TO: Internet Address: rcra-docket@U.S. EPA.gov

RE: RCRA Docket #: RCRA-2003-004

Conditional Exclusions from the Definitions of Hazardous Waste and Solid Waste for Solvent Contaminated Wipes

DATE: April 7, 2004

RCRA DOCKET:

Please find enclosed the Ohio Environmental Protection Agency's comments on U.S. EPA's proposal to modify the hazardous waste rules to conditionally exclusion from the definitions of hazardous waste and solid waste solvent contaminated industrial wipes. This proposal was issued November 20, 2003, in the *Federal Register* (Vol. 68, No. 224, pg. 65586).

Ohio EPA requests that these comments be made an official part of the record. If you have any questions or need additional clarification regarding the enclosed comments, please do not hesitate to contact Karen Hale, Division of Hazardous Waste Management, at (614) 644-2917 or karen.hale@epa.state.oh.us

Sincerely,

Christopher Jones
Director

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cc: Michael A. Savage, Chief, DHWM
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1. General Comment:

Over the years, Ohio EPA has encountered generators who argue that solvent contaminated wipes are not listed hazardous waste. The arguments include claims that solvent contaminated wipes are manufacturing wastes and are not included in the listing description for spent solvents. In addition, the contained-in policy does not cause the wipes to be listed because the policy was developed to address environmental media and the mixture rule does apply because the resulting waste was not the mixing of two separate waste streams. This federal register does not provide a regulatory explanation as to why wipers contaminated with listed solvents must be managed as listed hazardous waste. We believe that U.S. EPA should clearly state, in the preamble to the final rule, the legal basis for jurisdiction over wipers contaminated with listed solvents before they release them from their jurisdiction through a conditional exclusion. U.S. EPA's use of policy to regulate hazardous waste presents difficulty for Ohio because our state laws prohibit us from applying policies as if they are rules.

2. General Comment:

Ohio EPA suggests that in the preamble to the final rule U.S. EPA explain the relationship or interaction the final rule will have on the applicability of the derived-from rule and the land disposal restrictions alternative treatment standards for debris with regards to solvent contaminated wipes.

3. Disposable Solvent Contaminated Wipes Excluded from the Definition of Hazardous Waste

A. <u>Accumulation Standard</u>

U.S. EPA proposes to apply a performance standard to the accumulation of disposable wipes that will be disposed of in nonhazardous waste landfills or combusted. The performance standard is that the hazardous wipes must be placed in a nonleaking, covered container.

Ohio EPA supports the use of a performance standard for the accumulation of disposable wipes. The performance standards proposed are appropriate and focus on the aspects of contaminated wipes management that are most important that is leaking containers which would indicate the presence of free liquids and the reduction of emissions from the container.

We 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 sufficient to guard against incompatible wastes being inadvertently discarded into the container, to reduce emissions from the container and to accommodate easy use of the container by the generator.

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.

B. Use of Cloth and Plastic Bags

We do not object to the use of plastic bags for the accumulation of solvent contaminated wipes or to their use in transporting the wipes if such containers are permissible for use according to DOT requirements. These types of containers would further ensure that no free liquids are present in the container.

If free liquids are present in such a container, they can be easily detected by the generator, transporter, or inspector; free liquids could be detected in the corners of a plastic bag. This is an advantage because the generator, transporter or inspector does not need to unload the container to determine if free liquids are present.

Also, since the presence of free liquids would be readily evident, the generator can take immediate action to address the situation and adjust his procedures to attain the no free liquids standard. He can reduce the amount of solvent used per application or institute the use of an extraction method to remove the solvent from the wipes.

Although cloth and woven polypropylene bags would also allow the easy detection of free liquids, we are hesitant to support their use due to the permeability of such a container and the release of solvent through evaporation. We suggest that U.S. EPA further evaluate the use of cloth and polypropylene bags to determine the air emissions from such a bag containing solvent contaminated wipes and no free liquids does not pose an unacceptable risk to handlers of the wipes.

