

FUTURE ENVIRONMENTAL
19701 s 97TH AVE.
Mokena, IL 60448
708-479-6900

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OCT 11 2006
STATE OF ILLINOIS
Pollution Control Board

Oct 10, 2006

MS. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph
Suite 11-500
Chicago, IL 60601

PC 41

RE: R2006-020

Dear Pollution Control Board Members:

The following pages contain our final comments concerning this issue.

This discussion started out about paperwork tracking. However, we have tried to point out that this is also an operational issue concerning the use of transfer facilities and other operational issues where the two sets of regulations counter each other, as outlined in our earlier comments. In the beginning of this discussion we thought we were in basic agreement with IEPA. From there the Agency has moved this issue into more of a permitting issue due to the fact the Agency wants to continue manifesting mixtures regulated under Part 739. Further, it has now become clear that the agency also wants the manifested mixtures to only go to Part 807 solid/special waste permitted facilities.

In 1999 the agency petitioned the Board that used oil facilities should become regulated by Part 807. The Board ultimately disagreed that this was needed in their final ruling on this issue, R99-18 (document submitted with NORA comments). We feel what IEPA is currently proposing is an attempt by the agency to once again pull the majority, if not all used oil recyclers under part 807 authority. Recyclers cannot operate without Part 807 permits if they have to manifest things like oil and water mixtures due to the fact that oil and water mixtures are found quite often from intentional mixing (water soluble oils), co mingling by industry or rain water contamination that is common in the automotive segment of generators. The recyclers would rather not have this be the case because it lowers the value of the oil, but in reality it is.

That is one of the main reasons we cannot accept the Agency's position on this issue. We would not be able to accept any water and oil mixtures from our customers when encountered because we do not have Part 807 special waste permitted facilities. We do not have Part 807 permitted facilities due to the increased siting, operating and permitting requirements of Part 807 special waste facilities. These increased siting, operating and permitting requirements (acknowledged by IEPA in their 09/01/06 comments and by the Board in their 1999 ruling) would not allow us to compete with our out of state competitors. These same out of state competitors would be able to take these manifested oil/water mixtures (plus most everything else that is considered to be regulated as used oil under the federal regulations) to their out of state facilities, not incurring the additional siting, operating and permitting expenses that Illinois based recyclers would face. All the surrounding states consider used oil and water mixtures as "used oil" and do not require any additional siting, operating or permitting to accept such a mixture. Further, under the special waste regulations we could not transfer that used oil/water mixture to another truck to take for recycling elsewhere nor could we keep that mixture at our site for more than 24 hours. Under the Agency's regulation scenario if we accidentally got one 55 gallon barrel of an oil and water mixture from a generator we would be expected to haul that 55 gallons up to 100 miles or more to reach a Part 807 permitted facility, in the same bulk 3500 plus gallon capacity truck, by the very next day.

The used oil regulations allow "transfer facilities" where certain types of streams the recycler wants or needs to segregate can be held and accumulated for up to 35 days to accommodate more economical transportation. The special waste regulations do not accommodate any type of accumulation or transfer operations which are required for used oil recycling to succeed in an economical fashion.

As explained in our first set of comments we use transfer facilities. Under the Agency's plan of regulation a truck operating out of a transfer facility would have to manifest an unexpected oil/water mixture at the time of pickup from the generator. This is not possible in the used oil industry for the reasons I explained in our first comments concerning how transfer facilities work and above concerning the lack of special waste accumulation and transfer facility allowances. This is the other main reason we could not operate and survive under the Agency's plan. Let me state again. Illinois would be the only state including all surrounding states that would require more extensive siting, operating and permitting for handling used oil and water mixtures, and not allow accumulation at used oil (only) transfer facilities of such mixtures. Used oil recyclers encounter water (usually rain water) everywhere and we usually don't know we are going to encounter it until after it is being pumped into the truck, often getting mixed into the last generators oil. This is due to the fact that the water lies in the bottom of the container or tank under the oil.

On page four IEPA states that it is the generators and not the transporters responsibility to make a determination in the field if the used oil contains any added non-hazardous special waste. If the transporter did not determine what they were picking up in the field they could be charged with storing or transferring a non used oil special waste, or worse a hazardous waste without a proper permit and /or could have the load of used oil rejected by the buyer or recycle after all the oil was commingled together in the transporters truck.

IEPA also states that the tracking requirements for used oil and special waste mixtures, including DOT required tracking, are not adequate (leaving out hazardous waste mixture tracking). In the second meeting we assured IEPA we would be agreeable to discussing with them what further tracking they wanted and if reasonable we would agree. We are not against tracking. We just don't want to have to do redundant, time consuming and expensive tracking.

On page seven IEPA states that requiring manifesting of mixtures (and subsequent delivery to only special waste permitted facilities if delivered in Illinois) will encourage out of state competitors to recycle used oil in Illinois. We cannot see how this would happen if the out of state recycler only has to comply with the equivalent Part 739 regulations in their state and not the cumbersome, expensive Part 807 permit requirements as would be the case for Illinois based recyclers under IEPA's scenario.

On page seven and nine IEPA states that more tracking is required (again only for used oil and NON hazardous waste mixtures) to provide adequate information to the transporter or receiving facility. We know what were doing and we have (as much as possible) set up the necessary procedures to intercept anything that would cause the oil to not be safe to handle or properly burn. After all if the buyer of the oil doesn't want it due to any reason it is our problem, our very big problem.

