

PC# 118

ORIGINAL

**Comments of NORA, An Association of Responsible Recyclers  
Regarding Sue Brauer's April 29, 2010 Letter to IPCB**

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JUL 12 2010

Docket No. R06-20

STATE OF ILLINOIS  
Pollution Control Board

This responds to the letter dated April 29, 2010 to the Illinois Pollution Control Board concerning Docket R06-20.

In her letter, Ms. Brauer states: "[a]llowing used oil and nonhazardous waste mixtures (e.g. wastewater) to be regulated as used oil under 40 CFR Part 279 potentially poses threats to human health and the environment." This is an astounding statement for the following reasons:

- (1) Nothing in the completed rulemaking for this docket nor the proposed definitions has anything to do with what is allowed to be regulated under 40 CFR Part 279. The Board's rulemaking allows a tracking document to be substituted for a manifest for used oil and certain categories of materials regulated as used oil. In this rulemaking there are no explicit or implied changes to 40 CFR 279 or any other substantive provision of either federal or state law.
- (2) Ms. Brauer, an employee of the U.S. Environmental Protection Agency, appears to be criticizing certain provisions of 40 CFR Part 279, the federal used oil management standards. Part 279 contemplates and allows the mixture of used oil and non-hazardous solid waste. These rules have been in effect since 1985. If there is a threat posed by these rules, it is interesting that neither the U.S. EPA nor Ms. Brauer has ever put forward a proposal to revise these regulations. Like all other regulations promulgated pursuant to the Resource Conservation and Recovery Act, the used oil management standards (40 CFR Part 279) were drafted for the purpose of protecting human health and the environment. Ms. Brauer does not (because she cannot) cite even one EPA document that suggests that Part 279 does not protect human health and the environment.
- (3) The only state in EPA Region V that requires manifests for used oil is Illinois. If Ms. Brauer believes, as she has stated that "[a]llowing used oil and nonhazardous waste mixtures (e.g. wastewater) to be regulated as used oil under 40 CFR Part 279 potentially poses threats to human health and the environment" why has she not proposed a regulatory "fix" to the other states in Region V? Of course, this would be a difficult proposal to make in the context of manifests because, as stated above, the manifest requirement has nothing to do with whether or not used oil mixtures are regulated under 40 CFR Part 279.

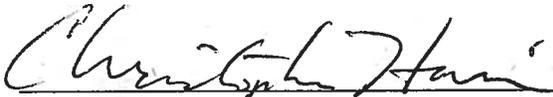
On page 2 of her letter Ms. Brauer asks: "[b]y allowing mixtures of used oil with nonhazardous solid wastes to benefit from the exemption to special waste requirements, does the current rulemaking encourage mixture of used oil with wastewater containing toxic contaminants that are not controlled by the used oil fuel specifications for arsenic, cadmium, chromium, lead, total halogens and flashpoint?"

Again, nothing in this rulemaking either encourages or discourages mixtures of any materials with used oil. Moreover, Ms. Brauer poses this question but deliberately fails to answer it.

Part of the absurdity of Ms. Brauer's position is that U.S. EPA *does not require manifests* for used oil or materials regulated as used oil. How then is it logically possible for an EPA employee to suggest that if a state undertakes a change in a paperwork requirement (i.e. allowing the information required under a manifest to be set forth in a tracking document) that such change would "encourage" mixtures of used oil with other nonhazardous materials? If Ms. Brauer believes that one of her duties at EPA is to participate in state rule-making proceedings she should also address the question of the level playing field, i.e., the situation where a state departs from the federal standard and imposes a regulatory burden that does not exist in the adjacent states.

Ms. Brauer appears to have a purely personal point of view on this rule-making and it was not appropriate to represent her personal point of view as a U.S. EPA position. Moreover, on the substance of her complaint, her issue is with regulations duly promulgated by the agency she works for – not the present rule-making by the Board addressed in Docket R06-20.

Respectfully submitted,



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July 7, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**PROPOSED AMENDMENTS TO THE )  
SPECIAL WASTE REGULATIONS ) R06-20 Docket B  
CONCERNING USED OIL ) Rulemaking - Land  
35 ILL. ADM. CODE, PARTS 739, 808, 809 )**

**CERTIFICATE OF SERVICE**

I, CHRISTOPHER HARRIS, an attorney, hereby certify that I filed with the Office of the Clerk of the Illinois Pollution Control Board the following documents:

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and will cause the same to be served upon the following persons by sending it via first class mail, United States Postal Service on July 7, 2010.

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