

April 9, 2004

OSWER Docket
EPA Docket Center
Environmental Protection Agency
Mail Code 5305T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

ATTN: Docket ID No. RCRA – 2003-0004

RE: Proposed Rule, Conditional Exclusions from Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes

Dear Sir/Madam:

The Hazardous Waste Recycling Task Force (“Task Force”) of the Association of State and Territorial Solid Waste Management Officials (herein referred to as “ASTSWMO”) has reviewed the November 20, 2003 proposed rule containing suggested conditional exclusions from hazardous waste and solid waste for solvent-contaminated industrial wipes (68 FR 65586). The Task Force is comprised of 12 State waste program experts representing all geographic and regional areas of the country, and the comments contained herein reflect their collective technical opinions regarding major aspects of the rule proposal. These comments have not been reviewed by ASTSWMO Board of Directors due to time constraints. Individual States may also submit comments reflecting their own unique perspectives on the proposed components of the rule.

1. Accumulation Standard for Reusable and Disposable Solvent Contaminated Wipes

U.S. EPA proposes to apply the same performance standard to the accumulation of disposable and reusable wipes. The performance standard is that the hazardous wipes must be placed in a non-leaking, covered container.

A majority of the Task Force members believe the proposed standard to cover the wipes container versus instituting a standard to close and seal the container when waste is not being added/removed is not sufficient to prevent the release of solvent vapors and guard against spills if the container is upset. Plywood, cardboard or other combustible materials should not be allowed to serve as a lid for the solvent contaminated wipes container. Containers must be of sufficient integrity and design



to minimize the potential for accidental puncture, tear, rupture or other unintended failure during accumulation, transportation, and handling.

We are familiar with commercially available wipe storage containers that are approved by OSHA for the storage of flammable wipes. Also, there are devices available such as spring-loaded lids that meet the requirements under Subpart CC requirements that would allow easy access for adding wipes to the container. These containers minimize the chance of combustion and reduce evaporation of solvents from the wipes.

Further, we agree that it is appropriate that the packaging used to transport the solvent contaminated wipes for disposal or combustion meet DOT packaging requirements.

2. Accumulation Time Limit for Reusable Solvent Contaminated Wipes

U.S. EPA specified no maximum time limit for the accumulation of reusable solvent contaminated wipes. However, the speculative accumulation provision, 40 CFR 261.1, is applicable to the accumulation of the wipes.

A majority of the Task Force members concur with this approach. It is not necessary to specify a maximum time limit for the accumulation of reusable wipes. This is because, generally, the use and cleaning of the wipes are covered by a contractual agreement between the generator and the laundry that includes a specified schedule for pickup of soiled wipes and delivery of laundered wipes. Further, a generator is charged a fee for each wipe that is not returned to the laundry.

One member supports establishing a finite accumulation period for reusable wipes destined for laundering or dry cleaning. Accumulation of wipes by generators should be for a period of time no longer than 180 days. Laundries and drycleaners should be allowed no more than 10 days to refurbish the wipes once they are received. Transporters should not be allowed more than 10 days total transit time to deliver the reusable wipes at the laundry or drycleaner. Establishing specific accumulation limits will discourage the storage of reusable wipes by a handler in lieu of reclaiming the wipes.

3. Reusable Wipes Eligible for Exclusion

As proposed, the exclusion from the definition of solid waste for reusable wipes only applies to those wipes that are hazardous solely due to the presence of the contaminating solvent. The exclusion does not apply to reusable wipes that exhibit the characteristic of toxicity due to contamination by a non-solvent substance or to reusable wipes that are contaminated with non-solvent listed hazardous wastes. The Task Force members support expanding the wipes eligible for exclusion to include all reusable wipes contaminated with a listed hazardous waste or exhibiting a hazardous waste characteristic.

U.S. EPA states that solvent-contaminated wipes being cleaned and returned into service are more commodity-like than waste-like and therefore, they can be conditionally excluded from the regulatory definition of solid waste. The applicable commodity-like factors are discussed in the preamble. The factors that U.S. EPA uses to support the exclusion would apply to any reusable wipe regardless of the contaminating substance. This is because the commodity is the wipe and not the contaminating substance. The same regulatory basis that supports the exclusion of solvent contaminated wipes from the definition of solid waste supports the exclusion of all reusable wipes that are defined as hazardous waste.

