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CLERK'S OFFICE
MAY 07 1999
STATE OF ILLINOIS
Pollution Control Board

Re: Docket R 99-18; USED OIL REGULATIONS

Dear Sirs,

P.C.#10

To further comment on the proposed changes regarding used oil regulation under Parts 807.105, 809.211, and 809.302, we offer the following, most of which is based on the testimony of Theodore Dragovich:

Mr. Dragovich testified that the requested changes are designed to increase environmental protection and encourage recycling. Our concern is that they probably would, in reality, have the opposite effect.

Mr. Dragovich states that many used oil management facilities that accept large volumes of used oil have historically had environmental problems. We are not going to dispute the fact that some have, however, two things need to be realized in conjunction to that fact. One is that prior to the used oil management regulations going into effect in the preliminary stages in the late 1980's, used oil recyclers were actually hazardous waste recyclers. The used oil they handled was vastly more contaminated through use and through mixing with other wastes than today. No anti waste mixing laws existed prior to that time. Due to the fact that most oil was being recycled by use as a fuel or refined into base stock, and that those procedures could either utilize or remove any mixed in (what is now) hazardous waste that was in the used oil, there was absolutely no reason for recyclers to not accept oil with those wastes in it. In addition, the waste that oil recyclers generated (oily water and oily sludge) were normally disposed of on site in simple evaporation lagoons and self made landfills. After all, there were no commercial waste water treatment facilities to take the water to and commercial landfills were also largely unregulated. Consequently, used oil recyclers dealt with their problems of waste disposal as best they could on their own, many times at their own sites. The second reason that old used oil sites have been a problem in some cases is the same reason old drilling, refining, and bulk terminal sites are often a problem. There were no facility regulations. No regulations on the tanks, no regulations or requirements to clean up spills, no requirements for secondary containment, nothing, also a real lack of knowledge of the environmental impacts those activities were causing existed at the time. As you can now surely see, it's obvious why old used oil and other petroleum sites are sometimes a problem today. However, one thing must still be realized, as bad as some were in managing "used oil" prior to any regulation, they still diverted hundreds of millions of gallons of used oil and hazardous wastes from being dumped, into uses as fuel or into "new" oil again by reprocessing and re-refining it.

Today these past problems have already been addressed very adequately by the SPCC regulations, the Oil Pollution Act and by the Federal Used Oil Regulations. Due the these regulations, todays oil recyclers are collecting and accepting used oil that is not contaminated by other hazardous toxic waste, and the oil is much cleaner on its' own due

to the elimination of lead in gasoline and other factors. In fact, much of the used oil today collected and accepted at used oil recycling facilities not only meets the EPA used oil on-specification parameters, a good portion will actually pass EPA's hazardous characteristic landfill tests. Also, used oil recycling facilities of today, under the federal regulations, are required to analyze the oil and have a written analysis plan. In addition, used oil recycling or processing sites of today are required to provide secondary containment for their storage areas, as do virgin oil and fuel tank terminals. However, the federal used oil regulations go even further, requiring that the secondary containment at used oil facilities be impervious to used oil. Virgin oil and fuel facilities do not have such a requirement.

