SUPREME COURT OF THE UNITED STATES

No. 92–1639

CITY OF CHICAGO, ET AL., PETITIONERS *v.* ENVIRONMENTAL DEFENSE FUND ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May 2, 1994]

JUSTICE SCALIA delivered the opinion of the Court.

We are called upon to decide whether, pursuant to §3001(i) of the Solid Waste Disposal Act (Resource Conservation and Recovery Act of 1976 (RCRA)), as added, 98 Stat. 3252, 42 U. S. C. §6921(i), the ash generated by a resource recovery facility's incineration of municipal solid waste is exempt from regulation as a hazardous waste under Subtitle C of RCRA.

Since 1971, petitioner the city of Chicago has owned and operated a municipal incinerator, the Northwest Waste-to-Energy Facility, that burns solid waste and recovers energy, leaving a residue of municipal waste combustion (MWC) ash. The facility burns approximately 350,000 tons of solid waste each year and produces energy that is both used within the facility and sold to other entities. The city has disposed of the combustion residue—110,000 to 140,000 tons of MWC ash per year—at landfills that are not licensed to accept hazardous wastes.

In 1988 respondent Environmental Defense Fund (EDF) filed a complaint against the petitioners, the city of Chicago and its Mayor, under the citizen suit

provisions of RCRA, 42 U. S. C. §6972, alleging that they were violating provisions of RCRA and of implementing regulations issued by the Environmental Protection Agency (EPA). Respondent alleged that the MWC ash generated by the facility was toxic enough to qualify as a "hazardous waste" under EPA's regulations, 40 CFR pt. 261 (1993). It was uncontested that, with respect to the ash, petitioners had not adhered to any of the requirements of Subtitle C, the portion of RCRA addressing hazardous wastes. Petitioners contended that RCRA §3001(i), 42 U. S. C. §6921(i), excluded the MWC ash from those requirements. The District Court agreed with that contention, see *Environmental Defense Fund, Inc.* v. *Chicago*, 727 F. Supp. 419, 424 (1989), and subsequently granted petitioners' motion for summary judgment.

The Court of Appeals reversed, concluding that the "ash generated from the incinerators of municipal resource recovery facilities is subject to regulation as a hazardous waste under Subtitle C of RCRA." *Environmental Defense Fund, Inc.* v. *Chicago*, 948 F. 2d 345, 352 (CA7 1991). The city petitioned for a writ of certiorari, and we invited the Solicitor General to present the views of the United States. *Environmental Defense Fund, Inc.* v. *Chicago*, 504 U. S. ___ (1992). On September 18, 1992, while that invitation was outstanding, the Administrator of EPA issued a memorandum to EPA Regional Administrators, directing them, in accordance with the agency's view of §3001(i), to treat MWC ash as exempt from hazardous waste regulation under Subtitle C of RCRA. Thereafter, we granted the city's petition, vacated the decision, and remanded the case to the Court of Appeals for the Seventh Circuit for further consideration in light of the memorandum. *Chicago* v. *Environmental Defense Fund*, 506 U. S. ___ (1992).

On remand, the Court of Appeals reinstated its previous opinion, holding that, because the statute's plain language is dispositive, the EPA memorandum

did not affect its analysis. 985 F. 2d 303, 304 (CA7 1993). Petitioners filed a petition for writ of certiorari, which we granted. 509 U. S. ___ (1993).

