



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 27, 2022

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

MEMORANDUM

SUBJECT: Key Elements of Effective Long-Term Stewardship for RCRA Corrective Action

FROM: Carolyn Hoskinson, Director
Office of Resource Conservation and Recovery

A handwritten signature in blue ink that reads "Hoskinson".

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CAROLYN HOSKINSON
Date: 2022.06.27
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TO: Land, Chemicals and Redevelopment Division Directors, Regions 1-10

This memorandum transmits the newly developed Key Elements of Long-Term Stewardship for Resource Conservation and Recovery Act (RCRA) Corrective Action, for implementation by regions and states pursuant to the RCRA Corrective Action 2030 Goals.

In September 2020, EPA issued a new 2030 Vision, Mission, and Goals for the RCRA Corrective Action Program. The Agency recognized the importance of the long-term effectiveness of cleanups and in Goal 4 committed to steps to achieve that result. Goal 4 provided:

By 2025, the RCRA Corrective Action Program will identify the key elements of effective Long Term Stewardship for Corrective Action cleanups, and regions and states will have approaches in place to ensure implementation of the key elements.

A Long-Term Stewardship Workgroup was formed to support the implementation of Goal 4. The Workgroup has satisfied the first portion of Goal 4 by identifying the attached nine Key Elements of effective long-term stewardship. These nine elements provide a general framework for regulators establishing and implementing processes to assure effective long-term stewardship at RCRA facilities.

Please share this memo and attached elements with your state and tribal partners. I understand that regions and state RCRA programs have many aspects of long-term stewardship underway and encourage you to begin working within your programs and with the states to incorporate or expand components to implement these Key Elements pursuant to Goal 4.

As regions and states continue to implement the elements of long-term stewardship, the Workgroup will focus its attention on the second part of Goal 4. ORCR and the Workgroup will continue to evaluate and solicit input on the needs of program implementers, and will consider development of guidance or other implementation tools as needs are identified.

Thank you for your continued support of the Long-Term Stewardship Workgroup. If you have any questions about the Key Elements, feel free to contact Sonya Sasseville at sasseville.sonya@epa.gov, 202-566-0319; or your staff may contact Barbara Foster at foster.barbara@epa.gov, 202-566-0382.

Attachment

cc: Cynthia L. Mackey, Director
Office of Site Remediation Enforcement

Enforcement and Compliance Assurance Division Directors, Regions 1-10

Dania Rodriguez, Executive Director
Association of State and Territorial Solid Waste Management Officials

Lia Parisien, Executive Project Manager
Environmental Council of the States

ATTACHMENT

Implementation of the Corrective Action 2030 Vision, Mission, Goals Statement Goal 4 Part 1 Elements of Long-Term Stewardship for RCRA Corrective Action

The Corrective Action 2030 Vision, Mission, Goals Statement, Goal 4 directed:

*By 2025, the RCRA Corrective Action Program will **identify the key elements of effective Long-Term Stewardship for Corrective Action cleanups**, and regions and states will have approaches in place to ensure implementation of the key elements.*

This document was developed to satisfy Part 1 of Goal 4 – identify the key elements of effective Long-Term Stewardship for Corrective Action Cleanups.

The Key Elements are intended to be factors for regulators to consider when establishing and implementing processes to address long-term stewardship at RCRA corrective action facilities and are not intended to be requirements. They are designed to accommodate the need for flexibility to address the variation among corrective action facilities and the variation among states, but to at the same time provide a framework to promote an appropriate level of consistency in implementation of long-term stewardship within the RCRA Corrective Action Program.

Key Elements of Effective Long-Term Stewardship for Corrective Action

- Element 1 – Legal Authorities
- Element 2 – Information Regarding Engineering and Institutional Controls
- Element 3 – Long-Term Facility Oversight, Monitoring, and Maintenance
- Element 4 – Recordkeeping and Tracking
- Element 5 – Meaningful Engagement and Consultation
- Element 6 – Funding
- Element 7 – Enforcement
- Element 8 – Enforceable Mechanisms
- Element 9 – Dedicated Resources

Element 1 – Legal Authorities

Corrective action program implementers should understand the legal authorities that are available at the federal, state, and local level to require, maintain, and enforce engineering controls (ECs) and institutional controls (ICs) at the facilities in their region or state.

