



WASTE MANAGEMENT / PUBLIC AFFAIRS

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September 22, 2010

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Subject: Waste Management's Comments on "Cumulative Impacts: Building a Scientific Foundation", Public Review Draft, August 19, 2010

Dear John:

Thank you for the opportunity to provide comments on the subject public review draft report as well as the opportunity to serve on the CI/PA Work Group. Waste Management has found the document to be straightforward and very well written. Waste Management submits these comments with the goal of further improving the report.

Toxic Release Inventory Data and the "Double-Counting" of Hazardous Waste Facilities

In general, we believe that the treatment of waste facilities in the report is fair and balanced – with only a couple of exceptions. For example, we fully support the inclusion of footnote 7 at the bottom of page 32: "The proper storage, treatment, and disposal of hazardous materials in compliance with laws and regulations should not result in an effect on the environment." Consistent with that footnote, there needs to be guidance on use of the chart on page 33, particularly with respect to the use of Toxic Release Inventory (TRI) data.

TRI data include two very different kinds of information:

1. "releases" of contaminants into the open ambient air and into surface water, and
2. "releases to land or underground injection" but are in fact placement of contaminants into secure RCRA Subtitle C (hazardous waste) containment facilities. This requires permanent isolation in an engineered disposal unit in accordance with federal and state regulations and permits.

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Containment of a TRI chemical in a permitted RCRA hazardous waste facility is, in fact, the opposite of a release. The purpose and design of the state and federal mandated waste regulatory program is to assure that materials placed in a permitted containment facility will never migrate into the environment at all. As a consequence, in the U.S. EPA's view, increases in containment of TRI materials can represent "a generally positive environmental trend because these facilities are in the business of managing hazardous waste and do so under strict controls." For further discussion on the problems associated with using TRI data for hazardous waste facilities and disposal sites, please see the attached discussion of "A More Informative TRI", previously prepared by Waste Management.

Only the TRI emissions to air and water, not the contained releases that represent wastes inside the landfill unit should be included in the "exposure" category in the Final Report. As footnote 7 of the Public Review Draft indicates, proper storage, treatment and disposal in compliance with the law should not result in an effect on the environment.

Besides, hazardous waste sites are also included in the "environmental effects" category. Thus, including contained substances under "exposures" would be double counting, as well as unrealistic in terms of relative exposure.

Recommendation: To eliminate the "double-counting" of hazardous waste facilities, they should only be included under Environmental Effects in Table 2 on Page 33 as "Hazardous waste & clean-up sites" as currently proposed. Waste Management requests that the report eliminate the additional identification of hazardous waste facilities under "Toxic Releases from Industrial Facilities". Only those TRI releases to water or air should be included under exposures – not the permitted disposal to containment facilities. The "release" of a hazardous material to a hazardous waste containment facility does not result in an exposure provided the facility is operating in compliance with all permitting and regulatory requirements. Inclusion of hazardous waste facilities under the Environmental Effects categories should be sufficient.

Exposure Data Appears Heavily Air Focused

From our review of the Public Review Draft, it appears that the evaluation of exposures is very air focused. The Screening Methodology does not include many of the exposures or stressors documented throughout Chapter 1, such as:

- Pesticide exposures to workers and adjacent communities
- Radon and Asbestos
- Drinking Water Quality
- Exposure to impaired water bodies

- Quality of food intake

All of these types of exposures have reasonably complete databases from which to estimate the degree of exposure that is occurring throughout California.

Recommendation: The exposure assessment in Chapter 3 of the report should be consistent with the discussion of disproportionate impacts in Chapter 1 – particularly if there is a reliable database of information that can be used to assess exposure (e.g., radon, asbestos, pesticide application, drinking water quality, and proximity to impaired water bodies).

Assigning the Scores

On the range of scores (p. 35), it is extremely unclear exactly who will assign the scores within a particular range and how a specific numerical score will be determined for a particular component. Number of facilities? Volume of emissions? Toxicity? This is particularly important for exposure since the range is wide.

Recommendation: The final report should include much more specific criteria regarding the assignment of numerical scores for each component.

