
Designing Institutions to Track Institutional Controls

Building The “Institution” for ICs

Presented by

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DPRA Incorporated

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An IC Institution?

*The only problem with Institutional Controls is that there's **no institution and no controls.***

- Does an Institution Exist for Institutional Controls?
- Why Do We Need an IC Institution?
- What Should an IC Institution Do?
- Where Are we Now?

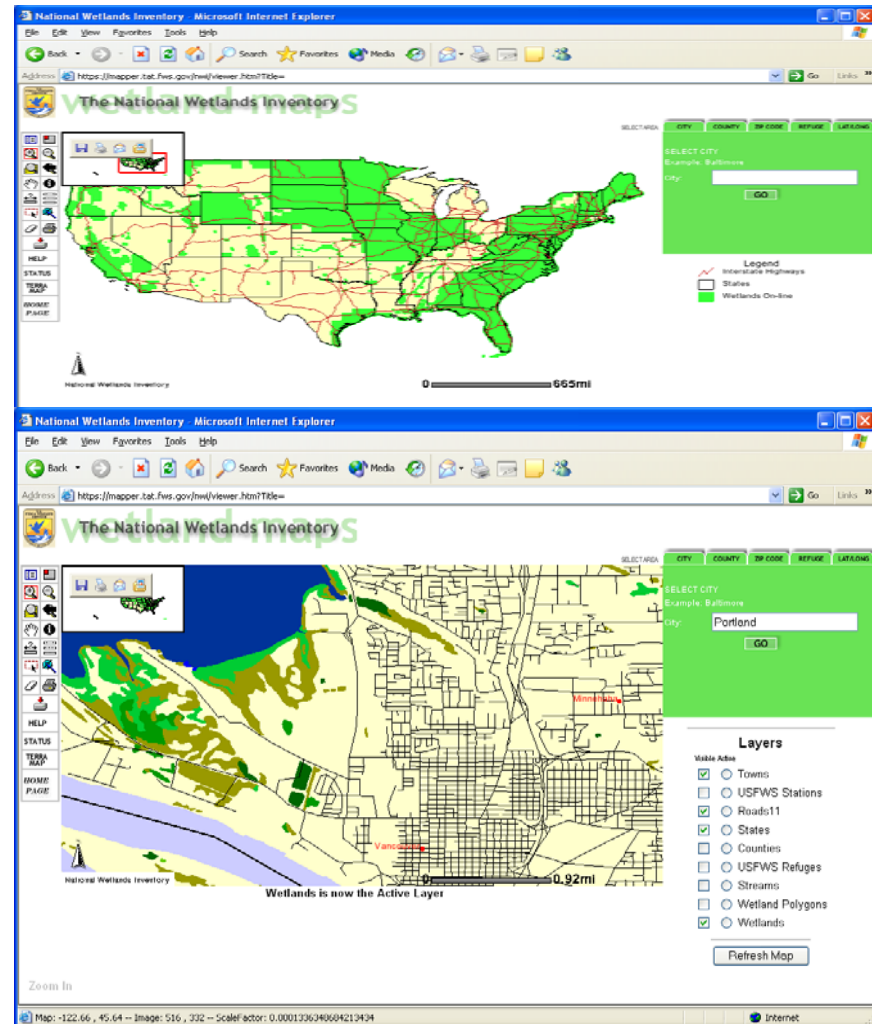
Overview

- Other “Institutions” that Serve a Public Purpose – Their Common Elements.
- Unique Challenges for Building an IC Institution.
- Which “Pre-IC” IC-Related Information Managements Systems Already Exist – How Do They Measure Up to the Unique Challenges.
- The Vision for the Direction of the Building IC Institution

