

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2012

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R12-13
NONHAZARDOUS SPECIAL WASTE) (Rulemaking - Land)
HAULING AND THE UNIFORM)
PROGRAM: 35 ILL. ADM. CODE 809)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

The Board today proposes amendments to its solid waste and special waste hauling regulations for first-notice publication in the *Illinois Register*. The Illinois Environmental Protection Agency (Agency or Illinois EPA) initiated this proceeding by filing a rulemaking proposal on October 28, 2011. The Agency's proposed amendments intend to implement Public Act 97-220, effective July 28, 2011, which includes provisions amending Sections 21 and 22.2(1) and (1-5) of the Environmental Protection Act (Act) to remove Illinois from the federal Uniform State Hazardous Materials Transportation Registration and Permit Program (Uniform Program).

After conducting two public hearings and considering the entire record, the Board proposes for first notice publication the amendments to Part 809 in its order below. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period. See 5 ILCS 100/5-40(b) (2010) (Illinois Administrative Procedure Act).

In this opinion, the Board first provides the procedural history of this rulemaking before reviewing the legislative and regulatory background. The Board then summarizes the Agency's original proposal before discussing issues of economic reasonableness and technical feasibility. After a section-by-section summary of the record on its first-notice proposal, the Board reaches its conclusion and issues its order setting forth the proposed amendments for first-notice publication.

PROCEDURAL HISTORY

On October 28, 2011, the Agency filed a rulemaking proposal (Prop.) accompanied by a Statement of Reasons (SR). The Agency also submitted provisions of Title 49, Subtitle B, of the Code of Federal Regulations, which establishes "Other Regulations Relating to Transportation." Specifically, the Agency included the following hazardous materials regulations of the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation (USDOT):

Part 171: General Information, Regulations, and Definitions (49 C.F.R. §§ 171.1 - 171.26) (2010);

Part 172: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans (49 C.F.R. §§ 172.1 - 172.822) (2010);
 Part 177: Carriage by Public Highway (49 C.F.R. §§ 177.800 - 177.870) (2010);
 Part 178: Specifications for Packaging (49 C.F.R. §§ 178.1 - 178.985) (2010);
 and
 Part 180: Continuing Qualification and Maintenance of Packagings (49 C.F.R. §§ 180.1 - 180.605) (2010).

The Agency also included the following regulations of the Federal Motor Carrier Safety Administration of the USDOT:

Part 383: Commercial Driver's License Standards; Requirements and Penalties (49 C.F.R. §§ 383.1 - 383.155) (2010);
 Part 387: Minimum Levels of Financial Responsibility for Motor Carriers (49 C.F.R. §§ 387.1 - 387.419) (2010);
 Part 390: Federal Motor Carrier Safety Regulations; General (49 C.F.R. §§ 390.1 - 390.46) (2010);
 Part 391: Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors (49 C.F.R. §§ 391.1 - 391.71) (2010);
 Part 392: Driving of Commercial Motor Vehicles (49 C.F.R. §§ 392.1 - 392.80) (2010);
 Part 393: Parts and Accessories Necessary for Safe Operation (49 C.F.R. §§ 393.1 - 393.209) (2010);
 Part 394: [Reserved];
 Part 395: Hours of Service of Drivers (49 C.F.R. §§ 395.1 - 395.18) (2010);
 Part 396: Inspection, Repair, and Maintenance (49 C.F.R. §§ 396.1 - 396.25) (2010); and
 Part 397: Transportation of Hazardous Materials; Driving and Parking Rules (49 C.F.R. §§ 397.1 - 397.225) (2010).

In an order dated November 17, 2011, the Board accepted the Agency's proposal for hearing.

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)) the Board requested in a letter dated November 17, 2011, that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency's rulemaking proposal. The Board requested that DCEO determine whether it "will conduct an economic impact study on the proposal and respond no later than Friday, January 20, 2012." The Board has not received a response to this request.

In an order filed November 21, 2011, the hearing officer scheduled two hearings: the first on Thursday, January 12, 2012, in Springfield with pre-filed testimony due by Thursday, December 29, 2011; and the second on Wednesday, February 15, 2012, in Chicago with pre-filed testimony due by Wednesday, February 1, 2012.

On December 20, 2011, the Agency pre-filed the testimony of Mr. David Walters (Walters Test.). The first hearing took place as scheduled in Springfield on Thursday, January 12, 2012, and the Board received the transcript (Tr.1) on January 19, 2012. Both Mr. Walters and Ms. Hope Wright testified on behalf of the Agency, and Mr. Stephen Davis testified on behalf of the Association of Illinois Electric Cooperatives. During the first hearing, the hearing officer admitted into the record two exhibits: the Agency's original rulemaking proposal (Exh. 1), and the pre-filed testimony of Mr. Walters (Exh. 2). Tr.1 at 8.

The second hearing took place as scheduled in Chicago on Wednesday, February 15, 2012, and the Board received the transcript (Tr.2) on February 16, 2012. During the second hearing, the hearing officer set a deadline of Friday, March 2, 2012, to file post-hearing comments. Tr.2 at 6-7. The Board did not receive post-hearing comment.

Filing Public Comments

First-notice publication of these proposed amendments in the *Illinois Register* will start a period of at least 45 days during which any person may file a public comment with the Board, regardless of whether the person has already filed a public comment. See 5 ILCS 100/5-40(b) (2010). The Board encourages comment on these proposed amendments. The docket number for this rulemaking, R12-13, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board at the following address:

Pollution Control Board
Office of the Clerk
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

Public comments may be filed electronically through the Board's Clerk's Office On-Line, or COOL, at www.ipcb.state.il.us. Questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Please note that all comments filed with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Before filing any document with the Clerk, please check with the hearing officer or the Clerk's Office to verify the most recent version of the Service List.

LEGISLATIVE AND REGULATORY BACKGROUND

The Agency states that the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) amended what was then known as the Hazardous Materials Transportation Act. SR at 1, citing 49 U.S.C. §§ 1801 *et seq.* The Agency further states that HMTUSA included the following provisions:

- (a) Working group - As soon as practicable after the date of the enactment of this section, the Secretary shall establish a working group comprised of State and local government officials, including representatives of the National Governors Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislators, for the purpose of -
- (1) establishing uniform forms and procedures for States that register persons who transport, cause to be transported, or ship a hazardous material, by motor vehicle; and
 - (2) determining whether or not to limit the filing of any State registration forms and collection fees therefor to the State in which a person resides or has its principal place of business. SR at 1-2, citing P.L. 101-615 (1990).

The Agency reports that Congress later enacted the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA) in order to provide “adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce.” SR at 2, citing 49 U.S.C. §§ 5101 *et seq.*

The Agency indicates that HMTAA “required states choosing to register or permit persons transporting or causing to be transported hazardous materials by motor vehicle to use uniform, reciprocal forms and procedures.” SR at 2, citing 49 U.S.C. §§ 5101, 5119(a) (1994). The Agency adds that HMTAA also directed the U.S. Secretary of Transportation to execute the recommendations of the working group by prescribing regulations to implement a uniform program of forms and procedures. SR at 2, citing 49 U.S.C. § 5119(c) (1994); *see* Walters Test. at 2. The Agency notes that HMTAA has been amended and renamed, but this direction to issue regulations remains. SR at 2 n.3, citing 49 U.S.C. §§ 5101 *et seq.* (2005) (Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005); P.L. 109-59.

The Agency states that the General Assembly adopted Public Act 90-219 to require the Agency “to implement the Uniform Program.” SR at 2-3, citing Public Act 90-219, eff. July 25, 1997 (introduced as Senate Bill 378); *see* 415 ILCS 5/22.2(1-5)(2) (2010). The Agency states that, on May 5, 1998, it proposed to implement HMTUSA by amending Part 809 of the Board’s regulations. SR at 1, citing P.L. 101-615 (1990); *see* Nonhazardous Special Waste Hauling and the Uniform Program: 35 Ill. Adm. Code 809, R 98-29 (May 8, 1998). On May 20, 1999, the Board adopted regulations establishing the Uniform Program in Illinois. Nonhazardous Special Waste Hauling and the Uniform Program: 35 Ill. Adm. Code 809, R 98-29 (May 20, 1999); *see* 415 ILCS 5/22.2(1-5)(4)(A) (2010) (Agency proposal and Board adoption of rules).

Public Act 97-0220, effective July 28, 2011, included provisions striking Section 22.2(1-5) of the Act, which implements the Uniform Program. Public Act 97-0220, eff. July 28, 2011. Public Act 97-220 also removed from Section 22.2(1) of the Act a cross-reference to the Uniform Program. *Id.*

SUMMARY OF AGENCY'S ORIGINAL PROPOSAL

The Agency states that, before proposing implementation of the Uniform Program in 1998, it issued a single special waste hauler permit “valid for haulers of nonhazardous and hazardous special waste generated in or destined to an Illinois facility.” Walters Test. at 1. Under the Uniform Program, “a hazardous waste transporter with its principal place of business in Illinois was required to register with and obtain a permit from the Illinois EPA.” SR at 3. The Agency adds that “[a] transporter that designated another state participating in the program as its base state had to register with and obtain a permit from that state before transporting hazardous waste in or through Illinois.” *Id.* The Agency indicates that the various base states collect registration and permit fees and apportion them to the other states participating in the Uniform Program. *Id.*; *see* Walters Test. at 2-3.

The Agency states that, after Minnesota’s withdrawal in 2010, only the States of Illinois, Michigan, Oklahoma, Ohio, Nevada, and West Virginia now participate in the Uniform Program. SR at 3; *see* Walters Test. at 2. The Agency adds that other states require permits or registrations from hazardous waste transporters. SR at 3; *see* Walters Test. at 2.

The Agency projected in 1998 that adoption of the Uniform Program by Illinois would annually generate more than \$330,000 for the Agency. SR at 3; *see* Walters Test. at 3. The Agency argues, however, that “actual revenues from the Uniform Program fell far below those predictions because apportionment drastically reduced the fees collected for Illinois while significantly increasing administrative costs (and because so few states opted to join the program).” SR at 3. For calendar year 2010, the Agency reports that it received a net amount of \$44,990 through the Uniform Program. *Id.* After collecting \$65,930 from transporters and other participating states, Illinois apportioned \$20,940 to other participating states. *Id.*; *see* Walters Test. at 3 (fiscal year amounts).