Disparities in Environmental Conditions

At the top part of page 13 there is a discussion regarding the location of hazardous waste facilities near primarily near low income and minority populations and several studies to this effect are cited (e.g. Bullard – “Toxics at Twenty”). We are concerned about the implication that all owners and operators of waste facilities have sited their facilities near low-income and minority communities.

WM is familiar with analysis performed by Bullard et al in the “Toxics at Twenty” report, and we undertook to apply that methodology to our own facilities in order to understand our siting demographics. We take very seriously the need to assure that our facilities and operations are consistent with the goal of furthering environmental justice. Making use of Toxics at Twenty’s commonly employed methodology has been important to our on-going effort to be a constructive voice in discussions about environmental justice.

In our evaluation, we have used the area apportionment analysis employed in Toxics at Twenty and recommended in EPA’s Draft EJ Methodology. We compared the demographics of our facilities with those of the population of the relevant state. We found that -- in contrast to the general pattern of hazardous waste facility siting as summarized in Toxics at Twenty -- our footprint much more closely tracks the demographics of the state population at large. Using

the Toxics at Twenty classification as “minority” all but non-Hispanic whites under the 2000 census at the 3 and 5 kilometer radii, we found that 33% of our Subtitle C facilities are located in communities where the minority representation is above the state average, 66% are located in communities below the state average minority representation. One facility is located in a community below the federal poverty level and that one only at the 1, not 3 or 5 kilometer radius.

Because we operate too few Subtitle C (hazardous waste) facilities to reflect a robust sample size, we also undertook the analysis for the universe of our Subtitle C and D (solid waste) landfills and waste-to-energy facilities. For this universe, WM’s operations are even less likely to be located in EJ communities:

- **Income:** Only one facility of the total WM solid and hazardous waste landfills and waste to energy facilities (an MSW landfill) is located in a community below the federal poverty level. In fact, half of our facilities fall above and half below the state median income.
- **Race:** Although you would expect a similar 50/50 distribution when considering whether the community surrounding our facilities falls above or below the state average minority representation, only 28% of our facilities are located in communities exceeding the state average at 1 km (31% at 3 km and 33% at 5 km).

Attached are comments we filed with EPA giving our own demographic footprint.

Recommendation: WM requests that a footnote be added to the first full paragraph on page 13 indicating that some owners of waste facilities have conducted the same analyses of their individual company footprints and found that they did not reflect the discriminatory pattern found by Bullard, et al., for the universe of hazardous waste facilities in their “Toxics at Twenty”. This suggests that in any given situation, consideration should be given to avoid stigmatizing individual companies that operate in a manner that assures non-discriminatory distribution of their facilities. We recommend that the following footnote “6b” be added at the end of the first paragraph:

^{6b} It should be noted that some owners of hazardous and solid waste facilities have conducted similar analyses of their individual company footprints and determined that they did not reflect the same discriminatory pattern as found by Bullard et al., for the entire universe of hazardous waste facilities in their “Toxics at Twenty” study. This suggests that in any given situation, consideration should be given to avoid stigmatizing individual companies that operate in a manner that assures non-discriminatory distribution of their facilities.

Again, thank you for the opportunity to comment and to participate on the CI/PA Workgroup. Please let me know if you have any questions or require further information regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. White". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charles A. White, P.E.
Director of Regulatory Affairs/West

cc: Joan E. Denton, Director, OEHHA, jdenton@oehha.ca.gov

Attachments:

1. A More Informative TRI
2. WM Comments on EPA's Draft EJ Methodology

A More Informative TRI

Since the late 1970s, U.S. EPA has worked to develop a regulatory structure that encourages waste reduction and assures that treatment, storage and disposal of hazardous wastes is protective of human health and the environment. The RCRA Subtitle C standards are rigorous and demonstrated effective by EPA studies showing modern RCRA facilities rarely appear on remedial lists. See EPA, Analysis of 40 Potential TSDs (January 19, 2007).

Another EPA program, management of the Toxic Release Inventory, is also designed to improve health and the environment by informing the general public of the existence of contaminants in their communities. An important result of this publicity has been its effect in incentivizing the industrial community to demonstrate environmental leadership/sustainability by reducing releases captured by TRI.

