



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

November 12, 2021

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

Re: Docket ID No. EPA-HQ-OA-2021-0403

ASTSWMO COMMENTS on EPA's Draft FY 2022 - 2026 EPA Strategic Plan

Dear Sir/Madam:

The Association of State and Territorial Solid Waste Management Officials (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 appreciates the opportunity to comment on the Draft FY 2022-2026 U.S. Environmental Protection Agency (EPA) Strategic Plan.

Overall, the ASTSWMO Board of Directors is encouraged with the EPA plan, which is in line with many of our Association's goals. Specifically, EPA's Draft Strategic Plan, Goal 6: Safeguard and Revitalize Communities, aligns with ASTSWMO's mission. The need to protect communities and improve the livelihood of all Americans is at the heart of our work. We applaud continued partnerships and collaborative goal setting. We offer the following general and specific comments.

GENERAL COMMENTS

ASTSWMO's general comments focus on Partnerships and Goals Setting.

Partnerships. We agree that partnerships must be leveraged to ensure we are collectively addressing the needs of our programs. The importance of collaboration and partnership is even more pressing in these uncertain budgetary times. States know their waste management and remediation programs and can share ideas on how to streamline and add flexibility.

In the EPA Draft Strategic Plan, Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights, ASTSWMO agrees with the point in the Introduction that achieving this goal requires "significant transformation" in how EPA will allocate funding and implement statutory authorities. The ASTSWMO Board would like to be an active partner in these discussions as our members are engaged in their communities and have experience in achieving these quality-of-life improvements. EPA discusses advancing priorities outside of EPA. As co-regulators, ASTSWMO's members must be an integral part of these discussions and decisions, as the priorities being advanced are implemented by the States in

fulfilling numerous delegated programs and/or implementing State-developed programs modeled after federal regulations. There may need to be significant change to the State funding allocations based on these proposals. The changing metrics and resulting issue with tracking and collecting the necessary data for reporting, time and cost to implement data management changes, and the potential for some EPA directives/goals to be at odds with State statutes or regulations are additional issues that necessitate the involvement of members in the discussions and decisions. Our use of the term “delegated program” includes programs that are authorized or approved by EPA.

Goals Setting. Environmental Justice, Civil Rights and Climate Change are incredibly important to the national environmental, public health, welfare, and security agenda. The draft EPA Strategic Plan identifies very high-level objectives conceptually (e.g., to consider climate change impacts in programs, policies, rulemaking processes, enforcement, and compliance assurance activities). ASTSWMO members strive to be good partners and would like to seek additional clarity from EPA on measurable implementation of those strategies, goals, and objectives. Our concern is that challenges may arise if EPA assesses a delegated program's performance on these goals without concrete quantifiable metrics, or adequate funding for achieving those goals.

ASTSWMO recently published an [Environmental Justice Resource Webpage](#) that is available on our website.

SPECIFIC COMMENTS (see attachment following the signature).

ASTSWMO members provided numerous specific comments and most of these comments were thematically similar. Where the Draft FY 2022-2026 EPA Strategic Plan states a goal or desired outcome, members striving to be good partners and stewards have questions regarding how to measure achievement of EPA expectations, and how to balance current funding and workforce obligations/requirements.

We thank EPA for the opportunity to provide comments and look forward to working together. Please contact me (timothy.ratsep@delaware.gov or 302-739-9400) or Dania Rodriguez, ASTSWMO Executive Director (daniar@astswmo.org or 202-870-2602).

Respectfully,



Tim Ratsep, DE
ASTSWMO President (2021-2022)

ATTACHMENT: COMMENTS FROM ASTSWMO MEMBERS ON EPA'S DRAFT FY 2022-2026 EPA STRATEGIC PLAN

Goal 1: Tackling the Climate Crisis

What are EPA's expectations for States regarding EPA's integration of the climate adaptation plan? Will there be a notice and comment period outlining these expectations? How, if at all, will this integration impact delegated work and related funding?

