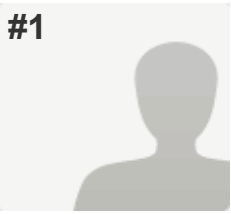


#1



Maryland

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Groundwater Use Restrictions, Easements, Covenants, State Use Restrictions, Statutes, Administrative Orders, Consent Decrees, Permits, Deed Notices, State Registries
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	@ 30 to 40
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Violation of covenant, Violation of land use restriction
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Outreach to local governments to inform them about environmental covenants and Land Restoration Program registry identifying ECs that are in place
2.	Streamline issuance process
3.	Additional resources for LUC monitoring

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	Yes, If Yes please provide a link to the policy or procedure. <a href="http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/ueca.aspx">http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/ueca.aspx</a>
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**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Voluntary Cleanup Program - No Further Requirements Determinations and Certificate of Completions  
Uniform Environmental Covenants -  
[http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp\\_brownfields/ueca.aspx](http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/ueca.aspx)

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
The language in the determination specifies that a party, or subsequent parties, are responsible for monitoring and maintenance of land use controls.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
LUCs are specified within the determination or environmental covenant and must be complied with until such time that it is demonstrated such controls are no longer needed.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

[http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp\\_brownfields/ueca.aspx](http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/ueca.aspx)

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Not applicable

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

If an entity wishes to change a LUC, it is their responsibility to demonstrate to the Department that the LUC is no longer needed.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting  
,

Land owner periodic field inspections and associated reporting  
,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,

Coordination with local government permitting process (e.g., local government notifies when permits are issued at an IC site)

**Q17: How is your State agency monitoring program funded?**

128(a) State Response grant; Voluntary Cleanup Program funds

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
If non-compliance is identified, the State Superfund program (CHS Enforcement) notifies the responsible entity and requires that they correct the issue.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

If an entity failed to properly implement or maintain a LUC, and then failed to comply with the Department's initial efforts to bring the entity into compliance, the Department would issue an administrative order.

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
[http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/mapping/Pages/programs/landprograms/erp\\_brownfields/mapping/index.aspx](http://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/mapping/Pages/programs/landprograms/erp_brownfields/mapping/index.aspx)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
 Currently working with local governments to share LUC information

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
 Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,  
 Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.  
 The Department is notified in writing 30 days prior to a property transfer.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

128(a) State Response grant; Voluntary Cleanup Program fee (\$2,000 for any determination issued that requires a LUC); and Controlled Hazardous Substance Act funds.

**Q32: May we contact you for clarification of responses, additional information about your State agency's institutional control activities, or case studies?**

Yes

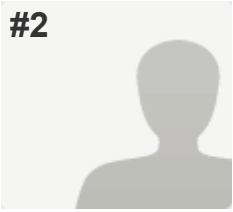
**Q33: Please complete your contact information.**

Name:	Jim Carroll
Agency/Dept/Division/Office	Maryland Department of the Environment, Land Management Administration, Land Restoration Program
Address:	1800 Washington Boulevard
City/Town:	Baltimore
State:	MD
ZIP:	21230
Email Address:	James.Carroll @maryland.gov
Phone Number:	410-537-3459

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#2

Delaware



PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Groundwater Use Restrictions, Covenants, Consent Decrees, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	Based on the last 5 years, an average of 33.
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Communicating the institutional control details was inadequate , Reporting is inadequate, The Stewardship/Implementation plan failed, Violation of covenant
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Assign a dedicated team for monitoring/inspection
2.	Streamline electronic tracking/reporting
3.	Institute an enforcement process.

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
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**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Template

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
Monitoring obligations are outlined in each Site's LTS Plan.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://www.dnrec.delaware.gov/dwhs/SIRB/Documents/OandM%20Guidance.pdf>

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

The requirement to modify the Final Plan of Remedial Action for the Site.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

N/A

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
Responsible party periodic field inspection and associated reporting  
,  
Land owner periodic field inspections and associated reporting  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Our State LTS Program is funded through a HSCA tax on petroleum products (0.9%). When possible, we always try to cost recover.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
Our Agency relies on annual inspections to identify non-compliance.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Administrative Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

When the conditions of the institutional control are not being met.

**Q22: Does your State agency have the authority to enforce using the following?**

Other (please specify)  
Revocation of the Certificate of Completion of Remedy for the Site.

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
The LTS data management system is part of our larger data management system for our agency.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

Data management system.

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**



**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Developers, Consultants, please list any others  
Public advertisement as part of Amended Proposed Plan for the Site.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Developers, Consultants

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,  
If yes please describe how and when you are notified.  
The Agency usually becomes aware during the annual inspection that ownership has changed. It is rare for the owner to contact us prior to property transfer.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Our State LTS Program is funded through a HSCA tax on petroleum products (0.9%). When possible, we always try to cost recover.

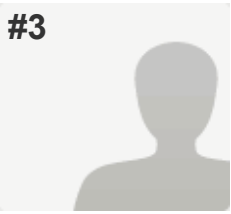
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Wendy March
Agency/Dept/Division/Office	Delaware Department of Natural Resources and Environmental Control
Address:	Site Investigation and Restoration Section
Address 2:	391 Lukens Drive
City/Town:	New Castle
State:	DE
ZIP:	19701
Email Address:	wendy.march@state.de.us
Phone Number:	wendy.march@state.de.us

#3



Complete-Anonymous

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Groundwater Use Restrictions,  
Deed Notices,  
Please list any other insitutional control you use but is not listed above  
Land Use Restrictions

**Q3: How many institutional controls are in place in your State?**

*Respondent skipped this question*

**Q4: On average how many institutional controls does your State agency implement per year?**

Do not know.

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Institutional control not discoverable,  
Institutional control not enforceable,  
Communicating the institutional control details was inadequate,  
,  
Monitoring is inadequate,  
The Stewardship/Implementation plan failed,  
Notice of transfer (deed restriction) was not survivable,  
,  
Violation of land use restriction,  
Physical break of a barrier

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Deed restriction. Mostly through federal regulations.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** Yes

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

There is no guidance.

**Q12: Does your agency require financial assurance specific to institutional controls?** Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

The files usually are found to be incomplete and it is difficult to recall the history of the site. Since there is no guidance and Federal Government have not delegate many of the tasks to the state the personnel feel unsecure on giving termination or modification to institutional controls.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.** *Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Our Agency has no institutional control monitoring program

**Q17: How is your State agency monitoring program funded?** *Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** No

PAGE 5: Enforcement

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Administrative Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?** *Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?** Monetary penalties

PAGE 6: Data Management

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

Facility's files

**Q25: Who can access the information from your data management system?** Agency and Public,  
Other (please specify) Public by a request

**Q26: How long are records maintained and active in your state agency's data management system?** 5 - 10 years

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner, Adjacent landowner,  
Local government, Banks

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner, Adjacent landowner,  
Local government, Banks

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

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**PAGE 8: Program Funding**

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**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

State funded and Federal Funded when the program is not delegate.

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** No

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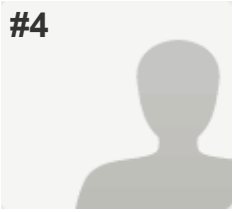
**Q33: Please complete your contact information.**

*Respondent skipped this question*

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#4

Kansas



PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Regulated/Permitted TSD facilities with current oversight by KDHE Bureau of Waste Management RCRA Program cannot be applied if there is no owner of record.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Groundwater Use Restrictions, Deed Notices,  
Please list any other insitutional control you use but is not listed above  
Develop an environmental use control agreement which describes restrictions, monitoring & maintenance requirements if necessary, notices, etc..  
Which are recorded on the deed.

**Q3: How many institutional controls are in place in your State?**

151 - 200

**Q4: On average how many institutional controls does your State agency implement per year?**

20-30

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Reporting is inadequate

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Better way to receive notice of property transfers and site activities
2. More funding upfront from applicants

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,  
If Yes please provide a link to the policy or procedure.  
[www.kdheks.gov/remedial/euc/index.html](http://www.kdheks.gov/remedial/euc/index.html)

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Application submitted by property owner or authorized representative. Once accepted into the EUC Programan EUCA is drafted by KDHE. If necessary, a long-term care agreement is negotiated with the RP. EUCA & LTCA is sent through management concurrence, including legal review, then signed by KDHE Secretary and notorized. EUCA is mailed to property owner for signature, notorized and recorded at deed office. Copy with deed recorded stamp submitted to KDHE. IC is considered effective until recoreded at the deed office.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain

Site-specific basis but each EUCA includes a monitoring and inspection section. When necessary, a separate L and attached to the EUCA.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe

LTCA is required for al category 3 properties. These include large acreage, higher toxic mobility of residual contamination, more complex and frequent monitoring/inspections. Often these are sites with an engineered design protective structure as part of the remedial strategy.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

[www.kdheks.gov/remedial/euc/index.html](http://www.kdheks.gov/remedial/euc/index.html)

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Ensuring sufficient data exists to support modification or termination.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

A written request is submitted by the property owner. KDHE reviews request and approves or may ask for additional information. If approved, an EUCA Amendment (or Termination letter) is drafted by KDHE and routed thru the same concurrence process as EUCAs and LTCAs. Once signed by Secretary of KDHE, the Amendment or Termination lettwer is sent to the owner for recording at the deed office. Termination requests must be responded to within 120 days.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
,  
Responsible party periodic field inspection and associated reporting  
,  
Land owner periodic field inspections and associated reporting  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Other (please specify)  
Specific notification requirements (change of land use, transfer, etc.) written into EUCA.

**Q17: How is your State agency monitoring program funded?**

Each EUCA is funded with a one time payment fee based on the size of the property, toxicity, mobility of the contaminants, frequency of monitoring and inspections and inspection cost (travel time, per diem, etc.). There are 3 categories. Level 1 - less than or equal to \$2000, Level 2 - less than or equal to \$10,000 and Level 3 - funded thru LTCA.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
Whether third party inspection or KDHE inspection, issues noted in the reports. Property owner or (RP in case of LTCA sites) is notified of "non-compliance" and given a timeframe to complete. A follow-up inspection is conducted to ensure deficiencies have been addressed. Sometimes it's just providing appropriate documentation.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Notice of Deficiency, Notice of Violation. The State has authority

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

Other (please specify)  
Terminate the EUCA and make clean-up occur to residential standards.



PAGE 6: Data Management

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link [http://www.kdheks.gov/remedial/isl\\_disclaimer.html](http://www.kdheks.gov/remedial/isl_disclaimer.html)  
There is a separate EUC Tab within the ISL Database.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach Webpage, presentations at the Kansas Environmental Conference and workshops

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
please list any others  
Implementing Party if there is no property owner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner,  
please list any others Implementing party (RP)

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
Language is written in all EUCAs that KDHE shall be notified 15 days prior to a property transaction. A copy of the deed with new owner information must also be provided within 30 days of completed transaction. However, this doesn't always happen and it's hard to enforce.

PAGE 8: Program Funding

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

The program was established using Federal funds (EPA 128(a)) with the idea once established, it will be self sustaining. See response to question #17. Currently supplemented with 128(a) funds to "build" up the fund.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

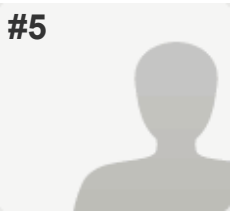
---

**Q33: Please complete your contact information.**

Name:	Brett Tavener
Agency/Dept/Division/Office	KDHE/Environment
Address:	1000 SW Jackson St.
Address 2:	Suite 410
City/Town:	Topeka
State:	KS
ZIP:	66612
Email Address:	btavener@kdheks.gov

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#5



Georgia

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
Tailored Ordinance, Groundwater Use Restrictions,  
Easements, Covenants, Statutes,  
Administrative Orders, Consent Decrees, Permits,  
Deed Notices, Advisories

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

Approximately 30 per year. Virginia addressed this question by averaging the number of UECAs recorded in a year, as well as deed restrictions recorded resulting from voluntary remediation sites receiving certificates that require ICs.

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Institutional control not discoverable,  
Monitoring is inadequate, Reporting is inadequate

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |  |
|----|--|
| 1. | Implement an IC registry                     |
| 2. | Require monitoring and reporting             |
| 3. | Require inspection, tracking and enforcement |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Virginia has implemented a UECA statute and regulation which incorporates a template:

<http://law.lis.virginia.gov/admincode/title9/agency15/chapter90/>

The voluntary remediation program uses guidance and a template form:

<http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RemediationProgram/VoluntaryRemediationProgram/GuidanceandRegulations.aspx>

For wetlands Virginia utilizes a conservation easement.

---

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,

Please explain

Virginia does not have regulations, guidance or policy pertaining to the selection and implementation of institutional controls other than the requirements found in the UECA regulation.

---

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe

Virginia follows EPA guidance regarding LUCIPs for actions taken in accordance with CERCLA for Federal Facility participants and responsible parties. The voluntary remediation program may require a LUCIP for individual site specific circumstances.

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**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Not applicable to Virginia

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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### PAGE 3: Modification or Termination

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Not applicable

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**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Not applicable

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**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

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### PAGE 4: Monitoring and Tracking

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Our Agency has no institutional control monitoring program  
,  
Responsible party periodic field inspection and associated reporting  
,  
Responsible party institutional control compliance certification  
,  
Land owner periodic field inspections and associated reporting  
,  
Land owner institutional control compliance certifications  
,  
Coordination with local government permitting process (e.g., local government notifies when permits are issued at an IC site)

**Q17: How is your State agency monitoring program funded?**

Not applicable.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

If Yes please explain. Not applicable

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,  
Federal Facilities Agreement, Consent Order,  
Unilateral Order,  
Please list other instruments you may use  
Each of these tools are available to the State, Virginia has never applied them.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Absent a monitoring and reporting component of a compliance program specific to ICs, the State has no criteria for enforcement of an IC. The exception would be specific criteria listed in a consent decree, VRP certificate or established in an administrative order.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

Virginia does not track ICs.

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

*Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Adjacent landowner,  
please list any others  
The Agency does not provide notice when an IC is implemented except to follow the general public notice requirements in accordance with the applicable program.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

please list any others  
General public notice requirements applicable to the individual program.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
Virginia's UECA requirements include a notice provision and a property transfer fee. Virginia's remedy consent orders may require a notice provision.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Virginia's UECA regulation has an established a fee structure, collection of participant fees for participation in the voluntary remediation program, and cost recovery/reimbursement activities through a remedy consent order.

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

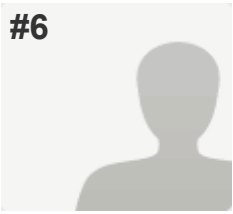
---

**Q33: Please complete your contact information.**

Name:	Michelle Hollis
Agency/Dept/Division/Office	Department of Environmental Quality
Address:	629 East Main Street
City/Town:	Richmond
State:	VA
ZIP:	23218
Email Address:	michelle.hollis@deq.virginia.gov
Phone Number:	804-698-4014

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#6



Oregon

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Groundwater Use Restrictions, Easements,  
 State Use Restrictions, Deed Notices,  
 State Registries, Advisories,  
 Please list any other insitutional control you use but is not listed above  
 Land-use restrictions - assumed to be covered by "State Use Restrictions" category.

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

18

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Please list any other failure not identified above. We have not sytematically reviewed ICs, and thus have rarely noted failed ICs.

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Develop a systematic IC review process and schedule (in progress).
2. Provide better public info. about ICs, including location, mapping, IC elements/requirements.
3. Increase DEQ's confidence that ICs are in fact on property deeds, and prospective buyers are aware of the ICs.

PAGE 2: Selection and Implementation



**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,

If Yes please provide a link to the policy or procedure.

(From 1998, but still relevant):

<http://www.deq.state.or.us/lq/pubs/docs/cu/GuidanceUseofInstitutionalControls.pdf>

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**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

1. Guidance on web, referred to in Q7 above.
2. Easement & Equitable Servitudes (E&ES) template, available to DEQ staff on internal Sharepoint site.
3. Reliance on project manager familiarity with process and recording requirements (w/assistance as needed from DEQ Legal Policy Advisor).

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**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain

If an IC includes such obligations, the E&ES spells them out clearly.

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**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,

If yes please describe (I'm not sure what this refers to.)

---

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

N/A.

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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### PAGE 3: Modification or Termination

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

This does not happen often, and DEQ lacks an interactive tracking system that might provide an easy answer to this question. In other words, such challenges may have arisen, but it would take a lot of time to research this.

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**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Does not exist.

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**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

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### PAGE 4: Monitoring and Tracking

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting

Land owner periodic field inspections and associated reporting

**Q17: How is your State agency monitoring program funded?**

Once implemented, it will likely be funded by current property owner (for complex reviews) or EPA's State Response grant (for simple reviews).

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No,

If Yes please explain.

However, once up and running, the IC review process at DEQ will identify and seek to correct deficiencies.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action  
It's possible we have, but this would be very hard to track down.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Please list other instruments you may use N/A

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

N/A

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link

Search form for sites:

<http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp?listtype=lis&listtitle=Environmental+Cleanup+Site%20Information+Database> In the "Site Actions or Milestones" dropdown field, select "Sites with Engineering or Institutional Controls," then click on "Submit" at bottom left.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner,  
please list any others  
Before implemented, all remedial-action decisions, including ICs elements, go out for a 30-day public notice & comment. However, the actual implementation does not include such notice.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,  
If yes please describe how and when you are notified.  
In some cases, the E&ES requires such notice, but we rarely if ever receive such notice.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

The cost-recovery process from current owners for DEQ oversight of a site's remedial actions includes recovery of DEQ's costs associated with all aspects of ICs, if needed.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

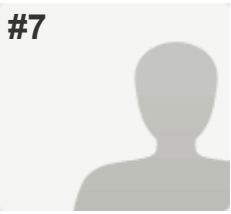
Yes

**Q33: Please complete your contact information.**

Name:	Gil Wistar
Agency/Dept/Division/Office	Oregon Dept. of Environmental Quality
Address:	811 SW 6th Ave.
City/Town:	Portland
State:	OR
ZIP:	97204
Email Address:	wistar.gil@deq.state.or.us
Phone Number:	(503) 229-5512

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#7



Missouri

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Statutory provision prohibits use of environmental covenant at regulated petroleum UST and AST sites

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
Groundwater Use Restrictions, Covenants,  
State Use Restrictions, Administrative Orders,  
Consent Decrees, Permits, Deed Notices,  
State Registries

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

15-20

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Communicating the institutional control details was inadequate  
,  
Violation of covenant, Physical break of a barrier

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |  |
|----|--|
| 1. | Adding data to haz substance locator map, esp. tank sites      |
| 2. | centralizing IC inspection, monitoring and tracking activities |
| 3. | establishing a dedicated and adequate fund for IC activities   |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Dependent on type of site. Petroleum tank (UST/AST) sites use common law restrictive covenant or deed notice, non-tank sites use Mo Environmental Covenant Act environmental covenant (EC). In either case, responsible party (RP) or agency project manager determine need for institutional control (IC). RP develops initial draft and submits to agency for review. PM reviews and sends on to legal staff. Once IC is approved, RP finalizes and submits for agency signature (agency is a signatory on restrictive covenants and ECs, not on deed notice). PM returns signed IC to RP for signature and recording. RP submits as-filed copy as documentation of recording and for agency files. Copy sent to LTS unit for inclusion in LTS database and publicly available Hazardous Substance Site Locator. EC template at <http://dnr.mo.gov/env/hwp/docs/BVCPMoECACovenantTemplate4-12-2012Web.pdf>, restrictive covenant and deed notice templates at <http://dnr.mo.gov/env/hwp/tanks/mrbca-pet/mrbca-pet-tanks.htm>. Guidance for process described above under development. General long-term stewardship guidance at <http://dnr.mo.gov/env/hwp/lts.htm> and in Section 11 of risk-based corrective action guidance available at <http://dnr.mo.gov/env/hwp/mrbca/mrbca.htm>.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain

Note: We interpret "monitoring" to mean post-closure data collection. Monitoring is generally not required in association with institutional controls, as institutional controls are generally applied at the end of a project. However, when required, the monitoring would be clearly defined in the institutional control itself.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe occasionally require soil mgmt. plans as addendum to institutional control

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Missouri has general long-term stewardship guidance in a couple of places: for brownfield/voluntary cleanup program sites, see <http://dnr.mo.gov/env/hwp/lts.htm> and section 11 of risk-based corrective action guidance at <http://dnr.mo.gov/env/hwp/mrbca/mrbca.htm>. For UST/AST sites, see section 11 of the tanks risk-based corrective action guidance and other information on this page: <http://dnr.mo.gov/env/hwp/tanks/mrbca-pet/mrbca-pet-tanks.htm>. An internal template is available for soil management and site management plans, which, per response to item 10 above, are occasionally required as an addendum to an institutional control. The template is available upon request.

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

None to-date.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Modification and termination are addressed in the template documents, although process and decision criteria are not (guidance/policy in this regard not developed). For non-tank site environmental covenants, see Section 11 of the template covenant at <http://dnr.mo.gov/env/hwp/docs/BVCPMoECACovenantTemplate4-12-2012Web.pdf>. For tank sites, see Section 10 of two-party covenant and Section 5 of single-party covenant at <http://dnr.mo.gov/env/hwp/tanks/mrbca-pet/mrbca-pet-tanks.htm> (scroll down to "Activity and Use Limitations").

---

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Rarely

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**PAGE 4: Monitoring and Tracking**

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**Q16: Does your State agency have any of the following institutional control monitoring programs?**

- Responsible party periodic field inspection and associated reporting
- ,
- Responsible party institutional control compliance certification
- ,
- Land owner periodic field inspections and associated reporting
- ,
- Land owner institutional control compliance certifications
- ,
- Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

---

**Q17: How is your State agency monitoring program funded?**

For our Brownfield Voluntary Cleanup Program (BVCP), any BVCP site at which, after closure, contaminant concentrations will be greater than the target levels for unrestricted land use must have an Environmental Covenant (EC). The EC must be accompanied by a fee of \$15,000 which is intended to fund the BVCP's ongoing inspection and monitoring activities for the site. However, at this time, the funding is insufficient to cover all costs, so a variety of funding sources is used.

