

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 GREG RAY** 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
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **PRE-FILED TESTIMONY OF GREG RAY** 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:

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

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

PRE-FILED TESTIMONY OF GREGORY RAY

I am Gregory Ray, Vice President of Business Management for Heritage – Crystal Clean, LLC. I thank the Illinois Pollution Control Board for hearing my testimony today.

I have a very extensive background in the used oil recycling industry, with more than twenty years of professional experience. After earning degrees from Stanford University (A.B. Economics, M.S. Industrial Engineering) I took a position with a chemical engineering company that built the first modern used oil re-refinery in the United States – Evergreen Oil, located in Newark, California. I spent ten years with Evergreen Oil, with responsibility for a wide range of functions including used oil collection, finance and administration, acquisitions, and new business development. During my tenure, Evergreen became the pre-eminent used oil recycler in California. During the early 1990's I hosted visits from President Bush and Vice Presidential candidate Al Gore. I also worked on international used oil re-refining studies and projects for Czechoslovakia, Poland, and Indonesia.

In 1994 I joined Safety-Kleen, then the largest environmental service company in North America, to head their used oil collection program. Safety-Kleen already had a large used oil collection business, and during the next five years we successfully expanded this throughout all of the 48 continental states, and more than doubled the total volume collected for re-refining.

In 1999 I joined Heritage – Crystal Clean (HCC), a smaller company with ambitious growth plans. HCC has successfully expanded our business into thirty states, serving small and mid-sized customers with a full range of environmental services – including used oil collection in many cases.

Throughout my career, I have participated in several industry trade associations, including the National Oil Recyclers Association (NORA) and also the Association of Petroleum Re-refiners (APR, later integrated into NORA). I have served as the Chairman of NORA's Government Affairs Committee, and I have been an active participant in various policy debates that impact our industry.

I would suggest that my extensive experience in the used oil industry, managing both large and small businesses in a variety of geographic areas, is a suitable background for offering testimony and advice on public policy relevant to used oil collection and recycling.

During the late 1980's, the industry was vigorously debating the issue of whether used oil should be classified as a hazardous waste. This debate was decided by Federal EPA's decision that used oil could be most effectively regulated if managed without the burdens associated with a hazardous waste designation – based on the EPA's understanding that most used oil was already being managed via

recycling. EPA considered the arguments of used oil generators who were eager to avoid the bureaucracy of manifesting and ID numbers, and concluded that these burdens were not necessary to ensure the protection of human health and the environment. While eschewing the hazardous waste label, EPA did promulgate management standards for used oil recyclers and marketers – standards which have come to be viewed by the industry as reasonable and sufficient.

Subsequently, many states adopted used oil rules and regulations that mirrored the EPA management standards. Both NORA and the American Petroleum Institute actively encouraged state governments to follow this path and adopt the federal framework. Over several years, the vast majority of states did so, creating a nearly uniform national system for used oil recycling. Today, generators and collectors operating across state boundaries can typically follow a simple and straightforward set of rules to see that used oil is safely collected and recycled, while conserving a valuable resource and protecting the environment.

Currently, HCC collects used oil (in bulk tank trucks) from generators in the following states: Illinois, Missouri, Indiana, Ohio, Kansas, Wisconsin, Arkansas, Louisiana, Texas, Mississippi, Alabama, Georgia, Tennessee, Kentucky, North Carolina, and South Carolina. To the best of my knowledge, Illinois is the only state from this list that classifies used oil as a special waste¹.

The Statement of Reasons provides some of the history explaining why Illinois is one of the very few states that have not yet adopted the uniform national approach. The current situation is unfortunate and undesirable. Illinois' unique used oil regulations make the state a more difficult place to do business – for generators as well as used oil collectors and recyclers. The most significant deviation from the federal system is that Illinois continues to require generators to ship used oil using special waste manifests, which is an administrative burden with no benefit to human health or the environment.

The issue of consistency across states is important to many of our customers who have multiple facilities. Such customers include, for example, chains of auto service facilities, auto dealerships, trucking companies, and manufacturers. These customers often have one environmental manager with oversight for many facilities in different states. Obviously, these customers find it much easier to follow regulations that are nearly uniform throughout their operating area, and prefer this to regulations that are a patchwork of different rules for different states.

Illinois' approach to this issue has also erected substantial barriers to entry for new competitors. Firms that were engaged in used oil collection in Illinois eight years ago were often granted written authorization by the Illinois Environmental Protection Agency (IEPA) to collect used oil without obtaining a manifest from each generator (instead, they were granted multi-stop permits which allowed them to use a single manifest per truckload per day). We believe that many of these firms have continued this practice. In contrast, five years ago my firm (HCC) requested a similar authorization from IEPA that was denied - on the grounds that IEPA could no longer issue these permits. Therefore, for the past five years HCC has been in the disadvantageous position of requiring each of our customers to use special waste manifests – documents that they often don't need to provide² when doing business with competitors. This has unnecessarily burdened HCC's customers and slowed our growth – all because we are complying with a rule that has no value and should be abolished. For those five years we have been seeking relief from this rule, and we are grateful to finally have a suitable forum to air this inequitable situation.

¹ And Illinois is the only state from the list that requires generators to manifest used oil shipments.

² I believe the Illinois EPA would say that all generators are required to manifest their used oil as special waste, and that the old multi-stop permits issued to our competitors are no longer valid. This is a technical rather than a pragmatic argument, since the manifesting requirement has not been broadly communicated to the generator community, and it is not being enforced.

