

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO THE)
BOARD'S SPECIAL WASTE REGULATIONS) **R06-20**
CONCERNING USED OIL) **(Rulemaking – Land)**
35 ILL. ADM. CODE 739,808, 809)

**COMMENTS OF NORA, AN ASSOCIATION OF RESPONSIBLE RECYCLERS
ON COMMENTS SUBMITTED BY
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

On October 20, 2009, the Illinois Environmental Protection Agency (“IEPA” or “the Agency”) submitted comments in this rulemaking concerning the Board’s proposed amendments to regulations governing used oil. NORA, An Association of Responsible Recyclers (“NORA”) has had very little opportunity or time to consider IEPA’s comments prior to the expiration of the comment period on October 26, 2009. It should be noted that IEPA declined to provide the undersigned a copy of the Agency’s comments.

NORA’s comments address each of the Agency’s numbered concerns and correspond to the numerical designations provided by the Agency.

1. NORA has no objection to IEPA’s proposed wording change: “the characteristic of hazardous waste has been extinguished in the resultant mixture.”

2. IEPA has proposed changing the content requirement of used oil/characteristic mixtures from 50 percent used oil to 75 percent used oil. NORA’s proposal on this requirement was submitted to the Board and IEPA prior to the hearing on October 1, 2008 and was discussed at such hearing. This is the first time that IEPA has put forward this proposed change. IEPA’s only support for this change is its own argument that “the resultant mixture of used oil would behave more like used oil and that large quantities of other wastes would be recycled separately...” For some unexplained reason, IEPA continues to believe, or at least assert, that the Board’s proposed rule would alter recycling practices in the industry or undermine hazardous waste regulations. It would do neither. The Board’s proposed rule simply exempts certain categories of used oil and materials regulated as used oil from the manifest requirement. The materials that would be exempt from the manifest requirement would still be subject to Department of Transportation tracking requirements as well as the tracking and certification requirements set forth in the proposed rule. Moreover, all hazardous waste rules will remain in place and can be applied whenever appropriate. A mixture that is documented on a manifest rather than on a tracking document does not make the mixture “behave more like used oil.”

Much of the testimony at the October 1, 2008 hearing before the Board provided detailed explanations of how the used oil and wastewater recycling industries function. It was demonstrated that recycling practices are influenced by market conditions, recycling technology,

the behavior of generators, and substantive environmental regulations. Manifests and tracking documents, according to NORA members, while duplicative and unnecessarily expensive in time and resources, do not govern nor influence recycling practices.

Consequently, NORA recommends that the Board not adopt IEPA's proposed change.

3. IEPA's proposal to dramatically expand generator certifications would place far more onerous requirements on used oil generators who want to use the tracking document than on generators of hazardous waste. Under IEPA's proposal, generators who use a tracking document in order to avoid unnecessary paperwork relating to manifests would be punished by having to compile and maintain an enormous amount of *additional* paperwork. This additional burden, apparently, is IEPA's not-so-subtle technique for sabotaging the Board's entire proposal to reduce the existing burden on generators and transporters. Obviously, under IEPA's scheme handling manifests would be much easier than handling the landslide of paper that the tracking documents would require.

The Board will recall from the hearing on October 1, 2008 that IEPA does NOT review manifests generated under the current system. It does NOT want any manifests sent to IEPA. If the Agency has not reviewed manifests under the current program, why would it want generators to compile and maintain many more documents? Certainly it would not be for the purpose of IEPA's review of those documents. It is more likely that IEPA intends to discourage generators from using tracking documents instead of manifests.

NORA strongly recommends that the Board reject IEPA's proposal on this item and adopt the Board's existing language.

4. IEPA's has, in effect, proposed to limit the definition of wastewater to water that contains less than one percent of petroleum. The Board will observe that IEPA has provided no rationale for its proposal. NORA contends that IEPA's proposal makes no practical sense. It should be pointed out (1) that the petroleum content in most wastewater would exceed one percent; (2) all (or virtually all) of this waste water (i.e. over one percent and under) is treated in centralized waste treatment units that are regulated under the Clean Water Act in accordance with stringent treatment standards and regulations promulgated by the U.S. Environmental Protection Agency; and (3) all of this wastewater will continue to be managed and treated in precisely the same way regardless of whether the Board's proposed rule is adopted. The benefit of the proposed rule is the worthwhile elimination of duplicative paperwork. The result of IEPA's proposal, however, would be to eliminate the tracking document option. Why? Because wastewater generators are not going to maintain a dual system: tracking documents for less than one percent of petroleum and manifests for more than one percent. IEPA's proposal has zero environmental protection benefit. It is intended simply to make the Board's proposal with respect to tracking wastewater unworkable.

NORA does not object to IEPA's proposal to define British Thermal Unit.

5. NORA does not object to IEPA's proposal to define "classification."

6. NORA does not object to IEPA's proposed clerical corrections and the clarification that 5000 Btu per pound requirement (not "limit") applies to the mixture's non-used oil material.
7. NORA does not object to replacing the word "materials" with the term "used oil mixtures."
8. NORA does not object to the IEPA's proposal to correct a clerical error.

Respectfully submitted,

Christopher Harris
General Counsel
NORA, An Association of Responsible Recyclers

October 26, 2009

1511 West Babcock
Bozeman, Montana 59715