

ILLINOIS POLLUTION CONTROL BOARD

May 2, 2002

IN THE MATTER OF: )  
)  
PETITION OF WORLD RECYCLING, INC.) AS 02-2  
d/b/a PLANET EARTH ANTIFREEZE FOR ) (Adjusted Standard - Land)  
AN ADJUSTED STANDARD FROM 35 )  
ILL. ADM. CODE 720.131(c) )

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On February 1, 2002, World Recycling Inc. d/b/a Planet Earth Antifreeze (Planet Earth) filed a petition for an adjusted standard pursuant to Section 28.1 of the Environmental Protection Act (Act) 415 ILCS 5/28.1 (2000). Planet Earth seeks to show that its process of filtering used antifreeze at a customer's site produces a commodity-like material that may be transported for further reconditioning without being regulated as a waste. Pet. at 1.<sup>1</sup>

Planet Earth requests that the Board make a solid waste determination, in accordance with 35 Ill. Adm. Code 720.131(c), that the filtered used antifreeze is not a solid waste, and should not be regulated as such. *Id.* Specifically, Planet Earth is requesting that its operation not be subject to Board regulations concerning the manifest requirements, transportation and management of the initially filtered antifreeze.

The Board finds that Planet Earth has established that the filtered used antifreeze is not a solid waste, and grants Planet Earth's petition for an adjusted standard.

**PROCEDURAL HISTORY**

Planet Earth filed a certificate of publication with the Board on February 28, 2002. The certificate of publication indicates that legal notice was timely published on February 8, 2002, in the *Rockford Register Star*.

Planet Earth has waived hearing, and the Board has not received a request for a hearing in this matter. Accordingly, no hearing has been held.

On March 12, 2002, the Illinois Environmental Protection Agency (Agency) filed its recommendation that the Board deny Planet Earth's petition unless Planet Earth provides sufficient information as requested in the Agency's recommendation. The Agency requests that if an adjusted standard is granted, that it be consistent with the Board's decisions in *In re*

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<sup>1</sup> References to the petition will be cited as "Pet. at \_\_\_."; references to the Agency recommendation will be cited as "Rec. at \_\_\_."; references to Planet Earth's response to the Agency recommendation will be cited as "Resp. at \_\_\_."

Petition of Recycle Technologies, Inc., AS 97-9 (Sept. 3, 1998) and *In re* Petition of Progressive Environmental Services, Inc. d/b/a/ Antifreeze Recycling, AS 01-7 (Jan. 10, 2002).

On April 3, 2002, Planet Earth filed a response to the Agency's recommendation. The response addresses the concerns raised by the Agency's recommendation and restates Planet Earth's request that the Board determine that the filtered used antifreeze is not a solid waste under 35 Ill. Adm. Code 720.131(c).

### **BACKGROUND**

Planet Earth has been in operation since 1996 and has an established clientele list of over 1000 companies. Pet. at 7. Planet Earth collects and filters used antifreeze onsite, and then further processes the material at a central facility. Onsite filtered used antifreeze that is further processed at the central facility is sold back to customers after the used antifreeze is picked up. *Id.*

Planet Earth filters used antifreeze upon their customers' request. Pet. at 2. Planet Earth collects used antifreeze that is processed through a truck mounted bag filtration system at its customers' facilities. The system consists of a pump and a two-stage bag filtration system. *Id.* The used antifreeze is first filtered through a 20-micron filter and then a 5-micron filter to remove particles of rust, scale, pieces of gasket and other solid particles. *Id.* Once the material is filtered, Planet Earth transports the used antifreeze to its central processing facility for further conditioning where chemical inhibitors and dyes are added. *Id.* The central facility is located at 5024 Willow Creek Road, Machesney Park; however, Planet Earth is planning to move its operation to 6307 Material Avenue, Loves Park within the next few months. Pet. at 10.