Other Institutions

The "Institution" for Wetland Protection

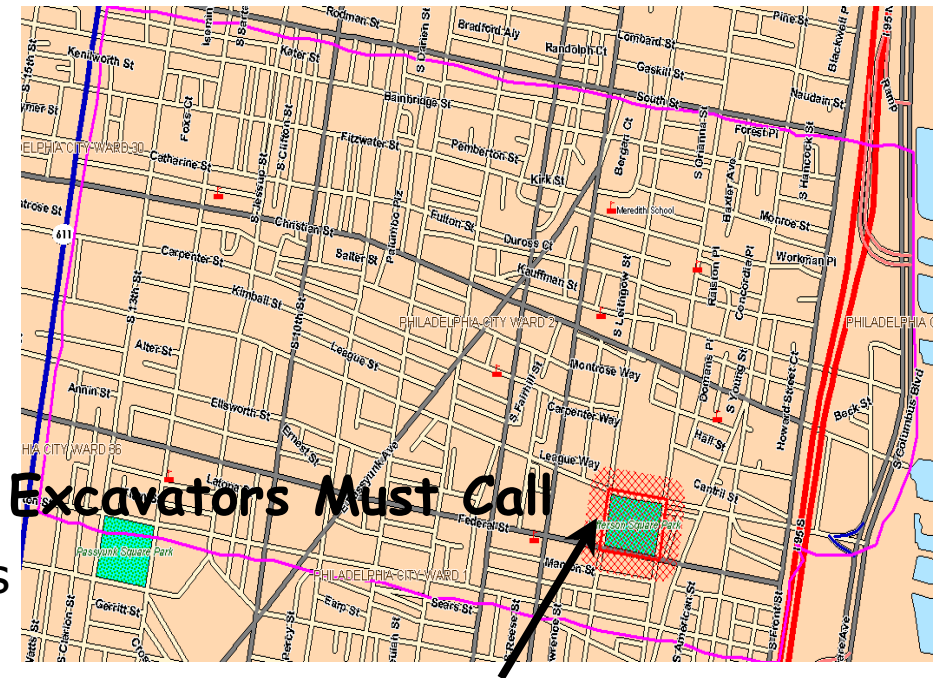
- **Purpose:** Protect Dredge & Fill of Wetlands
- **Definition:** Statutes, Courts, Wetland Delineation Manual.
- **Info Management:** GIS-Based Inventory
- **Enforceable Rules:** CWA 404 Permitting Scheme
- **Compliance Assurance:** Permit Enforcement
- **Inter-Governmental Cooperation**



Other “Institutions”

One Call Before You Dig

- **Purpose:** Provide Damage Prevention Service for Underground Utilities.
- **Definition:** Underground Lines are Statute-Defined
- **Enforceable Rules:** State Statutes Require Underground Facility Owners to Join & Excavators to Call.
- **Compliance Assurance:** One Call Prevention Process, Threat of Liability
- **Outreach:** Advertising & Promotion



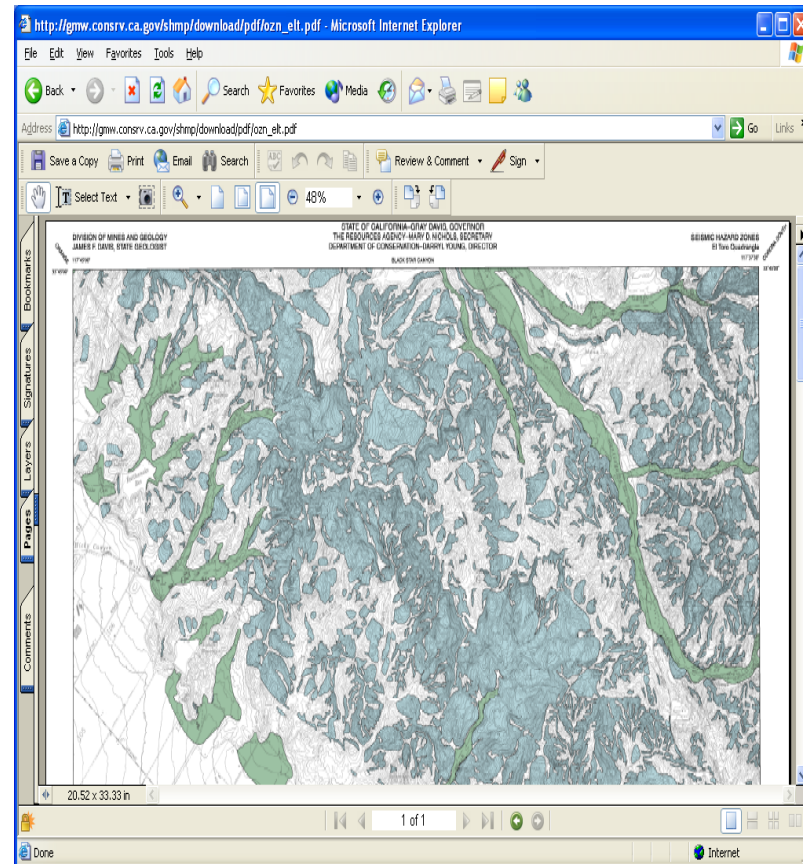
State One Call Systems Maintain A Library of “No Dig” Areas

