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Tribal Consultation Informational Webinar - Institutional Controls in Indian Country

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

Delivered: September 12, 2012, 1:00 PM - 2:30 PM, EDT (17:00-18:30 GMT)

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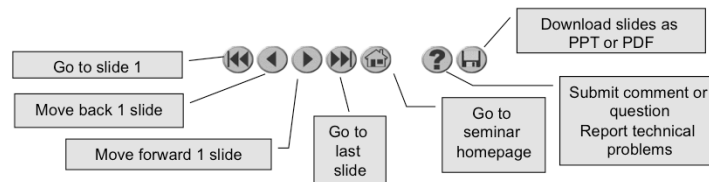
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*Visit the Clean Up Information Network online at [www.cluin.org](http://www.cluin.org)*

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# Housekeeping

- Please mute your phone lines, Do NOT put this call on hold
- Q&A
- Turn off any pop-up blockers
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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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You should note that throughout the seminar, we will ask for your feedback. You do not need to wait for Q&A breaks to ask questions or provide comments. To submit comments/questions and report technical problems, please use the ? Icon at the top of your screen. You can move forward/backward in the slides by using the single arrow buttons (left moves back 1 slide, right moves advances 1 slide). The double arrowed buttons will take you to 1<sup>st</sup> and last slides respectively. You may also advance to any slide using the numbered links that appear on the left side of your screen. The button with a house icon will take you back to main seminar page which displays our agenda, speaker information, links to the slides and additional resources. Lastly, the button with a computer disc can be used to download and save today's presentation materials.

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](http://epa.gov/tribal/consultation)
- Send comments by February 15, 2013, to:  
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**OR** [osretribalconsultation@epa.gov](mailto:osretribalconsultation@epa.gov)



## 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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