

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 IN THE MATTER OF:

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6 AMENDMENTS TO PERMITTING FOR No. R99-18
7 USED OIL MANAGEMENT AND USED (Rulemaking-Land)
8 OIL TRANSPORT 35 ILL. ADM. CODE
9 807 AND 809

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14 Proceedings held on March 1, 1999 at 10:35 a.m.,
15 at the Illinois Pollution Control Board, 600 South
16 Second Street, Suite 402, Springfield, Illinois,
17 before the Honorable Joel Sternstein, Hearing
18 Officer.

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3 Anand Rao, Member of the Board's Technical Unit

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1 P R O C E E D I N G S

2 (March 1, 1999; 10:35 a.m.)

3 HEARING OFFICER STERNSTEIN: Let's go on the
4 record.

5 Good morning. My name is Joel Sternstein. I have
6 been appointed by the Board to serve as the Hearing
7 Officer in this proceeding, which is entitled, In the
8 Matter of: Amendments to Permitting for Used Oil
9 Management and Used Oil Transport, 35 Illinois
10 Administrative Code, Part 807 and Part 809.

11 Sitting to my left is Nicholas Melas, the Board
12 Member assigned to this matter.

13 Sitting to my right is Anand Rao, a member of the
14 Board's Technical Unit.

15 This is a rulemaking subject to the Board's
16 procedural rules and, therefore, all relevant and
17 nonprivileged testimony will be heard. This is the
18 second hearing in this matter. The first was held
19 last week on February 25th of 1999 at the Board's
20 Chicago offices.

21 This matter was filed on November 2nd, 1998, by
22 the Illinois Environmental Protection Agency. On
23 December 17th, 1998 the Board accepted this matter for
24 hearing.

25 To my left and towards the back of the room are

1 copies of the current notice and service lists. If
2 you notice that your name does not appear on the
3 lists, there are also sign up sheets for the notice
4 and service lists in the back of the room. Please
5 sign up if you wish to be included on either list.

6 Individuals on the notice list receive only Board
7 and Hearing Officer orders, while individuals on the
8 service list receive all prefiled testimony and
9 questions, motions and appearances, as well as Board
10 orders. Anyone who intends to file comments should be
11 sure to pick those up. If you have any questions
12 about the lists, please see me after the hearing.

13 In addition, at the back of the room you will also
14 find copies of the Board's first notice opinion and
15 order in this matter dated January 21st, 1999, and
16 copies of the Hearing Officer order of January 8,
17 1999.

18 The rest rooms are located next to the elevators.
19 The keys for the rest rooms are located next to the
20 copies on the table in the back of the room. Vending
21 machines are to my left in the Board's offices.

22 We will proceed with anyone who might wish to
23 present testimony today. As we have received no other
24 prefiled testimony, we allow anyone who wishes to
25 testify the opportunity to do so.

1 A few items on decorum, anyone who testifies will
2 be sworn in by the court reporter. Anyone may ask a
3 question of anyone else who testifies. I ask that you
4 raise your hand, wait for me to acknowledge you, and
5 after I have acknowledged you then please state your
6 name and who you represent before you begin asking
7 questions.

8 Please speak one at a time. If you are speaking
9 over each other the court reporter will not be able to
10 get the questions on the record. When answering
11 questions, be sure to say yes or no instead of nodding
12 or shaking your head.

13 Please note that any questions asked by a Board
14 Member or a member of the Board's staff are intended
15 to help build a complete record for the Board's
16 decision, and not asked to express any preconceived
17 notion or bias.

18 Is there anyone here who anticipates that they
19 would like to testify today at the hearing? And you
20 are?

21 MS. MARSH: I am Jennifer Marsh, with the Chemical
22 Industry Council of Illinois.

23 HEARING OFFICER STERNSTEIN: Okay. Thank you. I
24 am not going to have Mr. Dragovich reread his
25 testimony again. I am sure that he would be glad to

