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Tribal Consultation Informational Webinar - Institutional Controls in Indian Country

Sponsored by: U.S. EPA Office of Site Remediation Enforcement

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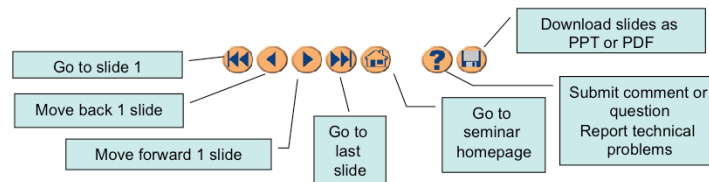
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Visit the Clean Up Information Network online at www.cluin.org

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- Q&A
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Although I'm sure that some of you have these rules memorized from previous CLU-IN events, let's run through them quickly for our new participants.

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With that, please move to slide 3.



Implementing Institutional Controls in Indian Country

Kimberly Fedinatz & Cecilia De Robertis
Office of Site Enforcement Remediation

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Overview of ICs

- Scenario – Cleanup does not always rid the land of all contamination
- Question – How to reduce potential exposure to contamination?
- Solution - an “institutional control,” which limits land or resource use

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- Institutional controls are non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedy.
- Engineered control are physical (such as a cap, fence, or groundwater treatment facility).
- Institutional controls are used in conjunction with engineered controls.
- Institutional controls protect people both during and after a cleanup. For example, a cleanup may not be to background level. Thus a deed notice could inform everyone of appropriate land uses.
- Institutional controls are used in Superfund, RCRA Corrective Action, and UST cleanups.



Types of ICs

- Proprietary - deed restrictions
- Governmental – zoning, ordinances
- Informational – signs, pamphlets, billboards, registries/lists, deed notices
- Permits/Orders – use EPA permitting authority to order responsible party

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- Generally there are four types of institutional controls.
 - Proprietary controls are deed restrictions such as easements and restrictive covenants.
 - Governmental controls are usually implemented by a local governments, states, or tribes.
 - Informational devices are usually not enforceable.
 - Permits and Orders are EPA enforcement tools.



For More Information and Background about ICs

- EPA IC Guidance: <http://www.epa.gov/superfund/policy/ic/guide/index.htm>
- Final Interim Guidance: Institutional Controls: A Guide to Planning, Implementing, Maintaining and Enforcing Institutional Controls at Contaminated Sites <http://www.epa.gov/superfund/policy/ic/guide/icgdraft.pdf>

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For more information about ICs, visit EPA's website.



Why Write the Handbook?

- EPA IC guidance is founded on state laws that follow traditional English and American property and government legal theory
- There are unique circumstances to IC implementation in Indian country
- Need for nationally consistency
- Not a rule or regulation

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•EPA policies and guidances discuss tribes generally but do not address tribe-specific issues.

•EPA identified a need to develop a handbook for nationally consistent implementation.



Common Questions

- Where do institutional controls and tribal sovereignty intersect?
- What are the different types of land ownership?
- How to conduct title search and record a deed restriction on tribal land?
- How to effectively work with tribes?

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Jurisdiction and Structure

- Definition of Indian country
- Bureau of Indian Affairs involvement
- Tribal sovereignty and how it affects ICs
- Tribal consultation when considering ICs in Indian country
- The different types of land ownership

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- The first section addresses jurisdiction and legal structure.
- The handbook discusses the definition of Indian country as well as federal trust responsibilities.
- The United States has a government to government relationship with tribes.
- Consultation with tribes is required when an action “may affect” tribes. Consultation should take place early in the process.
- The nature of land ownership affects implementation. The handbook discusses the different types of land ownership that may occur in Indian country (as well as checkerboarding issues).



Land Records and Title Concerns

- Title search process
- Obtaining tribe and BIA approval for a proprietary control
- The disadvantages of using proprietary controls in Indian country

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- The next section of the handbook addresses title issues.
- The handbook clarifies the title search process and the recording process.
- For example, recording a proprietary control may require approval by a Bureau of Indian Affairs Superintendent and then later be recorded in the Land Transfer and Records Office.
- Approval of a proprietary control requires working with the tribe.



Working with Tribes

- Addressing and incorporating cultural traditions when implementing ICs
- Resources that are available to effectively work with tribes

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- Knowledge is powerful and informational devices can be very useful.
- Integrating land management into cultural traditions may promote long-term stewardship.
- When implementing institutional controls, there may be a need to balance restrictions with the sacred and confidential needs of a tribe.
- The handbook identifies resources that are available for EPA employees:
 - American Indian Tribal Office
 - Regional office liaisons
 - National Indian Law Work Group
 - Institutional Controls Coordinator Workgroup
 - Conflict Prevention and Resolution Center



Consultation and Coordination

- EPA consultation website: epa.gov/tribal/consultation
- Send comments by February 15, 2013, to:
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Questions?

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- Please complete the [Feedback Form](#) to help ensure events like this are offered in the future

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