BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of	)	
Proposed Amendment to the	)	
SPECIAL WASTE REGULATIONS	)	R06-20
CONCERNING USED OIL,	)	(Rulemaking – Land)
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 of the State of Illinois NORA'S Response to Post Hearing Comments of the Illinois Environmental Protection Agency, a copy of each of which is herewith served upon you.

Date: October 10, 2006

Respectfully submitted,
NORA, an Association of Responsible Recyclers

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NORA'S RESPONSE TO POST HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES NORA, the Association of Responsible Recyclers ("NORA"), by and through its attorney, Claire A. Manning, Brown, Hay and Stephens, LLP, and respectfully submits this RESPONSE TO THE POST HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Response").

NORA appreciates the opportunity provided by the Illinois Pollution Control Board ("Board") to submit this Response to the Illinois Environmental Protection Agency's Post Hearing Comments ("Comments"). This Response is made necessary because, in its Comments, the Illinois Environmental Protection Agency ("IEPA") has for the first time articulated its position on key aspects of the issue before the Board. Prior thereto, during the public hearing portion of this proceeding, where NORA could have responded with witness testimony, the IEPA did not even ask questions of NORA witnesses and claimed that it was unprepared to discuss Part 739, although Part 739 is at the heart of NORA's proposed changes to Part 808 and 809 of the Board's rules.[1]

ISSUE OVERVIEW

It is now apparent that the position of the IEPA requires an interpretation of Part 739 that is not warranted by the very language and nature of those rules, nor is it legally appropriate

[1] See Attachment A, pages 54-55 and 58 of Transcript of Hearing, May 25, 2005

considering that those rules were established by the Illinois Pollution Control Board ("Board") pursuant to its Identical-In-Substance rulemaking authority. Essentially, the IEPA has put forward a definition of "used oil" that simply ignores Section 739.110 of the used oil rules, the "applicability" section of those rules. It accepts that "used oil" as defined in the definition section of Part 739 is "used oil"[2] but it fails to consider, and refuses to accept, that material that is collected, commingled and treated as used oil pursuant to Section 739.110 is also "used oil" and subject to the provisions of that Part. Importantly, that material could be rain water or process water or many other materials that are mixed with used oil. The commingled material allowed to be treated as "used oil" under that section is no longer special *waste* because it is no longer part of the waste stream, but has become part of the valuable recycled used oil material that is processed, sold as a product and utilized. It is not discarded. It is not waste. The IEPA has presented no record evidence, only suspicion and conjecture, that allowance of NORA's language would result in the inappropriate disposal of special waste.[3]

The Board cannot establish rules (or, as here, decline to make appropriate amendments to rules) based upon suspicion and conjecture. NORA submits that allowance of the IEPA's proposed language, given its position, would result in the unnatural and unworkable distinction between "used oil" as it is specifically defined in Section 739.100 and "used oil" as it is

[2] "Used oil" means any oil that has been refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. See Ill. Adm. Code 730.100.

[3] An example of such conjecture is found at page 10 of the Comments, where IEPA discusses the record testimony of Safety Kleen: that in 2005 the company estimated that it collected 180 million gallons of used oil and another 14 million gallons of oily water and that, in the same year, it turned 140 million gallons of "used oil" into "high quality lubricating oil" On the basis of that testimony, without having questioned the witness from Safety Kleen as to the nature of the difference between the used oil collected and that turned into "high quality lubricating oil, the IEPA concludes, without authority, that 54 million gallons was "discharged or sent for disposal." Such testimony shows the lack of understanding of the IEPA concerning the used oil industry. There are many other markets for the recycling of "used oil" besides "high quality lubricating oil" (for example, some steel mills and cement kilns are permitted to take, and utilize low grade used oil fuel). Without more, it is just as possible to conclude that the unaccounted for gallons were recycled in those markets, as something less than "high quality lubricating oil." There is simply no justification for a conclusion that the material was inappropriately disposed of.

processed and sold and managed in the used oil industry. Such distinctions cannot stand scrutiny, as they create further unnecessary economic burdens on the used oil industry as well as unwarranted confusion.

Moreover, there is no evidence that manifesting the material pursuant to Part 808 and 809 is more protective of the environment than tracking pursuant to Part 739. NORA has conclusively established (a) that the IEPA does not even review special waste manifests and (b) that the Part 739 tracking requirements, which require DOT tracking documents, and which are equally enforceable, are as protective of the environment as manifesting. The company completes these forms in exactly the same way – identifying the material in exactly the same way. For a full summary of what tracking and record keeping is required by the federal used oil program, NORA encloses with these comments USEPA's "Supporting Statement for Renewal of Information Collection Request Number 1286 "Used Oil Management Standards Recordkeeping and Reporting Requirements." Attachment B.

Uncannily, IEPA asks the Board to summarily dismiss the tracking evidence presented by NORA members, stating that:

> "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." See Comments, p. 4 -5.

The IEPA Comments then present a graphic illustration in an attempt to compare the recordkeeping requirements under Part 739 and Part 809; such illustration is wrong because it does not include the DOT requirements pursuant to Part 739. It is further wrong to state that "these business records ... are not required by the regulations." That the records "vary accordingly to company policy" simply buttresses NORA testimony that each NORA company

creates its own individual tracking records to ensure compliance with Part 739 and that one of NORA's basic goals is to train companies in how to maintain compliance with the used oil regulations.

Following is a point-by-point response to the further arguments made in IEPA's Comments.

The IEPA argues that "each individual waste stream of a special waste mixture must be disclosed to the receiving facility." First, such comment ignores the fact that special waste appropriately mixed with used oil is no longer special waste; it is used oil, destined for recycling. See 35 Ill. Adm. Code 730.100. Second, the shipping description on a manifest will not provide the IEPA with any more information than what the shipping description on the tracking documents of Part 739 will provide. The IEPA simply will not achieve any greater objective by continuing to require manifesting for material appropriately managed as used oil.

The IEPA argues that "only Part 809 manifesting requires the disclosure of individual waste streams of a mixture and Part 739 does not." IEPA is again incorrect. The manifest rules do not require disclosure of the individual waste streams, particularly when such material is appropriate for commingling as used oil. Obviously, what the IEPA actually seeks is reporting of material destined to be recycled as used oil to be reported as special waste. Such reporting is inconsistent with the used oil regulatory scheme. Material that is appropriately commingled with used oil, and managed as used oil, will be reported as "used oil," whether on the manifest or on the Part 739 tracking documents.

The IEPA argues 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 mixture occurred." The IEPA believes this is

necessary to ensure 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 (sic) than used oil." Nonetheless, the IEPA recognizes that the Part 739 rules allow hazardous wastes to be mixed with used oil. Of such mixtures, the IEPA comments: "The Illinois EPA does not propose any changes to the management of conditionally exempt small quantity hazardous waste." The comments specifically recognize that the exemptions under Part 739 for hazardous wastes that are added to used oil would not change with the IEPA's proposed language. NORA fails to understand how the IEPA accepts that hazardous waste can be appropriately mixed with used oil and effectively tracked pursuant to Part 739, but special waste (by its nature, non-hazardous) cannot. Moreover, the use of a manifest in addition to Part 739 tracking will not give an emergency responder any more information than what is contained in the Part 739 tracking documents. That information is imbedded in the DOT shipping description. Manifests do not provide or require any more emergency information.

The IEPA states that "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." This statement is simply not correct. NORA does not, and has never, disputed that the hauling of special waste that is not used oil under Part 739 would be exempt from special waste hauling permits. If a used oil transporter hauls special waste that is not regulated pursuant to Part 739, he or she most assuredly needs a special waste hauling permit to do so.

On page 4, the IEPA states that "Clearly, the manifest requirements in part 809 are more detailed than the tracking requirements in Part 739." NORA disagrees. As NORA has stated

time and again, tracking under Part 739 is virtually identical to manifesting under Part 808 and 809. The Part 808 and 809 rules themselves do not provide for individual listing of special waste streams. The special waste manifest only provides for a DOT shipping description, similar to that required under Part 739. NORA would also disagree with the IEPA's comment, on page 5, that "the Part 809 manifest will also satisfy the Part 739 tracking requirement as evidenced by the table above." This comment, and the accompanying table, simply demonstrate that the IEPA lacks a basic understanding as to how these documents actually apply in practice – at the point of pick-up and transport.

