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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO THE)	R06-20
BOARD'S SPECIAL WASTE)	(Rulemaking - Land)
REGULATIONS CONCERNING)	
USED OIL, 35 ILL. ADM. CODE 808, 809)	

NOTICE OF FILING

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

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POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Stephanie Flowers, and respectfully submits the following post-hearing comments in the above-entitled matter to the Illinois Pollution Control Board. The Illinois EPA appreciates this opportunity to supplement its comments and testimony already filed in this matter and presented during the two public hearings held.

ISSUE OVERVIEW

After much preliminary discussion with NORA and subsequent testimony by NORA before the Board, the Illinois EPA remains opposed to the exemption as proposed by NORA. During initial discussions with NORA and review of their proposal to exempt used oil from manifests, it appeared that the main difference in opinion between NORA and the Illinois EPA was the language of the exemption and how to limit the exemption to used oil. Subsequent testimony by NORA has made it clear that the difference is not regarding specific language, but a disagreement in the broadness of the exemption. The Illinois EPA does approve of an exemption from the manifesting requirement of 35 Ill. Adm. Code 809 ("Part 809") for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 ("Part 739") and an

exemption from the hauling permit requirement of Part 809 for loads that contain no special waste other than used oil that is defined by and managed in accordance with Part 739. However, the Illinois EPA believes the exemption cannot extend to all mixtures of used oil with other special wastes as requested by NORA for the reasons discussed below. Therefore, the Illinois EPA requests that the Board adopt the alternate language as provided by the Illinois EPA in its comments and testimony to accomplish the manifest exemption and hauling permit exemption.

JUSTIFICATION

I. NEED TO LIMIT THE EXEMPTION

The Illinois EPA believes that each individual waste stream of a special waste mixture must be disclosed to the receiving facility. The Illinois EPA does not want to prohibit the mixing of used oil and other waste, but the Illinois EPA does want to ensure the conveyance of information that is necessary to properly manage the waste mixture. Only Part 809 manifesting requires the disclosure of individual waste streams of a mixture and Part 739 tracking does not. Therefore the tracking requirements of Part 739 are not sufficient for mixtures of used oil and other special waste.

Used oil as defined in Part 739 includes the oil and the contaminants that are mixed with the oil during use. Other materials that are added to used oil after it has been generated do not become used oil, but become regulated by Part 739 because they are contaminated with used oil. The Illinois EPA believes that other non-hazardous special wastes should be evaluated separately to determine if they should be exempted from hauling permits and manifests, and should not be exempt merely because the waste was mixed with used oil. Materials added to the used oil after generation should only be exempted from the manifest and hauling requirements if they meet the

criteria in Sections 809.210, 809.211, or Section 808.121. The Illinois EPA believes that other non-hazardous wastes mixed with used oil after generation must be subject to both the used oil standards at Part 739 and the appropriate waste management standards that applied to the waste before the mixture occurred. But materials that are added to the used oil that are not wastes, such as diesel fuel or other fuels, would not become subject to the used oil manifesting or additional waste management requirements.

The use of a manifest for non-hazardous waste added to used oil will insure that the transporter, emergency responders and receiving facility are made aware of any waste that has been added to the used oil that may cause the properties of the mixture to be different from those normally associated with used oil and that may cause the mixture to behave different than used oil. In contrast, the language as proposed by NORA does not contain the regulatory safeguards to ensure that the proper information will be relayed to the appropriate persons in order to protect the health and welfare of the public and environment. Since there is no minimum amount of used oil that must be added to the waste to make it subject to the used oil standards in Part 739, the language as proposed by NORA would allow waste streams that have chemical and physical properties completely different from used oil to be transported and managed like used oil even when those practices are not appropriate for that waste stream.

