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April 2008

The Innocent Owner/Operator Program

Remediation Division

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

The Innocent Owner/Operator Program

Prepared by
Remediation Division

RG-382
April 2008

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Objectives: This document discusses implementation of the Innocent Owner/Operator Program (IOP) of the TCEQ. It includes information regarding eligibility, administrative procedures, the IOP demonstration, certification, and reissuance. It is designed to standardize and facilitate IOP demonstrations by providing guidance on many factors involved in IOP determinations, including those that may not be immediately obvious to a person seeking to demonstrate their status as an innocent owner or operator.

Audience: TCEQ Project Managers, Landowners, Operators, and Environmental Professionals

References: The IOP program is established under Subchapter V of the Texas Health and Safety Code (THSC). The applicable statutes governing the IOP program can be found in THSC §361.751 through 361.754, located at <http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm>.

Regulations established to implement the IOP program are present in 30 Texas Administrative Code 333, Subchapter B, which can be viewed through the TAC viewer, which can be found at <www.sos.state/tac/index.shtml>.

Contact: Innocent Owner/Operator Program, MC 221
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Preface

The State of Texas has established several programs to help citizens deal with contaminated property. Some of these programs are administered by the Texas Commission on Environmental Quality (TCEQ). Other local, state, and federal agencies may also be involved, especially the Environmental Protection Agency (EPA).

The Innocent Owner/Operator Program

This guide concerns the Innocent Owner/Operator Program (IOP) of the TCEQ. The IOP provides an Innocent Owner/Operator Certificate (IOC) to owners or operators (leaseholder or tenant) who are able to show that they did not cause or contribute to the contamination on their property, and that the contamination originated from an off-site source.

The IOP can be used by owners and/or operators of any kind of property in Texas (e.g., undeveloped land, offices and warehouses, supermarket and retail sites, commercial development sites, and even private residences). The IOP is not a cleanup program. The IOC, which is granted when a demonstration of innocence is made, is not transferable to future owners and operators. Prospective purchasers and operators may, however, be included in or added to applications in order to facilitate property transactions and use of the property.

Applicants are required to provide environmental soil and groundwater data to support their innocence; however, this data is not used to make a cleanup decision. An IOC can be used to facilitate redevelopment by confirming that the owner or operator is entitled to immunity from liability for assessment and remediation, as provided by THSC §361.752.

Use of This Guide

This publication begins with a table that will help you decide if you meet the requirements for an IOC and that outlines the steps you will need to take to complete the process. Later sections describe the administrative processes and technical aspects of preparing an application for an IOC. You should read the entire document before submitting an application to the IOP.

This publication is also written for others who may be involved in an IOP certification process, including legal representatives and environmental consultants with technical expertise. You may wish to use an

environmental consulting firm to assist in the IOP certification process. If groundwater testing is required, a licensed driller is required to install the monitoring wells. Check your local telephone directory for environmental consulting firms and licensed drillers. Note that the arrangement for licensed drillers will normally be conducted by the environmental consultant you select. The IOP cannot recommend a consultant.

Finally, use this guidance document as a general aid to assist you in complying with IOP rules. Remember, however, that this is only guidance, and not the statute or the official rules. If you have a question about whether this guidance applies to your particular situation, consult the IOP or the statute and official rules that are available at the links provided on the cover page.

Obtaining Additional Information

If you have questions about this guidance, please contact the Remediation Division of the TCEQ. Once you have filed an application (to the address below), your site will be assigned a project manager.

You can contact the TCEQ to receive more information on the IOP via the following:

By mail: TCEQ
Innocent Owner/Operator Program, MC 221
P.O. Box 13087
Austin, TX 78711-3087

By phone: 512-239-5891
TCEQ Publications, 512-239-0028

By e-mail: vcp@tceq.state.tx.us

On the Web: www.tceq.state.tx.us/goto/iop

For the **IOP rules**, visit the Secretary of State's Texas Administrative Code Web page, <www.sos.state/tac/index.shtml>, and click on "TAC viewer." The IOP rules are located in Chapter 333, Subchapter B, of the TAC.

For the **IOP statute**, visit the Texas Legislature's "Health & Safety Code" Web page, at <http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm>. The IOP law is located in Chapter 361 (Solid Waste Disposal Act), sections 361.751–754 (Subchapter V).

Eligibility Decision Points of the IOP

Table 1 can be used to determine if you are eligible for the IOP. This quick reference table also indicates the kind of information you must provide in your IOP application if you are eligible.

Table 1: Decision Points of the IOP

If the answer to this question . . .	Is . . .	Then . . .
1. Is the site affected by contamination?	Yes	Answer the remaining questions before you decide what to do.
	No	Do not apply for an IOC. (You are not eligible for this program unless you can demonstrate that the site is affected by contamination.)
2. Is something you own or operate on the site, the property containing the site, or another property, a source of the same chemicals of concern (COCs) for which you seek the IOC?	Yes	Do not apply for an IOC unless you can demonstrate that these potential sources are not contributing COCs to the site for which you seek the IOC. (If you can demonstrate this, then proceed to Question 3.)
	No	Answer the remaining questions before you decide whether to apply.
3. Is this site a subdivided portion of a tract that includes the source of the COCs?	Yes	If the site was subdivided from the source tract before 9/1/97, continue to Question 4. If the site was subdivided from the source tract on or after 9/1/97, read the corresponding subsection in 2.3 to determine your next course of action.
	No	Continue to Question 4.
4. Has an appropriate Phase I Environmental Site Assessment (ESA), or equivalent investigation (APAR, RFI), identified potential on-site sources for the COCs?	Yes (or you're not sure)	You will need to investigate the possibility that on-site sources caused or contributed to the contamination. Continue to Question 5.
	No	You might not have to perform an intrusive site investigation. Be sure to provide in your application and site investigation report (SIR) the information that supports your answers to these questions.
5. Do the application and site investigation report (SIR) demonstrate that the COCs in the media of interest result solely from a release from an off-site source?	Yes	Continue to Question 6.
	No	You are not eligible for an IOC, but you should consider addressing the contamination through a cleanup program of the Remediation Division.
6. Do any on-site or off-site releases for which you have responsibility threaten to contribute COCs to the media of interest in the future?	Yes	An IOC cannot be issued in such circumstances unless actions are taken to prevent the potential contribution and the TCEQ concurs that the actions are sufficient
	No	Apply for an IOC. Be sure to provide in your application the information that supports your answers to these questions.

Abbreviations and Acronyms

APAR	Affected Property Assessment Report
ASTM	American Society for Testing and Materials
COC	chemical of concern
ESA	environmental site assessment
IOC	Innocent Owner/Operator Certificate
IOP	Innocent Owner/Operator Program
MDL	method detection limit
MSDS	Material Safety Data Sheet
PST	petroleum storage tank
QA/QC	quality assurance/quality control
RCRA	Resource Conservation and Recovery Act
RFI	RCRA Facility Investigation
SIR	site investigation report
SDL	sample detection limit
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
THSC	Texas Health and Safety Code
TRRP	Texas Risk Reduction Program
TWC	Texas Water Code
USGS	United States Geological Survey
VCP	Voluntary Cleanup Program

1. Overview of the IOP

The Innocent Owner/Operator Program (IOP) was created to implement Texas Health and Safety Code (THSC), Chapter 361, Subchapter V, which became effective on Sept. 1, 1997. The program provides a process for current owners and operators of property to be certified as "innocent," when they can sufficiently demonstrate that their property has been affected by a contaminant migration from an off-site source and that they did not cause or contribute to the release. For the purposes of the IOP, it is only necessary to demonstrate the presence of such chemicals at a site. IOP certificate issuance is not contingent upon chemicals exceeding a health-based level or any other regulatory-based value.

The terms *potential source* and *source* are both used throughout this document. Potential sources are considered to be areas or structures where a COC may have been stored or utilized. Once sample data confirm the presence of a COC release, the IOP recognizes these potential sources to be actual sources of contamination. The media affected by the release, however, may still need to be determined and may affect whether or not an IOC will be issued.

1.1 Value of the IOC

The IOC is a statement, issued by the TCEQ, that you are not liable under the THSC or the Texas Water Code (TWC) for contamination that has migrated onto your property from an off-site source. This means that, as a holder of an IOC, under these statutes, you are not responsible for investigation or remediation of the contamination. Additionally, the IOC may be valuable in demonstrating to lenders or other parties that the TCEQ considers the person an innocent owner or operator, thereby potentially facilitating or expediting a property transaction.

An IOC is issued for specific contaminants in specific environmental media for which the owner or operator is innocent. Degradation products of the contaminants are included, unless specifically omitted from the certificate. The IOC covers the portion of the property addressed in the SIR, based on a legal description and a survey map that document the coverage area.

1.2 Eligibility

To be eligible for an IOC, an applicant must meet the following criteria, which can also be found in the Texas Health and Safety Code, sections 361.751(2) and 361.752(b):

- the subject site is contaminated;
- at the time of application, the innocent person is a current owner or operator of the subject site;
- the applicant did not cause nor contribute to the source of contamination; and
- the subject site is not a subdivided portion of a source tract, or
- the subject site is a subdivided portion of a source tract but the subdivision occurred prior to Sept. 1, 1997 (the effective date of the IOP law), or,
- the subject site is a subdivided portion of a source tract but the subdivision occurred on or after Sept. 1, 1997, and after appropriate inquiry consistent with good commercial or customary practice (latest ASTM standards), the person did not know or have reason to know of the contamination at the time the person acquired the property.

