ILLINOIS POLLUTION CONTROL BOARD
December 16, 1999

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO PERMITTING FOR	)	R99-18
USED OIL MANAGEMENT AND USED OIL	)	(Rulemaking - Land)
TRANSPORT 35 ILL. ADM. CODE 807 AND	)	
809	)	

Proposed Rule. Dismissal Order.

OPINION AND ORDER OF THE BOARD (by N. J. Melas):

The Board opened this docket as a result of activity in a predecessor regulatory docket. On November 2, 1998, in docket R98-29, the Illinois Environmental Protection Agency (Agency) filed a "Motion to Sever the Docket and Proposed Amendments to Parts 809 and 807" (Mot. sever). In the motion to sever, the Agency requested that the Board separate the Agency's proposed rules on used oil management and used oil transportation from the rules on hazardous waste transportation. In addition, the Agency proposed rules for used oil management and used oil transportation. The Board granted the motion to sever and created this docket to address the Agency's proposed rules on used oil management and used oil transportation. See *In re* Nonhazardous Special Waste Hauling and the Uniform Program: 35 Ill. Adm. Code 809 (Pursuant to P.A. 90-219) (December 17, 1998), R98-29, slip op. at 1. On January 21, 1999, the Board adopted its first notice opinion and order in this matter. See *In re* Amendments to Permitting for Used Oil Management and Used Oil Transport: 35 Ill. Adm. Code 807 And 809 (January 21, 1999), R99-18. This proposal was published in the Illinois Register on February 16, 1999. 23 Ill. Reg. 7, pp. 2483, 2489.

The Board's responsibility in this matter arises from the Illinois Environmental Protection Act (Act). 415 ILCS 5/1 (1998) *et seq*. The Board is charged therein to "determine, define, and implement the environmental control standards applicable in the State of Illinois." 415 ILCS 5/5(b) (1998).

After a comprehensive review of the record, the Board finds that the record does not support adoption of this proposal. The Board received 21 written public comments and six exhibits in addition to testimony at three public hearings While additional State regulation of used oil management and transportation is technically feasible, it is not economically reasonable when taking into account an extensive existing federal and State regulatory system. The proposal is dismissed and docket R99-18 is hereby closed. The Board will, however, address certain typographical errors and amend the definition of 'on-site' in Part 809 in a future rulemaking. The typographical errors are nonsubstantive, and the change in the definition of 'on-site' is unrelated to the Agency's used oil proposal.

PROCEDURAL HISTORY

The Board initially held two public hearings in this matter before Board Hearing Officer Joel Sternstein and Board Member Nicholas J. Melas. Anand Rao, a member of the Board's technical unit, also attended the hearings. The first hearing was held on February 25, 1999, in Chicago. The Agency, represented by Assistant Counsel Kimberly A. Geving, presented witnesses Daniel Merriman and Theodore J. Dragovich. The second hearing was held on March 1, 1999, in Springfield, where Geving, Dragovich, and Merriman were again present on behalf of the Agency. In addition, Jennifer L. Marsh testified on behalf of the Chemical Industry Council of Illinois (CICI) and Douglas Rutherford appeared on behalf of Illinois Power.

On December 22, 1998, the Board requested that the Department of Commerce and Community Affairs (DCCA) conduct an economic impact study (ECiS) for docket R99-18 pursuant to Public Act 90-489, effective January 1, 1998. The Board asked DCCA to respond to the request within ten days, but DCCA did not respond. As a result the Board relies on a July 26, 1998 DCCA letter notifying the Board that DCCA lacked the technical and financial resources to conduct an ECiS for any rule pending before the Board for the remainder of fiscal year 1999. At the February 25, 1999 hearing the Board reserved time to entertain any comments regarding DCCA's decision to not conduct an ECiS for docket R99-18. No comments were received.

During the public comment period following the publication of the first-notice opinion and order, the National Oil Recyclers Association (NORA) raised several questions with respect to the Agency's proposed rules. At the end of its May 7, 1999 comments NORA requested that the Board convene another hearing. PC 11 at 6. The Board granted the request for the additional hearing, and it was held on August 23, 1999, in Chicago before Hearing Officer Sternstein. Rao also attended the August 23 hearing, but Board Member Marili McFawn attended in place of Board Member Melas. At the August 23 hearing, Geving, Dragovich, Merriman, Lawrence W. Eastep, and Leslie D. Morrow testified for the Agency. Christopher Harris testified on behalf of NORA. In addition, several of NORA's Illinois members were present and some of them asked questions of the Agency representatives.

