

Institutional Controls:

*Everything You've Ever Wanted
to Know but Were Afraid to Ask*



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Defining Institutional Controls (ICs)

What

- Legal and administrative tools (e.g. legal documents) used on sites with soil, groundwater, or soil vapor contamination

Why

- Protect human health, welfare, and the environment
- Minimize possible exposure to contamination
- Protect integrity of a response action

How

- Place limits on land or resource use
- Provide information to guide human behavior



Types of Institutional Controls



Government Controls

Proprietary Controls

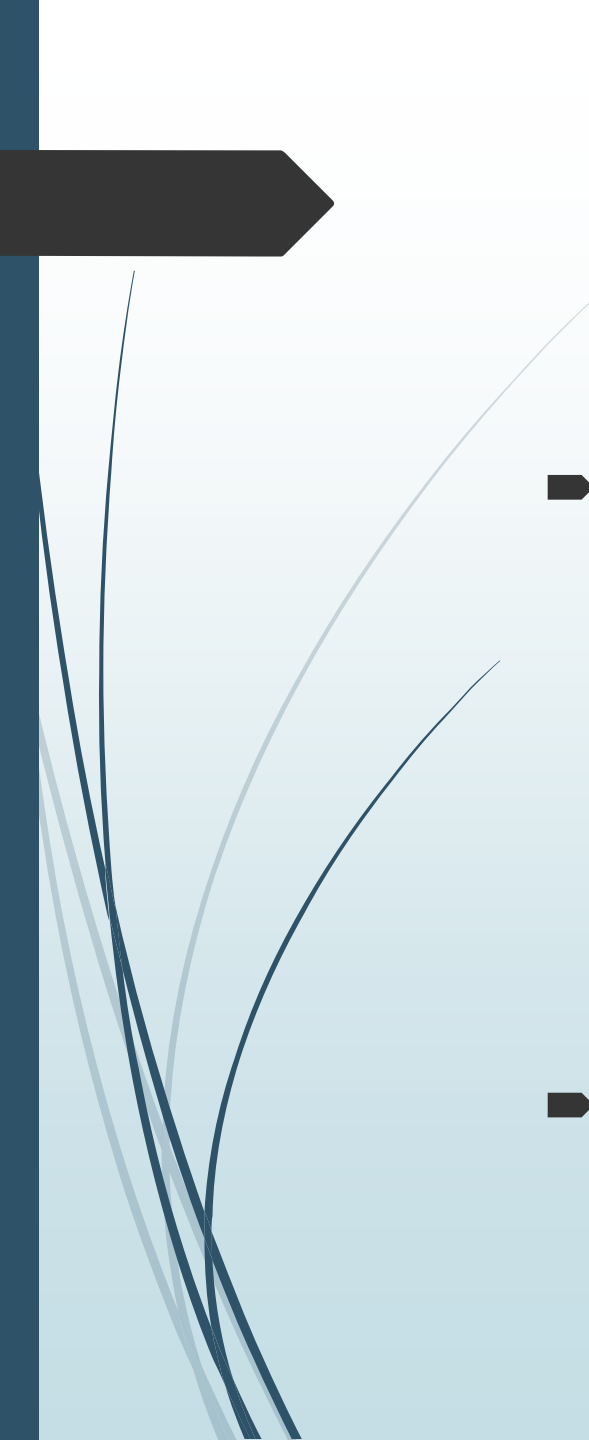
Enforcement and Permit Tools

Information Tools



Evolution of Institutional Controls

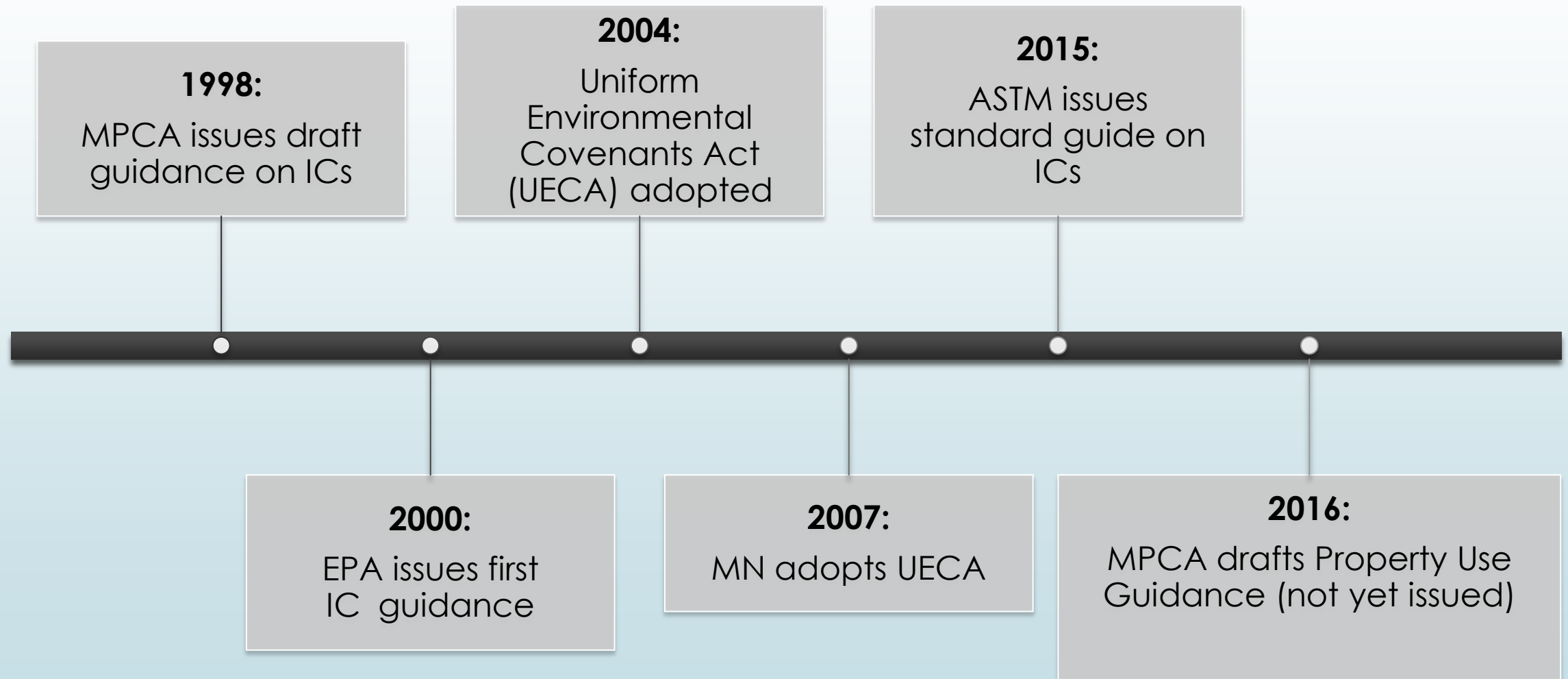
- **Uniform national approach to ICs initially promoted by EPA and DOD to encourage risk-based cleanups:**
 - Remedial actions at polluted sites lengthy and expensive
 - Business reluctant to develop contaminated sites
 - ICs encouraged remediation and provided a tool to address residual contaminants
- **Needed to address common law deficiencies in long-term enforceability of environmentally-derived land use restrictions**



Uniform Environmental Covenants Act (UECA)

- **National Conference of Commissioners on Uniform State Law developed and adopted UECA to provide:**
 - uniform, systematic approach to implementing ICs for risk-based cleanups
 - clear rules for controlling the use of contaminated property while allowing real estate ownership transfers, subject to those controls
- **25 states/territories have adopted UECA; others already had similar laws in place (some have taken different approach)**

Institutional Control Timeline



INSTITUTIONAL CONTROLS USED WHEN...

- **Contaminants remain onsite, limiting scope of safe activities** (i.e., the site cannot support unlimited use or unrestricted exposure)
- **Remedial actions/equipment remain on-site**
- **Needed to protect the integrity of the response action**

Timing of IC use can vary:

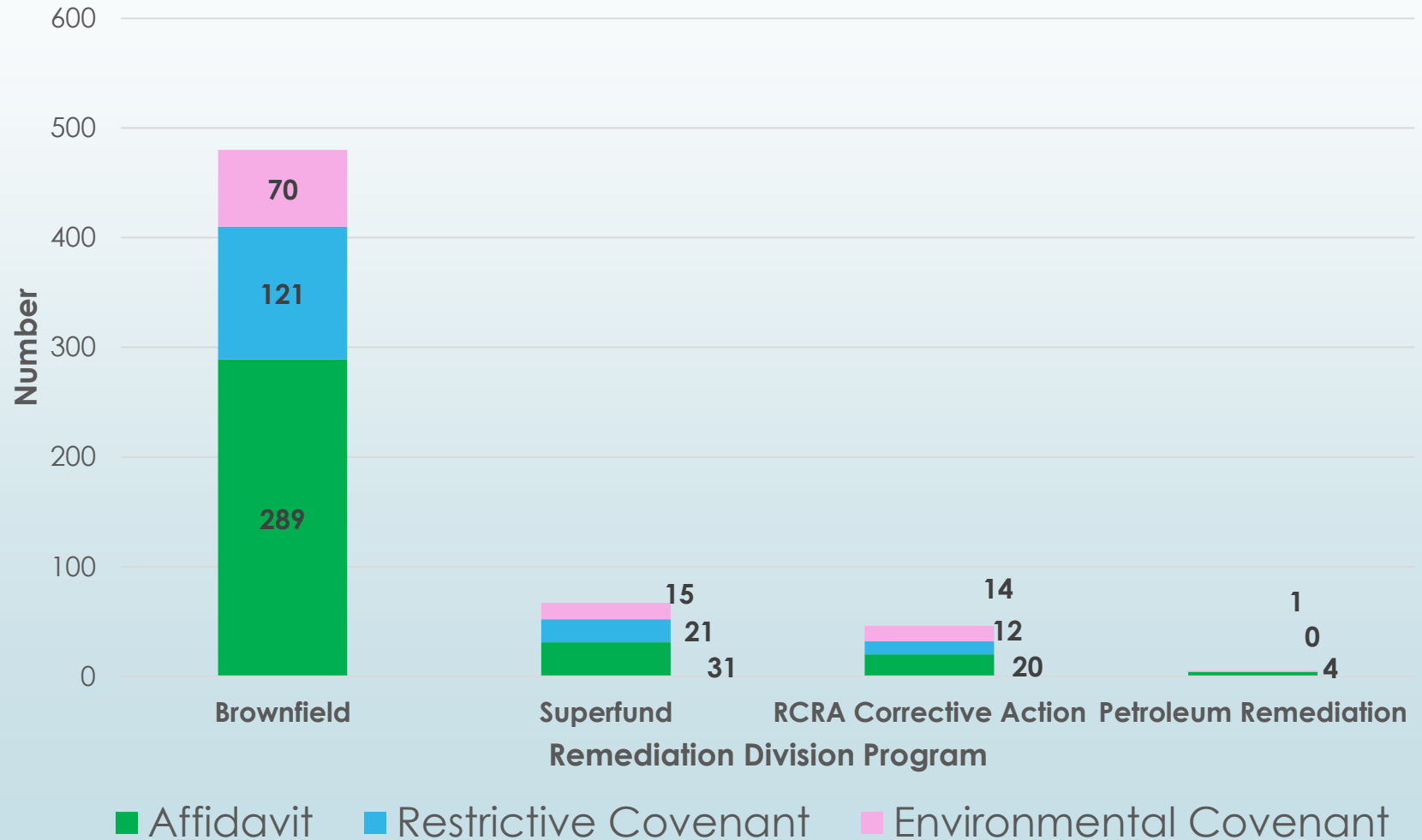
When
contamination first
discovered - to
protect people
during investigation

When cleanup
work is ongoing

When
contamination
remains on-site as
part of remedial
action

MPCA IC Tracking

MPCA Remediation Division Institutional Controls



MPCA IC Registry – Where is it?

- ➡ A list/registry of MPCA Remediation Division ICs is kept on the MPCA's Brownfield Program webpage:
<https://www.pca.state.mn.us/waste/brownfields>

For non-petroleum contaminated sites included in the Superfund and Voluntary Investigation and C

- [Dianne Mitzuk](#), 651-757-2573

For petroleum-contaminated sites:

- [Shellie Brunner](#), 651-757-2053
- [Lupe Verduzco](#), 651-757-2799

Response actions and institutional controls

- [Response actions completed in FY2017 \(c-vic2-08\)](#)
- [Response actions planned for FY2018 \(c-vic2-09\)](#)
- [Remediation sites with institutional controls as of January 15, 2018 \(c-vic2-10\)](#)
- [Remediation sites with institutional controls as of January 15, 2018 \(c-vic2-10\)](#)

Contact us

651-296-6300 or 800-657-3864

- Email us
- Staff directory
- Regional offices

Environmental emergencies (24 hrs)
800-422-0798

Social

-  Facebook
-  Twitter
-  YouTube

Sign up for **Gov Delivery** emails on many MPCA topics

MPCA IC Registry – What's in it?