Specific funding is not available for department monitoring of institutional controls used at tank sites. Other regulatory programs such as Superfund and RCRA use either owner/operator fees, cost-recovery, or federal funding to monitor institutional controls at sites under the authority of those programs. Our Federal Facilities Section funds their IC/LTS activities through grants and funding agreements with responsible parties.

---

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

The Hazardous Waste Program (HWP) is in the process of developing a central, program-wide long-term stewardship monitoring and tracking program. Currently, the LTS program is used only for monitoring/tracking/inspecting VCP sites and a few sites closed under CERCLA. Sites under the regulatory framework of CERCLA and RCRA are subject to five-year reviews, and those with institutional controls are reviewed more often, and the HWP is responsible for all such reviews. In all cases, post-closure monitoring and tracking are, among other purposes, intended to identify non-compliance as well as follow-up actions and resolution (e.g., return to compliance, enforcement action, etc.).

---

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action  
Our VCP accounts for the vast majority of institutional controls but lacks regulatory authority for enforcement. The VCP can, however, rescind a Certification of Completion and take civil action against a party for an institutional control violation if needed. Other Hazardous Waste Program sections, including those responsible for overseeing RCRA and CERCLA sites, have to-date not needed to take action regarding an institutional control.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,  
Federal Facilities Agreement, Consent Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Criteria will vary from site to site and depending on regulatory authority. Generally, requirements for an IC are laid out in the Remedial Design and Long-term Stewardship documents for the site. Enforcement action for an IC would be initiated if the requirements in the site's remedy documentation are not met. Five-year reviews are also used to determine if a remedy, including any ICs, remains protective. If a violation of an IC was discovered, corrective action would be required. If corrective actions are not taken, are incomplete, or slow to be implemented, enforcement mechanisms may be used to compel compliance. Note that our Brownfield Voluntary Cleanup Program does not have enforcement authority; significant violations of an IC at a BVCP site would be addressed either through civil litigation or rescission of the Certification of Completion (or both).

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

---

**PAGE 6: Data Management**



**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
 The Missouri Environmental Covenants Act (MoECA) required the department to create a public database of properties that have restrictions (i.e., environmental covenants) provided for by the law. This information is available through the new hazardous substance investigation and cleanup on-line information system, known as the Hazardous Substance Site Locator, at <https://www.dnr.mo.gov/molts/gov/>. This website features an interactive map viewer with individual site status summaries from department databases with links to important documents. It also includes downloadable data layers local governments or utilities can download and use in their own permitting and planning efforts. The site provides a comprehensive information resource designed to ensure property is used safely in Missouri. The map currently does not include regulated UST/AST sites, but work is underway to include such sites on the map. UST/AST sites are included in a separate, dedicated database that includes information on institutional controls but is not wholly available to the public. Finally, the Hazardous Waste Program maintains the internal (not publicly available) Site Management and Reporting System (SMARS) database, which is populated with all sites from the following HWP sections: VCP, Superfund, RCRA, and federal facilities. SMARS is searchable and includes institutional control and other long-term stewardship data. SMARS is the primary means by which the HWP manages site data, including institutional controls.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public,

Other (please specify)  
 Per #23 above, the Haz. Substance Site Locator is publicly available.

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control. ,  
 Other (please explain) No intention to delete records.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
 Conference presentations, meetings with cities and utilities

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Tenants, Local government, please list any others  
Covenant holder, if different from owner. Tenants notified as needed.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Tenants, please list any others  
Covenant holder, if different from owner. Tenants notified as-needed.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
See Section 9 of environmental covenant template at <http://dnr.mo.gov/env/hwp/docs/BVCPMoECACovenantTemplate4-12-2012Web.pdf>. See Section 8 of two-party covenant template (used at regulated UST/AST sites) at <http://dnr.mo.gov/env/hwp/tanks/mrbca-pet/mrbca-pet-tanks.htm>. No notification procedure if single party covenant used at regulated UST/AST site (and most covenants at tank sites are of this type).

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Please refer to response to #17 above.

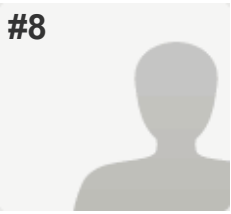
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Timothy Chibnall
Agency/Dept/Division/Office	DNR/DEQ/HWP
Address:	PO Box 176
City/Town:	Jefferson City
State:	MO
ZIP:	65102-0176
Email Address:	tim.chibnall@dnr.mo.gov
Phone Number:	573-522-1833

#8



Indiana

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No,  
If Yes please explain the limitations.  
On the contrary, our state laws require the approval of ICs when proposed as long as they "manage risk". ICs may be used in addition to, or in lieu of, active remediation.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Local Ordinance or Permit , Tailored Ordinance, Covenants, Permits, Deed Notices, State Registries

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

175

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Notice of transfer (deed restriction) was not survivable  
,  
Violation of land use restriction ,  
Physical break of a barrier

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |   |
|----|---|
| 1. | Implement a long term stewardship program with requirements |
| 2. | Develop and implement a compliance program                  |
| 3. | Improve outreach to stakeholders                            |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,

If Yes please provide a link to the policy or procedure.

Evaluation criteria in Chapter 12 of Remediation Closure Guide

[http://www.in.gov/idem/files/remediation\\_closure\\_guide\\_sect\\_12.pdf](http://www.in.gov/idem/files/remediation_closure_guide_sect_12.pdf).

---

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Indiana provides an restrictive covenant template (not mandatory, other formats are acceptable). The env. agency's review authority of ICs is limited to the specific land use restrictions and obligations. There is an internal review process for ICs in an agency SOP. After recordation a copy must be returned to the environmental agency. Most closures do not occur until recorded restrictive covenant is received.

---

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,

Please explain

There is currently not a compliance program in place. The state is now researching this topic due to more complicated sites with engineering controls or the need for long term monitoring. Monitoring objectives would be established with concurrence of technical staff such as geologists, chemists, and risk assessors.

---

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,

If yes please describe

But the state is currently developing policy for long term stewardship. The state RCRA corrective action program does require post closure permits for some sites.

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**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

No long term control management plan, but restrictive covenant templates available at <http://www.in.gov/idem/5959.htm>

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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### PAGE 3: Modification or Termination

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

We have experienced problems when 3rd parties are named in the IC's approval requirements for modification/termination and can not be located.

---

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

There is not yet a documented process. The state agency is developing a rule to handle these requests (working on draft 2nd notice language currently).

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Our Agency has no institutional control monitoring program  
,  
Other (please specify)  
A small amount of random audits are conducted annually. In 2014, 15 site audits were conducted.

**Q17: How is your State agency monitoring program funded?**

There is no funding allocated for IC monitoring.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** No,  
If Yes please explain.  
There is no formal monitoring for non-compliance due to a lack of funding and staffing.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?** No,  
Please describe at least one enforcement action  
However, we have sought and received, voluntary compliance after issuing letters documenting inadequate cap maintenance.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Warning Letter,  
Please list other instruments you may use  
In a few instances, warning letters were sent for known non-compliance issues.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

No compliance program exists.

**Q22: Does your State agency have the authority to enforce using the following?** Injunctive relief (meaning an order to act or cease further activities)  
,  
Other (please specify)  
See Indiana Code IC 13-14-2-6 for enforcement authority.

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
 A Microsoft Access database provides the foundation of the registry, with fields to track information such as site program, site identification number, address, county, type of IC, site-specific restrictions, contaminant type, affected media, property owner, and land parcel information. A subset of this information is provided publically via a PDF format file entitled the "IC Registry Remediation Sites Report" on the IDEM web site ( <http://www.in.gov/idem/5959.htm> ). A separate summary report listing solid waste sites subject to deed notices is available at the same web address. The second component of the management system is integration with the Virtual File Cabinet (VFC), Indiana's web-based document repository. Hyperlinks on the "IC Registry Remediation Sites Report" allow users to open and view each original IC for the site (e.g. restrictive covenant, deed notice). Finally, IC GIS data can be viewed from the IndianaMAP (<http://indianamap.org>) Indiana's statewide GIS mapping platform. The IC GIS data layer shows the location of each property subject to an IC either through a single point or GIS polygon and also contains information about the type of control, media impacted, and types of contaminants in the control area.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
 Yes, but limited due to resource constraints. Present in various venues (water well drillers, government units) as time allows.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner,  
 please list any others  
 Information posted on agency web site (Registry summary report).

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner, Consultants, please list any others  
Original owner notified IF their approval is specified in original restrictive covenant.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,  
If yes please describe how and when you are notified.  
Not consistently. There is no statutory requirement for the agency to be notified of property transfers. IDEM's optional restrictive covenant template contains an agency notice provision, but compliance with that requirement is sporadic.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Agency staff working on ICs may have cost recovery for implementation in a couple programs (VRP and state cleanup). IDEM has received statutory approval to develop rules to cost recover on ERC modifications. IC tracking, monitoring, compliance, etc. are not funded.

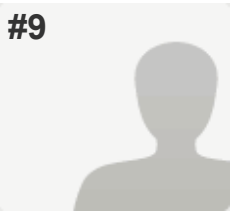
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Nancy Dollar
Agency/Dept/Division/Office	Indiana Dept. of Environmental Management
Address:	100 North Senate Ave.
Address 2:	IGCN 1101
City/Town:	Indianapolis
State:	IN
ZIP:	46142
Email Address:	ndollar@idem.in.gov
Phone Number:	317 234-4814

#9



Nebraska

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Zoning, Local Ordinance or Permit , Groundwater Use Restrictions, Easements, Covenants, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	26 - 50
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	2-4
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Please list any other failure not identified above. Lack of enforcement of city ordinance banning private wells.
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Additional outreach to affected parties/public.
2.	More audits.

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	

Drafts are cooperatively developed with responsible parties and recorded with the appropriate county Register of Deeds. Model covenant available at:  
<http://deq.ne.gov/Publications.nsf/pages/05-162#Sec5>



**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain Reporting is required annually.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Not applicable.

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Not applicable.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Not applicable.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land owner periodic field inspections and associated reporting  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Section 128(a) Cooperative Agreement with EPA.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
This is the purpose of any monitoring/tracking.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?** No,  
Please describe at least one enforcement action  
Not applicable.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** *Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**  
Not applicable.

**Q22: Does your State agency have the authority to enforce using the following?** Injunctive relief (meaning an order to act or cease further activities)  
,  
Other (please specify)  
Possible revocation of NFA letter.

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** Yes,  
If Yes please describe your agency's Data Management System or provide a link  
Institutional controls are recorded in a database, reports from which are published annually on the agency website at:  
<http://deq.ne.gov/NDEQProg.nsf/ICTSView.xsp>

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**  
Not applicable.

**Q25: Who can access the information from your data management system?** Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?** During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** Yes,  
If Yes please describe your Agency's public outreach  
Periodic outreach to state well drillers' association to inform of restrictions.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner, Realtors, please list any others County Register of Deeds

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** Yes

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

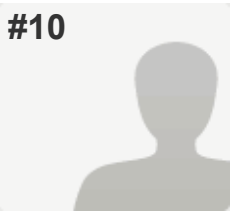
Selection and implementation are covered per site-specific VCP agreements (fee-based program) Monitoring and enforcement funded by Section 128(a) cooperative agreement with EPA.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

**Q33: Please complete your contact information.**

Name: Carrie Wiese  
 Agency/Dept/Division/Office: Nebraska Department of Environmental Quality  
 Address: 1200 N Street, Suite 400  
 City/Town: Lincoln  
 State: NE  
 ZIP: 68509  
 Email Address: carrie.wiese@nebraska.gov  
 Phone Number: 402-471-6411

#10



Mississippi

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Covenants, Deed Notices, State Registries

**Q3: How many institutional controls are in place in your State?**

101 - 150

**Q4: On average how many institutional controls does your State agency implement per year?**

10-20

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

The Mississippi Department of Environmental Quality maintains in our Groundwater Assessment and Remediation Division a template for our Environmental Covenants that are paired with an Agreed Order between the PRP and our agency that is consistent with Mississippi's Uniform Environmental Covenants Act.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
The Environmental Covenant is paired with an Agreed Order that references an approved Compliance Monitoring Plan. Implementation of those monitoring requirements are enforceable through the order.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe  
I'm not sure that I understand exactly what you are asking for here. Please contact for clarification.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

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**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

All of our Agreed Orders and Environmental Covenants are approved by our Commission, the MCEQ. Once a covenant can be removed, we take it before the Commission for approval. The MCEQ then issues an order for removal of the covenant consistent with the Mississippi Uniform Environmental Covenants Act.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Briefly, institutional controls can be removed once the party can show cause that the reasons for the controls no longer exist.

Example 1 - A site with groundwater contamination has been remediated to below MDEQ TRGs. They have provided data from two consecutive sampling events showing detections are below TRGs. They can then apply to MDEQ for removal of the institutional controls.

Example 2 - Site has lead contamination in soils above MDEQ TRGs. The site is capped to effectively prohibit exposure and institutional controls in the way of an Environmental Covenant are put into place. Since the lead contamination is capped in place, those controls will have to remain in place until those materials are removed. They will likely be in place indefinitely.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

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**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting

,

Responsible party institutional control compliance certification

,

Land owner institutional control compliance certifications

,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

,

Land owner institutional control permit requirements

**Q17: How is your State agency monitoring program funded?**

Fee based programs - PRP or interested party enrolls in the Mississippi Voluntary Evaluation Program or the Mississippi Brownfields Program.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

Again, not sure that I understand the question the way this is worded. The State's review would identify if there was non-compliance, but it has rarely been noted as an issue.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
Typically it is a late certification submission. We'll touch base and notify them of the deficiency.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Administrative Order,

Consent Order, Unilateral Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
[http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD\\_filelist/\\$FILE/Filelist.xls?OpenElement](http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_filelist/$FILE/Filelist.xls?OpenElement)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

20 plus years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Adjacent landowner, Local government, please list any others  
 Letters to landowners, adjacent landowners and local city and county officials. Public notices are placed in the local paper and the City Clerk posts notice in their office.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Adjacent landowner, Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.  
 It is a condition of our Agreed Orders. Notice required 30 days before the property is transferred.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Fee based programs

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

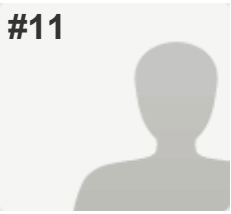
**Q33: Please complete your contact information.**

Name:	Willie McKercher
Agency/Dept/Division/Office	MDEQ - GARD
Address:	PO Box 2261
City/Town:	Jackson
State:	MS
ZIP:	39225
Email Address:	Willie_McKercher@deq.state.ms.us
Phone Number:	601-961-5731

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#11



Incomplete-Anonymous

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Zoning, Groundwater Use Restrictions, Easements, Covenants, Deed Notices, State Registries, Advisories
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	don't know
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Monitoring is inadequate, Reporting is inadequate
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Web based reporting of IC maintenance

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
Each program seems to have a specific, standard procedure	
<b>Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.</b>	Yes

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

*Respondent skipped this question*

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land owner periodic field inspections and associated reporting  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

*Respondent skipped this question*

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

*Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

*Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

*Respondent skipped this question*

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

*Respondent skipped this question*

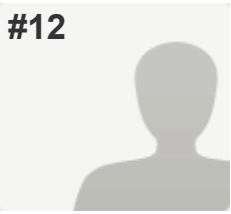
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

*Respondent skipped this question*

**Q33: Please complete your contact information.**

*Respondent skipped this question*

#12



Vermont

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Groundwater Use Restrictions, Easements, Covenants, Administrative Orders, Consent Decrees, Deed Notices

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

10

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

*Respondent skipped this question*

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |  |
|----|--|
| 1. | Make it easier to implement                          |
| 2. | Evaluate all "old" ICs                               |
| 3. | Have clear guidance on circumstances to implement IC |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We have a template for DR and NTLR. If it's a DR, the attorney's and PM work together to draft the document, then the document needs approval from town Selectboard, then travels to Commissioner, Secretary and Governor for final selection. the DR is recorded in the Book of Land Records for Town and sent back to PM with Book and Page number stamped on document.

NTLR are filled out by consultant usually, approved by State PM and then recorded in the Town Land Records and submitted back to State with Book and Page #

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,  
Please explain  
DR's require annual monitoring (but recently -2009),  
NTLR do not require monitoring.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

the only issue I know of is on an NPL site where EPA is also a signatory on the DR. The state wanted to change it and EPA did not - we have not come to resolution yet.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Never

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting  
,

Land owner periodic field inspections and associated reporting  
,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

It is not funded, we use whatever funds are associated with the project.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
If a report indicates that there is an issue, we request the RP to fix the issue

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Notice of Violation

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Response indicating that required remedy repair will not be conducted.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

<http://anrmaps.vermont.gov/websites/anra/?LayerTheme=4>

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?** 20 plus years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** Yes,  
If Yes please describe your Agency's public outreach we do this during the corrective action plan public notice

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner, Adjacent landowner, Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?** *Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

**PAGE 8: Program Funding**

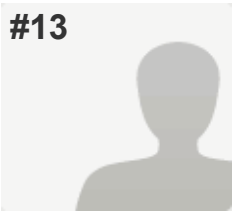
**Q31: Please explain briefly how your State agency's institutional control activities are funded?** *Respondent skipped this question*

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

**Q33: Please complete your contact information.**

Name: Queen Trish Coppolino  
 Agency/Dept/Division/Office: VT Agency of Natural Resources  
 Address: Land of Ice and Snow  
 City/Town: Frozen Town  
 State: VT  
 Email Address: patricia.coppolino@state.vt.us  
 Phone Number: 802-249-5822

#13



Michigan

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
 Tailored Ordinance, Groundwater Use Restrictions,  
 Easements, Covenants, Statutes,  
 Administrative Orders, Consent Decrees, Permits,  
 Deed Notices,  
 Please list any other insitutional control you use but is not listed above  
 Licensing Agreements (MDOT), Road ROW alternate controls, contracts

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

25+ estimate

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
 Communicating the institutional control details was inadequate  
 ,  
 Violation of land use restriction ,  
 Potential for exposure,  
 Please list any other failure not identified above.  
 Local Unit of Government representatives are unaware of ordinances that were previously enacted due to staff turnover. The local zoning authority definition of specific land use is not the same definition envisioned in the development of cleanup criteria uses.



**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Require all institutional controls to be recorded with the Register of Deeds Office
  2. Require an institutional control as a component of Remedial Action or Corrective Action plan
  3. Establish a scheduled monitoring program by DEQ staff to determine compliance with ICs
- 

**PAGE 2: Selection and Implementation**

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**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,  
If Yes please provide a link to the policy or procedure.  
Options are available in the Environmental Remediation state regulations.

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**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We have model documents and guidance which are currently being revised. Statutes provide for recording with register of deeds or other public notification.

Part 111 template for restrictive covenants, internal electronic storage location. Available upon request.  
Part 111 example language for 525 deed notices internal electronic storage location. Available upon request.

---

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
Yes, if one or more institutional controls (under Part 201 - environmental remediation statute) have long-term monitoring obligation in Past-Closure Agreement. Under Part 111, Hazardous Waste Management, in its corrective action long-term agreement include provisions for the implementing party to certify the controls are in place and still effective.

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**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
As a general rule no, but under Part 111, it is currently required.

---

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

There is currently no long-term institutional control management plan guidance.

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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**PAGE 3: Modification or Termination**

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Generally, there are no problems modifying or terminating institutional controls. When there are problems, it is due to a new property owner wishing to modify the land use or implement additional corrective actions to be protective of or allow for different property uses.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

For scenarios involving restrictive covenants that require department approval, the DEQ has a templates available that are to be recorded with the Register of Deeds office that describes the modification or termination of a restrictive covenant.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party institutional control compliance certification

,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

,

Other (please specify)  
Documentation of Due Care compliance that would describe describe a land owners compliance with land and resource use restrictions

**Q17: How is your State agency monitoring program funded?**

RCRA base grant, state funding, or cost recovery from responsible party

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** Yes,

If Yes please explain.  
Under RCRA, the responsible party is sent a notice of noncompliance and a schedule by which compliance is to be achieved.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** Yes,

Please describe at least one enforcement action  
Violation notices have been sent to parties not executing a deed notice to identify that their facility property has been used to manage hazardous wastes.  
Enforcement of Consent Order which required the implementation of institutional controls.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,  
Federal Facilities Agreement, Consent Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

When there is a failure of the institutional control or the institutional control is not implemented.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)  
,  
Other (please specify)  
Voidance of closure report or No Further Action Report

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
Internal excel spreadsheet Internet-based Mapping platform - Michigan Environmental Mapper

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
Outreach to LUGs, EPA, DOJ - Not necessarily for hazardous waste facilities

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Local government, Other State agencies,  
please list any others  
For RCRA, individuals or the facility mailing list.  
Under Environmental Remediation or Leaking  
Underground Storage Tank acts, individuals  
implementing the institutional controls are required to  
provide notice.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,  
Local government, Other State agencies,  
Home owners associations

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
For the State environmental remediation or leaking  
underground storage tank acts, occasionally. Under  
RCRA, Surperfund, and DSMOA facilities, there is a  
provision to notify the department of the facility  
transfers are included in the corrective action consent  
orders. A provision to notify the OWMRP of facility  
transfers are included in the corrective action consent  
orders, the corrective action long-term agreement, and  
the Part 111 rules.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

RCRA, EPA, or DSMOA based grants, state funding or cost recovery from responsible parties.

