



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

Rulemaking on Solvent-Contaminated Industrial Wipes

Report No. 2006-P-00001

October 4, 2005



Report Contributors:

Carolyn Copper
Steve Hanna
Anne Bavuso
Bao Chuong
Meredith Kurpius

Abbreviations

EPA	Environmental Protection Agency
GAO	Government Accountability Office
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSW	Office of Solid Waste
RCRA	Resource Conservation and Recovery Act

Cover photo: An industrial wipe being used to wipe down machinery.
(http://ercwipe.com/product_descriptions.htm#shoptowels)



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

This report responds to a congressional request that we evaluate the process for developing the Environmental Protection Agency's (EPA's) 2003 proposed rule for solvent-contaminated industrial wipes. By answering specific concerns presented to us by Congress, we sought to determine the appropriateness of procedures followed and whether there was inappropriate influence.

Background

Industrial wipes are used to wipe down machinery, floors, and other surfaces. On November 20, 2003, EPA proposed a rule to conditionally exclude (a) disposable industrial wipes contaminated with hazardous solvents from the definition of hazardous waste, and (b) reusable industrial wipes (such as rags) contaminated with hazardous solvents and sent for laundering from the definition of solid waste.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:

www.epa.gov/oig/reports/2006/20051004-2006-P-00001.pdf

Rulemaking on Solvent-Contaminated Industrial Wipes

What We Found

We found the following regarding specific concerns presented to us by Congress related to EPA rulemaking for industrial wipes:

- EPA met all legal and internal requirements for rulemaking when it developed the industrial wipes proposed rule. EPA complied with the Administrative Procedure Act, which establishes requirements for rulemaking. There are no provisions in the Act that address contacts with outside parties during the rulemaking process and thus the appearance of favoritism or undue influence.
- EPA officials and staff had extensive contact with representatives of the industrial laundry industry, but also had extensive contacts with disposable wipes industry representatives and others. No one indicated they were excluded from the rulemaking process. EPA allowed active public involvement through meetings, telephone calls, e-mails, and letters.
- The industrial laundry industry exerted considerable influence on the aspect of the proposed rule to exclude reusable wipes from solid waste regulations. However, we found no evidence that the influence was illegal or inconsistent with EPA's standard business practice of obtaining input from stakeholders. Exerting influence is allowable and appropriate. Other stakeholders had similar access to EPA. We did not find that the timing of any decisions coincided with external political events, nor did we find evidence that EPA staff were directly or indirectly influenced by external political events, including actions by campaign contributors. Certain EPA actions, related to sharing of a small portion of the preamble language and not documenting all contacts in the docket, contributed to public perceptions of impropriety.

What We Recommend

We recommend that EPA implement recommendations proposed by a 2001 taskforce on improving regulations. We also recommend that EPA draft a guidance document designed to avoid favoritism and the appearance of favoritism, and develop guidance that clearly defines rulemaking docketing requirements. The Agency generally agreed with our recommendations, and the Office of Solid Waste and Emergency Response needs to work with the Office of Policy, Economics, and Innovation to implement those recommendations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

October 4, 2005

MEMORANDUM

SUBJECT: Rulemaking on Solvent-Contaminated Industrial Wipes
Report No. 2006-P-00001

TO: Thomas Dunne
Deputy Assistant Administrator
Office of Solid Waste and Emergency Response

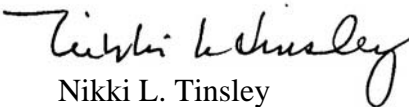
Brian Mannix
Associate Administrator
Office of Policy, Economics, and Innovation

This is the final report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and the findings in this report do not necessarily represent the final EPA position. Final determination on matters in the report will be made by EPA managers in accordance with established resolution procedures. The report includes EPA's full response to the recommendations in Appendix B.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 days of the date of this report. You should include a corrective action plan for agreed upon actions, including milestone dates. We have no objections to the further release of this report to the public.

If you or your staff have questions regarding this report, please contact Kwai Chan at 202-566-0827 or Carolyn Copper at 202-566-0829.


Nikki L. Tinsley

Attachment

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At a Glance

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Chapter 1

Introduction

Purpose

We initiated this review in response to a congressional request. Congress asked us to review several aspects of the Environmental Protection Agency (EPA) Office of Solid Waste's (OSW's) development of a rule to regulate disposable and reusable solvent-contaminated industrial wipes. OSW proposed the rule on November 20, 2003. Congress asked the Office of Inspector General (OIG) to examine the following three issues:

- Whether EPA's process for developing the proposal complied with all legal requirements for rulemaking, all internal EPA requirements and practices for open government, and established Federal practices to avoid the appearance of favoritism or undue influence in agency decision making processes.
- The extent of the contacts between EPA officials and staff and representatives of the industrial laundry industry.
- To clarify, to the extent possible, the degree of influence that the industrial laundry industry had in the outcome of the proposal.

Background

Industrial wipes are commonly used in commercial and industrial facilities, typically to wipe down machinery and remove small quantities of solvents from machinery parts, hands, tools, and the floor. Through normal use, they become contaminated with solvents that, under Federal and most State regulations, may cause the managing of the wipes to be subject to Resource Conservation and Recovery Act (RCRA) regulation. Wipes exist in both disposable and reusable forms. As the names imply, disposable wipes are disposed of after use; reusable wipes may be laundered and reused.

Interest in regulating industrial wipes began with petitions from the disposable wipes industry in 1985 and 1987 to exempt solvent-contaminated disposable wipes from regulation as hazardous waste. In 1987, industrial laundries, which service reusable wipes, requested that reusable wipes be excluded from the definition of solid waste. Solid waste is outlined in subtitle D of RCRA, which focuses on traditional non-hazardous solid waste, such as municipal garbage. Subtitle C of RCRA regulates the management and disposal of hazardous waste, and is more stringent than the subtitle D regulations that only apply to solid waste.

In 1994, EPA published guidance that effectively deferred determinations and interpretations regarding solvent-contaminated industrial wipes to those States or EPA regions with regulatory authority for the base RCRA hazardous waste program (48 States and 2 Territories are currently authorized for the base program). States have developed different regulatory actions for both types of wipes.

To address long-standing issues with the management of solvent-contaminated industrial wipes, EPA, on November 20, 2003, proposed to modify its regulation. The version published in the *Federal Register* was titled: “Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Conditional Exclusions From Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes; Proposed Rule.” A flowchart of the general process and milestones for this rulemaking are indicated in Figure 1.1. Significant elements of the rule included:

- **Excluding disposable wipes from the definition of *hazardous waste*.** However, these wipes would still be considered solid waste and thus subject to the applicable (but less stringent) RCRA regulations.
- **Excluding reusable wipes from the definition of *solid waste*.** This would exclude the management of all RCRA-listed hazardous solvents related to the laundering of the reusable wipes from RCRA disposal regulations. Solvents that come from laundering wipes would still be subject to local pretreatment requirements.