The Illinois EPA expects that used oil transporters will sometimes wish to transport other special waste on the same load as used oil. This could occur in separate containers, separate compartments, or within the same compartment. The Illinois EPA also understands that used oil transporters may use the same truck to transport exclusively used oil on one load and at other times to transport other special wastes that are not regulated under Part 739. Therefore, the language proposed by the Illinois EPA also specifies that there are two exemptions being

proposed. The manifest exemption will work independently from the hauling permit exemption because a generator would not have to initiate a manifest if the waste given to the transporter is only used oil as defined and managed in accordance with Part 739 but the transporter would not be exempt from the hauling permit requirements unless all the loads that are picked up by that truck are used oil as defined and managed in accordance with Part 739. The transporter may choose to pick up other loads of non-exempt waste, but must have a haulers permit and a manifest for the non-exempt waste. In contrast, the language proposed by NORA would apply the hauling permit exemption to all used oil transporters even when they are hauling special waste that is not used oil.

NORA members argued that it may not be possible for the transporter to make a determination in the field if the used oil contains any added non-hazardous special waste. However, other than the rebuttable presumption at Section 739.144, nowhere in Part 739 or Part 809 does it require the transporter to determine if the used oil has been mixed with other waste. The transporter does not have to determine whether the used oil contains other special waste because it is the responsibility of the generator to initiate a manifest if appropriate, such as when the generator mixes the used oil with other special waste that is not exempt from manifests.

NORA members argued that business records already provide the information necessary to track and identify the special waste mixtures. NORA members provided Exhibits 12 through 17 to illustrate the type of information included on their members' shipping paper. However, these business records vary according to company policy and are not required by the regulations. These business records go beyond the minimum regulatory requirements for Part 739 used oil tracking. The following table provides a simplified list of the requirements for non-hazardous

special waste manifesting under Part 809 and used oil tracking required by Part 739. Clearly, the manifest requirements in Part 809 are more detailed than the tracking requirements in Part 739.

Regulations	Who must keep records	Information required in shipping paper
Part 739	<ol style="list-style-type: none"> 1. Transporters 2. Receiving facilities: Processors, Burners, Marketers 	<ol style="list-style-type: none"> 1. Name and address of the generator, transporter, or processor; 2. USEPA ID number and Illinois Special waste number; 3. Quantity of used oil; 4. Signatures.
Part 809	<ol style="list-style-type: none"> 1. Generators 2. Haulers 3. Receiving facilities 	<ol style="list-style-type: none"> 1. Generator name, address, phone number and generator number; 2. Information stating when and where the special waste was generated; 3. Name of person who accepted delivery and name and address of site; 4. Name, phone number and permit number of the transporter; 5. Classification and quantity, US DOT Description, proper shipping name, hazard class, ID number, number of containers, quantity and additional description of special waste delivered to transporter; 6. Special handling instructions; 7. Date, name, and signature of generator, receiving facility and all transporters.

NORA has argued that added paperwork is burdensome. However there should be no additional paperwork because a mixture of used oil and other special waste does not have to be documented twice. The Part 809 manifest will also satisfy the Part 739 tracking requirement as evidenced by the table above. This does not mean that the Illinois EPA requests that used oil be shipped under a used oil manifest system or hazardous waste manifest system. The Illinois EPA does request that the Board limit the new special waste manifest exemption in Part 809 to used oil as defined by and managed in accordance with Part 739 and clarify that mixtures of used oil and other wastes will require an appropriate manifest for tracking.

NORA has argued that U.S. Department of Transportation ("DOT") shipping papers can be used instead of the manifest. However, DOT shipping papers do not require disclosure of the separate waste streams that make up a non-hazardous mixture and would allow the non-hazardous mixture to be described only as used oil. In addition, DOT documents are not required to be kept by the generator and although DOT requires a shipping paper accompany shipments of non hazardous materials, the description may mislead the reader to believe that the cargo is only used oil when it could be mainly other wastes mixed with used oil.