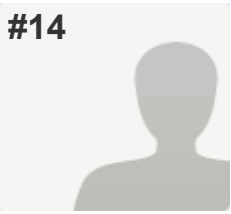
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Dan Yordanich / Kimberly Tyson
Agency/Dept/Division/Office	Remediation and Redevelopment Division / Office of Waste Management and Radiological Protection MDEQ
Address:	525 West Allegan Street
Address 2:	5th Floor South / 4th Floor South
City/Town:	Lansing
State:	MI
ZIP:	48933-7926
Email Address:	yordanichd@michigan.gov / tysonk@michigan.gov
Phone Number:	517-284-5174 / 517-284-6574

#14



Texas

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Except in limited circumstances, Texas rules require that landowner consent must be obtained to secure an IC to prevent any appearance of governmental takings.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Tailored Ordinance, Covenants, Deed Notices,  
Please list any other insitutional control you use but is not listed above  
Easements are not a mechanism for ICs explicitly provided for in the TCEQ's remediation rules; however, they are implemented in conservation efforts as part of the NRDA program.

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

50 to 75

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Institutional control not discoverable,  
Institutional control not enforceable,  
Monitoring is inadequate, Reporting is inadequate,  
Violation of covenant,  
Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Periodic monitoring/inspections of compliance with IC restrictions
2. Ensure timely implementation of IC for each site
3. Ensure ICs filed by other agencies (e.g., EPA) are enforceable by state

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** No

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**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Current and legacy Texas remediation rules provide IC requirements (See 30 Tex. Admin. Code sec. 350.111 and 30 Tex. Admin. Code sections 335.560 and 335.565 )  
Templates for the two sets of rules are provided for in guidance document (RG-366/TRRP-16 <http://www.tceq.texas.gov/remediation/trrp/guidance.html>) and rule (30 TAC 335.569 Subchapter S at <http://www.tceq.texas.gov/rules/indxpathdf.html/#335>). ICs for PST sites are specified in rule at 30 TAC 334.206 and 208 ( [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=30&pt=1&ch=334&sch=G&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=30&pt=1&ch=334&sch=G&rl=Y))

Once drafted per rule and guidance, an agency attorney typically reviews the draft before it is submitted for execution. Once it is executed, the document is filed in the appropriate county deed records, and the state obtains a file stamped copy of the recorded document.

---

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,  
Please explain  
The TCEQ does not require monitoring of the status of the institutional control once it is filed, however, monitoring and maintenance obligations for physical and engineering controls that require ongoing operation and maintenance must be defined in the institutional control.

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**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

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**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

N/A

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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**PAGE 3: Modification or Termination**

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

N/A

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**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

See 30 TAC sections 350.111 (Subchapter F) and 350.35(f) (Subchapter B) at <http://www.tceq.texas.gov/rules/indxpathdf.html/#350>. For PST sites see 30 TAC 334.206 (<https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/334g.pdf>)

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**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Not Applicable

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**PAGE 4: Monitoring and Tracking**

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**Q16: Does your State agency have any of the following institutional control monitoring programs?** Our Agency has no institutional control monitoring program  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Other (please specify)  
We have no specific IC monitoring program, but some ICs require periodic inspection/reporting by the terms of the document and TCEQ participates in a 5 year review process for particular federal Superfund sites.

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**Q17: How is your State agency monitoring program funded?**

N/A

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**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** No,  
If Yes please explain. N/A

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**PAGE 5: Enforcement**

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**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?** No,  
Please describe at least one enforcement action N/A

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**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Warning Letter, Notice of Violation,  
Administrative Order,  
Please list other instruments you may use N/A

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**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Follow standard TCEQ enforcement procedures if efforts to obtain voluntary compliance fail to rectify the issue.

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**Q22: Does your State agency have the authority to enforce using the following?** Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

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**PAGE 6: Data Management**

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**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

No,  
If Yes please describe your agency's Data Management System or provide a link  
N/A

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

Generally, most remediation programs maintain ICs in the relevant project case file. The Superfund program uses a database to track filed ICs associated with a site. While the information is available to the public, the database does not have an online search function.

**Q25: Who can access the information from your data management system?**

Other (please specify)  
We do not have a data management system; however, IC documents maintained in TCEQ case files are public record.

**Q26: How long are records maintained and active in your state agency's data management system?**

Other (please explain) N/A

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
Generally, written landowner consent is required before IC can be filed. In the Superfund program, the agency also conducts public meetings to solicit comment prior to implementing land use restrictions and prior to selecting a remedy. Haz waste permits can also undergo a public hearing.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner,  
please list any others  
The IC must be filed in the appropriate county property records.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,  
If yes please describe how and when you are notified.  
N/A

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Activities related to ICs are funded primarily by the relevant program's state and federal funds as part of the standard budget. Additionally, some LPST sites (including activities related to ICs) are funded by private insurance.



**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

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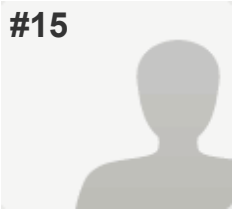
**Q33: Please complete your contact information.**

Name:	Paul Lewis
Agency/Dept/Division/Office	TCEQ/Remediation Division
Address:	MC-133
Address 2:	P. O. Box 13087
City/Town:	Austin
State:	TX
ZIP:	78711-3087
Email Address:	paul.lewis@tceq.texas.gov
Phone Number:	512-239-2341

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#15

California



PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Zoning, Tailored Ordinance, Groundwater Use Restrictions, Covenants, Statutes, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	20 or a year
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Communicating the institutional control details was inadequate , The Stewardship/Implementation plan failed, Violation of covenant, Physical break of a barrier
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	More local ordinances
2.	The ability to fence and post more UXO sites

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	

Ideally ICs are captured in a covenant which staff writes using a template. The covenant is reviewed by all parties who will sign it with attorney input. The last step is when the covenant is recorded with the local planning agency.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,  
Please explain  
IC Monitoring is not always required. Many older covenants did not require any monitoring or reporting.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
In most cases. Describes compliance, monitoring and reporting requirements.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Department of Toxic Substances Control public website.

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

ICs or covenants can be difficult to terminate or modify due to the fact we do not currently have a procedure in place. Also a covenant can be done for a large piece of property then the property is developed the contamination is addressed and the property is divided into smaller pieces and then you need consent to remove the ICs from landowners.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

<http://www.dtsc.ca.gov/SiteCleanup/SCLandUseRestrictionSites.cfm>

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers) ,  
Land owner periodic field inspections and associated reporting ,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

For the most part landowners pay for IC development and monitoring.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

Right now we use Terredex a one call system

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

There is no set criteria. If a breach of the ICs occurs I assume the action we would take would depend on the risk posed by the breach.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
Enviro-stor a large database that contains information about most if not all the sites we manage.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Local government, Other State agencies,  
Construction / utility

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,  
Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Mostly by responsible parties. There is no state funding assigned to manage ICs.

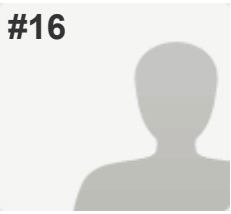
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Carolyn Tatoian Cain
Agency/Dept/Division/Office	Cal/EPA, DTSC
Address:	8800 Cal Center Drive
City/Town:	Sacramento
ZIP:	95826
Email Address:	ctatoian@dtsc.ca.gov
Phone Number:	916 255 3771

#16



Utah-Menatti

PAGE 1: Institutional Controls Survey Objectives

<p><b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b></p>	<p>No</p>
<p><b>Q2: Please check the types of site remediation institutional controls used in your state?</b></p>	<p>Covenants, Consent Decrees, Deed Notices, Please list any other insitutional control you use but is not listed above Clarification - Environmental Covenants in Utah are recorded on the property deeds.</p>
<p><b>Q3: How many institutional controls are in place in your State?</b></p>	<p>6 - 25</p>
<p><b>Q4: On average how many institutional controls does your State agency implement per year?</b></p>	<p>2</p>
<p><b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b></p>	<p>Communicating the institutional control details was inadequate , Monitoring is inadequate, Violation of covenant, Please list any other failure not identified above. Clarification - In Utah's LUST and UST programs most failures have resulted from the EC requirements not being communicated at all.</p>
<p><b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b></p>	<p>1. Record EC requirements with local utility finding company (this is partially done in UT) 2. Consider the incorporation of fines if IC is violated.</p>

PAGE 2: Selection and Implementation

<p><b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b></p>	<p>No</p>
--	-----------

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Utah UST/LUST Program: Environmental Covenant (EC) instructions can be found at (<http://www.deq.utah.gov/ProgramsServices/programs/tanks/ust/releases/docs/2013/11Nov/INSTRUCTIONS-2.pdf>)

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
Any monitoring requirements are specified under the IC or EC for the site.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

The State of Utah does not have a IC management plan guidance.

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

The State of Utah's UST/LUST programs have not modified or terminated an IC that has become formally accepted as part of a site EC (Environmental Covenant).

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

For the State of Utah, paragraph 13 of the EC template located at the following hyperlink covers the procedure to amend or terminate an EC:

<http://www.deq.utah.gov/ProgramsServices/programs/tanks/ust/releases/docs/2013/11Nov/USTtemplate%20owner872013-2.pdf>

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems

**Q17: How is your State agency monitoring program funded?**

The monitoring performed under question #16 is performed by Blue Stakes (our one call system) and is paid for with State General Funds.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No,

If Yes please explain.

The one call monitoring service is intended to prevent non-compliance issues from arising.

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PAGE 5: Enforcement

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action Paragraph #9 of the Utah EC template covers the enforcement provisions of the EC. Utah, under its UST/LUST program has not had to take an enforcement action on failure to implement a land use restriction or cleanup requirement.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Utah does not have a formal policy.

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

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PAGE 6: Data Management

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link The following hyperlink will take you to a listing of the Utah UST/LUST sites with an IC/EC.  
[http://eqedocs.utah.gov/SpecialSrchs.aspx?SSName=DERR\\_UST\\_EC](http://eqedocs.utah.gov/SpecialSrchs.aspx?SSName=DERR_UST_EC)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

---

PAGE 7: Outreach and Coordination



**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
It depends upon the site and stakeholder interest.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Local government, Consultants,  
please list any others Local Health Departments

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner, Consultants,  
please list any others Local Health Departments

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Under Utah's UST/LUST programs the only activity that incurs an expense is Utah's one call system, Blue Stakes. This utility monitoring program is currently funded (as it pertains to tracking the ECs) with State General Funds. Other options under consideration is the direct billing of responsible parties.

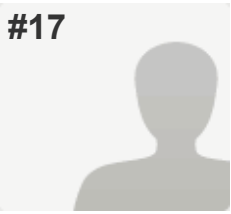
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	John Menatti
Agency/Dept/Division/Office	UDEQ - DERR,
Address:	195 North 1950 West
City/Town:	Salt Lake City
State:	UT
ZIP:	84116
Email Address:	jmenatti@utah.gov
Phone Number:	801-536-4159

#17



Utah-Bacon

PAGE 1: Institutional Controls Survey Objectives

<p><b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b></p>	<p>No</p>
<p><b>Q2: Please check the types of site remediation institutional controls used in your state?</b></p>	<p>Zoning, Local Ordinance or Permit , Groundwater Use Restrictions, Easements, Covenants, Consent Decrees, Permits</p>
<p><b>Q3: How many institutional controls are in place in your State?</b></p>	<p>6 - 25</p>
<p><b>Q4: On average how many institutional controls does your State agency implement per year?</b></p>	<p>Under our partnership with US EPA Region 8, as NPL or NPL equivalent sites are addressed ICs at the State level are considered as a remedial management tool. We dont have an average number implemented under the Superfund remedial program.</p>
<p><b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b></p>	<p>Institutional control not implemented , Location of contaminant is not sufficiently described , Communicating the institutional control details was inadequate , Monitoring is inadequate, Violation of covenant</p>
<p><b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b></p>	
<p>1.</p>	<p>Better coordination between EPA, UDEQ- DERR and local authorities from the perspective of negotiating, authorizing, monitoring IC or EC implemenation.</p>
<p>2.</p>	<p>More frequent reporting on IC/EC monitoring by local authorities rather than waiting for the statutory FYR.</p>
<p>3.</p>	<p>Financing for IC/EC implementation, monitoring and enforcement.</p>

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

The State of Utah, DEQ-DERR Superfund program has available to it the authority under the Executive Director to enter into ECs with a party. Said authority is granted by Utah Code Annotated 57-25-101, Uniform Environmental Covenants Act.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** Yes,  
Please explain  
Monitoring would be specified on a site by site basis.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

UDEQ does not have a guidance on IC management plans.

**Q12: Does your agency require financial assurance specific to institutional controls?** No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

UDEQ-DERR under the Superfund program has not modified an EC to date. However, paragraph 13 of the document at this hyperlink covers how one could be amended or terminated:

<http://www.deq.utah.gov/ProgramsServices/programs/tanks/ust/releases/docs/2013/11Nov/USTtemplate%20owner872013-2.pdf>

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

The following link covers the rule for which the State of Utah regulates the EC program:

[http://le.utah.gov/code/TITLE57/57\\_25.pdf](http://le.utah.gov/code/TITLE57/57_25.pdf)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Not Applicable

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Our Agency has no institutional control monitoring program  
,  
Land disturbance monitoring via One Call systems ,  
Other (please specify)  
Party which receives an EC is responsible to track changes in use.

**Q17: How is your State agency monitoring program funded?**

Superfund currently does not provide funding to the State's on call system but our Tanks program does from State General Funds.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No,  
If Yes please explain.  
The wording in an EC is intended to prevent non-compliance.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Please list other instruments you may use  
We have not taken an enforcement action.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Here is a link to the rule, under which Section 57-25-111 covers enforcement provisions:

[http://le.utah.gov/code/TITLE57/57\\_25.pdf](http://le.utah.gov/code/TITLE57/57_25.pdf)

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
Under our Superfund program links, a list of NPL or NPL equivalent sites with an EC is available. Here is the direct link:  
[http://eqedocs.utah.gov/SpecialSrchs.aspx?SSName=DERR\\_CERCLAFED\\_EC](http://eqedocs.utah.gov/SpecialSrchs.aspx?SSName=DERR_CERCLAFED_EC)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
When EPA and UDEQ are selecting a remedy for an NPL or NPL equivalent site, ICs are included in any outreach material if part of a proposed plan.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Local government, Other State agencies,  
Citizens groups, Consultants,  
please list any others Local Health Departments

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,  
Local government, Other State agencies,  
Citizens groups, Consultants,  
please list any others Local Health Department

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Under the Superfund program they are not.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

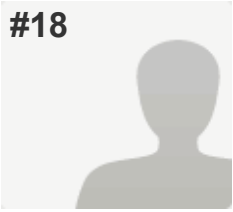
**Q33: Please complete your contact information.**

Name:	Douglas Bacon
Agency/Dept/Division/Office	UDEQ/DERR/NPL Section
Address:	195 North 1950 West
Address 2:	P.O. Box 144840
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State:	UT
ZIP:	84114-4840
Email Address:	dbacon@utah.gov
Phone Number:	8015364282

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#18

New Mexico



PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
only the VCP has the ability to require an IC

**Q2: Please check the types of site remediation institutional controls used in your state?**

Covenants, Deed Notices

**Q3: How many institutional controls are in place in your State?**

1 - 5

**Q4: On average how many institutional controls does your State agency implement per year?**

less than 1

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Institutional control not enforceable,  
Please list any other failure not identified above.  
land owner doesn't follow through and record the deed restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |   |
|----|---|
| 1. | universal covenant law  |
| 2. | allow the regulatory agency to be a party instead of voluntary by the VCP participant |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We have a template that we send to land owners who will record the deed restriction/covenant.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain

The only IC that our agency can implement is a voluntary (by the land owner) recording of a deed restriction. The agency audits the IC to assure compliance.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

I would need to send it to you.

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

We have never attempted to modify or terminate the single successful deed restriction.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

We do not have this.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Brownfield Grant (EPA)

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No

**PAGE 5: Enforcement**



**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

case by case

**Q22: Does your State agency have the authority to enforce using the following?** *Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

We only have nine in the entire state. Only one has successfully filed the restriction. We have a non-compliance issue.

**Q25: Who can access the information from your data management system?** *Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?** Unknown

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** New landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?** New Landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

VCP and Brownfields program

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

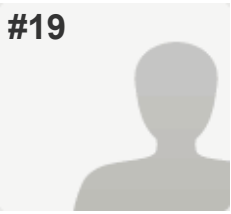
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**Q33: Please complete your contact information.**

Name:	Michelle Hunter
Agency/Dept/Division/Office	New Mexico Environment Depart - Ground Water Quality Bureau
Address:	1190 St. Francis Drive
City/Town:	Santa Fe
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Phone Number:	505 827 2242

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#19



Arkansas

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Any deed notice (IC) must be placed on the property by the owner. Without an enforcement agreement with the owner, the ICs may not be placed. Bankrupt properties are an issue.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Tailored Ordinance, Groundwater Use Restrictions, Administrative Orders, Deed Notices, Advisories

**Q3: How many institutional controls are in place in your State?**

6 - 25

**Q4: On average how many institutional controls does your State agency implement per year?**

2 or 3

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Location of contaminant is not sufficiently described ,  
Communicating the institutional control details was inadequate  
,  
Reporting is inadequate,  
Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Develop a registry of ICs tagged to a "one call" system
2. Add restrictions to the extent possible before remediation is complete-they can be altered later

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

A deed notice template is given to the property owner. The property owner adds the site specific information and returns it for review. After the project team reviews it for technical issues, the Legal Division will review. A redline strike out copy is passed back to the property owner. This sharing is continued until acceptable to all parties. Property owner files the notice and provides a file marked copy to the State. It becomes part of the environmental record.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
More recently, ICs are part of the site remedy. Monitoring of the remedy, to include the ICs, is included in the enforcement agreement.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Collecting new data to support the removal or modification of the IC. Helping the property owner to understand the level of data needed can be a challenge.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

The process would be the same as that used to determine that an IC was needed. Most of these decisions are risk based.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting

,

Responsible party institutional control compliance certification

,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

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**Q17: How is your State agency monitoring program funded?**

Arkansas's remedial action trust fund act (RATFA)

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**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No

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**PAGE 5: Enforcement**

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**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action Not that I am aware of. The exception may be under a permit.

---

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Administrative Order,

Consent Order,

Please list other instruments you may use ICs violations are an issue at an EPA lead site so they make take enforcement actions.

---

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

If the lack of ICs creates the potential for eminent and substantial endangerment of human health or the environment.

---

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

,

Other (please specify)

If they are part of the enforcement agreement.

---

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link project database for internal use and data input to RCRA info.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
All decision documents have a public notice component.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner, Tenants,  
Local government, Other State agencies,  
please list any others  
Landowner is required to notify potentially affected parties/ neighbors

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner,  
please list any others  
A modification is requested by the landowner and any changes would include notice to potentially affected parties/ neighbors.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Arkansas' remedial action trust fund is funded by permit and corrective action fees collected through various Hazardous Waste Division programs.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

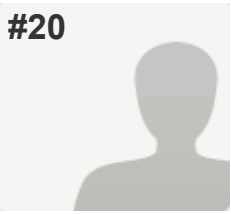
Yes

**Q33: Please complete your contact information.**

Name:	Dianna Kilburn
Agency/Dept/Division/Office	Arkansas Department of Environmental Quality, Hazardous Waste Division
Address:	5301 Northshore Drive
City/Town:	North Little Rock
State:	AR
ZIP:	72118
Email Address:	kilburn@adeq.state.ar.us
Phone Number:	501-682-0844

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#20



Colorado

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Groundwater Use Restrictions, Covenants, Statutes, Administrative Orders, Consent Decrees, Permits, Deed Notices, Please list any other insitutional control you use but is not listed above Restrictive Notices and intergovernmental Agreements
<b>Q3: How many institutional controls are in place in your State?</b>	101 - 150
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	12
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Please list any other failure not identified above. Staff is unaware of any that have failed
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	No response to this question

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	Yes, If Yes please provide a link to the policy or procedure. <a href="http://www.colorado.gov/pacific/cdphe/hmcovenants">www.colorado.gov/pacific/cdphe/hmcovenants</a>
<b>Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
We have a template with model language, a guidance document, and a tracking cover sheet outlining procedures to be followed (includes tracking attorney reviews).	



**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,  
If yes please describe Not aware of any.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

[www.colorado.gov/pacific/cdphe/hmcovenants](http://www.colorado.gov/pacific/cdphe/hmcovenants)

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

We have terminated 2 institutional controls and modified several. No challenges noted by staff or attorneys.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Completed on a case by case basis.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party institutional control compliance certification  
,  
Land owner institutional control compliance certifications  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

\$1,000 / year fee.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
 Sites with institutional controls are inspected periodically (every 1 to 5 years depending on the site concerns) by Department staff. An inspection form is completed and filed in the public record. Non-compliance results in a written warning and follow-up inspection. Non-compliance is a violation if not successfully addressed.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action  
 None identified by the Attorney Generals Office representative and our staff are not aware of any required enforcement actions.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Notice of Violation, Administrative Order,  
 Consent Order, Unilateral Order,  
 Please list other instruments you may use  
 Compliance Advisory

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

This would be determined on a case-by-case basis in accordance with site history and case facts.

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
 Internal database and  
[www.colorado.gov/pacific/cdphe/sites-environmental-covenants-and-use-restrictions](http://www.colorado.gov/pacific/cdphe/sites-environmental-covenants-and-use-restrictions)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

NA

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,  
Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
Standard language in our institutional controls it is required that the owner notify the Department if there is a property transfer. This is also confirmed by annual self-certifications and periodic inspections.

PAGE 8: Program Funding

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Annual fees and hourly billing rates.