RCRA is a comprehensive environmental statute that empowers EPA to regulate hazardous wastes from cradle to grave, in accordance with the rigorous safeguards and waste management procedures of Subtitle C, 42 U. S. C. §§6921–6934. (Nonhazardous wastes are regulated much more loosely under Subtitle D, 42 U. S. C. §§6941–6949.) Under the relevant provisions of Subtitle C, EPA has promulgated standards governing hazardous waste generators and transporters, see 42 U. S. C. §§6922 and 6923, and owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF's), see 42 U. S. C. §6924. Pursuant to §6922, EPA has directed hazardous waste generators to comply with handling, record-keeping, storage, and monitoring requirements, see 40 CFR pt. 262 (1993). TSDF's, however, are subject to much more stringent regulation than either generators or transporters, including a 4-to-5 year permitting process, see 42 U. S. C. §6925; 40 CFR pt. 270 (1993); U. S. Environmental Protection Agency Office of Solid Waste and Emergency Response, The Nation's Hazardous Waste Management Program at a Crossroads, The RCRA Implementation Study 49–50 (July 1990), burdensome financial assurance requirements, stringent design and location standards, and, perhaps most onerous of all, responsibility to take corrective action for releases of hazardous substances and to ensure safe closure of each facility, see 42 U. S. C. §6924; 40 CFR pt. 264 (1993). "[The] corrective action requirement is one of the major reasons that generators and transporters work diligently to manage their wastes so as to avoid the need to obtain interim status or a TSD permit." 3 Environmental Law Practice Guide §29.06[3][d] (M. Gerrard ed. 1993) (hereinafter Practice Guide).

RCRA does not identify which wastes are hazardous and therefore subject to Subtitle C regulation; it leaves that designation to EPA. 42 U. S. C. §6921(a). When EPA's hazardous-waste designations for solid wastes appeared in 1980, see 45 Fed. Reg. 33084, they contained certain exceptions from normal coverage, including an exclusion for "household waste," defined as "any waste material . . . derived from households (including single and multiple residences, hotels and motels)," *id.*, at 33120, codified as amended at 40 CFR §261.4(b)(1) (1992). Although most household waste is harmless, a small portion—such as cleaning fluids and batteries—would have qualified as hazardous waste. The regulation declared, however, that "[h]ousehold waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused" is not hazardous waste. *Ibid.* Moreover, the preamble to the 1980 regulations stated that "residues remaining after treatment (*e. g.* incineration, thermal treatment) [of household waste] are not subject to regulation as a hazardous waste." 45 Fed. Reg. 33099. By reason of these provisions, an incinerator that burned only household waste would not be considered a Subtitle C TSDF, since it processed only nonhazardous (*i. e.*, household) waste, and it would not be considered a Subtitle C generator of hazardous waste and would be free to dispose of its ash in a Subtitle D landfill.

The 1980 regulations thus provided what is known as a "waste stream" exemption for household waste, *ibid.*, *i. e.*, an exemption covering that category of waste from generation through treatment to final disposal of residues. The regulation did not, however, exempt MWC ash from Subtitle C coverage if the incinerator that produced the ash burned anything *in addition to* household waste, such as what petitioner's facility burns: nonhazardous industrial waste. Thus, a facility like petitioner's would qualify

as a Subtitle C hazardous waste generator if the MWC ash it produced was sufficiently toxic, see 40 CFR §§261.3, 261.24 (1993)—though it would still not qualify as a Subtitle C TSDF, since all the waste it took in would be characterized as nonhazardous. (An ash can be hazardous, even though the product from which it is generated is not, because in the new medium the contaminants are more concentrated and more readily leachable, see 40 CFR §§261.3, 261.24, and pt. 261, App. II (1993).)

Four years after these regulations were issued, Congress enacted the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98–616, 98 Stat. 3221, which added to RCRA the "Clarification of Household Waste Exclusion" as §3001(i), §223, 98 Stat., at 3252. The essence of our task in this case is to determine whether, under that provision, the MWC ash generated by petitioner's facility—a facility that would have been considered a Subtitle C generator under the 1980 regulations—is subject to regulation as hazardous waste under Subtitle C. We conclude that it is.

Section 3001(i), 42 U. S. C. §6921(i), entitled "Clarification of household waste exclusion," provides:

> "A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—
>
> "(1) such facility—
>
> "(A) receives and burns only—
>
> "(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and
>
> "(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

> "(B) does not accept hazardous wastes identified or listed under this section, and
>
> "(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility."

