

ILLINOIS POLLUTION CONTROL BOARD
September 3, 1998

IN THE MATTER OF:)
)
PETITION OF RECYCLE) AS 97-9
TECHNOLOGIES, INC. FOR ADJUSTED) (Adjusted Standard - RCRA)
STANDARD UNDER 35 ILL. ADM. CODE)
720.131(c))

ROBERT G. RIFFNER OF PANCRATZ, RIFFNER, & SCOTT APPEARED ON BEHALF OF PETITIONER; and

DONALD L. GIMBEL APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

Recycle Technologies, Inc. (RTI) is an automotive antifreeze recycler whose customers include car dealerships and auto repair shops. RTI recycles used antifreeze by filtering it and placing additives in the filtered material. Currently, RTI does all of its recycling at its customers' facilities.

RTI would like to continue to filter used antifreeze at its customers' facilities, but it wishes to begin taking the filtered material to a centralized location where it would undergo additional processing before being returned to customers. RTI has filed a petition under a provision of the Board's regulations, 35 Ill. Adm. Code 720.131(c), that allows the Board to determine that certain materials are not solid wastes if they meet certain criteria. RTI asserts that the filtered used antifreeze meets these criteria and therefore asks that the Board determine that the filtered used antifreeze is not a solid waste. The Illinois Environmental Protection Agency (IEPA) has commented on RTI's petition, but has not recommended that the Board grant or deny the petition.

The Board finds that RTI has established that the filtered used antifreeze is not a solid waste. The Board therefore grants RTI's petition for an adjusted standard.

PROCEDURAL HISTORY

Overview

The petition before the Board is RTI's amended petition, which RTI filed on September 11, 1997. On September 18, 1997, the Board accepted this matter for hearing and on October 16, 1997, IEPA filed a response to the amended petition. In that response, IEPA comments on the petition, but does not recommend that the Board grant or deny RTI's request for an adjusted standard.

Hearing Officer Amy L. Jackson held a hearing on the adjusted standard petition on April 1, 1998. RTI presented four witnesses, and 21 exhibits were entered into the record for RTI. IEPA participated at hearing but offered no testimony or exhibits.¹ RTI filed a posthearing brief on May 15, 1997, and IEPA filed a response brief on May 28, 1997.

Other Matters

On May 11, 1998, Mr. Bert Grout, President of On-Site Coolant Antifreeze Recycling, filed a letter with the Board. Mr. Grout explains that he is a competitor of RTI and asserts that Mr. Gary Gunderson, owner of RTI, presented false testimony in this matter. Mr. Grout alleges that RTI's centralized recycling process is not merely proposed, but has been in operation for at least six months and that RTI has conducted this operation without proper permitting or siting.

On June 18, 1998, RTI filed a motion to file *instanter* a response to Mr. Grout's letter. Attached to the motion is a sworn affidavit of Mr. Gunderson. No one filed an objection to the motion. The motion is granted.

In his affidavit, Mr. Gunderson disputes Mr. Grout's allegations and asserts that RTI is not accepting waste antifreeze at its centralized facility. In addition, Mr. Gunderson states that RTI does not own all of the equipment necessary to fully operate the centralized recycling system. Mr. Grout filed another letter on July 27, 1998, in which he questions and disputes Mr. Gunderson's affidavit.

The Board first notes that Mr. Grout's allegations do not affect the question presently before the Board—that is, whether the filtered used antifreeze should not be considered a solid waste. Whether RTI may be violating the law is an enforcement question for IEPA and the Office of the Illinois Attorney General or the State's Attorney. The Board also notes that citizens may bring enforcement actions before the Board. See 415 ILCS 5/31(d) (1996); 35 Ill. Adm. Code 103.120.

In addition, while the Board may consider written public comments in an adjusted standard proceeding, it cannot find, on the basis of Mr. Grout's allegations, that Mr. Gunderson testified falsely. Mr. Gunderson testified under oath and was subject to cross-examination. He also provided a sworn affidavit disputing Mr. Grout's allegations. In addition, the hearing officer present to observe Mr. Gunderson's testimony found him to be a credible witness. For these reasons, the Board has considered Mr. Gunderson's testimony in determining whether to grant RTI an adjusted standard.

¹ The transcript of the hearing is cited as "Tr. at _." Hearing exhibits are cited as "Exh. _."

