

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)	
)	
ADDITIONAL COMMENTS OF NORA)	

NOTICE OF FILING

Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Stephanie Flowers, Esquire
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794

Ms. Deirdre K. Hirner
Executive Director
Illinois Pollution Control Board
100 Randolph Street
Suite 11-500
Chicago, Illinois 60601

Ms. Dorothy Gunn
Clerk of Illinois Pollution Control
Board
100 Randolph Street Suite 11-500
Chicago, Illinois 60601

Tim Fox, Esquire
Hearing Officer
Illinois Pollution Control Board
100 Randolph Street
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board, The Additional Comments of NORA, An Association of Responsible Recyclers, a copy of which is herewith served upon you.

Christopher Harris

December 15, 2008

2001 South Tracy
Bozeman, Montana 59715
Telephone: (406) 586-9902

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**ADDITIONAL COMMENTS OF NORA,
AN ASSOCIATION OF RESPONSIBLE RECYCLERS
SUBMITTED DECEMBER 15, 2008**

Following the October 1, 2008 hearing conducted by the Board, NORA, An Association of Responsible Recyclers (“NORA”) has slightly revised the language for its proposed amendments to Part 739. This language is intended to improve the drafting and clarify the proposed new requirements; no substantive changes are submitted. At the Board’s request, NORA is also submitting proposed amendments to Parts 808 and 809 to clarify the relationship between the special waste and used oil provisions if NORA’s proposal is adopted. It should be noted that this language (attached) addresses certain materials *regulated as used oil* for which a manifest is not necessary. It has already been proposed by the Board that shipments of used oil (as defined by the federal regulations set forth at 40 CFR Part 279, as adopted by the Board by reference) would not require a manifest. NORA and the Illinois Environmental Protection Agency (“IEPA”) are in agreement on the Board’s proposal. Also, in compliance with the Board’s request, NORA’s suggestions for revisions to the Board Notes are deleted from the proposed amendments. However, because Board Notes remain crucially important to the correct interpretation of the regulations, NORA has included its suggestions for Board Note revisions at the end of its proposed revisions to the regulations.

As explained at the October 1, 2008 hearing, under NORA’s proposal, the manifest would be replaced by a shipping document (also referred to as shipping paper) containing (1) all information IEPA has requested (e.g., the quantity and description of the material); (2) the information required by applicable United States Department of Transportation (“U.S.DOT”) regulations; and (3) any business information deemed relevant by the transporter and/or

receiving facility. This approach to shipping paper is prescribed by U.S.DOT and has been the accepted procedure for more than 20 years throughout the United States. U.S. DOT mandates the content of the shipping paper while the design of the shipping paper is the responsibility of the shipper or the transporter. This approach allows business transaction information to be included in the shipping paper but without any loss of regulatory information or enforceability. Similarly, under NORA's proposal, the information that IEPA has stated it wants recorded would be reflected on the shipping document while the shipper or transporter would design the form to accommodate its transaction information. An exemplar of such a shipping document was provided to the Board at the October 1, 2008 hearing.

As pointed out during the hearing, the replacement of the manifest with a shipping document will dramatically reduce the unnecessary paperwork burden currently imposed on generators and transporters. Our proposal will also put Illinois businesses on a level playing field with businesses from adjacent states. NORA's proposal does *not* affect any substantive requirements, such as storage, testing and clean-up, that will, of course, remain the obligation of the regulated community. Indeed, NORA's proposal enhances the protection of human health and the environment because it would allow generators and transporters to focus on substantive compliance rather than duplicative and expensive paperwork. It is worth reiterating that under the current system, IEPA does not want to receive copies of the manifest; it wants to generators and transporters to store these manifests for three years just in case the Agency might someday wish to look at some these manifests. Under NORA's proposal, the shipping documents would be retained for at least three years (probably longer because they contain valuable business information) and the information contained in the shipping documents would be the same as IEPA says it may need.

