



Land Use Control Compliance

What You Need to Know

This document is intended to assist property owners in maintaining compliance with the land use controls on their properties as the result of closures issued by the Maryland Department of the Environment (MDE) Voluntary Cleanup Program (VCP) or under an Environmental Covenant. Further, this document will describe how the Land Restoration Program (LRP) ensures the continued compliance of land use controls at properties to protect public health and the environment and the potential consequences of failing to maintain compliance with the land use controls.

What properties have land use controls and where are they described?

Properties that have completed participation in the Voluntary Cleanup Program (VCP) and properties that were subject to a cleanup or technical review under the Site Assessment and Remediation Division for Controlled Hazardous Substances (CHS) are most frequently subject to land use controls. Land use controls include future land use restrictions (use for residential, commercial, industrial, or recreational purposes) and physical maintenance requirements. Land use controls are included in:

- Environmental Covenants (EC). The Maryland Uniform Environmental Covenants Act (UECA), which became effective on October 1, 2005, created the environmental covenant (EC), a real estate document that can be used to legally restrict activities on sites where some contamination remains in place. Based on traditional property law principles, the EC is recorded in the local land records, binds successive owners of the property, and provides State and local governments with clear rights to enforce the land use restrictions and better protect human health and the environment at the property over time. LRP issues ECs as standalone closure documents for sites where CHS remains present on a property and in concordance with VCP NFRDs and COCs. ECs can also be used by other programs within MDE or other State Agencies to create and enforce land use controls. The UECA required MDE to create and maintain a registry of all environmental covenants, amendments, or terminations;
- No Further Requirements Determination (NFRD) issued by the VCP; and
- Certificate of Completion (COC) issued by the VCP.

The specific land use controls for a site will be listed in the NFRD, COC and/or EC issued. A copy of the NFRD, COC, and EC can be requested by contacting the LRP. In addition, the LRP maintains a publicly available LRP-MAP, including outlines of the properties subject to land use controls, allowed property uses, and physical maintenance requirements that can be accessed at:

<https://mdewin64.mde.state.md.us/LRP/index.html>



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How do I maintain compliance with the land use controls on my property?

The first and most important aspect of knowing and understanding the land use controls on a property is to read and review the land use controls in the NFRD, COC, and/or EC. Most land use controls continue in perpetuity. Each set of land use controls differs due to site specific factors including the type and concentrations of contaminants, stage of redevelopment and occupancy, and allowed property uses.

It is particularly important to understand the definition of property uses allowed under each category (residential, commercial, industrial, or recreational) that are described within the document and are not influenced by zoning definitions. Commercial use does not allow the presence of a school or daycare facility on a property. Further, changing the zoning designation of a property through the planning process does not alter the allowed uses according to the NFRD, COC, and/or EC. If you have concerns about whether a specific use is compliant with the allowed uses of the property in the land use controls, please reach out to the LRP.

What are the most frequent questions about land use controls?

- **Are there any notification requirements to MDE prior to intrusive or excavation activities? Do these requirements apply to the entire property or a specific area? Are your building slabs considered environmental caps and require notification to the MDE prior to interior slab work?** Requirements for intrusive activities may include the requirement for dust monitoring, a health and safety plan, sampling requirement for soil prior to disposal, or limit on potential disposal locations. Notifications to MDE should include a map of the area to be disturbed, a description of the work to be completed, a schedule for completion, and contact information. If the land use controls include a maintenance and operation plan, the notification can then confirm that the procedures in the maintenance and operation plan will be followed. If the land use controls do not include a plan, the notification should describe the procedures that will be followed to ensure the land use control requirements will be met. Upon completion of the work, MDE should be notified with confirmation that the work has been completed and all engineering controls have been repaired.
- **What activities are considered intrusive or excavation activities?** Any activity that breaches the environmental caps (which can include asphalt parking lots, concrete sidewalks, concrete building slabs, or landscaped areas with geotextile) is considered an intrusive or excavation activity. These activities include, but are not limited to, borings for the purposes of geotechnical investigations, soil or groundwater sampling, landscaping activities, installation of fence, and



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lighting pole footers, installation of signage foundations, and below grade utility installation or maintenance activities.

