



# Institutional Controls Group Reminders and Updates

Crystal Haulter

*Technical Environmental Specialist*

*Institutional Controls Group*

**Consultants' Day**

April 16, 2024

# Agenda

- Reminders
- Website overview
- Self-audit update



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# Terminology

- **Institutional Control** - Administratively or legally enforceable measures that limit human exposure to release-related chemicals that exceed unconditional remediation objectives. (e.g., ERC or ERO)
- **Environmental Restrictive Covenant (ERC)** - Tied to a property deed and limits the use of the land or the activities that may be performed on the land and/or requires the maintenance of engineering controls on the land. Run with the land and are binding of subsequent landowners.
- **Environmental Restrictive Ordinance (ERO)** - Adopted by a municipal corporation and seeks to control the use of groundwater.

## Reminders



Save time & effort with  
our ERC templates



We need your deed



Wait for IDEM approval

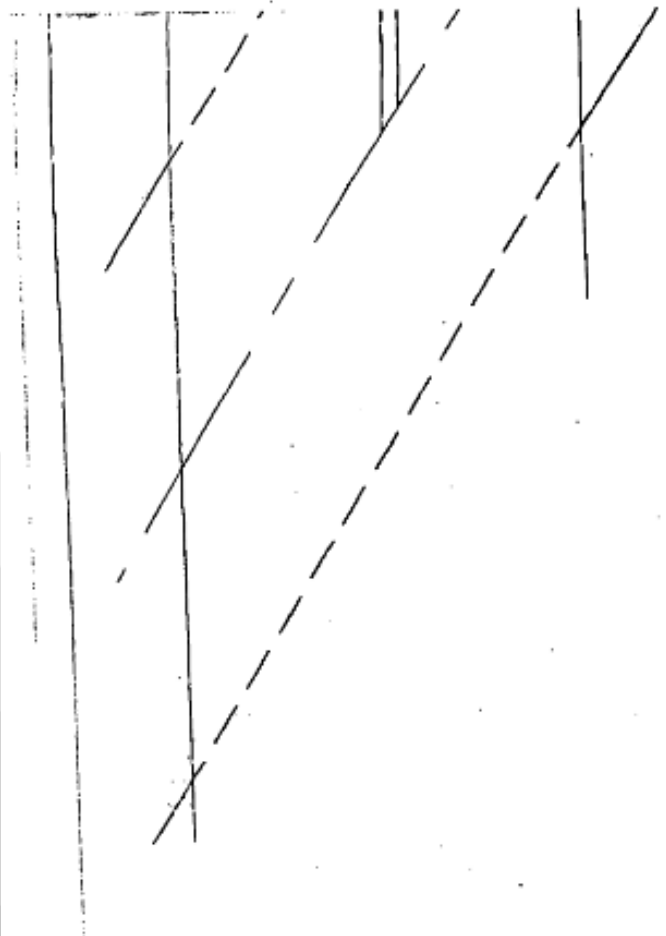
# Exhibits

*“Exhibits should be in 8.5 x 11 inch, black and white, non-aerial format, with extraneous information removed so they remain legible after being copied.”*

map or plat and the survey on which it is based were made in accordance with the minimum requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by the American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS) in 1999, and includes items 1, 3, 4, 6, 7(a), 8, 10, and 11(a) of Table A of the Standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of the survey. The surveyor certifies that proper field procedure, instrumentation, and adequate number of observations were used in order to achieve results comparable to those outlined in the "Minimum Requirements for Survey Measurements Which Control Land Boundaries for



*Alexander A. Fabian*  
 Registered Land Surveyor No. LS20000205



**ALTA / ACSM LAND TITLE**  
 COMMERCIAL PROPER  
 EAST CHICAGO, LAKE CO.  
 NW QUARTER SEC. 34-37-9

DATE: JULY 8, 2003  
 REVISIONS:

CLIENT:  
 HINSHAW & CULBERTSON  
 WILLIAM O'ROURKE  
 222 INDIANAPOLIS BOULEVARD  
 SUITE 202  
 SCHERERVILLE, IN 46375  
 JOB NO: 707-03S  
 DRAWN: JSR  
 SCALE: 1"=40'

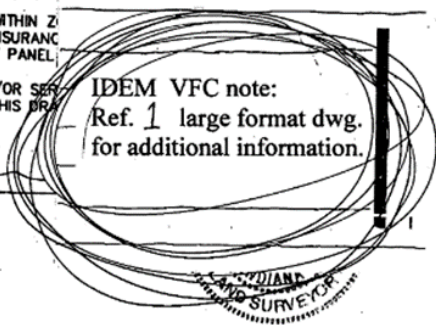
1 OF 1  
 SHEET





- 1.) SAID PREMISES IS LOCATED WITHIN ZONING DISTRICT DESIGNATED ON THE FLOOD INSURANCE RATE MAP OF THE CITY OF ELKHART, COMMUNITY PANEL #1, DATED MAY 1, 1985.
- 2.) ADDITIONAL EASEMENTS AND/OR SERVITUDES OTHER THAN AS SHOWN ON THIS DRAWING.

*Loren K. Stackhouse*  
 LOREN K. STACKHOUSE, PLS #S0068



IDEM VFC note:  
 Ref. 1 large format dwg.  
 for additional information.

