

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

**RECEIVED**  
CLERK'S OFFICE

SEP 16 2004

STATE OF ILLINOIS  
Pollution Control Board

ROCK ROAD COMPANIES, INC. )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )  
)

Case No. PCB No. ~~04~~ <sup>05-54</sup>

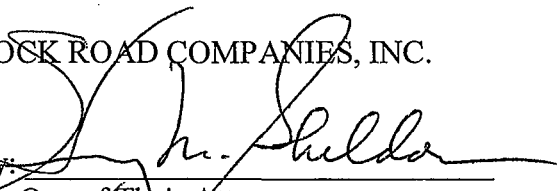
Permit Appeal

**NOTICE OF FILING**

TO: Office of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

**PLEASE TAKE NOTICE** that on Thursday September 16, 2004 I  
caused to be filed with the Clerk of the Illinois Pollution Control Board Petitioner's  
Petition For Review of Permit Conditions, a copy of which is hereby served upon you.

ROCK ROAD COMPANIES, INC.

By:   
One of Their Attorneys

Date: September 16, 2004

Harvey M. Sheldon  
Hinshaw & Culbertson LLP  
222 North LaSalle Street  
Chicago, IL 60601

Tel. 312-704-3504  
Fax: 312-704-3001

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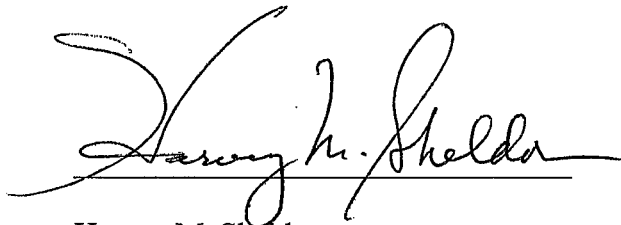
Case No. PCB No. 04-<sup>05-5</sup>

Permit Appeal

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, certify that I have served the attached and above-captioned Petition for Review of Permit Conditions, along with the Notice of Filing, by mailing a full copy thereof postage pre-paid via the United States Postal Service from Chicago, Illinois before 4 PM on September 16, 2004, in an envelope addressed to the following persons:

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276



Harvey M. Sheldon

September 16, 2004

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PROTECTION AGENCY, )  
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Respondent. )

Case No. PCB No. ~~04~~ 05-54

Permit Appeal

PETITION FOR REVIEW OF PERMIT CONDITIONS

NOW COMES ROCK ROAD COMPANIES, INC., Petitioner ("Rock Road" or "Petitioner") pursuant to Section 40 of the Illinois Environmental Protection Act (415 ILCS 5/40(e)(1)), and 35 IAC Part 105, and hereby petitions for a hearing and review by this Board of certain Conditions to a Construction Permit prescribed by Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency" or "Respondent").

In specification and support of its Petition for Review, Petitioner respectfully submits as follows:

1. The Agency's final decision is contained in a Construction Permit issued for the Alternate Firing of Petitioner's Asphalt Plant located at 801 Beale Court, Rockford, Illinois. A complete copy of the Construction Permit that is the Agency's final decision is set out as Exhibit A hereto, and is incorporated by reference ("Permit").
2. The date shown for issuance of the Permit is August 5, 2004. However, the Permit was actually served upon Petitioner by Certified Mail received on August 12, 2004, and August

12, 2004 is the date of service thereof. This Petition is timely and within 35 calendar days of the date of service.

3. The Conditions complained of in the Permit are Conditions 4 (Use of Organic Material), Condition 7b, insofar as it may be read to prohibit any oil-firing of the drum mixer/drum dryer unit due to that unit being a “fuel combustion emission unit”, Condition 9a (ii), (iii) and (iv) insofar as they characterize AP-42 Emission Factors as “limits” or “limitations” on emissions, Condition 10, insofar as it prescribes testing and reporting requirements that are inconsistent with the grant of only 7 days of operation, Condition 13, insofar as it identifies Emission Factors as “limits specified in Condition 9”, and Condition 14, insofar as it may be read to prohibit issue of an operating permit pursuant to 35 IAC § 201.160 because for the reasons forming the basis of this permit appeal the equipment has not been demonstrated to operate exactly “in accordance with applicable conditions in this construction permit”.