Underground Line Owners Mark Lines Within 2-3 Days

Other “Institutions”

Seismic Zone Protection

- **Purpose:** Protect Public From Earthquake-Related Hazards. Discourage/Regulate Development in Seismic Zones.
- **Definition:** Seismic Mapping Guidelines
- **Enforceable Rules:** Mapping Required by the Seismic Hazards Mapping Act. Duty to Disclose Seismic Zone to Buyers.
- **Inter-Government Cooperation:** Cities and Counties Must Consult the Map Prior to Project Approval.

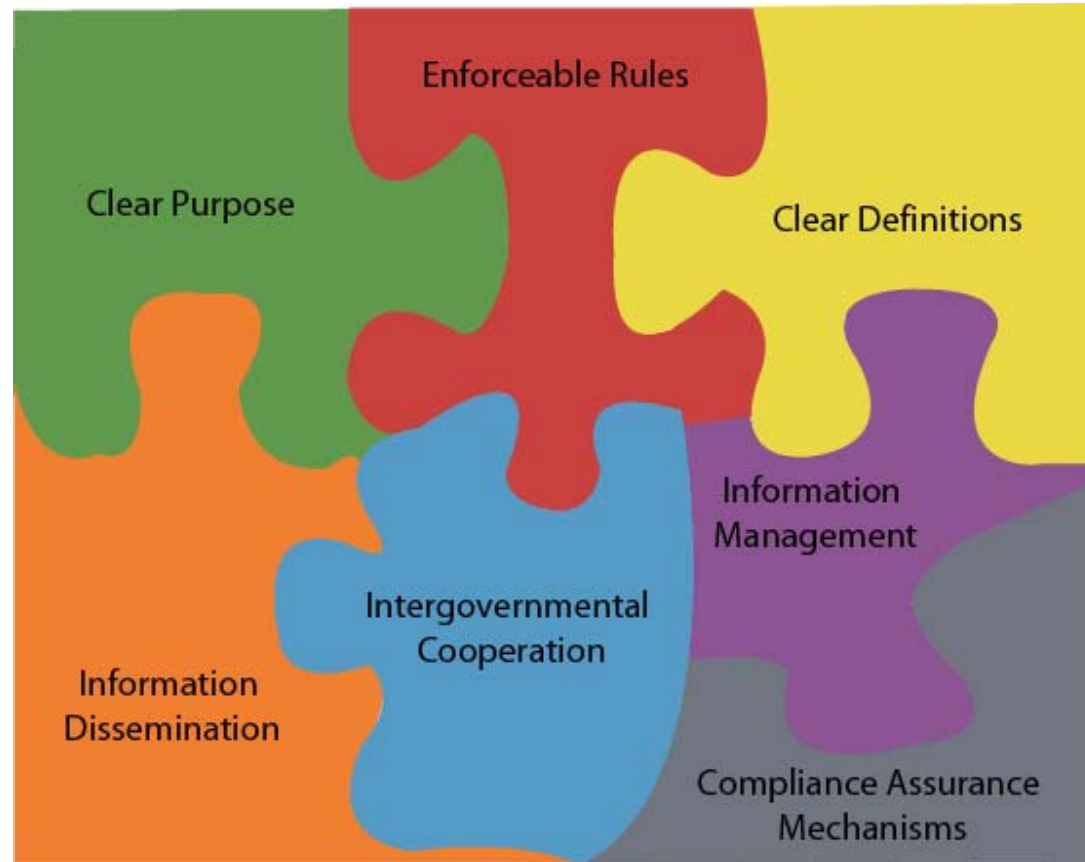


Other Institutions

Examples of Other Public “Institutions”

- SDWA Source Water Assessment Program (SWAP) & Sole Source Aquifer Program
- National Historic Preservation
 - National Register of Historic Resources
 - State Historic Preservation Officer Consultation
- Floodplain Management
- See Jay Pendergrass, ELR News & Analysis (Mar. 1996).

