

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2019

IN THE MATTER OF:)
)
AMENDMENTS TO MANIFESTING) R19-18
REQUIREMENTS: SPECIAL WASTE) (Rulemaking - Land)
HAULING 35 ILL. ADM. CODE 809)

Proposed Rule. First Notice.

ORDER OF THE BOARD (by B. F. Currie):

The Illinois Environmental Protection Agency (IEPA) proposed amendments to Part 809 of the Board’s solid waste and special waste hauling regulations. *See* 35 Ill. Adm. Code 809. Accompanying the proposal was IEPA’s Statement of Reasons (SR) and supporting documents. The proposed amendments are intended to “allow Illinois transporters of non-hazardous special waste to obtain and use functionally identical manifests to track such waste while avoiding the significant costs and burdens associated with utilization of USEPA’s e-Manifest system.” SR at 1.

The Board held two hearings, and today proposes the amendments for first-notice publication in the *Illinois Register*.

Below, the Board will describe the procedural background of this proceeding, followed by a summation of the regulatory background. The Board will then discuss the comments received on this proposal, and conclude by explaining the Board’s reasons for proceeding to first notice with the proposal.

PROCEDURAL BACKGROUND

Procedural History

On November 27, 2018, IEPA proposed amendments to Part 809 of the Board’s solid waste and special waste hauling regulations. On January 17, 2019, the Board accepted the proposal for hearing. On March 19, 2019, the hearing officer issued an order scheduling two hearings, each to be held via video conference between the Board’s Chicago office and Springfield office. The first hearing was scheduled on May 9, 2019, and the second on June 6, 2019.

In a letter dated March 19, 2019, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study for IEPA’s rulemaking proposal as required by Section 27(b) of the Act. 415 ILCS 5/27(b) (2018). The Board asked that DCEO determine by April 30, 2019 whether it would conduct such a study. The Board received no response from DCEO. During each hearing, the hearing officer afforded those present an opportunity to address the Board’s request for a study and DCEO’s lack of a response.

Tr. 1 at 61-62; Tr. 2 at 6-7. No participant offered testimony or comment on the request or response. *Id.*

On April 25, 2019, IEPA pre-filed the testimony of James Jennings for the first hearing. On April 26, 2019, Stericycle, Inc. (Stericycle) pre-filed testimony of Wade Scheel, Director of Governmental Affairs, for the first hearing. On May 7, 2019, the hearing officer issued an order including Board questions on IEPA's proposal and the pre-filed testimony of both IEPA and Stericycle.

The first hearing took place on May 9, 2019 (Tr. 1). During the hearing, the hearing officer admitted into the record two exhibits, the pre-filed testimony of James Jennings (Exh. 1) and the pre-filed testimony of Wade Scheel (Exh. 2). The second hearing took place on June 6, 2019 (Tr. 2).

REGULATORY BACKGROUND

Agency Proposal

The United States Environmental Protection Agency (USEPA) launched its Hazardous Waste Electronic Manifest System (e-Manifest System) on June 30, 2018. SR at 1. Prior to the e-Manifest System, USEPA used a six-part paper Uniform Hazardous Waste Manifest (Uniform Manifest) that was mandatory for all hazardous waste shipments. SR at 2. Due to the Uniform Manifest's "comprehensiveness and widespread acceptance in the field" Illinois adopted the Uniform Manifest system for the transportation of state regulated non-hazardous special wastes in addition to hazardous wastes. *Id.* However, IEPA states that the introduction of the e-Manifest System added additional, unneeded, USEPA regulatory burdens and costs to non-hazardous special waste transportation in Illinois. *Id.*

More specifically, under Part 809's language linking state-regulated special waste to USEPA's Uniform Manifest, non-hazardous special waste transporters in Illinois are and will continue to be subject to:

1. Additional fees ranging from \$5 to \$15 per manifest;
2. Significantly more staff time for e-Manifest system data entry; and
3. The potential for federal enforcement, including substantial federal fines and penalties for noncompliance. SR at 2.

IEPA states that the e-Manifest system shifts the financial burden for purchasing manifests from the waste generator to the waste receiving facility, which significantly alters the longstanding construct within the waste industry. *Id.* Further, the e-Manifest system's continuous reporting requirements are inconsistent with IEPA's annual reporting requirements. *Id.*

IEPA states that the proposed amendments are the simplest solution and will allow exclusively state-regulated non-hazardous special waste generators, transporters, and receiving

facilities to use non-USEPA manifests that are functionally identical to the Uniform Manifest. SR at 3. IEPA will maintain its level of oversight while reducing the regulatory and administrative burdens associated with USEPA's e-manifest system. *Id.*