As NORA frequently pointed out in its testimony during the October 1, 2008 hearing, NORA's proposed amendments constitute a *compromise* that was intended to attract the support of IEPA. Unfortunately, despite numerous efforts by NORA to engage IEPA in a constructive discussion on the question of replacing a manifest with a shipping document, the Agency has not indicated any interest in supporting a compromise proposal to the Board. See, for example, Claire Manning's April 2, 2008 letter on behalf of NORA to Stephanie Flowers, IEPA Legal Counsel

(attached). IEPA provided no substantive response to Ms. Manning's letter and has not approached NORA at any time since the October 1, 2008 hearing. Consequently, NORA and its members would like to remind the Board that our *original* proposal is more logical, straightforward, and efficient. NORA's original proposal was to replace the manifest for used oil (as defined) and all categories of materials regulated as used oil with a shipping document. See attached. This simpler approach would bring Illinois' regulations in congruence with the federal regulations as well as the regulations of the states adjacent to Illinois and virtually all other states. The disparity between Illinois' requirements and those of the other states creates confusion in the regulated community and imposes costly and unnecessary compliance burdens. Use of a hazardous waste manifest for these shipments misrepresents what the material is to emergency responders and others in contact with the shipments.

At a time when the current economic crisis is causing severe financial hardship on virtually every business in the United States, it is the duty of government to reduce or even eliminate costly and unnecessary requirements. As the Board is aware, all but two states allow the use of DOT shipping papers for the transportation of used oil destined for recycling and have done so since the promulgation of the used oil management standards in 1985. The Board will not be venturing into uncharted territory by adopting NORA's proposal; rather, the Board will be bringing Illinois into alignment with the policies of virtually all other states.

Accordingly, NORA's proposal as presented at the October 1, 2008 hearing merits the Board's approval. However, because this proposal constitutes a compromise that apparently was dismissed by IEPA, NORA also requests that the Board give consideration to the adoption of NORA's original (and more logical) proposal to substitute a shipping document for a manifest with respect to used oil (as defined) as well as all materials regulated as used oil.

Respectfully submitted,

Christopher Harris, General Counsel,
NORA, An Association of Responsible Recyclers

December 15, 2008



Brown, Hay & Stephens, LLP
LEGAL COUNSEL

Claire A. Manning, Attorney
cmanning@bhslaw.com
Direct Ext. 244
Direct Fax: (217) 241-3111

205 S. Fifth Street
Suite 700
P O Box 2459
Springfield, Illinois 62705
TEL 217 544 8491
FAX 217 544 9609
www.bhslaw.com

December 11, 2008

Mr. Christopher Harris
1511 West Babcock
Bozeman, MT 59715

**Re: R2006-20, In the Matter of Proposed Amendments to the
Board's Special Waste Regulations Concerning Used Oil, 35
Ill. Adm. Code 808, 809**

Dear Mr. Harris:

Vicky Custer has discussed with me the testimony of Stephanie Flowers at the Pollution Control Board hearing on October 1, 2008 in the above-referenced matter. At that hearing, Ms. Flowers asserted that the IEPA was not previously aware of certain positions that NORA was presenting at hearing.

For your information, I sent the attached letter to Ms. Flowers on April 2, 2008, at NORA's request. Prior to sending it to her, I conceptually discussed it with her. It delineates what mixtures of used oil would be subject to manifesting, and what would not, based upon the federal used oil program, adopted as an identical-in-substance rule by the Illinois Pollution Control Board. Specifically, the delineation incorporates industry practice pursuant to 35 Ill. Adm. Code 739.110. The letter suggests that such delineation was developed by NORA members in an effort to address the IEPA's stated concerns, and bring resolution to the issue.

Subsequent to the letter, Ms. Flowers responded to me that the Illinois Environmental Protection Agency preferred to wait to see what the Board did at First Notice, instead of agreeing to any resolution of the issue at that time. Please feel free to call me if you have any questions or need my further assistance. Good luck with your continued efforts and attempts to bring regulatory resolution and clarity to this important issue for the used oil industry.

Very truly yours,

A handwritten signature in cursive script that reads 'Claire A. Manning'.

