

## **ASTSWMO POLICY POSITION PAPER ON FEDERAL FACILITIES**

### **BACKGROUND**

Environmental compliance and remediation at active, closed, and transferred federal facilities continues to be one of the most complex and controversial issues in State-federal relationships. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) has consistently supported individual State efforts to regulate and enforce both State and federal waste management mandates upon federal agencies maintaining facilities located within their State. With the ongoing national debate concerning States' environmental rights and responsibilities relating to federal facilities, ASTSWMO believes that it is necessary to define our Association's positions relative to the environmental management and waste management efforts currently ongoing at all federal facilities.

### **POSITIONS**

It is ASTSWMO's view that national policies and statutory authorities should be adjusted to provide, at a minimum, the following:

- ***Decision Making.*** States must be involved in the critical decisions related to the environmental response and close-out actions at federal facilities, which includes such things as input into funding and project prioritization; review and approval of proposed remedies; monitoring of remedy performance; ensuring compliance with environmental laws; and long-term stewardship.
- ***Access and Information Sharing.*** Federal agencies must provide designated State regulatory personnel with appropriate access to facilities and should meet all federal and State reporting and information requirements.
- ***Policy and Guidance Development.*** States must have a collaborative role in the development of federal agencies' guidance, contracting practices, policy and regulation related to environmental compliance and remediation at federal facilities.
- ***Federal Facilities Environmental Restoration Dialogue (FFERDC).*** Federal and State agencies should continue to adopt and implement the findings of the 1996 FFERDC Final Report in the environmental restoration of all federal facilities.
- ***Formerly Used Defense Sites (FUDS) Program.*** FUDS properties are not subject to the same level of Department of Defense (DoD) control as active installations, which present unique challenges for State and federal agencies. DoD, the U.S. Army, States, and other federal agencies should continue to collaborate on the FUDS Forum Working Group (or

similar forum) to address issues such as site access, policy disputes, State Management Action Plans, and State and federal roles and authorities at these properties.

- ***Military Munitions Response Program (MMRP)***: The investigation and cleanup of munitions and explosives of concern (MEC) at former and active DoD facilities present unique risks and response actions, and has become a high program priority in recent years. States must be involved in the implementation of the MMRP including the munitions response prioritization process, and decisions in all critical phases of the cleanups including interim risk management, site closeout (defining clean), and long-term management.

States and federal agencies should continue to participate in the Munitions Response Dialogue (or similar forum) to collaborate on policies and technologies involved with the investigation, remediation, interim risk measures and long-term management of federal facilities contaminated with MEC and associated contaminants.

- ***Sovereign Immunity***. Legislation should be developed and supported to continue to clarify that federal facilities are subject to appropriate State regulations and are not unduly shielded by sovereign immunity and lead agency authority. In addition, States continue to oppose all legislative efforts resulting in the exemptions of federal facilities from federal and State environmental statutes.
- ***Long-term Stewardship***. Federal, State, and local agencies must work collaboratively in establishing long-term stewardship decisions to ensure that remedies that do not achieve unrestricted use remain protective. Prior to the selection of any final remedy all parties must engage in a thorough analysis to ensure the remedy is implementable, enforceable, and fully funded. Institutional controls are integral to long-term stewardship, and therefore, State and local authorities regarding these controls must be recognized by the federal agencies, including such things as the Uniform Environmental Covenants Act or similar State regulations.
- ***Emerging Contaminants***. States and federal Agencies should work collaboratively to address emerging contaminants unique to federal facilities. Emerging Contaminants are substances that are characterized by a real or perceived threat to human health or the environment, for which there is no currently published health standard, or for which the scientific basis of the standard is evolving or being re-evaluated.
- ***Funding***. The federal government should ensure that federal agencies request and receive adequate funding to carry out both their responsibilities for regulatory compliance with all applicable federal and State regulations, and for remediation and restoration of federal facilities.
- ***Cost Reimbursement***. Federal agencies should ensure that State costs for the regulation of federal facilities, including costs associated with State agency oversight, are fully reimbursed on a timely basis through the payment of fees and oversight costs to the same extent and in the same manner as other regulated entities (ex., Defense State Memorandum of Agreement (DSMOA)).

- ***Performance-Based Contracting (PBC)***. With the increased use of performance-based remediation contracts, federal agencies must ensure that regulators are adequately involved at key stages of the contracting process both pre- and post-award. In addition, federal agency oversight of contractors must be maintained to minimize possible conflicts with State regulators concerning performance standards and completion of performance objectives.
- ***Community Involvement***. Community involvement is a requirement of most federal and/or State environmental regulations and should be adhered to by all parties. It is important that the lead agency, with the responsible parties' support, provide uniformity of program implementation nationwide. A consistent commitment to community involvement as a programmatic priority will minimize commonly identified challenges. While the commitment needs to be consistent, the approaches should recognize that communities are unique and have specific needs that vary from site to site.
- ***Environmental Management Systems (EMS)***. State and federal agencies will support the development of waste management programs that support the development of EMS and a comprehensive waste management plan that addresses waste minimization and environmental compliance audit programs in a prioritized manner.

Additional information about the subjects discussed above, including issue papers, research projects, and fact sheets, are available on the ASTSWMO webpage.

ASTSWMO encourages its membership to pursue these common goals in voicing their support for or opposition to specific provisions of the many policy and legislative proposals that relate to federal facilities. The Association will continue to operate in close coordination with other State associations in seeking to realize these goals and is especially cognizant of the broad policy path established by the nations' Governors in their comprehensive position statement on State-Federal environmental roles at federal facilities.

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