The Honorable Hillary Rodham Clinton
476 Russell Senate Office Building
Washington, DC 20510

Dear Senator Clinton:

Thank you for your letter of July 20, 2004, regarding the rulemaking process for the Environmental Protection Agency's (EPA) recent proposal to establish management requirements under the Resource Conservation and Recovery Act (RCRA) for reusable and disposable solvent-contaminated industrial wipes. I appreciate your concerns that this proposal may represent a change in course regarding the federal regulations governing the handling of soiled reusable shop towels and that, based on a *Washington Post* article, you are concerned that EPA may have provided inappropriate access to the industrial laundry industry at the expense of other stakeholders.

In our view, the proposed rule would not represent a change in course regarding the regulatory structure applicable to soiled reusable shop towels. As stated in the preamble to the proposed rule, many states currently "provide regulatory relief for reusable contaminated wipes sent to an industrial laundry … for cleaning and reuse" with conditions that vary from state to state and most states requiring that "the containers of wipes do not contain free liquids." Because of varying state standards, in a number of cases, the proposed rule would tighten existing controls. For example, we expect that the proposed rule, if finalized, would require some laundries to switch to more expensive transportation containers to ensure that solvent does not escape during transportation. As a result, we estimate that the proposed rule would result in the removal of 3.4 million gallons of solvent from reusable shop towels that would otherwise be transported to industrial laundries and ultimately volatilize into the air.

I also want to assure you that EPA is committed to providing a fair and open stakeholder process for our rulemakings and to getting input from all sides of the issues our rules address. As shown in our enclosures, EPA has met many times with a large variety of stakeholders representing many viewpoints, held large stakeholder meetings, and granted requests for meetings whenever they were received. EPA did not provide preferential treatment nor inappropriate access to any stakeholders during the rulemaking process.

We have attached to this letter responses to the concerns expressed in your letter and documents responding to your specific requests for records of contacts and documents exchanged between EPA personnel and representatives of the industrial laundry industry since January 2001.

I hope this submittal addresses your concerns about the proposed rule. Thank you again for your letter. If you have further questions, please contact me or your staff may contact Holly Smithson, in EPA's Office of Congressional and Intergovernmental Relations, at 202.564.1609.

Sincerely,

Thomas P. Dunne
Acting Assistant Administrator

Enclosure
cc: Nikki Tinsley, EPA Inspector General

Response to Concerns on Solvent-Contaminated Wipes Proposal

(1) In your letter, you request (a) copies of any internal policies or guidance governing EPA's practices used to avoid the appearance of favoritism or undue influence on the agency's decision making processes; (b) copies of records of contact between EPA personnel and representatives of the industrial laundry industry since January, 2001; and (c) copies of all documents exchanged between EPA and representatives of the industrial laundry industry since January 2001.

In response to your inquiry regarding copies of internal policies or guidance governing EPA's interactions with outside parties during or prior to rulemaking, I have attached two documents: (1) the August 6, 1993, Memorandum to all Employees, the subject of which is "Serving the Public Interest," and (2) the Public Involvement Policy. These documents address EPA's policies with regard to public participation. Throughout this rulemaking, we have strived to meet with stakeholders whenever they requested a meeting and have accepted their input when it was offered. Our extensive contact with all stakeholders is shown in the docket for this rulemaking, which includes written correspondence with representatives of various interested parties and records of meetings between EPA and the various stakeholder groups.

In response to requests (b) and (c), we have enclosed with this letter the items you asked for, as well as an index of materials that meet this description that are already in the docket for this rulemaking. While you have only requested information since January 2001, you should be aware that the same procedures were followed since we initiated the rulemaking in 1996.

In addition to written communications, EPA personnel have spoken on the telephone with representatives of stakeholder groups during the rulemaking, most frequently to arrange meetings or to discuss the status of the proposal prior to its issuance. We do not have written records of these communications, but when conversations turned to substantive issues regarding the rule, we typically asked callers to put their requests or suggestions in writing so they could be added to the public record.

(2) In your letter, you express concern that the industrial laundry industry had extensive access to agency decision makers while other stakeholders were left out of the rule development process.