In addition, laundries are subject to regulation under the CWA and have either discharge permits or pretreatment requirements prior to discharging to the publicly owned treatment works (POTW). Therefore, it is unlikely that they would accept contaminated reusable wipes containing substances that would cause a violation of their CWA permit or that would pass through the treatment system untreated.

4. Inter/Intra-Company Transfer of Reusable Solvent Contaminated Wipes for the Purposes of Removing Free Liquids Prior to Laundering

U.S. EPA requests comment on whether inter/intra-company shipments of industrial wipes containing free liquids should be allowed under the conditions of the exclusion. The provision is intended to encourage the recovery of solvents from the wipes prior to laundering.

A majority of the Task Force members do not support the inter-company transfer of solvent-contaminated reusable wipes containing free liquids. It is likely that solvent mixtures would be recovered by third party processors since they would process solvent contaminated wipes from a number of generators using diverse solvents. We believe that it would be difficult to further reclaim such solvent mixtures into usable and marketable solvent products. It is much more likely that the solvent mixture would be sent off and recycled by being burned as a fuel. We do not support the notion that solvents will be widely recovered and recycled by industrial laundries and do not support excluding solvent contaminated wipes, containing free liquids, that are destined for inter-company transfer.

We recognize however, that intra-company wipe handling facilities have control over the types of solvents used in the wipes and therefore, it is likely that the solvent recovered from the wipes can be further recovered to gain a reusable product. A majority of the Task Force members are in favor of the intra-company transfer of reusable wipes for the recovery of solvents. However, several members want this provision to be conditioned as follows: A generator needs to provide a one-time notice to the overseeing agency informing the agency that he is using the exclusion, train employees regarding the proper handling of the wipes, and maintain records of the transfer of the wipes. The receiving intra-company needs to notify the overseeing agency, maintain records regarding the solvents recovered, train employees and have appropriate extraction/reclamation equipment on-site.

5. Exclusion from the Definition of Hazardous Waste for Disposable Wipes Destined for Disposal in a Non-hazardous Waste Landfill

For a variety of reasons, a majority of the Task Force members do not support the exclusion of solvent-contaminated disposable wipes destined for disposal in a non-hazardous waste landfill from the definition of a hazardous waste. There are however, several members who generally do support the exclusion given certain changes are made. Their comments are provided in paragraph 5.B. below. The comments of those members who oppose the exclusion are given in paragraph 5.A.

- A. Five of the twelve States represented on the Task Force do not anticipate that such an exclusion from the definition of hazardous waste for solvent-contaminated disposable wipes would be adopted in their respective States. This is because the proposed exclusion does not adequately consider the risks posed by the disposal of solvent-contaminated disposable wipes in non-hazardous waste landfills, and/or the exclusion is in contradiction with current State-specific law or State-initiated environmental objectives. Further, the proposal sets a precedent promoting disposal over recovery. The specific concerns are explained below.
1. Concerning the disposal of solvent contaminants in non-hazardous waste landfills, many States have taken great steps to minimize the amount of hazardous constituents that enter their non-hazardous waste landfills including the restriction of all but household hazardous waste. Given the concerns that many States have about limited landfill space and the addition of hazardous constituents into their non-hazardous waste landfills, U.S. EPA should consider in the rulemaking encouraging generators of these wipes to dispose of them in a manner that recovers energy. Such an exclusion would, for disposable wipes, promote energy recovery, alleviate concerns over non-hazardous landfill space, limit additional hazardous constituents from entering the non-hazardous waste landfills and provide regulatory relief to the generators of disposable wipes.
 2. During the last several years, some facilities generating soiled industrial wipes have modified their practices to eliminate solvents that are listed and characteristic hazardous wastes. In many cases, the facilities have switched to using reusable wipes, choosing to launder them and avoid hazardous waste regulation of the wipes. There is concern that this proposed rule may provide incentives to facilities to switch from less toxic solvents to those that are characteristic or listed hazardous wastes. Also, of concern is the anti-pollution prevention message this rule proposal sends by allowing solvent contaminated wipes to be disposed of into non-hazardous waste landfills.
 3. U.S. EPA has not considered the ecological risks of disposing solvent-contaminated industrial wipes in municipal landfills. U.S. EPA's risk screening analysis is based on data more than five years old and may not reflect currently applicable assumptions and data. Some of the assumptions used in U.S. EPA's risk screening analysis are

not specific to the target waste stream. For example, according to the risk screening analysis the partitioning model was...“developed based on the equations used to estimate the partitioning of pesticide products in the environment (Jury et al., 1983, 1984, 1990).”