Mr. Dragovich stated that the Federal Used Oil Regulations do not prescribe methods for ensuring that tanks meet the standards of "good condition". Part 279.54 in the Federal Used Oil Regulations and also as stated in IL 35 Part 739.154 define "good condition" as no severe rusting, apparent structural defects or deterioration, and no visible leaking. A tank that is not severely rusting or has severe defects, should ensure that it is and will stay in good condition. And if a leak would occur, the Federal and IL regulations require the tank be promptly fixed and the leak cleaned up. In addition, the Federal and IL Used Oil Regulations require a used oil processor to maintain and operate the facility to minimize the possibility of a fire, explosion or any unplanned sudden or nonsudden release of used oil to the air, soil, or surface water which could threaten human health or the environment. To obtain the desired preparedness and prevention level concerning the above possible incidents, processors are required to have an alarm system, a communication system capable of reaching emergency personnel, fire extinguishers, water for fire fighting, testing of the above equipment, arrangements with local authorities on how to handle an incident and what is stored in the facility, and where, a contingency plan, and the tanks labeled as to their contents. As you can see, used oil processors and storage sites have a much higher level of protection concerning possible human health and/or environmental harm than even large gasoline bulk terminals where the material being stored is more toxic and much more volatile and hazardous than used oil. Those facilities are regulated under the SPCC regulations, the Oil Pollution Act requirements, and OSHA requirements. Oil processors and storage facilities are also regulated under all those regulations, but have a further level of environmental protection under the Used Oil Facility Management Standards.

Mr. Dragovich mentioned that the EPA specification for used oil does not include bottom sediment or water or other parameters and therefore the on-specification parameters alone could not guarantee a value being applicable to the oil stored. It is imperative that low sediment and water on-specification oils continue to be allowed to be stored in unpermitted commercial leased bulk petroleum facilities. Seasonal demand patterns and other factors require storage of large amounts of used oil at certain times. Much more than what storage is available at actual used oil storage and processing facilities. In Addition, due to economics, many oil recyclers in recent years have started using transfer

facilities, collecting on and off specification used oil in smaller trucks and bulking it up into semi truck loads at transfer facilities. Again, many of these transfer facilities (although usually quite smaller facilities) are actually commercial petroleum storage facilities that the recycler leases part or all of. Typically, these facilities are or have been used for gasoline or fuel oils. We feel these facilities must live up to the used oil facility requirements as outlined above, but again requiring EPA permitting of these facilities would basically take them off the market to used oil recyclers. We would not object to requiring used oil haulers to identify such on-specification and transfer storage facilities as a requirement of their special waste hauling permit, and to certify that those facilities meet all the used oil facility standards where applicable. Commercial bulk storage facilities, whether large or small, would not be interested in "permitting" their facilities as used oil facilities. The loss of these commercial petroleum storage facilities would devastate the current used oil recycling operations and system in Illinois.

Although we have no real objections to the proposed changes to Part 809 specifically, we are concerned about the requirement that special waste be manifested, used oil included. Unlike almost all other waste streams, there is more used oil generated and it is generated in small batches. Therefore, a collector/recycler must stop many places to get an economically feasible load of oil for the day. Manifesting each and every small generator with the six part manifest and following the mailing requirements, etc., is very burdensome and has always been a problem in Illinois. Most Illinois recyclers therefore have been holding a manifest in the truck, but only filling it in when full and attaching a trip log of some sort to the manifest showing everywhere the oil came from. This is a procedure IEPA has endorsed in the past. However, NORA was told last year by the agency, they agreed this is a problem and were working on a way to drop the manifesting requirements for used oil and instead follow the Part 279/739 tracking requirements. NORA also offered to IEPA that they felt they could address this problem in the special waste hauling permits issued to used oil haulers. Both NORA and ourselves are curious what the agency now intends to do about this issue due to the fact it has not addressed this issue in these documents clearly. Also, Illinois generators of used oil have not been required to obtain an IEPA generator number. Mr. Dragovich stated in his proposed testimony discussing section 809.211 (1) that "the exemption from obtaining an Illinois Special Waste Identification Number in Part 739.124 conflicts with Part 809, since a manifest is required to ship used oil if the generator generates more than 220 pounds of special waste in a calendar month and the IEPA identification numbers are necessary to properly complete a manifest". This is confusing. Is Mr. Dragovich explaining that he feels that generators of over 220 pounds of used oil (and/or special waste) in a month should now be required to obtain an IEPA generator number? If so, is the IEPA prepared to register the some tens of thousands of oil generators in the state and require used oil collectors to manifest each and every one with the six part special waste manifests? We hope not. The burden to the generators and collector/recyclers would be tremendous due to the volume and number of stops serviced by even a single used oil collection driver (up to 15 a day). In addition, the way revised Part 809.211 is written, it seems to preclude an

exempt generator/hauler who is transporting used oil to an actual used oil processing facility instead of a aggregation point or collection facility. We question the value of restricting small shipments (55 or less gallons) of used oil to other types of used oil facilities. Many of those facilities are currently also accepting such generated oil.