1 summarize his testimony if so requested. Mr.
2 Dragovich presented his prefiled testimony at the
3 hearing last week in Chicago on February 25th.
4 Is there anyone here who would like Mr. Dragovich
5 to give his testimony again?
6 Okay. In addition, everyone from the Agency, Ms.
7 Robinson, Mr. Merriman, and Mr. Dragovich will all be
8 available for questions.
9 Is there anything else you would like to add, Mr.
10 Melas?
11 BOARD MEMBER MELAS: All covered. Thank you.
12 HEARING OFFICER STERNSTEIN: That's great. Well,
13 let's have the court reporter swear in Ms. Marsh.
14 (Whereupon Jennifer Marsh was sworn by the Notary
15 Public.)
16 HEARING OFFICER STERNSTEIN: Go ahead.
17 MS. MARSH: Thank you. I would like to preface my
18 remarks just with kind of a qualifier that if perhaps
19 Mr. Dragovich or any of the other Agency
20 representatives have covered this in the initial
21 hearing, please let me know. I would be interested in
22 a clarification or maybe a repeat of some of that
23 information. Thank you.
24 Again, my name is Jennifer Marsh. I am the
25 Regulatory Affairs Director for the Chemical Industry

1 Council and I work here in Springfield.

2 CICI is a not-for-profit association which

3 represents 170 corporations, over 100 of which are

4 chemical firms which manufacture, blend, distribute

5 and sell chemicals. CICI's members operate more than

6 700 facilities in Illinois, ranging from small to

7 large operations. The chemical industry in the State

8 of Illinois ranks third in the United States in

9 chemical exports, fourth in the value of chemical

10 shipments, and employs more than 62,000 people.

11 CICI's comments today relate specifically to the

12 amendment to Title 35 Illinois Administrative Code,

13 Part 807.105, Subpart A, originally proposed by the

14 Illinois Environmental Protection Agency and adopted

15 by the Illinois Pollution Control Board as part of

16 this First Notice Proposed Rule, R99-18.

17 One of our member companies, Safety Kleen, has

18 raised concerns with this particular portion of the

19 proposed rule, which requires that used oil transfer

20 facilities, used oil processors, used oil fuel

21 marketers, used oil burners, and petroleum refining

22 facilities be subject to Part 807 permitting

23 requirements. Until this proposed rule, Part 807 had

24 not required a facility to obtain a special waste

25 permit if the facility had already obtained a

1 hazardous waste management permit in accordance with
2 Title 35 Illinois Administrative Code Part 705. The
3 proposed changes would require a facility that manages
4 used oil -- already governed by a hazardous waste
5 permit issued by the Agency -- to obtain a separate,
6 nonhazardous special waste permit.

7 While CICI recognizes the Agency's interest in
8 ensuring safety and in maintaining oversight at used
9 oil facilities, it questions whether there is an
10 environmental benefit to requiring a facility that
11 already manages used oil in its permitted tanks and
12 processing units in accordance with a hazardous waste
13 permit to obtain a separate, nonhazardous special
14 waste permit. CICI especially questions this proposed
15 language as, according to Safety Kleen, the IEPA has
16 been moving toward consolidating old nonhazardous
17 special waste permits into current hazardous waste
18 permits. In the circumstances mentioned above, this
19 portion of the proposed rule appears to provide for a
20 duplicative permitting process, and should be
21 clarified and amended accordingly.

22 CICI appreciates the opportunity today to comment
23 on the Board's First Notice Proposed Rule, and plans
24 to continue to monitor both the progress of this
25 proposed rule and the responses of its members to the

1 proposed rule. Further, CICI is available to
2 participate with the Board and the Agency as it
3 proceeds through the rulemaking process. Thank you.

4 HEARING OFFICER STERNSTEIN: Thank you, Ms. Marsh.

5 Do you wish to have your testimony admitted as an
6 exhibit?

7 MS. MARSH: Yes, I do.

8 HEARING OFFICER STERNSTEIN: Do you have an extra
9 copy there?

10 MS. MARSH: Yes.

11 HEARING OFFICER STERNSTEIN: Thanks. Okay. We
12 will mark the testimony of Ms. Marsh from the Chemical
13 Industry Council of Illinois as Exhibit Number 2. The
14 official title is, Comments of the Chemical Industry
15 Council of Illinois.

16 (Whereupon said document was duly marked for
17 purposes of identification and admitted into
18 evidence as Hearing Exhibit 2 as of this date.)