1.3 Application Process

To be eligible for certification through the TCEQ as an innocent owner/operator, you must apply to the IOP. The IOP application requirements are described in the Texas Health and Safety Code, Chapter 361.753, and in Title 30 of the Texas Administrative Code (TAC), Section 333.35.

The application process includes the following steps:

1. Complete a site investigation report (SIR) or provide a Phase I and Phase II ESA (or other report documenting that the site is contaminated) with supplemental attachments that contain the additional information requested in the SIR. The SIR or other submittals should include an IOP Outline and Checklist. Submit two copies of all documents.
2. If the results of the SIR suggest that you meet IOP eligibility requirements, complete and submit an IOP application, the SIR (or equivalent submittals), and the required $1,000 fee. The IOP application and instructions on how to complete the application and associated submittals can be located on the IOP Web page,<www.tceq.state.tx.us/goto/iop>. (Scroll down to “IOP Forms and Publications.”)

3. Notify adjacent landowners of your intent to obtain an IOC from the IOP. Provide proof of the notification to the IOP within 14 days of the date of your application. You may send out the public notice letters as a prospective purchaser or operator as long as that status is evident in the letters. You may also include current and prospective owners/operators in a single letter. For time-sensitive property transactions, the TCEQ encourages you to accomplish these tasks expeditiously, since the TCEQ cannot issue an IOC until the comment period for public notice has expired. You can download a sample notification letter at the TCEQ's IOP Web page. Go to <www.tceq.state.tx.us/goto/iop> and scroll down to "IOP Public Notification Letter," under "IOP Forms and Publications."

Step 1: Completing the Site Investigation Report

To facilitate the IOP demonstration, the TCEQ prefers that the IOP applicant prepare and submit a SIR in accordance with this guidance. The guidance has been designed with the goal of a stand-alone SIR. The TCEQ recognizes, however, that in many cases an IOP applicant may have already performed a Phase I and Phase II ESA. While it is acceptable to provide the TCEQ with the Phase I and Phase II ESAs (and/or other reports demonstrating that the site is contaminated, such as APARs or RFIs) in lieu of an SIR, these reports may not address all the concerns of the TCEQ in determining that the IOP applicant is an innocent owner or operator. If a SIR is not completed, the IOP applicant should ensure that the other submitted reports are accompanied by supplemental information, the sum of which will satisfy all of the requested information in the IOP outline and checklist.

The SIR has two principal purposes:

1. Determine if the site has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property; and
2. Determine if activities at the site or by the applicant caused or contributed to the contamination referred to in purpose no. 1.

The SIR should include an outline and checklist. By using this outline and checklist, you can indicate that each section is complete and contained within the SIR. You may also indicate which sections, if any, are not applicable to your demonstration. A description of the contents of each item in the checklist is contained in Appendix A. The format of the SIR should be consistent with the outline in order to facilitate the report's review by the TCEQ. Reports submitted in a format inconsistent with the outline may delay the IOP determination and increase the amount of charges associated with the TCEQ's review of the report.

The checklist allows some requests to be marked as "not applicable" or "not available." For any response checked "not applicable," the applicant should provide an adequate explanation based on the IOP law, the IOP rules, and this guidance. For any response checked "not available," the applicant should document the efforts that were made to obtain the information. These explanations should be provided in the appropriate sections of the SIR. If the IOP applicant is submitting other reports in lieu of a SIR, similar explanations must be provided.

Table 2. IOP Outline and Checklist for the Site Investigation Report

Section	Section or Attachment Title	Completed	NA
1.	Executive Summary	_____	
2.	Site Location (general discussion)	_____	
2.1	Attachment: Regional Map	_____	
2.2	Attachment: Vicinity Map (including all adjacent properties)	_____	
2.3	Attachment: Site Map	_____	
3.	Site History (discuss all current and historical site usage)	_____	
3.1	Attachment: Chain of Title for Real Property	_____	
3.2	Attachment: Directory Listings (include all available)	_____	___
3.3	Attachment: Aerial Photographs	_____	___
3.4	Attachment: Fire Insurance Maps	_____	___
3.5	Attachment: Zoning Land-Use Records	_____	___
4.	Current and Historical Operations—Chemical Storage, Processing, and Disposal (general discussion)	_____	___
4.1	Potential On-site Sources (discuss in detail)	_____	___
4.2	Attachment: Potential On-site Source Area Map (current & historical)	_____	___
4.3	Attachment: On-site Chemical Documentation (MSDS, manifests, etc.)	_____	___
5.	Site Investigation (general discussion supporting off-site source impact)	_____	
5.1	Potential On-site Source Areas (discuss in detail)	_____	___
5.2	Investigation to Determine On-site Contribution (discuss in detail)	_____	___
5.3	Site Remedial Actions (discuss any historical response actions taken)	_____	___
5.4	Attachment: Sample Location Map (including background, if necessary)	_____	
5.5	Attachment: Contaminant Distribution Maps (each media)	_____	
5.6	Attachment: Gradient Maps (include for each media as applicable)	_____	
5.7	Attachment: Analytical Results Tables (by media)	_____	
5.8	Attachment: Surveying and/or Gauging Results Tables (by media)	_____	
5.9	Soil Boring and/or Monitoring Well Logs	_____	
5.10	Soil Cross-section Maps	_____	___
5.11	Laboratory Reports (including quality control data)	_____	
5.12	Waste Characterization and Disposal	_____	___
6.	Off-site Potential Sources (general discussion)	_____	
6.1	Attachment: Off-site Potential Source Map	_____	___
6.2	Site Subdivisions (if property was subdivided from a source tract)	_____	___
6.3	Interest in Off-site Potential Sources (list and discuss all)	_____	___
6.4	Investigation Results from Off-site Potential Source Property	_____	___
7.	Conclusions and Recommendations	_____	
7.1	Proposed Sample Location Map	_____	___
8.	Attachment: Supporting Information (Phase I, II ESAs, APARs, RFIs, etc.)	_____	___

Step 2: Completing the Application

The application form requests the following:

1. general information concerning the property owner/operator;
2. a legal description of the site; and
3. a statement that the owner or operator has not caused or contributed to the off-site source or sources of contamination that have been released or that migrated onto the site, and that the property is otherwise eligible for an IOC.

The application contains a statement that you agree to provide reasonable access, if needed, for future assessment and cleanup. By completing and signing the IOP application, you agree to provide reasonable access to your property for these purposes. The IOC, if issued, will reflect the applicant's statement that reasonable access will be provided. The application, however, is not an access agreement that specifies the terms of reasonable access.

Individuals who may need access to the property may include:

- a Voluntary Cleanup Program applicant
- a person named in a TCEQ administrative or agreed order
- a permit holder
- a petroleum storage tank (PST) responsible party
- a notifier of planned corrective action
- any other designated party, including their contractors, attempting to satisfy TCEQ requirements for investigation or remediation activities

If any portion of the application form is not complete, the IOP will notify you of the need for additional information by telephone or written correspondence within 45 days of receiving the application. The TCEQ will not begin the SIR review until a current and complete application form has been received.

The TCEQ may periodically update the IOP application (TCEQ Form 10019). You may download a copy of the latest version of the application at the TCEQ's IOP Web page. Go to <www.tceq.state.tx.us/goto/iop> and scroll down to "IOP Application Form," under "IOP Forms and Publications." Alternatively, you can request a copy by calling 512-239-5891.

By signing the application, the applicant acknowledges that the TCEQ has the authority to issue, deny, or revoke an IOC. The applicant also agrees to pay the TCEQ for all reasonable costs incurred in reviewing the IOP application and issuing the IOC. The applicant will be charged an hourly rate for the costs associated with the application review and IOC issuance. The initial $1,000 application fee will be used to cover the application

review process and the issuance of the Innocent Owner/Operator Certificate. If the review and processing costs exceed the initial $1,000 application fee, the applicant will be billed quarterly, based upon the current bill rate. However, if the $1,000 fee is not expended during the review, the unexpended amount will be refunded to the applicant.

If you are involved in site assessment and cleanup, and you discover that contamination on that property has been caused by an off-site release, you may also enter this property into the IOP. However, you must submit a completed IOP application form, application fee, and SIR to the TCEQ. Receiving an IOC may eliminate the need for assessment and/or remediation for those specific contaminants that migrated onto the property from an off-site source. Depending upon the program area (e.g., the Voluntary Cleanup Program, or VCP), the TCEQ may condition final approval on the placement of exposure prevention methods such as institutional and/or engineering controls at the site in order to adequately protect the public health.

Step 3: Notifying Adjacent Landowners

In accordance with 30 TAC, Section 333.36, of the IOP rules, within 14 days of the application's submittal to the TCEQ, you are required to notify adjacent landowners that you have applied for an IOC. If there are multiple applicants, include all applicants in the notification letters. If an applicant is added to the application (for example, a prospective owner or new operator) after you receive acceptance notification into the IOP, you must resend adjacent landowners notification within 14 days of the date that the TCEQ receives the updated application.