Planet Earth provides each customer with a clean drum to store the used antifreeze. Pet. at 7. Planet Earth starts the spill/leak prevention program by providing clean leak-free containers. *Id.* Only Planet Earth handles the filtered used antifreeze during the onsite filtering process. Before pumping the used antifreeze into the two-stage filtration system situated in Planet Earth's trucks, Planet Earth visually checks the storage container, associated tubing and the receiving tank for structural integrity. Pet. at 7. The used antifreeze is then pumped from the generators' container through the two-stage filtration system and into the polyethylene tank. *Id.*

The Planet Earth driver/operator is present at all times during the pumping operation, and each truck has been supplied with spill response material in the event of a leak. Pet. at 8. After collection, the truck returns to Planet Earth's central facility. *Id.* At the central facility, the filtered used antifreeze undergoes a split absorption/filtration process designed to further remove dyes and coloring from the filtered antifreeze in order to give the final product a more uniform color. Pet. at 5. The end result produces a nearly pure ethylene glycol and water mixture that is the same end product that is produced using the more common reverse osmosis process. *Id.*

At the central facility, the filtered used antifreeze is pumped into a polyethylene holding tank located inside the building. Pet. at 8. The filtered used antifreeze is pumped from the holding tank into a flocculation system where additional clarification occurs. From there, the

material is routed to a 1-micron filter cartridge. Pet. at 9. The material is filtered into a series of three charcoal filtration canisters to further remove dyes, and then through another 1-micron filter. *Id.* The clear product produced after the last stage of filtration allows for the addition of different colors of dyes to be added. *Id.* The final process is the incorporation of the additives and dyes in a polyethylene-mixing tank. Pet. at 8-9.

The entire floor of the central facility building is concrete, and concrete containment dikes surround all the storage tanks. Pet. at 8. There is only one floor drain located in the building. The floor drain is sealed during any type of operation. Pet. at 9.

All Planet Earth personnel are trained extensively by the owner, Mr. Don Boyer, on proper handling, spill prevention and countermeasure procedures for both the onsite filtration process and the off-site filtration process. Pet. at 8. Mr. Boyer has approximately ten years of experience in the antifreeze recycling industry and 35 years of experience in the automotive industry. *Id.*

Planet Earth provides each customer with a clean drum to store the used antifreeze. Pet. at 2. Each drum is labeled "USED ANTIFREEZE ONLY." *Id.* Planet Earth customers sign a certification statement indicating that used antifreeze is the only material presented to Planet Earth. *Id.* Before accepting the used antifreeze, Planet Earth visually checks for petroleum products such as oil. The physical inspection consists of dipping a clear plastic tube (suction hose) into the used antifreeze and examining it for evidence of contamination such as an oil sheen or a detectable petroleum odor. *Id.* A presence of either a sheen or odor would result in the rejection of the used antifreeze. *Id.* The customer is responsible for disposal of any contaminated material. *Id.*

There is no pollution control equipment in place at the central facility. Pet. at 9. Planet Earth asserts that no equipment is necessary because there are no air emissions, water discharges or other type of releases to the environment. *Id.* Residuals that are generated from the process include the filters and the used charcoal. Based on chemical analysis and Planet Earth's certification, residuals are not hazardous or special waste and are disposed of in a solid waste landfill. Pet. at 8-9.

Planet Earth claims that the quality of the onsite-filtered material is chemically and physically the same as virgin product as both consist primarily of ethylene glycol – the base substance of antifreeze – as well as residual dyes and inhibitors. Pet. at 5. Thus, the onsite-filtered used antifreeze is analogous to new antifreeze. Pet. at 6-7. The filtered used antifreeze contains an approximate 50-50 ratio of antifreeze to water that is appealing to customers because there is no need to pre-mix the antifreeze with water. Pet. at 5.

