



ASTSWMO, Providing Pathways to Our
Nation's Environmental Stewardship Since 1974

October 31, 2017

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Docket ID: OA-2017-0533

ASTSWMO COMMENTS on EPA's Draft FY 2018 - 2022 EPA Strategic Plan

Dear Sir/Madam:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Board of Directors appreciates the opportunity to provide the enclosed comments on the Draft FY 2018-2022 EPA Strategic Plan. ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States).

The ASTSWMO Board of Directors is encouraged with EPA's plan to "launch a new era of State, tribal, local and international partnerships." During these uncertain budgetary times, we agree that we must leverage partnerships to ensure we are collectively addressing the needs of our programs. States know their programs and can share ideas on how to streamline and add flexibility.

In the Strategic Plan Introduction, EPA recognizes and acknowledges States as the primary implementers of the nation's environmental programs. Consistent with that recognition and acknowledgment, States must be considered as partners and co-regulators, and not merely as stakeholders, throughout the development and implementation of EPA's Strategic Plan and related initiatives.

States are concerned about the obvious inconsistency between several Strategic Plan objectives and EPA's proposed budget. The Strategic Plan seeks to increase accomplishments and State outputs, yet the budget forecasts significant cuts across all programs, including grants to States to implement delegated programs or other EPA initiatives. EPA must reconcile this inconsistency in the budget proposal, ensuring that sufficient funds are available to achieve the stated goals and objectives. States need to work with EPA on priorities collaboratively (e.g., cooperative federalism). In that role, we can also assess how best to maximize the use of resources – both from States and EPA.

States are anxious for additional details regarding the innovative approaches and efficiencies being considered to streamline the federal cleanup programs, especially CERCLA. States generally consider the nomination of a site for the National Priorities List (NPL) a “last resort,” only after exploring and exhausting all other available State and Federal programmatic, enforcement and incentive options to either motivate a recalcitrant potentially responsible party or entice a non-labile party interested in taking on the cleanup as part of a redevelopment. Given the States’ front-line experience in dealing with countless parties over the lifetime of the various State and Federal environmental statutes and regulations, States welcome the opportunity to actively participate in this initiative and discussion.

Although States do support efforts to move additional sites through the cleanup process, any reprioritization of resources to focus on remedial actions, construction completions, ready-for-reuse determinations and NPL site deletions cannot be at the expense of the pre-remedial program. ASTSWMO has already shared its research that demonstrates that less than 10 percent of sites evaluated through the CERCLA site evaluation process are placed on the NPL and the balance addressed with other State or Federal programs, the vast majority using State voluntary cleanup, brownfields or enforcement program strategies and authorities. Depriving States of these invaluable assessment funds would effectively reduce the nation’s overall site cleanup efforts by 90 percent.

States also appropriately rely on EPA as a centralized and consistent clearinghouse for technical expertise that States cannot and should not maintain individually, including the development of toxicity and risk information, evaluation of cleanup technologies and analytical methods, and research and information on new threats from, and strategies for addressing, contaminants of emerging concern. The budget proposal all but eliminates many of these critical activities upon which States depend for the most current and accurate, science-based decision-making.

As a general comment we note that there is no mention of Waste Minimization and Recycling, or Sustainable Materials Management, anywhere in the draft Strategic Plan, yet reduction, reuse and recycling can all be strategies for preventing contamination. Elimination of this program will impact the success States and EPA have had on waste reduction, diversion, and recycling goals. Recycling is a long-standing program that creates thousands of jobs, provides valuable commodities to our economy, reduces pollution, conserves resources and has mass public support and expectations. Newer Sustainable Materials Management programs are helping to address reuse and reducing waste; for example, rescuing edible food from disposal reduces waste and conserves landfill space.

Eliminating EPA support to State UST compliance programs will hinder the States’ ability to prevent UST releases, resulting in an increase of confirmed releases and contaminated sites. While an increase in LUST sites and cleanups may be helpful in meeting EPA’s strategic measure of completing more LUST cleanups, it cannot be at the expense of prevention.

We have composed additional comments, which are attached to this letter. Please do not hesitate to contact me (609) 292-1251 or ASTSWMO Executive Director Dania Rodriguez at (202) 640-1061 if you have any questions or need additional information.