**ORIGINAL**


/03 3 23/03 N	Survey for Bayer Corporation  Pt. W1/2 SE1/4 Sec. 31, T38N, R5E Osolo Twp. Elkhart Co. ELKHART, INDIANA			
	 <b>Marbach</b> Marbach, Brady & Weaver, Inc. Engineering & Surveying Since 1918			
	3220 Southview Drive Elkhart, Indiana 46514 (574) 266-1010 Fax: (574) 262-3040 info@marbachpls.com www.marbachpls.com			
BY	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%; text-align: center;">© 2003 MARBACH, BRADY &amp; WEAVER, INC.</td> <td style="width: 33%; text-align: center;">SHEET 1 OF 1</td> <td style="width: 33%; text-align: center;">DRAWING NO. B-24303</td> </tr> </table>	© 2003 MARBACH, BRADY & WEAVER, INC.	SHEET 1 OF 1	DRAWING NO. B-24303
© 2003 MARBACH, BRADY & WEAVER, INC.	SHEET 1 OF 1	DRAWING NO. B-24303		

EXHIBIT B





**Legal Description  
SSA #7887  
5415 East 65<sup>th</sup> St.  
Indianapolis, IN  
Marion County**

Part of the Southeast Quarter of Section 33, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the North line of the Southeast Quarter of Section 33, Township 17 North, Range 4 East which is 451.10 feet North 90 degrees 00 minutes 00 seconds East (assumed bearing) of the Northwest corner of said Southeast Quarter; thence South 00 degrees 52 minutes 48 seconds West parallel with the West line of said Southeast Quarter 300.00 feet; thence South 90 degrees 00 minutes 00 seconds East parallel with the North line of said Southeast Quarter 203.17 feet to the Westerly Right-of-Way line of State Road 37, as shown on plans for Indiana State Highway Project E-284 (4) dated 1954; thence North 42 degrees 27 minutes 20 seconds East on and along said Right-of-Way line 180.25 feet; thence North 12 degrees 24 minutes 43 seconds West on and along said Right-of-Way line and its extension 170.96 feet to the North line of said Southeast Quarter; thence North 90 degrees 00 minutes 00 seconds West on and along said North line 287.88 feet to the place of beginning.





