

Institutional Controls in Pennsylvania's Brownfields Program

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Responsible Redevelopment

- **Consistent with:**
 - **Community/county/regional comprehensive plans**
 - **Smart Growth versus Sprawl**
 - **Local Zoning**
 - **Municipal ordinances**
 - **Community Vision & Needs**
- **Economically viable & sustainable**



Keys to Success

- Uniform cleanup standards based on health and environmental risks
 - Predictable and clearly identified end point for cleanup
 - Allows for use of institutional and engineering controls
- Standardized review procedures
- Release from liability
- Financial assistance



PA's Definition – Engineering Controls

- Remedial actions designed to contain or control the exposure to contaminated media.
- Can include:
 - various forms of caps
 - building foundations,
 - liners, and treatment methods
- Deed Notices are required
- Deed Restrictions may also be required

PA's Definition – Institutional Controls

- A measure undertaken to limit or prohibit certain activities that may interfere with the integrity of a remedial action or result in exposure to regulated substances at a site.
- Can include:
 - administrative measures, ie, groundwater use restrictions,
 - construction restrictions, ie only “slab on grade”
 - property use restrictions, ie only nonresidential
 - post remediation care requirements intended to prevent exposure to contaminants remaining on site.
- Deed restrictions are “remedial measure”
- Deed Notices are required

Benefits

- Engineering Controls and Institution Controls help control cleanup and site preparation costs while still being protective
- ICs and ECs are often the tools that make the real estate deal financially viable.
- Engineering controls can be incorporated into and built in concurrence with site development for additional cost savings.

Considerations

- Economic development at PA Brownfield sites dependent on continued use of IC/ECs
- Need to evaluate financial obligations of long term maintenance and monitoring
- Need to “formalize” long-term stewardship
- The integrity of our program is dependent on the demonstration of the protectiveness of these remedies – now and into the future

PA's Regulations

- Act 2, Section 303. Statewide health standard
Subsection (g) Deed notice - A deed acknowledgement is required for attaining a non-residential Statewide Health standard because non-residential exposure factors were used at property.
- Act 2, Section 304. Site-specific standard,
Subsection (m) Deed notice
- Act2, Section 305. Special Industrial areas
Subsection (g) Deed notice

Current Protocols – Deed Notices

- Property owners must submit the sample deed notices as part of a Final Report
- Letter approving final report states “Since this project attained a "Site-Specific or Non-Residential Statewide Health Standard", a deed notice is required in accordance with Section 303, 304 or 305 of Act 2.
- Some regions of DEP have the remediator submit a copy of the deed with the notice within 6 months of the Final Report Approval

Current Protocols – Deed Restrictions

- Draft deed restriction must be submitted as part of the clean up plan and Final Report
- Letter approving final report states “Since this project attained a "Site-Specific or Non-Residential Statewide Health Standard", a deed notice is required in accordance with Section 303, 304 or 305 of Act 2.
- Some regions of DEP have the remediator submit a copy of the deed with the notice within 6 months of the Final Report Approval

Long Term Stewardship

- Currently record sites that used EC or IC remedies in a database and info is posted on our website
- DEP inspects sites that have engineering controls to verify integrity of the remedy
- Operation and Maintenance reports of engineering controls are to be submitted to the DEP
- DEP's central office did an audit of the sites where deed notices were required
- Audit revealed opportunities for improvement

PA House Bill 1249

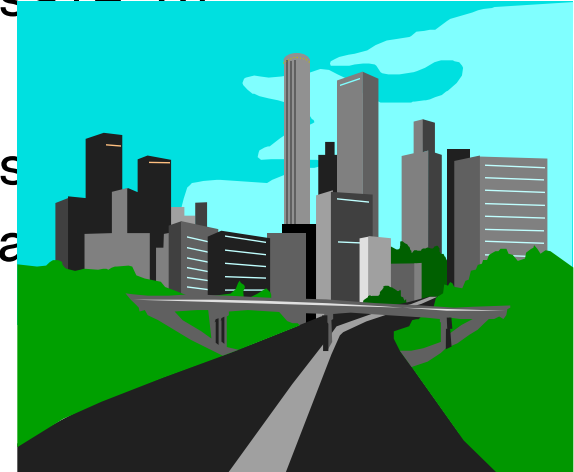
- Based on UECA, but incorporates existing PA Law
- Provides standard format for Environmental Covenant
- Contain legally sufficient description of the real property and conditions
- Describe the specific activity and use limitations
- Identify every holder
- Be signed and id the name and location of administrative record for the project

PA House Bill 1249

- Gives DEP the legal authority to:
 - **Approve the language and content of the Covenant**
 - **Enforce the obligations of the covenant**
 - **Create a statewide registry of Environmental Covenants – DEP can more easily track controls**
 - **Formalize long-term stewardship**
- Provides for clear protocols for dispute resolution
- Local Govts will need to assure that covenants are in accordance with local zoning and municipal ordinances

Program Enhancements with UECA

- 🌿 Promotes continued effective use of ICs and ECs as financial tools in the brownfields real estate market
- 🌿 Aids in marketing and future resale of properties
- 🌿 Strengthens DEP's ability to assure protectiveness of remedies now and into the future



Thank you

DEP – Land Recycling Program & Brownfields Action Team

www.dep.state.pa.us

(Keywords “land recycling” or “brownfields”)

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