Sincerely,

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

Kenneth J. Kloo (NJ)
ASTSWMO President

cc: ASTSWMO Board of Directors
Barry Breen, EPA OLEM
Alexandra Dunn, ECOS
Julia Anastasio, ACWA
Alan Roberson, ASDWA
Miles Keogh, NACAA
Clint Woods, AAPCA

Page 12: Goal 1 - Core Mission:

Deliver real results to provide Americans with clean air, land, and water.

Objective 1.3 - Revitalize Land and Prevent Contamination:

Provide better leadership and management to properly clean up contaminated sites to revitalize and return the land back to communities.

Strategic Measure

“Make additional Resource Conservation and Recovery Act (RCRA) corrective action facilities RAU.”

- **Comment:** Making a site “Ready for Anticipated Reuse” often requires the assistance of State partners in the processes. The document mentions competitive monies for States, communities, etc., but once again provides no real clarity on how much States will participate in the process and what, if any, changes in funding will be made.

External Factors and Emerging Issues

“Over the next four years, EPA will emphasize the importance of engaging stakeholders at all levels and from all perspectives in making cleanup and land revitalization decisions.”

- **Comment:** How EPA will emphasize the importance of engaging stakeholders? And a suggestion that it may be helpful to provide an example of the anticipated methods.
- As a **general comment** regarding Objective 1.3, we note that there is no mention of Waste Minimization and Recycling, or Sustainable Materials Management, anywhere in the draft strategic plan, yet reduction, reuse and recycling can all be strategies for preventing contamination. In comments to EPA regarding the draft FY 2016-2018 Office of Land and Emergency Management (OLEM) National Program Manager Guidance, ASTSWMO indicated that we do not agree with the President’s proposed FY 2018 budget request to eliminate EPA’s Waste Recycling and Minimization Program. We noted the that elimination of the program will impact the success States and EPA have had on waste reduction, diversion, and recycling goals. Recycling is a long-standing program that creates thousands of jobs, provides valuable commodities to our economy, reduces pollution, conserves resources and has mass public support and expectation. Newer Sustainable Materials Management programs are helping to address reuse and reducing waste. For example, rescuing edible food from disposal reduces waste and conserves landfill space. *By not including sustainable materials management in EPA’s strategic plan, the country will lose competitive, economic advantage with other countries that are investing in materials management and working towards a circular economy.*

Page 13, Objective 1.3: The top of page 13 states “the Agency will aim to accelerate cleanup by re-prioritizing some resources to focus on remedial actions, constructions completion, ready-for reuse determination, and NPL site deletions”.

- **Comment:** Further clarification on “re-prioritizing some resources” should be made because in the President’s proposed budget funding has been substantially reduced.
 - Is the objective to move funding from other EPA programs to meet these goals or shift the burden onto the States without providing financial resources?

Pages 13 – 14, Preventing Contamination: “EPA will update and improve the efficiency of the RCRA hazardous waste regulations to meet the needs of today’s business and industry to ensure protective standards for managing hazardous waste.”

- **Comment:** We suggest that EPA provide some examples of areas of regulation where such change is anticipated, as it would be helpful in understanding what is meant by EPA updating and improving the efficiency of the RCRA hazardous waste regulations.

“To prevent future environmental contamination and to protect the health of the estimated 20 million people living within a mile of a hazardous waste management facility,⁹ EPA will support states to issue, update, or maintain RCRA permits for the approximately 20,000 hazardous waste units (such as incinerators and landfills) at these facilities.”⁹ U.S. EPA, Office of Land and Emergency Management Estimate. 2014. Data collected includes: (1) site information as of the end of FY 2011 from RCRAInfo; and (2) census data from the 2007-2011 American Community Survey.

- **Comment:** It is noted the hazardous waste rules overall prevent activities that cause land contamination. Since contamination is prevented, the number of RAU sites should decrease.
 - How will EPA support States “to issue, update, or maintain RCRA permits”?

