



NACAA



Association of State and Territorial  
**ASTSWMO**  
Solid Waste Management Officials



**ASIWPCA**  
Association of State and  
Interstate Water Pollution  
Control Administrators

November 3, 2006

Marcus Peacock  
Deputy Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
Washington, D.C.

Dear Deputy Administrator Peacock:

We are writing to express our support for the U.S. Environmental Protection Agency's (EPA) continued use of the co-regulator exception from EPA's competition policy when issuing assistance agreements to state and local executive branch organizations. At the same time, we want to register our concerns about any future approach that would deviate from that practice. In support of our views on this matter, we are providing a brief overview of our organizations, the reasons why we believe they clearly fit within the exception, and the ramifications of not using the exception.

Each of our organizations was constituted for the principal purpose of providing an efficient and effective means of communicating and coordinating among state and local co-regulator officials in order to assist them in carrying out the delegated national or regional environmental and public health programs within their states and localities. Each organization has been very effective in working with its member states and localities and with EPA as partners in implementing these various programs. This partnership has led to substantial progress in attaining our mutual goals and achieved demonstrable outcomes in environmental improvements and public health protection. Our organizations depend, to varying degrees, on assistance agreements with EPA to enable us to carry out our commitments and we are genuinely appreciative of the Agency's past support of our respective organizations. In particular, we have relied on the appropriate use of the co-regulator exception in efficiently negotiating assistance agreements with the Agency in furtherance of our mutual goals.

We understand that the Agency is now contemplating a course of action that would subject our assistance agreements to a competitive process. We certainly understand and support EPA's overarching policy to "promote and provide for competition in awarding

assistance agreements” as embodied in EPA policy number 5700.5A1. However, we believe the co-regulator exception should continue to be used in connection with assistance agreements with our organizations. That exception applies when:

*“...the award is to a national or regional organization that represents the interests of co-regulators or co-implementers (State, Tribal, or Local governments) in the execution of national or regional environmental programs.”*

To use this exception, three conditions must be met:

- (A) “The membership of such national or regional organization is predominantly composed of officials of the co-regulator or co-implementor entities (e.g., State or Tribal program directors or commissioners); and*
- (B) The co-regulator/co-implementer organization represents governmental interests (e.g., the interests of State, Tribal or local governmental units) in the execution of national or regional environmental programs and helps these governmental units carry out national or regional environmental programs that have been delegated to them, or that the governmental units carry out in participation with EPA in a national or regional effort....and*
- (C) The nature of the work that the co-regulator/co-implementor organization will carry out under the assistance agreement furthers the specific interests of its governmental members in developing or implementing national or regional environmental protection programs that the governmental members will carry out in their governmental capacity at the State, Tribal, or Local levels.”*

Your policy as currently written acknowledges the States’ and localities’ roles, and the role of their associations in our federal system, and is very similar to other federal policy and laws, such as the Lobbying Disclosure Act of 1995, which recognize special status for States and their associations. The descriptions of co-regulators/co-implementors contained in this part of the exception are very close to many of our associations’ By-Laws. Our organizations and our missions fully meet all three conditions for applying the exception. Competition with private contractors or with other non-profits is an issue for us because it seems inappropriate for them to work with the Agency on State-Federal issues that are inherently between co-regulators. We are each uniquely qualified to perform our mission and were established by our members for this express purpose. Our organizations directly represent our members and are able to carry out the national and regional environmental and public health goals of States, the localities, and the Agency as embodied in our assistance agreements.

Further, we believe that setting aside the co-regulator exception and requiring open competition would represent an inappropriate overreaction to recent critiques of the Agency’s grants process. Such a course of action would put in place unnecessary, inefficient, and wasteful processes that would not lead to a better or different end result.

We are happy to provide any more specific information about our various organizations and our assistance agreements with the Agency. We would also welcome the opportunity

of discussing our views with you in person. Please contact Steve Brown, or any of us, if we can provide any additional information or if you would like to discuss this subject in more detail in person.



R. Steven Brown, Executive Director  
Environmental Council of the States



Linda Eichmiller, Executive Director  
Association of State and Interstate Water  
Pollution Control Agencies



Bill Becker, Executive Director  
National Association of Clean Air Agencies


Cc: Louis A. Luna, Assistant Administrator  
Office of Administration and Resource Management

Benjamin Grumbles, Assistant Administrator  
Office of Water

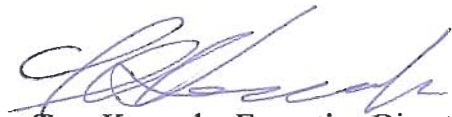
Susan P. Bodine, Assistant Administrator  
Office of Solid Waste and Emergency Response

Bill Wehrum, Assistant Administrator  
Office of Air and Radiation

Sincerely,



James Taft, Executive Director  
Association of State Drinking Water  
Administrators



Tom Kennedy, Executive Director  
Association of State and Territorial  
Solid Waste Management Officials