

ILLINOIS POLLUTION CONTROL BOARD

January 5, 2006

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

ORDER OF THE BOARD (by A.S. Moore):

On December 13, 2005, the Board received a proposal (Prop.) to amend Parts 808 and 809 of the Board's regulations concerning special waste classifications and nonhazardous special waste hauling as they pertain to used oil recycling in Illinois. 35 Ill. Adm. Code 808, 809. The proposal was filed by NORA, which states that it is an association of responsible recyclers formerly known as the National Oil Recycling Association. NORA explains that it is comprised of more than 200 companies providing used oil collection and recycling services.

In its proposal, NORA states that the federal government in 1985 and 1992 promulgated rules governing management and transportation of used oil. Prop. at 1; *see* 40 C.F.R. 279. NORA further states that the Board adopted those rules in 1993 as Part 739 of its regulations through "identical in substance" rulemaking. Prop. at 1; *see* 415 ILCS 5/7.2 (2004); 35 Ill. Adm. Code 739; RCRA Update, USEPA Regulations, July 1, 1992 through December 31, 1992, R93-4 (Sept. 23, 1993). According to NORA, "most states have adopted the federal used oil recycling rules . . . as the sole regulatory requirements governing the management of used oil," and Part 739 should reflect 40 C.F.R. 279. Prop. at 2. However, because Illinois had adopted special waste rules before Part 739, NORA argues that state regulations are not genuinely "identical in substance" to the federal rules. *Id.* Specifically, NORA states that, by treating used oil as a special waste, Illinois requires actions such as manifesting used oil during transportation that are not required by federal regulations. Prop. at 2.

Finding these additional requirements "burdensome," NORA states it has for several months discussed with the Illinois Environmental Protection Agency (Agency) "making the Illinois program substantially equivalent to the federal program." Prop. at 2-3. NORA states that the Agency "has agreed to eliminate the special waste hauling and manifesting requirements imposed on used oil as defined and managed under Part 739." Prop. at 3. NORA further states that it and the Agency substantially agree on the specific changes needed to accomplish that goal. *Id.*

The Board's procedural rules require a proponent other than the Agency or the Department of Natural Resources to submit "a petition signed by at least 200 persons." 35 Ill. Adm. Code 102.202(g). With its rulemaking proposal, NORA filed a motion to waive signature requirement (Mot.). In its motion, NORA states that it is a trade association of more than 200 throughout the United States that has appeared before the Board, the United State Environmental Protection Agency, and other entities on the regulation of used oil. Mot. at 1-2. NORA further

states that the additional expense to the organization of obtaining 200 signatures would constitute a burdensome and unnecessary expense. Mot. at 2. Consequently, NORA “seeks to waive the requirement for signature.” *Id.* The Board grants NORA’s request and waives the petition requirement.

In reviewing the proposal for compliance with the rulemaking petition requirements of 35 Ill. Adm. Code 102.202, the Board has identified some deficiencies. First, under 35 Ill. Adm. Code 102.202(b), the Board finds that the proposal has not described, “to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the proposed rule.” 415 ILCS 5/27(a) (2004); 35 Ill. Adm. Code 102.202(b).

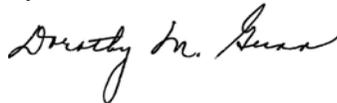
Second, the Board notes that the proposal states only that NORA members “are available to testify if necessary and to present prefiled testimony to the extent the Board deems such warranted.” Prop. at 7. While NORA describes that potential testimony as “consistent with the statement of reasons” and states that it would provide “further background concerning the history, intent, and purpose of the used oil regulations,” the Board finds that these statements do not constitute the required “synopsis of *all* testimony to be presented by the proponent at hearing.” 35 Ill. Adm. Code 102.202(c) (emphasis added).

Third, NORA did not either address the applicability of or provide the information requested in the “published study or report” requirement of Section 102.202(e) of the Board’s procedural rules. 35 Ill. Adm. Code 102.202(e); *see also* 35 Ill. Adm. Code 102.202(k).

The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed expeditiously under the rulemaking provisions of the Act and the Board’s procedural rules. 415 ILCS 5/27, 28 (2004); 35 Ill. Adm. Code 102. After conducting one or more hearings on this proposal the Board will consider whether to proceed to first notice. The Board requests, however, that NORA address the deficiencies noted above in writing prior to any hearing scheduled in this proceeding at such time as directed by the hearing officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 5, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board