The Agency describes the administrative burden of the Uniform Program by noting that the special waste hauler permit application is “very basic” and requires applicants to submit a limited amount of information. Walters Test. at 3. The Uniform Program permit application, however, is much more complex and requires a significant amount of additional information including permit history, incident history, and compliance with financial responsibility, recordkeeping, and other requirements. *Id.* at 4. The Agency argues that staff reductions make it difficult “to keep up with that work load and maintain all other transporter, manifesting, and reporting responsibilities.” *Id.*

The Agency argues that, “[b]ecause the funds generated from the Uniform Program did not warrant the increased resources needed to permit haulers under the Uniform Program,” the General Assembly withdrew Illinois from it. *Id.*, citing Public Act 97-220, eff. July 28, 2011; *see* Walters Test. at 4. The Agency claims that, “[b]ecause P.A. 97-0220 effectively abolished the Uniform Program, proposed amendments to Part 809 are necessary to remove all references to the Uniform Program from the Waste Hauling regulations.” SR at 4; *see* Walters Test. at 8, Tr.1 at 9.

The Agency stresses that “[t]he special waste hauler permitting requirements, however, remain. Therefore, all transporters of special waste (hazardous and nonhazardous) are now required to obtain a special waste hauler permit prior to transporting waste from an Illinois generator or to an Illinois facility.” Walters Test. at 4. In responding to a question during the first hearing, Mr. Walters agreed that “the proposal requires the Agency to return to issuing a single special waste hauler permit for transporting both hazardous and non-hazardous special waste.” Tr.1 at 10. The proposed amendment would effectively restore Illinois permitting requirements that were in effect before adoption of the Uniform Program in 1998. *Id.* Mr. Walters elaborated that, with the removal of language implementing the Uniform Program, “the remaining language requires anybody transporting special waste to get a special waste hauler permit and hazardous waste is a type of special waste. Therefore, they are required to get the special waste hauler permits now.” *Id.* at 10-11.

SUMMARY OF ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Request for Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)) the Board requested in a letter dated November 17, 2011, that DCEO conduct an economic impact study of the Agency’s rulemaking proposal. The Board requested that DCEO determine whether it “will conduct an economic impact study on the proposal and respond no later than Friday, January 20, 2012.” DCEO has not responded to this request. During the second hearing, the hearing officer noted the Board’s request and the absence of a response from DCEO. Tr.2 at 5-6. Although the hearing officer afforded those present an opportunity to testify regarding the request and absence of a response, no participant offered testimony. *See id.* at 6.

Economic Reasonableness

In its Statement of Reasons, the Agency projects that “[e]liminating the paperwork and verification required under the Uniform Program (which is not required under the special waste hauling requirements) will save the State roughly \$34,600 per year in staff resources.” SR at 4. The Agency attributes approximately one-quarter of the time of the assigned staff to implementation of the Uniform Program. *Id.*

During the first hearing, the Board requested that the Agency “comment on whether adoption of these rules as proposed would have any economic benefit for the entities that are regulated under Part 809.” Tr.1 at 17. Mr. Walters responded that he didn’t expect economic benefits to them “because they either would have had to be permitted under the uniform program or the special waste hauling permit.” *Id.* He agreed that the Agency’s proposal “would not relieve those entities of any kind of reporting or other responsibilities.” *Id.*

During the first hearing, Mr. Steve Davis of the Association of Illinois Electric Cooperatives stated that his organization supports the Agency’s proposal. Tr.1 at 21. He elaborated that the proposal “would really help the cooperatives reduce some of their reporting requirements, minimize sort of the number of hours that it would take over a year’s time to comply with all of the information, and then generate the final report that has to be submitted to

the Agency.” *Id.* at 21-22. He projected that adoption of the proposal would save each of 28 cooperatives approximately 80 staff hours annually, which he characterized as “a huge cost savings.” *Id.* at 23, 24. Suggesting additional savings that may result from adoption of the Agency’s proposal, Mr. Davis added that cooperatives generally “don’t have regulatory managers on their staff and they rely heavily on the association to assist them.” *Id.* In this regard, the Board notes Mr. Walter’s testimony that the Uniform Program permit application is more complex than an application for a special waste hauler permit. *See Walters Test.* at 3-4.

The Agency has plainly stated that adoption of its proposal would annually save approximately \$34,600 in staff resources. In addition, Mr. Davis’ uncontroverted testimony indicates that the 28 members of his association would annually save approximately 2240 hours of staff members’ time now spent complying with the requirements of the Uniform Program. The record before the Board contains no persuasive evidence that adoption of the Agency’s proposal would impose unreasonable costs on the Agency or regulated entities. Accordingly, the Board finds that the proposed amendments implement Public Act 97-220 in a manner that is economically reasonable. Based on the record to date, the Board finds that the first notice proposal has no “adverse economic impact on the People of the State of Illinois” within the meaning of Section 27 (b) of the Act. 415 ILCS 5/27(b) (2010).

Technical Feasibility

The Agency claims that “[r]eturning the regulations to their pre-Uniform Program status is technically feasible given that the Agency is simply returning to its old methods or changing methods that are no longer applicable (such as deleting the reference to the Agency reviewing manifests, which it no longer does).” SR at 4.

Reviewing the Agency’s claim and the record before it, the Board concludes that adoption of the Agency’s proposal would not impose unreasonable technical burdens on either the Agency or regulated entities. Accordingly, the Board finds that the proposed amendments implement Public Act 97-220 in a manner that is technically feasible.

SECTION-BY SECTION SUMMARY OF RECORD ON BOARD’S FIRST NOTICE PROPOSAL

The section-by section summary below describes the Agency’s proposal. The Board’s first notice proposal includes the Agency’s proposed amendments, unless other action is described.

Subpart A: General Provisions

Section 809.101: Authority, Policy and Purposes

In its original proposal, the Agency first sought to remove a reference to the federal Uniform Program from this section. Prop. at 4; *see* SR at 4. In addition, the Agency noted that the Uniform Program had distinguished nonhazardous special waste from hazardous waste. SR at 5. The Agency suggested that Illinois’ withdrawal from the Uniform Program obviates the need for this distinction. *See id.* The Agency argued that the Board’s regulations can now refer

to “special waste” as they did before adoption of the Uniform Program. *Id.* Accordingly, the Agency proposed to strike the term “nonhazardous” from a reference to “special waste transporters.” Prop. at 4.

Section 809.103: Definitions

In its original proposal, the Agency first sought to remove definitions adopted in order to implement the Uniform Program. Specifically, the Agency proposed to strike definitions of the following terms: “Base state,” “Nonhazardous special waste hauling vehicle,” “Nonhazardous special waste transporter,” “Off-site,” “Participating state,” “Principal place of business,” “Reciprocal agreement,” “Uniform application,” “Uniform permit,” “Uniform Program,” “Uniform registration,” and “Vehicle.” Prop. at 4-10; *see* SR at 4-5; Walters Test. at 4.

During the first hearing, Board staff noted that the Agency had proposed to strike the definitions of the terms “uniform permit” and “uniform registration,” both of which are employed in the proposed new Section 809.1001. Tr.1 at 18; *see* Prop. at 35. Board staff asked whether the rules should retain “those definitions or some version of them until all of the current uniform program haulers have been reissued the special waste hauler permit.” *Id.* Mr. Walters agreed that the definitions should be retained and did not object to a first-notice order including them. *Id.* at 18-19. Accordingly, the Board’s order below amends the Agency’s original proposal by retaining the existing definitions of these two terms.

The Agency also proposed to add a single definition providing in its entirety that “[s]pecial waste hauling vehicle” means any self-propelled motor vehicle, except a truck tractor without a trailer, used to transport nonhazardous special waste in bulk or packages, tanks, or other containers.” Prop. at 9. During the first hearing, Board staff noted that this proposed definition referred to “nonhazardous special waste.” Tr.1 at 11. Board staff asked the Agency to clarify “whether the Agency did intend to limit the definition only to vehicles transporting non-hazardous special waste or whether it had intended to apply it to vehicles transporting either hazardous or non-hazardous special waste. . . .” *Id.* Mr. Walters responded that the proposed definition should encompass both forms of special waste and that the term “non-hazardous” should be struck. *Id.* at 11-12. In its order below, the Board strikes this term from the proposed definition.

In addition, the Agency noted that a recent statutory amendment reorganized and renumbered the Act’s definitions. SR at 5; *see* Public Act 92-574, eff. June 26, 2002. The Agency proposed to correct citations to various definitions in order to follow this reorganization and renumbering. Prop. at 5-11. The Agency also noted that some statutory definitions had been “altered slightly,” and it proposed corresponding amendments to the Board’s regulations. SR at 5; Prop. at 5-11.

Finally, the Board has also modified the Agency’s proposed definition of “special waste.” In language addressing empty portable devices and containers, the Agency proposed to add a cross reference to a paint filter test in Section 3.475 of the Act. Prop. at 8-9; *see* 415 ILCS 5/3.475 (2010). However, the cross reference employs statutory terms that do not reflect the organization of the Board’s rules. *See* Prop. at 9. The Board has inserted a direct reference to

the language of Section 3.475(c)(1)(A) of the Act to clarify the application of the paint filer test. *See* 415 ICLS 5/3.475(c)(1)(A) (2010) (defining “special waste”). The Board invites comment on this proposed clarification of this definition.

