



MEMORANDUM

TO: Ohio Manufacturers' Association

FROM: Frank Merrill

DATE: January 24, 2018

RE: Proposed Ohio EPA Rulemaking – Laundered Textile Exclusion

Ohio EPA's Proposed Rulemaking

On January 10, 2018, Ohio EPA issued a proposed amendment to its rules regarding the identification and listing of hazardous waste. Ohio's current hazardous waste rules, found in Ohio Administrative Code Chapter 3745, provide a conditional exclusion that allows solvent contaminated wipes, as defined by O.A.C. 3745-50-10(A)(118), to be laundered without the need for the generator of the contaminated wipes to manage them as "hazardous waste." The current rule also excludes the laundry or cleaning facility from the requirement of obtaining a hazardous waste storage permit from Ohio EPA. Currently, "solvent contaminated wipes" does not include other types of hazardous waste textiles within its definition.

Rule Changes Proposed to O.A.C. 3745-51-06

The proposed revisions add an exclusion to some of the hazardous waste rules for "hazardous waste textiles" under the proposed provisions of O.A.C. 3745-51-06(A)(3).

The proposed rule does the following:

- Adds a conditional exclusion for "hazardous waste textiles" under O.A.C. 3745-51-06.
- Conditionally excludes hazardous waste textiles from regulation under O.A.C 3745-50-40 to 3745-50-235, 3745-52 to 3745-57, 3745-65 to 3745-69, 3745-205, 3745-256, 3745-266, and 3745-270.
- Includes a three-part definition for "hazardous waste textiles."
 - Defines hazardous waste textiles as including (but not limited to): "rags, gloves, uniforms, linens, smocks, coveralls and mops made of woven or unwoven natural or synthetic fibers."

- Defines hazardous waste textiles as any textile contaminated with a “hazardous waste,” as defined in O.A.C. 3745-51-03.
- Defines hazardous waste textiles as a contaminated textile that is “cleaned on-site or sent to a laundry or other cleaning facility and intended for reuse.”
- In order for the hazardous waste textile to qualify for the exclusion, the following conditions must be met:
 - The textiles are not burned for energy recovery, as a fuel, disposed of, or used to produce products “that are applied to the land.”
 - The textiles are not otherwise exempt under O.A.C. 3745-51-04(A)(26) [the solvent contaminated wipe rule].
 - The textiles are not mixed with additional hazardous waste after the initial use.
 - At the point of being transported for cleaning, the textiles do not contain “free liquids” as defined in O.A.C. 3745-50-10.
 - The textiles are not contaminated with acute hazardous waste as defined in O.A.C. 3745-51-30 and listed in O.A.C. 3745-51-31 and -33(E).
 - The textiles do not exhibit characteristics of ignitability or reactivity as defined in O.A.C. 3745-51.
 - All visible, free flowing used oil has been removed from the textiles.
 - Written notice has been provided to the off-site laundry or cleaning facility of the presence of hazardous waste in the textiles, including providing a list of the hazardous wastes present in the textiles.
 - The off-site laundry or cleaning facility is subject to regulation under Section 402 or Section 307(b) of the federal Clean Water Act.

Practical Effects of the Proposed Rule

The potential changes to O.A.C. 3745-51-06 provide a clear path for manufacturers and other businesses to follow in order for their hazardous waste textiles not to be considered “recyclable materials,” and thereby, avoid being subject to some of the regulations of hazardous waste generators, transporters, and storage facilities. However, the proposed revisions to the rule present three principal concerns.

First, the provisions leave open the possibility that if one step in the ten-step process is not complied with, the textile could be considered a “waste.” The very definition of “waste” in O.A.C. 3745-51-02(A)(1) indicates that it must be a “discarded material,” which is defined as any abandoned, recycled, or inherently waste-like material. O.A.C. 3745-51-02(A)(2). So, if a manufacturer were to fail to meet the regulatory requirements when it sends the textiles to a launderer, the textiles would be considered “waste.” But, sending textiles to a launderer for cleaning should not be considered a “discarded material.” This is inapposite to the reason for sending the textiles to be laundered in the first place; these textiles are not a “waste.”

Second, as proposed, these textiles are not treated like “solvent contaminated wipes” under O.A.C. 3745-51-04(A)(26) and 3745-50-10(A)(118). This is problematic because the current definition of “solvent contaminated wipes” is distinct from the proposed “hazardous textile waste,” and the provisions of (A)(26) for contaminated wipes are significantly less onerous than the proposed rules for hazardous textile wastes. For example, “solvent contaminated wipes” can be disposed of as “solid waste” whereas “hazardous waste textiles” must be disposed of as “hazardous waste.” This issue could be resolved by broadening the definition of “solvent contaminated wipes” and “wipe” to include hazardous textiles.

Finally, the proposed rule will continue regulatory burdens to a manufacturer or business that utilizes hazardous materials in its daily operations. A business will be forced to keep track of every hazardous material that every “textile,” which is defined very broadly, comes into contact with. Then, it will be forced to provide a list to the laundry facility of all such hazardous materials and the hazards posed by such hazardous materials. It is likely that a tremendous amount of hours will be added to regulatory compliance efforts, which could simply be avoided by folding the changes into the already existing “solvent contaminated wipe rule.”