

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATER OF:)
PROPOSED AMENDMENTS TO THE)
BOARD'S SPECIAL WASTE REGULATIONS) R06-20
CONCERNING USED OIL) (Rulemaking – Land)
35 ILL. ADM. CODE 808, 809)
)
SOUTHWEST OIL AND FUTURE)
ENVIRONMENTAL COMMENTS)
PRE-FILED TESTIMONY)

NOTICE OF FILING

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board NORA's Comments, a copy of which is herewith served upon you.

Christopher Harris

September 22, 2008

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:

PROPOSED AMENDMENTS TO THE
SPECIAL WASTE REGULATIONS
CONCERNING USED OIL,
35. Ill. Adm. Code, 739, 808 AND 809

R06-20
(Rulemaking-Land)

COMMENTS ON NORA'S PROPOSED REGULATORY LANGUAGE AND RULE CHANGE

These comments represent the views of Future Environmental, Inc. Our trade association, NORA, has made repeated attempts to find a compromise concerning the mixture of special wastes and used oil. Future Environmental fully supports and endorses NORA's proposed regulatory language as a way to remedy the complications between the used oil regulations and the special waste regulations, as requested by the Board. I want to encourage all parties involved to keep trying to find that compromise. I also want to say most of us, if not all of us in the industry understand some of IEPA's concerns on this issue. Used oil should not be a medium to mix anything into, so that it becomes used oil. However, we, along with NORA, are certain that the Federal Regulations (40 CFR Part 279) did intend to allow the generator to mix his own compatible wastes with his used oil for legitimate recycling.

One such reason is that in the more rural areas of Illinois used oil recyclers are the only recycler that cares to service such areas. There are simply not enough of any other wastes generated to interest other recyclers. So allowing those generators to mix some compatible wastes with their used oil may be their only means to recycle those other wastes. Numerous times we have tried to get recyclers to come to rural central Illinois areas to pick-up a single drum of hazardous or special waste that was not compatible with used oil for our customers, and it is not easy or economical. Many times after receiving the price to have that waste hauled away we never got a call back. I'm sure some of those wastes wound up not being recycled or disposed of properly, and on different occasions we simply couldn't find anyone who was interested to pick-up the waste. I have no first hand knowledge of what ultimately happened to that waste either, but I can take a pretty good guess. Where appropriate (appropriate wastes) those generators need us as an economical alternative for recycling. When forming the federal used oil regulations USEPA realized that costs of recycling effected participation more than passing any regulation on what had to be done with a certain waste, especially in rural areas. That was one of the major reasons USEPA ultimately decided against a hazardous waste listing for used oil.

We need to find a compromise because if our rule proposal just gets dismissed we will be back here before the board again and again, probably arguing over a specific issues as how existing rules relate concerning used oil recycling.

I want to start here by briefly listing IEPA's concerns and beliefs as we understand them:

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1. Only Part 809 manifesting requires the disclosure of individual waste streams in a used oil mixture which is needed to alert the transporter, recycler, burner and emergency response personnel to the possible differing characteristics of the included non used oil streams.
2. IEPA wants to decide, on an individual substance basis if a certain special waste mixture with used oil should be allowed.
3. Since no one has conducted an evaluation of the impact of managing special waste mixed with used oil solely under the used oil regulations, the used oil regulations may not be appropriate management standards for all non hazardous special waste. This should be evaluated at a minimum before it is allowed.
4. IEPA believes it will lose control of the special waste universe if by adding a small amount of used oil to any special waste stream it will pull that waste out from under Part 809 regulation into Part 739 regulation.
5. NORA has not proposed a minimum amount of used oil required in the mixture for the mixture to be considered used oil.
6. IEPA is concerned used oil recyclers will improperly handle and/or dispose of waste water streams if we are allowed to take them as used oil, or that we may just permanently store separated water in a tank long-term and basically leave it there to avoid disposal costs
7. IEPA has stated that burning a waste for energy recovery is not recycling, but is disposal.
8. IEPA is concerned that the addition of other non used oil special wastes to the used oil may negatively affect the burning characteristics of the mixture causing performance and/or environmental problems.
9. IEPA believes the federal regulations do not encourage mixture of different waste streams.
10. IEPA believes that the current Part 739 regulations regulate hazardous waste and used oil mixtures adequately and are proposing no changes for handling those mixtures.
11. IEPA believes that by allowing mixture of other special wastes with used oil it will “frustrate” their efforts to keep track of how many gallons of used oil is recycled verses how many gallons of other special waste is recycled, as is required to be answered and kept track of in their annual reporting requirements. They don’t want to include the special waste numbers in the used oil number.