Section 809.104: Incorporations by Reference

This section incorporates by reference the 1996 versions of fifteen Parts of Title 49 of the Code of Federal Regulations. 35 Ill. Adm. Code 809.104; *see* 49 CFR §§ 171-72, 177-78, 180, 383, 387, 390-97. In its original proposal, the Agency sought to update these incorporations by referring to the 2010 versions of the same Parts. Prop. at 11-12; *see* SR at 5; Walters Test. at 4. The Agency also proposed to strike from this section references to three sets of materials relating to implementation of the Uniform Program: “The Report of the Alliance for Uniform HazMat Transportation Procedures, November 17, 1993;” “The Final Report: Uniform Program Pilot Project, March 15, 1996;” and “State Program Administrator’s Manual, Uniform Program, Alliance for Uniform HazMat Transportation Procedures, revised version, September 10, 1997.” Prop. at 12; *see* SR at 5; Walters Test. at 4.

Section 809.105: Public Records

This section provides that information submitted to the Agency or the Board may be released to or withheld from the public in accordance with specific authorities, one of which is “Agency rules implementing the Illinois Freedom of Information Act.” 35 Ill. Adm. Code 809.105(c); *see* 5 ILCS 140 (2010). The Agency sought to add a citation to these rules. Prop. at 12; *see* 2 Ill. Adm. Code 1828 (Access to Public Records of the Illinois Environmental Protection Agency); SR at 5.

Subpart B: Nonhazardous Special Waste Hauling Permits

As noted above, the Agency stated that the Uniform Program had distinguished nonhazardous special waste from hazardous waste. SR at 5. The Agency suggested that Illinois’ withdrawal from the Uniform Program obviates the need for this distinction. *See id.* The Agency argued that the Board’s regulations can now refer to “special waste” as they did before adoption of the Uniform Program. *Id.*; *see* Walters Test. at 5. Accordingly, the Agency proposed throughout Subpart B to strike the term “nonhazardous” from references to “special waste.” Prop. at 12-18.

Section 809.201: Nonhazardous Special Waste Hauling Permits - General

In addition to the general amendment described above, the Agency proposed in this section to strike a specific reference to the Uniform Program. Prop. at 13. The Agency also sought to add language providing that “[t]hese regulations do not apply to on-site transportation of special waste by generators or by owners or operators of permitted special waste management facilities.” *Id.*

Section 809.204: Applications for Nonhazardous Special Waste Hauling Permit - Filing and Final Action by Agency

In addition to the general amendment described above, the Agency proposed to add to subsection (c) language authorizing “the Agency to send decisions by electronic mail in addition to U.S. Mail.” SR at 5; *see* Prop. at 15.

Section 809.213: Compliance with Federal Requirements

In its original proposal, the Agency sought to add this section in order explicitly to “require compliance with the federal regulations that have always been in place for hazardous waste transporters.” SR at 5. The Agency elaborated that “[t]ransporters have always had to comply with those provisions in the Code of Federal Regulations, but Part 809 previously did not embody those provisions in the text of the State rule; rather, the provisions were previously only incorporated by reference.” *Id.* Accordingly, the Agency proposed this new section providing in its entirety that “[a] hazardous waste transporter shall comply with all provisions of 49 CFR 171, 172, 177, 178, 180, 383, 387, and 390-97, incorporated by reference in Section 809.104, if the hazardous waste is transported in Illinois.” Prop. at 18.

Subpart C: Delivery and Acceptance

As noted above, the Agency stated that the Uniform Program had distinguished nonhazardous special waste from hazardous waste. SR at 5. The Agency suggested that Illinois’ withdrawal from the Uniform Program obviates the need for this distinction. *See id.* The Agency argued that the Board’s regulations can now refer to “special waste” as they did before adoption of the Uniform Program. *Id.*; *see* Walters Test. at 5. Accordingly, the Agency proposed in both sections of Subpart C to strike the term “nonhazardous” from references to “special waste.” Prop. at 18-20; *see* SR at 6. In both sections, the Agency also proposed to strike a reference to the Uniform Program. Prop. at 18-20; *see* SR at 6.

Subpart D: Permit Availability and Symbols

As noted above, the Agency stated that the Uniform Program had distinguished nonhazardous special waste from hazardous waste. SR at 5. The Agency suggested that Illinois’ withdrawal from the Uniform Program obviates the need for this distinction. *See id.* The Agency argued that the Board’s regulations can now refer to “special waste” as they did before adoption of the Uniform Program. *Id.*; *see* Walters Test. at 5. Accordingly, the Agency proposed in both sections of Subpart D to strike the terms “nonhazardous” and “hazardous” from references to “special waste.” Prop. at 21; *see* SR at 6. In Section 809.401, the Agency also proposed to strike references to the Uniform Program. Prop. at 21; *see* SR at 6.

Subpart E: Manifests, Records, and Reporting

As noted above, the Agency stated that the Uniform Program had distinguished nonhazardous special waste from hazardous waste. SR at 5. The Agency suggested that Illinois’ withdrawal from the Uniform Program obviates the need for this distinction. *See id.* The Agency argued that the Board’s regulations can now refer to “special waste” as they did before adoption of the Uniform Program. *Id.*; *see* Walters Test. at 5. Accordingly, the Agency

proposed in the single section comprising Subpart E to strike the terms “nonhazardous” and “hazardous” from references to “special waste.” Prop. at 18-20; *see* SR at 6.

The Agency’s original proposal included other amendments to Section 809.501. Subsection (a) addresses uniform hazardous waste manifests and provides that “[t]he manifest form will be provided or prescribed by the Agency.” 35 Ill. Adm. Code 809.501(a). The Agency proposed to strike this provision to reflect that forms must instead be required by USEPA. SR at 6; *see* Prop. at 22; Walters Test. at 5. In his testimony, Mr. Walters stated that “[t]he federal regulations now allow any printer to register with USEPA, print the manifest according to their specification, and sell them to generators and transporters.” Walters Test. at 5; *see* Tr.1 at 14-15. The Agency indicated that the amended federal requirements also changed substance of those manifests. Tr.1 at 15, citing 35 Ill. Adm. Code 721 (Identification and Listing of Hazardous Waste).

Subsection (b) includes language requiring transporters to include specified information in a manifest. 35 Ill. Adm. Code 809.501(b). The Agency proposed to correct an error by requiring that the generator provide the information. SR at 6; *see* Prop. at 23; Walters Test. at 6.

Subsection (c) addresses submission of copies of manifests to the Agency. 35 Ill. Adm. Code 809.501(c). In his testimony on behalf of the Agency, Mr. Walters stated that, “[w]hen the federal Uniform Manifest requirements were changed, the requirement for receiving facilities to submit copies of manifests to the Agency was removed from 35 Ill. Adm. Code 724 and 725.” Walters Test. at 6. Mr. Walters added that the Agency’s proposal deletes this subsection to remove this requirement from generators here as well. *Id.* Mr. Walters’ testimony supported this proposal by stating that “[t]he Agency does not believe that there is any significant value in getting manifests from generators but not from the destination facility. Generator copies of manifests may not be as accurate as the receiving facilities because generators may estimate the quantities of wastes whereas the receiving facilities weigh the materials.” *Id.* He added that receiving manifests only from generators allows the Agency to track only shipping and not receipts and that it complicates the tracking of rejected loads. *Id.* The Agency’s Statement of Reasons supported deleting this subsection by stating that “the Agency no longer reviews manifests.” SR at 6; *see* Prop. at 23; Tr.1 at 12-13.

In current subsection (d), re-designated as subsection (c), the Agency proposed to strike requirements pertaining to the form of manifests in order “to reflect the requirement that forms be prescribed by USEPA.” SR at 6; *see* Prop. at 24; Walters Test. at 6.

The Board Note following existing Section 809.501(g) re-designated as subsection (f) states in its entirety that “[t]he manifest requirements of 35 Ill. Adm. Code 722, 724, and 725 relative to RCRA hazardous waste are not affected by this subsection. Generators and receiving facilities subject to those Parts shall continue to supply designated copies of all manifests to the Agency.” 35 Ill. Adm. Code 809.501(g). Mr. Walters testified that the Agency seeks to strike the entire second sentence of that Board Note. Walters Test. at 6; *see* Prop. at 25. He stated that this proposal reflects amendments to Parts 724 and 725 and follows federal requirements for manifesting RCRA wastes. Walter Test. at 6. He explains that

[g]enerators complete and sign the manifest. The transporter signs to acknowledge receipt of the waste and to establish part of the chain of custody. The receiving facility signs to show acceptance of the waste and, before returning a copy to the generator, enters revised and more accurate amounts and results of fingerprint tests, if different from the generator's description. *Id.* at 6-7.

During the first hearing, Board staff asked whether the Agency will still review manifests under what is now subsection (g). The Agency indicated that “[w]e are proposing that we not receive any manifests from any generator and so, therefore, we would have none to review unless it was an inspector going out in the field.” Tr. 1 at 13. The Agency indicated that these circumstances did not necessitate any revisions of this subsection. *See id.*

Subsections (h) and (i) address annual reports by generators for waste going out of state. 35 Ill. Adm. Code 809.501(h), (i). Mr. Walters testified that “[t]he Act requires all facilities receiving nonhazardous special waste to submit annual reports detailing the generators and the amount received but leaves it to the Board to determine if generators that ship nonhazardous special waste out-of-state need to submit annual reports.” Walters Test. at 7. The Agency proposed to delete both of these subsections because these annual reports are “not required by the Act, and the Agency does not believe the information provides sufficient environmental benefit to justify the cost to industry and the State.” SR at 6; *see* Prop. at 25-26; Walters Test. at 7. Mr. Walters added that “[t]he Agency has determined that the minimal value added by these reports does not merit the effort required to be put forth by both generators and the Agency in compiling these reports.” *Id.*

Responding to a question during the first hearing, Mr. Walters acknowledged that this proposed revision does not stem from the requirements of Public Act 97-220. Tr.1 at 16. He stated that the Agency did not have information on what these reporting requirements costs regulated entities. *Id.*

Subpart J: Uniform Program

In its original proposal, the Agency submitted amendments reflecting “changes necessitated by the abolishment of the Uniform Program.” SR at 6; *see* Prop. at 26-35. Specifically, the Agency proposed to repeal the following entire sections, which now comprise the entire Subpart J:

- 809.910: Uniform State Hazardous Waste Transportation and Permit Program
- 809.911: Application for a Uniform Permit
- 809.912: Application for Uniform Registration
- 809.913: Payment of Processing and Audit Fees
- 809.914: Payment of Apportioned Mile Fees
- 809.915: Submittal of Fees
- 809.916: Previously Permitted Transporters
- 809.917: Uniform Registration and Uniform Permit Conditions
- 809.918: Uniform Registration and Uniform Permit Revision
- 809.919: Transfer of Uniform Registration and Uniform Permits

809.920: Audits and Uniform Registration and Uniform Permit Revocation
 809.921: Permit No Defense. Prop. at 26-35; *see* Walters Test. at 7.

