

February 11, 2014

Margaret May
Chairwoman, National Environmental Justice Advisory Council
Executive Director, Ivanhoe Neighborhood Council

Dear Chairwoman May:

As we mark the 20th Anniversary of Presidential Executive Order 12898 requiring federal agencies to adopt policies that address environmental justice for low-income and communities of color, it is disconcerting that the U.S. Environmental Protection Agency (EPA) would finalize a dangerous definition of what constitutes waste for the use as fuel. At its root, the finalized definition of secondary, non-hazardous solid waste materials adopted by the Agency impedes the effectiveness of the Clean Air Act (CAA) and ultimately runs afoul of the most basic aims of Executive Order 12898. Disturbingly, the Obama Administration may very well leave a *more* toxic legacy in our communities despite other laudatory efforts to address power plant pollution.

We, the undersigned environmental justice, community, labor, and allied organizations and individuals believe that the EPA's finalized definition of secondary, non-hazardous solid waste materials will leave many communities across the country dangerously exposed to mercury, dioxins, benzene and a host of other toxics that are generated when industrial and municipal waste is burned.ⁱ The Agency's arbitrary decision to allow such reclassification of waste as a fuel incentivizes backdoor incineration for a variety of industrial facilities across the nation.

In the case of municipal waste:

- Waste Incinerators (including pyrolysis, gasification and plasma arc incinerators) are disproportionately sited, and proposed for siting in working class communities, American Indian/Alaska Native communities, and communities of color.
- Burning waste for energy produces nearly 6 times more lead, up to 14 times as much mercuryⁱⁱ, and up to 28 times more dioxins than coal power plants^{iii,iv}. Many of these toxins are highly persistent, entering water systems and concentrating up the food chain to impact human health.
- Burning waste for energy is 2.5 times more carbon-intensive than coal-fired power; hence this regulatory loophole threatens to significantly increase industrial CO₂ emissions^v.
- Burning waste that can be recycled creates direct market barriers for zero waste economies that serve to create jobs in the poorest frontline communities.

Proliferation of industrial waste burning on top of municipal waste incineration only further compromises community health, climate stability and local economic resilience.

In 2009, EPA proposed a rule to modify the definition of Non Hazardous Secondary Materials (NHSM) under the Resources Conservation and Recovery Act (RCRA). This proposal was not prompted by any litigation under RCRA or the CAA. By 2012, a host of industries almost succeeded in securing Congressional approval to narrowly define waste to incentivize the use of

industrial waste as a fuel. These bills expressly described plastics, creosote-treated wood, railroad ties, spent solvents, whole tires etc., as non-wastes if burned to recover energy. Burning waste triggers strict pollution control standards under the CAA. By arbitrarily designating waste material as non-waste, multiple industries are allowed to avoid CAA compliance.

By early 2013, a series of legally challenged rulemakings resulted in a final rule that provided a narrow definition of what constitutes “solid waste.” What industry could not accomplish with Congressional allies was achieved through the Obama EPA. This definition created a “waste loophole” for more than 180,000 facilities currently operating as non-major sources of hazardous air pollutants nationwide, allowing them to burn industrial and municipal waste (including plastics, tires, chemically-treated wood, paper sludge, solvents, coal byproducts and municipal solid waste) as fuel in on-site incinerators (boilers), without any obligation to control, monitor, or report their toxic emissions. Communities already overburdened by industrial pollution will be subject to an increased risk of respiratory illness, birth defects, and cancer if such waste burning is allowed to occur.

Moreover, as many of these facilities are non-major sources of hazardous air pollution they do not have Title V permits indicating their fuel mix. As a result, *communities presently home to multiple polluting entities would find themselves unaware of what they are being exposed to.* The lack of regulatory transparency of industrial incineration further threatens the health and well being of some of the most vulnerable communities in our nation.

The National Environmental Justice Advisory Council (NEJAC) has a distinguished history of informing the EPA of documented and emerging threats to environmental justice (EJ) communities. With this history in mind, we respectfully request that the NEJAC make a formal statement to Administrator McCarthy requesting that EPA replace the current waste definition with one that safeguards community health and shows a real commitment to upholding environmental justice.

Sincerely,

Environmental Justice & Community Based Organizations

Action Now (CA)
Butte Environmental Council (CA)
California Communities Against Toxics (CA)
Cape Fear River Watch (NC)
CARE for Logansport (IN)
Citizens Against Ruining the Environment (IL)
Citizens Against Titan (NC)
Citizens Environmental Coalition (NY)
Clean Air Clean Water- Alachua County (FL)
CleanAirNow! (UT)
Clean Water & Air Matter (CA)