4. U.S. EPA has not considered exposure and ecological risks of disposing solvent-contaminated industrial wipes in non-municipal non-hazardous waste landfills. U.S. EPA's proposal to extend the exclusion of solvent-contaminated wipes to include disposal in landfills that meet the 40 CFR Part 257, Subpart B standards without first evaluating the associated risks raises great concern. Non-municipal non-hazardous waste landfills are held to fewer standards and are less protective than municipal landfills. For example, the standards for non-municipal non-hazardous waste landfills do not require the owner/operator to conduct random inspections of waste loads. Therefore, the owner/operator of the facility would not be required to randomly verify the contents of containers and determine whether or not the wipes meet the "dry standard" or if free liquids are present in the container. Other operational criteria that do not apply to non-municipal non-hazardous waste landfills include, but are not limited to, application of daily cover, restriction of access, and installation of run-on/run-off control systems. In addition, these landfills are not subject to any bottom liner or final cover system design standards or post closure care requirements.
5. U.S. EPA's stated objective of resolving certain issues associated with the management of solvent-contaminated industrial wipes is not accomplished by the proposed rule. First, facilitating pollution prevention and waste minimization opportunities is not accomplished because it does not discourage the generation or encourage the reduction in toxicity of solvent-contaminated industrial wipes. While it is true that the universe of hazardous waste will be reduced by the proposed conditional exclusion, the volume and toxicity of the waste stream will not change significantly. This waste stream will simply be relegated to less stringent management practices currently applicable to non-hazardous wastes. U. S. EPA offers no convincing support for the claim that the proposed rule will significantly impact recycling rates of solvents extracted from contaminated industrial wipes.

Also, U. S. EPA does not adequately support its statement that the proposed rule will foster improved solvent handling practices by generators and handling facilities. In fact, the proposed rule may make it easier for generators and handlers to mismanage solvent-contaminated industrial wipes and evade regulation by storing contaminated wipes in lieu of disposal while claiming intent to dispose at an indefinite future date. This may occur because the proposed rule does not have adequate controls for accumulation time-frames, notification, and reporting activities related to management of solvent-contaminated industrial wipes.

Regarding U.S. EPA's claim that compliance costs will be reduced, it is obvious that any rule excluding entire waste streams from the definition of hazardous waste will have the effect of reducing costs to generators, transporters, handlers, and disposers. However, U.S. EPA has not adequately evaluated whether there are any cost impacts to regulators implementing programs under the CWA, CAA, OSHA, DOT, RCRA C and RCRA D. U.S. EPA's assertion that this proposal will increase consistency in the regulations governing solvent-contaminated industrial wipes is suspect. As U.S. EPA notes, most States currently regulate disposable solvent-contaminated industrial wipes as a hazardous waste. Under this proposal, if finalized without change, authorized States may forgo adoption of the rule, creating a patchwork of management requirements where previously there was consistency among states.

6. The proposed conditional exclusion for solvent-contaminated industrial wipes that are destined for disposal is analogous in many ways to delisting a specific waste stream. The main difference is that the conditional exclusion process is initiated by U.S. EPA and is based on an evaluation of the general waste characteristics of a target class of waste, while the delisting process is initiated by the waste generator for a particular waste stream. However, the risk implications are virtually identical because most delisting reviews consider disposal in a municipal landfill as a worst-case management scenario for the delisted waste stream. Therefore, U.S. EPA should consider applying similar criteria to both risk evaluations. U.S. EPA has developed the Delisting Risk Assessment Software (DRAS) program for evaluating the risk of disposing a delisted waste in a municipal landfill. When this model is used to evaluate risk associated with the disposal of solvent-contaminated industrial wipes, the outcome appears to be inconsistent with the conclusions of U.S. EPA's risk screening analysis. In fact, the DRAS model may indicate a significant risk associated with disposal of solvent contaminated industrial wipes in a municipal landfill, even when limited to just the solvents identified in Table 5. U.S. EPA should review the results of applying the DRAS model to the disposal of solvent-contaminated industrial wipes and reconcile any variation in conclusions between it and the risk screening analysis model used in support of the proposed rule.