As previously noted, EPA has been meeting with various stakeholders throughout the rulemaking process to discuss the status of the proposed rule and how it would affect their constituents. We have included a list of all stakeholder meetings we held over the course of developing the rule. Although we did meet with the laundries throughout the process, we also met with the other stakeholder groups that expressed interest in the rulemaking, especially the manufacturers of disposable wipes and the representatives of the printing industry, which uses many of the wipes that would be affected by the rule.

The proposed rule took into account the pre-proposal input we received from all stakeholders

who expressed interest: the input from industry stakeholders—the generators of wipes, the makers of disposable wipes, and the industrial laundries—as well as the input of other interested parties, including UNITE, the laundry workers representatives, and the Sierra Club.

(3) You express a concern that EPA limited its disclosures to the public of contacts with stakeholders after the summer of 2001.

We do not believe we dealt with stakeholders any differently after the summer of 2001 than at any other time during rule development. EPA's policy of engendering an open rulemaking process has been consistent throughout this rulemaking process. Submittals to the docket regarding stakeholder correspondence declined since 2001 probably because stakeholders were aware that EPA was, at that point, no longer actively gathering information or data that would affect the outcome of the rule, but, rather, was making internal decisions, drafting the rule, and going through internal reviews. However, when we received requests from stakeholders to meet, we accommodated those requests.

(4) We would also like to address your concern that the laundries were given an opportunity to view and comment on EPA's decisions and draft preamble, whereas other stakeholders were left out of the process.

The *Washington Post* article implies that EPA provided representatives of industrial laundries the opportunity to review agency decisions and extensive preamble and rule language. The article identifies a few sentences that we provided to laundry representatives that would generally apply to all regulations at the proposal stage. The sentences describe the regulatory status of contaminated industrial wipes during the period between proposal and finalization of the regulation. These kinds of statements are often included in the preamble to proposed rules to eliminate any confusion on a material's regulatory status while rulemakings are proceeding. In this case, a laundry representative had specifically suggested we include such an explanation in the preamble to the proposed regulation. As a courtesy, we shared the sentences with the laundry industry, who suggested a few minor changes which didn't affect the substance. We considered some of the edits to be an improvement to our original draft and, after internal Agency review, included those in the preamble to the proposed rule.

[1]

Other than these few sentences, after final management decisions were made on the rulemaking in the fall of 2001, no drafts of the preamble or regulatory text were provided to any outside stakeholders, other than to states represented on our work group.

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[1] The language was published in the summary of proposed changes: "It is not EPA's intent to modify or in any way limit the existing state or EPA regional exclusions or policies through this proposed Federal rulemaking. 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, the regulatory status and classification of these materials, including all regulatory exclusions under current RCRA programs implemented by a state or EPA region implementing the RCRA program, remain unchanged" (EPA Proposal on Industrial Wipes; November 20, 2003, 68 FR 65589).

(5) Finally, we would like to address one other point that we believe the *Post* misrepresented in their article on May 17, 2004.

The industrial laundry industry would not get a cost savings under the proposed rulemaking—our analysis estimated they would likely incur a cost to meet the management standards in the rule. Because EPA policy for the past ten years has been to let authorized states establish their own policies for wipes, most laundries are in states that already have policies in place that are similar to the management standards in the proposed rule. However, we believe that the proposed rule, if adopted, would cause some laundries to switch to more expensive containers than currently used to ship used wipes from users to the laundries. These more expensive containers would be necessary to protect against release of solvents from the contaminated wipes. Additionally, as explained in the preamble to the proposed rule, authorized states that do not want to adopt the proposed rule as it applies to reusable wipes or disposable wipes are not required to do so because it is optional for states to adopt rules that are less stringent than their existing rules. The estimated savings that would result from the proposed rulemaking would be attributable to lower disposal costs for users of non-laundered (disposable) wipes, not to laundries. In addition, our analysis estimates that for wipes affected by the rule, the reusable wipes' market share may potentially be reduced three to fifteen percent as compared to disposable wipes.

Index of Attachments

EPA's August 6, 2003 Memorandum to All Employees, "Serving the Public Interest"

EPA's Public Involvement Policy

EPA Meetings With Members of Public on Wipes Rule

EPA Meetings with Representatives of the Industrial Laundry Industry

Index of Records of Contact Between Industrial Laundry Industry Representatives and EPA after 2001 in Solvent-Contaminated Wipes Rulemaking Docket (RCRA-2003-0004)

Records of Contact Between EPA Personnel and Representatives of the Industrial Laundry Industry since January 2001