

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R12-13
PROPOSED AMENDMENTS TO)	(Rulemaking-Land)
NONHAZARDOUS SPECIAL WASTE)	
HAULING AND THE UNIFORM)	
PROGRAM)	
(35 Ill. Adm. Code 809))	
)	

NOTICE

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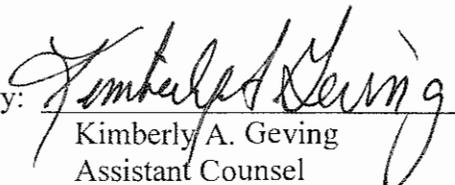
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Illinois EPA") Pre-filed Written Testimony of David Walters a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
 PROTECTION AGENCY

By: 

 Kimberly A. Geving
 Assistant Counsel
 Division of Legal Counsel

DATE: December 20, 2011

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TESTIMONY OF DAVID WALTERS

My name is David Walters. I am currently the manager of the Waste Reduction and Compliance Section of the Bureau of Land of the Illinois Environmental Protection Agency. I have been employed at the Agency since February 1991. The Waste Reduction and Compliance Section administers the household hazardous waste collection program, the various annual reports due to the Bureau of Land, the tracking of violation notices, and the issuance of hauler permits.

A. Background

The Illinois Environmental Protection Agency has permitted special waste haulers (hazardous and nonhazardous) since 1979. Prior to 1998, the Agency issued one special waste hauler permit that was valid for haulers of nonhazardous and hazardous special waste generated in or destined to an Illinois facility.

In 1997, Public Act 90-219 established the Uniform State Hazardous Materials Transportation and Registration program in Illinois. Amendments were made to Sections 21, 22.2, and 44 of the Act and only pertained to transporters of hazardous waste. Uniform Program permits were to apply to hazardous waste transportation into, through, or within the State. The intent of the Uniform Program was to create a national reciprocal permitting program that would

recognize one permit for the transportation of hazardous materials in all states and utilize the same forms and fee assessment calculations.

During the 1990s the perception developed that the federal government would preempt the ability of states to register and permit haulers of hazardous waste or materials. Instead, Congress mandated that the Federal Motor Carrier Safety Administration adopt rules for the Uniform Program when 26 states joined the Alliance for Uniform Permitting (the Alliance). Trucking Associations were in favor of the new permitting program as it promised to reduce the administrative burden of applying for permits from multiple states and pushed legislation requiring Illinois to join the program in 1998.

Initially, seven states joined the Alliance. Illinois, Michigan, and Oklahoma only permitted hazardous waste haulers, while Ohio, Minnesota, Nevada, and West Virginia permitted haulers of all hazardous materials. Minnesota withdrew from the program effective August 1, 2010. More than thirteen years after Illinois passed the Uniform Program legislation, only five states remain in the program and there is little likelihood of additional states joining. Oklahoma joined the Alliance in the late 1990s and was the last state to join.

A majority of states continue to permit hazardous waste haulers on their own. To name a few, Missouri, Indiana, Wisconsin, Colorado, California, Georgia, and Connecticut all have some form of permitting for hazardous waste and materials transporters. After more than a dozen years, it is clear that the Federal Motor Carrier Safety Administration will not meet the 26 state threshold need to adopt the rules.

Under the Uniform Program, a motor carrier of hazardous waste or materials obtains credentials in the state the carrier travels the most miles and that state becomes its base state. Those credentials are then accepted in all participating states. The permitting state collects all

registration fees due in any state that the hauler travels on public roadways and distributes them to the other states (i.e., apportions the fees). The Agency annually collected a \$250 processing and audit fee from any hauler utilizing Illinois as its base state. A \$20 fee was also collected for each vehicle a hauler used and was apportioned on a reciprocal basis with other states according to the number of miles traveled in each state and the number of miles a company travels hauling hazardous waste or materials.

