

April 29, 2011

**Plan EJ 2014 Dockets**

U.S. Environmental Protection Agency  
EPA Docket Center  
Mail Code 28221T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

**Re: Docket ID Nos: EPA-HQ-OECA-2011-0290**  
**EPA-HQ-OECA-2011-0291**  
**EPA-HQ-OECA-2011-0292**  
**EPA-HQ-OECA-2011-0293**  
**EPA-HQ-OECA-2011-0294**  
**EPA-HQ-OECA-2011-0295**  
**EPA-HQ-OECA-2011-0296**  
**EPA-HQ-OECA-2011-0297**  
**EPA-HQ-OECA-2011-0298**  
**EPA-HQ-OECA-2011-0299**

Dear Madam/Sir:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is providing the following comments to the 10 Dockets referenced above regarding the U.S. Environmental Protection Agency's (EPA's) Plan EJ 2014 draft implementation plans. In addition, specific comments to **EPA-HQ-OECA-2011-0293**, EPA's Considering Environmental Justice in Permitting Draft Implementation Plan, are attached to this letter.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste. These comments have not been reviewed or adopted by the ASTSWMO Board of Directors or Program Subcommittees. In addition, individual State or Territorial programs may also provide comments based on their own State perspectives and experiences.

In general, U.S. EPA should carefully evaluate the appropriateness of implementing environmental justice policies or practices after a State regulatory action has already taken place. Examples of State regulatory actions include but are not limited to the issuance of a permit, cleanup action, and public participation activities. State regulatory officials place considerable emphasis on ensuring that regulatory actions are protective of human health and the environment. However, we are also cognizant of the fact that many contributors to public health concerns in a community are unrelated to environmental regulatory issues. Therefore we must also recognize that sensitivity to public concerns about health issues in a community should not always lead to the application of environmental justice practices. In some cases, the U.S. EPA has initiated environmental justice practices in communities including promises to the public without appropriate consultation or

coordination with the affected State agencies. This has resulted in the need for State agencies to participate in meetings, studies, and sampling efforts which have significant unplanned and unanticipated associated costs and labor impacts, and which can significantly degrade these agencies ability to respond to other pressing and required activities which are directly related to their mission of protecting human health and the environment.

Based on a cursory review of the nine implementation plans, ASTSWMO is very concerned about the substantial impact to State resources that Plan EJ 2014 could have across all solid and hazardous waste programs. However, based on communications and feedback from our members, the current public review period has not provided sufficient time to satisfactorily analyze these impacts to State programs. Therefore, we respectfully request that U.S. EPA provide a longer comment period in order for States to fully analyze the nine draft implementation plans associated with Plan EJ 2014.

Please do not hesitate to contact me (334-271-7739) or ASTSWMO Executive Director Mary Zdanowicz (202-624-5351) if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Cobb", is written over a horizontal line.

Stephen A. Cobb  
ASTSWMO President

Enclosure

EPA's Considering Environmental Justice in Permitting  
Draft Implementation Plan  
**EPA-HQ-OECA-2011-0293**

Introduction

EPA states “The intent of this cross-Agency element (EJ Permitting Initiative) of Plan EJ 2014 is “to ensure that environmental justice concerns are given as full consideration as possible in the decision to issue a permit and the terms of the permits issued under [existing] federal environmental laws,” as stated in Plan EJ 2014. It contemplates a focus on both EPA-issued permits, as well as permits issued pursuant to existing federal environmental laws (i.e., federal, state, or tribal), and seeks to identify “the best current opportunities for taking environmental justice concerns into consideration” and “enable EPA to address the complex issue of cumulative impacts from exposure to multiple sources and existing conditions that are critical to the effective consideration of environmental justice in permitting.”

Comment #1: The above language should be modified to recognize that authorized state programs do not issue permits pursuant to (or under) existing federal laws. These permits are issued under equivalent state authorities that often incorporate the federal requirements by reference.