FINDINGS OF FACT

RTI's Current Operations

RTI recycles automotive antifreeze. RTI presently serves the Chicago area, with customers as far north as Waukegan, as far south as [South] Holland, and as far west as St. Charles. Its 514 active customers include car dealerships and auto repair shops. Tr. at 50-54, 69-70; Exh. 9, 10.

RTI's customers collect used antifreeze from vehicles in tanks or drums. Tr. at 45-46, 48-49, 89-90. RTI's customers fill out a registration statement in which they agree to store their used antifreeze "in a clean, safe manner" and to "take reasonable care in keeping recycled storage drums free of contamination (oil, rain water, etc.)." Tr. at 50-51; Exh. 8.

RTI uses a truck to transport its recycling equipment to its customers' facilities and does all of its work at its customers' facilities. Tr. 35-36, 55-60; Exh. 2A-C. RTI uses a pump and suction hose to transfer used antifreeze from the customer's receptacle to its recycling equipment. Tr. at 57. RTI handles used antifreeze carefully; one customer testified that RTI "never makes a mess." Tr. at 88.

Used antifreeze may contain contaminants such as rust sediment and oil. Tr. at 23, 59, 72-73; Exh. 2A. RTI removes these contaminants through a filtering process. RTI first puts the unfiltered used antifreeze through a 20 micron filter to remove larger particles and avoid clogging the smaller filter. RTI then puts that material through a filter no larger than 5 microns; it usually uses a one micron filter. Through this process, RTI removes many of the contaminants in the used antifreeze. Tr. at 23-24, 27, 35-36, 38, 55-57, 59-60, 68-69, 72-73; Exh. 2B-C, 11.

RTI then places additives (dyes and inhibitors) in the filtered material to create the recycled antifreeze product for the customer. Inhibitors are chemicals that prevent corrosion within vehicles. Tr. 16, 23, 35-36, 41, 55-60; Exh. 2A-C, 7.

RTI's customers use or sell the recycled antifreeze as a substitute for new antifreeze. Tr. at 47-48, 94-95. Because antifreeze is lost from leaks and spills, the typical customer generates enough used antifreeze to replace approximately 50% of their new antifreeze purchases. Most of RTI's customers want more recycled used antifreeze; however, RTI can only provide customers quantities of product equal to the quantities of filtered used antifreeze that RTI collects at their sites. Tr. at 79-80. It costs \$0.50 to \$1.00 per gallon to properly dispose of used antifreeze. Tr. at 62-63.

RTI's Proposed Operations

RTI would like to continue to filter used antifreeze at its customers' facilities. In lieu of completing the recycling process at its customers' facilities, however, RTI now proposes

trucking the filtered material to a centralized location. The centralized facility is in Wood Dale, Illinois. RTI would further process the filtered material at its centralized location before returning it to customers. Tr. at 60-61, 70, 72, 74-75.

RTI proposes having two lines of three tanks each at its centralized location. The tanks are made of stainless steel and each has a capacity of 1,500 gallons. The first tank in the line would receive the filtered used antifreeze from RTI's truck. Tr. at 82-83.

From there, RTI would pump the material into the second tank, which would contain a reverse osmosis machine to process the filtered used antifreeze. Tr. at 82-83. Reverse osmosis is a process that uses pressure, ionic charge, and a membrane to remove remaining contaminants and residual additives. The filtration that RTI puts the used antifreeze through before it enters the reverse osmosis system will enhance the reverse osmosis process. Tr. at 28-30, 60-62, 70, 81; Exh. 3A-B, 7. The material that has been through reverse osmosis is a clear mixture of ethylene glycol and water, which the third tank receives. Tr. at 28-30, 61-62, 81, 83-84; Exh. 3B.

In the third tank, RTI would add dyes and inhibitors based on customer specifications. The third tank would contain a blade that more thoroughly mixes the new additives than does RTI's current process. Tr. at 61-62, 71, 83-84; Exh. 3C. The final product cannot be differentiated from a mixture of new antifreeze and water and is preferable to RTI's current recycled product. Tr. at 28-30, 61-62, 66-69, 81; Exh. 2C, 3C, 7, 15, 16.

Initially, RTI would have only one reverse osmosis machine, *i.e.*, only one of the two lines will be fully operational. The second line of three tanks will be empty and used as a backup to receive antifreeze if necessary. Eventually, RTI would like to acquire a second reverse osmosis machine. Tr. at 82-83. RTI's facility would have secondary containment to contain any spills. Tr. at 83.