Adjacent properties are not restricted to adjoining or contiguous properties, and can simply mean properties near the IOP property. The intent of the IOP notice is to make the adjacent property owners aware of the contamination and to provide them the opportunity to comment upon the IOP applicant's request for an IOC. Therefore, the IOP applicant must provide notice to the landowners of all adjacent properties, including roads, drainage culverts, and other structures. In cases where properties are separated by roads, drainage culverts, or other structures, notice should continue to the owners of the next encountered properties. In situations where the IOP applicant also owns the nearest adjacent property, notice should be delivered to the next different property owner. Figure 1 gives an example of how public notice would have to be distributed.

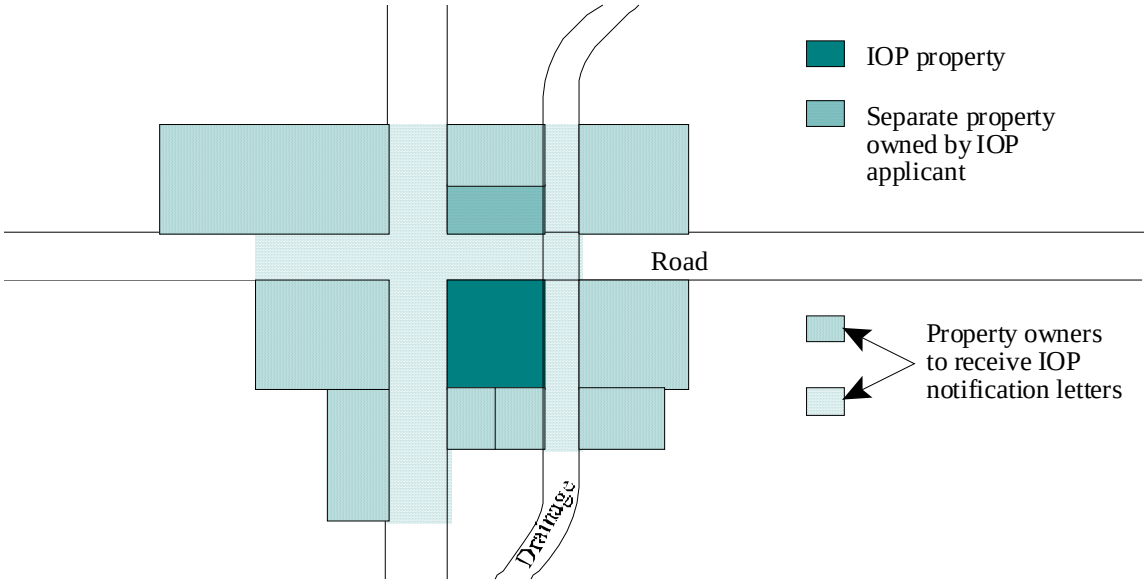

Figure 1. Notification of Adjacent Landowners

A sample notice form letter is provided in Appendix B of this document, and may also be downloaded from the TCEQ's IOP Web page, at <www.tceq.state.tx.us/goto/iop>. (Scroll down to "IOP Public Notification Letter," under "IOP Forms and Publications.") A notification letter must include the following information:

- names of all the applicants seeking an IOC (including prospective owners or operators);
- a statement declaring that all IOP application information is public record and as such can be viewed or copied at the TCEQ;
- a statement declaring that adjacent landowners may submit, at their discretion, any additional information regarding the subject IOP site for further TCEQ review; and
- notice that adjacent landowners who wish to respond to the notice should do so within 14 days of receipt of notice.

Within seven days of receipt of confirmation that the notification letters have been received, the applicant must submit copies of the letters and the signed receipts indicating that delivery occurred, to the TCEQ's IOP address, listed in the Preface. In situations where an applicant has mailed a notice to an adjacent property owner as required by 30 TAC. Section 333.36(a), and the return receipt is not returned to the applicant within 30 days from the postmarked date, an applicant may use an alternate method (hand delivery, express mail) to expedite the notification process or make a second certified return-receipt delivery attempt. If any alternate method is used, the applicant must make every effort to get a signed receipt from the adjacent landowner and submit a copy to the TCEQ. The IOP applicant is not required to provide public notice of the application to

easement holders, lessees of the property, or other tenants of an adjacent property.

The applicant should provide the TCEQ with copies of the receipt for certified mail as proof that the notice was sent, along with a written statement describing any alternate methods used to provide notice. If contact is not established with two attempts, no further notice is required. Failure to provide adequate notification to adjacent landowners will result in denial of an IOC. An applicant may also withdraw the IOP application based upon landowner comments pursuant to 30 TAC, Section 333.36(b).

2. Site Investigation

All IOP applications must include a site investigation. This guidance is geared toward the submittal of a Site Investigation Report, or SIR, although a Phase I and II ESA, APAR, RFI, or other assessment may suffice if supported with additional information. The purpose of the SIR in the IOP is to demonstrate that the IOP site has been contaminated from a source or sources not located at the site, and that neither the applicant nor any operations at the site caused or contributed to the contamination. This section describes each of the elements necessary to complete the SIR.

2.1 Demonstration of Site Contaminants

A necessary part of the IOP process is to demonstrate that your site is affected by contamination. **You are not eligible for this program unless you can demonstrate that the site is affected by contamination.**

Section 333.33(3) of 30 TAC defines an IOP site as "the property as described in the legal description provided in the innocent owner/operator application." The site itself may contain smaller legally described properties, such as a tract that contains several lot and block descriptions. The IOC can be issued to cover the tract even if not every individual lot and block in the tract is contaminated, as long as sufficient information concerning potential sources and historical operations is provided (Figure 2).

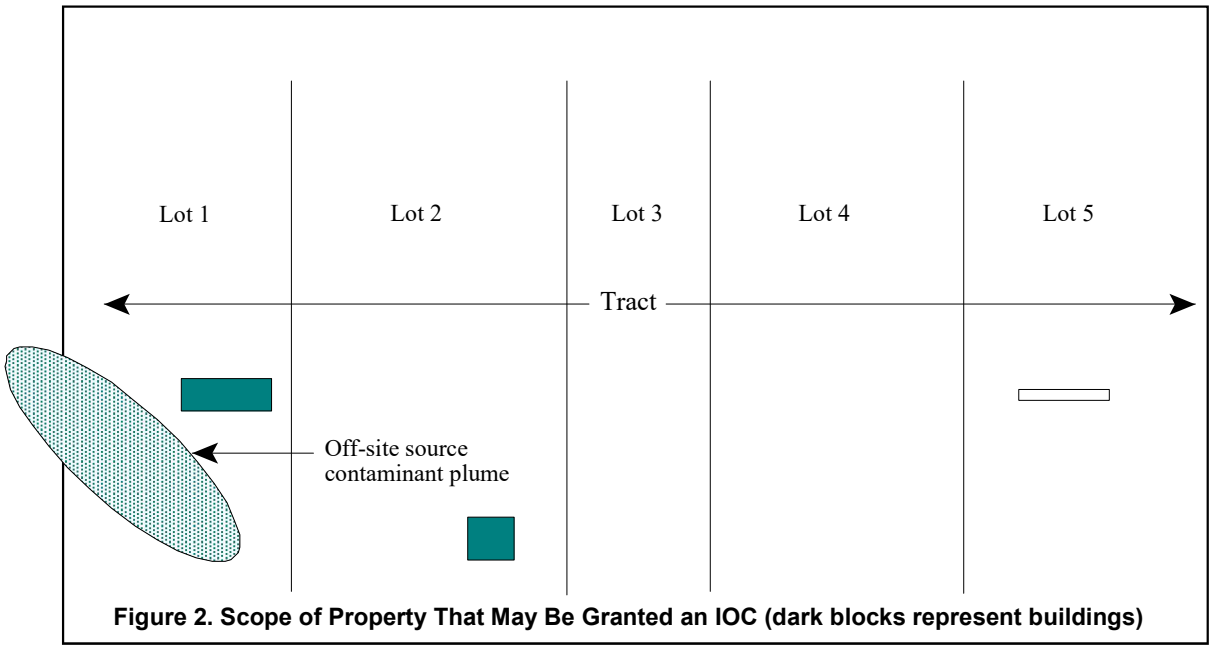

Figure 2. Scope of Property That May Be Granted an IOC (dark blocks represent buildings)

Analytical Sample Data Requirements

You must demonstrate through analytical data that the site is contaminated solely as a result of a release from an off-site source. This requirement is contained in the IOP law [Section 361.753(a)(1) of the Texas Health and Safety Code] and in the IOP rules [30 TAC, Section 333.35(c)(2)(A)].

Samples of environmental media must be collected from at least one on-site location to confirm that contamination exists on your property. The IOP may consider an exception to this requirement when sample data collected immediately adjacent to your property boundary strongly support the probability of release or migration of chemicals from a known off-site source onto your property. However, while one sample from environmental media is the minimum number for which an IOC may be issued, an IOP demonstration will generally require that more than one sample be collected. It may also be necessary to obtain samples from different environmental media in order to include multiple environmental media in the IOC. Additional samples will be required if potential sources of the COCs for which an IOC is sought are located on-site. Data from Phase II ESAs, APARs, RFIs, and other investigations may be utilized for these purposes.