12. IEPA wants to require that all used oil and special waste mixtures managed as used oil be manifested as a special waste and be taken only to facilities that operate under a Part 807 special waste permit.

We feel the Part 739 language NORA has proposed is a viable way to help IEPA deal with these issues without manifesting used oil and special wastes mixtures managed as used oil, and putting oil recyclers under Part 807 permitting. IEPA has stated their proposal would “allow haulers of used oil not containing other special wastes to be exempt from the hauling permit and manifest requirement and therefore will encourage the out of state competitors to recycle used oil at Illinois facilities.” This may be true to some extent; however, recyclers with facilities in Illinois would be at a severe competitive disadvantage to out of state competitors when it comes to used oil and other waste mixtures. Out of state competitors would not face the burdens or expense of managing used oil and other wastes commonly found mixed with used oil, such as water, at facilities requiring any of the time, energy and expense that Illinois Part 807 permits will require. Therefore out of state recyclers would most assuredly stay out of state, and therefore gain a decidedly upper hand over Illinois based recyclers.

A fact unknown to the general public is that this is a very competitive business, operated on very thin profit margins. Therefore even a slight advantage by an out of state competitor could devastate in state recyclers. This should be of concern to the Board and Agency due to the fact that it is the in state, more local recyclers that have set up the facilities and networks for do it yourself oil changers to properly recycle their used oil. The out of state recyclers are only after the larger generators of used oil. They are limited to those types of generators due to time constraints driving from out of state. It is estimated that around 30 percent of oil is still changed by do it yourselfers.

Back in the 1990s IEPA had proposed to put all used oil facilities under Part 807 permitting requirements. NORA argued against this idea and on December 16, 1999 the Board dismissed IEPA's proposal. One of the main arguments the Board cited was the competitive disadvantage it would impose on in state recyclers. Concerning the current proposal, if water is included as a waste if mixed with used oil that will be required to go to a Part 807 facility, all used oil recyclers will be forced to adopt Part 807 permits because post use mixture of water is virtually in all used oil.

Many facilities today have oil/water separators as a way to help keep the water generated in their facility from floor washing, spills, leaks, snow melt, drips, etc...from going directly into the sewer system along with anything else in the water. The reason these are called oil/water separators is usually, in such facilities that need them, oil is the main ingredient that goes into these separators along with the water and it floats on top of the water. This oil is normally collected from these separators and put into the used oil tank...along with some water. Also, 55 gallon drums are often stored outside and often have some water get in them since the top of a 55 gallon drum acts as a funnel due to the bung holes being lower than the rim of the drum. If the bung plug is not tight they will

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funnel water into the drum where it goes to the bottom of the drum, which can often not be detected by the generator or recycler until the load of used oil is inspected prior to off loading. In addition, at many manufacturing facilities water gets into the used oil stream from oil/water separators, process leaks and other reasons. Normally "factory" used oil has somewhere between 5 to 25% water in it.

IEPA's proposal would be very difficult for any facility or persons trying to operate under Part 739 regulations only. There is no reliable, clean and fast way to tell if water is in the container on the bottom before pumping, especially if the oil is in drums and/or the water has emulsified into the oil. Even when the transporter catches unknown water being pumped, often the generator states they are unaware how it got there. How is the recycler to determine if the water is from contamination thru use, or post use mixture? And even more challenging how is the recycler to determine all this on the phone when the generator first calls for a pump out? Based on the above facts, how would a Part 739 only recycler determine who they could or couldn't service when a pump out call comes in?