Goal 1: Objective 1.1: Reduce Emissions that Cause Climate Change

There are clearly national level discussions regarding this goal. How will the reductions in emissions be measured? How will EPA and the States be held accountable for meeting the goals? As green technologies progress, does EPA anticipate any changes to the regulatory or policy frameworks for waste generated from these technologies?

Goal 1: Objective 1.2: Accelerate Resilience and Adaptation to Climate Change Impacts

What are EPA's expectations for States to further the "decisive action to advance environmental justice and civil rights"? How, if at all, will these expectations accommodate States in which civil rights matters are managed by either other executive agencies or other constitutional officers?

At various points, the Draft EPA Strategic Plan uses the terms "environmental justice" and "civil rights" interchangeably. Is this intentional? If not, would it be possible to receive clarification on the areas in which one term is intended to be used over the other?

Are there any specific programs or sectors that EPA intends to target with its environmental justice and civil rights initiatives? If so, what are those areas and what information would be helpful for States to provide? If not, does EPA contemplate offering States the opportunity to comment on those initiatives and the impact to both delegated and State-developed programs (e.g., State coal combustion residuals (CCR) programs that existed prior to the federal CCR permit program)? Will EPA provide specific funding to help States achieve those priorities?

Page 12, Last paragraph: How will EPA promote a circular economy?

Page 13, Last sentence of "Transformation to Advanced Technology" paragraph under "External Factors and Emerging Issues": We agree Electric Vehicles (EV) will help to reduce greenhouse gas (GHG). As with other renewable energy sources (such as wind turbines and solar panels), there is a significant need to develop and implement a plan to manage EV batteries in a safe manner that also promotes the circular economy and environmental justice values.

Page 14, Second paragraph under "Introduction": What specifically is EPA intending to do or require States to do with respect to enforcement and compliance assurance activities that considers climate change and how that affects overburdened and underserved communities?

Page 14, Third paragraph under "Introduction": What specific change(s) is EPA going to require of States to “transform their environmental programs” in order to incorporate environmental justice?

Page 14, Third paragraph under "Introduction": What is meant by “strengthen adaptive capacity”? What specific changes is EPA looking to effect in State programs?

Page 15, #1 Under "Strategies": What specifically is meant by "integrating climate adaptation... into enforcement activities"?

Page 15, "Integrating Climate Adaptation into EPA Programs, Policies, and Operations": What are these nineteen plans associated with? What actions are contemplated?

Page 16, "Climate Adaptation Literacy and Science": Is this training going to be required for State personnel? Are there specific tools and methods going to be required to be considered in decision-making processes? If so, what are the specifics of these methods and tools? Will they be incorporated as specific requirements in Performance Partnership Agreements (PPAs)? If so, how will these requirements be measured? Will EPA fund these training opportunities for State staff capacity-building and development? What specific decisions are contemplated – permitting, compliance monitoring, enforcement?

Page 16, Second paragraph under "External Factors and Emerging Issues": What is meant by “transform”? What does EPA anticipate requiring of States to “transform”?

Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights

Page 22, First paragraph under "Introduction": What is meant by increasing commitments and capacities at the State level? Will this change specific requirements in State PPAs? If this results in a required increase in inspections, States will need a commensurate increase in funding. This cannot be an unfunded mandate.

Page 22, First bullet under “Long-Term Performance Goals”: There is a footnote that first year activities of this Long-Term Performance Goal will focus on definition and scope of program participation and what qualifies as capacity-building resources. How will the definition, scope and what qualifies as capacity-building resources be communicated? Will there be the opportunity for review and comment?

Page 22, Second bullet under, “Long-Term Performance Goals”:

- What will commitments look like and how are they enforceable? States will need time to determine potential statutory limitations, particularly for enforcement or varying away from inspection mandates. Programs will not be able to go against State statutes and regulations that could be in conflict with an EPA policy or goal, e.g., a State program requires inspection of all regulated facilities at least once every three years. If the environmental justice areas do not line up for such an inspection schedule, States may need to do more inspections than funding allows to comply with potential metric reporting requirements. State involvement in stakeholder discussions will be vital to program success.