Initial projections in 1998 were that the Agency would generate more than \$330,000 each year from the Uniform Program. The reality is that the moneys have fallen well below those predictions. For SFY 2010, 90 haulers listed Illinois as the base state and \$57,395 was collected. A total of \$25,405 of that was distributed to the other participating states, while Illinois received only \$11,480 in return. The net funds generated for Illinois totaled \$43,470. The earlier numbers that were set out in the Agency's Statement of Reasons represented calendar year. These numbers represent SFY 2010. The earlier numbers were pulled before all figures were in for SFY 2010.

In a number of ways, the Uniform Program did not live up to its potential. First and foremost, the Alliance has not even come close to meeting the 26 state threshold for adoption of rules by the Federal Motor Carrier Safety Administration. With Illinois and Minnesota dropping out of the program, only five states remain. The burden reduction envisioned by the trucking industry has never come to fruition.

Furthermore, the mandate of Illinois joining the Uniform Program placed an increased burden on the Agency. The special waste hauler permit, which remains in effect for haulers of nonhazardous special waste, is very basic and asks for transporter name, address, phone number, contact, EPA identification number, and vehicle identification. The Uniform Program permit

application requires the same transporter identification information as well as information about the transporter's federal safety rating; history of permit denials, suspensions, or revocations; history of hazardous waste transportation incidents; disclosure of terminals; and compliance with federal annual vehicle inspection requirements, financial responsibility, driver standards, training, equipment specifications, and record keeping. Because of staff reductions, it is difficult for the Agency to keep up with that work load and maintain all other transporter, manifesting, and reporting responsibilities.

It is clear that the limited funds generated do not warrant the increased responsibilities of reviewing and approving the complex uniform applications to permit the haulers. Little or no additional public safety or environmental protection is gained from the Uniform Program. As a result, the General Assembly passed legislation (Public Act 97-0220) and removed the portions of the Act in Sections 21, 22.2, and 44, which mandated the Agency's participation in the Alliance. The special waste hauler permitting requirements, however, remain. Therefore, all transporters of special waste (hazardous and nonhazardous) are now required to obtain a special waste hauler permit prior to transporting waste from an Illinois generator or to an Illinois facility.

B. The Proposed Amendments

1. Subpart A: General Provisions

Section 809.103 provides term and word definitions, many of which are defined by the Act and are referenced as such. Those terms and words that only correlated to the Uniform Program have been deleted.

Section 809.104 incorporates by reference provisions of federal regulations that pertain to hazardous waste transportation. The references that pertain solely to the Uniform Program have been deleted.

2. Subpart B: Special Waste Hauling Permits

The existing Subpart B differentiated the hazardous waste from nonhazardous special waste. Deletions in Sections 809.201, 809.202, 809.203, 809.204, 809.205, 809.206, 809.207, 809.208, 809.209, 809.210, 809.211, and 809.212 remove that differentiation and now require all haulers of special waste (hazardous and nonhazardous) to obtain an Illinois Special Waste Hauler permit prior to transporting special waste from an Illinois generator or destined for an Illinois facility.

3. Subpart C: Delivery and Acceptance

Again, all revisions to Sections 809.301 and 809.302 are to reflect the elimination of the Uniform Program and the requirement for all haulers to obtain a Special Waste Hauler permit.

4. Subpart D: Permit Availability and Symbols

This Subpart requires transporters of special waste to maintain a copy of the special waste permit in the vehicle. The revisions to Sections 809.401 and 809.402 reflect the elimination of the Uniform Permit Program and require all haulers of special waste to maintain the special waste hauler permit in the vehicles.

5. Subpart E: Manifests, Records and Reporting

In addition to eliminating the requirements of the Uniform Program, revisions to this Subpart reflect changes to federal requirements relating to the printing and availability of hazard waste manifests and the submittal of nonhazardous special waste annual reports to the Agency.

At Section 809.501(a), in addition to the changes relating to elimination of the Uniform Program, revisions are made to reflect that federal regulations no longer allow the Agency to be the sole provider of hazardous waste manifests. The federal regulations now allow any printer to register with USEPA, print the manifest according to their specifications, and sell them to generators and transporters.