Common “Institution” Elements





Clear Purpose

The IC Institution

*The Purpose - It Depends
Which Users You Ask.*

- *Government*
- *Responsible Parties*
- *Property Developers*
- *Interested Public*
- *Local Planners & Permit Writers*

Unique Challenges

- Responsible Party/Environmental Agency Relationship (Who Pays?)
- Impact on Property Redevelopment (e.g., BFPP Rules)
- The Scope v. Reliance on Existing Institutions.

Clear Definitions

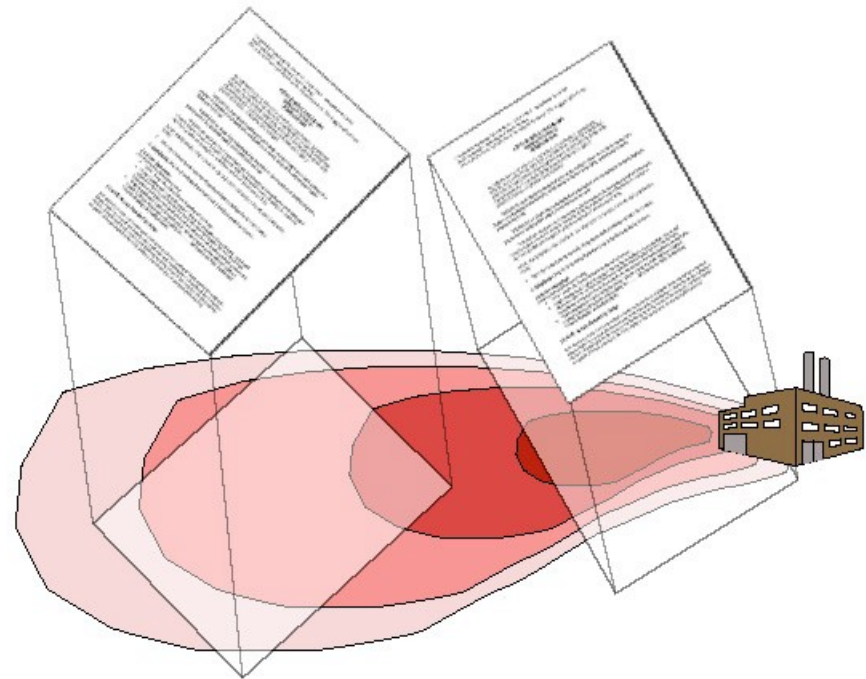
The IC Institution

Clear Definitions

Current Definitions

- IC vs. LUC vs. AUL – not a big deal.
 - Legal/Administrative Mechanism Designed to Prevent Exposure or Destruction of Remedy Apparatus
- Implemented vs. Non-Implemented ICs.

Unique Challenges





The IC Institution

Enforceable Rules

The Rules

- Proprietary Controls (Covenants/Easements)
- Government Controls (Zoning Ordinances, Local Legislation)
- Enforceable Agreements (Consent Agreements, Orders, Permits)
- Informational Devices

Unique Challenges

- Proprietary Rules May Not Be Enforceable – but see the Model UECA.
- Enforcement Authority Lies With A Separate Entity

The IC Institution

Compliance Assurance



Compliance Assurance

Compliance Assurance Mechanisms

- Municipal Code Enforcement
- Title Searching Provides Notice
- Deed Restriction Enforcement
- Environmental Cleanup Liability
- Environmental Agency Monitoring
- 3rd Party Monitoring

Unique Challenges

- Reliance on Pre-Existing Institutions Which Did Not Historically Contemplate Human Health Protection.
 - Deed Restrictions & Property Recording are Transaction Oriented (the “Cloud Title” issue)
 - Government Control Enforcement not Commensurate with the Demands of ICs
 - Code Enforcement Studies Suggest Problematic Enforcement
- Getting the Right Information to the Right People at the Right Time.
- Enforcement Resolve/Resources Exists Within Separate Agencies.



**Intergovernmental
Cooperation**

The IC Institution

Intergovernmental Cooperation

The Issue

- At any Given Cleanup Varying Levels of Government & Government Agencies Play an IC-Related Role.

