## Section C.1: ICs Other than RCs[[1]](#footnote-2)

It is important to note that, other than cases involving MOAs between the FDEP and other institutional or governmental entities, at the present time, these non-RC controls should only be used to address *groundwater* contamination at a site (which can include impacts off the source property). When addressing soil contamination using either land use restrictions or an engineering control (e.g., a concrete cap), an RC is the only type of control that effectively ensures that the type of land use remains in perpetuity, or that an engineering control remains in place and is properly maintained to permanently cover the area of soil contamination.

Factors to consider when evaluating whether institutional control other than an RC is adequately protective of human health, public safety, and the environment, include the following:

* The nature and concentrations of contaminants;
* The size and location of the contaminant plume relative to existing and projected improvements on the property;
* The scope and coverage of any applicable local ordinance:
  + Requirement for connection to county/municipal/community water delivery system for both potable and irrigation water;
* Status of site development and existing infrastructure for provision of potable and irrigation water;
* Current and projected use of the property and likelihood of need for additional water use in the future;
* Potential for additional construction in the area (i.e., possibility of dewatering, discharging of contaminated groundwater to surface soils, causing plume migration; etc.); and
* Potential for installation of new stormwater features or enlargement of existing stormwater features at or near the affected property.

When proposing an IC other than an RC, the Person Responsible for Site Rehabilitation (PRSR) should submit much of the same information as in a typical RC package including the Deed and Legal Description. Instead of a draft RC, the PRSR should submit electronic copies of the proposed institutional control and any documentation that is necessary to validate or provide context to the control. For example, in cases where a PRSR is relying on a local ordinance, the ordinance itself should be submitted. Along with the ordinance, a statement explaining whether the property(s) is currently in compliance with that ordinance, and, a statement of whether the ordinance relies upon delegation of authority from another governmental entity, should be submitted. Documentation of that delegation should also be provided. Since some local ordinances are quite lengthy, the PRSR should direct the FDEP to the specific provisions that are relevant.

An additional decision that will have to be made when using an IC of this nature, is whether title work is necessary to identify the holders of encumbrances on the property and provide them with notice of the proposed closure using the control. [See subsection 62-780.220(7), F.A.C.] This decision should be made on a site by site basis because it depends on both the nature of site as well as the nature of the control. For sites where contamination goes beyond property boundaries, this evaluation is necessary for each parcel. Factors to be considered in this evaluation include:

* Depth to groundwater contamination;
* Status of site development and existing or planned infrastructure on the site;
* Ownership of each property;
* Involvement and knowledge of off-site property owners as to the nature and extent of contamination;
* Nature of the property interests subject to the restriction in relation to the contamination causing the need for restriction.

1. In November 2013, the Division of Waste Management issued a memorandum regarding institutional controls, including the use of institutional controls that do not require RCs. Revisions to this Institutional Control Program Guidance in 2016 restate and clarify that November 2013 memorandum. [↑](#footnote-ref-2)