**Section 742.1015 Ordinances**

a) An ordinance adopted by a unit of local government that effectively prohibits the installation of potable water supply wells (and the use of such wells) may be used as an institutional control to meet the requirements of Section 742.320(d) or 742.805(a)(3) if the requirements of this Section are met. A model ordinance is found in Appendix G. Ordinances prohibiting the installation of potable water supply wells (and the use of such wells) that do not expressly prohibit the installation of potable water supply wells (and the use of such wells) by units of local government may be acceptable as institutional controls if the requirements of this Section are met and a Memorandum of Understanding (MOU) is entered into under subsection (i) of this Section. For purposes of this Section, a unit of local government is considered to be expressly prohibited from installing and using potable water supply wells only if the unit of local government is included in the prohibition provision by name. The prohibition required by this Section shall satisfy the following requirements at a minimum:

1) The prohibition shall not allow exceptions for potable water well installation and use other than for the adopting unit of local government;

2) The prohibition shall apply at all depths and shall not be limited to particular aquifers or other geologic formations;

3) If the prohibition does not apply everywhere within the boundaries of the unit of local government, the limited area to which the prohibition applies shall be easily identifiable and clearly defined by the ordinance (e.g., narrative descriptions accompanied by maps with legends or labels showing prohibition boundaries, or narrative descriptions using fixed, common reference points such as street names). Boundaries of prohibitions limited by area shall be fixed by the terms of the ordinance and shall not be subject to change without amending the ordinance in which the prohibition has been adopted (e.g., no boundaries defined with reference to zoning districts or the availability of the public water supply); and

4) The prohibition shall not in any way restrict or limit the Agency's approval of the use of the ordinance as an institutional control pursuant to this Part (e.g., no restrictions based on remediation program participation, or no restrictions on persons performing remediation within the prohibition area who may use the ordinance).

b) A request for approval of a local ordinance as an institutional control shall provide the following:

1) A copy of the ordinance restricting groundwater use certified by an official of the unit of local government in which the site is located that it is a true and accurate copy of the ordinance, unless the Agency and the unit of local government have entered an agreement under subsection (i) of this Section, in which case the request may alternatively reference the MOU. The ordinance must demonstrate that potable use of groundwater from potable water supply wells is prohibited;

2) A scaled map or maps delineating the area and extent of groundwater contamination modeled above the applicable remediation objectives including any measured data showing concentrations of contaminants of concern in which the applicable remediation objectives are exceeded;

3) A scaled map delineating the boundaries of all properties under which groundwater is located that exceeds the applicable groundwater remediation objectives;

4) Information identifying the current owners of each property identified in subsection (b)(3); and

5) A copy of the proposed written notification to the unit of local government that adopted the ordinance and to the current owners identified in subsection (b)(4) that includes the following information:

A) The name and address of the unit of local government that adopted the ordinance;

B) The ordinance's citation;

C) A description of the property being sent notice by adequate legal description, reference to a plat showing the boundaries of the property, or accurate street address;

D) Identification of the party requesting to use the groundwater ordinance as an institutional control, and a statement that the party has requested approval from the Agency to use the ordinance as an institutional control;

E) A statement that use of the ordinance as an institutional control allows contamination above groundwater ingestion remediation objectives to remain in groundwater beneath the affected properties, and that the ordinance strictly prohibits human and domestic consumption of the groundwater;

F) A statement as to the nature of the release and response action with the site name, site address, and Agency site number or Illinois inventory identification number; and

G) A statement that more information about the remediation site may be obtained by contacting the party requesting the use of the groundwater ordinance as an institutional control or by submitting a FOIA request to the Agency.

c) Written notification proposed pursuant to subsection (b)(5) must be sent to the unit of local government that adopted the ordinance, as well as to all current property owners identified in subsection (b)(4). Written proof that the notification was sent to the unit of local government and the property owners shall be submitted to the Agency within 45 days from the date the Agency's no further remediation determination is recorded. Such proof may consist of the return card from certified mail, return receipt requested, a notarized certificate of service, or a notarized affidavit.

d) Unless the Agency and the unit of local government have entered into a MOU under subsection (i), the current owner or successors in interest of a site who have received approval of use of an ordinance as an institutional control under this Section shall:

1) Monitor activities of the unit of local government relative to variance requests or changes in the ordinance relative to the use of potable groundwater at properties identified in subsection (b)(3); and

2) Notify the Agency of any approved variance requests or ordinance changes within 30 days after the date such action has been approved.

e) The information required in subsections (b)(1) through (b)(5) and the Agency letter approving the groundwater remediation objective shall be submitted to the unit of local government. Proof that the information has been filed with the unit of local government shall be provided to the Agency.

f) Any ordinance or MOU used as an institutional control pursuant to this Section shall be recorded in the Office of the Recorder or Registrar of Titles of the county in which the site is located together with the instrument memorializing the Agency's no further remediation determination pursuant to the specific program within 45 days after receipt of the Agency's no further remediation determination.

g) An institutional control approved under this Section shall not become effective until officially recorded in accordance with subsection (f). The person receiving the approval shall obtain and submit to the Agency within 30 days after recording a copy of the institutional control demonstrating that it has been recorded.

h) The following shall be grounds for voidance of the ordinance as an institutional control and the instrument memorializing the Agency's no further remediation determination:

1) Modification of the ordinance by the unit of local government to allow potable use of groundwater;

2) Approval of a site-specific request, such as a variance, to allow potable use of groundwater at a site identified in subsection (b)(3);

3) Violation of the terms of an institutional control recorded under Section 742.1005 or Section 742.1010; or

4) Failure to provide notification and proof of such notification pursuant to subsection (c).

i) The Agency and a unit of local government may enter into a MOU under this Section if the unit of local government has adopted an ordinance satisfying subsection (a) and if the requirements of this subsection are met. The MOU submitted to the Agency must match the form and contain the same substance as the model in Appendix H and shall include the following:

1) Identification of the authority of the unit of local government to enter the MOU;

2) Identification of the legal boundaries, or equivalent, under which the ordinance is applicable;

3) A certified copy of the ordinance;

4) A commitment by the unit of local government to notify the Agency of any variance requests or proposed ordinance changes at least 30 days prior to the date the local government is scheduled to take action on the request or proposed change;

5) A commitment by the unit of local government to maintain a registry of all sites within the unit of local government that have received no further remediation determinations pursuant to specific programs; and

6) If the ordinance does not expressly prohibit the installation of potable water supply wells (and the use of such wells) by units of local government, a commitment by the unit of local government:

A) To review the registry of sites established under subsection (i)(5) prior to siting potable water supply wells within the area covered by the ordinance;

B) To determine whether the potential source of potable water may be or has been affected by contamination left in place at those sites; and

C) To take whatever steps are necessary to ensure that the potential source of potable water is protected from the contamination or treated before it is used as a potable water supply.

j) A groundwater ordinance may not be used to exclude the indoor inhalation exposure route.

(Source: Amended at 37 Ill. Reg. 7506, effective May 15, 2013)