

Rachel's Environment & Health News

#293 - When Is A Hazard Not A Hazard

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To shore up his flagging support among corporate leaders, President Bush has begun a major campaign to roll back environmental regulations. Nothing like it has been seen in Washington since Ronald Reagan hired Anne Gorsuch to throttle the EPA [U.S. Environmental Protection Agency] back in 1980. Mr. Bush's campaign seems to be based on a belief that dumping massive quantities of poisons into the environment will create jobs and stimulate the economy.

In recent days the NEW YORK TIMES and others have detailed some of the ways Mr. Bush has labored to scuttle the Clean Air Act--the only piece of environmental legislation that slipped through Congress on his watch. On June 25th EPA issued a key rule under the Act, a rule allowing each corporate polluter to increase its toxic air emissions by 245 tons (490,000 pounds) per year without public notice or public hearings.[1] A corporation simply has to file for an emission increase, stating that the requested increase is needed because of a change in production methods. The polluter can increase emissions immediately upon filing. U.S. EPA then has 45 days to review the application and state governments have 90 days to approve or disapprove. However, without public notice, pollution-control officials will lack a key element they often require before they can stand up to polluters: public outcry.

According to the NEW YORK TIMES, EPA chief William Reilly battled it out with Vice-President Dan Quayle over the emission-increase rule. Mr. Reilly favored allowing polluters to increase their emissions by only 5 tons per year. In May it became clear that Vice-President Quayle and his secret Council on Competitiveness (see RHWN #251) favored larger increases; according to rumor, Mr. Quayle favored 40 tons per year. The TIMES says President Bush then weighed in personally on the side of Mr. Quayle, and when the final proposal was published, 245 tons per year had been written in. A 245-ton increase is significant even when measured against the large releases of toxins and carcinogens that are routine for oil refineries, chemical plants, and pharmaceutical firms. In polluted corridors like the Kanawha Valley of West Virginia or "cancer alley" between Baton Rouge and New Orleans, Louisiana, the 245-ton rule will allow enormous increases in airborne toxins when several firms take advantage of it simultaneously, thus significantly degrading environments that are already dangerous to life.

The administration's sabotage of the Clean Air Act has been heavily publicized, but the mass media have so far ignored a much more far-reaching proposal by Messrs. Bush and Quayle, to reclassify most of the nation's hazardous waste as "non-hazardous" and thus allow it to be dumped into ordinary municipal landfills. The proposal would put waste regulation back to where it was prior to 1975, thus rolling back 16 years of work by a broad coalition of environmentalists.

On May 20th, 1992, the EPA published a notice in the FEDERAL REGISTER (pg. 21450) proposing to redefine "hazardous waste." By EPA's own estimate, the new rule would exempt 66% of presently-defined hazardous wastes from RCRA [Resource Conservation and Recovery Act], the nation's "cradle to grave" hazardous waste control law.[2]

Members of the hazardous waste industry, among others, are shocked and outraged by the latest EPA proposal. According to an analysis by the Hazardous Waste Treatment Council, a trade association for incinerator operators, the EPA proposal would:

** Exempt 86.9 to 88.9 million tons of wastes from RCRA regulation;

** Contaminate one out of every seven drinking water wells within a mile of a landfill receiving exempt waste, which is EPA's own estimate;

** Pollute the drinking water of at least 13,200 individuals getting their water from wells near landfills that accept exempt wastes;

** Create as many as 1681 new "Superfund" sites, which would require cleanup as a result of receiving exempt wastes, according to calculations by the Hazardous Waste Treatment Council. The Superfund list today only contains 1211 sites requiring cleanup, so adding 1681 new landfills to the list would more than double the size of the officially-acknowledged cleanup problem.

The opportunity to re-write the hazardous waste rules arose Dec. 6, 1991 when the Court of Appeals for the D.C. Circuit decided a 12-year-old lawsuit (Shell Oil vs. EPA), saying EPA had made a procedural error by not giving industry enough time to comment on rules promulgated in 1980. Thus on procedural (not substantive) grounds, the court threw out two key parts of the nation's hazardous waste laws: the "mixture rule" and the "derived from" rule. The mixture rule said, if you mix a hazardous waste with a non-hazardous waste, the result is by definition a hazardous waste. The point was to prevent companies from merely diluting their wastes to avoid regulation. The "derived from" rule said any waste derived from treatment of a hazardous waste is, itself, a hazardous waste. The point was to prevent "sham recyclers" from processing wastes in ways that did nothing to detoxify them, merely to avoid regulation.

The administration's new proposal "reinstates" the mixture rule and the derived-from rule, but the two rules are unrecognizable in their new form.

EPA's new proposal actually encourages polluters to dilute their wastes. Any waste containing toxins below certain concentrations will be exempt from regulation. To get the concentration down, dilute. The problem with this approach has always been that toxins have a bad habit of getting into food chains and reconcentrating. What is dilute in water today is concentrated in lettuce and grass and cows tomorrow. This is why dilution can never be an adequate solution to pollution.

