

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 10 2006

STATE OF ILLINOIS
Pollution Control Board

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

NOTICE OF FILING

Dorothy Gunn, Clerk,
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

William Richardson, Chief Legal Counsel
Office of Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
James R. Thompson Center
100 W. Randolph, 12th Floor
Chicago, Illinois 60601

Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St.
Suite 11-500
Chicago, Illinois 60601

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

Anand Rao, Environmental Scientist
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

Deirdre K. Hirner, Executive Director
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, Illinois 62703

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board TESTIMONY OF THEODORE J. DRAGOVICH a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 5-9-06
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

RECEIVED
CLERK'S OFFICE

MAY 10 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

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

TESTIMONY OF THEODORE J. DRAGOVICH

My name is Theodore Dragovich. I am the manager of the Disposal Alternatives Unit in the Bureau of Land Permit Section. I have worked in this capacity for the past eleven years. I have been a permit reviewer and manager in the Permit Section of the Illinois Environmental Protection Agency ("Illinois EPA") for about eighteen years. During this time, I have been involved in the review of various Resource Conservation and Recovery Act ("RCRA") and state permit applications. Prior to that time I was employed in the construction industry. I received a Bachelor of Science in Engineering from Southern Illinois University at Edwardsville in 1980. I am an Illinois Licensed Professional Engineer. For a complete description of my education and work experience, please see my resume attached to my testimony as exhibit 1.

Today I will testify with regard to the proposed amendments to 35 Ill. Adm. Code 808 and 809. The Illinois EPA supports the concept of providing a manifest exemption for used oil, but is offering alternative language that will insure that the exemption can only be applied to used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 ("Part 739"). The National Oil Recyclers Association ("NORA"), in it's Statement of Reasons at page three, discusses efforts to "de-couple" the special waste rules from the used oil rules. This comment implies that the proposal will seek relief from reporting requirements and other obligations that used oil may be subject to as a special waste. The Illinois EPA does not support exempting used

oil from the definition of special waste or adopting an exemption that is anything beyond a manifest and hauling exemption for used oil that is defined by and managed in compliance with Part 739.

The Illinois EPA's discussions with the NORA were limited to the elimination of manifests for used oil that is defined by and managed in accordance with Part 739 and the elimination of hauling permits for transporters that are only transporting loads of used oil that is defined by and managed in accordance with Part 739. No other aspects of the special waste regulations were discussed with NORA, and it is the Illinois EPA's belief that NORA does not intend to exclude used oil from the definition of special waste or any other requirements such as reporting that still may apply. The Illinois EPA also believes that it was not NORA's intention to propose an exemption that includes other wastes that are not used oil that is defined by and managed in compliance with Part 739 or special wastes that are clearly not destined for recycling.

In the Statement of Reasons at page three, NORA stated, "While NORA maintains the current regulatory scheme can be interpreted so that special waste requirements do not apply to used oil, NORA believes that the proposed regulatory changes are necessary in order to unambiguously achieve this result." The Illinois EPA agrees that changes to the regulations are necessary to exempt used oil that is defined by and managed in accordance with Part 739 from manifests and special waste hauling requirements. The Illinois EPA does not believe the current regulations could be interpreted in a manner that would allow used oil to be exempt from manifesting and hauling. The most convincing evidence is the Board response in the R93-4 Board Order dated September 23, 1993 at page 65 that states, "The Board agrees that the used oil should be subject to the special waste manifesting regulations. The Board believes that its

existing manifest regulations in Part 809 are more stringent than the Federal regulations and thus apply. Therefore, the Board will adopt the regulations to reflect that used oils are subject to special waste manifesting regulations...in order to alert a generator regarding the special waste hauling permit requirements, the Board intends to add a Board Note....". In addition, Sections 739.156 and 739.174 of the used oil regulations specifically identify manifests as an acceptable tracking document for used oil and other states also require shipments of used oil to be accompanied by a manifest or a state issued tracking document similar to a manifest. Therefore, the Illinois EPA believes that used oil cannot be exempted from the manifesting and hauling requirements without modifying the regulations to include a specific exemption. This exemption should be limited to shipments of used oil that are transported in compliance with Part 739. The exemption should be clear that it only applies to used oil as defined by Part 739 and would not apply to other wastes transported on the same load, or other vehicles operated by the transporter that are not carrying exempt loads of used oil.