NORA would argue that Part 739 reporting is much more detailed and that the manifest does not require the same business information as is necessary for adequate reporting and tracking of used oil. See Attachment B. NORA members do not substitute their Part 739 tracking obligation with a special waste manifest. The IEPA further argues that the DOT shipping papers required pursuant to Part 739 "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." Again, NORA would respond that neither does special waste manifesting require such detail in reporting. There is no mechanism contained in the special waste manifest form for the disclosure of mixtures of special waste and used oil.

The IEPA is wrong in stating that "NORA has argued that Illinois is the only state that uses a manifest." In her testimony, Catherine McCord mentioned both Michigan and Massachusetts. However, NORA maintains that the vast majority of states are consistent in their adoption of a program which is identical to the federal program. No state, however, creates a distinction between (a) used oil as specifically defined in 739.100 and (b) used oil allowed to be treated as such under the applicability section of those same rules – as the IEPA language does.

On page 6, the IEPA maintains that it "is not seeking a new category of waste or new interpretation of Part 739" and further states: "the Illinois EPA would like to clarify that used oil is a special waste." Such attempted clarification has significantly muddied the waters in this proceeding. First, while used oil may have been a special waste when the special waste rules were adopted, prior to the Identical-In-Substance adoption of the federal program, and while discarded used oil is still classified as special waste, used oil (and materials which can be appropriately commingled with used oil under the Part 739 rules) are NOT special wastes if they are managed pursuant to the used oil rules; instead, they constitute a recycled product. Historically, the IEPA has attempted to blur the distinction between waste and recycled product. See *Alternate Fuels v. Environmental Protection Agency* 215 Ill. 2d 219, 830 N.E. 2d 444 (Ill. 2004). The IEPA's position in this proceeding is yet another example of such blurring. The IEPA's proposed language is based upon a regulatory interpretation of used oil mixtures that creates two divergent regulatory settings for recycled used oil. It creates an unrealistic distinction and, from NORA's perspective, throws the baby out with the bathwater.

IEPA's comment that its 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" cannot be more off the mark. First, most used oil companies operating in other states do not currently treat used oil as special waste, and do not currently have manifesting and hauling permits applicable to them. Second, as soon as these companies recognize that Illinois requires special treatment (manifesting) of material appropriate for mixing with used oil under the federal rules (but not [pure] "used oil" itself) the out-of-state competitor will be as confused about the rationale behind

Illinois' regulatory environment as it relates to used oil as Illinois NORA members are in this proceeding.

IEPA's comment at page 7 emphasizes the lack of understanding at IEPA concerning the nature and purpose of the federal used oil rules: to provide an incentive for the development of a market for used oil, which can appropriately consist of used oil mixed with non-used oil material, such as water. Thus, the federal rules recognize that the used oil and compatible materials (those materials appropriately mixed with the used oil) are NOT discarded but are recycled as product. That comment:

> "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." (Comments, p. 7)

The IEPA is simply wrong in its conclusion that no one has conducted an evaluation of the impact of mixing used oil with other would-be special waste, for purpose of treatment as used oil. The United States Environmental Protection Agency (USEPA) has done so numerous times, in particular when it created the used oil program and promulgated the very "applicability" section of the rules which allow for the mixing which today causes the IEPA such concern. Indeed, this statement flies in the face of the federal program, which ALLOWS such mixtures to be treated exclusively as used oil under the federal program. The USEPA studied and evaluated the impact of managing non-hazardous waste, as well as hazardous waste, mixed with used oil both in 1985 and again in 1992 when it promulgated the used oil rules, formulating the burning and management standards and developing the "applicability" section found now in state regulations at Section 730.110.

The IEPA argues that NORA's proposal will provide an incentive to encourage mixing of special waste with used oil. NORA fails to understand IEPA's concern regarding incentives for mixing, when such mixing (or commingling) is specifically allowed by the federal rules – and only done where technically appropriate and economically justified. Where the mixture of used oil and certain non-hazardous solvent is the lowest cost method for a generator to recycle his waste, and is allowed by law, mixing should be encouraged, as it takes other special wastes out of the waste stream and allows them to be recycled along with the used oil. That is a presumption underlying the federally-created used oil program. It is worth recalling that USEPA's mandate in promulgating the used oil management standards was to encourage legitimate recycling and protect human health and environment. See testimony of NORA General Counsel Christopher Harris, May 25, 2005, Attachment C and Transcript of Hearing, May 25, 2006.

What the IEPA fails to grasp is that after a history of two decades operating under the federal used oil program, the used oil recycler has become expert at determining which of such mixtures are appropriate, and still meet all relevant ASTM and used oil regulatory specifications, as well as the customer's Clean Air Act permits. While IEPA states that products that are mixed with used oil (which it routinely regulates as special waste) are waste and not recycled products, the IEPA is wrong. Also under Part 739, a transporter and recycler will not intentionally allow material that creates problems with the ASTM and EPA specifications (see Section 739.111) into the used oil stream, as to do so creates a problem meeting those specifications, and devalues the used oil as a valuable, marketable commodity. Again, the marketplace itself controls the used oil professional's decision as to whether a material is special waste or whether, through commingling, it is capable of appropriately blending into a used oil commodity. The used oil

recycler already has to ensure hazardous waste mixed with used oil or corrosive material mixed with used oil could cause equipment or tank problems. Any real problems in the field do not have to do with intentional mixing, but in ensuring that the generator has not mixed the material it seeks to have collected mixed with inappropriate materials. If it has, the material will not be collected as used oil.

IEPA also expresses concern that some facilities profit by taking used oil and non hazardous special waste mixtures, charge for that service and sell the material as "low grade oil fuel" to buyers. In fact, most steel mills and cement kilns can effectively burn a "low grade used oil fuel" in compliance with their air quality permits. The sale proceeds of these low grade, usually water and sludge emulsified used oils do not normally cover the costs associated with collection, and a charge is generally paid for recycling the material. NORA does not consider this to be an inappropriate or deviant practice. Still, the material is recycled – as used oil. However, what the IEPA fails to understand is that a recycler would not intentionally degrade one stream of used oil to meet a lower standard, because such result would not make economic sense. Instead of disposing the lower grade material, however, the used oil recycler simply seeks a user who has use for such material. With these lower value streams, a recycler can process the material back into used fuel oil and water byproduct (which will be used), or sell as is for a lower value. This material would not be handled any differently by the recycler or transporter than a better stream would; it would just be processed at a higher cost to the recycler, since it contains more waste water, sludge, etc. and, accordingly, has less value than high quality used oil.

The above-referenced discussion points out another reason the IEPA's scenario for regulation does not make sense in some areas. Processors and even transfer facilities routinely deal with water that has separated or has been separated by processing. Water, antifreeze, fuel

and sludge are all found in used oil to some degree from use. To say a recycler is not capable of handling something such as an oil and water mixture in a facility where it already deals with that very same substance does not make sense.

IEPA also argues that non-hazardous special wastes need more regulation than used oil because "waste" poses a present or potential threat to human health or the environment. Again, the IEPA misses the point that these materials also become part of the recycled stream and, in any event, do not pose any larger hazard that does the used oil itself. The only hazard posed is if the material is discarded or disposed of in the environment without doing so properly, or without appropriate documentation. The IEPA has no evidence that such is the case; NORA maintains, and has testified, that it is not. Used oil recyclers are very capable of handling used oil and non-hazardous waste streams that would fall under Part 739 regulation. Those regulations have significant record keeping requirements. The mixture of special waste (and material such as oily water, which almost all used oil contains – to varying degrees) with pure used oil, is only done when the process works economically for the recycler, the oil buyer, the oil burner and the generator – legally and safely. IEPA's proposed language and arguments presuppose nefarious motives that are simply not supported by the record.