A second key feature of the new EPA proposal is that any company can declare its wastes exempt (because of low concentration) without producing any laboratory analyses or data to support the claim. Industrial polluters will be bound only by an "honor system" not to cheat.

EPA supports its new proposals with elaborate risk assessments that claim to show that only 13,200 people would have their drinking water supplies contaminated by the proposal.

The Hazardous Waste Treatment Council has published a long analysis of EPA's risk assessments, trying to prove that risks to human health from the new proposal are much worse than EPA's scientists say they are. But the new proposal, and the risk assessments that support it, really represent a triumph of an approach that William Reilly has been pushing since he arrived at EPA four years ago and which the Hazardous Waste Treatment Council and its allies have never opposed: use risk assessment to decide priorities. Polluters love this approach because there is so little available data about health risks from pollutants, and the data that do exist are so controversial that a carefully-crafted risk assessment can support any claim anyone wants to make.

The problem is illustrated by an EPA study of the composition of leachate from 13 of the nation's 17 hazardous waste landfills. Only 4 percent of the total organic carbon in the leachate was analyzed, but in this four percent, EPA chemists identified 42 organic acids, 43 oxygenated and heteroaromatic hydrocarbons, 39 halogenated hydrocarbons, 26 organic bases, 32 aromatic hydrocarbons, 8 alkanes, and 13 metals. The unidentified 96 percent of organic carbon is of unknown toxicity. As the National Academy of Sciences said in reporting this data, "Overall, the number of compounds found in the four percent of the leachate studied is large, and yet this represents only a fraction of the overall organic contribution." [3] The unknowns are much larger than what is known. This is par for the course in any problem involving complex

toxicity.

In short, risk assessment is a "flexible" technique that allows you to reach any conclusion you set out to reach. The National Academy of Sciences put it politely when it said, "Risk assessment techniques are highly speculative, and almost all rely on multiple assumptions of fact--some of which are entirely untestable." [4] Claims that can't be tested can't be refuted, so risk assessors can claim anything they like. You can't refute a fairy tale, even one wrapped in the trappings of science. As Dr. David Ozonoff of Boston University said recently, "Risk assessment is: you shoot an arrow, then draw a target around it." This is the system Mr. Reilly has worked tirelessly to embed within EPA. He dignifies it with the title, "science-based decision-making," but--as EPA's latest proposal makes clear--it really means "establish your goals politically, then pepper your conclusion with numbers and call it science-based decision-making." It is the most enduring disservice a chief of EPA has ever inflicted upon the agency.

You don't need risk assessment to tell you that controlling the discharge of toxic chemicals into air and water is good for human health and the environment; you need common sense. Zero discharge is the right goal, not "acceptable risk."

As for Mr. Bush's notion that pumping poisons into the environment creates jobs and stimulates the economy, it is hard to find an economist who believes it. On the contrary, as a writer in the WALL STREET JOURNAL said recently, "Laws and regulations that force polluters to spend money on cleaning up the environment do not diminish the wealth of a nation. They transfer this wealth from polluters to polluter-cleaner-uppers and lay a foundation for greater future wealth.... What [Mr. Bush's regulation-relaxation policies] do is temporarily insulate inefficient producers from the need to innovate and invest in new equipment... temporarily shielding ossified entrenched interests from the dictates of a changing world economic order." [5]

SEND MR. REILLY YOUR IDEAS ON HIS LATEST PROPOSAL BY THE JULY 20 DEADLINE: C/O EPA, WASHINGTON, DC 20460

--Peter Montague

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[1] Keith Schneider, "Industries Gaining Broad Flexibility on Air Pollution," NEW YORK TIMES June 26, 1992, pgs. A1, A16. See also Keith Schneider, "Bush on the Environment: A Record of Contradictions," NEW YORK TIMES July 4, 1992, pgs. A1, A7.

[2] EPA's official estimate of the amount of hazardous waste produced in the U.S. each year is 265 million tons. Of this, half (about 133 million tons) is today subject to RCRA regulation. In its May 20 FEDERAL REGISTER notice, EPA estimated that about 88 million tons would be exempt under the new proposal.

[3] Anthony B. Miller and others, ENVIRONMENTAL EPIDEMIOLOGY, VOLUME 1: PUBLIC HEALTH AND HAZARDOUS WASTES (Washington, DC: National Academy of Sciences, 1991), pg. 107.

[4] Miller, cited above, pg. 45.

[5] Michael Silverstein, "Bush's Polluter Protectionism Isn't Pro-Business," WALL STREET JOURNAL May 28, 1992, pg. A21.

Descriptor terms: george bush; clean air act; william reilly; dan quayle; rcra; incineration; hazardous waste treatment council; mixture rule; derived from rule; risk assessment; george bush;