

DIVISION OF ENVIRONMENTAL REMEDIATION TECHNICAL GUIDANCE FOR SITE INVESTIGATION AND REMEDIATION

SECTION 5. REMEDIAL DESIGN/REMEDIAL ACTION

5.6 Institutional controls

(a) If an institutional control, consisting of deed restrictions or covenants, is required by the decision document for the site, to restrict activities on or off the site, the person responsible for conducting the remediation should submit the following information to the DER:

1. A map showing the area of control;
2. Description of the controls;
3. The property owner's agreement to establish and maintain the institutional controls, which are expressly made enforceable by the State, set out in such form as to be recordable pursuant to Real Property Law section 291.

(b) If an institutional control is required in (a) above, documentation is to be submitted to DER establishing that the person responsible for conducting the investigation and/or remediation has notified the persons listed below, and any others in accordance with section 1.4, of the intent to establish the institutional control. This notification should:

1. Be sent by certified mail, return receipt requested to:
 - i. Any adjacent property owner, and
 - ii. The state and local health departments and clerks of the governing bodies of each municipality in which the institutional control area is to be located.;
2. Describe the type and areal extent of the contamination to be addressed by the institutional control;
3. The proposed remedial action and its projected duration;
4. The limitation on site use that will be necessary based on the contamination present and the proposed remedial action; and,

(c) For institutional controls consisting of other than deed notices or covenants, the requirements of (a)1 and 2 and (b), above will apply.