Specific management conditions must be met to qualify for either exclusion. For example, for disposable wipes, 11 specific solvents are banned from disposal in non-hazardous waste landfills. Both reusable wipes going for laundering and disposable wipes going to a municipal incinerator may contain no free liquids; disposable wipes going to a landfill must have less than 5 grams of solvent.

Public comments in the docket for this rulemaking show considerable differences of opinion on the provisions of the proposed rule, as shown in Table 1-1:

Figure 1.1- Wipes Rulemaking Process

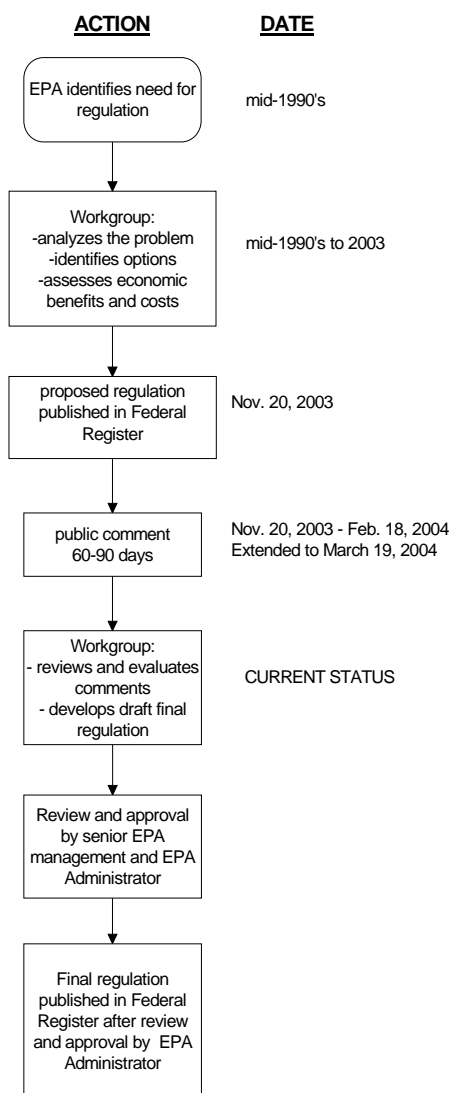


Table 1-1: Differences of Opinions

Public Group	Opinion on Rule
Manufacturers of Disposable Towels	They believe the rule provides an unfair competitive advantage to laundered wipes. In their opinion, the environmental risks from both laundered and disposable wipes are equivalent, and therefore the solid waste exclusion for laundered wipes is unjustified.
Industrial Laundries	These laundries, which service reusable wipes, are strong supporters of the rule.
Generators of Solvent-Contaminated Wipes	Generators of solvent-contaminated wipes, such as the printing industry, believe the intent of the rule is to fairly regulate industries that generate solvent-contaminated wipes rather than to affect market share among various segments of the industry. The printing industry generally supports the rule.
Labor and Environmental Groups	These groups generally oppose the rule on the grounds that the laundering process can cause environmental releases and expose workers to contamination.
States	States that commented expressed a wide variety of positions, but generally suggested modifications instead of blanket endorsement or opposition.
Source: OIG analysis of the rule docket log.	

From July 1998 to November 2003, the majority of the rule options changed in support of the reusable wipes industry positions. However, the net economic impact of this rule favors the disposable wipes industry. An economic analysis conducted by OSW presenting the most likely scenarios of direct impact shows a savings of from \$33 to \$36 million annually for the disposable wipes industry and a cost of \$9 to \$15 million annually for the reusable wipes industry.

A May 17, 2004, *Washington Post* article alleged a relationship between campaign contributions of a major industrial laundry company and EPA's development of the November 20, 2003, proposed rule. Subsequently, several members of Congress asked the EPA Administrator to submit the following information:

- Copies of any internal policies or guidance governing EPA's interactions with outside parties during or prior to a rulemaking and EPA's practices used to avoid the appearance of favoritism.
- Copies of each record of any contact between EPA personnel and representatives of the industrial laundry industry since January 2001.
- Copies of all documents, whether written or electronic, exchanged between EPA and representatives of the industrial laundry industry since January 2001.

At the same time they requested this information from the EPA Administrator, the congressional requesters asked the EPA OIG to examine these issues. We reviewed the Administrator's submission to Congress, which we received during the week of September 27, 2004. Our review showed that EPA had provided, for comment, a small portion of draft language to the preamble of the proposed rule to representatives of the industrial laundry industry and had not included all

contacts in the public record. Therefore, we initiated an independent review to examine these issues further.

Scope and Methodology

We conducted our evaluation from January 2005 to April 2005, and generally complied with *Government Auditing Standards*, issued by the Comptroller General of the United States (limitations are explained in Appendix A).

We interviewed key OSW rulemaking staff, other EPA personnel regarding rulemaking policies and procedures, and external stakeholders. External stakeholders included representatives from industrial wipes manufacturers and laundries, industrial wipes users, and environmental and union organizations. We obtained other information and EPA documents.

We reviewed the rulemaking process, from the beginning of the industrial wipes rulemaking (1985) to the publishing of the proposed rule in the *Federal Register* on November 20, 2003. We compared EPA's actions against specific legal requirements, EPA internal requirements, and established Federal practices.

We evaluated specific congressional concerns about favoritism or the appearance of favoritism. These included concerns about the sharing of a small portion of the draft preamble language with a representative of the reusable wipes industry, and inconsistency in including documents in the rulemaking docket. We analyzed applicable policies and procedures, interviewed OSW staff, and analyzed information in the docket. To evaluate the extent of contacts between EPA officials and representatives of the industrial laundry industry, we interviewed OSW and industry staff, reviewed e-mail and other written records, and compared lists of contacts from multiple sources. Congress had expressed concern that EPA's public participation efforts were inappropriate and one-sided in developing the wipes proposal, and we specifically reviewed actions in this area.

Further details on the scope and methodology for our review, including prior reports reviewed related to rulemaking and the specific limitations of our evaluation, are in Appendix A.

Results in Brief

EPA met legal requirements for rulemaking when it developed the November 20, 2003, proposed rule for solvent-contaminated industrial wipes. EPA complied with the Administrative Procedure Act, although there are no provisions in the Act that address contacts with outside parties during the rulemaking process. EPA did not adequately document some of its practices, but we do not believe this affected the outcome of the proposed rule.

EPA allowed active public involvement during the process and considered the view of various stakeholders through meetings, telephone calls, e-mails, and letters.

