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Seminar**

**NARPM Presents...Institutional Controls**

Sponsored by: U.S. EPA Office of Superfund Remediation and  
Technology Innovation

Delivered: April 4, 2012, 1:00 PM - 3:00 PM, EDT (17:00-19:00 GMT)

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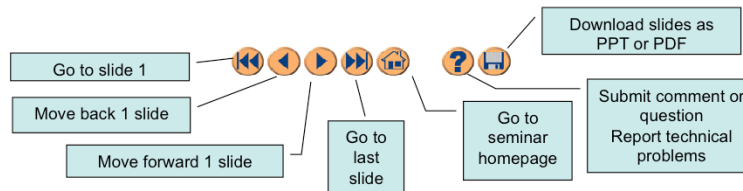
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- Q&A
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Although I'm sure that some of you have these rules memorized from previous CLU-IN events, let's run through them quickly for our new participants.

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With that, please move to slide 3.



# Institutional Controls (ICs)

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## Agenda

- **Contacts/ Resources**
- **ICs on Tribal Lands**
- **Highlights of Several Recent Guidance Documents**
- **Efforts of National Work Groups**
- **Highlight of EPA Collaboration with Local Governments**

## Resources/ Contacts

- **U.S. EPA Headquarters Contacts**
- **James Miles, OSRE; miles.james@epa.gov**
- **Chip Love, OSRTI; love.chip@epa.gov**
- **List of Regional and Other HQ Contacts Available On Clu-In Website under Other Resources or on EPA's intranet at:**

<http://intranet.epa.gov/oeca/osre/workgroup/ic/index.html>

## 2004 IC Strategy

- " **STRATEGY TO ENSURE INSTITUTIONAL CONTROL IMPLEMENTATION AT SUPERFUND SITES** " OSWER No. 9355.0-106 September 2004
- EPA's strategy (Strategy) for ensuring that institutional controls (ICs) are successfully implemented at Superfund sites, with an emphasis on evaluating ICs at sites where all construction of all remedies is complete (construction complete sites)
- Management Advisory Group for Institutional Controls (MAGIC)
- IC Program and Legal Coordinator in Each Region
- National Workgroup with members from HQ, Regions, DOJ and OGC



## National Workgroup Topics

- National IC Tracking
- ICs on Tribal lands
- “Uncooperative” landowners
- Use of ICs at vapor intrusion sites
- Model docs – Consent Decree & SOW (PRP-lead)
- Coordination with local governments



## National Workgroup Topics

- Meets Monthly, as needed.
- Sharing Information.
- Addressing novel issues.
- Discussing Site-Specific IC questions.
- Developing Sub-workgroups as needed to address topics.



## **Institutional Controls in Indian Country**

Cecilia De Robertis  
Office of Site Remediation Enforcement  
(OSRE)



## Land Ownership

Category	Description	Holder of Title
Trust Land	Legal title held in trust by United States for the benefit of a tribe or tribal member.	United States
Restricted Fee Land	Legal title held by tribe or tribal member subject to restrictions on alienation	Tribe or Tribal member
Fee Simple	Legal title held without restriction	Tribe, Tribal member, or non-tribal member



## Which IC Works Best? Proprietary Controls

### Advantages

- Title review required for mortgages, mining/timber leases
- Tied to the land
- If Trust or restricted land, enforceable against BIA

### Disadvantages

- Land is rarely transferred
- BIA land offices far and few between, so rarely searched
- BIA land offices in disarray
- Hard for BIA to control other people's activities



## Which IC Works Best? Governmental Controls

### Advantages

- Utilizes a process that is already in place, often with enforcement
- Empowers tribes as stewards
- More likely to be reviewed than proprietary controls

### Disadvantages

- Tribe may modify or change the governmental control
- EPA does not have enforcement authority
- Resource intensive



## Which IC Works Best? Informational Devices

### Advantages

- Very flexible and adaptable to cultural needs
- Easy to layer

### Disadvantages

- Not enforceable
- Tribes may be reluctant to give information or limit sacred activities
- Difficult to monitor
- Cannot force culture



## Which IC Works Best? Enforcement and Permit Tools

### Advantages

- May prohibit specific activities on a particular parcel
- MoA may be required due to sovereignty

### Disadvantages

- Contractually based and do not “run with the land”
- Unilateral order may lead to political issues



## Contact

- ICs in Indian country Workgroup
- Cecilia De Robertis
- (202) 564-5132
- [derobertis.cecilia@epa.gov](mailto:derobertis.cecilia@epa.gov)

## IC GUIDANCE AND REFERENCE DOCUMENTS

- PIME
- ICIAP
- Supplement to the Five-Year Review
- <http://www.epa.gov/superfund/policy/ic/guide/index.htm>



**Planning Implementation  
Monitoring and Enforcement  
(PIME)**



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## PIME

- *“Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites,”* OSWER 9355.0-89, EPA-540-R-09-001, November 2011, Interim Final.



