

MEMORANDUM

SUBJECT: Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA

FROM: Barnes Johnson, Director
Office of Resource Conservation and Recovery

TO: RCRA Division Directors, Regions 1-10
RCRA Enforcement Managers, Regions 1-10
Regional Counsels, Regions 1-10

Purpose

The purpose of this memorandum is to provide guidance to assist regulators in evaluating conditions at hazardous waste disposal facilities subject to Subtitle C of the Resource Conservation and Recovery Act (RCRA) that are approaching the end of the original 30-year post-closure care period, and in determining whether the post-closure care period should be adjusted or allowed to end. Any such determinations must ensure ongoing protection of human health and the environment. This guidance also provides information to assist facility owners and operators in preparing documentation to inform the regulators' evaluations.

This guidance has the additional benefit of helping regulated entities understand what may be necessary to ensure protection of human health and the environment at units subject to post-closure care requirements. This enables waste generators and handlers to have a better understanding of the costs associated with land disposal so they can better evaluate long-term waste management strategies, including waste minimization.

Introduction and Need for Guidance

The RCRA Subtitle C hazardous waste management regulations establish a post-closure care¹ period for certain hazardous waste treatment, storage and disposal facilities, and specify post-closure care activities. The post-closure care requirements apply to land disposal units (landfills, land treatment units,

¹ Post-closure care can be generally described as the period of time after closure during which owners and operators conduct specified monitoring and maintenance activities to preserve the integrity of the containment system and to continue to prevent or control releases of contaminants.

and surface impoundments) that leave hazardous waste in place after closure. Post-closure care also applies to some non-land-based units (*e.g.*, certain tanks or containment buildings) that cannot fully decontaminate or “clean close”¹ all equipment, structures, and soils. Post-closure care activities consist of two primary responsibilities: monitoring and reporting, and maintaining the integrity of the waste containment systems (see 40 CFR 264/265.117). Post-closure care for each hazardous waste management unit must begin after completion of closure of the unit and normally continue for 30 years after that date; the regulations also provide discretion to the permitting authority to adjust the length of the post-closure care period.

Many facilities around the country are approaching the end of the initial post-closure care period established in their RCRA permits or post-closure plans. Accordingly, questions have arisen about how to evaluate conditions at these facilities to determine whether the post-closure care period needs to be adjusted – that is, extended, or whether a 30-year post-closure care period is protective for a specific unit. In response, the Office of Resource Conservation and Recovery has developed this guidance recommending criteria to consider when evaluating facilities nearing the end of the post-closure care period² and thus ensure that human health and the environment will continue to be protected by the resulting determination. It also sets forth a recommended process for evaluating the post-closure care period in a timely fashion. Finally, this guidance discusses additional considerations that may be important for decision-makers when evaluating the adequacy of the post-closure care period.

This guidance supplements existing guidance on the post-closure care period, including the Technical Evaluation Criteria and Site-Specific Factors to Consider in Determining the Length of the Post-Closure Care Period, presented in the Appendix B of the *RCRA Guidance Manual for Subpart G Closure and Post-Closure Care Standards and Subpart H Cost Estimating Requirements* of January 1987.³

Regulatory Overview of the Post-Closure Care Period

¹ The RCRA Subtitle C regulations generally provide for two types of closure: closure by removal or decontamination (referred to as “clean closure”) and closure with waste in place. The premise of clean closure is that all hazardous wastes have been removed from a given RCRA unit and any releases at or from the unit have been remediated. More information on clean closure is available in *Memorandum: Risk-Based Clean Closure* from Elizabeth Cotsworth, Acting Director Office of Solid Waste, March 16, 1998.

² This document is solely intended to provide guidance to federal and state regulators on implementing the RCRA Subtitle C regulations and to provide policy advice and recommendations. As such, this document does not impose any legally binding requirements, and the use of such phrases as “guidance,” “recommend,” “may,” “should,” and “can,” are not intended to impose or connote any legal obligations. Accordingly, this document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The policies described in this document may not apply to a particular situation based upon the circumstances, and EPA may deviate from or revise any of the policies described in this document without prior notice to the public. While EPA has made every effort to ensure the accuracy of the discussion in this document, the obligations of the regulated community are determined by statutes, regulations or other legally binding requirements. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling.

³ OSWER Policy Directive #9476.00-5, EPA/530-SW-87-10.

EPA regulations⁴ require that the post-closure care period for each hazardous waste management unit subject to the requirements of 40 CFR 264/265.117 through 264/265.120 must begin after completion of closure of the unit and continue for 30 years after that date. Still, the regulations' identification of a default 30-year post-closure care period does **not** reflect a determination by EPA that 30 years of post-closure care is necessarily sufficient to eliminate potential threats to human health and the environment in all cases. Nor is the full 30-year period always necessary. In fact, the regulations provide for a permit authority to conduct a case-by-case review of the post-closure care period and establish arrangements to adjust the length of the post-closure care period on a facility or unit-specific basis, where the record supports a determination that the revised post-closure care period will remain protective of human health and the environment.⁵

The regulations provide that the decision to alter the length of the post-closure care period can be made at any time preceding *partial closure*⁶ of a hazardous waste management unit subject to post-closure care; at any time preceding *final closure*⁷ of a facility; or at any time during the post-closure care period for a particular unit. For permitted facilities, such a decision must be made through the permit renewal or modification procedures in parts 124 and 270 of the regulations. For interim status facilities, adjustment to the post-closure care period must be made in accordance with § 265.118(g).

According to § 264.117 the post-closure care period may be modified under certain circumstances provided the modifications are protective of human health and the environment:

- The post-closure care period may be shortened where “the reduced period is sufficient to protect human health and the environment (*e.g.*, leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure).”
- The post-closure care period may be extended where “the extended period is necessary to protect human health and the environment (*e.g.*, leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health or the environment).”