- What specific commitments are contemplated here? How will they be implemented on the ground, what specific actions are the States going to be required to perform?
- What type of commitments? There is a lack of detail. If this will result in an increase in workload specific to this area, what program area will see a corresponding reduction in commitments? Will there be additional funding for these new commitments?

Page 22, First two points under “Long-Term Performance Goals”: Again, ASTSWMO would like to help EPA in achieving these goals. For the third point, there is an “X” where there should be a number.

Page 22, Fourth bullet under "Long-Term Performance Goals":

- First comment: What more specifically is EPA looking for here beyond civil rights laws and State programs that already exist?
- Second comment: What does “foundational civil rights program” mean? What will be used to determine if an existing State program meets the requirements?

Page 23, Last sentence under "Engaging and Supporting Federal, State, and Local Governments to Achieve Results in Communities": Is this changing the current State Review Framework (SRF) model or PPA commitments? What are the measurements?

Goal 2: Objective 2.1: Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels

Page 24, First paragraph under “External Factors and Emerging Issues”: One State noted that their current landfill permitting rules evaluate locations based on considerations other than environmental siting reasons. The exception might be local control over zoning that is out of State control.

There is some vagueness here, with EPA indicating that it would like to do things, but that it must work with a broad array of federal, State, and local actors to make progress. More information on the strategies that EPA plans to use to bring partner groups on board would be helpful.

Goal 2: Objective 2.3: Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns

Page 30, Second paragraph under "Strategies": Is there going to be a specific number of inspections required by delegated programs? Or does EPA anticipate taking direct action in States with delegated programs?

Page 30, "External Factors and Emerging Issues": How will "...using the Agency’s affirmative authority to initiate compliance reviews and audits..." be coordinated with or integrated into States’ existing compliance monitoring and enforcement programs?

Goal 3: Enforce Environmental Laws and Ensure Compliance

Page 31, Second paragraph under "Introduction": Regarding the sentence: "This work will include targeting and screening to prioritize inspections in communities facing substantial burdens from environmental noncompliance." Will this be built into PPA commitments? Will States be required to use EJ screening tools to set inspection/compliance monitoring scheduling/targeting lists? How will this be measured?

Page 33, "Strengthening Environmental Justice Through a Robust Enforcement Program": Is this just for actions taken by EPA, or will this be built into PPAs? If so, what are the performance measures/specific commitments required of authorized States?

Page 33, "Strengthening Environmental Justice Through a Robust Enforcement Program" paragraph: With regard to enforcement under CERCLA and RCRA, ASTSWMO is willing to provide suggestions on more enforcement instruments or support on oversight as co-regulators.

Page 34, First paragraph on the page states, "EPA will strengthen tools for the detection of environmental crimes in overburdened communities": Specifically, what tools are contemplated here? Is this something under development?

Page 34, First paragraph under, "External Factors and Emerging Issues": Enforcement of these manufacturers should come from the State in which the manufacturing facility is located.

Goal 3: Objective 3.1: Hold Environmental Violators and Responsible Parties Accountable

Most enforcement is done by States, most of whom have had staffing levels cut by decreasing budget levels, retirements, and diminishing grants. At the same time, exciting buildouts of powerful data tools have made documenting violations easier (prior to an Inspector going on site). This is great news; however, the existing enforcement workflow is maxed out. Where will the money for these increased inspections come from? Will the inspections done in partnership with States be funded by EPA?

Goal 3: Objective 3.2: Detect Violations and Promote Compliance

Page 35, First sentence under "Introduction": Does EPA anticipate requiring States to conduct specific actions that constitute "effective targeting" in communities with environmental justice concerns? If so, what are these specific actions? How is this defined? Will specific requirements be built into funding agreements such as PPAs?

