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National Oil Recyclers Association

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Pollution Control Board

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P.C.#11

May 6, 1999

Illinois Pollution Control Board
100 West Randolph
Chicago, Illinois 60601

Re: Docket R98-29; Docket R99-18; Used Oil Regulations

Ladies and Gentlemen:

The National Oil Recyclers Association ("NORA") submits the following additional comments on proposed amendments to 35 Illinois Adm. Code Parts 807 and 809. These comments supplement those submitted by NORA on April 8, 1999. NORA's supplementary comments are principally in response to the February 25, 1999 testimony of Theodore Dragovich, an official with the Illinois Environmental Protection Agency ("IEPA"), before the Illinois Pollution Control Board. In his testimony, Mr. Dragovich states that the proposed change is designed to increase environmental protection and encourage recycling. Unfortunately, IEPA's proposal will have precisely the opposite effect. In large measure this is because, the Agency's proposal is a reaction to problems that existed in the late 1970s and early 1980s, rather than conditions which have existed since the implementation of the used oil management standards. 40 CFR Part 279; 35 Ill. Adm. Code Part 739.

Mr. Dragovich states that many used oil management facilities that accept large volumes of used oil have historically had environmental problems. At best, this is a half-truth, which like most half-truths, is highly misleading. It ignores all regulatory experience in the oil recycling arena since 1985 including, for example, the implementation and enforcement of the used oil management

standards, SPCC regulations and the Oil Pollution Act. The prevailing practices in the oil recycling industry prior to 1980 bear little resemblance to the operations in 1999. Numerous factors have contributed to this transformation.

First, the enforcement of federal and state Superfund laws have closed many oil recycling operations. The enforcement of such laws against used oil generators has compelled many of them to demand that their recyclers operate safely and in compliance with all applicable environmental regulations. In addition, these generators, various trade associations, and insurance companies have initiated systematic "compliance audits" of processing facilities to ensure that liability risks would be minimized.

Second, EPA's promulgation of the "specification" standard for used oil fuel (and the ability of processors to efficiently produce such fuel) virtually eliminated the demand for "off-spec" fuel. Consequently, the oil recycling industry focused on producing cleaner (specification) fuel products - to the exclusion of almost all off-spec products.

Third, the removal of lead from gasoline in the late 1980s resulted in the virtual elimination of lead from used oil.

Fourth, re-refining operations, once a widespread industrial activity, were largely terminated by the late 1980s because the increasingly high cost of re-refining made it impossible to compete with virgin lubricants. Re-refining operations are inherently more complicated and produce much greater quantities of waste materials than fuel processing.

Fifth, the used oil management standards, promulgated in 1985 and expanded in 1992, mandate numerous regulatory safeguards that were not "standard operating procedure" in the 1970s and early 1980s. These safeguards include the general prohibition on mixing used oil and hazardous waste, the rebuttable presumption, and requirements for waste analysis plans and procedures.

Sixth, used oil processing facilities are required to provide secondary containment in storage areas and that such secondary containment be impervious to oil - a requirement exceeding the secondary containment rules for virgin oil storage or storage of more volatile products such as gasoline. Moreover, the used oil management standards are augmented by the requirements set forth in SPCC plans and the federal Oil Pollution Act.

Seventh, for regulatory, liability and economic reasons, on-site disposal of sludge at oil processing facilities --once a widespread practice -- has been all but eliminated.

Eighth, the emerging availability of affordable commercial wastewater disposal options in the 1980s and 1990s has dramatically reduced on-site disposal of wastewater at used oil processing facilities. As late as the 1970s this was a normal and widespread practice.

Significantly, Mr. Dragovich's testimony failed to identify a single *actual* problem that would not be addressed by the used oil management standards. Rather than address an actual problem, Mr. Dragovich provides the example that "Part 739 requires facilities to store used oil in tanks that are in 'good condition.' This performance standard does not prescribe methods for ensuring that the tanks meet this standard, such as appropriate design, construction, maintenance, and inspection." It should be emphasized that the "in good condition" is not the only aspect of this performance standard. Part 739.154 defines "good condition" as "no severe rusting, apparent structural defects or deterioration, and no visible leaking." It is highly probable that a tank that exhibits no severe rusting, structural defects, deterioration or leaking will serve its basic purpose, i.e., to properly contain the oil that has been placed in it.

Mr. Dragovich's testimony also fails to mention that the used oil management standards require a used oil processor to maintain and operate the facility to minimize the possibility of a fire, explosion or any unplanned release of used oil which could affect human health or the environment. (These requirements are in addition to those requiring facilities to maintain alarm systems, emergency communications systems, fire-fighting equipment and to prepare and maintain emergency response plans.) The used oil management standards also mandate immediate remedial action if a spill does occur. If IEPA believes that performance standards - as opposed to design standards - will never be effective in assuring environmental protection, it should proceed to remove the thousands of performance standards that it has promulgated. In this context, if IEPA believes that a performance standard is inadequate, it should provide real world examples of how the currently applicable performance standard was incapable of addressing those examples.