“EPA will improve and modernize hazardous waste transportation and tracking by implementing the Hazardous Waste Electronic Manifest Establishment Act, enacted on October 5, 2012. The fee-based e-Manifest system will provide better knowledge of waste generation and final disposition, enhanced access to manifest information, and greater transparency for the public about hazardous waste shipments, and will reduce the burden associated with paper manifests by between 300,000 and 700,000 hours.¹⁰ ¹⁰ From a 2009 programmatic estimate, cited in *Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests; Final Rule*. 40 CFR § 260, 262, 263, 264, 265, and 271.

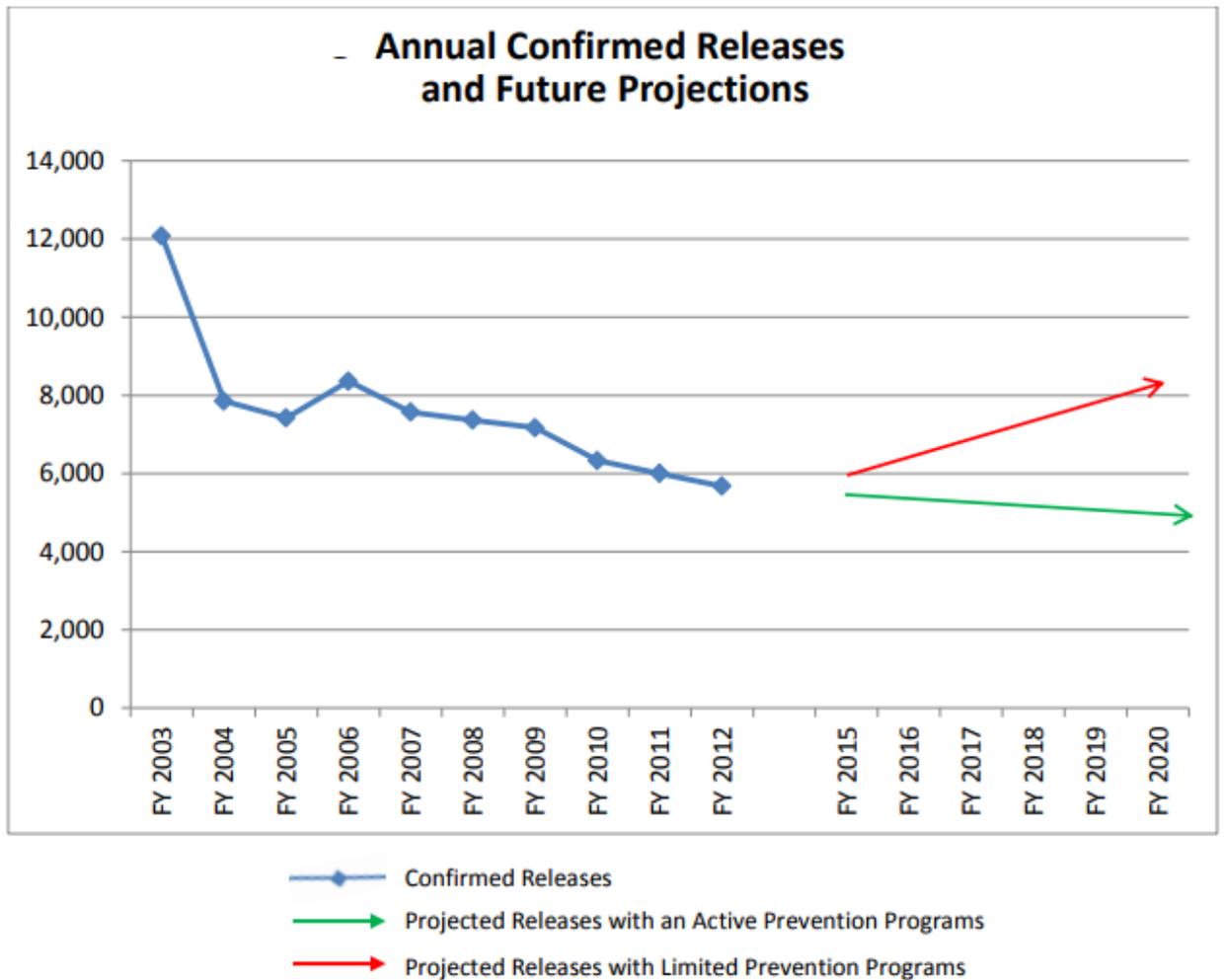
- **Comment:** Suggest that EPA rephrase the first sentence to highlight e-Manifest as a tracking system: “EPA will improve and modernize the tracking system for transportation of hazardous waste from cradle-to-grave by implementing the Hazardous Waste Electronic Manifest Establishment Act, enacted on October 5, 2012.”
- **Comment:** In making a connection between the Strategic Measure related to RCRA (“Make additional Resource Conservation and Recovery Act (RCRA) corrective action facilities RAU.”)

