



Who's Monitoring Land Use Controls on Brownfield Sites?

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Land Use Controls

- ☀ Land use controls are referred to by many terms
 - ✿ Long-term stewardship
 - ✿ Long-term management
 - ✿ Institutional/engineering controls



Land Use Controls

Defined as

“mechanisms used to limit human activities at or near a contaminated site”

Land Use Controls

- ✦ Often used and play an important role in minimizing exposure and are part of a practical, balanced approach to brownfield remediation and redevelopment

Land Use Controls

- ☀ Institutional controls may include:
 - ✳ Use of structures
 - ✳ Land and natural resource use restrictions
 - ✳ Identification of well restricted areas
 - ✳ Implementation of deed notice or deed restrictions

Land Use Controls

☀ Engineering controls may include:

- ☀ Caps
- ☀ Dikes
- ☀ Covers
- ☀ Trenches
- ☀ Signs
- ☀ Fencing

USEPA Guidance Document

- ☀ Identified in the USEPA Guidance Document on Institutional Controls there are four basic types of institutional controls. They are:
 - ✿ Proprietary controls such as covenants where the control is legally a property interest
 - ✿ Government controls such as the implementation of zoning and well permits
 - ✿ Informational devices such as deed notices
 - ✿ Enforcement tools such as consent decrees, orders or permits

Land Use Controls

- ✦ Federal, state and municipal agencies are struggling with the issue of the long-term monitoring of the continued effectiveness of implemented land use controls

Questions being asked...

- ☀ Do government agencies have a role and/or responsibility?
- ☀ If so, how do governmental agencies ensure that these sites remain protective and do not pose a threat to the surrounding community?
- ☀ Who will be responsible for the short and/or long-term monitoring of the control?

Questions being asked....

- ✱ What happens when the control is unknowingly compromised?
- ✱ How do you ensure the long-term effectiveness of the control and that it remains in place in perpetuity?

Some effective deterrents

- ☀ Deed notifications and/or deed notices
- ☀ Processes that require notification to state environmental agency, municipality and/or county health department
- ☀ State programs that require periodic inspections and certifications to ensure that control has not been compromised

Land Use Controls

- ☀ States need to provide a mechanism for notification to an individual attempting to redevelop or excavate a property that may have the potential to compromise the land use control in place.

Land Use Controls

- ✦ Incorporate the use of controls as early in the process as possible for the site cleanup and redevelopment

Land Use Controls

- ☀ Tracking processes will play a key role in ensuring long-term compliance and continued effectiveness of the control

Land Use Controls

☀ City of Portland, Oregon

- ☀ “One Call System”
- ☀ USEPA recently awarded (June 2003) an Innovations Pilot grant to Pennsylvania DEP to investigate the use of One-Call Systems for tracking institutional controls
- ☀ Financial Trusts
- ☀ Insurance

Land Use Controls

- ☀ Common interest among stakeholders
 - ✳ Safety
 - ✳ Certainty
 - ✳ Costs
 - ✳ Assurances of effectiveness

Land Use Controls

- ☀ Effective compliance and enforcement measures need to be implemented
- ☀ Whatever option is chosen, process must ensure effective and efficient monitoring for the long term to ensure effectiveness of control

Key points to remember

- ☀ Controls are implemented when a site is not cleaned up to unrestricted “residential” reuse standards
- ☀ Planning is key for incorporating potential use of control into redevelopment strategy
- ☀ Mechanism needs to be developed to ensure consistent long-term monitoring of the control

Some key roles that can be provided by government

- ✦ Providing input on anticipated future land use considerations
- ✦ Providing information and input on acceptable land use controls
- ✦ Provide a compliance role by implementing, monitoring and enforcing existing zoning regulations
- ✦ Evaluate new building permit requests, site plans, and zoning applications
- ✦ Provide timely and adequate notice to USEPA and State Environmental Agency regarding land use changes