C. 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 permitted to be discarded along with the generator's regular nonhazardous wastes. Therefore, 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 limit, generators may over accumulate wipes in an effort to avoid expending the resources 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 amount of solvent contaminated wipes that can be accumulated by a generator at any one time. The maximum allowable amount of wipes accumulated should be determined considering both the cost of transportation and the risk posed from long term storage of solvent contaminated wipes.

D. Disposable Wipes Eligible for Exclusion

As proposed, the exclusion from the definition of hazardous waste for disposable wipes only applies to those wipes that are hazardous solely due to the presence of the contaminating solvent. The exclusion does not apply to disposable wipes that exhibit the characteristic of toxicity due to contamination by a nonsolvent substance or to disposable wipes that are contaminated with nonsolvent listed hazardous wastes. Further, 11 solvents and any solvent blend containing the 11 solvents are not eligible for exclusion if destined for disposal in a nonhazardous waste landfill. Ohio EPA agrees with the eligibility requirements for disposable solvent contaminated wipes.

E. 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 nonhazardous waste landfill if the dry standard is met. Further, U.S. EPA requests comment on whether wipes contaminated with solvents may be disposed of into a nonhazardous waste landfill if the wipes meet only a "no free liquids" standard or "no free liquids when wrung" approach.

This component of the rule needs to be implementable and enforceable. Furthermore, the methods used to remove solvent from the wipes must be sufficient to ensure that off-site disposal and combustion facilities do not receive free liquids. Therefore, we support the use of the five gram standard in conjunction with an approach that specifies the high-extraction technologies that can be used in order to presume that the five gram standard is attained. In order to allow for the use of new and innovative technologies that may be developed in the future, a process should be included in the rule that would allow the use of an alternate extraction technology following evaluation and approval by U.S. EPA.

We do not support the finalization of the "no free liquids" or "no free liquids when wrung" approaches because it is unlikely that sufficient solvent will be removed to ensure that no free liquids are in a container of wipes when sent off-site for disposal. As proposed, the rule prohibits the disposal or combustion of free liquids by disposal facilities, therefore a solvent removal standard needs to be instituted that supports attainment of the prohibition.

F. Intra-Company Transfer for Processing to Attain Dry Standard Prior to Disposal or Combustion

The proposal includes a provision to allow disposable solvent contaminated wipes that contain free liquids to be transported to a facility owned by the generator of the wipes for the purposes of removing the solvent from the wipes to attain the dry standard. The wipes are required to be transported according to DOT regulations. Ohio EPA does not oppose the inclusion of the provision. Such a provision can promote the recovery of spent solvent 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.

4. Reusable Solvent Contaminated Wipes Excluded from the Definition of Solid Waste

A. Accumulation Standard
Same as above

B. Use of Cloth and Plastic Bags
Same as above

C. Accumulation time
No maximum time limit is specified 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. Ohio EPA concurs 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.

D. 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 nonsolvent substance or to reusable wipes that are contaminated with nonsolvent listed hazardous wastes. Ohio EPA believes that the wipes eligible for exclusion should be broadened to include all reusable wipes contaminated with a listed hazardous waste or that exhibit 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 meet the definition of hazardous waste.

Further, laundry facilities frequently work closely with their customers to learn the purposes for which the wipes will be used, the chemicals being used, the extent of contamination expected on the wipe and the constituents of concern that may be present on the wipes. This last part is especially important. Laundries are subject to regulation under the CWA and have either discharge permits or pretreatment requirements prior to discharging to the publically owned treatment works (POTW). Therefore, they probably would not accept contaminated wipes containing substances that would cause a violation of their CWA permit or that would pass through the treatment system untreated.

Lastly, the accumulation and management performance standards proposed for the exclusion of reusable solvent contaminated wipes would also be protective for wipes contaminated with hazardous substances other than solvents.