

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PROPOSED AMENDMENTS TO THE  
SPECIAL WASTE REGULATIONS  
CONCERNING USED OIL  
35 ILL. ADM. CODE, PARTS 739, 808, 809

**COMMENTS OF  
NORA, AN ASSOCIATION OF RESPONSIBLE RECYCLERS  
IN RESPONSE TO COMMENTS SUBMITTED BY THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY ON DECEMBER 15, 2008**

NORA, An Association of Responsible Recyclers (“NORA”) hereby submits the following additional comments, primarily in response to the post-hearing comments submitted on December 15, 2008 by the Illinois Environmental Protection Agency (“IEPA”).

NORA has a fundamental concern with IEPA's December 15 comments as well as its testimony at the October 1, 2008 hearing on this matter. The Agency's comments and testimony constitute a very substantial misreading of NORA's simple proposal to substitute a tracking document (usually referred to as a shipping paper or bill of lading) for the hazardous waste manifest that is currently required for the shipment of used oil and materials regulated as used oil. As we have frequently stated, NORA's proposal – including the specific proposed revisions to Parts 739, 808, and 809 – have one basic purpose: to reduce the unnecessary paper work burden imposed by the current manifest system.

NORA's proposal is simply to combine the DOT required information with the information that IEPA states that it needs together with the business information needed by the generator, transporter, and/or receiving facility. The combination of these three categories of information cannot be accomplished on a hazardous waste manifest. As the Board is aware, a hazardous waste manifest is a prescribed form, with specific boxes provided for information. The form does not provide any space for business transaction information, such as pricing, items sold, etc. A DOT bill of lading consists of prescribed data elements, rather than a set form. A company complying with the the DOT information requirements provides such information (along with business information) on a company-designed form. An example of this form was provided to the Board at the October 1, 2008 hearing. Accordingly, under NORA' proposal, all of the required information and the business transaction information can be provided on the same form, usually on a single piece of paper.

The approach that NORA advocates for Illinois is the shipping paper system for used oil that has been effectively used for nearly 25 years throughout most of the United States. It is a time-tested system that has become standard with both regulators and the regulated community. Simply stated, we are asking the Board to align Illinois with virtually all of the other states in our country.

NORA's proposal provides IEPA with all the information that the Agency says that it needs via a tracking document (shipping paper or bill of lading). However, IEPA has taken NORA's simple and straightforward proposal and attempted to transform it into a devious attempt to subvert existing hazardous waste regulations and foster sham recycling. Any objective evaluation of NORA's proposal

will reveal that nothing could be further from the truth.

Used oil (and materials regulated as used oil) are not classified as hazardous waste by either USEPA or Illinois EPA; they are subject to a different regulatory framework. Contrary to IEPA's alarming distortions, Illinois would not be venturing into uncharted territory if the Board adopted NORA's proposal; instead, the Board would be conforming Illinois' program to the approach used in 47 other states and which has been effectively relied on since 1985.

IEPA's mischaracterization of NORA's proposal also tends to obscure the fact that there is substantial agreement on the need to reduce the paperwork burden caused by the existing manifesting requirements. All remaining policy issues could have been resolved through routine good faith discussions concerning improvements in IEPA's manifest program. After all, the agreed-upon basic objective is to provide meaningful and timely information about the materials being generated and managed to all appropriate entities. NORA's suggestions are intended to accomplish this objective in a cost-effective manner.

However, NORA's several efforts to engage in a constructive dialogue on these issues with IEPA were rejected. Consequently, this proceeding has been unnecessarily drawn out and acrimonious. Nonetheless, NORA's proposal remains simple and straightforward. NORA and its members have no hidden agenda.

Set forth below is NORA's attempt to specifically respond to IEPA's stated concerns as set forth in its December 15, 2008 comments.

IEPA Comment A (page 2): *“There are two main reasons for this decision [to oppose NORA's proposal]: to encourage proper recycling and to insure proper management of wastes that are added to used oil. The Illinois EPA believes it is likely that other waste added in to the used oil will not be recycled, but will be burned with the used oil; or treated in a waste water treatment unit.”*

NORA's Responses:

First, nothing about NORA's proposal would change the current methods of managing and recycling the materials that are addressed in NORA's proposal. NORA's proposal substitutes a tracking document (shipping paper or bill of lading) for the manifest and the tracking document contains all of the information IEPA says it needs for proper oversight of its manifest program.

Second, U.S.EPA has already determined that burning for energy recovery is a form of recycling. See, for example, the EPA guidance document for small businesses (that IEPA submitted with its December 15, 2008 comments) which states that “used oil can be recycled in the following ways...processed and burned for energy recovery, which involves removing water...” In addition, burning for energy recovery is considered a legitimate form of recycling under Part 739.

Third, treatment of water-based materials in a waste water treatment is expensive and, with rare exceptions, no entity engages in this approach if it can be avoided. Consequently, for fundamental *financial* reasons generators and processors do not use waste-water treatment as an opportunity to dump non-water materials into a load of waste water. Even if that were the case, there is no difference between NORA's proposal and the current manifest system: neither will influence waste management

decisions – positively or negatively. Moreover, even in the context of the waste water treatment approach, treatment allows the non-water materials to be properly recycled.

