Since 1932
SMART | SECONDARY MATERIALS AND RECYCLED TEXTILES
The Association of Wiping Materials, Used Clothing and Fiber Industries

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Hazardous Waste Program
PO Box 176
Jefferson City, MO 65102-0176
Attn: Tim Eiken
tim.eiken@dnr.mo.gov

Dear Mr. Eiken:

I am writing on behalf of the Secondary Materials and Recycled Textiles Association (SMART) to express support for the Missouri Department of Natural Resource's plans to adopt by reference the U.S. Environmental Protection Agency (EPA) "Conditional Exclusions from Solid and Hazardous Waste for Solvent-Contaminated Wipes" [78 Fed. Reg. 46448 (July 31, 2013)], including provisions that provide a conditional exclusion from the definition of hazardous waste for non-laundered wipes.

As you are likely aware, this rulemaking was finalized by the EPA after more than 28 years of consideration, rigorous scientific analysis and input from a broad range of impacted stakeholders, including Secondary Materials and Recycled Textiles Association (SMART). Its purpose is to provide a consistent regulatory framework that is appropriate to the level of risk posed by solvent-contaminated non-laundered wipes and laundered shop towels in a way that maintains protection of human health and the environment, while reducing overall compliance costs for industry, many of which are small businesses.

As we will expand upon below, the conditional exclusion for non-laundered wipes and rags would bring to successful culmination a nearly three decade effort to establish an appropriate regulatory regime for industrial wipes. It would also achieve myriad benefits including: increasing flexibility/simplicity for the vast number of domestic small businesses that use industrial wipes on a daily basis by creating a uniform, national regulatory regime; reducing unnecessary regulatory burdens and confusion while being protective of human health and the environment; enhancing compliance of the rules; and creating new economic and job opportunities for U.S. businesses.

Background

Founded in 1932, SMART is a non-profit trade association that represents nearly 200 small and medium-sized companies involved in using, converting and recycling pre- and post-consumer textiles and other secondary materials.

The activities of this nearly $1 billion industry, which is comprised of mostly small, family-owned operations, are very diverse. Some SMART members recover and process "pre-consumer" by-products from the textile and fiber industries to be used in new materials for automobiles, home furnishings, and a variety of other products. Other buy and sell "post-consumer" second hand textiles, purchasing excess textile donations collected from various charities and commercial sources (e.g. Salvation Army, Goodwill, hospitals, hotels, industrial laundries, etc.). Some of this recovered material becomes wiping and polishing cloths used in institutional and industrial settings some other is reprocessed into fibers for furniture stuffing, upholstery, insulation, building and a variety of other products. The items that can be reused as apparel are usually exported, typically to least developed and developing countries where demand for second hand clothing is especially high.

Through these business activities, for-profit textile recyclers create meaningful employment for some 15,000-20,000 people who drive their local economies and generate much-needed tax revenue across the United States. These companies also make vital contributions to state and national environmental goals through the recycling of nearly 4 billion pounds of used clothing and other textile waste each year that would have otherwise gone to a landfill. Yet despite the industry's contributions, recent data shows that this figure is a mere 15 % of the total and Americans still throw away some 21 billion pounds of used textiles annually. These realities have prompted officials in New York City, San Francisco, Connecticut, Massachusetts, Rhode Island and elsewhere to pursue textile recycling one way to achieve their broader waste reduction goals.

As mentioned above, SMART has an interest in seeing this rulemaking implemented in its entirety because our members recover textiles that are turned into non-laundered wiping cloths/rags used in thousands of industrial facilities across the country for cleaning and degreasing equipment. Consequently, SMART has long had a keen interest in ensuring that environmental regulatory requirements for industrial wiping products are appropriate to the realities of their use and the risks they can pose, and thus has been very actively involved in the rulemaking since its inception.

