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March 13, 2023

Office of Enforcement and Compliance Assurance (OECA) Docket
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Via www.regulations.gov

Attention: Docket ID No. EPA-HQ-OECA-2022-0981
FY 2024-2027 National Enforcement and Compliance Initiatives

Dear Sir or Madam:

The Program Steering Committee (PSC) of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027, published in the Federal Register on January 12, 2023 (88 FR 2093). The PSC is co-chaired by the ASTSWMO Vice-President and Past-President and its members are the Chairs of ASTSWMO's five Subcommittees (CERCLA and Brownfields; Federal Facilities; Hazardous Waste; Materials Management; and Tanks) and the Contaminants of Emerging Concern Steering Committee. These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial waste programs may also provide comments based on their own State perspectives and experiences.

ASTSWMO is an association representing the waste management and remediation programs of the fifty (50) States, five (5) Territories and the District of Columbia (States).

Regarding the four existing FY 2020-2023 National Compliance Initiatives (NCIs) that EPA is proposing to continue as National Enforcement and Compliance Initiatives (NECIs) for FY 2024 - 2027:

- "Reducing Risks of Accidental Releases at Industrial and Chemical Facilities". A comment received from within ASTSWMO's Hazardous Waste Subcommittee supports this existing NCI being continued as a FY 2024-2027 NECI and recommends a slight enhancement. It appears that facilities that are active generators of hazardous waste are also often subject to applicable Clean Air Act (CAA) General Duty Clause (GDC) and Risk Management Program (RMP) requirements. In the event of a chemical accident, the immediate response as well as the longer-term remedial action often involves significant RCRA regulatory requirements, though the initial event may be triggered through mismanagement of a product or raw material or a problem with a production process.

This nexus of RCRA and CAA GDC/RMP requirements offers an opportunity to slightly refocus this NECI on prevention of, rather than response to, catastrophic accidents and for collaboration which could increase the potential for preventative action at higher risk facilities. One avenue that could help foster this collaboration might be that Regional EPA and State RCRA compliance officials be consulted when EPA selects

facilities for CAA GDC/RMP inspections. Familiarity with, and awareness of, a facility's waste handling procedures often leads to familiarity with management practices associated with raw materials, production processes, and workplace culture as it relates to safety. Additionally, local officials may be aware of significant changes at a facility, including, but not limited to, changes in ownership, management, production processes, that could potentially lead to production upsets and/or accidents. Local officials can also provide valuable insight about overburdened areas located close to a facility in question and vulnerability to natural hazards and climate change.

Regarding the two existing FY 2020-2023 NCI that EPA is proposing to return to the standard “core” enforcement program:

- “Reducing Toxic Air Emissions from Hazardous Waste Facilities”. ASTSWMO’s Hazardous Waste Subcommittee fully supports EPA returning this initiative to the core program. The Hazardous Waste Subcommittee also recommends that EPA continue to support implementation of the RCRA Air Emissions requirements by State programs to ensure proper implementation and provide robust training support to State inspectors. Due to the lack of resources necessary to purchase and maintain expensive air monitoring equipment, it is recommended that EPA consider establishing and maintaining Regionally-based repositories for the air monitoring equipment (and potentially trained equipment operators) necessary to assist States in evaluating compliance with the RCRA Air Emission requirements.

Regarding the two potential initiatives under consideration as new NEICs for FY 2024-2027:

- We note that one of the two potential new NEICs is “Addressing PFAS Contamination”. ASTSWMO has been engaged on PFAS issues for a number of years. Our engagement includes ongoing dialogue with EPA and other federal agencies. Mostly recently, the Association has issued a [position paper](#) addressing PFAS and provided [comments](#) to EPA on the proposed rule to designate PFOA and PFOS as CERCLA Hazardous Substances. In the comment letter, ASTSWMO asked for clarification on how enforcement discretion will be applied and how it will be considered during decision-making processes. As indicated in the Federal Register notice, State regulators are conducting PFAS enforcement as part of their overall work to address PFAS. The language “where appropriate”, “seek to supplement PFAS enforcement work already performed by many State regulators”, and “EPA does not intend to pursue entities where equitable factors do not support assigning CERCLA responsibility” is not clear and as such is concerning for the potential duplication of, or even conflict with, State enforcement efforts that could result from federal enforcement. Should EPA include addressing PFAS contamination in the final NEICs, we encourage EPA to be clear about their enforcement role and closely collaborate with States in the implementation of the new initiative.

Regarding the two additional areas for further consideration that EPA is considering for possible development as NEICs:

- Potential NEIC “Addressing Coal Combustion Residuals (CCR)”. ASTSWMO’s Materials Management Subcommittee provides the following: EPA is seeking comment on coal combustion residuals (CCR) as an area for possible development as a NEIC. In order to effectively reduce noncompliance at the 772 CCR units located throughout the Nation, we encourage EPA not to utilize their finite resources to develop a NEIC for CCR but instead expedite the review and approval of State CCR Permit Programs. A total of three State CCR Permit Programs have been approved but only one since 2020, while an additional four States have submitted applications since 2020. The approval of State CCR Permit Programs would give States the authority to conduct routine inspections of CCR units and address noncompliance with the RCRA regulations for the safe disposal of CCR.

Recommendations for areas for consideration as future NECIs:

- ASTSWMO has received the following list of recommendations from individual States for potential areas of focus for future NECIs:
 - Non-waste determinations and non-hazardous waste determinations at hazardous waste Treatment, Storage, or Disposal Facilities (TSDFs), drum reconditioners, and railcar/tank facilities
 - Waste Analysis Plans at TSDFs, especially focused on non-waste determinations
 - Facilities operating under the Definition of Solid Waste (DSW)/Hazardous Secondary Materials (HSM) rule (especially focused on the transfer based exclusion)
 - Land Disposal Restriction (LDR) compliance at waste consolidations facilities
 - Focus on Non-notifiers, identification of facilities that should be in the RCRA hazardous waste program
 - Specific industry sector initiatives including: electronic waste handlers, wood preserving facilities, electroplating facilities, universal waste lamp destination facilities

Thank you for your consideration. ASTSWMO's Program Steering Committee appreciates the opportunity to provide comments on the proposed FY 2024-2027 National Compliance and Enforcement Initiatives.

If you have any questions about these comments, please contact Dania Rodriguez, ASTSWMO Executive Director, at 202-640-1061 or daniar@astswmo.org.

Sincerely,



Amy Brittain, OK
ASTSWMO Vice-President and PSC Co-Chair



Timothy T. Ratsep, DE
ASTSWMO Past-President and PSC Co-Chair