

ORIGINAL

RECEIVED  
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD MAY 07 1999

IN THE MATTER OF: )  
)  
AMENDMENTS TO PERMITTING FOR )  
USED OIL MANAGEMENT AND USED )  
OIL TRANSPORT 35 IL ADMIN. CODE )  
807 AND 809. )

R99-18  
(Rulemaking - Land)  
*P. C. #13*

STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

TO: Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
**(VIA AIRBORNE EXPRESS)**

Joel J. Sternstein, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
**(VIA AIRBORNE EXPRESS)**

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have filed today with the Clerk of the Illinois Pollution Control Board an original and nine copies of the COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: *Kath D. Hodge*  
One of Its Attorneys

Dated: May 6, 1999

Katherine D. Hodge  
Karen L. Bernoteit  
HODGE & DWYER  
808 South Second Street  
Springfield, Illinois 62704  
(217) 523-4900

THIS FILING SUBMITTED ON RECYCLED PAPER

**CERTIFICATE OF SERVICE**

I, Katherine D. Hodge, the undersigned, certify that I have served the attached COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Joel J. Sternstein, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

by sending said documents via Airborne Express in Springfield, Illinois on or before 5:00 p.m. on May 6, 1999, and upon:

Sanjay K. Sofat, Esq.  
Illinois Environmental Regulatory Group  
215 East Adams Street  
Springfield, Illinois 62701

Robert Lawley  
Chief Legal Counsel  
Department of Natural Resources  
524 South Second Street  
Springfield, Illinois 62701-1787

Matthew J. Dunn, Chief  
Environment Bureau  
Office of the Attorney General  
100 West Randolph Street, 12<sup>th</sup> Floor  
Chicago, Illinois 60601

Jennifer Marsh  
Chemical Industry Council of Illinois  
920 South Spring  
Springfield, Illinois 62704

Cynthia Hilton, Executive Director  
Association of Waste Hazardous  
Materials Transporters  
2200 Mill Road  
Alexandria, Virginia 22314

Kimberly A. Geving, Assistant Counsel  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

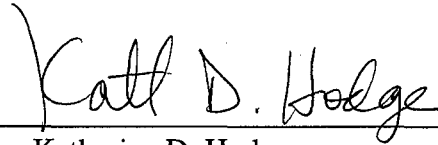
Vicki Thomas  
JCAR  
Wm. G. Stratton Bldg., Room 700  
Springfield, Illinois 62706

Jeffrey Jeep  
EMCO Chemical Distributors, Inc.  
2100 Commonwealth Avenue  
North Chicago, Illinois 60064

Paul Pike  
(MC-602)  
Ameren Services  
Post Office Box 66149  
St. Louis, Missouri 63166

Christopher Harris  
General Counsel  
National Oil Recyclers Association  
1439 West Babcock  
Bozeman, Montana 59715

by depositing said documents in the U.S. Mail in Springfield, Illinois on or before  
5:00 p.m. on May 6, 1999.

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

---

Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

MAY 07 1999

IN THE MATTER OF: )  
)  
AMENDMENTS TO PERMITTING FOR )  
USED OIL MANAGEMENT AND USED )  
OIL TRANSPORT 35 IL ADMIN. CODE )  
807 AND 809. )

R99-18  
(Rulemaking – Land)

STATE OF ILLINOIS  
*Pollution Control Board*

**COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by one of its attorneys, Katherine D. Hodge of HODGE & DWYER, and submits the following Post-Hearing Comments with regard to the above-referenced rulemaking.

On November 2, 1998, the Illinois Environmental Protection Agency (“Agency”) filed proposed amendments to 35 Ill. Admin. Code Parts 807 and 809 with the Illinois Pollution Control Board (“Board”) pursuant to Sections 27 and 28 of the Environmental Protection Act (415 ILCS 5/27 and 5/28 (1998)) and 35 Ill. Admin. Code § 102.121. Hearings were held in this proceeding on February 25, 1999 in Chicago and on March 1, 1999 in Springfield. On March 29, 1999, IERG and the Agency filed a Joint Motion to Extend the Public Comment Period with the Board, which requested that the comment period be extended from April 9, 1999 to May 7, 1999. On April 12, 1999, the Board’s Hearing Officer issued an order granting the Joint Motion to Extend the Public Comment Period until May 7, 1999.

As set forth more fully below, IERG is generally opposed to the permitting scheme for used oil management facilities contained in the Agency’s rulemaking proposal in the above-referenced matter. However, in the event that the Board should decide to proceed with adoption of these proposed rules, IERG offers several comments on particular issues of concern.

First, the Agency has not established the need for the Board to adopt permit requirements for used oil management facilities, which would result in a more stringent approach than the “permit-by-rule” scheme currently mandated by the United States Environmental Protection Agency (“USEPA”). In addition, the Agency’s proposal would result in the imposition of permit conditions more stringent than the used oil management standards currently in effect and would result in used oil management facilities in Illinois being placed at a competitive disadvantage compared to competitors located out-of-state, due to increased costs of doing business in complying with the more burdensome requirements. IERG member companies, in turn, would be charged more for all used oil management services in Illinois. Finally, there is insufficient information in the record in this proceeding to establish the economic reasonableness and technical feasibility of the Agency’s rulemaking proposal.