A list of the public comments and the exhibits that the Board received during the instant rulemaking process are at Attachment 1 and Attachment 2, respectively.

REGULATORY/STATUTORY FRAMEWORK

On November 19, 1986, the United States Environmental Protection Agency (USEPA) decided not to list used oil as a hazardous waste because the resulting stigma might have caused generators to dispose rather than recycle used oil. 51 Fed. Reg. 41,900 (Nov. 19, 1986). USEPA's decision to not list used oil as a hazardous waste was challenged and ultimately upheld by the District of Columbia Circuit Court. The Court stated that USEPA examined nine other federal regulatory programs and found that the "existing network of regulations" were pervasive enough to "control any

plausible scenario of used oil mismanagement" such that listing was not necessary. National Resources Defense Council v. USEPA, 25 F.3d 1063, 1071, 1072 (D.C. Cir. 1994).[1]

The genesis of USEPA's current used oil regulations is found in Section of 3014 of the Resource Conservation and Recovery Act (RCRA), which requires USEPA to promulgate regulations concerning the management of used oil. 42 U.S.C § 6927.

Used Oil Regulations at 40 C.F.R. § 279 and 35 Ill. Adm. Code 739

In 1992, USEPA adopted used oil management standards for owners and operators of used oil facilities which are codified at 40 C.F.R. § 279. Illinois adopted 40 C.F.R. § 279 through the identical in substance rulemaking process under Sections 7.2 and 22 of the Act. 415 ILCS 5/7.2. 5/22 (1998). The rules were codified as a new Part 739 of the Illinois Administrative Code in 1993. 35 Ill. Adm. Code 739; see *In re* RCRA Update, USEPA Regulations (7/1/92 - 12/31/92) (September 23, 1993), R93-4.

In the past, facilities receiving used oil from off-site locations were subject to solid waste permitting requirements at Part 807 of the Board's rules and used oil transporters were subject to special waste hauling permit requirements in Part 809. 35 Ill. Adm. Code 807, 809; PC 20 at 6. After the adoption of Part 739 of the Board's rules, used oil management facilities became exempt from permitting requirements at Part 807 of the Board's rules. PC 20 at 6. Currently, Section 807.105(a) of the Board's rules exempts "[p]ersons and facilities regulated pursuant to 35 Ill. Adm. Code 700 through 749." 35 Ill. Adm. Code 807.105(a). The placement of the revised used oil management standards at Part 739 did not affect used oil transportation, and used oil transporters are still subject to regulation under Part 809 of the Board's rules.

Used oil that is to be recycled is not regulated as a hazardous waste under RCRA provided that it is not contaminated with other hazardous wastes. Because it has value both as a recyclable substance and an energy source (and is therefore less likely to be discarded), used oil is subject to less rigorous standards and is not considered by definition to be a RCRA hazardous waste. Disposed used oil is managed as a hazardous waste if it otherwise meets the definition of hazardous waste under RCRA.

The Part 279 / Part 739 requirements set forth management standards applicable to collection centers, aggregation points, transporters, transfer facilities, processors, burners, marketers, and generators of used oil. 40 C.F.R. § 279.20 *et seq.*; 35 Ill. Adm. Code 739.120 *et seq.*

The used oil regulations include a rebuttable presumption that a batch of used oil is a hazardous waste if it contains more than 1,000 ppm total halogens. 40 C.F.R. § 279.10(b)(ii); 35 Ill. Adm. Code 739.110(b)(1)(B). The burden of proof is on the holder of the oil that a listed exception to the

[1] For a detailed discussion of the federal regulations governing the plausible mismanagement of used oil, see 57 Fed. Reg. 21,524 (May 20, 1992).

presumption applies. Hazardous Waste Treatment Council v. USEPA, 861 F.2d 277, 289 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989).