The industrial laundry industry exerted considerable influence on the outcome of the proposal to exclude reusable wipes from solid waste regulations. However, there was no evidence the influence was illegal or inconsistent with EPA's standard practices; other stakeholders had similar access to EPA's rulemaking staff. We did not find that the timing of any decisions coincided with external political events, nor did we find evidence that EPA staff were directly or indirectly influenced by external political events, including actions by campaign contributors. Certain EPA actions, related to sharing a small portion of the preamble language and not documenting all contacts in the docket, contributed to public perceptions of impropriety.

Chapter 2

EPA Complied with Legal Requirements, But Needs Better Documentation

Congressional Issue Addressed: Whether EPA’s process for developing the proposal complied with all legal requirements for rulemaking, all internal EPA requirements and practices for open government, and established Federal practices to avoid the appearance of favoritism or undue influence in agency decision making processes.

EPA met legal requirements for rulemaking when it developed the November 20, 2003, proposed rule for solvent-contaminated industrial wipes. EPA complied with the Administrative Procedure Act, which establishes requirements for rulemaking. There are no provisions in the Act that address contacts with outside parties during the rulemaking process and thus the appearance of favoritism or undue influence. The Agency also complied with other applicable statutes and executive orders, as well as its own policies, with some exceptions. EPA did not adequately document some of its practices, although we do not believe this affected the outcome of the proposed rule.

EPA Met Requirements for Rulemaking

EPA generally met legal requirements for rulemaking in issuing the November 20, 2003, industrial wipes proposal.

Statutes and EPA Policies Address Rulemaking

EPA develops most rules through hybrid rulemaking, which is informal rulemaking with additional requirements imposed by EPA’s authorizing statutes. Section 553 of the Administrative Procedure Act establishes four basic requirements for informal rulemaking:

- Publish the proposed rule, along with a statement of “basis and purpose,” in the *Federal Register*.
- Give the public an opportunity to comment on the proposed rule.
- Publish the final rule, which should be a logical outgrowth of the proposed rule, in the *Federal Register*.
- Make the final rule effective 30 or more days after publication.

“Basis and purpose” means that rulemaking agencies must provide justification for rules. EPA’s Office of General Counsel notes this is the legal reason why EPA uses a docket – it contains all information that serves as the basis for a rule.

Should there be a challenge to the final rule, a court will review the administrative record of the rulemaking. This record typically includes the *Federal Register* notice containing the final rule language and preamble; public comments on the proposed rule and Agency's response; and any supporting documents, data, information, or studies in the rulemaking docket. The Office of General Counsel has advised the Agency to include documents in the docket that serve as the basis of the proposed rule.

There are no provisions in the Administrative Procedure Act concerning contacts with external stakeholders before or after a proposed rule is published in the *Federal Register*. The Act's requirements are expanded by Title 40, Code of Federal Regulations, section 25.10, which requires that public comments on proposed rules and the Agency's response to them be included in the docket.

Executive Order 12866, *Regulatory Planning and Review*, requires agencies to submit significant regulatory actions to the Office of Management and Budget (OMB) for review. The Executive Order also lays out transparency requirements, including making available to the public all documents submitted to OMB for review, and details on substantive changes made between drafts and published versions of proposed or final rules.

EPA developed its own guidance for rulemaking. *Action Development Process: Guidance for EPA Staff on Developing Quality Actions* outlines the steps for developing Agency actions, including rules. Based on this guidance, the industrial wipes rulemaking needed cross-Agency involvement because of cross-media issues and the potential for precedent-setting policy. Additional processes include formal cross-Agency approval of an analytic blueprint, documentation of workgroup meetings, and completion of the Comprehensive Regulatory Data form. EPA's Action Development Process also identifies involving stakeholders.

EPA's January 1981 *Policy on Public Participation*¹ strengthens the Agency's commitment to public participation and establishes uniform procedures. In an August 1993 memo, *Memorandum on Serving the Public Interest*, then EPA Administrator Carol Browner emphasized stakeholder involvement. This memo indicated EPA employees should be open to all viewpoints and take affirmative steps to solicit input. All stakeholders are to have an equal opportunity to meet with EPA officials; no one stakeholder should be accorded privileged status. EPA is to examine critically any proposal or recommendation from constituents. This memo gives no instructions for how to avoid favoritism or the appearance of favoritism in Agency decision actions.

Dockets are commonly used for rulemaking actions to serve as repositories for the collection of documents or information relied upon in the development of a

¹ An updated policy, EPA 233-B-03-002: *Public Involvement Policy of the U.S. Environmental Protection Agency*, May 2003, is not applicable to this review. The 1981 policy was in effect during the time period the industrial wipes proposed rule was developed.

particular Agency action. The Office of Solid Waste and Emergency Response's 1997 *Dockets and Documents: Working with the RCRA Information Center* provides guidance on what to include in a rulemaking docket. The official OSW rulemaking docket is a publicly available paper file containing all the materials critical to each stage in rule development. All documents supporting a rulemaking must be physically in the docket. These are to include lists of participants in external group meetings, communications with outside parties, trip reports, critical internal correspondence, summary minutes of meetings, and summaries of telephone conversations.

Wipes Rulemaking Generally Complied with Legal Requirements

The industrial wipes rulemaking generally complied with all legal requirements, including the Administrative Procedure Act. In particular:

- The rulemaking fulfilled the Administrative Procedure Act requirement that the proposed rule be published in the *Federal Register* along with a statement of "basis and purpose."
- As required by Executive Order 12866, EPA submitted the proposed rule to OMB for review because of its novel legal and policy issues.
- EPA completed cost-benefit assessments to determine whether the proposed rule is economically significant under Executive Order 12866.
- As required by Title 40, Code of Federal Regulations, section 25.10, EPA included public comments on the proposed rule in the docket, and relied to some extent on docketing guidance for making decisions about what to include in the docket.

As noted, there are no provisions in the Administrative Procedure Act that address contacts with outside parties during the rulemaking process and thus the appearance of favoritism or undue influence.

EPA Did Not Always Follow Agency Documentation Guidance

Although EPA generally complied with legal requirements during the industrial wipes rulemaking process, it did not always follow the documentation requirements of the Action Development Process. However, we do not believe these issues affected the outcome of the proposed rule.