Under the proposed process, the customer would not necessarily receive its own recycled used antifreeze. RTI would deliver recycled antifreeze to a customer each time it picked up that customer's used antifreeze for processing. The quantity of recycled antifreeze that the customer receives would equal the quantity of filtered used antifreeze that RTI collected from that customer on RTI's prior visit. Tr. at 71, 79-80, 84-85.

RTI wants to use reverse osmosis to make its product more cosmetically appealing and to allow it to create more types of antifreeze (*e.g.*, not only the traditional green colored antifreeze with its inorganic inhibitors, but also orange colored antifreeze with organic inhibitors, which is becoming more popular in the market). Tr. at 16-18, 61-62, 70.

Factors Affecting the End Market for Filtered Used Antifreeze

Mr. Edward Eaton, who is a chemical engineer with extensive experience in the antifreeze recycling industry,² confirmed that there is a large market for used antifreeze that has been filtered but not processed further. Filtered used antifreeze sells for \$1.50 to \$2.50 per gallon. Tr. at 31-32, 38-42.

Filtered used antifreeze is chemically similar to new antifreeze; it consists primarily of ethylene glycol (the base substance of antifreeze) and water in approximately equal percentages. It also contains residual dyes and inhibitors. Tr. at 18, 27, 41, 59-60, 68-69; Exh. 2B, 7. Typically, there are enough residual inhibitors in the filtered used antifreeze for it to function properly. Tr. at 41 (majority of inhibitors do not deplete and are functional for 100,000 miles or five years, whichever comes first). One advantage of this product is that, unlike new antifreeze, it need not be mixed with water before it is used (*i.e.*, it is ready to use).³ Tr. 18, 27, 38-42.

In addition, RTI's filtration process is similar to a filtration system that has been approved by General Motors for some of its vehicles and that meets American Society for Testing and Materials (ASTM) standards when supplemental inhibitors are added. Tr. 13-14, 26, 35-38, 55-57, 78; Exh. 4, 11. RTI has its current recycled product tested by different laboratories periodically to ensure that it meets specifications. Tr. at 75-76. RTI introduced copies of some of these laboratory test results from the past several years. Exh. 18. RTI has had 30 to 40 tests conducted and none of the test results showed the product to be unacceptable. Tr. at 75-76, 78; Exh. 20.

In addition, as noted above, the proposed additional processing (*i.e.*, reverse osmosis) should make RTI's product more attractive to customers (*i.e.*, it is clearer and RTI can offer customers more types of antifreeze, including the organic orange variety that is becoming more popular in the market) than it is at present. Also as discussed above, the final product that has been through reverse osmosis will be indistinguishable from a mixture of new antifreeze and water. Many antifreeze recycling companies across the country that "wanted to become larger and have the best product" have switched from the filtration method to reverse osmosis. Tr. at 77; Exh. 19. The demand for recycled antifreeze that has undergone reverse osmosis will, in turn, ensure a market for filtered used antifreeze. Furthermore, as noted above, RTI will return recycled product to each customer in a quantity equal to the quantity of filtered used antifreeze that RTI collected from the customer.

Two of RTI's customers confirmed the demand for final product that has undergone reverse osmosis. Mr. Ronald Rabinowitz, a professional automotive mechanic since 1978 and the owner of an auto repair shop in Itasca, Illinois, has been a customer of RTI's since 1995. Tr. at 44-46. Mr. Rabinowitz sees vehicles that are out of or low on antifreeze or need their antifreeze replaced on a daily basis. Tr. at 45-46. New antifreeze costs Mr. Rabinowitz \$4.50 per gallon; RTI's recycled product costs approximately half that amount. Mr. Rabinowitz would like to purchase more recycled antifreeze from RTI because it would lower

² See Tr. at 8-14; Exh. 7.

³ Pure ethylene glycol freezes at nine degrees above zero Fahrenheit, while filtered used antifreeze has a freezing point of minus 34 degrees Fahrenheit. Tr. 40-41.

his costs. Tr. at 47-48. Mr. Rabinowitz preferred a sample of used antifreeze that had been through reverse osmosis to RTI's current recycled product because it looked cleaner and was more presentable to his customers. Tr. at 48; Exh. 2C, 3C.

Another RTI customer, Mr. Edward Stahl, owns two Goodyear dealerships. Tr. at 86. He has owned a facility in Carol Stream, Illinois, for 13 years and a facility in Algonquin, Illinois, for six years. Tr. at 87. RTI has been recycling used antifreeze at both of Mr. Stahl's locations for two to three years. Tr. at 87-88. Automotive cooling system problems and general maintenance requiring antifreeze are a major part of Mr. Stahl's business. Tr. at 88-89.