The Illinois EPA supports a manifest exemption because Part 739 has tracking requirements in Sections 739.146, 739.156, 739.165 and 739.174 that provide the necessary tracking information for shipments of used oil. However, the Illinois EPA has provided alternative language because the language proposed by NORA is overly broad and ambiguous. The language should be modified to limit the manifest exemption to a shipment of used oil that is defined by and managed in accordance with Part 739. The hauling exemption should only apply to the load a vehicle is transporting. The Illinois EPA has the following specific concerns about the proposed NORA language:

Special Waste Identification Number

NORA's proposal includes reference to a "special waste identification number", however the "special waste identification number" is not defined in the Illinois regulations. In Part 739 the Board made several references to the requirement for transporters of used oil to obtain an "Illinois special waste identification number." On page 22 of the Final Order in R93-16, dated March 17, 1994, the Board explained that by its use of the term "Illinois special waste identification number," it meant "a generator ID number" for generators, "a facility ID number" for TSDs, and "a waste hauling permit number" for transporters. Obviously, the Illinois EPA would not be assigning a special waste hauling permit number to an exempt hauler. Therefore, the Illinois EPA requests that the Board clarify that an "Illinois special waste number" for a used oil transporter is the number assigned by the Illinois EPA to the address of the special waste hauling permit exempt used oil transporter's main place of business that designates the person as a used oil transporter. This language would allow the Illinois EPA to assign the transporter a special waste identification number when they register as a used oil transporter.

Also, the Illinois EPA believes that NORA's proposed language is ambiguous because the transporter is by definition a person and a person may be the individual truck driver or the company. This makes it unclear whether the exemption would be applied to the individual load or the entire company. Currently, the Illinois EPA issues one hauling permit number to a company but, on its application, the company must identify the individual trucks and pay a fee for each truck. In this case, the Illinois EPA would assign the special waste identification numbers to the company address instead of to individual trucks. Therefore, the Illinois EPA would like the Board to clarify that the hauling permit exemption is by load. It would not be appropriate for the company's entire fleet to have to be dedicated to hauling used oil before the

exemption would apply or for the entire fleet to receive the exemption because one truck meets the requirements.

Section 808.121(b)(5)

The Illinois EPA objects to an exemption that would apply to either used oil as defined by or managed pursuant to 35 Ill. Adm. Code 739. The used oil must satisfy both criteria rather than either one before the used oil should be exempt. As written the waste could meet the definition of used oil and be exempt from manifesting even if the used oil is going for disposal. Used oil going for disposal may in fact be a hazardous waste subject to manifest and transportation requirements under Parts 722 and 723 and the uniform hauling program in Part 809. Under this scenario the exemption as proposed would be less stringent than the RCRA regulations. If the used oil were non-hazardous but not recycled in accordance with Part 739, it would be subject to Part 807 and should not be exempt from manifests and hauling permits. The proposed wording also allows the exemption to be applied to any waste that is managed in compliance with Part 739. This seems to be true even if Part 739 does not apply to the waste in question. Materials that are not used oil as defined in Part 739, but managed in compliance with the standards in Part 739 would in fact be subject to other standards. These wastes should only be exempt if they meet the criteria in 808.121(1- 4). It is irrelevant if a waste that is not used oil meets the management standards for used oil, since the waste would be subject to its own appropriate standards and not the used oil standards.

Furthermore, the structure of the proposed language for 808.121(b)(5) is inconsistent with 808.121(b)(1)-(4) and the exemption should not apply to hauling permits if the transporter also transports other special waste at the same time. The Illinois EPA is proposing the following alternative language that clarifies that there are two distinct exemptions:

“(5) The generator is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739.

(6) A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter.”

Section 809.211(l)

The language modification that NORA proposed for 809.211(l) does not require the load of used oil to be in compliance with Part 739, only that the hauler hauls some used oil subject to regulation under 739. The Illinois EPA suggests the following language:

“Any person who hauls only used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739, and who has registered with the Agency as a used oil transporter.”

Section 809.301(a)

As written, the NORA language proposed for 809.301 does not clearly exempt the used oil from delivery to a permitted hauler. The proposed change could be read to only exempt the used oil from manifests. The proposed language does not specifically say that a hauling permit is not required but does require the transporter to have a “special waste identification number”. The special waste identification number has been previously identified by the Board as the special waste hauling permit number. The special waste hauling number is the number issued to a permitted hauler. The Illinois EPA suggests adding a clarifying sentence as follows:

“The generator is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance

with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter”.