The provisions for interim status facilities are similar [§§ 265.117 and 265.118(g)].

For more details on particularly relevant portions of the federal RCRA hazardous waste regulations, see Appendix A.

Criteria to Consider for Evaluating the Post-Closure Care Period

⁴ 40 CFR 264.117 (for permitted facilities) and 265.117 (for interim status facilities)

⁵ EPA explained this approach early in the RCRA program. *See* 45 Fed. Reg. 33197 (May 19, 1980); *see also* 47 Fed. Reg. 32287-88 (July 26, 1982); 46 Fed. Reg. 2819 (Jan. 12, 1981).

⁶ *Partial closure* is defined in 40 CFR 260.10 as “the closure of a hazardous waste management unit in accordance with the applicable closure requirements of parts 264 and 265 of this chapter at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile or other hazardous waste management unit, while other units of the same facility continue to operate.”

⁷ *Final closure* is defined in 40 CFR 260.10 as “the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in § 262.34.”

An overarching consideration in determining whether to extend the post-closure care period, or allow it to end, is the inherent uncertainty associated with the long-term presence of hazardous waste in the unit. Because many hazardous wastes degrade slowly or do not degrade under containment in these units, the continued presence of hazardous waste in the unit (*i.e.*, any case other than clean closure) indicates the potential for unacceptable impacts on human health and the environment in the future if post-closure care is not maintained. For instance, there are often uncertainties in whether controls will continue to function as planned and whether future activities will lead to unplanned exposures to human and environmental receptors. Even if there is no current evidence of actual releases from the facility, significant factors can change over time. For example, groundwater flow can change direction due to the sequencing of dry and wet years, pumping at municipal water supply or other well fields, or shifting gradients resulting from seasonal variations or tidal influences. Landfill components, such as caps and liners (which have a finite design life), can degrade over time, especially if maintenance is discontinued. Exposure pathways that have been eliminated by means of an engineered control may be reopened (*e.g.*, if animals burrow through the cap). Thus, continued monitoring and maintenance activities may be appropriate unless or until it can be demonstrated that site-specific conditions adequately minimize the risk that contaminants will migrate from the unit (*e.g.*, site geology/hydrogeology) or that, in the event the engineering controls fail, a release would not pose an unacceptable risk to human health and the environment. This section provides recommended criteria that can be used to evaluate site-specific conditions and associated risks or remaining uncertainties in determining whether to adjust the post-closure care period.

These criteria can also be periodically used to evaluate whether activities in the post-closure plan should be amended. For instance, if the regulator determines it is necessary to extend the post-closure care period, these criteria can be used to determine if the frequency of one or more post-closure care monitoring requirements could be reduced during that extended timeframe. Each criterion is not necessarily applicable for every unit in post-closure care, for example, the “Gas Collection System Integrity” criterion would not apply to units without a gas collection system. The questions provided under each criterion are intended to help identify potential threats to human health and the environment. However, they do not all need to be answered in order to make a decision concerning the appropriate post-closure care period and the monitoring/maintenance activities.

Waste Treatment: Knowing whether the hazardous waste was disposed prior to the effective date of the Land Disposal Restrictions (LDR) program is an important piece of information when evaluating site-specific conditions. Hazardous waste treatment that destroys harmful contaminants or reduces toxicity of the waste before placement in a land disposal unit provides a more lasting form of groundwater protection than waste containment alone. Similarly, through a process called stabilization or immobilization, metal contaminants – that cannot be treated – can be chemically and physically solidified or bound into the wastes that contain them (*e.g.*, through chemical fixation). Thus, reducing the mobility or leachability of hazardous constituents in a waste is another means of achieving LDR's groundwater protection goal. Relevant questions for this criterion include:

- Were all the wastes pre-treated in accordance with the treatment standards of the LDR program or does the unit contain wastes that were placed on the land prior to the effective dates of the LDR rules?

EPA recommends reviewing the waste analysis data for treated wastes in the land disposal unit.

Nature of Hazardous Wastes Remaining in the Unit: The current properties of the hazardous waste (*e.g.*, degradation, solubility, liquid-to-solid ratio) provide an important indication of the waste's ability to migrate or disperse in the environment.

- What is the degree of risk (*e.g.*, exposure pathways, probability of exposure) presently associated with the wastes in the unit?
 - Are the wastes highly toxic?
 - Do they degrade into substances that are more or less toxic, or non-toxic?
 - Are there indications that the waste might become incompatible with the liner?
- What is the potential for adverse impacts from releases based on the current understanding of contaminant fate and transport considerations (*e.g.*, presence of persistent, bioaccumulative contaminants, as compared to biodegradable contaminants; constituent speciation(s); and leaching profiles)?
- Is the waste in a stable state? Are there indications that the waste may become unstable?

EPA recommends that current data from regulatory standards be used for comparison to facility-specific performance goals articulated in the post-closure plan, and that, as necessary, the plan be updated to account for any new information on toxicity and carcinogenicity. EPA also recommends reviewing and possibly updating the list of constituents to analyze, since scientific understanding of constituents of concern may change over time. In addition, the data gathered should include an analysis of potential degradation products as well as of the types of wastes known to have been placed in the unit(s).

Unit Type/Design: The main objective of the disposal units is the containment of the hazardous waste. Thus, emphasis should be placed on the unit's ability to contain hazardous wastes over the long term.

- Is the unit, for example, a landfill, a surface impoundment, or a closed tank with residual contamination?
- Does the unit meet the minimum technology requirements (*e.g.*, double liners, leachate collection system)? Or was the unit already in existence at the time these requirements were promulgated and closed before retrofitting?
- To what extent does the overall design and construction of the unit minimize the need for long-term maintenance, resist the generation of leachate and emissions, and contain any remaining waste in perpetuity?

