

#### D. Recordkeeping

EPA is not proposing any specific recordkeeping requirements for either the proposed exclusion from the definition of hazardous waste for disposable industrial wipes or for the proposed exclusion from the definition of solid waste for reusable industrial wipes, since 40 CFR 261.2(f) already requires persons to provide appropriate documentation that would demonstrate that the industrial wipes are not a solid waste, or are excluded from the hazardous waste regulations.

Nevertheless, we are considering whether specific recordkeeping requirements should be included in the conditions to qualify for the exclusions proposed today for the purpose of improving implementation by the relevant regulatory authority. We are asking for comment on a number of related issues. For example, should EPA require generators to keep basic information, such as the number or volume of industrial wipes generated, where the industrial wipes were sent, and how many shipments were sent off site? In addition, should EPA require generators to certify that their shipments of industrial wipes meet either the "no free liquids" or the "dry" condition, as appropriate, and maintain those records for three years?<sup>14</sup> Finally, should EPA require that the generators certify that their employees are adequately trained to manage wipes stored and handled on site through compliance with generator employee training and emergency response requirements in 40 CFR part 262. Should those records be maintained for three years if such requirements were ultimately promulgated? We request information on whether the certification could easily be added onto regular business records such as a transporter's pick-up sheets or shipping papers. In addition, would such a provision increase the likelihood that generators would ensure that the processes, techniques or technologies they use would meet the applicable "no free liquids" or "dry" condition?

EPA also seeks comment on whether industrial laundries, dry cleaners, and industrial wipes handling and disposal facilities should be required to certify the condition of wipes that arrive at their facility, such as whether or not they contain free liquids. If the wipes contain free liquids, should handlers be required to record what steps they took to address this problem (such as documenting whether they removed the free liquids and properly managed the

solvents or returned the saturated wipes and free liquids to the generator) and maintain these records for three years? In addition, EPA seeks comment on whether, when returning industrial wipes to their customers, handlers should be required to use a "streamlined" manifest to reflect the type of solvents enclosed, the weight or volume of the free liquids, the date and destination of the shipment, and acknowledgment of receipt by the generator.

Finally, EPA requests comment on whether the inclusion of these recordkeeping requirements in the rule would improve compliance with the conditions of the rule and, therefore, improve implementation of the provisions of the rule.

#### E. Enforcement

Under today's proposed rule, reusable industrial wipes are excluded from the definition of solid waste and disposable industrial wipes are excluded from the definition of hazardous waste if certain accumulation, transportation, and handling conditions are met. The party operating under either conditional exclusion will be responsible for maintaining the exclusion by ensuring that all the conditions are met. In the event that a condition is not met, the party managing the wipes at that time will need to remedy the situation as soon as possible in order not to jeopardize the exclusion. Facilities taking advantage of the exclusion that fail to meet one or more of its conditions may be subject to enforcement action, and the wipes may be considered to be hazardous waste from the point of their generation (*i.e.*, from the point when the generator had finished using them). EPA could choose to bring an enforcement action under RCRA § 3008(a) for all violations of the hazardous waste requirements occurring from the time the industrial wipes are generated through the time they are finally disposed of, reclaimed, or reused. States could choose to enforce for violations of state hazardous waste requirements under state authorities.

EPA believes that this approach, which treats solvent-contaminated industrial wipes that do not conform to the conditions of the exclusions as either solid waste or hazardous waste from their point of generation, provides generators, disposers, and other handlers with an incentive to handle the industrial wipes in a manner that prevents the loss of the exclusion. It also encourages each person to take appropriate steps to see that others in the management chain handle the industrial wipes so that they are

legitimately disposed of, reclaimed, or reused.

For example, if a laundry operating under the exclusion from the definition of solid waste receives a barrel of reusable industrial wipes containing free liquids and mixes them with other industrial wipes without removing the free liquids, then those industrial wipes would not be excluded. Likewise, if a municipal solid waste landfill disposes of industrial wipes containing a prohibited solvent such as trichloroethylene, the disposables would not be excluded. In both cases, EPA and an authorized state could choose to bring an enforcement action against those in the management chain, including the generator, transporter, and/or receiving facility, for violations of applicable RCRA hazardous waste requirements. In these cases, the material would be a hazardous waste from the time the generator first generated it.

As with any violation, EPA and authorized states would have enforcement mechanisms available that range in severity. In addition, EPA and authorized states would have flexibility in applying these mechanisms to the various responsible parties. Enforcing agencies would use their discretion to select the enforcement mechanisms and the parties that are appropriate to a specific case and its factual circumstances. Some of the enforcement mechanisms include sending a notice of violation, ordering that the situation be remedied, or assessing fines or other penalties as appropriate.

Generators and recycling, disposal, or handling facilities claiming the exclusion must be able to demonstrate to the appropriate regulatory agency that the conditions of the exclusion are being met. In an enforcement action, the facility claiming the exclusion bears the burden of proof pursuant to 40 CFR 261.2(f), to demonstrate conformance with the conditions specified in the regulation. For disposable industrial wipes, the burden of proof falls on the generator, commercial transporter, municipal solid waste landfill, municipal waste combustor, combustion facility, or handling facility claiming the exclusion, and for reusable industrial wipes, it falls on the generator, laundry, dry cleaner, or handling facility claiming the exclusion.

Additionally, the exclusions in today's rule would not affect the obligation to promptly respond to and remediate any releases that may occur of solvents and wipes managed within the exclusion. If, for example, a hazardous solvent is spilled or released, then the solvent would be discarded. Any

<sup>14</sup> Three years is the standard period of time that EPA usually requires for the maintenance of records.