EXHIBIT B

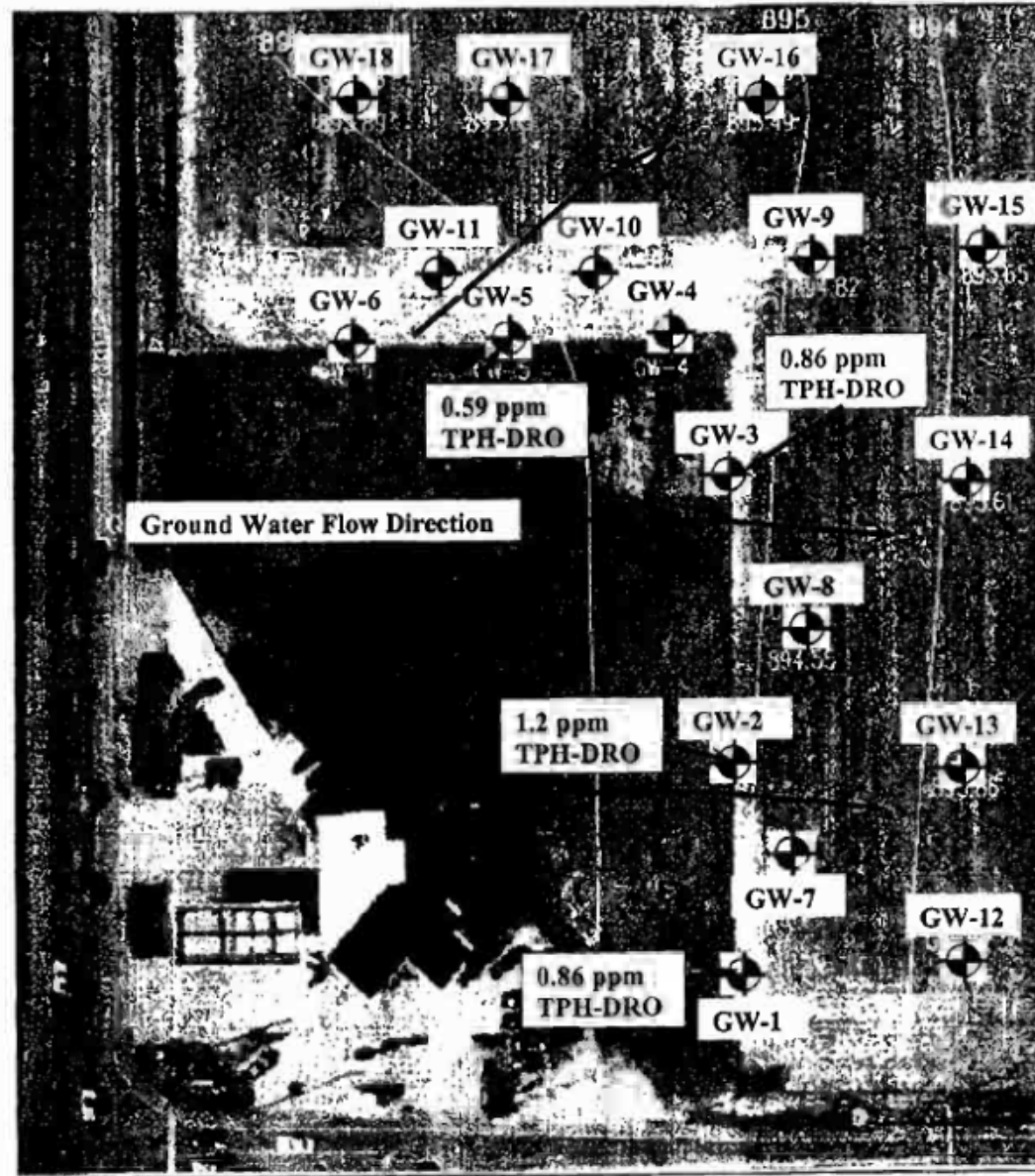


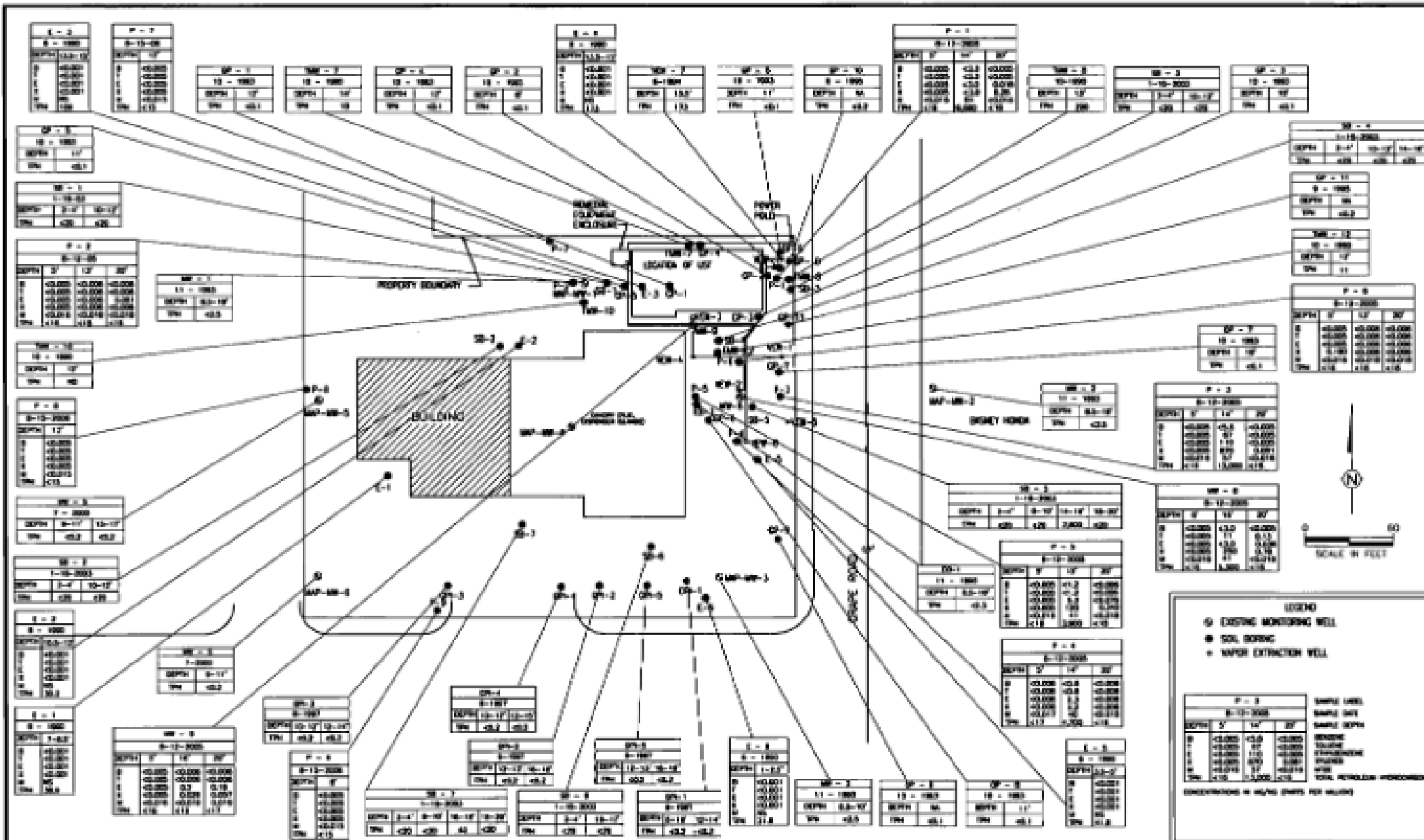


EXHIBIT B

1000

Sample Locations, Ground Water Flow Direction, and Ground Water Contaminant Concentrations Above IDEM January 2006 RISC Residential Default Closure Levels





AEGIS FILE: 05-707 (DATE)

