



PA One Cleanup and Land Use Controls

The “Business of Brownfields” Conference

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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

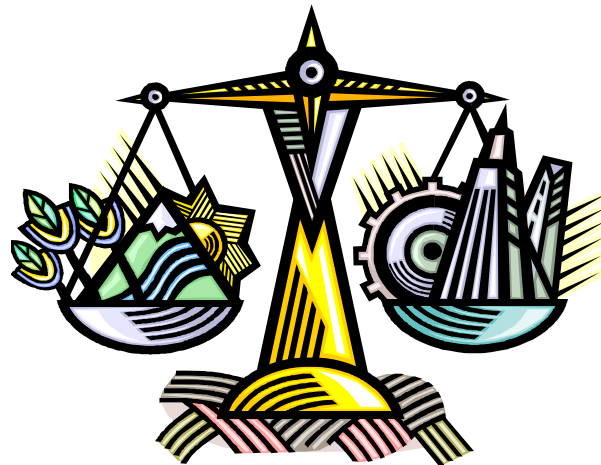
“mechanisms used to limit human activities at or near a contaminated site”





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

- Incorporating the use of controls as early in the site cleanup and redevelopment process as possible is the most cost effective and efficient implementation





Land Use Controls

- One method of evaluating fiscal impacts of implementing LUCs versus removing all contamination is a standard analytical method that calculates the total cost of investment, project, or activity over time



Land Use Controls

- This method is known as “life cycle costing”
- Some items to be considered include:
 - Planning & design
 - Implementation
 - Long term monitoring
 - Reporting
 - Enforcement
 - Termination



Land Use Controls

- The final evaluation of costs needs to be considered within the overall budget for the entire project





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





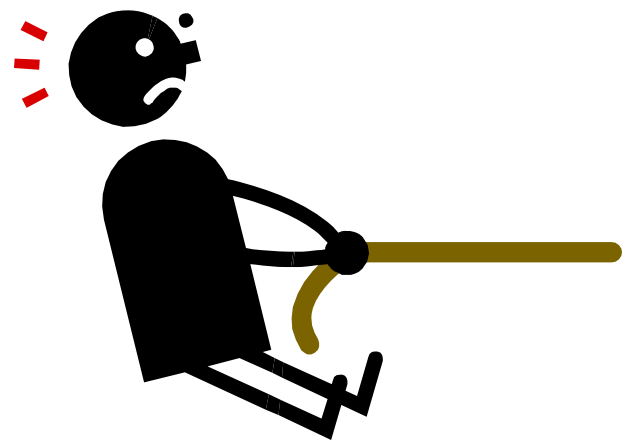
USEPA Guidance Document

- 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?



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.



CAUTION





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



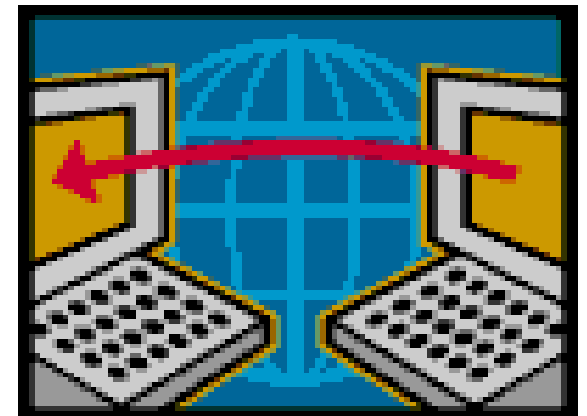
One Example

- Using the “One Call System”
 - USEPA has awarded grants to various states to evaluate the use of the One Call System to determine if it can be used to effectively track land use controls



Land Use Controls

- Tracking processes will play a key role in ensuring long-term compliance and continued effectiveness of the control
- Many states have compiled an inventory of sites with LUCs





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



Interstate Technology Regulatory Council (ITRC)

- Brownfield Team
 - Evaluating existing land use control systems across the country to determine areas of effectiveness
 - Developing a land use control guidance document
 - For more information
www.itrcweb.org



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