



Institutional & Engineering Control Requirements

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2006 RBCA Training Workshop

Statutory Authority for IC/EC

- * See s. 376.30701(2)(d), F.S.
- * We must allow the use of IC/EC at contaminated sites, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment.
- * No other specifics are provided.

Statutory Definitions

- * See 376.301, F.S.
- * (17) "Engineering controls" means modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.
- * (22) "Institutional controls" means the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.

Rule Provisions

- ✦ Definition of “engineering control” is slightly different in the rule:
- ✦ “Engineering control” means use of existing features (such as buildings) or modifications to a site to reduce or eliminate the potential for migration of, or exposure to, contaminants....
[Emphasis added. See subsection 62-780.200(19), F.A.C.]
- ✦ Refer to use of IC/EC in Section 62-780.680 (in RMO II and III).

Hey, I can see you sleeping!

* Wake up! It gets better, I promise.



The ICPG

- ★ Institutional Controls Procedures Guidance (Nov. 2004) (“ICPG”)
- ★ Details for use of IC/EC are in ICPG; statute and rule provide only general authority for use of controls
- ★ ICPG is a Referenced Guideline (i.e., not mandatory; provided FYI)

The ICPG

- ★ Any PRSR proposing a SRCO with Conditions will need a copy of the ICPG.
- ★ Download this FREE guidance at:
- ★ http://www.dep.state.fl.us/waste/quick_topics/publications/wc/csf/icpg.pdf

The ICPG

- ★ Don't be intimidated (66 pages)
- ★ Only 15 pages are actual text (provide background info, explanation of options, the process, etc.)
- ★ The remaining pages are attachments that provide examples to help you.
- ★ Use Attachment J4 (**RC checklist**)!



Sample RC in ICPG

- * Provides Model/Template starting point
- * No “cookie cutters”; every site is different
- * PRSR should review proposed RC against this template
- * If language is different, provide technical justification to FDEP Project Manager (e.g., 95% UCL)

Sample RC in ICPG

- * Interim RC versus permanent w/ SRCO
- * Timing of SRCO (at end of process; can't get SRCO w/ or w/o Conditions if you're still in NAM)
- * Partial restrictions versus whole property
- * Soil versus Groundwater

Words of Wisdom...



Common Problems in RC Packages

- ✦ Failure to submit entire RC Package
(please do not submit “draft” RC and request OGC preliminary review)
- ✦ Failure to include updated Title Work
(50-year search), copies of encumbrances,
and any necessary subordinations or
joinders

Common Problems in RC Packages

- ✦ Failure to explain why RC template language has been changed or deleted
- ✦ Failure to include “Exhibit B” for partial restrictions
- ✦ Maps/surveys are not legible (also, PLS should use GPS or State Plane Coordinates system)
- ✦ Formatting issues (nit-picky, but legally required for proper recording)

Notice of IC



- * Notice is required and 30-day opportunity to comment [see subsection 62-780.680(8), F.A.C.]
- * PRSR needs to allow time for this, especially if a real estate deal is pending and the PRSR is anxious to get RC approved and recorded

Tips for Dealing with FDEP

- ★ No blowing “raspberries”!
- ★ FDEP project managers have had RBCA training, including the use of IC/EC; but please be patient (we’re still learning!)



Institutional Controls Registry

- ★ Available online at:
<http://gisweb.dep.state.fl.us/dwm/icr/viewer.html>
- ★ FDEP will enter the site info into the ICR once the PRSR presents proof of recording the RC
- ★ Critical tracking database (used for RC enforcement, audits, etc.), so PRSR will want to ensure that the site's info is correct

Questions/Need Help



- * First work through your FDEP Project Manager, but for legal issues:
- * If the contaminated site falls within one of the “program areas,” then call the appropriate OGC program attorney.
- * If the site is subject to enforcement, then call the assigned OGC enforcement attorney.
- * FDEP Office of General Counsel: 850-245-2242

The End!

