

**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

Dorothy Gunn, Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
(ELECTRONIC FILING)

William Richardson, Chief Legal Counsel  
Office of Legal Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

Matthew J. Dunn  
Environmental Bureau Chief  
Office of the Attorney General  
Environmental Bureau North  
69 West Washington Street, Suite1800  
Chicago, Illinois 60602

Tim Fox, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St.  
Suite 11-500  
Chicago, Illinois 60601

Claire A. Manning  
Brown, Hay & Stephens, LLP  
700 First Mercantile Bank Building  
205 South Fifth St., P.O. Box 2459  
Springfield, Illinois 62705-2459

Deirdre K. Hirner, Executive Director  
Illinois Environmental Regulatory Group  
3150 Roland Avenue  
Springfield, Illinois 62703

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO NORA'S COMMENTS, 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: 1-14-09  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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**THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
RESPONSE TO NORA'S COMMENTS**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Stephanie Flowers, and respectfully submits the following in response to the Additional Comments of NORA filed with the Illinois Pollution Control Board ("Board") by the Association of Responsible Recyclers ("NORA") in the above-entitled matter on December 15, 2008.

**NORA'S GENERAL COMMENTS**

- 1 NORA comments that the Illinois EPA provided no substantive response to a letter from Ms. Manning dated April 2, 2008 and that the Illinois EPA has not approached NORA at any time since the October 1, 2008 hearing. In response the Illinois EPA would like to state that NORA has also not contacted the Illinois EPA since the October 1, 2008 hearing, although neither party was required to contact the other. In addition, please see Attachment #1 which is a letter dated April 23, 2008 from Illinois EPA responding to the April 2, 2008 letter from Ms. Manning.
- 2 NORA comments that the Illinois EPA requires manifesting of nonhazardous waste but does not have the manifests sent to the Illinois EPA headquarters and also that use of a hazardous waste manifest for shipments of non-hazardous materials misrepresents the

material to those who come in contact with the shipments. In response the Illinois EPA would like to state that this is a statutorily designed system with the Illinois legislature at Section 22.01 of the Illinois Environmental Act requiring manifests of non-hazardous materials to be identical to manifests required for the shipment of hazardous waste but also stating that generators are not required to submit copies of non-hazardous special waste manifests to the Illinois EPA.

- 3 NORA comments that Illinois regulations should be in congruence with the federal regulations and the regulations of states adjacent to Illinois. However, Illinois is allowed to and has chosen to regulate special waste in a more stringent manner than the federal government. If NORA believes that Illinois should abandon its special waste regulations to correspond with other states then the Illinois EPA believes that argument should be discussed clearly and should not be hidden in the discussion of a manifest exemption for used oil.
- 4 NORA comments that its proposed shipping paper would allow (1) the Illinois EPA required information, (2) the USDOT required information, and (3) any business information used by the transporter. However, in previous comments the Illinois EPA has pointed out that both the Illinois EPA required information and the USDOT required information are satisfied by the use of a manifest. Therefore Illinois EPA would like to note that it is the transporters business information that NORA wishes to be included on a shipping paper and which requires duplicative paperwork. Furthermore, a comparison between NORA's form submitted at the October 1, 2008 hearing and the uniform non-hazardous waste manifest required by the Illinois EPA (see Attachment #2 and #3) shows

very little difference between the two forms. Much of the additional information included on NORA's form may fit on the uniform non-hazardous waste manifest.

- 5 NORA comments that its proposal does not affect any substantive requirements and that its proposal would be protective of human health and the environment because generators and transporters would not have to focus on duplicative and expensive paperwork. In response the Illinois EPA would like to point out that the same paperwork would be required for NORA's shipping paper as for the uniform non-hazardous waste manifest since there is very little difference between the two forms. Duplicative paperwork could be reduced by adding the additional business information in the available space on the manifest. In fact, the Illinois EPA believes that NORA's proposal would increase the paperwork required for the used oil industry because of the need of the generator to document compliance with the 50% by volume used oil mixtures, the 5,000 BTU used oil mixtures, and the recoverable quantities used oil mixtures included in NORA's proposal. Therefore, Illinois EPA believes that NORA's true intent is not reduction of paperwork but relaxation of the special waste regulations to allow certain mixtures of used oil and other special waste to be received by used oil facilities that are not permitted to take special waste. This is a substantive request. Furthermore, NORA proposes to allow transporters to use their own tracking system for any waste that has been mixed with used oil, but the Illinois EPA believes that it is the generator, not the transporter, who would have the best knowledge of what waste was added to a used oil and other special waste mixture and that therefore the generator would be the person best suited to initiate a document that tracks the movement of the mixture and notifies the receiving facility of the other materials mixed with the used oil.

