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National Oil Recyclers Association

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BY FEDERAL EXPRESS

April 8, 1999

Illinois Pollution Control Board
100 West Randolph
Chicago, Illinois 60601

R99-18
PC #3

Re: Docket R98-29; Docket R98-18: Used Oil Regulations

Ladies and Gentlemen:

This letter conveys the thoughts and comments of the National Oil Recyclers Association ("NORA") and its Illinois members concerning proposed and potential regulatory and permit changes that would affect oil recyclers in Illinois. In general, we are concerned that the proposed permitting requirements for oil recyclers under Title 35, Parts 807 and/or 739, could impose on them an unfair disadvantage vis-à-vis their out-of-state competitors as well as add significantly to their existing regulatory burdens and costs.

One fundamental concern is that Part 807 allows Illinois EPA to promulgate *additional* used oil facility permit conditions that would prove to be excessively burdensome. While genuine improvements in the structure or wording of facility permits is always welcome, any new permit conditions should be consistent with existing regulations promulgated by the Pollution Control Board. As you are aware, the used oil regulations were adopted by reference under sections 7.2 and 22.4 of the Act. This legislation requires that the Board adopt rules that are "identical in substance" to those adopted by United States Environmental Protection Agency ("EPA") under Subtitle C of the Resource Conservation and Recovery Act ("RCRA"). In addition, the Board has issued explicit guidance governing these rules on April 21, 1994. *See* IN THE MATTER OF RCRA UPDATE, USEPA REGULATIONS (1/1/93 through 6/30/93), R93-16.

Specifically, the Board stated, on page 3, that, with respect to the definition of used oil: "The Act requires that meanings applied to the federal definition are to be applied to the Illinois definition." In addition, the Board stated: "The Illinois regulations will, as always, be consistent with those adopted by USEPA. Thus, the impact of these rules on entities operating in Illinois will be no greater than that of the minimum Federal Standards applied in other states, as was intended by the General Assembly when they drafted Sections 7.2 and 22.4" (copy enclosed).

As the General Counsel of the National Oil Recyclers Association, I have had the privilege to work with EPA in developing both the 1985 standards for used oil burning and the 1992 federal used oil management standards (now codified at 40 CFR Part 279). In addition, I have a good working knowledge of the implementation efforts of several states. I am therefore familiar with the intent and operation of the federal used oil regulations, especially with respect to used oil collectors and recyclers.

In light of NORA's collective experience with used oil regulations, we are gravely concerned that:

(1) permit conditions may be added that will expand the used oil requirements, in addition to Part 739 requirements, or impose additional costs upon Illinois used oil storage and processing facilities at a level that would be significantly higher than their out-of-state competitors;

(2) forthcoming regulations and/or permit conditions will improperly impose more stringent requirements on Illinois transfer facilities, marketers, and burners of used oil than existing Part 739 regulations; and

(3) future permit conditions and regulations may be inconsistent with the intent of the federal used oil management standards.

In addition, we worry that Illinois EPA will attempt to impose the many additional restrictions and regulations on recyclers that were attempted in the mid-1990s. These restrictions and regulations would have made it impossible for Illinois oil recyclers to compete with their out-of-state companies, and would have made oil recycling costs (imposed on Illinois generators) some of the highest in the Nation.

Let me briefly detail some of those previously proposed restrictions and regulations and how they would have impacted used oil collectors and processors in Illinois.

*** Completed generator certifications for each generator prior to acceptance of any used oil from the generator for the first time.** While this would be a major burden for Illinois-based recyclers, out-of-state competitors would not be slowed or hampered by this restriction. Generators often expect same or next day service.

*** Full analysis required from all "industrial" generators prior to acceptance.** In contrast to Illinois recyclers, out-of-state competitors would not be slowed or hampered by this restriction.

***Annual generator re-certification.** A single average sized recycler services thousands of generators. Annual re-certification of all those generators would be virtually impossible due to many reasons, and again this would be a substantial cost to Illinois recyclers not borne by their out-of-state competitors.