- **Are there inspection requirements for the property owner?** Sites with environmental caps or vapor mitigation systems as remedies often have requirements for the property owner to conduct a periodic inspection of the capped surfaces and vapor mitigation systems to ensure that they are monitored for condition and potentially necessary repairs. The land use controls will specify the frequency and whether the inspection forms should be retained by the owner, the required retention period, or should be provided to MDE. LRP's current policies specify in the land use controls that the inspections should be conducted by an environmental consultant annually (usually at a specific time of year) and that an Annual Summary Report to MDE should be submitted in January of each year that includes the inspection form for the previous year, documentation of any completed repairs, and any other information specifically required by the land use controls (e.g., long term monitoring data). Current ECs should also include a maintenance and inspection plan for environmental caps and vapor mitigation systems.
- **Are there reporting requirements to MDE?** As noted above, LRP's current policies specify in the land use controls that an Annual Summary Report be submitted to MDE in January of each year that includes the inspection forms for the previous year, documentation of any completed repairs, and any other information specifically required by the land use controls (e.g., long term monitoring data).
- **Are there requirements for future construction or redevelopment?** In cases where future development was unclear or certain circumstances apply, the land use controls may include a specific requirement to provide a plan for sampling or an environmental management plan prior to any future development or construction on a property. These restrictions tend to have much longer notification periods to the MDE due to the increased effort required to evaluate the proposal. LRP recommends that if the property owner is planning on such a redevelopment or construction, they consult with the LRP as early in the planning and development process as possible.

If a management company or property manager is in direct daily management of the property, it is imperative that the property owner, as the responsible entity, ensure that the property management is aware of and understands the land use controls. LRP recommends that the property owner ensure that each new property manager assigned to the property is aware and understands what the land use controls mean for their management of the property.

For properties issued a NFRD, COC and/EC with land use controls, it is the responsibility of the property owner and holder of the Environmental Covenant to ensure that the land use controls are being met. In



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certain cases, a homeowner's association (HOA), condominium association, or tenant may be responsible for the land use controls or the property owner or other responsible parties may be required to engage the services of an environmental consultant to complete certain tasks. In such cases, the NFRD, COC, and/or EC will clearly state the party with responsibility, and it is the responsibility of the property owner to ensure that any third party has been fully notified of the exact requirements that are the responsibility of that party. The VCP recommends that the property owner keep copies of the notification and acknowledgement response as a part of their records.

What happens if I sell or buy a property with land use controls?

The land use controls run with the land following recording of the NFRD, COC, and/or EC in the Land Records of the local jurisdiction and the new property owner is responsible for continued compliance with the land use controls. Part of the LUC requirements are notification requirements prior to property transfer. The seller must notify MDE of its intention to transfer the property at least five (5) days prior to the closing date, including a contact person for the new party responsible for the land use controls. The new owner is required to certify to MDE that they have received a copy of the NFRD, COC and/or EC. The certification to MDE should include contact information for the new ownership entity.

New owners can reapply to the VCP or request technical review to re-evaluate land use controls or to remediate a property to allow for a different use. If such a request occurs, it is the responsibility of the new owner to contact MDE and conduct any necessary sampling and remediation prior to any redevelopment activities. For example, if an area of impacted soil has been removed and confirmation samples collected, MDE would evaluate a request to issue a closure that no longer includes requirements to notify MDE or properly dispose of soil from a property (because impacted soil is no longer present on the property). For VCP NFRD and COC, new property owners may also submit a transfer affidavit that is available by contacting the LRP or on our webpage at:

https://mde.maryland.gov/programs/land/MarylandBrownfieldVCP/Pages/vcp_info.aspx

How does MDE monitor compliance?