**MARATHON PETROLEUM COMPANY**  
 525 SOUTH MAIN STREET  
 TERRELL, OK

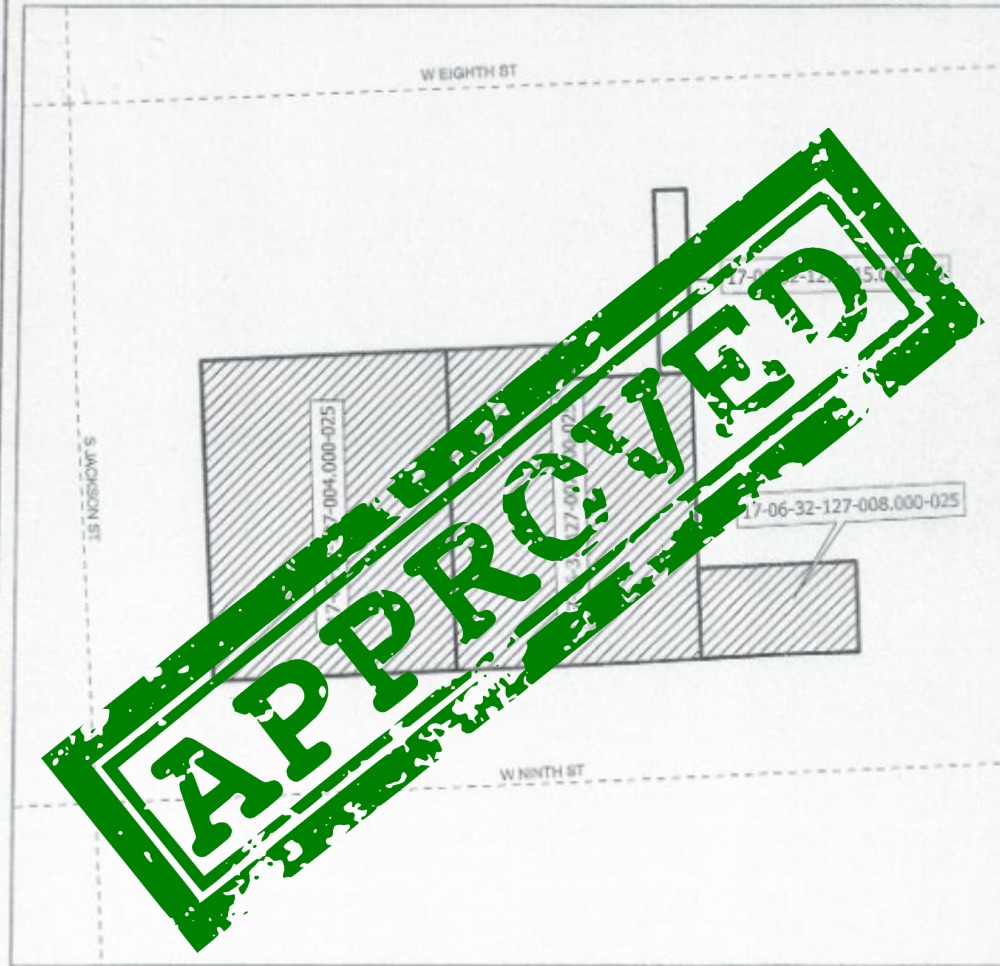
**MARATHON STATION #2380**  
 2611 OAKS ROAD  
 MARATHON, OK

**FIGURE 1 EXHIBIT B**  
**ANALYTICAL SOILS MAP**

1213 NORTH BLUFF ROAD  
 GREENWOOD, OK 73044-4814  
 Tel: 317-833-8888 Fax: 317-833-8881



# Indiana Brownfields Program Number 4230703 - Real Estate



**Mapped By:** Volney Robinson, GIS & Digital Services Specialist, Indiana Brownfields Program, January 12, 2024

**Real Estate:** Trustee's Deed - Instrument Number 202203384  
Recorded 06/10/22

**Parcel Info:** The Real Estate consists of Parcel Identification Numbers:  
17-06-32-127-004,000-025 17-06-32-127-008,000-025  
17-06-32-127-007,000-025 17-06-32-127-015,000-025

**Restricted Parcels:** The Restricted Parcels, to which the Environmental Restrictive Covenant apply, consist of Parcel Identification Numbers:  
17-06-32-127-004,000-025  
17-06-32-127-007,000-025  
17-06-32-127-008,000-025  
Described as Tracts 1 and 2 in Instrument Number 202203384

**PLSS Info:** Section 32, T34N, R13E, Union Township, DeKalb County, Indiana

**Property Info:** S Jackson St & W Ninth St, Auburn, Indiana

**Disclaimer:** This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.

**Please visit our website!**

<https://www.in.gov/idem/cleanups/investigation-and-cleanup-programs/institutional-controls/>





MENU



# Institutional Controls

[Home](#) [Environmental Cleanups](#) > [Investigation and Cleanup Programs](#) > [Institutional Controls](#)

The Office of Land Quality (OLQ) uses a risk-based approach to address hazardous substances or petroleum releases. When contamination remains on site after remediation is complete, OLQ may employ a legal or administrative measure called an institutional control. An institutional control protects human health and the environment by applying land use restrictions to properties that limit activity, use, or access to minimize exposure to contamination left in place. Environmental restrictive covenants (ERCs) are a type of institutional control that are used to apply land use restrictions to properties. For example, a landowner may agree to not develop a site for residential use and allow only commercial or industrial development.

## Institutional Controls Registry

The Institutional Controls Registry is an Excel spreadsheet of sites with an approved Institutional control. The Institutional Controls Registry includes environmental restrictive covenants approved by IDEM as well as Solid Waste sites that require a deed notice under Article 10 of Title 329 of the Indiana Administrative Code (IAC). The registry is updated the first Monday of every month.