It is recommended that the permitting authority consider any unit-specific design, in concert with applicable closure and post-closure care requirements, when evaluating whether adjustment of the post-closure care period is warranted to protect against any potential impact on human health and the environment. There can be circumstances in which continuing to maintain unit-specific controls may be necessary to protect human health and the environment, particularly if the unit pre-dated the minimum technology requirements; this could support a decision to extend the post-closure care period. Conversely, there might be circumstances where the overall design and construction of the unit minimize the need for long-term maintenance and could support a decision to shorten or end the post-closure care period.

Leachate: The leachate collection and removal system controls leachate build-up on the liner, working in conjunction with the liner's barrier system to minimize the potential for groundwater contamination.

Monitoring for leachate generation serves as the most effective way of examining the integrity of the waste management unit (*e.g.*, it can suggest a cover or liner failure when leachate is detected late in the post-closure care period).⁸

- Will the integrity and functionality of the leachate collection system, leachate generation rate, and leachate quality remain adequate to prevent harm to human health or the environment in the absence of post-closure care?
- Can the facility owner or operator show through monitoring/modeling and/or statistical analysis that the leachate would not pose a threat to human health and the environment because it would not exceed applicable standards at compliance or exposure points?
- Is it likely those standards will be exceeded in the future, for example, through formation and release of degradation products? Do the data demonstrate that there are no increasing trends in the concentration of leachate constituents?
- Can the facility owner or operator demonstrate that maintenance and operation of the leachate collection system can be ceased without posing a threat to human health and the environment?

EPA recommends that potential impacts from changes in leachate characteristics and generation rate that could result from discontinued maintenance be considered.

Groundwater: Groundwater monitoring serves as the primary means of detecting leachate releases and groundwater contamination. It is important that groundwater analytical results, adequacy and reliability of the groundwater-monitoring network, and groundwater-monitoring well integrity be evaluated before the post-closure care period nears its end.

Groundwater should not exceed risk-based concentrations for a reasonable exposure scenario (or point of exposure) using currently acceptable risk assessment methods and up-to-date risk-based levels and scenarios. If the evaluation determines that unacceptable risk exists, these risks should be addressed. The risk evaluation should consider reasonable current or future groundwater use in the general area of the site (*e.g.*, if a drinking water source is located nearby).

Review of the groundwater monitoring system should have been done as part of operation and maintenance inspections over time. Evaluation of the groundwater monitoring network should refer to the most recent operation and maintenance inspection. The well network evaluation should look at groundwater flow direction, well construction, and placement relative to groundwater flow direction.

⁸ “If leachate is generated late in the post-closure care period, this could suggest a cover or liner failure warranting an extension of the post-closure care period.” See page B-13 of the RCRA Guidance Manual for Subpart G Closure & Post-Closure Care Standards and Subpart H Cost Estimating Requirements, EPA/530-SW-87-010 (January, 1987).

- Is groundwater quality in compliance with current standards?
- Have there been changes or are changes anticipated in land use/groundwater use that could change the applicable standards (*e.g.*, introduction of agricultural irrigation to an area) or the directional flow (*e.g.*, sequencing of dry and wet years, pumping at municipal water supply or other well fields, or shifting gradients resulting from seasonal variations or tidal influences)?
- Do the data indicate any trend in the concentration of analytes in groundwater?
- Has an expanded list of analytes (*e.g.*, selected from Appendix VIII of 40 CFR part 261) been considered for analysis within a reasonable time frame?
- Have the monitoring wells been maintained to provide valid data, for example, no well screen occlusion?

Siting and Site Geology/Hydrogeology: Relevant facility location characteristics (which might have changed since the post-closure plan was approved) may include proximity to vulnerable areas such as residential areas and surface and drinking water sources. The current and reasonably anticipated future land use of the facility and surrounding properties may also be relevant. Location in potentially vulnerable areas increases the likelihood and potential severity of releases. For example, if units are located in areas prone to flooding or with a high water table, it may be appropriate for reviewers to consider the potential for continuing risks to surface water in evaluating whether to modify the post-closure care period. Conversely, units located in areas not prone to flooding, or at great distance from the water table, might have less need for long-term maintenance. Additional hydrologic and geologic conditions such as wetlands and earthquake zones, unstable soils, and areas at risk for subsurface movement could have changed since a unit first entered post-closure care and might also need to be taken into account. Proximity to residential areas can also present unique considerations. It is also appropriate to consider whether facility conditions minimize the potential for adverse impacts on local populations if there is a release from the unit.⁹

⁹ If a unit managing vapor-forming chemicals has releases to the environment, it creates the potential for vapor intrusion issues to neighboring communities due to migrating plumes of contaminated groundwater or migrating soil gases, even when the community is some distance away. Consider evaluating risks from subsurface intrusion of toxic constituents (*e.g.*, vinyl chloride from aerobic degradation of perchloroethylene/trichloroethylene), or landfill gases such as methane and hydrogen sulfide, into buildings or structures located near the unit in post-closure care. See the *Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air*, June 2015.

- Does the site geology include subsurface strata that might contain or retard migration?
- What is the distance to the groundwater table, bearing in mind seasonal fluctuations, and the proximity of any useable aquifers?
- Is the unit located in a dry climate that provides minimal precipitation?
- Is the pattern of land use changing or likely to change in the future in a way that would bring people closer to or farther away from the facility?
- Have zoning laws changed?
- Is there a sizable buffer zone around the facility that could limit human activity near the site into the future?
- What is the distance to sensitive receptors for groundwater flow and emissions?
- Could the distance to sensitive receptors change under reasonably foreseeable future conditions, as reflected, for example, in land use development plans for the area?
- Is there the potential for impact on surface water quality?
- Have new potential exposure pathways been identified and evaluated? For example, vapor intrusion had not been identified as a potential exposure pathway at the time many permits were issued.¹¹

In addition, EPA recommends that the potential effects of climate change be taken into account in making these assessments.¹⁰ For example, flooding from more intense and frequent storms and sea-level rise may lead to contaminant releases from units subject to post-closure care requirements by transport of contaminants through surface soils, groundwater, surface waters and/or coastal waters. Saltwater intrusion and increased groundwater salinity in coastal aquifers may increase the permeability of clay liners installed at waste sites, such as landfills. Changes in precipitation patterns and temperature may also adversely affect the performance and efficacy of engineering controls.