4. The grounds for the appeal include, without limitation, the following:

**As to Condition 4:** Condition 4 would apply an eight pound per hour emission limitation on Volatile Organic Material to the facility, pursuant to 35 IAC §215.301. The Agency has incorrectly applied the rule to the drum mixer/drum dryer, because the oil firing of the drum mixer/drum dryer is for the purpose of heat production and is therefore a fossil fuel combustion unit that should be exempt from 35 IAC §215.301, pursuant to 35 IAC §215.303, which provides:

**Section 215.303 Fuel Combustion Emission Sources**

The provisions of Sections 215.301 and 215.302 shall not apply to fuel combustion emission sources.

The burner in the drum mixer/drum dryer is a fossil fuel burning emission source, because it burns a fossil fuel and is for the primary purpose of providing heat to the contents of the interior of the drum by heat transfer. Cf. Section 211.2470 Fuel Combustion Emission Unit or Fuel Combustion Emission Source. The Agency thus incorrectly applied the rules applicable to this facility.

**As to Condition 7b:** Insofar as Condition 7b means or could be read to mean that the oil and on-spec waste oil firing of the drum mixer/drum dryer is prohibited due to the drum mixer/drum dryer being a fuel combustion unit, it is internally inconsistent and arbitrarily contradictory of the very purpose of the Permit, which is to allow such oil and on-spec waste oil firing in the burner of the drum mixer/drum dryer.

**As to Condition 9a:** Insofar as Condition 9a the Permit transforms the AP-42 emission factors for pollutants such as VOM, NO<sub>x</sub> and CO into "limits", it is an imposition of limits unsupported by applicable law or Board rules. AP-42 Emission Factors are developed from the careful and extensive study of similar sources nationwide, and are officially published by USEPA and regularly utilized to estimate emissions. Their use to demonstrate the inapplicability of major source thresholds is commonplace and appropriate here. However the Agency has turned them into emission limitations that may prove somewhat unattainable in actual practice at this particular facility and that have no basis in regulation of an asphalt plant such as this one.

**As to Condition 10:** Insofar as Condition 10 of the permit prescribes notice requirements, tests and testing procedures that are not feasible given the time limits on the operation for purposes of the Construction Permit, they impose an arbitrary and unreasonable hardship. Such limitations would be normal and reasonable were this an Operating Permit, but that is not the case here.

**As to Condition 13:** Insofar as Condition 13 characterizes as emission limitations the Emission Factors referenced in Condition 9 of the Permit, it imposes such limitations without a proper basis in the law or Board regulations. AP-42 Emission Factors are developed from the careful and extensive study of similar sources nationwide, and are officially published by USEPA and regularly utilized to estimate emissions. Their use to demonstrate the inapplicability of major source thresholds is commonplace and appropriate here. However the Agency has turned them into emission limitations that may prove somewhat unattainable in actual practice at this particular facility and that have no basis in regulation.

**As to Condition 14:** Insofar as Condition 14 may be read to prohibit issue of an operating permit pursuant to 35 IAC § 201.160, if, for the reasons stated herein forming the basis of this permit appeal, the equipment has not been demonstrated to operate exactly “in accordance with applicable conditions in this construction permit”, the Petitioner will be in a “Catch 22” situation and may be unable to obtain an Operating Permit.

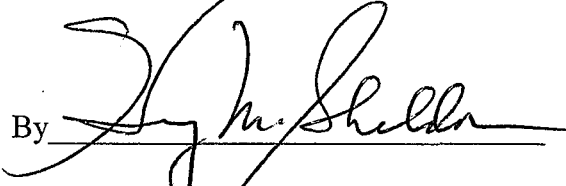
5. The Agency has been asked to reopen the record on this Permit to permit the submittal of additional data and evidence, but it has not agreed to that request. This leaves the Petitioner with no practical alternative but the Appeal of the Conditions complained of herein.

