NEBC northwest environmental business council

PBS

# Institutional Controls

## Getting to Regulatory Closure

# Introduction

## Institutional Controls

*What are they and why should we care?*

# Defining Institutional Controls

| | |
|---|---|
| **What** | • Legal and Administrative Tools |
| **Why** | • Protect human health, welfare and 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 |

# When to use Institutional Controls

- Contaminants remain onsite, limiting unrestricted use
- Remedial Action/equipment remain on-site
- Needed to protect the integrity of the response action

# Evolution of Institutional Controls

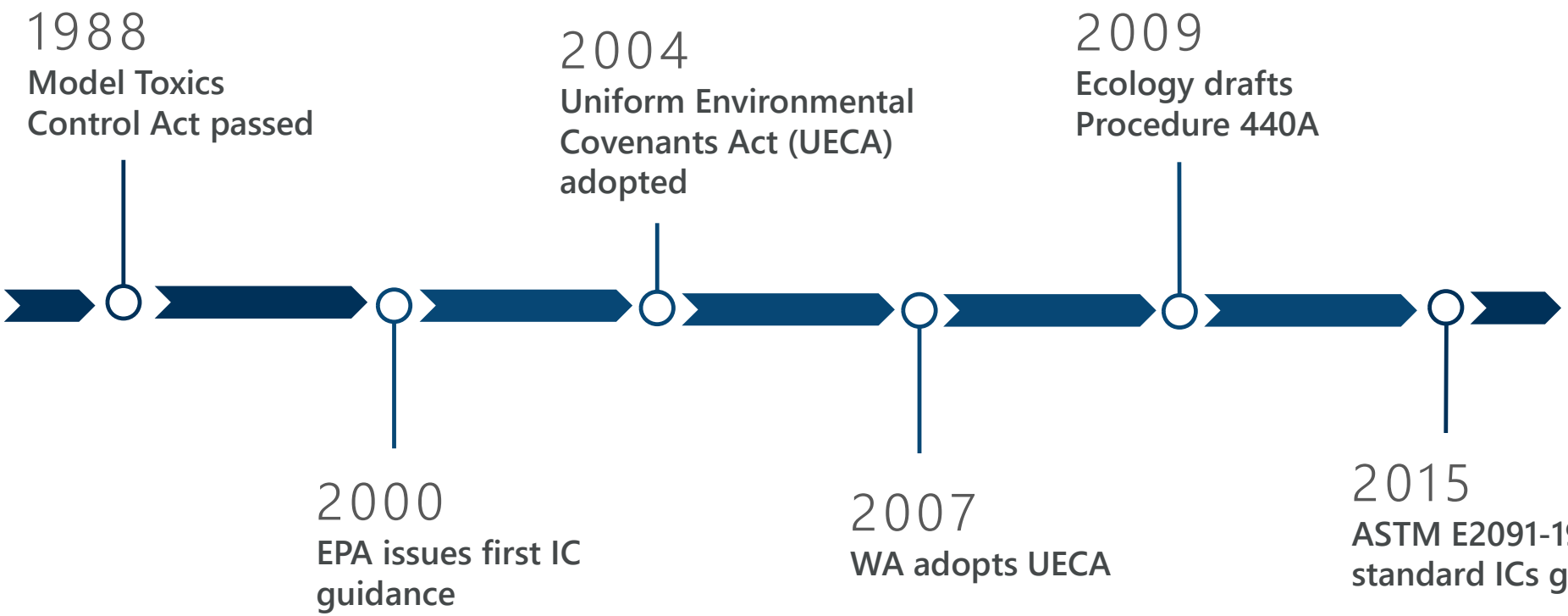
## Uniform national approach to ICs.

- Remedial actions at polluted sites lengthy and expensive
- Business reluctant to develop contaminated sites
- IC's encouraged remediation and provided a tool to address residual contamination

## Address common law deficiencies.

- long-term enforceability of environmentally-derived land use restrictions

# Timeline


1988
Model Toxics Control Act passed
2000
EPA issues first IC guidance
2004
Uniform Environmental Covenants Act (UECA) adopted
2007
WA adopts UECA
2009
Ecology drafts Procedure 440A
2015
ASTM E2091-19 standard ICs guide

# Uniform Environmental Covenants Act (UECA)

## Uniform State Law Commissioners developed and adopted UECA to provide:

- Uniform, systematic approach to implementing IC 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 have similar laws in place (some have taken other approach).**