EPA's regulatory management staff said the industrial wipes rulemaking began at a time when rulemaking workgroups did not always adhere to the Action Development Process. A 2001 taskforce on improving EPA regulations recommended stricter adherence to the Action Development Process and that staff attend rulemaking training. EPA's Office of Policy, Economics, and Innovation offers such training. Specific aspects of the Action Development Process not implemented include:

- Adhering to the formal cross-Agency approval of the detailed analytic blueprint (a planning document designed at the beginning of rulemaking). All Assistant Administrators/Regional Administrators represented in the rulemaking workgroup are to formally concur or concur with comment on the blueprint. The workgroup chair at the time the blueprint was developed stated it was approved informally. Workgroup members would call or e-mail the chair with their comments, suggestions, and concerns on the blueprint.
- Recording workgroup discussion meetings. Workgroup chairs are required by the Action Development Process to document all workgroup meetings, but this did not happen with the industrial wipes rulemaking.
- Answering all questions on the Comprehensive Regulatory Data form, a maintenance form that tracks a rulemaking from its preliminary stages to approval as a final rule. Workgroups are to keep the Comprehensive Regulatory Data on a rule current throughout the action development process. This did not happen in the industrial wipes rulemaking.

Conclusions

EPA met legal requirements for rulemaking when it developed the November 20, 2003, solvent-contaminated industrial wipes proposed rule, although there are no specific provisions that address contacts with outside parties during the rulemaking process. EPA's one guidance document on favoritism, the 1993 memo from the EPA Administrator, gives no instructions for how to avoid favoritism or the appearance of favoritism in Agency decision actions. However, EPA needs to implement its own taskforce recommendations for stricter adherence to its rulemaking process guidance and training for rulemaking staff.

Recommendations

We recommend that the Deputy Assistant Administrator for Solid Waste and Emergency Response:

- 2-1 Work with the Office of Policy, Economics, and Innovation to implement the recommendations proposed by the 2001 taskforce on improving regulations, including strict adherence to the Action Development Process, and ensure all Office of Solid Waste and Emergency Response rulemaking staff and management attend rulemaking training.

We recommend that the Associate Administrator for Policy, Economics, and Innovation:

- 2-2 Work with the Office of Solid Waste and Emergency Response to determine how best to complete the Comprehensive Regulatory Data form in future rulemaking actions.

Agency Comment and OIG Evaluation

Office of Solid Waste and Emergency Response officials said that the Office of Policy, Economics, and Innovation has the lead in implementing the recommendations of the 2001 taskforce and should continue in that role. The Office of Solid Waste and Emergency Response officials said they seek to strictly adhere to the Action Development process. They noted that all its employees were invited to take Office of Policy, Economics, and Innovation rulemaking training and they will make sure employees new to action development attend the course.

We agree that the Office of Policy, Economics, and Innovation should continue to be the lead in implementing the task force recommendations, including the taskforce-proposed action item to review, create, and revise, as necessary, rulemaking training. Therefore, we revised Recommendation 2-1 to indicate that the Office of Solid Waste and Emergency Response needs to work with the Office of Policy, Economics, and Innovation to implement the recommendation. The Agency indicated that it will make sure that employees new to action development will attend rulemaking training. However, we believe that the Office of Policy, Economics, and Innovation should implement the taskforce's suggestion to revise training requirements so that all staff involved in the regulatory and policy development process receive rulemaking training, not just employees new to action development. Given that our review found that a senior staff member, with many years experience, shared a small portion of the rule preamble language, refresher training appears appropriate for all staff.

With regard to the Wipes Rulemaking Comprehensive Regulatory Data form not being complete, the Office of Solid Waste and Emergency Response said the unanswered questions regarding stakeholders are for internal EPA use only, and the Office of Policy, Economics, and Innovation envisioned that someone in its public participation workgroup would input this information into the form. Because the Action Development Process requires the Comprehensive Regulatory Data form to be kept current, and the form is used for Agency status reports, we added Recommendation 2-2 to ensure that the Office of Policy, Economics, and Innovation determine how the form will be completed in future rulemaking actions. The Office of Policy, Economics, and Innovation developed the Action Development Process guidance and should clarify who is responsible to ensure completion of the form.

The Agency's full response to the recommendations is in Appendix B.

Chapter 3

EPA Had Extensive Contacts with the Public

Congressional Issue Addressed: The extent of the contacts between EPA officials and staff and representatives of the industrial laundry industry.

EPA officials and staff had extensive contacts with representatives of the industrial laundry industry and others. All stakeholders, including disposable wipes industry representatives, an environmental interest group, and a labor union, said that they were not excluded from the rulemaking process, and EPA staff were open and accessible. EPA staff consistently responded to questions, e-mails, and phone calls, and granted meeting requests when possible. Both reusable and disposable wipes representatives met with OSW senior management to voice their concerns. Details on the types of contacts follow.

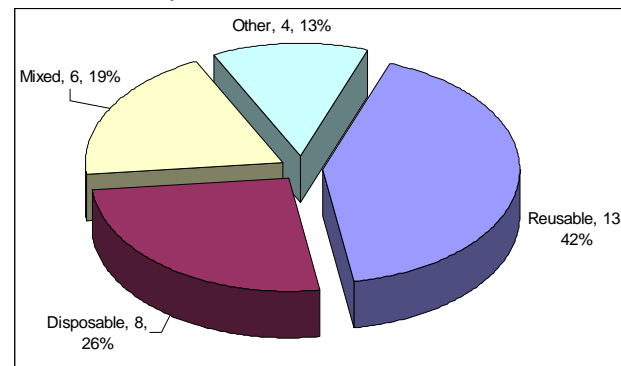
- **Meetings:** There were 31 documented meetings between EPA and stakeholders between the beginning of the wipes rulemaking (1985) and the rule proposal (November 20, 2003). As illustrated in Figure 3.1, reusable wipes representatives met with EPA more than other stakeholders (42 percent). Disposable

wipes representatives met with EPA 26 percent of the time. “Other” includes State representatives and printer associations. There was one meeting that included the reusable and disposable wipes representatives that was neither in the docket nor the response to Congress. This was a September 14, 2001,

meeting between the EPA Deputy Administrator and major small business trade associations. We determined that this was not a specific meeting between EPA and reusable wipes stakeholders, but rather a large conference-style meeting where EPA administrators gave short updates on specific projects. Since this was not a specific meeting between EPA and reusable wipes representatives, we did not consider the docket omission to be a breach of disclosure policy.

- **Letters:** There were 50 letters from various stakeholders placed in the docket for the time period prior to the *Federal Register* publication of the proposed rule. This encompassed 18 from the reusable wipes industry, 21 from

Figure 3.1 - Wipes Meetings with Industry
(Source: OIG analysis)



disposable wipes manufacturers, and 11 from other stakeholders. The Agency typically did not respond to these letters; OSW officials said there was no legal requirement to do so, and we agree.

