

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
AMENDMENTS TO MANIFESTING) R19-018
REQUIREMENTS: SPECIAL WASTE HAULING) (Rulemaking - Land)
35 ILL. ADM. CODE 809)

NOTICE OF FILING

TO: See attached Certificate of Service.

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board Illinois EPA's Testimony of James Jennings, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gabriel H. Neibergall
Gabriel H. Neibergall
Assistant Counsel
Division of Legal Counsel
Gabriel.Neibergall@illinois.gov

DATED: April 25, 2019

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

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PRE-FILED TESTIMONY OF JAMES JENNINGS, ON THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL 35 ILL. ADM. CODE 809

My name is James Jennings. I am the Manager of the Waste Reduction and Compliance Section, within the Illinois Environmental Protection Agency's ("Agency") Bureau of Land. I received my Bachelor's degree from the University of Cincinnati and my Juris Doctor from the University of Kentucky College of Law. In October 2013, I joined the Agency's Division of Legal Counsel as Assistant Counsel. In that position, I was primarily responsible for providing legal advice related to land regulatory and enforcement matters. I have served in my current position since April 2016.

The Waste Reduction and Compliance Section is responsible for administering numerous reporting and compliance programs. This includes serving as the Agency's public point of contact for the State of Illinois' implementation of waste hauler permitting and manifesting programs, including the special waste manifesting program. Relevant to this testimony, the Waste Reduction and Compliance Section has monitored the impact of the adoption of the United States Environmental Protection Agency's ("USEPA") Electronic Manifest System ("e-Manifest system") in Illinois and evaluated its impact on entities regulated exclusively at the state level.

My testimony will focus on the Agency's proposed amendments to the following sections of 35 Ill. Adm. Code 809 ("Special Waste Hauling rules"): Section 809.103 and Section 809.501.

These amendments address the impact of the e-Manifest system on waste haulers that handle waste regulated entirely at the state level.

On June 30, 2018, USEPA launched its e-Manifest system to electronically track federally-regulated hazardous waste shipments throughout the country. Prior to the e-Manifest system's development, USEPA's six-part paper Uniform Hazardous Waste Manifest ("Uniform Manifest") was required for all hazardous waste shipments. Due to the widespread use and utility of the paper Uniform Manifest, many states elected to adopt the Uniform Manifest for the transportation of certain non-hazardous wastes regulated exclusively at the state level. Illinois was among those states.

Until June 30, 2018, the Uniform Manifest represented a convenient avenue for tracking shipments of non-hazardous waste that did not carry any regulatory burden or other cost intended for hazardous waste. The implementation of the e-Manifest system profoundly altered that dynamic. The e-Manifest system is not an entirely paperless means of tracking and monitoring the shipment of hazardous waste. Rather, the e-Manifest system enables users to track hazardous waste electronically, using paper manifests, or through a hybrid of the electronic and paper options, each of which is ultimately channeled into USEPA's online electronic tracking platform. The rules establishing the e-Manifest system carry numerous enhanced responsibilities for entities that generate, transport, or receive hazardous waste. These obligations include mandatory participation in the e-Manifest system and a tiered fee schedule intended to incentivize the use of entirely electronic manifests. In other words, entities that lack the institutional infrastructure to utilize electronic manifesting or elect to continue to use paper manifests are financially penalized for maintaining historic practices.

In Illinois, the e-Manifest system has impacted entities that generate, transport, and receive exclusively state-regulated non-hazardous waste. This is a function of the Special Waste Hauling rules' textual link to the Uniform Hazardous Waste Manifest. *See* 35 Ill. Adm. Code 809.501. Consequently, facilities that receive non-hazardous special waste are now unnecessarily subject to USEPA fees, ranging from \$5 to \$15 per manifest, for receiving those state-regulated wastes. This change creates several issues. First, it shifts the financial burden for purchasing the manifests from the waste generator to the waste receiving facility, which significantly alters a longstanding operational construct. Second, USEPA's approach raises the possibility of duplicative fees for generators of state-regulated non-hazardous waste who lack the institutional or operational infrastructure to utilize electronic manifests. In such cases, the waste generator must continue purchasing paper manifests from a private printer and could be assessed a portion of the e-Manifest system fee the receiving facility incurs. Third, mandatory e-Manifest system participation could open the door to federal enforcement, including substantial federal fines and penalties to state-regulated entities for non-compliance with an otherwise inapplicable federal regulation.