The revision to Section 809.501(b) is a correction to mandate that the generator of the waste, not the transporter, is responsible for the completion of the manifests.

When the federal Uniform Manifest requirements were changed, the requirement for receiving facilities to submit copies of manifests to the Agency was removed from 35 Ill. Adm. Code 724 and 725. The elimination of Section 809.501(c) now removes that requirement from generators as well (as part of 35 Ill. Adm. Code 809), but the requirement still exists in 35 Ill. Adm. Code 722. Part 722 will need to be amended in the future for purposes of consistency. The Agency does not believe that there is any significant value in getting manifests from generators but not from the destination facility. Generator copies of manifests may not be as accurate as the receiving facilities because generators may estimate the quantities of wastes whereas the receiving facilities weigh the materials. In addition, just getting generator copies of manifests does not allow tracking of receipts, only shipping. Rejected loads, therefore, complicate tracking.

Existing Section 809.501(d) has been modified to mirror the federal requirements for printing, distributing, and signing of manifests and has been re-lettered to reflect the deletion of subsection (c).

The Board Note at existing Section 809.501(g) has been revised to parallel the changes to 35 Ill. Adm. Code 724 and 725 that receiving facilities (and now generators) do not need to submit designated copies of manifests to the Agency. These new requirements parallel the federal requirements for manifesting of RCRA wastes. Generators complete and sign the manifest. The transporter signs to acknowledge receipt of the waste and to establish part of the chain of custody. The receiving facility signs to show acceptance of the waste and, before returning a

copy to the generator, enters revised and more accurate amounts and results of fingerprint tests, if different from the generator's description.

At Sections 809.501(h) and (i) the requirement for a report from generators that ship nonhazardous special waste to facilities outside of Illinois has been removed. The Act requires all facilities receiving nonhazardous special waste to submit annual reports detailing the generators and the amount received but leaves it to the Board to determine if generators that ship nonhazardous special waste out-of-state need to submit annual reports. The Agency has determined that the minimal value added by these reports does not merit the effort required to be put forth by both the generators and the Agency in compiling these reports.

Sections 809.501(j) and (k) have been amended to reflect that there will no longer be a distinction between hazardous and nonhazardous special waste haulers.

6. Subpart J: Requirements for Haulers Previously Permitted Under the Uniform Program

All existing sections pertaining to the Uniform Program have been repealed and renumbering was done to correlate the section numbers to the Subpart J letter.

New Section 809.1001 provides for a transition period during which existing Uniform Permits will expire and haulers will be responsible to obtain a Special Waste Hauler Permit. The overriding objective during this period is to not interrupt haulers' authority to transport special waste during the transition. In addition, it would be impractical for the Agency to switch all hazardous waste transporters to a special waste hauler permit at one time. Therefore, this Section allows haulers who had previously obtained an Illinois Uniform Permit to transport hazardous waste in the State of Illinois from July 1, 2011 until June 30, 2012 or until their

existing permit expires. At that time, they will need to apply to the Agency for a special waste hauler permit.

7. Conclusion

The Agency believes that the changes and additions made to these rules accurately reflect the changes necessitated by the legislation, which no longer requires hazardous waste haulers to obtain a Uniform Permit.

This concludes my testimony.

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Pre-filed Written Testimony of David Walters upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

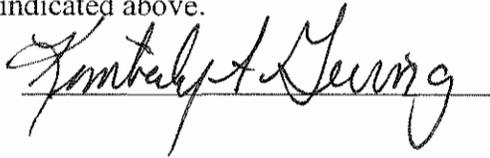
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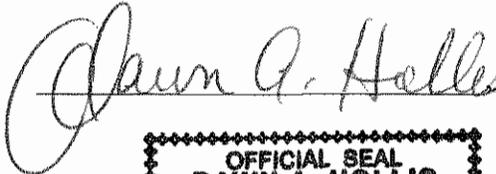
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Participants on Service List

and mailing them (First Class Mail) from Springfield, Illinois on December 20, 2011 with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME
This 20th day of December, 2011.

 Notary Public