B. A minority of the Task Force members supports the development of an approach that excludes solvent-contaminated disposable wipes from the definition of hazardous waste. However, several of the proposed conditions need to be changed in order to improve the enforceability and implementation of the exclusion. We offer the following comments regarding certain components of the exclusion.

1. Inter/Intra-Company Transfer of Excluded Wipes: None of the Task Force members support excluding solvent-contaminated disposable wipes that are transferred, inter-company, for the purposes of processing the wipes for the attainment of the "dry standard" prior to disposing of them at a non-hazardous waste facility. There is no outstanding environmental benefit or burden reduction benefit to the generator that

supports such an exclusion. The management of the wipes is identical to waste management where the solvent and solvent contaminated wipes will be managed by a third party, there will likely be free liquids present in the container, and the recovered solvent will likely be burned for energy recovery.

Several Task Force members support the intra-company transferring of disposable solvent-contaminated wipes for the purposes of processing to attain the "dry standard" prior to their disposal in a non-hazardous waste facility. Such an approach can promote the recovery of spent solvent for further reclamation and use by the generator, and reduce costs to the generator for virgin solvent, third party reclamation and disposal of the wipes. Further, the wipes remain in the control of the generator which reduces his liability due to third-party handling. Intra-company transfers should include affiliates, subsidiaries, and parent companies.

2. Dry Condition for Wipes Destined for Land Disposal: A disposable solvent contaminated wipe is considered "dry" when it contains less than five grams of solvent. U.S. EPA proposes that wipes contaminated with eligible solvents may be disposed of into a non-hazardous waste landfill if the "dry" standard is met.

In response to the "dry" provision, U.S. EPA has proposed a standard for eligible solvent-contaminated disposable wipes that will be very difficult to enforce consistently. We recommend a performance-based provision that specifies solvent removal processes that can be used to attain the "dry" standard. Such a provision can be easily implemented by generators and verified by inspectors. The specified processes need to result in wipes that contain minimal solvent contamination and will attain the standard of "no free liquids" in the container when sent off-site.

U.S. EPA should specify in the rule those extraction technologies, including wringing, if appropriate, that can be used by a generator to attain the "no free liquids" standard in the container. Generators should be required to process the disposable wipes by one or more of the given processes. If a generator uses one or a combination of the specified processes then it is presumed that no free liquids are present and that the dry standard is met. Further, an exemption procedure should be included in the rule to exempt a generator from the specified process standard if he can demonstrate that the solvent-contaminated wipes do not need to be processed to attain the "no free liquids" standard.

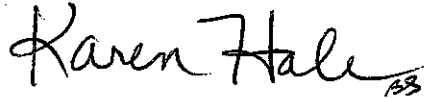
3. Accumulation Time: U.S. EPA proposes no maximum time limit for the accumulation of disposable solvent contaminated wipes. It appears that solvent contaminated wipes destined for disposal and combustion could be accumulated indefinitely.

Under the proposal, disposable wipes meeting the "dry standard" are not allowed to be discarded along with the generator's regular non-hazardous wastes. The disposable wipes will need to be segregated and transported to the disposal facility or combustion facility separately. This transportation will be a burden to the generator either in money spent to have the wipes transported separately by a third party or in time and money expended by the generator to self-transport the wipes. Therefore, by not having an accumulation time limit, generators may over-accumulate wipes in an effort to avoid expending the resources necessary to get the disposable wipes to the disposal or combustion facility. The indefinite accumulation of solvent contaminated rags could increase the fire hazard that they pose.

We suggest that U.S. EPA set a limit on the length of time for which generators may accumulate excluded solvent contaminated disposable wipes. This is so generators do not store the wipes in lieu of disposal.

We appreciate the opportunity to provide comment on this proposed rule. Please feel free to contact me at 614-644-2927 or via e-mail at karen.hale@epa.state.oh.us if you have any questions or need further clarification on these Hazardous Waste Recycling Task Force comments.

Sincerely,

A handwritten signature in black ink that reads "Karen Hale". The signature is written in a cursive style. There is a small mark or initials "BH" at the end of the signature.

Karen Hale (OH)
Chair, ASTSWMO Hazardous Waste
Recycling Task Force

cc: Katherine Blanton, EPA
ASTSWMO Hazardous Waste Subcommittee