

U.S. EPA Institutional Controls Update

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Jennifer Hovis, USEPA

Chief, Construction & Post Construction Management Branch
Office of Superfund Remediation & Technology Innovation



Presentation Overview

- ◆ **The importance of ICs to EPA**
- ◆ **Recent problem-solving exercise to identify root causes and countermeasures/solutions**
- ◆ **Success stories!**
 - » Highlight: Cooperative Agreement opportunities

Why are ICs so important?

- ◆ **Effective planning, implementation and maintenance of ICs is crucial to ensuring short- and long-term protectiveness of Superfund remedies**
- ◆ **ICs are essential to achieve key milestones that assist the program in reporting progress at the site and portfolio level**
 - » Human Exposure Environmental Indicator
 - » Site Wide Ready for Anticipated Use
 - » Deletion from the National Priorities List

FY21 Problem-Solving Exercise

- ◆ **EPA assembled a team of program, enforcement and regional staff to use formal problem-solving techniques**
 - » Identified root causes of IC challenges
 - » Brainstormed countermeasures to address root causes
 - » Prioritized actions based on ease and scale of impact

- ◆ **Identified action items in these priority areas:**
 - » Planning and implementation earlier in the life of a site
 - » More routine and robust engagement with States
 - » Broad solutions to increase program capacity preferred over narrow, site-specific fixes

Root Causes

- ◆ IC planning may not occur early enough in the Superfund remedial process
- ◆ IC requirements & procedures vary greatly across States and local governments
- ◆ States and local governments are resource-constrained
- ◆ Staff turnover among project managers & attorneys (EPA, State and local level)
- ◆ Layering a variety of ICs is recommended, but there may be uncertainty on how to do so
- ◆ Lack of guidance, tools, or resources to help with site mapping or title work
- ◆ ICs are often out of EPA's direct control, as implementation is heavily dependent upon States and local governments

Success Stories!

- ◆ Maintaining an ongoing dialogue with ASTSWMO Post Construction Focus Group to discuss IC challenges and solutions
- ◆ Added IC language in updated enforcement model documents for RI/FS and RD/RA to promote earlier IC planning, implementation, and coordination with state and local governments
- ◆ Integrated discussion of IC implementation into Site Strategies to encourage earlier planning and identification of site-specific obstacles
- ◆ Developing contract mechanisms for IC implementation support to Regions
- ◆ Identified EPA mediation resources to facilitate resolution with property owners to help implement ICs on private property
- ◆ Outlined opportunities to fund IC activities through Cooperative Agreements

Highlight: Cooperative Agreements

- ◆ **Funding IC work through CAs offers a unique opportunity to address two fundamental root causes of our shared struggles**
 - » EPA generally does not directly implement most ICs
 - » States and local governments are resource-constrained

- ◆ **EPA evaluated unique opportunities to provide IC support under the most commonly used CA vehicles**

Institutional Controls Support Through Superfund Cooperative Agreements

	Remedial Response	Core Program	Support Agency
Scope	Site-specific	Non-site-specific	Site-specific
Funding Source¹	Pipeline Allowance Remedial Action Allowance Special Account	Pipeline Allowance	Pipeline Allowance Special Account
Recipients²	States Tribes Local governments	States Tribes	States Tribes Local governments
Potential Opportunities	Implementation of ICs as remedial action (<i>ensure funded activities are not state O&M responsibilities</i>) Develop site-specific Institutional Controls Implementation and Assurance Plans (ICIAPs) and/or IC analyses during RI/FS	Develop and implement IC programs that are broad in nature, such as: Develop and maintain databases/websites, GIS tools, develop and update model documents, routine inspection and/or reporting processes, address public inquiries, “call before you dig” programs, legal document repositories and other program management tasks	Develop site-specific Institutional Controls Implementation and Assurance Plans (ICIAPs) and/or IC analyses during RI/FS Conduct PRP oversight

1. The *Pipeline Allowance* is used to allocate appropriated resources for pre-construction site activities (e.g., RI/FS, design) and oversight of PRPs. The *Remedial Action Allowance* is used to allocate appropriated resources for new and ongoing remedial actions, long-term response actions, and five-year reviews.

2. Cost share may be required. See 40 CFR 35.6105(b)(2) and 40 CFR 35.6235 for more information.

Questions?

Jennifer Hovis, Chief

Construction & Post Construction Management Branch

hovis.jennifer@epa.gov

202-566-1035