

ILLINOIS POLLUTION CONTROL BOARD
May 7, 2019

IN THE MATTER OF:

AMENDMENTS TO MANIFESTING
REQUIREMENTS: SPECIAL WASTE
HAULING 35 ILL. ADM. CODE 809

R19-18
(Rulemaking - Land)

HEARING OFFICER ORDER

On November 27, 2018, the Illinois Environmental Protection Agency (IEPA) filed a rulemaking proposing amendments to Part 809 (Special Waste Hauling) of its solid waste and special waste hauling regulations. *See* 35 Ill. Adm. Code 809. On January 17, 2019, the Board accepted the proposal for hearing without commenting on the merits. On March 19, 2019, the Hearing Officer set deadlines for pre-filing testimony for the two hearings scheduled for May 9 and June 6, 2019, conducted by videoconference between Chicago and Springfield.

The Board and Staff have reviewed the record. To expedite the hearings, the Board submits with this Order their questions to the IEPA and Stericycle, Inc., included as Attachment A.

Anyone may file a comment and anyone may respond to the questions attached, as well as any other prefiled questions in the record. All filings in this proceeding will be available on the Board's web page at <https://pcb.illinois.gov/> and participants may file electronically on the Board's web page.

IT IS SO ORDERED.



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**ATTACHMENT A
R19-18**

**AMENDMENTS TO 35 ILL. ADM. CODE 809,
MANIFESTING REQUIREMENTS: SPECIAL WASTE HAULING**

Questions for IEPA

Statement of Reasons (SOR)

1. On page 1, the SOR states that the USEPA's e-Manifest System is negatively and unnecessarily affecting the transportation of state-regulated nonhazardous special waste in Illinois.
 - a. Please explain how the Agency learned that the e-Manifesting is causing problems for Illinois generators/transporters.
 - b. In developing the proposed amendments to address the negative impacts of e-manifesting, did the Agency conduct any outreach with the regulated community? If so, please provide a list of entities/organizations contacted by the Agency. Also, please explain whether the proposed amendments address all concerns raised during outreach.

2. On page 2, the SOR states, "because of Part 809's existing language requiring the use of USEPA's Uniform Manifest for all special waste shipments, non-hazardous special waste transporters in Illinois are and will continue to be subject to: additional fees to USEPA ranging from \$5 to \$15 per manifest; significantly more staff time for e-Manifest system data entry; and the potential for federal enforcement, including substantial federal fines and penalties for noncompliance."
 - a. Please clarify whether there was a fee for using the USEPA's paper Uniform Manifest prior to the launch of the e-manifest system. If so, please explain how the fee for the paper manifest compares to the e-manifest fees.
 - b. Please explain how the regulatory burdens have changed with the e-Manifest system in terms of potential federal enforcement. Further, is the paper Uniform Manifest federally enforceable like the e-Manifest?
 - c. Please clarify whether the e-Manifest System forms require more information than the paper Uniform Manifest. If not, please explain why entering data into e-Manifest system is more burdensome than manually filling the 6-part paper Uniform manifest.

3. On page 2, the SOR notes, “the e-Manifest system’s continuous reporting requirements, which are currently applicable to non-hazardous special waste shipments, are inconsistent with the Agency’s annual reporting requirements.”
 - a. Please explain what continuous reporting means in the context of using the e-Manifest System.
 - b. Please comment on whether the Agency considered modifying Section 809.501(g) to make it consistent with the federal requirement at 40 CFR 264.71.
4. On page 3, the SOR notes that the regulatory and administrative burden would be reduced by using a separate non-USEPA manifest for state-regulated non-hazardous special waste generators, transporters, and receiving facilities.
 - a. Please explain whether the proposal reduces the administrative burden on both the regulated community and the Agency.
 - b. If so, please explain how having two separate manifest systems (one for hazardous waste and one for nonhazardous special waste) would reduce the administrative burden on the Agency.
5. On page 3, the SOR states that the proposal “will prevent Illinois transporters and facilities from being unnecessarily forced to pay significant fees to USEPA. This money can, instead, be reinvested into those Illinois businesses and the communities they help to grow and support.”
 - a. Based on fee collection data from prior years, would it be possible for the Agency to estimate the annual cost savings for the regulated community from not participating in the e-Manifest System?
 - b. Please clarify whether nonhazardous special waste generators or transporters are currently required to pay a fee to the Agency. If so, do they have to continue to pay the fee under the proposed amendments?