Breaking out the manifest exemption and transportation exemption into two separate exemptions will allow unmanifested loads of used oil to be transported on the same truck with other special waste that needs a manifest. The language that the Illinois EPA has proposed for the manifest exemption in 809.301 would not require the used oil to remain in a separate compartment or container, but individual circumstances may indicate that the used oil is no longer being managed under Part 739, for example mixing the used oil with a listed hazardous waste within a tanker truck. The transportation exemption language that the Illinois EPA has proposed for 809.301 would only exempt the truck from special waste hauling permits if the only special waste on that individual load is used oil.

Section 809.302(a)

The language proposed by NORA for 809.302 does not clearly exempt the used oil from delivery to a permitted hauler. The proposed change could be read to only exempt the used oil from manifests. The proposed language does not specifically say that a hauling permit is not required but does require the transporter to have a “special waste identification number”. The special waste identification number has been previously identified by the Board as the special waste hauling permit number. The special waste hauling number is the number issued to a permitted hauler.

In addition, the proposed language in Part 809.302 is problematic because the exemption applies to a “transporter who hauls used oil”. As written this would allow a transporter to be exempt from all manifest and hauling permit requirements if they haul used oil at some point in

time and register as a used oil transporter. The Illinois EPA suggests the following alternative language:

“The generator is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter”.

Section 809.501(a)

The language modification that NORA proposed for 809.501 does not require the load of used oil to be in compliance with Part 739, only that the hauler hauls some used oil subject to regulation under 739. In addition, since the transporter is by definition a person and a person could be the individual truck driver or the company, it becomes unclear whether the exemption would be applied to the individual load, or the entire company. The Illinois EPA suggests that the language be changed to specify that the exemption would be applied to the individual load as follows:

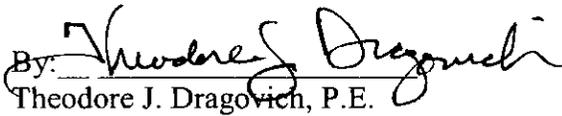
“The generator (or transporter) is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter.”

The Illinois EPA does not want the entire fleet to have to be dedicated to hauling used oil before the exemption would apply, and the Illinois EPA does not want the entire fleet to receive the exemption because one truck meets the requirements.

The Illinois EPA also requests that the Board clarify that the transporter number is the number assigned to the address of the transporter’s main place of business. The Illinois EPA

currently assigns one ten-digit number for each address. Then one or more activities are links with that ten-digit tracking number such as generator, transporter or TSD (treatment, storage or disposal facility). It is possible that the company is already assigned a number in our system as just a generator or a TSD and not a hauler. Therefore, the Illinois EPA would request that the Board clarify that the used oil transporter must obtain a transporter number (or add the transporter status to their existing number). A transporter number may then be assigned when they register as a used oil transporter.

In conclusion, the Illinois EPA will support the exemption of used oil from manifesting and hauling permits if the Board makes our suggested language changes. As I have just explained, the Illinois EPA does not support the language proposed by NORA because it is ambiguous and contains loopholes that would exempt special waste that is subject to other RCRA or solid waste regulations. Tying the exemption to used oil as defined by and managed in accordance with Part 739 will eliminate these concerns because Part 739 contains the alternative tracking requirements. This concludes my testimony. Thank You.

By: 
Theodore J. Dragovich, P.E.

DATED: 5-9-06
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

THEODORE DRAGOVICH
Illinois Environmental Protection Agency
Bureau of Land
Permit Section
1021 North Grand Avenue East
Springfield, Illinois 62794
217/524-3306

Education:

Graduated from Southern Illinois University, fall 1980, with a B.S. in Civil Engineering.

Major Classes: Hydraulics and Hydrology, Environmental Engineering I, Transportation Phenomena, Structural Analysis, Advanced Structural Analysis, Concrete Design, Steel Design, Foundation Design, Fluid Mechanics, Transportation Engineering I and II, Construction Engineering, Surveying I and II, Thermodynamics, Mechanics of Materials, Electrical Circuits, Engineering Economy.

Professional License:

Registered Professional Engineer, State of Illinois Since 1992.