Planet Earth states that the market price for onsite filtered used antifreeze in the Chicago area is \$1.65 to \$2.00 per gallon depending on the amount reclaimed. Pet. at 6. The current price for the onsite-filtered used antifreeze that is further reconditioned by Planet Earth at its central facility is the same. *Id.* The current retail price for 100% virgin antifreeze

premixed with water is approximately \$4.00 per gallon. Pet at 6. The filtered used antifreeze is equivalent to virgin antifreeze from a chemical, physical and financial aspect. Pet. at 3.

Planet Earth notes that in expert testimony elicited in Recycle Technologies, Edward Eaton stated that filtered used antifreeze is not merely commodity-like, but a commodity. Pet. at 3. Planet Earth asserts that the filtered used antifreeze can be sold at a lesser price than the virgin material, and that due to similarities between the onsite filtered used antifreeze and the virgin antifreeze, the value is similar. Pet. at 5-6.

### **AGENCY RECOMMENDATION**

The Agency recommends that the Board deny Planet Earth's request for an adjusted standard unless Planet Earth addresses certain concerns raised by the Agency. The Agency requested that the Board impose the same conditions as found in Recycle Technologies, AS 97-9 and Progressive Environmental Services, AS 01-7 if the Board grants the adjusted standard to Planet Earth. The Agency, in its recommendation, presents an analysis of how it perceived the petition by Planet Earth inadequately addressed certain factors under 35 Ill. Adm. Code 104.406 and 720.131(c).

The Agency first states that Planet Earth did not provide a narrative description of the proposed adjusted standard or proposed language for a Board order that would impose the standard, or present the efforts necessary to achieve the proposed standard and the corresponding costs. Rec. at 4.

The Agency next asserts that if Planet Earth complied with the regulations of general applicability, the Agency would provide regulatory oversight of Planet Earth's activities, and that this regulatory oversight would be absent if Planet Earth were to comply only with the proposed adjusted standard. Rec. at 4-5

The Agency states that it is unclear whether the onsite process utilized by Planet Earth for the used antifreeze includes augmentation of additives and dyes at the customer's site or whether they are added at the central facility. Rec. at 6. The Agency asserts that the freeze point is the quality of the antifreeze most important to its effectiveness as a product and that it is necessary to know the freeze point of the on-site material after it has been filtered. Rec. at 7. The Agency also contends that Exhibit 10 of the petition does not state whether the results of the "before" analysis in test number 6383 is antifreeze that has been filtered on site and that to understand this data additional information is necessary. *Id.*

The Agency asks that Planet Earth better explain the degree to which the filtered used antifreeze is like an analogous raw material, maintains that Planet Earth should provide information on the concentration of the parameters that would make antifreeze unacceptable for continued use, and contends that on-site filtered used antifreeze should be compared to the performance requirements in ASTM D6461. Rec. at 7.

The Agency recommends that Planet Earth answer several inquiries concerning the extent that Planet Earth handles filtered used antifreeze to minimize loss of the material. Rec.

at 8. The Agency contends that to properly evaluate the extent to which the reclaimed material is handled to minimize loss, it is necessary to know the volume of the secondary containment in comparison to the volume of the largest tank at the central facility and Planet Earth's inspection program to identify spill and leaks from equipment at the off-site facility. *Id.*

Finally, the Agency discusses other relevant factors that concern Planet Earth's petition for an adjusted standard. The Agency requests information on the quality control, such as sampling frequency, that Planet Earth utilizes to ensure that the product from the on-site filtration process or the off-site process meets the specifications referenced in the petition. Rec. at 8. The Agency requests information on the record keeping that Planet Earth maintains for the entire recycling process, and asks how Planet Earth's site will be decontaminated if Planet Earth ceases operations. *Id.* The Agency enquires about the process Planet Earth will follow if a drum of used antifreeze is rejected at the customer's site, and also asks if the central facility would meet the design operating requirements of a permitted special waste facility. *Id.*

### **RESPONSE TO RECOMMENDATION**

Planet Earth proposes the following as a narrative description of the adjusted standard: "The Board finds that the filtered used automotive antifreeze is not a solid waste and grants Planet Earth an adjusted standard under 35 Ill. Adm. Code 720.131(c)." Resp. at 2. Planet Earth asserts that the efforts and costs necessary to achieve the standard are set forth in the petition. *Id.*