IEPA also argues that, with its language, a re-refiner such as Safety Kleen would be more selective about the types of streams it accepts. This is simply not true. A re-refiner can handle practically anything in the oil because it splits everything apart again. Antifreeze and many other special wastes are not a problem for a re-refiner. They just charge accordingly. Oil destined for fuel, however, has to be much cleaner if it is to be marketed and meet ASTM and regulatory specifications. In any event, IEPA has every right to inspect any facilities it believes to be unlawfully disposing of special waste. If there is a problem with compliance, that problem

should be dealt with pursuant to Section 31, not by narrowing an exemption from manifesting to the extent that such exemption makes no sense.

The IEPA also argues that its proposal would not overly discourage used oil recycling in Illinois. It made that same argument in 1999, in R99-18. It was wrong then (as the Board determined); it is wrong now. As the Board then recognized: the IEPA's proposal to treat used oil as special waste (then for purposes of requiring Part 807 permitting) "is not economically reasonable when taking into account the extensive existing federal and state regulatory system."

The IEPA also argues, at page 11 -12, that "there are many other toxic constitutes that should be evaluated if other non hazardous special waste is burned as fuel." If the constituents are determined to be "toxic" the waste would be considered a hazardous waste, not a non hazardous waste. For those products, the TCLP rules apply and, if the wastes are not toxic under the TCLP rules, then the waste will hardly be more toxic than the used oil itself. Again, though, there is no reason to suspect that the material collected from the oil recycler, or processed by the used oil processor, will be discarded. Thus, it is not waste and cannot therefore be "special waste" requiring the implication of Part 807 – 809.

At page 12, the IEPA argues that placing special wastes in the used oil could change the viscosity, BTU value or ash. This is precisely why NORA helped establish the ASTM specifications for recycled used oil fuel that addresses this issue. See the enclosed table of specifications. Attachment D. Concerning the toxic characteristics of other wastes in used oil, USEPA fully evaluated all such constituents in 1985 in determining what was to be required (and what was not required) of the EPA used oil fuel specification requirements. See *Federal Register* ¶49174-49187, November 29, 1985. USEPA evaluated these concerns by taking random samples of used oil from generators and recyclers sites. The Board should note that such

sampling was done in the early 1980's, well before sophistication of the used oil recycling industry – which results from years of experience in determining what can and can not appropriately and economically be mixed into used oil – and marketed as such.

Overall, today's used oil is much less contaminated than the samples USEPA relied on for analysis. The USEPA used oil specification tests divide used oil up into three categories: On Specification (deemed equivalent to virgin fuels); Off Specification (required to only go to specially permitted facilities for energy recovery burning); and Hazardous Waste. Since the original federal rule, studies have been done concerning used oil fuel and emissions from burning it by the USEPA, all with favorable results. NORA's point in response to the unfounded and undocumented concerns of the IEPA is that the burning of used oil for fuel, including contaminants and other materials found in used oil has been very well documented, evaluated and studied. NORA members are well aware of these studies, as the economic success of their businesses, and proper compliance, depends on such knowledge.

In what may be the most surprising comment in all of the IEPA's comments is its citation from the USEPA preamble to the rewrite of the used oil rules in 1992. Using only a partial quote from *Federal Register* ¶41569, September 10, 1992, the IEPA attempts to make the point that that the USEPA somehow considers its used oil regulations incomplete. The partial quote: "The USEPA has decided that these current regulations [the original 1985 used oil rules] are protective but not complete or sufficient to protect human health or the environment from potential mismanagement of used oils that are recycled."

However, the IEPA cites that USEPA statement, inappropriately, in isolation and certainly out of context for the point IEPA attempts to make. The statement was given as a precursor to the USEPA's explanation of its adoption of the 1992 rules, the very rules which

created the record keeping standards that are relevant to this NORA rulemaking. As the USEPA explains directly after the language the IEPA cites: "Therefore, in addition to the existing regulations [the original used oil rules], used oil handlers will have to comply with additional management standards that EPA is promulgating today, such as recordkeeping and analysis requirements, and a requirement for containment consisting of impervious floor and dikes/berms." The USEPA promulgation of the very recordkeeping requirements we discuss in this proceeding were intended to (and do) provide the management safeguards that were missing in the original rule – and that make the Illinois backdrop of manifesting of used oil (and substances appropriated mixed with used oil) superfluous, burdensome and unnecessary.

The IEPA points out that any state can regulate used oil in a more stringent manner than federal regulations. This is true as a general statement; but the way the EPA would apply that authority here is inappropriate. If Illinois wishes to regulate used oil in a more stringent manner than that required pursuant to the federal identical-in-substance program, it cannot do so by simply bootstrapping pre-existing rules to an identical-in-substance program, without further general rulemaking. To do so is to obviate the public comment and hearing that is required pursuant to the Section 27 and 28 of the Illinois Environmental Protection Act ("Act") and the Illinois Administrative Procedures Act. The Act requires that all RCRA-derived programs, as the used oil program, is be adopted in Illinois in a manner that is identical to the federal program. If more stringent requirements are necessary, and appropriate in Illinois, NORA maintains that a later in time rulemaking is required – to insure adequate public participation regarding the question of reasonableness of more stringent rules. Here, the IEPA never sought more stringent rules subsequent to adoption of the federal used oil rules. Instead, it now seeks to bootstrap pre-existing rules into newer rules (which define, in the applicability clause, certain substances that

are entitled to be mixed with used oil for purposes of recycling). Such bootstrapping inappropriately seeks to lock in substances that are now entitled to be recycled as used oil into a more archaic definition of special waste.

Certainly, for purposes of regulation of used oil under Part 807, IEPA knew it had to go through formal rulemaking to include used oil (once the used oil rules were passed). Moreover, Part 807.105(a) exempts used oil from regulation under that Part. That part states: "Persons and facilities regulated pursuant to 35 Ill. Adm. Code 700 through 749 are not subject to the requirements of this part or of 35 Ill. Adm. Code 811 through 817. However, if such a facility also contains one or more units used solely for the disposal of solid wastes, as defined in 35 Ill. Adm. Code 810.103, such units are subject to the requirements of this Part and Parts 35 Ill. Adm. Code 811 through 817."

Therefore, as long as there is no on site disposal of any used oil itself or any wastes separated from the used oil, the regulation of the used oil, including mixtures of used oil and other materials regulated under Part 739, is not pursuant to Part 807, and has not been since the state adopted Part 739. The Board reiterated this fact in its December 16, 1999 ruling in R99-18, where it dismissed the IEPA's attempt to require special waste permitting to used oil. See Attachment E.

The IEPA incorrectly argues that "(T)he federal regulations do not encourage mixtures." In the case of used oil this is not correct. USEPA did say that it encouraged the separation of used oils from used oil/solid waste mixtures (solids being non liquids). Nonetheless, it endorsed liquid to liquid mixtures. See Section 739.110.

Finally, IEPA appears to consider NORA's proposed exemption language somehow flawed because it "does not include limits on the percentage of oil that would be present in the

waste." From that they state a belief that "should NORA's proposal be adopted by the Board, Illinois will lose regulatory control over non-hazardous special waste." NORA is only interested in exempting from special waste manifesting that material which is subject to regulation as used oil pursuant to Part 739. Section 739.110 details the materials that can be mixed with used oil, for purposes of recycling as used oil. NORA has established that the Part 739 tracking and record keeping requirements are substantial and enforceable. Thus, those materials would be subject to the same exemption as used oil because, in effect, they are or will be mixed with used oil for purposes of recycling. NORA has no reason to offer a percentage of mixture which is or is not appropriate for recycling, as the applicability section of the federal rules (adopted as Section 739.110) themselves govern, as they have been written, and justified.

NORA disagrees with the IEPA presumption that NORA's proposal would cause it to somehow lose regulatory control in Illinois. NORA would submit that there is absolutely no reason for the IEPA to hang onto a regulatory concept (treating as special waste material that is mixed with used oil for purposes of recycling) which has become, through the implementation of the federal used oil rules, in essence, obsolete. Again, if it is subject to regulation pursuant to Part 739, it is recycled used oil, not special waste. What the IEPA appears to miss is the important fact that, in order for Part 739 to apply in the first instance, the waste stream being collected has to be "destined for recycling." As NORA has pointed out, there are many special waste materials and special waste streams that a recycler would not prefer in his or her oil (because they lower the base oil value or BTU value); accordingly, they are not collected and transported and processed as "used oil." For those substances, the special waste rules would still apply. Moreover, Part 739 is itself law – and enforceable. There is no reason why the IEPA cannot investigate to ensure compliance with that part, if it feels such is necessary. How is

eliminating a requirement to report, because it is tracked in another part of the regulations, losing regulatory control?

