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Implementing Climate Resilience/Hazardous Waste Permitting: ASTSWMO Addresses Question to U.S. Environmental Protection Agency Regarding Draft Memorandum

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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) addressed in a January 26th letter to the United States Environmental Protection Agency (“EPA”) a question regarding a draft memorandum the agency had issued titled:

Implementing Climate Resilience in Hazardous Waste Permitting Under the Resource Conservation and Recovery Act (“Draft Memorandum”)

EPA issued the *Draft Memorandum* for public comment on December 12, 2023.

ASTSWMO describes itself as an association representing the waste management remediation programs of 50 states, five territories, and the District of Columbia.

ASTSWMO’s Corrective Action and Permitting Task Force (“CAP-TF”) reviewed the memo for the organization.

Arkansas Department of Energy & Environment – Division of Environmental Quality Office of Land Resources Compliance Branch Manager Brad Toler serves on the CAP-TF.

The ASTSWMO letter notes that the CAP-TF solicited comments from the organization’s members on the *Draft Memorandum*. It conveys a question regarding facilities siting standards that is addressed in the *Draft Memorandum*. Referenced are siting standards which are described as primarily considerations for new facilities. However, it is noted that there could be confusion regarding applicability of such siting standards in the face of changing 100-year flood plains. The question is posed as follows:

What considerations should be taken into account when evaluating permit renewals for facilities that fall within newly designated 100-year floodplains? The question brings up whether the new criteria are intended to apply only to siting of new facilities, or will regulators be expected to reevaluate siting decisions based on new conditions related to revised flood plains.

The CAP-TF recommends that EPA clarify applicability of the criteria to new and existing facilities in the final memorandum.

The January 26th letter also provides:

- Appreciation for EPA emphasizing that the Draft Memorandum does not supersede statutory or regulatory requirements.
- Recognition that RCRA authorized state program decision makers retain the discretion to adopt approaches on a site-specific basis that differ from the Draft Memorandum's where appropriate.

A copy of the January 26th letter can be downloaded [here](#).