*** Restrictions over used oils mixed with other wastes that were more stringent than the Part 739 used oil regulations.** Again, this places a severe burden on Illinois collectors and recyclers but not on their out-of-state competitors.

*** Additional restrictions and regulations on wastewater generated by used oil/water separation over and above the regulatory controls in the Clean Water or Clean Air Acts.** Once again, this places a severe burden on Illinois collectors and recyclers but not on their out-of-state competitors.

*** More restrictive regulations on low-level PCB contamination in used oil than the federal regulations.** This will not affect out-of state collectors but will be extremely costly to Illinois collectors and recyclers.

*** More stringent and restrictive regulations on storage tanks than the Part 739 regulations.** Again, a disadvantage to out-of-state competitors and very costly to Illinois oil recyclers (and therefore Illinois generators).

Moreover, NORA believes that used oil transfer facilities, used oil fuel marketers and used oil burners should not be included under the permitting requirement at all. Many used oil recyclers use commercial leased tank storage

for transfer facilities. Also, many used oil fuel marketers use commercial leased tank storage for finished product on-specification used oil fuel, for off-season or pre-delivery storage. These lessors will not want to deal with used oil recyclers storage needs if they will be required to permit their facilities. This would cause enormous upheaval of the used oil system in Illinois. We also feel strongly that burners of used oil fuel, especially EPA on-specification fuel, should not be required to obtain permits. According to EPA, "[specification] used oil fuel poses no greater risk than virgin fuel oil and, once it enters the commercial fuel market should not be regulated differently than virgin fuel oil." 50 Fed. Reg. 49189. Illinois should adopt this approach.

In an era of low petroleum prices there is little incentive for burners to burn used oil fuel (a relatively small cost savings compared to virgin fuel products). Requiring burners to be permitted would almost certainly result in a loss of virtually all used oil burners in Illinois. They would simply switch back to virgin fuels. Used oil burners currently provide over 90 percent of the used oil recycling market in the United States.

In addition, NORA and its Illinois members believe that certain other issues (previously proposed by Illinois EPA) need to be addressed. First, on-specification used oil fuel should be exempt from the special waste regulations, as is the case with that Part 739 regulations. (However, we would not object to a reasonable minimum BS&W standard being added – a requirement that Illinois EPA has previously indicated it may want to establish).

Second, sampling and analysis of *each shipment* of used oil fuel would significantly increase costs to Illinois marketers over their out-of-state competitors and is more restrictive than the Part 739 regulations. Third, more restrictive and extensive tank storage requirements than the Part 739 regulations require would constitute a tremendous advantage to out-of-state companies.

It is our view that most of the proposed permit conditions were contrary to the intent of the federal used oil regulations (and therefore were also inconsistent with the Part 739 regulations). Equally important, these regulations were not applied in a nondiscriminatory manner. This raises serious Constitutional questions concerning an unjustified burden on interstate commerce. Illinois recyclers simply would not be able to compete against out-of-state companies that are not impacted by such extensive and expensive regulations. In today's marketplace, Illinois recyclers could not survive once they were forced to charge more for used oil pick-ups than their out-of-state competitors.

The reason the federal regulations did not go as far as what Illinois EPA proposed as permit conditions is that EPA realized that if used oil recyclers were saddled with a lot of expensive regulations, charging a high price for used-oil pick-up would become prevalent and would lead to improper disposal of used oil. Simply stated, charging generators for used oil collection services above nominal fees causes pollution problems. In general, the greater the cost of compliance, the more commercial generators and Do It Yourself Oil Changers (still some 40 percent of the new oil market) would decide to avoid the recycling system. The potential for ever-escalating costs that would have resulted from compliance with the previously proposed permit requirements would have created the very problems that EPA was determined to prevent.

Finally, we urge the Board to consider adopting, pursuant to Part 739, a registration program (as opposed to a permitting system) for used oil recyclers managing off-specification used oil. Such a program could provide Illinois EPA with all the information it needs to carefully regulate and monitor oil recyclers and collectors in Illinois, without imposing the excessive burdens described in this letter.

