

EXHIBIT LIST

IN THE MATTER OF:)
)
AMENDMENTS TO MANIFESTING) R19-18
REQUIREMENTS: SPECIAL WASTE) (Rulemaking - Land)
HAULING 35 ILL. ADM. CODE 809)

1. Prefiled testimony of James Jennings on behalf of the Illinois Environmental Protection Agency (IEPA)
2. Prefiled testimony of Wade Scheel on behalf of Stericycle, Inc.

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)

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.

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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.

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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
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276



April 25, 2019

ILLINOIS POLLUTION CONTROL BOARD

Re: Amendments to Manifesting Requirements: Special Waste Hauling 35 ILL ADM. Code 809, Rulemaking R19-18

Stericycle is a publically traded corporation (NASDAQ: SRCL) based in Lake Forest, Illinois. In 2018, we had estimated revenues of approximately \$3.5B. We operate over 250 medical and hazardous waste facilities providing services for customers throughout the U.S. primarily in the healthcare field. Our services include compliant collection, transportation and treatment of medical waste, pharmaceutical waste and hazardous waste, as well as secure document destruction. In the State of Illinois, Stericycle operates a PIMW incinerator in Clinton, PIMW transfer station in Itasca, secure document destruction facilities in Orland Park and Schiller Park, mobile document destruction facility in Springfield, healthcare services distribution center in Aurora, as well as call and customer service centers in Northbrook and Chicago. In all there are over 1000 employees in the state throughout our different divisions servicing Illinois businesses. Our corporate vision is "Protecting What Matters".

Stericycle, Inc. (Stericycle) appreciates and supports the undertaking by the Illinois Environmental Protection Agency (the Agency) for identifying the issue of using a Uniform Hazardous Waste Manifest for shipment of special wastes in Illinois. As a hauler of both hazardous and non-hazardous special wastes, the adoption of The United States Environmental Protection Agency's (USEPA) electronic manifest (e-Manifest) Act has impacted us financially and increased administrative burden to our transportation and disposal facilities that receive these wastes nationwide. We understand this is beyond the control of the Agency regarding hazardous special waste, however, we appreciate the effort with this proposed rulemaking to remove these burdens for non-hazardous special wastes.

We'd like to first support the Agency in reiterating for the Illinois Pollution Control Board (the Board) that the even though EPA only requires use of a Uniform Hazardous Waste Manifest for shipments of hazardous wastes, when/if a Uniform Hazardous Waste Manifest is used for shipments of other waste types, such as non-hazardous special wastes, these are indeed subject to the e-Manifest Act. The USEPA clarifies this point in the following excerpt from their e-Manifest frequent questions website:

"... Under § 2(h) of the Act, if either the generation state or receiving state requires a manifest during the movement of the waste shipment, then the receiving facility must complete the facility portion of the manifest, sign and date the facility certification to indicate the receipt of the covered wastes (or any discrepancies), and then submit that completed manifest to EPA. The submission of this manifest will also require the receiving facility to pay the associated fee for that manifest. If the generation state requires a manifest, the receiving facility must submit this manifest to e-Manifest, even in instances where the waste is not regulated in the destination state and does not legally require a manifest under the laws of that state. This will enable the origination state to confirm the proper receipt of its regulated wastes, even when those wastes are shipped out-of-state for management."

Source: <https://www.epa.gov/e-manifest/frequent-questions-about-e-manifest>

Stericycle agrees with the Agency's statement in their filing for this rulemaking that identifies the fees that are to be paid to USEPA for each manifest, ranging from \$5 to \$15. This fee is to be paid by the disposal facility but ultimately impacts haulers and generators as well. We'd like to add that the financial burden may even be greater as time goes on for two reasons, 1) The e-Manifest fee schedule referenced

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above (\$5-\$15) is only in effect until 9/30/19. We are concerned that these fees could increase even more after 9/30/19. 2) Most disposal facilities pass this fee onto their customers, haulers and/or generators of these wastes, in order to recoup administrative costs. In some instances, these disposal facilities add on additional fees. Haulers and generators of non-hazardous special waste are likely seeing an increase in hauling and disposal fees. Thus, the financial burden caused by having to use the e-Manifest system is likely widespread as non-hazardous special waste encompasses many waste types which may then be shipped by a significant number of generators in Illinois.

Stericycle disagrees with the Agency's statement in the filing that "... many states—including Illinois—opted to adopt the Uniform Manifest for the transportation of other state-regulated non-hazardous wastes". We understand the appeal for using a Uniform Hazardous Waste Manifest to be able to track and manage non-hazardous special waste, however, there are other mechanisms to accomplish this. For example, universal waste requirements, including your own in 35 IAC 733, do not require use of a Uniform Hazardous Waste Manifest and these wastes are safely and effectively transported and managed today. As a company that operates nationwide, we'd like to point out that we know of no other states that require the use of a Uniform Hazardous Waste Manifest for shipment of non-hazardous wastes. There are some states that require the use of a Uniform Hazardous Waste Manifest for hauling waste generated by Very Small Quantity Generators (VSQGs) and/or universal waste, both of which are situations exempted by USEPA from having to use a Uniform Hazardous Waste Manifest. However, we are unaware of any states, other than Illinois, requiring the use of a Uniform Hazardous Waste Manifest for non-hazardous waste shipments.

Finally, we support the proposal to require use of a functionally identical manifest. There are many forms available and in-use today that would meet this requirement without an increased burden or cost and would be equally effective in tracking the waste. We appreciate the opportunity to submit testimony on this important rule. If you have any further questions or comments please feel free to contact me at 612-590-5039 or via email at wscheel@stericycle.com; or contact my colleague Cara Simaga at 312-720-6213 or via email csimaga@stericycle.com

Sincerely,

A handwritten signature in cursive script that reads "WScheel".

Wade Scheel, Director of Governmental Affairs

Stericycle, Inc.