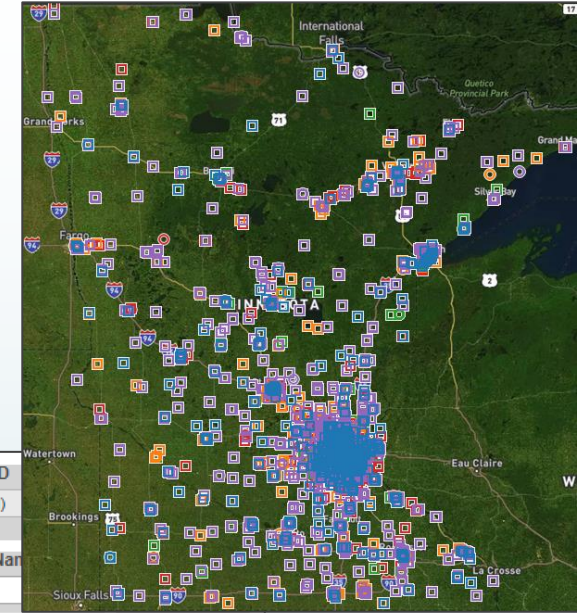
- New MPCA database → our IC data is improving
- Old ICs being scanned; data being entered & checked:

Site ID	IC Type	IC Address	Acreage
PINs/PIDs	Record Number	Signed Date	Recorded Date
Inspection Dates	Comments	Latitude/Long.	Site Info

AI ID	Site ID	Site Name	Activity ID	Control Type	SI	SI designation	IC address	Acre	Parcel(s)	IC
16 191756	VP8740	Department of Revenue	SIW19970001	Affidavit - Contaminated Property	AREA-3	IC-VP8740	See location description, Saint Paul, MN 55101 - Ramsey County			
17 1543	MND022888143	Determan Welding and Tank Service, Inc.	SIW19990001	Restrictive Covenant	AREA-7	IC-MND0228881	1241 72nd Ave NE, Fridley, MN 55432 -			
18 193642	VP14222	Diamond Products Co. #3	SIW20010002	Restrictive Covenant	AREA-8	IC-VP14222	310 5th St E, Saint Paul, MN 55101 - Ramsey County			
19 194164	VP25861	DM & IR Proctor South Yard #2	SIW20100001	Environmental Covenant	AREA-3	IC-VP25861	329 2nd St, Proctor, MN 55802 - St. Louis County			12
20 104340	VP11710	DM & IR Railroad (Chisholm Industrial Park)	SIW19990003	Affidavit - Contaminated Property	AREA-7	IC-VP11710	602 Industrial Dr, Chisholm, MN 55719 - St. Louis County	8	PIN(s) 020-0082-00010	98
21 185839	VP2531	DNR/Bayport Prison Dump	SIW19980001	Affidavit - Contaminated Property	AREA-5	IC-VP2531	See location description, Bayport, MN 55003 - Washington County		PIN(s) 1502920140002	32
22 31487	VP11691	Doc's Auto Salvage #2	SIW19990001	Restrictive Covenant	AREA-6	IC-VP11691	580 8th Avenue North, Minneapolis, MN 55411 - Hennepin County	0.67	PIN(s) 2202924230148	36
23 31487	SR0001301	DOC'S AUTO SALVAGE (SF)	SIW19990004	Restrictive Covenant	AREA-7	IC-SR1301	519 10th Ave N, Minneapolis, MN 55411 - Hennepin County			
24 188429	VP18851	Don's Leather Cleaning (Former) #2	SIW20040001	Affidavit - Contaminated Property	AREA-3	IC-VP18851	4308 E Lake St, Minneapolis, MN 55406 - Hennepin County	0.1	PIN(s) 3102923440176	90
25 196222	VP4930	Driftwood Apartments	SIW19950001	Restrictive Covenant	AREA-3	IC-VP4930	101 - 135 E 59th St, Minneapolis, MN 55419 - Hennepin County			
26 91702	BF0000338	Drywall Supply, Inc.	SIW20170001	Environmental Covenant	AREA-3	IC-BF0000338	9700 13th Ave N, Plymouth, MN 55441 - Hennepin County	3.58	PIN(s) 25-118-22-44-0003	10
27 65327	VP14230	Duluth Glass & Mirror Co.	SIW20010001	Affidavit - Contaminated Property	AREA-5	IC-VP14230	2304 W Superior St, Duluth, MN 55806 - St. Louis County	0.33	PIN(s) 010-1120-02910	98