There is no limit on the age of the analytical data that may be submitted for an IOP demonstration. However, the IOP will evaluate the analytical data on a case-specific basis to determine whether detectable levels of contamination are likely to have been present at the site on the date the IOP application for the IOC was received, and is unlikely to issue IOCs for data older than seven years. If the contaminant concentrations observed at the site were very near detection limits or background (see below) at the time of sampling, or the contaminant of interest is not persistent in the environment, then the IOP may require that the analytical data be collected no more than one year prior to the date the application was received. If, in these circumstances, the analytical data is older than the application by more than one year, the IOP may require the collection of new analytical data in order to demonstrate that the site is contaminated. Additionally, more recent information may be required if a potential on-site source for the contamination that may have contributed to the release existed in the time between the date of the older analytical results and the date the new application was received.

Background Concentrations

If the COCs include possible natural or anthropogenic background constituents (for example, metals), the SIR may need to include a background study to determine if the chemicals exceed background

concentrations. When the concentrations of the COCs in the IOP demonstration are reasonably attributable to naturally occurring or anthropogenic background levels for the region, a background study should be performed. The background study should be performed consistent with background determinations under the Texas Risk Reduction Program (30 TAC, Chapter 350), except that Texas median background values should not be utilized. If a background study is necessary, samples must be collected from areas unaffected by activities related to waste management activities.

If statistics are used to determine background, the following information should be included:

1. a description of the statistical methods and parameters used,
2. a data summary table (including locations and collection depths of the background sample), and
3. the results of the statistical test or interval construction.

The IOP **will not** issue you an IOC if the investigation results demonstrate that the chemicals for which an IOC are sought are at or below background concentrations, as this is not considered contamination.

Chemicals that do not exist naturally in the environment (for example, chlorinated solvents) are considered contamination when present at concentrations above the sample detection limit (SDL).

2.2 Interests in Off-Site Potential Sources of Contamination

You will not qualify for an IOC if you have or have had an economic interest in an off-site property that is a contributing source of the on-site contamination, unless you can demonstrate that the economic interest pre-dates the release affecting the IOP property. “Economic interest” may include ownership of the off-site property or operations on the off-site property. The Off-Site Potential Source Map in the SIR should include and highlight any off-site properties that you have owned or upon which you have had operations.

If you currently or formerly did own or operate at a property within 1/4 mile of the IOP site that has utilized the same COCs for which you are seeking an IOC and that is located in an area that may affect the IOP site (e.g., up-gradient), the investigation may have to be expanded to include the potential sources of COCs on that off-site property. If the results of the investigation(s) confirm that the same COCs for which an IOC is sought were released at the off-site property, further investigation may be warranted. In these situations, the IOP may require that you collect

analytical data from environmental media at the off-site property and, if necessary, between the two properties to demonstrate that COCs have not migrated onto the IOP site. Existing information, where it sufficiently addresses these concerns, may be utilized for each demonstration. If it is determined that COCs originating on property you owned or operated off-site have migrated onto the IOP site, then an IOC will not be issued.

2.3 Properties Subdivided from a Source Tract

Section 361.752(b) of the IOP law allows an IOC to be issued to owners and operators of tracts of land subdivided from a source tract as long as certain criteria are met. The criteria that must be met for a subdivision that occurred prior to the effective date of the IOP statute (Sept. 1, 1997) differ from those that must be met for a subdivision that occurred on or after the effective date of the IOP statute.

Properties Subdivided before Sept. 1, 1997

The requirements stated in Section 361.752(b) do not apply to any subdivisions of source properties that occurred before the effective date of this law, Sept. 1, 1997. Before this date, property subdivision does not affect the issuance of an IOC, and COC migration from one parcel to the other will be treated as contamination from an off-site source.

Properties Subdivided on or after Sept. 1, 1997

For such sites, the law specifically requires the submittal of sufficient documentation to demonstrate that the purchaser performed an "appropriate inquiry consistent with good commercial or customary practice" that indicated that they had no knowledge of any environmental concerns associated with the relevant contaminants before they purchased the subdivided portion of the source tract. In some situations, the demonstration of "appropriate inquiry" may involve only the submittal of documents that support the contention that there was no reason to know of the contamination at the time of property acquisition. In other situations, the IOP may require the submittal of an investigation report that sufficiently demonstrates that the subdivided site was not contaminated at the time of purchase. If the IOP requires an investigation report, and such a report was not completed before the acquisition date, then an IOC will not be issued.

If the data collected before property acquisition confirms that contamination was present in, or had migrated from, the source property

onto the subdivided portion of the property, or if either the source property or the subdivided portion were not investigated or investigated inadequately when reason to suspect potential contamination was evident, an IOC will not be issued for the subdivided tract.

Subdivided Portions of Source Tracts Purchased from a Person that Caused the Release

The TCEQ interprets the term "person who caused the release" present in Texas Health and Safety Code, Section 361.752(b), to be equivalent to "a person responsible for solid waste" under Texas Health and Safety Code, Section 361.271. Thus, "persons who caused the release" are "responsible parties" or "potential responsible parties," and a person that acquires a portion of the tract on which the source of a release of contaminants is located from a responsible party or potential responsible party is eligible for immunity under the IOP only if, after appropriate inquiry consistent with good commercial or customary practice, the person did not know or have reason to know of the contamination at the time the person acquired the property.

2.4 Demonstrating that the Site Has Not Contributed to the Contamination

A site will be considered to have no potential sources of relevant contamination if the results of the SIR or other assessment reveal that:

- no COCs or degradation COCs were generated, stored, treated, or disposed of at the subject property (as is the case with many residential properties).

If it has been established that the site is affected by contamination but that there are no potential on-site sources of the contamination, no additional sampling is needed at the site.

A site is considered to have potential contributing source areas if the SIR or other assessment indicates that:

- COCs or degradation COCs that were requested to be certified were generated, stored, treated, or disposed of on-site at any time during the site's operational history; or
- the site's operational history is unknown or incomplete.

If any COCs were actually or potentially generated, stored, treated, or disposed of at your property, or if the site history is incomplete or unknown, you must confirm that all the contamination present on your

property and for which you are requesting an IOC has migrated onto your property from an off-site source.

In the process of identifying potential source areas at the site (or off-site, if an economic interest is held in an off-site potential source property), the IOP applicant should perform an inquiry consistent with ASTM E 1527-05, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," or a later version of this document, as it is made available. Other assessments (including ESAs performed under previous ASTM standards, APARs, and RFIs) may be utilized for these purposes, as long as they encompass the entire "site" and operational history.

Gradient Information

Determining the topographic gradient for surface flow in soils and/or the hydraulic gradient for groundwater flow are essential to most Innocent Owner/Operator Program demonstrations where potential on-site sources have been identified. For sites where no potential source areas have been identified, determining gradients is generally not required unless the applicant must rule out an off-site source (located on a property in which an economic interest is or has been held). For contaminant impacts to shallow soils, an adequate number of elevations should be determined in order to understand the surface flow patterns. The elevations should be taken from both high and low spots across the property, as well as from areas in between.

Monitoring wells should also be installed in locations suitable for assessing potential impacts from on-site sources. Note that monitoring wells must be positioned for triangulation of a gradient. For groundwater, a minimum of three properly developed monitoring wells installed by a licensed driller are necessary to determine the average flow gradient in most situations. More monitoring wells may be necessary for large properties or those with complex hydrogeology. A discussion of the monitoring well placement should be included in the SIR or other report.

COC concentrations that are greatest at the upgradient property boundary and consistently decrease in a downgradient direction across the property generally indicate that contamination has migrated from an off-site source. To establish the highest concentration of groundwater contamination flowing through the property, at least one sampling point should be placed at or near the upgradient adjacent property boundary. Data collected from off-site properties may also provide information on groundwater gradient direction and the distribution of the COCs. Often, this data is present in other TCEQ program area files. For TCEQ records information, call 512-239-2900.

Sampling of On-site Potential Source Areas

Soil samples should be collected from each potential source area and then analyzed for the appropriate COCs. Additionally, monitoring wells should be located immediately upgradient and downgradient of any potential on-site source areas if the application includes groundwater. While a decrease in contaminant concentration consistent with gradient is desirable, an IOC may still be issued if the weight of evidence suggests that the applicant is an innocent owner or operator. The presence of "hot spots" (locations with concentrations of COCs higher than upgradient COCs) on the IOP site at any location without a reasonable explanation, however, will be problematic to the IOP demonstration. If hot spots are located near on-site potential source areas, an IOP applicant should expect the IOP demonstration to be exceedingly difficult, if not impossible.

In some cases, the contaminants to be covered by the IOC leave very little trace in their migration from soil to groundwater. Therefore, collecting a few soil samples that are non-detect for the contaminant may not be viewed as compelling evidence that a release has not occurred. The TCEQ may require that the person perform a much more thorough evaluation of soils in all potential source areas than would be required if a consistent decreasing trend in groundwater concentrations were observed. The IOP applicant should weigh the benefits of the IOC (should it be attained) against the rigors and costs associated with attempting to make the IOP demonstration.

3. On-site Releases of Chemicals Similar to Those Sought in the IOC

Pursuant to 30 TAC 333.35(c)(8), a person may attempt to demonstrate that an on-site potential source or release of similar contaminants has not contributed to the off-site source contamination. When a confirmed release of similar COCs is present at the site, you must demonstrate that the migration of the COCs in the soil has not and will not contribute to the off-site sourced contaminant plume.

As an example, the presence of an insoluble metal at the soil surface may not preclude the issuance of an IOC for groundwater affected by an off-site source of soluble metals. The TCEQ must give considerable weight to the chemical and physical properties of the contaminants in these determinations. Such demonstrations that releases of similar chemicals occurred but did not affect certain environmental media may not always be possible and the IOP applicant should expect that when possible, they will be very difficult. The IOP applicant should weigh the benefits of the IOC (should it be attained) against the rigors and costs associated with attempting to make the IOP demonstration.