- [Institutional Controls Sites \[XLSX\]](#)

## ERC Templates

OLQ is now providing one template to cover all remediation programs; Resource Conservation and Recovery Act (IC 13-22), Regulated Leaking Tanks (IC 13-23), ICP/petroleum releases (IC 13-24), State Cleanup/Hazardous Substances (IC 13-25), and Voluntary Remediation Program (IC 13-25-5) and another ERC template for Solid Waste Landfills. To ensure a prompt review, follow the template and provide a copy of the property deed along with a draft copy of your ERC to your assigned project manager. Deviations from the ERC template will require a review from IDEM's Office of Legal Counsel and will delay your project. The ERC templates include drop downs (choose item in blue font), optional language (highlighted blue) and fillable fields (highlighted yellow). To complete the fillable fields, click on each, hover over the three dots to the left of the field and begin typing.

- [Remediation Program ERC Template \[DOCX\]](#)
- [Solid Waste Landfill ERC Template \[DOCX\]](#)

I. RESTRICTIONS

**Restrictions.** The Owner: *In accordance with IC 13-14-2-8, select from the list below those restrictions that are applicable to the Site. Delete those that are not applicable and renumber list. Additional site-specific restrictions may be appropriate based on site conditions and are to be negotiated between the property owner and the Department.*

(a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily childcare facilities or educational facilities for children (e.g., daycare centers or K-12 schools).

(b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.

(c) Shall not use the Real Estate for any agricultural use.

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

(d) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's current risk based guidance. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, do not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws; and disposal of such soils must also be done in accordance with all applicable federal and state laws.

*[In addition to the preceding general soil disturbance restriction, additional soil disturbance restrictions may be appropriate for high levels of contamination and should be tailored accordingly. The following is an example restriction illustrating the case where COCs remain in soil as free product, or at levels above construction worker criteria. Refer to IDEM's nonrule policy document, Waste 0075-NPD, for guidance in developing a Soil Management Plan. A title search to determine if there are conflicting easements must be conducted and documentation provided to IDEM prior to implementing this restriction]*

(e) Shall neither engage in nor allow excavation of soil at depths greater than **depth restriction** feet in the area identified via **Choose an item** as the "Construction Worker Restriction Area" depicted on Exhibit **Choose an item**. The Owner, upon the Department's request, shall provide the Department evidence showing the excavated and restored area do not represent a threat to human health or the environment. In accordance with **insert title and date of the IDEM approved Soil Management Plan**, described in **VFC #VFC Number**, and any IDEM approved updates.

*[Include if vapor intrusion screens out based on existing site buildings and/or current use but a change in use and/or new construction would warrant a vapor intrusion evaluation]*

(f) Prior to the **change in use of the site or** construction of new structures to be occupied by persons at the Real Estate, the current Owner of the Real Estate shall confirm there is no unacceptable exposure risk due to vapor migration in accordance with then-applicable agency guidance, regulation, or law. This may include conducting groundwater, soil, indoor air and/or soil-gas sampling for volatile organic compounds ("VOCs") or semi-volatile organic compounds ("SVOCs"), with an IDEM approved sampling plan. The results and analyses of such sampling shall be presented to IDEM in support of the Owner's determination whether an unacceptable vapor exposure risk exists. If the results demonstrate that no such risk exists, IDEM will provide its concurrence in writing and grant the Owner a waiver of this restriction for the proposed **change in site use and/or** new construction. If the results demonstrate that an unacceptable risk to human health exists, then the Owner must submit plans for mitigation for approval by IDEM and must conduct adequate indoor air sampling to demonstrate the effectiveness of the approved remedy.

*[Include the following if there is a potential future vapor intrusion threat at undeveloped or unoccupied sites]*

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

*[Include the following if current buildings are subject to OSHA PELs due to continued use of COCs on-site]*

(h) Shall confirm there is no unacceptable exposure risk due to vapor migration in accordance with then-applicable agency guidance, regulation, or law in both of the following situations:

- i. After the use of **insert a list of the COCs currently in use at the facility** inside the building at the Real Estate ceases; and/or
- ii. When any new structures to be occupied by persons at the Real Estate are constructed.

Both situations require an IDEM-approved sampling plan and may include conducting groundwater, soil, indoor air, and/or soil-gas sampling for volatile organic compounds ("VOCs") or semi-volatile organic compounds ("SVOCs"). The results and analyses of such sampling shall be presented to IDEM in support of the Owner's determination whether an unacceptable vapor exposure risk exists. If the results demonstrate that no such risk exists, IDEM will provide its concurrence in writing and grant the Owner a waiver of this restriction for the proposed change in site use and/or new construction. If the results demonstrate that an unacceptable risk to human health exists, then the Owner must submit plans for mitigation for approval by IDEM and must conduct adequate indoor air sampling to demonstrate the effectiveness of the approved remedy.