Unique Challenges

- Coordinating IC Sub-Institutions to Make a Single IC Institution.
- This Might Be the Biggest Challenge that Exists

The IC Institution

IC Information Management



Information
Management

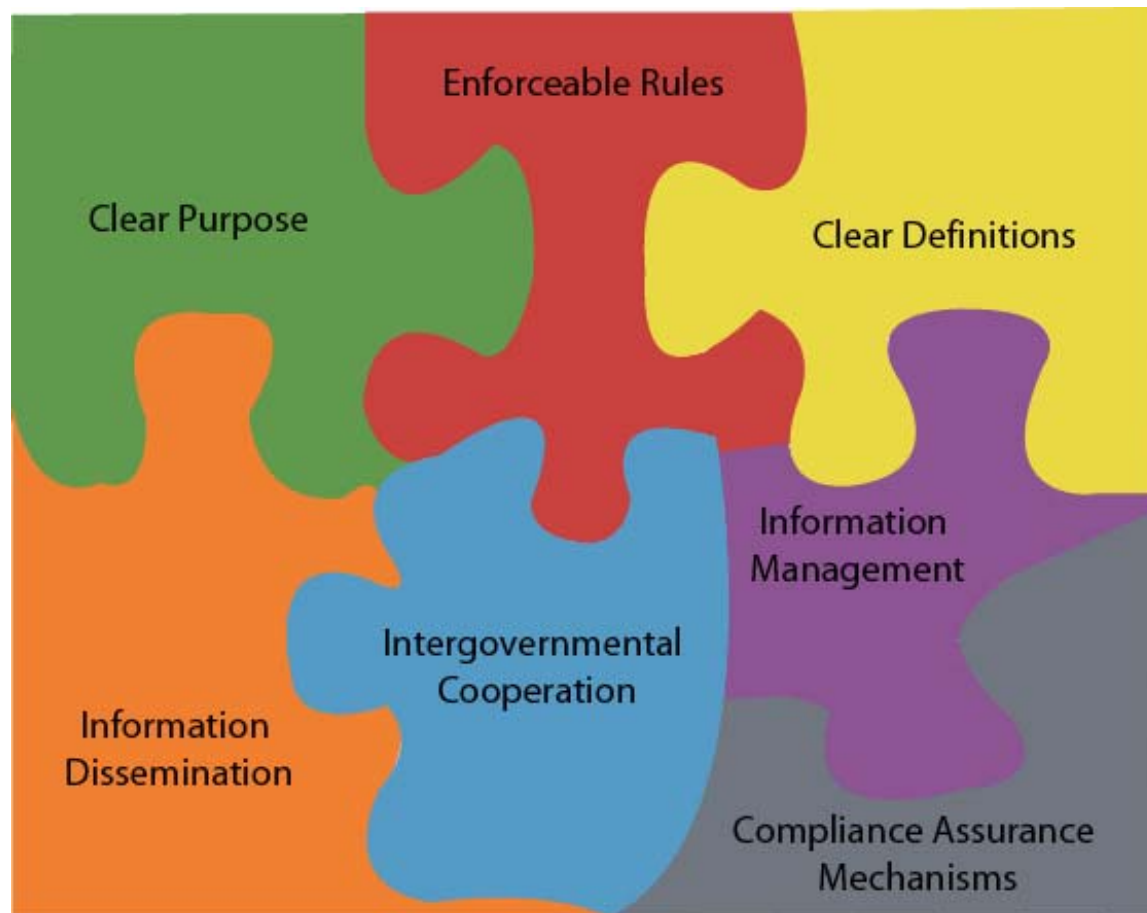
Existing IC Information Management

- Property Recording Offices
- Municipal Codes
- Environmental Agency Cleanup-Related Documents
- IC-Specific Information Management Systems

