

Institutional Controls Overview

EPA/State RCRA
Corrective Action Workshop
September 11, 2002



Presentation Objectives

- ◆ Background
- ◆ Guidance
- ◆ IC Tracking System
- ◆ IC Data Collection Pilot
- ◆ Workshops
- ◆ “One-Call” Pilots
- ◆ IC Privatization Pilot (Guardian Trust)



What Is An IC?

- ◆ Non-engineered administrative or legal controls that limit land or resource use and/or protect the integrity of a remedy



When Are ICs Used?

- ◆ Used when contamination is first discovered to limit exposure
- ◆ Used during cleanups
- ◆ Used when residual contamination is left in place after site cleanup



What Are ICs Used For?

- ◆ Two primary purposes:
 - » Minimize the potential for exposure to contaminants
 - » Protect the integrity of the remedy



How Do ICs Work?

- ◆ Work by

- » Limiting land or resource use

- » Providing information to modify behavior



When are ICs Necessary

◆ Threshold for ICs

- » Unlimited use and unrestricted exposure
 - Site-specific determination
 - Residential v. UU/UE



Program Expectations

- ◆ Program expectations:
 - » Protect human health and the environment
 - » Treat principal threats
 - » Contain low-level threats
 - » Restore groundwater to beneficial use within a reasonable timeframe



Regulatory Framework

- ◆ Use a combination of methods (treatment, engineering and ICs)
- ◆ Use water, land and activity restrictions to supplement engineering controls
- ◆ Short-term and long-term management to prevent or limit exposure to hazardous waste constituents.
- ◆ ICs not generally expected to be the sole remedial action



IC Categories

- ◆ Four general categories of ICs
 - » Governmental controls
 - Zoning and permits
 - » Proprietary controls
 - Easements and covenants
 - » Enforcement and permit tools with IC components
 - CDs, orders and permits
 - » Informational devices
 - Deed notice, State registries



Guidance

- ◆ A Site Managers Guide to Identifying, Evaluating and Selecting ICs
 - » Completed in September 2000
- ◆ Guide to Implementing, Monitoring and Enforcing ICs.
 - » Out for External Review - September 02



Summary of Draft Implementation, Monitoring and Enforcement Guide

- ◆ Cross-program guidance (cross-agency)
- ◆ Larger cross-cutting issues with the implementation, monitoring and enforcement of ICs.
- ◆ Strongly advocates the team approach
- ◆ Stresses importance of appropriate IC documents (easements, covenants, deed notices)
- ◆ Guidance on vague or incomplete language in remedy decision/enforcement documents.



Summary of Draft Implementation, Monitoring and Enforcement Guide

- ◆ Describes role of local and state governments
- ◆ Advocates written agreements with States and Local agencies on roles and responsibilities.
- ◆ Advocates a written IC Implementation/Assurance Plan (detailed guidance forthcoming)
- ◆ Stresses annual inspection/monitoring and reporting as routine operation and maintenance requirements.



Summary of Draft Implementation, Monitoring and Enforcement Guide

- ◆ Advocates annual certification from a responsible person at the site that ICs are in place and effective.
- ◆ Describes the challenges and options for securing the appropriate enforcement of ICs.
- ◆ Advocates detailed roles and responsibilities for enforcement.



Guidance (Cont.)

- ◆ ICs and Communities
 - » Draft for Regional Review - Winter 02
- ◆ Developing IC Implementation Plans
 - » Draft – Spring 03
- ◆ Developing Full Life-Cycle Cost Estimates for ICs
 - » Draft – Summer 03



IC Tracking System

- ◆ System to track entire life-cycle of ICs
 - » Selection
 - » Implementation
 - » Monitoring
 - » Reporting
 - » Enforcement
- ◆ GIS Map based
- ◆ Web-enabled for stakeholder access to information



IC Tracking System Objectives (Cont.)

◆ Linked:

- » Other programs
- » Other Federal Agencies
- » States
- » Tribes and
- » Local Government



Developed a Data Collection Form

◆ Seven Categories

- » Basic Site Information
- » ICs Instrument Selection as Specified in the Decision Document(s)
- » ICs Implementation
- » ICs Monitoring
- » ICs Enforcement
- » IC Costs
- » IC Trends, Additional Information



Data Collection Pilots

- ◆ Surveyed 72 sites in Regions 3 and 5
 - » Determine:
 - what IC information is available
 - where it is located
 - what form it is in
 - what it cost to get it
 - evaluate feasibility/methods of data gathering



Preliminary Results

- ◆ Data was not where we expected
- ◆ How deed notices are organized varies considerably
- ◆ Very few “tracking” systems – mostly filing systems
- ◆ Very little information post selection
- ◆ ICs often assigned to the whole parcel
- ◆ Imprecise language problematic
- ◆ Little routine monitoring - based on reported problems



Focused Workshops

- ◆ Conduct a series of focused workshops
 - » Invite multi-program/agency experts in tracking
 - » Obtain advanced copies of:
 - Data elements
 - Data dictionary
 - Data entry/system approach
 - » Develop a matrix
 - Areas of agreement/discussion/disagreement
- ◆ Encourage database exchange



Focus Groups

- ◆ EPA Headquarters Group
 - » June 2002
- ◆ States and Tribes
 - » June 18-19, 2002
- ◆ EPA Regions
 - » June 26-27, 2002
- ◆ Other Federal Agencies
 - » July 23-24



Focus Groups (cont.)

- ◆ Industry

- » October 8

- ◆ Local Agencies

- » October 10-11



National Workshop

- ◆ National Workshop on IC Tracking
 - » Co-hosted by EPA, DOD, DOE, ASTSWMO, ICMA and industry.
 - » Representatives from each focus group
 - » Objective is to advance national tracking concept
 - » Planned for October 28-30, 2002



One Call Pilots

- ◆ Coordinate with IC tracking system
 - » One-Call, Miss Utility, Dig Safe, Blue Stake
 - » Notify excavators of environmental contamination
 - » Pilots in Region 3/PA and 5/WI



Guardian Trust Pilot

- ◆ EPA HQ, Region 3, State of Pennsylvania and MGP Partners
 - » Research the viability of a “private trust” for long-term stewardship of ICs
 - » Establish non-profit trust
 - Trust inspects/monitors and reports on ICs
 - Assumes liability for IC breaches



Status of Guardian Trust

- ◆ Received EPA approval for funding in June 01
- ◆ Final report includes:
 - » analysis of environmental law
 - » financial considerations and form of the Guardian Trust
 - » scope of services of the Guardian Trust and,
 - » legal rights of the Guardian Trust.
- ◆ Findings available on PA Web-site
 - » <http://www.dep.state.pa.us/dep/deputate/airwaste/wm/andrecy/guardian.html>



Strengths

- ◆ Additional IC tool
- ◆ Standardized inspections and reporting
- ◆ Independent inspection and reporting
- ◆ Private market mechanism
- ◆ Addresses several CERCLA/RCRA limitations
 - » obtaining property interests
 - » State assurance requirements



Need More Information

- ◆ Don't know the cost
- ◆ Trust agreement language
- ◆ Enforcement relationship
- ◆ Focuses on proprietary controls



Next Steps

- ◆ Finalize summary report
- ◆ Expect an additional proposal for research
- ◆ State of PA is considering advancing pilot to implementation