Although RCRA Subtitle C facilities are included in the Toxics Release Inventory, unlike the emissions to the ambient environment reflected in other TRI reporting categories, disposal of toxics at RCRA facilities is usually a positive development. Toxics managed and contained in RCRA Subtitle C facilities are isolated from the public. Their existence at RCRA facilities reflects successful Superfund cleanups, brownfields remediation, and removal of contaminants from storage in urban centers and other uncontrolled environments.

EPA recognizes that the inclusion of RCRA facilities in TRI is a poor fit because *increases* in containment of TRI materials at RCRA Subtitle C facilities can represent “*a generally positive environmental trend* because these facilities are in the business of managing hazardous waste and do so under strict controls.” U.S. EPA Toxic Release Inventory 2006 Public Data Release Key Findings, p. 10 (emphasis added), http://www.epa.gov/tri/tridata/tri06/pdr/key_findings_v12a.pdf.

Unfortunately, the distinction in trend lines between containment and actual releases gets lost in most uses of TRI data. Because TRI data are usually aggregated in reports of the “100 largest polluters” or areas with the highest pollution, it’s impossible for the public to distinguish ambient releases (which everyone would like to see decline) from safe containment (which would increase with progress in cleanup and containment).

The policy distortions caused by this aggregation multiply by the year:

- By all measures, EPA’s leadership on brownfields remediation and revitalization has enhanced protection of health and the environment in these communities. Paradoxically, however, this removal of contaminants to safe containment in RCRA Subtitle C facilities is categorized in TRI reporting as a “release.” What is in fact community protection instead is reported as an adverse impact.

- Mischaracterization of RCRA Subtitle C facilities obscures public perception of the environmental assets and regulatory programs these facilities represent. This has widespread negative impact. For example, when EPA determines that new waste streams require RCRA Subtitle C handling, or a more generous federal budget expands the capacity of brownfields or the Superfund program, inclusion of Subtitle C containment in “release” numbers creates the misperception that TRI data are going “in the wrong direction.”
- Aggregated TRI data have become the basis for study of areas with most exposure to toxics -- despite the fact that RCRA Subtitle C facilities are designed and operated to *eliminate* exposure (see RSEI, http://www.epa.gov/oppt/rsei/pubs/basic_information.html; websites like ED Scorecard flagging priority communities), <http://www.scorecard.org/env-releases/us-map.tcl>). Similarly, TRI data are incorporated into the environmental justice tool EJ SEAT to prioritize EJ communities (see <http://www.epa.gov/compliance/resources/policies/ej/ej-seat.html>). This is a particular problem because uncontrolled pollution from non-TRI sources goes largely ignored in such data bases.
- Corporate sustainability reports showcase TRI reductions for their own sake – an appropriate and useful indicator for hazardous waste generation and release into the ambient environment, but a misleading indicator for wastes contained at RCRA Subtitle C facilities.
- As hazardous waste generators take steps to reduce their cumulative “releases” attributable to off-site shipments, undesirable outcomes can emerge. Actions taken to reduce accounting for TRI emissions can instead result in the handling of materials at less environmentally protective facilities (e.g., unregulated reclamation sites). In these cases, the current, opaque form of TRI reporting has incentivized generators to seek less environmentally protective alternatives in order to do what is necessary to get TRI materials “off the books.” This incentive would be mitigated if RCRA Subtitle C disposal were reported separately as permitted and controlled containment pursuant to a rigorous regulatory system.
- Sustainable investment groups (e.g., Dow Jones Sustainability Index, KLD, IW Financial) generate lists of the “most sustainable” companies and investments, with the simplistic assumption that the lower the total TRI score the better.
- Companies taking a conservative approach to TRI reporting, erring on the side of higher calculations and estimates in order to assure the most fulsome disclosure, are particularly disadvantaged when reporting TRI quantities.

Finally and most importantly, these uses of TRI data do a disservice to EPA’s Office of Solid Waste and Emergency Response and the time and expertise it has brought to the hazardous waste program. As TRI continues to be a metric

for environmental performance, the odd combination of a “real” release into the ambient environment vs. RCRA-regulated containment is increasingly problematic, and RCRA Subtitle C facilities increasingly are caricatured as major environmental problems. This undermines support for the RCRA program and exacerbates opposition to permitting of the very facilities needed to support the RCRA management system.