Subtitle C of the federal Resource Conservation and Recovery Act mandates a “permit-by-rule” scheme. USEPA adopted the federal used oil management standards, set forth in 40 C.F.R. Part 279, that establish various used oil management standards but do not require a permit for used oil facilities. The Board then adopted 35 Ill. Admin. Code Part 739 as an identical-in-substance rulemaking under Sections 22.4 and 27 of the Act (415 ILCS 5/22.4 and 5/27 (1998)). The Agency has failed to establish a need for permitting requirements more stringent than the federal “permit-by-rule” requirements. At the Board hearing in Springfield on March 1, 1999, the Agency indicated that it was not sure of the number of used oil facilities that would be impacted by the proposed rulemaking. (See pages 16 and 17, Hearing Transcript for R99-18, March 1, 1999.) The need for such permit requirements can not be determined when the Agency knows neither the number of affected facilities nor particular “environmental risks” at such facilities.

IERG member companies are concerned that the imposition of a land permit requirement will put those used oil facilities subject to the permit requirement at a competitive disadvantage with respect to competitors located in other states. The costs associated with applying for and obtaining a land permit and obtaining subsequent permit renewals are costs that would not be incurred by out of state competitors that operate under a "permit by rule" scheme. In addition, companies that seek to enter the used oil management field may be discouraged from doing so, due to the fact that they would incur costs associated with obtaining a land developmental permit and possibly, of going through the local siting approval process. This may have the impact of discouraging the recycling of used oil when, from a public policy standpoint, the State of Illinois tries to encourage recycling of materials to the greatest extent possible

Under the Agency's rulemaking proposal as it currently exists, the Agency may have discretion to impose permit conditions that are more burdensome than the used oil management standards that currently exist in Part 739. This possibility will also increase the likelihood that used oil management facilities will be at a competitive disadvantage as compared to out-of-state competitors. The increased costs associated with compliance with more burdensome requirements are costs that will be passed along to IERG member companies who utilize the services of these used oil management facilities.

In addition, there is insufficient information in this record to allow the Board to consider the economic reasonableness and technological feasibility of the Agency's rulemaking proposal. The Agency has presented no testimony regarding the specific types of requirements that used oil management companies will have to meet as a result of being required to obtain a state land permit; the Agency has presented no testimony on the costs associated with meeting the more burdensome permitting requirements.

In conclusion, due to the above reasons, IERG urges the Board not to adopt the above-referenced rulemaking proposal. However, in the event that the Board decides to proceed with adoption of these proposed rules, IERG offers the following comments on several issues of particular concern:

1. If the Board intends to proceed with this rulemaking proposal, the Board should add an exemption from state land permit requirements for used oil management facilities which use an outside party to process or treat used oil on the site where the used oil is generated. Such used oil management facilities should not be subject to state land permit requirements because the facilities will have control over the used oil from the time it is generated through the processing or treating of the used oil. Therefore, a land permit requirement should not be applicable since the concerns the Agency may have about used oil management facilities that handle used oil generated at another site are not present in this situation.

2. There should be no state land permit requirement for generators of used oil that also are the first to claim that their used oil, to be burned for energy recovery, meets the used oil specifications in 35 Ill. Admin. Code § 739.111. These generators are also by definition “used oil fuel marketers,” as defined in 35 Ill. Admin. Code § 739.100. Under the current rulemaking proposal, a state land permit issued pursuant to 35 Ill. Admin. Code Part 807 would be required for this activity. A permit should not be required for activity, which is limited to sampling, and analyzing used oil to determine whether it meets the specification requirements. This issue has been discussed with the Agency and IERG understands that the Agency will propose an amendment that will address the concern.

3. Under the current regulatory proposal, existing used oil facilities that operate in compliance with the “permit-by-rule” scheme will not be in compliance with the above

rulemaking proposal upon its effective date because those facilities that must obtain local siting approval will not be able to obtain local siting and a permit upon the effective date of the rule. In addition, used oil facilities that would only be subject to the permit requirement would not be able to obtain a permit by the effective date of the rule and, as such, would not be in compliance with the rule. This issue has been discussed with the Agency and IERG understands that the Agency will propose an amendment that will address this concern.

In conclusion, IERG reserves the right to offer additional comments on the amendments expected to be submitted by the Agency, especially if the Board determines to proceed with adoption of these regulations.

WHEREFORE, IERG appreciates the opportunity to participate in this proceeding and respectfully requests the Board to take action on the Agency's regulatory proposal consistent with these comments.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: Kath D. Hodge  
One of Its Attorneys

Dated: May 6, 1999

Katherine D. Hodge  
Karen L. Bernoteit  
HODGE & DWYER  
808 South Second Street  
Springfield, Illinois 62704  
(217) 523-4900