In addition, the Agency proposed to add a new section addressing transporters previously permitted under the Uniform Program. Proposed Section 809.1001¹, entitled “Transporters Previously Permitted Under Uniform Hazardous Waste Transportation Permit and Registration Program,” provides in its entirety that “[a] transporter who previously obtained a Uniform Permit is not required to obtain a special waste hauler permit for the transportation of special waste in Illinois until the transporter’s Uniform registration expires.” Prop. at 35. Mr. Walters explained that this proposed language “provides for a transition period during which existing Uniform Permits will expire and haulers will be responsible to obtain a Special Waste Hauler Permit.” Walters Test. at 7. He states that it is not practical for the Agency to reissue all permits at once, and this proposal avoids disrupting haulers’ authority to transport special waste. *Id.* Specifically, he indicates that haulers now operating with a Uniform Permit can do so until June 30, 2012, or until that permit expires. *Id.* “At that time, they will need to apply to the Agency for a special waste hauler permit.” *Id.*

CONCLUSION

As described above in this opinion, the Board proposes to amend Part 809 of its solid waste and special waste hauling regulations. The Board found above that the proposed amendments implement Public Act 97-220 in a manner that is economically reasonable and technically feasible. Based on the record to date, the Board finds that there is no “adverse economic impact on the People of the State of Illinois” within the meaning of Section 27 (b) of the Act. 415 ILCS 5/27(b) (2010). In its order below, the Board directs the Clerk to cause first-notice publication of the Board’s proposal in the *Illinois Register*, which commences a 45-day public comment period under the Illinois Administrative Procedure Act.

ORDER

The Board directs the Clerk to cause first-notice publication of the following proposed amendments to the Board’s solid waste and special waste hauling regulations in the *Illinois Register*. Proposed additions are underlined, and proposed deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 809
 NONHAZARDOUS SPECIAL WASTE HAULING AND ~~THE UNIFORM PROGRAM~~

¹ Mr. Walters stated that the Agency proposed to number this new section differently from the repealed sections in order to align the new section number to the subpart designated “J,” the tenth letter of the alphabet. Walters Test. at 7.

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SUBPART D: PERMIT AVAILABILITY AND SYMBOLS

Section	
809.401	Permit Availability
809.402	Nonhazardous Special Waste Symbols

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section
809.501 Manifests, Records, Access to Records, Reporting Requirements and
Forms

SUBPART F: DURATION OF PERMITS AND TANK NUMBERS

Section
809.601 Duration of Special Waste Hauler Permits and Tank Numbers (Repealed)

SUBPART G: EMERGENCY CONTINGENCIES FOR SPILLS

Section
809.701 General Provision

SUBPART H: EFFECTIVE DATES

Section
809.801 Compliance Date
809.802 Exceptions (Repealed)

SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

Section
809.901 Definitions (Repealed)
809.902 Disposal Methods (Repealed)
809.903 Rendering Innocuous by Sterilization (Repealed)
809.904 Rendering Innocuous by Incineration (Repealed)
809.905 Recordkeeping Requirements for Generators (Repealed)
809.906 Defense to Enforcement Action (Repealed)

SUBPART J: REQUIREMENTS FOR HAULERS PREVIOUSLY PERMITTED UNDER THE
UNIFORM PROGRAM

Section
809.910 Uniform State Hazardous Waste Transportation Registration and Permit
Program (Repealed)
809.911 Application for a Uniform Permit (Repealed)
809.912 Application for Uniform Registration (Repealed)
809.913 Payment of Processing and Audit Fees (Repealed)
809.914 Payment of Apportioned Mile Fees (Repealed)
809.915 Submittal of Fees (Repealed)
809.916 Previously Permitted Transporters (Repealed)
809.917 Uniform Registration and Uniform Permit Conditions (Repealed)
809.918 Uniform Registration and Uniform Permit Revision (Repealed)
809.919 Transfer of Uniform Registration and Uniform Permits (Repealed)
809.920 Audits and Uniform Registration and Uniform Permit Revocation

(Repealed)

809.921 Permit No Defense (Repealed)

809.1001 Transporters Previously Permitted Under Uniform Hazardous Waste Transportation Permit and Registration Program

809.APPENDIX A Old Rule Numbers Referenced (Repealed)

AUTHORITY: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22.2 and 27] (see P.A. 90-219).

SOURCE: Adopted in R76-10, 33 PCB 131, at 3 Ill. Reg. 13, p. 155, effective March 31, 1979; emergency amendment in R76-10, 39 PCB 175, at 4 Ill. Reg. 34, p. 214, effective August 7, 1980, for a maximum of 150 days; emergency amendment in R80-19, 40 PCB 159, at 5 Ill. Reg. 270, effective January 1, 1981, for a maximum of 150 days; amended in R77-12(B), 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R80-19, 41 PCB 459, at 5 Ill. Reg. 6378, effective May 31, 1981; codified in R81-9, 53 PCB 269, at 7 Ill. Reg. 13640; effective September 30, 1983; recodified in R84-5, 58 PCB 267, from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; amended in R89-13A at 14 Ill. Reg. 14076, effective August 15, 1990; amended in R91-18 at 16 Ill. Reg. 130, effective January 1, 1992; amended in R95-11 at 20 Ill. Reg. 5635, effective March 27, 1996; amended in R98-29 at 23 Ill. Reg. 6842, effective July 1, 1999; amended in R00-18 at 24 Ill. Reg. 14747, effective September 25, 2000; amended in R06-20 at 34 Ill. Reg. 3310, effective February 25, 2010; amended in R06-20(B) at 34 Ill. Reg. 17398, effective October 29, 2010; amended in R12-13 at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 809.101 Authority, Policy and Purposes

Pursuant to the authority contained in Sections 5, 10, 13, 21, 22, 22.01, and 22.2 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22, and 22.2], and consistent with the policy and purposes expressed in Section 20 [415 ILCS 5/20] thereof, the Board adopts this Part. This Part prescribes the procedures ~~for the Uniform Hazardous Materials Transportation and Registration Program~~ and for the issuance of permits to ~~nonhazardous~~ special waste transporters; for the inspection and numbering of vehicles; and for proper hauling of special wastes to approved disposal, storage and treatment sites. It is the purpose of this Part to control only wastes as defined herein.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.103 Definitions

"Act" means the Illinois Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

~~"Base state" means the state in which a hazardous waste transporter must obtain a uniform registration, if required by the base state, and uniform permit.~~

"Board" means the Illinois Pollution Control Board.

"Btu" or "British thermal unit" means the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste or special waste into or on any land or water so that such waste or special waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. [415 ILCS 5/3.08](See "Waste", "Special Waste.")

"Garbage" ~~is means the~~ waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage and sale of produce. [415 ILCS 5/3.200 ~~5/3.11~~](See "Waste.")

"Hazardous waste" means a waste, or combination of wastes, which because of quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential threat to human health or to the environment when improperly treated, stored, transported or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) or pursuant to agency guidelines consistent with the requirements of the Act and Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. [415 ILCS 5/3.220 ~~5/3.15~~]

"Hazardous waste transporter" means any person who transports hazardous waste as defined in Section 3.15 of the Act.

"Industrial process waste" means any liquid, solid, semi-solid or gaseous waste, generated as a direct or indirect result of the manufacture of a product or the performance of a service, which poses a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Industrial process waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes, core sands, metallic dust sweepings, asbestos dust, hospital pathological wastes and off-specification, contaminated or

recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris. [415 ILCS 5/3.235 5/3.17]

"Manifest" means the form ~~provided or~~ prescribed by the USEPA Agency and used for identifying name, quantity, and the origin, routing, and destination of special waste during its transportation from the point of generation to the point of disposal, treatment, or storage, as required by this Part, 35 Ill. Adm. Code: Subtitle G, or by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) or regulations thereunder.

"Nonhazardous special waste" means any special waste, as defined in this Section, that has not been identified, by characteristics or listing, as hazardous pursuant to section 3001 of the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) or pursuant to Board regulations.

~~"Nonhazardous special waste hauling vehicle" means any self propelled motor vehicle, except a truck tractor without a trailer, used to transport nonhazardous special waste in bulk or packages, tanks, or other containers.~~

~~"Nonhazardous special waste transporter" means any person who transports nonhazardous special waste.~~

~~"Off site" means any site that is not "on site", as defined in this Section.~~

"On-site" means ~~(for the purpose of transporting hazardous waste)~~ on the same or geographically contiguous property under the control of the same person even if such contiguous property is divided by a public or private right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way that the person controls, and to which the public does not have access, is also considered on-site property.

~~"Participating state" means a state that has elected to participate in the uniform program and has entered into a reciprocal agreement.~~

"Permitted disposal site" means a sanitary landfill or other type of disposal site, including but not limited to a deep well, a pit, a pond, a lagoon or an impoundment that has a current, valid operating permit issued by the Agency and a supplemental permit issued by the Agency specifically permitting the site to accept a special waste tendered for disposal.

"Permitted storage site" means any site used for the interim containment of special waste prior to disposal or treatment that has a current, valid operating permit issued by the Agency and a supplemental permit issued by the Agency specifically permitting the site to accept a special waste tendered for storage.

"Permitted treatment site" means any site used to change the physical, chemical or biological character or composition of any special waste, including but not limited to a processing center, a reclamation facility or a recycling center that has a current, valid operating permit issued by the Agency and a supplemental permit issued by the Agency specifically permitting the site to accept a special waste tendered for treatment.

