# Section F: AMENDING AND REMOVING AN INSTITUTIONAL CONTROL

To remove an IC, the current property owner may submit a written request to the appropriate program of the FDEP or district. The commonly acceptable reasons to remove an IC include: all of the site’s contamination no longer exceeds the Cleanup Target Levels or water quality standards (recent assessment data would need to be submitted) or one form of an IC is to be replaced with another. An IC can be amended, for example, when the restrictions in the IC need to be modified (e.g., a land use restriction in a DRC replaced with an engineering control and associated survey). For other circumstances that may necessitate the temporary removal or modification of an IC such as asphalt, concrete, or soil cap and/or slab or foundation replacement or accessing groundwater from a non-contaminated aquifer, please contact the site/project manager.

Amending an RC

It is not always necessary to amend an IC to accommodate construction on the property with the control. For example, an owner can replace a parking lot that is serving as an engineering control as long as the new parking lot meets the criteria contained in the CSRCO and RC[[1]](#footnote-2), and provided the contamination is properly managed during construction activities. Likewise, construction with dewatering activities can be conducted when there is contaminated groundwater as long as the owner complies with the RC which typically requires that a dewatering plan approved by FDEP’s DWM or a certified plan be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated. However, prior to a property owner fully developing plans for any construction that may interfere with an engineering control or conflict with restrictions in the IC, the owner should contact the district or Tallahassee office that originally approved the IC and provide information about the owner’s plans. At that time the FDEP can provide assistance regarding what measures must be in place to protect human health and the environment. Once construction or development activities are complete, the owner and the FDEP can evaluate whether the IC needs to be changed or RC amended.

The process for amending an RC is similar to the initial process of placing an RC on the property (e.g., IC checklist, title work[[2]](#footnote-3), noticing). However, a draft Amended RC, addressing only those provisions in the RC that need to be altered, including revised surveys, if applicable, will need to be submitted by the property owner to FDEP for review. A sample Amended Declaration of Restrictive Covenant is included as [Attachment 26A](https://floridadep.gov/waste/district-business-support/documents/icpg-attachment-26a). The amended RC will be reviewed for both technical and legal considerations.

The site/project manager should complete the IC Legal Referral and Checklist ([Attachment 6](https://floridadep.gov/waste/waste/documents/icpg-attachment-6)) showing what the proposed amendment is doing and how it differs from the existing RC as recorded (e.g., are controls being removed because the property is clean or are the controls changing because of redevelopment, explain how the new/different controls are protective, etc.)

After approval by the site/project manager and OGC, the Amended RC will be executed by both parties and recorded in the public records of the county where the property is located. To complete the process, the site/project manager must place a copy of the recorded Amended RC in Oculus and update the Institutional Control Registry (ICR).

Termination of an RC

An RC should only be removed by execution of a termination of the RC by the appropriate program of FDEP or the district, and the recordation of the signed termination in the public records of the county where the property is located. A sample Termination and Release of Declaration of Restrictive Covenant is included as [Attachment 26B](https://floridadep.gov/waste/district-business-support/documents/icpg-attachment-26b). The Termination document should state that FDEP agrees to remove the control and should also briefly state the reason(s) for removing the IC.

If it is determined that a Termination is in order, the property owner should submit title work for determination of who should receive notice of intent to remove the controls. Local governments should be notified of the intent to remove the controls. After the noticing comment period has expired and resolution of any comments, the FDEP should issue the unconditional SRCO and copy the same individuals and local governments as previously noticed. After the time for filing a petition on the SRCO expires and no petition is received, the property owner should sign the Termination document, FDEP countersigns and the property owner (or FDEP if FDEP is the PRSR) records the Termination.

The FDEP site/project manager must update the ICR any time an IC is removed.

1. If the control type or location is changed, the Engineering Control Maintenance Plan may need to be revised and resubmitted to FDEP. [↑](#footnote-ref-2)
2. Title report for an amended RC should include the original title report submitted with the original RC plus an updated title report that covers the time that has passed since the effective date of the original title report. [↑](#footnote-ref-3)