and the Strategic Objective related to e-Manifest, it is noted that a corrective action facility is one that through orders or a permit must perform sitewide evaluations to determine the presence of areas of contamination and then take measures to remediate the contamination. With that being said, the only connection that we see between RAU sites and e-manifest is that the hazardous waste can be tracked to final disposition. Hence, regulators can ensure that the hazardous waste is properly disposed and not illegally land disposed, which could create contamination and a corrective action facility. Therefore, the e-manifest should reduce the number RAU sites since contamination has been prevented.

“As authorized in the Water Infrastructure Improvements for the Nation Act of 2016, EPA will help States develop plans, work to approve State permit programs for coal ash disposal, coordinate closely with the States on guidance for evaluating State permit programs, and implement a coal ash permit program in Indian country. “

- **Comment:** Since passage of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act, the ASTSWMO Coal Combustion Residuals (CCR) Ad Hoc Workgroup has provided input to EPA regarding implementation of the Act’s provisions related to State CCR permit programs. The Workgroup reviewed and provided comments to EPA in September 2017 regarding the interim final guidance for State CCR permit programs. We appreciate EPA developing guidance that lays out the procedures and processes for State CCR permit program applications and EPA approval of those programs. We also appreciate that EPA is approaching the guidance as a living document that EPA will continue to update as more is learned about what does and does not work as States develop CCR permit programs. We encourage EPA to provide flexibilities in State permit programs that EPA has determined to be as protective as the federal requirements in approving a State program. We would like to see EPA create a clearinghouse of such flexibilities, including the justification for and documentation of the flexibilities submitted by States. ASTSWMO plans to continue to engage with EPA as the guidance is further developed to address additional elements. We would also like to serve as a resource for EPA to provide information to States as they submit their applications and to work through any implementation issues involved with the CCR program going forward, especially any problems that may arise as the guidance is implemented by State programs.
- **Comment:** From a LUST program perspective, the three statements regarding LUST cleanups are fairly straightforward and we are encouraged to see the inclusion of this important program.
- **Comment:** EPA funding for LUST cleanups at abandoned sites or sites with no viable responsible party will still be needed by many States to make progress on the three measures/strategies listed above.

- Comment:** ASTSWMO is concerned with the elimination of support to State underground storage tank (UST) compliance programs (training, compliance assistance, and inspection support) in the draft Strategic Plan. ASTSWMO conducted a study of State UST programs in 2014 that found EPA grants fund approximately 50% of State UST programs nationwide, and investments by EPA to States have helped reduce the number of confirmed UST releases since 2003 ([http://www.astswmo.org/Files/Policies and Publications/Tanks/New 2014-06-ASTSWMO Tanks Core Report FINAL2.pdf](http://www.astswmo.org/Files/Policies%20and%20Publications/Tanks/New%202014-06-ASTSWMO%20Tanks%20Core%20Report%20FINAL2.pdf)).



Eliminating EPA support to State UST compliance programs will hinder the States' ability to prevent UST releases resulting in an increase of confirmed releases and contaminated sites. While an increase in LUST sites and cleanups may be helpful in meeting EPA's strategic measure of completing more LUST cleanups, it cannot be at the expense of prevention.

Page 18: Goal 2 – Cooperative Federalism:

Rebalance the power between Washington and the States to create tangible environmental results for the American people.

Objective 2.1 - Enhance Shared Accountability:

Improve environmental protection through joint governance and compliance assistance among state, tribal, local, and federal partners.

