

Alaska Community Action on Toxics \* American Bottom Conservancy \* American Nurses Association \* Arkansas Renewable Energy Association \* B.E. CAUSE \* BridgeWorks\* California Communities Against Toxics \* Center for Health, Environment & Justice (CHEJ) \* Center for Public Environmental Oversight \* Childhood Lead Action Project \* Citizens Against Ruining the Environment \* Clean Water Action \* Clean Water Network \* Congress of Communities \* Colorado Fourteeners against CCW \* Concerned Citizens of Giles County \* Concerned Citizens of Wagon Mound and Mora County \* Connecticut Coalition for Environmental Justice \* Comite Dialogo Ambiental, Inc. \* Cook Inletkeeper \* Crop Plus \* Disabled Vietnam War Veteran \* Don't Waste Arizona \* Downwinders at Risk \* Earthjustice \* Environmental Defense Fund \* Environmental Health Respiratory Health Association \* Friends of the Chattahoochee \* Global Community Monitor \* Greater Gambrells Improvement Association \* Greenpeace \* Greenwich Citizens Committee, Inc. \* Green Environmental Coalition \* Happily Natural Day \* Henry S. Cole & Associates, Inc. \* Indiana Toxics Action Project \* Jesus People Against Pollution \* Just Transition Alliance \* Kentucky Environmental Foundation \* Little Blue Regional Action Group \* Los Jardines Institute (the Gardens Institute) \* Lowndes Citizens United for Action \* MEAN-Mossville Environmental Action Now \* Missouri Beyond Coal Organizer \* Mitchell Environmental Health Associates \* Moapa Band of Paiutes \* Montanans Against Toxic Burning \* Montana Environmental Information Center \* MS Sierra Club \* M-W & Associates \* National Committee for the New River \* National Environmental Justice and Community Partnerships Program \* North Carolina Environmental Justice Network \* Neighbors for Neighbors \* New Energy Economy \* New Jersey Sierra Club \* Northern Alaska Environmental Center \* North Gulfport Community Land Trust \* On Wings Of Care, Inc. \* Ohio Environmental Council \* Our Children's Earth Foundation \* P.I.N.E.S. Group \* Physicians for Social Responsibility- Los Angeles (PSR-LA) \* Prairie Rivers Network \* Public Health and Social Justice \* Reproductive Health Technologies Project \* Resurrection Bay Conservation Alliance \* RI State Nurses Assoc. \* San Juan Citizens Alliance \* Save the Dunes \* Sierra Club \* Sierra Student Coalition \* Silicon Valley Toxics Coalition \* Southern Sustainable Resources \* South Valley Partners for EJ \* Sugar Law Center for Economic & Social Justice \* Tamalpais NatureWorks \* Tennessee Clean Water Network \* Texas Environmental Justice Advocacy \* Texas Southern University \* University of Michigan \* University of Montana \* Water Resources Scientist \* West End Revitalization Association \* WE ACT \* Western Boulevard Presbyterian Church \* Will Hardin Studio \* WNC Green Congregations \*  
**WORKSAFE \***

February 12, 2013

*By Email*

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Jeffrey Zients  
Deputy Director for Management  
Office of Management and Budget  
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**Re: Delay of the Definition of Solid Waste Final Rule**

Dear Administrator Jackson and Deputy Director Zients:

The 103 undersigned organizations and individuals from 33 states, District of Columbia, and Puerto Rico write with urgency and great concern about the fate of the Definition of Solid Waste (DSW) Final Rule. In 2009, we commended your reconsideration of the 2008 DSW Rule, which deregulated hazardous waste recycling under the Resource Conservation and Recovery Act (RCRA). We also heartily supported EPA's preparation of a comprehensive, first-of-its-kind environmental justice analysis, which set an important precedent for all future agency rules. Yet it has been 15 months since the close of the comment period on the 2011 Proposed Rule, and EPA is in violation of a settlement agreement that required the issuance of the Final DSW Rule on December 31, 2012. Yet there is no rule in sight.

