

CERCLA Five-Year Review Reports/Checklist for State Project Managers: ASTSWMO Guidance Issued



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

01/10/2024

The Association for State and Territorial Solid Waste Management Officials (“ASTSWMO”) issued two guidance documents for Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) state project managers:

Five-Year Review Checklist

- Five-Year Review Checklist for State Project Managers (“Checklist”)

Five-Year Review General Guidance Document

- Five-Year Review Process and Reports General Guidance for Support Role Project Managers (“Guidance Document”)

Both documents are intended to support and provide assistance to CERCLA state project managers.

ASTSWMO describes itself as an organization representing the 50 states, five territories, and the District of Columbia whose mission is to enhance and promote state and territorial programs and to affect relevant national policies for waste and materials management, environmentally sustainable practices, and environmental restoration.

The documents were prepared by the organization’s CERCLA Post-Construction Focus Group.

CERCLA was enacted by Congress in 1980 to focus on the cleanup of inactive hazardous waste sites and address liability for cleanup costs on arrangers and transporters of hazardous substances and on current and former owners of facilities where hazardous substances were disposed. The federal statute gives the President the authority to cleanup these sites under requirements generically referred to as “removal” or “remedial provisions.”

The United States Environmental Protection Agency is required by CERCLA to provide state and local officials with an opportunity to participate in the planning and selection of remedial action. State and local participation is required to include review of applicable data as it becomes available and the development of studies, reports, and action plans.

Post-Construction Completion (“PCC”) activities are required to ensure CERCLA response actions provide for the long-term protection of human health and the environment. PCC is the term typically used for a number of activities undertaken at sites following the construction of response actions.

These activities may include:

- Operation and maintenance and long-term response actions

- Institutional controls
- Five-year reviews
- Site deletion from the National Priority List

The ASTSWMO Guidance notes that the purpose of a PCC five-year review is to:

. . . evaluate the implementation and performance of a remedy in order to determine if the remedy is or will be protective of human health and the environment.

Five-year reviews are noted to address concerns with current remedies which may have been identified during the review process. Further, such concerns are required to be accompanied by recommendations to address them in the five-year report.

The Guidance Document addresses topics such as:

- Sites that Require a Five-Year Review
- Triggers that Start the Five-Year Review
- Subsequent Five-Year Reviews
- Technical Assessment and Protectiveness Determinations
- Role of the Support Agency
- A Note on Timeframes
- Additional Resources

The ASTSWMO Checklist addresses what it describes as three areas of focus to consider during the five-year review:

- Review Process
- Report Components
- Drafting Recommendations

Links to the Guidance Document and Review Checklist can be downloaded below:

https://astswmo.org/files/Policies_and_Publications/CERCLA_and_Brownfields/2024-01-5YR-overview-info.pdf

https://astswmo.org/files/Policies_and_Publications/CERCLA_and_Brownfields/2024-01-Checklist-Update.pdf