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February 11, 2022

U.S. Environmental Protection Agency
Office of Land and Emergency Management Docket
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

via Regulations.gov

Attention: Docket ID No. EPA-HQ-OLEM-2021-0348

Dear Sir or Madam:

The Corrective Action and Permitting (CAP) Task Force within the Hazardous Waste Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments regarding the U.S. Environmental Protection Agency's (EPA) Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions published in the Federal Register on December 16, 2021 (86 FR 71482). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition to these comments, individual State or Territorial programs may also provide comments based on their own State perspectives and experiences.

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.

The term "State" as used in these comments refers to the States that have provided input to the Task Force.

The CAP Task Force strongly supports the concept of modernizing archaic processes for public notice. We agree with EPA's opinion that the existing requirements for general notices in print newspapers are often an extremely expensive and ineffective means of providing notice to a community. We commend EPA for moving in the direction of expanding the concept of public notice to include digital media.

We appreciate EPA clearly stating in the Federal Register notice that authorized States with similar newspaper notice regulations would be able to implement an online newspaper interpretation similar to EPA's without seeking authorization if no State regulatory changes are made, and for further clarifying that States would have this ability with respect to this notice for permit issuance (i.e., initial permit and permit renewals) and other actions (e.g., permit modifications).

However, we have some concerns with the statement, at page 71493, "if authorized states interpret their existing authorized regulations as allowing for such flexibility for notices not subject to section 7004(b)(2), EPA would generally not view that as creating an issue as to the equivalence of the state program as long as they provide for notice that is likely to be as effective as or more effective than the notice required by the federal regulations." We are concerned the language "as long as they provide for notice that is likely to be as effective

as or more effective than the notice required by the federal regulations” is subject to interpretation and “as or more effective” would be difficult to demonstrate. We do not think it is EPA’s intent to limit flexibility by a subjective interpretation of effectiveness and recommend this language be excluded from a final notice.

The Task Force believes the Agency’s interpretation that online newspapers meet the definition of newspapers is reasonable. However, as States are not bound by EPA’s interpretation, explicitly stating this in the regulations would reduce the risk to States of costly litigation of ambiguous language. We recommend revising the language to make this explicit in the regulation.

EPA is seeking comment as to whether or not other agency publications such as agency bulletins or newsletters could also satisfy 7004(b)(2) requirements. We concur that alternate options of publication, such as those discussed above, satisfy the requirements of notices for actions such as permit modifications. If needed to address concerns for equitable access in an identified Environmental Justice community, we suggest recommending that supplemental notice be published via local government or community organization bulletins.

The Task Force believes that publication in agency formats, particularly if such publications are distributed via the agency’s web and/or social media sites, are often more far-reaching than newspaper publication because interested groups often subscribe to agency updates, and these updates are easy to share with their followers.

As EPA describes in the notice, distribution of information is rapidly changing and varies greatly for different demographics. Allowing agencies to use means such as online newsletters and agency web and social media postings is a much more effective method of informing the public than the outdated and prescriptive requirements of newspaper advertisements.

In addition to the Task Force comments, we are forwarding the attached comments from the Illinois Environmental Protection Agency.

If you have any questions about these comments, please contact me at 804-350-5623 or Ashby.Scott@deq.virginia.gov.

Thank you for your consideration of this input.

Sincerely,



Ashby R. Scott (VA)
Chair, Corrective Action and Permitting Task Force
ASTSWMO Hazardous Waste Subcommittee

Attachment

**Attachment to the ASTSWMO CAP Task Force Comments regarding
Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions
Docket ID No. EPA-HQ-OLEM-2021-0348**

Comments Submitted by the State of Illinois Environmental Protection Agency

1. Online Newspapers That Are Local and of General Circulation Satisfy RCRA and Regulatory Requirements.

The Illinois Environmental Protection Agency (Illinois EPA) welcomes the flexibility being afforded under this interpretation as it is easy to foresee a time when a print newspaper may not be available to make compliant notice. As a note, the Illinois EPA has already implemented e-notice for Prevention of Significant Deterioration (PSD) and National Pollutant Discharge Elimination System (NPDES) permitting and have not seen a reduction in community involvement.

2. Request for Comment on Whether Online EPA or State Newsletters / Bulletins Would Satisfy RCRA and Regulatory Requirements.

Illinois EPA welcomes this interpretation. Allowing for publication in other periodic online publications to satisfy the newspaper requirement will provide for improved notice. Notice in online documents will allow for notice to be continuously posted during the duration of the comment period and provides a central location that interested parties may be assured of finding a notice.

3. Flexibility for notices not subject to section 7004(b)(2).

Illinois EPA welcomes this interpretation. Allowing for online notice will provide for improved notice. Notice at a known, central online repository for notice and documents will allow for notice to be continuously posted during the duration of the comment period and provides a central location that interested parties may be assured of finding a notice. It also allows for all documents to be made available in a single convenient location. As noted above, the Illinois EPA has already implemented e-notice for PSD and NPDES permitting and hav not seen a reduction in community involvement.