6 NORA comments that its proposal is a compromise that the Illinois EPA has not supported. However, the Illinois EPA has supported a manifest and hauling permit exemption for used oil as defined in Part 739. The Illinois EPA cannot support a manifest exemption for mixtures of used oil and other special waste that should be received only at a properly permitted special waste facility. The Illinois EPA believes the best system is for a shipment that is only used oil, the used oil tracking requirements apply, but if the shipment also contains some other special waste, the generator initiates a manifest to alert the transporter and receiving facility that other special waste has been mixed with the used oil. For this reason, the Illinois EPA recommends that the Board adopt the language of its first notice proposal.

#### NORA'S PROPOSED LANGUAGE

1 The Illinois EPA's concern is that NORA has proposed an exemption that goes beyond the original manifest exemption. The following language in NORA's proposal exempts used oil from Parts 808 and 809 and also other special wastes that may be subject to the management requirements under Part 739 solely because they are mixed with used oil:

“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: “

The language in the proposal would exempt used oil and materials subject to regulation under Part 739 from the definition of special waste and the special waste management requirements including the reporting requirements. However please see Section 2(b) at the following website, <http://www.epa.gov/osw/consERVE/materials/usedoil/support.htm>, wherein USEPA found that the reporting requirements for used oil were essential stating,

“The biennial reports will help EPA develop Phase II management standards that may include incentives for encouraging DIY-generated (do-it- yourself) used oil recycling and/or more stringent management standards for a particular form of recycling. The biennial reports also help the Agency monitor the flow and disposition of used oil and allow the Agency to assess the relative amounts of used oil that are recycled in different manners.”

Furthermore, exempting wastes subject to regulation under Part 739 from Parts 808 and 809 would require the establishment of a second reporting system to satisfy the requirements of Section 739.157(b). The reporting requirements of Section 739.157(b) are currently met by satisfying the reporting requirements in Subpart E of Part 809. Therefore, the Illinois EPA believes that used oil and other wastes subject to regulation under Part 739 should remain special wastes subject to the reporting requirements and should not be exempt from Parts 808 and 809.

2 The Illinois EPA also has concerns regarding the following language in NORA’s proposal regarding de minimis or recoverable amounts of used oil in wastewater:

“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.”

The amount of oil that would be considered recoverable varies from facility to facility depending on the types of processes and efficiency of each component of the treatment system. (See October 1, 2008 Hearing Transcript Page 85 Line 17 through Page 87 Line 4 and Page 164 Lines 4-15). Based on NORA’s testimony the generator may know the facility where the oil is bulked but the treatment facility may change depending on characteristics of the oil mixture and price of treatment. Some systems that would receive the waste water are not used oil treatment units, but waste water treatment units that use chemical and biological methods to treat the water to meet discharge standards. The Illinois EPA’s concern is that since the generator may not know the end facility that

receives the used oil and wastewater mixture, the generator would not be able to determine if the wastewater had recoverable amounts of used oil and therefore the generator could not determine if the waste was exempt from manifesting requirements under the manifest exemption language proposed by NORA.

3 With the proposed Parts 739.124 and 739.146(a)(6), Illinois EPA's concern is that NORA proposes tracking requirements that call for the "classification" and "description" of the non used oil materials but does not define these terms.

4 The Illinois EPA is concerned with language at proposed Part 739.146(a)(6) requiring the use of a Part 809 special waste manifest for hazardous waste when hazardous waste is subject to the uniform hazardous waste manifest requirements.

5 The Illinois EPA is also concerned with the language at proposed Part 739.146(b)(6) which references an ASTM specification but does not fully identify or incorporate a specific ASTM specification.

Because of the reasons specified above the Illinois EPA recommends that the Board proceed to adopt its first notice proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Stephanie Flowers

Stephanie Flowers  
Assistant Counsel  
Division of Legal Counsel

DATED: 1-14-09  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

**CERTIFICATE OF SERVICE**

I, STEPHANIE FLOWERS, an attorney, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO NORA'S COMMENTS and will cause the same to be served upon the following persons, by placing a true and correct copy in an envelope addressed to:

Dorothy Gunn, Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601

William Richardson, Chief Legal Counsel  
Office of Legal Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

Matthew J. Dunn  
Environmental Bureau Chief  
Office of the Attorney General  
Environmental Bureau North  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

Tim Fox, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St.  
Suite 11-500  
Chicago, Illinois 60601

Claire A. Manning  
Brown, Hay & Stephens, LLP  
700 First Mercantile Bank Building  
205 South Fifth St., P.O. Box 2459  
Springfield, Illinois 62705-2459

Deirdre K. Hirner, Executive Director  
Illinois Environmental Regulatory Group  
215 East Adams Street  
Springfield, Illinois 62701

and mailing it by First Class Mail from Springfield, Illinois on January 14, 2009 with sufficient postage affixed.

