reports as needed.

Task: J After the remediation work is complete, the Applicant shall submit a Completion Report to the IDEM, and shall provide all the necessary information for a determination to be made whether or not the work was conducted pursuant to the approved RWP and this Agreement. If the remedial objectives for the Site were based on an ERC and/or an ERO, then the Applicant shall include a copy of the recorded ERC and/or the ERO (including documentation showing that the ERO was adopted by a municipal corporation and is in effect under IC 36) with the Completion Report. IDEM is not bound to accept any ERC or ERO that was not evaluated by IDEM prior to being recorded or adopted by a municipal corporation.

Task: K The IDEM will determine whether or not a Certificate of Completion will be issued. IDEM will not issue the Certificate of Completion until the Applicant has remitted all Administrative Costs pursuant to paragraph 9 of this Agreement. If the Certificate of Completion is issued, the Applicant shall record it on the deed of the property subject to the remediation. The Applicant shall provide a copy of the recorded Certificate of Completion to the IDEM for its review to ensure the recording was correct.

Task: L After the IDEM receives a copy of the recorded Certificate of Completion and determines it was properly recorded, the IDEM Project Manager will prepare a Covenant Not To Sue packet to forward to the Governor's Office for appropriate signature. When the Covenant Not To Sue is executed by the Governor's Office, the IDEM will provide to the Applicant the executed Covenant Not To Sue.

The Contractor shall follow the schedule provided as Exhibit B, Schedule for Project Tasks, attached hereto and incorporated herein.

SAMPLE

**EXHIBIT B
SCHEDULE OF PROJECT TASKS**

The tasks and the associated time periods necessary for the project are as follows:

TIME PERIOD	TASK
Prior to or concurrent with the submittal of the RWP	<ul style="list-style-type: none"> • Task A
Within 180 days after the Effective Date of this Agreement or longer per a written extension granted by IDEM	<ul style="list-style-type: none"> • Tasks B, C & D
Upon IDEM's receipt of the Applicant's proposed RWP	<ul style="list-style-type: none"> • Task E
Upon conclusion of IDEM's review of the proposed RWP and any additional information submitted at IDEM's request	<ul style="list-style-type: none"> • Task F
Following the completion of the 60-day public comment period on the proposed RWP	<ul style="list-style-type: none"> • Task G
Within 60-days of IDEM's approval of the RWP	<ul style="list-style-type: none"> • Tasks H & I
Following the completion of the remediation work performed pursuant to the RWP	<ul style="list-style-type: none"> • Task J & K
After IDEM receives and reviews the recorded Certificate of Completion	<ul style="list-style-type: none"> • Task L

**EXHIBIT C
SPECIAL CONDITIONS**

In addition to the terms and conditions set forth herein, the parties agree to abide by the following Special Conditions:

**Part I
General Special Conditions**

Access.

To the extent that the Site or other areas where work is to be performed hereunder are presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain access agreements from the present owners. Such agreements shall provide access for IDEM and authorized representatives of IDEM, as specified below. In the event that access to the Site is not obtained, the Applicant shall so notify IDEM, which may at its discretion assist the Applicant in gaining access. IDEM may terminate or modify this Agreement should the Applicant's inability to gain access to the Site or other areas affect the Applicant's ability to perform the work required herein. The Applicant shall provide authorized representatives of IDEM access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as IDEM may deem necessary; examining, sound recordings, and other documents; equipment for field activities; and verifying data submitted to IDEM by the Applicant's equipment. The Applicant shall permit IDEM authorized representatives to inspect and copy all records, logs, operating logs, and other writings, including all sampling and analytical data, which are in this Agreement and of which the Applicant maintains control. All persons with access to the Site pursuant to this Agreement shall comply with the approved Health and Safety Plan and established health and safety protocols.

Nothing herein shall be construed as restricting the inspection or access authority of IDEM under any law or regulation. Furthermore, nothing herein shall be construed as restricting the authority of IDEM to abate any pollution or contamination at the Site.

Community Relations.

In addition to performing the requirements specified in the Community Relations Plan in the Applicant's RWP, the Applicant shall cooperate with IDEM in providing information about the RWP to the public. The Parties will give to each other reasonable advance notice of any such public meetings they may hold, and each will work together to agree upon the time and location of any public meeting. IDEM may require the Applicant or its agent to attend any public meeting held by the agency. Before the Commissioner may approve or disapprove the RWP, the Commissioner shall provide thirty (30) days for public comment pursuant to IC 13-25-5-11.