There is a simple solution that increases rather than decreases transparency, better communicates real risk, and complies with the provisions of the statute. In all TRI communications, EPA should disaggregate TRI data into:

- Releases to the environment, and
- Permit-controlled containment

Instead of focusing on whether a release is on or off site, the relevant consideration is whether the contaminant is released to the environment or if it is contained in a permit-controlled structure (i.e., a RCRA regulated unit). In no case should EPA combine the two categories in their annual reporting, but instead should report trends separately, with a consistent acknowledgement that RCRA facilities are heavily regulated and an important aspect of EPA’s mission to assure protection at all levels of hazardous waste management. Moreover, in applications like RSEI and EJ SEAT, releases to the ambient environment should be the primary data source, with discussion of RCRA facility data separately broken out.

This more precise reporting creates better incentives:

- TRI reporters are encouraged to reduce ambient releases; and
- Removal of uncontrolled releases to the containment of permitted RCRA Subtitle C environment (and resulting increases in TRI substances at those facilities) is understood as a potentially positive development.

Waste Management

Memorandum

To: Kathy Lett
EPA/OSWER/ORCR/MRWMD
From: Sue Briggum
Date: March 15, 2010
Re: Comments on EPA's Draft EJ Methodology
Docket EPA-HQ-2009-0315

Waste Management (WM) appreciates the opportunity to provide comment on EPA's "Draft Environmental Justice Methodology for the Definition of Solid Waste Final Rule," January 13, 2009 (hereafter *Draft EJ Methodology*). WM is North America's largest provider of solid and hazardous waste reduction, recycling, reuse, waste to energy conversion, and disposal services. We operate seven landfills disposing hazardous waste under RCRA Subtitle C permits, serve as hazardous and solid waste reduction consultant to private and public sector customers with our ISO certified Upstream division and our Green Squad, are the largest handler of post-consumer solid waste for recycling, generate renewable energy at waste-to-energy facilities and landfills with landfill gas to energy projects, and operate 271 RCRA Subtitle D permitted municipal waste landfills.

WM strongly supports EPA's intent to include consideration of environmental justice within the context of the rulemaking process itself rather than wait until rules are implemented to attempt to identify and address potential environmental justice impacts. As a member of EPA's National Environmental Justice Advisory Council (NEJAC) and its Work Groups continuously since 1994, we consistently have joined with environmental justice advocates and others recommending that EPA include a specific and well-researched environmental justice analysis when proposing significant regulations. It just makes more sense to anticipate and address environmental justice impacts when developing a rule rather than attempting ad hoc responses to environmental justice concerns after a regulatory program goes into effect.

As a member of NEJAC and particularly as co-chair of its Work Groups on Cumulative Impact and EJ Screening Methodologies, we have joined with broad-based, multi-stakeholder groups urging EPA to determine which communities are most likely to warrant an environmental justice analysis that will (1) illuminate a community's vulnerability and potential environmental burden, and (2) seek to redress that burden. Efforts to improve environmental conditions in environmental justice communities by enhancing enforcement, increasing environmental benefits, and engaging all sources of environmental burden in

collaborative efforts to improve community health and welfare are key to success in seeking environmental justice. Members of the business community can be important participants in environmental justice solutions.

We appreciate the opportunity to comment on EPA's current proposal, both in these written comments and a member of one of the groups from which EPA is soliciting comment, the NEJAC. EPA's *Draft EJ Methodology* clearly is the beginning of the discussion of how to structure an environmental justice analysis in the rulemaking context. Moreover, EPA's draft is the first cut, not a final EJ analysis of the Definition of Solid Waste, and at many junctures takes the form of a request for input.

What is presented at this point, however, contains statements and assumptions too flawed to serve as a helpful template for considering environmental justice in regulation. Moreover, the draft analysis is surprising and deeply troubling for those of us in an industry sector that have worked for decades as EPA's partner in implementing a rigorous regulatory program under RCRA Subtitle C. In this *Draft EJ Methodology*, EPA characterizes RCRA Subtitle C facilities not as closely monitored, prescriptively regulated facilities that embody and implement the environmental expectations that EPA itself has crafted, but instead depicts Subtitle C facilities as an environmental justice problem to be avoided by diverting hazardous materials to un-permitted "reclamation" facilities. See p. 15 (a benefit of the DSW exclusion rule is to divert materials away from Subtitle C facilities).

