The waste industry and the Environmental Defense Fund (EDF) have held a series of private meetings since June to develop a proposal to change federal law, to remove the term "hazardous" from all ash produced by municipal solid waste (msw) incinerators. The proposal would require that all msw ash be placed in special dumps (called "monofills") designated for that purpose. The 13-page EDF-industry proposal was released publicly without fanfare August 12.

The two largest corporations in the msw business are Ogden Martin, and Wheelabrator, a subsidiary of WMX Technologies (formerly Waste Management, Inc.). EDF is an environmental organization that in recent years has adopted a strategy of making alliances with corporate polluters in hopes of modifying their behavior.

The few grass-roots activists who have heard of the EDF-industry ash proposal expressed outrage at both the substance of the proposal, and the secretive process by which it was drawn up. Paul Connett, co-editor of WASTE NOT and co-director of Work on Waste USA said, "We see this is as a complete sabotage of all the grass-roots efforts that have gone into defeating 280 incinerators since 1985. [EDF has] come in and rescued this technology." Judi Enck of the New York Public Interest Research Group (NYPIRG) said, "If I was an incinerator company, I would just jump at the opportunity to get this legislation because it makes the picture much rosier for them." We were unable to locate any grass-roots activists who favored the EDF-industry approach. EDF's executive director, Fred Krupp, said he was "bewildered" by the "assertion that EDF's position has been formulated without any discussion with other groups that work on this issue," citing phone discussions with NYPIRG, U.S. Public Interest Research Group (US PIRG), Sierra Club, and others. Both NYPIRG and US PIRG oppose the EDF-industry proposal. Sierra Club has not yet taken a position on the proposal.

The 160 msw incinerators operating in the U.S. produce about 8 million tons of ash each year containing, by rough estimate, some 18,000 tons of lead, plus lesser quantities of other potent toxins such as cadmium, arsenic and dioxin.[1]

The joint EDF-industry proposal, titled "The Ash Management and Utilization Act of 1994," covers ash from municipal solid waste incinerators, not hazardous waste incinerators. The incinerator industry hopes Congress will pass the law this term, which would require extraordinarily rapid action on capitol hill. The proposal would amend RCRA (the Resource Conservation and Recovery Act), the nation's basic waste-management law. The EDF-industry proposal has the following features:

** Ms w ash would not have to be tested for its toxicity;

** No msw ash would ever be designated a "hazardous waste" but would all be called "special waste;"

** All ash would have to be put into a double-lined dump designed specifically for ash (termed a "monofill" because only one substance -- ash --could go into it); industry would have to monitor such dumps for 30 years, after which the taxingpaying public would assume responsibility for monitoring, maintenance, and eventually cleanup.

** EDF [U.S. Environmental Protection Agency] would be required to issue a finding in 36 months that ash is, or isn't, suitable as a base for road building. Other commercial uses of ash would be regulated by EPA.

** Within 7 1/2 years, the msw industry would be required to place all its ash in monofill dumps. Until monofilling began, the industry would be exempt from liability for any problems its ash might cause.

The joint EDF-industry proposal follows on the heels of an EDF victory in the U.S. Supreme Court in early May. The Court ruled May 2 that msw ash is not exempt from RCRA, the nation's hazardous waste law, which requires that wastes be tested for toxicity; wastes that flunk the test must be placed in officially-designated hazardous waste dumps. The incineration industry fears that some of its ash will have to be designated a hazardous waste -- a severe psychological deterrent to expanding the industry, as well as a considerable expense. Hazardous waste can cost up to $300 per ton for burial at a legally-designated hazardous waste dump. Judi Enck of the New York Public Interest Research Group estimates that ash can be placed in an "ash monofill" for only $70 or $80 per ton.

For its part, EDF fears that most ash will NOT have to be designated hazardous waste and will be released directly into the environment.

May 24th, EPA held a briefing for the incinerator industry, describing how EPA will react to the Supreme Court decision. EPA said that within a few months they plan to issue rules that:

** Allow incinerator operators to mix fly ash and bottom ash. Bottom ash makes up 90% of the ash generated by an incinerator; fly ash is 10%. The bottom ash usually contains about 2000 parts per million (ppm) of lead; the lead concentration in fly ash is usually at least twice that. EPA's plan would allow dilution of the more toxic fly ash with less toxic bottom ash, to diminish the overall concentration of toxins in the combined ash. This runs contrary to most other EPA rules, which do not allow dilution as a solution to pollution.

Ash containing 2000 ppm lead is contaminated at a level more than 5 times as high as the "level of concern" EPA recently set for lead in soil.