Unique Challenges

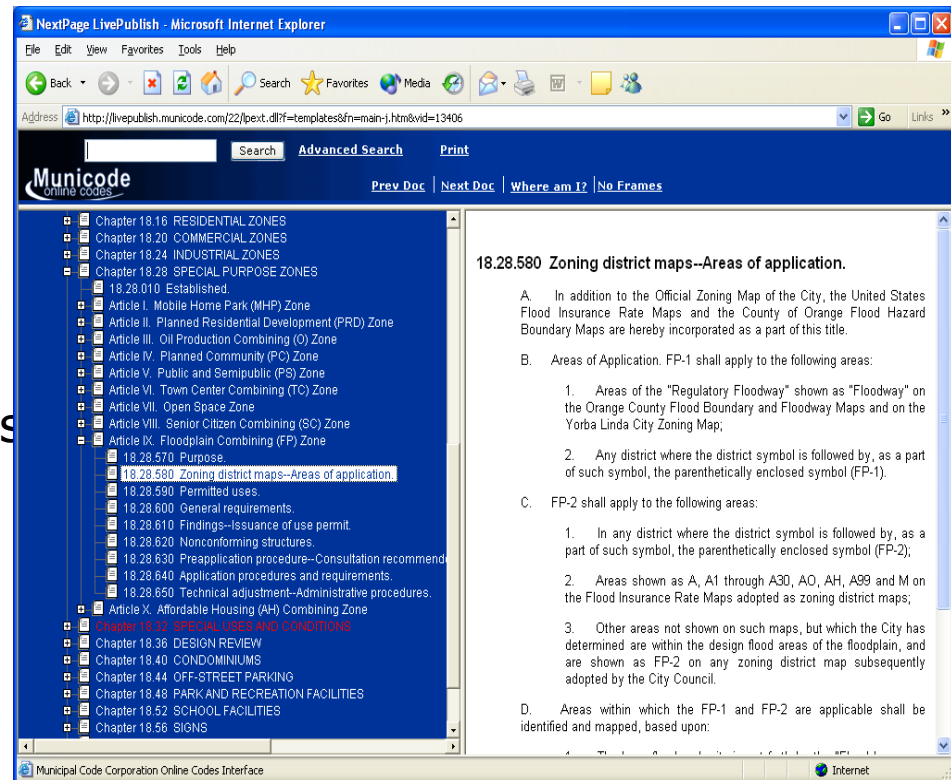
- Tailor the Existing Institutions More Directly Towards IC Issues, Without Duplicating Efforts.
- IC Information Management is Evolving Along With an Evolving IC Institution.

A Closer Look at Existing IC-Related Institutions



Existing IC Information Management Municipal Codes

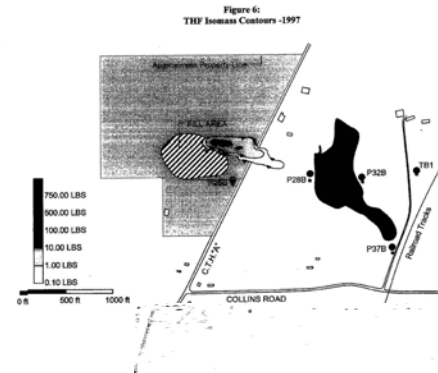
- Online Access to Municipal Codes Exists
- County Clerk, Land Use Planning Agency, County Library.
- Detailed/Burdensome Process



Existing IC Information Management.

Environmental Cleanup Documents

- Good Record of Exposure & Risk Assumptions.
- Often Do Not Provide a Good Discussion About the IC Required.
- Generally, No Ready Access
- Voluminous, Highly Technical



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
 IN THE MATTER OF :
 CALDWELL TRUCKING COMPANY SITE :
 CALDWELL TRUCKING COMPANY :
 THE CARBORUNDUM COMPANY :
 COOPER INDUSTRIES, INC./ :
 MCGRAW EDISON, INC. :
 ✓ CURTISS-WRIGHT CORPORATION :
 E.I. DUPONT DE NEMOURS & COMPANY :
 FLUID CONDITIONING PRODUCTS, INC. :
 KEARFOTT GUIDANCE & NAVIGATION :
 CORPORATION, INC. :
 OKON CORPORATION :
 REXON TECHNOLOGY CORPORATION :
 I/A/ REMM CORPORATION/ :
 LITTLE FALLS LTD :
 SCHERING CORPORATION/ :
 SCHERING-PLOUGH CORPORATION :
 SCOVILL, INC. :
 -----X

Respondents,

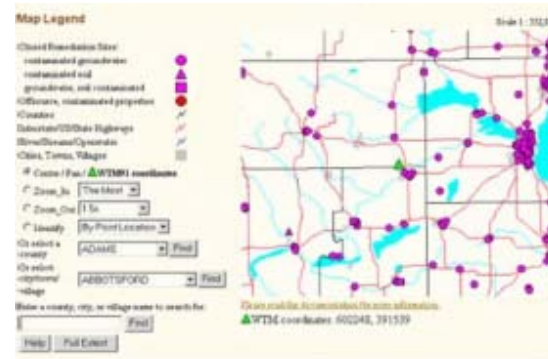
Proceeding Under Section 106(a)
 of the Comprehensive Environ-
 mental Response, Compensation
 and Liability Act, as amended,
 42 U.S.C. 9606(a).

