

August 9, 2001

Mr. Robert W. Dellinger (5306W)  
Director, Hazardous Waste Identification Division  
U.S. Environmental Protection Agency  
2800 Crystal Drive, 9<sup>th</sup> Floor  
Arlington, VA 22202

**Re: Solid Waste Exclusion for Reusable Shop Towels**

Dear Mr. Dellinger:

On behalf of the Uniform and Textile Service Association (UTSA) and the Textile Rental Services Association of America (TRSA), we want to thank you and your staff for meeting with us on July 13<sup>th</sup> to discuss exempting properly managed, reusable shop towels from solid and hazardous waste regulation. As you know, TRSA and UTSA do not believe a federal shop towel exemption is necessary or justified because the existing state regulatory framework effectively ensures that: (1) free liquids are removed from reusable shop towels; and (2) reusable shop towels are sent to industrial laundries which discharge to a regulated publicly-owned treatment works (POTW). While we will continue to argue that a federal regulation is **not** warranted, our immediate goal is to make sure that EPA's proposed preamble language and regulation fully support and do not undermine the well-established state regulatory framework.

At our meeting, EPA indicated that the federal regulation would **not** impose any new, additional requirements that would discourage the recycling of shop towels or force states to fundamentally redesign their well-established shop towel exemptions. John Michaud specifically indicated that the preamble to the proposed rule would clearly state that EPA's proposed rule would not impact state's existing shop towel determinations. While we support such clarification, unintended consequences (such as triggering state solid waste regulations) could result from the proposal if EPA indicates that shop towels are a "solid waste."

EPA's stated goal of "codifying" (and not undermining) the existing state regulatory framework can best be accomplished by excluding properly managed, reusable shop towels from "solid waste" classification under 40 C.F.R. § 261.4(a). EPA would not gain any strategic, legal or environmental benefits if the Agency instead classified reusable shop towels as a solid waste under a hazardous waste exclusion pursuant to Section 261.4(b). Through the attached position paper, TRSA and UTSA provide EPA with the legal basis to support a "solid waste" exclusion

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for properly managed, reusable shop towels that is entirely consistent with applicable legal and regulatory precedent. This correspondence also addresses specific suggestions and legal issues raised by John Michaud at our meeting and in a follow-up telephone conversation on July 19<sup>th</sup>.

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We are hopeful that EPA will ultimately recognize that the complex legal problems and unintended consequences of any federal shop towel regulation outweigh the negligible environmental benefits. In the meantime, TRSA and UTSA look forward to continuing to work with you and your staff to ensure that any **proposed** preamble language or regulation supports and does not undermine the well-established state regulatory framework and does not discourage the use of reusable shop towels.

I will place a follow-up call to John Michaud and Leslie Schaff next week to see if we need to provide any additional legal analysis to support a holistic "solid waste" exclusion for properly managed reusable shop towels. Please call me if you have any questions or concerns.

Sincerely,



William M. Guerry, Jr.

Counsel for TRSA and UTSA

WMGJr.:sfl

Attachment

cc: John Michaud  
Jim O'Leary  
Lesley Schaaff

## REUSABLE SHOP TOWELS MUST BE EXCLUDED FROM SOLID WASTE CLASSIFICATION

### I. UNINTENDED IMPACT OF EPA "SOLID WASTE" CLASSIFICATION OF REUSABLE SHOP TOWELS ON STATE SOLID WASTE PROGRAMS

A growing number of states (with large reusable shop towel markets) impose onerous requirements (modeled on the federal hazardous waste regulations) on both generators and processors of industrial, non-hazardous solid wastes. These state solid waste programs impose costly fees, detailed permitting requirements, restrictive management conditions, complex site assessments, and frequent testing, analytical, and recordkeeping requirements on both "solid waste" generators and processors. (See Legal Analysis of Pennsylvania and California Solid Waste Programs, Attached as Exhibits A-1 and A-2).<sup>1</sup>

Under the status quo, neither reusable shop towel users nor the textile supply and service companies are subject to any of these state solid waste programs. Reusable shop towels are not subject to state solid waste regulations because they are not classified as "solid wastes" in most states. Twenty-four states have explicitly determined that shop towels are not "solid waste." (See Chart, attached as Exhibit B). Another 17 states exempt shop towels from hazardous waste regulation, and do not explicitly classify shop towels as "solid waste." *Id.* Even the five states that have generally classified shop towels as a "solid waste" (exempt from hazardous waste regulation) do not regulate reusable shop towels as solid/non-hazardous wastes. For example, New York is one of the five states that generally classify shop towels as a "solid waste," but choose not to regulate shop towels as solid waste. This is because states want to encourage shop towel reuse and recognize the practical problem of imposing traditional solid and hazardous

