

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO THE) R06-20 Docket B
BOARD'S SPECIAL WASTE) (Rulemaking –Land)
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 respectfully submits the following comments regarding the R06-20 Docket B first notice proposal of the Illinois Pollution Control Board (“Board”) published in the Illinois Register on January 22, 2010. *See*, 34 Ill. Reg. 1257, 1267, and 1275.

Definition of “Wastewater”

The Board in its first notice proposal for R06-20 Docket B has put forth three definitions related to the new tracking requirements for 35 Ill. Adm. Code 739 (“Part 739”) and the new manifest exemption under 35 Ill. Adm. Code 808 and 809 (“Parts 808 and 809”). For the first two terms, “Btu” and “classification”, the Board chose to accept the Illinois EPA’s proposed definition language and therefore the Illinois EPA does not have further comments on the Board’s proposed definitions of these terms.

However, for the third term, “wastewater”, the Board declined to accept the Illinois EPA’s proposed definition. Instead, the Board has selected the definition of “wastewater” from 35 Ill. Adm. Code 301.425 (“Section 301.425”) to define wastewater that may be mixed with used oil and not be subject to manifest. It has been the Illinois EPA’s understanding that the

manifest exemption was extended to mixtures of used oil and other special waste that would not significantly influence the management requirements for the used oil when it unintentionally contaminates used oil or is unintentionally mixed with used oil. However, the definition that was chosen by the Board for “wastewater” allows the exemption to be too broad. A review of the definition of “wastewater” at Section 301.425 and the terms used within that definition that are defined in the same portion of the regulations reveals that it is a broad definition meant to cover anything subject to regulation under the Clean Water Act.

Under Section 301.425 the term wastewater is defined as

“sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff”

At Section 301.385 the terms “sewage” is defined as

“water-carried human and related wastes from any source.”

At Section 301.285, the term “industrial waste” is defined as

“any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business or from the development, processing, or recovery, except for agricultural crop raising, of any natural resource.”

And at Section 301.330, the term “other wastes” is defined as

“garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye stuffs, acids, chemicals and all other substances not sewage or industrial waste whose discharge would cause water pollution or a violation of the effluent or water quality standards.”

Therefore, the Board’s definition would allow all human and related wastes meeting the definition of sewage, and any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business that meets the definition of industrial waste, and all garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye stuffs, acids, chemicals and all other substances whose discharge would cause water pollution or

a violation of the effluent or water quality standards to be transported without a manifest provided that it contains some quantity of used oil. The Illinois EPA's concern all along has been that other wastes will be transported under this exemption that will not behave like used oil and that this will cause environmental problems when managed as used oil. The Illinois EPA's belief is that by using this definition at Section 301.425, any amount of used oil that finds its way into another wastestream would qualify that wastestream as a mixture of used oil and wastewater. The above mentioned wastes mixed with small amounts of used oil will clearly not behave the same as used oil and would require different management standards.

For the aforementioned reasons, the Illinois EPA has drafted the following definitions and proposes that the Board consider adding these two definitions in lieu of the Section 301.425 definition:

“Wastewater” means stormwater, surface water, groundwater or nonhazardous washwater that has been contaminated with used oil but has not been mixed with sewage, industrial waste or any other waste.

“Washwater” means a mixture of water, nonhazardous cleaning compounds, and residue that results from cleaning surfaces and equipment and which is collected separately from sewage.

The Illinois EPA believes these two definitions would allow the type of wastewater described in testimony by NORA members and would allow stormwater and washwater to be collected in the same tank. (See R06-20 Docket A, Transcript of Oct. 1, 2008 Hearing, p. 87, Line 16-20)

Generator Certification

The Illinois EPA would also like to comment on the certification process for generators.

The Illinois EPA proposed a generator certification at 35 Ill. Adm. Code 809.501(a)(2) that is

similar to the certification required at Section 22.48 of the Illinois Environmental Protection Act. The Board declined to adopt this type of generator certification and discussed its reasoning in the Board Order dated December 17, 2009 regarding Docket A of R06-20. The Illinois EPA believes there was a misunderstanding and would like to make it clear that the intention was not to have used oil generators certify that the used oil mixture is no longer a special waste, but to have them follow the same type of format to certify that the used oil mixture meets the requirements for a manifest exemption. The frequency of the certification may also have been misunderstood. The intention was not to require specific information be developed for each shipment, but to develop a one-time record of the information used to determine that the used oil mixture qualifies for the exemption. This certification language was also meant to identify the type of information that used oil generators may be required to provide in case of enforcement. Because at the point of inspection by the Illinois EPA the used oil mixtures will most likely have been consolidated from many generators, having a certified record of the waste stream and generating process to refer to would allow the Illinois EPA to identify which generator may have caused the contamination. Per testimony by NORA, the Illinois EPA believes the information needed for the certification would already be compiled. (See R06-20 Docket A, Transcript of Oct. 1, 2008 Hearing, p. 40-41.) Under the Illinois EPA's proposed language, a new certification would only be submitted if the waste stream or generating process changed. The certification would only need to be maintained by the generator, but would be available to the Illinois EPA, the transporter, or the receiving facility if requested. Since the generator would probably have only one used oil mixture waste stream and probably only one certification, the Illinois EPA believes this would not be a paperwork burden. Therefore, the Illinois EPA urges the Board to reconsider adding the certification language at 35 Ill. Adm. Code 809.501(a)(2) as it

was proposed in the comments of the Illinois EPA dated October 20, 2009. (See R06-20 Docket A, Public Comment #111).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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