If a listed exception to the used oil rules does not apply, management of the used oil must be from 'cradle to grave.' The rules are comprehensive in nature and are divided into four regulatory stages: generation, storage, transportation, and recycling or disposal. 40 C.F.R. § 279.20 *et seq.*; 35 Ill. Adm. Code 739.120 *et seq.*

A USEPA identification number is required of transporters, processors, burners of off-specification[2] used oil, and marketers so that states or USEPA may track the movement of used oil from one handler to the next. 40 C.F.R. §§ 279.42(a), 279.51, 279.62, 279.73; 35 Ill. Adm. Code 739.142(a), 739.151, 739.162, 739.173.

For three years, marketers of used oil are required to maintain copies of analyses showing that their used oil is either on-spec or off-spec. 40 C.F.R. §§ 279.72, 279.74; 35 Ill. Adm. Code 739.172, 739.174. Transporters and processors must maintain records of their used oil for a period of three years as well. 40 C.F.R. §§ 279.46(d), 279.56(c); 35 Ill. Adm. Code 739.146(d), 739.156(c).

Used oil must be stored in containers, above-ground storage tanks, underground storage tanks, or any storage unit subject to interim or permitted status under the hazardous waste rules. 40 C.F.R. § 279.22; 35 Ill. Adm. Code 739.122. Above-ground storage tanks, containers used for used oil, and fill pipes to underground storage tanks must be labeled "Used Oil". 40 C.F.R. §§ 279.22(c), 279 .45(g), 279. 54(f); 35 Ill. Adm. Code 739.122(c), 739.145(g), 739.154(f).

Generators, processors, refiners, transporters, transfer facilities, burners, collection centers, aggregation points, and marketers all have a duty under 40 C.F.R. § 279 and 40 C.F.R. § 280 to clean up used oil if a release is from an underground storage tank. Similar State requirements are at 35 Ill. Adm. Code 739.122.

Standards for used oil processors and marketers track the requirements for an owner or operator of a RCRA interim status hazardous waste treatment, storage, and disposal facility. 40 C.F.R. §§ 270.10, 279.52; 35 Ill. Adm. Code 739.152. For example, processors are required to maintain emergency preparedness and prevention plans , develop a contingency plan, and develop closure and waste analysis plans. 40 C.F.R. §§ 279.52(a), 279.52(b), 279.54(h), 279.55; 35 Ill. Adm. Code 739.152(a), 739.152(b), 739.154(h), and 739.155. Finally, like interim status facilities, used oil facilities must maintain all operating records. 40 C.F.R. § 279.57; 35 Ill. Adm. Code 739.157.

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[2] Used oil to be burned as a fuel must first be tested to determine if it is on specification (on-spec) or off-specification (off-spec). Oil that is on-spec has minimal levels or no trace of arsenic, cadmium, chromium, lead, and total halogens. On-spec oil also has a high flash point. Burners of on-spec used oil are exempt from the Part 279 / Part 739 requirements. 40 C.F.R. § 279.11; 35 Ill. Adm. Code 739.111.

Additional Regulatory Programs for Used Oil

Federal Clean Water Act (CWA), amendments required USEPA to develop and adopt regulations designed to prevent pollution of the navigable waters of the United States. 33 U.S.C. § 1251. These regulations are found at 40 C.F.R. § 112 and are referred to as the Spill Prevention Control and Countermeasure (SPCC) regulations. See also 35 Ill. Adm. Code 739.122. The Oil Pollution Act of 1990 (OPA), strengthened the provisions for oil spill control. 33 U.S.C. § 2701 *et seq*. The OPA applies to on-shore and off-shore non-transportation facilities that manage oil. Used oil handlers may also be subject to CWA stormwater regulations at 40 C.F.R. § 122.26.

If used oil meets the statutory definition of hazardous material, it is subject to the Hazardous Materials Transportation Act (49 C.F.R. §§ 171-180) and is regulated by the United States Department of Transportation (USDOT). See also 35 Ill. Adm. Code 739.143. Used oil transporters of USDOT hazardous materials must comply with all applicable USDOT regulations for identification and classification, packaging marking, labeling, and shipping. 49 C.F.R. §§ 106-199.