As stated in IEPA's concerns above, we understand IEPA's concern about waste waters. However, water is something that every used oil transporter, transfer facility or processor deals with on a daily basis and is in every facility to some degree. Also, as stated is often unknown to be in the load by the generator and the transporter until the load is inspected or off loaded by the transporter, transfer facility or processor.

IEPA's past concern about possible long term water storage to avoid disposal costs may have been a legitimate concern in time past. However, today the Spill, Prevention, Contingency and Countermeasure (SPCC) regulations, which were expanded and reworked over the last few years have made the safety standards for above ground storage tanks (AST's) and the extensive underground tank (UST) regulations, both much too expensive to ever consider for long term storage of waste water. In addition, if an oil recycler was ever foolish enough to occupy their tank storage with waste water in this fashion, there would be no possible potential environmental harm associated with that activity due to the current SPCC and UST regulations. Further, if any oil recycler would want to do any final treatment and release the waste water, the facility would be considered an industrial waste water processing facility which includes many more safeguards and Part 807 permits. In addition, NPDES permitting would currently be required for the facility prior to this activity.

For these reasons it is our hope that the Board, and hopefully IEPA, will agree that Part 807 regulation of waste water being collected with used oil and stored at used oil facilities, would effectively require all used oil recyclers to adopt Part 807 permits at all their facilities. This would put them at a severe disadvantage with their out of state competitors (as the Board has already noted), and is not required. Further, if water is included as one of the mixtures that will cause the used oil mixture to only go to a Part 807 permitted facility, used oil 35 day transfer facilities would also have to be permitted under Part 807. This would mean not only would a recyclers processing facility have to

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obtain the permit, but also it's often numerous transfer facility sites, increasing the overall permitting cost to Illinois based recyclers many times over.

One of the other major reasons the Board dismissed IEPA's proposal in 1999 was the fact we educated them about how the used oil industry in Illinois (and elsewhere) currently works. One of those points was that many transfer facility sites, along with many larger longer term or seasonal storage sites are at leased commercial petroleum storage facilities. This is required do to the cost of building the larger longer term seasonal facilities is beyond many used oil recyclers capabilities, especially if those facilities are for later river transportation. Buyers of used oil transported from river facilities often will not pay much more for dry oil than moderately wet oil, so many times EPA on specification used oil and low level water mixtures are stored at these types of facilities. Transfer facilities can also be used to achieve economical collection costs and economical land transportation costs to put the recycler in a position to ship the product to the more regional area buyers in a timely fashion, when the buyer needs the product (keeping the product as close to the buyer as possible). I believe the Board came to understand that requiring commercial petroleum storage facilities to obtain Part 807 permits to store used oil would effectively take these commercial facilities off the market for used oil, severely disrupting the current used oil industry in Illinois and make recycling used oil much more expensive in Illinois than in surrounding states.

In the Board's 1999 decision the Board also stated that Part 807 permitting for used oil recyclers was "not economically reasonable when taking into account the existing Federal and State regulatory system." Since that conclusion in 1999 there have been numerous additions to the regulatory system. The Spill Prevention, Countermeasure and Contingency (SPCC) regulations, the Stormwater Pollution Prevention Plan (SWPPP) regulations and the Oil Spill Prevention and Response Plan regulations have all been reworked, with many more intensive and inclusive measures being taken than in 1999. They now require very strict and regular inspections, a higher standard for secondary containment, integrity testing of the storage tanks and much, much more.

For other waste and used oil post use mixtures NORA's proposal would give the IEPA more authority over such post use mixtures, but still keep some of them that our industry believes were intended to be handled with used oil under the original intent of the federal regulations and out of the Part 807 universe.

