

ASTSWMO POSITION PAPER

POST-CLOSURE CARE BEYOND 30 YEARS AT RCRA SUBTITLE C FACILITIES

Background

Regulations promulgated under the authority of Subtitle C of the Resource Conservation and Recovery Act (RCRA), include provisions regarding the post-closure care of hazardous waste land disposal units. The Subtitle C regulations establish a 30-year post-closure care period as the default requirement (See 40 CFR § 264.117).

These regulations include provisions allowing the 30-year period to be extended or shortened. The 30-year period may be extended if the Environmental Protection Agency (EPA) Regional Administrator (RA) or Director of an authorized State program “finds that the extended period is necessary to protect human health and the environment”, and may be shortened if the RA or State Director finds that a reduced period is sufficient to protect human health and the environment. After completion of the established post-closure care period, the owner or operator is required to certify that the post-closure period was performed in accordance with the approved post-closure plan. Similar provisions are found in regulations promulgated under authority of Subtitle D of RCRA.

Facilities around the country are now coming up on the end of the initial 30-year post-closure period. Many States are grappling with the issue of how to address this situation. In particular, questions arise as to what specific criteria should be used to make a determination that post-closure care needs to be extended or ended at the end of the initial 30-year period. Related questions include such issues as: whether the term of the post-closure care period should be adjusted when a permit is due for renewal; criteria that should be used in deciding whether to adjust the post-closure care period; if the post-closure care period is extended, what period of time is most appropriate; what type and amount of financial assurance should be required for the extended post-closure period; and whether the burden of proof is on the regulatory agency to demonstrate the need for additional post-closure care, or on the facility to demonstrate that additional post-closure care is not needed.

A joint workgroup composed of members from the ASTSWMO Hazardous Waste and Materials Management Subcommittees has been evaluating post-closure care requirements in relation to the end of the initial 30-year post-closure period. The workgroup conducted a survey of ASTSWMO members and presented the results at the 2011 ASTSWMO Annual Meeting.

Issue

As part of the survey on post-closure issues, ASTSWMO members were presented with a list of items that could potentially be useful in dealing with post-closure considerations and were asked to select one or more items that they would find helpful. The top three items, beginning with the most requested, were: (1) EPA guidance on factors relevant to modifying the post-closure care period; (2) Guidance on evaluating post-closure care criteria; and (3) An ASTSWMO position paper making specific recommendations as to preferred elements of national guidance. Further discussion within the Hazardous Waste Subcommittee's Corrective Action and Permitting (CAP) Task Force highlighted the following as key issues:

- The need for a clear statement from the EPA that there is a presumption that a Subtitle C post-closure care obligation remains as long as hazardous waste remains in a closed land disposal unit, even if there is no evidence of a release after 30 years of post-closure care (although a facility may be able to rebut this presumption on a case-by-case basis);
- The need for a clear statement identifying the relevant criteria on which to base decisions on the need for continuing post-closure care;
- The need for a clear statement of the process to be used to decide that ending the post-closure care obligation is warranted;
- The need to make clear to permit holders that the burden is on the permit holder to provide information to make a case that post-closure care is no longer needed;
- The need for a clear statement identifying facility financial assurance obligations during an extended post-closure period, taking into account that financial assurance issues involve more than just the type of instrument and amount of coverage;
- The recognition, in any federal guidance, that States may be more stringent than the federal program, and a need to coordinate the development of federal guidance with States so that States' programs are not inadvertently disrupted; and
- The recognition that States need flexibility in determining the site-specific risk associated with the failure of engineering controls after the post-closure period.

It is worth noting that the key issues highlighted by the CAP Task Force are in common with the Subtitle D post-closure care issues that have been identified by the Materials Managements Subcommittee's Municipal D Waste Task Force, with the exception of the first issue that is specific to hazardous waste.

Position

The ASTSWMO Board of Directors recommends that EPA issue supplemental guidance on the implementation of the post-closure regulations under Subtitle C of RCRA. Such guidance should be congruent with the key issues highlighted in the issues section of this position paper. ASTSWMO remains ready to work with EPA to achieve a mutually satisfactory outcome on this very important issue.

Approved by the ASTSWMO Board of Directors on October 17, 2012 in Washington, DC.