

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

IN THE MATTER OF:)
)
SPECIAL WASTE HAULING) R95-11
VEHICLE NUMBERS: AMENDMENT TO) (Rulemaking-Land)
35 ILL. ADM. CODE 809.401)

ORDER OF THE BOARD (by C.A. Manning):

Today, on our own motion pursuant to Section 28(a) of the Environmental Protection Act (415 ILCS 5/28(a)), we are opening this rulemaking docket for the purpose of amending the "Vehicle Numbers" provision of the Special Waste Hauling regulations, 35 Ill. Adm. Code Part 809. We are initiating this rulemaking at the request of the American Trucking Association (ATA) who notified the Board by letter dated February 22, 1995¹, that Section 809.401 as it is currently written, may be subject to a preemption ruling by the United States Department of Transportation (U.S.DOT).

On February 2, 1994, U.S.DOT issued a final administrative determination finding that certain provisions of Michigan's statute and regulations requiring the marking of motor vehicles used to transport liquid industrial wastes and hazardous wastes, were preempted by federal law. (59 *Federal Register* 6186 (February 9, 1994).) ATA believes that because Illinois' vehicle numbers provision at Section 809.401 is substantially similar to that of Michigan's, Section 809.401 should be amended to reflect the U.S.DOT's final determination.

This rulemaking would thus consider amending Section 809.401 by deleting the current provision found at that section and replacing it with new language. The ATA has suggested language which was drafted jointly with the Illinois Environmental Protection Agency (Agency) and which both the ATA and the Agency agree would cure the preemption cloud over Section 809.401. The suggested language provides:

The owner and operator of any vehicle, except truck tractors as defined in Subpart A, which is used to transport special waste shall list each such vehicle on the special waste hauling permit application. Upon issuance of a special waste hauling permit, the owner and operator of any such vehicle used to transport special waste shall maintain within the vehicle a legible photocopy of the special waste hauling permit. Issuance of the special waste hauling permit shall be disclosed by the owner and operator of the vehicle to

¹The American Trucking Association letter has been marked by the Board as Public Comment #1.

any representative of the State of Illinois (including, but not limited to, the Agency) or any treatment, storage, or disposal facility which has handled, is handling, or will handle the special waste. Upon request by such representative, the photocopy shall be made available by the owner and operator of the vehicle for review. The owner and operator of the vehicle shall also comply with any otherwise applicable federal regulations.

The new language would replace Section 809.401 which currently provides:

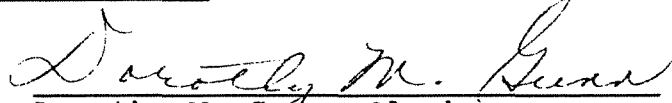
Upon issuance of a special waste hauling permit, the owner and operator of any vehicle used to transport special waste except truck tractors as defined in Subpart A shall display a number issued by the Agency on opposite sides of the permitted vehicle following the words, "Licensed Special Waste Hauler: (number)." Numbers and letters shall not be less than two inches high and shall be removable only by destruction. Directly adjacent to said words and number, the vehicle owner and operator shall display a seal furnished by the Agency which shall designate the date on which the permit was issued.

Accordingly, we authorize at least two hearings to be held in the State of Illinois as any rule change resulting from this rulemaking would have state-wide applicability. (415 ILCS 5/28(a).) However, at this juncture, we will not send this matter to First Notice as a Board proposal until we have had sufficient opportunity to hold hearings and receive either testimony or public comment from any interested participants. (35 Ill. Adm. Code Sections 102.160 and 102.342.) In the ATA's February 22nd letter, the ATA has offered to testify in support of the amendment and therefore, we anticipate that the ATA will provide testimony at the first scheduled hearing. We also invite the Illinois Environmental Protection Agency to provide testimony and/or public comment regarding any change to Section 809.401.

A hearing officer order shall be issued in the near future establishing the dates, locations and times for hearing, in addition to scheduling due dates for pre-filed testimony or questions, and a public comment period. All questions concerning this docket may be addressed to the hearing officer, Musette H. Vogel at (217) 524-8509.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of March, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board