Authority for cleanup of past releases of used oil is under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)[3] and RCRA corrective action requirements.[4] State and federal emergency response notifications are required for reportable quantities of released hazardous substances. Section 103(a) of CERCLA and 40 C.F.R. § 302 *et seq*. instruct facility owners to report hazardous substance releases to national and State emergency response centers and local emergency planning commissions.[5]

Used oil which contains polychlorinated biphenyls (PCBs) (40 C.F.R. § 761; 35 Ill. Adm. Code 739.110(i)) and used oil stored in underground storage tanks are also regulated (40 C.F.R. § 280; 35 Ill. Adm. Code 731).

Many facilities handle both used oil and hazardous substances that are regulated under RCRA. At those facilities, RCRA permits may address the management of used oil. CICI pointed out that one of its member companies which manages used oil already operates under a State-issued RCRA Part B permit. CICI questioned the environmental benefit of requiring a RCRA-permitted facility to obtain another permit for its used oil activities. Tr. 2 at 7-10; PC 1; Exh. 2. The Agency recognized this concern and submitted an amendment to its proposal in which RCRA Part B permitted facilities handling used oil were not subject to a used oil permitting requirement. Tr. 2 at 11-15; PC 12 at 6.

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[3] 42 U.S.C. § 9601 *et seq*. CERCLA's petroleum exclusion does not apply if the used oil is mixed with hazardous substances. 42 U.S.C. § 9601(14).

[4] To enforce the corrective action requirements of RCRA, USEPA must demonstrate that the facility is subject to interim status regulations. 40 C.F.R. § 270.10. This threshold can easily be met by a presumption that used oil is mixed with a hazardous waste.

[5] Constituents in the used oil that are not hazardous waste under RCRA may be designated hazardous substances under CERCLA. CERCLA substances are subject to the immediate notification requirements at 40 C.F.R. § 302.6.

THE AGENCY PROPOSAL

Used Oil Management

The Agency proposes that the following facilities be subject to the Part 807 permitting requirements: used oil transfer facilities, used oil processors, certain used oil fuel marketers, used oil burners of off-specification used oil, and petroleum refining facilities. PC 20 at 6.

Facilities not subject to Part 807 permitting requirements include small-volume facilities (those handling used oil in shipments of 55 gallons or less), namely: used oil aggregation points and used oil collection centers. In addition, used oil generators who deliver used oil to the small volume facilities are exempt from Part 807. *Id.*

Used Oil Transportation

The Agency proposes that transporters who haul only used oil (but no other hazardous or nonhazardous special waste) be exempt from Part 809 permitting requirements if those transporters deliver used oil to a nonpermitted used oil aggregation point or a used oil collection center (*i.e.*, facilities exempt from Part 807). Other transporters would be subject to Part 809 permits. Mot. sever at 4.

The Permit Application

In general, a used oil facility would have to provide the following information to the Agency in a permit application: facility design, location, a closure plan, operating procedures (*i.e.*, waste screening and analysis), waste acceptance procedures, inspection schedules, maintenance procedures, and emergency response procedures. Exh. 3 at Dragovich 14.

In a June 18, 1999 hearing officer order, the Board requested that the Agency submit (for the record) a draft permit application form. The Agency did not create a new application form for used oil facilities. Instead, the Agency plans to use a series of up to five existing application forms that it currently uses for permitting nonhazardous solid waste treatment and storage facilities except garbage transfer stations. Exh. 3 at Dragovich 13-14, exhibit 1. The Agency's rationale for using the existing permits was that "most of these facilities do more than just (manage) the used oil, and so it would be better just to use the standard application." Tr.3 at 177-178.

Miscellaneous

The Agency and the Board are proposing some other minor changes to Part 809 of the Board's rules. The Agency is proposing a change in the definition of "on-site" at Section 809.103 that will eliminate a discrepancy between the State and federal definitions. See PC 21. After docket R98-29

closed, the Joint Committee on Administrative Rules (JCAR) submitted a list of typographical errors in Part 809 from that previous docket. As a result, the Board is proposing to correct those errors which are technical and nonsubstantive in nature. The Board will address these miscellaneous changes to Part 809 (which are unrelated to the Agency's used oil permitting proposal herein) in a future rulemaking.

