# Section B: WHEN IS THE USE OF AN INSTITUTIONAL CONTROL APPROPRIATE?

The use of Institutional Controls (ICs) to eliminate or control the potential exposure to contamination is specifically authorized by the Florida Statutes governing global Risk Based Corrective Action (RBCA), petroleum cleanup, drycleaning solvent cleanup, and brownfields.[[1]](#footnote-2) Chapter 62-780, Florida Administrative Code (F.A.C.), implements the statutory authorization by allowing use of ICs and alternative cleanup target levels (ACTL) instead of the default cleanup target levels contained in Chapter 62-777, F.A.C.[[2]](#footnote-3) These rules authorize the use of ICs to achieve FDEP approval for a Conditional Site Rehabilitation Completion Order (CSRCO) if the controls are protective of human health, public safety, and the environment.[[3]](#footnote-4) In determining whether a CSRCO is appropriate, please look to these rules and any FDEP guidance document on site assessment and remediation regarding the contaminated site. Then determine the actual or potential exposure pathways and develop a list of restrictions that will be necessary to protect human health and the environment from the remaining contamination in consideration of those pathways.

Chapter 62-780, F.A.C., and the enabling statutory provisions describe the circumstances under which an IC is appropriate. Conceptually, the rule contemplates evaluation of the following:

* Which media are contaminated [e.g., a groundwater use restriction may be appropriate if, among other things, contaminant levels exceed groundwater cleanup target levels (GCTLs)];
* Current and projected use of the affected groundwater and surface water (e.g., a groundwater use restriction may be appropriate if, among other things, there is no current and projected use of the groundwater because the area is served by a municipal water supply);
* Current and projected use of the contaminated property (e.g., a land use restriction may be appropriate if soil contamination is greater than the residential soil cleanup target levels (SCTLs), but below the commercial/industrial SCTLs and the property that will not be capped, but exposure is limited to adults in a commercial/industrial setting);
* Development of ACTLs for contaminated property that are based upon maintaining site-specific conditions of exposure (e.g., adjusting soil direct exposure parameters for an age restricted community);
* Probability of the contamination spreading (e.g., a groundwater use restriction may be appropriate if, among other things, the technical documents show that the plume is stable or shrinking);
* Location of receptors (water supply wells, surface water bodies, etc.) and availability of public water supply systems (e.g., a groundwater use restriction may be appropriate if, among other things, there are no water supply wells near the groundwater plume that could provide a pathway for human exposure); and
* Necessity of an engineering control (e.g., the parking lot of a shopping mall may serve as an engineering control to prevent exposure to an area of soil contamination[[4]](#footnote-5)).

Specifically, when selecting restrictions and requirements for an IC, the applicable rules should be followed. For example, if the selected IC is a RC that will be recorded, real property law requires such covenants be executed by the current real property owner. Work closely with the property owner, or his or her representative, to find a mutually satisfactory IC.

Under certain circumstances, FDEP may agree to rely on non-recorded ICs to close a site (e.g., permittings). This is often considered for sites having non-source property contamination (under RMO III).

1. Sections 376.30701(2)(d), 376.3071(5)(b)4, 376.3078(4)(d) and 376.81(1)(d), F.S. [↑](#footnote-ref-2)
2. Also see Rules 62-780.650 and 62-780.680, F.A.C. [↑](#footnote-ref-3)
3. Risk Management Options Level II and III (RMO II and RMO III) are the options for a CSRCO are available when the controls are protective of human health, public safety, and the environment. See subsections 62-780.680(2) and .680(3), F.A.C. [↑](#footnote-ref-4)
4. A Professional Engineer would need to certify that the parking lot is competent for use as a cap, and an IC would need to require proper maintenance of the parking lot cap. [↑](#footnote-ref-5)