Routine and formal coordination among regulators exercising authority at the federal, state, and local levels, as necessary, will assure effective implementation of ECs and ICs.

Element 2 – Information Regarding Engineering and Institutional Controls

Regulators should have internal practices to assure that accurate and updated information regarding ECs and ICs is readily available to program implementers involved in selecting and/or overseeing corrective action interim measure or remedies.

Over time, implementation issues may arise that affect the implementation and/or effectiveness of controls that are relied on for corrective action remedies. Regulators should have internal practices to assure that those issues are brought to the attention of program implementers making remedy decisions. Information conveyed should include impacts of climate change on the performance of controls.

Element 3 – Long-Term Facility Oversight, Monitoring, and Maintenance

Facilities at which the remedy relies on ECs and ICs will likely require periodic oversight and monitoring to verify the continued effectiveness of those controls - for example, to identify and address the potential impacts of climate change. The type and frequency of oversight and monitoring needed will depend on site-specific factors.

Where oversight and/or monitoring of a facility identify a failure or potential failure of a control, adjustment may be needed to maintain the effectiveness of the control. Where oversight identifies a non-compliance situation, enforcement may be needed.¹

Element 4 -- Recordkeeping and Tracking

Significant events in the implementation of ECs and ICs should be tracked as necessary to enable effective oversight and assure effective implementation. Tracking should typically begin when those controls are implemented and continue until the controls are no longer needed.

The location of controls at a facility should be clearly identified and documented, and that information should be shared as necessary to assure their effective implementation.

Records regarding controls at a facility should be maintained as necessary to assure continued effectiveness of controls and access to information about the facility.

Element 5 – Meaningful Engagement and Consultation

All regulators including federal, state, local and tribal governments that will play a role in the implementation of the remedy and/or implementation and enforcement of the controls, should be involved in the process as soon as it becomes evident that controls may be used at a facility. These parties should have opportunity to provide meaningful input on the use of long-term controls particularly where they will assume long-term responsibilities.

¹ Note: Post-closure care and long-term remedies such as pump and treat, and natural attenuation and monitoring, have similar oversight needs.

The community should be informed early in the process, have opportunity to provide meaningful input at remedy selection² and, as necessary for effective implementation, continue to be kept aware of the importance of the controls until the controls are no longer needed for their protection.

Regulators should identify and effectively communicate with affected communities and particularly consider vulnerable communities and environmental justice concerns throughout the process of selecting and implementing ECs and ICs.

Element 6 – Funding

The costs to implement and oversee controls at a facility should be estimated and understood when they are selected, and regulators should consider how costs associated with maintenance and necessary adjustments and responses in the event of failure will be covered.

Element 7 -- Enforcement

A party with authority to enforce ECs and ICs at the facility should be identified. Agreement by that party to take responsibility for enforcement of the controls will help assure their effective implementation. Enforcement authority should include necessary access to the facility, access to information, and ability to compel compliance and/or impose sanctions.

Element 8 – Enforceable Mechanisms

An enforceable mechanism will help assure effective implementation of the key elements of long-term stewardship. Examples of enforceable mechanisms include permits, orders, or covenants.

An enforceable mechanism should cover a number of areas, as necessary at a particular facility. For example, it should include, as necessary, some or all of the following:

- Identify and bind the parties who have authority to, and who have agreed to require, maintain, and enforce controls at the facility
- Provide necessary access to the facility for oversight
- Anticipate potential failures of ECs and ICs at the facility and include a plan to address them
- Require adequate reporting and recordkeeping to support effective oversight
- Assure funding for LTS activities
- Include provisions to assure public awareness
- Provide a process for effective transfer of responsibility for the ECs or ICs, as necessary, where responsibility at the facility changes, such as upon completion of corrective action or transfer of the property
- Provide for enforcement of its provisions

² See EPA's Public Participation Manual https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf, Chapter 4, Hazardous Waste Management for public participation processes for RCRA corrective action

Element 9 - Dedicated Resources

Implementation of an effective long-term stewardship program requires a commitment of resources to support necessary program activities including:

- Adequate qualified staff to select and to oversee implementation of effective controls
- Ongoing training on all aspects of long-term stewardship to develop and maintain staff skills
- Records development and management
- Tracking of ECs and ICs and data management
- Outreach efforts to assure access to recent information
- Coordination with relevant federal, state, local and tribal governments
- Meaningful public involvement and tribal consultation