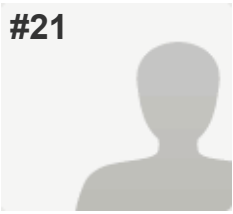
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Eric Jacobs
Agency/Dept/Division/Office	CDPHE HMWMD
Address:	HMWMD-B2
Address 2:	4300 Cherry Creek Drive South
City/Town:	Denver
State:	CO
ZIP:	80246-1530
Email Address:	eric.jacobs@state.co.us
Phone Number:	303-692-3430

#21



Tennessee-State

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,

If Yes please explain the limitations. Depending on the intent of the question, we usually limit the requirements in an IC to passive issues in terms of usually limiting the property use in some way. However, there are not requirements for maintenance usually included.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Groundwater Use Restrictions, State Use Restrictions, Deed Notices, State Registries

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

10-15

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Monitoring is inadequate,  
 Notice of transfer (deed restriction) was not survivable  
 ,  
 Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |   |
|----|---|
| 1. | Revise the reporting requirements                 |
| 2. | Make sure owners disclose when selling and buying |
| 3. | Decide how to enforce better, etc.                |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No,  
If Yes please provide a link to the policy or procedure.  
You are confusing terms. In Tennessee State agency is Division specific whereas Department is all programs (agencies)

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We use primarily a deed restriction called a Notice of Land Use Restrictions attached to a specific deed. We are currently developing SOPs for our Division of Remediation. However, it won't necessarily apply to the Department.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,  
Please explain  
Usually our LURs are for restrictive uses, such as, no residential type use, or no GW use without TDEC approval, etc. For the most part we are not requiring active participation on the part of the property owner as in most cases some owners were not liable for the contamination. With that said the Division annually monitors LURs for compliance issues.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

We have only probably amended or removed a couple of LURs. We follow the statute T.C.A 68-212-225 with respect to amending and removing LURs.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

<http://www.lexisnexis.com/hottopics/tncode/>

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
Other (please specify)  
We do our own annual compliance inspections and report them to the Departments Tracking Database.

**Q17: How is your State agency monitoring program funded?**

If possible we negotiate this requirement with the Liable Party when completing the final remedy selection for the site which includes residual was left in place such that a LUR is required. In dealing with voluntary parties particularly where there has been no liability we don't require the liable party to provide for this if they have investigated and preformed the remedial action as a 3rd party.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
Yes, our APEX database can store and report documentation that indicates non-compliance issues. The database can be filtered so generate reports on non-compliance issues.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Unilateral Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

We evaluate the risk resulting from the violation before we entertain enforcement actions. It is on a site specific basis.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link I mentioned it above. It is our APEX database which in the Division of Remediation is known as DoRway. We can filter the database for Engineering and Institutional Controls issues.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency,  
Other (please specify)  
It is Department-wide and plans are for it to be available to the public in a read only portal in the future.

**Q26: How long are records maintained and active in your state agency's data management system?**

20 plus years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Adjacent landowner,  
Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,  
If yes please describe how and when you are notified.  
We are working to get there, but currently the restriction transfers with the property.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Primarily through our EPA Brownfields grant, some liable party funding, and through the State DoR program funding in some cases.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

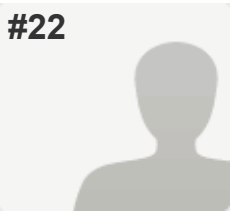
**Q33: Please complete your contact information.**

Name:	Robert L. Powell
Agency/Dept/Division/Office	Remediation
Address:	312 Rosa L. Parks Avenue
Address 2:	14th Floor, TN Towers
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State:	TN
ZIP:	37243
Email Address:	Robert.Powell@tn.gov
Phone Number:	615-532-0916

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#22



New York

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Easements
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	50
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	<i>Respondent skipped this question</i>
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	<i>Respondent skipped this question</i>

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	Yes, If Yes please provide a link to the policy or procedure. <a href="http://www.dec.ny.gov/chemical/48236.html">http://www.dec.ny.gov/chemical/48236.html</a>
<b>Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	<a href="http://www.dec.ny.gov/chemical/48236.html">http://www.dec.ny.gov/chemical/48236.html</a>
<b>Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.</b>	Yes, Please explain EE requires compliance with Site management Plan

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
see SMP in  
<http://www.dec.ny.gov/chemical/48236.html>

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://www.dec.ny.gov/chemical/48236.html>

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
,  
Responsible party periodic field inspection and associated reporting  
,  
Responsible party institutional control compliance certification  
,  
Land owner periodic field inspections and associated reporting  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Land owner institutional control permit requirements

**Q17: How is your State agency monitoring program funded?**

By either the RP or via the state superfund

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
PM's enter status into our Unified Information System

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Please describe at least one enforcement action define enforcement action. If problems with SMP are needed, corrective measures are sought and generally achieved

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation, Consent Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

pm Judgemewnt

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
The UIS tracks ICs

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

Other (please explain) forever

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

If Yes please describe your Agency's public outreach  
EEs are described in the Proposed Remedial Action Program along with other elements of the remedy

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Adjacent landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,  
Adjacent landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
EE's run with the land. Part 375 requires change of use notification which include a change in ownership see Part 375-  
<http://www.dec.ny.gov/regulations/2393.html>

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

IC's are an element of the remedy and funded that same as any other. For RP funded sites, the RP undertakes the IC and DEC does for state funded sites

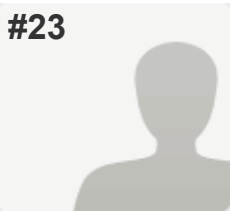
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Jim Harrington
Agency/Dept/Division/Office	NYS DEC
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State:	NY
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Phone Number:	518-402-9624

#23



Illinois

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Illinois has specific set back zones for potable wells, an IC cannot be used within these zones.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Local Ordinance or Permit , Tailored Ordinance,  
Groundwater Use Restrictions, Deed Notices,  
State Registries

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

Not a number that is tracked in Illinois

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

The Stewardship/Implementation plan failed,  
Violation of covenant,  
Violation of land use restriction ,  
Physical break of a barrier

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. NA, Illinois has a good working program

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,  
If Yes please provide a link to the policy or procedure.  
<http://www.ipcb.state.il.us/documents/dsweb/Get/Document-38408>

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

<http://www.ipcb.state.il.us/documents/dsweb/Get/Document-38408>

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe Under CERCLA

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

None

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?** Respondent skipped this question

**Q22: Does your State agency have the authority to enforce using the following?** Respondent skipped this question

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

Each program tracks

**Q25: Who can access the information from your data management system?** Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?** 20 plus years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Respondent skipped this question

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Our budget is funded through grants and fees.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

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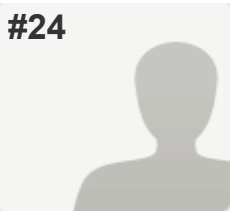
**Q33: Please complete your contact information.**

Name:	Joyce Munie
Agency/Dept/Division/Office	IEPA/BOL/DRM/RPMS
Address:	1021 N. Grand Ave. E
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State:	IL
ZIP:	62702
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Phone Number:	217.524.3300

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#24



Louisiana

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Generally, federal and state constitutional law prohibit a "taking" without just compensation; however, use restrictions are mandatory in the Voluntary Remediation Program regulations when a partial remediation is approved

**Q2: Please check the types of site remediation institutional controls used in your state?**

Local Ordinance or Permit ,  
Groundwater Use Restrictions, Deed Notices

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

30

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Scope of the institutional control is insufficient ,  
Location of contaminant is not sufficiently described ,  
Communicating the institutional control details was inadequate  
,  
Violation of covenant, Physical break of a barrier ,  
Potential for exposure

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |                                      |
|----|--------------------------------------|
| 1. | Develop a monitoring program         |
| 2. | Write a Policy Directive             |
| 3. | Develop training (internal/external) |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Conveyance Notices - Template - Must be recorded in parish conveyance records

Use Restrictions under the Voluntary Remediation Program regulations (Title 33: Part VI, Chapter 9) must be recorded in in conveyance records

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain

For a site under the VRP, the use restriction would contain caveats for monitoring; example: if a concrete cover is a design element, it must be inspected periodically to verify sound condition

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe

A site in VRP may have a long-term IC plan

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

We have no template guidance at this time

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Termination and modification is described in the VRP regulations. Certain administrative steps must be completed before approval. Outside of VRP, such as at a UST site, modifications of the conveyance notices have been done; however these can be cumbersome for the party doing it since the old notices cannot be deleted from the record. A new conveyance notice must be filed. This can be confusing to someone looking at the property record.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Title 33:VI.915C(4)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Land disturbance monitoring via One Call systems ,  
Responsible party periodic field inspection and associated reporting  
,  
Land owner periodic field inspections and associated reporting

**Q17: How is your State agency monitoring program funded?**

We have no dedicated agency monitoring program

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** No

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Warning Letter, Notice of Deficiency,  
Notice of Violation , Administrative Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

non-compliance with the recorded use restriction

**Q22: Does your State agency have the authority to enforce using the following?** Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** Yes,  
If Yes please describe your agency's Data Management System or provide a link  
TEMPO (agency internal site data tracking tool) and the Voluntary Remediation Program (VRP) List for Public Record

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.** *Respondent skipped this question*

**Q25: Who can access the information from your data management system?** Agency and Public,  
Other (please specify)  
VRP List: Public and Agency Access; TEMPO: Agency Access

**Q26: How long are records maintained and active in your state agency's data management system?** Other (please explain) indefinitely in electronic format

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

PAGE 8: Program Funding

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

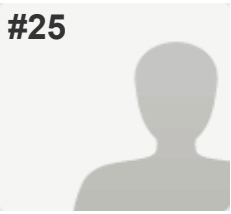
Fees and Oversight Costs under the VRP program and Brownfields 128a Grant; Hazardous Waste Site Cleanup Fund; LUST Trust Fund Grant and Performance Partnership Grant (PPG); Superfund Grant

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control activities, or case studies?** Yes

**Q33: Please complete your contact information.**

Name:	John Halk, CHMM
Agency/Dept/Division/Office	LDEQ/OEC/USTRD
Address:	P.O. Box 4312
City/Town:	Baton Rouge
State:	LA
ZIP:	70821-4312
Email Address:	john.halk@la.gov
Phone Number:	225-219-3652

#25



Wisconsin

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
Our enabling statute defines how ICs can be made enforceable. Our regulations (rule) clarifies and identifies the situations where they can be used.

**Q2: Please check the types of site remediation institutional controls used in your state?**

State Use Restrictions, Statutes, State Registries,  
Please list any other insitutional control you use but is not listed above  
We apply our form of ICs called Continuing Obligations at properties via enforceable conditions in closure approval remedial action plan approval letters.

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

From our online database, we average approximately 2 per site at 200 sites per year, for a total of 400 per year.

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Monitoring is inadequate, Reporting is inadequate,  
Violation of land use restriction ,  
Physical break of a barrier ,  
Please list any other failure not identified above.  
A common situation is the property ownership changes hands and the new owner is "unaware" of the Continuing Obligations.

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. More state audits of sites with Continuing Obligations
2. More outreach to realtors

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,

If Yes please provide a link to the policy or procedure.

See our enabling Statute, s. 292.12, Wis. Stats. See <http://dnr.wi.gov/topic/Brownfields/Residual.html>

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We have internal templates for drafting closure letters with Continuing Obligation conditions.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Guidance on Case Closure and the Requirements for Managing Continuing Obligations  
<http://dnr.wi.gov/files/PDF/pubs/rr/RR606.pdf>

[http://prodoasext.dnr.wi.gov/inter1/pk\\_rr\\_doc\\_public\\$doc.QueryViewByKey?](http://prodoasext.dnr.wi.gov/inter1/pk_rr_doc_public$doc.QueryViewByKey?)

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

### PAGE 3: Modification or Termination

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Wide variety of changes made to Continuing Obligations and how to process them consistently.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Internal guidance RR5303.pdf, "Interim Process for Modifying or Removing Sites or Properties from the GIS Registry", is attached to cover email. This guidance is undergoing revision. An external version is also under development.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

### PAGE 4: Monitoring and Tracking

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Other (please specify)  
We audit approximately 50 sites a year.

**Q17: How is your State agency monitoring program funded?**

CERCLA 128(a) grant

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
We track the types of Continuing Obligations at each site. We track audit results and any follow up action required to regain compliance post-audit.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,  
Please list other instruments you may use  
The above are options, but haven't been used as of yet.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Nature of the violation, degree of risk and exposure and length of time out of compliance.

**Q22: Does your State agency have the authority to enforce using the following?**

Other (please specify)  
We don't have direct administrative authorities for these. If we refer a case to our Dept. of Justice, they can see these in court.

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
Our online data systems are described here.  
<http://dnr.wi.gov/topic/Brownfields/clean.html>

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach Both the RP and the our Agency send letters to affected property owners and right of way holders regarding applicable Continuing Obligations before and after a closure letter is issued.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Adjacent landowner, Tenants, Local government, Other State agencies, please list any others Any affected party

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Local government, please list any others Local government if applicable

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Audits - CERCLA 128(a) grant

Closure and remedial action plan approvals and later changes to those letters are fee based

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:

Jane Lemcke

Agency/Dept/Division/Office

WI Department of Natural Resources

Address:

PO Box 7921

Address 2:

RR/5

City/Town:

Madison

State:

WI

ZIP:

53711

Email Address:

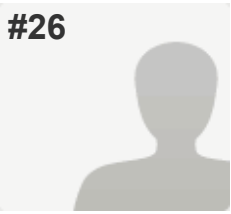
Jane.Lemcke@wisconsin.gov

Phone Number:

608 267-0554



#26



Minnesota-Dotson

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	Yes, If Yes please explain the limitations. At least in the Petroleum Remediation Program, our policy is to use them sparingly, and we have not used them on off-site properties.
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Covenants, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	1 - 5
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	one
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	<i>Respondent skipped this question</i>
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	<p>1. strengthen real estate duty-to-notify checklist</p> <p>2. consider applying at least notices to all sites with significant contamination remaining</p>

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
For petroleum remediation, we have templates, a draft guidance, and attorney review is sought when appropriate, particularly for covenants	
<b>Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.</b>	No

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

This issue has not yet arisen in practice, though we have discussed it.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Never

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

For petroleum, it will be funded from the same funds as the field work auditing activities are.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
This issue also has not yet arisen in practice, but this will be the purpose of the auditing activity.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action  
At least not for petroleum

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Primarily, has noncompliance with the terms of the IC resulted in increased, unacceptable risks at the site.

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
There is a database which allows us to search for ICs, record information, and record any auditing activity.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

Unknown

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
We have done a little, with consultants, regarding our statutory authorities.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

For petroleum sites, staff time is funded in the same way as any other site activity.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

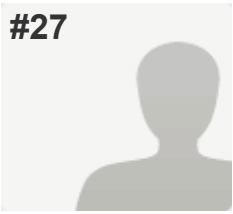
---

**Q33: Please complete your contact information.**

Name:	Allen Dotson
Agency/Dept/Division/Office	Petroleum Remediation Section
Address:	520 Lafayette Road
City/Town:	St. Paul
State:	MN
ZIP:	55155
Email Address:	allen.dotson@state.mn.us
Phone Number:	651-757-2315

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#27



Rhode Island

## PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Groundwater Use Restrictions, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	31
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Monitoring is inadequate, Reporting is inadequate, Violation of land use restriction
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Audit throughout the year instead of just the summer
2.	Staff conducting audits instead of just interns

## PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
We have a template ELUR which can be downloaded off of the Department web site. Attorney reviews take place if the template is changed by outside party or counsel. Owner of property records ELUR on deed and returns a stamped copy back to the Department.	

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
We require annual monitoring and the Department audits a percentage of the sites.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Modification of the Institutional Control may take place if property use changes. Termination of an Institutional Control only takes place when all contamination is removed.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land owner periodic field inspections and associated reporting  
,  
Land owner institutional control compliance certifications  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

We use Federal Funding from EPA's 128(a) program to pay summer technical interns.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
We issue Letters of Non-Compliance after audits find a problem and require the property owner to bring the site back into compliance with the Institutional or engineered control.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
We have issued Notices of Violation to recurrent non-compliance.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation,  
Please list other instruments you may use  
We use progressive enforcement.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Out of compliance with required monitoring or the engineered control is not being maintained.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
Not available to the public, but we keep track of annual monitoring and audits in an Access database

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

See above

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Adjacent landowner, Tenants, Local government, Other State agencies, Construction / utility

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
They are supposed to, however we are seldom notified.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

EPA Brownfield's 128(a)

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

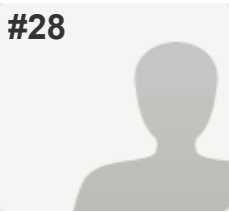
Yes

**Q33: Please complete your contact information.**

Name:	Kelly Owens
Agency/Dept/Division/Office	RIDEM Office of Waste Management
Address:	235 Promenade Street
City/Town:	Providence
State:	RI
ZIP:	02908
Email Address:	kelly.owens@dem.ri.gov
Phone Number:	401-222-2797



#28



**INCOMPLETE-Anonymous**

**Collector:** Web Link 1 (Web Link)  
**Started:** Wednesday, March 11, 2015 10:39:08 AM  
**Last Modified:** Wednesday, March 11, 2015 10:45:52 AM  
**Time Spent:** 00:06:43  
**IP Address:** 199.20.71.230

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Groundwater Use Restrictions, Permits,  
 Deed Notices,  
 Please list any other insitutional control you use but is not listed above  
 Classification Exception Areas for Ground Water

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

*Respondent skipped this question*

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

*Respondent skipped this question*

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

*Respondent skipped this question*

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

*Respondent skipped this question*

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

*Respondent skipped this question*

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

*Respondent skipped this question*

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

*Respondent skipped this question*

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

*Respondent skipped this question*

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

*Respondent skipped this question*

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

*Respondent skipped this question*

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

*Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

*Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

*Respondent skipped this question*

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

*Respondent skipped this question*

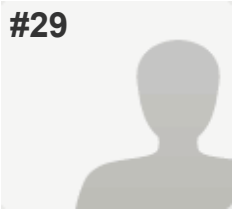
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

*Respondent skipped this question*

**Q33: Please complete your contact information.**

*Respondent skipped this question*

#29



New Jersey

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Permits, Deed Notices,  
Please list any other insitutional control you use but is not listed above  
Notice in Lieu of deed Notice for roadways that have contamination beneath them

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

Approximately 400-500

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Violation of land use restriction ,  
Please list any other failure not identified above.  
Transfer of ownership failed to disclose ongoing obligations/property defects

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Tracking all property transactions via subscription service and flagging transactions involving ECs/ICs

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We use Modle Deed Notice and termination of Deed Notice Templates; can only obtain permits relying on filed copies of the Deed Notice or Termination containing book and page number where recorded.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
The templates and certain instructions and guidance documents can elaborate or tailor the requirements to a specific site/circumstance.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://www.nj.gov/dep/srp/> under ARRCs, 7:26C-7.0, and appendices B and C for the templates. For question 12 below, only engineering controls require financial assurance.

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Most of the problems have been to develop guidance for the outside; we had to make up the process.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

<http://www.nj.gov/dep/srp/> hit ARRCs 7:26C 7.9

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes, Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
,  
Remote sensor monitoring (e.g., vapor mitigation systems, groundwater hydraulic gradient containment systems)  
,  
Responsible party periodic field inspection and associated reporting  
,  
Responsible party institutional control compliance certification  
,  
Land owner institutional control compliance certifications  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Land owner institutional control permit requirements

**Q17: How is your State agency monitoring program funded?**

Through permit application, modification and termination fees (user), and annual billing.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
Failure to submit biennial certification/monitoring reports are tracked. Failure to notify of a transfer of ownership is also enforceable.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,  
Please describe at least one enforcement action  
A church was being altered into a Child Care facility, fined approximately \$5K. Most often, we try to rely on informal notices, but now they will get formal Notices of Deficiency and possibly NOVs. see [http://www.nj.gov/dep/srp/ARRCS 7:26C-9.5](http://www.nj.gov/dep/srp/ARRCS%207:26C-9.5) for specific Administrative Penalties and amounts.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,  
Please list other instruments you may use  
Also issue listserv notices and compliance advisories

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

The criteria are simple; you failed to do what you were supposed to do in the timeframes required; you had the ability to request an extension.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Other (please specify)  
May result in rescission of NFA letter and covenant not to sue

PAGE 6: Data Management

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
<http://www.nj.gov/dep/srp/DataMiner> Extensive site information is available and increasingly includes activity tracking information/schedules, and documents.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

20 plus years

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
The responsible entity/licensed site remediation professional are required to copy bi-certs, permit applications/modification/terminations to local, county or other affected government agencies.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Tenants, Local government,  
Other State agencies, Construction / utility,  
Nearby sensitive receptors (e.g., daycare, schools),  
Citizens groups, Home owners associations,  
please list any others  
any persons overlying ground water contaminated areas

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Adjacent landowner,  
Local government, Construction / utility ,  
Nearby sensitive receptors (e.g. daycare, schools) ,  
Citizens groups,  
please list any others same as question 28

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
Within 30 days after the sale of a property, a permit transfer of ownership form must be submitted. This is apparently not well understood in the closing process, but one would think the seller might be motivated to legitimately transfer the ongoing obligations.