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<sup>1</sup> Pennsylvania and California are examples of the rigorous state solid waste programs that exist in numerous states, including Ohio, Michigan, Indiana, Wisconsin and Minnesota among others, and which are becoming increasingly common.

waste regulations onto the reusable shop towel industry. New York's shop towel exemption is based on the fact that EPA Headquarters and EPA Regions have explicitly provided states with the needed "leeway" and "latitude" to develop common sense, pragmatic compliance strategies for shop towels. *Id.* (See New York Opinion, attached as Exhibit C). ("EPA has wisely given the States and EPA Regions considerable latitude in determining what the regulatory status of rags and soiled clothing should be.") *Id.*

As you know, all delegated state programs must be at least as stringent as the federal RCRA program. Most states rely on the same or a similar "solid waste" definition (based on the federal definition) in both their RCRA Subtitle C hazardous waste programs, as well as their separate solid/non-hazardous waste programs. If EPA indicates in the proposed *Federal Register* preamble that reusable shop towels (or the solvents these shop towels contain) are a "solid waste," then this language could **unintentionally** result in shop towels (and/or the solvents in shop towels as well as other reusable products) becoming **immediately** subject to state solid waste regulation and potentially state and federal hazardous waste regulation. For example, California has recently stated that it would follow U.S. EPA's "**proposed** [shop towel] rule as its policy" in lieu of relying on the attached EPA Region IX opinion which states that reusable shop towels are not a solid waste until they are discarded. (See Footnote 2 of California Letter, attached as Exhibit D).

## **II. FEDERAL SOLID WASTE CLASSIFICATION WOULD DISCOURAGE SHOP TOWEL RECYCLING AND INCREASE THE AMOUNT OF LANDFILLED SOLVENTS**

EPA's classification of shop towels as a "solid waste" would impose substantial unwarranted compliance costs on shop towel users and laundries and create significant market disincentives for reusable shop towels. Many shop towel users currently use and reuse environmentally beneficial shop towels because they perceive, correctly, that generating large

volumes of solid waste creates potentially significant long-term liability. If reusable shop towel products were deemed "solid wastes," then a critical distinction between reusables and disposables would disappear and a significant portion of the shop towel market could shift away from reusables to disposable rags that are landfilled. Such a market shift would result in the following adverse impacts on the environment.

First, the production of disposable paper towels has a greater environmental impact than the production of reusable shop towels. A life cycle analysis (sponsored by EPA)<sup>2</sup> and the laundry industry's subsequent corrections (See April 3, 1998 UTSA Letter to Jim O'Leary) document that the production of new disposable paper towels consume dramatically more resources than the production of reusable cloth shop towels.

Second, a shift away from reusable shop towels to disposable rags would result in much greater releases of unprocessed and untreated solvents into the environment. The solvents found on disposable towels or rags end up in a landfill and thus greatly increase the chance that these solvents will be released to cause impact to human health and the environment. In contrast, solvents on reusable shop towels are either concentrated and recovered at laundries or effectively processed and destroyed at their POTWs through biological treatment. Because of laundries' and POTWs' effective treatment and management of solvents, EPA did not impose Clean Water Act Effluent Limitation Guidelines (ELGs) on the laundry industry. See UTSA/TRSA's March 19, 1998 Comments to EPA on the Proposed Rule: Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category, pages II-6 through II-21, Docket No. W-97-14.

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<sup>2</sup> See Environmental Assessment of Shop Towel Usage In the Automotive and Printing Industries, EPA's Office of Research and Development (1996).

Classifying properly managed shop towels as a "solid waste" would be in direct contradiction to one of the primary goals of RCRA -- to promote recycling and resource recovery and to reduce the amount of landfilled wastes. There is simply no federal legal interest or environmental consideration that would justify classifying properly managed shop towels as a "solid waste."

### III. EPA SHOULD NOT UNDERMINE THE WELL-ESTABLISHED STATE PRECEDENT ON REUSABLE SHOP TOWELS

To avoid classifying shop towels as a solid waste, EPA's Office of General Counsel suggested that EPA's proposed preamble language and management conditions could focus solely on the solvents (rather than the reusable shop towels). We appreciate EPA's efforts at trying to craft a mutually-acceptable alternative approach that avoids classifying the shop towel (exclusive of the contaminants on the towel) as solid waste. However, no state or EPA regional office opinion has ever "bifurcated" non-saturated, solvent containing shop towels into a solvent component and a textile component. Rather, each state (and each EPA regional office) **holistically** views these towels as a single, integrated entity. Under the status quo, states appropriately exempt the entire shop towel and limit the regulation of laundry wastewaters to the Clean Water Act (*i.e.*, laundries are exempt if they discharge wastewaters to a POTW).

