

Division Directors Regions I–X in Appendix B). We did this because we felt, at that time, that these questions were best addressed by the regulatory officials responsible for implementing the regulations.

This policy led to the application of different regulatory schemes for both types of industrial wipes in EPA regions and states. Although the states differ in the details of their policies, in general, they regulate disposable industrial wipes as a hazardous waste when they are contaminated with a solvent that is listed or exhibits a hazardous waste characteristic. On the other hand, many, but not all, states provide regulatory relief for reusable contaminated wipes sent to an industrial laundry or other facility for cleaning and reuse. In about half the cases, this regulatory relief is in the form of an exclusion from the definition of hazardous waste, whereas other states provide an exclusion from the definition of solid waste. The substantive difference between these two approaches is that materials excluded from the definition of solid waste are not considered a waste at all, and are not subject to Federal RCRA regulation, whereas materials excluded from the definition of hazardous waste are considered to be wastes that, when certain conditions are met, do not need to be managed as hazardous wastes.

For reusable industrial wipes, the conditions for the various exclusions vary from state to state, but most require that the containers of wipes not contain free liquids, and require that the laundry discharge to a Publicly Owned Treatment Works (POTW) or be permitted under the Clean Water Act. Some states have established other requirements such as requiring generators to manage contaminated wipes according to the hazardous waste accumulation standards prior to laundering, and requiring generators to file a one-time notice under the land disposal restriction (LDR) program (*see* 40 CFR part 268) when wipes are sent to be laundered. More detail on the specifics of the states' policies can be found in Chapter 3 of the Technical Background Document to this proposal.

The EPA policy laid out in the Shapiro memo, deferring interpretation to the states or EPA regions, has led to some confusion. The state regulations and policies established on the basis of the Shapiro memo, as described above, differ from state to state. This rule, when finalized, would clarify that EPA believes that full RCRA hazardous waste regulation of these materials is not necessary to protect human health and the environment and, therefore, that management of solvent-contaminated

wipes in the manner described in this proposal is appropriate.

In late 1994, EPA's policy regarding solvent-contaminated industrial wipes came under further review as a part of the Common Sense Initiative (CSI) for the printing industry. The CSI sought the insight and input of multiple stakeholders on how to make environmental regulation more easily implementable and/or less costly while still maintaining protection of human health and the environment. The one significant problem posed by RCRA regulations identified by the representatives from the printing industry was the ambiguity of the rules and regulations applicable to disposable and reusable solvent-contaminated industrial wipes. Specifically, they requested that EPA do three things: (1) Clarify the definition of "treatment" as it pertains to printers wringing solvent from their wipes; (2) examine the potential for over-regulation of disposable industrial wipes; and (3) increase regulatory consistency among the states.

This proposal, therefore, results from discussions during the printing industry CSI, as well as the concerns we have heard from other stakeholders on the Agency's (and states') current policies. We are addressing these concerns, while at the same time encouraging recycling and solvent recovery and ensuring protection of human health and the environment. In summary, the stakeholders' general positions are that generators of contaminated industrial wipes seek clarification of the rules and a more consistent regulatory scheme throughout the states; manufacturers of disposable industrial wipes feel their product is over-regulated by RCRA when levels of risk are taken into consideration leading to inequitable treatment vis-à-vis reusable wipes; and industrial laundries which clean solvent-contaminated wipes believe they are managing a commodity, not solid wastes, and should be considered accordingly.

Additional stakeholder groups have also been involved in the development of this proposal. The first is made up of the state and local governments that have been developing and implementing policies for these materials for the past ten years. They have come to EPA to ask advice on what they should do when conditions established at the state level for an exclusion are not met. The second is worker unions which have also recently expressed interest in RCRA requirements for management of solvent-contaminated industrial wipes because of worker safety concerns.

B. Jurisdiction Over Solvent-Contaminated Industrial Wipes

1. Exclusion From the Definition of Hazardous Waste

The concept of regulating a waste if it fails to meet certain standards forms the basis of many RCRA regulations. To provide added flexibility for implementation, EPA has previously promulgated conditional relief from subtitle C regulation for low-level mixed waste,³ for certain refining wastes,⁴ and for non-chemical military munitions.⁵ Today's proposed rule would limit regulation under subtitle C for solvent-contaminated industrial wipes that are disposed or combusted (circumstances when the industrial wipes are used as a fuel are included) when they meet the conditions described in this notice.

The DC Circuit Court of Appeals has expressly upheld EPA's authority under RCRA to establish a conditional exemption from subtitle C regulation (*i.e.*, hazardous waste regulation) for wastes that, absent the exemption, would be hazardous (*See Military Toxics Project v. EPA* 146 F.3d 948, D.C. Cir. 1998). For a more detailed discussion of EPA's authority to establish a conditional exemption from subtitle C regulation, *see* the discussion at 62 FR 6636–6637 for the Military Munitions Rule preamble.

2. Exclusion From the Definition of Solid Waste

Makers and users of reusable industrial wipes that are sent to laundries or dry cleaners to be cleaned prior to reuse have asked EPA to maintain our current policy of deferring to the states. Under current EPA policy, as established in 1994, EPA defers interpretations and decisions about how to regulate solvent-contaminated wipes to either an EPA region or authorized state (*see* 2/14/94 memo from Michael Shapiro to Waste Management Division Directors Regions I–X).

EPA is today proposing to exercise its discretion to exclude from the subtitle C definition of solid waste reusable industrial wipes exhibiting a hazardous waste characteristic due to use with

³ *See* 66 FR 27266, May 16, 2001, Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules: Final Rule.

⁴ *See* 63 FR 42109, August 6, 1998, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities.

⁵ *See* 62 FR 6621, February 12, 1997, Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies: Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways and Contiguous Properties: Final Rule.