- **Telephone Calls:** Wipes rulemaking staff had many stakeholder conversations, mostly concerning the current status of the rulemaking and the scheduling of meetings. A rulemaking staffer told us: “It is OSW’s policy to return phone calls by the end of the next working day,” and that she “was on the phone with stakeholders every week.”
- **E-mail:** EPA exchanged numerous e-mails with various stakeholders. Between January 2001 and September 2004, OSW staff exchanged approximately 75 e-mails with reusable wipes representatives. During the same time period, OSW exchanged approximately 39 e-mails with disposable wipes manufacturers. The majority of e-mails between EPA and the reusable and disposable wipes industries were simple requests for an update on the wipes rulemaking status. However, in a number of substantive e-mails, the conditions of the rule were discussed. OSW also exchanged extensive e-mails with printer industry representatives to discuss a December 2003 conference.

We concluded that while EPA may have had more contacts with industrial laundry officials than others, EPA sufficiently made itself available to all interested stakeholders.

Chapter 4

Reusable Wipes Industry Influenced Proposed Rule, But No Illegal Action Noted

Congressional Issue Addressed: To clarify, to the extent possible, the degree of influence that the industrial laundry industry had in the outcome of the proposal.

The industrial laundry industry exerted considerable influence on the outcome of the proposal to exclude reusable wipes from solid waste regulations. However, we found no evidence that the influence was illegal or inconsistent with OSW's standard business practice of obtaining input from stakeholders. Other stakeholders had similar access to EPA's rulemaking staff. We did not find that the timing of any decisions coincided with external political events, nor did we find evidence that EPA staff were directly or indirectly influenced by external political events, including actions by campaign contributors. Certain EPA actions, related to sharing a small portion of the preamble language with a reusable wipes industry representative and not documenting all contacts in the docket, contributed to public perceptions of impropriety.

Reusable Wipes Industry Influenced Rulemaking, But This Is Allowable

The August 1993 *Memorandum on Serving the Public Interest* requires EPA to provide for the most extensive public participation possible in decision-making while assuring it does not afford special privileged status to any special interest, and does not accept any recommendations or proposals without careful, critical examination. EPA's 1981 *Policy on Public Participation* discusses the Agency's intention to strengthen its commitment to public participation and establish uniform procedures for public participation in EPA's programs and decision-making processes. Neither guidance discusses when public involvement exceeds appropriate levels or has the appearance of favoritism.

Reusable Wipes Industry Requested Solid Waste Exclusion, and EPA's Analysis Supported It

Up until 2001, OSW management had recommended an exclusion from the definition of hazardous waste for both the reusable and disposable wipes industries, and had received approval for this option from OSW senior management. This option exempted those industries from the hazardous waste regulations under RCRA, but they would still need to comply with RCRA's less stringent solid waste regulations.

In the summer of 2001, reusable industry representatives submitted to OSW staff legal policy and regulatory alternatives that enable EPA to exclude the management of laundered industrial wipes from classification as solid waste while accomplishing EPA's goals. In December 2001, reusable industry representatives met with OSW senior management and elaborated on the issue. Soon after this meeting, OSW senior staff instructed EPA rulemaking staff to reevaluate the option of excluding reusable wipes from the definition of solid waste. The reason cited by a senior management official was that the rule would otherwise “. . . not get through OMB.” This official explained to us that his comment was based on experience developing EPA rules, and knowledge of the type of rules reviewed and favorably commented on by OMB, but he did not elaborate further. He also stated that OMB never contacted him about the industrial wipes rulemaking. Although we attempted to discuss this issue with OMB officials, they declined to speak to us about the particulars of its review of the proposed rule, citing that we would be going outside our jurisdiction.

EPA staff members told us that they did not view these directions as contrary to their views on the proposal. They also said the exclusion of reusable wipes from the definition of solid waste would still be effective, because if the companies did not meet the conditions required by the rule the wipes would revert to full regulation as a hazardous waste.

Meetings with Stakeholders Encouraged during Rulemaking

The Agency refined its proposed regulatory approaches for both the reusable and disposable industry throughout 2001, 2002, and 2003 by frequent contacts with all stakeholders, including the launderers. Meetings with stakeholders and the exchange of supporting evidence is not illegal unless the stakeholder offers a quid pro quo arrangement² to a favorable rulemaking. In fact, in EPA public participation policy, stakeholders impacted by a rule are encouraged to present their points of view and supporting documentation. The public participation policy strongly supports EPA decision makers accepting and considering the knowledge and opinions of others into its decision-making processes to achieve its mission. The policy also acknowledges that meaningful involvement with stakeholders can influence the Agency's decision. Prior to 2000, the disposable industry dominated communication with OSW in an effort to inform OSW of its concerns with disposable wipes being regulated as hazardous waste.

No Evidence of Direct Political Influence Found

A May 17, 2004, *Washington Post* article alleged that the direction of the wipes rule changed based on political campaign contributors. We learned from stakeholders and EPA that the reusable wipes industry began urging a solid waste exclusion after a May 2000 meeting, when EPA staff informed the reusable wipes industry that reusable wipes would be classified as solid waste. Over the next

² *Quid pro quo* is a legal term for the transaction of valued items or favors, in return for giving something of value.

1½ years, the reusable wipes industry assembled and submitted requests and arguments for a solid waste exclusion. They ultimately met with senior EPA management in December 2001 to express their position. EPA senior management approved the solid waste exclusion in May 2002. We did not find the timing of wipes rule decisions to coincide with external political events, nor did we find evidence that EPA staff were directly or indirectly influenced by external political events, including actions by campaign contributors.

Appearances of Favoritism Contributed to Perceptions of Impropriety

Although influence was exerted by industry groups, it is allowable and appropriate for any member of the public with an interest in EPA regulations. However, certain EPA actions contributed to public perceptions of impropriety. These actions involved the sharing of a small portion of the preamble language with a reusable wipes industry representative, and not providing consistent information and other rule conditions for the solid waste exclusion in the docket.

Shared Preamble Language Contributed to Appearance of Favoritism

OSW shared three sentences of the draft preamble language with a representative of the reusable wipes industry, but not with representatives of the disposable wipes industry or anyone else, in an August 5, 2002 e-mail. These three sentences read:

Because this action is a proposed rulemaking, provisions of the proposal, as well as EPA's assumptions and rationale leading to them, are subject to public notice and comment. Therefore, until a final rule governing these materials is issued, they remain regulated, as they are currently, by the State or EPA Region implementing the RCRA program. This proposed rule is not intended to affect individual states' policies and regulations on management of industrial wipes until it, or a variant of it, is finalized.

The sharing of a small, if even innocuous, portion of the preamble with only the reusable wipes industry provided the appearance of favoritism. According to EPA, the reusable wipes representative was concerned that some States might change their regulations in anticipation of the implementation of the rule as proposed. During proposed rule development, the reusable wipes industry had expressed concern that language be included in the preamble stating that the status quo remains between publication of the proposed rule and promulgation. The sharing of the preamble language is viewed as a courtesy to assure the reusable wipes industry that its concerns were being addressed. Because the shared preamble language is a statement of legal fact, and not proposed policy, it would not have provided laundry industry stakeholders with special knowledge.

