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**May 7, 2004**

William V. Kennedy  
Executive Director  
Commission for Environmental Cooperation  
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Dear. Mr. Kennedy:

Waste Management, Inc. (WM) is pleased to respond to the draft report *Taking Stock: Toxic Chemicals and Children's Health in North America*. WM currently operates five hazardous waste landfills and one underground injection disposal facility, all of which annually report to the Toxic Release Inventory (TRI) in the United States. WM historically has supported the need for the USEPA to properly inform the public regarding the fate of toxic chemicals in the environment. We have stressed, however, that EPA and any subsequent users of TRI data, such as the Commission for Environmental Cooperation in North America, be conscious of their responsibility to use well-founded science and clear terminology to ensure that the public is not misinformed on the issue of toxics in the environment and the potential impact on health. To that end, we offer the following comments for your consideration.

- 1. It is entirely inappropriate for CEC to identify the placement of toxic constituents into a pollution control system as a “release into the environment.”** Placement of materials into a controlled containment facility is far different from releasing toxics into the ambient environment, and the CEC report must reflect this distinction. The CEC report adopts TRI's confusing use of the term “release” for two radically different events. By using the term “release” to describe both emissions into the environment and isolation of materials in a containment facility, TRI violates plain English and common sense. This confusion is an artifact of EPA's strained interpretation of the TRI statute<sup>1</sup>. CEC should not perpetuate this

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<sup>1</sup> Other U.S. statutes are interpreted differently. For example, EPA's attempt to expand “release” in the CERCLA context to include placement of a reportable quantity of hazardous substances into an “unenclosed containment structure” was roundly rejected by the U.S. Court of Appeals for the District of Columbia. *Fertilizer Institute v. EPA*, 935 F.2d 1303 (D.C. Cir. 1991). The Court's reasoning is even more compelling when viewed in the context

confusion if its intent is to usefully inform the public of the threat of exposure of children to toxic chemicals.<sup>2</sup> Indeed, WM believes that this terminology egregiously *misinforms* the media and the public on the nature of regulated hazardous waste landfill operations and underground injection systems by equating the containment of a toxic chemical in a land-based facility with the release of a toxic chemical into the ambient air, water, or soil where exposure may occur.

2. **Hazardous waste disposal facilities are designed and operated to eliminate exposure of an existing toxic chemical found in a waste stream.** The specifications for these facilities are established by the Resource Conservation and Recovery Act and the Safe Drinking Water Act and their respective regulations, and include treatment or stabilization of the toxic chemicals prior to disposal, redundant containment systems, and comprehensive monitoring<sup>3</sup> for any possible releases outside the man-made containment system.<sup>4</sup> The toxic chemicals in a hazardous waste landfill (generally referred to as Subtitle C landfills in the United States in reference to the corresponding provision in the statute), or in an underground injection system are not available for uptake through the soil, air, or water. To suggest otherwise in the CEC report is simply false.
  
3. **The report is wrong to identify hazardous waste landfills and underground injection systems as “sources” of toxic chemicals.** As part of a rigorously regulated system of hazardous waste management, Subtitle C landfills are the *recipient* of toxic chemicals contained in the waste streams. As pollution control facilities, their purpose is to minimize or eliminate public exposure to toxic constituents. The landfill is no more a “source” of toxic chemicals than a trash can is the “source” of the garbage that an individual tosses into it. The incongruity of CEC’s use of this term is manifested in the management of remediation waste. Throughout North America there are thousands of sites contaminated with the residuals of an industrial society – workplaces, residential areas, playgrounds, etc. Over the past 20 years, these sites have been systematically remediated. It is common for, say, soil contaminated with lead from a historic industrial operation to be excavated, stabilized, and land disposed. The remediation, to include the eventual disposal of the toxic chemical into a Subtitle C facility, eliminates the opportunity for public exposure. The original industrial operation is the source of the toxic chemical. Placement of that chemical

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of disposal in a RCRA permitted facility specifically designed to avoid exposure of hazardous substances to the environment

<sup>2</sup> It may be useful for CEC to know of WM’s experience in dealing with EPA’s annual Public Data Release that identifies secure containment as a release to the environment. After being informed by WM of the factual circumstances, the media and the public find the TRI a *less credible* tool to inform the public regarding potential exposure.

