



January 28, 2004

Mr. Michael Leavitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Opposition to Proposed Rule-Making Concerning State Research, Development
and Demonstration Permits for MSW Landfills
Request for Additional Public Comment
Docket No. F-2002-RDMP-FFFF

Dear Administrator Leavitt:

This is to ask that, in order to provide an opportunity for further public comment, you delay acting on the pending rule change the OSWER staff has submitted to you for your signature. That rule change would permit states, without any effective federal supervision, to waive most minimum RCRA-based standards for municipal solid waste landfills.

In addition to the policy arguments that we set forth in our 52 page submittal in this docket on August 6, 2002 (a copy of which is attached for your convenience), we believe that you need to consider the legal impediments to administrative deregulation of the sort outlined in the proposed rule.

The Resource Conservation and Recovery Act does not permit such open-ended, unreviewed delegation that is so extreme that not only is the public kept uninformed of the dimensions of state actions contrary to federal rule, but the agency itself is as well.¹

It is conceivable that OSWER may have attempted to address this fatal legal infirmity in whatever changes have been made in the original proposal. However, we are doubtful that this can be done within the existing legislative framework. For the existing rules already provide for regulatory flexibility upon the request of a state. But that rule is subject to public oversight by EPA to insure that "flexibility" does not, in a race to the bottom, become a smokescreen for

¹ 42 U.S.C. §6944(a) and §6907.

rolling back essential protections.² That is to say, correcting the legal flaw in the proposed rule would bring things back to the existing rule that already provides flexibility, and make the entire process nugatory.

For all of these reasons as well as those articulated in our prior submissions, we ask that you publish the revised version of this rule for public comment and consider the responses in order to reduce the possibility of needless litigation challenging more rules of dubious legality.

Sincerely,

David Wood, Executive Director
GRASSROOTS RECYCLING NETWORK

Allen Hershkowitz, Senior Staff Scientist
NATURAL RESOURCES DEFENSE COUNCIL

Erich Pica, Director of Economic Campaigns
FRIENDS OF THE EARTH

cc: RCRA Docket
Mr. Robert Springer, OSW