Incomplete Public Records Contributed to Appearance of Favoritism

Congress expressed concern that many contacts were not made public through the rulemaking docket, especially after 2001. We confirmed that the following contacts and communications between 1985 and the publication of the proposed rule on November 20, 2003, were not included in the industrial wipes rulemaking docket:

- 17 meetings
- 6 letters between EPA and stakeholders
- all telephone conversations
- most e-mails

We further found that after summer 2001 EPA placed fewer meetings in the docket than prior to summer 2001. For example, 13 of the 20 meetings that took place through summer 2001 were in the docket (65 percent), while only 1 of 11 meetings was in the docket after summer 2001 (9 percent). The change with respect to what information was included in the docket created an appearance of favoritism because the omissions coincided with a change in rule direction. Through 2001, EPA favored the option to provide both the disposable and reusable wipes industries with hazardous waste exclusion, and this preference is documented in the docket through stakeholder meeting notes. In 2001, EPA began working toward the solid waste exclusion related to reusable wipes that was ultimately in the proposed rule. Meeting notes with outside stakeholders on EPA's change in direction to a solid waste exclusion after 2001 exist, but EPA did not place them in the docket. Although the basis for the solid waste exclusion was included in the preamble to the rule, which is included in the docket, there is no documentation in the docket to explicitly address EPA's decision for its change in position. Explicit documentation demonstrating the bases for this change would have made the rulemaking process more transparent and helped avoid the appearance of favoritism.

Although contacts and communications were omitted from the docket, this is not in violation of EPA rulemaking policy or guidance, nor does it indicate favoritism. If the information received from communications and contacts – whether it is a document, e-mail, telephone conversation, or meeting summary – is not relied upon in the development of a rule, that information does not have to be in the docket. Currently, all the information that supports the bases for the proposed rule is reflected in the docket. Therefore, the omissions to the docket do not violate rulemaking policy or guidance. In addition, the Agency's consistent exclusion of records of telephone and e-mail contacts, regardless of source, demonstrates that EPA treated stakeholders similarly with regard to the exclusion or inclusion of contacts in the docket and did not selectively exclude or include contacts.

Conclusions

The industrial laundry exerted considerable influence on the November 20, 2003, proposed rule to regulate solvent-contaminated industrial wipes, but the influence exerted is allowable and encouraged activity under EPA's public involvement policies. EPA staff conducted their own review and analysis of the options suggested by the industrial laundry industry and found merit in the suggestions. However, actions related to the sharing of a small portion of the preamble language, and not including in the docket key information regarding the proposed exclusion for the reusable wipes industry, contributed to an appearance of favoritism. EPA should avoid casting such appearances of favoritism in the future.

Recommendations

We recommend that the Deputy Assistant Administrator for Solid Waste and Emergency Response:

- 4-1 In collaboration with the Office of Policy, Economics, and Innovation and the Agency's Regulatory Steering Committee, develop a guidance document that discusses how to avoid favoritism and the appearance of favoritism in Agency actions, including the development of rules.
- 4-2 In collaboration with the Office of Policy, Economics and Innovation, develop a guidance document that clearly defines rulemaking docketing requirements, by stages of a rulemaking, and ensure they are consistently followed to avoid the appearance of favoritism.

Agency Comment and OIG Evaluation

The Office of Solid Waste and Emergency Response agreed that these guidance documents are appropriate and should be prepared. However, the Office of Solid Waste and Emergency Response indicated the guidance documents are more appropriately developed by the Office of Policy, Economics, and Innovation, in conjunction with the Agency's Regulatory Steering Committee (of which the Office of Solid Waste and Emergency Response is a member).

The Office of Policy, Economics, and Innovation agreed that it was the appropriate office to develop guidance to avoid the appearance of favoritism in Agency actions and rulemaking docket procedures. Office of Policy, Economics, and Innovation officials indicated they would work with the Agency's Regulatory Steering Committee to implement the recommendations. We consider EPA's actions to be appropriate.

The Agency's full response to the recommendations is in Appendix B.

Details on Scope and Methodology

We reviewed the rulemaking process for the proposed industrial wipes rule from the beginning of the rulemaking (1985) to the rulemaking staff's assessment of the public comments to the Notice of Proposed Rulemaking, which was published in the *Federal Register* on November 20, 2003. Our general approach for answering the congressional questions was to interview EPA industrial wipes rulemaking staff, along with external stakeholders involved in the wipes rulemaking. We interviewed key OSW rulemaking staff on multiple occasions. We selected external stakeholders based on their involvement in the rulemaking. We obtained other information and EPA documents. Specific interviewees included the following:

Interviewees
EPA staff involved in the rulemaking:
<ul style="list-style-type: none"> • Office of Solid Waste • Office of General Counsel rulemaking workgroup staff • Office of Enforcement Compliance Assurance rulemaking workgroup staff • Region 3 rulemaking workgroup staff • Region 9 rulemaking workgroup staff • Former senior Office of Solid Waste and Emergency Response management
EPA rulemaking policy staff:
<ul style="list-style-type: none"> • Office of Policy, Economics, and Innovation • Policy Analysis and Regulatory Management Staff
External stakeholders:
<ul style="list-style-type: none"> • Association of Nonwoven Fabrics Industry, a disposable wipes manufacturers' trade association • Secondary Materials and Reusable Textiles Association, a disposable wipes management trade association • Uniform and Textile Service Association, an industrial laundries' trade association, and legal counsel for the Association • Specialty Graphic Imaging Association, a printers' trade association • Sierra Club, an environmental organization • UNITE HERE, a labor union for the laundry industry (formerly the "Union of Needletrades, Textiles and Industrial Employees" and "Hotel Employees and Restaurant Employees International Union," which merged in 2004)

To specifically answer questions concerning EPA's compliance with rulemaking requirements, we determined the full scope and degree of compliance with all legal requirements for rulemaking, all internal EPA requirements and practices for open government, and established Federal practices to avoid the appearance of favoritism or undue influence in agency decision making processes. To accomplish this, we reviewed EPA and OSW policies and regulations, interviewed EPA staff and interested stakeholders, and analyzed supporting documentation.

We identified training opportunities and requirements for regulations development staff defined by EPA and the Office of Solid Waste and Emergency Response. We obtained additional

information from senior EPA management officials, including OSW and regulations development program staff in the Office of Policy, Economics, and Innovation and Office of Solid Waste and Emergency Response. Although OMB would not discuss the specifics of its review of the proposed rule, it did provide us with general information on OMB's role in the rulemaking process.