Facility History: All waste management units (during active life or in post-closure care) must be adequately managed to prevent releases of contaminants to the environment. A well-managed facility is more likely to maintain its structural integrity. Good compliance records, routine maintenance and inspections, emergency procedures to handle natural disasters, and prompt and efficient response to spills and other incidents, are some of the management practices that help demonstrate whether the unit has been adequately managed.

¹⁰ For more information on climate change adaptation consult the “Climate Change Adaptation Technical Fact Sheet: Landfills and Containment as an Element of Site Remediation,” EPA 542-F-14-001 (May 2014).

- From the facility records (including frequency of all maintenance activities), to what extent did the unit closure design and activities described in the closure plan and closure certification minimize the need for ongoing monitoring and maintenance?
- Has past noncompliance with regulatory requirements contributed to present environmental conditions that warrant an extension of the post-closure care period (*e.g.*, non-compliance with current LDR standards)?
- Is there a history of any releases and what are current contaminant levels?
- If a release did occur, have corrective measures been successfully implemented and has subsequent monitoring shown no evidence of a recurrence?
- Are analyses being conducted for the correct parameters?
- How complete and accurate is the facility operating record?
- Is there confidence that the record accurately reflects spills, releases, lapses in maintenance or other events that may have a bearing on potential facility impacts?
- To what extent have closure activities minimized or eliminated escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, surface waters or the atmosphere during the post-closure care period?

In order to fully understand the facility history, EPA recommends that the permit authority also review the closure plan and certification of closure.¹¹

Gas Collection System Integrity: For units that have a landfill gas collection system, it is important to analyze the extent to which it is capable of being modified or shut down at the end of the post-closure care period without exceeding emission levels that are consistent with applicable regulatory standards and with public safety at the facility. In addition, because gas emissions can increase or decrease over time, it is recommended that statistical or graphical analysis of the data be used to identify any significant changes in gas emissions.

- To what extent is the gas collection system capable of being modified or shut down at the end of the post-closure care period without exceeding emission levels that are consistent with applicable regulatory standards and with public safety at the facility?

Integrity of Cover System: A viable cover is the most important mechanism in preventing leachate generation and, ultimately, releases of contaminants. Cracks, burrows from animals, and other problems are likely to occur after termination of post-closure care. If testing and inspection end, problems can go undetected and releases could occur. Thus, it is vital to evaluate the performance of the cover system during the post-closure care period.

¹¹ For further information on closure performance standards, see 40 CFR 264.111 and 265.111.

- Has the cover system been designed and maintained to minimize migration of water into the management unit and to prevent contaminants from escaping into the environment?
- Has periodic testing or inspection been conducted to identify and assure any necessary repairs? Potential concerns include differential settlement, problems with cover integrity (cracks, burrows, etc.), cover drainage, and the adequacy of the diversion or drainage system. Even where such problems have not occurred, are they likely to arise without long-term care, *e.g.*, will the cover system remain intact without mowing to prevent growth of trees?
- Is the remaining waste likely to be so benign that even with a compromised cover system release of hazardous constituents is unlikely?
- To what extent will the integrity of the cover system be preserved in the absence of long-term care or with reduced maintenance requirements?

For alternative covers, it is recommended that the potential effects of climate change (*e.g.*, increasing frequency and intensity of weather events) be taken into account to the extent practical. For example, will the vegetation remain viable under altered precipitation patterns?

Long-Term Care: The concept of long-term care (also known as long-term stewardship) generally includes the establishment and maintenance of physical and legal controls that are necessary to prevent unacceptable exposure to hazardous waste or contaminated environmental media left in place at a site or closed facility. As a general matter, the RCRA post-closure care requirements (for example, monitoring and cap maintenance) fall under the umbrella of long-term care. When considering whether to adjust the post-closure care period, permitting authorities should evaluate any continuing need to maintain engineering controls (ECs),¹² particularly those specified in the RCRA post-closure care regulations.

- How will the potential for human exposure to contamination be minimized in the absence of RCRA post-closure care?
- How is the integrity of the entire containment system going to be preserved over time?
- Can maintenance and monitoring activities cease or be reduced without causing an adverse impact to human health and the environment?

A further need to maintain ECs could justify an extension of the post-closure care period. This may be the case even if the frequency of some activities could be adjusted (*e.g.*, some activities may be needed more frequently in the early years of the post-closure care period and less frequently later).

The RCRA post-closure care regulations provide for the imposition of institutional controls (ICs)¹³ as well. For example, §§ 264/265.117(c) provides that post-closure uses of a property where hazardous wastes remain after final or partial closure must never be allowed to disturb the integrity of the containment system or the functioning of the monitoring system, with limited exceptions. In addition, §§ 264/265.119(b)(1)(ii) provide that the owner or operator must record a notation, in accordance with state law, on the deed to the facility property – or on some other instrument which is normally examined during title search – that will in perpetuity notify any potential purchaser of the property that, among other things, the property’s use is restricted under the RCRA closure/post-closure regulations. States can

¹² Engineering controls are the engineered physical barriers or structures (*e.g.*, caps, impermeable liners, mitigation barriers, or fencing) designed to monitor and prevent exposure to the contamination.

