



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

STATE CLEANUP PROGRAM

Independent Closure Process (ICP) Guidance

www.idem.IN.govMichael R. Pence
GovernorCarol S. Comer
Commissioner

100 N. Ave., Indianapolis, IN 46204

Phone: (317) 234-4165

Toll Free: (800) 451-6027

Introduction

The Indiana Department of Environmental Management (IDEM) State Cleanup Program (State Cleanup or Program) has introduced the Independent Closure Process (ICP) to allow a particular category of contaminated sites (low priority sites and medium priority sites contaminated only with petroleum, as defined by 329 Indiana Administrative Code (IAC) 7.1) to investigate, remediate, and close without direct IDEM oversight. IDEM will issue a *Completion of ICP* letter to the responsible party (RP) when the contamination has been fully delineated to the IDEM Remediation Closure Guide (RCG) residential screening levels and when contaminants have been remediated to land-use appropriate closure levels, i.e. residential or industrial screening levels. IDEM will not accept non-default or risk assessment based closure approaches under the ICP. Non-default or risk assessment based closure approaches can be pursued through IDEM's Voluntary Remediation Program (VRP). Through the ICP, the consultant will retain responsibility for concluding that closure has been achieved. IDEM will not provide daily oversight or detailed technical evaluation of each site participating in the ICP. However, IDEM will conduct minor quality audits of the project documents, data and the *ICP Site Closure Form, State Form 54166*. If incompleteness or an omission is found during the audit a denial letter will be sent; however, the RP will have the opportunity to correct any errors and resubmit closure documentation.

Key elements of the ICP include accurate site prioritization, complete site characterization or delineation to the RCG residential screening levels and consultant and responsible party (RP) certification of information quality and completeness. The reduction of direct oversight by IDEM does not relieve the RPs or consultants from the legal requirements of reporting releases, investigation and cleanup.

Background

State Cleanup was created in 1989 to oversee the cleanup of petroleum and hazardous substance contamination projects not listed on the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), otherwise known as the Superfund Program. State Cleanup has authority under Indiana's Environmental Laws to oversee cleanup of these hazardous substances and petroleum contamination sites. Administration of State Cleanup is funded solely through the Hazardous Substances Response Trust Fund, and as such, does not receive federal funding or Indiana General Fund

appropriations. Currently, the Hazardous Substances Response Trust Fund receives income through taxes levied on hazardous waste disposal and direct cost recovery from RPs.

With the decline in hazardous waste disposal during the past nine years, the Hazardous Substances Response Trust Fund balance has exhibited a flat or decreasing trend in annual revenue. During the same period, State Cleanup has experienced a steady increase in new remediation sites entering the Program; therefore, the funding and personnel resources cannot meet the oversight needs of lower priority sites. The ICP has been developed by State Cleanup as an alternative method for RPs to achieve closure of lower priority sites by completing the necessary site investigation and remediation following this guidance and the IDEM RCG. Responsible parties will be expected to submit the requested site investigation and remediation documentation and certify to State Cleanup that closure criteria has been met and the site does not pose a threat to human health or the environment. With the institution of the ICP, only sites determined to be high or medium priorities will receive ongoing oversight by State Cleanup staff.

Eligibility of sites to enter the ICP is determined by the State Cleanup Section after conducting priority ranking, as described below.

Site Prioritization and Site Eligibility

IDEM considers proper allocation of State Cleanup staff resources to be direct oversight on the highest priority sites while maintaining a manageable work load. State Cleanup determines the need for resource allocation to a specific site or project after completion of a priority assessment on each new site entering the Program. Site priority assessment and ranking is made by State Cleanup at the time of release reporting and is based upon the information known to IDEM at the time. Proper staff resource allocation and site prioritization is promulgated by rule. An understanding of the eligibility of sites to enter the ICP requires an understanding of the site Prioritization Ranking System, as defined in legislative rule 329 IAC 7.1-4-1 and can be found online in Rule 4, page 4, at www.in.gov/legislative/iac/T03290/A00071.PDF. In general, State Cleanup will utilize site history and environmental conditions, as reported to IDEM during release reporting, to determine the priority status of a site. If information reported to IDEM is insufficient to determine site priority, State Cleanup will issue a Prioritization Information Request letter (PIR) to the RP to request the information necessary for accurate site prioritization. IDEM must be notified immediately if additional information becomes available during the ICP indicating that a change in the priority ranking is appropriate. If IDEM agrees that the site priority needs to be upgraded, the site can be brought under direct State Cleanup oversight and removed from qualification for the ICP.

Site eligibility will be based upon potential human health and environmental threat concerns, and will be determined during the prioritization process. State Cleanup will only consider low priority sites and medium priority sites contaminated with petroleum to be eligible to enter the ICP. High priority sites and medium priority sites contaminated with hazardous substances will not be eligible to enter the ICP. State Cleanup will continue to provide oversight for all high priority sites and medium priority sites contaminated with hazardous substances.