For soils, if the TCEQ agrees that the on-site release to soil has not affected groundwater, it will still be necessary to demonstrate that the remaining levels of contaminants in the soil will not affect groundwater in the future. Soils can then be evaluated for groundwater protectiveness consistent with procedures outlined under the *Texas Risk Reduction Program* (TRRP) for the soil to groundwater (^{GW}Soil) exposure pathway. This demonstration should be made consistent with a Tier 1, 2, or 3 evaluation under TRRP. In the demonstrations, however, the method detection level (MDL) of the contaminant must be used in place of its risk-based exposure limit for groundwater. Such calculations are predictive tools. They may demonstrate that groundwater will not be affected in the future. They do not, however, ensure that groundwater was not affected in the past. If contaminated soil is removed from the site to eliminate the potential for future impacts to groundwater, the SIR should include a discussion of adequate waste characterization, waste disposal, and verification sampling.

For properties where an on-site source of the COCs has affected groundwater but the contamination is separate from an off-site sourced release of similar COCs, the person may be eligible for an IOC for a portion of the property if they can demonstrate that the two groundwater plumes will not commingle in the future. *Separateness* is demonstrated when the results of soil and groundwater samples collected from a sufficient number of monitoring wells located between the on-site and off-site sourced groundwater COC plumes are below the SDL. An IOC cannot

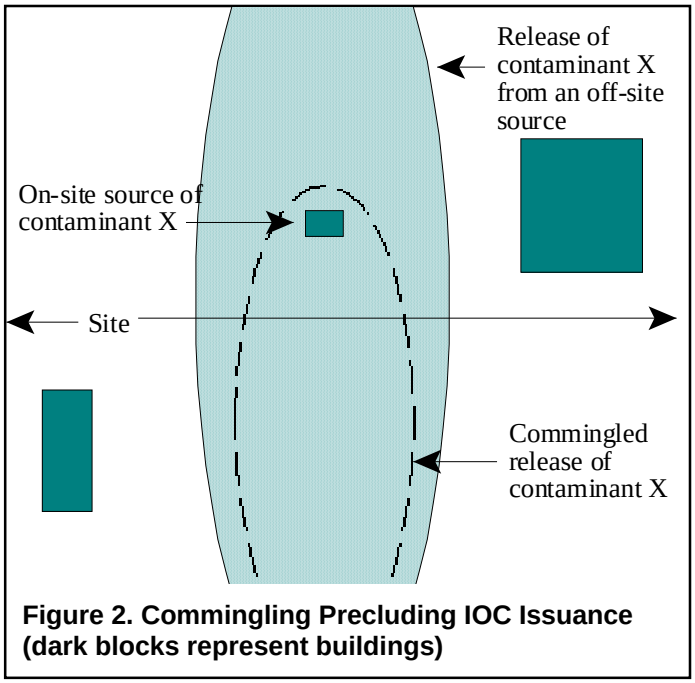

Figure 2. Commingling Precluding IOC Issuance (dark blocks represent buildings)

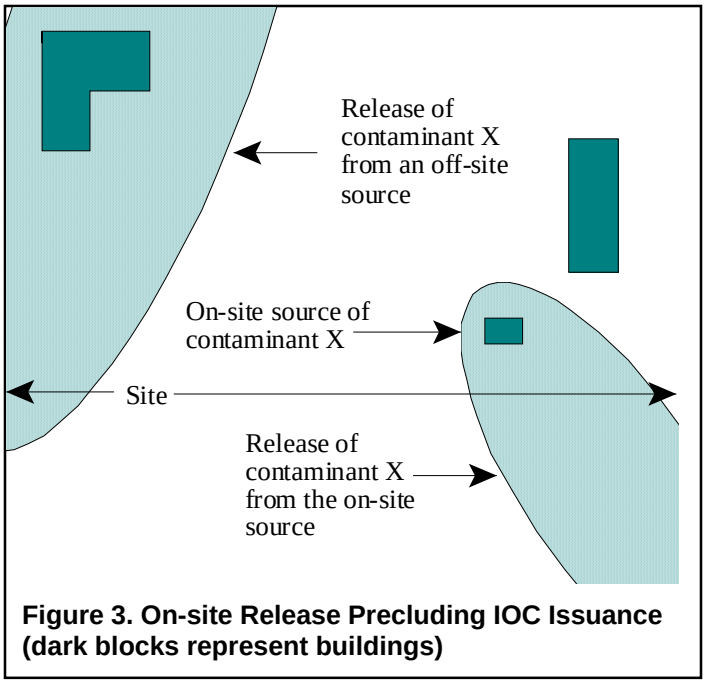

Figure 3. On-site Release Precluding IOC Issuance (dark blocks represent buildings)

be issued in such a scenario if the releases are commingled (Figure 3). Similarly, an IOC cannot be issued as long as the two releases are present on the same site, as described in Figure 4. However, if the person surveys a new site that contains only the off-site impact, a person may obtain an IOC for the new site if they are otherwise eligible for a certificate (Figure 5).

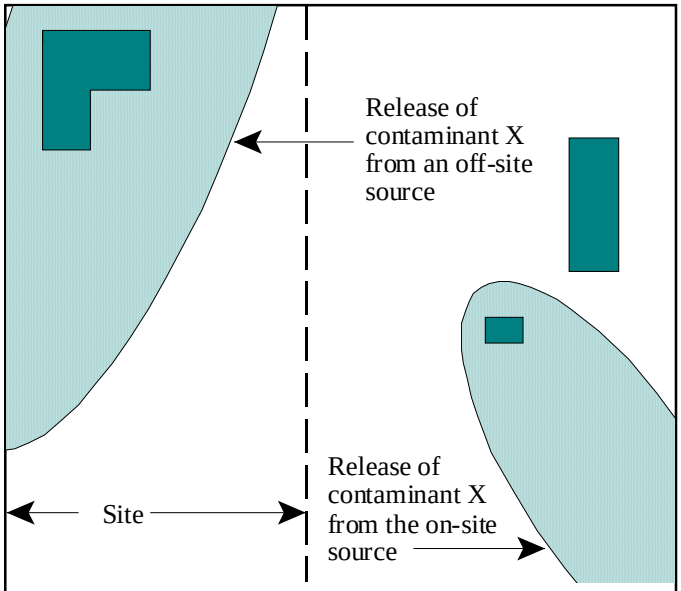

Figure 4. Creation of New Site to Allow IOC (dark blocks represent buildings)

4. Post Site Investigation Report Considerations

This section provides more information on the following issues:

- Institutional and engineering controls
- Information included in affidavits
- Transferability of the IOC
- Denial or Revocation of the IOC
- Limitations of the IOC
- Responsibilities as an IOC holder

4.1 Institutional and Engineering Controls

Section 361.753(g) of the Texas Health and Safety Code states: "the commission may condition the issuance of the IOC on the placement of restrictions on the use of the property that are reasonably

necessary to protect the public health, including: institutional controls such as deed restrictions or municipal zoning restrictions; or at the owner's or operator's option, other control measures."

If, in the estimation of the TCEQ, it is reasonably necessary in order to protect the public health from the contamination present at the site, the TCEQ will withhold the IOC until the applicant demonstrates that the site has been made protective. In a situation where an institutional control is utilized, you must place the institutional control(s) in the property records and provide proof of its filing to the TCEQ before an IOC will be issued.

Generally, institutional or engineering controls will not be required. An example of a situation that might prompt a request for a restrictive covenant on groundwater use would be when an existing affected water well is present at the site. An example of a situation that might prompt other control measures would be when contaminated foundry sands are present at the surface of a property and concentrations of chemicals are above levels protective of the intended land use.

4.2 Information Included in Affidavits

Affidavits, provided by the IOP, must be signed by the applicants who performed work necessary to receive an IOC for the property. The TCEQ will issue these affidavits within 90 days of application receipt or 45 days

of receipt of additionally requested information. See Appendix C for examples of each of the three types described in this section. The affidavits must be signed, notarized, and returned before the TCEQ can issue an IOC for the property. The type of affidavit completed is determined by the applicant's interest in the site and whether or not that is the same person that performed the site assessment. (The affidavits are labeled "Exhibit B," "B-1," and "B-2," because they are thus referred to in the actual Innocent Owner/Operator Certificate.)

Exhibit B: Affidavit by Innocent Owner/Operator. This is the standard affidavit and affirms that:

1. The innocent owner, or operator, or their representatives have adequately completed the required site investigation activities for the site.
2. The IOP application contains information collected and analyzed using a prudent degree of inquiry consistent with accepted industry standards.
3. All submitted plans and reports are true, correct, and complete to the best of the innocent owner or operator's knowledge.
4. The property has become contaminated as a result of a release or migration of contaminants in the affected soil or groundwater from a source or sources not located on or at the property.
5. Neither the innocent owner or operator, nor their agents, nor other persons, properties, or operations for which they have legal responsibility, have caused or contributed to the source of contamination at the property.

Commonly, the person who is seeking the IOC is not the same person who performed the site investigation. The TCEQ has designed separate affidavits to address such a situation.

