

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of)	
)	
PROPOSED AMENDMENTS TO)	
SPECIAL WASTE REGULATIONS)	R06-20
CONCERNING USED OIL,)	
35. Ill. Adm. Code, 808, 809)	
)	

NOTICE OF FILING

To: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on May 16, 2006 we filed the attached **SUPPLEMENTAL STATEMENT OF REASONS AND ERRATA SHEET #1** with Dorothy Gunn, Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

NORA, AN ASSOCIATION OF RESPONSIBLE
RECYCLERS

By: //Claire A. Manning
Claire A. Manning, one of its attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **SUPPLEMENTAL STATEMENT OF REASONS AND ERRATA SHEET #1** was filed, electronically, with the Clerk of the Illinois Pollution Control Board, and with copies of such rule proposal being placed in the U.S. mail on May 16, 2006 and addressed to:

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SUPPLEMENTAL STATEMENT OF REASONS AND ERRATA SHEET #1

On December 13, 2005, NORA, An Association of Responsible Recyclers (“NORA”), by and through its attorney, Claire A. Manning, Brown Hay & Stephens LLP., filed a Proposed Rule and Statement of Reasons with the Illinois Pollution Control Board (“Board”). The proposed rulemaking would eliminate the requirement for special waste manifesting and hauling permits for used oil that is managed in accordance with the Board’s used oil regulations, found at 35 Ill. Adm. Code Part 739, which are identical-in-substance to the federal used oil rules, found at 40 CFR Part 239. Since that filing, the Illinois Environmental Protection Agency (“IEPA”) has filed a Public Comment and has submitted the Pre-Filed Testimony of Ted Dragovich, the manager of the Disposal Alternatives Unit, Bureau of Land Permit Section, IEPA. This pleading is responsive to those filings, as well as the Board Order in this matter, issued January 5, 2006, which requires NORA to supplement its initial statement of reasons and otherwise provide additional information.

A. Supplemental Information.

The Board has requested that NORA provide supplemental information to fully comply with the Board’s procedural rules regarding rulemaking proceedings, found at 35 Ill. Adm. Code

Part 102. In this rulemaking, NORA is seeking to amend the Board's special waste rules to clarify that the obligation related to the transportation of used oil as managed pursuant to Part 739 is as described in 35 Ill. Adm. Code 739 (Part 739), not 35 Ill. Adm. Code 808 and 809. The "universe of affected sources" that would benefit from this proposed amendment to the Board's rules would be all those entities and companies who generate used oil, transport used oil, and/or who process or recycle used oil. It is virtually impossible to indicate how many such entities that might be, who are either located in Illinois or who are doing business in Illinois, but testimony from NORA participants (filed simultaneously with this filing) should give the Board a good appreciation of the magnitude of the used oil industry.

The Board also requested more information, pursuant to Section 35 Ill. Adm. Code 102.202, of the "economic impact" of these proposed changes. Illinois law and regulations require such information in Board proceedings in part to ensure that the proposed regulations will not impose an unduly burdensome requirement on industry and that any adverse economic impact is weighed against any environmental benefit. In this rule, NORA seeks relief from a regulatory requirements that have virtually no environmental benefit, but significant economic consequences for the used oil industry. It is estimated that for every used oil generator, hauler and recycler to obtain and complete the special waste manifests required by IEPA pursuant to their interpretation of Part 808 and 809 of the Board's rules (for which the IEPA charges \$3.00 apiece for a 6-part form), the cost is indeed significant, excessive – and not capable of true and accurate measurement.

Yet, there is no environmental benefit from this burdensome regulatory requirement which has, effectively, been replaced by the federal used oil program, found at 40 CFR Part 279.

Yet, there is no environmental benefit from this burdensome regulatory requirement which has, effectively, been replaced by the federal used oil program, found at 40 CFR Part 279. This used oil program, and the corresponding federal rules, have been adopted by the State of Illinois, through its identical-in-substance rulemaking authority, at 35 Ill. Adm. Code Part 739. Those federally-derived rules require tracking of used oil – making the manifesting of used oil pursuant to the Board's special waste hauling rules superfluous – as well as unduly burdensome. Interestingly, while the IEPA currently requires that used oil generators and haulers need to follow the manifesting requirements of Part 808 and 809, not one part of the six-part form is actually seen by the IEPA, because the IEPA does not itself require filing of these manifests. Since the federally-derived rules cover the gamut of tracking of material that is considered “used oil” pursuant to the federal used oil program, manifesting of used oil as “special waste” is unnecessary, wasteful, burdensome and counterproductive to the goal of recycling used oil for re-use.

Testimony from NORA members will further enlighten the Board as to the burdensome nature of the current Illinois requirement. That testimony is now provided, as Pre-Filed Testimony, simultaneous with this filing. Thus, NORA's responsibility under Rule 102.202(e) is complete. Further, in compliance with Rule 102.202(e), NORA asserts that it has used no “published study or report” in regard to the development of this proposal regulatory amendment.

The Illinois Environmental Protection Act requires that the Board, in rulemakings of general applicability, assess the “technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.” See 415 ILCS 5/27(a). In this case, the federal government has done that, by establishing the used oil program and adopting rules at 40 CFR

Part 739 which have been adopted by the State of Illinois at 35 Ill. Adm. Code Part 739. As testimony will show, NORA was instrumental in the establishment of this program, the intended effect of which was to *reduce* pollution by providing a simple regulatory program which would encourage the recycling of used oil. Such encouragement came in the form of the development of a program where regulatory requirements were relatively straightforward and un-burdensome, thus allowing an industry to develop which could effectively, from an economic standpoint, collect and transport used oil for purposes of recycling and re-use – making illegal disposal of used oil a thing of the past.

NORA is an association that is committed to this purpose, and believes that the regulatory amendments proposed in this rulemaking achieve that goal.

B. Errata Sheet #1

NORA is pleased that, based upon its discussions with the IEPA, and the filings by the IEPA heretofore in this proceeding, IEPA shares the sentiment that, where used oil is managed in accordance with Part 739, the requirement for manifesting used oil as “special waste” and the requirement for obtaining a “special waste hauling permit” for the transportation of used oil are requirements that should be eliminated from Part 808 and 809 of the Board’s rules. NORA asserts that IEPA’s concern with the specific language offered by NORA to achieve the above-stated goal is more a matter of semantics than it is substance.

Nonetheless, NORA asserts that its proposed language is not intended to eliminate the special waste tracking requirements (manifesting and hauling) for any material that is *not* subject to regulation as “used oil” under the federal program (and, correspondingly, Part 739 of the

Board's rules). In other words, the exemption NORA seeks would only apply to used oil and used oil like material (see 35 Ill. Adm. Code Part 739.110) managed in accordance with Part 739.

In an effort to clarify this point, and accommodate IEPA's concern with NORA's language, NORA offers alternative language which achieves the same objective. See Errata Sheet #1, attached hereto as Exhibit A.

Respectfully submitted,

NORA, AN ASSOCIATION OF
RESPONSIBLE RECYCLERS

By: _____
Claire A. Manning, one of its attorneys

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EXHIBIT A

ERRATA SHEET #1

Section 808.121(b)(5)(6)

INSERT:

- (5) The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739.
- (6) A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.

Section 809.211(l)

INSERT:

“Any person who hauls material subject to regulation pursuant to 35 Ill. Adm. Code Part 739 and who has registered with the Agency as a used oil transporter.”

Section 809.301(a)

INSERT:

“The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.”

Section 809.302(a)

INSERT:

“The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.”

Section 809.501(a)

INSERT:

“The generator (or transporter) is not required to complete a manifest for material that is subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material that is subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.”