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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO THE	)	R06-20
BOARD'S SPECIAL WASTE	)	(Rulemaking -Land)
REGULATIONS CONCERNING	)	
USED OIL, 35 ILL. ADM. CODE 808, 809	)	

NOTICE OF FILING

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Illinois Pollution Control Board  
James R. Thompson Center  
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Chicago, Illinois 60601  
(ELECTRONIC FILING)

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Illinois Environmental Regulatory Group  
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the RESPONSE TO RULE PROPOSAL AMENDMENT, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Stephanie Flowers  
Stephanie Flowers  
Assistant Counsel  
Division of Legal Counsel

DATE: 12-3-07  
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Springfield, Illinois 62794-9276  
(217) 782-5544

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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USED OIL, 35 ILL. ADM. CODE 808, 809 )

**RESPONSE TO RULE PROPOSAL AMENDMENT**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Stephanie Flowers, and pursuant to 35 Ill. Adm. Code 101.500(d) and in response to the Rule Proposal Amendment filed with the Illinois Pollution Control Board ("Board") by the Association of Responsible Recyclers ("NORA") in the above-entitled matter on November 5, 2007, states as follows:

**1. The Rule Proposal Amendment mischaracterizes the current regulations.**

NORA states that this new proposal is intended to "eliminate duplicative and unnecessary paperwork."<sup>1</sup> The Illinois EPA believes this is a mischaracterization of the current regulations. Currently there is no requirement for duplicative paperwork. Presently, if a transporter carries any special waste, including used oil, they need only one special waste manifest for each load received from each generator.<sup>2</sup> The Illinois EPA's alternate exemption language<sup>3</sup> would modify the current regulations and eliminate the requirement of a special waste manifest for used oil. The Illinois EPA feels secure in allowing this exemption because even though used oil drops out of the requirement for manifesting under 35 Ill. Adm. Code 809 ("Part 809") it is still subject to the used oil tracking regulations at 35 Ill. Adm. Code 739 ("Part 739"). The Part 739 tracking

<sup>1</sup> See Rule Proposal Amendment at page 1.

<sup>2</sup> Even though used oil is subject to both the Part 739 tracking requirements and the Part 809 manifest requirements, a special waste manifest satisfies the requirements of both Parts so there are not two different documents to fill out.

<sup>3</sup> See Testimony of Theodore J. Dragovich filed in R06-20 on May 10, 2006.

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requirements do not require a manifest and do not require as much detail but are sufficient for a homogeneous product such as used oil. However, the Illinois EPA's alternate language does not allow and the Illinois EPA cannot support any proposal that would allow other special waste<sup>4</sup> to be exempt from the manifesting requirements of Part 809 because then there would be no regulatory requirement to track the special waste. There is no second regulatory framework to pick up other special waste tracking as there is for used oil in Part 739.

The issue, therefore, is not that the Illinois EPA requires duplicative and unnecessary paperwork, but that NORA's members do not benefit from the Illinois EPA's alternate exemption language because they do not carry only used oil but also other special waste and therefore would still be required to carry a manifest.

**2. The Rule Proposal Amendment does not address the Illinois EPA concerns.**

NORA accurately states the Illinois EPA's concern when it says, "Illinois EPA will not be in a position to effectively regulate special waste that's being inappropriately managed as used oil since tracking under Part 739 is not as extensive as manifesting under Part 809".<sup>5</sup> However, NORA's newly proposed language does not lessen this concern.

NORA's recently submitted language still draws mixtures of used oil and special waste into the exemption by using the phrase "used oil regulated under Part 739". Used oil that is mixed with other special waste after generation is subject to both the used oil regulations and the more stringent special waste regulations. Therefore, mixtures are technically "regulated under Part 739" and this is why the Illinois EPA cannot support this language. The Illinois EPA cannot allow mixtures<sup>6</sup> of other special waste with used oil to be regulated only as used oil. As

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<sup>4</sup> The term "other special waste" as used in this document does not include types of special waste specifically exempted from manifesting and hauling permits pursuant to Board regulations or the Act.

<sup>5</sup> See Rule Proposal Amendment at page 2.

<sup>6</sup> The term "mixtures" as used in this document means the intentional mixing of used oil after generation with other special waste and does not mean mixtures resulting from the original use of the oil.

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Illinois EPA has previously stated, this would encourage the mixing of other waste into the used oil by the generator and transporter because of the exemption from manifesting and hauling.

Mixtures would also be encouraged by the used oil receiving facility because they could receive the special waste mixed into the used oil without first obtaining a Part 807 permit or local-siting approval as no documents would exist to identify the waste received as anything but used oil.

Thus, the Illinois EPA has proposed alternative language<sup>7</sup> that limits the manifest exemption to used oil as defined in Part 739 leaving mixtures of used oil and other special waste subject to the manifest requirements of Part 809.

