

# The Guardian Trust™

## *A Program for the Stewardship of Land Use Controls and Engineering Controls*

**Presented by  
Michael G. Testone  
MGP Environmental Partners LLC**

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# Land Use Controls (“LUCs”) and Engineering Controls (“ECs”)

- **Viability of LUCs (e.g. easements, deed restrictions, etc.) and ECs (caps, pump & treat systems, etc.) underlie risk-based remediation programs**
- **Failure of LUCs and ECs may cast doubt on acceptance of risk-based programs which may impede continued effectiveness of brownfields redevelopment**
- **Important public policy interest in ensuring integrity of LUCs and ECs**

# Where are we today nationwide?

- **No consistent approach to monitoring and reporting**
- **States and federal government may be restricted from taking property rights**
- **Financial and staff resources vary over administrations**
- **Remedies for breach of LUCs are not clearly defined**

# The Guardian Trust: Effective Long Term Post Closure Stewardship

- **Trust is true Public/Private partnership and is most capable to handle**
  - **Flexibility**
  - **Legal authority**
  - **Focused only on LUCs and ECs**
  - **Public Oversight**
  - **Tax Advantages for private remediators**

# Concept Origin



- **MGP, EPA, PA DEP**
- **Combine stewardship obligations with state voluntary programs**
  - **Critical mass provides advantages of pool**
  - **Advantages for private remediators to participate**
- **Programmatic solution for looming environmental issues**
  - **Superfund sites**
  - **RCRA Corrective Action sites**
  - **Brownfield sites**
  - **Other sites**

# The Pilot Study

## A Public/Private Partnership

- **EPA**
- **Pennsylvania**
- **MGP Environmental Partners LLC**
- **Pilot Study Advisory Committee Representatives:**
  - **EPA (Headquarters and Region 3)**
  - **Pennsylvania**
  - **Department of Defense, Department of the Navy**
  - **California**
  - **Maryland**

# Program Services

**The Guardian Trust will offer services that include:**

- A. Inspections of sites and land use records**
- B. Monitoring of sites, land use changes and building permits**
- C. Reporting to prescribed stakeholders**
- D. Providing financial assurance for remedy maintenance and breach**
- E. Developing a database and comprehensive information system to properly track the status of LUCs and ECs and disseminating information to stakeholders**
- F. Providing programs for local governments and other stakeholders**
- G. Assuring the maintenance and protectiveness of an environmental remedy by enforcing land use rights**

# Guardian Trust Management Process

- **Step 1:** Gather Information to Determine Scope of Guardian Trust Responsibilities and Cost to Responsible Parties
- **Step 2:** Site Acceptance Review And Approval for Inclusion into Trust
- **Step 3:** Institutional Controls (LUCs and ECs) Performance Assurance
- **Step 4:** Breach Response and Cure Notification



# STEP 1: Gather Information

- Site Submitted for Review
- Obtain and Review Key Documents (e.g. Consent Order, ROD, etc.)
- Visit Site
- Determine Stewardship Objectives
- Underwriting & Pricing

# Step 2: Site Acceptance Review & Approval

- Completion of Site Acceptance Review Form
- Regulatory Agency Input/Approval
- Review and Approval by Trust
- Execution of Site Acceptance Agreement
- Input of Baseline Data
- Funding of Trust

