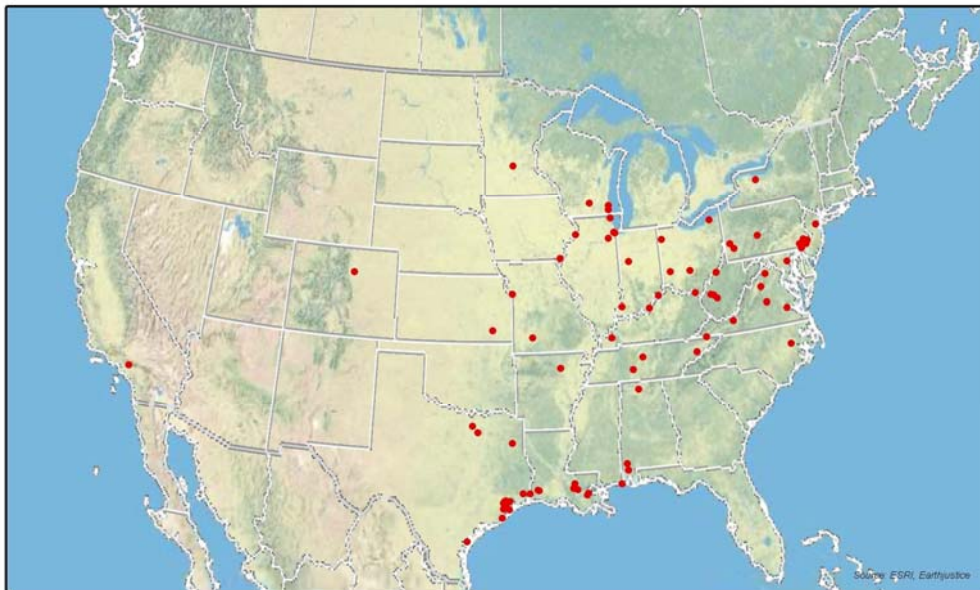




EPA to Deregulate Over 100,000 Tons of Hazardous Waste

Congress enacted the Resource Conservation and Recovery Act (RCRA) in order to “promote the protection of health and the environment.”¹ When hazardous waste is at issue, EPA is to apply a “cradle to grave” approach to regulation because of the increased environmental and health risks from such substances.² In the coming weeks, however, EPA could sidestep that mandate by proposing to reclassify over 100,000 tons of hazardous waste as “fuel,” which would allow it to escape RCRA’s comprehensive regulation.³

Taken together with its rule to redefine solid waste,⁴ EPA will exempt nearly two million tons (3.6 billion pounds) of hazardous waste from RCRA annually, increasing human exposure to hundreds of toxins and carcinogens. This industry handout comes at an enormous cost to public health and the environment, and the next President and Congress should act quickly to undo the rules.



Facilities that EPA expects to handle and burn hazardous waste without RCRA regulation under proposed rule.

Toxic Emissions from Burning Hazardous Waste Are a Grave Threat to Public Health

As the map above shows, industrial boilers and other facilities across the country could take advantage of this loophole, and surrounding communities would be faced with exposure to emissions from burning of hazardous waste. EPA justified deregulating the waste by claiming that emissions are “likely” not to differ from emissions from burning fossil fuels.⁵ EPA freely admits, however, that even when “burned even under good combustion conditions, emissions of hazardous organics may be somewhat higher than those from burning fossil fuel.”⁶

Furthermore, EPA testing reveals that emissions allowed under this rule are in fact higher than emissions from fossil fuels. Out of 173 test conditions for hazardous waste, 32 showed more toxic emissions than the worst fossil fuel-fired boilers. Emissions were significantly greater for highly toxic benzene and toluene, a potent human carcinogen. This testing shows that emissions from burning hazardous waste are anything but comparable to emissions from burning fossil fuels.

Rule Allows Facilities With Poor Environmental Records to Burn Hazardous Waste

Emissions are likely to be even more dangerous than EPA testing shows because the Agency's testing occurred under good combustion conditions. Many of the facilities that this loophole will allow to burn hazardous waste have poor environmental records and conditions could vary widely. EPA acknowledged that over a third of the facilities at issue have been in "significant non-compliance" with RCRA "for some period of time." EPA even admits that over 10% of the facilities have had RCRA violations since 2000 specifically relating to the storage of the type of hazardous wastes that the rule seeks to exempt. Even more troubling, Earthjustice obtained information from EPA showing that nearly 90% of the facilities that would begin to burn hazardous waste as a fuel are presently subject to RCRA corrective action, which is EPA's remedial program designed to address releases of hazardous waste from operating facilities.⁷ Instead of tightening restrictions on these recalcitrant offenders, the proposed rule will exempt facilities that have already demonstrated poor hazardous waste management from RCRA.

Rule Reduces Oversight of Storage, Transport, and Disposal of Hazardous Waste

The deregulation of these hazardous wastes means that stringent requirements regarding storage, transport and disposal will no longer apply. EPA admits that these wastes are more likely than fossil fuels "to sink into the ground and surrounding water, and therefore create a greater hazard."⁸ EPA documents also show some egregious mishandling of waste at facilities the agency expects to take advantage of the proposed loophole. For example, a pharmaceutical production company in Delaware was found to have open hazardous waste containers, containers with visible cracks, no weekly inspections, and impermissible hazardous waste "accumulation areas."⁹ Even if some emissions from burning hazardous wastes were comparable, the risks from storing, transporting, and disposing of hazardous waste remain a threat to workers and surrounding communities.

Part of Bigger Trend of EPA Fast-Tracking Industry Favors

The U.S. District Court for the District of Columbia found in 2006 that the current EPA routinely neglects its duty to protect public health, and instead, "devotes substantial resources to discretionary rulemakings, many of which make existing regulations more congenial to industry."¹⁰ In 2005, OMB published "Regulatory Reform of the U.S. Manufacturing Sector," which compiled 189 suggestions from industry on which regulations should be scaled back and which loopholes should be opened wider. Expanding the comparable fuels exclusion was near the top of the wish list for the National Association of Manufacturers and the American Chemistry Council, and EPA has responded quickly.

The Next President and Congress Must Undo This Dangerous Rulemaking

EPA has diverged from its mission to protect public health by undertaking this effort to ease hazardous waste regulation, leaving workers and communities vulnerable to exposure to dangerous chemicals. The next President and Congress should put undoing this rule and the related Revisions to the Definition of Solid Waste at the top of his list of environmental priorities.

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¹ 42 U.S.C. § 6902 (a)

² See "Hazardous Waste and Consolidated Permit Regulations," Federal Register, May 19, 1980 (45 FR 33066) May 19, 1980

³ Expansion of RCRA Comparable Fuel Exclusion, Proposed Rule, 72 Fed. Reg. 33284, June 15, 2007.

⁴ EPA, Revisions to the Definition of Solid Waste, 72 Fed. Reg. 14171-14218 (proposed March 26, 2007).

⁵ 72 Fed. Reg. at 33289.

⁶ *Id.* at 33292

⁷ Internal Earthjustice analysis, contact Ben Dunham for details.

⁸ 72 Fed. Reg. 33301, footnote 75.

⁹ EPA, Letter to 25 members of the House of Representative, January 25, 2008

¹⁰ *Sierra Club v. Johnson*, 444 F. Supp.2d 46, 57 (D.D.C. 2006).