Planet Earth states that it is currently transporting the on-site filtered used antifreeze to the central facility without the addition of dyes and inhibitors. Resp. at 3. Planet Earth notes that the freeze point analytical report contained a typographical error and should have indicated that the antifreeze had a freeze point of -40 degrees C, and that the results show the used antifreeze to be within the ASTM standard. *Id.* Planet Earth clarifies that the "before" analysis of the report provided to show the effectiveness of the split absorption/filtration process indicates pre-filtration. *Id.*

Planet Earth contends that the concentrations that would make the antifreeze unacceptable for continued use are found in Exhibit 6 of the petition, and that ASTM D6461 relates to silt fence materials and should not apply to this situation. Resp. at 3.

Planet Earth states that it is currently in the process of evaluating the location of various structures at its new plant, but that it will take all actions necessary to minimize the loss of reclaimed material. Resp. at 3.

In addressing the other relevant factors, Planet Earth states that spill preventative techniques are exercised on a regular basis and that Planet Earth visually inspects valves, couplings, hoses, tanks and other appurtenances on a daily basis. Resp. at 4. Planet Earth asserts that any spills that might occur will be promptly remediated and actions taken to prevent similar occurrences from happening in the future. *Id.*

Planet Earth maintains that it inspects each drum of used antifreeze from each customer prior to filtering, and that the customer is questioned as to whether or not the used antifreeze is free from contaminants and if it has been stored in a safe and secure manner. Resp. at 4. Planet Earth further asserts that it field samples each batch of on-site filtered used antifreeze for pH and freeze point level, and that the filters and carbon canisters are changed on an as-needed basis. *Id.* Planet Earth responds that sampling on a regular basis is being investigated.

Planet Earth maintains that it keeps records for business purposes, and that those records include the location and amount of used antifreeze filtered and collected from each facility and the total amount of used antifreeze sold, along with associated costs. Resp. at 5. Planet Earth contends that decontamination of the site upon closure is not anticipated because the facility will be maintained so as to safeguard against spills and leaks, but that if decontamination is necessary, Planet Earth will pursue all appropriate post-closure procedures. *Id.*

Finally, Planet Earth states that if it rejects a drum of used antifreeze at the customer's site, the drum stays with the customer and that the customer is ultimately responsible for proper disposal of any rejected materials. *Id.*

## **DISCUSSION**

In this section, the Board discusses whether the filtered used antifreeze collected by Planet Earth qualifies for a nonsolid waste determination in accordance with Section 720.131(c) of the Board regulations. *See* 35 Ill. Adm. Code 720.131(c). The Board first provides a general framework of the regulations concerning this matter. The Board next examines whether the determination under Section 720.131(c) is available to Planet Earth. Finally, the Board analyzes whether the filtered used antifreeze initially reclaimed by Planet Earth is commodity-like, according to the six factors under Section 720.131(c).

### **Legal Framework**

Planet Earth requests that the Board find that the filtered used antifreeze collected from its customers' facilities is not a solid waste under 35 Ill. Adm. Code 720.131(c). Section 720.131(c) of the Board's regulations reads in part as follows:

The Board will determine that those materials that have been reclaimed but must be reclaimed further before recovery is completed are not solid wastes if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further) . . . . 35 Ill. Adm. Code 720.131(c).

The Board notes that these regulations are substantively identical to regulations that the United States Environmental Protection Agency (USEPA) promulgated under the Solid Waste

Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.* According to the USEPA, to “determine if a secondary material is a RCRA solid waste when recycled, one must examine both the material and the recycling activity involved.” 50 Fed. Reg. 614, 619 (Jan. 4, 1985).

