



Instructions for Preparing the Land Use Covenant and Associated Exhibits

General

A Land Use Covenant is the legal instrument used to establish and document Activity and Use Limitations (AULs) and Engineering Controls (ECs) for properties remediated through the West Virginia Voluntary Remediation Program (VRP) and Uniform Environmental Covenants Act-Leaking Underground Storage Tank (UECA-LUST) Program. A LUC consists of the covenant document and a minimum of two (2) exhibits: a site map showing the areas on the property subject to AULs and/or ECs, and an inspection form used to document that the AULs have not been violated and that the ECs remain in place and functional. As discussed below, other exhibits may be necessary at some properties to more fully describe the property subject to the covenant or to separately list the contaminants of concern (COCs) present at the property.

The LUC template includes standardized language to ensure that all information required by the applicable statute and regulations are included. In addition, the template provides sample language and guidance to address many possible situations, including multiple parcels, varied restrictions, and multiple landowners. Therefore, it will be necessary for the LRS to occasionally delete sections of the template that do not apply to their specific VRP or UECA-LUST project. The template and the instructions below typically indicate where deletions can or should occur. To ensure the most efficient and expeditious review of the draft LUC, the standard template language must not be modified. Any modification to the standard template language without prior WVDEP approval will result in the draft LUC being rejected. If there is uncertainty regarding any sections within the template, please contact WVDEP for guidance prior to submittal of the draft LUC.

Property Description

Provide the property description information requested on the LUC template for each parcel covered by the LUC. The LUC template is adequate for listing up to three (3) contiguous parcels. However, if parcels are not contiguous, exist across multiple tax maps/districts, or otherwise cannot be clearly described using the template, a separate exhibit (*Exhibit B*) should be provided to describe all affected parcels.

In addition to the written property description provided on Page 1 of the LUC, a map indicating the area or areas to which AULs and/or ECs apply must be attached to the LUC as *Exhibit A*. *Exhibit A* is designed to quickly communicate the area subject to AULs and/or ECs in a straightforward manner. *Exhibit A* is not intended to be a survey plat as discussed below. Refer to Appendix A of these instructions for specific information regarding the format and content of *Exhibit A*.

If the area subject to restriction does not encompass the complete tax parcel, but instead is a subset of the larger parcel(s), provide a survey description (metes and bounds) of the restricted area and attach a survey plat to the LUC. The survey must be certified by a Professional Surveyor licensed in the State of West Virginia. If the survey description is longer than one page, provide the survey description as an exhibit (*Exhibit B or C*). A formal property description prepared by a surveyor is only required where the restrictions apply to a subset of the property, and it is necessary to distinguish this portion from the larger property as a whole.

In addition to the map showing AULs and/or ECs (*Exhibit A*), a georeferenced digital file must also be provided to WVDEP in either ESRI® shapefile format or a computer aided drafting format adequate to accurately delineate the area or areas to which the specific controls apply.

Use of Site-Specific Remediation Standards (*Voluntary Remediation Program Sites Only*)

If a site-specific remediation standard is being applied at a VRP site, the LUC must state whether residential or non-residential exposure assumptions were utilized in deriving the site-specific standard. If only de minimis or uniform standards are being applied, the applicable sentence should be deleted from the template.

Identified Contaminants of Concern at Property

Provide a list of COCs present on the subject property (i.e., COCs that exceed residential de minimis standards) in list or table format by media (surface soil, subsurface soil, groundwater). If the list is extensive, a table should be included as an exhibit. This list of COCs must be limited to the property that is the subject of the LUC. Where there is an exceedance of a remediation standard due to exposure of a contaminant in vapor, the contaminant(s) should be listed as a COC for the media in which the contaminant source is present, and a note should be made that the exceedance is due to vapor exposure. Do not list vapor as the media.

Activity and Use Limitations

Common AULs using preferred standard language are listed on the LUC template. Delete all AULs that are not applicable and renumber the list accordingly. Additional AULs or revised language that may be appropriate based on site-specific conditions are to be proposed by the applicant and approved by both the property owner and WVDEP prior to inclusion in the LUC. Where excavation restrictions are necessary and a cover or cap is being used to prevent contact with soils, Items 3.c through 3.e must be included to ensure that the covered or capped area is appropriately replaced if excavation occurs.

Engineering Controls

If the site requires one or more ECs to attain/maintain the remediation standard (e.g., soil cover, asphalt/concrete pavement, impermeable cap, soil venting system, groundwater pumping system, etc.), these controls must be listed in the LUC (using the standard language provided), and information regarding their maintenance and/or operation must be included. If an EC does not encompass the complete tax parcel, attach a survey description (metes and bounds) and attach a survey plat on the EC restricted area to the LUC. If an EC is not required, simply delete this section.

Property Owners

The legal name of each property owner must be listed, as well as current contact information for a representative of the property owner.

Covenant Holders

A “holder” means the grantee of an environmental covenant. Any person, including any person that owns an interest in the property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder, and the relationship of each covenant holder to the property should be described. The property owner

must always be included as a holder. WVDEP should not be listed as a holder, unless the agency makes such a request.

