



Restore EPA's Hazardous Waste Oversight Bush loophole threatens communities with toxic waste contamination

With one of its last pen strokes, the Bush EPA exempted 1.5 million tons (3 billion pounds) of hazardous waste from the Resource Conservation and Recovery Act (RCRA) and excused thousands of companies from complying with rules that protect human health and the environment. The change was made despite protests from state environmental regulators, the public, environmental groups, and some responsible corporations.

Under the so-called "Definition of Solid Waste" Rule, chemical and industrial waste that has been considered hazardous for decades is suddenly innocuous enough to be stored, transported, or processed without RCRA's vital safeguards. The industrial wastes that will slip through contain some of the most dangerous chemicals known to man: solvents, such as benzene, toluene, TCE and perc that cause cancer, birth defects, lupus and immune disorders; and metals such as lead, hexavalent chromium, mercury and arsenic—which are potent neurotoxins and carcinogens. These listed hazardous wastes are precisely the chemicals currently endangering communities at hundreds of Superfund sites throughout the U.S.-- generated by the chemical, pharmaceutical, electroplating, steel, paint, mining and treated wood industries, among others.

The Obama administration must act now, before unlicensed and barely supervised companies mishandle hazardous waste and create new Superfund sites. After a public hearing on June 30, the EPA will consider withdrawing this rule. The new administration should take this opportunity to listen to state regulators and concerned citizens and restore vital public health and environmental safeguards.

Removing Hazardous Oversight Comes at a Very High Cost

Recyclers without RCRA permits cut corners and create Superfund sites

Hazardous waste recyclers operating without RCRA permits pose a far greater threat of harm to public health and the environment. The EPA has identified 218 cases of damage to human health or the environment from hazardous waste recycling.ⁱ (See map at <http://www.earthjustice.org/library/features/toxic-waste-speak-out.html>). Only 4% of those cases occurred at RCRA-permitted facilities.ⁱⁱ In contrast, a large majority occurred at facilities that were already exempt from RCRA's strict oversight.ⁱⁱⁱ Exempting millions more tons of hazardous waste will only increase exposure to dangerous chemicals in communities throughout the U.S.

EPA ignored the disproportionate harm to poor and minority communities

Minority and low-income urban communities suffer the most from hazardous waste deregulation. People of color are the majority in neighborhoods surrounding hazardous waste facilities (59 percent on average) and often form *more than two-thirds* of the population in neighborhoods where several such facilities are clustered close together.^{iv} Yet during the rulemaking process, the EPA declined to evaluate how this new exemption would impact people of color and poor people. This violates Executive Order 12,898, which seeks "to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs and activities."^v In the past, EPA has neglected its legal and moral obligation to avoid and redress environmental injustice. The Obama EPA must correct this egregious error.

The rule authorizes inclusion of toxics into commercial products- even those made for children

Under the new rule, hazardous waste recycling may be considered "legitimate," even though the end product it creates is more toxic than other similar products on the market. Even products meant for children will not necessarily receive close attention. Where a product that will be used by children is made with recycled

hazardous waste and contains more toxic chemicals than competing products, the Bush EPA promised nothing more than “that product will *likely* need to be closely scrutinized.”^{vi} Remarkably, the EPA’s new rule leaves the manufacturer, not a trained regulator, to scrutinize the product. EPA does *not* prohibit the unnecessary incorporation of hazardous constituents into products, or even guarantee close inspection of this so-called recycling. This scheme invites companies to dispose of hazardous wastes by putting them into products where they serve no useful purpose but are simply “along for the ride.”

High cost to taxpayers

82% of the sites contaminated by hazardous waste recycling needed public funds for cleanup, in whole or in part, under state or federal Superfund programs.^{vii} The EPA identified 52 superfund sites that were listed on the National Priority List (NPL)—the list of the most dangerous Superfund sites in the nation. For ten NPL Superfund sites contaminated by solvent recyclers, the cleanup cost alone topped \$114 million.^{viii} The meager cost savings to industry from this regulatory rollback are far outweighed by the high costs borne by taxpayers for clean up.

The “Benefits” of Decreased Hazardous Waste Oversight

Insignificant increase in recycling, few reductions in regulatory costs

The EPA expects that the rule will only increase hazardous waste recycling by 1%.^{ix} And the industries that lobbied for this rollback will save as little as \$95 million per year, spread over as many as 5600 companies.^x That’s around \$17,000 each — an almost insignificant amount for a multi-million dollar corporation. And these cost reduction are not found by cutting “red tape,” but by cutting real safety protections and well-paid jobs. Further, hazardous waste recyclers, who are trained, licensed and insured to manage hazardous waste safely and responsibly, could face dramatic cutbacks and job losses. So costs will be reduced, but only for certain companies, only by a tiny fraction of their overall operating costs, and at the expense of other American companies and the American taxpayer.

The Obama Administration Must Undo This Dangerous Mistake

The EPA’s guiding principle is to protect public health and the environment. This rulemaking turned that principle on its head by arranging a slight increase in profits for a few companies at the great expense of public health and the environment. The Bush administration’s interest in promoting the profits of a few large industries trumped their mandate to prevent spills, midnight dumping, and poor management practices that contaminate air, soil, and water. The Obama administration should withdraw this dangerous, discriminatory rule.

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ⁱ See EPA, *An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials*, available at <http://epa.gov/osw/hazard/dsw/abr-rule/env-prob.pdf> (“Assessment of Environmental Problems”).

ⁱⁱ See *id.* at 12.

ⁱⁱⁱ See Sierra Club comments to Revisions to the Definition of Solid Waste, Docket ID EPA-HQ-RCRA 2002-0031, available at <http://www.regulations.gov>.

^{iv} See Robert D. Bullard et al., *Toxic Wastes and Race at Twenty 1986-2007*, Executive Summary p.5 (Feb. 2007).

^v Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order, 59 Fed. Reg. 7,629 (Office of the President Feb. 16, 1994).

^{vi} Revisions to the Definition of Solid Waste, Final Rule, 73 Fed. Reg. 64,668, 64,706 (EPA Oct. 30, 2008) (emphasis added).

^{vii} EPA, *Assessment of Environmental Problems*, *supra* note 1 at 10.

^{viii} *Id.*

^{ix} EPA, *Regulatory Impacts Analysis for USEPA’s 2007 Supplemental Proposed Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste 16* (2007), available at <http://www.epa.gov/waste/hazard/dsw/rulemaking.htm>.

^x EPA, Revisions to the Definition of Solid Waste, 72 Fed. Reg. 14172 (proposed March 26, 2007).