This approach appears to be a repudiation of EPA's own program, developed over the past 30 years. It is also contradicted by the relevant facts.

(1) *EPA's proposal assumes that the shift of hazardous materials from RCRA Subtitle C facilities to reclamation sites shifts the location of hazardous material handling to fewer EJ communities. The data provided in the record of the DSW exclusion rule demonstrates this is not the case.*

According to Robert Bullard, et al., in *Toxic Wastes and Race at Twenty, 1987 – 2007* (2007)(hereafter *Toxics at Twenty*), 56% of RCRA Subtitle C facilities are present (within a 3 kilometer radius) in communities of color, in comparison to the 30% representation in the overall population. The important question that follows is: will materials diverted to reclamation sites pursuant to the rule in question less frequently go to environmental justice communities?

The Draft EJ Methodology does not appear to address that question. Comments submitted in this proceeding by Vernice Miller-Travis, however, do provide an initial answer. Her analysis reveals that the reclamation facilities that constitute the DSW exclusion rule's "damage cases" are in fact far more – not less -- likely to be located in EJ communities:

California: 88% in communities of color, 89% in poor communities
Florida: 70.8% in communities of color; 95% in poor communities

Comments of Vernice Miller-Travis, Vice-Chair, Maryland Commission on Environmental Justice and Sustainable Communities (June 30, 2009).

Moreover, comments submitted by EarthJustice in this docket (March 8, 2010) analyze the 23 facilities thus far that have notified the government that they intend to take advantage of the DSW exclusion, and find that 82.6% are sited in low-income communities and/or communities of color. EarthJustice also notes that 95% of the environmental damage cases cited by Miller-Travis occurred at unpermitted facilities – and condemns the effect of the DSW exclusion to direct hazardous materials to facilities without permits.

The effect of the DSW exclusion, given these important statistics, is to channel hazardous materials to facilities substantially more disproportionately sited than RCRA Subtitle C facilities in areas where environmental justice is a concern. Consideration of these kinds of patterns is appropriate in the rulemaking context, particularly when the analysis is done with care and matches the demographic pattern to the universe of facilities under regulatory modification.

WM is familiar with the method of analysis performed in *Toxics at Twenty*, and undertook to apply that methodology to our own facilities in order to understand our siting demographics. We take very seriously the need to assure that our facilities and operations are consistent with the goal of furthering environmental justice. Making use of *Toxics at Twenty's* commonly employed methodology has been important to our on-going effort to be a constructive voice in discussions about environmental justice.

In our evaluation, we have used the areal apportionment analysis employed in *Toxics at Twenty* and recommended in EPA's Draft EJ Methodology. We compared the demographics of our facilities with those of the population of the relevant state. We found that -- in contrast to the general pattern of hazardous waste facility siting as summarized in *Toxics at Twenty* -- our footprint much more closely tracks the demographics of the state population at large. Using the *Toxics at Twenty* classification as "minority" all but non-Hispanic whites under the 2000 census at the 3 and 5 kilometer radii, we found that 33% of our Subtitle C facilities are located in communities where the minority representation is above the state average, 66% are located in communities below the state average minority representation. None of the six¹ facilities are located in communities at the poverty level.

¹ Of WM's 7 Subtitle C facilities, one facility has no residents of any kind within a 5-kilometer radius. We have omitted that facility from the analysis. Our analysis was conducted in the spring of 2009 using 2000 census data, as had *Toxics at Twenty*. When 2010 census data are available, we will update our analysis.

Because we operate too few Subtitle C facilities to reflect a robust sample size, we also undertook the analysis for the universe of our Subtitle C and D landfills and waste-to-energy facilities. For this universe, WM's operations are even less likely to be located in EJ communities:

- **Income:** Only one facility of the total WM solid and hazardous waste landfills and waste to energy facilities (an MSW landfill) is located in a community below the federal poverty level. In fact, half of our facilities fall above and half below the state median income.
- **Race:** Although you would expect a similar 50/50 distribution when considering whether the community surrounding our facilities falls above or below the state average minority representation, only 28% of our facilities are located in communities exceeding the state average at 1 K (31% at 3 K and 33% at 5 K).