Questions for Agency Witness James Jennings

1. On Page 2, you state, “many states elected to adopt the Uniform Manifest for the transportation of certain non-hazardous wastes regulated exclusively at the state level.”
 - a. Please explain how these states are handling the USEPA’s transition to e-Manifest System?

- b. Are any of these states taking a similar approach to this proposal by also moving away from an e-Manifest System to paper forms?
2. On the same page, you state that the obligations of the e-Manifest System include mandatory participation and fee structure to incentivize the use of entirely electronic manifests.
 - a. As a matter of policy, do you believe that it would be more efficient to use an e-Manifest rather than maintaining the use of paper forms?
 - b. Further, please explain whether the Agency considered creating a separate electronic reporting system at state level for tracking transport of nonhazardous special waste to move away from paper forms.
3. On page 3, you note that the USEPA's e-Manifest System shifts the financial burden of purchasing the manifests from waste generator to the waste receiving facility and that there would be the possibility of duplicative fees for generators of state regulated nonhazardous special waste who do not utilize electronic manifests.
 - a. Has the Agency heard any complaints from either generators or receiving facilities regarding the shift in financial burden under the e-Manifest System?
 - b. Please clarify whether there will be a single purchase fee by the receiving facility if both the generator and receiving facility are utilizing electronic manifests, i.e. the generator is subject to duplicative fees only if paper manifest forms are used.
4. On page 3 you note that e-manifesting "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."
 - a. Please explain what you mean by "institutional or operational infrastructure."
 - b. Please comment on how many generators of nonhazardous special waste lack the expertise to use an e-Manifest System.

Rule Language

1. The proposed amendment to the definition of "manifest" under Section 809.103 adds the phrase "as required by the Act..." Please provide the citation to this requirement in the Act.
2. The proposed amendment to Section 809.501 states, "[f]or nonhazardous special waste, the manifest will consist of forms prescribed by the Agency, provided that the

forms must comply with the requirements of Section 22.01 of the Act and may be purchased from a third party.” SOR at 4.

- a. Please provide a copy of the Agency’s nonhazardous special waste manifest form for the record.
 - b. Please clarify whether any third party can reproduce and sell the nonhazardous special waste manifest form prescribed by the Agency. If so, would the Agency provide any guidelines for the cost of the third-party forms? Could the cost of using the third-party manifest form be avoided if the Agency provides an electronic reporting system?
3. The Board notes that the legislature is considering two bills (HB 2764 and HB 3675), which may impact this proposed rule. Would the Agency please comment on how HB 2764 and HB 3675 might affect the proposed amendment?

Questions for Stericycle Witness

Wade Scheel

1. On page 1, you note that in Illinois, Stericycle has several PIMW and document destruction facilities. The Board regulations at 35 Ill. Adm. Code 1420.104(d) and the Act at Section 56.1 require PIMW manifests for transporting PIMW. Please explain whether Stericycle must complete dual manifests or whether the special waste manifest satisfies the PIMW manifest requirements.
2. Regarding concerns with the USEPA’s e-Manifesting System, has Stericycle approached USEPA to alleviate the financial and administrative burdens? If so, please comment on any response you have received from USEPA.
3. On page 1, 3rd paragraph, you mention the “e-Manifest Act”. Please provide a complete citation to that Act for the record.
4. On page 2, you note that there are many forms available that meet the proposed requirements without increased burden or cost.
 - a. Please clarify whether these are third-party forms that you must purchase. If so, how much do they cost?
 - b. Please explain whether utilizing a separate state level electronic reporting system for nonhazardous special waste, instead of paper forms, would ease the administrative burden for a generator or transporter.