



ACTIVITY & USE LIMITATIONS IN LAND USE COVENANTS

The West Virginia Department of Environmental Protection (WVDEP) utilizes Land Use Covenants (LUCs) — also referred to as environmental covenants — as institutional controls at sites where the removal and treatment of all contamination is not possible or practical. LUCs are legal instruments that impose activity and use limitations (AULs) where residual contamination is present on a property. The LUC serves three purposes:

1. Informs prospective owners or tenants of the environmental conditions of the property
2. Ensures long-term compliance with the AULs that are necessary to prevent unacceptable exposure to the residual contamination
3. Maintains integrity of the remedy over time

The LUC is recorded by the VRP applicant at the county recorder's office and remains in the "chain of title" with the property deed. In this way, it reliably communicates environmental conditions and restrictions to current and future persons who own or have an interest in the property.

Since June 1, 2017, Section 13.6 of the Voluntary Remediation and Redevelopment Rule (60CSR3) has required that the VRP applicant provide a geo-referenced data file that defines the exact area within a property subject to AULs. The purpose of this file is to allow WVDEP to monitor all LUCs for potential impacts from underground utility construction. The agency monitors planned underground utility construction and maintains a geo-database tracking system for sites that employ institutional and/or engineering controls. To maintain this system, the VRP regulations require data that accurately delineates the limits to which restrictions and controls apply. Mapping must be referenced to a real-world coordinate system. A CAD file in dgn or dwg format or a GIS shape file are preferred, although the KML file format is also acceptable.

Currently, all geo-referenced data must have a horizontal accuracy within 12.2 meters (40 feet). However, most commonly-available GIS and CAD applications can

provide significantly more accurate data, and WVDEP plans to change the regulations in the future to require a higher degree accuracy.

Mapping must be referenced to one of the following coordinate systems:

- Universal Transverse Mercator (UTM) North American Datum 1983 (NAD83) zone 17 North – meters (preferred)
- West Virginia State Plane Coordinate System, North or South zone as appropriate, NAD27 or NAD83 – US Survey feet or meters
- Geographic (Latitude and Longitude) 1984 World Geodetic System (WGS84)

Because this data is required for all LUCs, and because the LUC is a component of the remedy, the Licensed Remediation Specialist (LRS) should develop this information as soon as the area requiring restriction is defined. The LRS should submit the LUC as a part of the Remediation Action Work Plan (RAWP), or in many cases, the LUC will constitute the entire RAWP.

WVDEP is currently revising the existing LUC format to facilitate more consistent documents and will include a reference to the requirement for geo-referenced data that defines the area where AULs apply. The LUC template will be available in the Technical Guidance and Templates section of the OER website.

NEWS FLASH!! NEWS FLASH!!

The most recent revisions to the Voluntary Remediation and Redevelopment Rule (60CSR3) have been passed by the West Virginia Legislature and become effective on April 1, 2018. Major changes include a shift to electronic submittal of documents (from previously required U.S. Certified Mail for all correspondence) and incorporation of all regulations related to Brownfields Revolving Fund loans into one section. The new version is now available on the Secretary of State's website.