

Appendix 1

Research Questions

ASTSWMO State Superfund Focus Group Research Project State Approaches to Monitoring and Oversight of Land Use Controls

Introduction

The 2008 report by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) State Superfund Focus Group (SS FG) titled “State Status of Institutional Controls” recommended several possible areas of follow-up research. After discussions among the Focus Group (FG), with the membership at ASTSWMO sponsored meetings and with EPA representatives, the FG decided to pursue additional research in the area of State monitoring and oversight efforts of land use controls (LUCs).

Purpose

The SS FG will be researching how select States are monitoring and overseeing LUCs that have been put in place as part of, or to protect, a final remedy. The SS FG will then summarize the findings and prepare a resource document for use by the States, EPA, local officials, and others to help identify and evaluate successful approaches to monitoring and oversight. The document will discuss the variety of approaches the States have taken, programmatic costs to the States, lessons learned, and recommendations provided by the participating states.

Information Gathering

Each SS FG member has selected one or two States in their region to research. SS FG members will conduct interviews with representatives of the selected State(s). A set of written questions has been developed by the group to be used as a guide for the interview. The SS FG member will send the list of questions to the State representative prior to the actual interview so that the representative will have time to review the questions in preparation for the follow-up interview. The SS FG member may ask that the questionnaire be filled out and returned before the interview or may conduct the interview without getting written responses first. The questions are meant to serve as a guide, and the interviewer and/or the interviewee can expand particular parts of the discussion based on the responses in the live interview.

Questions/Areas of Interest

1. What is your State’s approach to monitoring and oversight of LUCs? Describe if and how your agency conducts monitoring of oversight for LUCs. If it is not done by your agency, is it done by another entity? If not done directly by your agency, is there an auditing component that is done by your agency?
2. How/why did your agency choose this approach?

3. What is the frequency of monitoring/oversight conducted at each site with a LUC? Reviewed annually or other regular schedule? Does agency staff conduct site visits as part of monitoring and oversight? How often is this done?
4. As part of monitoring and oversight, are the County Registry of Deeds documentation (or equivalent in your State) reviewed to determine if LUCs have been recorded? If so, how often is this component evaluated. If not, why not?
5. To what extent are interviews conducted with municipal officials responsible for implementation of city ordinances related to LUCs? To what extent are interviews conducted with the current owner/occupant to determine their knowledge, understanding, and compliance with land use restrictions? If not, why not?
6. Is there any type of one-call system in place in your State that is being used for sites that rely on LUCs as part of the remedy?
7. Is there any reporting required with respect to LUCs once they are in place? What type of reporting and by whom? Frequency of reporting? Who reviews/evaluates these reports? What sort of follow up may result from the reports?
8. How does your agency respond to the findings of the reporting above and to any problems that are discovered with respect to implementation/performance of LUCs?
9. Are there any public notifications on the outcomes of monitoring and oversight, including submission of reports, results of audits, problems found?
10. Do local land use decisions (zoning, building permits, certificates of occupancy) consider land use restrictions?
11. Does the transfer/sale of property affect the long-term effectiveness of LUCs? Does the responsibility for LUCs change with change in property ownership? Is there a reporting requirement to your agency when there is a change of property ownership?
12. Is there a notification requirement if the land use is changing in a way that conflicts with the LUCs?
13. How does your State handle situations where the landowner refuses to place the necessary LUCs on the property? Does the State have the authority to require the action or implement the LUCs themselves? How often does this happen?

14. How has your State's approach to monitoring and oversight of LUCs performed? Do you think it has been effective in encouraging compliance and identifying non-compliance? What do you think the strengths and weaknesses are to your approach? How would you change it if you could? Are there any planned changes? Are any changes being considered?

15. Could you give an example of where the State's approach has been particularly effective and an example of where it was not successful in ensuring compliance and identifying non-compliance? Why was it and why was it not successful in those examples?

16. Could you estimate how many personnel hours and/or other State resources (e.g. contractor costs) are spent on monitoring and oversight of LUCs annually? Do you expect that this will change in the future (increase or decrease) and why?