Steps in the Independent Closure Process

I. Notification of Release and Site Prioritization by IDEM

RPs are required under 327 IAC 2-6.1 to report current and historic spills of hazardous substances, petroleum and objectionable substances to the IDEM Emergency Response Section (ER). Information on release reporting can be found at the ER website online at: www.in.gov/idem/4155.htm. The spill/release reporting to ER is the current pathway for sites to enter the State Cleanup Program. Upon receipt of the spill/release report, ER completes an Incident Report and issues an IDEM-generated site number for tracking purposes. ER will collect pertinent site information from the RP or reporter of the spill/release. If the spill/release is determined to require long term site investigation and remediation efforts to achieve closure (i.e. more than 24 to 48 hours to achieve non-detect or background conditions) and the spill/release conditions are considered by ER to be a stabilized, non-emergency situation, the site or spill/release is referred to State Cleanup for long term oversight. State Cleanup may send a PIR letter to the RP in response to a new release report to gather additional information. The RP or their representative will complete the questionnaire within the PIR letter and submit it back to State Cleanup to verify the priority ranking assigned during release reporting. State Cleanup will utilize the information presented by the RP at the time of release reporting, the ER Incident Report, the responses to the PIR letter, and other IDEM collected information to make a priority determination.

II. Responsible Party Notification by IDEM

If the reported site or spill is determined by State Cleanup to be a ICP eligible site the RP will be notified by IDEM and requested to complete investigation and cleanup under the ICP. Notification will be issued by IDEM in the form of the *Independent Closure Process Information and Remediation Request* letter.

III. Site Investigation

The first step to receiving closure under the ICP is complete site characterization. Site investigation must follow the process outlined in the IDEM RCG. Site investigation must completely evaluate site operation and release history, contaminant management, storage and disposal practices and evaluate potential exposures to create a complete conceptual site model for the contaminants of concern. In addition to completion of historical research and evaluation of potential exposure pathways the site investigation must also fully delineate the nature and extent of all actual and potential contaminants of concern. Contaminants must be delineated to the IDEM RCG residential screening levels in both the horizontal and vertical directions away from the source(s) of contamination in both soil and ground water.

Site Investigation and delineation must be completed in a manner following Section 2 and 3 of the IDEM RCG. Where soil contamination is found exceeding the IDEM RCG residential soil migration-to-ground water screening level ground water samples must be collected to demonstrate vertical and horizontal delineation of ground water contamination.

Site investigation reports should be formatted following the general report outline found at <http://www.in.gov/idem/files/riscuserapp1.pdf>

IV. Remediation

Remediation must be conducted where contaminant concentrations exceed land use-specific RCG screening levels. Remediation must be consistent and must proceed as a default cleanup approach. Contamination on a residential use property or a property expected to be residential use in the future must be reduced to below the IDEM RCG residential screening levels. Soil contamination on an industrial or commercial use property must be reduced to the IDEM RCG industrial direct contact soil exposure screening level. Ground water contamination on an industrial or commercial use property must be reduced to a concentration equal to ten times the IDEM RCG residential ground water screening level. As an example, the remediation objective for benzene in ground water on an industrial or commercial property would be 50 parts per billion, or 5 parts per billion (residential ground water screening level) times a factor of 10. On all properties where contamination remains above the residential screening level an environmental restrictive covenant (ERC) must be recorded on the property deed to act as an administrative control. For guidance on developing, recording and submitting the ERC please refer to section VI, below.

Because non-default, site-specific, closure levels or risk based closures require careful evaluation by IDEM staff, they are not appropriate for the ICP. Accordingly, closure to site-specific closure levels using a non-default closure approach will not be accepted by State Cleanup within the ICP. Non-default or risk based closure approaches for ICP eligible sites can be pursued by applying to IDEM's VRP.

V. Requests for Closure

An RP, their designated representative, or environmental consultant may determine that a site is eligible for closure once a site has been characterized and/or remediated to the applicable land use-specific IDEM RCG screening levels. For consistency purposes, IDEM will only accept cleanups to the land-use specific IDEM RCG screening levels. It is the responsibility of the RP or their designee to provide all necessary documentation to confirm that IDEM's closure criteria has been achieved. Minimally, at the time of closure the RP must submit a comprehensive site investigation report and a remediation implementation report/closure request. However, IDEM believes it may be necessary to generate the documents listed in Document Submittal Guidelines, below.

IDEM will require that closure documentation be provided for audit inspection and program quality assurance monitoring within one year (365 days) from the date of IDEM's initial notification letter for a soil contamination site, or within three years (3 years) for a ground water contamination site. If the completion timeframes are not achieved, IDEM reserves the right to inactivate the site, and deny issuance of the *Completion of ICP* letter. At the time site closure is requested, the RP or their environmental representative should complete the *ICP Closure Form*, State Form 54166, which summarizes site conditions and environmental data collected at the site. The *ICP Closure Form* certifies to IDEM that closure is acceptable and no risk of contaminant exposure exists at the site. The RP is required to sign and notarize the *ICP Closure Form*; thereby acknowledging that they have verified and certified the accuracy of the site closure information presented to IDEM. In addition, IDEM will require that both the environmental consulting professional and the principal/owner of the environmental consulting company sign and certify that the information presented to IDEM is true and accurate. IDEM

will require that the consultant's primary project manager or principle/owner hold a current license or certification in the State of Indiana as a professional geologist, professional engineer or certified hazardous materials manager.

