



EPA’s Proposal Narrows Dangerous Gaps in Hazardous Waste Recycling Standards, *But More Protections Are Needed for Vulnerable Communities*

Bush-Era Loophole Threatens Communities with Toxic Waste Contamination

In a last-minute giveaway to polluters in 2008, the Bush administration passed the Definition of Solid Waste (“DSW”) rule, which stripped federal oversight of recyclers who handle **1.5 million tons of hazardous waste** generated by steel, chemical, and pharmaceutical companies each year.¹ With one of its last strokes of the pen, the Bush EPA excused thousands of companies from complying with rules that protect public health and the environment, despite a wealth of evidence that revealed the effects of deregulation—including hundreds of cases where hazardous waste recycling resulted in contamination from hazardous wastes.² The change was made despite protests from state environmental regulators, the public, environmental groups, and some responsible corporations.

A lawsuit filed in 2009 by the Sierra Club prompted changes by the Obama EPA. On June 30, 2011, EPA published proposed changes to the DSW rule narrowing some of the very broad exemptions from responsible storage and handling requirements that safeguard public health and the environment. In addition, the EPA completed the first environmental justice analysis of a regulatory proposal in EPA’s history. Bottom line: while the proposed rule restores some vital protections, there are additional improvements that must be made to protect communities from exposure to hazardous waste.

EPA Admits 2008 Definition of Solid Waste Rule Endangers Communities of Color and Low-Income Communities

In the preamble to the proposed standard, EPA finally admitted that the “possibility of hazards from hazardous secondary materials [hazardous waste] recycling adversely impacting health and the environment is increased in the 2008 DSW Final Rule.”³ EPA additionally found that “many of the communities potentially impacted by this potential increase in risk of adverse impact are minority and low-income communities.”⁴ The proposed standard and the environmental justice analysis are available at <http://www.epa.gov/osw/hazard/dsw/rulemaking.htm>.

The Findings of the EPA’s Environmental Justice Analysis

In its peer-reviewed study, EPA found statistically-significant evidence that:

- Facilities already operating under the 2008 DSW exemption in (Iowa, New Jersey and Pennsylvania are located in communities with a higher percentage of people of color than state averages. A higher percentage of people living below the poverty level in Iowa and Pennsylvania are also living near these facilities.⁵
- Cases where **toxic releases have occurred in the past** (“damage cases”) are consistently located in communities of color and low-income communities. 55.8% of them are sited in communities with more people of color than the relevant statewide average, and 69% have higher low-income representation than the statewide average.⁶
- In general, the facilities located in environmental justice communities are also in the densest communities. Therefore, the total population nationwide facing the threat of toxic exposure is **disproportionately low-income and non-white**.⁷

<p>People of Color are:</p> <ul style="list-style-type: none"> ➤ twice as likely as white individuals to live within 3-km of a hazardous waste facility. ➤ 2.6 times as likely to live within 3-km of a damage case facility. ➤ 1.3 times as likely to live within 3-km of a non-hazardous industrial waste facility that may begin recycling hazardous waste under the DSW rule. 	<p>Low-Income Individuals are:</p> <ul style="list-style-type: none"> ➤ 1.5 times as likely as moderate- or high-income individuals to live within 3-km of a hazardous waste facility. ➤ twice as likely to live within 3-km of a damage case facility. ➤ 1.2 times as likely to live within 3-km of a non-hazardous industrial waste facility that may begin recycling hazardous waste under the DSW rule.
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- The 2008 DSW rule allows communities **fewer opportunities for public participation** in siting and permitting decisions than federal hazardous waste regulations.⁸
- The facilities exempt from federal controls in this rule are often located in areas that already face exposure to multiple environmental hazards, and already have high cancer rates and neurological hazard rates as a result of exposure to pollution.⁹

The Remaining Gaps that Threaten Communities

Given the findings of its own environmental justice analysis, in order to comply with Executive Order 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Population*,¹⁰ EPA must fully close all of the loopholes opened up by the 2008 DSW standard. The 2011 Proposed Rule is a step in the right direction, but EPA must strengthen the standard to protect all communities from exposure to hazardous waste.

Specifically, EPA must:

- Strengthen the standard defining “containment” to prevent releases of hazardous waste during the storage and recycling process by hazardous waste generators. Standards for storage prior to recycling should be identical to the containment standards for hazardous waste storage at treatment, storage and disposal facilities.
- Clarify the definition of what constitutes a “release” of hazardous waste to ensure that no hazardous chemicals are allowed to escape when hazardous wastes are recycled — and to ensure that irresponsible practices that result in releases are addressed sooner rather than later;
- Remove the exemption for “tolling contractors,” whereby unlimited amounts of hazardous waste can be transferred for recycling to third parties without essential protections.

EPA Must Not Weaken the Proposed Rule

Furthermore, EPA must resist pressure from industry to weaken its proposed rule. The agency must maintain:

- Strict safeguards for hazardous waste recycling involving transfer from one company to another;
- Strict protections against sham recycling in the form of four mandatory “legitimacy criteria” that must be met by all hazardous waste recyclers;
- Robust standards for notification, containment, and recordkeeping for 32 additional hazardous waster recycling operations that have historically caused substantial environmental damage.

Support Stronger Protections for Your Community

Help convince EPA to adopt stringent safeguards for hazardous waste recycling by participating in a public meeting and/or by submitting comments on the 2011 Proposed Rule.

Public meetings will be held on Monday, **September 12, 2011** at the Marriott Downtown (Franklin Room, Fourth Floor, 1201 Market Street) in **Philadelphia, PA** and on Thursday, **September 15, 2011** at the Avenue Crowne Plaza (Grand Avenue Room, Second Floor, 160 E. Huron Street) in **Chicago, IL**. Each will run from 10 am to 7 pm. Go to <http://www.epa.gov/osw/hazard/dsw/pub-meet-philadelphia.htm> to pre-register to provide testimony in Philadelphia and to <http://www.epa.gov/osw/hazard/dsw/pub-meet-chicago.htm> to register for the Chicago meeting.

Please submit written comments on [Regulations.gov](http://www.regulations.gov), using docket number [EPA-HQ-RCRA-2010-0742](http://www.regulations.gov/docket/EPA-HQ-RCRA-2010-0742) by **October 20, 2011**.

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¹ Revisions to the Definition of Solid Waste; Final Rule, 73 Fed. Reg. 64668 (Oct. 30, 2008)

² 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”).

³ *Environmental Justice Analysis of the Definition of Solid Waste Rule*, U.S. ENVTL. PROT. AGENCY, iii (June 30, 2011), <http://www.epa.gov/osw/hazard/dsw/downloads/2011-ej-draft-analysis.pdf>.

⁴ *Id.* at 130.

⁵ *Id.*

⁶ *Id.* at 131.

⁷ *Id.* at 132.

⁸ *Id.* at 110.

⁹ *Id.* at 112-113.

¹⁰ Exec. Order No. 12,898, 3 C.F.R. 859 (1995), *reprinted as amended* in 42 U.S.C. § 4321 (1994 & Supp. VI 1998).