NORA has argued that it would be confusing to manage waste both under the used oil standards and under the special waste regulations. However, the Illinois EPA would like to clarify that used oil is a special waste. Neither NORA nor the Illinois EPA has proposed to exempt used oil from the definition of special waste. Used oil, like hazardous waste and potentially infectious medical waste, is a type of special waste that has specific management standards. From the time the special waste manifesting and hauling regulations were adopted, they applied to used oil. The Illinois EPA is not seeking a new category of waste or new interpretation of Part 739. In addition, the Illinois EPA would maintain that any used oil exempt from manifesting and hauling permits as a result of this rule making is still subject to the other special waste requirements such as the annual reporting requirements of Section 809.501.

NORA has argued that Illinois is the only state that uses a manifest. However, used oil regulations vary from state to state and while some states only require compliance with the federal regulations, others require hauling permits, manifests, and other tracking papers. Illinois is not the only state to require a manifest for mixtures of used oil and other non hazardous waste. There is no consistency between the states' used oil rules.

NORA has argued that the Illinois EPA proposal will put Illinois used oil recyclers at a disadvantage with out-of-state competitors. However, currently both out-of-state and in-state used oil transporters must use manifests and obtain a hauling permit to transport special waste, including used oil, in Illinois. The Illinois EPA proposal will allow haulers of used oil not containing other special waste to be exempt from the hauling permit and manifest requirement and therefore will encourage the out-of-state competitors to recycle used oil at Illinois facilities.

The Illinois EPA can understand that appropriate paperwork is time consuming. However, the Illinois EPA believes that the requirement to manifest mixtures of used oil and other special waste under Part 809 is the best way to ensure that adequate information is conveyed regarding the mixture. In contrast, the exemption as proposed by NORA would give generators of non-hazardous special waste the opportunity to mix their non-hazardous special waste with used oil and would relieve them of any responsibility to convey this to the transporter or receiving facility, effectively hiding the waste in used oil. In addition, the generator would not have to maintain records as to where the non-hazardous special waste was sent for storage, treatment, or disposal. Under NORA's proposal, the transporter would not be required to carry a shipping paper describing the load other than a DOT shipping paper that could identify the load as solely used oil and the receiving facility would not have any records to inform them that the mixture is anything other than used oil. The proposed NORA language would allow special waste that is mixed with used oil by the generator, the transporter, or the receiving facility, to become subject to only the used oil standards of Part 739. The Illinois EPA's concern is that since no one has conducted an evaluation of the impact of managing special waste mixed with used oil solely under the used oil regulations, the used oil regulations at Part 739 may not be the appropriate management standards for all non hazardous special waste. Further, if all non

hazardous special waste is allowed to be regulated under Part 739, the Illinois EPA believes the rulemaking should not be disguised by its proponents as a manifest exemption.

II. INCENTIVE FOR MIXING AND THE DEMISE OF THE SPECIAL WASTE PROGRAM

The Illinois EPA believes that should NORA's proposal be adopted by the Board, the Illinois EPA will lose regulatory control over non-hazardous special waste and the special waste regulations at Part 808 and Part 809 will be effectively eliminated. NORA's proposal will allow all non-hazardous special waste mixtures to be relabeled 'used oil' and be managed solely under the Part 739 regulations because the proposal does not specify a minimum quantity of used oil that needs to be added to the waste mixture before the mixture may be relabeled 'used oil'. After the mixture is relabeled in tracking documents as only 'used oil', the mixture may be received by used oil facilities that have less stringent permitting and siting requirements than special waste facilities. The Illinois EPA believes that the less stringent permitting, siting, and recordkeeping requirements for used oil facilities will be an incentive for facilities to combine used oil with other special waste and relabel the mixture as 'used oil'.

NORA argues that the market for their oil product will dictate what wastes will be accepted and further argues that the value of the used oil will insure that the waste is managed properly. However, although this may be true for high grade used oil products, the Illinois EPA knows that many facilities also profit by collecting generator fees and disposing of the mixtures as low grade used oil fuel. The Illinois EPA believes that many of these facilities will abuse the used oil manifest exemption to receive special waste that must normally be managed at a facility that has siting and has been permitted to manage special waste. The Illinois EPA has already had experience with such practices in this industry.