NORA submits that IEPA has seriously misrepresented industry motives in this rulemaking. NORA understands that, in most cases, a single generator will and should attempt to keep used oil separate from special waste. In reality, that doesn't always happen, so a recycler who is suspicious about the product will have to make appropriate inquires, and manifest or track appropriately. Only if the material is appropriate for mixing with used oil and recycling as such is the NORA language relevant. Moreover, NORA does not anticipate that its proposal will allow a recycler to go from one facility and collect pure used oil (which it will track pursuant to Part 739) and go to the next facility and collect special waste (e.g., antifreeze) and call that special waste "used oil." NORA recognizes an obligation to treat that second load (antifreeze) as special waste and manifest accordingly. A special waste hauling permit would also be applicable. However, where the load being picked up is already used oil mixed with material encompassed within Section 739.110 (e.g., oily waste water), there is absolutely no reason to manifest that load because the material is destined to be recycled and Part 739 tracking applies. IEPA's fear of "loss of regulatory control" is not real; nor is it a reason to deny NORA the regulatory clarification and relief it seeks and has justified in this proceeding.

CONCLUSION

NORA has spent much time and effort trying to achieve an objective that is reasonable, legitimate, economically wise and technically sound. The IEPA has agreed that manifesting of used oil pursuant to Part 808 and 809 ought to be discontinued, since it is covered by Part 739. Yet, the IEPA's language is a half measure that would, without justification and based purely on lack of familiarity with Part 739, as well as suspicion and speculation, dissect Part 739 in a way

that is not workable in this industry and not contemplated by Federal or state law. NORA urges the Board to move forward with NORA's requested changes to Part 808 and 809 – which would exempt materials regulated as used oil pursuant to Part 739 from the special waste manifesting and hauling permit requirements of Part 808 and 809, by recognizing that such material is already sufficiently regulated pursuant to Part 739.

Respectfully Submitted,
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)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached NORA'S Response to 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 October 10, 2006, with sufficient postage affixed.

Jennifer L. Sievers

SUBSCRIBED AND SWORN TO BEFORE ME
This 10th day of October, 2006

OFFICIAL SEAL
CINDY STOCKER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 5-11-2009

Cindy Stocker
Notary Public

October 10, 2006\jlp\F:\WORD\CAM\CAM CLIENTS\NORA\NORA RESPONSES REVISED.DOC

ATTACHMENT A

managed in accordance with 739.

MR. RAO: When you say defined and managed pursuant to Part 739, does that include other materials that are regulated under Part 739?

MS. FLOWERS: We think 739 stands on its own and we don't want to get -- we're talking about 808 and 809, and if 739 for some reason is inadequate by how it's -- that would be an issue with 739. We're just going to agree to an exemption for used oil that's in compliance with and defined by 739.

MR. RAO: So --

MS. FLOWERS: We're not prepared to discuss 739 today.

MR. RAO: Okay. In that case, let me ask you this question now. Mr. Ray gave some examples about what these other materials could be, so if somebody's picking up used oil from an oil change facility and there is some fuel mixed up with the used oil, would that qualify for an exemption under your interpretation?

MR. DRAGOVICH: Yeah, that meets the definition of used oil. Used oil is used oil that's contaminated through use, and so that's a perfect example of the contaminants that are in used oil.

MR. RAO: Okay.

MS. MANNING: I have a follow-up question to that, if I might. When the Agency uses the word "used oil" in its proposed language to the Board, does it mean used oil as defined in 739.100, which is a discreet two-and-a-half-line definition, or does it mean used oil both as defined in 739.100 plus as set forth in the applicability section found at 739.110? That is a question related to --

MS. FLOWERS: Well, I mean, we'll have to get back to the comments on that. We weren't prepared to discuss 739.

MR. RAO: Okay. Any input from your part will be helpful to the Board.

MS. MANNING: If Mr. Harris could offer a comment at this point as well?

MR. HARRIS: I wanted to amplify, if you will, on the exchange we've just had here. Mr. Ray testified that there may be circumstances where the fuel is sort of naturally part of the used oil. I think he also indicated that there may be a situation where the generator would take some fuel, such as diesel -- maybe it's a cup of diesel fuel, virgin diesel -- and put it into the used oil. From my perspective, that would not specifically meet the definition of used oil but it still

used oil?

MR. RAY: 739.110(d)(1). Little D -- excuse me -- lower case D, numeral 1.

MR. HARRIS: And I will just read that provision. "Mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this part."

BOARD MEMBER GIRARD: So I'm trying to understand what the Agency is trying to say here. So you're saying that you need some specific language to make sure there's a cross-reference here between this and 808 and 809 that we're dealing with today, or is it the other way around, that the Agency wants that cross-reference?

MS. MANNING: I think we need to have a clear understanding of what the Agency's position is regarding their rule, their proposed language.

BOARD MEMBER GIRARD: Thank you. So you aren't willing to talk about 739 today; is that --

MS. FLOWERS: No, actually, we were not ready to talk about 739 today. We were prepared to talk about 808 and 809.

MS. MANNING: Yet if I might, their proposed rule language particularly segues into 739, which is why

ATTACHMENT B

SUPPORTING STATEMENT FOR RENEWAL OF INFORMATION COLLECTION REQUEST NUMBER 1286 "USED OIL MANAGEMENT STANDARDS RECORDKEEPIN(AND REPORTING REQUIREMENTS"

SEPTEMBER 28, 1998

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title and Number of the Information Collection

This ICR is titled "Used Oil Management Standards Recordkeeping and Reporting Requirements," ICR number 1:

1(b) Short Characterization

Section 3014 of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Amendments of 1984 (HSWA), directs EPA to "promulgate regulations...as may be necessary to protect public he environment from the hazards associated with recycled oil" and, at the same time, to not discourage used oil recy mandate was amended to RCRA as Section 3012 by the Used Oil Recycling Act (UORA) of 1980, and later redes Section 3014 by HSWA. In 1985, EPA established regulations for used oil burners and marketers to mitigate pote hazards to human health and the environment from the mismanagement of used oils. These standards were codi CFR Part 266. EPA assessed the burdens and costs imposed upon the regulated community by these requireme Specific Units Information Collection Request (ICR), ICR 1572 or the "Specific Units ICR."

When EPA codified standards for used oil destined for recycling in 40 CFR Part 279, the Agency decided to cons related standards for used oil fuels from Part 266 of 40 CFR to Part 279. EPA assessed the burdens and costs as with the new management standards in ICR 1286 "Used Oil ICR." To avoid double counting, EPA did not assess and costs associated with the requirements promulgated in 1985, since they were included in the Specific Units IC

New standards for boilers and industrial furnaces (BIFs) that burn hazardous waste fuels were then promulgated i Part 266. Accordingly, EPA revised the Specific Units ICR to include the burdens and costs associated with the ne standards. At this time, the burdens and costs associated with the used oil burner standards were mistakenly dele were no longer codified in 40 CFR Part 266.

The purpose for this ICR is to renew and revise the current Used Oil ICR 1286 to update and include all burdens a imposed upon the regulated community by the used oil management standards. Specifically, this involves updatin estimate for burdens and costs assessed in the Used Oil ICR, and identifying and adding the requirements associ the used oil burner standards which were previously accounted for in the original Specific Units ICR, but not acco the revised Specific Units ICR.

Certain used oil handlers required by the current regulations to notify EPA of their hazardous waste activities have done so because of regulations at 40 CFR Parts 262 and 266. The burdens for these information collections are c the Notification of Hazardous Waste Activity ICR ("Notification ICR"), No. 261, OMB Control Number 2050-0028. I continue to account for the reporting and recordkeeping burden for these requirements under the Notification ICR Throughout this supporting statement, EPA indicates which specific requirements are covered by this clearance.