IDEM shall maintain a public information file containing the RWP during the thirty (30) day Public Comment period at a public repository near the Site. The Applicant shall provide the location of a suitable public repository in accordance with applicable guidance.

Extensions of Time Periods—Generally.

Any written response shall be deemed timely performed if hand delivered or postmarked by the last day of any time period prescribed herein. Whenever a Party has the right or an obligation to

do some act or make some response within a prescribed period after the service of a notice by mail, three (3) days shall be added to the prescribed period.

Whenever any Party is called upon to respond or otherwise act in a certain number of days, and the final day occurs on a Saturday, Sunday or legal holiday (whether state or national), such time limitation shall automatically extend to the next business day after such Saturday, Sunday or legal holiday.

Any time periods specified in this Agreement may be extended only by written agreement of the Parties.

Extensions of Time Periods for submitting a RWP.

The Applicant may receive an extension of time for no longer than 90 days if requested in writing and the IDEM determines good cause exists for requesting the extension. Applicant may request a second extension for no longer than 90 days if requested in writing and the IDEM determines good cause exists for requesting the second extension. In no event shall more than two 90 day extensions be granted, and if Applicant fails to submit a RWP that meets the requirements of IC 13-25-5 within the initial 180 day period or within an extended time period as granted by the IDEM, this Agreement shall terminate and the IDEM reserves the right to bring any action to enforce any statute or regulation under Title 13 of the Indiana Code, including an action regarding the violations or releases that were the subject of this Agreement.

Event of Bankruptcy or Death
As soon as the Applicant has knowledge of an intent to file for bankruptcy and no later than seven (7) days after the actual filing of a voluntary or involuntary bankruptcy petition, the Applicant shall notify IDEM of the filing of a bankruptcy petition. If an Applicant dies, as soon as a personal representative of a decedent's estate becomes aware of this VRP project, the personal representative shall notify IDEM of the project of the estate. IDEM shall be considered a creditor of the bankruptcy and/or estate. IDEM's claim may be a contingent claim, in whole or in part, as there may be oversight costs due after the closing of the bankruptcy and/or probate estate.

Notice to Key Person(s)/Designated Project Managers.

Whenever any notice, statement, report, approval, notification, disapproval, and other correspondence or communication is required under this Agreement, it shall be sent to the following addresses by U.S. First Class mail, hand delivery, overnight mail, or by courier service:

Notices to IDEM: Project Manager
Voluntary Remediation Program
MC 66-30V IGCN 1101
Indianapolis, Indiana 46204-2251
(317) 231-(extension)

Applicant Project Manager: Name
(See paragraph 16) Address
City, State, Zip
Phone Number

Additional Applicant Contact (optional): Name
(Delete this section is no additional Contact is desired) Address
City, State, Zip

Part II
Special Technical Conditions

Compliance with Guidance Documents.

All work performed and all documents submitted shall be in accordance with all the VRP guidance documents available and in effect as the Effective Date of this Agreement, including the IDEM's *Risk-Integrated System of Closure non-rule policy document (Waste-0046-NPD, 24 Ind. Reg. 1986 (2001))* and IDEM's *Draft Vapor Intrusion Pilot Program Guidance (April 26, 2006)* or any other Vapor Intrusion guidance approved by IDEM. The Applicant may supplement this guidance with guidance or other documents approved by the VRP. Guidance documents identified in this Agreement are named for the convenience of the Applicant; the failure to specify a specific guidance document in this Agreement shall not be construed as a limitation on the applicability of a guidance document.

Environmental Professionals.

All work plans and reports related to the practice of geology to be submitted by the Applicant shall be designed and implemented under the direction and supervision of a Licensed Professional Geologist ("LPG") licensed in Indiana with expertise in hazardous substance or petroleum Site investigation and remediation. If the work requires a designed remediation system or engineered barrier, the work will be done under the direction and supervision of a Professional Engineer ("PE") with expertise in hazardous substance or petroleum Site investigation and remediation.

Quality Assurance.

The Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan and any other procedures approved by IDEM through any sample collection, analysis and testing under this Agreement, unless IDEM agrees otherwise.

Applicant shall provide the IDEM with reasonable advance notice of all sampling and analysis details in corrective action RWPs. IDEM reserves the right to be present at the presence of an IDEM representative during sampling the Applicant shall do each of the following.