Our EPA policy and guidance review included rulemaking docket requirements and an evaluation of existing docket contents for consistency with guidance, including evaluation of completeness of docket documents and evaluation of documents known to be absent from the docket. We identified meetings and communications absent from the docket from OSW responses and other sources, such as meetings identified in industry Web sites. Documents reviewed included EPA documents on Web sites, documents requested of EPA by members of Congress, documents provided by stakeholders, the Administrative Procedure Act, other Federal statutes and executive orders affecting the agency rulemaking process, and information from OMB's Web site.

To determine whether instances of favoritism or the appearance of favoritism existed in the wipes rulemaking, we used congressional concerns mentioned in the request as criteria. These concerns are the sharing of a small portion of the draft preamble language with a representative of the reusable wipes industry and inconsistency in the inclusion of documents in the rulemaking docket. We:

- Analyzed Agency policies and procedures on rulemaking.
- Interviewed OSW staff concerning the preamble language and including information in the docket.
- Confirmed comments with other OSW staff involved in the rulemaking and internal written correspondence between OSW staff.
- Analyzed the impact of the shared preamble language.
- Performed an extensive review and analysis of information included in the docket.
- Determined the impact of items not included in the docket.

To answer the question regarding the extent of the contacts between EPA officials and staff and representatives of the industrial laundry industry, we interviewed OSW and industry staff, reviewed e-mail and other written records, and compared lists of contacts from multiple sources. We verified that the full extent of contacts was captured and communicated in the Agency's response to Congress. We reviewed stakeholder Web sites to identify meetings.

Congress expressed concern that EPA's public participation was inappropriate and one-sided in developing the wipes proposal. To address this concern, we specifically asked EPA staff about their public participation program in developing the wipes proposal, and asked all stakeholders interviewed whether they believed EPA had been open and accessible. In addition, we reviewed meeting frequency from the beginning of the rulemaking to determine whether access to EPA was consistent and fair throughout the rulemaking.

To answer the question regarding the degree of influence that the industrial laundry industry had in the outcome of the proposal, we used Agency criteria for serving the public interest and public

participation in Agency decision making. We also answered this question through our analysis of the overall communications between OSW and stakeholders (e-mails, meetings, etc.), the concerns raised by congressional requesters (preamble language shared by EPA with the laundry industry representatives), and at least one meeting in particular that was significant to changing the outcome of the proposed rule. To evaluate whether undue influence in Agency rulemaking was present, we relied on the Office of General Counsel's definition of what constitutes illegal influence. We also relied on two pivotal points made in the request:

- What was the level of influence by the reusable wipes industry and its impact on the proposed rule preamble language?
- What was the degree of influence in the change in the proposal to exempt reusable wipes from regulation as a solid waste?

To evaluate the level of influence the reusable wipes industry had on the preamble language and its impact, we reviewed communications between OSW staff and laundry representatives, and interviewed OSW staff, laundry representatives, and staff at an environmental organization and a labor organization. We also conducted an extensive review of internal EPA staff e-mails to determine the basis for rulemaking decisions and assess the role of various stakeholders in influencing decisions. We completed an analysis of OSW communications with disposable wipes staff, and compared these communications with OSW communications with laundry industry staff. We analyzed original proposal language, recommendations by laundry representatives, final preamble language, and impact of language changes.

To evaluate the degree of influence in the change to exempt reusable wipes from regulation as a solid waste, we evaluated the efforts of the disposable wipes representatives, and environmental and labor organizations, and whether they were accorded similar access as the industrial laundry industry representatives. We evaluated e-mails and meetings between OSW and both the disposable and reusable wipes representatives, and documentation in the regulatory process, including meeting summaries in the docket and requested pre-decisional rulemaking documentation obtained from OSW. Pre-decisional documentation includes the detailed analytical blueprints and options analysis required in regulation development, plus briefing documents used by staff in presentations to senior Office of Solid Waste and Emergency Response management. We also examined whether the degree of influence exerted by the reusable wipes industry conformed to EPA rulemaking policies and guidelines.

Prior Reports

Although there were no prior reports on rulemaking related specifically to industrial wipes, we reviewed the following EPA and Government Accountability Office (GAO) reports related to rulemaking:

Prior Reports Reviewed			
Organization	Report Title	Report No.	Date
EPA OIG	Additional Analyses of Mercury Emissions Needed Before EPA Finalizes Rules for Coal-Fired Utilities	2005-P-00003	February 3, 2005
GAO	Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews	GAO-03-929	September 2003
GAO	Regulatory Reform: Changes Made to Agencies' Rules are Not Always Clearly Documented	GAO/GGD-98-31	January 1998

Limitations

A limitation to answering congressional questions regarding EPA's compliance with rulemaking requirements is the lack of any rules for avoiding favoritism or the appearance of favoritism and undue influence in EPA decision-making processes. EPA guidance indicates that EPA should consider the input of stakeholders, but does not provide clear guidance on when the level or type of input becomes inappropriate or illegal.

We relied on evaluations by EPA Policy Analysis and Regulatory Management Staff and the Office of Policy, Economics, and Innovation of OSW's compliance with Federal statutes applicable to rulemaking, but we did not perform tests to ensure their oversight processes and procedures were accurate or sufficient. However, we did not detect any indication of noncompliance issues with Federal statutes during our evaluation.

A limitation in answering the congressional question regarding the extent of contacts between EPA and the laundry representatives is the possibility that some contacts remain undiscovered despite the fact that our review of contacts and information we received was thorough and extensive. An additional limitation is that notes from telephone conversations and some meetings were either unavailable or non-existent.

A lack of access to OMB staff who conducted a review on the industrial wipes proposed rule is a potential limitation in answering the questions regarding the extent of influence the laundry industry had on the outcome of the proposed rule. OMB declined to speak to us about the particulars of its review of the proposed rule, citing that we would be going outside our jurisdiction. We also are impacted by interviewees' interpretations of events and their impact, by their ability to remember details of events that occurred in the past, and by a lack of documentation.

Full Text of Agency Response



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

September 9, 2005

MEMORANDUM

SUBJECT: Response to Draft Evaluation Report
Rulemaking on Solvent-Contaminated Industrial Wipes
Assignment No. 2005-000728

FROM: Thomas P. Dunne /s/
Acting Assistant Administrator

TO: Kwai Chan
Assistant Inspector General
Office of Program Evaluation

The Office of Solid Waste and Emergency Response (OSWER) has received and reviewed the draft report sent August 9, 2005, on the review conducted by the Office of the Inspector General (OIG) on the rulemaking on solvent-contaminated industrial wipes. In the following attachment, OSWER has provided comments on the draft report and our response to OIG's recommendations and findings. Where we have not raised specific comments on the findings in this report, we do not take issue with them.

Thank you for the opportunity to provide our comments. If you or your staff have any comments regarding them, you may contact Kathy Blanton at (703) 605-0761.

