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To: Robert Dellinger/DC/USEPA/US@EPA

cc: WGuerry@colliershannon.com

Subject: Shop Towel Exclusion

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Dear Bob -

This follows-up our telephone meeting earlier today and your meeting with the Textile Rental Services Association (TRSA) on March 12, 2002. Enclosed is the requested draft language for a proposed RCRA § 261.4(a) solid waste exclusion for properly managed shop towels and accompanying draft preamble language supporting the exclusion.

After careful consideration, TRSA and the Uniform and Textile Services Association (UTSA) believe that a solid waste exclusion under § 261.4(a) is the best approach to regulating shop towels. Indeed, TRSA and UTSA feel that a hazardous waste exclusion under § 261.4(b) or regulation under the empty container rule (§ 261.7) would strongly implicate industrial shop towels as being solid waste, and thus potentially trigger state solid waste regulation inconsistent with the status quo.

We greatly appreciate the opportunity to submit the attached, and look forward to your thoughts on the same.

Best regards,

Bill Guerry

Adam Cramer

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(See attached file: Proposed RCRA Solid Waste Exclusion for Industrial Shop Towels.DOC)

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Proposed RCRA Solid Waste Exclusion for Industrial Shop Tow

PROPOSED RCRA SOLID WASTE EXCLUSION FOR INDUSTRIAL SHOP TOWELS

RCRA 261.4(a) EXCLUSIONS:

(a) *Materials which are not solid wastes.* The following materials are not solid wastes for the purpose of this part:

(1)

(20) Industrial shop towels are not solid waste if they:

(i) contain no "free liquids" [based on a practical, commonsense definition];

(ii) are stored in appropriate containers sufficient to prevent a release to the environment prior to laundering; and

(iii) are destined for laundering by a laundry that discharges to a POTW. } ?

PROPOSED PREAMBLE
Solid Waste Exclusion

Since 1980, EPA has increased the number of solid waste exclusions under 40 C.F.R. § 261.4(a) from seven to nineteen. For example, in 1998, EPA excluded "sludges, byproducts, and spent materials generated within the primary metal processing industry" from solid waste classification (under § 261.4(a)(16)), provided that certain management conditions are met. EPA appropriately concluded that the secondary materials subject to the solid waste exclusion under 40 C.F.R. § 261.4(a) would be managed through conditions that were adequately "protective" so that they would not become part of the "waste disposal problem" and therefore, would not need to be considered "discarded" solid waste. (See 63 Fed. Reg. 28556, 28582 (May 26, 1998)). EPA went on to explain that this solid waste exclusion should "encourage properly conducted recycling" and should also "fulfill an agency objective of reducing some of the complexity in the existing regulatory definition of solid waste." *Id.* at 28583.

When determining to exclude a category of materials from the regulatory definition of solid waste under the Agency's rulemaking authority, the Agency looks at the totality of the situation and excludes materials from solid waste classification "for a variety of reasons, including public policy, economic impacts, regulation by other laws, lack of data, or impracticality of regulating the waste." (See RCRA, Superfund & EPCRA Hotline Training Module at 2.1).

Shop towels effectively meet all the legal conditions and criteria that EPA has applied in granting solid waste exclusions to similar secondary materials. Reusable shop towels clearly meet all of EPA's stated policy considerations that the Agency evaluates in granting a solid waste exclusion. See EPA's "RCRA, Superfund, and EPCRA Hotline Training Module". First, EPA would not lose any of its regulatory control over improperly managed shop towels and would best achieve its "public policy" goal of minimizing wastes and promoting recycling through a broad "solid waste" exclusion for reusable shop towels that are properly managed. Second, as most states currently recognize, it would be totally impractical to regulate reusable shop towels as either a solid or hazardous waste. Third, if solid waste regulations were imposed on reusable shop towels, it would impose substantial unwarranted economic costs on small and large industrial laundries and their customers. Fourth, no environmental benefits would result from imposing solid waste requirements on reusable shop towels in light of the well-established state regulatory structure. Fifth, industrial laundries and shop towel using industries already must comply with extensive obligations under the Clean Air Act, the Clean Water Act, OSHA and DOT regulations. The existing federal and state regulatory structure ensures that shop towels are properly managed throughout their use and reuse life cycle and that human health and the environment are fully protected. When managed according to the conditions contained in the proposed exclusion, shop towels pose less threat to the environment than other materials that are subject to the "solid waste" exclusion EPA has previously excluded. There are well-established and

straightforward industry management practices and economic incentives (for both the laundries and the businesses that lease shop towels) to assure that these management practices are followed.
Application of "Partially Reclaimed" Variance Criteria