WHEREFORE, pursuant to Board regulation, the Board is respectfully requested to conduct a

public hearing on this Petition and to strike or otherwise provide the Petitioner with full and appropriate relief of the Conditions complained of herein.

Respectfully submitted,

ROCK ROAD COMPANIES, INC.

By   
Harvey M. Sheldon, Its Attorney

DATE: September 16, 2004

Harvey M. Sheldon  
Hinshaw & Culbertson LLP  
222 North LaSalle Street, 3rd Fl.  
Chicago, Illinois 60602

Tel: 312-704-3504  
Fax: 312-704-3001



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

P.O. Box 19506, SPRINGFIELD, ILLINOIS 62794-9506

RENEE CIPRIANO, DIRECTOR

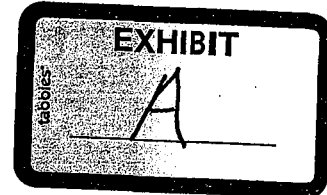
217/782-2113

CERTIFIED MAIL  
7002 3150 0000 1258 1117

CONSTRUCTION PERMIT GRANT - OPERATING PERMIT DENIAL - NSPS SOURCE - REVISED

PERMITTEE

Rock Road Companies, Inc.  
Attn: Mr. Steve Kennedy, Vice President  
Post Office Box 1779  
301 West Townline Road  
Janesville, Wisconsin 53547



Application No.: 04030060

I.D. No.: 201808ABG

Applicant's Designation: BEALECOURT

Date Received: July 29, 2004

Subject: Asphalt Plant Alternate Firing

Date Issued: August 5, 2004

Location: 801 Beale Court, Rockford, Illinois, 61109

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of the modification of the existing drum-mix asphalt plant with baghouse to allow the use of distillate fuel oil No. 2 and waste oil in the drum mixer/drum dryer, as described in the above-referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

- 1a. This asphalt plant is subject to New Source Performance Standards (NSPS), 40 CFR 60, Subparts A and I. The Illinois EPA is administering these standards in Illinois on behalf of the United States EPA under a delegation agreement.
- b. The emissions from the asphalt plant shall not contain particulate matter (PM) in excess of 0.04 gr/dscf and shall not exhibit 20% opacity or greater, pursuant to the NSPS, 40 CFR 60.92.
- c. At all times the Permittee shall also maintain and operate the asphalt plant, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions, pursuant to the NSPS, 40 CFR 60.11(d).
- 2a. No person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit other than those emission units subject to the requirements of 35 Ill. Adm. Code 212.122, pursuant to 35 Ill. Adm. Code 212.123(a), except as allowed by 35 Ill. Adm. Code 212.123(b) and 212.124.
- b. No person shall cause or allow any visible emissions of fugitive particulate matter from any process, including any material handling or storage activity beyond the property line of the source except when the wind speed is in excess of 25 miles per hour, pursuant to 35 Ill. Adm. Code 212.301 and 212.314.

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ROD R. BLAGOJEVICH, GOVERNOR



