

EPA COMPLETES LONG-AWAITED "WIPER RULE": RULE COULD SPELL OPPORTUNITY FOR WIPES, RAGS

Well, it took nearly thirty years, but the U.S. Environmental Protection Agency (EPA) has finally published its long-awaited, final solvent-contaminated wipes rule (a.k.a. “wiper rule”), thereby better leveling the regulatory playing field between non-laundered wipes and rags and laundered shop towels. As many know, SMART and its members were a driving force throughout the decades. Now that it has been completed once and for all, many are wondering what the regulation says and what it means for our industry.

Background Tens of thousands of industrial and commercial facilities use non-laundered nonwoven wipes, rags and laundered shop towels with solvents for cleaning their equipment. Historically, spent, non-laundered wipers contaminated with solvents have been identified as hazardous under the Resource Conservation and Recovery Act (RCRA), and subject to overly-stringent and expensive handling and disposal obligations. Federal regulators, meanwhile, have generally not regarded laundered shop towels contaminated with the same solvents as waste, since they are re-used. Instead, they have relied on states to establish the frameworks for their handling. The end result has been that non-laundered wipes have faced federal regulation while laundered shop towels have been subject to a mishmash of often conflicting state requirements. This has created a confusing regulatory environment for wipes users (a.k.a. “generators”) and an unwarranted market advantage for laundered shop towels.

In 1985, industry petitioned the EPA to conditionally exclude non-laundered wipes from the RCRA definition of hazardous waste, arguing that they do not pose a threat to human health and the environment because of the insignificant amount of solvent in the wipes. The agency agreed these products were likely being over-regulated and after many years of study, false starts and broad stakeholder engagement, released a proposed rule in 2003. That proposal called for a conditional exclusion from the definition of hazardous waste for non-laundered wipes, and a conditional exclusion from the definition of solid waste for laundered shop towels. Unfortunately, the 2003 version specified far more onerous conditions for non-laundered wipes versus shop towels. For example, in addition to more stringent labeling and container obligations, the proposal said non-laundered wipes destined for non-hazardous waste landfills would have to be “dry” (i.e., contain less than five grams of solvent) and could not contain any amount of 11 solvents the agency had tentatively deemed too risky for landfills. Meanwhile, laundered shop towels needed only show they contained “no free liquids” (not be dripping) prior to washing to be exempt from the definition of solid waste.

Scores of stakeholders including SMART weighed-in, objecting to these and other discrepancies. After years of work, which included digesting substantial public input, redoing the rule’s underlying risk analysis, many delays, and countless discussions with SMART, the agency published its final version of this highly-anticipated rule in the July 31 *Federal Register*.

What Does the Rule Say? As was the case in the earlier proposal, it creates a conditional exclusion from the definition of hazardous waste for non-laundered wipes and a conditional

exclusion from the definition of solid waste for laundered wipes. The exemptions are available for solvent-contaminated wipes that: 1) contain one or more of the F001-F005 “listed” solvents or the corresponding P- or U-listed solvents; 2) exhibit a characteristic of hazardous waste because of the presence of a solvent listed in the U.S. Code of Federal Regulations, 40 CFR Part 261; and/or 3) exhibit the hazardous waste characteristic of ignitability because of the presence of one or more non-listed solvents. These exclusions are only applicable to the wipes and shop towels themselves, EPA notes, and any solvent extracted or remaining in containers will still be considered solid waste and potentially subject to hazardous waste regulations. Additionally, non-laundered wipes that contain trichloroethylene (TCE) are not eligible for exclusion.

The agency apparently heeded concerns voiced by SMART and others about the 2003 proposal, eliminating the 5 gram limit and prohibition on 11 solvents (except, as noted, for wipes contaminated with TCE). Meanwhile, requirements for achieving exclusion are nearly equivalent between the two classes of 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.”** A “closed” container does not necessarily mean sealed, simply that there is complete contact between the fitted lid and rim. However, once the container is full or being transported, it must be sealed in such a way that it prevents the release of volatile organic emissions or a spill if it tips over. This standard is performance-based, EPA points out, to give facilities flexibility in determining which option best suits their needs.
- **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).** This is a performance standard, and generators are free to use any of a range of methods to remove solvent from the wipe (e.g. centrifuging, mechanical-wringing, microwave technology, etc.). Generators will not need to test every wipe/shop towel, but rather ensure it would meet the standard if a test was performed. They can do that by conducting sampling or by using knowledge as to how much solvent is present in each wipe. As noted below, they must also document how they are meeting the “no free liquids” condition.
- **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 of 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).

What's Next? Although the final rule cites a Jan. 31, 2014 effective date, that time frame applies only to those states that do not have an authorized RCRA program, which includes Alaska and Iowa. In reality, implementation of the rule throughout the rest of the states could take up to two years depending on their individual rulemaking process. Further, as has been the case since the rule was first conceived, states are not required to adopt the provisions that affect non-laundered wipes because they are deregulatory. They are only required to implement rules that are more stringent than current law. However, in the preamble, EPA explicitly encourages states to pick up the entire rule as quickly as possible to enhance regulatory uniformity for businesses that use wipes. Moreover, based on contacts with officials knowledgeable about RCRA rule implementation, it appears likely that most states – apart from some on the coast (California, Washington, Oregon, New York and some in New England) which tend to resist deregulatory measures – will likely pick up the entire rule.

Assuming most choose to adopt the rule in its entirety, it could create new marketing opportunities for makers of non-laundered wipes, both by neutralizing competitors' arguments that their products are not subject to federal regulation (since generators will need to meet the various conditions to achieve the solid waste exemption) and by creating the opportunity for non-laundered wipes to be disposed in non-hazardous waste landfills. With this in mind, SMART will plan to work with states to encourage them to adopt the rule in its entirety as quickly as possible and will keep members informed about opportunities to get involved as they come up.

Update as of July 2014: Based on recent contacts with officials in all 50 states, our earlier predictions about state implementation of the rule more or less appear to be playing out. As of July 2014, nine states—Alaska, Florida, Iowa, Illinois, Louisiana, North Carolina, New Jersey, Pennsylvania and Virginia—have implemented the rule in its entirety, including the deregulatory provisions affecting disposable wipes. Meanwhile, some 28 states say they either plan to or are highly likely to adopt the entire rule, including the conditional exclusion for disposable wipes. Another nine states—Connecticut, Delaware, Georgia, Maryland, New Hampshire, New York, Maine, Vermont and Washington—are still evaluating the rule. Four states—California, Hawaii, Minnesota and Rhode Island—have said they won't be implementing the rule or its deregulatory provisions affecting non-laundered wipes and rags.

The timeline for adopting the rule varies greatly from state to state depending on its individual rulemaking process, with some states predicting adoption in a matter of months and others projecting up to three years. SMART will continue to monitor and report on states that adopt the rule, but EPA also provides the status of state incorporation on its website at:

http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes_fnl_rul_effctv.htm

To view the July 31 final rule, visit: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-31/pdf/2013-18285.pdf>.

A summary chart of the final rule is available at http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/sumry_chrt_wipes_fnl_rul_070913.pdf.

An FAQs document answering questions about rule can be found at: http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes_faq.htm

More information about this rulemaking: <http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes.htm>