19 HEARING OFFICER STERNSTEIN: Okay. Ms. Marsh is
20 now available for questions. Again, I would only ask
21 that if anybody has a question for her to please wait
22 to be acknowledged and then state your name and
23 affiliation for the court reporter
24 (Ms. Robinson, Mr. Merriman and Mr. Dragovich
25 confer briefly.)

1 HEARING OFFICER STERNSTEIN: Do you want to go off
2 the record for a minute?

3 MR. MERRIMAN: Perhaps we should.

4 HEARING OFFICER STERNSTEIN: Okay. We will go off
5 the record.

6 (Whereupon a short recess was taken.)

7 HEARING OFFICER STERNSTEIN: Okay. Let's go back
8 on the record.

9 Again, does anybody have any questions for Ms.
10 Marsh?

11 MS. ROBINSON: This is Kim Robinson, representing
12 the Illinois EPA. We don't have questions, per se,
13 for Ms. Marsh, but we do have a reply that would maybe
14 clarify the record as to how the Agency handles that
15 situation.

16 HEARING OFFICER STERNSTEIN: Okay. Who is going
17 to be giving the reply?

18 MS. ROBINSON: Mr. Dragovich.

19 HEARING OFFICER STERNSTEIN: Why don't we go ahead
20 and swear Mr. Dragovich in.

21 (Whereupon Mr. Theodore Dragovich was sworn by the
22 Notary Public.)

23 HEARING OFFICER STERNSTEIN: Go ahead.

24 MR. DRAGOVICH: We have -- in the past we have not
25 required a separate 807 permit for units that are

1 permitted under the RCRA program, and we want to
2 consistently do that in the future. I don't know what
3 else could be said beyond that except for if a unit is
4 going to manage both nonhazardous waste and hazardous
5 waste, it would receive a RCRA permit. If the unit
6 was within a RCRA permitted facility but only managed
7 nonhazardous waste, we would give the facility the
8 option to get an 807 permit solely for that unit if
9 they chose, or they could roll it right into their
10 RCRA permit. To us it is easier to have just one
11 permit for the facility.

12 HEARING OFFICER STERNSTEIN: Okay. Does anyone
13 have any questions for Mr. Dragovich on that?

14 MS. MARSH: I have a brief question. I think that
15 that sounds really along the same wavelength as what
16 my comments have been today. I am just wondering if
17 there might be a way of expressing that in the
18 language a little bit more clearly than what the
19 proposed amendment is today in case there may be a
20 situation where people don't necessarily know about
21 that practice or interpretation.

22 MR. DRAGOVICH: We could clarify it within 807,
23 but I think the scope of the clarification goes beyond
24 used oil, because it would impact all types of
25 nonhazardous waste management facilities.

1 MS. ROBINSON: I think Mr. Dragovich's concern is
2 that it may go beyond the scope of this rulemaking,
3 this particular docket that you opened for this
4 issue.

5 MR. RAO: So are you saying that any kind of
6 clarification here may effect other types of
7 nonhazardous waste that may be managed at facilities
8 which have hazardous waste permits?

9 MR. DRAGOVICH: Yes, because I would think the
10 clarification would have to be that facilities that
11 are permitted under the RCRA system, or units that are
12 permitted under the RCRA system do not require an 807
13 permit in addition to their 724 permit.

14 MR. RAO: Now, under this proposed rule for those
15 facilities which have a RCRA permit right now, would
16 they be required to like get an amendment to their
17 permit to manage used oil if they don't have such
18 requirement in their permit?

19 MR. DRAGOVICH: Say, for instance, they wanted to
20 manage used oil for the first time and it is not
21 already in the RCRA permit, we would ask them to get a
22 class one or a class two modification probably,
23 depending on the scope of the changes. In most
24 instances they don't have very many changes in the
25 facility, so it would be a minor modification.

1 MR. RAO: Okay. So it is just like, you know,
2 managing any nonhazardous waste at the site, which if
3 they are not permitted right now, they get a class
4 modification to allow them to manage such waste; is
5 that it?

6 MR. DRAGOVICH: Yes. It would be very similar to
7 if they have a hazardous waste container storage area
8 and they want to bring in containers of the
9 nonhazardous waste also and store them in that area.
10 So we would just amend the permit to make sure that
11 that was a safe procedure.

12 MR. RAO: Do you think that we need to clarify
13 that kind of a change in the rule, or is it something
14 that the Agency routinely does, you know, include
15 conditions in the RCRA permit if they are managing
16 nonhazardous waste?