VI. *Institutional Controls and Environmental Restrictive Covenants*

ICP sites closing with contamination remaining above the IDEM RCG residential screening levels will require the implementation of appropriate institutional controls to protect human health and the environment by restricting property activity, use, or access. IDEM will require development and recording of an ERC on the property to act as a legally binding institutional control document and must meet the statutory definition found in IC 13-11-2-193.5 and IC 13-14-2-6. A draft ERC, including a map, must be sent to IDEM for approval prior to its recording with the county. Once the draft ERC is approved by IDEM the ERC must be made a part of the closure plan for the site and be submitted to IDEM as part of the closure documentation after final recording onto the property deed or title is completed. A copy of the recorded ERC and an original notarized copy of the Affidavit of Recording form must be submitted to IDEM. The submitted copy of the recorded ERC must include all attachments or exhibits and must have been stamped by the county recorder's office. An ERC must run with the deed or title for the property, remain in effect until IDEM agrees that the ERC is no longer warranted and be binding upon future property owners. Any ERC which fails to be enforceable, remain attached to the deed or title, protect human health and the environment or bind future property owners will be grounds for IDEM to deny or revoke the approval of site closure.

For consistency, IDEM requests that ERCs submitted under the ICP follow the ERC template found at www.in.gov/idem/files/erc_generic_language.doc. At a minimum, an ERC should contain restrictions on installation of drinking water wells and also the use of the property for residential, daily care, medical care, elderly care and agricultural purposes. Ultimately, for the purposes of the ICP, the restrictions placed in the ERC must be chosen by the property owner, RP and consultant managing the project. The RP or consultant must certify to IDEM that the restrictions chosen to be placed on the property through the ERC adequately protect against exposure to contaminants. Certification of the effectiveness of an ERC is made by signing the *ICP Closure Form* and submitting a final recorded ERC to IDEM with the site's closure documentation. Any ERC must meet IDEM's requirements and specifications in order for the ERC to be valid and enforceable under state law. Additional information regarding institutional controls can be found online at www.in.gov/idem/5959.htm.

VII. *Closure Approval and Issuance of ICP Closure Completion Letter*

State Cleanup will conduct quality assurance monitoring and audits of the ICP sites to verify consistency in closure determinations and to ensure the IDEM file is complete. However, IDEM will not provide project management oversight or technical review of data and documentation. If the closure documentation presented to IDEM is true, accurate and complete, and IDEM is in agreement with the RP and consultant's certification that contamination has been remediated and no threat to human health or the environment exists, then IDEM will issue a standard *Completion of ICP Letter*. Once the RP has received this letter, closure is considered complete and further correspondence will not be necessary.

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

IDEM Quality Assurance Monitoring

IDEM's oversight of remediation projects in the ICP will be minimal. However, to ensure that the quality of investigation and remediation conducted under the ICP meets IDEM's requirements and completion timelines, periodic monitoring of site progress will be conducted. Please note that closure status may be withheld or revoked if IDEM discovers that investigation or remediation of the site is insufficient, if documentation submitted is inaccurate or incomplete, or the terms of an ERC are not being met by a property owner. If remediation is not completed within the specified one-year time frame, IDEM may refuse to issue the *Completion of ICP letter*.

Document Submittal Guidelines

Documentation and data supporting completion of site investigation, contaminant delineation, remediation and closure under the ICP must be submitted to IDEM within the completion timeline set forth in Section V, above. Reports should follow the formats contained in Appendix 1 of the RISC User's Guide, <http://www.in.gov/idem/files/riscuserapp1.pdf>. The following is a limited list of documents that IDEM anticipates are necessary to adequately document closure activities:

- Site Investigation Report
- Further Site Investigation Work Plan(s)
- Further Site Investigation Report(s)
- Remediation Work Plan or Corrective Action Plan
- Remediation Completion Report or Closure Report
- ICP Site Closure Form, [*State Form 54166*](#)
- Site Specific Environmental Restrictive Covenant

Data submitted to IDEM to substantiate investigation, remediation and closure completion must meet the minimum data documentation requirements (MDDR's). The MDDR's can be found online at www.in.gov/idem/5058.htm.

ICP closure documentation should be submitted to the State Cleanup email address, scp@idem.in.gov. When submitting emails to scp@idem.in.gov, please include the site name, IDEM site number and site address in the subject line of the email.

If your closure documentation exceeds a total of 15 megabytes (mb) in size, documents should be submitted by regular mail to the address provided below. When submitting documentation by regular mail the following guidelines apply:

- 1 paper copy of all closure documentation (comprehensive paper copy including full quality assurance/quality control (QA/QC) documentation for lab data);
- 1 compact disk (CD) of complete report (including QA/QC, if applicable). CD should be labeled with program name, site name, site number, document title and date;
- Document electronic file names must not include any symbols, e.g. “#” or “&;
- Do not use color paper to separate sections;
- Electronic document files should not be larger than 25 mb

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

ICP General Contact Information and Questions

By email: scp@idem.in.gov