"Person" is ~~is~~ means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity or their legal representative, agent or assignee. [415 ILCS 5/3.315 5/3.26]

"Pollution control waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution control waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, scrubber sludges and chemical spill cleanings. [415 ILCS 5/3.335 5/3.27]

~~"Principal place of business" means the state in which a person owning vehicles used for transporting hazardous waste maintains its central records or majority of its records relating to the transportation of hazardous materials; or the state in which the person owning vehicles used for transporting hazardous waste has the plurality of its mileage.~~

~~"Reciprocal agreement" means an agreement between Illinois and another state to participate in the Uniform Program.~~

"Reclamation" means the recovery of material or energy from waste for commercial or industrial use.

"Refuse" means any garbage or other discarded materials, with the exception of radioactive materials discarded in accordance with the provisions of the Radiation Protection Act [420 ILCS 40] and Radioactive Waste Storage Act [420 ILCS 35]. (See "Waste.")

"Septic tank pumpings" means the liquid portions and sludge residues removed from septic tanks.

"Site" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations under the Act. [415 ILCS 5/3.460 5/3.43]

"Solid waste" (see "Waste.").

"Special waste" means ~~means~~ any of the following:

Potentially infectious medical waste;

Hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in 35 Ill. Adm. Code 722.111, including a residue from burning or processing hazardous waste in a boiler or industrial furnace unless the residue has been tested in accordance with Section 726.212 of Title 35 of the Illinois Administrative Code 35 Ill. Adm. Code 726 and proven to be nonhazardous;

Industrial process waste or pollution control waste, except:

Any such waste certified by its generator, pursuant to Section 22.48 of the Act, not to be any of the following:

A liquid, as determined using the paint filter test set forth in subdivision (3)(A) of subsection (m) of Section 35 Ill. Adm. Code 811.107 of Title 35 of the Illinois Administrative Code (m)(3)(a);

Regulated asbestos-containing waste materials, as defined under the National Emission Standards for Hazardous Air Pollutants in 40 CFR 61.141;

Polychlorinated biphenyls (PCBs) regulated pursuant to 40 CFR 761;

An industrial process waste or pollution control waste subject to the waste analysis and recordkeeping requirements of Section 35 Ill. Adm. Code 728.107 of Title 35 of the Illinois Administrative Code under the land disposal restrictions of Part 35 Ill. Adm. Code 728 of Title 35 of the Illinois Administrative Code ; and

A waste material generated by processing recyclable metals by shredding and required to be managed as a special waste under Section 22.29 of the Act;

Any empty portable device or container, including but not limited to a drum, in which a special waste has been stored, transported, treated, disposed of, or otherwise handled, provided that the generator has certified that the device or container is empty and does not contain a liquid, as determined using the paint filter test

set forth in subdivision (3)(A) of subsection (m) of Section ~~35 III. Adm. Code 811.107~~ of Title 35 of the Illinois Administrative Code ~~(m)(3)(a)~~. "Empty portable device or container" means a device or container in which removal of special waste, except for a residue that shall not exceed one inch in thickness, has been accomplished by a practice commonly employed to remove materials of that type. An inner liner used to prevent contact between the special waste and the container shall be removed and managed as a special waste; or

*As may otherwise be determined under Section 22.9 of the Act.
[415 ILCS 5/3.475 ~~5/3.45~~]*

"Special waste hauling vehicle" means any self-propelled motor vehicle, except a truck tractor without a trailer, used to transport special waste in bulk or packages, tanks, or other containers.

"Special waste transporter" means any person who transports special waste ~~(as defined in Section 3.45 of the Act)~~ from any location.

"Spill" means any accidental discharge of special waste.

"Storage" means the interim containment of special waste prior to disposal or treatment.

"Tank" means any bulk container placed on or carried by a vehicle to transport special waste, including wheel mounted tanks.

"Treatment" means any method, technique or process, including neutralization designed to change the physical, chemical or biological character or composition of any special waste so as to neutralize that waste or so as to render that waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous special waste to render it less dangerous or nonhazardous. [415 ILCS 5/3.505 ~~5/3.49~~] Treatment also includes reclamation, re-use and recycling of special waste.

"Truck" means any unitary vehicle used to transport special waste.

"Truck tractor" means any motor vehicle used to transport special waste that is designed and used for drawing other devices and not so constructed as to carry a load other than a part of the weight of the device and load so drawn.

~~"Uniform application" means the uniform registration and uniform permit application form established under the Uniform Program and provided by the~~

Agency.

"Uniform permit" means the permit issued by a base state under Part II of the uniform application.

~~"Uniform Program" means the program established pursuant to the directive of the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 USC 1 et seq.) and the Hazardous Materials Transportation Authorization Act of 1994 (49 USCS 5101 et seq.) and implemented pursuant to the Final Report: Uniform Program Pilot Project and the State Program Administrator's Manual, Uniform Program, Alliance for Uniform HazMat Transportation Procedures, incorporated by reference in Section 809.104.~~

"Uniform registration" means the annual registration issued by a base state under Part I of the uniform application, if the base state has a registration requirement.

~~"Vehicle" means any self-propelled motor vehicle, except a truck tractor without a trailer, designed or used for the transportation of hazardous waste. [415 ILCS 5/22.2(1-5)(1)]~~

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135 3-94 of the Act, or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or byproduct materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) (42 USC 2011 et seq.) or any solid or dissolved material from any facility subject to The Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto. [415 ILCS 5/3.535 5/3.53]

"Washwater", as used in this Part, means a mixture of water, nonhazardous cleaning compounds, and residue that results from cleaning surfaces and equipment and ~~that that~~ is collected separately from sewage.

"Wastewater", as used in this Part, means stormwater, surface water, groundwater or nonhazardous washwater that has been contaminated with used oil but has not been mixed with sewage, industrial waste or any other waste.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.104 Incorporations by Reference

The Board incorporates the following material by reference:

- a) CFR (Code of Federal Regulations). A copy is available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402 (202) 783-3238.

49 CFR 171	<u>(2010)</u> (1996)
49 CFR 172	<u>(2010)</u> (1996)
49 CFR 177	<u>(2010)</u> (1996)
49 CFR 178	<u>(2010)</u> (1996)
49 CFR 180	<u>(2010)</u> (1996)
49 CFR 383	<u>(2010)</u> (1996)
49 CFR 387	<u>(2010)</u> (1996)
49 CFR 390-397	<u>(2010)</u> (1996)

- b) ~~The Report of the Alliance for Uniform HazMat Transportation Procedures, November 17, 1993. A copy is available from the U.S. Department of Transportation, 400 Seventh Street, SW, Washington D.C. 20590.~~
- e) ~~The Final Report: Uniform Program Pilot Project, March 15, 1996. A copy is available from the U.S. Department of Transportation, 400 Seventh Street, SW, Washington D.C. 20590 or on the internet at <http://www.fhwa.dot.gov/ome/alliance.html>.~~
- d) ~~State Program Administrator's Manual, Uniform Program, Alliance for Uniform HazMat Transportation Procedures, revised version, September 10, 1997. A copy is available from the National Governors' Association, 444 North Capitol Street, Suite 267, Washington D.C. 20001 or the National Conference of State Legislatures, Attn: Alliance Project Manager, 1560 Broadway, Suite 700, Denver CO 80202.~~
- b) e) This Section incorporates no later editions or amendments.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.105 Public Records

Information submitted to the Agency or Board pursuant to this Part will be withheld from or released to the public in accordance with the following:

- a) The Illinois Freedom of Information Act [5 ILCS 140];
- b) 35 Ill. Adm. Code 120; and

- c) Agency rules implementing the Illinois Freedom of Information Act (2 Ill. Adm. Code 1828).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART B: ~~NONHAZARDOUS~~-SPECIAL WASTE HAULING PERMITS

Section 809.201 ~~Nonhazardous~~ Special Waste Hauling Permits-General

No person may haul or otherwise transport any ~~nonhazardous~~-special waste generated within Illinois or any ~~nonhazardous~~-special waste to be disposed of, stored, or treated within Illinois without a current, valid ~~nonhazardous~~-special waste hauling permit issued by the Agency in accordance with the requirements of this Subpart unless the transporter ~~participates in the Uniform Program~~ or is exempt from the ~~nonhazardous~~ special waste hauling permit requirements under this Subpart. These regulations do not apply to on-site transportation of special waste by generators or by owners or operators of permitted special waste management facilities.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.202 Applications for ~~Nonhazardous~~ Special Waste Hauling Permit-Contents

Applications for ~~nonhazardous~~-special waste hauling permits shall be made on application forms prescribed or provided by the Agency, which, at a minimum, shall require the following information:

- a) Name, address, telephone number and location of the ~~nonhazardous~~-special waste hauling vehicle owner and operator applying for the permit;
- b) A description of the number and types of ~~nonhazardous~~ special waste hauling vehicles and tanks to be used;
- c) An agreement by the ~~nonhazardous~~-special waste hauling vehicle owner and the operator identified in Section 809.202(a) that:
 - 1) Special ~~Nonhazardous~~-special waste loading, hauling and unloading will be conducted in compliance with all applicable State and federal laws and regulations;
 - 2) All ~~nonhazardous~~-special waste hauling vehicles and tanks used in ~~nonhazardous~~ special waste hauling will be clean and in good repair at all times when so employed;
 - 3) All ~~nonhazardous~~ special waste hauling vehicles, tanks and associated piping, valving, etc., will be constructed and maintained to prevent leakage or spillage, and shall be cleanable;

- 4) No waste may be mixed with other wastes in one tank or on one ~~nonhazardous~~-special waste hauling vehicle if such mixture results in a hazardous combination likely to cause explosion, fire or release of a dangerous or toxic gas or in violation of any applicable State or federal law or regulation;
- 5) The ~~nonhazardous~~-special waste hauling equipment and procedures to be used shall be proper for the permitted service, be safe for the transporters, handlers, and others, and meet the requirements of all other applicable State and federal laws and regulations; and
- d) The application may require additional information deemed necessary by the Agency consistent with the requirements of the Act and Board regulations.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.203 Applications for ~~Nonhazardous~~ Special Waste Hauling Permit-Signatures and Authorization

All ~~nonhazardous~~-special waste hauling permit applications shall be signed by the owner and operator of the ~~nonhazardous~~-special waste hauling vehicle; or, in the name of the owner and operator, by the owner's or operator's duly authorized agent when accompanied by evidence of authority to sign the application.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.204 Applications for ~~Nonhazardous~~ Special Waste Hauling Permit-Filing and Final Action by the Agency

- a) An application for ~~nonhazardous~~-special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees.
- b) If the Agency fails to take final action (which includes granting or denying the ~~nonhazardous~~-special waste hauling permit as requested, or by granting the ~~nonhazardous~~ special waste hauling permit with conditions) within 90 days after the date the completed application is filed, the applicant may deem the ~~nonhazardous~~-special waste hauling permit granted for a period of one calendar year commencing on the 91st day after the application was filed.
- c) The Agency will send all denials by U.S. Registered or Certified Mail, Return Receipt Requested. All other final Agency decisions may go by regular U.S. Mail or electronic mail. The Agency will be deemed to have taken final action on the date that the notice of final action is mailed or sent. Within 35 days after the Agency's final action, the applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act.