Historically, under Subtitle C of the Resource Conservation and Recovery Act (RCRA), non-laundered wipers that contained even one drop of "listed" solvent were regarded as hazardous waste when discarded. Although these rules were intended to eliminate potential loopholes, they were so stringent that they had the unintended consequence of subjecting numerous types of generally non-hazardous materials, including non-laundered industrial wiping products, to overly burdensome and unnecessary waste management requirements. At the same time, wipes that are laundered (a.k.a. "shop towels") have generally not been subject to federal hazardous waste regulations due to an EPA decision to defer determinations and interpretations regarding regulation of solvent-contaminated industrial wipes to states or EPA regions.[1] Numerous states have provided laundered shop towels a conditional exclusion from the definition of hazardous or solid waste, but these

[1] Policy Memorandum from Mike Shapiro, Director, Office of Solid Waste, to EPA Waste Management Division Directors, February 14, 1994.

conditions vary considerably and are typically provided in informal, hard-to-find, and unenforceable "regulatory interpretations," leaving a patchwork of different, confusing and often conflicting requirements throughout the country.

In 1985, manufacturers of non-laundered wipes formally petitioned EPA to conditionally exclude wipes from the RCRA definition of hazardous waste, arguing that these materials are over-regulated because the amount of solvent in the wipes is typically insignificant and because they do not pose a meaningful threat to human health and the environment. In 1987, the Agency received a similar petition to exclude laundered wipes from the RCRA definition of solid waste.

Agreeing that these products are over-regulated and finding that managing disposable wipes as solid rather than hazardous waste under RCRA was protective of human health and the environment, EPA included a conditional exemption for them in its 1992 Hazardous Waste Identification Rule (HWIR) proposal, again in its 1993 redefinition of solid waste proposal, and still again in the Reengineering RCRA for Recycling report issued in 1994.

Unfortunately, none of these efforts resulted in a final rulemaking that resolved the issue of a conditional exclusion for wipes/rags. EPA spent the next nine years evaluating industrial wipes management options, conducting field visits, collecting data on wiper use and disposal practices, consulting and receiving vast amount of input from stakeholders, and vetting various options. In 2003, nearly 20 years after receipt of the initial petition, the EPA finally proposed a rule to establish a conditional exclusion from the RCRA definition of hazardous waste for non-laundered wipes, and also a conditional exclusion from the RCRA definition of solid waste for laundered shop towels. Scores of stakeholders, including SMART, formally weighed-in on the 2003 proposal. The EPA ultimately decided to redo the risk analysis underlying the 2003 proposal to ensure that it adequately considered comments about possible shortcomings in its initial risk assessment and to account better for the impact on the type of landfill that would be receiving wipes/rags and laundry sludge. After spending the next several years working on the revised assessment, the EPA published in October 2009 a Notice of Data Availability ("NODA") describing the details of its revised risk analysis. The updated assessment included additional data and information, a new model to evaluate the behavior of solvents in a landfill, revised fate and transport modeling, and an improved approach from the 2003 risk screening analysis to compare the estimates of the solvent quantities disposed to the risk-based solvent loading levels. This includes a methodology to estimate allowable amounts of spent solvents that can be disposed of safely based on modeling scenarios defined in terms of the solvent, landfill type (lined or unlined), exposure route (ingestion, inhalation, dermal absorption), contact media (groundwater, ambient air), and receptor (child or adult). *See generally* 78 Fed. Reg. 46451-54. It was subjected to public comment and external peer review according to established EPA and Office of Management and Budget policies.[2] Based on this extremely rigorous analysis, the EPA ultimately concluded that both solvent-contaminated wipes and rags (except for those tainted with trichloroethylene) and laundry sludge can be disposed of in lined, municipal solid waste landfills while still being protective of public health and the environment.