28 3845	VP26130	Duluth Spring	SIW20100001	Affidavit - Contaminated Property	AREA-3	IC-VP26130	300 Canal Park Dr, Duluth, MN 55802 - St. Louis County		PIN(s) 010-2480-00190	92
29 191582	VP4140	Duluth, Winnipeg & Pacific RR	SIW19950001	Affidavit - Contaminated Property	AREA-2	IC-VP4140	vic. of Polk St & 68th Ave W, Duluth, MN 55807 - St. Louis County	55	PIN(s) 010-2744-00010	11
30 207711	SR0001005	Ecolotech	SIW19980001	Restrictive Covenant	AREA-3	IC-SR1005	Front & Jameson Sts, Saint Paul, MN 55103 - Ramsey County			
31 186004	VP13790	Ecolotech Warehouse	SIW20000001	Restrictive Covenant	AREA-3	IC-VP13790	2619 28th Ave S, Minneapolis, MN 55406 - Hennepin County	0.2	PIN(s) 3602924410058	34
32 203804	VP20470	EDA Site (Hwy 7 at Louisiana Ave.)	SIW20050001	Restrictive Covenant	AREA-2	IC-VP20470	7131, 7250, 7200 State Highway 7, Saint Louis Park, MN 55407 - Hennepin County			
33 101223	VP34160	Edina Twins South	SIW20160001	Affidavit - Contaminated Property	AREA-2	IC-VP34160	7301-7329 Washington Avenue South, Edina, MN 55439 - Hennepin County	2	PIN(s) 07-116-21-23-0006	10
34 199215	SR0000136	ELECTRIC MACHINERY (SF)	SIW19880001	Affidavit - Contaminated Property	AREA-3	IC-SR136	711 Anderson Ave, Waite Park, MN 56387 - Stearns County		PIN(s) 82.47033.0013	66
35 199215	SR0000136	ELECTRIC MACHINERY (SF)	SIW19880001	Restrictive Covenant	AREA-2	IC-SR136	711 Anderson Ave, Waite Park, MN 56387 - Stearns County			
36 195688	VP22070	Electric Machining/Crown Iron	SIW20000001	Environmental Covenant	AREA-3	IC-VP22070	1229-1361 Tyler St NE, Minneapolis, MN 55413 - Hennepin County	6.09	PIN(s) 1302924230004; 1302924230005; 1302924230009; 13029242	A9
37 318	MND006154918	Electro - Plating Engineering Co.	SIW19990002	Restrictive Covenant	AREA-6	IC-MND0061549	45 Ivy Ave W, Saint Paul, MN 55117 -			
38 17853	MND049529522	Electronic Industries (RCRA)	SIW19990001	Restrictive Covenant	AREA-2	IC-MND0495295	7516 42nd Ave N, Minneapolis, MN 55427 - Hennepin County			
39 190299	VP18490	Electronic Industries (VIC)	SIW20030001	Restrictive Covenant	AREA-3	IC-VP18490	7500-7528 42nd Avenue North, New Hope, MN 55412 - Hennepin County	2.45	PIN(s) 1711821220038; 1711821220039	82
40 318	VP11770	Electro-Plating Engineering	SIW19990001	Restrictive Covenant	AREA-7	IC-VP11770	45 Ivy Ave W, Saint Paul, MN 55117 - Ramsey County	0.43	PIN(s) 192922320139	15
41 192039	VP4752	Eleventh Avenue Addition #2	SIW20010001	Affidavit - Contaminated Property	AREA-2	IC-VP4752	1101 W River Parkway, Minneapolis, MN 55415 - Hennepin County	3.25	PIN(s) 2302924440021	A9

