



ASTSWMO, Providing Pathways to Our
Nation's Environmental Stewardship Since 1974

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 for nonhazardous waste disposal units promulgated under the authority of Subtitle D of RCRA.

Facilities around the country are approaching or have already arrived at the end of the initial 30-year post-closure period, and many States are grappling with the issue of how to address this situation. ASTSWMO raised several questions and asked EPA to address a number of issues regarding this topic in its October 17, 2012 Position Paper.

While EPA’s December 15, 2016 Memorandum addressed several of ASTSWMO’s requests, and provides guidance on this issue, it does not fully address all of ASTSWMO’s concerns and the situations faced by the States with disposal units at the end of the 30-year post closure period cited in the regulations. Failure to address these concerns may lead to hazardous waste disposal units exiting post-closure care without sufficient controls (including land use restrictions) in place. If this occurs, ASTSWMO is concerned that unregulated development, or even simple neglect of these units will result in the release of hazardous wastes and hazardous constituents. This will ultimately lead to those units/facilities being regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

ASTSWMO members agree that controls need to remain in place in perpetuity if wastes are present in the disposal units. These controls must be required even if the unit has met all the requirements of its post-closure permit and there is currently no groundwater contamination associated with the unit.

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ISSUES

The Hazardous Waste Subcommittee's Corrective Action and Permitting (CAP) Task Force has highlighted the following as key issues:

- A clear statement is needed 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 facility financial assurance obligations during an extended post-closure period, that ensures cost estimates are periodically updated and that financial assurance instruments are maintained to ensure adequate coverage,
- If an alternate enforceable document (such as an order or environmental covenant under the Unified Environmental Covenant Act) can be used in place of a post-closure permit, identification of the minimum controls and restrictions that need to be included in this document or order, and
- Guidance addressing the addition of an emerging or newly listed contaminant to monitoring requirements.

POSITION

The ASTSWMO Board of Directors recommends that EPA either revise the RCRA regulations for post-closure or 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 July 20, 2022 in Park City, UT.