The idea of addressing cumulative/multimedia impacts through implementation of Environmental Justice activities, while laudable in its intention, is impractical in anything more than a qualitative sense given the current state-of the-science in multi-pathway risk assessment from multiple sources, the current lack of integration/harmonization of the permitted pollution (water, air) and cleanup programs and the presence of ubiquitous, anthropogenic environmental impacts, many of which are transient, which cannot be tied to any particular source(s). Cumulative impacts from multiple sources is a highly complex technical issue that can only be addressed via a multi-media cross program implementation approach that takes into account all sources in an area (i.e., similar to a Total Maximum Daily Loading (TMDL) approach for watersheds but expanded to encompass all media, known permitted pollution sources and both naturally-occurring and anthropogenic background/ambient conditions). This is not something that can be addressed either simply or via policy pronouncements and will require specialized technical tools to do so.

Section 1.1 Goals

EPA states: “EPA’s mission to protect human health and the environment, and specifically to ensure that: all people in America are protected from significant risks to human health and the environment where they live, learn and work, federal laws protecting human health and the environment are enforced fairly and effectively, and all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks.”

Comment #2: Perhaps “all people in America” should be modified to state “all people in the United States of America and its territories?”

### Section 1.2 Organizational Structure

Comment #3: States are initially acknowledged in the Introduction but under this Section, mention of the states, territories and tribes is notably absent despite the fact that most permits are issued by authorized state programs under state laws and regulations. Expanded Environmental Justice implementation can only be successful if undertaken in partnership with states, territories and tribes.

### Section 2.1, Strategy 3

Comment #4: This Strategy should specify "Subsequently, we will engage in supporting and encouraging other federal agencies, as well as state, local and tribal permitting authorities, to develop environmental justice strategies for their permit decisions pursuant to applicable federal, state and local environmental laws and regulations." (i.e., for consistency with the other text in this Section this should not be limited to "existing federal environmental laws" as currently written).

### Section 2.2 Activities, Activity 1.2

Comment #5: Is the “cross-agency workgroup” referenced in this sub-section limited to those individuals identified under Section 1.2 Organizational Structure or is there another work group that includes additional members that is not listed in the document? Does this work group include (or will it be expanded to include) state, tribal and/or local members in advance of internal/external stakeholder outreach activities? If not already included or planned, we recommend that the work group include, at a minimum, state members since authorized states currently handle the bulk of national environmental permitting and associated public outreach activities and as such earlier involvement of states and consideration of their experiences would aid greatly in initial development activities.

### Section 2.2 Activities, Activity 5

Comment #6: Whether by policy or rulemaking, any final actions undertaken by EPA relative to EJ activities in permitting are expected to impact authorized state programs. To the extent that EPA’s actions increase work loads associated with permitting in authorized states, EPA should be prepared to provide additional resources to states to implement any EJ activities that go beyond currently required public participation activities.

### Section 2.2 Activities, Activity 5

Comment: #7: Same general comment as #4 above; state, local and tribal permit decisions are made pursuant to applicable/equivalent state, local and tribal environmental laws and regulations, not “existing federal environmental laws.”

### Section 2.3 Community Engagement and Stakeholder Partnership Plan

Comment #8: Similar to comment #5 above; if not already included or planned, the “core” work group should, at a minimum, include state members since authorized states currently handle the bulk of national environmental permitting and associated public outreach activities. EPA should not wait until the subject plan is developed to involve states as a stakeholder. Rather, states should be involved upfront as regulatory partners and can bring their considerable experience to bear in helping EPA to develop this plan.

ASTSWMO is the acronym for the Association of State and Territorial Solid Waste Management Officials. The word “Solid” is missing as currently defined. This omission also needs to be corrected in Appendix B.

### Section 3.1 Deliverables

Comment #9: Given EPA’s proposed level of stakeholder involvement in this initiative, the number of associated activities and competing national environmental priorities, the time frames associated with the planned deliverables seems highly optimistic.

### Section 4.0 Appendices, Appendix A: Potential Tools and Resources

Comment #10: Is the “development of EJ Screen” (referenced in Footnote 2) a planned extension of EPA’s existing EJ screening tool, “EJView” located at <http://epamap14.epa.gov/ejmap/entry.html>? Regardless, existing EJ screening tools such as EJView should be included on the list.

### Section 4.0 Appendices, Appendix B: Acronyms

Comment #11: As indicated above in Comment #8, ASTSWMO should be changed to the Association of State and Territorial Solid Waste Management Officials.