

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of)
)
PROPOSED AMENDMENTS TO)
SPECIAL WASTE REGULATIONS) R06-20
CONCERNING USED OIL,)
35. Ill. Adm. Code, 808, 809)
)

NOTICE OF FILING

To: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on November 5, 2007, An Association of Responsible Recyclers ("NORA") filed the attached **RULE PROPOSAL AMENDMENT** with Dorothy Gunn, Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

NORA, AN ASSOCIATION OF
RESPONSIBLE RECYCLERS

By: /s/ Claire A. Manning
One of its Attorneys

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RULE PROPOSAL AMENDMENT

On December 13, 2005, An Association of Responsible Recyclers (“NORA”), by and through its attorneys, Brown Hay & Stephens, LLP, by Claire A. Manning, filed a proposed Rule and Statement of Reasons with the Illinois Pollution Control Board (“Board”). Hearings were held on May 25, 2006 and June 20, 2006. The parties filed post-hearing briefs. Forty-two (42) public comments were also filed; a majority of which were in support of NORA’s proposed rule. While the Illinois Environmental Protection Agency (“IEPA”) generally supported a manifest exemption for used oil, it proffered alternative language than that proposed by NORA.

The Board has yet to act on a first notice rule proposal. The rule changes proposed by NORA are intended to give full effect to the used oil rules under Part 739 of Chapter 35 of the Illinois Administrative Code, 35 Ill. Adm. Code 739 (“Part 739”) and eliminate duplicative and unnecessary paperwork. As established at the above-mentioned hearings, requirements similar to the manifesting and hauling requirements contained in Part 808 of Chapter 25 of the Illinois Administrative Code, 35 Ill. Adm. Code 808 (“Part 808”) for special waste, are set forth as tracking requirements for used oil in Part 739. The rule proposed by NORA would eliminate manifesting pursuant to Part 808 for those entities that properly tracked used oil under Part 739.

NORA suspects that the Board has not yet acted on this rule proposal since the IEPA and NORA have not been in agreement as to the specific language of the rule. Accordingly, NORA has reconsidered its original filing and the position espoused by the IEPA at hearing and in its filings.

At the heart of the IEPA's disagreement with NORA's language is the IEPA's argument that since Part 739 tracking is not as prescriptive as Part 809 manifesting, the IEPA will not be in a position to effectively regulate special waste that is being inappropriately managed as used oil since tracking under Part 739 is not as extensive as manifesting under Part 809. Specifically, the IEPA argues that it will not be able to adequately track any waste streams that may result from the inappropriate management of used oil.

“In sum, the Illinois EPA believes that by directly encouraging mixtures of used oil with special waste, NORA's proposal would have a negative impact on the ability to recycle each waste stream and that without the tracking of individual waste streams and mixtures, the waste may be inappropriately handled, managed or burned.” (Agency Public Comment; Public Comment #40, October 10, 2006, page 5.)

In this Rule Proposal Amendment, NORA proposes a more simple approach that is intended to accomplish the objectives of both NORA and the IEPA: a manifest exemption for used oil. Specifically, NORA seeks to amend its proposal to request that the Board adopt language which would eliminate manifesting for used oil that is tracked in accordance with Part 739, provided that such tracking contains information relevant and necessary for the IEPA to ascertain that the material tracked is used oil regulated under Part 739.

Under this arrangement, the IEPA will be able to oversee and regulate the transportation of used oil in the very same manner it does now, so that it may continue to

be aware of individual waste streams and pursue any perceived violations. Concurrently, members of NORA who have tracking procedures which are relevant and necessary to identifying the material as used oil under Part 739 will not be required to utilize two separate and duplicative tracking mechanisms.

The attached language, proposed as Errata Sheet #2, and attached hereto and incorporated herein as Exhibit A, if added as the last paragraph to Section 809.101 (Authority, Policy and Purpose) would achieve the intended result of all parties. This language would nullify the need for the previous language proposed by NORA. NORA urges the Board to accept and adopt this language in a First Notice Order as soon as possible. This language is responsive to the IEPA's concern, as reflected in hearing, and as further set forth in its post-hearing comments. In addition, this language allows NORA's members to manage used oil as contemplated by Part 739, while addressing the IEPA's stated concerns.

The proposed language puts the burden on a used oil recycler to identify the waste stream, just as it would do with manifesting, so that responsible recyclers get the benefit of reduced paperwork, where those recyclers who do not have tracking mechanisms specific to this purpose do not. In this situation, irresponsible recyclers will not be in a position to utilize the new language toward an inappropriate purpose, as the IEPA fears. The proposed language achieves a practical result which nonetheless protects the environment.

Accordingly, in the interest of common sense and elimination of duplicative regulations and paperwork, NORA urges the Board to move forward to First Notice with the proposed language, proposed as Errata Sheet #2, which is attached hereto and incorporated herein as Exhibit A, as soon as possible.

Respectfully submitted,
**NORA, AN ASSOCIATION OF
RESPONSIBLE RECYCLERS**

By: /s/ Claire A. Manning
One of its Attorneys

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ERRATA SHEET #2

EXHIBIT A

NORA WITHDRAWS THE PRIOR PROPOSED AMENDMENT AND IN ITS PLACE PROPOSES THE FOLLOWING AMENDMENT TO 35 Ill. Adm. Code 809.101:

PART 809.101 Authority, Policy and Purposes; Applicability

Pursuant to the authority contained in Sections 5, 10, 13, 21, 22, 22.01, and 22.2 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22, and 22.2], and consistent with the policy and purposes expressed in Section 20 [415 ILCS 5/20] thereof, the Board adopts this Part. This Part prescribes the procedures for the Uniform Hazardous Materials Transportation and Registration Program and for the issuance of permits to nonhazardous special waste transporters; for the inspection and numbering of vehicles; and for proper hauling of special wastes to approved disposal, storage and treatment sites. It is the purpose of this Part to control only wastes as defined herein.

Used oil which is regulated under 35 Ill. Adm. Code 739 is not subject to the manifesting and permit hauling requirements of this Part, including Sections 809.210(b); 809.211; 809.301; 809.302(a); 809.501(a), provided that the tracking documents which are utilized pursuant to 35 Ill. Adm. Code Part 739 contain information relevant and necessary to identify and track the material as used oil regulated under that Part.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **RULE PROPOSAL AMENDMENT** was filed, electronically, with the Clerk of the Illinois Pollution Control Board, and with copies being placed in the U.S. mail on November 5, 2007 and addressed to:

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