On behalf of NORA and its Illinois members, we would appreciate the consideration of the concerns and issues set forth in this letter.

We initially inquired about this issue on January 15, 1999 to the Illinois EPA. We never received a response until March 11. This left us very little time to respond before the April 9th deadline. Due to the magnitude and importance of these issues, we respectfully request additional time so that these issues can be adequately addressed and discussed between all affected parties prior to the Board's final determination.

Sincerely,

Christopher Harris

CKH/msj
Enclosures

ILLINOIS POLLUTION CONTROL BOARD
April 21, 1994

IN THE MATTER OF:	)	
	)	R93-16
RCRA UPDATE, USEPA REGULATIONS (1-1-93 THROUGH 6-30-93)	)	(Identical in Substance Rules)

Adopted Rule. Final Order.

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by E. Dunham):

The Board adopted amendments to the Illinois hazardous waste regulations on March 17, 1994 in this docket. That action under this docket included incorporating the federal amendments that occurred during the period of January 1 through June 30, 1993 into the Illinois RCRA Subtitle C hazardous waste regulations and restoring text that was erroneously omitted from the base text during the course of prior update dockets. The Board issues this supplemental opinion and order to address additional public comments received subsequent to final adoption and to restore an additional segment of text inadvertently omitted from our March 17 order.

The Board received the following three public comments after the adoption on March 17, 1994:

PC 5 U.S. EPA Region 5 (4-8-94, by Norman R. Niedergang, Associate Division Director of RCRA, Waste Management Division)

PC 6 Lenz Oil Service, Inc. (4-13-94, by Mike Lenz, President)

PC 7 National oil Recyclers Association (4-20-94, by Christopher Harris, General Counsel)

In PC 5, U.S. EPA comments that the Board has in our March 17, 1994 order, adequately addressed its comments submitted in PC 3 on February 14, 1994. PC 6 generally commends the Board's approach to adopting the used and waste oil regulations, but makes additional comments on implementation issues. PC 7 endorses the Board's proposal to adopt the used and waste oil regulations as adopted by U.S. EPA. It states that the proposed regulations will encourage recycling while imposing reasonable controls.

The Notices of Proposed Amendments for this rulemaking appeared in the Illinois Register on January 4, 1994. Therefore, pursuant to the Administrative Procedure Act, the public comment period closed on February 28. The Board adopted the amendments on March 17, 1994. We withheld filing the amendments with the Secretary of State for 30 days, as part of our primacy agreement with U.S. EPA, in order to allow the filing of any additional

comments by U.S. EPA on the adopted version of the amendments (PC 5). Consequently, PC 6 and PC 7 are untimely. Nevertheless, since the Board is issuing this supplemental opinion and order, addressing these public comments will cause no delay. Neither PC 7 nor PC 6 will result in any change in the text of the adopted rules. However, the Board does not routinely address such late-filed comments. Identical-in-substance rulemakings are on a legislatively-mandated tight time schedule and late-filed comments could jeopardize the Board's ability to timely meet its deadlines.

PC 6 expresses concerns over the status of water soluble oils that were used as coolants or cutting oils as "used oil". The comment states that U.S. EPA considers these materials "used oil", as contemplated by the used and waste oil regulations. The comment further states as follows:

> IEPA considers this waste a [sic] "oily waste". This distinction subjects water soluble oils to full TCLP parameters even when recycled in Illinois. This puts Illinois companies at a major disadvantage when competing outside Illinois for this waste. Companies outside Illinois only have the fuel specification tests to meet . . ..

Thus, the comment implies that Illinois EPA applies a definition of "used oil" that is more stringent than the federal definition.

In response, the Board highlights the scope of the legislative mandate by which we adopted these rules. Sections 7.2 and 22.4 of the Act require the Board to adopt rules that are "identical in substance" to those adopted by U.S. EPA under RCRA Subtitle C. This we have done. The Board's Section 739.100 definition of "used oil" is identical to the federal definition of 40 CFR 279.1:

> "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Unless the Board were to engage in a general rulemaking under Section 27 of the Act on a petition from the Illinois EPA or some other interested person, subject to the public hearings and full Administrative Procedure Act requirements, this is the only definition we are free to adopt. Therefore, the Act requires that meanings applied to the federal definition are to be applied to the Illinois definition.