Bifurcating a laundry-destined shop towel into a non-solid waste towel component and a solid waste solvent component would effectively turn the existing regulatory framework upside down. By narrowly focusing attention on the relatively small amount of used solvent, rather than on the entire shop towel product, EPA would raise numerous unintended regulatory and complex legal problems in addition to triggering state solid waste programs.<sup>3</sup> Focusing a federal

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<sup>3</sup> Laundries that "processed" solvents that were classified as a "solid waste" could become subject to state "solid waste" regulation.

regulation on solvents (exclusive of the reusable shop towel) would not provide any environmental benefits or regulatory clarity or stability. Instead, such an approach could undermine the holistic approach that is the cornerstone of the existing state regulatory framework. For these reasons, EPA's Office of Solid Waste (OSW) has consistently indicated throughout the regulatory development process that EPA's proposed rule would be based on the "no free liquids" management conditions **applicable to shop towels** (consistent with the existing regulatory framework) and would **not** separately establish any unique conditions or requirements applicable to solvents in shop towels or to laundry wastewaters or sludges.

#### **IV. EPA SHOULD CONCLUDE THAT PROPERLY MANAGED SHOP TOWELS ARE NOT AND HAVE NEVER BEEN SOLID WASTE UNDER EXISTING CASES AND EPA DETERMINATIONS**

While apparently EPA's OSW and TRSA/UTSA agree that any federal regulation must holistically view the entire shop towel product, EPA is still evaluating whether reusable shop towels should be excluded from solid waste or only from hazardous waste classification. To help EPA address this issue, we have set forth below our analysis of applicable case law interpreting EPA's jurisdictional authority over discarded "solid waste." Our analysis of EPA's precedent from analogous solid and hazardous waste regulatory exclusions follows in the subsequent section.

In evaluating whether a recycled secondary materials constitutes a "solid waste" under RCRA, EPA must determine whether these materials are "truly discarded, disposed of, thrown away or abandoned." (*See America Mining Congress v. EPA*, 824 F.2d 1177, 1190 (D.C. Cir. 1987)). Courts have precluded EPA from regulating secondary materials (like reusable shop towels) which **"have not yet become part of the waste disposal problem; rather they are destined for beneficial reuse or recycling in a continuous process."** *Id.* at 1186. More recently, Courts have clarified that secondary materials that are "retained" or "saved" as part of an overall

recycling/production process are **not** "discarded" or "thrown away" as solid waste. (*See Association of Battery Recyclers v. EPA*, 208 F.3d 1047, 1051 (D.C. Cir. April 21, 2000)).<sup>4</sup> For this reason, EPA cannot and should not regulate as a "solid waste" those secondary materials that are "destined for reuse as part of a continuous industrial process" because such materials are not "abandoned or thrown away." *Id.* at 1056.

Industrial laundries own leased or rented shop towels throughout their use/reuse life cycle. Reusable shop towels are "retained" and "saved" so that they do not threaten to become "part of the waste disposed problem." In the context of determining whether reusable shop towels are "a solid waste," U.S. EPA regional offices, including EPA Regions IV, VIII and IX, have interpreted RCRA in a manner that is consistent with the case law cited above. In one of the most recent EPA regional opinions (dated June 29, 1995), Region IX concluded that:

Industrial textiles manufactured for multiple cycles of soiling and cleaning are generally not regulated as solid waste **until they are discarded**. The normal use of such textiles is therefore not ordinarily subject to hazardous waste regulations. (Emphasis added).

(*See* Exhibit D-2, Page 1).

Reusable shop towels are like "leased" and "retained" tools or equipment that simply need to be cleaned between successive use cycles. EPA lacks the statutory jurisdiction to regulate reusable shop towels until they are discarded or destined for disposal and, therefore, threaten to become "part of the waste disposal problem." EPA's proposed rule will be vulnerable to legal challenge if the Agency classifies as solid wastes those properly managed, reusable shop towels that are "retained" or "saved" so that they are not "part of the waste disposal problem."

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<sup>4</sup> "Secondary materials destined for recycling are obviously not of that sort [disposed wastes]. Rather than throwing these materials away, the producer saves them; rather than abandoning them, the producer reuses them." 208 F.3d at 1051.

V. **EPA MUST CONDITIONALLY EXCLUDE PROPERLY MANAGED SHOP TOWELS FROM FUTURE SOLID WASTE REGULATION UNDER § 261.4(a)**

A. **Legal Basis of 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. In legally justifying this new solid waste exemption, EPA explained in the preamble that:

EPA reads the case law [principally the AMC cases cited above] as allowing the Agency to make reasonable distinctions among secondary material handling practices in determining when a particular recycling practice may be considered "part of the waste disposal problem."

(See 63 Fed. Reg. 28556, 28581 (May 26, 1998), attached as Exhibit E).

