

August 24, 2012

“Plan EJ 2014: Considering EJ in EPA’s Permitting Process” Docket
Environmental Protection Agency
EPA Docket Center, MC 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Docket ID No., EPA-HQ-OAR-2012-0452

Dear Madam/Sir:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is providing the following comments to the U.S. Environmental Protection Agency regarding “EPA Activities to Promote Environmental Justice in the Permit Application Process” (77 FR 38051), published in the Federal Register on June 26, 2012.

ASTSWMO is an association representing the waste management and remediation programs comprised of 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 provide comments based on their own State perspectives and experiences.

As stated in the notice, “EPA recognizes that some States have made significant progress in meaningfully involving overburdened communities in the permitting process. While the focus of today’s notice is on EPA-issued permits, EPA believes that States with experience in this area can provide valuable information that will strengthen EPA’s efforts. Therefore, EPA invites States to share their ideas for ensuring the meaningful involvement of overburdened communities in the permitting process and encouraging dialogue between permit applicants and the communities.”

We do agree that States continue to make progress in communicating, collaborating and addressing issues presented by overburdened communities. We note that States may have their own statutory definition of an overburdened community, and procedures for considering environmental justice in their permitting process.

While we understand that this notice is specifically focusing on EPA-issued permits, we must stress the importance of EPA clearly communicating that the proposed actions were developed for and are intended for use solely by EPA Regional offices. There have been instances when

EPA issues guidance that is strictly for EPA or a tool that is voluntary, but is then communicated to the States that they must comply and implement the “voluntary” guidance.

Throughout the notice, it is written that EPA will utilize a screening tool or other methodology to identify already overburdened communities. Will the screening tool and other methodology be made available for public comment?

The notice also states that EPA hopes that once finalized, the “Draft Best Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Communities at the Fence-Line” will inform business and other participants in the permitting process of some effective techniques for meaningfully engaging communities in the permitting process for EPA-issued permits. However, the notice also says that once final, the document would supplement existing guidance and recommendations issued by permitting authorities, including States. This statement contradicts the preceding statements of this notice that it is specifically for EPA-issued permits. Since the draft best practices document has been developed for those seeking EPA-issued permits, then we would ask EPA to clarify the expectation that the final document could supplement existing State recommendations and guidance, solely at the State’s discretion.

Thank you for your consideration of these comments. If you have any questions, please contact me (406-444-6748) or Mary Zdanowicz, ASTSWMO Executive Director (202-624-5351), if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Thamke', with a stylized flourish at the end.

Ed Thamke (MT)
ASTSWMO President

cc: ASTSWMO Board of Directors
ASTSWMO Hazardous Waste Subcommittee
ASTSWMO Materials Management Subcommittee
EPA OECA