Exhibit B-1: Affidavit by Innocent Owner/Operator Who Did Not Prepare the Site Investigation Report. This affidavit must be completed by applicants who are innocent owners or operators but were not responsible for completion of the SIR. In this situation, the innocent owner or operator must affirm all of the facts stated for an Exhibit B with the exception of items 1, 2, and 3, discussed in the previous paragraph.

Exhibit B-2: Affidavit by Person Who Completed the Site Investigation Report. This affidavit must be completed by persons who were responsible for completing the SIR (when different than the person seeking the IOC). In these situations, applicants must affirm all of the facts stated for an Exhibit B, with the exception of item 5.

There are other affidavits tailored for specific, less common circumstances, such as an affidavit signed by an IOC holder that they

have not caused nor contributed to the contaminants listed on the certificate since the date of its issuance.

4.3 Transferability of the IOC

IOCs are **not** transferable. During the review of an application for a new IOC, a prospective owner of the site or a portion of the site may be added to an application as a co-applicant without an additional fee. An IOC cannot be issued to a future owner or operator until the person actually owns or begins operations at the property. In case of new ownership, once the person forwards a copy of the new deed and the appropriate affidavit to the TCEQ, an IOC may be issued. For operators, an IOC may be issued once the IOP receives proof of operations of the business (e.g., filing with the Texas Secretary of State) at the property.

In a case where an IOC has already been issued for a site and the IOC holder contemplates the sale, transfer, or change in operation of the site, the prospective owner or operator may also apply for an IOC. In this situation, the IOC holder and/or the prospective owner or operator should submit an updated application, an updated SIR, and a new application fee. The technical information used to confirm the innocence of the original IOC holder will generally provide sufficient information for the prospective owner or operator to also receive an IOC, as long as the site (as it is described in Exhibit A of the certificate) has not changed (see paragraph on subdivision information below), necessary affidavits or other documentation are submitted (see below), and the TCEQ agrees that the data still supports the conclusion that the site is contaminated.

If an IOC is issued for a site and the site is later subdivided, a person seeking an IOC for the subdivided portion must demonstrate that the subdivided site is contaminated. If previous sample results are sufficient for this purpose, an IOC may be issued (Figure 6). However, if the previous sample results only support that one or some subdivided portion(s) of the original site are affected by contamination, additional information must be collected to demonstrate that the new subdivided "site" is contaminated, before an IOC can be issued (Figure 7).

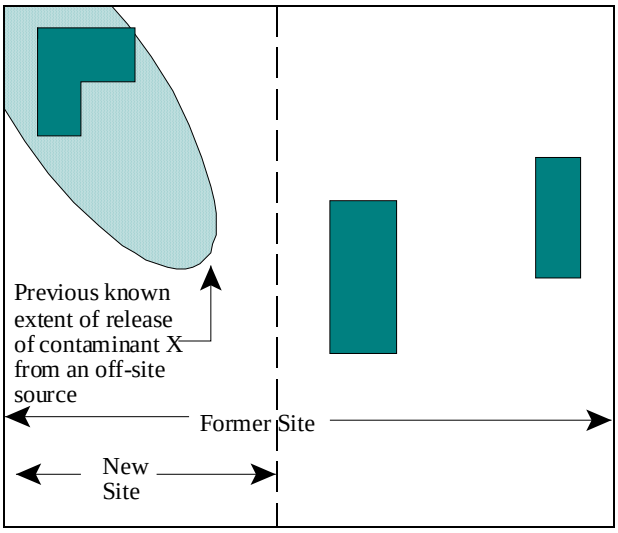

Figure 5. Subdivision That Can Be Certified

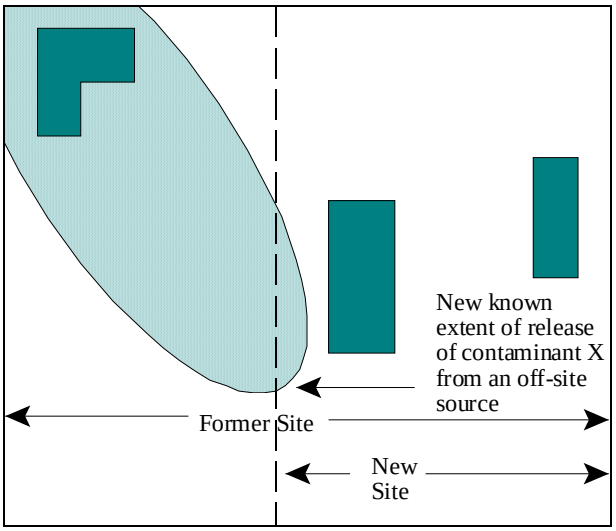

Figure 6. Subdivision Needing More Information

The prospective owner or operator must also provide the following:

1. A copy of the most recent IOC issued for the site.
2. General information regarding the prospective owner or operator and any activities conducted by the prospective owner or operator on the site.
3. A statement that the prospective owner or operator has not caused or contributed to the off-site source or sources of contamination that have been released or have migrated onto the site and is otherwise eligible for an IOC.

4. An affidavit or, if an affidavit is unobtainable, other documentation that demonstrates that the IOC holder:
   - has not, during the period since issuance of the most recent IOC, caused or contributed to the source or sources of off-site contamination that has been released or has migrated on-site; and
   - has not, during the period since issuance of the most recent IOC, discharged or released on-site any contaminants covered by a prior IOC, and remains otherwise eligible for an IOC.
5. A legal description of the site and the name of the site's owner and/or operator at the time the updated application is submitted.
6. A summary of all known historical and current site uses, including a description of areas and activities where potential on-site contaminant sources may be located since the most recent IOC was issued.
7. Other background information requested by the executive director.
8. Additional site investigation activities and information necessary when activities or land use since the most recent IOC was issued may have caused the discharge or release of contaminants covered by a prior IOC.

4.4 Denial or Revocation of the IOC

If an IOC is denied, within 90 days of receipt of the application or 45 days of receipt of additional information, TCEQ staff will submit a letter to the applicant stating the reasons for denial. The TCEQ staff, acting on behalf of the executive director, may deny an IOC for any of the following reasons:

- The application form is incomplete.
- Insufficient information is submitted to the TCEQ to determine the applicant's eligibility.
- The application or new information indicates that the person is ineligible.
- The owner/operator refuses to grant reasonable access to persons designated by the executive director.

TCEQ staff, acting on behalf of the executive director, may revoke an IOC if it is determined that the IOC holder:

- acquired the IOC by fraud, misrepresentation, or failing to disclose information;
- is not maintaining institutional and/or engineering controls where required for IOC issuance or by other law or rule;
- has not paid all agency costs associated with an IOC within 180 days of its issuance; or,

- is ineligible by virtue of new information obtained after the IOC was issued.

In addition, the TCEQ Commissioners may revoke an IOC if facts and/or evidence presented to the commission through an enforcement action, demonstrate that the IOC holder is unreasonably denying property access to the person designated by the executive director.

4.5 Limitations of the IOC

The immunity from liability recognized by the IOC pertains to liability under the Texas Health and Safety Code and the Texas Water Code. The IOC limits the recognition of this liability immunity to the specific contaminants or COCs listed in the certificate and degradation products of those COCs. The immunity from liability recognized by the IOC is also limited to the medium or media specified in the certificate. The IOC covers only the releases identified in the IOP demonstration for which an IOC was requested. It does not cover future (separate) releases of the contaminants or COCs specified in the IOC, including the release investigated in the IOP if the site contributes to that release.

If the issuance of the IOC was conditioned upon institutional or engineering controls, the IOC is valid only for as long as the engineering and institutional controls specified in the IOC are being observed and maintained.

Immunity from liability does not apply to the wastes generated as part of the IOP investigation nor any other wastes generated from activities performed at the site.

4.6 Responsibilities as an IOC Holder

The following are some of the responsibilities of an IOC holder.

If required by the TCEQ, you must place or ensure the placement of the necessary institutional controls on the use of the property—for example, a notice of contamination, restrictive covenants, or equivalent zoning restrictions. If other control measures are utilized (e.g., physical or engineering controls), a statement declaring that the physical or engineering controls must be maintained must be placed on the property deed.

You must also allow persons designated by the TCEQ to have reasonable access to the property to investigate and, if necessary, remediate the contamination.

You must properly dispose of your investigation-derived wastes.

Appendix A: Description of Each Item in the IOP Checklist

If a SIR is submitted, the following checklist defines the content and the outline of the document. If other assessments—such as Phase I and II ESAs, APARs, or RFIs—are submitted instead, the checklist defines what information must be included in the reports and supplemental attachments. In any case, the information required by the checklist should be submitted unless it can be demonstrated that the requested information is unnecessary or would result in completely duplicative effort.

1. Executive Summary. A brief and general discussion of the activities performed, the results of those activities, and any conclusions derived from those results should be included.

2. Site Location (general discussion), A general discussion of the site location should be provided. Include a discussion of the regional geology and hydrogeology. Briefly discuss the water supply at the site and in the areas surrounding the site to the extent that they are known. If known, note in the discussion any areas where public water is not available. Additionally, note the locations of private water wells that are immediately known to the IOP applicant.

   A Drinking Water Survey Report does not need to be prepared in conjunction with an innocent owner/operator demonstration. However, to the extent that the IOP applicant is aware, local and regional public water availability should be discussed. If the site is supplied by public water, provide the TCEQ with the name and phone number of the public water provider.