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need And Authority For The Collection

Section 3014 of RCRA, as amended, provides EPA with the statutory authority to promulgate the 40 CFR Part 27 management standards to protect public health and the environment and to not discourage recycling. Sections 30 3013 of RCRA provide EPA with the authority to require the collection of information associated with these standa 3007 provides that any hazardous waste handler shall, upon request by any authorized representative of EPA, fur information relating to the wastes being managed, and grant access to all records relating to such wastes. Sectior EPA the authority to issue an order requiring a facility owner/operator to conduct monitoring, testing, analysis, anc with respect to such facility to ascertain the nature and extent of a condition that may pose a substantial hazard tc health and the environment. In accordance with section 3010 of the Act, used oil handlers who have not received identification number must obtain one by notifying EPA of their used oil activity by submitting EPA Form 8700-12 requesting an EPA identification number.

USED OIL GENERATORS

In order for a burden to qualify as an Information Collection Request (ICR) element as part of the Paperwork Redu must impose a monitoring, reporting, or recordkeeping requirement, and not be considered a customary business Although Subpart C contains at least the burden element of reading and understanding the regulations, by definiti burden is not subject to the ICR requirement.

USED OIL COLLECTION CENTERS AND AGGREGATION POINTS

In order for a burden to qualify as an Information Collection Request (ICR) element as part of the Paperwork Redu must impose a monitoring, reporting, or recordkeeping requirement, and not be considered a customary business Subpart D of Part 279 does contain burden elements for collection centers. However, reading and understanding regulations, by definition, is not subject to the ICR requirement. Furthermore, the section 279.31 burden associate registration, licensing, or permitting by a state and local government is considered to be a widely conducted indus

USED OIL TRANSPORTERS AND TRANSFER FACILITIES

Transporter and transfer facility requirements for used oil are set forth in Part 279, Subpart E. Pursuant to section used oil transporter and transfer facilities must determine the total halogen content of the used oil. Section 279.46 used oil transporters and transfer facilities to keep records of each used oil shipment accepted for transport and/o to another used oil transporter, or to a used oil burner, fuel marketer, or used oil recycling facility. The records mu maintained for at least three years. These requirements assist in keeping used oil handlers accountable for the m used oil. EPA also believes these recordkeeping requirements are necessary to monitor the flow of used oil within oil management system. By providing a paper trail documenting all parties who handled the used oil, the requirem discourage adulteration of used oil by any used oil handler.

USED OIL PROCESSORS AND RE- REFINERS

Processor and re-refiner requirements for used oil are set forth in Part 279, Subpart F. Owners/operators of used processing and re-refining facilities are also required to undertake prevention and preparedness activities at their such as compliance with section 279.52 standards, which are very similar to Part 265 Subpart D contingency plan emergency procedure requirements for hazardous waste management facilities. These requirements will ensure t processing and re-refining facilities are maintained to minimize the threat of a sudden or non-sudden release, fire, or similar emergency, as well as ensure that facilities are prepared to undertake appropriate actions if an emerger occurs.

In addition, section 279.54(h) requires that oil processing and re-refining facilities that store or process used oil in aboveground or underground tanks determine at the time of closure whether all contaminated soils can be practic removed or decontaminated as required. If the owner/operator cannot make the determination, the owner/operato close the tank system and perform post-closure in accordance with section 265.310. Based on existing Superfunc RCRA enforcement information available for the solid waste management units used for used oil storage or mana EPA is convinced that the closure requirements of section 279.54 are critical to minimizing the potential creation c Superfund sites.

Pursuant to section 279.55, used oil processors and re- refiners must develop a written used oil analysis plan and copy of the plan at the facility. The plan must include information concerning methods, location and frequency for used oil. This requirement will ensure that the facilities are consistent in used oil testing methodologies.

Section 279.56 sets forth tracking requirements for used oil processors and re-refiners. Used oil processors and r are required to keep a record for each used oil shipment that is accepted for processing or re-refining or delivered used oil processor and re-refiner, or to a used oil burner or disposal facility. All records must be maintained for at years. These requirements will assist in keeping used oil processors or re-refiners accountable for movements of EPA also believes these recordkeeping requirements are necessary to monitor the flow of used oil within the usec management system. By providing a paper trail documenting all parties who handled the used oil, the requiremen discourage adulteration of used oil by any used oil processor or re-refiner.

Pursuant to section 279.57(b), processors and re-refiners must submit a biennial report to EPA. EPA requires this submission so that the statistics can be grouped and used to identify industry trends.

USED OIL BURNERS WHO BURN OFF- SPECIFICATION USED OIL FOR ENERGY RECOVERY

On November 29, 1985, EPA promulgated notification, analysis and recordkeeping requirements for used oil burn of the used oil final Phase I burning regulations at 40 CFR 266.44. These standards are now codified under Part 2 G.

Section 279.65 sets forth tracking requirements for used oil burners. Burners are required to keep a record for eac shipment that is accepted for burning. Section 279.66 stipulates that before a burner can accept off-specification u from a generator, transporter, or processor or re-refiner, he must provide to the used oil marketer a one-time writt signed notice certifying that the burner has notified EPA of his location and has provided a general description of l management activities, and that the burner will burn the used oil only in an industrial furnace or boiler identified in The certification must be maintained for three years from the date the burner last receives a shipment of off-speci used oil from that generator, transporter, or processor or re-refiner. These requirements are the final step in monit flow of used oil within the used oil management system and discouraging adulteration of used oil by any used oil l providing a paper trail documenting all parties who handled the used oil. These requirements provide a self- imple mechanism to ensure that off-specification used oils are burned only in approved units.

USED OIL FUEL MARKETERS

On November 29, 1985, EPA promulgated notification, analysis and recordkeeping requirements for marketers of fuels as part of the used oil final Phase I burning regulations at 40 CFR 266.43. These standards are now codifiec 279, Subpart H.

Pursuant to section 279.72, marketers that demonstrate that used oil meets the specifications of section 279.11 a subject to further regulation. These persons may determine that used oil meets the specifications of section 279.1 performing analyses on the used oil or by obtaining copies of analyses or other information documenting that the meets the specifications. All copies of analysis or other information must be kept for at least three years. This requ provides useful market information for burners and blenders and helps discourage any adulteration of used oil by handler.

Section 279.74 sets forth tracking requirements for used oil marketers. Marketers who direct a shipment of off-spe used oil to a burner are required to keep a record for each used oil shipment. Section 279.75 stipulates that befor marketer sends a first shipment of off-specification used oil fuel to a burner, he must obtain from the burner a one and signed notice certifying that the burner has notified EPA of his location and has provided a general descriptio used oil management activities, and that the burner will burn the used oil only in an industrial furnace or boiler ide §279.61. The certification must be maintained for three years from the date the marketer last sends a shipment of specification used oil to the burner. This provides assurances that the off-specification oil is burned in facilities wit appropriate emission controls. It also provides a paper trail documenting all parties who handled the used oil, ther discouraging adulteration of used oil by any used oil handler.

STATE PETITIONS

Section 279.82 provides that a State may petition EPA to allow the use of used oil (that is not mixed with hazardo and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than i as a dust suppressant. In addition, such programs must minimize the impacts of road oiling on the environment. S rules have been in place, no states have petitioned to use used oil as a dust suppressant. Therefore, EPA estima burden imposed upon States is insignificant.

2(b) Practical Utility/Users of the Data

The halogen content and tracking requirements help document the condition and management of the used oil as responsibility of its handlers. Specifically, the requirements provide valuable market information. They also enable and EPA, if EPA requests this documentation, to review and account for shipments of used oil. EPA also believes recordkeeping requirements help to monitor the flow of used oil within the used oil management system and to dis any adulteration of used oil by any used oil handler, by providing a paper trail documenting all parties who handle oil.

The preparedness and prevention requirements of section 279 Subpart F (contingency plans and emergency plar designed to minimize the threat of a sudden or non-sudden release, explosion or fire or similar event at used oil p and re- refining facilities. EPA believes that the majority of recycling facilities have preparedness and prevention a contingency measures in place as a customary business practice or because they are required to under the Spill Control, and Countermeasures (SPCC) program.