- d) The Agency will require the application to be complete. If incomplete, the application will be returned, and the transporter will be required to resubmit a complete application. The application must be consistent with the provisions of the Act and Board regulations. The Agency may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application. If the application is complete and granting it will not violate the Act or Board regulations, the Agency will grant the permit.
- e) When an application is denied because it fails to comply with the Act or Board regulations, any fees submitted with the application will be non-refundable. Any subsequent re-filing of the application will be considered a new application for which an application fee must be included in accordance with Section 22.2 of the Act.
- f) When the Agency rejects an application because it is incomplete, any fees submitted will be non-refundable. The applicant can receive credit for the payment with a resubmitted application if the resubmittal is complete and returned to the Agency within 30 days after the initial date-stamped rejection.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.205 ~~Nonhazardous~~ Special Waste Hauling Permit Conditions

- a) In granting ~~nonhazardous~~ special waste hauling permits, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and the Board regulations.
- b) The applicant may deem any conditions imposed by the Agency as a denial of the ~~nonhazardous~~ special waste hauling permit for purposes of review pursuant to Section 40 of the Act.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.206 ~~Nonhazardous~~ Special Waste Hauling Permit Revision

A ~~nonhazardous~~ special waste hauling permit will be automatically modified to include any relevant change in the Act or Board regulations. The Agency will revise any ~~nonhazardous~~ special waste hauling permit issued by the Agency under this Part to make the permit compatible with any such relevant changes and so notify the permittee in writing. Failure of the Agency to issue a revised permit shall not excuse the permittee from compliance with any such change.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.207 Transfer of ~~Nonhazardous~~ Special Waste Hauling Permits

No ~~nonhazardous~~ special waste hauling permit is transferable from one person to another.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.208 ~~Nonhazardous~~ Special Waste Hauling Permit Revocation

Violation of any ~~nonhazardous~~-special waste hauling permit conditions or failure to comply with any provisions of the Act or with any Board regulation will be grounds for sanctions as provided in the Act, including revocation of the permit as provided in the Act.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.209 Permit No Defense

The existence of a ~~nonhazardous~~ special waste hauling permit under this Part does not provide the permittee with a defense to a violation of the Act or Board regulations, except for hauling ~~nonhazardous~~-special waste without a ~~nonhazardous~~ special waste hauling permit.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.210 General Exemption from ~~Nonhazardous~~ Special Hauling Permit Requirements

Any person who generates a total quantity of ~~nonhazardous~~ special waste 100 kilograms (220 pounds) or less in any calendar month for disposal, storage or treatment within Illinois is exempt from the permit requirements of this Subpart and from the manifest provisions in Subpart E of this Part. This exemption shall not constitute a defense to a violation of any provision of the Act or any applicable disposal, storage or treatment requirement of 35 Ill. Adm. Code 807.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.211 Exemptions for ~~Nonhazardous~~ Special Waste Transporters

The following persons need not obtain a ~~nonhazardous~~ special waste hauling permit nor carry a manifest if they haul only the waste indicated:

- a) Any person licensed in accordance with the Private Sewage Disposal Licensing Act [225 ILCS 225] and who hauls only septic tank pumpings.
- b) Any person who hauls only livestock waste intended for land application pursuant to 35 Ill. Adm. Code 560.
- c) Transporters of municipal water or wastewater treatment plant sludge that is to be applied to land and that is regulated under a sludge management scheme approved by the Agency pursuant to 35 Ill. Adm. Code 309.208.

- d) Any person licensed in accordance with the Illinois Dead Animal Disposal Act [225 ILCS 610] and who hauls only grease, meat packing scraps, dead animals and parts of animals for delivery to a renderer.
- e) Any person operating under rules and regulations adopted pursuant to the Illinois Oil and Gas Act [225 ILCS 725] and who hauls only oil and gas extraction wastes as defined in that Act.
- f) Any person who hauls only radioactive wastes as defined by the Radiation Protection Act [420 ILCS 40].
- g) Any person who hauls only coal combustion fly ash.
- h) Any person who hauls only declassified waste or refuse.
- i) Any person who hauls only special waste exempted by 35 Ill. Adm. Code 808.123 (small quantity generators of 220 pounds or less per month of special waste).
- j) Any person who hauls potentially infectious medical waste that is regulated under 35 Ill. Adm. Code Subtitle M.
- k) Any person who hauls used tires regulated under 35 Ill. Adm. Code 848.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.212 Duration of ~~Nonhazardous~~ Special Waste Hauling Permits

- a) All permits issued under this Part will be issued for a period not to exceed one year and are renewable.
- b) Applications for renewal of a ~~nonhazardous~~-special waste hauling permit should be made prior to the expiration date of the permit on the application forms prescribed in Section 809.302.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.213 Compliance with Federal Requirements

A hazardous waste transporter shall comply with all the provisions of 49 CFR 171, 172, 177, 178, 180, 383, 387, and 390-397, incorporated by reference in Section 809.104, if the hazardous waste is transported in Illinois.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART C: DELIVERY AND ACCEPTANCE

Section 809.301 Requirements for Delivery of ~~Nonhazardous-Special Waste to~~ Transporters

No person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current ~~nonhazardous-special waste hauling permit or Uniform Program Registration and Permit~~ issued by the Agency under Subpart B or C of this Part. The following are exceptions to this requirement:

- a) The generator or transporter is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739.
- b) The generator or transporter is not required to complete a manifest for the following used oil mixtures, provided that the generator complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
 - 1) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by a conditionally exempt small quantity generator of hazardous waste, provided that the mixture contains more than 50 percent used oil by either volume or weight;
 - 2) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000 prior to being mixed with the used oil, when:
 - A) the characteristic has been extinguished in the resultant mixture;
 - B) both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator; and
 - C) the mixture contains more than 50 percent used oil by either volume or weight;
 - 3) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and
 - 4) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, when the used oil and the nonhazardous wastewater are generated by the same generator, and when the mixture results from use or unintentional contamination.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.302 Requirements for Acceptance of ~~Nonhazardous Special or Hazardous~~ Waste from Transporters

- a) No person may accept any special waste for disposal, storage or treatment within Illinois from a special waste transporter unless the special waste transporter has a valid ~~nonhazardous~~-special waste hauling permit ~~or Uniform Program Registration and Permit~~ issued by the Agency under Subpart B ~~or J~~ of this Part and concurrently presents to the receiver of the special waste, or the receiver's agent, a completed, signed manifest as required by Subpart E of this Part, which manifest designates the receiver's facility as the destination for the special waste. The following are exceptions to this requirement:
- 1) The generator or transporter is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739.
 - 2) The generator or transporter is not required to complete a manifest for the following used oil mixtures, provided that the generator or transporter complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
 - A) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by a conditionally exempt small quantity generator of hazardous waste, provided that the mixture contains more than 50 percent used oil by either volume or weight;
 - B) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000 prior to being mixed with the used oil, when:
 - i) the characteristic has been extinguished in the resultant mixture;
 - ii) both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator; and
 - iii) the mixture contains more than 50 percent used oil by either volume or weight;
 - C) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and

- D) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, when the used oil and the nonhazardous wastewater are generated by the same generator, and when the mixture results from use or unintentional contamination.
- b) No person may deliver special waste in Illinois for disposal, storage or treatment unless the person who accepts the special waste has a current, valid operating permit issued by the Agency and the necessary supplemental permits required by 35 Ill. Adm. Code 807, as well as all other applicable permits as required by the Act and Board regulations.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART D: PERMIT AVAILABILITY AND SYMBOLS

Section 809.401 Permit Availability

Upon issuance of a ~~nonhazardous~~ special waste hauling permit ~~or a Uniform Program registration and permit~~, the owner and operator of any such vehicle used to transport ~~nonhazardous~~ special ~~or hazardous~~ waste shall maintain within the vehicle a legible photocopy of the ~~nonhazardous~~-special waste hauling permit ~~or Uniform Program registration and permit~~. Upon request, issuance of the ~~nonhazardous~~-special waste hauling permit ~~or Uniform Program registration and permit~~ shall be disclosed by the owner and operator of the vehicle to any representative of the State of Illinois (including, but not limited to, the Agency), any generator of the special waste, or any treatment, storage, or disposal facility that has handled, is handling, or will handle the special waste. Upon request by such representative, the transporter shall make available a photocopy of the ~~nonhazardous~~-special waste hauling permit ~~or Uniform Program registration and permit~~ to the representative. The owner and operator of the vehicle shall also comply with any otherwise applicable federal regulations.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.402 ~~Nonhazardous~~ Special Waste Symbols

All vehicles used to transport special waste and packages used to contain special waste shall be labeled, marked and placarded in accordance with regulations adopted by the Illinois Department of Transportation or the United States Department of Transportation or the United States Environmental Protection Agency, whichever has jurisdiction.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section 809.501 Manifests, Records, Access to Records, Reporting Requirements and Forms