The plain meaning of this language is that so long as a facility recovers energy by incineration of the appropriate wastes, *it* (the *facility*) is not subject to Subtitle C regulation as a facility that treats, stores, disposes of, or manages hazardous waste. The provision quite clearly does *not* contain any exclusion for the *ash itself*. Indeed, the waste the facility produces (as opposed to that which it receives) is not even mentioned. There is thus no express support for petitioners' claim of a waste-stream exemption.[1]

Petitioners contend, however, that the practical effect of the statutory language is to exempt the ash by virtue of exempting the facility. If, they argue, the facility is not deemed to be treating, storing, or disposing of hazardous waste, then the ash that it treats, stores, or disposes of must itself be considered

---

[1]The dissent is able to describe the provision as exempting the ash itself only by resorting to what might be called imaginative use of ellipsis: "even though the material being treated and disposed of contains hazardous components before, during, and after its treatment[,] that material `shall not be deemed to be . . . hazardous.'" *Post*, at 8. In the full text, quoted above, the subject of the phrase "shall not be deemed . . . hazardous" is *not* the material, but the *resource recovery facility*, and the complete phrase, including (italicized) the ellipsis, reads "shall not be deemed to be *treating, storing, disposing of, or otherwise managing* hazardous *wastes*." Deeming a facility not to be engaged in these activities with respect to hazardous wastes is of course quite different from deeming the output of that facility not to be hazardous.

nonhazardous. There are several problems with this argument. First, as we have explained, the only exemption provided by the terms of the statute is for the *facility*. It is the facility, *not the ash*, that "shall not be deemed" to be subject to regulation under Subtitle C. *Unlike* the preamble to the 1980 regulations, which had been in existence for four years by the time §3001(i) was enacted, §3001(i) does not explicitly exempt MWC ash generated by a resource recovery facility from regulation as a hazardous waste. In light of that difference, and given the statute's express declaration of national policy that "[w]aste that is . . . generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment," 42 U. S. C. §6902(b), we cannot interpret the statute to permit MWC ash sufficiently toxic to qualify as hazardous to be disposed of in ordinary landfills.

Moreover, as the Court of Appeals observed, the statutory language does not even exempt the *facility* in its capacity as a *generator* of hazardous waste. RCRA defines "generation" as "the act or process of producing hazardous waste." 42 U. S. C. §6903(6). There can be no question that the creation of ash by incinerating municipal waste constitutes "generation" of hazardous waste (assuming, of course, that the ash qualifies as hazardous under 42 U. S. C. §6921 and its implementing regulations, 40 CFR pt. 261 (1993)). Yet although §3001(i) states that the exempted facility "shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes," it significantly omits from the catalogue the word "*generating*." Petitioners say that because the activities listed as exempt encompass the full scope of the facility's operation, the failure to mention the activity of generating is insignificant. But the statute itself refutes this. Each of the three specific terms used in §3001(i)—"treating," "storing,"

and "disposing of"—is separately defined by RCRA, and none covers the production of hazardous waste.[2] The fourth and less specific term ("otherwise managing") is also defined, to mean "collection, source separation, storage, transportation, processing, treatment, recovery, and disposal," 42 U. S. C. §6903(7)—just about every hazardous waste-related activity *except* generation. We think it follows from the carefully constructed text of section 3001(i) that while a resource recovery facility's management activities are excluded from Subtitle C regulation, its generation of toxic ash is not.

Petitioners appeal to the legislative history of §3001(i), which includes, in the Senate Committee Report, the statement that "[a]ll waste management activities of such a facility, including the *generation*, transportation, treatment, storage and disposal of waste shall be covered by the exclusion." S. Rep. No.

---

[2]"Treatment" means "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous." 42 U. S. C. §6903(34).

"Storage" means "the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste." 42 U. S. C. §6903(33).

"Disposal" means "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters." 42 U. S. C. §6903(3).

98–284, p. 61 (1983) (emphasis added). But it is the statute, and not the Committee Report, which is the authoritative expression of the law, and the statute prominently *omits* reference to generation. As the Court of Appeals cogently put it: "Why should we, then, rely upon a single word in a committee report that did not result in legislation? Simply put, we shouldn't." 948 F. 2d, at 351.[3] Petitioners point out that the activity by which they "treat" municipal waste is the very same activity by which they "generate" MWC ash, to wit, incineration. But there is nothing extraordinary about an activity's being exempt for some purposes and nonexempt for others. The incineration here is exempt from TSDF regulation, but subject to regulation as hazardous waste generation. (As we have noted, see *supra*, at 3–4, the latter is much less onerous.)