EPA appropriately concluded that the secondary materials subject to the solid waste exclusion 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." *Id.* at 28582 (Exhibit E). 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 (Exhibit E).

B. **Criteria EPA Evaluates in Issuing Solid Waste Exclusions**

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, attached as Exhibit F).

In evaluating whether to grant a solid waste exclusion, the agency has also 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) (Exhibit G) and for circuit boards at 62 Fed. Reg. at 25998, 26011-26012 (May 12, 1997) (Exhibit H)). These criteria consider, among other things, (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.*

### C. Applying Established Criteria to Shop Towels

Shop towels effectively meet all the legal conditions and criteria that EPA has applied in granting solid waste exclusions to other 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 promoting recycling through a broad "solid waste" exclusion for reusable shop towels that are properly managed. Second, as states like New York have recognized, 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. These compliance costs would likely require EPA to implement a formal SBREF<sup>5</sup> review process to evaluate and try to mitigate the adverse impact of the federal rule on thousands of small businesses. Fourth, no environmental benefits (and likely environmental harm) 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 RCRA, 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.

Laundered shop towels would also clearly 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, an industrial 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

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<sup>5</sup> Small Business Regulatory Enforcement Fairness Act.

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).

**D. Addressing EPA's Concerns with Recycling 100% of Excluded Material**

At our meeting on July 13<sup>th</sup>, an attorney with EPA's Office of General Counsel (OGC) indicated that the solvents in shop towels may not be eligible for a § 261.4(a) solid waste exclusion unless the solvents as well as the shop towels were recycled. However, EPA has frequently and consistently excluded numerous composite materials from solid waste classification, even though only a fraction of the total components in those materials will be recovered. For example, recycled circuit boards and splash condenser dross residue (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. (See 56 Fed. Reg. 41116, 41174 (August 19, 1991) (Exhibit G)). 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. (See Enclosed "Stripped" Circuit Board and 62 Fed. Reg. at 26011-14 (Exhibit H)).

**E. Addressing EPA's Concerns with Solvents in Laundry Wastewaters**

As long as there are no free liquids in the excluded shop towels, the separate regulatory status of the solvents would not arise under a broad shop towel exclusion. These solvents would be in the form of "newly generated" process wastewaters from the laundry

washing cycle and would not constitute a "spent" degreasing or cleaning solvent covered under the hazardous "F-listing." As EPA recognized in the F-listing background documents:

It should be clear from this discussion that the wastes encompassed by this listing do not include waste streams where the solvent is a contaminant, such that the waste stream is not a spent solvent, as defined above. Thus, wastes which contain as constituents solvents which are used in the industrial process are not included within the scope of this listing. Nor are these waste streams hazardous by virtue of the mixing rule (§ 261.3(a)(2)(ii)), since a spent solvent is not being mixed with another solid waste.

(See Exhibit I).

Thus, the industrial wastewaters produced by the laundry would only constitute a hazardous waste if they exhibited a hazardous characteristic. (Laundry wastewaters do not exhibit a hazardous characteristic.)

An attorney with EPA's Office of General Counsel has questioned whether EPA should separately address (in the proposed preamble) the regulatory status of solvents **after** these solvents are separated from the excluded shop towels and end up in the laundry wastewaters. EPA has never generically classified as a hazardous waste (or established management conditions for) the numerous industrial wastewaters generated downstream from processing other, similar secondary materials that are currently excluded from either solid waste or hazardous waste classification under 40 C.F.R. § 261.4.<sup>6</sup> Some portion of virtually all of these excluded materials will ultimately end up in industrial process waters. EPA has appropriately delegated to the authorized states the full discretion to determine how such wastewaters should

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<sup>6</sup> Even when EPA has specifically identified certain excluded industrial process wastewaters, it has not imposed specific management conditions on these wastewaters. For example, certain waste streams arising out of ore and mineral processing are excluded from the definition of hazardous waste. 40 C.F.R. § 261.4(b)(7). Even though these wastewaters are identified in the regulatory exclusion, EPA does **not** impose separate management conditions on these excluded wastewaters.

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 (*i.e.*, if hazardous, are the wastewaters managed in an exempt "wastewater treatment unit"). There would be no justification for EPA to take a different approach in crafting a solid waste exclusion for properly managed shop towels. In fact, there is no information in the administrative record, which would support the development of management standards applicable to laundry wastewater systems.

## **VI. CONCLUSION**

EPA's stated goal of "codifying" (and not undermining) the existing state regulatory framework can best be accomplished by excluding properly managed, reusable shop towels from "solid waste" classification under 40 C.F.R. § 261.4(a). EPA would not gain any strategic, legal or environmental benefits if the Agency instead classified reusable shop towels as a solid waste under a hazardous waste exclusion pursuant to Section 261.4(b).