

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED AMENDMENTS TO THE ) R06-20 Docket B  
SPECIAL WASTE REGULATIONS ) Rulemaking - Land  
CONCERNING USED OIL )  
35 ILL. ADM. CODE, PARTS 739, 808, 809 )

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*PC# 114*

CERTIFICATE OF SERVICE

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

Comments of NORA, An Association of Responsible Recyclers in response to comments submitted by the Illinois Environmental Protection Agency on March 3, 2010.

and will cause the same to be served upon the following persons by sending it via first class mail, United States Postal Service on March 15, 2010.

Dorothy Gunn, Clerk  
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Christopher Harris

March 15, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
PROPOSED AMENDMENTS TO THE )  
BOARD’S SPECIAL WASTE REGULATIONS ) R06-20 Docket B  
CONCERNING USED OIL ) (Rulemaking – Land)  
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**COMMENTS OF NORA, AN ASSOCIATION OF RESPONSIBLE RECYCLERS**

NORA, an Association of Responsible Recyclers (“NORA”) hereby responds to the comments of the Illinois Environmental Protection Agency (“IEPA”) dated March 3, 2010. It is apparent from IEPA’s comments that the Agency continues to miscomprehend the scope and purpose of the Board’s rulemaking in this matter. The Agency states that its “concern all along has been that other waste will be transported under this exemption that will not behave like used oil and that this will cause environmental problems when managed as used oil.” However, the Agency fails to provide a single example of any such “environmental problem.” The Agency cannot provide an \_\_ example because by eliminating the requirement for manifesting for used oil and certain categories of materials regulated as used oil the Board did not create any loopholes that would allow mishandling of these materials. The Agency’s rule concerning manifests for used oil and certain materials regulated as used oil does not alter any substantive requirement imposed by any environmental law. The Board’s rule simplifies the regulated community’s paperwork burden but does not eliminate any needed information. All of the information that the Agency claimed that it may need will be set forth in the tracking documents (also known as shipping papers) that must accompany shipments of used oil and materials regulated as used oil. Throughout this rulemaking the Agency has never been able to point to either an actual or hypothetical example of a mismanagement event in which the use of a manifest would prevent the mismanagement event but the tracking document would not.

For example, while the Agency conjures up a scenario of human waste in the waste water mixed with used oil, it does so without any context. If this material is subject to the requirement of a manifest, the same information describing this material must be set forth in the tracking document. Once again, the Agency attempts to create a scare tactic without providing any

analysis of how mismanagement of the material is likely to occur – or how a manifest would preclude such mismanagement. As the Board is well aware, the Agency does not receive manifests, does not want to receive manifests, and does not routinely review manifests. However, it wants the regulated community – at considerable expense -- to generate manifests and store the manifests for years just in case, someday, the Agency wants to look at them.

It is worth mentioning that manifests are required to be kept for three years. The tracking document must also be kept for the three years but as a practical matter is likely to be kept much longer than that because it is also a useful business record.

With respect to the specific question of the definition of wastewater, it was entirely appropriate and logical that the Board chose to use a broad definition. A narrow definition would create an unfeasible system where some wastewaters containing used oil would be subject to a manifest and others would not. Under the Agency's proposal, generators would be subject to expensive dual paperwork requirements. To avoid doubling the paperwork, many generators would simply use manifests for all waste water containing used oil. This would defeat the purpose of the Board's rule, namely, to simply the paperwork burden imposed on Illinois generators. Also, it must be reiterated that the Agency's proposal does nothing to advance the availability of useful information; information needed by the Agency on a manifest would also be recorded on a tracking document.

With respect to the Agency's proposal for generator certifications, it is obvious that this proposal is intended to *increase* the regulatory burden on generators. To avoid certifications, many generators would elect to use a manifest rather than a tracking document. This would result in a dual paperwork system for generators, transporters and processors. It is worth emphasizing that under either federal or Illinois law such generator certifications are not required for hazardous waste generators -- nor for any exemptions from classification as a hazardous waste. For example, if a generator asserts that its material constitutes a "commercial chemical product" under RCRA regulations and consequently is not a hazardous waste, there is no requirement for a "certification." If challenged in an enforcement action, the generator has the burden of proving that the material is not a hazardous waste. The same situation should apply in this context: a generator should not have to formally certify that a manifest is not required for its

material. However, if challenged in an enforcement action, the generator would have the burden of proving that a manifest is not required.

Finally, while the Agency is keen to impose paperwork burden on generators, it is not so eager to actually review the mountain of paper that would be caused by the generator certification. Nowhere in IEPA's proposal is there a requirement that such certifications would be received the Agency. Even if received, there is little likelihood that the certifications would be reviewed by anyone at IEPA.

For the foregoing reasons, NORA respectfully recommends that the Agency (1) not revise its proposal in Docket B with respect to the definition of wastewater; and (2) not adopt IEPA's proposal to impose an additional and unnecessary paperwork burden on Illinois businesses by requiring "generator certifications."

Respectfully submitted,

A handwritten signature in blue ink that reads "Christopher Harris". The signature is written in a cursive style and is positioned above a horizontal line.

Christopher Harris  
General Counsel  
NORA, An Association of Responsible Recyclers

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March 15, 2010