Attachment

ATTACHMENT

OSWER Responses to Recommendations and Findings

(1) Recommendations

(a) On page 9, the Office of the Inspector General (OIG) recommends that the Deputy Assistant Administrator (DAA) for the Office of Solid Waste and Emergency Response (OSWER) implement recommendations proposed by the 2001 taskforce on improving regulations, implement strict adherence to the Action Development Process (ADP), and ensure staff and managers attend rulemaking development training.

The Office of Policy Economics, and Innovation (OPEI) has the lead in implementing the recommendations of the 2001 taskforce on improving regulations and should continue in that role. OSWER seeks to strictly adhere to the Agency's current Action Development Process (dated 6/30/04). Shortly after the guidance document was released and sent to every OSWER employee, OSWER's senior managers were briefed. All of OSWER's employees, including managers, have been invited to attend OPEI's rulemaking training, and many have taken the training. We will continue to ensure that OSWER staff and managers new to action development attend the course. In addition, a chart that lays out the steps to the ADP and provides specific guidance has been provided to all OSWER employees. We will ensure that the policies are followed through standard management controls.

(b) On page 16, the OIG recommends that the DAA for OSWER draft a guidance document defining favoritism and discussing how to avoid the appearance of favoritism in Agency actions. In addition the OIG recommends that the DAA for OSWER draft a guidance document defining the docket process for each stage of a rulemaking and ensure these guidelines are followed to avoid the appearance of favoritism.

OSWER agrees that these guidance documents are appropriate and should be prepared. However, the guidances are more appropriately developed by OPEI, in conjunction with the Agency's Regulatory Steering Committee (of which OSWER is a member). These documents would be relevant across the entire Agency, not just within OSWER. We are referring your recommendations to these groups.

(2) Other Comments

(a) Chapter 1, page 1, Background, 1st paragraph: The draft report states that through normal use, industrial wipes get contaminated with solvents that cause their management to be subject to Resource Conservation and Recovery Act (RCRA) regulation. Because exclusions or exemptions unrelated to this rulemaking may be in effect in some cases, such as that for conditionally exempt small quantity generators, we suggest that this be changed to "*potentially* cause their management to be subject to Resource Conservation and Recovery Act (RCRA) regulation."

(b) Chapter 1, page 1, Background, 1st paragraph: The draft report states that disposable wipes are generally paper towels and reusable wipes are generally rags and cloth shop towels. Non-woven wipes, the kind generally disposed, are not necessarily paper-based: they can be made from plastics or other materials. In addition, there are cases in which woven wipes, like rags, are discarded. Throughout the proposed rulemaking, we tried to avoid this confusion by referring to “disposable” and “reusable” wipes. We suggest that you may want to make this change throughout your report.

(c) Chapter 1, page 1, Background, 2nd paragraph: The draft report statement saying the 1987 petition from the industrial laundry requested that “waste resulting from laundering reusable wipes” be excluded from the definition of solid waste is not exactly correct. This petition requested an exclusion for the industrial wipes themselves, not for the waste from laundering them, which would imply a request for an exclusion for sludges and other wastes that would have come out of wipes when they were laundered.

(d) Chapter 1, page 2, 1st paragraph: We believe it’s misleading to state that EPA’s 1994 policy “led to the application of different state regulatory actions for both types of wipes.” Most states had already developed their own approaches to wipes before the 1994 guidance, and that guidance largely confirmed the existing situation at that time. In addition, to clarify, 48 states and 2 territories are authorized for the RCRA base program, not 50 states.

(e) Chapter 1, page 2, 2nd bullet: We believe it is somewhat misleading to state that the exclusion for reusable wipes would exclude the management of all RCRA-listed solvents in laundered wipes from disposal regulations. The solvents that come from laundering wipes would still be subject to local pretreatment requirements and those who use the exclusion would often be required to follow certain conditions established by publicly owned treatment works.

(f) Chapter 1, page 2, 3rd paragraph: The last sentence states that under the proposal, both types of wipes would have to meet a standard for no free liquids. In fact, the proposed standard for disposable wipes requires that each wipe have less than five grams of solvent in them when sent for landfilling or contain no free liquids if sent to a municipal incinerator.

(g) Chapter 1, page 3: The draft report includes Table 1-1, which attempts to boil down the differences in opinions on the proposed rule of the major stakeholder groups into five categories. As this is an ongoing rulemaking, the Office of Solid Waste (OSW) is still evaluating the comments on the proposal and has not made its analysis public. In the final report, the Office of the Inspector General (OIG) should indicate that this summary is theirs, and not OSW’s more thorough analysis to be used for the purpose of regulatory development and the response to comments.

(h) Chapter 1, page 3, Table 1-1: The OSW staff evaluation of the comments to the proposal does not agree with the OIG’s assessment that “most states favor consistency when addressing both reusable and disposable wipes.” The state comments were mixed with most states agreeable toward the proposal for reusable wipes. Over half the states that commented did not want an exclusion for disposables.

(i) Chapter 1, page 3, last paragraph: In stating that “draft language to the preamble of the proposal” was provided to representatives of the laundering industry, we believe it important to properly put into context that only a small portion of the draft language to the preamble was provided. This is language that OIG used later in your draft report. This comment applies throughout the report wherever it discusses language being provided to the laundering industry. A reader of a select portion of the report might get the mistaken impression that a larger section of the preamble was shared.

(j) Chapter 2, page 9, 3rd bullet: The draft report states that EPA did not answer all the questions on the Comprehensive Regulatory Data form, a maintenance form that tracks a rulemaking from its preliminary stages to approval as a final rule. The unanswered questions regard stakeholders and are for internal EPA use only. They do not appear in the tiering form or the Regulatory Agenda form that the workgroup chair regularly updates. These questions originated from the OPEI public participation group a few years ago. OPEI envisioned that someone in this group would contact each workgroup chair for the information and would input the data into the electronic form. This has not occurred and, therefore, the information was not entered. As a result, we do not believe that the omission of this information reflects any failure on OSWER’s part to follow Agency processes.

(k) Chapter 4, page 15, 2nd paragraph: The draft report states that meeting notes on EPA’s decision to propose a solid waste exclusion in 2001 exist but were not placed in the docket. We suggest that the report should indicate whether it refers to internal meeting notes or notes with outside stakeholders, as notes from internal meetings should not ordinarily be placed in the docket (these are considered deliberative).

Distribution

Office of the Administrator
Deputy Assistant Administrator, Office of Solid Waste and Emergency Response
Associate Administrator for Policy, Economics, and Innovation
Director, Office of Solid Waste
Agency Followup Official (the CFO)
Agency Followup Coordinator
Audit Liaison, Office of Solid Waste and Emergency Response
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