



# Independent Closure Process Guidance

Petroleum Remediation Section

(317) 232-8900 • (800) 451-6027

[www.idem.IN.gov](http://www.idem.IN.gov)

100 N. Senate Ave., Indianapolis, IN 46204

Effective: August 7, 2020

## Introduction

The Indiana Department of Environmental Management (IDEM) recognizes that the economic and technical resources available for environmental investigation and remediation are limited, and that the highest priority for these resources must be the protection of human health and environmental receptors. IDEM has observed that many petroleum releases pose a low threat to human and environmental health. The Petroleum Remediation Section has introduced the Independent Closure Process (ICP) Nonrule Policy Document (Waste-069-NPD) to allow low-threat petroleum releases to achieve closure with minimal IDEM oversight. The policy seeks to increase petroleum release closure process consistency and efficiency. An advantage of improved consistency and efficiency is the preservation of limited resources for mitigation of releases posing a greater threat to human health and the environment. This guidance is consistent with existing statutes, regulations, and policies.

The ICP allows particular categories of contaminated sites (low priority releases and medium priority releases contaminated only with petroleum, identified pursuant to Indiana Code (IC) 13-23-13-4, IC 13-23-13-5, and 329 IAC 9-5-5.1(b)(2)(B)(iii), and/or IC 13-24-1-2(b) and 329 IAC 7.1) to be investigated, remediated, and closed with minimal IDEM oversight. Closure documentation should be submitted within one year of the release confirmation date for a soil contamination-only release, or within three years of the release confirmation date for an on-site groundwater contamination-only release. IDEM will issue a No Further Action (NFA) status letter to the owner/operator/property owner (O/O/P) and/or responsible person (RP) when the contamination has been adequately delineated and contaminants have been remediated to land-use appropriate closure levels, and/or institutional controls are implemented to protect human health and environmental receptors.

IDEM will not provide daily oversight or detailed technical evaluation of each site participating in the ICP. However, IDEM will conduct quality assurance audits of the project documents, data, and the ICP Completion form (State Form 54166, available on the [IDEM Forms](#) page). The reduction of direct oversight by IDEM does not relieve the O/O/Ps and/or RPs and their environmental consultants from the legal requirements of reporting releases, investigation, and remediation.

## Release Prioritization and Eligibility

The Petroleum Remediation Section (PRS) determines the need for resource allocation to a specific release or project after completion of a priority assessment on each new release entering the program. Priority assessment and ranking is made by PRS at the time of release reporting and is based upon the information known to IDEM at the time.

ICP eligibility is based upon the potential for human health and environmental threats, and will be determined during the prioritization process. Only low priority releases with soil contamination, and medium priority releases with groundwater contamination contained on-site or within the immediate right of way, are eligible to participate in the ICP. IDEM must be notified immediately if additional information becomes available during the ICP indicating that a change in the priority ranking is appropriate. If IDEM agrees that the priority needs to be upgraded or the release no longer meets the requirements for the ICP, the release can be brought under direct PRS project manager oversight and removed from the ICP.

Light non-aqueous phase liquid (LNAPL) may be an ongoing source of groundwater contamination. If LNAPL is

present, it must be removed to the maximum extent practicable before a release is eligible for the ICP. Any LNAPL must be removed in a manner that minimizes the spread of the release into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site.

## **Steps in the Independent Closure Process**

### ***I. Notification of Release and Release Prioritization by IDEM***

O/O/Ps and/or RPs are required to report all spills and/or suspected or confirmed releases of petroleum from underground storage tank(s) (USTs) or other sources within 24 hours of discovering the release. They must email a completed Initial Incident Report (State Form 54487, available on the [IDEM Forms](#) page) to the Petroleum Remediation Section (PRS) at [LeakingUST@idem.IN.gov](mailto:LeakingUST@idem.IN.gov) or call (317) 232-8900 during business hours or (317) 233-7745 after hours or during holidays. The PRS will utilize the information presented in the Initial Incident Report by the O/O/P and/or RP at the time of release reporting, and other IDEM-collected information, to make a priority determination.

