

Post-Closure Care Beyond 30 Years at RCRA Subtitle C Facilities: Association of State and Territorial Solid Waste Management Officials Position Paper



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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) issued a position paper titled:

Post-Closure Care Beyond 30 Years at RCRA Subtitle C Facilities (“Position Paper”)

The *Position Paper* was drafted by ASTSWMO’s Hazardous Waste Subcommittee’s Corrective Action and Permitting Task Force.

Carolyn Pollard and Penny Wilson of the Arkansas Department of Energy & Environment – Division of Environmental Quality are members of the Hazardous Waste Subcommittee.

The Resource Conservation and Recovery Act (“RCRA”) Subtitle C regulations require certain actions when a hazardous waste management facility ceases receipt of waste at the end of its active life. The unit must be remediated, monitored, and maintained in accordance with the closure and post-closure care requirements. These are found in the closure and post-closure sections of the RCRA regulations.

Closure of units or facilities can happen in one or two ways:

- A clean closure (receipt of all waste from the unit and decontaminated to remove all equipment, structures, and stranded soil)
- A closure with waste in place (closure method for facilities or units that cannot meet the clean closure requirements [i.e., all waste and contamination could not be removed])

Note that post-closure applies only to land disposal facilities and cannot decontaminate (or clean close) all equipment, structures, and soils. There is normally a 30-year period after closure during which owners and operators conduct monitoring and maintenance activities to preserve the integrity of the disposal system and continue to prevent or control releases of contaminants from the disposal units.

The ASTSWMO *Position Paper* notes that the Subtitle C regulations establishing a 30-year post-closure care period can be extended or shortened. The 30-year period may be expanded or shortened if the United States Environmental Protection Agency (“EPA”) Regional Administrator or Director of an authorized program:

... “finds that the extended period is necessary to protect human health and the environment” and may be shortened if the Regional Administrator or State Director finds that a reduced period is sufficient to protect human health and the environment.

The *Position Paper* states that various facilities in the United States are approaching (or have already reached) the end of the initial 30-year post-closure period. As a result, it notes that many states are “grappling with the issue of how to address this situation.”

EPA is noted to have drafted a 2016 memorandum addressing several ASTSWMO’s questions on this issue. However, the *Position Paper* states that memorandum did not address all concerns/situations faced by the states. As a result, concern is expressed that hazardous waste disposal units exiting post-closure care may do so without sufficient controls.

The issues outlined by the *Position Paper* include:

- 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.

Finally, the *Position Paper* 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.

A copy of the *Position Paper* can be downloaded [here](#).