DISCUSSION

During this proceeding, the Agency has attempted to demonstrate the need for the adoption of its proposal. It has testified that the dumping of used oil is a prevalent problem across the nation and provided examples on releases of used oil in Illinois during the 1990s. Tr.3 at 13, 34-35; Exh. 3 at Dragovich 13, Dragovich attachment 3. The Agency also provided details about the migration of dumped used oil in the environment, toxic substances commonly found in used oil, and the harm that such toxic substances can cause to plants, animals, and humans. Tr.3 at 18-19, 23-26; Exh. 3 at Eastep 3 and Morrow 3-7. In deciding whether or not to adopt the Agency's proposal the Board considers certain factors, including those listed at Section 27 of the Act. 415 ILCS 5/27(a).

Section 27(a) of the Act requires the Board:

> In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of the surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution [emphasis added]. *Id*.

Economic Reasonableness

The Illinois Supreme Court has affirmed the Board's authority to adopt rules and has determined the manner in which the Board may consider evidence concerning technical feasibility and economic reasonableness. Granite City v. IPCB, 155 Ill. 2d 149, 613 N.E.2d 719 (1993). In Granite City, the court stated that the authority granted under Section 27 of the Act is a "general grant of very broad authority and encompasses that which is necessary to achieve the broad purposes of the Act." Granite City, 115 Ill. 2d 149, 175, 613 N.E.2d 719, 734. The court went on to state:

> Section 27(a) does not impose specific evidentiary requirements on the Board, thereby limiting its authority to promulgate only regulations that it has determined to be technically feasible and economically reasonable. Rather, Section 27(a) requires only that the Board consider or take into account the factors set forth therein. The Board must then use its technical expertise and judgment in balancing any hardship that the regulations may cause to dischargers against its statutorily mandated purpose and function of protecting our environment and public health. Granite City, 115 Ill. 2d at 175-176, 613 N.E.2d at 734-735.

Technical feasibility is not at issue in this proposed rulemaking. Therefore the Board focuses on economic reasonableness and other relevant issues.

Although there is no filing fee associated with the Agency's proposed used oil permit, NORA, its members, and the Illinois Environmental Regulatory Group (IERG) claim that permitting requirements will be costly and will put used oil facilities at a competitive disadvantage.

The Agency claims that the cost of completing a permit application package varies depending on a facility being previously permitted and depending on consultants' fees. Tr.3 175. NORA "regards the entire permitting process, particularly the engineering studies and the permit negotiations with IEPA, to be a costly and time consuming process". PC 19 at 4.

The Agency claims that a well-run used oil facility operating pursuant to Illinois' Part 739 standards that is currently competitive with virgin oil producers should not have to make any expensive changes to its operation once the Agency issues the permit. A well- run facility will remain competitive with virgin oil facilities after Board promulgation of the Agency's proposed standards. Tr.3 at 14; PC 12 at 11; PC 20 at 15, 22-23; Exh. 3 at Dragovich 11. Mike Lenz (a NORA member with a used oil business in Peoria) disputes this and points to his complex 1995 proposed draft permit from the Agency. See Exh. 5; Exh. 6. NORA claims that its other members could also face expensive changes to their operations in order to comply with Agency permits. Furthermore, NORA claims that appealing disputed permit conditions to the Board could also be expensive. PC 19 at 5.

NORA, its members, and IERG claim that if the permitting process forces facilities to increase the price that they charge for used oil, burners may switch back to using virgin oil. If permitting costs force facilities to pass costs to generators, these generators (both large generators and do-it-yourselfers) may illegally dump used oil. Tr.1 at 19; Tr.3 at 35, 38, 120-121, 130; PC 2; PC 6; PC 13; PC 18 at 3; PC 19 at 3.

NORA states that used oil recyclers must periodically store their product due to seasonal demand. NORA claims that requiring the lessors to get permits will drive up costs and create a shortage of places to store used oil. Tr.3 at 41, 146; Exh. 4 at 5; PC 19 at 3. NORA suggested that this scenario will place Illinois recyclers at a competitive disadvantage compared to recyclers in other states. Tr.3 at 93, 97. Although the Agency is concerned with competitive disadvantage "to a point", it is not the Agency's primary concern. Tr.3 at 95. The Agency also had a response to NORA's alleged competitive disadvantage scenario: in the event the permitting process creates a shortage of Illinois storage sites, used oil recyclers could simply take their product to other states - a common practice in the industry. PC 20 at 16.