IEPA explains that its proposal will not have an adverse environmental impact, while the technical and economic justifications are substantial. SR at 3. The proposed rule will enable generators, transporters, and receiving facilities dealing with state-regulated, non-hazardous special waste to continue to operate safely and efficiently without the drastic changes to technology and staffing needed to comply with the e-Manifest system. Further, Illinois transporters and facilities will not be forced to pay new significant fees to USEPA. *Id.*

Section-By-Section Summary of First-Notice Proposal

Section 809.103: Definitions

IEPA proposes amending the definition of "Manifest" to allow IEPA, in addition to USEPA, to prescribe manifest forms. SR at 3-4. In addition, IEPA proposes adding a reference to the Act, and correcting a typographical error. *Id.*

The Board also proposes various non-substantive changes intended to clarify the rule-language and remove legalese. For example, the Board replaces "pursuant to" with "under", and "accordance" with "compliance."

Section 809.501: Manifests, Records, Access to Records, Reporting Requirements and Dorms

IEPA proposes:

For hazardous waste, the manifest will consist of forms prescribed by USEPA for the Uniform Hazardous Waste Manifest and will be distributed in accordance with those requirements. For nonhazardous special waste, the manifest will consist of forms prescribed by the Agency, provided that the forms must comply with the requirements of Section 22.01 of the Act and may be purchased from a third party. SR at 4.

The Board also proposes various non-substantive changes intended to clarify the rule-language and remove legalese. For example, the Board proposes changing "shall" to "must" and "accordance" with "compliance."

TESTIMONY AND PUBLIC COMMENTS

The Board received testimony from IEPA and Stericycle in support to the IEPA's proposal as well as two public comments in support of IEPA's proposal. Below the Board will briefly summarize the testimony and comments, all of which support the proposal.

General Comments on IEPA's Proposal

IEPA provided testimony (Exh. 1) and a final comment (PC 4) in support of its proposal. Mr. Jennings explains that IEPA's Waste Reduction and Compliance Section administers reporting and compliance programs, including acting as the public point of contact for waste hauler permitting and manifesting. Exh. 1 at 1. IEPA has monitored the impact of the USEPA's e-Manifest system and evaluated the impact on state regulated entities. *Id.* Mr. Jennings reiterated information from IEPA's statement of reasons, noting that because Illinois linked nonhazardous special waste manifest requirements with Uniform Manifest (*see* 35 Ill. Adm. Code 809.501), nonhazardous special wastes are subject to USEPA fees ranging from \$5 to \$15 per manifest for receiving state-regulated waste. *Id.* at 3. Also, the burden for purchasing the manifest shifts from the waste generator to the receiving facility, and USEPA's approach raises the possibility of duplicate fees for generators of state-regulated nonhazardous waste. *Id.*

In addition to new fees required under the USEPA's e-Manifest system, there are other regulatory requirements. Tr. 1 at 16. For example, if the fees are not paid, USEPA can bring enforcement actions against users. *Id.* IEPA also has additional oversight responsibilities with the e-Manifest system, and that includes over 5,500 entities over which IEPA now has day-to-day oversight. *Id.* at 18. Further, e-Manifest requires continuous reporting, while under the Uniform Manifest, IEPA receive annual reports from the regulated entities. *Id.* at 19.

Mr. Jennings notes that decoupling the state-regulated waste from the USEPA's e-Manifest system is the simplest solution. Exh. 1 at 3. IEPA's proposal will alleviate the need for nonhazardous special waste to use the USEPA's e-Manifest system; however, the information included on the Uniform Hazardous Waste Manifest is identical. *Id.*; Tr. 1 at 17. While the rules require IEPA to develop a nonhazardous special waste form, IEPA has not yet developed the form. PC 4 at 1. IEPA was also given the authority under P.A. 101-145 (eff. July 26, 2019) to develop those forms as well.

Mr. Jennings indicates that the proposed rule will achieve two objectives:

1. Enable the IEPA to maintain its intended level of oversight for specific shipments of state-regulated waste, and
2. Alleviate unnecessary regulatory and administrative burdens associated with the application of the e-Manifest system to state-regulated wastes. Exh. 3 at 4.

Stericycle supports the proposal and provided testimony (Exh. 2) and comment (PC 2) on the financial and administrative burdens from the requirement to use the USEPA's e-Manifest system. Stericycle also supports the use of a functionally identical paper manifest in Illinois for state-regulated special waste. Exh. 2 at 2.