NORA members commented that "special wastes are non-hazardous waste. Therefore they should not carry any characteristics that could cause the used oil to be hazardous." This comment seemed to imply that hazardous characteristics were the sole reason for regulation as a special waste. "Special waste" as defined in Section 3.475 of the Act includes both hazardous and non-hazardous waste. The non-hazardous wastes include pollution control waste and industrial process waste. These non-hazardous wastes are regulated as special waste not because they exhibit hazardous characteristics, but because they pose a present or potential threat to human health or the environment.

Again, the Illinois EPA believes that NORA's proposal would allow used oil generators, transporters and used oil handlers to mix other non-hazardous special waste with used oil after generation and manage it outside of the current special waste manifest, transportation and permitting requirements. In fact, the Illinois EPA believes there will be an incentive for facilities to operate in this manner because of the reduced siting, operating and permitting requirements of used oil facilities compared to special waste facilities. The Illinois EPA believes this will effectively eliminate the special waste regulations and the Illinois EPA is concerned that the used oil regulations at Part 739 may not contain the appropriate management standards for all non-hazardous special waste. At the very least, an evaluation of the impact of managing special waste mixed with used oil solely under the used oil regulations at Part 739 should be performed.

III. EFFECT OF THE EXEMPTION ON RECYCLING

An exemption from manifest and hauling permits that is extended to any special waste that is mixed with used oil will lead to more waste being mixed with used oil after generation. The Illinois EPA believes that by indirectly encouraging mixtures of used oil with special waste,

NORA's proposal would have a negative impact on the ability to recycle each waste stream and that without the tracking of individual waste streams in mixtures, the wastes may be inappropriately handled, managed or burned. The Illinois EPA believes it is likely that other waste added into the mixtures (e.g., inks, solvents and coolants) will not be recycled, but will be burned with the used oil or treated in a waste water treatment unit. Some of the wastes added to used oil which will be blended for fuel do not have fuel value themselves and may contain constituents that are not appropriate to burn in that setting.

In contrast, limiting the manifest exemption to used oil as defined and managed in accordance with Part 739, as the Illinois EPA has proposed, encourages the generator to keep waste streams separate for appropriate management and recycling and insures that the generator provides the type of information necessary to make the transporter and receiving facility aware of the source and type of waste. This would not mean that the used oil mixtures that NORA said they are currently recycling would no longer be recycled. It would only mean that these mixtures still have to be transported under a special waste manifest. Again, a mixture of used oil and special waste does not have to be documented twice with both a manifest under Part 809 and a tracking document under Part 739. The manifest will suffice for the tracking documents required by Part 739.

NORA testified that Safety Kleen collected approximately 180 million gallons of used oil and an additional 14 million gallons of oily water in 2005 and that Safety Kleen turned that waste oil into approximately 140 million gallons of high quality lubricating oil. Based on this testimony the Illinois EPA calculated that approximately 54 million gallons of wastes were discharged or sent for disposal. Fifty-four million gallons is a significant waste stream. Since industry standards dictate that lubricating oils undergo stringent quality control, used oil re-

refiners such as Safety Kleen would be more selective about the waste that they accept as used oil as opposed to used oil fuel marketers who only have to meet individual customer's standards to satisfy their contract with a used oil burner. Therefore in comparison to Safety Kleen's fifty-four million gallons, these marketers could allow even higher percentages of non-used oil wastes to be included in used oil. Furthermore, under the used oil regulations at Part 739, these non-used oil wastes may be shipped to the burner under a bill of lading that only identifies the shipment as used oil. Therefore, the Illinois EPA believes that the continued use of a special waste manifest would alert burners that the used oil contains other waste and would provide the record necessary to determine whether the receipt and burning of that waste is appropriate or whether it is an improper method of incinerating special waste that is not used oil.