Coalition for a Safe Environment (CA)
Comite Amplio Contra la Incineracion en Arecibo (PR)
Comite Dialogo Ambiental, Inc. (PR)
Connecticut Coalition for Environmental Justice (CT)
Del Amo Action Committee (CA)
Desert Citizens Against Pollution (CA)
Detroitters Working for Environmental Justice (MI)
Don't Waste Arizona (AZ)
Downwinders At Risk (TX)
East Michigan Environmental Action Council (MI)
Friends of the Hudson (NY)
Green Delaware (DE)
Green Environmental Coalition (OH)
Greenaction for Health & Environmental Justice (CA)
Grupo Arecibo 2015 (PR)
Hoosier Interfaith Power and Light (IN)
Indigenous Environmental Network (US)
Ironbound Community Corporation (NJ)
Jesus People Against Pollution (MS)
Just Transition Alliance (CA)
Ka Wai Ola O Waianae (HI)
Kentucky Environmental Foundation (KY)
Little Village Environmental Justice Organization (IL)
Madres de Negro Arecibo (PR)
Minneapolis Neighbors for Clean Air (MN)
Missourians Organizing for Reform and Empowerment (MO)
Montana Environmental Information Center (MT)
Montanans Against Toxic Burning (MT)
Neighbors Against the Burner (MN)
Ohio Citizen Action (OH)
Pender Watch & Conservancy (NC)
Resurrection Bay Conservation Alliance (AK)
Resurrection Church (CA)
Society for Positive Action (CA)
Stafford Citizens for Open Government (VA)
Stand Up/Save Lives Campaign (IL)
Stop Titan Action Network (NC)
Texas Campaign for the Environment (TX)
Tri-Valley Communities Against a Radioactive Environment (CA)
UPROSE (NY)
Utah Moms for Clean Air (UT)
Valley Improvement Projects (CA)
Waukesha County Environmental Action League (WI)
Working on Waste (NH)
Zero Waste Detroit (MI)

Regional, National & Global Organizations, Networks and Alliances

American Environmental Health Studies Project
American Nurses Association
Blue Ridge Environmental Defense League
California Safe Schools
Center for Health & Environmental Justice
Clean Water Action
Cradle2 Coalition
Earthjustice
Eco-Cycle
Energy Justice Network
Friends of the Earth - US
Global Alliance for Incinerator Alternatives
Global Community Monitor
Global Justice Ecology Project
Global Initiative of Caribbean Americans for a Better Earth
Grassroots Global Justice Alliance
Grassroots International
GrassRoots Recycling Network
Institute for Local Self Reliance
Institute for Policy Studies, Climate Policy Program
Labor Network for Sustainability
Movement Generation Justice & Ecology Project
North Carolina Coastal Federation
Nuclear Information Resource Service
Partnership for Policy Integrity
Physicians for Social Responsibility Florida
Physicians for Social Responsibility Oregon
Physicians for Social Responsibility Sacramento
Rising Tide North America
Ruckus Society
Texas Campaign for the Environment
Toxics Action Center Campaigns
UPSTREAM

Individual Leaders and Experts

Rev. Dr. Terrance G. Gallagher, Sacred Conversations on Eco-Justice (IL)
Erin Flory Robertson, 50 States United Clean Air Ambassador (KS)
Eloy Garduno, Vice President, Denver-Labor Council for Latin American Advancement (CO)
Peggy Ann Berry, PhD Candidate, MSN, COHN-S, SPHR, Thrive at Life: Working Solutions
Victor Sanchez, President, Central Florida Labor Council for Latin American Advancement (FL)
Sylvia Perez, 50 States United Clean Air Ambassador (MN)
Barbara Daring-Smith, 50 States United Clean Air Ambassador (MA)
Rev. Richard Hibbert, 50 States United Clean Air Ambassador (VT)

Bettie D. Kettell, RN, 50 States United Clean Air Ambassador (ME)
Alexandra Allred, 50 States United Clean Air Ambassador (TX)
Brandi N. Williams, APR, 50 States United Clean Air Ambassador (NC)
Minister James H. Henderson, 50 States United Clean Air Ambassador (NC)
Henry S. Cole, Ph.D. President, Henry S. Cole & Associates, Incorporated (MD)
Michelle Nowlin, Esq. Duke Law School (NC)
Professor Paul Connett, PhD, Author - The Zero Waste Solution (NY)
Ellen Connett, Secretary, American Environmental Health Studies Project (NY)
Lynn Pledger, Zero Waste Consultant, Don't Waste Massachusetts (MA)
Gretchen Brewer, Zero Waste Consultant, Earth Circle Conservation & Recycling (CA)
Susan Hubbard, Zero Waste Consultant, Nothing Left to Waste (MN)
Tim Brownell, CEO, Eureka Recycling (MN)

CC: Members, National Environmental Justice Advisory Council

ⁱ “Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste,” Final Rule, (40 CFR Parts 60, 241) (Feb. 7, 2014).

ⁱⁱ New York State Department of Environmental Conservation, “Matter of the Application of Covanta Energy Corporation for Inclusion of Energy from Waste Facilities as an Eligible Technology in the Main Tier of the Renewable Portfolio Standard Program. Case No. 03-E-0188,” Aug. 19, 2011. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DEEA097E-A9A6-4E53-898C-0BC2F4C60CC4}>

ⁱⁱⁱ “An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the U.S. for the Years 1987, 1995 and 2000.” Table ES-2, p. xlvi, U.S. EPA Nov 2006. <http://cfpub.epa.gov/ncea/CFM/recordingdisplay.cfm?deid=159286>

^{iv} “Emissions from Large and Small MWC Units at MACT Compliance,” U.S. EPA memorandum, August 10, 2007. http://energyrecoverycouncil.org/userfiles/file/070810_Stevenson_MWC_memo.pdf

^v <http://www.energyjustice.net/egrid>: CO₂ emissions - waste incinerators (5,420 lbs./MWh); coal power plants (2,167 lbs./MWh)