  
STEPHANIE FLOWERS

DATED: 1-14-09  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544



copy

\*\*\*\*\* PC # 74 \*\*\*\*\*

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

April 23, 2008

Claire A. Manning, Esq.  
Brown, Hay & Stephens, LLP  
205 S. Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, Illinois 62705-2459

Dear Ms. Manning:

The Illinois Environmental Protection Agency ("IEPA") has reviewed your letter received by the IEPA on April 3, 2008 requesting further negotiation of amendments to the special waste regulations regarding an exemption for used oil from manifests and hauler permits. With regard to the proposed "Mixtures not subject to Illinois Special Waste Manifesting" set forth on the attachment to the letter the IEPA states the following:

(1) Small Quantity Hazardous Waste – The IEPA’s position is that small quantity hazardous waste must be manifested pursuant to Part 809 even if mixed with used oil. If mixed with used oil small quantity hazardous waste may also be subject to the used oil regulations at Part 739.

(2) Materials containing or otherwise contaminated by used oil – The IEPA’s position is that materials containing or otherwise contaminated by used oil must be manifested pursuant to Part 809 even if mixed with used oil. If mixed with used oil these materials may also be subject to the used oil regulations at Part 739. Regarding NORA’s suggestion of setting a BTU value for manifest exemption, the IEPA believes this would create the need for a regulatory program that would be more burdensome than manifesting.

(3) Mixtures of Used Oil and Fuels – The IEPA’s position is that fuels in used oil are not a special waste because they are presumed to be going for burning (the original intended use) and are therefore not disposed. Fuels would not be subject to special waste manifesting but would be subject to Part 739 when mixed with used oil. However, fuel and used oil going to be disposed (including incineration) would be subject to other regulations and not Part 739.

(4) Nonhazardous Wastewater Mixed with Used Oil – The IEPA’s position is that wastewater that is mixed with used oil through use or unintentional contamination during

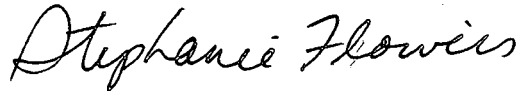
ROCKFORD – 4302 North Main Street, Rockford, IL 61103 – (815) 987-7760 • DES PLAINES – 9511 W. Harrison St., Des Plaines, IL 60016 – (847) 294-4000  
ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5463  
BUREAU OF LAND - PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 278-5800  
SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINSVILLE – 2009 Mall Street, Collinsville, IL 62234 – (618) 346-5120  
MARION – 2309 W. Main St., Suite 116, Marion, IL 62959 – (618) 993-7200

Attachment #1

collection or storage by the generator is subject to Part 739 and should be allowed a special waste manifesting exemption. However, the IEPA believes that there are possibly only two scenarios where a special waste manifesting exemption would apply. One is cutting fluids that contain a lot of water and the second is used oil that contains water due to storage contamination. All other wastewater requires a special waste manifest pursuant to Part 809 and may also be subject to the used oil regulations at Part 739 when mixed with used oil.

Based on the foregoing comments the IEPA cannot support NORA's proposed amendments set forth in the letter. The IEPA comments were based on the proposed amendments as written. The IEPA reserves the right to offer additional comments should any proposed amendments be submitted to the Illinois Pollution Control Board. If you have any further questions or concerns, please feel free to contact me by phone at 217-782-6494 or by email at [stephanie.flowers@illinois.gov](mailto:stephanie.flowers@illinois.gov).

Sincerely,



Stephanie Flowers  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency

cc: Ted Dragovich

# ABC RECYCLING COMPANY

1234 COLLECTION STREET  
 ANYWHERE, IL 00000  
 (000) 000-0000  
 (000) 000-0000 Fax

Attachment #2

<b>Generator ID No.:</b> <b>Generator:</b>		<b>Billing Address:</b>			<b>IEPA Transporter No.</b>
<b>Site Address:</b>		<b>e-mail</b>			<b>Driver:</b> <b>Phone:</b>
<b>Telephone:</b> _____ <b>Fax:</b> _____					<b>ILD #0000000000</b>
<b>Destination :</b> _____					<b>USEPA #0000000000</b>
<b>Tel.</b> _____ <b>e-mail:</b> _____					<b>Illinois Special Waste No.</b> <b>(if applicable)</b>
Shipping Unit	US DOT Description/Hazard Class	Quantity	Payment	Check No./Date	Billed
TT		Gallons			
RQ					
TT		Pounds			
RQ					
DM		Drums			
RQ					
	<b>Other:</b>				