¹³ Institutional controls are administrative or legal instruments (*e.g.*, deed restrictions/notices, easements, restrictive covenants, zoning) intended to minimize the potential for human exposure to contamination by limiting land or resource use.

choose to supplement or support such deed restrictions under state law, *e.g.*, by setting up a deed restriction tracking system, ensuring that deed restrictions remain in place, or ensuring that information on existing ICs is available to interested parties.

Even in cases where the post-closure care period need not be extended to protect human health and the environment, the permitting authority may want to ensure that some long-term ICs, such as an easement that provides access to the property, are continued. EPA recommends that any ICs (under state or local authority) needed beyond the post-closure care period be in place before the post-closure care period ends. EPA expects that the permit authority would typically need to assess the availability and adequacy of other potential mechanisms for overseeing ICs as part of evaluating whether any modification to the post-closure care period was warranted.

EPA also recommends that consideration be given as to whether a funding source is available to support any necessary ECs and ICs in the future (see Appendix B for a list of ICs resources.) This could be done, for example, as part of an anticipated future use (or end-use strategy) that generates revenue, so that protective controls at the unit can be continued while supporting beneficial reuse of the land into the future.

Recommended Approach for Reviewing Hazardous Waste Management Units Approaching the End of the Post-Closure Care Period

EPA believes that, at a minimum, it is important to make a decision about the length of the post-closure care period, and to document such decision, well before that period nears its end. Therefore, EPA recommends that regulators assess the overall status of all the units under post-closure care, and plan to evaluate the adequacy of their post-closure care periods well in advance of their anticipated conclusions. EPA also recommends that the results from the evaluation of the post-closure care period be included in the regulator's administrative record for the facility.

As stated before, the federal RCRA hazardous waste regulations provide discretionary authority to the permitting authority to extend or shorten the length of the post-closure care period. However, the facility owner or operator is responsible for providing the information necessary to support this decision (see, for example, 40 CFR 270.30(h), Duty to provide information). A lack of relevant and complete information may justify a conclusion by the regulatory authority that extension of the post-closure care period is necessary to protect human health and the environment until such information is provided.

EPA's recommendations for evaluating units approaching the end of the post-closure care period are discussed in more detail below.

Timing: Regulators should track permit terms and dates of all post-closure permits and have a strategy for when they will begin looking at whether to adjust the post-closure care period, allowing enough time for the necessary steps to take place prior to the 30-year expiration:

- Identify and gather necessary information
- Evaluate information
- Decide whether to adjust the post-closure care period
- Incorporate tentative decision into permit renewal (or modification) process.

For units with operating permits, EPA recommends starting the process at least 18 months before the expiration of the post-closure permit or post-closure care period, whichever comes first. It is important to keep in mind that in accordance with § 270.1(c) units subject to post-closure care must have post-closure permits or an enforceable document in lieu of a post-closure permit and, under § 270.50, permits can be issued for no longer than ten years. Consequently, over the course of a 30-year post-closure care period, the permit would normally need to be renewed at least twice (unless the post-closure care period has been modified). In addition, for a permitted land disposal facility, the length of the post-closure care period is an important component of the five-year review required under § 270.50(d). The facility owner or operator may also initiate the post-closure care evaluation and/or modification process by submitting a permit modification. Similarly, regulators should evaluate petitions to end or shorten the post-closure care period in a timely manner.

For facilities conducting post-closure care under interim status, regulators might want to adopt time frames for review similar to those of permits (*e.g.*, every ten years) to initiate the process of identifying and gathering relevant information. At a minimum, they should evaluate the adequacy of the post-closure care period well in advance of its end date. The facility owner or operator may also initiate the process by submitting a revision to their post-closure plan, including a petition in accordance with § 265.118(g)(1).

Post-Closure Plan: When considering adjusting or ending the post-closure care period, regulators should request a copy of the most current version of the approved post-closure plan, along with any proposed revisions provided by the owner or operator. Under §§ 264.118(b) and 265.118(c), the post-closure plan identifies certain activities (and their frequency) that must be conducted during the post-closure care period (*e.g.*, monitoring and maintenance). The post-closure plan may also identify performance standards or performance goals, which should be updated to account for any new information on toxicity and carcinogenicity. The post-closure plan thus provides an important starting point for the review. The project file should have a history of permit modifications including those made to the post-closure plan. It is also important that the results of the post-closure period assessment be incorporated into a revised post-closure plan (and the permit), as appropriate.

Relevant Information: As part of the review of the post-closure plan and any relevant historical information, regulators should determine whether they possess the information necessary to adequately evaluate the conditions at the unit so that a decision about the post-closure care period can be made. Relevant information may include monitoring reports, results from testing or inspections of the cover system, information concerning land use and institutional controls, and any other information that would be helpful in determining whether post-closure care continues to be needed for the unit. The absence of adequate information (*e.g.*, to address unresolved risk issues), including failure of the permittee to provide necessary information, will make it difficult for the permitting authority to conclude that allowing the post-closure period to end or shortening the post-closure care period meets the regulatory standard. The permitting authority can conclude that an extension of the post-closure care period is necessary to protect human health and the environment until the information necessary to make a final determination is available. Any proposal to adjust the post-closure care period should be supported by adequate data and analysis to demonstrate the anticipated long-term performance of the unit. To account for cyclical fluctuations in weather and hydrology, EPA recommends that multiple-year performance data be considered (*e.g.*, ten years).

The recommended criteria outlined in the previous section are also relevant to inform deliberations on whether and what additional information about the facility is necessary.

If information becomes available indicating changing circumstances that might necessitate the need to revisit the post-closure care (e.g., monitoring results show leaching) it is recommended that the regulator immediately request any additional information needed from the facility owner or operator to inform a decision about adjusting the post-closure care period. This can be accomplished through various means, including under the facility's permit terms (e.g., under § 270.30(h), the permit holder has a duty to provide relevant information and records; under § 270.30(k)(4), monitoring results must be reported at intervals specified in the permit); through enforcement of the relevant interim status regulations; or through inspections or studies required pursuant to RCRA sections 3007 or 3013.