MPCA IC Registry – the future?

- New ways of viewing data
 - Looking into publishing on the MN Geospatial Commons
 - Tableau view for MPCA only (looking into public view)



How do you want to filter the IC recorded date?

Show all projects - ignore the date filters

From: 10/1/2016 To: 9/30/2017

Control Type

☒ (All)
☒ Affidavit - Contaminated Property
☒ Environmental Covenant
☒ Restrictive Covenant

Inspection required

☒ (All)
☒ Null
☒ N
☒ Y

Site type

☒ (All)
☒ Brownfield Site
☒ Leak Site
☒ RCRA Remediation Site
☒ Superfund Site
☒ Superfund sub-area

Subprogram

☒ (All)
☒ Combo
☒ Neither
☒ Non-petroleum

County

(All)

City

(All)

Parcel

(All)

IC Recording # (Property Id)

(All)

AI ID

(All)

AI Name

(All)

Count Institutional Controls

Control Type	
Affidavit - Contaminated Property	344
Environmental Covenant	100
Restrictive Covenant	154
Grand Total	598

Count AIs with ICs

Control Type	
Affidavit - Contaminated Property	325
Environmental Covenant	89
Restrictive Covenant	142
Grand Total	534

Count sites with ICs

Control Type	
Affidavit - Contaminated Property	339
Environmental Covenant	99
Restrictive Covenant	150
Grand Total	571

You will get more data if you download.
See that data by hovering over a star below.