Before RTI began recycling Mr. Stahl's used antifreeze, he had it hauled away for disposal. It is more economical for him to recycle his antifreeze than to dispose of it off-site. Tr. at 89-90. New antifreeze costs Mr. Stahl \$2.89 to \$4.79 per gallon and he pays less than \$2 per gallon for RTI's recycled antifreeze. Tr. at 90-91. Mr. Stahl would like to buy more recycled antifreeze because it is cheaper. Mr. Stahl also found the sample of antifreeze treated by reverse osmosis more attractive than RTI's current recycled product. Tr. at 94-96.

RTI is aware of at least six competitors in the Chicago area who recycle antifreeze at customer sites. None of them use reverse osmosis. Tr. at 73-74. The reverse osmosis machine will be an additional cost to RTI, but RTI believes these costs will be offset. For example, RTI's drivers will spend less time at customers' sites because they will not be adding dyes and inhibitors and testing to ensure the proper levels of chemicals are present. This will enable RTI to do more pickups and take advantage of economies of scale. Tr. at 70-71.

DISCUSSION

Legal Framework

This proceeding concerns the used antifreeze after RTI has filtered it at the customer's site. RTI asks the Board to determine that the filtered used antifreeze is not a "solid waste." RTI seeks this determination under 35 Ill. Adm. Code 720.131(c). That provision provides standards and criteria for the Board to use in determining whether certain materials that would otherwise be considered solid wastes are not solid wastes. See 35 Ill. Adm. Code 720.130(c).

Initially, we note that before this case, the Board had issued only one final opinion and order interpreting the solid waste determination provision of Section 720.131(c). See Petition of Chemetco, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 720.131(a) and (c) (March 19, 1998), AS 97-2. We also note that the Board regulations at issue are substantively identical to regulations that the United States Environmental Protection Agency (USEPA) promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.* (RCRA). Accordingly, the Board has referred to USEPA preamble language interpreting the federal counterpart to the Board regulations at issue.

Section 720.131(c) reads in part as follows:

- c) The Board will determine that those materials that have been reclaimed but must be reclaimed further before recovery is completed are not solid wastes if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). . . . 35 Ill. Adm. Code 720.131(c).

Certain materials become “solid wastes” if they are to be “recycled.” As USEPA states, to “determine if a secondary material is a RCRA solid waste when recycled, one must examine both the material and the recycling activity involved.” 50 Fed. Reg. 614, 619 (Jan. 4, 1985). Generally, the Board considers three factors: the category of the secondary material (e.g., “by-product,” “sludge,” or “spent material”); whether the material is an unlisted “characteristic” hazardous waste or a “listed” hazardous waste; and which recycling activity is involved. See 35 Ill. Adm. Code 721.102(c) and 721.Appendix Z. These factors, when considered together, determine whether and how a material becomes a solid waste.

As noted, one of the categories of secondary materials is “spent material.” A “spent material” is:

any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing. 35 Ill. Adm. Code 721.101(c)(1).

Generally, a solid waste is a hazardous waste if it exhibits a “characteristic” of hazardous waste (*i.e.*, it is toxic, corrosive, ignitable, or reactive) or if it is “listed” as hazardous waste (*e.g.*, it comes from a specific type of process, such as electroplating). See 35 Ill. Adm. Code 721.103, 721, Subparts C and D. The definition of “solid waste” applies only to materials that are also “hazardous waste” for purposes of the regulations implementing Subtitle C of RCRA. See 35 Ill. Adm. Code 721.101(b)(1). As USEPA explains, “[a]lthough hazardous wastes are a subset of solid wastes under RCRA, [USEPA’s] regulatory authority under Subtitle C applies only to hazardous wastes. Since the present regulations apply only to Subtitle C, we have chosen to make the definition of solid waste applicable to those materials that also are hazardous wastes.” 50 Fed. Reg. 614, 616, n. 3 (Jan. 4, 1985).

The Board notes that used automotive antifreeze is not a listed hazardous waste. The Board also notes that it is not in a position to determine if the used antifreeze generated by RTI’s many customers exhibits any characteristics of hazardous waste. However, if spent materials are listed or characteristic, they are solid wastes if they are to be recycled by reclamation.

A material is “reclaimed” if it is:

processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. 35 Ill. Adm. Code 721.101(c)(4).