17 (Ms. Robinson, Mr. Merriman, and Mr. Dragovich
18 confer briefly.)

19 MR. DRAGOVICH: We believe that we have been doing
20 it routinely and it has not been an issue so far, so
21 we think we can continue on that basis.

22 MR. RAO: Based on that response, I have a
23 question for Ms. Marsh.

24 Ms. Marsh, do you really believe that we should
25 have some clarification in the rule, or does the

1 Agency's response address your concerns?

2 MS. MARSH: I think the Agency's response
3 addresses my concern. The concern -- if it is a very
4 routine practice, I am not sure whether there is any
5 guidance available on that. My only initial concern
6 would be that if the same people were no longer at the
7 IEPA and we were having these discussions, if there
8 was not a routine practice of this kind of -- not
9 exemption, but the practice that Mr. Dragovich was
10 referring to, it would seem nice to have something in
11 writing, but I see their point.

12 MR. RAO: The reason I asked was, you know, in
13 most of the other nonhazardous rules we don't have
14 this kind of a specific requirement that says if we
15 have a RCRA permit then you can amend that permit.
16 You know, it is left to the Agency's permitting
17 procedure.

18 MS. MARSH: Right.

19 MR. RAO: So I just wanted to make sure what Mr.
20 Dragovich said addresses that.

21 MS. MARSH: I appreciate the discussion today and
22 it has really helped to clarify, so I think that makes
23 a lot of sense.

24 MR. RAO: All right.

25 HEARING OFFICER STERNSTEIN: Does anybody else

1 have any questions for either Ms. Marsh or Mr.

2 Dragovich?

3 MR. RUTHERFORD: I have a couple.

4 HEARING OFFICER STERNSTEIN: Okay. Identify
5 yourself, please.

6 MR. RUTHERFORD: I am Doug Rutherford, with
7 Illinois Power and Ted, I guess, could probably
8 clarify these.

9 If you fall into the requirements to be permitted
10 under 807 would you have to be sited as a regional
11 pollution control facility?

12 MR. DRAGOVICH: Yes, if you met the definition of
13 a new regional pollution control facility.

14 MR. RUTHERFORD: So facilities that are currently
15 operating under the permit by rule in 739 would then
16 have to be sited through the local siting even though
17 they may have been operating under the permit by rule
18 requirements?

19 MR. DRAGOVICH: Yes, that's correct.

20 MR. RUTHERFORD: Do you have any idea how many
21 facilities that would impact?

22 MR. DRAGOVICH: There is less than 20 commercial
23 facilities that we have permitted in the past in
24 Illinois. I don't think that number is going to be
25 impacted by this. In Thursday's testimony I think I

1 had some numbers of facilities who registered with the
2 U.S. EPA, and they were not very confident that those
3 numbers were real accurate. But the largest number
4 was 94 facilities, and that was marketers.

5 MR. RUTHERFORD: Are you going to give them any
6 kind of a grace period or something in there if they
7 are currently operating under 739 and then they get
8 pulled into 807?

9 (Ms. Robinson, Mr. Merriman and Mr. Dragovich
10 confer briefly.)

11 MR. DRAGOVICH: Yes, we would like the Board to
12 consider some type of phase in for these facilities so
13 that on the effective date they didn't all immediately
14 have to get permits.

15 HEARING OFFICER STERNSTEIN: Are you finished, Mr.
16 Rutherford?

17 MR. RUTHERFORD: I have got some other questions.

18 BOARD MEMBER MELAS: What order of magnitude are
19 you talking about for phase in? Are you talking
20 weeks, months, 90 days? Do you have any number in
21 mind, an approximation?

22 MR. MERRIMAN: We have discussed this internally,
23 and the -- by the way, this is Dan Merriman from the
24 Illinois EPA.

25 This has been sort of a difficult question, which

1 I think is why Mr. Dragovich asked that we would like
2 the Board to consider a phase in. There are a number
3 of facilities that are currently operating under
4 permits who are regional pollution control facilities
5 who have been sited, and who we don't anticipate any
6 changes. We don't know -- we really just don't know
7 the numbers of potential facilities or transfer
8 stations in that they are not required to be
9 permitted, and they may not have complied with the
10 notification.