Fourth, no evidence has been presented by IEPA that there is or has been any abuse of burning for energy recovery or wastewater treatment, thereby precluding “proper recycling or proper management” with respect to the materials that are the subject of NORA's proposal. It should be emphasized that nothing in NORA's proposal affects decisions regarding materials management or recycling.

Fifth, if IEPA wants to “encourage proper recycling and/or proper management” by curtailing the existing legal options, it can propose changes to the existing regulatory program. Thus far it has declined to do so. In any event, IEPA has completely failed to demonstrate that substituting a tracking document for a manifest would lead to *any* improper recycling or management.

IEPA Comment B (page 3, under the heading “POST-USE MIXTURES”): *“The Board's proposed language in the first notice exempts all used oil as defined in and managed in accordance with Part 739 regardless of water content.”*

NORA's Responses:

First, NORA enthusiastically concurs with this position and agrees that this position applies to mixtures a result of use as well as post-use mixtures. Accordingly, in deference to IEPA, NORA hereby withdraws the component of its proposal that would require an oil/water mixture contain a minimum of 50 percent used oil in order to be eligible for the manifest exemption.

Second, based on IEPA's comment there would appear to be a consensus that manifesting for this category of materials is unnecessary. Since that is the case, it would be prudent to adopt a comprehensive system of tracking that minimizes the paperwork burden while preserving all the information IEPA says it needs. Such a system is available under NORA's original proposal or, less preferably, under NORA's compromise proposal as articulated at the October 1, 2009 hearing before the Board.

Third, IEPA's position, quoted above, also negates its contradictory statements in the first full paragraph on page 7 and the second paragraph on page 10 of its comments.

IEPA Comment C (page 3): *“...it is Illinois EPA's position that small quantity generators that are exempt from manifesting before mixture with used oil would remain exempt under the Board's first notice proposal...”*

NORA's Responses:

First, NORA enthusiastically concurs with this position.

Second, based on IEPA's comment there would appear to be a consensus that manifesting for this category of materials is unnecessary. Since that is the case, it would be prudent to adopt a comprehensive system of tracking that minimizes the paperwork burden while preserving all the information IEPA says it needs. Such a system is available under NORA's original proposal or, less preferably, under NORA's compromise proposal as articulated at the October 1, 2009 hearing before the Board.

IEPA Comment D (page 4): *"...Illinois EPA points out the USEPA acknowledged that individual states may impose more stringent standards than the federal requirements."*

NORA's Responses:

First, that states generally possess the authority to impose more stringent requirements has never been in question. The policy issue for the Board to decide is which approach is more sensible. NORA contends the more burdensome approach (namely, the current manifest system) advances no environmental protection advantage when compared to NORA's proposal.

Second, in this case, more stringent requirements for generators and transporters in Illinois impose an unfair and unnecessary burden because generators and transporters in surrounding states do not have to contend with manifest requirements.

Third, NORA's proposal is already the procedure used in 47 other states. There will be no environmental harm if the Board decides to adopt this cost-effective method of compliance.

Fourth, it is worth noting that IEPA also attempted to impose additional and unnecessarily stringent used oil regulations in the late 1990s. NORA objected to IEPA's proposal and ultimately the Board agreed with NORA's position in its 1999 Opinion and Order. Our current proposal is consistent with the Board's previous ruling concerning the need to avoid excessively stringent requirements. IEPA's position is not.

IEPA Comment E (page 6): *"However, the latest proposed language by NORA expands the exemption beyond fuels to include normal components of fuel. Fuel components include the same chemicals that are used as fuel additives, in small amounts, but could be placed in the used oil in high concentrations and could have been used as a solvent before they were mixed with used oil."*

NORA's Responses:

First, IEPA implies without explicitly stating that NORA's proposed language would amend Illinois' hazardous waste regulations to create a new giant loophole whereby generators could dump hazardous waste (spent solvents) into their used oil. IEPA offered neither an actual example of this purported abuse nor a hypothetical.

Second, because amending the hazardous waste regulations has never been NORA's intent in this proceeding, NORA hereby withdraws the language that IEPA objects to. NORA proposes that the Board replace "fuels or normal components of fuels" with "fuels or other fuel products" which would track existing regulatory language and presumably resolve IEPA's concern.

IEPA Comment F (page 7): *"Also, NORA's proposed exemption does not require the wastewater to be in the used oil as a result of the use of the used oil. Therefore the source of the wastewater is limitless and the receiving facility would have no idea of what the chemical constituents would be in the waste water."*

NORA's Responses:

First, IEPA's comment demonstrates that it does not comprehend how wastewater is generated nor the rationale supporting NORA's proposal. Water becomes combined with oil prior to use, as a result of use, and after use. Regardless of how the water became combined with the oil or used oil, the recycling options are the same. In other words, the point in time when the water became combined with the oil or used oil does not affect the recyclability of this material. Nor does it affect the ability of generators or transporters to accurately describe the oily wastewater – whether on a manifest or a tracking document.