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**PAGE 8: Program Funding**

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**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Permit application/modification/termination fees and annual billing.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

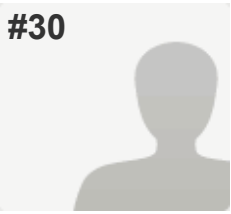
**Q33: Please complete your contact information.**

Name:	Bob Soboleski
Agency/Dept/Division/Office	SRP
Address:	401 E. State St.,
City/Town:	Trenton
State:	NJ
ZIP:	08625
Email Address:	bob.soboleski@dep.nj.gov
Phone Number:	609-984-2990

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#30



Tennessee-DOE

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Groundwater Use Restrictions, Covenants, Permits, Deed Notices, Advisories,  
Please list any other insitutional control you use but is not listed above  
signs, fences, surveillance patrols, excavation permit

**Q3: How many institutional controls are in place in your State?**

6 - 25

**Q4: On average how many institutional controls does your State agency implement per year?**

NA. We are doing this for DOE Oak Ridge Reservation

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Please list any other failure not identified above.  
No failures. Our surveillance/inspections correct any inappropriate use

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Improve consistency of selection and implementation
2. Improve communication to those responsible for implementation as to actual requirements

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No,  
If Yes please provide a link to the policy or procedure.  
Our ICs are in CERCLA Records of Decision, and they are selected in a consistent manner

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

CERCLA Record of Decision

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
The Record of Decision and subsequent implementation documents contain the monitoring requirements

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
EPA Land Use Control Implementation Plan and DOE Comprehensive Monitoring Plan

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

The only challenge is obtaining DOE, EPA, and State of Tennessee consensus.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
 Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
 ,  
 Remote sensor monitoring (e.g., vapor mitigation systems, groundwater hydraulic gradient containment systems)  
 ,  
 Responsible party periodic field inspection and associated reporting  
 ,  
 Responsible party institutional control compliance certification  
 ,  
 Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
 ,  
 Coordination with local government permitting process (e.g., local government notifies when permits are issued at an IC site)  
 ,  
 Land owner institutional control permit requirements

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
 If Yes please explain.  
 If a non-compliance is found, then a corrective action is implemented

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,  
 Please describe at least one enforcement action  
 This is a DOE site, so DOE is the owner and enforcer.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Federal Facilities Agreement

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

FFA and Land Use Control Assurance Plan define how interaction between DOE and EPA/State of Tennessee is performed.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
Land Use Manager is an automated tracking system with GIS capability. Currently, it is internal only.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
Oak Ridge Reservation Site Specific Advisory Board for the public; meetings and annual review with EPA/State of Tennessee

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner, Tenants,  
Local government, Other State agencies,  
Citizens groups

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner, Tenants,  
Local government, Other State agencies,  
Citizens groups

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
The CERCLA land transfer process

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

DOE funds institutional control activities with annual appropriations

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

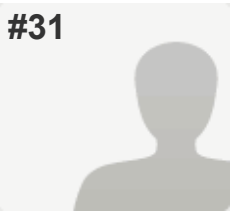
---

**Q33: Please complete your contact information.**

Name:	Sid Garland
Agency/Dept/Division/Office	Department of Energy Oak Ridge Office of Environmental Management
Address:	152 South Columbia Drive
City/Town:	Oak Ridge
State:	TN
ZIP:	37830
Email Address:	sidney.garland@ettp.doe.gov
Phone Number:	865-574-8581

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#31



Minnesota-Schmitt

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
we can't put an IC on an offsite property.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
Groundwater Use Restrictions, Easements,  
Covenants, Administrative Orders,  
Consent Decrees, Deed Notices, Advisories

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

20

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |  |
|----|--|
| 1. | Guidance/Fact sheet on what an IC actually is and used for.                                |
| 2. | Tracking compliance.   |
| 3. | Better access (GIS would be great) to sites with ICs and copies of ICs publicly available. |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No,  
If Yes please provide a link to the policy or procedure.  
we're working on a policy.

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We have a template for an affidavit that get's recorded on the property deed, and an environmental covenant that gets recorded on the property deed. <http://www.pca.state.mn.us/u98u4qc> under Guidance for BF Redevelopment Projects

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain

For covenants, we require an annual letter stating that the property owner is in compliance with the activity and use limitations. If an O & M plan is required, it's either referenced in the covenant, or it's attached to the covenant as an exhibit. For affidavits, we don't have annual compliance reporting, and if an O & M plan is required, it's either referenced in the affidavit or it's attached as an exhibit.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

We don't often modify or terminated ICs, but when we do sometimes it takes a while to find all the parties that hold an interest in a property so that they can be notified.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

no set process

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting

,

Responsible party institutional control compliance certification

,

Land owner periodic field inspections and associated reporting

,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

General funding.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No,

If Yes please explain.

We don't have a set/regular process for monitoring and tracking non-superfund sites (brownfield sites mostly), so we rarely identify non-compliance issues.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action  
We may have, but I wasn't able to find an example.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation,

Federal Facilities Agreement

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

We always try talking with the RP first. I don't think we've ever had to enforce an IC, but it would be done through an Administrative Judge/Court.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**



**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
We have a database for internal use that we use for managing our Sites, and we have an IC field, but it contains limited information. We provide a list of Sites with ICs on our BF webpage (bottom of the page) at <http://www.pca.state.mn.us/lupg7f9>.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control. ,  
Other (please explain)  
I don't know of any records that have been destroyed since our agency was founded

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.  
we are notified when a site with a covenant is transferred or a superfund site is transferred, but not sites with affidavits.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

We bill our time to sites with active VPs or RPs if the site is active. For inactive sites and/or state funded sites, we use general funding.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

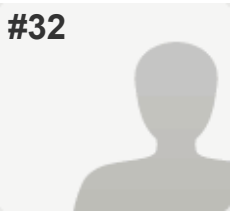
Yes

**Q33: Please complete your contact information.**

Name:	Shanna Schmitt
Agency/Dept/Division/Office	MPCA, Remediation Division
Address:	520 Lafayette Ave N
City/Town:	St. Paul
State:	MN
ZIP:	55155
Email Address:	shanna.schmitt@state.mn.us
Phone Number:	651-757-2697

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#32



Connecticut

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	Yes, If Yes please explain the limitations. Environmental Land Use Restrictions may only be used for properties subject to our clean up regulations.
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Easements, Deed Notices, Please list any other insitutional control you use but is not listed above Drafting of regulations for deed notices underway
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	30
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Violation of land use restriction , Please list any other failure not identified above. Environmental investigations conducted without releases, provisions of ELUR not followed
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	<ol style="list-style-type: none"> <li>1. Long Term Self Monitoring &amp; Reporting</li> <li>2. Deed Notice for lower risk releases</li> <li>3. Mechanism to address subordination issues</li> </ol>

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	Yes, If Yes please provide a link to the policy or procedure. <a href="http://www.ct.gov/deep/cwp/view.asp?a=2715&amp;q=438254&amp;deepNav_GID=1626">http://www.ct.gov/deep/cwp/view.asp?a=2715&amp;q=438254&amp;deepNav_GID=1626</a>
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**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

[http://www.ct.gov/deep/lib/deep/site\\_clean\\_up/elur/elur\\_instructions\\_and\\_guidance.docx](http://www.ct.gov/deep/lib/deep/site_clean_up/elur/elur_instructions_and_guidance.docx)

[http://www.ct.gov/deep/lib/deep/site\\_clean\\_up/elur/elur\\_instructions\\_and\\_guidance.docx](http://www.ct.gov/deep/lib/deep/site_clean_up/elur/elur_instructions_and_guidance.docx)

[http://search.cga.state.ct.us/dtsearch\\_pub\\_statutes.html](http://search.cga.state.ct.us/dtsearch_pub_statutes.html)

<http://www.ct.gov/deep/lib/deep/regulations/22a/22a-133q-1.pdf>

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,  
Please explain  
We will be implementing changes in the future to address this.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,  
If yes please describe  
We will be implementing changes in the future to address this.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

N/A

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Our statutes allow for releases in whole or part on a temporary or permanent basis. We do not have a mechanism to modify ELURs. In some cases, a new ELUR needs to be recorded.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

22a-133o(b)3  
[http://search.cga.state.ct.us/dtsearch\\_pub\\_statutes.html](http://search.cga.state.ct.us/dtsearch_pub_statutes.html)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Other (please specify) periodic agency inspections

**Q17: How is your State agency monitoring program funded?**

No specific funding

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
Compliance information tracked in a database

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
During a site inspection it was discovered that the contractor had excavated greater than 18 inches below ground surface, in violation of the ELUR. In calculation the maximum penalty, It is estimated that there was 11 days of work performed in the unauthorized area at \$25,000 per day per violation. Work in the violation area was stopped till settlement and approval of the revised plan. The violation was settled with \$75,000 fine and production of a video tape about the special nature of the site (to inform future employees of the NPL status and site restricted activities}. need description from Ron

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Notice of Violation, Administrative Order,

Consent Order, Unilateral Order,

Please list other instruments you may use lawsuit

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

DEEP Enforcement Policy at [http://www.ct.gov/deep/cwp/view.asp?a=2694&q=322606&deepNav\\_GID=1629](http://www.ct.gov/deep/cwp/view.asp?a=2694&q=322606&deepNav_GID=1629)

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
We would like to develop a web based searchable database and GIS map for institutional controls. Currently, this information can be found in a list at [http://www.ct.gov/deep/cwp/view.asp?a=2715&q=325018&deepNav\\_GID=1626](http://www.ct.gov/deep/cwp/view.asp?a=2715&q=325018&deepNav_GID=1626)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency,  
Other (please specify)  
We provide electronic copies of the database to the public upon request.

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach as part of our inspection program and training events

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Local government,  
please list any others  
public notice required in most cases, see 22a-133q-1(c)  
<http://www.ct.gov/deep/lib/deep/regulations/22a/22a-133q-1.pdf>

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

please list any others  
not applicable, modification not allowed. No provisions for notification when ELUR is released.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,  
If yes please describe how and when you are notified.  
We are working to address this.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

No specific funding for institutional controls. Use EPA Brownfield funding for program development and training seminars.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

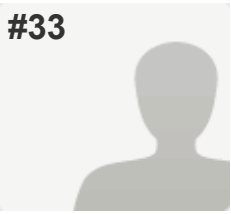
Yes

**Q33: Please complete your contact information.**

Name:	Peter Hill
Agency/Dept/Division/Office	DEEP, Remediation Division
Address:	79 Elm Street
City/Town:	Hartford
State:	CT
ZIP:	06106
Email Address:	peter.hill@ct.gov
Phone Number:	860-424-3912

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#33



Hawaii

PAGE 1: Institutional Controls Survey Objectives

<p><b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b></p>	<p>No</p>
<p><b>Q2: Please check the types of site remediation institutional controls used in your state?</b></p>	<p>Groundwater Use Restrictions, Covenants, State Use Restrictions, Consent Decrees, Permits, Deed Notices, Advisories, Please list any other insitutional control you use but is not listed above 1)Environmental Hazard Management Plans, 2) Soil use restrictions, 3) classification of a site as other than unrestricted use (e.g., commercial/industrial)</p>
<p><b>Q3: How many institutional controls are in place in your State?</b></p>	<p>200 or above</p>
<p><b>Q4: On average how many institutional controls does your State agency implement per year?</b></p>	<p>37, but this varies widely (early years on 1 or 2 per year; 2011 101; HEER Office numbers</p>
<p><b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b></p>	<p>Institutional control not implemented, Institutional control not discoverable, Institutional control not enforceable, Scope of the institutional control is insufficient, Location of contaminant is not sufficiently described, Communicating the institutional control details was inadequate , Monitoring is inadequate, Reporting is inadequate, Violation of land use restriction, Physical break of a barrier, Potential for exposure, Please list any other failure not identified above. often tenants, subsequent owners, and contractors are unaware or restrictions</p>



**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Better outreach to contractors (example, One Call)
  2. Require owners to report on IC conditions annually, or if there is a failure
  3. Periodic monitoring by regulator
- 

**PAGE 2: Selection and Implementation**

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**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,  
If Yes please provide a link to the policy or procedure.  
Section 19 of the Technical Guidance Manual  
<http://www.hawaiidoh.org/tgm.aspx>

---

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Letter to RP, record in public record (access file), now we require RP to write an Environmental Hazard Management Plan and include it in the closure document.

---

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
We do not have a universal monitoring requirement but we are moving towards that. Certain ICs currently require monitoring and notification of future owners. Additionally, DoD sites closed with LUCs implement reviews, monitoring, and inspections. Hazardous Waste Section ICs require periodic field inspections in accordance with RCRA.

---

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
An Environmental Hazard Management Plan (EHMP) is the link between site investigation activities and response actions carried out to address hazards posed by the presence of contaminated soil and groundwater.

---

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://eha-web.doh.hawaii.gov/eha-cma/documents/8935e423-25fb-46b9-adaa-fc0a207d5518>

also

<http://www.hawaiidoh.org/tgm.aspx>

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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PAGE 3: Modification or Termination

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

N/A. For standard sites, if an RP wishes to do additional work to reduce ICs, this is not a problem. Change in site use, site condition, or exposure potential. Typically, the RP approaches the State when he/she wants develop the property. There are usually no deed restrictions, so we just reopen the site. We only use UECA with deed restrictions for risk-based closures with extensive or highly persistent contamination. UECA's may also be required where there are foreseeable future use changes that could expose sensitive populations. We also use deed restrictions for VRP sites, but they are location and contaminant specific, "run with the land," and unlikely to be changed. At sites where historic NFAs have provided insufficient protections, the state updates the requirements when they become aware of potential impact to human health or the environment (for instance, if site use changes, or the property is developed).

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

No official criterion

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

PAGE 4: Monitoring and Tracking

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting  
,  
Land owner periodic field inspections and associated reporting  
,  
Coordination with local government permitting process (e.g., local government notifies when permits are issued at an IC site)  
,  
Land owner institutional control permit requirements ,  
Other (please specify)  
Military sites we oversee follow CERCLA, some sites may require continued reporting of GW conditions, we also had some contractor work to spot monitor a handful of sites. The boxes for "Land owner periodic field inspections and associated reporting" and "Land owner institutional control permit requirements" are relevant for the Haz Waste permit.

**Q17: How is your State agency monitoring program funded?**

No consistent program, various funding sources.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

Often tenants, subsequent owners, and contractors are unaware of restrictions. Recently, a DoD monitoring program prevented a municipal contractor from breaking an EC. During the DoD interview with the tenant, the tenant told DoD that the contractor planned work on the property. DoD followed up with the contractor and brought it to the attention of the municipal organization's environmental oversight personnel. The environmental personnel had thought they were working outside the LUC boundary, but looked at the plans again and identified an access road planned for construction through the property with the LUC. If DoD personnel had not talked to the tenant during monitoring, the IC would have been breached without protocols in place to manage the contamination.

---

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action We don't typically "enforce". We try to foster a spirit of cooperation that makes it in their best interest to comply.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation,

Administrative Order, Federal Facilities Agreement,

Consent Order,

Please list other instruments you may use Phone calls, letters, meetings. The Hazardous Waste Section would use a "Notice of Violation" to enforce an institutional control via permit.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

We would enforce when there is imminent or potential threat of release or exposure that requires immediate action to protect human health and/or the environment.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

,

Other (please specify)

The monetary penalties are for failure to report a release or if the state takes clean up action. We do not have IC-specific fines.

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**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
The ICs are included in our published Public Record tables and are maintained by the agency in our internal Access database.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

Information is maintained in the internal Access system which includes additional site data, not exclusively IC information.

**Q25: Who can access the information from your data management system?**

Agency and Public,

Other (please specify)  
Agency only can access Access database. Public can download public record (including IC information) from HEER website.

**Q26: How long are records maintained and active in your state agency's data management system?**

Other (please explain)

Always, however historic information is very spotty.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
Community meetings and outreach are a requirement for many site closures with ICs. There are additional requirements for some programs. We also do general public outreach through Brownfields forums and other trainings.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner,

please list any others  
This also varies by site. UXO sites have more notifications. Sites where the tenants are at risk require notification/community outreach.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

There is no delegated funding. Staff salaries come from different sources (DSMOA, SRP, State funds, etc). We cost recover against some RPs in some programs when sites are active, but the cost recovery efforts do not currently extend throughout the IC lifecycle.

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

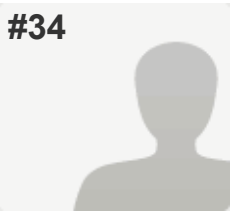
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**Q33: Please complete your contact information.**

Name:	Lynn Bailey
Agency/Dept/Division/Office	Hawaii Dept of Health, Hazard Evaluation and Emergency Response Office
Address:	919 Ala Moana Blvd., Room 206
City/Town:	Honolulu
State:	HI
ZIP:	96814
Email Address:	lynn.bailey@doh.hawaii.gov
Phone Number:	808-586-4249

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#34



Utah-Bacon

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,

If Yes please explain the limitations.  
The divisions of the Utah Department of Environmental Quality will vary on the use of institutional controls to address waste left in place or a potential exposure issue. Most will make use of our environmental covenant. One division, Solid and Hazardous Waste (as replied previously) has a policy that does not allow for leaving a potential exposure issue in place.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Local Ordinance or Permit, Tailored Ordinance,  
Groundwater Use Restrictions, Easements,  
Covenants, State Use Restrictions,

Please list any other insitutional control you use but is not listed above  
Please note, as the use of ICs will vary across divisions of UDEQ and other Departments of the State, some answers in this survey may only reflect UDEQ's use of ICs.

**Q3: How many institutional controls are in place in your State?**

51 - 100

**Q4: On average how many institutional controls does your State agency implement per year?**

This will vary from divisional program to divisional program within UDEQ. For the CERCLA program such would be about 0 to 5 in a year, as CERCLA project decisions take longer. In our Tanks program the number may be more on the order of 0 to 10 based on Tank closures completed. These two programs will use ICs the most.

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Institutional control not discoverable,  
Location of contaminant is not sufficiently described,  
Communicating the institutional control details was inadequate,  
,  
Monitoring is inadequate, Reporting is inadequate,  
The Stewardship/Implementation plan failed

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Increase transparency - ICs need to be clear and concise and then need to be searchable for anyone to read.
  2. Increase communication - ICs are functional when all understand their purpose and details. Communication should begin from a strong foundation in the form of an implementation plan which is communicated at the beginning and reviewed as needed (i.e. staff turn-over).
  3. Increase follow-up - ICs should include a monitoring component that is reported on by the implementing party to other interested stakeholders.
- 

**PAGE 2: Selection and Implementation**

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**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** No

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**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Utah does not generally have a standardized procedure for IC drafting and recording. Standardizing such can be sometimes problematic when addressing site specific conditions that do not follow the norm.

UDEQ does have a general standard form of one type of IC, our Environmental Covenant, which has standard boiler plate language, but retains some flexibility to incorporate site specific needs. However, not every division of UDEQ uses the environmental covenant (some cases due to lack of understanding about applicability and in some cases due to divisional policy that does not allow for the use of ICs like a covenant).

Utah Code Title 19, Chapter 10 spells out some basic requirements for an environmental covenant but at time such may be negotiated site specifically. [http://www.le.utah.gov/xcode/Title19/Chapter10/19-10.html?v=C19-10\\_1800010118000101](http://www.le.utah.gov/xcode/Title19/Chapter10/19-10.html?v=C19-10_1800010118000101)

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**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,

Please explain

As noted above there is not a standardized form for an IC in Utah. ICs are tailored for site specific reasons and sometimes require some legal and political involvement. That said UDEQ's environmental covenant does provide for site tailoring to facilitate the EC's effectiveness. During such tailoring, project managers (for example in the CERCLA division) can attempt to negotiate monitoring obligations but such is not required under the act authorizing the environmental covenant.

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**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,

If yes please describe  
However, under UDEQ's CERCLA division we have begun to make use of EPA's guidance on implementation plans for ICs but a management plan for ICs is not currently required within this division or others of UDEQ.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Utah's does not have such a guidance. In the CERCLA division we make use of EPA guidance on implementation plans, but this has not been universal across all CERCLA sites. Other divisions of UDEQ may or may not have such a plan, at the time of this survey such was not able to be assessed.

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

As it pertains to the State's environmental covenant, the biggest challenge has been to come to an agreement with the party implementing the EC (in terms of work that has to take place to change land use and other protection pursuits implementing parties may pursue). UDEQ's environmental covenant has a basic boiler plate language use throughout, changing such is considered on a case by case basis with the effort to avoid setting precedence. This too can be challenging.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Utah Code Title 19, Chapter 10 spells out some basic requirements for modification and termination but at time such may be negotiated site specifically. [http://www.le.utah.gov/xcode/Title19/Chapter10/19-10.html?v=C19-10\\_1800010118000101](http://www.le.utah.gov/xcode/Title19/Chapter10/19-10.html?v=C19-10_1800010118000101)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**



**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Our Agency has no institutional control monitoring program  
,  
Land disturbance monitoring via One Call systems ,  
Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
,  
Land owner periodic field inspections and associated reporting  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Coordination with local government permitting process (e.g., local government notifies when permits are issued at an IC site)  
,  
Other (please specify)  
Utah does not have a formal monitoring program. Our environmental covenant act (Title 19 Chapter 10) requires that maintenance needs be listed in an EC but such have to be negotiated site specifically (there is not a general form this is to comply with). The above selected items have been or may be used periodically across divisional authority to monitor ICs, or environmental covenants that have been issued.

---

**Q17: How is your State agency monitoring program funded?**

Under the environmental covenant program, UDEQ is able to seek injunctive relief as well as recover costs for enforcement actions under the EC. However, there is not a monitoring funding mechanism covered explicitly under Title 19 Chapter 10. Cost recovery for such might be negotiated site specifically, across divisions of UDEQ.

---

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No,  
If Yes please explain.  
UDEQ does not have a formal program for monitoring. However site specifically monitoring may take place formally or informally. Non-compliance issues would be resolved as a result of the monitoring, site specifically.

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**PAGE 5: Enforcement**

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**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Please list other instruments you may use Under UDEQ's environmental covenant program (Title 19 Chapter 10) an enforcement action may seek the use of a temporary restraining order or injunction from a court of competent jurisdiction. Other than this, we may make use of another state agencies enforcement capability if an IC is vested with their program or similarly a city or county (via an ordinance penalty of some sort). Whether on a federal, state or local level an IC enforcement action may make use of any of the above initial options.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Such is not formally set under UDEQ's rule authorizing the environmental covenant (Title 19 Chapter 10). Enforcement under an EC by UDEQ may be judged site specifically. If the non-compliance with and IC falls under a federal, other state, or local jurisdiction, their criteria may be reviewed and used to determine when to enforce on a non-compliance issue.