NORA members argued that the Illinois EPA position of limiting the manifest exemption does not promote recycling. However, the special waste regulations have been in place for years and throughout this time, facilities have been recycling used oil and used oil mixtures. NORA also argued that the intent of the federal used oil regulations was to promote the recycling of used oil. However, a review of 50 FR 49213, November 29, 1989, (Part One.I.A) and 57 FR 41566, September 10, 1992, (II. Background) makes it clear that protection of human health and the environment was the prime concern even if it would discourage recycling. Plus, the Illinois EPA believes that if the other wastes are kept separate by the generator, the potential that these wastes will be recycled in an appropriate manner is higher.

NORA argues that the mixtures are subject to stringent testing and examination in order to be sold as fuel. However, the regulations only require testing for certain constituents and there are many other toxic constituents that should be evaluated if other non hazardous special waste is burned as used oil. These concentrations can only be evaluated if the receiving facility is

notified of the individual waste streams that make up the mixtures. Mixtures of used oil and other special wastes could meet the specification in Part 739 for used oil and still not be marketable as a used oil fuel. Other constituents could be present in the special waste mixture that would be problematic when added to the used oil. These constituents could reduce viscosity or BTU content or increase ash content or emissions from burning the oil. No one from NORA testified that they evaluate BTU and toxic constituent concentration values of the waste prior to commingling the waste or testified that they consider the impact of these constituents when burned as used oil.

In sum, the Illinois EPA does not believe it is appropriate to encourage mixing other wastes into used oil by offering a manifest exemption for the mixture. The Illinois EPA is concerned that the NORA proposal would allow the improper identification of waste and that the misidentification may cause the waste to be handled, managed or burned inappropriately and that the recyclability of each waste stream of the special waste mixtures would be reduced.

IV. FEDERAL AND STATE REGULATIONS

The federal regulatory requirements for used oil were adopted in an identical in substance rulemaking in Part 739. Prior to promulgation of the used oil regulations at Part 739, the special waste regulations at Part 808 and Part 809 already applied to used oil. NORA argues that the federal regulations allow that all non-hazardous wastes contaminated with some used oil should be effectively exempt from Illinois' special waste requirements and only regulated by Part 739. In contrast, the Illinois EPA interprets the federal regulations as requiring non-hazardous waste mixed with used oil to meet the management standards in Part 739 but not preempting more stringent state regulation of these wastes. The United States Environmental

Protection Agency ("USEPA") at 57 F.R 41569 dated September 10, 1992 stated, "The [USEPA] has decided that these current regulations are protective but not complete or sufficient to protect human health and the environment from potential mismanagement of used oils that are recycled."

The purpose of the federal used oil regulations is to provide recycling management standards for used oil and for materials contaminated with used oil. The federal regulations do not intend to preempt more stringent state regulation of these non-hazardous wastes. As stated at 57 FR 21526, "[USEPA] also recognizes that several states regulate used oil as a hazardous waste, and some states regulate it as a special waste. . . A used oil handler must comply with all state requirements applicable to used oil in his/her state, in addition to any federal requirements that apply."

The federal regulations also do not encourage mixtures. USEPA did not contemplate generators and transporters adding other non-hazardous waste to the used oil because if other non-hazardous wastes were added to the used oil, from USEPA's point of view, it would subject unregulated non-hazardous waste to federal regulation for the first time. Therefore, the Illinois EPA believes that in the federal program there is an incentive not to mix non hazardous waste that is unregulated with used oil that is regulated. In contrast, NORA's proposal would provide the opposite incentive and would encourage mixtures of used oil and other special wastes to take advantage of the reduced siting, operating and permitting requirements of used oil facilities compared to special waste facilities. NORA has taken the federal regulatory requirement that materials contaminated with used oil must also be managed as used oil and erroneously interpreted it as stating that all non-hazardous wastes contaminated with some used oil should be exempted from Illinois' special waste manifest and hauling permit system, and subsequently

state permitting requirements. The Illinois EPA believes that this type of evaluation goes beyond the original intent of this proposed regulatory change, a manifest exemption. NORA's proposal would allow a relaxation of the Illinois regulatory requirements for special waste.

