

Rachel's Environment & Health News

#232 - Public Ownership Of Dumps Is The Key

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What does it take--really--to make a good landfill?

U.S. Environmental Protection Agency (EPA) proposed new regulations for municipal solid waste landfills back in August, 1988 (see RHWN #231). Soon the Agency will publish final regulations, which are likely to draw heavily on the earlier proposals. Many generations of Americans will be affected by these regulations because we presently bury about 134 million tons of municipal solid waste (msw) in the ground each year. Although these wastes are legally "non-hazardous," the estimated 90 billion gallons of leachate that drip into the ground (and the groundwater) beneath msw landfills each year are definitely carcinogenic and toxic (see RHWN #90).

The new regulations will not make msw landfills any safer. They may, however, delay the release of toxic leachate into the groundwater below landfills. In proposing new msw landfill regulations, EPA says right up front that all landfills will eventually leak, and then proceeds to describe the real meat of the proposed regulations, which is a "corrective action" program to clean up each leaking mess after it has begun leaking.[1] Obviously, this is an exceedingly costly approach to the problem of managing msw--intentionally creating problems you know you'll later pay to try to solve. In truth, it is a consultants' dream because it will require many billions of dollars for "remediation specialists" to try to clean up today's messes tomorrow. (A question occurs: Are the people writing these regulations hoping to create jobs for themselves as cleanup consultants?)

As we saw last week, the EPA readily admits that all landfills leak and that all landfills will, therefore, sooner or later, require a "corrective action" program to clean them up. The Agency knows it will happen because it has happened before and often. EPA says, "EPA has evidence that ground water has been contaminated by MSWLFs [municipal solid waste landfills] on a local basis in many parts of the nation and on a regional basis in some heavily populated and industrialized areas. Evaluation of 163 MSWLF case studies has indicated ground-water contamination or adverse trends in ground-water quality at 146 of them." (pg. 33366) That's a 90% contamination rate for groundwater beneath municipal solid waste landfills.

EPA also knows, from theoretical considerations, that all landfills will one day require "corrective action:" "First, even the best liner and leachate collection systems will ultimately fail due to natural deterioration, and recent improvements in [msw] containment technologies suggest that releases may be delayed by many decades at some landfills. For this reason the Agency is concerned that while corrective action may have already been triggered at many facilities, 30 years may be insufficient to detect releases at other landfills. The Agency, therefore, wants to ensure that any potential release will be detected regardless of when it occurs." (pg. 33345) To this end, as we saw last week, the agency expects the landfill cover (its "cap") to be replaced periodically and the monitoring wells to be replaced periodically. The monitoring wells are really critical: "Even the best designs, operating practices, and quality control procedures cannot always prevent unexpected failure of a landfill. Therefore, ground-water monitoring at all facilities, including those that are properly designed and operated, is viewed by the Agency as an essential measure to insure protection of human health and the environment," EPA says. (pg. 33366)

The strategy of the new regulations is to ensure that when the inevitable leakage begins, regulatory officials will be alerted so they can ask the owner/operator to begin "corrective action" which usually means pumping groundwater to the surface, treating it to remove contaminants (which will then be buried in another landfill somewhere), returning the cleaned water to the subsurface. The regulations never address the fundamental problem, now widely acknowledged among the world's community of geologists and hydrologists, which is that contaminated groundwater is exceedingly difficult--often impossible--to clean up, once it is

contaminated. (See RHWN #163.) Really, the only way to guarantee clean groundwater is to never contaminate it in the first place.

What makes this EPA shell game so tawdry and pathetic is that real solutions are readily available, solutions that do not ask us to make the preposterous assumption that a dedicated priesthood of garbage persons will, in perpetuity, be replacing the plastic caps and the monitoring wells at today's landfills. We could prevent landfills from contaminating groundwater by simply changing the rules about ownership of landfills. We should prohibit the private ownership of dumps.

The issue of private vs. public ownership of dumps is key. If a dump is privately owned, the owner has a strong incentive (money) to take as much garbage as possible through the front gate because every ton earns a "tipping fee" which is the landfill owner's bread and butter. Private owners want to fill the dump as fast as possible (get the most money into the bank as quickly as possible) and they have little or no interest in monitoring what comes through the front gate. Very likely, they will go bankrupt, or will skip town, before any serious pollution occurs, so they don't care if the garbage is filled with toxics or is clean as a whistle. It's literally not their problem. They have no real incentive to care. Landfill owners typically live somewhere else--and as more big companies take over dumps, it becomes ever more true that dump owners live far from the dumps they own.

It is private owners of dumps who sue in court to prevent states from closing their borders to out-of-state garbage. They sue under the interstate commerce clause of the U.S. Constitution, and often they win the right to force a locality to take garbage from far away. This is another serious problem of private ownership.

On the other hand, when a dump is owned by a public agency (a county, or town, government, for example), the incentives are entirely different. The empty dump is a local asset. The government wants to make it last as long as possible, so there is an incentive to restrict what can come in the gate. The interstate commerce clause is not an issue because local governments have the right to restrict who can dump what at the local landfill. No local government in its right mind would want to take garbage from another state or county. (There are a few towns on record favoring huge imports of trash into their community, but these are places where local officials have been seduced by a garbage company and are now eager to turn garbage tricks for their entire region. Such instances of municipal prostitution are rare.)

To minimize dangers from dumping, local governments can restrict what comes in the gate. They can, for example, refuse to take mixed wastes-- only separated wastes can come in. Further, they can order that nothing recyclable can be buried in the ground, and nothing compostable. Naturally, they could refuse to take anything remotely toxic or dangerous. They could even refuse to take reusable items, like old stoves, directing them instead to Goodwill, or to some other fix-it organization.

Because the leachate from dumps is a demonstrable hazard to local water supplies, local governments can control what goes into their landfill in the name of public health and safety--and these are powers of government derived directly from the Constitution. It would therefore seem to be a valid exercise of a local government's police power if the local government were to pass an ordinance outlawing private ownership of landfills. Outlawing privately-owned new landfills will be much easier than outlawing private ownership of existing landfills because the present owners would fight in court for their God-given right to poison the environment for profit.

--Peter Montague

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[1] U.S. Environmental Protection Agency, "Solid Waste Disposal Facility Criteria," FEDERAL REGISTER, Vol. 53, No. 166 (aug. 30, 1988), pgs. 33314-33422."

For ideas on landfill controls, I am indebted to Paul Connett of Work on Waste USA [82 Judson St., Canton, NY 13617; (315) 379-9200--if you're not reading their weekly news bulletin, WASTE NOT, you should be, and to attorney Mark Lohbauer of the Philadelphia firm, Leather & Lohbauer [(215) 423-5000].

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