

What LUC: The State Role in Institutional Controls

John Pendergrass
Senior Attorney
Environmental Law Institute

The Many, Varied Roles of States

- Establishing Programs/Making Policy
- Cleanup Decisions that Lead to ICs
- Drafting/Designing ICs
- Implementing ICs
- Monitoring Implementation by Others
- Enforcing ICs
- Approving Modification and Termination

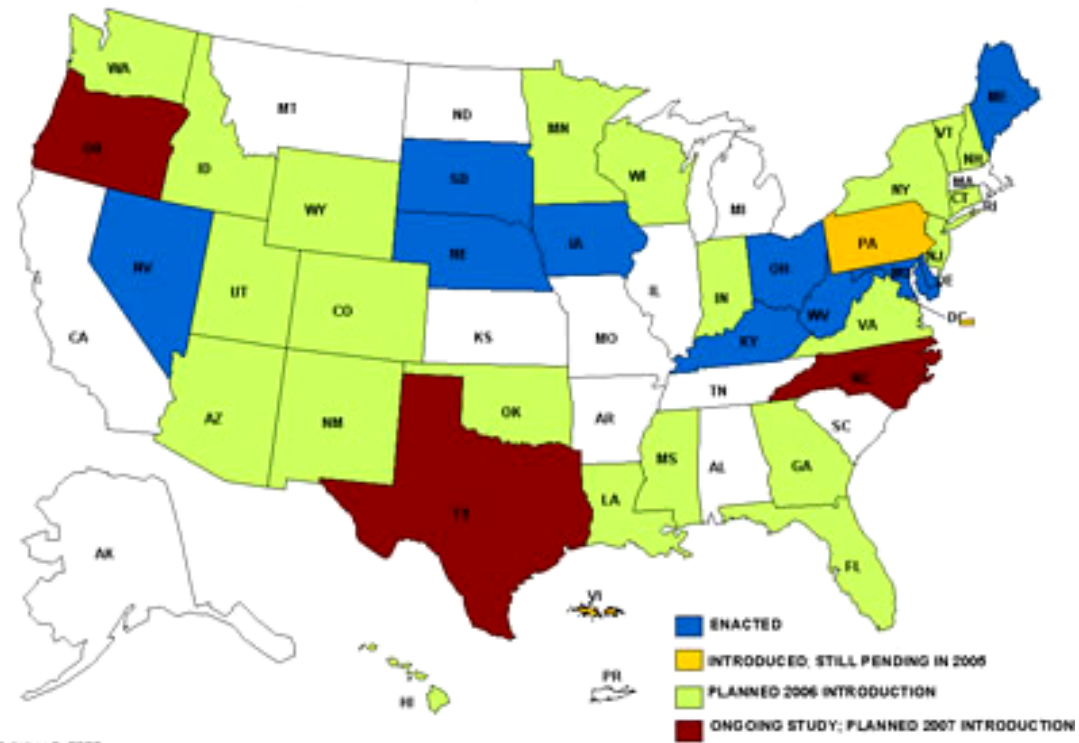
Establishing Programs

- Cleanup Programs
 - Mandatory
 - Voluntary
- Brownfield Redevelopment Programs

Making Policy

- Establishing Risk-Based Cleanup Standards
- Authorizing Institutional Controls
 - CO Sen. Bill 01-145 Environmental Real Covenants
 - Uniform Environmental Covenants Act (OH, IA, KY, ME, MD, NE, NV, SD, WY, & DE)
 - Non-statutory

UNIFORM ENVIRONMENTAL COVENANTS ACT



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Elements of a State IC Program

- Robust record keeping system
- Legally binding restrictions on the use of property, including groundwater
- Agency with responsibility for overseeing sites, including monitoring and enforcement
- Regulatory system for groundwater and soils
- Public information systems

Elements of a State Program

- Stable funding
- Coordination between government agencies with institutional control responsibilities
 - Other state agencies
 - Federal
 - Local
- System for periodic review of sites

Risk-Based Cleanup Decisions

- Cleanup decisions that allow contamination to remain at levels that preclude some use
 - Depend on institutional controls
- Institutional controls should be specified in such decisions
 - Too often left for later
 - Approve specific controls

Drafting /Designing ICs

- Begin during planning for cleanup and future land use
- Institutional controls need to deal with the unexpected
 - Future users who may not have complete information
 - Fail-safe

Direct Implementation

- Issuing warning notices (Fish advisories)
- Record keeping
 - Maintain records
 - Share information
- State-owned property

Monitoring Institutional Controls

- Tracking institutional controls (about half of states)
- Monitoring specific sites (39 states)
 - Inspection
- Review and reevaluation of institutional controls at specific sites

Enforcement

- Primary enforcement agent in most cases
 - Other governments and non-government enforcers may be allowed
- Depends on monitoring
- Results may require changes on-site or to ICs

Modification and Termination

- State agency that approved original ICs should approve any modification or termination
- Based on achieving standards for unrestricted use

States are at the Center of ICs

- Achieving the goal of institutional controls
– to protect public health and the environment – depends on effective state action throughout the process
- Also depends on other actors

Thank You

Pendergrass@eli.org

202 939-3846

www.eli.org