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Administrator Lisa Jackson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
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Dear Ms. Jackson,

We are deeply concerned that deregulation of "recycled" hazardous waste poses a major national health threat, especially to minority and low-income communities that already are over-burdened by pollution. We urge you to take immediate action to rescind rules that were finalized in the waning days of the Bush Administration and to restore vitally important safeguards under the Resource Conservation and Recovery Act ("RCRA").

In October 2008, the Environmental Protection Agency ("EPA") published its final "Revisions to the Definition of Solid Waste." *Final Rule*, 73 Fed. Reg. 64,668 (Oct. 30, 2008). Under this new rule, hazardous wastes destined for recycling are no longer included within the definition of "solid waste" subject to RCRA regulation. Thus, facilities that claim to recycle hazardous wastes are no longer required to comply with RCRA's safe-handling and reporting requirements.

There is no justification for this sweeping exemption. As EPA's own studies show, effective regulation under RCRA is crucial to preventing damage from hazardous waste recycling. EPA has identified 218 "damage cases" where toxic releases from recycling activities caused serious contamination of air, water and soil, necessitating costly clean-ups. Nearly all of these damage cases (209) occurred at facilities that were not operating under RCRA permits. This highlights both the important function served by RCRA permitting and the very real danger posed by deregulation. Given this industry's dismal environmental record, less EPA oversight is a prescription for more toxic pollution, expensive clean-ups, and unacceptable threats to human health and the environment.

Minority and low-income communities in urban areas can expect to suffer the most as a result of this rule. In neighborhoods surrounding hazardous waste facilities, people of color are the majority (59 percent on average), and in neighborhoods where several such facilities are clustered close together, people of color are often a much larger (more than two-thirds) majority. *See* Robert D. Bullard, Ph.D. *et al.*, *Toxic Wastes and Race at Twenty 1986-2007*, Executive Summary, 5 (Feb. 2007). Yet during the rule-making process, EPA declined even to evaluate how this new RCRA exemption would impact people of color and poor people. This failure violates Executive Order 12,898, which seeks "to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and

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adverse human health and environmental impacts as a result of EPA's policies, programs and activities." *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7,629 (Feb. 16, 1994). In the past, EPA has neglected its legal and moral obligation to avoid and redress environmental injustice, and this rule is yet another disturbing example of that neglect.

Further, this rule fails to protect the public more broadly. Under the new rules, recycling of hazardous waste may be considered "legitimate" and therefore exempt from RCRA requirements even if the end product it creates is more toxic than other similar products on the market. According to EPA, "if a hazardous secondary material has been reclaimed and made into a product that will be used by children, and that product contains hazardous constituents that are not in analogous products, that product will *likely* need to be closely scrutinized." 73 Fed. Reg. at 64706 (emphasis added). Remarkably, EPA does not prohibit the unnecessary incorporation of hazardous constituents into these products, or even guarantee close scrutiny of this so-called recycling. Thus, manufacturers that use *hazardous wastes* to make products for *children* are no longer subject to RCRA requirements as a matter of course. Moreover, EPA's rule allows the manufacturer to decide whether or not RCRA should apply. This scheme invites companies to dispose of hazardous wastes by putting them into commercial products — including products targeted at children and other sensitive populations that are especially vulnerable to toxic chemicals that serve no useful purpose but are simply "along for the ride."

EPA must use its authority under RCRA to ensure responsible cradle-to-grave management of hazardous wastes. When it comes to storing, handling, using, and transporting hazardous waste, it defeats RCRA's fundamental purpose to allow industry to self-regulate. It may be advantageous to recycle hazardous wastes in certain circumstances, but recycling operations pose all of the same risks that other hazardous waste operations pose to human health and the environment. In fact, based on EPA's own study of damage cases, off-site recycling often involves even greater risks, making RCRA's safeguards all the more indispensable.

You have committed to use the rule of law to "protect neighborhoods and communities across the country." We ask that you act on that commitment by taking swift action to restore strong, enforceable rules governing the re-use of hazardous waste.

Respectfully,

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