Claire A. Manning

CAM/jp





Brown, Hay & Stephens, LLP
LEGAL COUNSEL

205 S. Fifth Street
Suite 700
P O Box 2459
Springfield, Illinois 62705
TEL 217 544 8491
FAX 217 544 9609
www.bhslaw.com

Claire A. Manning, Attorney
cmanning@bhslaw.com
Direct Ext. 244
Direct Fax: (217) 241-3111

April 2, 2008

Stephanie Flowers
Illinois Environmental Protection Agency
Legal Counsel
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

**Re: *Proposed Amendments to the Special Waste Regulations
Concerning Used Oil, R06-20***

Dear Ms. Flowers:

Pursuant to our conversation yesterday, I enclose a document prepared by NORA, an Association of Responsible Recyclers, for purposes of settlement of the above-referenced rulemaking. As you know, NORA has been working on the issue of elimination of special waste manifesting for used oil for some time. The IEPA has agreed that such elimination is appropriate, but to date we have been unable to agree to language that would effectively accomplish this result. Based upon initial discussions with the IEPA, it was decided that NORA would file a regulatory proposal with the Illinois Pollution Control Board (Board), and IEPA would support the elimination of manifesting for used oil. However, IEPA was uncomfortable with NORA's proposed language, and filed a version of its own. At hearing, both parties explained their versions of the proposed amendments to the Board.

The sticking point seems to be what constitutes "used oil" for purposes of elimination of the manifesting requirement. The federal used oil rules, adopted by Illinois as Identical-In-Substance rules and found at 35 Ill. Adm. Code 739, allow certain materials to be mixed with used oil for purposes of recycling and application of the used oil rules. See Section 739.110 NORA has requested that the materials mixed with used oil in accordance with this section also be exempt from manifesting. The IEPA has steadfastly refused to support that concept, expressing concerns that recyclers would be in a position to eliminate special waste streams, such as paint residues, etc. from manifesting. NORA has responded that tracking is required under Part 739 and has agreed to utilize tracking documents required under that Part in a manner that contains all information requested in the special waste manifest. Still, we have not reached agreement.



Brown, Hay & Stephens, LLP
LEGAL COUNSEL

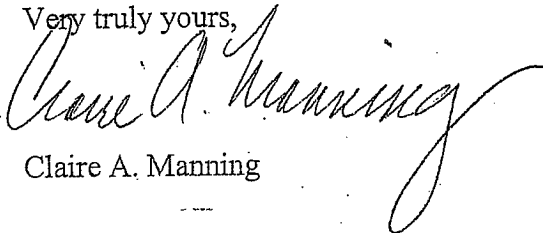
Ms. Flowers
April 2, 2008
Page 2

As we discussed, NORA has requested that I approach the IEPA once more, in an attempt to reach consensus on rule language that we could put forth to the Board. Attached is NORA's suggested basis for that agreement, which would specifically delineate what materials could appropriately be mixed with used oil and tracked as used oil, thereby eliminating the manifesting requirement only for those materials. The document also lists the mixtures that would not be subject to the manifest exemption.

Based upon the Board's agenda, it is likely that the Board may decide this matter at its next meeting, April 17. As we discussed, the Board will likely move the matter to First Notice, either with NORA's language, the IEPA's language, or its own language. As you and I have discussed, you offered to raise this issue with the appropriate officials at the IEPA in a final effort to mutually resolve this matter prior to Board order. I look forward to hearing from you and, on behalf of NORA, hope to bring closure to this issue.

Thank you for your time and attention to this matter.

Very truly yours,



Claire A. Manning

CAM/jp
Enclosure

cc: Vicky Custer

USED OIL MANIFESTING PROTOCOL

NORA proposes that certain materials managed as used oil and subject to the used oil shipping record requirements should be exempted from Illinois Special Waste Manifesting requirements. Materials to be so exempted would include used oil as defined, and also certain used oil mixtures already subject to management as used oil (and commonly managed as used oil) as described below:

Mixtures not subject to Illinois Special Waste Manifesting:

- Post use mixtures of used oil and the same conditionally exempt small quantity generator's hazardous waste that is destined to be recycled under the used oil regulations (Part 739.110 b 3).
- Materials containing or otherwise contaminated by or mixed with the same generator's used oil that are destined to be recycled under the used oil regulations. This would include BTU valuable characteristic hazardous wastes that are contaminated by or mixed with the generator's used oil and no longer exhibit a characteristic of a hazardous waste (Part 739.110 b 2 B&C). This would also include BTU valuable nonhazardous wastes contaminated by or mixed with the generator's used oil (Part 739.110 c 2). Any such BTU valuable wastes must contain a minimum of 5000 BTU per lb.
- Mixtures of used oil and fuels, normal components of fuels or other fuel products (Part 739.110 d 1).
- Nonhazardous wastewater mixed with used oil from the same generator and containing more than a de minimis (recoverable) amount of used oil in the mixture (Part 739.110 f.)

