

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of)	
PROPOSED AMENDMENTS TO)	
SPECIAL WASTE REGULATIONS)	R06-20
CONCERNING USED OIL,)	
35. Ill. Adm. Code, 808, 809)	
)	

NOTICE OF FILING

To: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on May 16, 2006 we filed the attached **PRE-FILED TESTIMONY OF CHRISTOPHER HARRIS** with Dorothy Gunn, Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

NORA, AN ASSOCIATION OF RESPONSIBLE RECYCLERS

By: //Claire A. Manning
Claire A. Manning, one of its attorneys

BROWN, HAY & STEPHENS, LLP
Claire A. Manning, Esq.
Registration No. 3124724
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
(217)241-3111 (fax)
Cmanning@bhslaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **PRE-FILED TESTIMONY OF CHRISTOPHER HARRIS** was filed, electronically, with the Clerk of the Illinois Pollution Control Board, and with copies of such rule proposal being placed in the U.S. mail on May 16, 2006 and addressed to:

DOROTHY GUNN
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

TIM FOX
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Stephanie Flowers
Division of Legal Counsel
1021 North Grand Avenue
P.O. Box 19276
Springfield, Illinois 62794-9276

ILLINOIS DEPARTMENT OF NATURAL RESOURCES
William Richardson
Chief Legal Counsel
One Natural Resources Way
Springfield, Illinois 62702-1271

OFFICE OF THE ILLINOIS ATTORNEY GENERAL
Matthew J. Dunn
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

ILLINOIS ENVIRONMENTAL REGULATORY GROUP
Deirdre K. Hirner
Executive Director
3150 Roland Avenue
Springfield, Illinois 62703

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of)
)
SPECIAL WASTE REGULATIONS) R06-20
CONCERNING USED OIL,)
35. Ill. Adm. Code, 808, 809)
)

PRE-FILED TESTIMONY OF CHRISTOPHER HARRIS

My name is Christopher Harris. I have the privilege of serving as General Counsel to NORA, An Association of Responsible Recyclers. On behalf of NORA, I would like to express our appreciation for the opportunity to offer additional views of the rule proposal in this matter. The purpose of my testimony today is to demonstrate that manifesting shipments of used oil (and materials regulated as used oil) is not necessary for the protection of human health and the environment. Therefore, NORA respectfully requests that Illinois discard the used oil manifest requirement and thereby remove an unnecessary and expensive paperwork burden on the used oil generators and transporters in this state.

NORA is a national trade association whose members provide recycling services throughout the entire United States including Illinois. In addition to collecting and recycling used oil, NORA members collect and recycle oil filters, wastewater, antifreeze and parts cleaning solvents. NORA was founded in December 1984 and has participated in all of EPA's rule-making activities concerning used oil conducted by the United States Environmental Protection Agency ("US EPA"), beginning with the first set of used oil management standards that were promulgated in November 1985.

To provide some background to NORA's position, I would like to briefly review the origins of the used oil regulatory system in the United States. The enactment by Congress of the

Used Oil Recycling Act of 1980 marked the first legislative effort to address the unique challenge of used oil. In the Congressional "findings" that serve as the predicate for this law, Congress determined that (1) used oil is a valuable source of increasingly scarce energy; (2) technology exists to reprocess and recycle used oil; and (3) that used oil constitutes a threat to public health and the environment when disposed of improperly. 42 U.S.C. 6901; See *also* H.R. Rep. No 1415, 96th Cong., 2d Sess., 10 (1980); S. Rep. No. 879, 96th Cong., 2d Sess. 1 (1980). Because the U.S. Environmental Protection Agency failed to issue any regulations to implement the 1980 statute, Congress, as part of the 1984 RCRA reauthorization, specifically directed the EPA to establish a used oil regulatory program governing the generation, marketing, transportation and recycling of used oil. 42 U.S.C. 6935.

The legislative history of the 1984 Congressional mandate makes clear that "where protection of human health and the environment can be assured....the [EPA] Administrator should make every effort not to discourage recycling of used oil. For example, if there are several alternative controls that would be environmentally acceptable, the Agency should allow those which would be least likely to discourage used oil recycling." H.R. Rep. 1133, 98th Cong., 2d Sess., 114 (1984). Responding to this directive, EPA promulgated the basic regulations governing used oil management in November 1985 and followed up with a more comprehensive set of regulations in September 1992. These regulations, codified at 40 CFR Part 279, are usually referred to as "the used oil management standards" or as the "Part 279 regulations." The regulations have been adopted in Illinois pursuant to this Board's identical-in-substance rulemaking authority, and are found at 35 Ill. Adm. Code Part 739.