LUC Inspections

The property owner must inspect the property at least annually and document compliance with AULs and maintenance of ECs. WVDEP has developed a Land Use Covenant Inspection Form template that is to be used for this purpose. The inspection form template must be completed as directed below in Appendix B. The approved form must be included as the final exhibit to the LUC.

Signature and Notarization

After final approval of the draft LUC is obtained from WVDEP, the LUC must be signed and notarized by the agency, every owner of the fee simple of the real property subject to the covenant, and every other holder. If several holders sign before the same notary, their signatures may be listed together and only one notarization, referring to all such holders, will be needed for those signatures.

Procedure for Execution

1. The entity requesting a LUC submits a draft of the LUC and the LUC Inspection Form in MS Word format, a draft of other exhibits in PDF format, and a georeferenced digital file of the AUL/EC area(s) to WVDEP for approval. A draft LUC cannot be reviewed until all applicable exhibits are provided.
2. WVDEP reviews the draft and either approves the LUC for signature or provides comments for revisions.
3. The final approved version of the LUC is then signed by the entity requesting the LUC and any other covenant holders, and the original document including original signatures is returned to WVDEP. The LUC must be an original document containing all original signatures for recording by the county clerk. Only one copy should be signed and submitted to WVDEP.
4. WVDEP provides the final signature and returns the executed document to the entity requesting the LUC for filing.

Filing

The LUC must be recorded in every county in which any portion of the real property subject to the covenant is located. The entity requesting the LUC is responsible for properly recording the original signed Land Use Covenant with the county clerk and requesting the clerk return the recorded instrument to the West Virginia Department of Environmental Protection at the following address:

Office of Environmental Remediation
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

APPENDIX A

Guidance for Preparing Land Use Covenant Maps

The Voluntary Remediation Program Regulations (60CSR3) require that all LUCs contain a map indicating the area or areas to which specific AULs and/or ECs apply. The LUC, including this map, will be recorded (as a paper copy) in the deed book of each county in which any portion of the site is located. When these paper documents are scanned or photocopied, it is important that copies of the LUC maps continue to accurately depict the information that was provided in the original LUC. Therefore, the following guidelines must be followed when preparing maps to be used in association with a LUC.

Basic Map Standards

All maps should include, at a minimum, the following:

1. Title: “Exhibit A – Site Map Showing Activity and Use Limitations”
2. Site name and street address
3. Graphical scale bar
4. North arrow
5. Legend keyed to any symbols used
6. Property boundary
7. VRP site boundary
8. Identifying features such as street and waterway names
9. Specific activity and use limitation boundaries and the area (in acres) subject to restriction
10. Engineering control boundaries, where applicable (e.g., cap or cover limits) and the area of the cover or cap in acres

In some cases, the boundaries of one or more items specified in Standards 5 through 8 may coincide. If so, this should be clearly noted on the map. If not, specific boundaries and/or areas must be clearly delineated using line styles, cross hatching, etc. (no color – see below) to designate these areas. Line styles and patterns must be explained in the legend.

Graphical Standards

To ensure that scanned or photocopied versions of LUC maps accurately depict the activity and use limitations, the following standards must be followed:

1. Present the map 8.5 x 11 format.
2. Present the map in black and white. Neither color images, nor dark backgrounds such as aerial photos or satellite images, are acceptable.
3. Use a minimum resolution of 300 DPI, but adequate to clearly and accurately depict the required information and allow for photocopying.
4. Use line styles, patterns, and other black and white methods to distinguish boundaries/areas.
5. Use text large enough to be clearly legible.
6. Do not include environmental sample locations or other unnecessary information that causes the exhibit to be cluttered or otherwise difficult to read or understand.

APPENDIX B

Guidance for Preparing LUC Inspection Forms

The LUC Inspection Form attached to the LUC is provided for the property owner(s) to easily conduct annual inspections and thus should be tailored to the specific site.

Section 1: Environmental Response Project Description

The Environmental Response Project Description Section should be filled out in its entirety. The LUC Inspection Form has been designed for use at all sites with LUCs. Reference the identifier (Site ID Number) used in the program which administered the environmental response project. These identifiers are typically located in the header of the LUC and in the administrative record section. Examples are provided below.

Program	Site ID Number
Uniform Environmental Covenants Act (UECA)-Leaking Underground Storage Tank (LUST) Program	WV ID #XXXXXXX and Leak #XX-XXX or #XXXX-XXX
RCRA Corrective Action	RCRA ID #WVDXXXXXXXXXX RCRA ID #WVRXXXXXXXXXX
Superfund Program	CERCLIS #WVDXXXXXXXXXX
Voluntary Remediation Program	VRP #XXXXXX

After completing the Environmental Response Project Description Section, skip to the Annual Inspection – Property Observations Section.

Section 3: Annual Inspection – Property Observations

AULs and ECs commonly included in LUCs are provided in tables on the Land Use Covenant Inspection Form template. All AULs and ECs listed in the LUC must also appear on the Land Use Covenant Inspection Form. Delete the rows of standard AULs and ECs that are not applicable to the site from the table and add any unique ones.