Additionally, NORA questioned whether the Illinois EPA proposed language for the used oil manifest exemption would erect an impediment to the safe recovery of CESQG hazardous waste. The Illinois EPA does not propose any changes to the management of conditionally exempt small quantity hazardous waste. The current regulations at Part 739 already address which hazardous wastes must be managed under traditional RCRA regulations and which hazardous wastes may be managed under Part 739.

Also, NORA testified that previous information provided by the Illinois EPA incorrectly stated that New Hampshire, New Jersey, And South Carolina require hazardous waste manifests for used oil shipments. The actual testimony of the Illinois EPA stated that New Hampshire requires that used oil be transported by a New Hampshire permitted hazardous waste transporter and be accompanied by a three-copy bill of lading (N.H. Adm. Code R. Env-Wm 807.07) and that both New Jersey (N.J.A.C. 7:26A-6.6(g)) and South Carolina (SC ADC 61-107.279) require a manifest. The testimony did not imply that these states required the used of a hazardous waste manifest. The purpose of the testimony was to call attention to the fact that other states do impose more stringent requirements on used oil as allowed by 40 CFR 279.

CONCLUSION

In summary, the used oil tracking requirements are adequate for the proper tracking of used oil as defined and managed in accordance with Part 739, but these regulations are not adequate for other non-hazardous special wastes that have been mixed with used oil. The Illinois

EPA believes that the Part 739 used oil tracking and the DOT requirements are not an adequate substitute for the Part 809 manifest to track non-hazardous special waste mixed with used oil because, unlike Part 809, those regulations contain no specific provisions to properly identify and track special waste. Also, the Part 739 regulations do not require the generator to keep records and do not require the transporter to carry documentation that describes the waste. Only Part 809 manifesting requires these safeguards.

In contrast to NORA's proposed language, the Illinois EPA's proposed language would not allow the exemption to apply to used oil that is not recycled and it would not allow the exemption to be applied to other non-hazardous wastes that were added to the used oil after it was generated. However, the exemptions under Part 739 for hazardous wastes that are added to used oil would not change with the Illinois EPA proposed language. Also, the Illinois EPA proposed wording would not change the regulatory status of waste currently exempt from manifesting under Section 808.121, and Sections 809.210 and 211. The exemption language proposed by the Illinois EPA does not implement any new regulatory requirements.

The Illinois EPA believes that NORA's proposal would result in inadequate tracking of special waste and would allow inappropriate special waste to knowingly or unknowingly be blended with used oil and burned as used oil. The Illinois EPA believes that adequate tracking is essential to the proper management of non-hazardous special waste mixed with used oil and that the generator should be encouraged to keep waste streams separate for appropriate management and recycling.

Because NORA's proposed manifest exemption does not include limits on the percentage of oil that would be present in the waste, the Illinois EPA believes that should NORA's proposal be adopted by the Board, the Illinois will lose regulatory control over non-hazardous special

waste and the special waste regulations at Parts 808 and 809 will be effectively eliminated. The most reasonable approach is to limit the manifest exemption to used oil as defined in Part 739. The language proposed by the Illinois EPA remains the best alternative. Therefore, for the reasons stated above, the Illinois EPA requests that the Board adopt the alternate language as provided by the Illinois EPA in its comments and testimony to accomplish the manifest exemption and hauling permit exemption.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers

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STATE OF ILLINOIS)
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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached POST-HEARING
COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the
persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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and mailing it by First Class Mail from Springfield, Illinois on September 1ST, 2006, with
sufficient postage affixed.

Melinda Brandt

SUBSCRIBED AND SWORN TO BEFORE ME
This 1ST day of September, 2006.

Brenda Boehner
Notary Public