ADMINISTRATIVE ORDER
 Index No. II-CERCLA-
 93-0102

Existing IC Information Management

State IC Tracking Efforts

- About ½ of the States Expressly Track IC Use
 - Varied Breadth
- Not Typically Injected Into the Local Permitting Process.
- Tracking Protocol Not Standard Among States – Not Yet.



Document Number: GROUNDWATER USE RESTRICTION

Declaration of Restrictions

In Re: Lots 1 and 2, Certified Survey Map 3176, recorded in Volume 12 of Certified Survey Maps, page 211, Document No. 1621369, in the Village of Mt. Pleasant, except lands conveyed by Warranty Deed dated 10/4/92 and recorded 10/12 in Volume 18128 of Records, page 1, Document No. 2330789 in the Village of Mt. Pleasant, Dane County, Wisconsin

STATE OF WISCONSIN 2
COUNTY OF DANE 2 00

WHEREAS, James T. Curran is the owner of the above-described property;

WHEREAS, one or more previous discharges have occurred at this property. Petroleum related volatile organic compound contaminated groundwater above NR 140 enforcement standards exists on this property at the following location(s): business contaminated groundwater exists at the location of monitoring well MW-5.

WHEREAS, it is the desire and intention of the property owner to impose on the property restrictions which will make it unnecessary to conduct additional soil or groundwater remediation activities on the property at the present time.

WHEREAS, natural attenuation has been approved by the Department of Natural Resources to remediate groundwater exceeding the NR 140 groundwater standards within the boundaries of this property.

WHEREAS, construction of wells where the water quality exceeds the drinking water standards in ch. NR 809 is restricted by ch. NR 811 and ch. NR 822. Special well construction standards or water treatment requirements, or both, or well construction prohibitions may apply.

NOW THEREFORE, the owner hereby declares that all of the property described above in full and shall be held, conveyed or encumbered, leased, rented, used, occupied and improved subject to the following limitations and restrictions:

Anyone who proposes to construct or reconstruct a well on this property is required to contact the Department of Natural Resources' Bureau of Drinking Water and Groundwater, or its successor agency, to determine what specific requirements are applicable, prior to constructing or reconstructing a well on this property. No well may be constructed or reconstructed on this property unless applicable requirements are met.

Recording Area

Name and Return Address
MERC & ANDERSON, S.C.
250 Corporate Drive
Madison, Wisconsin 53714

48-5610-527-5151-3
Parcel Identification Number (PIN)

The IC Institution

The Future Vision

- Purpose
Protect Public from Environmental Exposure While Facilitating Redevelopment
- Definitions
Cover Both the IC Instrument and the Actual Risk.
- Enforceable Rules
UECA Will Take Hold to Cover Single or Few Parcel Contamination & Government Ordinances Will Become Increasingly Tailored.

The IC Institution

The Future Vision

- Intergovernmental Coordination

The LUCIP Model Will Take Hold. Local Governments Will Come To Welcome ICs.

- Compliance Assurance

Quantify the Cost of IC Stewardship. State's Will Develop IC Permit Program. Real Time Monitoring for IC Conflicts Required, 3rd Party-Provided Leveraging Existing Institutions Such As One Call and Property Recording Information. Government Agency Will Perform Routine Auditing.

IC Institution The Future Vision

- IC Information Management

IC Data Sharing Standards Will Exist – Heavy GIS Emphasis. Portal Will Exist Where Government Agencies Share IC Information & Where Users Can One-Stop Shop.

Environmental Agencies will Keep Track of their Covenants, and Local Ordinances – focusig on the Exposure Control Issue, and Auditing Programs.

3rd Party Providers Will Inject “for Pay” Services Into the Information Management System On Behalf of Responsible Parties.