### ***II. Responsible Party Notification by IDEM***

If the PRS determines the reported release or spill is ICP eligible, IDEM will notify the O/O/P and/or RP through an ICP Initial Investigation Request letter.

### ***III. Release Investigation***

The findings of the initial investigation should be submitted to IDEM within 60 days of the release confirmation date. Release investigation should follow the process outlined in the IDEM Remediation Closure Guide, 2012 (RCG). Investigation of a release from a regulated UST facility must also adhere to 329 IAC 9.

Release investigation must completely evaluate site operation and release history, contaminant management, storage and disposal practices, and evaluate potential exposure pathways to create a conceptual site model (CSM). For additional guidance, refer to Sections 2 and 3 of the IDEM RCG and Table 3.1 of the Remediation Program Guide, 2012 (RPG).

The O/O/P and/or RP submits an Initial Investigation report to demonstrate that exposure pathways are not complete and the release has a low threat to human health and environmental receptors. IDEM will review the Initial Investigation report and send an email response with a due date for submission of the ICP Completion form (State Form 54166, available on the [IDEM Forms](#) page) and supporting documentation. If omissions are identified in the Initial Investigation report, the IDEM response will provide a list of inadequacies that must be reconciled during investigation and/or remediation. Additional information requested by IDEM in the email response must be provided with the ICP Completion form and supporting documentation.

### ***IV. Remediation***

Remediation may be required where contaminant concentrations exceed land-use specific RCG screening levels. Soil contamination on a residential use property or a property expected to be residential use in the future must be reduced to below the RCG residential direct contact screening levels unless lines of evidence (LOE) are provided to demonstrate that no unacceptable exposure risks are present at closure. Groundwater contamination exceeding the RCG tap water and/or vapor intrusion screening levels must be remediated to below the applicable screening levels unless LOE are provided to demonstrate that no unacceptable exposure risks are present at closure.

Alternatively, if contaminant levels are not reduced to below RCG screening levels and LOE are not sufficient to protect human and environmental health, an environmental restrictive covenant (ERC) will need to be recorded on the property deed to act as an institutional control. For guidance on developing, recording, and submitting the ERC, please refer to [Section VI](#) below.

## **V. Requests for Closure**

A release is eligible for closure once it has been characterized and threats to human health or environmental receptors are either eliminated or controlled. It is the responsibility of the O/O/P and/or RP, or their designee, to provide all necessary supporting documentation to confirm that IDEM's closure criteria have been achieved.

IDEM requires that closure documentation be provided within one year of the release confirmation date for a soil contamination-only release, or within three years of the release confirmation date for an on-site groundwater contamination-only release. If the completion time frames are not achieved, IDEM reserves the right to rescind ICP eligibility and deny issuance of the No Further Action letter.

At the time closure is requested, the O/O/P and/or RP, or their environmental representative, should complete and submit the ICP Completion form (State Form 54166, available on the [IDEM Forms](#) page), which summarizes site conditions and environmental data. Additional investigation and/or remediation documentation (e.g., site maps identifying subsurface utility corridors, source area, and sampling locations; soil boring logs; monitoring well construction diagrams; and laboratory analytical data) must also be submitted with the ICP Completion form to demonstrate that the CSM is adequate. Contact IDEM for assistance with determining the appropriate supplemental information to submit.

The ICP Completion form certifies to IDEM that closure is acceptable and no risk of contaminant exposure exists. The O/O/P and/or RP is required to sign and notarize the ICP Completion form to verify that the information is true, accurate and complete. In addition, IDEM requires that both the environmental consulting professional and the principal/owner of the environmental consulting company sign and certify that the information presented to IDEM is true, accurate and complete. IDEM also requires that the consultant's primary project manager or principal/owner hold a current license or certification in the state of Indiana as a licensed professional geologist, a registered professional engineer, a registered professional soil scientist, or a certified hazardous materials manager.

## **VI. Institutional Controls and Environmental Restrictive Covenants**

Release incidents that close with contamination remaining above the RCG residential screening levels will require lines of evidence to demonstrate that the release does not pose a threat to human and environmental health, and/or the implementation of appropriate institutional controls to protect human health and the environment by restricting property activity, use, or access. If necessary, IDEM will require development and recording of an environmental restrictive covenant (ERC) on the property to act as a legally binding institutional control document.

