

Copy

***** PC #115*****

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

John Therriault, Acting Clerk of the Board	Claire A. Manning
Illinois Pollution Control Board	Brown, Hay & Stephens, LLP
James R. Thompson Center	700 First Mercantile Bank Building
100 W. Randolph, Suite 11-500	205 South Fifth St., P.O. Box 2459
Chicago, Illinois 60601	Springfield, Illinois 62705-2459
(ELECTRONIC FILING)	

Matthew J. Dunn	Tim Fox, Hearing Officer
Environmental Bureau Chief	Illinois Pollution Control Board
Office of the Attorney General	James R. Thompson Center
Environmental Bureau North	100 W. Randolph St.
69 West Washington Street, Suite 1800	Suite 11-500
Chicago, Illinois 60602	Chicago, Illinois 60601

Mitchell Cohen, General Counsel	Deirdre K. Hirmer, Executive Director
Illinois Dept. of Natural Resources	Illinois Environmental Regulatory Group
One Natural Resources Way	215 East Adams Street
Springfield, Illinois 62702-1271	Springfield, Illinois 62701

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the RESPONSE OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, 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: April 13, 2010
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONSE OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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 comments filed with the Illinois Pollution Control Board ("Board") by the Association of Responsible Recyclers ("NORA") in the above-entitled matter on March 19, 2010.

The Illinois EPA believes that as proposed by the Board the used oil manifest exemption will make it difficult to track waste streams that have been combined with used oil. The used oil manifest exemption as proposed by the Board with the Clean Waste Act definition of wastewater and without the one-time generator certification proposed by the Illinois EPA insures that any waste mixed with used oil and sent to a used oil recycler will be untraceable. As currently proposed by the Board, a generator would be able to mix almost any waste with used oil. The mixture would then be picked up and co-mingled with other oil containing waste where it will lose its original characteristics. At this point it would be impossible to tell which co-mingled waste stream did not meet the requirements of the manifest exemption. The generator, transporter and receiving facility could all claim that someone else is responsible for the unacceptable waste found in the used oil mixture. The keys to insuring this does not happen is to

limit the definition of wastewater as proposed by the Illinois EPA and to require a one-time generator certification as proposed by the Illinois EPA that would demonstrate the generator met the manifest exemption and would include information such as an explanation of the source of any wastewater.

With regard to the Illinois EPA's proposed definition of wastewater, NORA has stated on page 2 of its comments dated March 19, 2010, "A narrow definition would create an unfeasible system where some wastewaters containing used oil would be subject to manifest and others would not." However, the definition of wastewater selected by the Board was developed for the Clean Water Act and designed to identify any material that would be subject to regulation under the Clean Water Act. This definition goes way beyond the oil and water mixture described in NORA's testimony as the material that they wished to transport without a manifest. The Illinois EPA believes that it is not appropriate to exempt all materials from manifesting so long as they contain used oil. Facilities that generate used oil may always generate some other waste that is subject to manifesting including some materials that contain used oil. The purpose of the manifest exemption was to simplify paperwork for the management of used oil and used oil mixtures that can safely be managed as used oil. It was not to exempt used oil generators from all manifesting and used oil recyclers from collecting manifests for those wastes that do not behave like used oil.

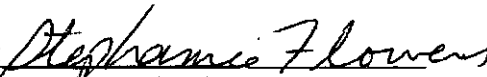
With regard to the Illinois EPA's proposed one-time generator certification, NORA has stated on page 2 of its comments dated March 19, 2010, "It is worth emphasizing that under either federal or Illinois law such generator certifications are not required for hazardous waste generators – nor for any exemptions from classification as a hazardous waste." However, 35 Ill. Adm. Code 722.140(c) and the corresponding federal regulations require that "a generator must

keep records of any test results, waste analysis, or other determinations made in accordance with Section 722.111". Section 722.111 would require a hazardous waste determination with respect to any waste mixed with used oil. In addition, a certification that special waste is identified accurately is currently required by 35 Ill. Adm. Code 809.501(i)(7) and is included on the manifest.

For the foregoing reasons, the Illinois EPA again respectfully asks the Board to consider the definition of wastewater proposed in the comments of the Illinois EPA dated March 3, 2010 and the requirement for a one-time generator certification as proposed in the comments of the Illinois EPA dated October 20, 2009 to insure that the used oil manifest exemption does not become a loop hole for managing other waste. It is only necessary to search EPA's superfund website (www.epa.gov) to see that used oil recycling can still be responsible for environmental damage.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: April 13, 2010
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 RESPONSE OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and will cause the same to be served upon the following persons, by placing a true and correct copy in an envelope addressed to:

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

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

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

Mitchell Cohen, General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

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 April 13, 2010 with sufficient postage affixed.


STEPHANIE FLOWERS

DATED: April 13, 2010
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544