

ASTSWMO POLICY POSITION PAPER ON FEDERAL FACILITIES

BACKGROUND

Environmental compliance and remediation at federal facilities continues to be one of the most complex and divisive issues in State-Federal relationships. The ASTSWMO Board of Directors 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 on-going national debate concerning States' environmental rights and responsibilities relating to federal facilities, the ASTSWMO Board believes that it is necessary to clearly define our Association's positions relative to the environmental management and waste management efforts currently ongoing at all federal facilities.

POSITION

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

- States must have an active role in the critical decision making processes relating to remediation at sites located at federal facilities which includes formalized and continuing input into the setting of priorities, the selection of remedies and the monitoring of compliance.
- Federal agencies should adopt a policy of openness and cooperation with State regulatory authorities by allowing appropriate access to restricted and unrestricted facilities for designated State regulatory personnel and should meet all federal and State reporting and information requirements without delay.
- States must have an active role in the development of DoD guidance, policy and regulation related to the investigation, remediation and closure of federal facilities contaminated with military munitions and explosives of concern (MEC) and associated contaminants. States should have an active role in the prioritization process of federal facilities at closed transferred and/or transferring sites. ASTSWMO should continue to participate in the Munitions Response Committee, which is developing a collaborative decision-making process regarding cleanup of sites contaminated with MEC and associated contaminants. Finally, States should continue to push for additional DoD funding, not only towards clean-up but for additional research and development of technologies associated with the investigation and cleanup of MEC and associated contaminants.
- Federal agencies must work closely with States in making decisions regarding long-term stewardship. Prior to the selection of any final remedy that includes institutional and land use controls, federal agencies must engage in a thorough analysis of these controls with States and affected stakeholders. Remedies that do not achieve unrestricted use should only be chosen when the necessary controls to address residual risk have been determined to be implementable, enforceable, and are fully funded. State and local authorities regarding these controls must be recognized by the federal agencies.
- Federal agencies should adopt, develop guidance, and implement the findings of the 1996 Federal Facilities Environmental Restoration Dialogue Committee Final Report in the environmental restoration of all federal facilities.

- Support the development of Environmental Management Systems and a comprehensive waste management plan that addresses waste minimization and environmental compliance audit programs in a prioritized manner
- Community involvement and outreach should be a prime consideration at each federal facility. It is critical that stakeholders and the community be updated on environmental issues and be allowed input into remediation and restoration projects on those sites. Customized strategies should be developed in consultation with the States that are appropriate for each site and could include a formal structure such as a Restoration Advisory Board or simple newsletters, emails or websites as are appropriate to the site.
- 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.
- 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.
- Legislation should be developed and supported which clearly and explicitly waives sovereign immunity regarding the application, implementation and enforcement of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, the federal Water Pollution Control Act, as amended, and other applicable federal and State environmental statutes and regulations for federal facilities. Legislation to further clarify the waiver of sovereign immunity currently contained in the Resource Conservation and Recovery Act (RCRA) as amended, should be developed. Legislation should be developed and supported which clarifies the regulatory status of government contractors and other quasi-governmental entities by stating explicitly that these entities are subject to regulation under RCRA, CERCLA and other federal and State environmental statutes to the same extent and in the same manner as any other regulated entity. In addition, States continue to oppose all legislative efforts resulting in the exemptions of federal facilities from federal and State environmental statutes.
- Legislation and/or federal agency policy should be developed and supported which subjects federal facilities and their operators to civil and criminal sanctions, including the assessment and collection of penalties, to the same extent and in the same manner as any other regulated entity.

The ASTSWMO Board of Directors 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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Retained & Revised by the Board of Directors, January 12-13, 1998 in San Antonio, TX.

Retained & Revised by the Board of Directors, October 25, 2005 in Washington, DC.