



POLICY ON LAND USE CONTROLS ASSOCIATED WITH ENVIRONMENTAL RESTORATION ACTIVITIES

Ensuring that the Department of Defense (DoD) property is environmentally safe at transferring property and at active installations is an important goal of DoD's environmental restoration program. Land use controls (LUCs) are tools used to continue protecting human health and the environment after the completion of the risk-based cleanup.

DoD wants to ensure that uses of property remain compatible with cleanup decisions and future land use. On January 17, 2001, DoD developed the *Policy on Land Use Controls Associated with Environmental Restoration Activities* to provide a DoD framework for implementing, documenting, and managing LUCs for real property being transferred out of Federal control and active installations.

WHAT ARE LAND USE CONTROLS?

LUCs include any type of physical, legal, or administrative mechanism that restricts the use of, or limits access to, real property to prevent exposure to contaminants above permissible levels. The intent of using these controls is to protect human health, the environment, and the integrity of an engineering remedy by limiting the activities that may occur at a particular contaminated site. The three types of LUCs are described below.

- Physical Mechanisms include a variety of engineered remedies to contain or reduce contamination, and/or physical barriers intended to limit access to property such as fences and signs.
- Legal Mechanisms include restrictive covenants, negative easements, equitable servitudes, and deed notices that are meant to ensure the continued effectiveness of land use restrictions imposed as part of a remedial decision.
- Administrative Mechanisms include notices, adopted local land use plans and ordinances, construction permitting or other existing land use management systems that may be used to ensure compliance with use restrictions.

WHAT ARE THE REQUIREMENTS FOR IMPLEMENTING LUCs AT BOTH TRANSFERRING PROPERTY AND ACTIVE INSTALLATIONS?



FEASIBILITY STUDIES - For Feasibility Studies initiated after October 31, 2000, a remedy that will require LUCs must include the cost of implementing and maintaining a LUC, as well as an evaluation of an "unrestricted use" alternative. These analyses will enable decision-makers to consider cost in the remedy selection process. Feasibility Studies in progress on or before October 31, 2000 should attempt to conform to the same analysis.



DECISION DOCUMENTS - Environmental decision documents for remedies with use restrictions should describe:

- The exposure scenario used to select the remedy
- The assumptions made concerning current and reasonably anticipated future land uses
- The allowable or prohibited uses of the property and the specific LUCs to be implemented.

If the decision is to take no further action, a Record of Decision/ Decision Document must also be prepared and contain:

- An outline of the rationale behind the decision
- Relevant exposure assumptions

We welcome and invite your comments on this fact sheet as we seek to improve the information provided.

Please send comments to:

Office of the Assistant Deputy Under Secretary of Defense for Environment/Cleanup
3400 Defense Pentagon
Washington, DC 20301-3400

You can find this fact sheet and other information on DoD's Environmental Cleanup Office Web site:

<http://www.dtic.mil/envirodod>



DEFENSE ENVIRONMENTAL RESTORATION PROGRAM FACT SHEET

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- Documentation of the reasonably anticipated future land use
- A description of existing land use restrictions that were used to make the determination.



LUC IMPLEMENTATION - DoD Components should use control mechanisms and incorporate LUCs into land use management processes.

To accomplish this, the Components should:

- Use a layering strategy or as system of mutually reinforcing controls
- Describe their LUCs strategy delineating the responsibilities of all parties involved in implementing the LUCs.

Components should not use the Defense-State Memoranda of Agreement (DSMOA) to pay for monitoring, enforcement, or managing LUCs by state regulatory agencies.



LUC DATABASE - Components should maintain a central database of properties restricted by LUCs. The database should include the following:

- Information on the property
- Types of LUCs established
- DoD land use monitoring and management responsibilities
- Location of real estate records.

For transferring property, components should make property and LUC information available to existing state or local government database or use restriction registry.



LUC MODIFICATION / TERMINATION - LUCs shall be modified or terminated through the same process used to establish the LUC. If the LUC is terminated, the LUC should be

deleted from its original record (e.g., Installation Master Plans, Construction/ Planning documents). In addition, the layering mechanism, if used, must be undone to avoid future confusion.

There are cases where a LUC's modification or termination does not require an amendment to the decision document. However, if the decision document does need to be amended, the Components should obtain the same level of regulatory review as when first establishing the LUC.



MEMORANDUMS OF AGREEMENT/ UNDERSTANDING (MOA/MOU) - There

is no legal requirement to establish an MOA for LUCs at active installations and these documents should not be routinely used, but in certain circumstances, they may be needed to facilitate effective LUC implementation. Any **voluntary** agreement should:

- Be drafted after the remedy with LUCs has been selected
- Be consistent with existing law
- Address only specific sites where LUCs will be employed and not the installation as a whole.

These agreements are subject to a 72-hour Office of the Secretary of Defense and Component review.



FEDERAL AGENCY-TO-AGENCY PROPERTY TRANSFERS - The receiving agency will

be responsible for management of LUCs. In addition, the Component transferring the property should notify the receiving agency of the need to inform the local government of the LUCs.

CONCLUSION

The *Policy on Land Use Controls* is intended to ensure that DoD's land use management responsibilities are consistent with environmental restoration decisions. This policy is not intended to provide guidance on how to select a remedy but rather, how to implement remedies that incorporate land use controls. By instituting the Policy, DoD remains committed to addressing the issues associated with LUCs and ensuring that continued use of the property remains protective of human health and the environment.