The undersigned organizations and individuals, which are committed to serving environmental justice and protecting human health and the environment, view with concern the continuing inadequate regulation of hazardous waste recycling and mounting damage. Indeed, it was "recycling" of hazardous waste that launched the environmental justice movement in Warren County, North Carolina in the early 1980s, when communities found themselves the unwitting hosts to PCP-contaminated soil dumped in a rural, predominantly African-American county.

Serious problems continue today. Since 1982, hazardous waste recycling has caused more than 200 documented cases of environmental damage from toxic releases. Many of the cases are on the Superfund National Priority List, which identifies the most dangerous toxic waste sites in the nation.<sup>1</sup> Hazardous wastes released include solvents, such as benzene, toluene, TCE and perchlorate 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.<sup>2</sup> EPA found that the majority of the contamination occurred when recycling operations were exempted from full RCRA compliance.<sup>3</sup> These hundreds of sites illustrate the unacceptable threat posed by eliminating the cradle-to-grave protections afforded by RCRA.

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<sup>1</sup> Correlation of Recycling Damage Cases with Regulatory Exclusions, Exemptions or Alternative Standards, U.S. ENV'T'L PROT. AGENCY, 2 (July 2011), *available at* <http://www.epa.gov/osw/hazard/dsw/downloads/2011-correlation.pdf>.

<sup>2</sup> *See* An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials, Appendix 2: Profiles of Damage Cases from Hazardous Materials Recycling Operations, U.S. ENV'T'L PROT. AGENCY (Document ID EPA-HQ-RCRA-2002-0031-0355).

<sup>3</sup> *Id.* at 10.

There is an urgent need to finalize this rule for the environmental justice community. The DSW Rule potentially impacts management of 1.8 million tons of hazardous waste, predominantly in communities of color and in low-income communities.<sup>4</sup> In 2011, EPA found statistically significant evidence that facilities already operating under the 2008 DSW exemptions in Iowa, New Jersey and Pennsylvania are located in communities with a higher percentage of people of color than state averages.<sup>5</sup> Since EPA's 2011 analysis, hazardous waste facilities in four additional states and territories have triggered the exemption, enlarging its potential to impact vulnerable communities. In fact, in two new states, Illinois and Idaho, every hazardous waste recycling facility operating under the regulatory exemption is located in a low-income community.

People of color are twice as likely as white individuals to live within three kilometers of a hazardous waste facility, 2.6 times as likely to live very close to a site contaminated by hazardous waste recycling, and 1.3 times as likely to live within three kilometers of a non-hazardous industrial waste facility that may begin recycling hazardous waste under the Proposed DSW Rule.<sup>6</sup> Similarly, low-income individuals are 1.5 times as likely as moderate- or high-income individuals to live within three kilometers of a hazardous waste facility, twice as likely to live within three kilometers of a contaminated site, and 1.2 times as likely to live within 3 kilometers of a non-hazardous industrial waste facility that may begin recycling hazardous waste.<sup>7</sup>

We request that EPA take action immediately to finalize the rule and close the regulatory gaps created by the sweeping 2008 DSW exemptions. Further delay is unacceptable while fires rage at scrap metal facilities in environmental justice communities and toxic releases to air and water poison fence-line neighborhoods at recycling operations. Please ensure that this important rule receives the priority it deserves so that the safety of the nation's most vulnerable communities can be ensured now and for future generations.

Respectfully Submitted,

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<sup>4</sup> See Regulatory Impact Analysis: EPA's 2011 Proposed Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, U.S. ENV'T'L PROT. AGENCY, 47, 132 (June 30, 2011), *available at* <http://www.epa.gov/osw/hazard/dsw/downloads/2011-ria.pdf> (Calculating that approximately 1.5 million tons of hazardous waste were exempted under the 2008 Final Rule exclusions, and that an additional 300,000 tons, approximately) would face new requirements under the 2011 Proposed Rule).

<sup>5</sup> See *Environmental Justice Analysis of the Definition of Solid Waste Rule*, U.S. ENV'T'L PROT. AGENCY, 130 (June 30, 2011), <http://www.epa.gov/osw/hazard/dsw/downloads/2011-ej-draft-analysis.pdf>.

<sup>6</sup> *Id.* at 132.

<sup>7</sup> *Id.*

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