Pages 19, Joint Governance: “To develop a future model of joint governance that takes into account the progress States have made in protecting human health and the environment, the Agency will undertake an analysis of EPA’s statutory roles and responsibilities to determine what we have to do and assess what we want to do in light of priorities. As part of this process, the Agency will pilot new approaches to tailoring state transactional oversight (e.g., permits) where we have the legal flexibility to do so and streamlining those processes by which EPA reviews and approves state actions.”

- **Comment:** What is meant by “State transactional oversight”? It is not clear from the example provided.
- **Comment:** Have the series of initiatives been defined? What is the timeline for these initiatives and how will States be participating? Out of all the task force recommendations and initiatives, which ones will EPA be working on with the States’ first?
- **Comment:** Along with piloting new approaches for tailoring State transactional oversight, some States may already be doing similar approaches that are proving to be effective, and we may want to include evaluating and considering what may already be working among States for achieving this objective.

Page 20, Joint Governance:

- **Comment:** Some of the States may not be familiar with NEPPS and how NEPPS has helped advance Cooperative Federalism, so maybe an introduction and/or information sharing about NEPPS and roles they have served in the past will be of benefit to those involved.

Page 21, External Factors and Emerging Issues: “Advances in the field of information technology and social science research may offer innovative ways to promote compliance. EPA is partnering with States to help prepare for and use these technologies and research to carry out our statutory obligations.”

- **Comment:** Will EPA partner with academia on the social science research component?

“EPA also will work closely with the Environmental Council of the States (ECOS), State program associations, and individual States, tribes, and territories to implement the Administrator’s vision

for cooperative federalism. In partnership with ECOS, EPA plans to develop principles and best practices for enhancing collaboration among EPA and states on compliance assurance work.”

- **Comment:** This collaboration is very positive. How will the principles/best practices developed with ECOS for enhancing collaboration be memorialized?

Page 22, Objective 2.2: This objective discusses “increasing the amount of non-EPA resources leveraged by projects receiving EPA infrastructure Investments” and “Eliminating unnecessary or duplicative reporting burdens to the regulated community”.

- **Comment:** It is imperative that in this universe of limited funding, that leveraging resources occurs; however, if it involves State resources, those States need to be brought in at the beginning and clarification needs to occur as to what EPA’s expectations are of the State.
- **Comment:** From a process and streamlining approach with the permitting and cleanup programs, will EPA continue to utilize public comment periods, public availability sessions and Community Advisory Groups (CAGs) to reach out to the public or create new avenues for engaging local communities?

Page 25: Goal 3: Rule of Law and Process
Administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law.

Page 26:

Objective 3.1 - Compliance with the Law:

Enforce environmental laws to correct noncompliance and promote cleanup of contaminated sites.

Strategies for Achieving the Objective

- **Comment:** ASTSWMO recommends that the e-manifest effort under Objective 1.3 be moved and included as a strategy for attaining this objective. The e-manifest helps increase the compliance rate since it makes the movement of hazardous waste between entities transparent and in real time.

Page 27, Civil Enforcement: “To maximize compliance over the next four years, the Agency will refocus efforts toward areas with significant noncompliance issues and where enforcement can address the most substantial impacts to human health and the environment. Recognizing the role of States and tribes as the primary implementers where authorized by EPA to implement the federal statutes, EPA will focus resources on direct implementation responsibilities and the most significant violations, and assisting authorized States and tribes in meeting national standards.”

- **Comment:** On what kinds of resources will EPA focus? How will EPA assist authorized States and tribes in meeting national standards?

Page 27, Objective 3.1: “Through CERCLA, EPA will facilitate prompt site cleanup and use an “enforcement first” approach that maximizes the participation of liable and viable parties in performing and paying for cleanups”.

- **Comment:** ASTSWMO strongly believes that it is imperative that the State be brought in at the beginning of enforcement actions and settlement discussions with PRPs. The State needs to be an active member because of the potential financial burdens placed upon the State should the PRP become no longer viable through the remedial process.