As stated, we believe NORA's proposed language would cover the vast majority of IEPA's concerns as we understand them. However, the Board needs to understand that IEPA only submitted three examples of problem mixtures in detail. All three of the mixture problems IEPA presented as evidence in its 6-15-2006 comments of current problems, could be violations under current rules. We do not believe current rules allow generators and oil recyclers to pick up special waste streams containing no used oil (Fixer and Paint Waste) and manifest such streams to used oil facilities that do not hold a Part 807 permit for such wastes, which is what we believe IEPA stated was happening in two of the examples. This would seem to be a violation by the generator of Parts 808.121c, d and possibly e. It would seem to also be a violation by the transporter under Parts

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808.121c, d and possibly e, and Part 809.302 b. Under current rules unless the waste stream could be considered used oil it has to be manifested according to what it actually is. Accordingly, if the generator and transporter follow current rules such wastes could only be manifested to Part 807 facilities. The other example involved an ignitable only hazardous wastewater/sludge and oil stream being mixed with used oil by the same generator. Here the Part 739 used oil regulations are clear. If the mixture continues to exhibit a characteristic of ignitability it is a hazardous waste, if not it is used oil. In addition, it seems that the IEPA would be notified as to what other non used oil streams the used oil facilities were receiving from the requirements of Part 809.501 j and k concerning annual reporting requirements.

The sludge aspect of the stream is not a problem for used oil recyclers set up with vacuum trucks and the proper equipment at the receiving facility. Sludge is another item that every used oil recycler handles to some degree on a daily basis from tank bottoms, filter cleanings and routine truck and facility tank cleanings. After oil and water separation this sludge would be considered a newly generated waste, generated by the oil recycler. Most of this material tests out nonhazardous and is made into a slurry fuel by the cement manufacturers and burned for energy recovery in the production of cement, or solidified and landfilled.

As far as IEPA's concern that these mixtures would complicate their efforts to keep track of how many gallons of used oil is recycled, they could ask for the water to be separated from the oil in the reporting numbers. We believe that water numbers would be easy to separate for most used oil recyclers. This would still allow other wastes, such as other BTU valuable wastes to be included in the used oil number, but those wastes are a very small percentage compared to the used oil numbers, and those wastes are still getting recycled as defined under the used oil rules and the Illinois Environmental Protection Act.

In closing, we have set up our business models based on the used oil regulations and have been operating that way since Illinois adopted those regulations in 1993.

From 1993 to 2000 we were told we didn't have to manifest our used oil individually.

We were told to continue to use the old multi stop procedures. We asked how to manifest at all to a used oil transfer facility (because it is not the final recycling destination as the manifest regulations require to be listed on the manifest), we were told by IEPA to keep doing it as we had been until IEPA figured it out. We were reassured by a Board guidance letter from April, 21 1994, in the matter of "RCRA UPDATE, USEPA REGULATIONS (1/1/93 through 6/30/93, R93-16". Specifically the board stated 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." Also, "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 section 7.2 and 22.4."

Further, as discussed above in 1999 the Board again confirmed that we would be operating under the used oil regulations in Illinois with its dismissal of IEPA's Part 807

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permitting proposal. Then in April 2000 IEPA sent out a guidance letter to some of the Illinois based oil recyclers that stated each used oil generator had to be manifested individually. However, that letter did not specify how to manifest the used oil to used oil transfer facilities. In addition, no explanation was included concerning how the generator and/or recycler would not be breaking regulations such as Part 808.121, d or Part 809.302, b, by taking a manifested special waste (used oil) to a non-Part 807 permitted facility.

We started out these current discussions thinking we were dealing with a paperwork issue to rectify these problems. Now it has become a permitting issue as well, with much more serious potential consequences for Illinois based oil recyclers. We encourage the Board to adopt NORA's proposed regulatory language as a way to both rectify this issue (manifesting and special waste/used oil mixtures) and keep used oil regulation in Illinois consistent with surrounding states and consistent with past Board opinions.

Respectfully submitted,

Michael Lenz
Future Environmental, Inc.

September 22, 2008

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached NORA's Comments (Pre-filed Testimony), by U. S. mail, upon the following persons:

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