** EPA will require msw ash to be tested only 4 times each year. The average incinerator produces 137 tons of ash per day. Sampling all this ash only 4 times per year is guaranteed, mathematically, not to give a very reliable (consistent) estimate of the actual concentration of pollutants in the ash. Findings that are not reliable cannot, mathematically, be valid (accurate). So EPA's proposal is guaranteed not to give a true picture of the contaminants in ash.

** EPA will test ash by the Toxicity Characteristic Leaching Procedure (TCLP). This test does not identify the actual pollutants contained in the ash; it only identifies those pollutants that leach out under certain specific conditions. Since, sooner or later, all of the ash will be released into the environment (even ash that is monofilled), it is the total pollutant content that will affect communities, not merely what leaches out under TCLP conditions. Therefore the TCLP test gives a misleading estimate of the ash hazard.

** EPA will allow -- and even encourage -- ash producers to "treat" their ash before subjecting it to the TCLP test, to reduce its chances of flunking the test. For example, by treating ash with phosphoric acid, the toxic lead can be converted to lead phosphate, which will not leach out in a TCLP test. This would allow the ash to pass the TCLP test without diminishing the long-term hazard of the toxic metals in the ash.

A memo from EDF to several grass-roots leaders dated August 11 refers to ash monofills as "state of the art" technology for protecting the environment against ash. But in a phone call August 11, EDF senior scientist Richard Denison said that communities would only be "a little better protected" by ash monofills than by the present system. He stressed that the big benefit would be control of "ash utilization" -- schemes to mix ash into concrete, or put it beneath road surfaces. Ash utilization is presently unregulated.

Grass-roots activists say the EDF-industry proposal removes a major point of public debate about msw incineration. Paul Connett said, "When the ash issue is examined it underlines the total absurdity of spending billions of dollars destroying resources that we should be
sharing with the future. This is where the craziness of this whole [incinerator business] breaks down. You give them a convenient toilet and there's no [longer any] question of absurdity. We're just going to have ash monofills all over the place."

EDF's Karen Florini, an attorney and lobbyist on Capitol hill, expressed surprise that grass-roots incinerator fighters might be concerned about the proposed legislation. "We didn't intentionally not check with [grass-roots activists] about this stuff, it's that we didn't realize that issues relating to federal legislation on this would be of profound concern to you," she said.

The waste industry has demonstrated profound concern for these issues. According to the Center for Responsive Politics in Washington, D.C., during the period 1991 to 1994, Ogden, Foster Wheeler, and various subsidiaries of WMX Technologies contributed $825,695 to election campaigns of certain members of Congress. Particularly favored by waste industry contributions were Sen. Frank Lautenburg (D-N.J.) and Rep. Al Swift (D.-Wash.) who head the two committees that will review the EDF-industry ash bill.

Fred Krupp said EDF had 3 goals in proposing the legislation:

1. Immediately limit ash utilization until and unless federal regulations are developed;
2. Immediately replace the flawed TCLP-test-based system with one that imposes baseline requirements on all ash;
3. Phase in, as quickly as possible, state-of-the-art disposal requirements for ALL ash.

EDF's Richard Denison said, "The intent is to try to deal with an existing problem, which we see as massive and which we see as needing to be addressed."

Judi Enck of NYPIRG said she appreciates all the good scientific work EDF has done on incinerator ash over the years. However, she thinks they have made a profound error in their proposed ash legislation: "Ash won't be a problem any more if the bill passes. The regulators, the industry, the politicians are going to dismiss any legitimate concerns about toxicity in ash. They're going to say the EDF agreed that we just need to put this in monofills. What does this mean for our day-to-day organizing work? It means that we're going to get monofills sited with the blessing of a national environmental group and the whole opportunity to fight with the regulators about ash toxicity, the [TCLP] test, the [phosphoric acid] treatment, the mixing, it will all vanish. And there will be a legitimate way to dispose of huge quantities of ash which you know and I know a good percentage of which is really a hazardous waste and in 5 or 10 or 20 years will probably be a Superfund site."

To tell Congress what you think about the EDF-industry ash bill contact: Honorable Al Swift, U.S. House of Representatives, 1502 Longworth House Office Building, Washington, DC 20515. Phone: (202) 225-2605; fax: (202) 225-2608.

To give EDF your opinion of its ash bill, write or phone Fred Krupp, executive director, 275 Park Avenue South, New York, NY 10010; phone (212) 505-2100; fax: (212) 505-2375.

To contact opponents of the EDF-industry ash bill, call Judi Enck at NYPIRG: (518) 436-0876.

--Peter Montague

[1] Assuming the 8 million tons are 90% bottom ash containing 2000 ppm lead and 10% fly ash containing 4000 ppm lead.