Page 35, Second bullet under "Long-Term Performance Goals": It is unclear what that means. Does it mean of all the agency's inspections, 55% of them will be in environmental justice areas? Or does it mean 55% of facilities in environmental justice areas will be inspected? Those are vastly different goals. Is this going to be a State requirement or just of inspections EPA conducts? How does this work in authorized States?

Page 36, “Producing Timely Inspection Reports” paragraph: What is meant by “improving the timeliness”? Specifically, how long from the date of inspection should facilities expect to receive a report? What is meant by “more time” to complete complex reports? Would like to see specific target turnaround times. Will funding be allocated to ensure enhanced public outreach is implemented for environmental justice communities?

Goal 5: Objective 5.1: Ensure Safe Drinking Water and Reliable Water Infrastructure

Page 49, Fourth paragraph: ASTSWMO supports the cross-Agency Council on PFAS.

PFAS: We strongly recommend that EPA should be involved in evaluating treatment options for removing/managing PFAS in landfill leachate and make recommendations on effective treatment. There is no mention of landfill leachate in addressing PFAS contamination. [ASTSWMO’s PFAS Position Paper](#) was approved by the ASTSWMO Board of Directors in March 2021.

Goal 6: Safeguard and Revitalize Communities

Page 57, Introduction: In the introduction to this section, EPA indicates it will “collaborate with . . . affected communities. . .by cleaning up and returning sites to productive use.” This is an admirable objective. Should additional weight be provided in this section to contamination prevention and waste reduction at the point of manufacture?

ASTSWMO is pleased to see recycling and sustainable materials management included in the Draft FY 2022 – 2026 EPA Strategic Plan, which were not part of the FY 2018 – 2022 EPA Strategic Plan. What role, if any, does EPA envision manufacturers playing in enhancing the state of national recycling? Although circular economy principles are referenced throughout, it is not clear to what extent EPA contemplates encouraging improved manufacturing practices. We understand that the final National Recycling Strategy is set to be released on November 15, 2021. [ASTSWMO’s Recycling Position Paper](#) was approved by the ASTSWMO Board of Directors in July 2020.

Page 57, Second paragraph: Will EPA provide additional funding to help achieve this initiative? There is a backlog of sites that have not been remediated due to funding and each year the 128(A) funding grant requests are greater than the allocations.

Page 57, Third paragraph: ASTSWMO agrees with the statement of reducing waste and would like to continue to be an active partner in achieving this goal. What are the “land-based contributions to the mismanagement of post-consumer materials and plastic waste” noted on page 64 and how does EPA contemplate addressing them? What role, if any, does EPA foresee States playing in this effort? What types of “additional strategies” does EPA contemplate encouraging to reduce food waste and the built environment?

Goal 6: Objective 6.1: Clean Up and Restore Land for Productive Uses and Healthy Communities

Page 59, Long-Term Performance Goals: Will EPA provide additional funds to achieve these goals?

Page 60, Second paragraph under “Strategies”: How specifically will EPA consider climate change as a standing operating practice in Superfund cleanup projects? In most cases this may substantially increase the remedial costs and if it is a fund led site, the State’s cost share will be affected. How will the States be involved in these decisions?

Page 61, Second paragraph: ASTSWMO would like to be an active partner in assisting EPA in establishing guidance for PFAS investigations and cleanups.

Page 61, Third paragraph: ASTSWMO agrees with these statements and would like to work through the petroleum brownfield programs to help achieve this goal.

Page 62, Third paragraph: Where will funding come from, how will it be allocated, will this require new programs at the State level, or will existing programs need to manage these issues? On the emerging technology issues (e.g., lithium batteries), this is great to see, but how will it be addressed, what is the plan?

Page 62, Third paragraph: States should be an integral part of these decisions as most States have delegated Tanks Programs. With States and industrial leaders moving toward EV, this will be a growing financial concern to the States as many of our remedial programs are funded through petroleum fees.