11 The U.S. EPA's database and our database do not
12 correspond, because under certain portions of the
13 rules they could notify either us or the EPA, and we
14 assume many have notified both, and many, perhaps,
15 have not notified.

16 We certainly have an enforcement discretion that
17 we wouldn't initially start in taking an enforcement
18 action for operating without a permit for someone who
19 has been operating a facility as a permit by rule. By
20 the same token, we would not necessarily want a new
21 facility under the grace period after these changes to
22 the rules came into effect to begin operating pursuant
23 to a rule, and then go through the process of
24 obtaining local siting already being an existing
25 facility.

1 Of course, the local siting issue comes in only
2 because 39(c), Section 39(c) of the Environmental
3 Protection Act requires proof of local siting for a
4 new pollution control facility to obtain a development
5 or construction permit. Again, it would not -- this
6 would not effect existing facilities that are already
7 sited.

8 We think that if we are going to require a phase
9 in, consideration might be given to facilities that
10 are in existence and operating pursuant to rule on the
11 effective date, as opposed to new facilities that -- I
12 think they should just operate in accordance with the
13 normal permit procedures and obtain a local siting and
14 so forth.

15 The local siting process can be lengthy. There is
16 always the possibility of an appeal if the third party
17 opposes it or if they are denied and they appeal to
18 the Board. And then there is also the possible
19 appellate procedures. I think on the average we
20 consider the start up process, to go through the
21 siting process in about 12 months. And I think that's
22 the -- sometimes it can be done in less and sometimes
23 it takes longer.

24 When we get into the issue of trying to phase it
25 in and distinguish between existing facilities and how

1 do we define them and nonexisting facilities, it gets
2 more and more complicated. The Agency is not -- we
3 recognize the problem, and we have enforcement
4 discretion, and we would not be enforcing against
5 facilities who are operating out there, other than
6 telling them that you need to begin the process to
7 apply for a permit.

8 So there is a couple of ways we can go. And that
9 is just leave it to the existing procedure, and I
10 think that the retroactivity question and, I mean,
11 there are some legal precedents in the existing
12 procedures that can apply to that. Or we can come up
13 with a definition.

14 But your initial question, and I realize that was
15 a roundabout way of getting to that, but I wanted to
16 try to kind of pose some background as to why we
17 didn't come today prepared to give a specific proposal
18 on this. The local siting could, if they meet the
19 definition of new regional pollution control facility,
20 could take a year or it could take more. The
21 development permit would be a standard 807 development
22 permit. We have a 90 day statutory review period that
23 frequently is waived.

24 And if there are problems with the -- with
25 providing additional information or whatever that can

1 be stretched out. So hard and fast would -- however,
2 the Board did handle something very similar to this on
3 a much larger scale in R88-7 when they dealt with the
4 phasing in of the 811 Landfill Operating Standards.
5 And I believe in that there was a lengthy procedure of
6 two years notification and so on.

7 So I think maybe the simplest answer, and
8 hindsight will only tell us if it is the best, but the
9 simplest answer might be to either pick an arbitrary
10 date that an application, either for siting or for a
11 permit, must be filed within so many months of the
12 effective date of this rule, or just be silent on that
13 issue and leave it to the Agency's enforcement
14 discretion.

15 We certainly can't -- I can't believe the Board or
16 a court would allow us to proceed in a prosecution
17 against a facility who has been existing and operating
18 pursuant to a rule and then suddenly the day after, or
19 even a week, or a month after these rules would come
20 into effect. And I don't think it is a viable
21 alternative necessarily to require a facility that has
22 been properly operating pursuant to a permit by rule,
23 to shut down while they are waiting for their permit.
24 That commercially would be something that would be
25 just inappropriate, and we are not suggesting that.

1 MR. RAO: May I ask a clarification question?
2 When you are talking about these siting issues, you
3 know, siting requirements apply to only new
4 facilities; am I correct?

5 MR. MERRIMAN: Yes.

6 MR. RAO: So this phase in question about calling
7 in existing facilities apply to permit applications
8 or, you know, they apply only to existing facilities
9 and not to new facilities; am I right?

10 MR. DRAGOVICH: Right. But these facilities may
11 not have ever obtained a permit before, and they may
12 not have gone through the local siting procedures.