Institutional control details

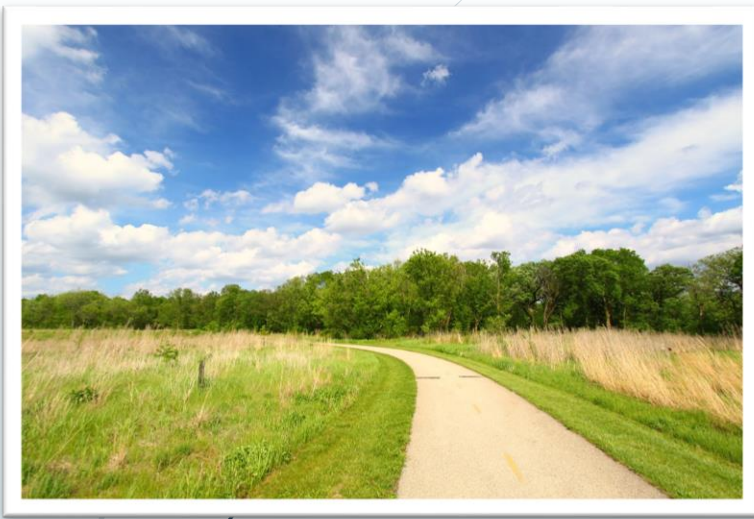
AI ID	Site ID	Site Name	Activity ID	Control Type	SI	SI designation	IC address	Acres	Parcel(s)	IC Recording # (Property Id)	IC Signed Date	IC Recorded Date	IC Terminated Date	IC Inspection Report Received	Comments
1	MND006155071	Crown Cork & Seal Company Inc.	SIW20010001	Environmental Covenant	AREA-5	IC-MND006155071	174 Chestnut St, Mankato, MN 56001 - Blue Earth County	22.51	PIN(s) R01090 6479009	T119353	9/5/2013	10/8/2013	Null	7/13/2017	Restricted Area is generally marked by an asphalt cap and the cap secondarily impedes unauthorized excavation. No excavation activities in the Restricted Area unless permission granted by Owner and certain health and safety protocols are followed. Fence around Property must be maintained to prevent access to the Restricted Area. PLS and Blue Earth County PIN entered 01/11/2018.

MPCA Guidance on ICs in Minnesota*

Property Use	No IC Needed	Affidavit Required	Covenant Required
Residential / Recreational	Soil, groundwater, soil vapor, surface water, sediments all at background concentrations and/or unrestricted use criteria	<ul style="list-style-type: none">• Limited residual contamination• Inaccessible contamination	<ul style="list-style-type: none">• Affirmative obligation(s)• Restrictions on activities
Industrial / Commercial		<ul style="list-style-type: none">• Limited residual contamination• Inaccessible contamination	<ul style="list-style-type: none">• Affirmative obligation(s)• Restrictions on activities

***Excludes petroleum & agricultural chemicals!**

Use of ICs in Minnesota – Affidavit Examples



- A hiking trail is installed through a restored prairie area. 0-4 ft bgs is non-impacted. Some lead impacted soil from 4-8 ft bgs.

- A site redevelopment as a warehouse. Residual soil contamination (PAHs, lead, arsenic, debris) at property boundary.



Use of ICs in Minnesota – Affidavit Template

Remediation template: Affidavit Concerning Real Property Contaminated with Hazardous Substances
Delete the red-italicized instructions before printing. Insert text between < >.

[Leave three inches of space above title for recording information.]

**AFFIDAVIT CONCERNING REAL PROPERTY
CONTAMINATED WITH HAZARDOUS SUBSTANCES**

STATE OF MINNESOTA)
) ss.
COUNTY OF <COUNTY>)

<Name of affiant>, the <Title> <of or on behalf of> <Name of company>, as owner of the real property described herein, being duly sworn, states the following under oath:

1. This Affidavit is made pursuant to Minn. Stat. § 115B.16, subd. 2 (2014), which requires that before any transfer of ownership of any property which the owner knows is subject to extensive contamination by release of a hazardous substance, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property and disclosing to any potential transferees: a) that the property has been used to dispose of hazardous waste or that the property is contaminated by a release of a hazardous substance(s); b) the identity, quantity, location, condition and circumstances of the disposal or contamination to the full extent known or reasonably ascertainable; and c) that, if the property was used as a permitted hazardous waste disposal facility, the use of the property or some portion of it may be restricted as provided in Minn. Stat. § 115B.16, subd. 1 (2014).