**3. The Rule Proposal Amendment does not provide sufficient tracking requirements.**

NORA states, "The proposed language puts the burden on a used oil recycler to identify the waste stream, just as it would do with manifesting . . ."<sup>8</sup> However, the Illinois EPA asserts this is not true. The newest proposed language by NORA states,

". . . provided that the tracking documents which are utilized pursuant to 35 Ill. Adm. Code Part 739 contain information relevant and necessary to identify and track the material as used oil regulated under that Part".<sup>9</sup>

This language requires no more than that the material be tracked as used oil regulated under Part 739. This is true even when other special wastes are combined with minimal amounts of used oil. As stated before, mixtures of other special waste and used oil are regulated under both Part 739 and Part 809. Therefore, for a transporter to record that the mixture is regulated by Part 739 would not be incorrect but would be misleading as it fails to identify the other special waste in the mixture. And since Part 739 does not require the generator to keep copies of shipping records indicating where the other special waste was sent for storage, treatment, recycling or

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<sup>7</sup> See Testimony of Theodore J. Dragovich filed in R06-20 on May 10, 2006.

<sup>8</sup> See Rule Proposal Amendment at page 3.

<sup>9</sup> See Rule Proposal Amendment at page 5 (Exhibit A).

disposal and since the receiving facility would not be notified that the waste contained anything other than used oil, the identification of the other special waste in the mixture would be lost. There would not be any information conveyed to the transporter, storer, or processor that would make them aware that the other special waste requires management standards different from used oil. Hence, NORA's proposed language results in no existing records of the other special wastes added to used oil, making it easy to hide the presence of these wastes at used oil facilities that are not sited or permitted to accept wastes other than used oil.

**4. The Rule Proposal Amendment is duplicative of arguments already raised.**

From the first response of the Illinois EPA to NORA's proposal, the Illinois EPA has made clear that the exemption cannot apply to materials "regulated under Part 739".<sup>10</sup> This is because most materials contaminated with used oil come under the regulation of Part 739. These materials are often also regulated under the stricter standards of the special waste regulations and other regulations. Materials that should be regulated under stricter standards cannot be allowed out of these standards simply because they contain used oil because this would encourage the contamination of these materials with used oil.

The Illinois EPA proffered language<sup>11</sup> that gave a manifest exemption to "used oil as defined by and managed in accordance with Part 739" to limit the exemption to recycled used oil only. This language kept used oil mixed with other special waste and used oil intended for disposal still requiring manifests and hauling permits. NORA adopted this language in Errata Sheet #1 but changed the phrase "used oil as defined by and managed in accordance with Part 739" to "material subject to regulation pursuant to Part 739".<sup>12</sup> The change is because NORA understands the broader scope of its language in relation to the Illinois EPA's. Since NORA's

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<sup>10</sup> See Comments of the Illinois Environmental Protection Agency filed in R06-20 on May 1, 2006.

<sup>11</sup> See Testimony of Theodore J. Dragovich filed in R06-20 on May 10, 2006.

<sup>12</sup> See Exhibit A of Supplemental Statement of Reasons and Errata Sheet #1 filed in R06-20 on May 16, 2006.

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members transport used oil mixed with special waste they want a release from manifesting these loads also. And while NORA's members may make a good faith effort to track the other special waste, their proposed exemption would leave no regulations in place that would require them to do so. As the Illinois EPA has already explained<sup>13</sup> NORA's exemption would create a significant loophole for bad actors and others to circumvent the special waste rules including the requirements of permitting and siting of special waste facilities.

In its current proposal, titled Errata Sheet #2, NORA continues to use the same language "regulated under Part 739" that seeks to broaden the exemption to mixtures and to which the Illinois EPA has repeatedly stated its objections.

WHEREFORE, for the above and foregoing reasons, the Illinois EPA respectfully requests that the Board deny NORA's motion to file its Rule Proposal Amendment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Stephanie Flowers  
Stephanie Flowers  
Assistant Counsel  
Division of Legal Counsel

DATE: 12-3-07  
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<sup>13</sup> See page 8 of Post-Hearing Comments of the Illinois Environmental Protection Agency filed in R06-20 on September 1, 2006 and page 8 of Comments of the Illinois Environmental Protection Agency filed in R06-20 on October 10, 2006.

STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON )

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached RESPONSE TO RULE PROPOSAL AMENDMENT upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Dorothy Gunn, Clerk,  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph; Suite 11-500  
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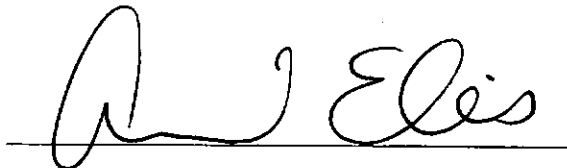
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Deirdre K. Hirmer, Executive Director  
Illinois Environmental Regulatory Group  
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and mailing it by First Class Mail from Springfield, Illinois on December 3, 2007, with sufficient postage affixed.



SUBSCRIBED AND SWORN TO BEFORE ME  
This 3<sup>rd</sup> day of December, 2007.

Brenda Boehner  
Notary Public

