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# Modernizing Public Notice for RCRA Hazardous Waste Permitting/Other Actions : Association of State and Territorial Solid Waste Management Officials Comments

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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) submitted February 11th comments to the United States Environmental Protection Agency (“EPA”) on a notice EPA had published in the December 16th Federal Register titled:

*Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions (“RCRA Notice”)*

See 86 Fed. Reg. 71482.

The EPA RCRA Notice solicited comments on allowing modern electronic alternatives for public notifications in implementing Subtitle C of the Resource Conservation and Recovery Act (“RCRA”).

EPA further solicited comments on interpretations it had developed in which it determined that certain RCRA regulatory provisions requiring newspaper notice for specified actions (i.e., permit issuance) could be satisfied by notice in qualifying online newspapers (as well as print newspapers).

The RCRA Notice also asked whether online mechanisms that might not typically be viewed as newspapers (i.e., bulletins or newsletters published online by state environmental agencies) could also satisfy such requirements.

EPA’s conclusion in the RCRA Notice is that the agency can, in what it describes as “appropriate cases,” authorize state regulations providing for equivalent notice mechanisms other than newspaper publications for actions other than permit issuance. It cites as an example RCRA permit modifications.

Overall, EPA also asks in the December 16th RCRA Notice whether it should provide more flexibility in its notice of permit and other RCRA actions.

ASTSWMO describes itself as an association representing the waste management and remediation programs that include:

- 50 states
- 5 territories
- District of Columbia

The membership includes state waste program personnel involved in the management and regulation of solid and hazardous waste.

ASTSWMO's comments were drafted by its Corrective Action and Permitting Task Force ("CAP Task Force") within its Hazardous Waste Subcommittee.

The CAP Task Force notes support for the concept of modernizing what it describes as the "archaic process for public notice." In addition, it is in agreement 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.

The possibility of "moving in the direction" of expanding the concept of public notice to include digital media is supported. Further, the organization references favorably an EPA statement 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). This is noted to be applicable to a notice for permit issuance referenced as initial permit and permit renewals along with permit modifications.

Concern is expressed with the following statement:

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.

Additional thoughts by ASTSWMO include:

- While EPA's interpretation of online newspapers meet the definition of newspapers is deemed reasonable, states are not bound by this interpretation.
- Alternate options of publications as described by EPA do satisfy the requirements of notices for action such as permit modifications.
- Equitable access/Environmental Justice community concerns might be addressed by supplemental notices published via local government or community organization bulletins.
- Publication in agency formats via web and/or social media sites are often more far-reaching than newspaper publications.

A copy of the ASTSWMO comments can be downloaded [here](#) and the December 16th Federal Register Notice [here](#).