# Ecology Regulations

- WAC 173-340-440 Institutional controls
- Procedure 440A: Establishing Environmental Covenants under the Model Toxics Control Act
- Chapter 64.70 RCW, Uniform Environmental Covenants Act

# Ecology Regulations

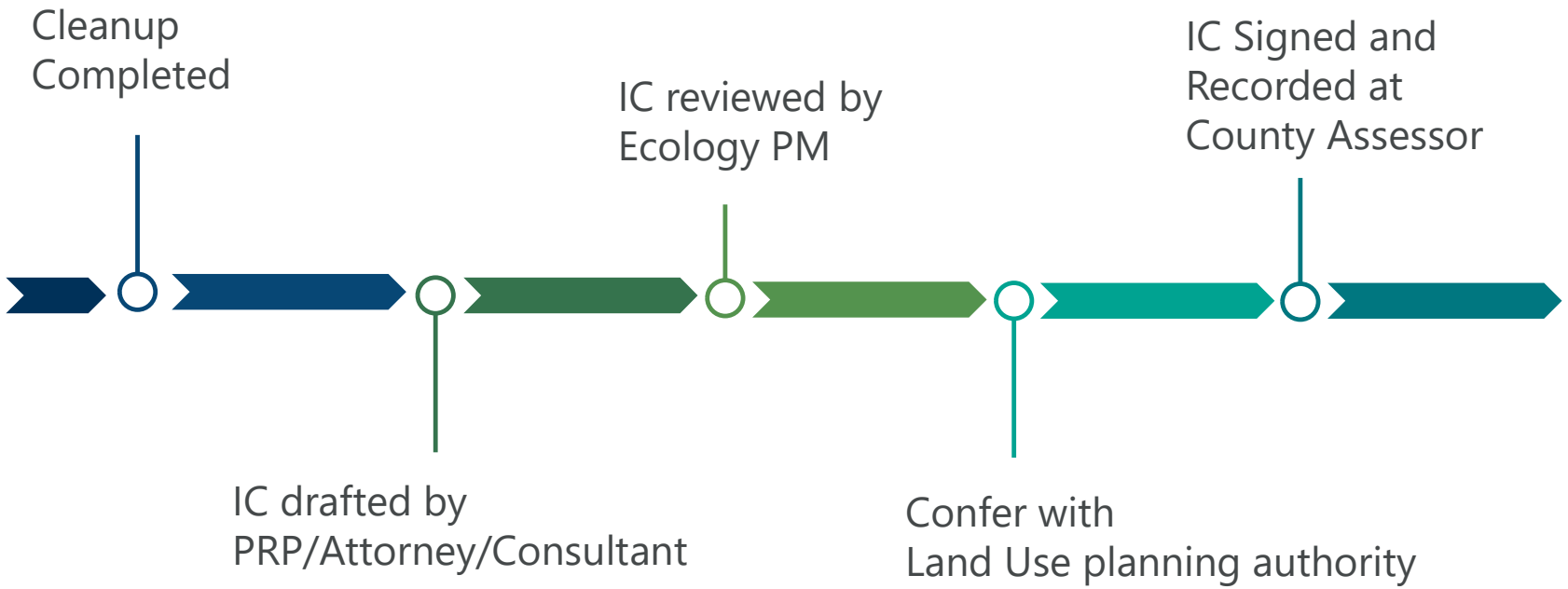
## Where institutional controls are required

**These circumstances include the following:**

1. sites where contamination remains at concentrations that exceed the established Method A or B cleanup levels;
2. sites where Method C is used to establish cleanup levels;
3. sites where soil cleanup levels are established based on industrial land use, and
4. sites where a conditional point of compliance is used.

*Institutional controls may also be required to establish a site-specific cleanup level for non-potable ground water or to ensure the continued protection of terrestrial ecological receptors (plants and animals).*

# Procedure for Establishing an Environmental Covenant




**24-Step Process: Procedure 440A**

# Protection After Cleanup

| Financial Assurance | Confirmational Monitoring | Periodic Review |
| --- | --- | --- |
| Required for site using engineering controls | Plan developed as part of covenant | Review of the site every five years |

# Environmental Covenants Registry

## Environmental Covenants Registry

A list of sites that have implemented institutional controls as part of the remedy.