- a) Any person who delivers special waste to a permitted ~~nonhazardous special or hazardous~~ waste transporter shall complete a uniform hazardous waste manifest to accompany the special waste from delivery to the destination of the special waste. ~~The manifest form will be provided or prescribed by the Agency.~~ The following are exceptions to this requirement:
- 1) The generator or transporter is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739.
 - 2) The generator or transporter is not required to complete a manifest for the following used oil mixtures, provided that the generator or transporter complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
 - A) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by a conditionally exempt small quantity generator of hazardous waste, provided that the mixture contains more than 50 percent used oil by either volume or weight;
 - B) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000 prior to being mixed with the used oil, when:
 - i) the characteristic has been extinguished in the resultant mixture;
 - ii) both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator; and
 - iii) the mixture contains more than 50 percent used oil by either volume or weight;
 - C) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and
 - D) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, when the used oil and the nonhazardous wastewater are generated by the same generator, and when the mixture results from use or unintentional contamination.
- b) The generator ~~transporter~~ shall include in the manifest the following:

- 1) The name of the generator of the special waste and generator number;
 - 2) Information stating when and where the special waste was generated;
 - 3) The name of the person from whom delivery is accepted and the name of the site from which delivered;
 - 4) The name and permit number of the transporter;
 - 5) The date of delivery; and
 - 6) The classification and quantity of the special waste delivered to the transporter.
- e) ~~Manifest copies to be sent to the Agency:~~
- 1) ~~Every person who delivers RCRA hazardous waste or polychlorinated biphenyl (PCB) wastes to a transporter shall submit a copy of the Illinois manifest to the Agency within two days after the shipment. Every person who accepts RCRA hazardous waste or PCB waste from a transporter shall submit a copy of the Illinois manifest to the Agency within 30 days after receipt.~~
 - 2) ~~A person who delivers RCRA hazardous waste or PCB wastes to a transporter on another state's manifest, such as where the destination state requires use of its manifest, does not have to submit manifest copies to the Agency.~~
 - 3) ~~A person who delivers non-RCRA hazardous wastes or non-PCB wastes to a transporter does not have to send a copy of the manifest to the Agency. A person who accepts non-RCRA hazardous waste or non-PCB wastes from a transporter does not have to send a copy of the manifest to the Agency.~~
- c) d) The manifest will consist of forms as prescribed by US EPA for the Uniform Hazardous Waste Manifest and will be distributed in accordance with those requirements. at least four parts, in contrasting colors, such that an entry or signature on one part will be directly reproduced upon all underlying parts. The top part of the manifest shall be signed by the person who delivers special waste to a special waste transporter, acknowledging the delivery. The top part of the manifest shall also be signed by the special waste transporter, acknowledging receipt of the special waste. The person who delivers special waste to a special waste transporter shall retain the designated parts of the manifest as a record. The remaining parts of the manifest shall accompany the special waste shipment. At the destination, the manifest shall be signed by the person who accepts special

waste from a special waste transporter, acknowledging receipt of the special waste.

- d) e) A permitted site that receives special waste for disposal, storage or treatment of special waste must be designated on the manifest as the final destination point. Any subsequent delivery of the special waste or any portion or product thereof to a special waste transporter shall be conducted under a manifest initiated by the permitted disposal, storage or treatment site.
- e) f) In all cases, the special waste transporter shall deliver the designated parts of the complete, signed manifest to the person who accepts delivery of special waste from the transporter. The special waste transporter shall retain the designated part of the complete, signed manifest as a record of delivery to a permitted disposal, storage or treatment site. In addition, at the end of each month, or longer if approved by the Agency, the owner and the operator of the permitted disposal, storage or treatment site that ~~who~~ accepts special waste from a special waste transporter shall send the designated part of the completed manifest to the person who delivered the special waste to the special waste transporter.
- f) g) Every generator who delivers special waste to a special waste transporter, every person who accepts special waste from a special waste transporter and every special waste transporter shall retain their respective parts of the special waste manifest as a record of all special waste transactions. These parts shall be retained for three years and will be made available at reasonable times for inspection and photocopying by the Agency.

BOARD NOTE: The manifest requirements of 35 Ill. Adm. Code 722, 724 and 725 relative to RCRA hazardous wastes are not affected by this subsection. ~~Generators and receiving facilities subject to those Parts shall continue to supply designated copies of all manifests to the Agency.~~

- h) ~~Every generator who delivers nonhazardous special waste via a transporter to a facility located outside Illinois shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding calendar year. Such reports shall, at a minimum, include the information specified in subsection (i) of this Section and should be received by the Agency no later than February 1.~~
- i) ~~Every annual report required to be filed with the Agency by a generator for waste going out of state pursuant to subsection (h) of this Section shall include the following:~~
 - 1) ~~The IEPA identification number, name and address of the generator;~~
 - 2) ~~The period (calendar year) covered by the report;~~

- 3) ~~The IEPA identification number, name and address for each off-site treatment, storage or disposal facility to which waste was shipped during the period;~~
 - 4) ~~The name and IEPA special waste hauling number of each transporter used during the period for shipments to a treatment, storage or disposal facility;~~
 - 5) ~~A description and the total quantity of each nonhazardous special waste shipped out of state, listed by IEPA identification number of each receiving site;~~
 - 6) ~~The method of treatment, storage or disposal for each nonhazardous special waste; and~~
 - 7) ~~A certification signed by the generator or the generator's authorized representative.~~
- g) j) Every in-State facility that accepts nonhazardous-special waste from a ~~nonhazardous~~ special waste transporter shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding calendar year. Such reports should, at a minimum, include the information specified in subsection (h) ~~(k)~~ of this Section and be received by the Agency no later than February 1. This subsection is applicable to all nonhazardous special wastes that are delivered to a ~~nonhazardous~~ special waste transporter on or after January 1, 1991.
- h) k) Every annual report required to be filed with the Agency by a person accepting nonhazardous special waste from a ~~nonhazardous~~ special waste transporter pursuant to subsection (g) ~~(j)~~ of this Section shall include the following information:
- 1) The IEPA identification number, name and address of the facility;
 - 2) The period (calendar year) covered by the report;
 - 3) The IEPA identification number, name and address of each nonhazardous special waste generator from which the facility received a nonhazardous special waste during the period;
 - 4) A description and the total quantity of each nonhazardous special waste the facility received from off-site during the period. This information shall be listed by IEPA identification number of each generator;
 - 5) The method of treatment, storage or disposal for each nonhazardous special waste; and

- 6) A certification signed by the owner or operator of the facility or the owner's or operator's authorized representative.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART J: REQUIREMENTS FOR HAULERS PREVIOUSLY PERMITTED UNDER THE UNIFORM PROGRAM

Section 809.910 Uniform State Hazardous Waste Transportation Registration and Permit Program (Repealed)

- a) ~~Beginning July 1, 1998, no person may transport offsite any hazardous waste (or mixture of hazardous and nonhazardous waste) into, through, or within Illinois, without registering and obtaining a permit under the Uniform Program, or in violation of any permit condition for any permit required under this subsection and issued by the Agency or by any participating state.~~
- 1) ~~A transporter with its principal place of business in Illinois shall obtain a uniform registration and a uniform permit from the Agency.~~
- 2) ~~A transporter with its principal place of business in another state shall designate another participating state in the Uniform Program as its base state and shall obtain a uniform registration from the base state, if the base state requires registration, and shall obtain a uniform permit from the base state before transporting hazardous waste in Illinois.~~
- b) ~~Small quantity generators of 100 kilograms (220 pounds) or less per month are exempt from the uniform registration and uniform permit requirements of this Part, except generators of acute hazardous waste as specified in 35 Ill. Adm. Code 721.105(e).~~
- c) ~~A hazardous waste transporter shall comply with all the provisions of 49 CFR 171, 172, 177, 178, 180, 383, 387, and 390-397, incorporated by reference in Section 809.104, if the hazardous waste is transported in Illinois.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.911 Application for a Uniform Permit (Repealed)

- a) ~~Hazardous waste transporters whose base state is Illinois shall obtain a uniform permit from the Agency by completing Part H of the uniform application, provided by the Agency. The application form, provided by the Agency, will be identical in scope, coverage, and content to the uniform procedures and forms required by the Uniform Program. If the application is complete and granting it~~

will not violate the Act or Board regulations, the Agency will grant the uniform permit.

- b) The following procedures apply to the submittal of an application for a uniform permit:
- 1) An application for a uniform permit is considered filed when the Agency receives a completed application on the form provided by the Agency and with the correct fee, set forth in Sections 809.913 and 809.915.
 - 2) A completed application must include all information required in Part II of the uniform application.
 - 3) The Agency will notify the transporter in writing within 90 days after receipt of the application if the application is incomplete. If incomplete, the application will not be reviewed, and a copy of it will be returned to the transporter with instructions for resubmittal.
 - 4) If the Agency is unable to take final action (which includes granting or denying the uniform permit as requested, or by granting the uniform permit with conditions) within 90 days after the date the completed application is filed, the Agency will issue a Letter of Filing to the applicant. Letters of Filing will include the following:
 - A) A statement indicating that the applicant is in compliance with the application requirements of the Uniform Program;
 - B) A statement that law enforcement officials in all participating jurisdictions shall honor Letters of Filing as temporary evidence of compliance with the Uniform Program; and
 - C) An expiration date 180 days from the date the Letter of Filing is issued.
 - 5) On or before the expiration of any Letter of Filing the Agency will take final action on the completed application or the applicant may deem the uniform permit granted for the three year permit period, commencing on the day the completed application was filed with the Agency.
- e) The uniform permit will be valid for a period of three years unless:
- 1) a transporter fails to renew its annual uniform registration; or
 - 2) there is a change in the transporter's operations during the permitting period (i.e., a transporter with a Part I uniform permit begins transporting hazardous waste in a state that requires a Part III disclosure).