On page eight and nine IEPA argues that the less stringent siting, operating and permitting at used oil facilities verses special waste permitted facilities would encourage the mixture of special waste with used oil. Yes, if the mixture of used oil and something like non hazardous (or ignitable only) solvent is the lowest cost way for the generator to recycle his waste, and is allowed by law it could encourage mixing. We may not have a problem with that type of a mixture because chemically the solvent is almost identical with the used oil and is normally no more contaminated than the used oil itself through use. Further, it would not effect the oil meeting either the EPA or ASTM burning specifications. IEPA states that burning a used oil and other waste mixture is not recycling, but in fact it is considered recycling under Part 739. If this is the lowest cost safe recycling method available to the generator it could be argued that this is the best recycling avenue. On the other hand a transporter and recycler will not intentionally allow anything to be mixed into the used oil that would cause a problem of the material meeting either the EPA or ASTM specifications. .

On page eleven IEPA states that its proposal would not overly discourage used oil recycling in Illinois. However, in the Boards 1999 ruling it states that the Agency's idea of regulating "used oil" under Part 807 regulations "is not economically reasonable when taking into account the extensive existing federal and state regulatory system." The Board further stated in the order "The agency was able to respond to some of NORA's competitive disadvantage arguments, but some of the arguments withstand the Agency's counterarguments."

On page twelve IEPA states that other non hazardous wastes in the used oil could change the viscosity, BTU value or ash. That is why NORA helped develop the ASTM specifications for recycled used oil fuel which regulate those very things. NORA has submitted the table of those specifications.

Industry uses the ASTM specification in conjunction with the EPA specifications to make sure we have a good, safe used oil fuel. The USEPA used oil specification tests divide used oil up into three categories: On Specification, Off Specification and Hazardous Waste. We have enclosed an attachment that our personnel use to verify if a given stream of used oil is On Spec, Off Spec or Hazardous (Attachment A). Since that time many other studies have been done concerning used oil fuel and emissions from burning it by the USEPA (AP-42 emission factors), the Entropy Study sponsored by NORA and the National Asphalt Pavers Assn, all with very favorable results.

On page thirteen IEPA states that; "The federal regulations do not encourage mixtures." In the case of used oil this is not entirely correct. While USEPA did say that they encourage the separation of used oils from used oil/solid waste (solid as in non liquid) mixtures they did endorse certain liquid to liquid mixtures (even hazardous wastes) as outlined under Part 739.110.

IEPA states a number of times it is due to the fact that NORA's proposal "does not include limits on the percentage of oil that would present in the waste, the Illinois EPA believes that should NORA's proposal be adopted by the board, the Illinois will lose regulatory control over non-hazardous special waste". We are not sure what IEPA means concerning the percentage. Certain wastes such as water would have to be allowed at higher levels. Most everything else is normally found at lower levels.

Finally, we do not agree with IEPA's assumption that NORA's proposal would cause the IEPA to lose regulatory control of the special waste regulations in Illinois. First, the waste stream collected has to be destined for recycling or the Part 739 regulations do not apply. Secondly, there are many special waste streams a recycler would NOT want in his oil. Anything that lowers the BTU or base oil value, the recycler would prefer not be in the oil. Thirdly, we feel a single generator would have to generate both used oil and another special waste that was allowed to be mixed by the used oil regulations and by the recycler for the recycler to utilize the used oil exemption. We feel a recycler could not legally go to one generator of used oil only and then to another separate generator that was generating special waste but no used oil, pick up the other special waste and call it "used oil". The non used oil special waste generator would be required to fill out a manifest and fill it out according to the regulations for the waste stream they were generating. If done so the used oil recycler would then have to handle the material as manifested, not as used oil. And lastly, we do not believe the used oil mixtures that are regulated under part 739 are also subject to Part 807 regulation, as currently written. If this is the case used oil and other special wastes qualifying for regulation under Part 739 could be manifested and go to Part 739 only facilities.

In closing, we feel for the reasons we have outlined in all our comments and the very important issues NORA has submitted concerning this issue that Nora's proposed language is the appropriate course of action for the Board to take to fix what doesn't work between the two sets of regulations and that such an action would be consistent with the Boards previous ruling concerning used oil regulation.

Sincerely,
Michael Lenz
Future Environmental
Environmental Compliance Specialist

ATTACHMENT A

LEVELS OF CONTAMINATES TO DETERMINE IF USED OIL IS: ON-SPECIFICATION / OFF- SPECIFICATION / OR HAZARDOUS

<u>Contaminate</u>	<u>on-spec</u>	<u>off-spec</u>	<u>hazardous</u>
Arsenic	5ppm Max	over 5ppm	N/A
Cadmium	2ppm Max	over 2ppm	N/A
Chromium	10ppm Max	over 10ppm	N/A
Lead	100ppm Max	over 100 ppm	N/A
Flashpoint	100 degrees F Max	under 100 degrees F Rebutted	under 100 degrees F Not rebutted
PCB's	>2ppm	2 to 49 ppm	50 ppm & Over
Total Halogens (Chlorine)	under 1000ppm &1000-4000ppm Rebutted	over 4000ppm rebutted	over 1000ppm not rebutted

USED OIL – Any oil that has been refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. Including used oil/non listed aqueous waste mixtures, and used oil/solvent mixtures if the mixture is more than 50% used oil and was mixed with a non-hazardous petroleum solvent.

ON-SPECIFICATION – Equivalent to virgin fuel oils – Deemed just as clean – No special regulation on handling, storage, sale or use when sold and used as a fuel. However cannot be applied to the land.

OFF-SPECIFICATION – Must be marketed only to industrial types of furnaces, boilers, or kilns, who have notified the EPA of their burning of this type of oil, or to used oil processors.

HAZARDOUS – Must be disposed of to approved and permitted hazardous waste disposal facilities only.