2. <Name(s)> is the owner of certain real property ("Property") located at <street address, if available> in <County> County, State of Minnesota, and legally described as follows:

[Insert legal description of property]

3. *[Describe the use of the property that resulted in the contamination and recite any relevant subsequent history of the property, such as how the owner came to own the property.]*

4. *[Recite the facts about the involvement of the Minnesota Pollution Control Agency ("MPCA") with the property, such as through the Superfund program or the Voluntary Investigation and Cleanup program.]*

5. *[Recite the facts about any site investigation and cleanup activities that occurred with respect to the property, including a description of the basis for the residual contamination levels.]*

Keep Preferred ID number on first page. Do not delete:
Preferred ID: <insert VIC number>

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6. *[State the legal description of the area where contamination remains, including a precise description of the identity, quantity, location and condition of the residual contamination remaining on property (and off the property if appropriate) and may include a registered or recorded survey of the contamination.]*

7. *[If the response action at the property included ongoing operation and maintenance structures or equipment, such as monitoring wells, recite the facts about the identity, location, and instances of those structures or equipment.]*

8. *[Recite any other relevant history of the property, if any, such as whether a certificate of deletion was issued.]*

9. Any person who is planning any use or activity which may adversely affect the effectiveness of the response action or which has the potential to disturb the areas of contamination response action structures and equipment described above should contact the Minnesota Pollution Control Agency prior to commencement of the planned activities.

10. *[Add only if applicable under the circumstances:]* The response actions at the property approved by the MPCA based on the assumption that the property was to be used for <type of property use>. If the property use is changed, the change could associate the property owner with the use or threatened release of hazardous substances <or pollutants or contaminants> and could result in requirement for performance of further response actions at the property.

<OWNER>

By _____ (signature)
<Name of affiant>

<Name of affiant> (print)

<Title>

<Company>

ACKNOWLEDGMENT

I, _____
COUNTY OF _____

On this _____ day of _____, _____, before me a notary public within and for said County and State, personally appeared _____ and _____ to me personally known, who, being duly sworn by me on oath, did say that he/she/they is/are the person(s) who signed the foregoing instrument and acknowledged that he/she/they signed the same as free act and deed for the uses and purposes therein set forth.

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- Legal description of property
- Identification of property owner
- **Facts regarding:**
 - cause of contamination
 - MPCA involvement
 - site investigation / cleanup
- **Descriptions of:**
 - residual contamination area
 - remaining structures or equipment
- **Requirement** that owner notify MPCA before activities disturbing residual contamination or equipment
- **Notice** that change in property use could associate owner with release

Use of ICs in Minnesota – Covenant Examples

- Site redevelopment as a warehouse. Soil below 4 ft bgs has lead concentrations I-SRVs.



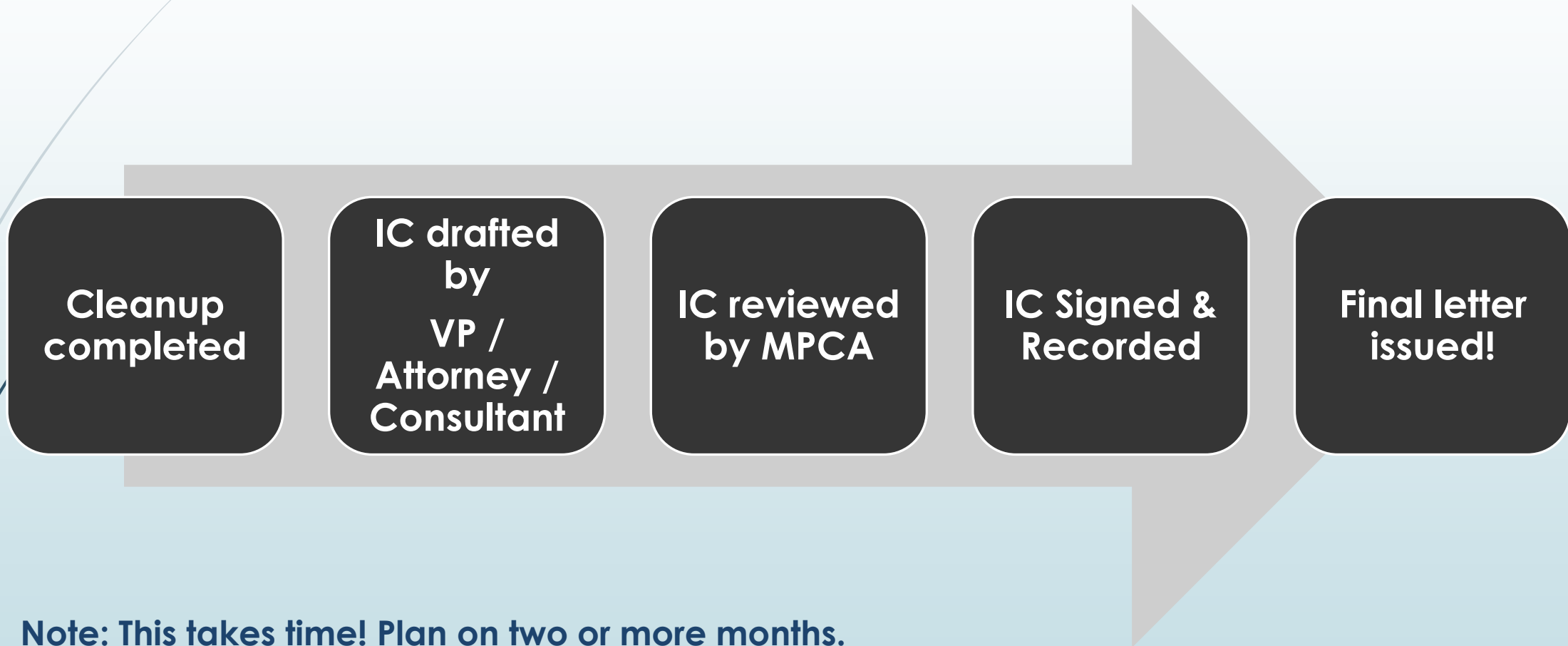
- Site redevelopment as an office. Soil below 2 ft bgs & beneath asphalt has TCE concentrations < SLV.

