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# Superfund/Applicable, or Relevant and Appropriate Requirements: Association of State and Territorial Solid Waste Management Officials Policy Paper

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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) has published a position paper titled:

*State Concerns with the Process of Identifying Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) applicable, or Relevant and Appropriate Requirements (“Paper”)*

The *Paper* states that the ASTSWMO CERCLA and Brownfields Subcommittee has been evaluating State and Territorial roles at CERCLA (i.e., Superfund) cleanups.

An issue identified as “troubling” is the process of identifying and accepting State cleanup standards and rules as Applicable or Relevant and Appropriate Requirements (“ARARs”) in CERCLA cleanups.

As noted by the *Paper*, ARARs are identified on a site-specific basis based on whether an environmental law is “applicable” or “relevant and appropriate.”

The CERCLA/Superfund National Contingency Plan (“NCP”) provides that “applicable requirements” are cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a Superfund site. Further, “relevant and appropriate” requirements are stated to include cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not applicable to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at Superfund site, address problems or situations sufficiently similar to those encountered at the Superfund site that their use is well suited to the particular site.

ASTSWMO member concerns about “the process EPA follows to identify and determine if State requirements are ARARs, as well as State guidance that may constitute to-be-considered (“TBCs”) criteria for fund and enforcement lead CERCLA remedial actions” is stated to be the impetus for the *Paper*.

The listed policy concerns raised by States are identified as:

- Inconsistencies in ARAR determination from one site to another;

- EPA's application of State requirements as ARARs that is inconsistent with how States apply their cleanup requirements and standards;
- EPA's determination that a State requirement is procedural rather than substantive when the State believes it is an ARAR critical to implementation of the chosen remedy;
- Reluctance of other federal entities to recognize State environmental laws and regulations as ARARs;
- Lack of written documentation on an ARAR determination where EPA finds that a State cleanup requirement was not an ARAR; and
- EPA delays when determining whether a State requirement is an ARAR, and as a result, leaving the State inadequate time to challenge the finding.

The remainder of the *Paper* includes a discussion of "ARARs and the CERCLA Process" and the ASTSWMO ARAR recommendations.

The recommendations include:

- States referencing OLEM Directive 9200.187 as they work on CERCLA projects to help improve communication between EPA and States
- EPA providing better training and guidance to Regions on the ARAR identification process and consideration of State requirements
- Consistent communication between ASTSWMO and EPA that other federal entities must comply with State environmental laws and regulations to the same extent as non-federal entities when conducting CERCLA cleanups

[A copy of the \*Paper\* can be downloaded here.](#)