

October 14, 2011

Suzanne Rudzinski  
Director  
EPA ORCR  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Ms. Rudzinski,

The Hazardous Waste and Solid Waste Subcommittees of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciate your invitation to provide input on the "RCRA Messaging" initiative. In this letter, we offer our perspectives on this initiative and the value of the RCRA Subtitle C and D programs as well as additional State and Territorial (State) programs and their continuing accomplishments. At their heart, the Resource Conservation and Recovery Act and equivalent State programs are pollution prevention and resource conservation programs. This is truer now than when RCRA first became law, as evidenced by substantial reductions in the amount of hazardous waste generated across the nation and shifts towards use of less-toxic, more environmentally friendly materials in manufacturing and production operations. We believe this fundamental shift in thinking was brought about by RCRA and its implementing regulations.

An important aspect of RCRA is that it is aimed at permitting operating waste management facilities that have viable owners/operators and thereby requiring a high standard of waste management behavior. This helps to protect communities from mismanagement of wastes and taxpayers from potentially having to shoulder future costs for the clean-up of sites resulting from poor waste management practices that might otherwise occur. RCRA and State programs require waste permits that lay out design and operations standards for operating facilities to ensure safe waste management and prompt response to any problems that arise. In addition, EPA and State and facility inspection and compliance assurance programs ensure that facility wastes are properly handled, controlled and tracked. These programs are designed to prevent releases of wastes into the environment thereby preventing pollution and protecting public health and the environment. Finally, post-closure care and corrective action programs required under RCRA and State authorities ensure that past and present releases of waste and hazardous constituents at waste management facilities are investigated, monitored and cleaned-up to protective levels by the facility. This mitigates public health threats and environmental damage caused by such releases,



provides incentives to industry to prevent future releases and places the burden on the facility owner/operator, not the taxpayer, to address known releases. Clearly, prevention efforts must have continuity and consistency to be effective. RCRA and State programs provide both. In the end, prevention is a goal that is never really “achieved” in the sense of being able to count accomplishments but rather a perpetual activity conducted to minimize that which can be counted (i.e., releases to the environment).

In the early part of the last century, Thomas Edison noted, “Waste is worse than loss.” By building RCRA to conserve and recover resources, its original architects agreed with Edison. RCRA discourages waste generation and encourages **waste minimization, resource recovery** and recycling. As an example, hazardous waste generation has drastically decreased in the 30+ years RCRA has been in place. Generating less hazardous waste means less risk to public health and the environment, but it also means less cost and liability to industry. As with prevention, “waste minimization” is a perpetual activity, it continues until there is no more waste.

Waste resource recovery and materials recycling operations have expanded exponentially in many industry sectors due to RCRA. For example, lead acid batteries, plastic battery cases and battery acids are routinely recovered at secondary lead smelting facilities that didn’t exist prior to RCRA. Lead is still integral to our nation’s technological development and these secondary recovery facilities serve to lessen our dependence on mining and smelting of primary lead ores thus conserving natural resources. Cement kilns are permitted to operate safely and effectively under RCRA in recovering energy from the burning of wastes in lieu of fossil fuels for cement production. This action prevents those wastes from being land disposed or simply burned for destruction in incinerators while offsetting the need for burning coal and other fossil fuels in the kilns, thus also preserving natural resources. Hazardous waste (solvent) recycling operations routinely recover large quantities of solvents for reuse and military demanufacturing operations routinely recover valuable economic quantities of many metals (copper, brass, aluminum and steel), fiberglass, plastics and other materials. Again, RCRA has been the catalyst for virtually all of these industry practices.

Technology has not stood still since RCRA became law. Many **new waste streams** have emerged as new manufacturing processes and products have been developed. Some of these waste streams are or could be very dangerous (e.g., wastes from the manufacture and use of pharmaceuticals and nanotechnology and wastes from methamphetamine labs). Other new waste streams have emerged as problems because of the very high volumes involved (e.g., waste electronics). While not perfect, RCRA has the flexibility for EPA and the States to evaluate these new wastes and regulate them appropriately. Like the items above, new wastes that need to be appropriately regulated will continue to result from advancing technology and the demands of our society. Further, as we continue to advance our knowledge of the persistence and toxicity of known hazardous waste streams and hazardous constituents (e.g., trichloroethylene, bisphenol A,

chlorinated dioxins) RCRA provides the vehicle within which we maintain our ability to reevaluate and make adjustments to the management, monitoring and cleanup of these wastes and constituents.

We believe that RCRA has created certain economic benefits to industry and the public that continue today. This includes the cost savings to industry due to waste minimization mentioned above. It also includes the consistency and predictability of a level playing field. Companies that comply know their competitors must also expend the efforts to comply or face the regulatory consequences. This prevents a "race to the bottom." In addition, RCRA sets a common-sense floor that is attractive to industry because it is predictable and decreases their liability for contamination and public exposure issues. RCRA, and in particular the 1984 Hazardous and Solid Waste Amendments to RCRA, increased the regulatory obligations of hazardous waste owners/operators with respect corrective action investigation and site cleanup. The obligation of facilities to provide financial assurance for needed corrective action activities has consequently decreased the potential for taxpayer funded cleanups under the federal Superfund Program as current facility owners/operators are responsible for those costs.

While the benefits of strong, vital continuing RCRA and State programs are clear, we encourage EPA to consider some bold revitalization and improvement efforts for RCRA and its implementing regulations as part of the message. In this economic climate, EPA's efforts must become significantly more efficient, cutting back to areas where the added value is clear while still preserving and expanding the gains made. For instance, the time has long since passed for EPA to maintain duplicative day-to-day project management staff for implementation of State-lead projects in authorized States, particularly in States that have a long history of competent program administration and implementation. In these cases, the States have more experienced staffs and run more cost-effective programs. Instead, EPA should add value by applying the deep and broad technical expertise within the agency to things like providing focused technical support in areas such as risk-assessment as requested by States, evaluating how emerging waste streams should best be regulated across the country, working on evaluating, updating and removing parts of the regulations that no longer are needed, evaluating flexibility mechanisms that allow States to tailor their programs to unique problems, and evaluating the viability of new remediation technologies.

In addition, with more materials moving to reuse and recycling and less to disposal, guidance on how to effectively manage that shift would be of benefit in the Subtitle D realm. Increases in solid waste recycling highlight a need for recycling market development tools. There will continue to be a need, however, to effectively provide for waste disposal and there are issues needing resolution associated with long term care. The needs associated with reuse, recycling and waste disposal point to an overarching need to examine how life cycle analysis and life cycle-based evaluation tools can be used to support fully integrated waste management.

Perhaps the most powerful message that EPA could deliver on RCRA and its programs is that our collective efforts are being applied dynamically. EPA and the States need to demonstrate through our actions that we are actively working to predict, adapt to, and implement programs that are timely, relevant, smart, efficient, and even elegant.

Thank you for the opportunity to provide input on this very important issue. We look forward to discussing this issue during the upcoming October 26-27, 2011, ASTSWMO Annual Meeting in Bethesda, MD and other venues in the future.

Sincerely,



Tammie Hynum, Arkansas  
Hazardous Waste Subcommittee Chair



Mark de Bie, California  
Solid Waste Subcommittee Chair

cc: ASTSWMO Board of Directors  
ASTSWMO HW Subcommittee and Task Forces  
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