- (a) Applicant shall allow IDEM personnel and/or IDEM authorized representatives reasonable access to laboratories and personnel utilized by the Applicant for analyses.
- (b) Applicant shall ensure that all sampling and analyses are performed according to U.S. EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by IDEM.
- (c) Applicant shall ensure that any laboratories used by the Applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with U.S. EPA guidance documents. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of analytical data for each such laboratory.
- (d) Applicant shall perform confirmatory sampling for all contaminants and all media for which a Certificate of Completion and Covenant Not to Sue

are sought. Applicant shall specify in the RWP the means of taking confirmatory samples and notify IDEM personnel a minimum of fourteen (14) days prior to taking confirmatory samples.

IDEM reserves the right to reject any data not gathered consistent with the requirements of this section and Exhibit C, Part II (Sampling and Data/Document Availability) and to require that the Applicant utilize a different laboratory.

Sampling and Data/Document Availability.

The Applicant shall, upon request, make the results of all sampling, including raw data, and/or tests or other data generated by the Applicant, or on the Applicant's behalf, available to IDEM. IDEM will make available to the Applicant the quality assured results of sampling and/or tests or other data similarly generated by IDEM.

At the request of IDEM, the Applicant shall provide to IDEM (and/or its authorized representative) splits or duplicates of any samples collected by the Applicant pursuant to the implementation of this Agreement. At the request of the Applicant, IDEM (or its authorized representative) shall provide split or duplicate samples to the Applicant of any samples collected by IDEM and/or its authorized representative pursuant to the implementation of this Agreement. Each Party shall notify the other in advance of any sample collection activity.

Scientific Practices.

The Applicant shall employ sound scientific, engineering, and construction practices.

Part III
Agency Representative
Following agencies have an interest in the RWP being conducted in current jurisdiction over
Site:
Indiana Department of Natural Resources

SAMPLE

Executive Office Room W-256
402 W. Washington, Indianapolis, IN 46204
Attn: John M. Davis
Phone: (317) 232-4025
Fax: (317) 233-6811

2. Indiana State Department of Health
Epidemiology Resource Center
3-D
2 N. Meridian St.
Indianapolis, IN 46204
3. Department of Homeland Security
Fire Code Enforcement, Fire & Building Safety
Rm E-241
402 W. Washington St.
Indianapolis, IN 46204
Phone: (317) 232-2222
Fax: (317) 233-0307

4. U.S. Department of Interior
Fish & Wildlife Service
Bloomington Ecological Services Field Office
620 South Walker Street
Bloomington, Indiana 47403-2121
Telephone: (812) 334-4261
Fax: (812) 334-4273

The Applicant shall provide notice to these agencies of the submission of the RWP by sending them a copy of the RWP Executive Summary, a Site map, and the names of the Project Managers for the Parties. Any of the above named agencies that wish to review the RWP shall be given an opportunity by IDEM to comment during the time that IDEM is reviewing the RWP or during the thirty (30) day public comment period provided for in IC 13-25-5-11. If the Applicant wishes to address natural resource damages in the RWP, the Applicant shall so notify the State and Federal Natural Resources Trustees within thirty (30) days of the Effective Date of this Agreement.

Part IV Natural Resource Damages

The Applicant may devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources or pay to the State the value of the natural resources, as determined by the Natural Resource Trustees. The plan may be developed and implemented as part of the RWP. If the Applicant wishes to address natural resource damages in the RWP, the Applicant shall so indicate in the notice to State and Federal Natural Resources Trustees, as

defined in Exhibit A, Special Provisions, Item L, *Implementation Coordination*.

After receiving notice of the Applicant's plan to address natural resource damages, the Natural Resources Trustees may perform a pre-assessment screen. If the Applicant is responsible for construction of, or damage to, natural resources, the Applicant shall reimburse IDEM for any and all costs incurred by IDEM or the Indiana Department of Natural Resources in performing the pre-assessment screen. The Applicant will perform the assessment of damages on the pre-assessment screen. This Agreement and the Covenant Not to Sue issued hereunder do not alter the liability of the Applicant or any other person to the federal government for claim of natural resource damages under any federal law.