[2]You can read a summary of the extensive risk analysis process in the preamble to final rule. Documents supporting the comprehensive risk analysis include "Landfill Loadings Calculations for Disposed Solvent-Contaminated Wipes and Laundry Sludge Managed in Municipal Landfills," October, 2008; "Risk-Based Mass Loading Limits for Solvents in Disposed Wipes and Laundry Sludges Managed in Municipal Landfills," October, 2009 and "F001–F005 Solvent-Contaminated Wipes and Laundry Sludge: Comparison of Landfill Loading Calculations and Risk-Based Mass Loading Limits," August, 2009, can be found in the docket associated with this rulemaking [RCRA Docket Nos. 2003-0004].

Finally, in July 2013, after nearly 30 years under development, the EPA published its final solvent contaminated wipes rule. As noted, the regulation creates a conditional exclusion from the definition of hazardous waste for non-laundered wipes/rags and another one conditional exclusion from the definition of solid waste for laundered shop towels. As previously noted, non-laundered wipes and rags that contain trichloroethylene (TCE) are not eligible for exclusion.

Requirements for achieving such exclusions are nearly the same for both laundered and non-laundered wiping products. Under the final rule, in order to be eligible for exemption, generators of both wipes and shop towels must:

- Ensure that wipes and shop towels are accumulated, stored, and transported in non-leaking, closed containers capable of containing free liquids and labeled "Excluded Solvent-Contaminated Wipes."
- Not accumulate wipes/shop towels for longer than 180 days.
- Ensure that when wipes are transported off-site, they contain "no free liquids" as determined by the Paint Filter Liquids Test (EPA Methods 9095B).
- Maintain recordkeeping. Generator facilities will have to keep documentation onsite that includes: 1) the name and address of the landfill/combustor or laundry/dry cleaner receiving wipes/towels when sent off site; 2) records showing that the 180-day accumulation time limit is being met; 3) a description of the process the generator is using to meet the "no free liquids" condition.

Assuming these standards are met, non-laundered wipes will be able to be disposed in either a lined, non-hazardous waste landfill or in a hazardous waste landfill; a municipal waste combustor regulated under New Source Performance standards (section 129) under the Clean Air Act or a hazardous waste combustor or hazardous waste boiler or industrial furnace. Meanwhile, laundered shop towels may be sent to either an industrial laundry or dry cleaner that is subject to effluent discharge requirements under the Clean Water Act and has a National Pollutant Discharge Elimination System (NPDES) permit or is subject to indirect discharge limitations imposed by a publicly-owned treatment works (POTW).

Now that the rule has been finalized, states are left to decide whether to implement the final product. SMART argues that doing so would achieve numerous laudable objectives as outlined below.

1) Increase Regulatory Flexibility/Simplicity for Domestic Small Businesses and Enhance Regulatory Compliance by Creating a Uniform, National Regulatory Regime

As the EPA itself noted, until the rule was finalized, its failure to clearly establish the regulatory status of industrial wipes under RCRA led to the development of diverse and confusing regulatory schemes for these materials across various states, a situation exacerbated by the fact that very few states had set forth their positions regarding laundered industrial wipes in transparent, promulgated regulations. *See generally* 68 Fed. Reg. 65591-92. This made it difficult for the hundreds of thousands of U.S. businesses that use these wipes in their day-to-day operations, the vast majority of which are small businesses, to comply with regulatory requirements relating to wipes. As the agency notes in the preamble to its 2003 proposed rule, "generators of solvent-contaminated wipes have asked EPA over the years to clarify our position on both disposable and reusable wipes." 68

Fed. Reg. 65591. As a representative from the printing industry noted during a March 9, 2004 public meeting on this matter, "Over the years the printing industry has continued to identify the ambiguity of the state policies as they apply to both disposable and reusable solvent contaminated wipes as a major concern...It has long been our intention to encourage the U.S. EPA to establish a federal regulation that levels the playing field and provides an element of consistency to this issue."[3] Indeed, a review of the administrative record for this rulemaking reveals numerous submissions from the printing, electronics, automotive and other industries calling for the EPA to establish a clear, uniform national policy to bring consistency and enhance their ability to comply. These same groups cheered the EPA when it finally delivered a simple and straightforward rule that clearly lays out generator obligations to achieve their respective exclusions for both classes of products.