USEPA explains that materials are reclaimed if “material values . . . are recovered as an end-product of a process” or if they are “processed to remove contaminants in a way that restores them to their usable original condition.” 50 Fed. Reg. 614, 633 (Jan. 4, 1985).

The Board finds that the used automotive antifreeze to be filtered by RTI, if a characteristic hazardous waste, is a “solid waste” because it is a “spent material” being “reclaimed.” See 35 Ill. Adm. Code 721.102(c)(3) and 721.Appendix Z.

Availability of Section 720.131(c)

To be eligible for a nonsolid waste determination under Section 720.131(c), the material must have been initially reclaimed but require further reclaiming before recovery is completed. A waste being reclaimed remains a waste until reclamation is completed. A nonsolid waste determination under Section 720.131(c) applies only to wastes after they have been initially reclaimed. See 50 Fed. Reg. 614, 620, 633-634, 655 (Jan. 4, 1985). In discussing the federal counterpart to Section 720.131(c), USEPA explains that the provision is designed to address those situations where “the initial reclamation step is so substantial that the resulting material is more commodity-like than waste-like even though no end-product has been recovered.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985).

The Board finds that Section 720.131(c) is available in this case because once the used antifreeze has gone through RTI’s two-step filtration, it has been initially reclaimed. Below, the Board will address the evidence on the Section 720.131(c) factors to determine if the initially reclaimed material (*i.e.*, the filtered used antifreeze) is commodity-like and thus not a solid waste.

Section 720.131(c) Factors

The Board must determine whether the initially reclaimed material (*i.e.*, the filtered used antifreeze) is commodity-like based on the Section 720.131(c) factors. Those factors read as follows:

- 1) The degree of processing the material has undergone and the degree of further processing that is required;
- 2) The value of the material after it has been reclaimed;
- 3) The degree to which the reclaimed material is like an analogous raw material;

- 4) The extent to which an end market for the reclaimed material is guaranteed;
- 5) The extent to which the reclaimed material is handled to minimize loss; and
- 6) Other relevant factors. 35 Ill. Adm. Code 720.131(c).

The Board finds that the filtered used antifreeze is commodity-like based on these factors. The Board addresses these factors in turn.

The Degree of Processing the Material has Undergone and the Degree of Further Processing That is Required

As USEPA states, the “more substantial the initial processing, the more likely the resulting material is to be commodity-like.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985). By using two filters, RTI removes many of the contaminants in used antifreeze. RTI’s filtration process is similar to a filtration system that has been approved by General Motors and ASTM.

Chemically, the filtered used antifreeze is similar to new antifreeze. It contains residual inhibitors and may be used as antifreeze without any further processing. As Mr. Eaton explained, filtered used antifreeze is not merely commodity-like, but a commodity. In fact, there is a large market for filtered used antifreeze.

The filtration that RTI puts used antifreeze through before the used antifreeze enters the reverse osmosis system will enhance the reverse osmosis process. The additional processing by reverse osmosis will remove remaining contaminants and residual additives from the filtered used antifreeze. Reverse osmosis will allow RTI to make a more cosmetically appealing final product than RTI’s current recycled product. It will also give RTI greater flexibility to create other types of antifreeze to take advantage of market trends.

The Board finds that while the proposed processing of the used antifreeze after it has been filtered is important, the filtration is a substantial processing step.

The Value of the Material After It Has Been Reclaimed

USEPA states that “the more valuable a material is after initial processing, the more likely it is to be commodity-like.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985). As noted above, there is a large market for filtered used antifreeze without further processing. It sells for \$1.50 to \$2.50 per gallon. These prices are comparable to the prices paid by Mr. Rabinowitz and Mr. Stahl for RTI’s current recycled product (*i.e.*, the filtered use antifreeze with dyes and inhibitors added by RTI). The Board finds that the initially reclaimed material has significant value.

The Degree To Which the Reclaimed Material is Like an Analogous Raw Material

According to USEPA, “[i]f the initially-reclaimed material can substitute for a virgin material, . . . it is more likely to be commodity-like.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985). The raw material in antifreeze is ethylene glycol. To make new antifreeze, dyes and inhibitors are added to ethylene glycol. Filtered used antifreeze contains ethylene glycol, water, and residual dyes and inhibitors. Filtered used antifreeze can be used as antifreeze without any further processing.

The Board finds that the filtered used antifreeze contains the same raw material as new antifreeze, and can be substituted for new antifreeze.