Mixtures subject to Illinois Special Waste Manifesting:

- Post use mixtures of characteristic hazardous waste and used oil that continue to exhibit a characteristic of a hazardous waste.
- Post use mixtures of a listed hazardous waste and used oil.
- Post use mixtures of used oil and any nonhazardous special waste stream that does not contain a minimum of 5000 BTU per lb, with the exception of nonhazardous wastewater as explained above.
- Mixtures of used oil from one generator with any non used oil regulated special or hazardous waste stream from a different generator.
- Used oil containing over 1000 PPM of total halogens (if not successfully rebutted as outlined under section 739). This would include post use halogenated solvents and used oil mixtures.
- Used oil containing PCBs subject to TSCA regulation.
- Post use mixtures of hazardous waste water and used oil.
- Nonhazardous wastewater containing only de minimis (non recoverable) amounts of used oil.

NORA'S PROPOSED AMENDMENTS

REGULATORY LANGUAGE TO BE ADDED TO AND DELETED FROM PART 739

Submitted December 15, 2008

[additional language set forth in bold type]

Part 739.110 Applicability- hazardous wastes
After 739.110,b,3 add the following language:

4) Used oil and the following post use mixtures are subject to regulation as used oil under this Part, and are exempt from 35 Ill. Adm. Code 808 and 809:

A) Mixtures of used oil and hazardous waste, both mixed and generated by a conditionally exempt small quantity generator of hazardous, provided that such mixture contains more than fifty percent of used oil by either volume or weight.

B) Mixtures of used oil containing BTU-valuable characteristic hazardous wastes, both mixed and generated by the same generator, and which contain more than fifty percent of used oil by weight or volume, provided such mixture does not exhibit a characteristic of a hazardous waste. Any such BTU-valuable wastes or materials shall contain a minimum of 5000 BTUs per pound before mixture with the used oil.

C) Mixtures of used oil and ignitable-only characteristic hazardous wastes, both mixed and generated by the same generator, and which contain more than fifty percent of used oil by weight or volume, provided such mixture does not exhibit the characteristic of ignitability. All other post use mixtures of used oil and hazardous wastes are regulated by 35 Ill. Adm. Code 702, 703, and 720 through 728.

Part 739.110 Applicability- other materials
After 739.110,c,3 add the following language:

4) Used oil and the following post use mixtures are regulated under this Part, and are exempt from 35 Ill. Adm. Code 808 and 809:

A) Mixtures of BTU-valuable nonhazardous wastes and used oil, both generated by the same generator, and which more than fifty percent of used oil by weight or volume. Any such BTU-valuable wastes must contain a minimum of 5000 BTU per pound before mixture with the used oil.

B) Nonhazardous waste water contaminated by or mixed with used oil, both generated by the same generator and which contain more than a de minimis (recoverable) quantity of used oil.

Part 739.124 Off-Site Shipments

In the first paragraph remove the last part of the last sentence that reads:
“and an Illinois special waste identification number pursuant to 35 Ill. Adm. Code 809.”
and replace it with the following:

Whenever a Part 809 special waste manifest is not required, the generator must record the quantity, classification and description of the non used oil materials for each shipment and provide such information to the transporter at the time of acceptance by the transporter. The generator shall keep all such records on file for a minimum of three years.

Part 739.142,a Notification

Delete the following language from the last sentence:
“identification number”
And replace it with the following:
hauling permit (if applicable)

Part 793.142,b,2 Notification

Delete the following language:
“has not received an Illinois special waste identification number”
And replace it with:
is required to obtain an Illinois special waste hauling permit

Part 739.143,a,1 Used Oil Transportation

Delete the following language from the END of the last sentence:
“identification number”
And replace with:
hauling permit (if applicable)

Part 739.146,a,6 Tracking - Acceptance

Add the following as a new section 6:

If the transporter has accepted any used oil mixed with special or hazardous waste that is not regulated as used oil, or accepts any other non used oil special or hazardous waste for recycling along with the used oil without the use of a Part 809 special waste manifest, the transporter shall provide to the agency if requested, the quantity, classification and description of the non used oil streams in the mixture. The transporter shall have procedures in place that will ensure that emergency personnel in the event of an accident, are immediately provided with information concerning any non-used oil materials in the shipment that could alter the handling characteristics of the used oil. This information must also be recorded on the used oil shipping document.