https://apps.ecology.wa.gov/cleanupsearch/reports/covenants

**911 entries i**n the registry as of 9/28/2022.

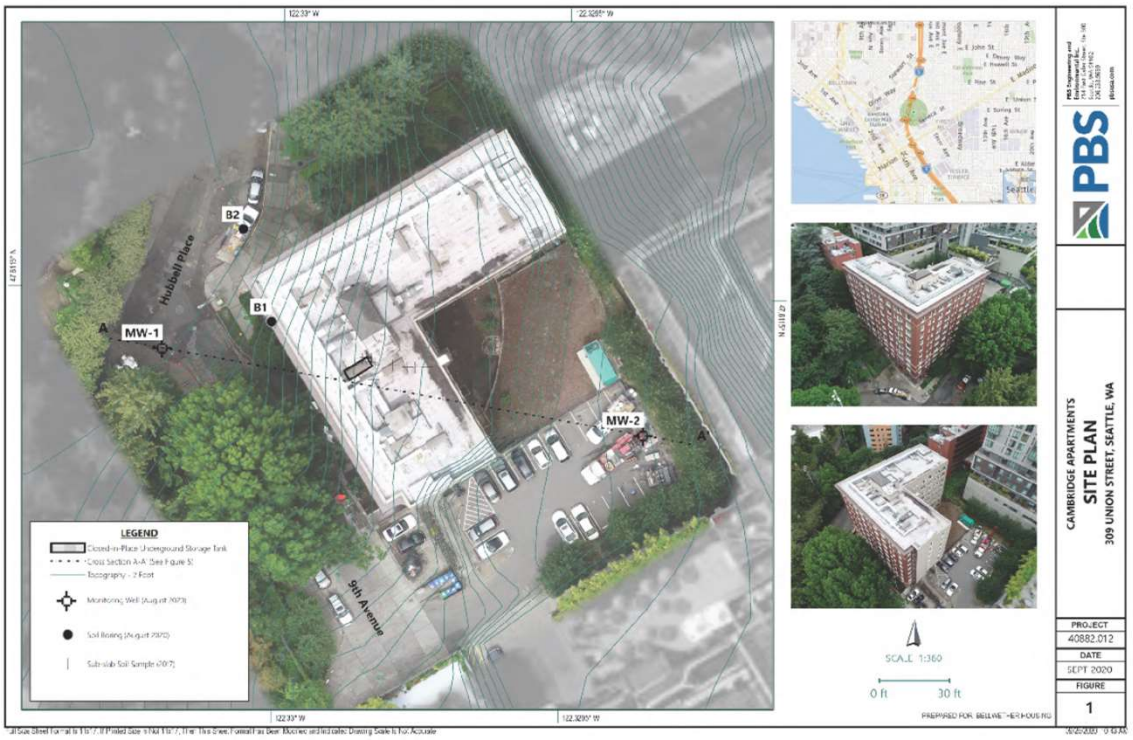
# Case Study 1

**Grantor:** Cambridge LLLP

**Grantee:** State of Washington, Pollution Liability Insurance Agency

**Brief Legal Description**:
Lots 1, 4 and 5, Block 109, A.A. Denny's Broadway Addition to City of Seattle

**Tax Parcel No.:** King County Parcel No. 197820-0225



# Case Study 1

## Confirmation Monitoring and Contingency Plan

1. **Annual inspections** shall be undertaken to ensure that the cap is not compromised.
2. **Should the cap be compromised, the cap must be restored** to an acceptable condition that prevents a person from making dermal contact with the underlying contaminated soil.
3. **Re-assess the potential for petroleum vapors** from the contaminated soil that remains under the building after cap replacement.
4. **Annual report** will be sent to the regulatory agency (PLIA).

# Case Study 2

**Grantor:**
Reserve at Lynnwood

**Grantee:**
State of Washington, Department of Ecology

**Brief Legal Description:**
Northwest Quarter of Section 21, Township 27 North, Range 4 East of the Willamette Base and Meridian

**Tax Parcel No.:**
Snohomish County Tax Parcel #00575600000100.

# Case Study 2

## Covenant Restrictions

- Retain Vapor Mitigation
- Retain Cap Integrity
- Prohibit Soil Disturbance
- Restrict Domestic Ground Water Use

## Media Restrictions

- Groundwater
- Soil

## Monitoring Plan

- Annual Inspections
- Maintain CAP
- Maintain subgrade ventilation system
- 5 –year Agency Review

Tom Mergy, LHG
*PBS Principal*

# Thank you