13 MR. MERRIMAN: But that may not be the issue
14 either. If they don't meet the definition of a new
15 pollution control facility as set out in, I believe,
16 Section 3.32(b) of the Act, then they would not
17 require siting before we could issue them a permit.

18 MR. RAO: That's what I was going to -- my next
19 question was before this proposed rule I think the
20 Agency viewed these facilities to be permitted by
21 rule?

22 MR. MERRIMAN: Right.

23 MR. RAO: How does that relate to the definition
24 of new pollution control facility, and do you still
25 view them to be permitted, and whatever you do under

1 this 807 amendment would be, like, you know, bringing
2 this permit on paper?

3 MR. MERRIMAN: The complicating factor is that 807
4 essentially requires before the Agency issues any
5 permit that a development permit be issued. We may
6 have some -- like some of the early landfill permits
7 where there is sort of a combination operation and
8 development permit.

9 One of the definitions of new pollution control
10 facility, or one of the ways one can be a new
11 pollution control facility is a pollution control
12 facility initially permitted for development or
13 construction after July 1, 1981, and that's the one
14 that seems to be problematic to us initially here.

15 If we would be required to issue a development,
16 slash, operating permit, for the first time there may
17 be -- siting may be an issue. On the other hand, if
18 the existing commercial facilities that we are aware
19 of initially were issued permits by the Agency and
20 have local siting and that, that shouldn't be an
21 issue. I don't know if that's a satisfactory answer.

22 MR. RAO: Yes. I just wanted to get that
23 clarified.

24 HEARING OFFICER STERNSTEIN: Is there anybody else
25 who has questions for Mr. Merriman, Mr. Dragovich, Ms.

1 Robinson or Ms. Marsh?

2 MR. RUTHERFORD: Could I ask just a couple other
3 questions? This is Doug Rutherford again.

4 HEARING OFFICER STERNSTEIN: Go ahead.

5 MR. RUTHERFORD: One is kind of an interpretation
6 question for Ted. If you are an on specification fuel
7 burner and you are not going to burn oil that exceeds
8 the standards that are in 739, you are -- by
9 definition, a used oil burner is one that burns off
10 specification oil. So if you are only burning on
11 spec, you are not a used oil burner and, therefore,
12 you would not be subject to 807 permit requirements?

13 MR. DRAGOVICH: That's correct.

14 MR. RUTHERFORD: Do you anticipate any changes to
15 the regulations that would change that
16 interpretation?

17 MR. DRAGOVICH: No.

18 MR. RUTHERFORD: No. Just one last question. I
19 have discussed this a little bit with Ted. Used oil
20 fuel marketers are, by definition, a person that
21 conducts either of the following activities; either
22 the direct shipment of off specification used oil to a
23 facility, or from their facility to a used oil burner,
24 or first claims that used oil is to be burned for
25 energy recovery meets the used oil specifications set

1 forth in 739.

2 Focusing on the second part of that definition,
3 the person that first claims that used oil meets the
4 specification, if you are a generator of used oil and
5 you test your oil to see if it is on specification or
6 off specification you, therefore, become a marketer of
7 used oil, and you are not doing essentially anything
8 more than characterizing your oil, would those people
9 have to be subjected to these 807 permitting
10 requirements and, therefore, the siting requirements?

11 MR. DRAGOVICH: It was not our intention to
12 capture generators that are marketing used oil.
13 Originally we thought that an exemption in 21(d) would
14 cover that because it exempts on site storage and
15 treatment, but marketing in some instances may only be
16 analysis. So to clarify that, I think we probably
17 need to modify the language in 807 and put something
18 in there similar that is in 21(d) that says that
19 except that a marketer who is marketing only their own
20 used oil from the site where it is generated would not
21 be required to obtain a permit.

22 HEARING OFFICER STERNSTEIN: Are there any other
23 questions at this time?

24 MR. RUTHERFORD: Can I follow-up just a minute?

25 HEARING OFFICER STERNSTEIN: Go ahead.

1 MR. RUTHERFORD: Can you give me an example of a
2 marketer that is not a generator, Ted?

3 MR. DRAGOVICH: Yes. There are facilities that
4 pick up used oil from many generators, bring them back
5 to a central storage location, blend the used oil, and
6 then ship it off as -- and test it to see if it is on
7 spec and ship it off.