The analysis plan requirement assigns marketers responsibility to establish documentation for used oil making its through the used oil management system. Developing and retaining these records also discourages any adulterat oil by subsequent used oil handlers.

The biennial reports will help EPA develop Phase II management standards that may include incentives for encou generated (do-it- yourself) used oil recycling and/or more stringent management standards for a particular form of The biennial reports also help the Agency monitor the flow and disposition of used oil and allow the Agency to ass relative amounts of used oil that are recycled in different manners.

The response and closure requirements are critical to protect against potential future damages that could result at sites; the requirements stipulate that the owner/operators must control used oil spills or releases and that contami near or beneath the storage units must be removed or decontaminated.

The notices provide a self-implementing mechanism ensuring that off-specification used oils are burned only in ur approved by EPA (industrial furnaces or boilers identified in section 279.61). Recordkeeping requirements ensure certifications can be made available to EPA upon request.

The on-specification fuel requirements for used oil marketers, and the associated recordkeeping, in effect remove regulatory burden from used oil burners burning on-specification used oil fuel and others handling used oil that me specifications. EPA believes that little is gained from regulating these fuels more stringently than virgin fuels, since used oil fuels essentially present no greater risk to human health and the environment.

The off-specification requirements for used oil marketers, and the associated recordkeeping, assist EPA in keepin marketers and burners accountable for regulatory compliance and help document the movement and burning of u EPA.

3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Nonduplication

There is no other Federal agency that collects the information as required under Part 279 concerning the manage used oil for recycling. EPA has coordinated the development of the Part 279 requirements with the Department of Transportation's 49 CFR regulations, where applicable. Used oil transporters must comply with all applicable pack labeling, and placarding requirements of 49 CFR Parts 173, 178, and 179. In addition, used oil transporters must discharges of used oil according to existing 49 CFR Part 171 and 33 CFR Part 153 requirements.

3(b) Consultations

On November 29, 1985, EPA proposed a comprehensive set of management standards for generators, transporte recycling facilities that handle and recycle used oil. EPA received substantial public comment on the 1985 propos requirements. On September 23, 1991, EPA published a Supplemental Notice of Proposed Rulemaking that discu Agency's recent data collection activities for the identification and listing of used oil, and discussed several option oil management standards. An objective of the management standards alternatives identified and discussed in the Supplemental Notice was to clarify or modify certain 1985 proposed standards and to add new requirements. The received a substantial number of comments on the specific approaches that the Agency was considering in the N reviewing and analyzing the comments in response to both the 1985 proposed rulemaking and the 1991 Supplem

of Proposed Rulemaking, the Agency adopted the current rule for controlling the management of used oils that ar

EPA developed an ICR in conjunction with the final used oil management standards Part 279. On December 21, approved ICR 1286 for use through 12/31/95. On September 1, 1995, EPA published in the Federal Register (60 a notice announcing that ICR 1286 for the used oil management standards was up for renewal. Because of recen ICR development requirements, OMB granted a three month extension for ICR 1286. A renewal of ICR 1286 was on December 8, 1995. It was flawed. This renewal identified, but did not assess, a number of burdens related to b marketers of used oil which were believed to be covered by ICR 1572, or the Specific Units ICR (which addressec requirements for Part 266). Previously, in an effort to consolidate the requirements for used oil destined for recycli moved the related regulations from Part 266 to Part 279. Accordingly, the burdens associated with the burner and requirements, which were mistakenly believed to be covered by ICR 1572, were deleted from the Specific Units IC subsequent renewal. With this ICR 1286.5, EPA has revised the previous renewal ICR 1286 to include all burden imposed upon the regulated community by the used oil management standards.

EPA received one comment on the September 1, 1995, Federal Register Notice. That comment was submitted el to the RCRA Docket. This comment recommended that EPA provide used oil handlers with "information and skills people in the field for cleaning-up inadvertent (hopefully) oil spills." The commenter provided no information on the or suggestions on how the existing ICR could be improved. Informal discussions with industry subsequent to the c comments on the notice confirmed that there was no interest in commenting on the renewal ICR 1286.

3(c) Effects of Less Frequent Collection

Past Agency experience in collecting information on a biennial basis has been proven to be an adequate frequenc collection under the hazardous waste management system. This proven collection frequency is therefore warrante oil processors and re-refiners as part of the used oil management requirements.

3(d) General Guidelines

This information collection follows all of OMB's General Guidelines regarding Federal data collection.

3(e) Confidentiality

The information being collected under the Part 279 used oil management regulations does not reference trade se confidential business information, or any other type of confidential material that would trigger the Privacy Act of 19 protective statutes.

3(f) Sensitive Questions

The information being collected under the Part 279 used oil management regulations do not concern sexual beha attitudes, religious beliefs, or other matters usually considered private.

4. THE RESPONDENTS AND THE INFORMATION COLLECTED

4(a) Respondents and SIC Codes

The following is a list of SIC codes associated with used oil generators, transporters and transfer facilities, proces refiners, burners, and marketers affected by the information requirements covered under this ICR:

29 - Petroleum refining and related industries
42 - Motor freight transportation and warehousing
5093 - Oil waste, wholesale
3559 - Cement kilns
3531 - Asphalt plants

4(b) Information Requested

USED OIL TRANSPORTER AND TRANSFER FACILITIES

(a) Reading and Understanding the Regulations

(i) Data items:

- Used oil transporters must read and understand all of the regulations that pertain to the transport of used o

(ii) Respondent activities:

- Read and understand applicable regulations.

(b) Notification

Section 279.42 requires used oil transporters and transfer facilities who have not previously complied with the not requirements of RCRA §3010 to obtain an EPA identification number. An EPA identification number can be obtair completing EPA Form 8700-12 or submitting a letter to EPA requesting an EPA identification number.

(i) Data items:

Transporters must complete and submit to EPA Form 8700- 12 or write and submit a letter requesting an identific number. The letter must include the following information:

- Transporter company name;
- Owner of the transporter company;
- Mailing address for the transporter;
- Name and telephone number for the transporter point of contact;
- Type of transport activity;
- Location of all transfer facilities at which used oil is stored; and
- Name and telephone number for a contact at each transfer facility.

(ii) Respondent activities:

To provide EPA with the required information, used oil transporters and transfer facilities must perform the followi

- Complete and submit EPA Form 8700-12 or a letter requesting an identification number, as required by §2

[Note: As a renewal ICR, burden for this requirement would only fall on new entrants to this business. Any new en hazardous waste business would be required to notify under Part 262. With the trend toward consolidation, rather expansion, among industry participants, EPA expects no incremental burden from this requirement.]

(c) Used oil transportation: discharges

In the event of a used oil discharge, section 279.43(c) requires the transporter to take appropriate, immediate acti protect human health and the environment. Section 279.43(c)(3) requires an air, rail, highway, or water transporte discharged used oil to give notice, if required by 49 CFR 171.15, to the National Response Center (NRC) and to r writing, as required by 49 CFR 171.16, to the Department of Transportation. Section 279.43(c)(4) requires a wate who has discharged used oil to give notice as required by 33 CFR 153.203.

(i) Data items:

- Notification to local authorities of the used oil discharge.

(ii) Respondent activities:

- Notify local authorities, as required by §279.43(c)(1).

[Note: The notification requirements of 279.43(c) are subject to 49 CFR Part 171 and 279.43(c)(5) is subject to 33 153. Therefore, these elements are not addressed in this ICR.]

(d) Rebuttable presumption

Pursuant to section 279.44, the used oil transporter must determine whether the total halogen content of used oil transported or stored at a transfer facility is above or below 1,000 ppm. The transporter must test the used oil or a knowledge of the halogen content of the used oil in light of the materials or processes used. If the used oil contair than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste. The transporter may rebut this presumption by demonstrating that the used oil does not contain hazardous waste.

(i) Data items:

Data items required by section 279.44 include:

- Records of analyses conducted or information used to comply with the requirements; and
- If the used oil contains greater than or equal to 1,000 ppm total halogens, a demonstration that the used oi contain hazardous waste.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities, as required by 2 (c), and (d):

- Test the used oil, as required by §279.44(b)(1); or
- Apply knowledge of the halogen content of the used oil in light of the materials or processes used, as requi §279.44(b)(2).
- If the used oil contains greater than or equal to 1,000 ppm total halogens, rebut the hazardous waste presu demonstrating that the used oil does not contain hazardous waste, if desired, as provided by §279.44(c).
- Maintain records for at least three years of analyses conducted or information used to comply with the requ 279.44, as required by §279.44(d).