Page 2

3. No person shall cause or allow the emission of sulfur dioxide into the atmosphere from any process emission unit to exceed 2000 ppm, pursuant to 35 Ill. Adm. Code 214.301.
4. Use of Organic Material. Pursuant to 35 Ill. Adm. Code 215.301, no person shall cause or allow the discharge of more than 8.0 lbs/hour of organic material into the atmosphere from any emission unit, except if no odor nuisance exists this limitation shall only apply to photochemically reactive material as defined in 35 Ill. Adm. Code 211.4690.
- 5a. Operation of the drum mixer/drum dryer associated with the asphalt plant firing distillate fuel oil No. 2 or waste-oil shall not begin until all associated air pollution control equipment has been constructed and is operational.
- b. The Permittee shall furnish the Illinois EPA written notification as follows pursuant to 40 CFR 60.7(a):
  - i. A notification of anticipated date of initial start-up at least 5 days prior to such date,
  - ii. A notification of actual date of initial start-up within 15 days after such date.
- c. Waste oil-firing of the drum mixer/drum dryer is allowed under this construction permit only for a period not to exceed a total of seven days, for the purposes of preparing for and conducting compliance stack testing. These are not required to be seven consecutive calendar days. If additional time is required, the Illinois EPA, Compliance Section and Field Operations Section must first be contacted to obtain approval. Records shall be kept of the calendar dates and number of hours each day the plant is fired with waste oil until testing is completed. If evidence arises of odor problems, operation with waste oil-firing must be stopped immediately.
- 6a. The baghouse shall be in operation at all times when the associated drum mixer/drum dryer is in operation and emitting air contaminants.
- b. The Permittee shall follow good operating practices for the baghouse, including periodic inspection, routine maintenance and prompt repair of defects.
- 7a. At the above location, the Permittee shall not keep, store, or utilize in the affected drum-mix asphalt plant:
  - i. Distillate fuel oil (Grade No. 1 and 2) with a sulfur content greater than the larger of the following two values:
    - A. 0.28 weight percent, or

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B. The Wt percent given by the formula: Maximum Wt percent sulfur = (0.000015) x (Gross heating value of oil, Btu/lb).

b. This permit is issued based on the combustion waste oil for the drum mixer/drum dryer. This use of waste oil is not allowed to fire the asphalt tank heaters, boilers, or any unit that meets the definition of a fuel combustion emission unit pursuant to 35 Ill. Adm. Code 211.2470.

c. The Illinois EPA shall be allowed to sample all fuels stored at the above location.

8. In the event that the operation of this source results in an odor nuisance, the Permittee shall take appropriate and necessary actions to minimize odors, including but not limited to, changes in raw material or installation of controls, in order to eliminate the nuisance.

9a. Emissions and operation of the asphalt plant shall not exceed the following limits:

i. Asphalt Production Limits:

Asphalt Concrete Production	
<u>(Tons/Month)</u>	<u>(Tons/Year)</u>
50,000	300,000

ii. Emissions from Drum Mixer/Dryer:

<u>Pollutant</u>	<u>Emission Factor</u> <u>(Lb/Ton)</u>	<u>Emissions</u>	
		<u>(Tons/Mo)</u>	<u>(Tons/Yr)</u>
Particulate Matter (PM)	0.033	0.83	5.0
Nitrogen Oxides (NO <sub>x</sub> )	0.055	1.38	8.3
Carbon Monoxide (CO)	0.130	3.25	19.5
Volatile Organic Material (VOM)	0.032	0.80	4.8
Sulfur Dioxide (SO <sub>2</sub> )	0.058	<u>1.45</u>	<u>8.7</u>
	Totals	7.71	46.3

iii. Emissions from Asphalt Silo Loading and Truck Loadout:

<u>Pollutant</u>	<u>Emission Factor</u> <u>(lb/Ton)</u>	<u>Emissions</u>	
		<u>(lb/Mo)</u>	<u>(Ton/Yr)</u>
CO	0.0007	35	0.11
PM	0.0007	35	0.11
VOM	0.0048	240	0.72

iv. These limits are based on maximum asphalt production and standard AP-42 emission factors. Compliance with annual limits shall be determined from a running total of 12 months of data.