2.1 Attachment: Regional Map. A map, of appropriate scale, which depicts the site, regional topography, nearby surface water bodies, major roads and thoroughfares, and notable structures, should be provided. Any known areas that are not serviced by a public water system should be identified on this map. Additionally, the location of any known private drinking water wells should be shown on the map. The IOP recommends using the appropriate USGS topo map(s) as the regional map. In any case, the map legend for this map (as well as for maps listed below) should include a north arrow, fractional and bar scales, map source, and identification of all symbols used on the map.

2.2 Attachment: Vicinity Map (including all adjacent properties), A map, drawn to scale, should be provided that includes the site and, at a minimum, all adjacent properties that must be provided notice of the

applicant's intent to secure an IOC. The map should depict all major roads and crossroads at the site. Adjacent properties to receive notice should be identified by address and clearly denoted on the map by methods such as shading.

2.3 Attachment: Site Map. A map, drawn to scale, that depicts all existing and historical structures and improvements (such as known sewer lines) should be provided.

3. Site History (discuss all current and historical site usage). A complete history of the usage of the property, including the names and operations of all previous and current owners and known tenants at the property, should be provided.

3.1 Attachment: Chain of Title for Real Property. A complete chain of title for real property, indicating the current owner of the site as well as all historical owners of the site, should be provided.

3.2 Attachment: Directory Listings (include all available). City directory listings for all the properties located in the property containing the site should be provided. Listings should be included for all businesses located along all streets and cross-streets bordering and (if applicable) transecting the property containing the site.

3.3 Attachment: Aerial Photographs. Color copies of aerial photographs representative of current and historical site use should be presented when such photographs are available.

3.4 Attachment: Fire Insurance Maps. When available, fire insurance maps representative of historical site use should be included.

3.5 Attachment: Zoning Land-Use Records. Zoning land-use records should be included to establish or reinforce land-use history when other methods have yielded unclear results.

4. Current and Historical Operations—Chemical Storage, Processing, and Disposal (general discussion). A general discussion of all chemical storage, processing, and disposal that has occurred at the site should be included. Historical chemical storage, processing, and disposal includes not only the historical activities of current operations at the site and property including the site (if different) but the activities of former operators in these areas.

4.1 Potential On-site Sources (discuss in detail). Discuss in detail any potential on-site sources identified from the list of current and historical operations. For each potential source, include a detailed discussion of the associated chemical storage, processing, and disposal activities. Discuss whether a

release of the chemicals from these on-site potential sources to soil and or groundwater is known to have occurred. Examples include chemical and waste treatment, storage, or disposal areas, and the locations of process equipment, trenches, parts-washing equipment, floor drains and sumps, oil/water separators, discharge lines, subsurface utilities, and stained soil or concrete.

4.2 Attachment: Potential On-site Source Area Map (current & historical). A map, drawn to scale, that depicts all the identified potential source areas that exist or have existed at the site should be provided. Existing potential source areas should be delineated by solid lines on the map, while historical potential source areas that are no longer evident at the site should be delineated by dashed lines.

4.3 Attachment: On-site Chemical Documentation (MSDS, manifests, etc.). Copies of solid waste notices of registration; waste analysis plans; material safety data sheets; manifests; invoices; bills of lading; and product inventory documents or other documents describing current and past chemical or waste treatment, storage, or disposal should be provided when available.

5. Site Investigation (general discussion supporting off-site source impact). A general discussion of the site investigation analytical results and other technical information that support the claim that contamination has migrated onto the IOP site from an off-site source should be included. The discussion should indicate how the investigation was performed, what type of sampling methods were utilized, and how sampling devices were decontaminated between sample locations. The discussion should also address monitoring well development when groundwater was sampled, as well as other items relevant to the investigation. For groundwater impacts, it should also include information on site-specific geology and hydrogeology, including the uppermost water bearing zone, groundwater flow direction, preferential flow pathways, depth to the bedrock, and on-site water supply wells, if applicable.

5.1 Potential On-site Source Areas (discuss in detail). This should include a general discussion of all on-site chemical treatment, storage, and disposal facilities and a detailed discussion of all activities associated with any potential source areas for the IOP contaminants since the site's first commercial or industrial development. Examples of facilities that should be discussed include process equipment, chemical and waste storage areas, trenches, parts-washing equipment, floor drains and sumps, oil/water separators, discharge lines, and stained soil or concrete. Records on zoning and land use, as well as fire insurance maps, may also help in determining

whether potential sources may have existed at the site and should be submitted.

5.2 Investigation to Determine On-site Contribution (discuss in detail). A detailed discussion of the analytical results and other technical information from the investigation of potential on-site source areas should be provided. The potential for on-site contribution should be discussed and a demonstration consistent with this guidance should be contained that indicates that an on-site contribution to the IOP contaminants has not occurred. The sampling methods utilized, decontamination procedures, well development and other items relevant to these investigations should be provided.

5.3 Site Remedial Actions (discuss any historical response actions taken). Any remedial actions taken at the site in response to the contamination or historically taken to address releases at the site should be discussed. A section on how the response actions taken may affect the determination of possible on-site contribution should be included.

5.4 Attachment: Sample Location Map (including background, if necessary). A map that clearly indicates the locations and depths of samples that are relevant to the innocent owner/operator demonstration should be provided. The map should be large enough to depict the locations of any background samples collected, if a comparison to background is contained in the SIR.

5.5 Attachment: Contaminant Distribution Maps (each media). Maps depicting analytical results should be included for each media sampled. The contaminant concentrations encountered at each location should be documented on the map. Isoconcentration lines, constructed from the results of sampling, should also be included.

5.6 Attachment: Gradient Maps (include for each media as applicable). A groundwater gradient (potentiometric surface) map should be submitted for groundwater impact demonstrations and/or a topographic map must be submitted for shallow soils (as applicable to the demonstration). Lines of equal hydraulic head and/or elevation should be constructed and included in the map(s). Arrows indicating average flow direction should also be included. Groundwater elevation measurements can only be combined to create a map if the measurements are the result of a single gauging event.

Where gradients are determined to be essentially flat, it may be necessary to have the site surveyed by a registered professional surveyor. If elevations are measured from a benchmark, the location and elevation of the benchmark should be shown on the survey.

5.7 Attachment: Analytical Results Tables (by media). Tables, separated by media, listing the sample identification number, the depth of sample collection, and the corresponding analytical results for all relevant samples collected as part of the investigation should be submitted. A similar table should be included for background samples if a comparison to background is contained in the SIR.

5.8 Attachment: Surveying and/or Gauging Results Tables (by media). Tables, separated by media, that list the results of surveying and/or gauging activities conducted at the site for the purposes of the IOP demonstration should be included.

5.9 Soil Boring and/or Monitoring Well Logs. Soil boring logs and/or monitoring well construction details should be included that clearly depict the types of soils encountered at the site; the results of any field screening activities; the aquifer matrix, if groundwater was sampled; the completion and screening details of a well, if one was constructed; and the depths of water during boring advancement and after well development, if groundwater was encountered.

5.10 Soil Cross-section Maps. Cross-section maps correlating observations of geology and hydrogeology from the sample locations should be submitted to support any interpretations made of the geology and/or hydrogeology between the sample points.

5.11 Laboratory Reports (including quality control data). All available laboratory reports upon which the innocent owner/operator demonstration is based, including quality assurance/quality control (QA/QC) data, should be submitted. Note that failure to collect, evaluate, and report QA/QC data could invalidate the data and require that additional samples be collected.

5.12 Waste Characterization and Disposal. Waste characterization and disposal information for any soil cuttings and/or purge water generated as a result of the investigation should be submitted.

6. Off-site Potential Sources (general discussion). A general discussion of off-site potential sources, including the off-site potential source's proximity to the site and location in relation to local hydrogeologic and topographic flow gradients, should be submitted. Documented releases at the off-site potential source areas should be discussed and an overview of the investigation results from any assessments performed at these areas should be included in the SIR, if available.

6.1 Attachment: Off-site Potential Source Map. A map, drawn to scale, with a radius of 1/4 mile from the site that includes all known off-site potential sources, should be included if there are properties owned by the applicant.

Properties that the applicant has owned or operated upon and that are within 1/4 mile should be clearly indicated on the map. General topographic flow and hydraulic flow directions should be included, if known.

6.2 Site Subdivisions (if property was subdivided from a source tract). If the site was subdivided from a source tract, a detailed discussion should be submitted that documents that the IOP site was subdivided prior to Sept. 1, 1997, or that the IOP site was subdivided on or after Sept. 1, 1997, and, upon appropriate inquiry, the applicant did not know or have reason to know of the contamination at the time that they acquired the subdivided tract.

6.3 Interest in Off-site Potential Sources (list and discuss all). All economic interests, including present or historical ownership or operations in properties within 1/4 mile of the site, should be discussed. If such properties exist, a discussion should be included that differentiates those properties where potential sources of the IOP contaminants exist or existed.

6.4 Investigation Results from Off-site Potential Source Property. For any properties where an economic interest and a potential source of the IOP contaminants were identified, the results of an investigation should be provided that either demonstrate that a release of the IOP contaminants did not occur at those sites or that a release of the IOP contaminants did occur but the release could not have affected the IOP site.

7. Conclusions and Recommendations. Basic conclusions that follow from the investigation performed should be provided. Specific recommendations for the next step in the IOP process should also be documented. The recommendation should be for either an IOC or additional investigation.