8 MR. RUTHERFORD: They would be marketers as
9 opposed to transfer stations?

10 MR. DRAGOVICH: They may be both.

11 MR. RUTHERFORD: The marketer seems to be more
12 focused at the people that are intending to burn it
13 for energy recovery?

14 MR. DRAGOVICH: Just a second. I just want to
15 check the difference in the definition between
16 transfer facility and marketer. Those facilities
17 would more than likely be both. The only ones that
18 wouldn't -- some of the ones that wouldn't would be
19 somebody that picks it up, leaves it in the same
20 truck, does the analysis to determine if it is on
21 specification.

22 MR. RUTHERFORD: Okay. So I take it that it
23 probably would not be possible to just remove used oil
24 fuel marketer from 807?

25 (Mr. Merriman and Mr. Dragovich confer briefly.)

1 MR. DRAGOVICH: Right. If we remove the marketer
2 altogether we would lose the possibility of regulating
3 people that are beyond just a generator of used oil
4 that are doing the marketing.

5 MR. RUTHERFORD: Okay. I don't have any further
6 questions.

7 HEARING OFFICER STERNSTEIN: Does anybody else
8 have any further questions for any of the Agency or
9 CICI?

10 BOARD MEMBER MELAS: Yes, I have a question. I am
11 Mr. Melas.

12 I have a question for Ms. Marsh. You mentioned
13 CICI has 170 members, and you received comment from
14 one company, Safety Kleen. Have you heard from any of
15 the other members that have expressed any concerns?

16 MS. MARSH: At this point they have been pretty
17 quiet. I am not sure whether that is -- I am not sure
18 the reason. I have spoken with a few additional
19 members where I have actually picked up the phone and
20 called them, but there has not been a vast number of
21 comments. There still may be some. We have -- the
22 final comment deadline is -- is it April 1st or March
23 17th?

24 HEARING OFFICER STERNSTEIN: It should be around
25 the 1st of April.

1 MS. MARSH: Around the 1st of April. Okay.

2 HEARING OFFICER STERNSTEIN: I will announce it at
3 the end of the hearing.

4 BOARD MEMBER MELAS: I have another follow-up.
5 Most of your members are chemical firms?

6 MS. MARSH: Right.

7 BOARD MEMBER MELAS: How many actually use used
8 oil?

9 MS. MARSH: I don't have a number for you, I am
10 afraid. But I do know that the specific member we are
11 talking about today is a little bit different than the
12 majority of our members, based on its activities.

13 BOARD MEMBER MELAS: They do clean up? What
14 activities are they -- I have heard the name.

15 MS. MARSH: Hazardous waste, nonhazardous waste
16 recycling.

17 BOARD MEMBER MELAS: Recycling?

18 MS. MARSH: Right, primarily.

19 BOARD MEMBER MELAS: Okay. Thank you.

20 HEARING OFFICER STERNSTEIN: Any other questions?

21 MR. RAO: I would just like to request the Agency
22 to, you know, when you file your comments if you have
23 any additional thoughts on this issue of permitting,
24 you know, if you could put it in it would be helpful
25 to the Board.

1 MR. DRAGOVICH: On the phase in?

2 MR. RAO: Yes.

3 MR. MERRIMAN: We certainly would. In response

4 also, Ted mentioned in response to Mr. Rutherford's

5 remarks the possibility or the probability of putting

6 in language similar to the exemption for on site

7 generated used oil as being marketed similar to

8 Section 21(d) of the Act.

9 Would you like us to propose a wording change as

10 part of our comment? Is that the way we would do

11 that, as part of our final comment, that would

12 accommodate that? I think it is something we could

13 easily do. Off the cuff, I don't want to make a

14 proposal right at this moment.

15 MR. RAO: Yes, that would be helpful.

16 BOARD MEMBER MELAS: Yes.

17 HEARING OFFICER STERNSTEIN: Okay. At this point

18 I am going to request, if there is no objections, that

19 we recess for about ten minutes but stay convened in

20 case someone else from the public arrives last who has

21 questions to ask. Any objections?

22 MR. RUTHERFORD: Could I point out just one more

23 thing?