**EXHIBIT D
ITEMIZED COSTS**

NON-BINDING COST ESTIMATE
IDEM SITE #: Site Number

Oversight of voluntary remediation at the Site Name site in Site City, Indiana will be required. The following tasks and estimated costs are anticipated:

Review of Phase 2 Work Plan	\$
Review of Phase 2 Report & Revisions	\$
Review of Remediation Work Plan & Revisions	\$
Review of Risk Assessment & Revisions	\$
Implementation Oversight	\$
Review of Remediation Completion Report & Revisions	\$

Please note that IDEM split sampling costs are NOT included in this estimate

Total: \$

SAMPLE
N O C U M

Sample 8.7 Covenant Not to Sue

STATE OF INDIANA
VOLUNTARY REMEDIATION PROGRAM
COVENANT NOT TO SUE
COVENANT

On DATE, the Commissioner of the Indiana Department of Environmental Management issued a Certificate of Completion pursuant to Indiana Code § 13-25-5-16 to APPLICANT in recognition of the completion of the work required under a Voluntary Remediation Work Plan ("Work Plan"). The Certificate is attached to this Covenant as Exhibit 1 and the Work Plan as Exhibit 2. The APPLICANT has completed the Work Plan to address the release of the hazardous substances or petroleum listed in Exhibit 3 at the SITE NAME ("Site") located at STREET ADDRESS, CITY, Indiana. Site characterization information is attached as Exhibit 4, and a site map and legal description are attached as Exhibit 5.

Pursuant to Indiana Code § 13-25-5, the Governor of the State of Indiana now covenants not to sue APPLICANT for any liability, including future liability, or for any claim, resulting from or based upon the release or threatened release of contaminants listed in Exhibit 3 that were the subject of the Work Plan. The Covenant shall bar suit against APPLICANT, and any other person who receives the Certificate of Completion through transfer or who acquires the subject property with the Certificate applied for ("successors in title"), from all public and private claims arising under Title 13 of the Indiana Code or rules adopted thereunder in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the Work Plan.

This Covenant Not To Sue shall be construed as a Covenant running with the land, but shall not apply to the predecessors in title of APPLICANT.

RESERVATIONS

1. Pursuant to Indiana Code § 13-25-5-18(c), the Covenant does not extend to any public or private claim for liability, or future liability, arising under Title 13 of the Indiana Code or any rules adopted thereunder, resulting from or based upon a condition or extent of a condition that:

- A) was present on the property on which a completed Voluntary Remediation Work Plan took place; and
- B) was not known to the Commissioner of the Indiana Department of Environmental Management at the time the Certificate of Completion was issued.

For purposes of this paragraph, the Commissioner's knowledge at the Site is limited to the information IDEM received during the execution of the Work Plan and the information contained in the site investigation report(s) and the Work Plan and its attachments as provided to IDEM.

2. Pursuant to Indiana Code § 13-25-5-1, a person that performs an action under an approved Remediation Work Plan is performing that action to assure compliance with the voluntary remediation of hazardous substances and petroleum. This section does not affect a person's legal obligations set forth in 42 U.S.C. § 6901, *et seq.* regardless of a person's participation in this chapter.

3. Pursuant to Indiana Code § 13-25-5-18(d), this Covenant does not preclude the federal government from pursuing APPLICANT for claims based on federal law.

4. This Covenant does not preclude the State of Indiana from taking any unilateral action at the Site, under any existing or future statutory authority, to protect human health and the environment, provided however, in no event shall the State have a right of recovery against APPLICANT, or its successors in title, to the extent that such right of recovery arises under Title 13 of the Indiana Code, or rules adopted thereunder, and relates to matters covered by the Work Plan.

5. This Covenant does not preclude the State Natural Resource Trustees ("Trustees") from pursuing APPLICANT, or its successors in title, for natural resource damages resulting from the release or threatened release of contaminants listed in Exhibit 3 that were addressed by the completed Work Plan.

6. This Covenant does not preclude the State of Indiana from enforcing, under Indiana Code § 13-14-2-6(5), a restrictive covenant implemented under the Work Plan.

7. This Covenant does not preclude the State of Indiana from suing APPLICANT for the money they are required to pay the Indiana Department of Environmental Management under the Voluntary Remediation Agreement.

WHEREFORE, the Governor of the State of Indiana issues this Covenant to APPLICANT, with all aforementioned privileges, responsibilities, conditions and reservations, this _____ of _____, 20_____.

Mitchell E. Daniels, Jr., Governor, State of Indiana

APPROVED FOR LEGALITY AND FORM

Steve Carter
Attorney General, State of Indiana

By:
Gregory F. Zoeller
Chief Counsel, Advisory Services