BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:

PROPOSED AMENDMENTS TO THE
SPECIAL WASTE REGULATIONS R06-20
CONCERNING USED OIL, (Rulemaking-Land)
35 Ill. Adm. Code, 739, 808 and 809

Future Environmental's response to Dec 15, 2008 IEPA manifest comments

We are in complete agreement with NORA concerning their submitted comments. However, I wanted to address the Board with some additional comments primarily having to do with generator obligations. IEPA stated in their comments under NORA's proposal the generator would be responsible for determining percent water and BTU value of used oil mixtures. Ultimately this is true, just as it is true that ultimately it is the generators responsibility that they discern if their waste is a solid waste, a special waste or a hazardous waste. Guess who they usually call when trying to decide these types of things? Recyclers have a vested interest to help generators on all these things. After all if they mess up and we take their mess up, we could be in just as much trouble as them, usually more. That's why virtually all transporters are filling out the manifests for ninety nine percent of the generators, even though it is ultimately the generators responsibility to do so.

Under IEPA's proposal a generator would have to understand if they mixed a hazardous waste and used oil to remove the hazardous characteristic as outlined and allowed under Part 739, the mixture would not only be considered used oil, but would now also be considered a non hazardous, non used oil special waste, requiring manifesting to a Part 807 permitted facility. There is no mention of this in Part 739, or anywhere else in the written regulations. This would be very confusing to the regulated community, especially the generators.

Based on IEPA's Dec.15 comments, under their proposal a Part 739 only facility could still manage "appropriate used oil mixtures", from Conditionally Exempt Small Quantity Generators. However, those same facilities would not be allowed to manage the same exact mixtures from non exempt, larger generators due to the fact under IEPA's proposal they state those mixtures could only be manifested to a Part 807 permitted facility. Again, there is no mention of this distinction anywhere in the Part 739 regulations.

Testing for water and or BTU value is very straightforward and common in the petroleum industry. Would the generator know how to reliably do such a thing? Probably not, but used oil recyclers do it on a routine basis using established industry procedures. We do not feel that specific test methods need to be listed in our proposal. Standard laboratory API or ASTM procedures are very adequate for these simple tests. After all, this detail is not even listed in Part 739 concerning the used oil on specification testing (739.111).

IEPA mentioned that in their opinion not enough information would be available from MSDS sheets to discern the water and BTU value from them. What I was referring to is the list of ingredients that are listed on all MSDS documents as required by OSHA regulation 29 CFR Part 1910.1200 (g). We would then do some research if we did not have the knowledge of what those ingredients may have in BTU value, or any key information was missing. Based on the use of the product if we felt there was a chance that the BTU value had changed to where it could be under 5000 BTU's or if we could not ascertain the original BTU value, we would do a test on a sample. We would basically use the same procedure concerning the water content of the waste. Under NORA's proposal the need for testing for BTU's would be rather rare do to the familiarity of most co generated streams at used oil generator facilities. Testing for water is already a routine procedure for all recyclers to aid in valuing what a certain used oil stream is worth.

IEPA mentioned that under our proposal generators would be required to keep copies of the shipping paper. The only reason we included that in our proposal is because it was a concern IEPA brought up having to do with not being able to know what a generator was doing with their oil and other wastes upon inspection. If IEPA now does not think this is a justified burden to put on the generator, we can agree to that I'm sure.

IEPA states that the cost of our proposal could be higher for the generator. As I stated, costs due to required new testing would be rather rare. This is also still just an option the generator would have, not a requirement. They would still have the option to dispose of their other waste streams as a manifested special waste. As explained above, under our proposal the cost of the form and the preparation would be borne by the transporter ninety nine percent of the time, just as it is now. The only new costs experienced by the generator would be storage of the documents.

We feel that once IEPA adopted the federal used oil regulations in 1992, identical in substance to the federal regulations, those regulations became the ruling factor considering used oil, including used oil mixtures that are regulated under Part 739. We have provided evidence that in past issues regarding this same matter the Board agreed with us concerning this fact.

As I explained fully in my Sept 22, 2008 comments, the1994 Board Guidance Letter stated that with respect to the definition of used oil, and specifically used oil mixtures: "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."

Again, in 1999 the Board stated in their Opinion and Order for dismissal of IEPA's proposal to regulate used oil recyclers under Part 807, those regulations would put Illinois based recyclers at a "completive disadvantage" compared to their out of state competitors. The Board also commented that they found "the existing federal and State laws and rules governing the used oil industry are quite extensive and are sufficiently

protective, at this time, absent a permitting scheme". Further; "the agency stated that permitting (under Part 807) would increase compliance with existing regulations by used oil facilities in Illinois. The Board finds that the record does not support the agency's position". Finally, the Board stated; "After the adoption of Part 739 of the Board's rules, used oil management facilities became exempt from permitting requirements at Part 807 of the Board's rules" "Currently, Section 807.105(a) of the Boards rules exempts persons and facilities regulated pursuant to 35 Ill. Adm. Code 700 through 749". Under IEPA's current proposal they state any manifest required used oil will have to go to a part 807 permitted facility. This is not consistent with Part 807.105 (a) or the Board's 1999 Order.

While the Board did state that used oil was still subject to Part 809 transportation regulations in the 1999 Opinion and Order, it is clear from the 1994 Guidance Letter and the 1999 Order it was the Board's intent that used oil, including mixtures that are regulated under part 739, be subject to Part 739 facility management standards, not Part 807 facility management standards, for the reasons given above.

If IEPA wants to again propose more stringent regulations for used oil facilities we feel they should promulgate such regulations, including needed language additions and changes for Parts 739, 807, 808 and 809 and propose them for public comment. We will fight that battle if and when we are confronted with it again. However, that battle is not this battle. We feel this battle should only be focused on what we must manifest and what we may not have to manifest.

Due to the Boards identical in substance adoption of the federal used oil regulations in 1992, the1994 Guidance Letter, and 1999 subsequent ruling, used oil recycling businesses and facilities in Illinois set themselves up to operate under the Part 739 rules and have been manifesting to Part 739 only facilities in some fashion or another since 1992. For numerous operational reasons we have explained in detail in our past comments, these facilities cannot operate under IEPA's perceived proposal.

Finally, IEPA's proposed scheme would be very confusing to the regulated generator, transporter and recycler community, would not increase compliance with existing regulations (as the Board previously noted in it's 1999 Opinion and Order) and therefore would not offer environmental benefit.

We respectfully ask that the Board adopt NORA's original proposal or our compromise proposal for which we have submitted updated regulatory language.

Sincerely,
Michael Lenz
January 14, 2009

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SPECIAL WASTE REGULATIONS
CONCERNING USED OIL
35 ILL. ADM. CODE, PARTS 739, 808, 809

CERTIFICATE OF SERVICE

I, CHRISTIPHER HARRIS, an attorney, hereby certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the following documents:

1. Comments of NORA, An Association of Responsible Recyclers In Response to Comments Submitted by the Illinois Environmental Protection Agency on December 15, 2008.
2. Additional Comments of Gregory Ray
3. Comments of First Environmental

and will cause the same to be served upon the following persons by sending it via first class mail, United States Postal Service on January 14, 2009.

Dorothy Gunn, Clerk
Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601

Stephanie Flowers, Esq.
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P.O. Box 19276
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Christopher Harris