Inspections

The Agency states that if it is allowed to permit used oil facilities, it will be able to regularly inspect those with permits. Under the current Part 279 / Part 739 scheme, the Agency only inspects used oil facilities when a complaint has been lodged. Exh. 3 at Dragovich 2. The Agency also claims

that it is difficult "to administer a very limited amount of resources over a large area or responsibility." Tr.3 at 59. NORA disagrees with the Agency regarding the need for permits in order to allow for Agency inspections. NORA recommends that, if the Agency is concerned about used oil facilities, then the Agency should schedule regular periodic inspections without resorting to a permitting requirement. Tr.3 at 33, 140; PC 19 at 1-2.

Existing Federal and State Regulatory Scheme

NORA, NORA's members, and IERG are generally opposed to the Agency's used oil permitting proposal because they claim the Part 739 State requirements and the federal requirements are extensive and that further regulation is unnecessary. Tr.3 at 30-32; PC 2; PC 6; PC 13; PC 17 at 2, 5; PC 19 at 1; Exh. 4 at 3-4.

The Agency claims that many used oil management facilities that accept large quantities of used oil have had environmental problems as a result of factors including "poor design, operation, maintenance, and waste analysis". Exh. 1 at 5. The Agency points to at least 56 former used oil management sites in Illinois that are either abandoned, currently in remediation pursuant to a State order, or are being cleaned voluntarily. Tr.3 at 20; Exh. 3 at Dragovich 4, Dragovich attachment 1. The Agency also cites used oil sites that operated until the 1980s or 1990s (including one still in operation) where the Agency had been involved in remedial projects. Tr.3 at 16; Exh. 3 at Eastep 5-7, Eastep exhibits 1-8.

NORA and Lenz claim that many of the problems that the Agency cited were at refining facilities that closed more than ten years ago and never operated under Illinois' Part 739 used oil management standards. Furthermore, Lenz alleges that environmental problems which occurred prior to the 1980s were the reason that the Agency was engaged in remediation at facilities which were still in operation during the 1980s and 1990s. The problems that the Agency cited would now be addressed by Part 739 or by other federal and State regulatory programs. Thus, these problems do not support the adoption of a permitting scheme. PC 18 at 2; PC 19 at 2.

The Agency responds that the improved practices in the used oil industry during the 1980s and early 1990s were as a result of the Illinois Part 807 permitting requirements which, at that time, applied to used oil facilities. The Agency states that permits provide specific direction to facility operators on how to comply with regulations, and the permit review process allows the Agency to evaluate how the facility is complying with used oil standards. Exh. 3 at Dragovich 2, 6. However, the Agency admits that it permitted "probably less than 20" used oil facilities when Part 807 applied to those facilities. Tr.1 at 19.

CONCLUSION

By promulgating the Agency's used oil permitting proposal, the Board would require certain used oil management facilities to engage in a potentially expensive permitting process. The Agency was able to respond to some of NORA's competitive disadvantage arguments, but some of the arguments

withstand the Agency's counterarguments. For example, while interstate transport may be feasible for a used oil recycler near the State line, it may not be feasible for a recycler in the middle of the State.

As for the Agency's testimony about resource limitations, if the Agency has concerns about conditions at a used oil facility, the Agency should inspect that facility regardless of whether a complaint has been lodged or not. Although regular periodic inspections may occur pursuant to a permit, a permit is not a necessary precursor for such inspections.

The Board agrees that protecting the public from the hazards of spilled used oil is necessary but finds that the existing federal and State laws and rules governing the used oil industry are quite extensive and are sufficiently protective, at this time, absent a permitting scheme. These existing laws and rules have improved the management of used oil and have led to advances in safety as well. The Board takes note of USEPA's decision not to list used oil as a hazardous waste because several other federal programs already address used oil. See *supra* pp. 2-3. During the rulemaking process, the Agency reiterated that its permitting proposal did not involve proposing new standards. Instead, the Agency stated that permitting would increase compliance with existing regulations by used oil facilities in Illinois. Tr.3 at 63, 90-91; PC 20 at 5, 10. The Board finds that the record does not support the Agency's position.

The Board appreciates that the Agency, public participants, and Board staff have expended a considerable amount of time and resources on this proceeding. However, the record does not support adoption of the Agency's proposal at this time.