*[Include if an active engineered control (vapor mitigation system, etc.) has been implemented at the site requiring operation and maintenance of an engineered control]*

(i) Shall operate and maintain the **type of engineered control**, identified via **Choose an item**, and depicted in Exhibit **Choose an item**, so as to protect its functional integrity in accordance with **insert title and date of the document containing operations and maintenance requirements** described in **VFC #VFC Number** and all subsequent IDEM approved revisions. Owner shall notify the Department in writing at least fifteen (15) days in advance of conducting any construction or excavation work that may impact an engineered control unless an emergency exists. Owner shall ensure that the integrity of the **type of engineered control** is restored immediately after disturbance by any construction or excavation work. Upon IDEM's request, the Owner shall provide written evidence showing the **type of engineered control** has been restored to its complete integrity.

*[Include if a passive engineered control or barrier has been implemented such as pavement or a building foundation. A title search to determine if there are conflicting easements must be conducted and documentation provided to IDEM prior to implementing this restriction]*

(j) Shall maintain the integrity of the existing **type of passive engineered control**, which is depicted on Exhibit **Choose an item** via **Choose an item**; this **type of passive engineered control** serves as an engineered barrier to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair in accordance with **insert title of the document containing maintenance requirements** described in **VFC #VFC Number** and all subsequent IDEM approved revisions.

*[Include the following if groundwater monitoring is being conducted]*

(k) Shall prohibit any activity at the Real Estate that may interfere with the groundwater monitoring or well network as depicted on Exhibit **Choose an item** via **Choose an item**.

(l) *Insert other site-specific restriction(s) here.*





## Training Tutorial

A training tutorial on institutional controls and IDEM restricted sites is available on YouTube. "[E101: Let's talk about Institutional Controls and Comfort Letters](#)".

## Long Term Stewardship

Long-term stewardship (LTS) applies to sites where long-term management of contaminated environmental media is necessary to protect human health and the environment while providing a conditional closure to responsible parties (RPs). LTS includes the establishment and maintenance of physical and legal controls, implementation entities, authorities, financial assurance, information and data management, and resources that are necessary to ensure these sites remain protective of human health and the environment. At this time, LTS is in draft phase, however the following documents are available [upon request](#) for your consideration.

- Long Term Stewardship Flow Chart
- IDEM LTS Guidance
- Long Term Stewardship - Master Plan
- Groundwater Monitoring Work Plan Cover Sheet & Report Format
- Vapor Monitoring Work Plan Cover Sheet & Report Format
- Engineering Control Monitoring Work Plan Cover Sheet & Report Format
- Land Activity Monitoring Work Plan Cover Sheet & Report Format
- Long Term Stewardship Agreement

## What's in my Neighborhood

### Modification and Terminations

As site conditions and use evolve, environmental guidance becomes more refined, and properties change hands, it may be necessary to evaluate recorded ERCs and ensure that the land use restrictions in place are appropriate and necessary. In accordance with Indiana Code 13-14-2-9(c)(3), an ERC may be modified if supporting information is provided. OLQ will use current risk-based policy, recent data, and proposed land use to make a written determination as to the appropriateness of an ERC modification or termination.

OLQ requires reimbursement for the administrative and personnel expenses associated with the development of the written determination under [329 IAC 1-2-7 \[PDF\]](#). OLQ personnel expenses are \$75.00 per hour, and once a written determination is made, an invoice reflecting the actual number of hours spent on the review will be provided. To request a modification or termination please provide written justification and all supporting documentation necessary for OLQ review, including the following completed forms, via email to the [Institutional Controls](#) program.

- ERC/Deed Notice Modification or Termination Request - 56082 (available on the [IDEM Agency Forms](#) page)
- [ERC Modification Template, May 2018 \[DOC\]](#)
- [ERC Termination Template, May 2018 \[DOC\]](#)

## Environmental Restrictive Covenants (ERCs) and Easements

An easement is a permanent right of access to real property not owned by the easement holder. Easements “run with the land,” so when a property having an easement is sold to a new owner, the easement still exists, and the new owner must allow access. To ensure that ERCs are enforceable on real property that has already-existing easements, proposed ERCs with excavation restrictions or passive engineering controls should also include: 1) a map showing all easements that affect the property and 2) a copy of any easements that relate to the property. If, after a review of the easement and the proposed land-use restrictions in the ERC, IDEM determines that the easement and ERC have conflicting terms, to ensure that the ERC is enforceable by IDEM, additional documents are required to use the ERC for regulatory closure.

The person placing the ERC on the property has the option of either obtaining a [Subordination Clause \[DOCX\]](#) or a [Joinder and Consent \[DOCX\]](#) to ensure that the ERC properly manages risk for persons also using the easement. Another option may be to work with the property owner and easement holder to renegotiate the easement so that it does not conflict with the ERC. If an agreement regarding the priority of the ERC with regard to the easement cannot be reached, the ERC may not appropriately manage risk, and an alternative remedy may be necessary.

Persons wanting to use ERCs on properties with potentially conflicting easements should obtain knowledgeable environmental and/or real estate counsel to discuss all options.