## **PIME**

- PIME integrates concepts from other disciplines such as real law, land estate and, land use planning and community engagement
- Provides roles and responsibilities for IC life cycle



## PIME

- Describes roles of states, tribes, local governments and communities in IC selection and maintenance
- Supports EPA's "enforcement first" policy for ICs
- Recommends early coordination with stakeholders

## Significant Policy Statements in PIME

- IC “trigger”: UU/UE as one factor
- Documentation of use restrictions & ICs in decision documents
- Community involvement
- Capacity of IC stakeholders, particularly local governments



# Evaluating Institutional Controls during the 5-Year Review Evaluation

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## ICs in 5-Year Review Evaluations

- ["Recommended Evaluation of Institutional Controls: Supplement to the Comprehensive Five-Year Review Guidance", OSWER Directive 9355.7-18, September 2011 \[PDF 2.2MB / 28pp.\]](#)



## ICs in 5-Year Review Evaluation

- This guidance supplements OSWER's 2001 Comprehensive Five-Year Review Guidance and provides recommendations for conducting five-year reviews for the IC component of remedies in a manner similar to the review of engineering or other remedy components



## ICs in 5-Year Review Evaluation

- Purpose of the review is to evaluate the implementation and performance of a remedy to determine if the remedy is or will be protective of human health and the environment
- Identify issue and recommend the need for additional evaluation and/or follow-up actions included as highlighted issues and recommendations.



## **ICs in 5-Year Review Evaluations**

- Key Questions
- Clarity of Use Restrictions and Exposure Pathways
- Accuracy of Property Information and Mapping
- Adequacy of Long-Term Stewardship



## **ICs in 5-Year Review Evaluations**

- Document review, Interviews and Inspections
- Supplemental evaluations may be necessary
- ICs are considered along with other remedy components.
- Make protectiveness determination- both short-term and long-term
- Role of PRPs



## ICs in a 5-Year Review Evaluation

**QUESTION A:** *Is remedy functioning as intended by Decision Document?*

Do ICs cover the use restrictions specified by ROD?

Are ICs in place?

Are exposures occurring?



## ICs in a 5-Year Review Evaluation

**QUESTION B:** *Are exposure assumptions, toxicity data, cleanup levels, and RAOs still valid?*

Any changes to land use, zoning?

Any changes to ground/surface water use?

Any new exposure pathways?



## IC's in 5-Year Review

**Question C:** *Has any other information come to light that could call into question the remedy protectiveness?*

State or local law change?

Any known breaches?

Contamination found is a new area or has moved?



## ICs in a 5-Year Review Evaluation

### **POSSIBLE RECOMMENDATIONS:**

Need to select and implement an IC.

Need an additional IC layer.

Need to review reliability of IC.

Need communication strategy.

Need Long-Term Stewardship Plan.

Explore use of state's One-Call System for ICs.



## ICs in 5-Year Review Evaluations

### PROTECTIVENESS DETERMINATION:

ICs are considered along with other remedy components.

Examples of determinations are found in the guidance.



# Institutional Controls Implementation and Assurance Plan (ICIAP)

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## A Plan that documents:

- Activities necessary to implement . . .
- maintain . . .
- enforce . . . and
- terminate the ICs
- AND who does what (roles and responsibilities)



## ALSO . . .

- Done as part of RD
- already in the model Consent Decree



## ICIAP

- Guidance is being created
- Can use the outline as a guide – ask Dante and Sheri (or your Regional IC Coordinator)



## Other Guidance Available

- **Citizen's Guide** – *"Institutional Controls: A Citizen's Guide to Understanding Institutional Controls at Superfund, Brownfields, Federal Facilities, Underground Storage Tank, and Resource Conservation and Recovery Act Cleanups,"* OSWER 9255.0-98, EPA-540-R-04-004, October 2004.
- **Site Manager's Guide** – *"Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups,"* OSWER 9355.0-74FS-P, EPA 540-F-00-005, September, 2000.
- **Bibliography** - *"Institutional Controls Bibliography: Institutional Control, Remedy Selection, and Post-Construction Completion Guidance and Policy"* OSWER 9355.0-110, December 2005.



## **Institutional Controls:**

- **EPA Collaboration with Local and State Governments**
- **Importance of Effective Governmental Institutional Controls**



## **Examples of EPA's IC Collaboration Across Jurisdictions at Superfund Sites**

- Region 4 MOA with South Florida Water Management District.
- MOU Between State and City with Region 7 Oversight in Excelsior Springs, MO.
- City of Aspen ordinance at the Smuggler Mountain Site in Region 8.
- Groundwater Control Area / Ordinances at Former Weldon Springs Site in Region 7
- Bunker Hill Local IC Program: Panhandle Health District (and four small cities) in Idaho, Region 10 ; Jasper and Newton County Soil IC Program in Region 7 and Pending Soil ICs in Madison County In Region 5 (other large-scale contamination sites have similar programs).
- And many other formal and informal "partnerships" with local governments



## Resources

- Resources are also available to provide technical assistance to site teams and communities to understand and implement ICs



# Questions

# Resources & Feedback

- To view a complete list of resources for this seminar, please visit the [Additional Resources](#)
- Please complete the [Feedback Form](#) to help ensure events like this are offered in the future

U.S. EPA Technical Support Project Engineering Forum  
*Green Remediation: Opening the Door to Field Use Session C (Green Remediation Tools and Examples)*  
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- Follow CLU-IN on Facebook or Twitter starting April 1, 2012

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