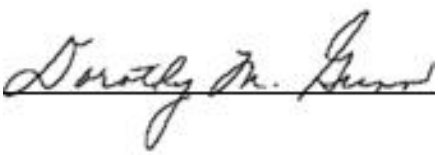
ORDER

The instant proposal is hereby dismissed and docket R99-18 is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 16th day of December 1999, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

ATTACHMENT 1
DOCKET R99-18 - PUBLIC COMMENTS

PC 1. Chemical Industry Council of Illinois (CICI), Springfield, submitted by Jennifer Marsh (3/3/99).

PC 2. Beaver Oil Co., Inc., Hodgkins, submitted by Ray Vintika, Vice President (4/9/99). Note: PC 2 is identical to PCs 4, 5, 6, 7, 8, and 15.

PC 3. National Oil Recyclers Association. (NORA), Bozeman, MT, submitted by Christopher Harris, General Counsel (4/9/99).

PC 4. Gateway Petroleum, Belleville, submitted by Roland Odenwald, Jr. (4/9/99).

PC 5. Southwest Oil Inc., Orland Park, submitted by Victoria M. Custer, Vice President (4/9/99).

PC 6. Lenz Oil Peoria Inc., submitted by Mike Lenz, President (4/9/99).

PC 7. Future Environmental Inc., Mokena, submitted by Steven Lempera, President (4/12/99).

PC 8. RS Used Oil Services Inc., Monee, submitted by Ronald Winkle, President (4/12/99).

PC 9. Illinois Steel Group, submitted by James Harrington and Charles Wesselhoft, Ross & Hardies, Chicago (5/4/99).

PC 10. Lenz Oil Peoria Inc., submitted by Mike Lenz, President (5/7/99).

PC 11. National Oil Recyclers Association. (NORA), Bozeman, MT, submitted by Christopher Harris, General Counsel (5/7/99).

PC 12. Illinois Environmental Protection Agency (IEPA), Springfield, submitted by Kimberly A. Geving (5/7/99). "Final Comments of the IEPA and Proposed Amendments to Address Issues Raised at Hearing."

PC 13. Illinois Environmental Regulatory Group (IERG), submitted by Katherine D. Hodge and Karen Bernoteit, Hodge & Dwyer, Springfield (5/7/99).

PC 14. Ameren Services, St. Louis, MO, submitted by Paul Pike, Senior Environmental Scientist (5/7/99).

PC 15. Morgan Distributing Inc., Decatur, submitted by Gary R. Morgan, CEO (5/20/99).
Note: This comment was stricken from the record because it was not timely filed. Identical to PC 2.

PC 16. Letter from State Representative David Leitch (R-Peoria) to the Board (8/16/99).

PC 17. Illinois Environmental Regulatory Group (IERG), submitted by Katherine D. Hodge, Hodge & Dwyer, Springfield (9/24/99).

PC 18 Lenz Oil Peoria Inc., submitted by Mike Lenz, President (9/24/99).

PC 19 National Oil Recyclers Association. (NORA), Bozeman, MT, submitted by Christopher Harris, General Counsel (9/27/99).

PC 20 Illinois Environmental Protection Agency (IEPA), Springfield, submitted by Daniel P. Merriman (9/28/99). "Final Comments of the Illinois EPA."

PC 21 Illinois Environmental Protection Agency (IEPA), Springfield, submitted by Kimberly Geving (10/20/99). "Additional Supplemental Final Comments of the Illinois EPA."

ATTACHMENT 2
DOCKET R99-18 - EXHIBITS

Exh. 1	Motion for Acceptance, Errata Sheet Number 1, and Testimony of Theodore Dragovich.
Exh. 2	Comments of the Chemical Industry Council of Illinois.
Exh. 3	Motion of Acceptance, Testimony of Theodore Dragovich, Larry Eastep, and Leslie Morrow.
Exh. 4	Statement of Christopher Harris, General Counsel, National Oil Recyclers Association Before the Illinois Pollution Control Board Concerning Used Oil Regulations - Docket R98-29; Docket R99-18 - August 23, 1999.
Exh. 5	Lenz Oil Service, Inc., Peoria - Draft Modification of Operating Permit - December 1995.
Exh. 6	March 28, 1996 Letter to Scott Hacke, Illinois EPA, from Christopher Harris, Counsel to Lenz Oil Service, Inc. Re: December 1995 Draft Permit.