Today, HCC has approximately 1,100 customers in Illinois who are subject to the special waste manifesting provisions related to used oil. We generate approximately 2,800 Illinois special waste manifests for used oil annually – documents that we prepare for our customers, ensuring that they are signed by multiple parties and are promptly returned and properly filed. HCC has several full time employees engaged in the printing and filing of manifests – and another eight or ten field personnel who need to deal with Illinois special waste manifests for used oil as a significant fraction of their daily work³. We estimate that HCC spends \$100,000 per year on our Illinois manifesting activity, and HCC is one of the smallest used oil collectors in Illinois. It is my contention that all of this paperwork does nothing to enhance the protection of human health and the environment – to the contrary, the exercise is a waste of paper, time and energy. Most state environmental agencies have apparently come to a similar conclusion – as evidenced by their adoption of the federal management standards which do not require manifesting for used oil.

Next, I would like to address the specific language that might be appropriate to implement the intended exemption.

With the filing dated December 13, 2005, NORA proposed to exempt from manifesting "Used oil as defined by or managed pursuant to 35 Ill. Adm. Code 739." Subsequently, we have received and reviewed the comments submitted on May 1, 2006 by the Illinois EPA. With these comments, Illinois EPA objects to the original NORA-proposed wording. I understand that the Illinois EPA believes that this original wording could be construed to exempt from manifesting certain used oil which is NOT subject to management pursuant to 35 Ill. Adm. Code 739. Certainly that was not NORA's intent. We have therefore proposed different language which we believe is fully responsive to the concern voiced by Illinois EPA. We have amended our proposal to suggest that the manifest exemption should apply to "materials subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739." Not only does this directly address the concern expressed by Illinois EPA, but it makes for a more clear and useful regulation. I'd like to elaborate on this point.

Federal used oil regulations define used oil briefly and narrowly (at 40 CFR 279.1):

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Additionally, when writing these regulations, federal regulators recognized that there were a variety of common materials which occur in proximity to used oil and are compatible with used oil, and are safely and properly recycled within the national used oil recycling system. Some of these materials are mixtures that are almost impossible to distinguish from normal used oil. The regulators felt that it was beneficial that these used-oil-like materials were also eligible to be managed under the used oil regulations. Some examples of these materials – materials which are NOT used oil, but which are subject to regulation as used oil - can be found at 40 CFR 279.10:

Mixtures of used oil and conditionally exempt small quantity generator hazardous waste.

Materials containing or otherwise contaminated with used oil that are burned for energy recovery.

Mixtures of used oil and fuels or other fuel products.

³ In the event that the proposal is adopted, HCC does not expect to eliminate any jobs – all personnel involved in the special waste manifesting of used oil will be able to re-direct their efforts within our company to more value-added functions.

Wastewater contaminated with more than de minimis quantities of used oil.

The result is that in almost all states, the used oil management system participants, including generators, collectors, processors, and marketers, have developed programs to manage all of these materials – both used oil as defined, and also the used-oil-like mixtures – safely and efficiently.

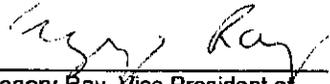
The existing Illinois used oil regulations follow the form of the federal used oil regulations very closely. Each of the used-oil-like mixtures described above is also addressed in the Illinois regulations, and is deemed appropriate to manage pursuant to the state's used oil regulations.

We think it is clear that if and when the proposed manifest exemption for used oil is adopted by Illinois, it should apply not only to used oil, but also to all of the used-oil-like mixtures which are already subject to management as used oil pursuant to federal regulations and also pursuant to 35 Ill. Adm. Code 739. To do otherwise would create a variety of problems, including:

- A) Inconsistency with all other states and with the federal used oil system, instead of achieving the national consistency we seek;
- B) Creating an artificial distinction between materials which are virtually impossible to differentiate in the real world;
- C) Erecting an impediment to the safe recovery of CESQG hazardous waste.

Allowing the manifest exemption for used oil and used-oil-like mixtures provides consistency with other state programs. It does nothing to change the current management practices in Illinois – which already allow all these materials to be managed as used oil – except that it would eliminate the requirement for unnecessary manifests. **Our proposal will relieve the industry and Illinois generators of a state-specific administrative burden, without compromising human health or the environment.**

In conclusion, I thank you for considering our proposal and my testimony. I believe that this proposal is in the best interests of the citizens of the state of Illinois. I am pleased to respond to your questions.


By Gregory Ray, Vice President of
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May 10, 2006
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Graphical Representation of Manifest Exemption Definitions

A. Original NORA proposal (12/13/05) – potential interpretation

Material Definition		Management	Practice
		Handled per Used Oil Management Standards (35 IL 739)	Managed Outside of Used Oil Management Standards (35 IL 739)
Material Definition	Used Oil as defined at 35 IL 739.100	XXX	XXX
	Other Materials Subject to Regulation as Used Oil per 35 IL 739.110	XXX	

B. Illinois EPA suggestion (5/1/06)

Material Definition		Management	Practice
		Handled per Used Oil Management Standards (35 IL 739)	Managed Outside of Used Oil Management Standards (35 IL 739)
Material Definition	Used Oil as defined at 35 IL 739.100	XXX	
	Other Materials Subject to Regulation as Used Oil per 35 IL 739.110		

C. Revised NORA proposal (5/10/06)

Material Definition		Management	Practice
		Handled per Used Oil Management Standards (35 IL 739)	Managed Outside of Used Oil Management Standards (35 IL 739)
Material Definition	Used Oil as defined at 35 IL 739.100	XXX	
	Other Materials Subject to Regulation as Used Oil per 35 IL 739.110	XXX	