Employment:

May 1996 to Present:

Employed by the Illinois Environmental Protection Agency as Manager of the Disposal Alternatives Unit. As part of these duties I speak at public meetings and hearings, provide expert witness testimony, participate in various Agency and interstate work groups including the Interstate Regulatory Cooperation Work Group, supervise and train subordinates. I am responsible for the day to day supervision of eight permit reviewers. The Disposal Alternative Unit reviews and issues medical waste, solid and hazardous waste permits for storage treatment and recycling facilities, responds to oral and written inquiries regarding recycling and treatment, and interacts with the public, regulated community and other regulators on various environmental issues regarding storage, treatment or recycling of waste.

April 1995 to May 1996

Appointed Acting Unit Manager for the Disposal Alternatives Unit. Responsible for the day to day operations of the unit.

January 1994 to April 1995

Performed duties of unit manager. Responsible for review of all DAU permits and correspondence for correctness, uniformity and compliance with federal and State regulations, policies and procedures. Provided guidance and training to other unit members. Continued duties as Environmental Protection Engineer IV as described below.

March 1992 to January 1994

Employed by the Illinois Environmental Protection Agency, Springfield, Illinois, as an Environmental Engineer (EPE IV). Reviewed permit applications, assisted and trained junior staff members and substituted for the unit manager on occasions when he is unavailable. Assisted in the drafting of Agency proposed regulations regarding Potentially Infectious Medical Waste (PIMW).

February 1991 to March 1992

Employed by the Illinois Environmental Protection Agency, Springfield, Illinois, as an Environmental Engineer (EPE III). Provided technical/engineering review of State permit applications and USEPA Part B permits for hazardous waste facilities, substituted for unit manager when he was not available to attend meetings. Trained entry level personnel. Assisted in drafting of PIMW Regulations.

July 1989 to February 1991

Employed by the Illinois Environmental Protection Agency, Springfield, Illinois, as an Environmental Engineer (EPE II). Provided technical/engineering review of the State permits and USEPA Part B permits for hazardous waste facilities, lead worker in used oil policies and procedures.

May 1988 to July 1989

Employed by the Illinois Environmental Protection Agency, Springfield, Illinois, as an Environmental Engineer (EPE I). Responsible for providing technical/engineering review of State permit applications and USEPA Part B permits for hazardous waste treatment, storage and recovery/recycle facilities.

May 1987 to September 1987

Briehan Properties, Inc., St. Louis, Missouri. Residential Construction Superintendent for the Forest Haven Subdivision in Imperial, Missouri. Responsible for permit applications, inspections, estimating, ordering materials, scheduling and supervision of hourly employees and subcontractors, and quality control.

June 1986 to May 1988

Self employed doing residential remodeling including carpentry, electrical and plumbing.

June 1986 to November 1986

L. Wolf Co., 1733 Cleveland, Granite City, Illinois. Worked on site as project coordinator at Scott Air Force Base, Illinois, on the construction of a new 10.8 million dollar commissary building. Responsible for supervision of site work and expedited the resolution of design and coordination problems for all phases of construction.

December 1980 to June 1986

HBE Corporation, 11330 Olive Street Boulevard, St. Louis, Missouri

April 1985 to June 1986: Worked on site as an Assistant Superintendent at the Adams Mark Hotel in downtown St. Louis, Missouri, a 900 room new and remodeled hotel. Responsible for the supervision of all phases of construction in the Pierce Building.

October 1983 to April 1985: Worked on site as Field Project Engineer for the 19-story Trinity Towers Retirement Community and nursing home in Corpus Christi, Texas.

November 1981 to October 1982: Worked on site as Field Project Engineer at Hays Memorial Hospital in San Marcos, Texas. This is a 190 bed new replacement facility.

Field Project Engineer responsibilities included reviewing shop drawings, negotiating change orders, scheduling deliveries, maintaining construction records and drawings, inspecting work, estimating minor changes, purchasing materials, assisting at bids and contract negotiations.

1976-1980

Worked for A&L Construction as a carpenter in residential construction.

TJD/mls\003241S.WPD

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached TESTIMONY OF THEODORE J. DRAGOVICH upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Dorothy Gunn, Clerk,
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

William Richardson, Chief Legal Counsel
Office of Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
James R. Thompson Center
100 W. Randolph, 12th Floor
Chicago, Illinois 60601

Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St.
Suite 11-500
Chicago, Illinois 60601

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

Anand Rao, Environmental Scientist
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

Deirdre K. Hirner, Executive Director
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, Illinois 62703

and mailing it by First Class Mail from Springfield, Illinois on May 9th, 2006, with sufficient postage affixed.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME
This 9th day of May, 2006.

Brenda Boehner
Notary Public