The Illinois Association of Wastewater Agencies (IAWA) also filed a comment in support of IEPA's proposal. PC 1. IAWA does not support the application of the USEPA's e-manifest system because those requirements impose additional cost and reporting burdens. *Id.* IAWA notes that the federal e-Manifest system subjects publicly owned treatment works

(POTW) to new federal regulations not envisioned when the requirement for use of hazardous waste manifests for special waste was adopted by Illinois. *Id.*

Illini Environmental, Inc. (Illini) comments in support of IEPA's proposal. PC 3. Illini is an industrial waste management and recycling company that also is permitted as a hauler of both hazardous and nonhazardous special waste. *Id.* Illini comments that the USEPA regulations impacted Illini financially and increased its administrative burden. Illini supports the proposed rulemaking that will remove the burdens from nonhazardous special waste. *Id.*

Technical Feasibility

IEPA's proposal will revert to the historical system used in Illinois for state-regulated nonhazardous special waste. Tr. 1 at 25. IEPA believes this will alleviate the administrative burden imposed by USEPA's e-Manifest on those state-regulated entities, while maintaining oversight by IEPA. Tr. 1 at 25-26. The proposal returns to requiring annual reporting to IEPA for state-regulated nonhazardous waste. The proposal will not impact the use of the e-Manifest system for wastes regulated under the USEPA's e-Manifest system. Exh. 2 at 1; *see also* 83 Fed. Reg. 420, 425-26, 448 (Jan. 3, 2018) (under the Hazardous Waste Electronic Manifest Establishment Act, 42 U.S.C. § 6939g(h), if the waste-generation state requires that non-hazardous waste be tracked through a RCRA hazardous waste manifest, then the receiving facility in another state must comply with USEPA's e-Manifest, even if the waste-receiving state does not require a RCRA hazardous waste manifest for the non-hazardous waste involved); 40 C.F.R. §§ 260.4, 260.5.

Economic Reasonableness

IEPA states that the rulemaking proposal "will prevent Illinois transporters and facilities from being unnecessarily forced to pay significant fees to USEPA." SR at 3. IEPA further states that the money saved can be "reinvested into those Illinois businesses and the communities they help to grow and support." *Id.* IEPA states that the rule change will "enable generators, transporters, and receiving facilities dealing with state-regulated, non-hazardous special waste to continue to operate safely and efficiently without the drastic changes to technology and staffing needed to comply with the e-Manifest system." SR. at 3.

Stericycle testifies that the USEPA e-Manifest system has impacted Stericycle financially and increased the administrative burden to transportation and disposal facilities nationwide. Exh. 2 at 1. Stericycle expresses concern that the financial burden of the USEPA e-Manifest system may be even greater in the future. *Id.* Stericycle did not comment on USEPA's proposed e-Manifest rule regarding the financial burden as the financial requirements for that program are prescribed by legislation. PC 2 at 1.

IAWA notes that prior to the effective date of the USEPA regulations, paper manifests costing approximately \$.50 each were used to track nonhazardous waste. Now the costs for manifests has risen to \$6.50 to \$15.00. PC 1 at 1. IAWA states its members are "on track to expend \$100,000 or more in fees to USEPA annually." *Id.* at 1-2. IAWA believes the costs of

tracking hazardous waste in this manner may be justified but does not see the benefit of tracking nonhazardous waste at these costs. *Id.* at 2.

BOARD DISCUSSION

The Board finds that IEPA's proposal to require state-regulated special waste manifests to be paper manifests and removing such wastes from USEPA's e-Manifest requirements is supported by the record in this proceeding. IEPA's decoupling state-regulated special waste manifests from USEPA's e-Manifest allows such manifests to return to the system in use prior to the USEPA rule change. IEPA represented it will develop forms for state-regulated special waste manifests that require information similar to the paper manifests under the Uniform Manifest. P.A. 101-145 grants IEPA the authority to adopt the forms, although IEPA has not yet done so. The Board asks that IEPA provide a copy of the forms to the Board during the first notice comment period, or if the form is not available, give additional detail on the form's content.

The Board finds that the proposed rule will alleviate economic and administrative burdens placed on the regulated community. IEPA, and commenters, detailed the additional costs and administrative burdens for waste haulers and waste receivers under the USEPA's e-Manifest requirements. The record establishes that the additional costs and administrative burdens for state-regulated special waste manifests do not come with any additional environmental benefit. The return to the Uniform Manifest will reduce the costs and administrative burden, while ensuring adequate IEPA oversight of state-regulated special waste.

The Board finds that the IEPA's proposal is technically feasible and economically reasonable. As discussed above, USEPA's e-Manifest requirements are costlier to the regulated community. Manifests have increased from \$.50 each to a range of \$6.50 to \$15.00, with no additional information gathered. Thus, the costs have increased, but there is no environmental benefit resulting from those costs.

CONCLUSION

The Board proposes for first notice amendments to Part 809 of the Board's regulations governing solid waste and special waste hauling. The Board will provide a comment period of at least 45 days following publication in the Illinois Register, during which anyone may file public comments with the Board.

ORDER

The Board directs the Clerk to cause first-notice publication of the proposed amendments in the addendum attached to this opinion.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2019, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board