Mr. Dragovich's testimony also focuses on the quality of used oil fuel. He acknowledges that "[t]he used oil specification in Part 739 limits hazardous constituents in on-specification oil to levels which may be found in similar virgin oils." However, because the specification "does not have limitations on bottom sediment and water or other parameters...there is no guarantee that that on-spec

used oil will have economic value and thus be properly managed." Because there is no such guarantee, Mr. Dragovich concludes that "there have been used oil management facilities in the superfund or other remediation programs."

Although NORA agrees that a product such as used oil that has economic value will be properly managed, we do not believe it is either appropriate or a good use of IEPA's resources to regulate product specifications. Currently, certain parameters such as minimum BTU content, ash, and bottom sediment & water ("BS&W") are governed by the contractual arrangement between the processor and the burner. The factors controlling these parameters are the capability of the boiler or furnace and the price of the fuel.

A blast furnace in a steel mill is quite capable of handling fuel with higher levels of BS&W and the steel mill prefers burning cheaper fuel. Where there is no environmental issue involving air emissions, is it good policy for IEPA to restrict the type of used oil fuel the steel mill may burn? Hamburger with a high fat content may not possess the quality of low-fat hamburger meat, but the government does not try to restrict consumers from buying this product. In the absence of any demonstrable environmental benefit, NORA contends that any attempt by IEPA to prohibit or otherwise restrict the processing, selling or burning of specification fuel is unwarranted. It should be reiterated that EPA has determined -- and IEPA agrees -- that specification used oil fuel is the equivalent of virgin oil fuel in terms of its effect on the environment. See 50 Fed. Reg. 49189 (November 29, 1985). See also *R.R. Donnelley & Sons Co. v. Illinois Environmental Protection Agency*, Illinois Pollution Control Board 88-79 at pp. 3-4 (February 23, 1989) (used oil handled as product is not a solid waste). Consequently, NORA would simply ask for IEPA to identify post-1992 examples of Illinois used oil processing facilities that have experienced environmental problems because their specification used oil fuel contained elevated levels of BS&W - or any other parameter not set by Part 739.

There are numerous practical problems that flow from a requirement that storage tanks containing specification fuel be subject to permits. Transfer facilities and leased tanks would be required to obtain permits. Few, if any, owners of tanks otherwise available for lease would be willing to obtain a permit (and assume all the other regulatory costs and burdens) in order to accommodate used oil fuel storage. Currently, fluctuations in seasonal demand make the use of leased storage an economic necessity. Similarly, because of transportation costs, the use of transfer facilities is essential for cost-effective management of used oil. Ironically, IEPA expresses its concern that unmarketable used oil fuel leads to improper management and disposal, yet IEPA's proposals will drive up the cost of used oil fuel products, making them less and less marketable.

IEPA's proposal does not exempt burners from permitting requirements. Although this may have been unintentional on the part of IEPA, NORA is extremely concerned that any attempt to impose requirements on burners of specification used oil fuel that are not imposed on virgin oil will completely undermine the market for used oil fuel. Simply stated, no burner will willingly subject itself to costly and burdensome permit requirements and procedures. Such permits have many adverse side effects, including, for example, more paperwork, more potential liability exposure, greater insurance costs, and greater visibility as a burner. It is far less costly and burdensome to pay the slightly greater cost of virgin fuel products.

As NORA has previously pointed out, once the burners switch from used oil fuel to virgin fuel, there will be no recycling system in place to collect and manage used oil. Obviously, this directly affects used oil generated by "do-it-yourself" oil changers. The collection system now in place to take such oil will be dismantled, leaving only the sewer system, the backyard or the trash as DIYers' disposal options.

With respect to the special waste manifesting requirements, NORA believes that used oil generators should remain subject to the current tracking requirements under Part 739. Registering and properly categorizing tens of thousands of used oil generators in Illinois is not worth the effort, expense, and paperwork burden that would be imposed on the generators, collectors and IEPA. NORA is also concerned that many used oil generators would illegally dispose of their used oil rather than become a registered generator subject to IEPA inspections and enforcement actions. At the very least, the regulatory burdens that would result from this proposal should be carefully evaluated prior to promulgation.

Finally, we note that the Department of Commerce and Community Affairs has declined to conduct an economic impact statement on this proposed rule. NORA is unaware of any other study or review that IEPA has conducted regarding the economic impact on the regulated community resulting from the implementation of these proposed regulations. Moreover, to the best of our knowledge, there has been no survey of oil processors in Illinois to determine whether any of IEPA's proposals would be workable. The absence of any of these inquiries, in combination with the lack of any actual examples of problems requiring regulatory controls, suggests that IEPA's proposals are, at best, premature and, accordingly, should not be adopted.

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NORA also requests that the Pollution Control Board convene a hearing to consider the many comments received by the Board in April and May. Prior hearings did not have the benefit of a comprehensive discussion of the numerous problems IEPA's proposal raised in these comments. NORA would welcome the opportunity to testify at such a hearing.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Harris".

Christopher Harris