## Self-audits

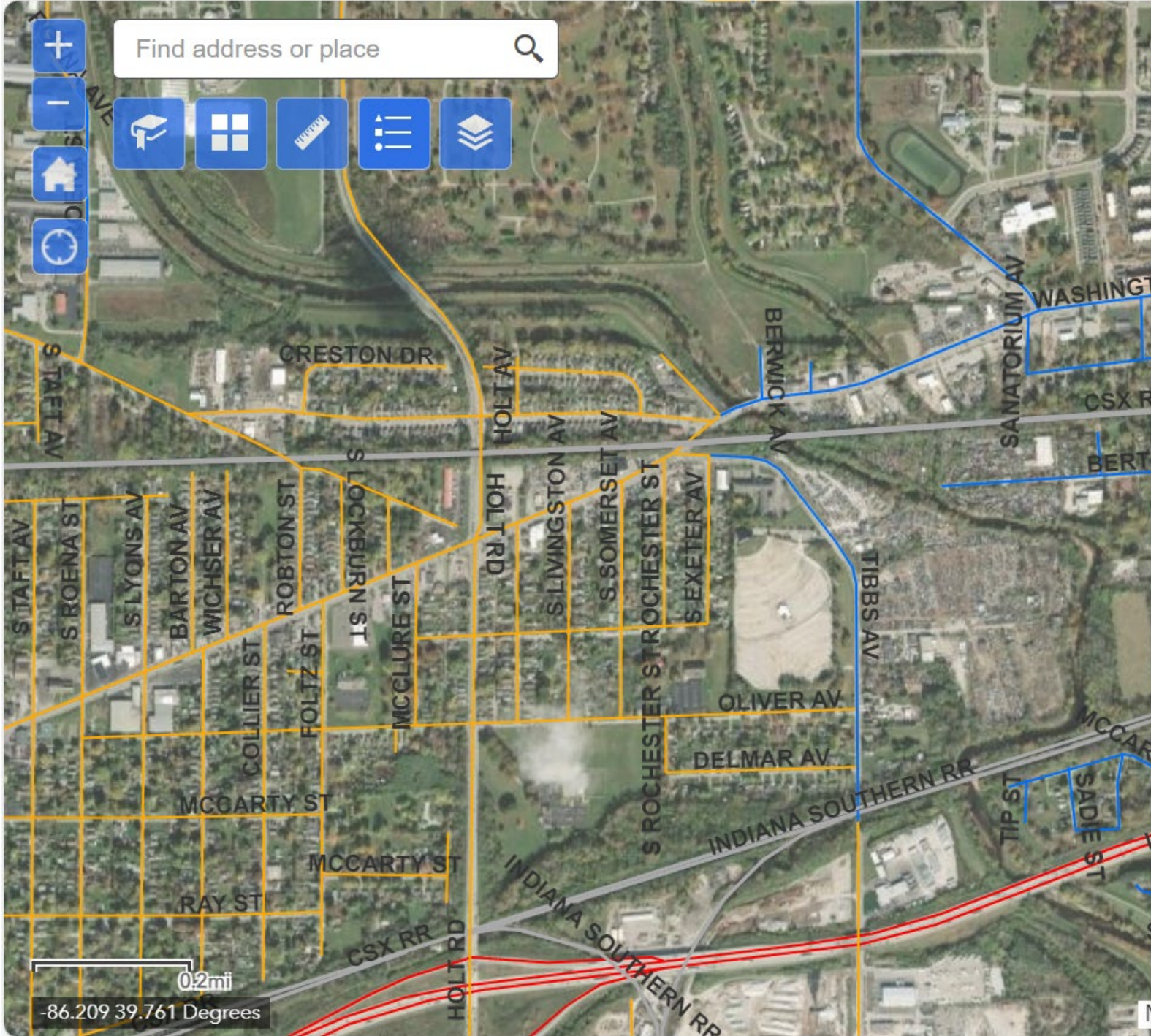
To ensure that property owners are both aware of property restrictions and to ensure compliance necessary to protect human health, IDEM has begun to mail out Requests for Self-Audits. If you receive this request in the mail, you may either provide a hard copy to the Office of Land Quality with “ATTN: Institutional Controls Group” on the mailer, or you may [download a digital copy](#) of State Form 55715 and email it to the [Institutional Controls](#) program.

## Contamination in the Right of Way Links

Use the following links to help fill out [State Form 57234 \[PDF\]](#) which provides notice that contaminated soil and or groundwater is present in the Right-of-Way because of a release of contamination to the environment from an IDEM reported incident. This information will be used by the roadway’s managing authority to consider worker safety and proper management practices during future construction activities.

- [ArcGIS - My Map](#) To help you identify the managing authority use this link to determine if a road is owned by an entity other than INDOT.
- [Virtual File Cabinet](#) To view the ERC in its entirety, visit IDEM’s Virtual File Cabinet
- [IDEM’s Uncontaminated Soil Nonrule Policy Document \(NPD\) \(Waste-0064-NPD\)](#) Use to determine whether it is appropriate to reuse excavated soil in a construction project.
- [Effective Nonrule Policies](#) To help find the most current version of the Nonrule Policy Document to determine the appropriate criteria to evaluate soil containing detectable levels of human introduced chemicals and the proper management of such soils.