Reflecting upon the implications of EPA's Draft EJ Methodology, it is difficult to understand how diverting hazardous materials from Subtitle C facilities to DSW exclusion facilities could be characterized as an environmental justice "benefit."

(2) EPA's proposal does a poor job of outlining the differences between RCRA facilities -- with clear, rigorously enforced, prescriptive siting, design, operating, monitoring, closure, corrective action and post-closure standards -- and DSW exclusion facilities, which replace prescriptive standards with the verb "contain."

EPA's table comparing RCRA Subtitle C vs. DSW exclusion requirements only begins to describe the profound difference in oversight of Subtitle C vs. DSW exclusion sites. See the attached table, which provides a comprehensive characterization of the standards for Subtitle C facilities. RCRA Subtitle C's detailed standards for siting, designing, operating, monitoring, and reporting on RCRA "containment" units assure a rigorous analysis and mandatory imposition of best, not just "reasonable," practices. A generic exhortation to "contain" gives no guidance on whether a unit is appropriate in a floodplain or seismic area, mandates no secondary containment, doesn't dictate the design of a liner or tank and piping system, requires that no one compile let alone submit to a regulatory authority the results of monitoring systems. No certifications or training are required; and no emergency response notifications or protocols established.

Waste Management believes that RCRA Subtitle C (and its companion Subtitle D) has proven highly effective in assuring that communities surrounding these facilities are safe – and have a say in what happens at the site. Given the fact that the DSW exclusion damage cases indicate that DSW exclusion sites are more rather than less likely to be located in environmental justice communities, the choice to eliminate Subtitle C protections at DSW exclusion sites cannot possibly be postured as an environmental justice benefit.

(3) Two of the premises of environmental justice are the need for robust and meaningful public participation and the need for strict and frequent agency enforcement.

In contrast to the RCRA Subtitle C facility siting and permitting process, the DSW exclusion does not have public participation and mandatory oversight – a fact given too little attention in the Draft EJ Methodology. At RCRA Subtitle C facilities, facility siting, design, operation, monitoring and permit renewal/expansion are subject to mandatory and extensive public participation processes. There are regulatory obligations in terms of notice, opportunity for a public hearing, and guidance on how the participation should be conducted. The details of what are often 100- if not 1000-page permits are available at the facility, as are the results of agency inspections. None of this is required for DSW exclusions sites – unless, of course, they happen to occur at the RCRA Subtitle C facilities.

Perhaps the most surprising part of EPA's draft analysis is its assumption that a one-time audit by the generator of hazardous waste materials is comparable to on-going mandatory inspections by federal and/or state agencies of jurisdiction. Most RCRA Subtitle C facilities – and all WM facilities operated under any environmental statute – have rigorous internal auditing systems, yet EPA has never proposed that these systems or a customer audit might substitute for agency oversight, inspections and enforcement.

Conclusion: CERCLA was passed nearly 30 years ago to remedy the pollution generated when businesses and institutions public and private – often “reasonable” people -- followed what it turned out to be inadequate law that didn't “contain” pollution from impacting communities. The RCRA programs have been created and strengthened over the years to turn this shortcoming around. As the EPA and the country focus on more sustainable ways of doing business so that more raw materials are conserved and wastes are reduced, EPA should not abandon well-learned lessons on what constitutes an effective regulatory program to ensure proper handling of hazardous materials. In many of the NEJAC reports from Work Groups where WM was a member, the consensus of the group has been that environmental justice demands 100% compliance plus additional efforts to improve environmental conditions and to ensure that community members have meaningful participation in the decision making process. An EPA environmental justice analysis should function similarly to advance continuous environmental improvement.