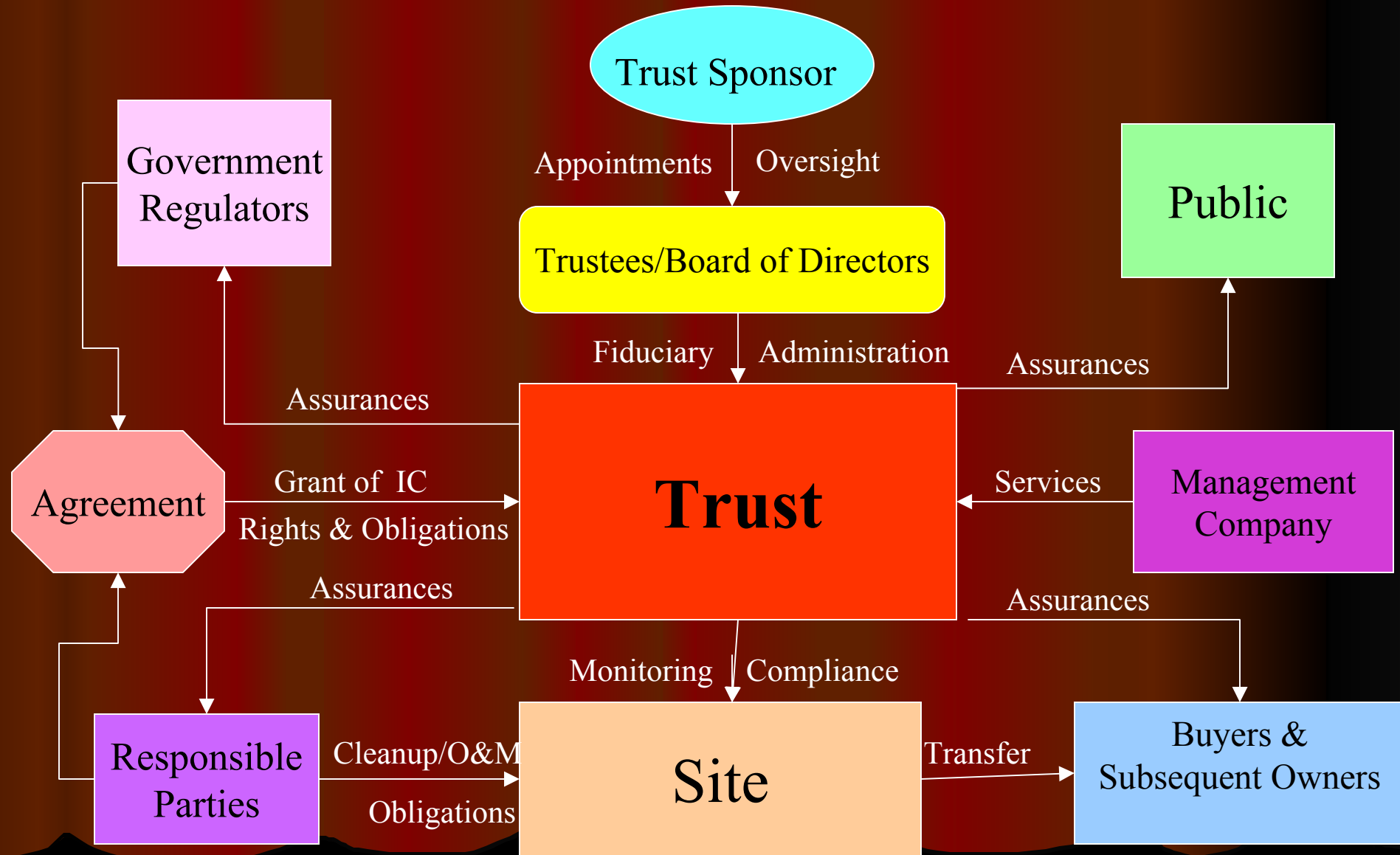
# Step 3: Performance Assurance

- File/Confirm Filing of LUCs
- Periodic Inspections
- Update IC Implementation Plan & IC O&M Plan (as necessary)
- Yearly IC Performance Reports
- Five Year Performance Reviews
- Database Maintenance

# Step 4: Breach Response

- Notification of Breach to Responsible Parties
- Notification of Breach to Other Stakeholders
- Regulatory Confirmation of Cure
- Notification of Cure
- Database Update

# Relationship Model



# Key Advantages of The Guardian Trust

- **Public/Private partnership allows for ongoing public oversight and private management expertise**
- **Pooling of properties enables most favorable pricing and risk sharing for program participants**
- **Disciplined stewardship and enhanced institutional memory**
  - ❖ **Physical inspections of property and land use records**
  - ❖ **Automatic notices to land-use decision makers**
  - ❖ **Can interface and support state registries with updates**
- **Trust can address breach of IC without triggering re-opener or other regulatory action**
  - ❖ **Liability neutral third party**
- **Funds placed outside reach of political process**
- **Provides first alert of remedy breach and cure confirmation**

# Guardianship



Core Functions

Stakeholders<sup>15</sup>

# The Guardian Trust

*There would be no brownfields development without risk-based cleanups.*

*There will be no risk-based cleanups without sustainable land use and engineering controls.*