7.1 Proposed Sample Location Map. If additional investigation is proposed, a map showing the proposed sampling locations should be provided. The IOP applicant should exercise caution in proceeding with the sampling without first obtaining written concurrence on the plan from the appropriate IOP project manager.

8. Attachment: Supporting Information (Phase I, II ESAs, APARs, RFIs, etc.). Available historical reports or other documentation describing any potential off-site and on-site sources of contamination should be included as an attachment to the SIR.

Appendix B. Sample Adjacent Property Notification Letter

Innocent Owner/Operator Public Notification Letter

I.M. IOP Applicant Letterhead

Date
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Adjacent Property Owner Name
Adjacent Property Owner Address
City, TX Zip Code

Re: Notification of Application to TCEQ Innocent Owner/Operator Program (IOP)
Site Address
City TX Zip Code, County
IOP Project No. XXX

Dear Adjacent Property Owner:

This letter was prepared to inform you that an application has been submitted to the IOP of the Texas Commission on Environmental Quality (TCEQ) by the owners/operators of **[Name of Site]** located at **[Site Address]** adjacent to your property at **[Recipient's Address]**. The application was submitted in response to the discovery of **[Type Contamination]** in **[Type Media]** on **[Name of Site's]** property, which the owners/operators contend has migrated to their property from an off-site source.

Additionally, **[Name of Other Applicants]** is/are included in the application and is/are listed as **[Interest in Property]**.

The law creating the IOP became effective Sept. 1, 1997 and was drafted to provide immunity from liability under the Texas Water Code and Health and Safety Code for owners/operators of property that has been contaminated by an off-site source. The law also provides for issuance of a certificate confirming the person is an innocent owner/operator and thereby not liable for the contamination if the person makes an adequate demonstration to TCEQ that the contamination has migrated from an off-site source and that activities on the property did not contribute to the contamination. The owner/operator of **[Name of Site]** has submitted an application and site investigation report for TCEQ review requesting an evaluation of information they believe will support their status as innocent owner or operator.

You are not required to respond to this letter; however, if you have any information that may affect the TCEQ's evaluation of contamination on the **[Site Name]** property or have any questions regarding this notice, please contact the **[IOP Project Manager]** at **[telephone with area code]** with questions concerning this notice. Any such information must be provided within 14 days of receipt of this letter and may be sent to the above IOP Project Manager via Fax at (512) 239-1212, sent by regular mail to the TCEQ, MC 221, P.O. Box 13087, Austin, Texas 78711-3087 or by express mail at 12100 Park 35 Circle, Austin, Texas 78753. Please reference **[IOP No.]** in any correspondence. Please refer to IOP No. **[IOP #XXX]** when contacting the TCEQ. Should you have any questions of **[Applicant]**, please contact

_____ at (XXX) XXX-XXXX.

Sincerely,

IOP Applicant Representative Name
Title

cc: TCEQ, IOP Project Manager, Remediation Division, MC-221

Appendix C. Sample Affidavits

EXHIBIT B

Affidavit by Innocent Owner/Operator

INNOCENT OWNER/OPERATOR PROGRAM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Before me, the undersigned authority, personally appeared **[Mr./Ms. Name of Owner/Operator Contact]**, who, being by me duly sworn, deposed as follows:

My name is **[Name of Owner/Operator Contact]** and I am a representative of **[Company Name]**. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

[Company Name] is the **[owner/operator]**of the Site located at **[Address, City, County]** County, Texas. The physical boundaries of the site are set out in the attached Exhibit A, "Legal Description of Property" (Site).

[Company Name] has owned the site from _____ to _____

[Company Name] or its representatives have completed investigations, pursuant to Section 361.753(a) of the Texas Solid Waste Disposal Act, at the Site described in Exhibit A to this certificate. The plans and reports submitted by **[Company Name]** in its Innocent Owner/Operator Application contain information collected and analyzed using a prudent degree of inquiry consistent with accepted industry standards. The plans and reports are true, correct and complete to the best of my knowledge.

The Site has become contaminated as a result of a release or migration of contaminants in **[List Media]** from a source or sources not located on or at the Site. These contaminants are described in the Site Investigation Reports for the Site dated **[SIR Dates]**, located in the TCEQ Central Records under IOP No. **[IOP No.]**.

Neither I, **[Company Name]**, my agents, nor other persons, properties or operations for which I have legal responsibility, have caused or contributed to the source or source(s) of contamination at the Site.

Site Innocent Owner or Operator

By: _____
Signature

_____
Name (Printed or Typed)

SWORN TO AND SUBSCRIBED before me on the _____day of _____, 20____

_____
(Notary)

EXHIBIT B-1

Affidavit by Innocent Owner/Operator Who Did Not Prepare the Site Investigation Report

INNOCENT OWNER/OPERATOR PROGRAM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Before me, the undersigned authority, personally appeared **[Name of Innocent Owner/Operator]**, who, being by me duly sworn, deposed as follows:

My name is **[Name of Innocent Owner/Operator]** and I am a representative of **[Company Name]**. I am of sound mind, capable of making this affidavit and personally acquainted with the facts herein stated:

[Name of Innocent Owner/Operator] is the **[owner/operator]** of the Site located at **[Address, City, County]** County, Texas. The physical boundaries of the Site are set out in the attached Exhibit A, "Legal Description of Property" (Site).

[Name of Innocent Owner/Operator] has **[owned/operated]** the Site from **[Enter Date]** to **[Enter Date]**.

The Site has become contaminated as a result of a release or migration of contaminants in **[List Media]** from a source or sources not located on or at the Site. These contaminants are described in the Site Investigation Reports for the Site dated **[SIR Date(s)]**, located in the TCEQ Central Records under IOP No. **[IOP No.]**.

Neither I, **[Name of Innocent Owner/Operator]**, my agents, nor other persons, properties or operations for which I have legal responsibility, have caused or contributed to the source or source(s) of contamination at the Site.

Site Innocent Owner or Operator

By: _____
Signature

_____
Name (Printed or Typed)

SWORN TO AND SUBSCRIBED before me on the _____day of _____, 20____

_____
(Notary)

EXHIBIT B-2

Affidavit by Person Who Completed the Site Investigation

INNOCENT OWNER/OPERATOR PROGRAM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Before me, the undersigned authority, personally appeared **[Name of Person]**, who, being by me duly sworn, deposed as follows:

My name is **[Name of Person]** and I am a representative of **[Company Name]**. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

[Name of Owner/Operator Contact] is the **[owner/operator]** of the Site located at **[Address, City, County]** County, Texas.

[Name of Person] or its representatives have completed investigations, pursuant to Section 361.753(a) of the Texas Solid Waste Disposal Act, at the IOP Site located at **[Address, City, County]** and described in Exhibit A to this certificate (IOP Site). The plans and reports prepared by **[Name of Person]** and submitted with the Innocent Owner/Operator Application for the IOP Site contain information collected and analyzed using a prudent degree of inquiry consistent with accepted industry standards. The plans and reports are true, correct and complete to the best of my knowledge.

The IOP Site has become contaminated as a result of a release or migration of contaminants in **[List Media]** from a source or sources not located on or at the IOP Site. These contaminants are described in the Site Investigation Reports for the Site dated **[SIR Dates]**, located in the TCEQ Central Records under IOP No. **[IOP No.]**.

Person Who Completed the Site Investigation Report

By: _____
Signature

_____
Name (Printed or Typed)

SWORN TO AND SUBSCRIBED before me on the _____day of _____, 20____

_____
(Notary)

Appendix D. Sample Innocent Owner/ Operator Certificate

Innocent Owner/Operator Program Certificate

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

As provided for in §361.753, Subchapter V, Solid Waste Disposal Act (SWDA), Texas Health and Safety Code.

I, **[TCEQ Division Director]**, Director, Remediation Division of the Texas Commission on Environmental Quality (TCEQ or Commission), certify under §361.753, SWDA, Texas Health and Safety Code, that necessary investigations have been completed as described in the approved Site Investigation Report(s) dated **[Date(s) of Report]** (Site Report) for the tract(s) of land described in Exhibit A (Site), and that **[Name of Innocent Owner/Operator]** is an Innocent Owner [Operator] as defined by §361.751(2) for the Site, based on the affidavit for IOP No. **[IOP No.]** in Exhibit B. A copy of the Site Report may be found in the TCEQ Central Records Office under IOP No. **[IOP No.]**.

[Name of Innocent Owner/Operator] is not liable under the Texas Health and Safety Code or the Texas Water Code for investigation, monitoring, remediation or corrective or other response actions regarding the conditions attributable to the release or migration of the contaminant(s) in **[List Media]** from a source or sources not located on or at the Site including **[List of Contaminants]** or related degradation products described in the Site Reports, or otherwise liable regarding those Conditions. **[Name of Innocent Owner/Operator]** shall grant reasonable access to the property for purposes of Investigation and Remediation to Persons designated by the Executive Director of the TCEQ.

EXECUTED this _____ *day of* _____, *20*____

_____

[TCEQ Division Director], *Director*
Remediation Division

STATE OF TEXAS
TRAVIS COUNTY

BEFORE ME, on this the _____ day of _____, personally appeared **[TCEQ Division Director]**, Director, Remediation Division of the Texas Commission on Environmental Quality, known to me to be the person and agent of said commission whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 20_____

_____

Notary Public in and for the State of Texas