Second, the idea that the source of the wastewater is “limitless” is absurd because generators have to pay for treatment of wastewater (which is not inexpensive). The intentional mixing of water and used oil would not be encouraged and would cost the generator money.

Third, IEPA's assertion that the receiving facility would have “no idea of what the chemical constituents would be in the wastewater” is completely inaccurate. Receiving facilities, which must operate in compliance with applicable Clean Water Act regulations and stringent permit requirements impose on their customers significant information requirements concerning the oily wastewater as well as stringent restrictions on the type and concentration of wastewater contaminants. The receiving facility's information requirements, which usually involve analytical laboratory test results and generator profiles, far exceed the information required by the current manifest system and would not in any way be changed if the Board adopts NORA's proposal.

Fourth, as NORA has repeatedly emphasized, the same information set forth in a manifest would be provided in a tracking document. Accordingly, the argument that substituting a tracking document for a manifest will create incentives for dumping chemicals into oily wastewater and slipping the load into an unsuspecting treatment facility is pure nonsense.

Fifth, IEPA has never presented a shred of evidence to support its scenarios of abuse. If abuse exists, it would be as a result of regulatory violations of the Clean Water Act – which can and should be prosecuted under existing law. Whether the generator uses a manifest or a tracking document (both requiring the same information) will have no effect on compliance or non-compliance with other regulations.

Sixth, this is a moot point since IEPA has concluded that “[t]he Board's proposed language in the first notice exempts all used oil as defined in and managed in accordance with Part 739 regardless of water content.”

IEPA Comment G (page 7): “*..it is not Illinois EPA's desire or the intent of the used oil regulations to encourage the mixing of other wastes with the used oil, but to recycle each waste separately.*” (and page 8): “*...Illinois EPA believes the mixing of used oil with other special waste should not be encouraged by providing a manifest exemption as an incentive to mix these wastes.*”

#### NORA's Responses:

First, neither NORA nor IEPA encourage intentional mixing of used oils with other materials. It remains a fact that both the federal and Illinois used oil regulations allow such mixing under certain circumstances. When such mixing interferes with recycling NORA members attempt to discourage these practices and will charge the generators more money to handle these materials. However, NORA

members have to deal with the reality of the materials that generators produce. If the materials may be lawfully collected and recycled (even if they have been mixed by the generators) NORA members will do so.

Second, in any event, nothing in the current manifest system nor NORA's proposal will affect generators' practices with respect to mixing.

Third, if IEPA wants to engage in a constructive discussion with generators, transporters and processors about policies designed to "recycle each waste separately" NORA would welcome such an opportunity following the completion of the present rulemaking. However, neither the current manifest system nor NORA's proposal would have an impact on this policy goal.

IEPA Comment H (page 9): *"...a DOT document does not have to be a separate piece of paper in addition to a manifest."*

NORA's Responses:

First, if DOT *did* require a separate piece of paper NORA would not be offering its proposal. NORA's proposal is simply to combine the DOT required information with the information that IEPA states that it needs together with the business information needed by the generator, transporter, and/or receiving facility. The combination of these three categories of information cannot be accomplished on a manifest.

Second, as stated above, a hazardous waste manifest is a prescribed form, with specific boxes provided for information. The form does not provide any space for business transaction information, such as pricing, items sold, etc. A DOT bill of lading consists of prescribed data elements, rather than a set form. A company complying with the the DOT information requirements provides such information along with business information, on a company-designed form. Accordingly, under NORA' proposal, all of the required information and the business transaction information can be provided on the same form, usually on a single piece of paper.

IEPA Comment I (page 11): *"the generators...were not represented and may not be aware of the changes NORA's proposal would require of them if adopted."*

NORA's Responses:

First, NORA's proposal does not **require any** changes. If NORA's proposal is adopted but a generator desires to continue to use a manifest, nothing in NORA's proposal precludes that choice.

Second, numerous generators (including generators represented by trade associations), transporters and processors submitted comments in support of NORA's proposal. These include: Illinois Manufacturers Association, Chemical Industry Council of Illinois, EMC Oil Corp., RS Used Oil Services, Inc., Holston Environmental Services, Inc., Noble Oil Services, Inc., Thermo Fluids, Ricky's Oil Service, Inc., Oil Re-Refining Company, Independent Lubricant Manufacturers Association, Gencor Industries, Excel Environmental Incorporated, Chicago Petroleum Club, Consolidated Recycling Co. Inc., Usher Oil Company, Mosner Services, Gateway Petroleum Co., Inc., Safety-Kleen, ESI Environmental, Curran, Universal Lubricants, Inc., Valley Environmental Services, Solvent Systems International, Inc., North Branch Environmental, Modal Marketing, Inc., Moore Oil Environmental, Hanson Heidelberg

Cement Co., Excel Environmental and United Waste Water Services.

Respectfully submitted,

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