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

,

Other (please specify)

Other federal, state (not environmental covenant related), or local jurisdictional rules may provide for one of the above.

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

No,

If Yes please describe your agency's Data Management System or provide a link Our division overseeing CERCLA related environmental covenants or other ICs maintains a list of current ECs on their webpage (which is linked to our electronic document storage database, [http://eqedocs.utah.gov/SpecialSrchs.aspx?SSName=DERR\\_CERCLAFED\\_EC](http://eqedocs.utah.gov/SpecialSrchs.aspx?SSName=DERR_CERCLAFED_EC)). No formal IC data management system exists within UDEQ.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

State project managers are required to track the ICs being used at their sites. Under our CERCLA division, five year reviews are performed by these managers and they are responsible to assess the ongoing usefulness of the site specific ICs. Other than this, divisions will vary on how they track ICs or environmental covenants that they have required to be enacted.

**Q25: Who can access the information from your data management system?**

Agency and Public,

Other (please specify)

As for the environmental covenants in use at NPL sites under our CERCLA program, any one is able to see the list of sites with environmental covenants and able to access the covenants the divisions's web page.

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control. ,

Other (please explain)

Please note UDEQ and the State of Utah do not have a formal ICs data management system. Our environmental covenants which have been filed for some NPL and NPL-caliber sites are available through our electronic documents storage database.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No,

If Yes please describe your Agency's public outreach This will vary across divisions that allow for the use of ICs. Under our division which oversees CERCLA response actions we work closely with EPA Region 8 to develop outreach plans site specifically when a stakeholder outreach for the proposed remedy (which may include the use of ICs) is ready for public comment.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,

Adjacent landowner, Tenants, Local government,

Other State agencies, Nearby business owners,

Nearby sensitive receptors (e.g., daycare, schools) ,

Citizens groups, Home owners associations,

please list any others

As noted elsewhere, this type of notification will vary across divisions of UDEQ (which allow for the use of ICs and/or are implementing environmental covenants) and other State departments (who may implement an IC through rule, policy, or permit). Communication of an implemented IC will equally vary. The ones selected above are typically notified of a pending IC (by our CERCLA division) when a proposed remedy plan released for public comment.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Local government,  
Other State agencies,  
Nearby sensitive receptors (e.g. daycare, schools) ,  
please list any others  
There is no formal requirement for such notification, but under our CERCLA divisions actions the ones selected would like get notification.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
In the case of UDEQ's environmental covenant program (Title 19 Chapter 10) since the covenant is recorded to the property deed, UDEQ divisions may but such has not been tested yet.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

As noted elsewhere, this will vary across the divisions of UDEQ and certainly across the departments or organizational structure of other federal, state and/or local jurisdictions implementing ICs which are in part used by UDEQ. For my individual division (CERCLA division of UDEQ) our funding is provided by EPA Region 8 (under NPL projects) through cooperative agreements or through State general funds (when the State has an O&M cost contribution component).

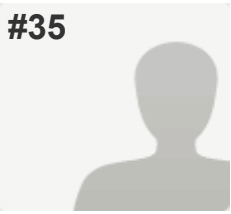
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name: Douglas Bacon  
Agency/Dept/Division/Office: Utah DEQ/Div. of Env. Response & Remediation/ NPL Section  
Address: 195 North 1950 West  
City/Town: SLC  
State: UT  
ZIP: 84116  
Email Address: dbacon@utah.gov  
Phone Number: 801-536-4282

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Washington

PAGE 1: Institutional Controls Survey Objectives

<p><b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b></p>	<p>No</p>
<p><b>Q2: Please check the types of site remediation institutional controls used in your state?</b></p>	<p>Zoning, Local Ordinance or Permit , Groundwater Use Restrictions, Covenants, Deed Notices, Advisories</p>
<p><b>Q3: How many institutional controls are in place in your State?</b></p>	<p>200 or above</p>
<p><b>Q4: On average how many institutional controls does your State agency implement per year?</b></p>	<p>Approximately 20</p>
<p><b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b></p>	<p>Institutional control not implemented, Scope of the institutional control is insufficient , Location of contaminant is not sufficiently described , Monitoring is inadequate, Notice of transfer (deed restriction) was not survivable , Violation of covenant, Violation of land use restriction</p>
<p><b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b></p>	
<p>1.</p>	<p>Implementation of a real time (one call) monitoring system.</p>
<p>2.</p>	<p>Improve cost-recovery system for periodic/5-year review work.</p>

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We have a policy (440A, I believe) that addresses drafting, recording and terminating ICs.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** Yes,  
Please explain  
If there are long term monitoring requirements, they are described in the No-Further-Action determination, and should also be included in the IC. That hasn't always happened, historically.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.** Respondent skipped this question

**Q12: Does your agency require financial assurance specific to institutional controls?** No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Tracking down previous owners/signatories.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Typically an IC is modified if a restriction is no longer necessary, or if a new restriction is required. In that event, the property owner is notified that the change is necessary if they wish to maintain their NFA determination. An IC is eligible for termination if it is determined that there is no longer a potential for exposure and/or contamination is no longer present at concentrations exceeding unrestricted cleanup levels. The property owner must petition for removal of the IC, and public comment is required.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Self-funded.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

During the periodic review process, compliance issues are identified and the liable party is given the opportunity to correct them. In the event that they are not corrected, or are not correctable in a short time period (within a month or so), the first action is to rescind the NFA.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No,

Please describe at least one enforcement action  
Not really. Our enforcement action would involve returning them to the cleanup process. In other words, we would use our rule (MTCA) to enforce additional actions. If the site is under decree, we could use the court to pursue a required action, but I don't believe we have ever used that option.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Potential exposure. Violation of covenant restrictions. Risk based on land use. Cooperation from responsible party.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link

Our database is internal and not accessible by the public. It is a comprehensive database with data on all of our sites, and contains an IC subsection. Our registry is a report available in .xls or .pdf format containing all the sites with ICs.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public,

Other (please specify)

The public can access certain parts of our database through web-reporting tools.

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
We publish a monthly register with information about our sites and ICs. For high profile sites, we send out mailings. There are public comment periods for many of our decision steps.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,

Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Local government,  
please list any others

We have an open public comment period required for modification or termination of an IC.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.

It is a requirement, but doesn't always happen.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

From our program budget. We only cost recover when the site in question is under an active order or decree with a cost recovery mechanism already in place.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

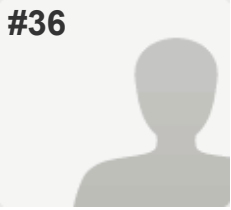


**Q33: Please complete your contact information.**

Name:	Jeff Newschwander
Agency/Dept/Division/Office	Washington State Department of Ecology
Address:	15 W Yakima Ave
City/Town:	Yakima
State:	WA
ZIP:	98902
Email Address:	jeff.newschwander@ecy.wa.gov
Phone Number:	5094547842

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#36



North Carolina

## PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Groundwater Use Restrictions,  
State Use Restrictions, Deed Notices

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

I really don't have an idea but to say it is a lot

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. develop a more centralized database to list sites in other programs

## PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

<http://portal.ncdenr.org/web/wm/>  
<http://portal.ncdenr.org/web/wm/ust/forms>

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.** Respondent skipped this question

**Q12: Does your agency require financial assurance specific to institutional controls?** No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Usually not a problem just a matter of moving through the process again or making amendments. This process is used by another section I'm not real familiar with.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.** Respondent skipped this question

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Our Agency has no institutional control monitoring program

**Q17: How is your State agency monitoring program funded?** Respondent skipped this question

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** Respondent skipped this question

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** Respondent skipped this question

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Respondent skipped this question

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?** *Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?** *Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.** *Respondent skipped this question*

**Q25: Who can access the information from your data management system?** *Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?** *Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** *Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner, Adjacent landowner, Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner, Adjacent landowner, Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?** *Respondent skipped this question*

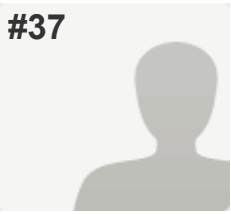
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

**Q33: Please complete your contact information.**

Name:	James Brown
Agency/Dept/Division/Office	NCDENR - DWM - UST Section
Address:	225 Green Street
City/Town:	Fayetteville
State:	NC
ZIP:	28301
Email Address:	james.brown@ncdenr.gov
Phone Number:	9104333300

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#37



West Virginia

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
The only way to implement Land Use Covenants (LUCs; ICs) is through Voluntary Remediation Program

**Q2: Please check the types of site remediation institutional controls used in your state?**

Covenants

**Q3: How many institutional controls are in place in your State?**

51 - 100

**Q4: On average how many institutional controls does your State agency implement per year?**

about 5 to 10

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Monitoring is inadequate, Reporting is inadequate

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. We have included an Item in LUCs that the property owner should submit a LUC inspection report once or twice a year
2. Final Report in VRP should include a format for LUC inspection report
3. A Stewardship Program is under discussion for implementation

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No,  
If Yes please provide a link to the policy or procedure.  
only in VRP and LUST UECA Program

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We do have a template for Land Use Covenant available in our web page  
<http://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/VRP%20Land%20Use%20Covenant%20Template-6.5.2015.dotx>

Such a template for Land Use Covenant is also available for LUST - UECA risk based program.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
There is a paragraph in Land Use Covenant - obligating property owner to submit - LUC inspection report once a year or twice a year based on site specific situation. Final report for the site must include a format for LUC inspection report. This will be easy for the current and future property owners. In addition the respective county project managers follow up, and inspect time to time - the sites for which LUC has been recorded.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe  
This is in discussion, and pilot program is on going

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/VRP%20Land%20Use%20Covenant%20Template-6.5.2015.dotx>

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

It has been a slow process

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

We have a reopener provision in the Rule - for sites where a certificate of completion has been issued.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
 Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
 ,  
 Responsible party periodic field inspection and associated reporting  
 ,  
 Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
 ,  
 Land owner institutional control permit requirements ,  
 Other (please specify)  
 We have a Google earth link where all sites having LUCs are marked with LUCs linked to it

**Q17: How is your State agency monitoring program funded?**

Not yet. Looking at how this can be implemented. A Land Use Stewardship program is in development where in-addition LUCs; Closed Landfills monitoring; and many other such monitoring can be brought in as well as data base on available Lands for future development.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No,  
 Please describe at least one enforcement action  
 I am not aware of

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter,  
 Please list other instruments you may use  
 Not aware of

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Deviation on restrictions included in recorded LUCs

**Q22: Does your State agency have the authority to enforce using the following?**

Other (please specify)  
 Not aware of. However I can check and revert

**PAGE 6: Data Management**



**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

No,

If Yes please describe your agency's Data Management System or provide a link  
 Not yet - Possibly there is. We do have a contractor - reviewing Miss Utility calls and sending emails to us if any work is planned on or near sites having a LUC in place.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Other (please specify) Not clear

**Q26: How long are records maintained and active in your state agency's data management system?**

11 - 15 years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

If Yes please describe your Agency's public outreach  
 Not clear

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Local government, Construction / utility

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Local government, Construction / utility

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.  
 The LUC template includes - obligation that change of property owner is conveyed to our Director - Division of Land Restoration

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Responsible party goes through a Voluntary Remediation Program

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

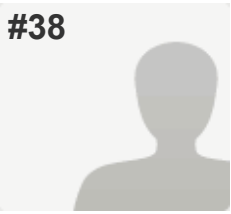
Yes

**Q33: Please complete your contact information.**

Name:	Pasupathy Ramanan
Agency/Dept/Division/Office	WV DEP
Address:	2031 Pleasant Valley Road
Address 2:	Suite#1
City/Town:	Fairmont
State:	WV
ZIP:	26554
Email Address:	pasupathy.ramanan@wv.gov
Phone Number:	304-368-2000 ext. 3730

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#38



Alaska

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,

If Yes please explain the limitations.  
 First - the definition of "off-site" is unclear. If a property is contaminated (including groundwater) then it is part of the site. Alaska statute requires cleanup down to risk based cleanup levels unless an alternative cleanup level is established. If the alternative cleanup level requires institutional controls to control activities, i.e. industrial use only, or groundwater use restrictions, then landowner concurrence is required.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
 Groundwater Use Restrictions, Easements,  
 Statutes, Administrative Orders , Consent Decrees,  
 Permits, Deed Notices, Advisories,  
 Please list any other insitutional control you use but is not listed above  
 Clarification on "Easement". Alaska does not have a version of the uniform environmental covenant act, but our statutes do include the uniform conservation easement act. Conservation easements are not an ideal environmental covenant but they have been used here at superfund sites to retain a property interest and right of entry for the state.

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

50 / Year - total ICs in state 1,172

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Institutional control not discoverable,  
Institutional control not enforceable,  
Scope of the institutional control is insufficient,  
Location of contaminant is not sufficiently described,  
Communicating the institutional control details was inadequate  
,  
Monitoring is inadequate, Reporting is inadequate,  
The Stewardship/Implementation plan failed,  
Notice of transfer (deed restriction) was not survivable  
,  
Violation of covenant,  
Violation of land use restriction,  
Physical break of a barrier, Exposure,  
Potential for exposure,  
Please list any other failure not identified above.  
Agency does not have a system for maintaining periodic correspondence when property owner does not report.

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**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Pass Environmental Covenants Statute
2. Develop statewide GIS and registry with contaminated areas clearly mapped
3. Establish system for communicating with and billing property owners, preferably with their property tax billings

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**PAGE 2: Selection and Implementation**

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**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,  
If Yes please provide a link to the policy or procedure.  
<http://dec.alaska.gov/spar/csp/guidance/2011%20Final%20IC%20Guidance.pdf>

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

<http://dec.alaska.gov/spar/csp/guidance/2011%20Final%20IC%20Guidance.pdf>

Guidance linked has an IC Template for establishing "Equitable Servitude" including easement and right of entry. This requires attorney review and land management agency involvement.

The Guidance also has a template for "Notice of Environmental Contamination" (deed notice). Which is recorded by the agency without review or other agency involvement.

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**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,

Please explain

The definition of monitoring obligations is inconsistent statewide. Even if required, monitoring obligations are often poorly defined and not enforced. This is a problem with Alaska's system. A better system to map and track properties subject to ICs is needed.

---

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe

All federal properties have an ICMP requirement. Typically we follow EPA and DOD guidance on long term management plans, including a 5 year review schedule. If the property is also subject to CERCLA we tie the two requirements together for that site.

---

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Alaska Guidance:

<http://dec.alaska.gov/spar/csp/guidance/2011%20Final%20IC%20Guidance.pdf>

EPA ICIAP Guidance:

[http://www.epa.gov/superfund/policy/ic/guide/ICIAP%20guidance%20\(FINAL\)%20-%2012.04.2012.pdf](http://www.epa.gov/superfund/policy/ic/guide/ICIAP%20guidance%20(FINAL)%20-%2012.04.2012.pdf)

<http://www.epa.gov/superfund/policy/ic/guide/Final%20PIME%20Guidance%20December%202012.pdf>

<http://www.epa.gov/superfund/policy/ic/guide/641333.pdf>

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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### PAGE 3: Modification or Termination

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Note to Question 12 - Alaska has the ability to require financial assurance however we do not do that regularly.

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**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

See: <http://dec.alaska.gov/commish/regulations/pdfs/18%20AAC%2075.pdf>

Reference to IC termination is in 18 AAC 75.375(f)

Section available here: <http://www.touchngo.com/lglcntr/akstats/aac/title18/chapter075/section375.htm>

(f) If the concentrations of all residual hazardous substances remaining at the site are subsequently determined to be below the applicable cleanup levels, the department will approve, at the owner's request, elimination of the institutional control.

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**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Frequently

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**PAGE 4: Monitoring and Tracking**

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**Q16: Does your State agency have any of the following institutional control monitoring programs?**

- Responsible party periodic field inspection and associated reporting
- ,
- Responsible party institutional control compliance certification
- ,
- Land owner periodic field inspections and associated reporting
- ,
- Land owner institutional control compliance certifications
- ,
- Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)
- ,
- Other (please specify)  
CERCLA 5 year reviews and annual reporting requirements under plans developed following EPA ICAP guidance.

---

**Q17: How is your State agency monitoring program funded?**

Our "Response Fund" is a tax on crude oil production and refined fuel sales. Costs for time spent directly on specific site ICs are recovered by billing the site owner or RP. Not all IC review costs are recovered directly. Alaska is considering going to a permit and fee system for most ICs.

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**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

Our IC Unit is in its infancy. Previously compliance efforts were at the discretion of individual regulators managing these sites. Most considered compliance with ICs a low priority. Today, our "IC Unit" receives and communicates with property owners regarding site ICs. If the owner does not respond then they are considered out of compliance, and this non-compliance is subject to escalating enforcement efforts. This program is inconsistently applied but Alaska is increasing its efforts to identify non-compliant RPs. Federal sites continue to be managed by assigned project staff. Non-Compliance is typically identified during the 5 year review process for CERCLA and other sites.

---

**PAGE 5: Enforcement**

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**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
Eielson Air Force Base failed to implement several ICs and associated engineering controls that had been specified in multiple RODs for multiple OUs. Alaska used escalating enforcement to require the Air Force to bring their IC efforts into compliance with state and federal law. Some of these sites were subject to an FFA, others were state only sites. A 2 party agreement was negotiated for the state sites, and FFA penalties and process were followed for CERCLA sites.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,

Federal Facilities Agreement, Consent Order,

Please list other instruments you may use  
Property liens to recover regulatory costs and any costs the state incurs implementing a remedy.

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Risk of exposure is the primary criteria. This is tracked for each site in our registry with an "Exposure Tracking Module", basically a CSM for each site. Typically we will enforce if people are currently being exposed, and we will consider enforcement if there is a significant risk of exposure. Alaska will usually attempt administrative measures first before enforcement.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

,

Other (please specify)

Cost recovery. Also our Statutes and Regs allow us to directly implement remedies if needed to prevent exposure, which is needed for abandoned or orphan properties.

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**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link

All sites are described in our public database, and most "actions" recorded in the database are also available on the public side, although enforcement and limited other actions are only available to the agency. [http://dec.alaska.gov/spar/csp/db\\_search.htm](http://dec.alaska.gov/spar/csp/db_search.htm) (Also on that page is a link to our web map which locates all sites visually using the same database) Click "Search" and follow this link:

<http://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Search> Under "Status" choose the drop down "Cleanup Complete - Institutional Controls" - you can search by property, city, file number, or site name.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public,

Other (please specify)

See answer to 23, not all database actions are available on the public search.

**Q26: How long are records maintained and active in your state agency's data management system?**

20 plus years,

Other (please explain)

Alaska has a statutory requirement for approval to move soil from any closed or open site. This requirement has no expiration date so the data on both closed and open sites needs to be maintained in perpetuity.

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**PAGE 7: Outreach and Coordination**



**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach Seminars at local environmental conferences. State & Tribal outreach programs. ListServ notifications. Targeted industry seminars with real estate professionals and banks.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner, Tenants,

Local government, Other State agencies,

please list any others

Public Meetings with notice in newspaper - This is required on most federal sites and optional for most private or state owned sites.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner,

Other State agencies,

please list any others

Public Meetings with notice in newspaper - This is required on most federal sites and optional for most private or state owned sites.

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,

If yes please describe how and when you are notified.

We are working to correct this deficiency. The deed notices requiring notification of the agency are not being followed by title companies and banks. The remedy could be statutory or perhaps just education efforts will solve this problem.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Alaska's "Response Fund" is a tax on oil production and refined fuel sales. This is used to fund IC activities and other regulatory efforts. Costs for regulatory efforts on specific sites are expected to be recovered by billing the site RP or Landowner. Not all IC efforts meet the reasonable threshold for sending such billings. Alaska is considering a permit and fee system for typical IC registry, administration and reporting activities but for now all of these are funded as described above.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

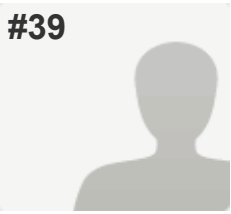
Yes

**Q33: Please complete your contact information.**

Name:	Fred Vreeman
Agency/Dept/Division/Office	Alaska Dept. of Environmental Conservation
Address:	610 University Avenue
City/Town:	Fairbanks
State:	AK
ZIP:	99709
Email Address:	fred.vreeman@alaska.gov
Phone Number:	907-451-2181

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#39



Arizona

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No,  
If Yes please explain the limitations.  
Arizona Revised Statutes dicate the requirements

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit , Easements,  
Covenants, Statutes, Administrative Orders,  
Consent Decrees, Permits, Deed Notices,  
Please list any other insitutional control you use but is not listed above  
Declaration of Environemntal Use Restriction (DEUR) is a restrictive covenant is option as a remediation tool when contamination is left in place above an applicable Arizona residential soil remediation level.

**Q3: How many institutional controls are in place in your State?**

151 - 200

**Q4: On average how many institutional controls does your State agency implement per year?**

5

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Change the rule to make a notification of property ownership a requirement.