Page 28, External Factors and Emerging Issues: “Advanced monitoring technology and information technology are rapidly evolving, and advances in these fields offer great opportunities for improving the ability of EPA, States, and tribes to ensure compliance. EPA, States, and tribes do, however, face challenges in keeping up with the rapid pace of change in these technologies. In addition, social science research and knowledge may offer innovative ways to promote compliance. EPA is partnering with states and tribes to help prepare for and use these technologies, consistent with statutory and regulatory obligations. The Agency will collaborate with ECOS and State associations to maximize the use of these technologies and modernize programs. For example, EPA will work with States and academics to pilot and evaluate innovative compliance monitoring (this word was added by ASTSWMO) methods.¹⁷ EPA will work with States to integrate advanced pollution monitoring and information technology into Agency work.” ¹⁷ ECOS Resolution 17-2: On the Value of Diverse and Innovative Approaches to Advance Compliance (2017)

- **Comment:** This section only discusses use of “technologies”. It does not address how EPA intends to determine if social science research and knowledge may also promote compliance.

Page 29, Objective 3.2 - Create Consistency and Certainty:

Outline exactly what is expected of the regulated community to ensure good stewardship and positive environmental outcomes.

- **Comment:** As an overarching observation, it was not clear how the Objective, Strategic Measure, Strategies for Achieving the Objective and External Factors/Emerging Issues align with each other.
 - Need clarification as to how meeting a legal deadline creates consistency and certainty (e.g., Definition of Solid Waste).

“Support EPA cooperative federalism commitments aimed at minimizing duplications and overlap amount regions, headquarters, States and tribes”.

- **Comment:** We believe that the review/approval and oversight process be streamlined in the light of reduced resources both at the Federal and State level.

Strategic Measure: “Meet legal deadlines imposed on EPA.”

Strategies for Achieving the Objective

Pages 29 – 30: “In addition, EPA will develop and engage stakeholders in reviewing a draft base catalog of responsibilities that statutes require EPA to perform in programs delegated to States and tribes. The base catalog, to be complete by 2019 and subsequently updated as necessary, will provide EPA a foundation to make decisions that reduce contradictory policy determinations at headquarters and across regions. It will also support EPA cooperative federalism commitments aimed at minimizing duplication and overlap among regions, headquarters, States, and tribes. This effort also leverages another commitment that EPA is making under cooperative federalism—to identify for all environmental media an inventory and timeline for state-led permits that EPA reviews.”

- **Comment:** The development of a base catalog of responsibilities that statutes require EPA to perform in programs delegated to States and tribes sounds like it would be helpful. However, we request further clarifications about the base catalog, such as: how it will reduce contradictory determinations within EPA; and how it will leverage the identification of an inventory and timeline for State-led permits that EPA reviews.
- **Comment:** Recommend that minimizing duplication and overlap of environmental rules in different environmental programs (e.g., Clean Air Act vs RCRA) should also be included in this strategy.

Page 33, Objective 3.3: “Develop assessment products, peer-reviewed toxicity values, and advanced exposure assessment tools to help inform Superfund and hazardous waste cleanups as require by RCRA and CERCLA”.

- **Comment:** It is imperative that this work does continue because States typically do not have the financial or technical resources to perform these actions.

Page 34, Objective 3.4 - Streamline and Modernize:

Issue permits more quickly and modernize our permitting and reporting systems.

Strategic Measure: Accelerate permitting-related decisions

Strategies for Achieving the Objective

“Over the next four years, EPA will systematically collect and report permitting data for each of its permitting programs.”

- **Comment:** How and to whom will EPA collect and report permitting data?

“EPA will also consider where policy changes can improve permitting efficiency without sacrificing environmental results. Examples include expanding the scope of minor permit modifications to reduce the number of permit reviews required, reinvigorating the use of plant-wide applicability limits (PALs) to reduce unnecessary permitting transactions, and increasing States’ ability to incorporate federal regulations by reference, enabling them to adjust quickly and efficiently to new regulatory provisions.”

- **Comment:** If expanding the scope of minor permit modifications to reduce the number of permit reviews required means reducing the scope of major permit modifications (under RCRA, Class 2 and 3 modifications), it will also reduce opportunity for public participation.
- **Comment:** What is meant by “increasing States’ ability to incorporate federal regulations by reference”? It was noted that this would not affect the timeline/efficiency of State rulemaking procedures.