Although the federal definition of "used oil" itself makes no reference to water soluble oils, the preamble discussion in the Federal Register indicates that U.S. EPA did address these

materials. U.S. EPA stated in the Federal Register preamble discussion that it received comments relating to "synthetic oil", including water soluble and water-bearing water soluble oils. The commenters requested that U.S. EPA exclude copper drawing solution from the definition of "used oil". U.S. EPA observed, "Copper drawing solution is an emulsion of 1 to 2 percent oil in water." (57 Fed. Reg. 41574 (Sept. 10, 1992).) The discussion stated that U.S. EPA revised the definition prior to final adoption to add "synthetic oil". (57 Fed. Reg. 41604 (Sept. 10, 1992).) The discussion further stated as follows:

> EPA has concluded that synthetic oils that are not petroleum based (*i.e.*, those produced from coal or oil shale), those that are petroleum-based but are water soluble (*e.g.*, concentrates of metalworking oils/fluids), or those that are polymer-type, are all used as lubricants similar to petroleum-based lubricants, oils, and laminating surface agents. . . . Therefore, EPA believes that all oils, including used synthetic oils, should be regulated in a similar fashion and, hence, EPA has decided to include synthetic oils in the definition of used oil. For the large part, the definition of used oil includes used lubricants of all kinds that are used for a purpose of lubrication . . ..
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> 57 Fed. Reg. 41574 (Sept. 10, 1992).

To address the concerns expressed in PC 6, the Board need not revise the Illinois definition to implement the federally-derived regulations. Because U.S. EPA contemplated that synthetic water soluble oil lubricants be included in the federal definition of "used oil", the identical-in-substance definition must include them as well. The Illinois regulations will, as always, be consistent with those adopted by U.S. EPA. Thus, the impact of these rules on entities operating in Illinois will be no greater than that of the minimum federal standards applied in other states, as was intended by the General Assembly when they drafted Sections 7.2 and 22.4.

As to the omitted language, the Board is correcting the adopted text of the rules to include the language. As more fully discussed in the March 17, 1994 opinion, we adopted amendments to Part 728 in R91-13 (January 1 through June 30, 1991; effective June 9, 1992) that were excluded from the base text in R93-4 (July 1 through December 31, 1992; effective November 22, 1993). Much of the work involved in the present docket has been to make these restorations. We add one segment of text omitted from our March 17 order at this time because we have not yet filed the adopted amendments with the Secretary of State. The missing text (segment in bold type) is restored to Section 728.107(a)(3)(B) as follows:

Section 728.107 Waste Analysis and Recordkeeping

a) . . .

. . .

3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under Section 728.105, an exemption under Section 728.106, an extension under Section 728.101(c)(3) or a nationwide capacity variance under 40 CFR 268.Subpart C (1989), with each shipment of waste, the generator shall submit a notice with the waste to the facility receiving the generator's waste, stating that the waste is not prohibited from land disposal. The notice must include the following information:

. . .

B) The corresponding treatment standards for wastes F001- through F005, F039 and wastes prohibited pursuant to Section 728.132 or Section 3004(d) of the Resource Conservation and Recovery Act, referenced in Section 728.139. Treatment standards for all other restricted wastes must either be included or be referenced ~~as above, or~~ by including on the notification the ~~subcategory of the waste, the treatability group(s) of the waste(s)~~applicable wastewater or nonwastewater (as defined in Section 728.102) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003, reactive cyanides), and the Section and subsection where the applicable treatment standards appears. Where the applicable treatment standards are expressed as specified technologies in Section 728.142, the applicable five-letter treatment code found in Section 728.Table C (e.g., INCIN, WETOX) also must be listed on the notification.

. . .

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above supplemental opinion and order was adopted by the Board on the 31st day of April, 1994, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board