As stated in our first comments, our general concern is that if transfer facilities and processors are permitted under Part 807, we will actually see an entire new set of used oil regulations that go over and above the federal regulations added as permit conditions and design, operation, and maintenance criteria, as are allowed under Parts 807.206 and 807.213. In addition, Part 807,206 may require used oil facilities to provide financial assurance as prescribed by Part 807.600 which was primarily formulated for landfills, and which we feel should not apply to used oil facilities. All this would cause the operations of Illinois recyclers to be much more expensive than their neighboring competitors and would make the costs for oil pick-up and recycling to the generators much higher than they currently are, at a time when used oil recyclers have already been struggling with low values for their product due to virgin oils severely depressed prices over the last year. We feel these factors along with what was discussed above would work to discourage recycling of used oil in Illinois, especially Do-It-Yourself oil changers oil due to higher disposal/recycling costs.

We see no reason to permit marketers. Marketers have to also either generate transport, store, or process used oil to be considered a marketer. Since those other activities are all regulated to some extent, it seems redundant to permit a marketer.

The proposal does not exempt on-specification used oil burners as written, from the permitting requirements. Requiring permitting of on-specification burners in Illinois would be the end of Illinois recycling industry and system, with inadequate possible destination points for all the oil generated in Illinois. The nationwide market is already in a glutted position due to the depressed pricing mentioned above. This action could cause generators to find that no one is willing to pick-up their oil, greatly increasing improper disposal. Burners would simply switch to other cheap virgin fuel sources. Please refer to ours and NORA's first set of comments dated April 8 for more detail concerning the detriments to Part 807 permitting.

In closing; used oil of today is much cleaner and better managed than just a few short years ago. The Federal Management Standards are extensive but not unnecessarily restrictive and provide a level of environmental protection that is higher than virgin oil and fuel handlers. However, at the same time they keep the costs down to recyclers while protecting human health and the environment, and at the same time encourage recycling by letting the recyclers do things their way (within the scope of the regulations). This keeps the costs the absolute lowest they can safely be, to the generators of used oil. Remembering that 40% of automotive oil is generated by Do-It-Yourself non regulated generators who can easily opt out of the used oil recycling program and system, cost to the generators is the most critical issue in encouraging or discouraging participation.

From what we understand this was the number one factor that USEPA kept in mind when formulating and working on the current used oil regulations. Also from what we understand, USEPA worked on development of those regulations for over 10 years before issuing them. As written, while they have very adequate environmental protections, they allow used oil to be handled more like a commodity than a waste and allow recyclers to compete along side virgin fuel and oil producers. Saddling used oil recyclers and burners with much more restrictive facility requirements than virgin oil and fuel facilities just makes used oil derived products that much more uncompetitive. As stated, the hazards of used oil today are no more than virgin fuels from a spill, fire, or toxic perspective.

Currently, IEPA holds the proper authority to prescribe a more comprehensive registration program, perform inspections, and provide full enforcement of existing regulations, regulations that we feel are very adequate. We also want to encourage the board to review the Part 739 regulations as written. It's important we keep state variations from the federal regulations as minimal as possible, and do not feel an actual permitting program would be a beneficial thing to do for the reasons outlined above and in our first set of comments. We would like to see Illinois make reasonable changes they feel needed made to try and fit into the federal program, not invent their own program that varies widely from surrounding states, increases costs to recyclers and generators and over regulates and over burdens the industry.

Sincerely,

Mike Lenz, President