Air Pollution Loophole Challenge

Earthjustice is representing Sierra Club, Montanans Against Toxic Burning, Huron Environmental Activist League and Downwinders at Risk in challenging an egregious air pollution loophole supported by the U.S. Environmental Protection Agency. The suit disputes the Obama EPA's unprecedented assertion that burning industrial solid waste as a fuel—akin to coal or natural gas—is a form of recycling, and therefore not subject to key provisions of the Clean Air Act that protect people from the harmful air emissions that result.

Under the Clean Air Act, any facility that burns industrial solid waste is supposed to be regulated as an incinerator, which would ensure that the toxic air emissions from such burning are appropriately monitored and controlled to protect public health. But whether a facility is actually regulated as an incinerator depends on how solid waste is defined.

The Obama EPA issued a definition that exempts broad categories of industrial solid waste including scrap plastics, spent solvents and chemicals, industrial sludges and other materials if they are burned for energy by the company that generates them. The agency has also exempted whole tires, asphalt, and chemically treated wood waste no matter where they are burned. Industry groups have pressed previous administrations long and hard for just such a favor, but the Obama administration is the first to acquiesce so broadly to their demands.

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Clients:
Downwinders at Risk
Huron Environmental activist League (HEAL)
Montanans Against Toxic Burning
Sierra Club
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