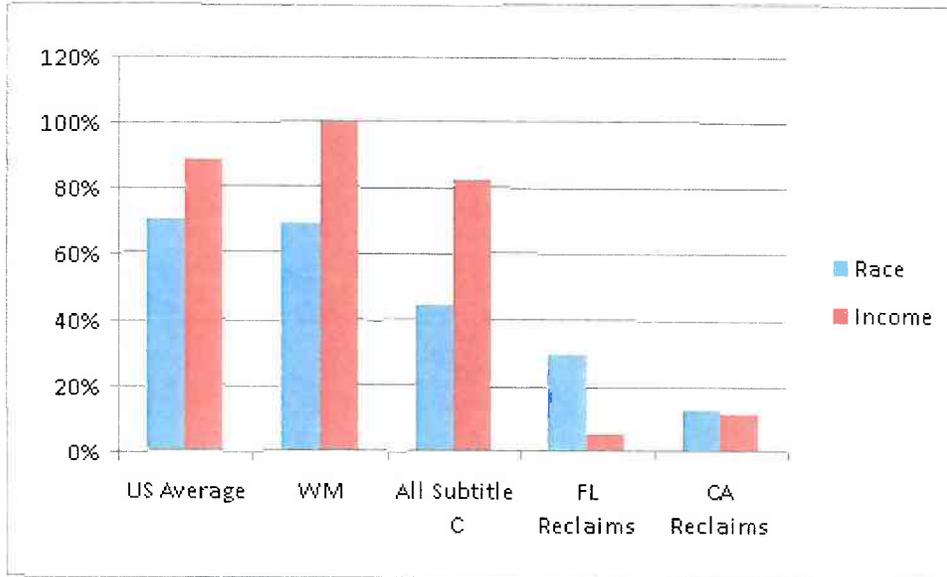
It may be that in its efforts to solicit early comment, the Agency has given a mistaken impression of the contours of its final proposal. As the Agency reviews comments and prepares its final EJ Methodology for the DSW rule, three fundamental conditions must be addressed: 1) reclamation sites are located in environmental justice communities in higher frequencies than Subtitle C sites; 2)

DSW exclusion sites are less regulated and therefore ensure less protection; and 3) DSW exclusion sites do not incorporate critical elements of environmental justice such as public participation and agency oversight. In its desire to encourage recycling, reclamation, waste reduction and reuse, EPA – if it is to respect the goals of environmental justice – must demand environmental performance at least equal to that required under the regulatory programs that have controlled waste disposal. The goal is not to simply divert materials from the accountability chain, but to provide both environmental protection (in terms of substantive standards, monitoring, oversight and public participation) and the opportunity for conservation of resources. To us, that's what sustainability in the evolution of environmental regulation means.

Waste Management very much appreciates the opportunity to comment at this early juncture, and submits these comments in the spirit of helping to improve the proposal as it moves through the process. Please feel free to call Sue Briggum, Vice President of Federal Public Affairs (202-639-1219 or sbriggum@wm.com), with any questions or requests for further information.

Summary Demographics Chart

	US Av.	WM all	All Sub. C	FL Reclaimers	CA Reclaimers
Race: % white	70%	69%	44%	29.20%	12%
Income: % over 20K	88%	99.50%	82%	5%	11%



Appendix: How Did the Revised Definition of Solid Waste Change
the Materials
Handling Requirements for Reclaimed Hazardous Waste?

Hazardous waste (HW) handler requirements	Before the Revised Definition, these requirements applied to reclaimed hazardous waste:	After the Revised Definition, do these requirements continue to apply?
HW generator (40 CFR Part 262)	Hazardous waste characterization	No, unless requested by reclaimer
	EPA identification number on file	No
	Manifest required to accompany HW shipment off-site, for use in national database and for emergency personnel; used for compliance and as evidence for Superfund cost-recovery; 3-year retention. DOT shipping requirements.	Records of shipments retained internally by generator but not submitted to regulator. Biennial notice of shipments sent to state. DOT shipping requirements.
	Packaging, labeling, & placarding requirements	No
	90 day holding time limits & specific container standards	Unspecified "containment" goal; difficult to monitor holding period related to progress toward reclamation target.
	Public disclosure in Large Quantity Generator database	No
	RCRA & Superfund liability if there's a release from an off-site treatment, storage or disposal facility	No RCRA liability if generator "reasonably" relied on brochures stating reclaimer was legitimate. Status of "useful product" defense under Superfund unclear.
	Reports under TRI	Unclear
	Will appear in LandView, ED Scorecard, etc. as a toxics source in the community	No
HW transporters/brokers (40 CFR Part 263)	EPA identification number on file	Records of shipments retained internally by generator.
	Manifest required to accompany HW shipment off-site, for use in national database and for emergency personnel; used for compliance and as evidence for Superfund cost-recovery; 3-year retention	Records of shipments retained internally by generator.
	Cleanup and notice requirements in the event of a spill	No
HW treatment/storage/recycling/disposal facility (40 CFR Part 264)	EPA identification number on file	No*
	Permit required prior to construction	No
	Public participation required prior to permit issuance and renewal	No
	Analysis of waste received according to specified	No