- d) ~~If the transporter's operations change during the permitting period, the transporter shall submit a new uniform permit application (Part II) detailing the changes. The Agency will review the changes in accordance with the criteria and procedures outlined in the Alliance for Uniform HazMat Transportation Procedures, incorporated by reference in Section 809.104(d), for evaluation of the application.~~
- e) ~~The Agency will send all denial notices and applications granted with conditions by U.S. Registered or Certified Mail, return receipt requested. All other final notices may be sent by regular U.S. Mail. The Agency will be deemed to have taken final action on the date that the notice of final action is mailed. Within 35 days after the Agency's final action, the applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act.~~
- f) ~~The Agency may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.912 Application for Uniform Registration (Repealed)

- a) ~~Hazardous waste transporters whose base state is Illinois shall obtain a uniform registration from the Agency by completing Part I of the uniform application, provided by the Agency, during the first year of each three year permitting period. A hazardous waste transporter whose base state is Illinois shall renew the uniform registration from the Agency by completing Parts I and IV of the uniform application, provided by the Agency, during the second and third years. The application form will be identical in scope, coverage, and content to the uniform procedures and forms required by the Uniform Program. If the application is complete and granting it will not violate the Act or Board regulations, the Agency will grant the uniform registration.~~
- b) ~~The following procedures apply to the submittal of an application for a uniform registration:~~
 - 1) ~~An application for uniform registration is considered filed when the Agency receives a completed application on the forms provided by the Agency and with the correct fees, set forth in Sections 809.914 and 809.915.~~
 - 2) ~~A completed application must include all information required in Part I of the uniform application during the first year and all information required in Parts I and IV during the second and third years.~~

- 3) ~~The Agency will notify the transporter in writing within 90 days after receipt of the application if the application is incomplete. If incomplete, the application will not be reviewed, and a copy of it will be returned to the transporter with instructions for resubmittal.~~
- 4) ~~If the Agency is unable to take final action (which includes granting or denying the uniform registration as requested, or by granting the uniform registration with conditions) within 90 days after the date the completed application is filed, the Agency will issue a Letter of Filing to the applicant. Letters of Filing will include the following:~~
- A) ~~A statement indicating that the applicant is in compliance with the application requirements of the Uniform Program;~~
- B) ~~A statement that law enforcement officials in all participating jurisdictions shall honor Letters of Filing as temporary evidence of compliance with the Uniform Program; and~~
- C) ~~An expiration date 180 days from the date the Letter of Filing is issued.~~
- 5) ~~On or before the expiration of any Letter of Filing the Agency will take final action on the completed application or the applicant may deem the uniform registration granted for the one year registration period, commencing on the day the completed application was filed with the Agency.~~
- e) ~~The uniform registration is valid for a period of one year and must be renewed annually.~~
- d) ~~The Agency will send all denials and applications granted with conditions by U.S. Registered or Certified Mail, return receipt requested. All other final Agency decisions may be sent by regular U.S. mail. The Agency will be deemed to have taken final action on the date that the notice of final action is mailed. Within 35 days after the Agency's final action, the applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act.~~
- e) ~~The Agency may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.913 Payment of Processing and Audit Fees (Repealed)

~~Beginning July 1, 1998, and annually thereafter, each transporter designating Illinois as its base state must pay a \$250 processing and audit fee for administering the uniform registration and permit program as set forth in Section 22.2 of the Act.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.914 Payment of Apportioned Mile Fees (Repealed)

- a) ~~Beginning July 1, 1998, and annually thereafter, all transporters whose base state is Illinois shall pay registration fees to the Agency for apportioned miles for all states that are participating in the uniform registration program and in which the transporter hauls hazardous waste. The Agency shall transmit to other participating states the registration fees collected each calendar quarter on behalf of the other participating states within 30 days after the last day of the calendar quarter. A transmittal report will accompany each payment and will summarize the fees collected and list the transporters from which the fees were collected. The level of hazardous material transportation activity within a state should be calculated using the instruction in the uniform application and should be based on two factors:~~
- 1) ~~The percentage of mileage in the state; and~~
 - 2) ~~The percentage of the transporter's total activity that involves the transport of hazardous wastes.~~
- b) ~~For Illinois, the registration fee should be calculated by multiplying the percentage of Illinois transportation by the percentage of hazardous waste transportation multiplied by the total number of vehicles the transporter operates multiplied by the \$20 registration fee set forth in Section 22.2 of the Act.~~
- e) ~~A transporter should determine its percentage of Illinois transportation by dividing the number of miles it traveled in Illinois during the previous year by the number of miles it traveled nationwide during the previous year. If a transporter operates only in Illinois, it should use 100 percent of the miles traveled as its percentage of Illinois transportation. A transporter may separately calculate fees payable for each fleet the transporter operates.~~
- d) ~~A transporter shall determine its percentage of hazardous waste transportation by using a method based on general percentage ranges. A transporter shall determine its percentage of hazardous waste transportation as follows:~~
- 1) ~~For less than truckload shipments, the transporter should divide the weight of the transporter's hazardous waste shipments transported during the previous year by the total weight of all shipments transported during the previous year.~~

- 2) ~~For the truckload shipments, the transporter should divide the number of shipments transported during the previous year for which placarding, marking, or manifesting was required by the Code of Federal Regulations, Title 49, Part 172, by the total number of all shipments transported during the previous year.~~
- 3) ~~A transporter that transports both truckload and less than truckload shipments of hazardous waste should determine its percentage of hazardous waste transportation by calculating the percentage of business that is hazardous waste transportation on a proportional basis with the percentage of business that is not hazardous waste transportation.~~
- 4) ~~A transporter may use data from its most recent complete fiscal year or the most recent complete calendar year in calculating the percentages required in this Subpart for transportation conducted during the previous year. If the applicant elects to change the reporting year in a subsequent application, the applicant must inform the Agency of its intention in writing.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.915 Submittal of Fees (Repealed)

~~Any person who submits an application for a uniform registration and uniform permit to the Agency must determine the total fees owed in accordance with the instructions in the Final Report: Uniform Program Pilot Project, incorporated by reference in Section 809.104, the Act, and Sections 809.913 and 809.914 of this Part.~~

- a) ~~The transporter must attach or enclose with the application a certified check, cashier's check or money order payable to the Treasurer, State of Illinois in the appropriate amount.~~
- b) ~~When an application is denied, any fees submitted with the application will be non-refundable. Any subsequent re-filing of the application will be included in accordance with subsection (a) of this Section.~~
- e) ~~When the Agency rejects an application because it is incomplete, any fees submitted will be non-refundable. The applicant can receive credit for the payment with a resubmitted application if the resubmittal is complete and returned to the Agency within 30 days after the initial date-stamped rejection.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.916 Previously Permitted Transporters (Repealed)

- a) ~~From July 1, 1998 until June 30, 1999, a transporter who previously obtained an Illinois Special Waste Transporter Permit is not required to obtain a uniform permit or uniform registration under this Subpart for the transportation of hazardous waste in Illinois until the transporter's special waste permit expires.~~
- b) ~~Transporters with permits expiring July 1, 1998 through June 30, 1999, and whose base state is Illinois shall submit uniform registration and permit applications to the Agency and should apply 90 days in advance of the expiration date of their current permit. If the Agency cannot timely review the uniform registration and permit applications within 90 days, the current Illinois Special Waste Transportation permit will be extended by operation of law for 30 days, or until the Agency takes final action on its applications, whichever occurs first. However, if the transporter fails to submit its new uniform registration and uniform permit application 90 days in advance of the expiration of the current permit, the current Illinois Special waste Transporter permit will expire on the expiration date indicated in the permit.~~
- e) ~~Beginning July 1, 1998, all Uniform Program permits issued by other states that have not expired or been revoked will be acceptable for the transportation of hazardous waste in Illinois.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.917 Uniform Registration and Uniform Permit Conditions (Repealed)

- a) ~~When reviewing uniform registrations or uniform permits, the Agency may impose such conditions as are necessary to satisfy the requirements of the Uniform Program set forth in this Part.~~
- b) ~~The applicant may deem any conditions imposed by the Agency as a denial of the uniform registration or uniform permit for purposes of review pursuant to Section 40 of the Act.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.918 Uniform Registration and Uniform Permit Revision (Repealed)

~~Changes to the uniform registration or uniform permit, or the applications, issued pursuant to this Part can only be made by the U.S. Secretary of Transportation or other entity authorized pursuant to federal law. The Agency will revise any uniform registration and uniform permit issued under this Part to conform with any such changes and notify the permittee in writing. Failure of the Agency to issue a revised uniform registration or uniform permit is not a defense to a violation of any changed permit condition.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.919 Transfer of Uniform Registration and Uniform Permits (Repealed)

~~No uniform registration and permit is transferable from one person to another.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.920 Audits and Uniform Registration and Uniform Permit Revocation (Repealed)

~~The Agency will conduct audits to ensure that the transporter is accurately reporting its hazardous waste transportation activity. If a transporter violates any of the uniform permit conditions or fails to comply with any provisions of the Act or with any Board regulation, sanctions may be imposed as provided in the Act, including revocation of the uniform permit and uniform registration. As part of the audit process the Agency is authorized, within constitutional limitations, to do the following:~~

- ~~a) Require transporters to allow Agency representatives to inspect or examine any commercial vehicle or facility operated by a transporter who transports hazardous waste in this State;~~
- ~~b) Require transporters to produce papers, books, records, documents, or other evidentiary material necessary to determine if a transporter is accurately reporting its hazardous waste transportation operations and is otherwise complying with the Uniform Program; and~~
- ~~e) Require transporters to allow Agency representatives to conduct investigations and audits necessary to determine if a transporter is entitled to a uniform permit or to make a suspension or revocation determination.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.921 Permit No Defense (Repealed)

~~The existence of a uniform permit or uniform registration under this Part does not provide the permittee with a defense to a violation of the Act or Board regulations, except for hauling hazardous waste without a uniform permit or uniform registration.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 809.1001 Transporters Previously Permitted Under Uniform Hazardous Waste Transportation Permit and Registration Program

A transporter who previously obtained a Uniform Permit is not required to obtain a special waste hauler permit for the transportation of special waste in Illinois until the transporter's Uniform registration expires.

(Source: Added at 36 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 15, 2012, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board