Generally, the Board considers three factors to determine whether and how material becomes a solid waste. See Recycle Technologies, Inc., AS 97-9, slip op. at 7; 35 Ill. Adm. Code 721.102(c) and 721 Appendix Z. The first factor that the Board considers is the category of the secondary material, such as whether it is a by-product, sludge, or spent material.<sup>2</sup> The second factor is whether it is an unlisted “characteristic” hazardous waste or a “listed” hazardous waste. The third factor that the Board considers is which recycling activity is involved.

With regards to the second factor, solid waste generally is also hazardous waste if it exhibits certain characteristics (*i.e.* it is toxic, corrosive, ignitable, or reactive) or is “listed” as a hazardous waste. See 35 Ill. Adm. Code 721.103, 721, Subparts C and D. For regulations implementing Subtitle C of RCRA, the definition of “solid waste” is applicable to those that are hazardous wastes. See 35 Ill. Adm. Code 721.101(b)(1). The USEPA explains this scope in its federal regulations:

Although hazardous wastes are a subset of solid wastes under RCRA, [USEPA’s] regulatory authority under Subtitle C applies only to hazardous wastes. Since the present regulations apply only to Subtitle C, we have chosen to make the definition of solid waste applicable to those materials that also are hazardous wastes. 50 Fed. Reg. 614, 616, n. 3 (Jan. 4, 1985).

Used automotive antifreeze is not a listed hazardous waste. Planet Earth conducted tests on its used filters and filtered used antifreeze generated from the onsite filtration process. Pet. at 8. The test results for the filters and filtered used antifreeze appear to be contained in Exhibits 7 and 8 of the petition. The analysis revealed that the filters and filtered used antifreeze are below all hazardous waste levels. Pet. at 4. Planet Earth certifies that the other residuals generated from the process (filters and charcoal) are non-hazardous and not special waste. Pet. at 8.

, “If spent materials are listed or characteristic [hazardous waste], they are solid wastes if they are to be recycled by reclamation” unless a non-solid waste determination is made. See Recycle Technologies, AS 97-9, slip op. at 7..

The Board regulations state that a material is reclaimed if it is:

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<sup>2</sup> The Board regulations define “spent material” as “any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.” 35 Ill. Adm. Code 721.101(c)(1).

processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. 35 Ill. Adm. Code 721.101(c)(4).

According to the USEPA, materials are reclaimed if “material values . . . are recovered as an end-product of a process” or if they are “processed to remove contaminants in a way that restores them to their usable original condition.” Recycle Technologies, AS 97-9, slip op. at 8, quoting 50 Fed. Reg. 614, 633 (Jan. 4, 1985). With regards to the third factor considered by the Board, Planet Earth’s processing of filtered used antifreeze through the truck mounted bag filtration system is consistent with this material reclamation process.

Without the non-solid waste determination, the Board finds that the filtered used antifreeze collected by Planet Earth, if considered under the hazardous waste regulations, is a “solid waste” because it is a “spent material” being “reclaimed.” *See* 35 Ill. Adm. Code 721.102(c)(3) and 721 Appendix Z.

### **Availability of Relief Under Section 720.131(c)**

Planet Earth is eligible for a non-solid waste determination, pursuant to 35 Ill. Adm. Code 720.131(c) if, after Planet Earth initially reclaims the used antifreeze, the resulting material is commodity-like. The filtered used antifreeze can qualify as commodity-like even though it is not yet a commercial product and has to be reclaimed further. Without a non-solid waste determination, a waste that is in the process of being reclaimed is a waste until the reclamation is complete. *See Recycle Technologies*, AS 97-9, slip op. at 8. “A nonsolid waste determination under Section 720.131(c) applies only to wastes after they have been initially reclaimed.” *See* 50 Fed. Reg. 614, 620, 633-34, 655 (Jan. 4, 1985). According to the USEPA, the provision is designed to address situations where “the initial reclamation step is so substantial that the resulting material is more commodity-like than waste-like even though no end-product has been recovered.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985).