In evaluating whether to grant a solid waste exclusion, the agency has also frequently applied its five "partially reclaimed variance," or "commodity-like" criteria. Although these criteria were established for a variance determination, EPA believes that "they are relevant in determining whether a material should be considered to be 'discarded' within the meaning of § 261.2(a)(1)." (See exclusions for splash condenser dross residue (SCDR) at 56 Fed. Reg. 41164, 41173 (Aug. 19, 1991) and for circuit boards at 62 Fed. Reg. at 25998, 26011-26012 (May 12, 1997). These criteria consider: (1) the value of the material after being reclaimed, (2) the degree to which the initially-reclaimed material is like an analogous raw material, (3) whether a market exists for the reclaimed material, and (4) whether the reclaimed material is handled in a way to minimize loss. *Id.* (5)(?)

Laundried shop towels would also meet the "partially reclaimed" or "commodity-like" variance criteria that EPA has applied in granting similar solid waste exclusions. First, reusable shop towels obviously have significant ongoing value both for the laundry, which owns those towels, as well as the shop towel user, which relies on those towels as a necessary component of its business. Second, the laundered shop towel is not only like, but identical to the replaced, "analogous raw material", which in this case would be a brand new, unused, clean towel. Third, there is a strong continuous market demand for laundered shop towels. Fourth, reusable shop towels are handled in a way to minimize loss throughout their use and reuse cycles. In fact, reusable shop towels and wipers are already subject to tighter and more continuous control by laundries and their customers than most of the currently excluded secondary materials under § 261.4(a). Significantly, a laundry's core business totally depends on their reusable shop towel products being carefully retained, laundered and reused. Laundries could not operate if they did not keep tight controls on the management and return of these leased products to prevent any loss. Properly managed reusable shop towels (with no free liquids) pose significantly less exposure risks than most of the secondary materials already excluded under § 261.4(a).

Impact on Existing State Programs

EPA's proposed exclusion for shop towels from regulation as solid waste essentially codifies the status quo. For more than a decade, most states have taken the position that industrial shop towels manufactured for multiple cycles of soiling and cleaning are not regulated as solid waste, as long as they do not contain free liquids and they are sent to a laundry. This approach has significant common sense appeal. To assure that the existing management practices developed by industry (and adopted by the state and federal regulatory agencies) continues to function in a manner that is both protective to human health and the environment, EPA proposes to exclude properly managed shop towels from "solid waste" classification.

Alternative Approaches

EPA considered the concept that whereas the used shop towels are not solid waste, the solvents absorbed by the textile fibers should be classified as solid waste because unlike the textile, the solvents are not being regenerated by the laundering process. However, upon further consideration, this approach appears inconsistent with Agency precedent. In making a solid waste exclusion, EPA has never previously "bifurcated" the substance at issue into a solid waste component and a non-solid waste component. For example, recycled circuit boards and SCDR are excluded from RCRA regulation as a solid waste even though both items, like shop towels, are a composite of recycled and non-recycled materials. For example, SCDR is composed of only 50% to 60% reclaimable zinc. The remaining SCDR components, including hazardous constituents like cadmium, are ultimately disposed. Similarly, even after the removal of batteries and mercury switches, excluded circuit boards remain a composite item comprised of silicon, epoxy, lead and other heavy metals as well as materials targeted for recovery, such as copper and various precious metals. Considering that to be excluded from solid waste, industrial shop towels must not contain any free liquids, the recycled or reclaimed component of a used industrial shop towel (the textile itself) represents the majority component in a used shop towel, destined for laundering and subsequent reuse.

Any contaminants removed by the laundering process will be in "newly generated" process wastewaters from the laundry washing cycle. EPA has appropriately delegated to the authorized states the full discretion to determine how wastewaters from an industrial laundry should be classified and managed considering site-specific factors (i.e., do the wastewaters exhibit a hazardous characteristic), as well as the overlapping regulatory requirements imposed under the Clean Water Act.

In sum, the simplicity and efficacy of the proposed management conditions, the profound economic incentives to assure that the management conditions are followed, and the fact that the proposed management conditions are already practiced by the vast majority of industrial laundries and shop towel users warrant excluding properly managed shop towels from solid waste classification.