Expiration/Renewal of Post-Closure Permits: Permits are issued for a fixed term not to exceed ten years, which means post-closure permits will need to be renewed periodically throughout the post-closure care period (e.g., a 30 year period could span three permit terms). Renewal applications must be submitted 180 days before the expiration date of an effective permit (see § 270.10(h)). Frequently, facility owners or operators do not submit a renewal application as they approach the permit's expiration date because they believe they will submit an acceptable certification that they have completed post-closure care for the unit(s). If, towards the end of the permit term, the permitting authority has not received a permit renewal application from the facility or if the permitting authority anticipates that there may be any issues regarding the acceptability of the certification of completion of post-closure care, EPA recommends that the regulatory authority remind the owner or operator that the regulations require the facility to provide the required certification or reapply for a permit, and request submission of the permit renewal application (see §§ 270.10(h) and 270.30(b)). Timely submission of an application for permit renewal will ensure that a valid permit is in effect (pursuant to § 270.51) pending a resolution. If a facility owner or operator does not submit a timely renewal application, and the permit is not administratively continued, the regulator may consider initiating an enforcement action or issuing a new permit (see § 270.51(c)).

Public Participation: Any potential adjustments to the length of the post-closure care period are subject to requirements for involving the public. For permitted facilities, extensions to the post-closure care period would be processed as a Class 2 modification, and reductions would be Class 3. In both cases, the regulator must provide public notice, hold a public meeting, and allow an opportunity for written comments to be submitted. Similarly, for adjustments in the length of the post-closure care period at interim status facilities, the regulator must provide public notice and an opportunity for written comments. Although there is no specific provision in the regulations to notify the public when a post-closure care period ends, we recommend that the regulatory authority consider providing notice to the local community when they release a facility owner or operator from their post-closure care obligation.

Financial Assurance Requirements: Finally, permitting authorities should keep in mind that an adjusted post-closure care period may also necessitate revisions to the associated post-closure cost estimate and financial assurance.

Additional Considerations

Benefits of Post-Closure Permits: Permits are site-specific legal documents that establish the technical and administrative conditions to which a facility must adhere, in order to ensure that monitoring and maintenance activities are performed to prevent and address releases that could potentially threaten

public health and the environment and lead to cleanup obligations.¹⁴ Thus, it is critical that any modifications to the permit are made, as necessary, to ensure they are complete and current. Permits are issued in, at most, ten-year increments to ensure they are periodically reviewed and requirements are updated as necessary. Additionally, facility owners and operators may request modifications to a permit. Although there are resources associated with permit maintenance, permits provide numerous benefits and protections such as:

- Basic Permitting Requirements – Permits are subject to the regulations governing facility permitting as set forth in 40 CFR part 270, which covers basic EPA permitting requirements, such as application requirements, standard permit conditions (*e.g.*, duty to comply, duty to reapply, duty to provide information), and monitoring and reporting requirements (*e.g.*, annual monitoring reports, compliance schedules).
- Unit-Specific Informational Requirements – Where applicable, owners or operators of a permit must submit information including detailed plans and engineering reports under § 270.14(b)(13).
- Financial Assurance – The owner or operator of a permitted unit must establish and maintain financial assurance. At facilities with units in post-closure, requirements include financial assurance for post-closure care in accordance with the approved post-closure plan for the facility, for as long as the unit remains subject to RCRA post-closure care requirements, including the post-closure permit requirement (§ 264.145).
- Corrective Action – Section 264.101 requires that all permits include requirements for facility-wide corrective action as necessary to protect human health and the environment.
- Enforceability – The permitting authority can enforce RCRA permit requirements including through facility inspections, record reviews, and other means. Section 270.28 provides that the permittee shall allow the regulatory authority to perform inspections at the facility.
- Public Participation – The permitting process of 40 CFR parts 270 and 124, and the permit modifications procedures in § 270.42 provide for public involvement. The public has the opportunity to comment on a facility's closure and post-closure plans as part of the initial permitting process and any amendments made to the plans as part of the permit modification procedures.
- Additional Conditions – Section 3005(c)(3) of RCRA (codified at 40 CFR 270.32(b)(2) and commonly referred to as the "omnibus authority"), allows for additional site-specific permit conditions to be incorporated into RCRA permits, should such conditions be necessary to protect human health and the environment.
- When permits incorporate the technical requirements contained in parts 264, 266, and 267 of the regulations, those permit conditions are not subject to challenge (*i.e.*, a number of permit conditions are required by the regulations themselves).
- Permit requirements cannot be terminated merely by sale of the property or bankruptcy of the owner or operator.

Relationship of Subpart F Corrective Action and Post-Closure Care: Corrective action and post-closure care requirements for a regulated unit may be linked, for example, in the case of groundwater

¹⁴ Owners and operators of units subject to post-closure care, must have post-closure permits, “unless they demonstrate closure by removal or decontamination as provided under § 270.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under paragraph (c)(7) of this section” (see §270.1(c)).

monitoring and/or corrective action for releases from closed regulated units being handled pursuant to 40 CFR 264.90–264.100. In many cases, it may be desirable (either by the facility owner/operator, the regulatory agency, or both) to coordinate the post-closure care and monitoring/corrective action requirements. EPA recommends that the regulatory agency consider extending the post-closure care period (and associated permits or other enforceable documents) when corrective action continues beyond the original post-closure care period (see §§ 264.90(c)(3) and 264.96(c)).