[Note: The section 279.44 determinations are not expected to impose an incremental burden or cost on most use transporters because such determinations are already a widely conducted industry practice in response to the req 40 CFR Part 266, Subpart E. EPA estimates that approximately 12.5 percent of transporters and transfer facilities their used oil and retain records because of the section 279.44 requirement.

(e) Labeling

Section 279.45(g) requires that labels with the words "used oil" be clearly placed on containers and aboveground to store oil and on fill pipes used to transfer oil into underground storage tanks at the transfer facility.

(i) Data items:

Apply labeling as necessary.

[Note: This ICR element does not impose incremental burden because the exact wording of the information to be provided in the regulations.]

(f) Tracking

Pursuant to section 279.46, used oil transporters must keep a record of each used oil shipment accepted for trans each used oil shipment that is delivered to a transporter, burner, processor/re-refiner, or disposal facility. In additic transporters must keep a record of each shipment of used oil that is exported to any foreign country.

(i) Data items:

- Records of each used oil shipment accepted by a transporter must include the following:
    - The name, address, and EPA identification number (if applicable) of the generator, transporter, or pr refiner who provided the used oil for transport;
    - The quantity of used oil accepted;
    - The date of acceptance; and
    - The signature, dated upon receipt of the used oil, of a representative of the generator, transporter, o processor/re-refiner who provided the used oil for transport.

- Records of each used oil shipment sent to another used oil transporter, or to a used oil burner, processor/r disposal facility must include the following:
    - The name, address, and EPA identification number (if applicable) of the receiving facility or transpor
    - The quantity of used oil delivered;
    - The date of delivery; and
    - The signature, dated upon receipt of the used oil, of a representative of the receiving facility or trans

- Records of each used oil shipment that is exported to a foreign country must include the following:
    - The name, address, and EPA identification number (if applicable) of the receiving facility or transpor
    - The quantity of used oil delivered; and
    - The date of delivery.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities, as required by s 279.46:

- Maintain for at least three years a record of each used oil shipment accepted for transport, as required by § and (d);

- Maintain for at least three years a record of each used oil shipment delivered to a used oil transporter, burr processor/re-refiner, or disposal facility, as required by §279.46(b) and (d); and

- Maintain for at least three years a record of each used oil shipment exported to any foreign country,as requ §279.46(c) and (d).

USED OIL PROCESSORS AND RE-REFINERS

(a) Reading and Understanding the Regulations

(i) Data items:

- Used oil processors and re-refiners must read and understand all of the regulations that pertain to manage used oil.

(ii) Respondent activities:

- Read and understand the applicable regulations.

(b) Notification

Section 279.51 requires used oil processors and re-refiners who have not previously complied with the notificatior requirements of RCRA §3010 to obtain an EPA identification number. An EPA identification number can be obtair completing EPA Form 8700-12 or submitting a letter to EPA requesting an EPA identification number.

(i) Data items:

Processors and re-refiners must complete and submit to EPA Form 8700-12 or write and submit a letter requestin identification number. The letter must include the following information:

- Processor or re-refiner company name;
- Owner of the processor or re-refiner company;
- Mailing address for the processor or re-refiner;
- Name and telephone number for the processor or re-refiner point of contact;
- Type of used oil activity;
- Location of the processor of re-refiner facility; and

(ii) Respondent activities:

To provide EPA with the required information, processors and re-refiners must perform the following activities:

- Complete and submit EPA Form 8700-12 or a letter requesting an identification number, as required by §2

[Note: The section 279.51 notification requirement is not burdened in this ICR because it is already burdened in th Notification ICR, No. 261.]

(c) Contingency Plan and Emergency Procedures

Pursuant to section 279.52(b), used oil processors and re-refiners must comply with the contingency plan and em procedure requirements established in the rule, which are similar to those promulgated under 40 CFR Part 265 Su hazardous waste facilities. Section 279.52(b)(1) requires processors and re-refiners to develop a contingency plar 279.52(b)(3) requires used oil processors and re-refiners to maintain a copy of the contingency plan at the facility. 279.52(b)(4) requires that the contingency plan be reviewed and immediately amended, if necessary. If the emerg coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or environment, outside the facility and if the assessment indicated that evacuation of local areas may be advisable, immediately notify appropriate local authorities, as required by section 279.52(b)(6)(iv)(A). Section 279.52(b)(6)(iv requires the emergency coordinator to notify the National Response Center (NRC) or the on-scene coordinator (C used oil release, fire, or explosion which could threaten human health or the environment. After an emergency situ section 279.52(b)(viii)(B) stipulates that the processor or re-refiner cannot resume operations until he notifies EPA and local authorities that the facility is in compliance with waste compatibility and emergency equipment requirem Section 279.52(b)(ix) requires a processor or re-refiner to record in the facility operating record and submit to EPA report of any emergency incident.

(i) Data items:

The data items required of processors and re-refiners for the above activities include the following:

- A contingency plan that includes the following information:
    - A description of actions that facility personnel must take to comply with §§279.52(b)(1) and 279.52(b response to fires, explosions, or any unplanned release of used oil;
    - A description of arrangements with local police and fire departments, hospitals, contractors, and Sta emergency response teams to coordinate emergency services, pursuant to §279.52(b)(iii);
    - A list of names, addresses, and phone numbers of all persons qualified to act as emergency coordir required by §279.52(b)(iv);
    - An updated list of all emergency equipment at the facility. The list must include a physical descriptio piece of equipment, its location, and its capabilities, as required by §279.52(b)(v); and
    - An evacuation plan for facility personnel where there is a possibility that evacuation could be neces required by §279.52(b)(vi).

- A review and amendment, if necessary, of the contingency plan whenever:
    - Applicable regulations are revised;
    - The plan fails in a emergency;
    - The facility makes design, construction, operation, maintenance, or other changes that materially inc potential for fires, explosions, or releases of used oil, or changes the response necessary in an eme
    - The list of emergency coordinators changes; or
    - The list of emergency equipment changes.

- After a used oil release, fire, or explosion, notification to the NRC or OSC and to local authorities if the eme coordinator determines that evacuation of local areas may be advisable.

- After an emergency situation, notification to EPA and State and local authorities that the facility is in compli waste compatibility and emergency equipment requirements;

- Documentation of the emergency in the operating record; and

- A written report of any emergency incident.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities, as required by 2 and 40 CFR Part 265 Subpart D:

- Develop a contingency plan, as required by §279.52(b)(1) and (2);

- Retain a copy of the contingency plan at the facility and submit copies to specified parties, as required by § (3);

- Review and amend, if necessary, the contingency plan, as required by §279.52(b)(4);

- Notify NRC or the OSC and, if applicable, local authorities as required by §279.52(b)(6)(iv)(A) and (B), of a fire, or explosion;

- After an emergency situation, notify EPA and State and local authorities, as required by §279.52(b)(6)(viii), facility is in compliance with waste compatibility and emergency equipment requirements; and

- Maintain in the facility operating record and submit to EPA a written report of any emergency incident, as re §279.52(b)(6)(ix).

[As a renewal ICR, burden for these requirements would only fall on new entrants to this business. Any new entra be required to develop contingency and emergency plan procedures. With the trend toward consolidation, rather t expansion, among industry participants, EPA expects no incremental burden from these requirements. However, estimates that 1% of used oil processors and re-refiners will experience an emergency, and therefore be subject t emergency procedural requirements. Furthermore, that same 1% will be required to revise emergency plans.]

(d) Rebuttable presumption

Pursuant to section 279.53, a used oil processor or re-refiner must determine whether the total halogen content o being managed at the facility is above or below 1,000 ppm. The processor or re-refiner must test the used oil or a knowledge of the halogen content of the used oil in light of the materials or processes used. If the used oil contair than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste. The processor or re-refiner m presumption by demonstrating that the used oil does not contain hazardous waste.