Since 2019, MDE has used the DigClean system (administered by Terradex) to automatically create a "Dig Clean Safety and Land Use Advisory" (Advisory) every time a Miss Utility dig ticket is requested on, or near, a closed LRP site with land use controls. The DigClean system uses excavation tickets made publicly available at the Miss Utility Search and Status website combined with LRP GIS data. Daily, LRP reviews all generated Advisories and emails relevant Advisories to the person who requested the Miss Utility dig ticket. If the request is impacted by the presence of the LUCs, LRP staff contacts the property



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owner and/or contractor to ensure that the LUC requirements will continue to be met. The system allows LRP to focus its land use control oversight in an efficient manner on sites where construction and excavation activities are occurring and to identify potential or obvious violations in a timely manner.

By using such a system, MDE is often able to assist property owners avoiding land use control violations, by contacting the property owner or contractor prior to work beginning.

When does MDE conduct an inspection?

MDE inspections of land use control sites may occur on an as needed or scheduled basis. LRP staff evaluates the Dig Clean and Safe Advisories to determine whether an on-site inspection is necessary either during or after work has been completed and/or whether work is obviously being done at a site in violation of the existing land use controls. The MDE also conducts periodic inspections of closed sites with land use controls to ensure that all COC, NFRD, or EC requirements continue to be met. As a part of these inspections, the MDE may request the inspection and maintenance records required by the land use controls, information regarding obvious patches to a capped area, or other information relevant to the land use controls and observed site conditions. If the requested information cannot be provided, the property owner may be subject to notice of violation and penalty.

What happens if the land use controls are not met?

For the VCP NFRD and COC, enforcement capabilities are set forth in §7-515(a) of the Environment Article, which states that provisions of §§ 7-256 through 7-268 of this title shall be used and shall apply to enforce violations of this subtitle or any regulation adopted under this subtitle. For ECs, §1-810 states that a holder may bring civil action for injunctive or other equitable relief for violation of an environmental covenant.

If a violation is identified, LRP will issue a Notice of Violation (NOV) letter within thirty (30) days stating the alleged facts that constitute the LUC violations, describing the current conditions, and enclosing all inspection forms documenting violations. The letter will direct the property owner to provide any additional information (inspection reports, repair receipts, etc.) necessary to evaluate the violations and will specifically state that the owner must correct the conditions. The NOV letter will give the Owner a least ten (10) days following receipt to provide information or correct the conditions. The LRP classifies each violation as minor or significant and will assess the penalty based on the penalty matrix included on the last page of this fact sheet. For the purposes of land use controls, a violation shall be considered:



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- Minor in circumstances where a failure to inspect or maintain land use controls did not result in immediate or prolonged exposure to contaminants to populations. For example, maintenance of the environmental remedy has degraded but not yet failed. Examples of this could include situations where a cap has not been inspected but is in adequate condition, or where a vapor system has been poorly maintained or is not operational, but the indoor space it is designed to protect is unoccupied.
- Significant for instances of a change in land use to a non-approved use or a continued failure to inspect and maintain a remedy that results in an exposure. Examples of this include a lack of cap maintenance leading to failure and access to impacted soil by workers and the general public or residential redevelopment of a property approved for commercial or industrial use.

LRP may elect to address minor violations via compliance assistance depending on situation specific factors. In addition, LRP may consider the concentrations of contaminants when designating a violation as minor or significant.

LRP will re-evaluate the site conditions no later than sixty (60) days following issuance of the NOV letter and will determine at that time whether a violation still exists.

Any property that has had three (3) or more violations within a two (2) year period or any property involving a property owner willfully falsifying records shall be referred to the OAG for potential criminal enforcement action.

Questions

Please contact Ronnie Anderson, Land Use Control Compliance Coordinator at (410) 537-3455 or ronnie.anderson@maryland.gov with any questions.



