Institutional Controls Federal Perspective

Brownfields 2003

October 26, 2003

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The IC Tracking System / Network

◆ EPA frequently relies on ICs:
  » protect human health and the environment
  » protect the integrity of the remedy

◆ Increasing use of risk-based cleanups
  » 70% of NPL RODs since 2000 call for ICs

◆ EPA cannot easily determine:
  » where ICs are required,
  » if they have been implemented,
  » if they are being monitored and
  » whether they are being enforced

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IC Tracking Use at EPA

◆ Governmental Controls

> » Permits and zoning

◆ Proprietary Controls

> » Easements & Covenants

◆ Enforcement Devices

> » Consent Decrees, Orders, Permits

◆ Informational Devices

> » Deed Notice, State Registries

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EPA Unpublished Studies

◆ IC Data Collection Study

» Region 5 (23 sites)

— Michigan – 2 counties

— Wisconsin – 2 counties

» Region 3 (49 sites)

— Pennsylvania – 3 counties

— Delaware – 2 counties

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Study Background

◆ Phase 1:

» Conduct desk-top review of available information

» Interview Remedial Project Managers (RPMs)

◆ Phase 2:

» Interview appropriate State/Local government officials

» Travel to relevant counties to interview appropriate officials and collect documents

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Results

◆ ICs at the ROD stage

  » 73% of the sites with RODs required at least one IC

  » Evidence of implementation for 58% of the ROD-required ICs

  » 48% of the ROD-required ICs provided semi-specific guidance on what IC was required

  » In those instances where the ROD provided semi-specific guidance, there was evidence that 60% of these ICs were implemented

  » In those instances where the ROD did not provide semi-specific guidance, there was evidence that 56% were implemented.

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Results (cont.)

◆ <u>ICs Required by Enforcement Documents</u>

» 35% of the ICs were required solely by an enforcement document

» Evidence of implementation for 76% of the ICs required by an enforcement document

» 95% of ICs found in enforcement documents had semi-specific language

» Evidence of implementation for 80% of the ICs found in enforcement documents that had semi-specific language

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ROD Review

◆ October 2000 to January 2003 - 291 decision documents signed (for 211 sites)

» Of the 291 decision documents, CERCLIS said 199 documents that called for ICs (68%)

◆ Reviewed 91 EPA decision documents, (RODs, ROD Amendments, and ESDs) to determine if they meet the criteria of the September 2000 IC guidance

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Guidance Criteria

1. Does the decision document present information that helps the public understand the impacts of the specific ICs and their relationship with the overall remedy?

2. Does the decision document clearly describe the objectives to be obtained by ICs?

3. Does the decision document describe performance standards?

4. Does the decision document discuss the kinds of controls envisioned and provide enough information to show that effective implementation of the ICs can be reasonably expected?

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Guidance Criteria

5. Does the decision document discuss plans for monitoring land use and other aspects of the remedy that depend on ICs?

6. Does the decision document discuss the enforcement mechanisms that are anticipated to ensure the long-term reliability of the ICs?

7. Vague IC language usage. This involved tracking the total number of times the words "institutional control" (7a) and "deed restriction" (7b) are used compared to the number of times these words are used in place of a more specific term.

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Results

◆ The following table provides a comparison of the percent of RODs, ESDs, and ROD Amendments reviewed that met each criteria for _non-federal facility sites:_

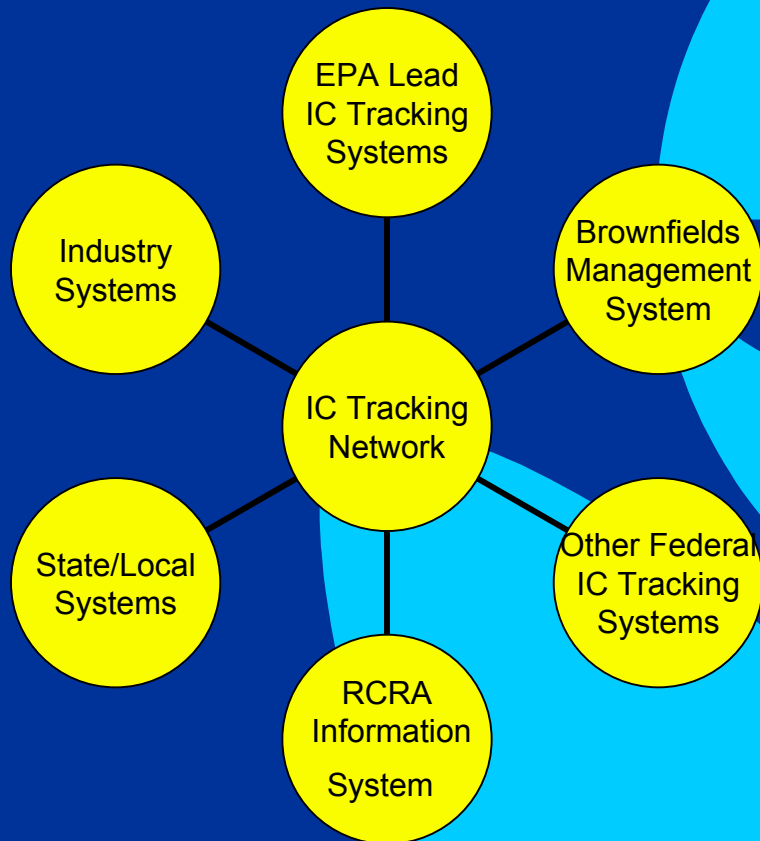| Criteria	1	2	3	4	5	6	7a	7b
ESD	25%	29%	8%	21%	8%	4%	17%	0%
ROD A	33%	53%	27%	40%	20%	27%	33%	7%
ROD	37%	71%	34%	41%	17%	22%	66%	10%

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Lessons Form Conceptual Solution

◆Clear need to track life-cycle of ICs

◆ Cross-program and cross-agency

◆ GIS Map based

◆ Web-enabled for stakeholder access to information

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IC Tracking:
A Network of Linked Systems

Cross-Program/Cross-Agency Input

◆ Developed a data category universe
  » Queried over 300 agencies (Federal, State and Local)

◆ Conducted focus groups in 2002
  » Headquarters Group - June 5
  » States Focus Group - June 18-19
  » Regional Focus Group - June 26-27
  » Other Federal Agencies - July 23-24
  » Non-regulated-industry - October 8
  » Local Agencies - October 10-11
  » Policy Think-Tanks - October 22

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National Workshop

◆ National Workshop on IC Tracking - October 28-30, 2002

◆ 63 Total attendees from different focus groups

◆ Discussion of Tracking Systems evaluated

» Present 33 data categories

» Advance national tracking concept

» Discuss: inputs, systems and outputs

» Develop an Action Plan

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Data Registry Meeting

◆ Conducted May 12-14, 2003 in Chicago

» 60 Federal, State, local and industry representatives

» To develop a common registry of terms for tracking

— data elements

— data definitions

— database format

» Begin discussion of GIS requirements

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