The Board finds that relief under Section 720.131(c) is available in this case because Planet Earth initially reclaims the used automotive antifreeze when it filters it through its bag filtration system at its customers’ facilities. This results in a commodity-like material, even though the filtered used antifreeze is not yet a commercial product until it is reclaimed further through the split absorption/filtration process and supplemented with dyes and inhibitors. Below, the Board addresses the evidence on the Section 720.131(c) factors to determine if the initially reclaimed material (the filtered used antifreeze) is commodity-like and thus not a solid waste.

### **Section 720.131(c) Factors**

The Board must determine whether the filtered used antifreeze that Planet Earth initially reclaims at its customers’ facilities is commodity-like according to the Section 720.131(c) factors. The Board must consider the following six factors under Section 720.131(c):



- 1) The degree of processing the material has undergone and the degree of further processing that is required;
- 2) The value of the material after it has been reclaimed;
- 3) The degree to which the reclaimed material is like an analogous raw material;
- 4) The extent to which an end market for the reclaimed material is guaranteed;
- 5) The extent to which the reclaimed material is handled to minimize loss; and
- 6) Other relevant factors. 35 Ill. Adm. Code 720.131(c).

The Board finds that the filtered used antifreeze is commodity-like based on these factors. The Board addresses these factors in turn.

#### **The Degree of Processing the Material has Undergone and the Degree of Further Processing that is Required**

The USEPA states that the “more substantial the initial processing, the more likely the resulting material is to be commodity-like.” 50 Fed. Reg. 614, 655 (Jan. 4, 1985). For the initial processing, Planet Earth first inspects and filters used automotive antifreeze through a truck mounted bag filtration system at its customers’ facilities. The bag filtration removes particles of rust, scale, pieces of gasket and other solid particles.

The Board has previously found that there is a large market for filtered used antifreeze, and that “it is not only commodity-like, but a commodity.” *See Recycle Technologies*, AS 97-9, slip op. at 9.; *Progressive Environmental Services*, AS 01-7, slip op. at 9.

In its recommendation, the Agency expressed concerns about the when the additives and dyes are added to the antifreeze. Rec. at 6. The Agency asserts that it is necessary to know the freeze point of the on-site material after it has been filtered and also contends that Exhibit 10 of the petition needs clarification on the definition of the “before” in the analysis of test number 6383. Id.

In response, Planet Earth clarified that it is currently transporting the on-site filtered used antifreeze to the central facility without the addition of dyes and inhibitors, and that the test results show the filtered used antifreeze to be within the ASTM standard. Planet Earth stated that the “before” analysis of the report provided to show the effectiveness of the split absorption/filtration process indicates pre-filtration.

The Board finds that Planet Earth provided sufficient information in its response to address the Agency's concerns. The Agency's concerns do not alter the fact that Planet Earth has shown the bag filtration system is a substantial processing step in the overall reclamation process and produces a commodity-like material.

### **The Value of the Material After it Has Been Reclaimed**

The USEPA states that "the more valuable a material is after initial processing, the more likely it is to be commodity-like." 50 Fed. Reg. 614, 655 (Jan. 4, 1985). As noted above, there is a large market for filtered used antifreeze without further processing. The filtered used antifreeze, which contains ethylene glycol and water, is also an essential raw material in manufacturing split absorption/filtered used antifreeze.

The Board finds that Planet Earth provides sufficient evidence to show that filtered used antifreeze as well as the split absorption/filtration filtered antifreeze have both an economic and practical value. The practical value of the filtered used antifreeze to Planet Earth lies in its use as a raw material that is a necessary part of its business. From an economic standpoint, the filtered used antifreeze contains ethylene glycol, water, and residual inhibitors and may be used as antifreeze without any further processing. *See, e.g., Recycle Technologies*, AS 97-9, slip op. at 9.

The USEPA stated that "[i]f the initially-reclaimed material can substitute for a virgin material, . . . it is more likely to be commodity-like." 50 Fed. Reg. 614, 655 (Jan. 4, 1985).