The Agency's proposal represents the simplest solution: decoupling exclusively state-regulated non-hazardous special waste manifesting from the federal system. This approach enables waste generators, transporters, and receiving facilities whose operations are exclusively regulated at the state level to elect to use non-USEPA manifests that are functionally identical to the Uniform Manifest if participation in the e-Manifest system represents an unpalatable operational hurdle.

This proposal will not have an adverse environmental impact because it maintains the manifesting system that existed prior to the e-Manifest system's launch. On the other hand, the proposal's technical and economic justifications are substantial. By allowing this flexibility, the

Board will achieve two objectives: (1) enable the Agency to maintain its intended level of oversight for specific shipments of state-regulated wastes and (2) alleviate unnecessary regulatory and administrative burdens associated with the application of the e-Manifest system to state-regulated wastes, including potentially significant fees and fines. These resources could, instead, be reinvested into Illinois businesses and the communities they support.

Section 809.103 – Definitions

Section 809.103 contains the definitions of relevant terms used in the Special Waste Hauling rules. The Agency proposes amending the definition of “Manifest” to allow the Illinois EPA to prescribe manifest forms. This will create the regulatory flexibility necessary to allow the Agency to craft Illinois-specific forms for state-regulated non-hazardous special waste. The Agency also proposes correcting a typographical in the definition of “Treatment”.

Section 809.501 – Manifests, Records, Access to Records, Reporting Requirements & Forms

Section 809.501 contains the responsibilities related to manifest use, the necessary manifest contents, and the procedures for handling manifests when waste is in transit and ultimately accepted for treatment or disposal. The Agency proposes two amendments. First, the Agency proposes replacing “uniform hazardous waste manifest” with “manifest” in subsection (a). This amendment creates the necessary flexibility to decouple state-regulated wastes from USEPA’s e-Manifest system. Second, the Agency proposes revising subsection (c) to differentiate the type of manifest necessary for transporting hazardous waste versus non-hazardous special waste. The amendment also authorizes the Agency to prescribe manifests that comply with the requirements of Section 22.01 of the Act for the transportation of non-hazardous special waste. In effect, this maintains the regulatory status quo from an environmental, economic, and programmatic perspective for state-regulated non-hazardous special waste.

This concludes my pre-filed testimony. I will supplement the testimony as needed during the hearing and am happy to address any questions.

By: 

James Jennings
Section Manager
Waste Reduction and Compliance
Bureau of Land

DATED: April 25, 2019

Illinois Environmental Protection Agency
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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attached NOTICE OF FILING and Testimony of James Jennings, on behalf of the Illinois EPA, upon the following person(s) by e-mail to the e-mail address(es) indicated below or, if no e-mail address is provided, by placing true copies, in an envelope duly addressed and bearing proper first class postage, in the United States mail at Springfield, Illinois on April 25, 2019:

TO:

Illinois Pollution Control Board
Don Brown, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
don.brown@illinois.gov

Illinois Department of Natural Resources
Office of Legal Services
One Natural Resources Way
Springfield, Illinois 62702-1271
renee.snow@illinois.gov

Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
mdunn@atg.state.il.us

Heplerbroom, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
melissa.brown@heplerbroom.com

I affirm that my e-mail address is gabriel.neibergall@illinois.gov; the number of pages in the e-mail transmission is 8; and the e-mail transmission took place today before 4:30 PM. If you prefer service by mail, please contact me and a copy will be mailed to you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gabriel H. Neibergall
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Assistant Counsel
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