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,  
If Yes please provide a link to the policy or procedure.  
<https://www.azdeq.gov/environ/waste/cleanup/deur.html>

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Templates documents have been developed and can be accessed through the above provided website

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
Pursuant to A.R.S. 49-152 (K) IC's which utilize a land use restriction are required to submit annual reports. Those IC's which also utilize engineering control(s) are required to inspect and submit an inspection report at least once a year.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe  
When engineering controls are utilized, an engineer control plan is required pursuant to A.R.S. 49-152.01

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/49/00152-01.htm&Title=49&DocType=ARS>

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

None to date.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

A.R.S 49-152(D) allows for the termination or modification of the IC.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Never

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting  
,

Land owner periodic field inspections and associated reporting  
,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Fees are associated with Institutional Control which are designed to pay for the Agency's oversight. Arizona Administrative Code R17-7-601 defines the fees. [http://apps.azsos.gov/public\\_services/Title\\_18/18-07.pdf](http://apps.azsos.gov/public_services/Title_18/18-07.pdf)

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
The Agency tracks and reviews annual reports that are submitted and conducts site visits of respective sites.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

Please describe at least one enforcement action  
To date, all issues have been resolved without enforcement, via phone calls and letters.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation,  
Administrative Order, Consent Order,  
Unilateral Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

A.R.S 49-152.02 <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/49/00152-02.htm&Title=49&DocType=ARS>

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
<https://www.azdeq.gov/databases/deursearch.html>

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No,

If yes please describe how and when you are notified.  
The DEUR Program Coordinator tracks this information on a yearly basis when the IC annual reports are sent to respective property owners. It should be noted above that the program (Underground Storage Tank, Voluntary Remediation Program, etc) community involvement requirements must be adhered to, which can include many of the above, but the statute specific to IC's does not have a community involvement element.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Again, Fees are associated with the ICs and provide for funds for the Agency to monitor and provide oversight of the respective sites.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

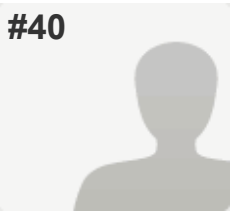
Yes

**Q33: Please complete your contact information.**

Name:	Gwenn Ziegler
Agency/Dept/Division/Office	ADEQ/RPS/Voluntary Remediation Program
Address:	1110 W Washington St
City/Town:	Phoenix
State:	AZ
ZIP:	85007
Email Address:	gez@azdeq.gov
Phone Number:	602-771-4177

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#40



Nevada

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Groundwater Use Restrictions, Covenants, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	6 - 25
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	unknown
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	<i>Respondent skipped this question</i>
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	More guidance and examples.

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
Some guidance on our website, but its usually reviewed site by site case and on complex sites we will have the attorney general review. <a href="http://ndep.nv.gov/bca/covenant.htm">http://ndep.nv.gov/bca/covenant.htm</a>	
<b>Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.</b>	Yes, Please explain Again, it is reviewed on a site by site case. Some sites may not require any monitoring, while others may still require monitoring.



**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe  
Some sites will require a soil management plan to be developed and tied to the covenant.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

We haven't had to modify any to my knowledge. But it would be very difficult since most are recorded with the County and in agreement with the property owners.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

<http://ndep.nv.gov/bca/covenant.htm>

<http://www.leg.state.nv.us/NAC/NAC-445A.html#NAC445ASec22725>

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting

**Q17: How is your State agency monitoring program funded?**

Any monitoring is usually performed by the RP.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
To the extent that it is reported by the RP.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation, Consent Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Has the RP been notified and given chance to respond? Are they refusing to comply? Are they under any other consent order? What is the immediate danger to the public and environment?

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

It is usually case by case with the regulator.

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

Unknown

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner,  
Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

We don't implement very many ICs, so they are funded under the Corrective Actions Bureau.

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

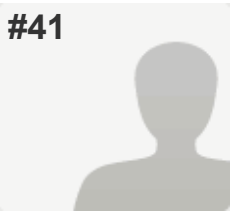
---

**Q33: Please complete your contact information.**

Name:	Michael Friend
Agency/Dept/Division/Office	Environmental Protection
Address:	2030 East Flamingo
Address 2:	Suite 230
City/Town:	Las Vegas
State:	NV
ZIP:	89119
Email Address:	mpfriend@ndep.nv.gov
Phone Number:	7024862850

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#41



Alabama

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Groundwater Use Restrictions, Covenants, Administrative Orders, Consent Decrees, Permits, State Registries
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	5
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Institutional control is overly restrictive and prevents beneficial use , Communicating the institutional control details was inadequate , Property was not able to be returned to beneficial use
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Direct electronic coding from probate offices
2.	Automatic covenant registry update on website
3.	Match use restrictions to actual zoning

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
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**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

We provide boiler plate information for environmental covenants. The template is available upon request.

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain Situational and program specific.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
For sites with potentially long term remedial activities.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Currently, the State does not have its own plan. Long term institutional control plans, if required, are submitted by regulated entities either through permits or administratively ordered cleanup activities.

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

To change an institutional control cited in an environmental covenant generally requires significant additional assessment and cleanup activities.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

No link is available, only 2 of approximately 2,500 environmental covenants have been modified.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party institutional control compliance certification  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Fee driven environmental covenants program.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
Site inspections are conducted with a frequency dependent on the type of institutional control.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Deficiency,  
Notice of Violation, Administrative Order,  
Federal Facilities Agreement, Consent Order,  
Unilateral Order,  
Please list other instruments you may use Civil suit

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

For non Voluntary Cleanup Program sites (i.e. RCRA). Violations of an institutional control at a permitted facility or a facility under an administrative order will cause an enforcement action.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
The Department maintains an environmental covenants registry which is available upon request.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Other (please specify)  
Public and agency, available upon request

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

please list any others  
General public, all cleanup plans (many of which include institutional controls) are required to be public noticed

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Other State agencies, Banks, Citizens groups, Developers, Realtors, Consultants

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
By letter with a description of transfer activity

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Programmatic dependent, example RCRA through permit fees, Voluntary Cleanup Program through environmental covenant fees...

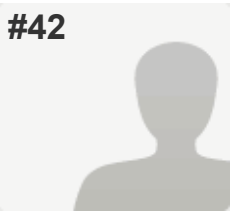
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Lawrence A. Norris, Chief-Redevelopment Section
Agency/Dept/Division/Office	Alabama Department of Environmental Management/Land Division/Environmental Services Branch/Redevelopment Section
Address:	1400 Coliseum Boulevard
City/Town:	Montgomery
State:	AL
ZIP:	36110-2400
Email Address:	lan@adem.state.al.us
Phone Number:	334-279-3053

#42



Ohio

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,

If Yes please explain the limitations. IC controls in our Voluntary Action Program are usually limited to the property in question. ICs going on to adjoining properties owned by another party are generally not permitted.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Covenants, Administrative Orders, Consent Decrees

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

Approximately 50 in the Voluntary Action Program alone.

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Violation of covenant,  
Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. More timely institutional control inspections (we aim for every 5 years)

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Our Voluntary Action Program has several legal templates that are used as part of the Covenant Not to Sue that include specific institutional controls.



**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
For each property in the Voluntary Action Program that has an institutional control, we conduct an inspection every five years to verify that the institutional control(s) is/are being implemented.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Modifications or terminations of institutional controls are handled on a case-by-case basis.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)

,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Costs for institutional control inspections are included in the fee the volunteer pays to obtain a covenant not to sue.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
Under the Voluntary Action Program, we conduct five year reviews to make sure the CNS issued properties comply with land use restrictions. Non-compliance with these restrictions would be noted during the inspection.

---

PAGE 5: Enforcement

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
Not an enforcement action, but we have revoked a covenant not to sue due to not adhering institutional controls (land use restrictions).

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Please list other instruments you may use  
Letter of revocation of covenant not to sue

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

---

PAGE 6: Data Management

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
We have a master spreadsheet that indicates which properties that have received a covenant not to sue are due for inspections.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

Other (please explain)  
Under our records retention policy, any IC inspections associated with a covenant not to sue would be kept permanently.

---

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner, New landowner, Consultants

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner, Consultants

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** Yes,  
If yes please describe how and when you are notified.  
The new property owner is required to notify Ohio EPA when a property that has a covenant not to sue (both with and without institutional controls) is transferred.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

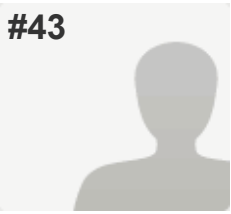
For the Voluntary Action Program, activities are funded through the fees paid to obtain a covenant not to sue.

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

**Q33: Please complete your contact information.**

Name: Kelly Kaletsky  
 Agency/Dept/Division/Office: Ohio EPA - DERR - VAP  
 Address: 50 W. Toiwn Street, Suite 700  
 Address 2: P.O. Box 1049  
 City/Town: Columbus  
 State: OH  
 ZIP: 43216  
 Email Address: kelly.kaletsky@epa.ohio.gov  
 Phone Number: 614-644-2304

#43



Florida

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Local Ordinance or Permit , Groundwater Use Restrictions, Covenants, Statutes, Consent Decrees, Permits, Deed Notices, State Registries, Please list any other insitutional control you use but is not listed above Memorandum of Understanding (MOU) w/Florida Dept.of Transportation
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	150 +-
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Institutional control not implemented
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Frequent training to Project/Site Managers
2.	Improve Grantor's understanding of Title Search criteria
3.	Improve Grantor's adherence to 30 day Notice of property sale to Agency

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,

If Yes please provide a link to the policy or procedure.  
[www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm](http://www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm)

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Institutional Controls Procedures Guidance manual.

Found at bottom of link:[www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm](http://www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm)

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
During the active assessment phase the extent of contamination is identified

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,

If yes please describe  
Engineering Control Maintenance Plan(s) for all Engineering Contols. Restrictive Covenants last in perpetuity. Institutional Controls established to last in perpetuity and/or be modified as necessary

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

[www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm](http://www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm)

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

None

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

[www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm](http://www.dep.state.fl.us/waste/categories/brownfields/pages/icr.htm)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

Inland Protection Trust Fund (IPTF-Gas Tax)

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.  
Institutional Control & Engineering Control Auditing Program (ICECAP)

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
Person(s) Responsible for Site Rehabilitation (PRSR) failed to implement Institutional/Engineering Controls pursuant to Agency Consent Order.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Consent Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

When a responsible party does not comply with terms of the Institutional Control (IC) or the Site Rehabilitation Completion Order w/Conditions SRCO w/Conditions enforcement can be taken

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
Institutional Control Registry & Oculus database

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

N/A

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
Public rulemaking meetings, Contaminated Media  
Forum meetings & Newspaper Publication

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Tenants, Local government,  
Construction / utility, Banks,  
Home owners associations, Developers,  
Consultants

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,  
If yes please describe how and when you are notified.  
Grantor must notify Agency 30 days in writing prior to any sale or transfer of property ownership

PAGE 8: Program Funding

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Primarily by Grantors but by state cleanup funding

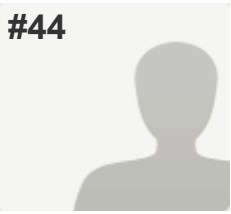
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Mary Stewart and Dan Blackwell
Agency/Dept/Division/Office	Florida Department of Environmental Protection-Office of the General Counsel
Address:	3900 Commonwealth Blvd. MS 35
City/Town:	Tallahassee
State:	FL
ZIP:	32399-3000
Email Address:	mary.stewart@dep.state.fl.us & dan.blackwell@dep.state.fl.us
Phone Number:	(850) 245-2287

#44



South Carolina

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Groundwater Use Restrictions, Easements, Covenants, Administrative Orders, Consent Decrees, Permits, Deed Notices, State Registries, Advisories

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

N/A

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented, Monitoring is inadequate, Reporting is inadequate, The Stewardship/Implementation plan failed, Violation of covenant, Physical break of a barrier

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. For all environmental programs, implement a process that incorporates compliance, monitoring, enforcement, and renewal details, similar to what is done for a standard permit

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No



**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Template. Template varies amongst programs.

---

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** No

---

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** No

---

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.** *Respondent skipped this question*

---

**Q12: Does your agency require financial assurance specific to institutional controls?** Yes

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**PAGE 3: Modification or Termination**

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

N/A

---

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

N/A

---

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Sometimes

---

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
,  
Remote sensor monitoring (e.g., vapor mitigation systems, groundwater hydraulic gradient containment systems)  
,  
Responsible party periodic field inspection and associated reporting  
,  
Responsible party institutional control compliance certification  
,  
Land owner periodic field inspections and associated reporting  
,  
Land owner institutional control compliance certifications  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

**Q17: How is your State agency monitoring program funded?**

There is no State agency monitoring program. Individual programs fund the monitoring of sites.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,  
If Yes please explain.  
Individual programs that monitor sites identify non-compliance.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,  
Please describe at least one enforcement action  
Failure to monitor and report

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

N/A

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
 Injunctive relief (meaning an order to act or cease further activities)  
 ,  
 Other (please specify)  
 Termination of a Voluntary Cleanup Contract,  
 Revocation of a Covenant not to sue

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
 If Yes please describe your agency's Data Management System or provide a link  
 ICs are documented via the general Agency database (named EFIS)

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

20 plus years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
 If Yes please describe your Agency's public outreach  
 Letters are sent to stakeholders, press release,  
 Internet posting on the Agency website

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Individual programs fund the institutional control activities of sites.

---

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

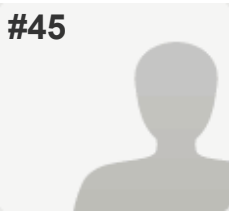
---

**Q33: Please complete your contact information.**

Name:	Keisha Long
Agency/Dept/Division/Office	SC DHEC
Address:	2600 Bull Street
City/Town:	Columbia
State:	SC
ZIP:	29201
Email Address:	longkd@dhec.sc.gov
Phone Number:	803-898-0774

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#45



**INCOMPLETE-Anonymous**

**Collector:** Web Link 1 (Web Link)  
**Started:** Monday, July 13, 2015 2:20:25 PM  
**Last Modified:** Monday, July 13, 2015 2:30:25 PM  
**Time Spent:** 00:10:00  
**IP Address:** 205.204.186.9

**PAGE 1: Institutional Controls Survey Objectives**

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
 If Yes please explain the limitations.  
 The state does not have the authority in the statute to place environmental covenants on properties which do not have an owner of record.

**Q2: Please check the types of site remediation institutional controls used in your state?**

Groundwater Use Restrictions, Covenants,  
 State Use Restrictions, Statutes, Deed Notices,  
 Advisories

**Q3: How many institutional controls are in place in your State?**

151 - 200

**Q4: On average how many institutional controls does your State agency implement per year?**

20

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Monitoring is inadequate, Violation of covenant,  
 Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1. Conduct routine audits of some ICs
2. Require parties to fund long term oversight of ICs

**PAGE 2: Selection and Implementation**

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

*Respondent skipped this question*

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

*Respondent skipped this question*

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

*Respondent skipped this question*

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

*Respondent skipped this question*

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

*Respondent skipped this question*

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

*Respondent skipped this question*

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

*Respondent skipped this question*

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

*Respondent skipped this question*

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

*Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

*Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

*Respondent skipped this question*

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

*Respondent skipped this question*

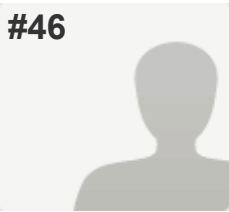
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

*Respondent skipped this question*

**Q33: Please complete your contact information.**

*Respondent skipped this question*

#46



**INCOMPLETE-Anonymous**

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, July 09, 2015 1:09:56 PM  
**Last Modified:** Tuesday, July 14, 2015 9:39:08 AM  
**Time Spent:** Over a day  
**IP Address:** 205.204.186.9

**PAGE 1: Institutional Controls Survey Objectives**

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

*Respondent skipped this question*

**Q2: Please check the types of site remediation institutional controls used in your state?**

*Respondent skipped this question*

**Q3: How many institutional controls are in place in your State?**

*Respondent skipped this question*

**Q4: On average how many institutional controls does your State agency implement per year?**

*Respondent skipped this question*

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

*Respondent skipped this question*

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

**PAGE 2: Selection and Implementation**

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

*Respondent skipped this question*

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

*Respondent skipped this question*

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

*Respondent skipped this question*



**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

*Respondent skipped this question*

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

*Respondent skipped this question*

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

*Respondent skipped this question*

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

*Respondent skipped this question*

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

*Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

*Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Nearby sensitive receptors (e.g., daycare, schools) ,  
Banks

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

*Respondent skipped this question*

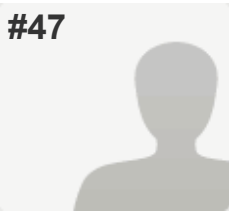
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

*Respondent skipped this question*

**Q33: Please complete your contact information.**

*Respondent skipped this question*

#47



**INCOMPLETE-Anonymous**

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, July 14, 2015 2:24:12 PM  
**Last Modified:** Tuesday, July 14, 2015 2:42:52 PM  
**Time Spent:** 00:18:39  
**IP Address:** 205.204.186.9

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).** No

**Q2: Please check the types of site remediation institutional controls used in your state?** *Respondent skipped this question*

**Q3: How many institutional controls are in place in your State?** *Respondent skipped this question*

**Q4: On average how many institutional controls does your State agency implement per year?** *Respondent skipped this question*

**Q5: For institutional controls that have failed, please select the possible causes from the list below.** *Respondent skipped this question*

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.** *Respondent skipped this question*

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** *Respondent skipped this question*

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)** *Respondent skipped this question*

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** *Respondent skipped this question*

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** *Respondent skipped this question*

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

*Respondent skipped this question*

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

*Respondent skipped this question*

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

*Respondent skipped this question*

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

*Respondent skipped this question*

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

*Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

*Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

*Respondent skipped this question*

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

*Respondent skipped this question*

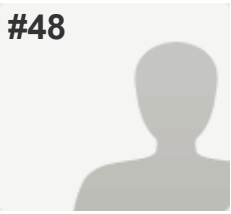
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

*Respondent skipped this question*

**Q33: Please complete your contact information.**

*Respondent skipped this question*

#48



Kentucky

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Covenants, Statutes, Deed Notices

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

~15/year

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented,  
Violation of covenant,  
Violation of land use restriction,  
Please list any other failure not identified above.  
No property owner available to place restriction on property

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |   |
|----|---|
| 1. | Broader application of statutory environmental covenant                         |
| 2. | Ability to place covenant on abandoned property or where no viable owner exists |
| 3. | More consistent documentaion of impacted area acreage/maps                      |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Environmental Covenant template and attorney review

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**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,

Please explain  
Part of the long-term management plan, annual certification, and Five Year Review

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**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes

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**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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#### PAGE 3: Modification or Termination

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

None

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**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

KRS 224.80-190

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**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

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#### PAGE 4: Monitoring and Tracking

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**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)

,

Responsible party periodic field inspection and associated reporting

,

Responsible party institutional control compliance certification

,

Land owner periodic field inspections and associated reporting

,

Land owner institutional control compliance certifications

,

Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)

,

Land owner institutional control permit requirements

**Q17: How is your State agency monitoring program funded?**

General Funds

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** Yes

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter, Notice of Violation,  
Administrative Order, Federal Facilities Agreement,  
Consent Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

When IC is not being complied with by the person possessing the property

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**



**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link  
Internal only

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,  
If Yes please describe your Agency's public outreach  
We require the responsible party to provide the outreach

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Local government,  
please list any others  
Any other interest-holders on the property (e.g., liens, easement holders)

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Local government,  
please list any others  
Any other interest-holders on the property (e.g., liens, easement holders)

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes

PAGE 8: Program Funding

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Responsible party

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

**Q33: Please complete your contact information.**

Name:	Jerri Martin
Agency/Dept/Division/Office	DWM - Superfund Branch
Address:	200 Fair Oaks Lane
Address 2:	2nd Floor
City/Town:	Frankfort
State:	KY
ZIP:	40601
Email Address:	jerri.martin@ky.gov
Phone Number:	502-564-6716

---

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

*Respondent skipped this question*

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

*Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

*Respondent skipped this question*

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

*Respondent skipped this question*

**Q17: How is your State agency monitoring program funded?**

*Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

*Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

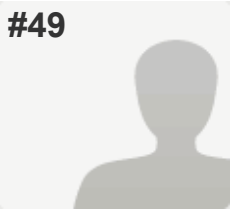
*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

*Respondent skipped this question*

**PAGE 6: Data Management**

#49

**INCOMPLETE-Anonymous****Started:** Wednesday, July 15, 2015 7:21:50 AM**Last Modified:** Wednesday, July 15, 2015 8:48:10 AM

## PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

*Respondent skipped this question*

**Q2: Please check the types of site remediation institutional controls used in your state?**

*Respondent skipped this question*

**Q3: How many institutional controls are in place in your State?**

*Respondent skipped this question*

**Q4: On average how many institutional controls does your State agency implement per year?**

*Respondent skipped this question*

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

*Respondent skipped this question*

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

## PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

*Respondent skipped this question*

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

*Respondent skipped this question*

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

*Respondent skipped this question*

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

*Respondent skipped this question*

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

*Respondent skipped this question*

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

*Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?**

11 - 15 years

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

*Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

*Respondent skipped this question*

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

*Respondent skipped this question*

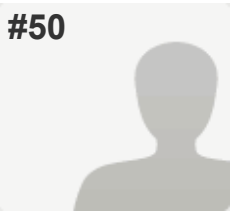
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

*Respondent skipped this question*

**Q33: Please complete your contact information.**

*Respondent skipped this question*

#50



COMPLETE-Anonymous

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Local Ordinance or Permit , Covenants
<b>Q3: How many institutional controls are in place in your State?</b>	200 or above
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	30 per year but now slowly decling
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Violation of covenant
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	establish a tracking system
2.	site checks
3.	possible use of enforcement

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No, If Yes please provide a link to the policy or procedure. <a href="http://www.iowadnr.gov/InsideDNR/RegulatoryLand/UndergroundStorageTanks/LeakingUndergroundTanks/EnvironmentalCovenant.aspx">http://www.iowadnr.gov/InsideDNR/RegulatoryLand/UndergroundStorageTanks/LeakingUndergroundTanks/EnvironmentalCovenant.aspx</a>
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**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Model Covenant:

<http://www.iowadnr.gov/InsideDNR/RegulatoryLand/UndergroundStorageTanks/LeakingUndergroundTanks/EnvironmentalCovenant.aspx>

Model Ordinance: <http://www.iowadnr.gov/Portals/idnr/uploads/ust/gwbb010704.pdf>

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**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,

Please explain  
Iowa uses a RBCA approach which requires monitoring of all applicable pathways. Once IC is in place, pathway is reclassified as "no risk" and monitoring is not required

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**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No

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**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

N/A

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**Q12: Does your agency require financial assurance specific to institutional controls?**

No

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**PAGE 3: Modification or Termination**

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**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Needed to file a covenant to remove the IC covenant

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**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

N/A

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**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

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**PAGE 4: Monitoring and Tracking**

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**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Our Agency has no institutional control monitoring program

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**Q17: How is your State agency monitoring program funded?**

N/A

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** No

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?** No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** *Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

N/A

**Q22: Does your State agency have the authority to enforce using the following?** *Respondent skipped this question*

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

We do not track ICs

**Q25: Who can access the information from your data management system?** *Respondent skipped this question*

**Q26: How long are records maintained and active in your state agency's data management system?** *Respondent skipped this question*

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** Current landowner, Local government

**Q29: What stakeholders in your state are notified when an institutional control is modified?** Current landowner



**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** No

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**PAGE 8: Program Funding**

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**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

The LUST program in general is funded by fees and supplemented by US EPA grants

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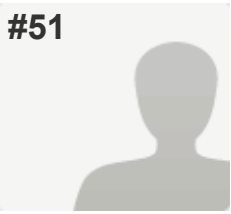
**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** No

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**Q33: Please complete your contact information.** *Respondent skipped this question*

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#51



Idaho

PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Local Ordinance or Permit , Groundwater Use Restrictions, Covenants, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	101 - 150
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	30
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	Please list any other failure not identified above. None have failed that we know of.
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	
1.	Improve monitoring program
2.	Coordinate IC implementation between programs
3.	Develop adequate and consistent funding mechanism

PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
Idaho has a UECA statute. The process for drafting is described on the EC webpage at <a href="https://www.deq.idaho.gov/waste-mgmt-remediation/remediation-activities/environmental-covenant/">https://www.deq.idaho.gov/waste-mgmt-remediation/remediation-activities/environmental-covenant/</a>	

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

No,  
Please explain  
Monitoring requirements are site specific and IC specific.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

Guidance does not exist.

