30 Years of Post-closure Care ...NOW WHAT?

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Session Objectives

- Describe ASTSWMO activities to-date
- Preliminary discussion of survey results
- Provide overview of issue
- Discuss ASTSWMO’s planned activities
- Solicit Audience input
The Problem

- Default regulatory requirement – 30-year post-closure care period
- Regs give agency authority to lengthen or shorten PCC period
- Regulatory criteria for modifying PCC period very general
- Facilities approaching end of initial 30-year PCC period
Core Issues

- Specific criteria lacking
- Burden of proof – what? who?
- Financial assurance (term; type; discounting, etc.)
ASTSWMO Activities

- Small, ad hoc workgroup
- Joint effort between Hazardous Waste and Solid Waste subcommittees
- Friendly engagement with EPA
Goals of Workgroup

• Identify common concerns between C&D

• Coordinate w/ EPA, communicating States’ needs

• Develop a useful product
Initial step – surveyed States’ program managers

- Distributed to ASTSWMO’s Subtitle C and Subtitle D contact lists

- Solicited 2 responses per State (1 from C perspective, 1 from D)

- Survey open 8/18 – 9/6/11
Survey objectives

- Identify appropriate State contacts
- Determine what regs/guidance/policy is available
- Solicit views on key criteria
- Ask what kind of product would be most useful
39 States gave substantive responses
31 Subtitle C responses, 27 Subtitle D
12 States C only responses, 8 States D only responses
Fairly good regional coverage, except:
-- Region 1 (0/6 C, 1/6 D)
-- Region 5 (2/6 C)
Survey highlights

- Have extended 30 year PCC period:
  - Facility: 10 C, 1 D;
  - Regulated unit: 2 C, 0 D

- 5 C programs reset the clock to 30 years, 5 did not
Mechanisms used to extend PCC:

- Order: 6 C, 3 D
- Permit: 11 C, 9 D
- Other:
  - C: cleanup agreement; informal policy;
  - D: pc letter; corrective action regulation; Directors’ letter; perpetual by statute
Site where corrective action needs to be performed: possible to end PCC?

- Yes: 12 C, 2 D
- No: 18 C, 25D
Mechanisms to continue enforceable corrective action after end of PCC:

- Order (10 C, 2 D)
- Other: Consent agreement; directive; Corrective action permit; voluntary remedy agreement; consent decree; agency letter
States with regulatory provisions that differ from federal regulations

- 2 C, 8 D

- Specific criteria (mandatory or optional): 1 C, 5 D
Criteria outside of regulations for evaluating change in PCC period

- State guidance: 2 D
- Formal State policy: 2 C, 2 D;
- Informal, consistently-used policy: 5 C, 2 D
State activities

- Currently developing guidance: 5 C, 6 D
- Currently developing a formal policy: 5C, 4 D
- See a need for State guidance if currently do not have: 18 of 25 C, 12 of 14 D ("of" indicates total responding to question)
Common elements of States’ regs/guidance/policies

- Burden of proof – statement of who is responsible: 12 C, 17D
- Financial responsibility: 11 C, 13 D
- Allowance for extension for < 30 years and/or extension w/reduced requirements: 10 C, 14 D
- Process for evaluating specific criteria to determine if change warranted: 8 C, 11 D
- Timeframes specifying when the Agency will evaluate the need for modifying the PCC period: 5C, 5D
Burden of Proof

- Extend PCC period
  - State: C 8, D 10
  - Owner/operator: C 4, D 5

- Reduce PCC period
  - State: C 1, D 1
  Owner/operator: C 9, D 13
Opinions on importance of criteria in deciding whether to modify PCC period

- Asked about 33 criteria
- Asked if “Critical/essential”, “Possibly important” or “Nonessential”
• Very few “Nonessential” responses
• Suggested way to categorize criteria based on responses:
  - Ignore “Nonessential” responses, since so few calculate % “Critical/essential” and % “Possibly important” responses for each criterion (assume %C/E + %PI = 100)
  - Establish break points for categories (“very important”, “moderately important”, etc.)
Categorize as follows

- Very important if % Critical/essential > 75%
- Moderately important if 50% < % C/E ≤ 75%
- Somewhat important if 25% < % C/E ≤ 50%
- Of minor importance if C/E ≤ 25%
Results of this classification scheme

- 5 “very important” C criteria, 10 “very important” D criteria
- 19 “moderately important” C, 18 “moderately important” D criteria
- 7 “somewhat important” C criteria, 2 “somewhat important” D criteria
- 2 “of minor importance” C, 3 “of minor importance” D criteria
Results (continued)

- 3 of 5 C “very important” also “very important” for D

- One “very important” C just missed being “very important” for D, other was 72% C/E for D

- All criteria that were judged “very important” for D were either “very important” or moderately important” for C
Top 5 Criteria – Subtitle C

- Potential for release/migration of hazardous constituents (#2 for D)
- Financial assurance (#12 for D)
- Potential for adverse impacts of releases based on fate/transport (#4 for D)
- Site location characteristics (#6 for D)
- Site geology/hydrogeology (#15 for D)
• Groundwater analytical results (#6 for C)
• Potential for release/migration of hazardous constituents (#1 for C)
• History of releases and current associated contaminant levels (#12 for C)
• Potential for adverse impacts of releases based on fate/transport (#3 for C)
• Presence of enforceable institutional controls that will remain in force following the end of the PCC period (# 8 for C)
Some differences between C and D

- C less concerned than D about potential for release/migration of nonhazardous constituents
- C significantly less concerned about gas criteria (gas collection system functionality, generation rate, quality)
• Facility compliance history was of minor importance as a criterion for both C and D (i.e., most identified it as “possibly important” rather than “critical/essential”)
States that have had a facility challenge a decision to extend the PCC period

- Yes: 5 C, 0 D
- No: 18 C, 20 D (5 C among States that reported extending PCC; 1 D among States that reported extending PCC)
In order, high to low:

- EPA guidance on factors relevant to modifying the PCC period (50)
- Guidance on evaluating PCC criteria (43)
- An ASTSWMO position paper making specific recommendations as to preferred elements of national guidance (40)
- EPA regulation or other policy directive (36)
- Training on evaluating PCC criteria (35)
- An ASTSWMO white paper summarizing States' activities with respect to modification of the PCC period (32)
Discussion

- EPA – any comments?
- States – what would be most helpful to you?
- Other stakeholders – reactions?
- Open discussion
- Next steps, timeline
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