Reset Form

INSTITUTIONAL CONTROLS ENVIRONMENTAL RESTRICTIVE COVENANT/DEED NOTICE MODIFICATION OR TERMINATION REQUEST

State Form 56082 (R / 6-26)

Return this *signed* form to:
INSTITUTIONAL CONTROLS GROUP
100 N. Senate Avenue, IGCN N1101
Indianapolis, IN 46204-2251
Fax: 317-234-0428
Or submit form electronically to:
institutionalcontrols@idem.IN.gov

INSTRUCTIONS: *Please complete this form (type or print legibly) and return it to the Institutional Controls Group to begin the process of modifying or terminating a recorded Environmental Restrictive Covenant (ERC) or Deed Notice. Attach any additional documentation needed to support the request and include a draft modification or termination document. Eligibility determinations utilize the facts and data provided with the request, and a written evaluation response will be provided along with an approved modification or termination as appropriate. Please note that the complexity of technical issues pertaining to the site, and/or incomplete submittals, may significantly increase staff review time.* ***Regardless of the eligibility determination results, reimbursable costs will apply to IDEM's evaluation of the request.***

ENVIRONMENTAL RESTRICTIVE COVENANTS/DEED NOTICES (RESTRICTIVE COVENANTS)

Environmental Restrictive Covenants (ERCs)/Deed Notices are institutional controls which are enforceable (IC 13-11-2-193.5) legal instruments used to protect human health at contaminated sites by restricting property activity, use, and access. ERCs/Deed Notices can also obligate property owners and their successors to operate or maintain physical barriers to eliminate exposures to the contamination.

When a restrictive covenant is proposed as a remedy or component of a remedy, IDEM evaluates it to determine: 1) whether the proposed activities, land use restrictions, and obligations are sufficient to protect human health from the contamination; 2) if the covenant is associated with the correct real estate; and 3) that the covenant includes all of its necessary elements as defined in IC 13-11-2-193.5.

After June 30, 2009, a restrictive covenant must include instructions on how it can be modified or terminated (IC 13-11-2-193.5). This clause requires IDEM's prior written approval for all amendments, modifications, or terminations. If approved by IDEM, the **PROPERTY OWNER** must record the document in the same manner as the original ERC/Deed Notice in the office of the Recorder of the county in which the real estate is located. A copy of the recorded modification or termination must be provided to IDEM.

Restrictive covenant modification and termination requests will be evaluated utilizing IDEM's current risk based guidance.

REQUESTER CONTACT INFORMATION

Restrictive covenant modification / Termination requester		Entity / Organization / Community
Address *(number and street, city, state, and ZIP code)*		
Telephone number *(include area code)* ( )	Fax number ( )	E-mail address

Are you the current owner of record with the county?
☐ Yes ☐ No *(if not, complete property owner contact information section below)*

PROPERTY OWNER CONTACT INFORMATION

Name(s) of property owner		Organization / Community / Firm *(if applicable)*
Address *(number and street, city, state, and ZIP code)*		
Telephone number *(include area code)* ( )	Fax number ( )	E-mail address

SITE/PROPERTY INFORMATION

Site or Project name	
Address *(number and street, city, state, and ZIP code)*	County
Original restrictive covenant instrument number *(County recorder number)*	Original restrictive covenant date of recordation *(mm/dd/yyyy)*
Original restrictive covenant IDEM virtual file cabinet (VFC) number *(if not available in VFC, please attach original ERC)*	

IDEM Office of Land Quality Program

☐ Indiana Brownfields Program
☐ Leaking Underground Storage Tanks (LUST)
☐ Voluntary Remediation Program
☐ Hazardous Waste
☐ Solid Waste
☐ Other *(please specify)* _____
☐ Federal Programs (Superfund; DERP)
☐ State Cleanup

PROPERTY STATUS / REUSE

Is the property currently being leased? ☐ Yes ☐ No	If property is currently being leased, the lessee is:

Current land use *(check all that apply)*:
☐ Agricultural ☐ Commercial ☐ Industrial ☐ Recreational ☐ Residential ☐ Vacant

Intended reuse of property *(check all that apply)*:
☐ Commercial ☐ Green space ☐ Industrial ☐ Mixed use ☐ Residential ☐ Park ☐ Undecided
☐ Other *(please specify)* _____

RESTRICTIONS PROPOSED TO BE MODIFIED/TERMINATED

Control type *(check all restrictions proposed for modification or removal)*:	Current site coverage:
☐ Residential Use Restriction	☐ Entire ☐ Portion
☐ Groundwater Use Restriction	☐ Entire ☐ Portion
☐ Agricultural or Food Crop Restriction	☐ Entire ☐ Portion
☐ Construction Restriction	☐ Entire ☐ Portion
☐ Excavation Notice Required	☐ Entire ☐ Portion
☐ Vapor Mitigation System	☐ Entire ☐ Portion
☐ Engineered Control (*check all that apply*):	☐ Entire ☐ Portion

☐ Soil cap ☐ Paved cap ☐ Vegetative cap ☐ Liner system ☐ Treatment system
☐ Slurry wall ☐ Sheet piling ☐ Interceptor well/trench ☐ Groundwater recovery system ☐ Other Physical control (*e.g. building*)
☐ Leachate collection system ☐ Landfill gas system ☐ Other *(please specify)* _____

☐ Solid Waste Post Closure Care Requirements	☐ Entire ☐ Portion
☐ Other *(please specify)* _____	☐ Entire ☐ Portion

REASON FOR REQUEST

Reason for modification (*check all that apply*):

☐ A correction to the Original ERC/Deed Notice ☐ Additional remedial activities ☐ Change in land use
☐ Subdivision of the Real Estate & contamination is/will be located off-site *(does not apply to property-wide ground water use restrictions)*
☐ Other *(please specify)* _____

Reason for termination (*check all that apply*):

☐ Additional remedial activities ☐ Evidence of contaminant degradation from environmental sampling
☐ Replacing *(i.e. superseding)* the original institutional control ☐ Other *(please specify)* _____

ATTACHMENT(S)

In an attachment, describe the reason(s) for the modification or termination along with the technical basis for the change. For example, if additional environmental sampling or remedial activities have been conducted, a copy of the report detailing those activities, along with maps and data tables (with the data compared to current applicable IDEM risk based guidance), must be provided. As part of the attachment, a draft ERC modification/termination document is also required (IC 13-14-2-9(a)(1)).

COST RECOVERY

In accordance with 329 IAC 1-2-7, IDEM is requiring reimbursement for the administrative and personnel expenses associated with the evaluation and completion of the requested ERC/Deed Notice modification or termination. In accordance with 329 IAC 1-2-7(c), IDEM expenses are currently billed at $75.00 per hour. Once a determination is made that an ERC/Deed Notice modification or termination is appropriate based on the submitted information, an invoice reflecting the actual number of hours spent on the review will be provided to the requestor. However, in accordance with 329 IAC 1-2-7(e)(1) IDEM will not issue the written determination until IDEM receives payment for costs invoiced. Finally, be advised that a full accounting of all personnel and administrative costs incurred by IDEM may not have been completed before issuance of the written determination; therefore, the requestor agrees to pay any additional associated costs that may be invoiced after the written determination has been issued.

SIGNATURE

IN CONSIDERATION OF, AND WITH FULL KNOWLEDGE THAT IDEM WILL INVOICE THE APPLICANT FOR THEIR COSTS ASSOCIATED WITH THIS REQUEST, I HEREBY REQUEST A REVIEW OF THE SUBMITTED RESTRICTIVE COVENANT MODIFICATION OR TERMINATION. I ATTEST WITH MY SIGNATURE BELOW, THAT I WILL FULLY REIMBURSE IDEM FOR ALL ASSOCIATED COSTS INCURRED AND INVOICED WITH THIS REQUEST:

Signature of Requester or Authorized Representative	**Date** (*mm/dd/yyyy*)