2) Prevent Unnecessary Over-Regulation, Increase User Options, and Create New Economic Opportunities

Over the years, impacted industries including SMART's have submitted reams of scientific data demonstrating that wiping products are indeed over-regulated and can be handled, managed and disposed of safely without the onerous controls currently in place. EPA shared this position, as evidenced by numerous statements in the administrative record for the wipes rule in which it notes that these materials are excessively regulated, and the fact that EPA had released several proposals that attempted to conditionally exclude wiping products from onerous hazardous waste requirements.[4]

This well-established over-regulation of non-laundered wipes and rags obviously creates costs that are unnecessary to achieve environmental objectives. One of these is limiting the wiper options available to those who use wipes. Generators in clean environments such as electronics, bio-pharmaceutical, medical device and other high tech manufacturing frequently prefer using non-laundered wipes and rags due to various attributes such as increased sterility, absorbency, texture and low lint particles. However, due to the additional costs of complying with the excessive hazardous waste management restrictions applicable to non-laundered wipes and rags, wipes users often feel compelled to use laundered shop towels in situations where non-laundered wipes or rags are better suited to the task at hand. For example, in a February 26, 2010 submission to the EPA, the National Automotive Dealers Association, which represents some 17,000 automotive and truck dealers, the vast majority of which are small businesses, called upon the EPA to finalize revisions to the existing waste regulations, noting that "[d]ealerships and other small businesses want the ability to choose among wipe products," and contended that making these regulatory revisions would create a more even playing field between disposable and reusable wipes.

Moreover, this over-regulation hasn't merely impacted users of wipes; it has also unnecessarily burdened manufacturers and distributors of these products. Conservative industry estimates show that eliminating this needless over-regulation of disposable wipes and replacing it with smart, uniform, and straightforward national management and disposal requirements described in the final rule will open up a new market for these products, in the range of $718 million annually. That's

[3] March 9, 2004 Statement of Marci Kinter, Specialty Graphic Imaging Association International.

[4] For example, a Technical Background document supporting the 2003 proposed rule states that "[c]urrent federal rules appear to over-regulate these materials, such as when very small amounts of hazardous solvent are applied to industrial wipes."

$718 million in jobs creation, and $718 million in U.S. economic growth that is lost each year due to unwarranted over-regulation.[5]

3) Bring to a Successful Conclusion a Nearly Three Decade EPA Effort

As noted in detail above, the EPA invested years of staff work and a lot of money studying this issue, conducting public meetings, engaging and responding to stakeholder input, gathering and evaluating data, conducting internal and external government reviews, and creating two risk analyses. Based on this extensive work, EPA managed to develop a well-balanced rule that achieves numerous laudable objectives detailed above. In recognition of its many benefits, 19 states have already implemented the rule in its entirety, while the vast majority of others including Missouri indicate they plan to do the same.[6]

SMART would strongly urge Missouri to implement this rulemaking in its entirety as quickly as possible. As already noted, doing so will: 1) rectify unnecessary over-regulation in existing hazardous waste rules; 2) bring clarity and certainty to the covered community by creating a uniform, national regime; 3) and aid the vast number of small businesses across the nation who use these wipes on a daily basis in creating new economic and job opportunities, all while being protective of human health and the environment.

Should you have any questions or need further information, I can be reached directly at 443-640-1050, ext. 105 or via e-mail at Jackie@kingmgmt.org or you may contact SMART's government affairs consultant Jessica Franken at 703-521-0545 or via email at jessica@thefrankengroup.com.

Sincerely,

Jackie King
Executive Director
Secondary Materials and Recycled Textiles Association

[5] "INDA Impact" Report, 2014.
[6] Based on direct contacts in 2014 and 2015 with state officials responsible for overseeing the rule's implementation.