Post-Closure Rule:¹⁵ This rule amended the regulations applicable to facilities with land disposal units in two areas. First, it modified the requirement for a post-closure permit to provide EPA and the authorized states discretion to use a variety of authorities to address the post-closure period at non-permitted facilities. In addition, it amended the regulations governing closure of land-based units to allow EPA and the authorized states to address those units through the corrective action program in certain situations where regulated units and other solid waste management units have contributed to a release.

Scope of Guidance and Relationship to Existing Guidance: This document is not intended to provide guidance on decisions to extend or shorten the post-closure care period for *non-hazardous* waste units (*i.e.*, units regulated under RCRA Subtitle D), nor is it intended to replace existing guidance concerning establishment and attainment of remedial goals at contaminated facilities addressed under RCRA Subtitle C authority. This guidance is meant to supplement any existing guidance on the post-closure care period, and should be used in concert with the Technical Evaluation Criteria and Site-Specific Factors to Consider in Determining the Length of the Post-Closure Care Period, presented in the Appendix B of the *RCRA Guidance Manual for Subpart G Closure and Post-Closure Care Standards and Subpart H Cost Estimating Requirements* of January 1987.¹⁶ This document provides additional considerations and factors that are not included in the 1987 guidance, such as vapor intrusion, updated toxicity values, and climate change considerations – although the updates presented in this guidance are not intended to be comprehensive.

Relationship to State Authorities: Under RCRA, states may apply to, and receive from EPA, authorization of a state program to operate in lieu of the federal RCRA hazardous waste program. *These state programs may be broader in scope or more stringent than EPA's RCRA hazardous waste regulations, and requirements can vary from state to state.* Members of the regulated community are encouraged to contact their state agencies for the particular post-closure care requirements that apply to them in any particular state.

For additional information, feel free to contact me, or your staff may contact Lilybeth Colon (colon.lilybeth@epa.gov, 703-308-2392) or Tricia Buzzell (buzzell.tricia@epa.gov, 703-308-8622).

¹⁵ See *Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process*; Final Rule, October 22, 1998 (63 FR 56710).

¹⁶ OSWER Policy Directive #9476.00-5, EPA/530-SW-87-10. Appendix B of this guidance presents technical factors to consider in determining the length of the post-closure care period as well as a number of hypothetical scenarios illustrating how site-specific information might be used to support an extension or reduction in the length of the period.

Appendix A: Overview of Federal Regulatory Provisions

Regulations governing RCRA post-closure care are set forth in 40 CFR part 264 subpart G for permitted facilities and part 265 subpart G for interim status facilities. Additional requirements for post-closure care of specific types of units are included in the regulations for those units. See §§ 264/265.197 (Tank Systems); §§ 264/265.228 (Surface Impoundments); §§ 264/265.258 (Waste Piles); §§ 264/265.280 (Land Treatment Units); §§ 264/265.310 (Landfills); § 264.603 (Miscellaneous Units); §§ 264/265.1102 (Containment Buildings); and §§ 264/265.1202 (Hazardous Waste Munitions and Explosives Storage).

Regulations governing financial assurance for post-closure care are set forth in 40 CFR part 264 subpart H for permitted facilities and part 265 subpart H for interim status facilities.

Regulations governing facility permitting are set forth in 40 CFR part 270.

Post-Closure Care – Sections 264.117(a) and 265.117(a) establish general requirements for post-closure care and a 30-year post-closure care period. However, the regulations also allow the permitting authority to shorten the 30-year post-closure care period if the reduced period is sufficient to protect human health and the environment, or to extend it, if necessary (see the *Post-Closure Plan Amendment* section for more details). Sections 264.117(a)(2)(i) and 265.117(a)(2)(i) provide the following examples for shortening the post-closure care period: “...(e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure).”

Sections 264.117(a)(2)(ii) and 265.117(a)(2)(ii) provide the following example for extending the post-closure care period: “...(e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).”

Post-Closure Plan – Under §§ 264.118 and 265.118, the owner or operator of specified units must have a written post-closure plan. The plan must identify monitoring and maintenance activities that will be carried out after closure, and their frequency, to assure compliance with the requirements of specific subparts, including subparts F, K, L, M, N and X, where applicable. For permitted facilities (§ 264.118(a)), the post-closure plan must be submitted with the permit application and approved by the permitting authority as part of permit issuance procedures. The approved post-closure plan becomes a condition of any RCRA permit issued (see the *Post-Closure Plan Amendment* section for more details). For interim status facilities (§ 265.118), the owner or operator must submit the post-closure plan to the permitting authority within specified time frames, and the regulations provide for making the post-closure plan available to the regulatory authority.

Procedures for Post-Closure Plan Amendment – For permitted facilities, the process for making changes to the post-closure plan is through permit modification (permit modification procedures are set forth in § 270.42). Under § 264.118(d)(1), the owner or operator may submit a written notification or request for a permit modification to amend the post-closure plan. Under § 264.118(d)(2), the owner or operator must submit a written notification of the permit modification or request for a permit modification to authorize a change in the approved post-closure plan under certain circumstances. Specific reasons set forth in the regulations include changes in operating plans or facility design that affect the approved post-closure plan, and

events occurring during the active life of the facility that affect the approved post-closure plan. For interim status facilities, § 265.118(d) prescribes procedures for amending the post-closure plan. The permitting authority may also request modifications to the post-closure plan under §§ 264.118(d)(4) and 265.118(d)(4).

Procedures for Post-Closure Care Period Adjustment – Adjustments to the post-closure care period may be initiated at any time preceding partial or final closure or at any time during the post-closure care period of a particular unit. For interim status facilities, § 265.118(g) prescribes a process for extending or shortening the post-closure care period that includes provisions for public involvement. For permitted facilities, § 264.117(a)(2) provides for shortening or extending the post-closure care period in accordance with the permit modification provisions in parts 124 and 270.