Goal 6: Objective 6.2: Reduce Waste and Prevent Environmental Contamination

ASTSWMO appreciates the inclusion of the underground storage tanks (USTs) partnership activities between EPA and the States specific to the prevention of releases from USTs as an objective in Goal 6.2, which was not a priority in EPA’s previous Strategic Plan.

Page 63, First paragraph under "Introduction": This seems like a fairly difficult thing to quantify – how will these latest technologies and standards be communicated?

Page 63, Second paragraph under “Introduction”: Significant change is needed to make the system sustainable and move towards a circular economy. It is unlikely that manufacturers/producers of these materials will do so on their own, which is why individual States are taking legislative action. If a national approach is desired, then additional legislation is needed.

Page 63, Second paragraph, second to last sentence under “Introduction”: (“Reducing waste helps...poorly run”): One member suggested concentrating efforts on better run landfills and better run gas collection systems.

Page 64, Second paragraph under “Strategies”, two comments:

- Food Waste: Reducing food waste has a strong connection to reducing GHG emissions and impacts on Climate Change. Outreach efforts should inform the public that they can save money by reducing food waste (“eat what you buy”) and at the same time help decrease GHG emissions.
- Built Environment: For the built environment, we encourage EPA to work with the Federal Highway Administration to gain federal endorsement of using certain materials in highway construction (used asphalt shingles, tires, crushed glass for roadbed, etc.).

Goal 6: Objective 6.3: Prepare for and Respond to Environmental Emergencies

Page 64, Long-Term Performance Goal: EPA is seeking to increase the speed of permit renewals by 9%. How will this be accomplished - will EPA be doing this or will the States? Considering that staff must review these complicated permits, how is it expected that this will be sped up? Electronic reporting is often thought to be a factor in increasing “permitting efficiency”, however, that is not always the case. Given the reduced number of positions (and funding) at most State agencies, how will permit reviews be expedited?

Page 66, Second paragraph under “Strategies”: ASTSWMO can help support and provide suggestions to EPA as it looks to develop and update regulations addressing environmental emergencies.

Goal 7: Ensure Safety of Chemicals for People and the Environment

How does EPA contemplate reevaluating its P2 National Emphasis Areas?

Goal 7: Objective 7.1: Ensure Chemical and Pesticide Safety

Page 73: How, if at all, does EPA’s proposed “sector-focused” approach on page 73 differ from the existing national P2 efforts?

Goal 7: Objective 7.2: Promote Pollution Prevention

It would be beneficial to include more education/outreach to the public on the Safer Choice certification in the Strategic Plan.

Cross-Agency Strategy 1

ASTSWMO supports the strong focus on rigorous scientific research.

Cross-Agency Strategy 2

Page 81, Long-Term Performance Goal: There should be a number where it says “XX” %.

Cross-Agency Strategy 4

Page 89, fourth bullet under "Long-Term Performance Goals": Will this lead to changes in the SRF? Would strongly encourage EPA to seek State input on any substantive changes to the current oversight metrics.

Page 90, first two paragraphs under "Fostering Tribal, State, and Local Partnerships": ASTSWMO fully agrees with these statements and looks forward to EPA's early, meaningful, and substantial involvement with our members as co-regulators.

Page 91, paragraph 2: As co-regulators, ASTSWMO's members must be involved in oversight.

Cross-Agency Strategy 1 and 4

Long-Term Performance Goal (LTPG) under development on updating the Agency's oversight policies and guidances to strengthen and improve oversight of federally delegated environmental programs: Will authorized States be involved in development of these LTPGs?

Learning Priority Area: Grant Commitments Met

Learning Priority Area: Grant Commitments Met: Many of the goals and implementation plans are expected to result in a need for metrics that are not currently tracked in State databases, e.g., facilities and sites within environmental justice areas. There is concern that EPA will require State programs to report new metrics as a condition of a cooperative agreement or grant. Significant funding and time will be needed to gather the new metric data and redesign State databases to capture the information in a format that can utilize data management reporting systems.

Page 103: Appreciate the acknowledgement of challenges and commitment to work directly with grantees in establishing performance evaluation model.