The component of the used oil management standards we are concerned about today is the record-keeping requirement for shipments of used oil. Under the federal and corresponding

state requirements, transporters are required to maintain records (for at least three years) documenting the acceptance and delivery of each used oil shipment. Records for each shipment must include: (1) the date of shipment; (2) the name, address and EPA Identification Number (if applicable) of the entity who provided the used oil for shipment; (3) the quantity and type of used oil accepted; and (4) the dated signature of the party providing the used oil.

In addition, transporters must also create and maintain records (for at least three years) of each shipment of used oil that is delivered to another transporter, fuel marketer, or processor. Records of each delivery must include: (1) the date of delivery; (2) the name, address and EPA identification of the receiving facility or transporter; (3) the quantity of used oil delivered; and (4) the dated signature of a representative of the receiving facility or transporter. 40 CFR 279.46.

A parallel set of records must be maintained by processors. 40 CFR 279.56; 35 Ill. Adm. Code. Moreover, processors must also maintain an analysis plan which requires comprehensive records regarding (1) any used oil subject to the rebuttable presumption; and (2) analysis demonstrating meeting the on-specification standards. This information must be included, together with reports on any incidents requiring implementation of the contingency plan, in the operating record and all biennial reports. 40 CFR 279.57.

Finally, all used oil generators must comply with applicable U.S. Department of Transportation hazardous material requirements that include identification and classification, packaging, marking, labeling and manifesting used oil destined for disposal. Transporters of used oil have to comply with DOT requirements governing placarding, record-keeping, insurance, and reporting spill incidents. 40 CFR 279.43(b).

US EPA has determined that these tracking and record-keeping requirements adequately protects human health and the environment and pointed out that “[a]ll of this information [required by the tracking requirements] is currently required in the standard EPA hazardous waste manifest.” 50 Federal Register 49196, November 29, 1985. In other words, all of the relevant information concerning used oil shipments is collected, recorded, and available to regulators; but it was not necessary to impose the burden of a requiring manifest to accompany each shipment. Given that used oil shipments generally involve more transactions¹ than hazardous waste shipments (and each segment of the transportation journey requires a separate manifest) it was reasonable for EPA to conclude that manifesting used oil shipments was not necessary. In this way, EPA fulfilled the Congressional mandate to choose the regulatory option that “would be least likely to discourage used oil recycling.” In contrast, the Illinois manifest requirement for shipment of used oil imposes a significant burden on generators and transporters of used oil as the testimony of Gregory Ray, Vice President of Crystal Clean, clearly establishes.

As the Board is aware, very few states require manifests for transporting used oil. (Nearly all of the states have adopted the federal used oil management standards with respect to tracking requirement.) None of the states bordering Illinois imposes any manifest requirement on used oil generators or transporters. It is apparent to NORA that the Part 279 tracking system (without any manifest requirement) works well. It does not have any “loopholes” and has not been subject to abuse. Any question regarding the origination, transportation, destination, quantity, and timeline of any used oil shipment can be answered by the required documents.

Finally, NORA strongly believes that the proposed regulatory change ending the manifest requirement for used oil should encompass all materials regulated as used oil under 40 CFR Part

¹ A shipment of used oil commences with the generator and may be collected from one transporter before being transferred to another. It may be subsequently stored at a transfer facility before being sent to a processor. In contrast, hazardous waste is typically sent from the generator directly to the TSD facility.

239 and 35 Ill. Adm. Code Part 739. The tracking system works effectively to monitor used oil shipments and does so with equal effectiveness for materials regulated as used oil (such as oil/water mixtures). Any advocate of requiring manifests for materials regulated as used oil should be asked to cite either an actual or theoretical example of how the Part ~~279~~/ Part 739 tracking system would NOT function to provide all relevant information and why the manifest requirement would provide such information.

Accordingly, for the reasons stated above, NORA respectfully requests that the Illinois Pollution Control Board amend Parts 808 and 809 of its rules and end the manifest requirement for used oil and materials regulated as used oil.

Respectfully submitted,

/s/Christopher Harris
Christopher Harris
General Counsel
NORA, An Association of Responsible Recyclers

BROWN, HAY & STEPHENS, LLP
Claire A. Manning, Esq.
Registration No. 3124724
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
(217) 241-3111 (fax)
Cmanning@bhslaw.com