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- b. Emissions of hazardous air pollutants (HAPs) as listed in Section 112(b) of the Clean Air Act shall be less than 10 tons/year of any single HAP or 25 tons/year of any combination of such HAPs. As a result of this condition, this permit is issued based on the emissions of all HAPs from this source not triggering Section 112(g) of the Clean Air Act.
  - c. No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Illinois Pollution Control Board, pursuant to Section 9(a) of the Illinois Environmental Protection Act.
- 10a. Pursuant to 40 CFR 60.8(a), within 60 days after achieving the maximum production rate at which the asphalt plant will be operated, but not later than 90 days after initial startup, the particulate matter concentration in its effluent stream shall be measured by an approved independent testing service, using waste-oil firing and during conditions which are representative of the maximum performance. During these tests, observations to determine opacity of the effluent stream shall also be conducted.
- b. This testing shall be conducted and data collected in accordance with the test methods and procedures specified in 40 CFR 60.8, 60.11 and 60.93.
  - c. At least 60 days prior to the actual date of testing, the Permittee shall submit a written test plan to the Illinois EPA for review and approval. This plan shall include as a minimum:
    - i. The name (or other identification) of the emission unit(s) to be tested and the name and address of the facility at which they are located;
    - ii. The name and address of the independent testing service(s) performing the tests, with the names of the individuals who may be performing sampling and analysis and their experience with similar tests;
    - iii. The specific determinations of emissions and/or performance which are intended to be made, including the site(s) in the ductwork or stack at which sampling will occur;
    - iv. The specific conditions under which testing will be performed, including a discussion of why these conditions will be representative of maximum emissions and minimum control performance, the values of operating parameters for the emission unit, including associated control equipment, at or within which compliance is intended to be shown, and the means by which the operating parameters will be determined;

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- d. i. The Permittee shall provide the Illinois EPA with written notification of testing at least thirty (30) days prior to testing to enable the Illinois EPA to have an observer present. This notification shall include the name of emission unit(s) to be tested, scheduled date and time, and contact person with telephone number.
- ii. If testing is delayed, the Permittee shall promptly notify the Illinois EPA by facsimile, at least 5 days prior to the scheduled date of testing or immediately, if the delay occurs in the 5 days prior to the scheduled date. This notification shall also include the new date and time for testing, if set, or a separate notification shall be sent with this information when it is set.
- e. The Permittee shall submit the Test Report for this testing, accompanied by a cover letter stating whether or not compliance was shown, to the Illinois EPA without delay, within 30 days after the results are compiled, but no later than sixty (60) days after the date of testing or sampling. The Test Report shall include as a minimum:
  - i. General information describing the test, including the name and identification of the emission source which was tested, date of test, names of personnel performing the tests, and Illinois EPA observers, if any;
  - ii. A summary of results;
  - iii. Description of test procedures, including description of sampling points, test equipment, and test schedule;
  - iv. Detailed description of test conditions, including:
    - A. Process information, i.e., process rate, aggregate type, fuel type, and firing rate.
    - B. Control equipment information, i.e., equipment condition and operating parameters during testing.
  - v. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.
- 11a. The Permittee shall perform all applicable monitoring for the drum-mix asphalt plant as specified in 40 CFR 60.13 and 60.674.
- b. Inspections of the drum-mix asphalt plant and control systems equipment and operations shall be performed as necessary but at least once per week when the affected drum-mix asphalt plant is in operation to confirm compliance with the requirements of this permit.
- 12a. The Permittee shall maintain records of the following items for the drum-mix asphalt plant to demonstrate compliance with the conditions of this permit:
  - i. Asphalt concrete production (tons/month and tons/year);