	procedures	
	Site security requirements	No
	Routine inspection plan with record of results	No
	Personnel training plan	No
	Limits on facility siting (seismic zones, floodplains)	No
	Construction quality assurance program	No
	Preparedness & prevention program, with specified equipment, aisle space, arrangements with local authorities, contingency plans and emergency procedures filed with emergency coordinators	No
	Confirmation of manifest information and retention of records	Internal recordkeeping only, with biennial report on total quantities to state.
	Biennial report of wastes received included in RCRA national database	No
	Cleanup obligations for any solid wastes released (in the past or future) on the property of a RCRA Subtitle C facility	No
	Closure/post-closure obligations, with financial assurance & notice requirements; certification of completion of closure and post-closure care required	Materials must be disposed or reclaim for clean closure. No agency oversight.
	Specific requirements for containers (inspections, design of containment system, special requirements for ignitable, reactive and incompatible wastes, air emissions standards)	Facility should "contain" hazardous materials
	Specific requirements for tanks (integrity assessment, engineering assessment for design & installation, design of containment system, siting restrictions, inspections, mandatory response to leaks & spills, special requirements for ignitable, reactive and incompatible wastes, air emissions standards)	Facility should "contain" hazardous materials
	Specific requirements for surface impoundments (siting restrictions, double composite liner, leachate collection system, leak detection plan, response action plan, monitoring and inspection, emergency plan, closure and post-closure care & financial assurance, special requirements for ignitable, reactive and incompatible wastes, air emissions standards)	Facility should "contain" hazardous materials
	Specific requirements for waste piles (design requirements, liners, leachate collection system, leak detection plan, monitoring and response, special requirements for ignitable, reactive and incompatible wastes and ban on FO 20 – 27 wastes)	Facility should "contain" hazardous materials
	Specific requirements for land treatment (pretreatment program including treatment demonstration acceptable to permitting authority, treatment program requirements, special controls to avoid contaminating food chain crops, unsaturated zone monitoring, closure and post-closure care plan & financial assurance, special	Facility should "contain" hazardous materials

	requirements for ignitable, reactive and incompatible wastes an ban on FO 20 – 27 wastes)	
	Specific requirements for landfills (design restrictions & approval, double composite liner, leachate collection system, cap equal to liner, leak detection plan, monitoring & inspection, manadatory plan & timing for leak response, recordkeeping, closure & post-closure care plan & financial assurance, special requirements for ignitable, reactive and incompatible wastes an ban on FO 20 – 27 wastes, special requirements for liquids)	Facility should “contain” hazardous materials
	Specific requirements for temporary holding areas, drip pads	Facility should “contain” hazardous materials
	Air emissions controls for process vents, air emissions for equipment leaks, air emissions standards for tanks, surface impoundments and containers (detailed equipment standards, monitoring and response, recordkeeping and reporting)	No
	Design & operating standards for containment building housing stored waste	No
	Routine agency inspections (on-site governmental inspector requirements for large facilities)	No
	Mandatory corrective action/compliance schedules upon detection of violation	No
	Groundwater monitoring according to plan, routine reporting, mandatory response in the event of a release	No
	Superfund liability if cleanup is required for a release (hazardous waste generator, transporter who selected site, and owner/operator of site with release)	Yes
	TRI reporting	Unclear
	Included in public disclosure data bases (Landview, ED Scorecard, etc.)	Not unless confirmed a TRI reporter

*Facilities handling only reclaimed materials need not comply with RCRA hazardous waste treatment, storage and disposal requirements. Only those facilities that choose to handle both reclaimed materials and hazardous waste must comply with Part 264.