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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 01 2006

IN THE MATTER OF:)

STATE OF ILLINOIS
Pollution Control Board

PROPOSED AMENDMENTS TO THE)
BOARD'S SPECIAL WASTE)
REGULATIONS CONCERNING)
USED OIL, 35 ILL. ADM. CODE 808, 809)

R06-20
(Rulemaking --Land)

PC#1

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

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Environmental Bureau Chief
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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 an APPEARANCE and COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY 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: 4-26-06
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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USED OIL, 35 ILL. ADM. CODE 808, 809)

APPEARANCE

The undersigned hereby enters her appearance as attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: 4-26-06

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REGULATIONS CONCERNING)
USED OIL, 35 ILL. ADM. CODE 808, 809)

COMMENTS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through one of its attorneys, Stephanie Flowers, and submits its COMMENTS in the above-captioned matter to the Illinois Pollution Control Board (“Board”) stating as follows:

I. **INTRODUCTION**

The Illinois EPA submits these comments in response to the proposal filed in this matter on December 13, 2005 by the National Oil Recyclers Association (“NORA”). The Illinois EPA prior to the filing of the proposal in this matter had several discussions with NORA regarding the manifesting and hauling requirements for used oil. These discussions were limited to the elimination of manifests for used oil that is defined by and managed in accordance with the used oil regulations at 35 Ill. Adm. Code 739 (“Part 739”) and elimination of hauling permits for transporters that are transporting no special waste other than 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 the Illinois EPA believes NORA does not intend to exclude used oil from the definition of special waste, special waste reporting, or any other requirement that applies to special waste.

The Illinois EPA agrees that an exemption from the manifesting requirement of 35 Ill. Adm. Code 809 (“Part 809”) is proper for used oil that is defined by and managed in accordance with Part 739. Currently, Part 739 requires tracking of used oil shipments. Since Part 739 requires used oil to be tracked, the additional requirement of manifesting under Part 809 is unnecessary. However, a manifest exemption in Part 809 should clarify that it only applies to used oil that is defined by and managed in accordance with Part 739 and would not apply to other wastes transported on the same load.

Additionally, the Illinois EPA agrees that an exemption from the hauling permit requirement of Part 809 is proper for loads that contain no special waste other than used oil that is defined by and managed in accordance with Part 739. The Illinois EPA would require the transporter to register with the Illinois EPA as a used oil transporter in the same manner of notification as stated in Section 739.142. Also, the exemption must clarify that it applies only to the load that a vehicle is carrying and does not apply to an individual vehicle or all vehicles operated by the transporter.

II. SECTION 808.121(b)(5)

The Illinois EPA disagrees with the proposed language of the exemption in Part 808.121(b)(5) because it applies to either used oil as defined by or managed pursuant to 35 Ill. Adm. Code 739 (emphasis added). It is the Illinois EPA’s opinion that the used oil must satisfy both criteria (i.e. used oil must be both defined by and managed in accordance with Part 739) before the exemption would apply because used oil is subject to regulations other than Part 739. Only used oil that is defined by and managed in accordance with Part 739 would be eligible for the exemption. Also, the transporter exemption from hauling permits should be clear that it

would not apply to a vehicle that is also transporting other special waste that is not used oil that is defined by and managed in accordance with Part 739. Therefore, the Illinois EPA recommends the following language at 808.121(b)(5) and (6):

(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.

III. SECTION 809.211(l)

The Illinois EPA disagrees with the language of the exemption in Part 809.211(l), specifically the wording “subject to regulation as used oil” since used oil can be subject to regulation both under Part 739 and other regulations. The Illinois EPA recommends the wording “defined by and managed in accordance with Part 739”. Also, the transporter exemption from hauling permits should be clear that it would not apply to a vehicle that is also transporting other special waste that is not used oil that is defined by and managed in accordance with Part 739.

Therefore, the Illinois EPA recommends the following language be added to Section 809.211:

(l) 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”.

IV. SECTION 809.301(a)

The Illinois EPA disagrees with the language of the exemption in Part 809.301(a). The proposed change in 809.301(a) could be read to exempt all special waste from manifests if it is transported by a used oil hauler. Since the exemption, as proposed, could be applied to all hazardous and non-hazardous waste including used oil destined for disposal, the exemption would be less stringent than the federal RCRA regulations. The Illinois EPA recommends the following language be added to 809.302(a):

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.

V. SECTION 809.302(a)

The Illinois EPA disagrees with the language of the exemption in Part 809.302(a) as written. The language amendment proposed by NORA for Section 809.302(a) could allow a facility to accept waste from a non-permitted transporter without a manifest if they haul used oil at some point in time and register as a used oil transporter. The exemption as proposed, could be interpreted to apply to all hauling vehicles that belong to the registered transporter regardless if they are hauling used oil or some other waste. The Illinois EPA recommends the following language be added to 809.302(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. 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.

VI. SECTION 809.501(a)

The Illinois EPA disagrees with the language of the exemption in Part 809.501(a) as written. The proposed exemption in 809.501(a) does not require the load of used oil to be in compliance with Part 739, only that the hauler hauls some used oil regulated under Part 739. The wording "subject to regulation as used oil" could be interpreted to mean that the used oil does not comply with the requirements of 739, but is a material that falls within the applicability section of 739.110. Furthermore, it is ambiguous as to whether the individual truck or the company has to meet the exemption, since a person can be an individual or a company as defined in Part 809. Therefore, the Illinois EPA recommends the following language be added to 809.501(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. 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.

VII. CONCLUSION

The Illinois EPA does not object to used oil as defined in Part 739 being exempt from hauling permits and manifests if managed in compliance with Part 739 because Part 739 has its

own provisions for proper transportation and tracking of used oil. However, the Illinois EPA does oppose the language used to accomplish the exemption. Therefore, the Illinois EPA has suggested alternate language that the Illinois EPA could support and that would accomplish the goal of NORA's proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: 4-26-06
1021 North Grand Avenue East
P.O. Box 19276
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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached APPEARANCE and
COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY 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
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Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, Illinois 62703

and mailing it by First Class Mail from Springfield, Illinois on April 26th, 2006, with sufficient
postage affixed.

Nancy J. D. Hampton

SUBSCRIBED AND SWORN TO BEFORE ME
This 26th day of April, 2006.

Brenda Boehner
Notary Public