## Legend

### Roads sm scale

-  Interstate
-  US Route
-  County Road
-  City Street
-  State Road
-  Other

# Self-auditing and Compliance Checks



## INSTITUTIONAL CONTROLS SELF AUDIT CHECKLIST

State Form 55715 (R / 3-21)  
Indiana Department of Environmental Management

### INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

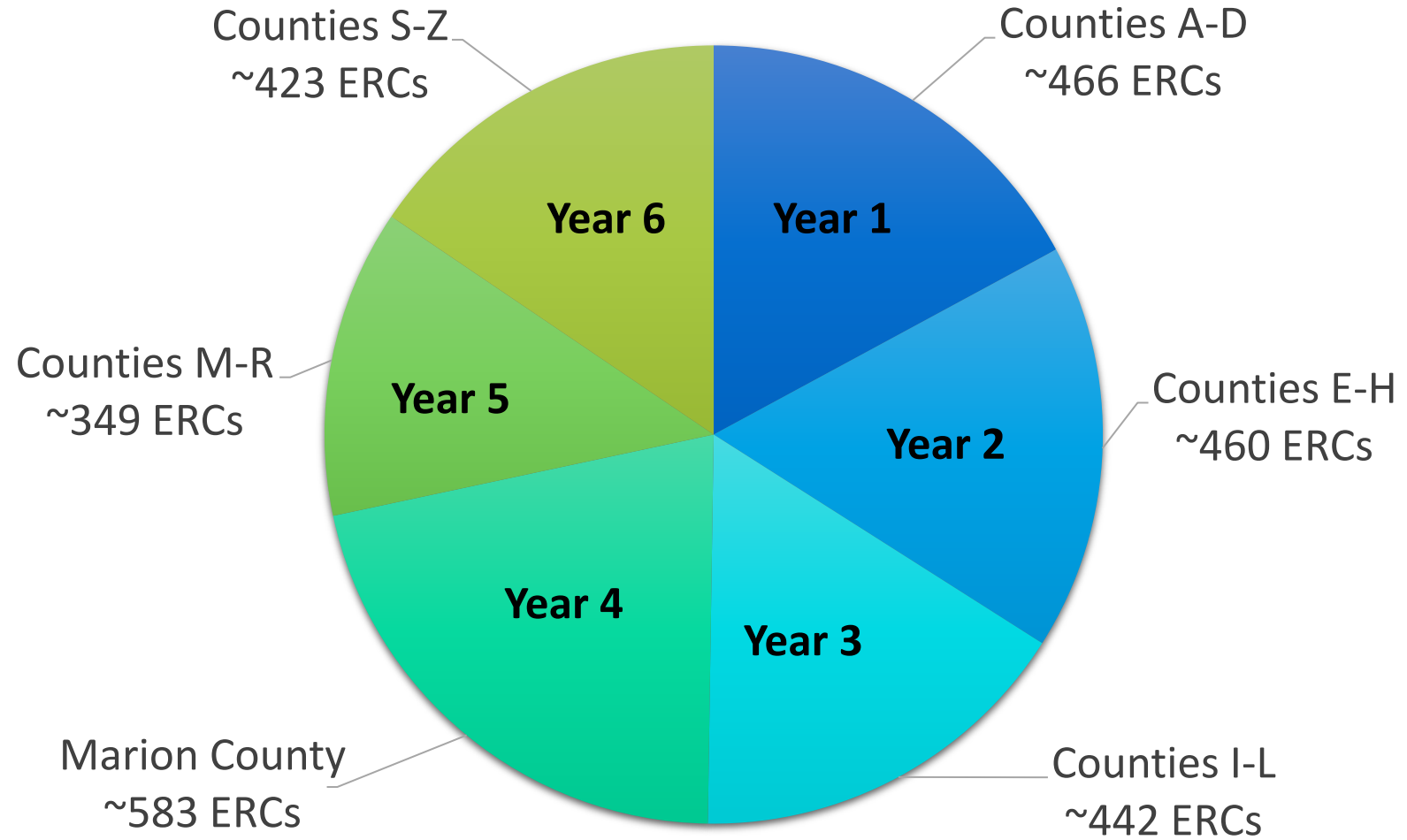
Office of Land Quality  
Remediation Services Branch  
ATTN: Institutional Controls Group  
100 North Senate Avenue, Room 1101  
Indianapolis, IN 46204-2251

**INSTRUCTIONS:** When completing this checklist refer to the Environmental Restrictive Covenant (ERC) for property and restriction information. When completing Section I, include the current property owner information, which may be different than the property owner listed in the ERC. The Auditor completing this form may be the owner or any individual authorized by the owner to act as their delegate or agent. **Shaded boxes are for Office Use Only.**

SECTION I: PROPERTY INFORMATION			
Name of Property			County
Address of Property (number and street)			
City	State	ZIP / Postal Code	
	Indiana		
State Identification Number	AI Identification	Federal Identification Number	
Property Owner			
Address of Owner (number and street)			
City	State	ZIP / Postal Code	
Telephone Number	E-mail Address		
Date ERC recorded (month, day, year) *	Instrument Number	VFC Number	
Has property owner changed since the ERC was recorded? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is property being leased? <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes, the lessee is:	
SECTION II. LAND USE RESTRICTION INFORMATION			



# Self-auditing and Compliance Checks



# Self-auditing and Compliance Checks



Inform/educate  
landowners



Create accountability



Ensure continued  
protection



# Thank you!

Crystal Haulter  
Remediation Services Branch  
IDEM – Office of Land Quality

[Chaulter@idem.IN.gov](mailto:Chaulter@idem.IN.gov)

(317) 234-1957

General Mailbox  
[InstitutionalControls@idem.IN.gov](mailto:InstitutionalControls@idem.IN.gov)