The split absorption/filtered used antifreeze processed by Planet Earth also has economic value. Planet Earth states the quality of the reclaimed product approximates virgin antifreeze, and the value is similar. The economic value of split absorption/filtered antifreeze may not be similar to virgin antifreeze, but the practical value to the consumer would be. The economic value is seen in the current market price for reclaimed antifreeze, which is \$1.65 to \$2.00 per gallon for filtered used antifreeze in the Chicago Metro Area. Pet. at 6. This price is also within the same range that the Board has previously seen for filtered used antifreeze without further processing. *See, e.g., Recycle Technologies*, AS 97-9, slip op. at 9.

The fact that Planet Earth provides a higher grade alternative to on-site filtered used antifreeze does not mean that a market for the lower quality onsite filtered used antifreeze no longer exists.

### **The Degree to Which the Reclaimed Material is Like an Analogous Raw Material**

Section 720.131(c)(3) of the Board's regulations requires that the petitioner demonstrate the extent to which the reclaimed material is like an analogous raw material. In this case, the reclaimed material is the onsite filtered used antifreeze. The filtered used antifreeze, as the main ingredient, is like an analogous raw material in Planet Earth's process to further reclaim and produce its split absorption/filtered used antifreeze filtered at the central facility. The

filtered used antifreeze contains ethylene glycol and water, which are an essential part of the final used antifreeze product.

The Board finds that the filtered used antifreeze is used as raw material to make antifreeze filtered by split absorption/filtration, which can be substituted for new antifreeze with the addition of chemical dyes and inhibitors.

### **The Extent to Which an End Market for the Reclaimed Material is Guaranteed**

In discussing this factor, the USEPA states that:

If the [petitioner] can show that there is an existing and guaranteed end market for the initially-reclaimed material (for instance, value, traditional usage or contractual arrangements), the material is more likely to be commodity-like. 50 Fed. Reg. 614, 655 (Jan 4, 1985).

As stated above and in Recycle Technologies, AS 97-9, slip op. at 10 and Progressive Environmental Services, AS 01-7, slip op. at 12, there is a large market for filtered used antifreeze that only passes through bag filtration without further processing. Planet Earth claims that it has an established client list of over 1000 companies. Planet Earth also guarantees its own end market in that it plans to use all of the filtered used antifreeze that it collects to make its final product, the split absorption/filtered used antifreeze with additives.

As to the end market for the on-site filtered antifreeze that is further processed at the central facility, Planet Earth claims that it was just granted a contract with PACE, a large transportation company with nine locations in the Chicago metro area.

In addition, customers typically use more recycled antifreeze than they collect for recycling. This is due in part to leaks and spills and vehicle repairs. Pet. at 7.

The Board finds that there is a guaranteed end market for all of the filtered used antifreeze and the filtered used antifreeze that is further processed at Planet Earth's central facility.

### **The Extent to Which the Reclaimed Material is Handled to Minimize Loss**

According to the USEPA, the "more carefully a material is handled, the more it is commodity-like." 50 Fed. Reg. 614, 655 (Jan. 4, 1985). Only Planet Earth handles the filtered used antifreeze during the on-site filtration process. Planet Earth provides each customer a clean drum. Planet Earth inspects each drum of used antifreeze from each customer prior to filtering, and questions the customer about the storage of the antifreeze. Planet Earth further asserts that it field samples each batch of on-site filtered used antifreeze for pH and freeze point level, and that the filters and carbon canisters are changed on as needed basis.

Before accepting the used antifreeze, Planet Earth visually checks for petroleum products such as oil. The Planet Earth driver/operator is present at all times during the pumping operation, and each truck has been supplied with spill response material in the event of a leak. After collection, the truck returns to Planet Earth's central facility. At the central facility, the filtered used antifreeze is pumped into a polyethylene holding tank located inside the building. The entire floor of the central facility building is concrete, and concrete containment dikes surround all the storage tanks. There is only one floor drain located in the building. The floor drain is sealed during any type of operation. Planet Earth handles the antifreeze so that it does not spill.