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

Particularly with off-site landowners there is a reluctance to modify environmental covenants once they are in place.

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

The process involves redrafting of environmental covenant language as needed, attorney review, signature of all applicable parties (including the agency director) and recording of the environmental covenant.

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Rarely

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Land disturbance monitoring via One Call systems ,  
Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)  
,  
Responsible party institutional control compliance certification  
,  
Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)  
,  
Other (please specify)  
The agency has recently completed a pilot monitoring study and is in the process of evaluating each monitoring methods effectiveness for future continued implementation.

**Q17: How is your State agency monitoring program funded?**

Monitoring of ICs is funded by a patchwork of program by program funding.

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes,

If Yes please explain.

One call monitoring provides the ability to track non-compliance with no-dig restrictions. Water well permit monitoring provides the ability to track non-compliance with GW well prohibitions.

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter,

Please list other instruments you may use  
civil complaint

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Clear violation of the terms of the restrictions described in the environmental covenant.

**Q22: Does your State agency have the authority to enforce using the following?**

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
The ICs, in the form of environmental covenants, are stored within the agency document management system and parcels/sites with ECs are maintained in a registry in the form of a searchable map called the Facility Mapper found at <http://wastesites.deq.idaho.gov/>.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

PAGE 7: Outreach and Coordination

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes,

If Yes please describe your Agency's public outreach  
Public outreach is done on a program by program, statute or rules specific basis usually in the context of a remediation workplan which contains IC elements. Certain programs have public notification and outreach requirements. One example would be the voluntary cleanup program.

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, Local government,  
please list any others  
Anyone the agency requires in the environmental covenant.

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.  
Within 30 days of closing the seller has to notify the agency in writing of the property transfer.

PAGE 8: Program Funding

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

It is a patchwork of program by program funding

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

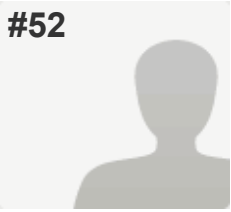
Yes

**Q33: Please complete your contact information.**

Name:	Bruce Wicherski
Agency/Dept/Division/Office	Idaho Department of Environmental Quality
Address:	1410 North Hilton
City/Town:	Boise
State:	ID
ZIP:	83706
Email Address:	bruce.wicherski@deq.idaho.gov
Phone Number:	208-373-0246

#52

North Dakota



## PAGE 1: Institutional Controls Survey Objectives

<b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b>	No
<b>Q2: Please check the types of site remediation institutional controls used in your state?</b>	Zoning, Local Ordinance or Permit , Tailored Ordinance, Groundwater Use Restrictions, Covenants, Deed Notices
<b>Q3: How many institutional controls are in place in your State?</b>	6 - 25
<b>Q4: On average how many institutional controls does your State agency implement per year?</b>	2 - 3
<b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b>	<i>Respondent skipped this question</i>
<b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b>	<i>Respondent skipped this question</i>

## PAGE 2: Selection and Implementation

<b>Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?</b>	No
<b>Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)</b>	
policy, guidance, template, attorney review, <a href="http://www.ndhealth.gov/wm/EnvironmentalCovenantsInstitutionalControls.htm">http://www.ndhealth.gov/wm/EnvironmentalCovenantsInstitutionalControls.htm</a>	
<b>Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.</b>	No

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** No

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

<http://www.ndhealth.gov/wm/EnvironmentalCovenantsInstitutionalControls.htm>

**Q12: Does your agency require financial assurance specific to institutional controls?** No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.** *Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

<http://www.ndhealth.gov/wm/EnvironmentalCovenantsInstitutionalControls.htm>

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Not Applicable

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Our Agency has no institutional control monitoring program

**Q17: How is your State agency monitoring program funded?** *Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** No

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** *Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?** *Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,  
Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link Access database

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

No

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

*Respondent skipped this question*

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

no additional funding source

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

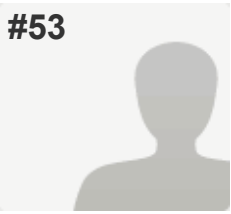


**Q33: Please complete your contact information.**

Name:	Scott Radig
Agency/Dept/Division/Office	ND Dept. of Health, Waste Management Division
Address:	918 E Divide Ave
Address 2:	3rd Floor
City/Town:	Bismarck
State:	ND
ZIP:	58501-194
Email Address:	sradig@nd.gov
Phone Number:	7013285166

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#53



Georgia

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
Groundwater Use Restrictions, Covenants,  
Administrative Orders, Consent Decrees, Permits,  
Deed Notices

**Q3: How many institutional controls are in place in your State?**

51 - 100

**Q4: On average how many institutional controls does your State agency implement per year?**

Variable.

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not implemented

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

1.

Better tracking

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes,

If Yes please provide a link to the policy or procedure.  
[https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/BFInstCnt\\_0.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BFInstCnt_0.pdf)

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

[https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/BFInstCnt\\_0.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BFInstCnt_0.pdf)

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** Yes

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

[https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/BFInstCnt\\_0.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BFInstCnt_0.pdf)

**Q12: Does your agency require financial assurance specific to institutional controls?** Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.** *Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

[https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/BFInstCnt\\_0.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BFInstCnt_0.pdf)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

- Land activity monitoring (e.g., day care, water wells, building permits, zoning changes, property transfers)
- ,
- Periodic agency institutional control compliance reviews (e.g., annual reviews, 5 year reviews)
- ,
- Coordination with local government permitting process (e.g., local government notifies when permits are issued at an IC site)
- ,
- Land owner institutional control permit requirements

**Q17: How is your State agency monitoring program funded?** *Respondent skipped this question*

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** Yes

PAGE 5: Enforcement

<b>Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?</b>	Yes
<b>Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?</b>	Notice of Deficiency, Notice of Violation, Administrative Order
<b>Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?</b>	<i>Respondent skipped this question</i>
<b>Q22: Does your State agency have the authority to enforce using the following?</b>	Monetary penalties, Injunctive relief (meaning an order to act or cease further activities)

PAGE 6: Data Management

<b>Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)</b>	No
<b>Q24: If your state agency does not have a data management system, please describe how you track institutional controls.</b>	Files
<b>Q25: Who can access the information from your data management system?</b>	Agency and Public
<b>Q26: How long are records maintained and active in your state agency's data management system?</b>	11 - 15 years

PAGE 7: Outreach and Coordination

<b>Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?</b>	Yes
<b>Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.</b>	Current landowner, New landowner, Local government
<b>Q29: What stakeholders in your state are notified when an institutional control is modified?</b>	Current landowner, New Landowner, Local government

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

Yes,

If yes please describe how and when you are notified.  
By letter

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**PAGE 8: Program Funding**

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**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Fees

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

No

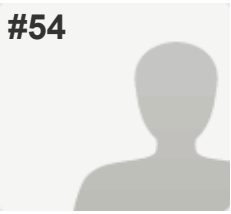
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**Q33: Please complete your contact information.**

Name:	Will Steele
Address:	2 M. L. King, Jr. Dr., SE
Address 2:	Suite 1066
City/Town:	Atlanta
State:	GA
ZIP:	30334
Email Address:	Will.Steele@dnr.ga.gov
Phone Number:	404-463-0080

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#54



Pennsylvania

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

Yes,  
If Yes please explain the limitations.  
ICs can't be used under certain cleanup standards but can be used under other options

**Q2: Please check the types of site remediation institutional controls used in your state?**

Zoning, Local Ordinance or Permit ,  
Tailored Ordinance, Groundwater Use Restrictions,  
Covenants, Administrative Orders, Deed Notices,  
State Registries

**Q3: How many institutional controls are in place in your State?**

200 or above

**Q4: On average how many institutional controls does your State agency implement per year?**

150

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Institutional control not discoverable ,  
Violation of land use restriction

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

- |    |  |
|----|--|
| 1. | Obtain resources to add old restrictions to state UECA registry          |
| 2. | Obtain resouces to inspect sites   |
| 3. | Add shaped files for more specific locations on web-based state registry |

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

Yes

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and its location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

model template available  
State UECA statute and regulations

[http://www.portal.state.pa.us/portal/server.pt/community/uniform\\_environmental\\_covenants\\_act/21547](http://www.portal.state.pa.us/portal/server.pt/community/uniform_environmental_covenants_act/21547)

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.** Yes

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?** Yes

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

[http://www.portal.state.pa.us/portal/server.pt/community/guidance\\_\\_\\_technical\\_tools/20583](http://www.portal.state.pa.us/portal/server.pt/community/guidance___technical_tools/20583)

Under Technical Guidance Manual, Post Remediation Care Plan

**Q12: Does your agency require financial assurance specific to institutional controls?** No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.** *Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.** *Respondent skipped this question*

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?** Sometimes

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?** Responsible party periodic field inspection and associated reporting  
,  
Land owner periodic field inspections and associated reporting

**Q17: How is your State agency monitoring program funded?**

Same sources as cleanup programs

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?** Yes

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?** *Respondent skipped this question*

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?** Notice of Violation , Administrative Order

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?** *Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?** Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)** Yes,  
If Yes please describe your agency's Data Management System or provide a link <http://www.depgis.state.pa.us/pa-aul/>

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.** *Respondent skipped this question*

**Q25: Who can access the information from your data management system?** Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?** During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** Yes,  
If Yes please describe your Agency's public outreach Web site explanations, specific questions and answers

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** *Respondent skipped this question*



**Q29: What stakeholders in your state are notified when an institutional control is modified?** *Respondent skipped this question*

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**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** *Respondent skipped this question*

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**PAGE 8: Program Funding**

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**Q31: Please explain briefly how your State agency's institutional control activities are funded?** *Respondent skipped this question*

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**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

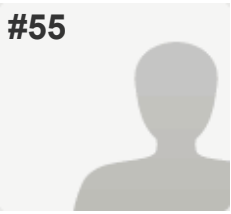
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**Q33: Please complete your contact information.**

Name:	George Hartenstein
Agency/Dept/Division/Office	Dept of Environmental Protection
Address:	PO Box 8471
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State:	PA
ZIP:	17105
Email Address:	ghartenste@pa.gov
Phone Number:	717-783-3006

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#55



Maine

PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Please list any other insitutional control you use but is not listed above  
We could potentially use any of the listed types of ICs

**Q3: How many institutional controls are in place in your State?**

*Respondent skipped this question*

**Q4: On average how many institutional controls does your State agency implement per year?**

*Respondent skipped this question*

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

Please list any other failure not identified above.  
No failed ICs

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

Template for covenant (see <http://maine.gov/dep/spills/publications/guidance/index.html>)  
Attorney review

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

*Respondent skipped this question*

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,  
If yes please describe  
Required under CERCLA for BRAC site, no specific State requirement

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

*Respondent skipped this question*

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

No problems experienced

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

We follow UECA

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

*Respondent skipped this question*

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Responsible party periodic field inspection and associated reporting

**Q17: How is your State agency monitoring program funded?**

Varies by program

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

Yes

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement against a responsible party regarding an institutional control?**

No

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

*Respondent skipped this question*

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

*Respondent skipped this question*

**Q22: Does your State agency have the authority to enforce using the following?**

Other (please specify) Unknown

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,  
If Yes please describe your agency's Data Management System or provide a link Access database with information on ICs implemented at each site.

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

*Respondent skipped this question*

**Q25: Who can access the information from your data management system?**

Agency,  
Other (please specify)  
Annual report made available to public

**Q26: How long are records maintained and active in your state agency's data management system?**

During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

Yes

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

Current landowner, New landowner

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

Current landowner, New Landowner

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

No

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Varies by program

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

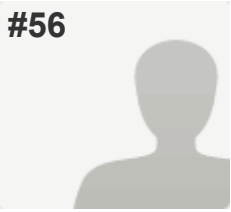
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**Q33: Please complete your contact information.**

Name:	Iver McLeod
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ZIP:	04333
Email Address:	iver.j.mcleod@maine.gov
Phone Number:	207-287-8010

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#56



South Dakota

## PAGE 1: Institutional Controls Survey Objectives

**Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).**

No

**Q2: Please check the types of site remediation institutional controls used in your state?**

Easements,  
Please list any other institutional control you use but is not listed above  
What ever is most appropriate

**Q3: How many institutional controls are in place in your State?**

1 - 5

**Q4: On average how many institutional controls does your State agency implement per year?**

0

**Q5: For institutional controls that have failed, please select the possible causes from the list below.**

*Respondent skipped this question*

**Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.**

*Respondent skipped this question*

## PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?**

No

**Q8: What processes or standard procedures are used in your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

*Respondent skipped this question*

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

*Respondent skipped this question*

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

No,  
If yes please describe Not that I know of.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

none

**Q12: Does your agency require financial assurance specific to institutional controls?**

No

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

*Respondent skipped this question*

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

None

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Our Agency has no institutional control monitoring program  
,  
Other (please specify)  
Case by case decision no program or policy.

**Q17: How is your State agency monitoring program funded?**

No IC State monitoring program

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

*Respondent skipped this question*

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Please describe at least one enforcement action  
I am unaware of any.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Please list other instruments you may use  
Depends on how the IC is structured

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Depends on how the IC is structured

**Q22: Does your State agency have the authority to enforce using the following?**

Other (please specify)  
Depends on how the IC is structured

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

No

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

So few...they are checked on occasion

**Q25: Who can access the information from your data management system?**

Other (please specify) None

**Q26: How long are records maintained and active in your state agency's data management system?**

Other (please explain) None

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?**

If Yes please describe your Agency's public outreach  
Taken into account when IC is considered

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.**

please list any others  
As appropriate during IC evaluation

**Q29: What stakeholders in your state are notified when an institutional control is modified?**

please list any others  
As appropriate during IC evaluation

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?**

*Respondent skipped this question*

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

Incorporated into regular duties

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?**

Yes

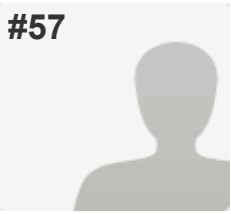


**Q33: Please complete your contact information.**

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Email Address:	john.mcvay@state.sd.us
Phone Number:	6057735488

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#57



Montana

PAGE 1: Institutional Controls Survey Objectives

<p><b>Q1: Do any statutes, regulations, policies, or other legal impediments prohibit or limit the use of institutional controls (ICs) in your state (e.g., impediments to mandating the use of ICs, impediments to the use of ICs due to takings concerns at off-site properties).</b></p>	<p>No</p>
<p><b>Q2: Please check the types of site remediation institutional controls used in your state?</b></p>	<p>Groundwater Use Restrictions, Covenants, Deed Notices, Advisories</p>
<p><b>Q3: How many institutional controls are in place in your State?</b></p>	<p>6 - 25</p>
<p><b>Q4: On average how many institutional controls does your State agency implement per year?</b></p>	<p>less than 5. Note I received a response only from the State Super fund Section. Other sections such as our Federal Superfund, Abandoned Mine program and Petroleum Tank Cleanup Section also employ IC's but they did not provide a response.</p>
<p><b>Q5: For institutional controls that have failed, please select the possible causes from the list below.</b></p>	<p>Institutional control not discoverable ,          Communicating the institutional control details was inadequate          ,          Monitoring is inadequate, Reporting is inadequate,          Violation of covenant,          Violation of land use restriction ,          Physical break of a barrier ,          Please list any other failure not identified above.          Exposure or potential for exposure is not a cause of a failure. The IC either failed and you were exposed or there was potential for exposure or it didn't fail and you were not exposed and there was no potential of exposure.</p>
<p><b>Q6: How would you improve your State agency's institutional control program? Limit your answer to the top three.</b></p>	<p>1. Attach IC documents to site entry in database          2. Tie IC's into the State's Cadatral system</p>

PAGE 2: Selection and Implementation

**Q7: Does your State agency have a standard policy or procedure for selecting institutional control that applies across all State programs?** No

**Q8: What processes or standard procedures are used In your State agency for drafting and recording institutional controls? Please describe the procedure and it's location. (e.g. template, model, guidance, policy, attorney review, recording certification, web URL)**

The State Superfund Section uses a Template model/model within the VCRA guide - [http://deq.mt.gov/StateSuperfund/VCRA\\_Guide/AttFICs.pdf](http://deq.mt.gov/StateSuperfund/VCRA_Guide/AttFICs.pdf)

They also use an attorney review regarding certification

**Q9: During selection and implementation, does your State agency require monitoring obligations for each institutional control to be clearly defined? Please explain.**

Yes,  
Please explain  
If an IC requires monitoring (a site specific determination), the monitoring must be described and considered part of the IC evaluation.

**Q10: Does your State agency ever require the development of a long-term institutional control management plan?**

Yes,  
If yes please describe  
Typically included with other long- term monitoring requirements in long-term monitoring plan.

**Q11: Please provide a link or location where we can obtain a template or description of your State agency's long-term institutional control management plan guidance.**

N/A

**Q12: Does your agency require financial assurance specific to institutional controls?**

Yes

**PAGE 3: Modification or Termination**

**Q13: Describe any challenges or problems your State agency has experienced during the process to modify or terminate an institutional control.**

The process is time consuming

IC filing inconsistencies - different clerks attach document differently

Short sidedness of RP's. IC's put in place cause complications in the end

**Q14: Please describe, or provide a hyperlink to, your State agency's process or decision criteria for modification or termination of an Institutional Control.**

Montana Codes Annotated 75-10-727 (4) & (5)

**Q15: In your experience, how often do periodic reviews (if required) identify a need to modify an institutional control?**

Not Applicable

**PAGE 4: Monitoring and Tracking**

**Q16: Does your State agency have any of the following institutional control monitoring programs?**

Our Agency has no institutional control monitoring program

,  
Responsible party periodic field inspection and associated reporting

,  
Responsible party institutional control compliance certification

**Q17: How is your State agency monitoring program funded?**

Montana does not have an IC monitoring program but some states include monitoring requirements which are performed and paid for by the responsible party

**Q18: Does your State agency's monitoring and tracking program identify non-compliance?**

No

**PAGE 5: Enforcement**

**Q19: Has your State agency ever taken an enforcement action against a responsible party regarding an institutional control?**

Yes,

Please describe at least one enforcement action  
Monitoring/inspection of sidewalks capping asbestos was not being performed as required in the operation and maintenance plan. DEQ issued a warning letter requiring inspections and reporting.

**Q20: What type of instrument does your State agency use when enforcing against a party who is responsible for a site containing an institutional control?**

Warning Letter

**Q21: What criteria does your State agency use to determine when to enforce against a responsible party of an institutional control?**

Cooperation in getting back into compliance.

**Q22: Does your State agency have the authority to enforce using the following?**

Monetary penalties,

Injunctive relief (meaning an order to act or cease further activities)

**PAGE 6: Data Management**

**Q23: Does your State agency employ an institutional control data management system? (e.g., searchable databases, IC registries)**

Yes,

If Yes please describe your agency's Data Management System or provide a link  
<https://svc.mt.gov/deq/dst/#/app/srs>

**Q24: If your state agency does not have a data management system, please describe how you track institutional controls.**

N/A

**Q25: Who can access the information from your data management system?** Agency and Public

**Q26: How long are records maintained and active in your state agency's data management system?** During the entire life cycle of the institutional control.

**PAGE 7: Outreach and Coordination**

**Q27: Does your agency conduct stakeholder outreach in your state regarding institutional controls?** *Respondent skipped this question*

**Q28: Who in your state is notified by your agency when an institutional control is implemented? Please describe all federal, state, county or municipalities, including the public.** please list any others It depends on the IC

**Q29: What stakeholders in your state are notified when an institutional control is modified?** please list any others Depends on the IC

**Q30: Is your State agency notified when a property containing an institutional control is transferred to a new landowner?** Yes,  
If yes please describe how and when you are notified.  
Sometimes. It depends on the IC.

**PAGE 8: Program Funding**

**Q31: Please explain briefly how your State agency's institutional control activities are funded?**

For State Superfund Sites - the State Agency's IC activities are typically paid for by the responsible party as part of work on the site/

**Q32: May we contact you for clarification of responses, additional information about you State agency's institutional control actives, or case studies?** Yes

**Q33: Please complete your contact information.**

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