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Violation	Minor	Amount*	Significant	Amount*
Failure to record NFRD/COC and/or EC	Within 1 year; document is void and may be reissued for recording purposes upon request.	\$250	Greater than one year since issuance; document is void; must reapply for VCP properties	\$1,000 per year
Property transfer without required notification to MDE by the Seller	Seller did not provide notification, but the Purchaser confirmed the transfer. Neither Seller nor Purchaser notified MDE.	\$250 to seller \$250 to each party	Not applicable.	-
Use of groundwater where prohibited	Used non-potable, non-agricultural purpose for limited duration; no installation of a permanent well.	\$2,500 per event	Used for a potable purpose; installation of a permanent well.	\$10,000 per installed well
Conducting intrusive activities without following requirements. Applies to requirements for: <ul style="list-style-type: none"> Notification to MDE HASP Dust control/monitoring Submittal of plan or followup report Emergency excavation procedures Soil sampling and disposal requirements 	Notification was not sent but all other proper procedures were followed. Construction workers were protected via PPE and a HASP if needed. Failure to properly sample and/or dispose of soil or inability to provide documentation of disposal location. Movement of soil to an unapproved location. Whether a minor or significant violation is also dependent upon the volume of material.	\$1,000 per violation \$2,500	No notification occurred and not all required protective measures were in place. Activities resulted in exposure to construction workers and/or other populations. Repeated failure to properly sample and/or dispose of soil or inability to provide documentation of disposal location. Movement of soil to a location with a conflicting property use based on the data. Whether a minor or significant violation is also dependent upon the volume of material.	\$5,000 per day up to \$25,000 per event \$10,000
Failure to conduct required inspections and maintain or provide documentation. Applies to: <ul style="list-style-type: none"> Caps Treatment systems (vapor or groundwater) Monitoring wells Monitoring records and/or data 	Failure to conduct inspections, maintain or submit paperwork but remedy remains in operable but adequate condition. Failure to collect required data where no exposure pathway exists.	\$1,000 per failure \$1,000 per missed sampling event	Repeated failure to conduct inspections, maintain or submit paperwork but remedy regardless of whether remedy is operable but adequate condition. Failure to collect data where an exposure pathway exists (ex. Post-treatment system drinking water, sentry wells in a groundwater use area, occupied indoor space requiring soil gas or indoor air samples) or repeated failure to collect data regardless of whether an exposure pathway exists.	\$2,500 per failure \$2,500 per missed sampling event
Failure to maintain a remedy. Applies to: <ul style="list-style-type: none"> Caps Treatment systems (vapor or groundwater) 	Remedy failure is in a limited area, was for a limited time period, or has limited access to populations.	\$1,000 per failed remedy	Remedy failure is widespread, has been in failure for an extended time period and/or has resulted in exposure to populations. Repeated failure to maintain a remedy, repeated exposure to populations.	\$10,000 per failed remedy, max \$50,000 \$25,000 per remedy, max \$100,000
Use of the property for an unapproved use. Applies to: <ul style="list-style-type: none"> Change in use from a former dry cleaner space Day care on a commercial property Residential redevelopment on a commercial and/or industrial property. use inconsistent with approved Low or Moderate Frequency Recreational Use designations on a property 	Not applicable.	-	Change in use from a former dry cleaner space without providing the required data to MDE. Day care on a commercial property; Residential redevelopment on a commercial and/or industrial property; use inconsistent with approved Low or Moderate Frequency Recreational Use designations on a property.	Starting at \$25,000 dependent on site specific contaminants concern; exposure pathways and phase of development when violation was identified.

In addition to the violation amount, the Land Restoration Program may seek cost recovery for oversight to bring Property into compliance with the Land Use Controls and/or require submission of the VCP request for a change in use or change in restrictions. For example, if a well was installed, the LRP may oversee sampling and installation of a treatment system on a well or well abandonment depending on site-specific conditions.