The ERC must meet the statutory definition found in IC 13-11-2-193.5 and must satisfy the applicable criteria in IC 13-14-2-6. A draft ERC must be sent to IDEM for approval prior to its recording with the county recorder. Once the draft ERC is approved by IDEM, the ERC must be made a part of the closure plan and be submitted to IDEM as part of the closure documentation after final recording onto the property deed or title is completed. A copy of the recorded ERC must be submitted to IDEM. The submitted copy of the recorded ERC must include all attachments or exhibits and must have been stamped by the county recorder's office.

An ERC must run with the deed or title for the property, remain in effect until IDEM agrees that the ERC is no longer warranted, and be binding upon future property owners. Any ERC that fails to be enforceable, remain attached to the deed or title, protect human health and the environment, or bind future property owners will be grounds for IDEM to deny or revoke the approval of No Further Action status.

For consistency, IDEM requests that ERCs submitted under the ICP follow the applicable ERC template found on IDEM's Institutional Controls [webpage](#).

## **VII. Closure Approval and Issuance of No Further Action Letter**

The Petroleum Remediation Section will conduct quality assurance audits of the ICP releases to verify consistency in closure determinations and to ensure the IDEM file is complete. However, IDEM will provide minimal project management oversight and/or technical review of data and documentation after the Initial

Investigation report review. If an omission is found during the closure audit, IDEM will send an NFA Information Request letter. The O/O/Ps and/or RPs will have the opportunity to correct any errors and resubmit closure documentation. If the closure documentation presented to IDEM is true, accurate, and complete, and IDEM is in agreement with the O/O/P and/or RP, and the consultant certifies that no threat to human health or the environment exists, then IDEM will issue a No Further Action (NFA) letter. Once the O/O/P and/or RP has received the NFA letter, closure is considered complete and further correspondence will not be necessary.

All wells and borings installed for the purpose of investigating, remediating, or monitoring the release shall be properly abandoned per 312 IAC 13-8-3. All waste piles, drums, debris, and other investigation or remediation derived materials shall be removed from the site and properly managed in accordance with regulatory agency requirements.

As stated in the NFA letter, IDEM does have the authority to revoke a closure determination if additional information becomes available demonstrating that the site is a threat to human health and/or the environment or if false or misleading information is submitted to IDEM. In addition, IDEM's acceptance of a closure certification is conditioned upon continued compliance with a legally enforceable and binding ERC. Any violation of the use and activity restrictions imposed by the ERC shall void IDEM's closure determination, and additional remedial activities may be required.

### **IDEM Quality Assurance Auditing**

Please note that closure status may be withheld or revoked if IDEM discovers that investigation or remediation of the release is insufficient, documentation submitted is inaccurate or incomplete, or the terms of an ERC are not being met by a property owner. In the event false information is submitted to IDEM, the agency may take enforcement action and/or seek penalties under applicable authorities, including but not limited to IC 13-23-14-2, IC 13-30-3, IC 13-30-4, IC 13-30-10, and/or IC 35-44.1-2-1. If the completion time frames are not achieved, IDEM reserves the right to rescind ICP eligibility and deny issuance of the NFA letter.

### **Document Submittal Guidelines**

Documentation and data supporting completion of release investigation, contaminant delineation, remediation, and closure under the ICP must be submitted to IDEM within the completion timeline set forth in [Section V](#) above. The requested information should be submitted following the Office of Land Quality (OLQ) Document Submittal Guidelines at [www.idem.IN.gov/landquality/2368.htm](http://www.idem.IN.gov/landquality/2368.htm). Please submit all items to:

Indiana Department of Environmental Management  
Office of Land Quality  
Petroleum UST Branch  
Petroleum Remediation Section, Attn: Independent Closure Process Reports  
100 N. Senate Ave., IGCN, Room 1101  
Indianapolis, IN 46204-2251

### **For Assistance**

Please contact the Petroleum Remediation Section staff via email at [LeakingUST@idem.IN.gov](mailto:LeakingUST@idem.IN.gov) or by phone at (317) 232-8900 for more information or assistance.