- Site with an active soil vapor mitigation system.

Use of ICs in Minnesota – Covenant Content

1. Identification of grantor and property
2. Grant of covenant to MPCA, which runs with the land
3. Description of release and response actions
4. Activity and use limitations
5. Affirmative obligations of owner
6. Prior MPCA approval required for activities limited
7. Easement; MPCA and local government rights of access
8. Duration, amendment, termination
9. Disclosure of covenant in property conveyance
10. Recording and notice of covenant, amendments, termination
11. Rights of enforcement
12. Representations and warranties
13. Compliance reporting
14. Notice of property conveyance

Typical IC Process



Note: This takes time! Plan on two or more months.

Note: For Superfund sites, the IC may be completed earlier in the cleanup process



IC Process – Drafting the IC

- Must leave 3" blank at top of first page for recording
- Provide exact legal description (e.g., metes & bounds, not abbreviated)
- If Restricted Area is < entire site, provide diagram and, if required, legal description
- Include Property Identification Number (PID/PIN)
- Provide MPCA Site ID & site name in footer
- Always include a Site Map - black & white (not grayscale)
- Single sided (so signature and notary stamp don't bleed through)
- For covenant, must list all parties holding interest/encumbrance in site and provide Subordination Agreements if required
- **Don't change template language**
- **Timing!**



IC Process – Property Owner Perspective

► Recording:

- Record promptly after MPCA provides fully-executed version
- Confirm legal description is exactly correct – no comma out of place
- Double-check any exhibits listed are attached in full
- County Recorder will need to confirm accuracy of legal description and completeness
- Provide MPCA with copy of stamped, recorded document

► Termination:

- ICs can be terminated in certain circumstances
- No MPCA template, but the MPCA will help draft or give an example

IC Process – Property Owner Perspective

■ Post-recording obligations:

- Obtain MPCA approval for activities subject to limitations
- For environmental covenant – **don't forget the annual compliance report!**

The Owner shall submit to MPCA **on an annual basis** a **written report confirming compliance** with the Activity and Use Limitations provided in Paragraph 7 and summarizing any actions taken pursuant to Paragraph 8 of this Environmental Covenant. Reports shall be submitted on the first July 1 that occurs at least six months after the effective date of this Environmental Covenant, and on each succeeding July 1 thereafter.

Owner shall notify the MPCA as soon as possible of any actions or conditions that would constitute a breach of the Activity and Use Limitations in Paragraph 7.

IC Process – Prospective Purchasers

- **Prospective Purchasers:** You may not know of ICs until the Phase I ESA or title search is complete

Database	Searched	Search Radius	Project Property	Within 0.12mi	0.12mi to 0.25mi	0.25mi to 0.50mi	0.50mi to 1.00mi	Total
TANKS	Y	0.25	0	0	0	-	-	0
INST	Y	0.50	1	1	2	1	-	5
VIC	Y	0.50	1	7	12	13	-	33
BROWNFIELDS	Y	0.50	1	0	1	3	-	5

* Excerpts from
ERIS report in
Phase I for VP
2475 by AET

<u>3</u>	5 of 7	-/0.00	698.00	455 Hardman Avenue (see Van Hoven Auxillary Site) 455 Hardman Avenue South St. Paul MN	INST
Prgm ID:	VP2474	Pgmint:	VIC		
Deed Notification:	Yes	Restrict Covenant:	No		
Enviro Covenant:	No	County:	Dakota		
Description:	A vapor barrier and venting system are required for any new construction at the Site. Plans must be submitted to the MPCA for review and approval.				



Institutional Controls:

*Everything You've Ever Wanted to Know but
Were Afraid to Ask*

Session 2 Topics

- Transaction timeline challenges
- Long-term maintenance obligation challenges
- Financial ramifications
- Information management
- Other states' approaches
- Q&A, Discussion