Our interpretation is confirmed by comparing §3001(i) with another statutory exemption in RCRA. In the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, §124(b), 100 Stat. 1689, Congress amended 42 U. S. C. §6921 to provide that an "owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of" Subtitle C. This provision, in contrast to §3001(i), provides a complete exemption by including the term "generating" in its list of covered activities. "[I]t is generally presumed that Congress acts intentionally and purposely" when it "includes particular language in one section of a statute but omits it in another," *Keene Corp.* v. *United States*, 508 U. S. ___, ___ (1993) (slip op., at 7–8) (internal

[3]Nothing in the dissent's somewhat lengthier discourse on §3001(i)'s legislative history, see *post*, at 5–7, convinces us that the statute's omission of the term "generation" is a scrivener's error.

quotation marks omitted). We agree with respondents that this provision "shows that Congress knew how to draft a waste stream exemption in RCRA when it wanted to." Brief for Respondents 18.

Petitioners contend that our interpretation of §3001(i) turns the provision into an "empty gesture," Brief for Petitioners 23, since even under the pre-existing regime an incinerator burning household waste and nonhazardous industrial waste was exempt from the Subtitle C TSDF provisions. If §3001(i) did not extend the waste-stream exemption to the product of such a combined household/nonhazardous-industrial treatment facility, petitioners argue, it did nothing at all. But it is not nothing to codify a household waste exemption that had previously been subject to agency revision; nor is it nothing (though petitioners may value it as less than nothing) to *restrict* the exemption that the agency previously provided—which is what the provision here achieved, by withholding all waste-stream exemption for waste processed by resource recovery facilities, even for the waste stream passing through an exclusively household-waste facility.[4]

We also do not agree with petitioners' contention that our construction renders §3001(i) ineffective for its intended purpose of promoting household/nonhazardous-industrial resource recovery facilities, see 42 U. S. C. §§6902(a)(1), (10), (11), by subjecting them "to the potentially enormous

---

[4]We express no opinion as to the validity of EPA's household waste regulation as applied to resource recovery facilities *before* the effective date of §3001(i). Furthermore, since the statute in question addresses only resource recovery facilities, not household waste in general, we are unable to reach any conclusions concerning the validity of EPA's regulatory scheme for household wastes *not* processed by resource recovery facilities.

expense of managing ash residue as a hazardous waste." Brief for Petitioners 20. It is simply not true that a facility which is (as our interpretation says these facilities are) a hazardous waste "generator," is also deemed to be "managing" hazardous waste under RCRA. Section 3001(i) clearly exempts these facilities from Subtitle C TSDF regulations, thus enabling them to avoid the "full brunt of EPA's enforcement efforts under RCRA." Practice Guide §29.05[1].

* * *

RCRA's twin goals of encouraging resource recovery and protecting against contamination sometimes conflict. It is not unusual for legislation to contain diverse purposes that must be reconciled, and the most reliable guide for that task is the enacted text. Here that requires us to reject the Solicitor General's plea for deference to the EPA's interpretation, cf. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–844 (1984), which goes beyond the scope of whatever ambiguity §3001(i) contains. See *John Hancock Mut. Life Ins. Co.* v. *Harris Trust & Savings Bank*, 510 U. S. ___ (1994) (slip op., at 23). Section 3001(i) simply cannot be read to contain the cost-saving waste stream exemption petitioners seek.[5]

For the foregoing reasons, the judgment of the Court of Appeals for the Seventh Circuit is

Affirmed.

---

[5]In view of our construction of §3001(i), we need not consider whether an agency interpretation expressed in a memorandum like the Administrator's in this case is entitled to any less deference under *Chevron* than an interpretation adopted by rule published in the Federal Register, or by adjudication.