The Extent To Which an End Market for the Reclaimed Material is Guaranteed

In discussing this factor, USEPA states:

If the [petitioner] can show that there is an existing and guaranteed end market for the initially-reclaimed material (for instance, value, traditional usage or contractual arrangements), the material is more likely to be commodity-like. 50 Fed. Reg. 614, 655 (Jan. 4, 1985).

As stated above, there is a large market for filtered used antifreeze that has not undergone any further processing. Moreover, RTI will return recycled product to each customer in a quantity equal to the quantity of filtered used antifreeze that RTI collected from the customer.

In addition, as discussed, RTI’s filtration process is similar to a filtration system that General Motors and ASTM have approved. RTI’s current recycled product has been tested numerous times and shown to be within acceptable parameters for use as antifreeze. Reverse osmosis should make RTI’s product more attractive to customers. RTI will be able to make a clearer product and create more types of antifreeze, including the variety with organic inhibitors that is becoming more popular in the market. The product will be indistinguishable from a mixture of new antifreeze and water. Companies in the antifreeze recycling industry elsewhere in the country have switched from filtration to reverse osmosis so they can become larger and improve their final product.

RTI currently has 514 active customers, two of whom testified. They confirmed that there is a constant need for antifreeze in their auto repair and maintenance businesses. They want more recycled antifreeze because it would reduce their costs, and most of RTI’s customers want more recycled used antifreeze. The RTI customers who testified also preferred the appearance of used antifreeze that had been through reverse osmosis to RTI’s current recycled product. RTI’s competitors in the Chicago area use filtration, not reverse osmosis.

The Board finds that there is an end market for the filtered used antifreeze.

The Extent To Which the Reclaimed Material is Handled to Minimize Loss

USEPA states that the “more carefully a material is handled, the more it is commodity-like.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985). Currently, only RTI handles the filtered used antifreeze. This will not change under RTI’s proposal. RTI uses a pump and suction hose to remove used antifreeze from the customer’s receptacle to RTI’s filters. RTI handles used antifreeze so that it does not spill.

Once filtered at the customer’s site, the material would be trucked by RTI to its centralized location. Once at this facility, RTI would pump the filtered used antifreeze into the stainless steel receiving tank. The tank lines will have secondary containment. Inactive tanks may be used to accept material if necessary.

The Board finds that RTI handles the initially reclaimed material so as to minimize loss and will continue to do so under its proposal. The Board notes that RTI has a financial incentive not to lose the filtered used antifreeze: if it loses material, it has less to sell back to customers.

Other Relevant Factors

RTI’s clients fill out a registration statement in which they agree to store their used antifreeze so as to avoid contaminating it. The Board finds that this factor also militates toward finding that the filtered used antifreeze is commodity-like.

CONCLUSION

The Board finds that RTI has established, under Section 720.131(c), that the filtered used antifreeze is commodity-like. Accordingly, the Board finds that the material is not a solid waste and grants RTI’s petition for an adjusted standard.

The Board emphasizes that this nonsolid waste determination applies only to used antifreeze once it has been initially reclaimed by RTI at the customer’s site, *i.e.*, it applies only after the material has been through RTI’s two-step filtration process of at least one 20 micron filter and a five micron or less filter. In addition, this nonsolid waste determination applies only to the filtered used antifreeze that is to be further processed by RTI through reverse osmosis at its centralized facility for return to a customer in a quantity equal to the quantity of filtered used automotive antifreeze that RTI collected at the customer’s facility.

This opinion constitutes the Board’s findings of fact and conclusions of law in this matter.

ORDER

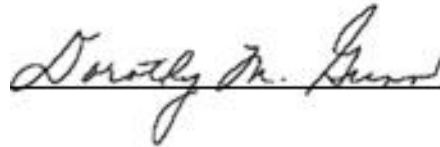
1. The Board finds that the filtered used automotive antifreeze is not a solid waste and grants RTI an adjusted standard under 35 Ill. Adm. Code 720.131(c).

2. The adjusted standard applies only to used automotive antifreeze after RTI has initially reclaimed it through RTI's two-step filtration process of at least one 20 micron filter and a five micron or less filter at the customer's site where the used automotive antifreeze was generated. In addition, the adjusted standard applies only to such filtered used automotive antifreeze that is to be further processed by RTI through reverse osmosis at its Wood Dale, Illinois facility for return to a customer in a quantity equal to the quantity of filtered used automotive antifreeze that RTI collected at the customer's facility.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 3rd day of September 1998 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board