24 HEARING OFFICER STERNSTEIN: Go ahead, Mr.

25 Rutherford.

1 MR. RUTHERFORD: In Ted's testimony on page 5, I
2 don't know if you have that in front of you or not,
3 but you said that, used oil that has been determined
4 to be on specification is no longer subject to the
5 management standards under Part 739. It should be
6 used oil that is being -- that is to be burned for
7 energy recovery is no longer subject to 739, right?
8 Unless there is something else.

9 MR. DRAGOVICH: I would have to look at the regs
10 themselves. The applicability part did say that all
11 of the oil was assumed to be burned for energy
12 recovery. Yes, that's correct, the regs themselves
13 739.172(a) says may determine that used oil that is to
14 be burned for energy recovery meets the specification.

15 MR. RUTHERFORD: So it only applies to be used for
16 energy recovery control?

17 MR. DRAGOVICH: Yes.

18 MR. RUTHERFORD: That's the only time you need to
19 know if it is on spec or off spec?

20 MR. DRAGOVICH: Yes.

21 MR. RUTHERFORD: Thank you.

22 MR. DRAGOVICH: I will revise my testimony to
23 incorporate that into that sentence. Used oil that
24 has been determined to be on specification that is
25 burned for energy recovery is no longer subject to the

1 management standard in part 739 is the correct

2 sentence.

3 MR. MERRIMAN: For the record, this would be the

4 second paragraph on page five of Mr. Dragovich's

5 prerecorded testimony.

6 HEARING OFFICER STERNSTEIN: The first sentence in

7 that paragraph, right?

8 MR. MERRIMAN: The first sentence in that

9 paragraph, that's correct.

10 HEARING OFFICER STERNSTEIN: Okay. Getting back

11 to the recess, it is now, according to my watch,

12 11:14. We will stand in recess until 11:24. At that

13 time we will see if there is anybody else in the

14 public who has any questions and if not we will

15 adjourn. Thanks. Off the record.

16 (Whereupon a short recess was taken.)

17 HEARING OFFICER STERNSTEIN: All right. Back on

18 the record.

19 Does anyone present have any further comments on

20 this rulemaking R99-18?

21 All right. Seeing none, we will begin the close.

22 Requests for additional hearings will be accepted

23 pursuant to the Board's procedural rules of 35

24 Illinois Administrative Code 102.161, which require

25 the proponent or any other participant to demonstrate

1 in a motion to the Board that failing to hold an
2 additional hearing will result in material prejudice
3 to the movant.

4 The transcript of this hearing should be available
5 by March 11, 1999. If anyone would like a copy, they
6 can speak to the court reporter directly, or you can
7 get a copy by contacting the Board's Clerk's office in
8 Chicago, or you can also call me.

9 A couple things about public comments here, public
10 comments in this matter must be filed no later than
11 Friday, April 9th, 1999. The mailbox rule will
12 apply. Anyone may file public comments with the Clerk
13 of the Board.

14 If you are on the service list, your comments must
15 be simultaneously delivered to all persons on the
16 service list. You should contact the Clerk's office
17 to make sure you have an updated service list.

18 Seeing no one else who wishes to testify today,
19 that concludes today's hearing. Thank you all very
20 much for your time and attention. This hearing is
21 closed. Thanks.

22 (Hearing Exhibit 2 retained by
23 Hearing Officer Sternstein.)

24

25

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3

4 C E R T I F I C A T E

5

6 I, DARLENE M. NIEMEYER, a Notary Public in and for
7 the County of Montgomery, State of Illinois, DO HEREBY
8 CERTIFY that the foregoing 32 pages comprise a true,
9 complete and correct transcript of the proceedings
10 held on the 1st of March A.D., 1999, at 600 South
11 Second Street, Springfield, Illinois, In the Matter
12 of: Amendments to Permitting for Used Oil Management
13 and Used Oil Transport, 35 Ill. Adm. Code 807 and 809,
14 in proceedings held before the Honorable Joel
15 Sternstein, Hearing Officer, and recorded in machine
16 shorthand by me.

17 IN WITNESS WHEREOF I have hereunto set my hand and
18 affixed my Notarial Seal this 8th day of March A.D.,
19 1999.

20

21

22 Notary Public and
23 Certified Shorthand Reporter and
24 Registered Professional Reporter

25 CSR License No. 084-003677
 My Commission Expires: 03-02-2003