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- ii. Waste oil shipments, usage, sulfur content, and ash content (gallons/month, gallons/year, % weight, % weight); and
  - iii. Dates of operation and hours of operation with waste oil-firing (calendar days, hours/day).
  - iv. Records addressing use of good operating practices for the baghouse:
    - A. Operating logs for the drum-mix asphalt plant dryer baghouse, including operating data (pressure drop or stack condition), daily upon startup;
    - B. Records for periodic inspection of the baghouse with date, individual performing the inspection, and nature of inspection; and
    - C. Records for prompt repair of defects, with identification and description of defect, effect on emissions, date identified, date repaired, and nature of repair.
  - v. Incidents of malfunction, with date, duration, description, probable cause, and corrective actions, pursuant to 40 CFR 60.7(b), and
  - vi. Monthly and aggregate annual CO, NO<sub>x</sub>, PM, SO<sub>2</sub>, and VOM emissions from the drum-mix asphalt plant shall be maintained, based on asphalt production and the applicable emission factors, with supporting calculations.
- b. All records and logs required by this permit shall be retained at a readily accessible location at the source for at least three years from the date of entry and shall be made available for inspection and copying by the Illinois EPA upon request. Any records retained in an electronic format (e.g., computer) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to an Illinois EPA request for records during the course of a source inspection.
- 13a. The Permittee shall promptly notify the Illinois EPA, Compliance Section, of deviations of the drum-mix asphalt plant with the permit requirements as follows. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken:
- i. Emissions of CO, NO<sub>x</sub>, PM, SO<sub>2</sub> and/or VOM, in excess of the limit specified in Condition 9 within 30 days of a record showing such an occurrence.
  - ii. Continued operation of the drum-mix asphalt plant with a defect in a baghouse that may result in emissions of particulate matter in excess of limits in Conditions 1(b), 2, or 4(a) within 30 days of such an occurrence.

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- iii. The use of distillate fuel oil with a sulfur content in excess of the limit specified in Condition 7(a) with the length of time this fuel was used and the effect on emissions of SO<sub>2</sub> within 30 days of this violation being detected.
- b. The Permittee shall submit all applicable reports for the drum-mix asphalt plant as specified in 40 CFR 60.7 and 60.19.
- c. Two (2) copies of required reports and notifications concerning equipment operation or repairs, performance testing or a continuous monitoring system shall be sent to:

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
Compliance Section (#40)  
P.O. Box 19276  
Springfield, Illinois 62794-9276

and one (1) copy shall be sent to the Illinois EPA's regional office at the following address unless otherwise indicated:

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
5415 North University  
Peoria, Illinois 61614

14. A construction permit covers construction activity taking place on or after the date of issuance of the permit. Even though the issuance of this permit indicates that the Illinois EPA has found that the application for the subject equipment met 35 Ill. Adm. Code 201.155, the standards for issuance of a construction permit, this permit does not cover and in no way condones or approves any construction of the subject emission sources or air pollution control equipment which took place before the date of issuance of this permit.

The OPERATING permit application is DENIED because the Illinois Environmental Protection Act, Section 9, and 35 Ill. Adm. Code 201.160 might be violated.

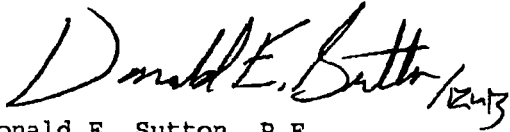
Pursuant to Section 201.160, an operating permit may not be issued until the equipment has been constructed or modified in accordance with applicable conditions in this construction permit. The Illinois EPA suggests that you reapply for the operating permit after construction and testing are completed in accordance with the construction permit.

It should be noted that this permit does not authorize the acceptance of waste. The appropriate permit must be obtained from the Bureau of Land before waste can be accepted. If the used oil is not "on-spec" and not burned in a unit for energy recovery as allowed by 35 Ill. Adm. Code 739.161, the used oil will be considered a solid waste and not a fuel. This makes the used oil subject to the manifest requirements of 35 Ill. Adm. Code 809 and the facility subject to the permitting requirements of 35 Ill. Adm. Code 807, as a solid waste management site. Furthermore, the used oil must provide surplus energy beyond that necessary to sustain combustion to be considered a fuel and not a waste.

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It should be noted that this permit has been revised to change Condition 5c to limit waste oil-firing to a total of seven days, which need not necessarily be consecutive, at the request of the applicant.

If you have any questions on this permit, please call Jim Kallmeyer at 217/782-2113.

A handwritten signature in black ink that reads "Donald E. Sutton" with a date "12/13" written at the end of the signature.

Donald E. Sutton, P.E.  
Manager, Permit Section  
Division of Air Pollution Control

DES:JDK:psj

cc: Illinois EPA, FOS Region 2