<sup>3</sup> CEC may not be aware of the intensity of monitoring at hazardous waste management facilities to ensure that there are no releases out of the containment system and into the environment. For example (and this is typical), at WM’s Kettleman Hills facility, RCRA inspections for leaks, releases, alarms, etc., are conducted 365 days a year, and the groundwater monitoring system includes *sixty-five wells to ensure that any leak is detected immediately and can be responded to well before any exposure is possible.*

<sup>4</sup> If a release should occur outside the containment system, WM would agree that is a “release into the environment” for definitional purposes. One of the anomalies of EPA’s inappropriate use of the term “release” in TRI is that once a toxic constituent has been placed inside the containment system, a subsequent release outside the containment system need not be reported. The logic of EPA’s approach can be summed as follows: When no exposure is occurring, it is a release into the environment; when exposure is possible through release into an ambient media, the release need not be reported.

into a Subtitle C disposal facility is a pollution control event, and to equate the two is wrong.<sup>5</sup>

4. **The Report's implied association of children's exposure to toxic chemicals with hazardous waste management facilities does serious injustice to EPA's RCRA and SDWA programs and to the facilities regulated under those programs.** Throughout the Report, hazardous waste disposal facilities are identified as one of the primary "releasers" of toxic chemicals among the several subcategories of toxic constituents. The reader is left with the impression that EPA's RCRA and SDWA programs serve little purpose other than to provide another pathway for the exposure of children to these toxic constituents. This will come as a surprise to the EPA, the US Congress, and to the millions of Americans who have had their exposure to toxic constituents minimized or eliminated due to the performance of the world's most rigorous hazardous waste management regime. *It is not sufficient for the Report's authors to merely issue a short disclaimer regarding interpreting "release" data as synonymous with exposure while producing over 90 pages of implied association between the two.*
5. **The Report's implied association of children's exposure to toxic chemicals (and thus of children's health) with "releases" as documented in the TRI is scientifically unjustified.** The Report disregards exposure and impact altogether, and proceeds to outline a litany of health impairments the report cannot and does not allege are actually caused by the facilities and chemicals listed. This utter disregard for causation and sound scientific analysis does a profound disservice to the reader. There is no balance between the brief caveats on the paucity and skewing of data used and the sheer verbiage of the report describing advocacy literature on children and health effects and the listing of various "top 10s." This is irresponsible, because it implies a cause where none is demonstrated. It implies children's health will be improved if the named facilities cease "releasing," yet it abdicates any attempt to understand the mechanism by which "releases" actually impact health and the degree to which the releases chosen to be included in this report have any relationship to exposure, and then any relationship of the exposure to identified health effects.

Coming from an international advisory commission, this mischaracterization of the data is particularly troubling. Public policy and environmental controls are warranted where environmental exposures have detrimental impact, or at least some likelihood thereof. This report merely lists the small subset of industries (and only industry) that have governmentally-created design, operating and reporting obligations. By juxtaposing this list with general information on health status, the report implies a relationship that does not exist. The report thus begs a regulatory response – targeted at the facilities that are known because they're already regulated. In doing so, the report does a disservice by ignoring analysis and regulatory response tailored to the releases or conditions that genuinely cause health impacts. In short, the alleged "science" of this report would only serve to mislead and misdirect resources.

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<sup>5</sup> The anomaly is also manifested in EPA's TRI system. Remediated waste usually represents 40-60% of a Subtitle C landfill's waste volumes. These wastes are removed from areas where public exposure is possible, yet the TRI requires that they be reported as *new releases* when placed in the landfill. In using EPA's TRI, CEC would have the public believe that their children are being *newly* exposed to these same constituents, when in fact children are being protected by removal of the toxic constituent from the ambient environment into an isolating facility.

- 6. The Report's preparation raises a serious issue of transparency and ethics.** The author of the report is not identified, which is inconsistent with established practices of ethics and transparency on such matters in the United States, where the Data Quality Act established specific principles on data quality and integrity for establishing public policy. Does CCE operate under a different principle? EPA, for one, does not sponsor documents for which the authors remain anonymous, and for good reason – if the authors of this study purport to opine on the meaning of TRI data and the regulatory programs controlling the facilities listed, the expertise and potential bias of such authors must be scrutinized. This is particularly important in a report on a subject as important as children's health and a report relying so heavily upon advocacy literature (i.e., its reliance upon Environmental Defense's Scorecard cited on page 27 as a data source and mischaracterized as the report of "a US nongovernmental group" when it has neither authority or expertise to characterize developmental toxicants and is a defined advocacy group).

In light of these many concerns, WM offers the following recommendations to the CEC:

- 1. The Report should be withdrawn and re-written to conform to the principles of sound science, transparency of authorship, and data quality.**
- 2. The new draft Report should be peer reviewed.**
- 3. The Report must clarify the role that hazardous waste management facilities play in the isolation of toxic constituents from the public. Regulated, contained disposal should not be equated with releases of toxic chemicals to the ambient environment. Indeed, CEC should not use the EPA's TRI database and its industry ranking systems in a report purporting to describe children's health since neither the TRI nor the Report attempts to offer any scientific basis for the implied relationship between reported "releases" of toxic chemicals "into the environment" and exposure of the public. The disclaimer at the beginning of the Report must be substantially strengthened to reflect this limitation so that the reader is not misled to unsubstantiated -- and in the case of hazardous waste management facilities -- inaccurate conclusions.**

If you have any questions regarding these comments, please feel free to contact me at your convenience at the above-identified address, or email at [eskernolis@wm.com](mailto:eskernolis@wm.com).

Sincerely yours,

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Director of Government Affairs

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