Section 270.41 provides for Agency-initiated permit modifications. EPA may modify a permit for the following reasons: if there have been material and substantial alterations or additions to the facility; there is new information that was not available at the time of permit issuance; new statutory or regulatory requirements were promulgated; EPA has cause to initiate a compliance schedule under § 270.33; or as necessary to assure that the facility continues to comply with the currently applicable requirements in parts 124, 260 through 266, and 270, when a permit for a land disposal facility is reviewed by the Director under § 270.50(d).

Section 270.42 contains the regulations that apply to the modification of a permit at the request of the permittee. For all modifications, the permittee submits information to EPA that describes the exact change to be made to the permit conditions, identifies whether the modification is Class 1, 2, or 3, and provides the applicable permit application information.

The process for extending the post-closure care period is a Class 2 modification, while the process for shortening the post-closure care period is a Class 3 modification (§ 270.42, Appendix I, E2 and E3). These procedures include provisions for public involvement. The post-closure care period can also be modified through permit renewal under § 270.32(d).

Financial Assurance for Post-Closure Care – EPA's regulations under parts 264/265 subpart H establish requirements for financial assurance, including financial assurance requirements for post-closure care (see §§ 264.140 and 265.140). Under §§ 264.144 and 265.144, the owner or operator is required to have detailed written cost estimates for post-closure monitoring and maintenance in accordance with the applicable post-closure care requirements. Under §§ 264.145 and 265.145 generally, the owner or operator is required to establish financial assurance for post-closure care in an amount equal to the current post-closure cost estimate.

Certification of Completion of Post-Closure Care and Release of Owner and Operator from Financial Assurance Requirements – Under §§ 264.120 and 265.120, the owner or operator must submit certification that the post-closure care for the unit(s) was performed in accordance with the approved post-closure plan; the certification must be sent by registered mail to the permitting authority. This certification must be submitted no later than 60 days after the completion of the post-closure care period for each hazardous waste disposal unit. The certification must be signed by the owner or operator and a qualified professional engineer. Documentation supporting the professional engineer's certification must be furnished to the permitting authority upon request until the permitting authority releases the owner or operator from the financial assurance requirements for post-closure care under §§ 264.145(i) and 265.145(h).

Under §§ 264.145(i) and 265.145(h), within 60 days of receipt of certification from the owner or operator and a qualified professional engineer that the post-closure care has been completed for a hazardous waste disposal unit in accordance with the approved plan, the permitting authority will notify the owner or operator that it is no longer required to maintain financial assurance for post-closure care for that unit. If the permitting authority has reason to believe that post-closure care has not been in accordance with the approved post-closure plan, the permitting authority must provide the owner or operator a detailed written statement of any such reason.

Scope of the Post-Closure Permit Requirements – Under § 270.1(c), owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115) must have post-closure permits, unless they demonstrate closure by removal or decontamination, or obtain an enforceable document in lieu of a post-closure permit as provided under § 270.1(c)(7). Under § 270.10(h), if a permittee has an effective permit and they want to renew it, they must submit a new application at least 180 days before the expiration date of the effective permit.

Monitoring and Records – Under § 270.30(j)(2), the permittee must retain records of all monitoring information for a period of at least three years from the date of sample, measurement, report, or certification, unless extended by request of the permitting authority at any time. Records from all groundwater monitoring wells and associated groundwater surface elevations must be maintained for the active life of the facility, and for disposal facilities for the entire post-closure care period.

Compliance with an Expiring Permit – Under § 270.51(c), if the permittee is not in compliance with the conditions of the expiring or expired permit, the permitting authority may issue a new permit under part 124, initiate enforcement action, or take other actions authorized by the RCRA regulations.

Appendix B: Institutional Controls (ICs) Resources

The following resources may be helpful in implementing and maintaining ICs throughout the post-closure care period and beyond.

- EPA guidance on *Ensuring Effective and Reliable Institutional Controls at RCRA Facilities* (Matt Hale, Director, Office of Solid Waste, and Susan Bromm, Director Office of Site Remediation and Enforcement, June 14, 2007) sets forth guiding principles and recommendations that can help EPA and state decision makers on the use of ICs at RCRA facilities, and EPA resources for additional information and assistance.
- *Institutional Controls: A Site Manager's Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups* guidance provides some discussion about how ICs can be used at post-closure care facilities. (p.3 text box) EPA 540-F-00-005, OSWER 9355.0-74FS-P, September 2000, <https://www.epa.gov/fedfac/institutional-controls-site-managers-guide-identifying-evaluating-and-selecting-institutional>
- *Institutional Controls: A Guide to Preparing Institutional Control Implementation and Assurance Plans at Contaminated Sites* provides information and recommendations that should be useful for planning, implementing, maintaining and enforcing ICs, and offers an overview of EPA's policy regarding the roles and responsibilities of the parties involved in the various life-cycle stages of ICs. Final, December 2012. OSWER 9200.0-77, EPA-540-R-09-002, <https://www.epa.gov/fedfac/institutional-controls-guide-preparing-institutional-control-implementation-and-assurance>
- *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites* guidance also discusses how ICs could be used at RCRA post-closure care facilities. (Section 2.3) Final, December 2012. OSWER 9355.0-89, EPA-540-R-09-001, <https://www.epa.gov/fedfac/institutional-controls-guide-planning-implementing-maintaining-and-enforcing-institutional>
- *Long-Term Stewardship: Ensuring Environmental Site Cleanups Remain Protective over Time* report identifies long-term stewardship challenges and opportunities for improvement, and makes recommendations for how EPA and its state, tribal, and local partners should proceed in addressing them. This report also includes a definition of long-term stewardship, why long-term stewardship is important, and what EPA and others are currently doing to address long-term stewardship issues. Final, September 2005, EPA 500-R-05-001, <https://nepis.epa.gov/Exe/ZyNET.exe/P100119V.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000015%5CP100119V.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>