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Open Burning/Open Detonation of Waste Explosives/RCRA: Association of State and Territorial Solid Waste Managing Officials' Comments on U.S. Environmental Protection Agency Proposed Rule

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The Hazardous Waste Subcommittee of the Association of State and Territorial Solid Waste Management Officials ("ASTSWMO") submitted June 20th comments to the United States Environmental Protection Agency ("EPA") on its proposed rule styled:

Revisions to Standards for the Open Burning/Open Detonation (OB/OD) of Waste Explosives. ("Proposed Rule").

See Fed. Reg. 19952 March 20, 2024.

The Proposed Rule would revise the RCRA regulations in a manner that EPA states:

...clarify and add specificity to existing requirements for owners/operators of open burning and open detonation (OB/OD) units, including how and when to apply and implement the requirement in the permitting process.

ASTSWMO describes itself as an association representing the waste management and remediation programs of the 50 states, 5 territories, and the District of Columbia.

EPA argued in promulgating this Proposed Rule that it would:

...improve implementation of requirements for how facilities must evaluate and use alternative technologies determined to be safe and valuable for treating waste explosives in lieu of OB/OD, and would set new minimum technical standards for OB/OD where it remains the only available treatment option.

The federal agency's Proposed Rule would create new subparts for OB/OD units in parts 264 and 265. Such subparts would contain requirements applicable to all owners/operators conducting or seeking to conduct OB/OD of waste explosives. This would include activities conducted as part of Resource Conservation and Recovery Act ("RCRA") cleanup and closure.

By way of qualification, the ASTSWMO June 20th comments state that they have not been reviewed or adopted by the organization's Board of Directors and that individual state or territorial waste programs may also provide comments directly to EPA based on their own state's perspectives and experiences.

ASTSWMO initially notes:

- Current RCRA regulations prohibit OB/OD of hazardous waste unless there are no safe alternative treatment technologies for the waste.
- Historically, there have been few technologies capable of safely treating waste explosives.
- Recent research is stated to indicate the availability of alternative treatment technologies.
- The revisions incorporated in the Proposed Rule are stated to be necessary and beneficial to ensuring alternative treatment technologies are identified and implemented or further reduce the amount of waste explosive treated by OB/OD.

ASTSWMO's detailed comments address issues such as:

- De Minimis Exemption.
- Emergency responses.
- Evaluation and permitting of alternative technologies.
- Minimum operating standards.
- Mobile treatment units.
- Comments on specific proposed regulatory language.

A copy of the comments can be downloaded [here](#).