Part 739.146,b,2

Add the following language after “and Illinois special waste identification number”:
(if applicable)

Part 739.146,b,6 Tracking – Deliveries

Add the following as a new section 6:

The transporter shall have procedures in place to assure that the receiving facility will be promptly notified of all relevant information concerning any non-used oil materials in the shipment that could adversely affect the management or characteristics of the used oil. The transporter shall also notify the receiving facility of any other special waste streams in the used oil would likely cause the used oil to fail the oil EPA used specifications in 40 CFR Part 279 or the applicable ASTM performance specifications, unless such used oil is sold or transferred as an EPA off specification or non-ASTM certified used oil.

Part 739.156,a,3 and b,3 Tracking – Processors

Delete the following language:

“identification number”

And replace with:

hauling permit number (if applicable)

Part 739.156,b,4

Add the following language after “special waste identification number”:

(if applicable)

Part 739.158 Processor Off-Site Shipments of Used Oil

Delete the following language from the last sentence of the first paragraph:

“ identification number”

And replace with:

hauling permit (if applicable)

Part 739.165,a,3 Off specification Burners Tracking

Delete the following language in the LAST part of the sentence:

“identification number”

And replace with:

hauling permit (if applicable)

Part 739.174,a,3 Marketers - Tracking

Delete the following language in the LAST part of the sentence:

“identification number”

And replace with:

hauling permit number (if applicable)

NORA's Suggestions for Amending Board Notes

Delete the Board Note that immediately follows Section 739.124.

Part 739.131 Used Oil Collection Centers
Add to the end of the existing Board Note:

if post use mixture takes place. See Board Notes under Part 739.110, Applicability, for post use mixtures that are exempt from Part 809 manifesting requirements.

Part 739.132 Used Oil Aggregate Points Owned by the Generator
Add to the end of the Existing Board Note:

if post use mixture takes place. See Board Notes under Part 739.110, Applicability, for post use mixtures that are exempt from Part 809 manifesting requirements.

Part 739.140,a,4 Applicability for Standards For Used Oil Transporter And Transfer Facilities

Add to the end of the Existing Board Note:

if post use mixture takes place. See Board Notes under Part 739.110, Applicability, for post use mixtures that are exempt from Part 809 manifesting requirements.

NORA'S PROPOSED AMENDMENTS

REGULATORY LANGUAGE TO BE ADDED TO PARTS 808 AND 809

Submitted December 15, 2008

(additional language set forth in bold type)

Part 808.121 Generator Obligations

After 808.121,b,4 add the following language:

- 5) The generator is not required to complete a manifest for used oil and certain mixtures of used oil and special wastes as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739.**
- 6) A transporter is not required to have a special waste hauling permit to transport a shipment that contains no special waste other than used oil or is a mixture of used oil and certain special wastes as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in accordance with 35 Ill. Adm. Code 739 and the transporter has registered with the Agency as a used oil transporter.**

Part 809.211,1

- L) Any person who hauls only used oil and certain mixtures of used oil and special wastes as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739 and the transporter has registered with the agency as a used oil transporter.**

Part 809.301 Add at the end:

The generator or transporter is not required to complete a manifest for used oil and certain special waste mixtures as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil or is a mixture of used oil and certain special wastes as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739 and the transporter has registered with the agency as a used oil transporter.

Part 809.302,a Add at the end:

The generator or transporter is not required to complete a manifest for used oil and certain special waste mixtures as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil or is a mixture of used oil and certain special wastes as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739 and the transporter has registered with the agency as a used oil transporter.

Part 809.501,a Add at the end:

The generator or transporter is not required to complete a manifest for used oil and certain special waste mixtures as set forth in 35 Ill. Adm. Code 739.110,b and c if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil or is a mixture of used oil and certain special wastes as set forth in 35 Ill. Adm. Code 739.110,b and c, if the used oil and or mixtures are managed in compliance with 35 Ill. Adm. Code 739 and the transporter has registered with the agency as a used oil transporter.