In its recommendation, the Agency requested information concerning on the volume of the secondary containment in comparison to the volume of the largest tank at the central facility, and Planet Earth's inspection program to identify spill and leaks from equipment at the off-site facility. In response, Planet Earth states that it is in the process of evaluating the location of various structures at its new plant, but that it will take necessary actions to minimize the loss of reclaimed material.

The Board finds that Planet Earth handles the filtered used antifreeze so as to minimize loss. Planet Earth also has a financial incentive not to lose the filtered used antifreeze. Lost material would deplete its supply of recycled product to sell to its customers.

The Board notes that the process of reclaiming the used antifreeze makes Planet Earth the generator of any wastes produced in that process. However, the solid waste determination only pertains to filtered used antifreeze collected and transferred from customers' facilities to the centralized processing facility. It does not include wastes produced during the reclamation process.

The Board further notes that Planet Earth is in the process of opening a new facility in Loves Park. In order for this adjusted standard to apply to the new facility, the features and practices at the new facility must not be materially different than those described for the current facility.

### **Other Relevant Factors**

The Agency expressed several concerns regarding the scope of a nonsolid waste determination in this matter. The Agency requests information on the quality control, such as sampling frequency, that Planet Earth utilizes to ensure that the product from the on-site filtration process or the off-site process meets the specifications referenced in the petition. The Agency requests information on the record keeping that Planet Earth maintains for the entire recycling process, and asks how Planet Earth's site will be decontaminated if Planet Earth ceases operations. The Agency enquires about what the process is if Planet Earth rejects a drum of used antifreeze at the customer's site, and also asks if the central facility would meet the design operating requirements of a permitted special waste facility.

The Board finds that the remaining issues raised by the Agency concerning quality control and disposal are all adequately addressed in the petition and Planet Earth's response. As for issues that the Agency raised concerning record keeping and closure, such requirements would not apply in the context of this adjusted standard because of this non-solid waste determination.

### CONCLUSION

The Board finds that Planet Earth established under Section 720.131 of the Board regulations (35 Ill. Adm. Code 720.131(c)), that the filtered used antifreeze is commodity-like. Accordingly, the Board finds that the material is not a solid waste, and grants the petition for an adjusted standard.

The Board emphasizes that this nonsolid waste determination applies only to used antifreeze once it has been initially reclaimed by Planet Earth at the customer's site, *i.e.*, it applies only after Planet Earth processes the material through the bag filtration system and finds that it meets their quality control and assurance measures. In addition, this nonsolid waste determination applies only to the filtered used antifreeze that is to be further processed by Planet Earth through split absorption/filtration at its centralized facility for sale to customers in its recycling program.

This opinion constitutes the Board's findings of fact and conclusions of law.

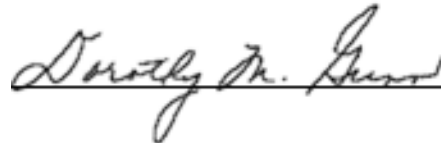
### ORDER

1. The Board finds that the filtered used automotive antifreeze currently handled by Planet Earth at its central facility at 5024 Willow Creek Road, Machesney Park, and soon to be handled at Planet Earth's new central facility at 6307 Material Avenue, Loves Park, is not a solid waste. The Board accordingly grants Planet Earth an adjusted standard under 35 Ill. Adm. Code 720.131(c).
2. The adjusted standard applies only to used automotive antifreeze that Planet Earth initially reclaims it through a bag filtration unit at the customer's site where the used automotive antifreeze was generated and that meets Planet Earth's quality control and assurance measures. In addition, the adjusted standard applies only to such filtered used antifreeze that is to be further processed by Planet Earth through split absorption/filtration at its centralized facility for sale to customers in its recycling program.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above opinion and order on May 2, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board