**Additional Special Waste Information (if applicable):**

Additional Description: \_\_\_\_\_

Date(s) Generated: \_\_\_\_\_

Location Generated: \_\_\_\_\_

Special Handling Instructions: \_\_\_\_\_

Discrepancy Issues (if any): \_\_\_\_\_

Receiving Facility: \_\_\_\_\_

Name & Signature of Person Accepting Delivery at Receiving Facility: \_\_\_\_\_

GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, package, marked and labeled/placarded, and are in all respects in proper conditions for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledge of Consent. I certify that the waste minimization statement identified in 40CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

ABC Recycling collects, transports and markets used oils and non-hazardous wastes in accordance with the requirements of 40 CFR Part 279 and applicable regulations. Generator is responsible for properly classifying their waste streams as used oil or non-hazardous waste in accordance with the provisions of 40 CFR 262.11 and applicable state laws. ABC Recycling will collect and transport the non-hazardous materials, based on Generator's representation of the materials, in accordance with all applicable local, state and federal regulations. Based on representation made by the Generator regarding the type of material generated, ABC Recycling may screen the materials at the time of collection; and may take and retain a sample of the materials collected. Oil's failure to screen Generators materials, or take a retain sample, in no way constitutes a waiver of Generators obligation to properly classify their waste streams. ABC Recycling relies on the Generators representations, and the Generator is responsible for informing ABC Recycling of any process changes that may alter the characteristics of the material(s) collected. Generator agrees to provide access to collection tanks and/or containers for sampling and additional analysis for unacceptable materials. If collected material(s) from Generator are not as represented and confirmed unacceptable through further analysis - Generator agrees to accept return of material(s) and all materials subsequently contaminated or the proper disposal of material(s) - Generator is responsible for all costs and expenses related to, or arising from the proper management and disposal of the unacceptable material(s), and the disposal of material(s) subsequently contaminated thereby.

Generator certifies warrants and represents that the materials provided hereunder have not been mixed, combined, or otherwise blended in any quantity with hazardous waste materials under applicable laws, including but not limited to 40CFR Part 261 generated by this facility. Generator agrees to indemnify and hold harmless ABC Recycling, its officers, directors, employees and agents from and against any and all losses, damages, penalties, demands, claims, judgments, or expenses of any kind related thereto, including all legal, remediation and disposal costs arising out of or in any way related to a breach of the above warranty by the Generator.

**EMERGENCY RESPONSE 1-000-000-0000**

X \_\_\_\_\_  
**Generator's Printed Name & Signature**

X \_\_\_\_\_  
**Transporter's Printed Name & Signature**

X \_\_\_\_\_ **Second Transporter's Printed Name & Signature** Address: \_\_\_\_\_ Transporter Permit No. \_\_\_\_\_ Tel: \_\_\_\_\_

X \_\_\_\_\_ **Third Transporter's Printed Name & Signature** Address: \_\_\_\_\_ Transporter Permit No. \_\_\_\_\_ Tel. \_\_\_\_\_



Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved. OMB No. 2050-0039

<b>UNIFORM HAZARDOUS WASTE MANIFEST</b>		1. Generator ID Number		2. Page 1 of		3. Emergency Response Phone		4. Manifest Tracking Number <b>000625392 GBF</b>				
		5. Generator's Name and Mailing Address						Generator's Site Address (if different than mailing address)				
Generator's Phone:												
6. Transporter 1 Company Name								U.S. EPA ID Number				
7. Transporter 2 Company Name								U.S. EPA ID Number				
8. Designated Facility Name and Site Address								U.S. EPA ID Number				
Facility's Phone:												
GENERATOR	9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))					10. Containers		11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes	
							No.	Type				
	1.											
	2.											
	3.											
4.												
14. Special Handling Instructions and Additional Information												
<p>15. <b>GENERATOR'S/OFFEROR'S CERTIFICATION:</b> I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.</p>												
Generator's/Offeror's Printed/Typed Name						Signature			Month	Day	Year	
16. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S. Port of entry/exit: _____ Date leaving U.S.: _____												
17. Transporter Acknowledgment of Receipt of Materials												
Transporter 1 Printed/Typed Name						Signature			Month	Day	Year	
Transporter 2 Printed/Typed Name						Signature			Month	Day	Year	
18. Discrepancy												
18a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection												
Manifest Reference Number: _____												
18b. Alternate Facility (or Generator)								U.S. EPA ID Number				
Facility's Phone:												
18c. Signature of Alternate Facility (or Generator)									Month	Day	Year	
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)												
1.	2.	3.	4.									
20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a												
Printed/Typed Name						Signature			Month	Day	Year	