(i) Data items:

Data items required by section 279.53 include the following:

- Records of analyses conducted or information used to comply with the requirements; and
- If the used oil contains greater than or equal to 1,000 ppm total halogens, a demonstration that the used oi contain hazardous waste.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities:

- Test the used oil, as required by 279.53(b)(1); or
- Apply knowledge of the halogen content of the used oil in light of the materials or processes used, as requi §279.53(b)(2).
- If the used oil contains greater than or equal to 1,000 ppm total halogens, rebut the hazardous waste assu demonstrating that the used oil does not contain hazardous waste, if desired, as provided under §279.53(c

[Note: As described in previously approved Used Oil ICRs, the section 279.53 ICR element of testing for halogen processors and re-refiners is considered to be a "customary and usual business practice" (CBP) and is therefore non-burdensome.]

(e) Used oil management

Pursuant to §279.54(h)(1)(ii), upon closure of a tank system, if a used oil processor or re-refiner demonstrates tha contaminated soils can be practicably removed or decontaminated as required by 279.54(h)(1)(i), he must close tl system and perform post-closure care in accordance with section 265.310.

(i) Data items:

- A demonstration upon closure of a tank system that not all contaminated soils can be practicably removed decontaminated.

(ii) Respondent activities:

- If necessary, demonstrate that not all contaminated soils can be practicably removed or decontaminated, a by §279.54(h)(1)(ii).

[Note: EPA expects that no aboveground used oil tanks will require post-closure care under section 265.310.]

(f) Analysis plan

Pursuant to 279.55 used oil processing and re-refining facilities must develop and follow a written analysis plan de procedures that will be used to comply with the analysis regulations. This section lists the data items and respond activities associated with the analysis plan.

(i) Data items:

- Processors and re-refiners must develop a written analysis plan for on-specification and off-specification us includes the following information:
    - For the rebuttable presumption for used oil in section 279.54: Whether sample analyses or other infc be used to make this determination;
- The sampling method used to obtain representative samples;
- Methods used to analyze used oil for the parameters specified in section 279.11;
- The frequency of sampling to be performed, and whether the analysis will be performed on site or off site.
    - For the specification fuel analysis (if required under 279.72): Whether used oil will be sampled and a prior to or after any processing or re- refining;
- The sampling method used to obtain representative samples;
- Methods used to analyze used oil for the parameters specified in section 279.11;
- Whether used oil will be sampled or analyzed prior to or after any processing/re-refining; and
- The frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(ii) Respondent activities:

In order to provide the data items listed above, processors and re-refiners must perform the following activities:

- Develop and maintain the analysis plan, as required by §279.55; and
- Retain the plan at the facility, as required by §279.55.

(g) Tracking

Pursuant to section 279.56, used oil processors/re-refiners must keep a record of each used oil shipment accepte processing/re-refining and each shipment that is shipped to a burner, processor/re-refiner, or disposal facility.

(i) Data items:

- Records of each used oil shipment accepted for processing/re-refining must include the following:
    - The name, address, and EPA identification number (if applicable) of the generator or processor/re-r whom the used oil was sent for processing or re-refining;
    - The EPA identification number (if applicable) of the transporter who delivered the used oil to the pro re-refiner;
    - The quantity of used oil accepted; and
    - The date of acceptance.
- Record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal fa include the following:
    - The name, address, and EPA identification number (if applicable) of the transporter who delivers the a burner, processor/re-refiner, or disposal facility;
    - The name, address, and EPA identification number (if applicable) of the burner, processor/re-refiner

facility who will receive the used oil;
- The quantity of used oil shipped; and
- The date of the shipment.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities, as required by s 279.56:

- Maintain a record for at least three years of each used oil shipment received for processing or re-refining, a by §279.56(a) and (c); and

- Maintain a record for at least three years of each used oil shipment shipped to a burner, processor/re-refine disposal facility, as required by §279.56(b) and (c).

(h) Operating record and reporting

This section lists the data items and respondent activities associated with the operating record and reporting requ section 279.57.

(i) Data items:

- Processors and re-refiners must keep a written operating record at the facility that includes the following inf

- Records and results of used oil analyses performed as specified in §279.55;
- Records and results of used oil analysis rebuttals as specified in 279.53;
- Summary reports and details of all incidents that require implementation of the contingency plan as specifie §279.52(c); and

- Processors and re-refiners must biennially develop and submit a letter to EPA (Regional Administrator) cor following information:

  - The EPA identification number, name, and address of the processor or re-refiner;
  - The calendar year covered by the report;
  - The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/ re-refined, including the specific processes employed;

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities, as required by s 279.57:

- Develop an operating record as required by §279.57(a)(1);

- Retain records of results of analyses performed under §279.55.

- Retain records of emergency incidents as required by §279.52.

- Develop and submit to EPA a biennial report (by March 1 of each even numbered year) concerning used o during the previous calendar year, as required by §279.57(b).

[Note: Most section 279.57 requirements are already widely conducted industry practices in response to the used regulations promulgated in 1985. However, EPA estimates that 20 percent of all processors and re-refiners will be records because of the new section 279.57 and 279.55 requirements. In addition, EPA expects that one percent c facilities will rebut the hazardous waste presumption and now retain records demonstrating that the used oil is not hazardous.]

USED OIL BURNERS WHO BURN OFF-SPECIFICATION USED OIL FOR ENERGY RECOVERY

(a) Reading and Understanding the Regulations

(i) Data items:

- Used oil burners must read and understand all of the regulations that pertain to burning used oil.

(ii) Respondent activities:

- Read and understand the applicable regulations.

(b) Notification

Section 279.62 requires used oil burners who have not previously complied with the notification requirements of F to obtain an EPA identification number. An EPA identification number can be obtained by completing EPA Form 8 submitting a letter to EPA requesting an EPA identification number.

(i) Data items:

Used oil burners of off-specification used oil must complete and submit to EPA Form 8700-12 or write and submit requesting an identification number. The letter must include the following information:

- Burner company name;
- Owner of the burner company;
- Mailing address for the burner;
- Name and telephone number for the burner point of contact;
- Type of used oil activity; and
- Location of the burner facility.

(ii) Respondent activities:

To provide EPA with the required information, used oil burners must perform the following activities:

- Complete and submit EPA Form 8700-12 or a letter requesting an EPA identification number, as required t (a).

[Note: The section 279.62 notification requirement is not burdened in this ICR because it is already burdened in th Notification ICR, No. 261.]

(c) Rebuttable presumption

Pursuant to section 279.63, a used oil burner must determine whether the total halogen content of used oil being the facility is above or below 1,000 ppm. The burner must determine halogen content by testing the used oil, appl knowledge of the halogen content of the used oil in light of the materials or processes used, or by using informatic by the processor/re-refiner. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presum hazardous waste. The burner may rebut this presumption by demonstrating that the used oil does not contain haz waste.

(i) Data items:

Data items required by section 279.63 include:

- Records of analyses conducted or information used to comply with the requirements; and
- If the used oil contains greater than or equal to 1,000 ppm total halogens, a demonstration that the used oi contain hazardous waste.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities:

- Test the used oil, as required by §279.63(b)(1); or
- Apply knowledge of the halogen content of the used oil in light of the materials or processes used, as requi §279.63(b)(2); or
- Use information provided by the processor/re-refiner, as required by §279.63(b)(3).
- If the used oil contains greater than or equal to 1,000 ppm total halogens, rebut the hazardous waste assu demonstrating that the used oil does not contain hazardous waste, if desired, as provided in §279.63(c).
- Maintain records for at least three years of analyses conducted or information used to comply with the req section 279.63, as required by §279.63(d).

[Note: The section 279.63 ICR element of rebutting a presumption is considered to be a "customary and usual bu practice" (CBP) and is therefore excluded as non-burdensome. However, the requirement of maintaining records considered an additional ICR element. EPA expects that 1% of these facilities will begin to keep records as a res requirement.]

(d) Labeling

Section 279.64 requires that the words "used oil" be clearly placed on containers and aboveground tanks used to and on fill pipes used to transfer oil into underground storage tanks at the transfer facility.

(i) Data items:

- Apply labeling as necessary.

[Note: This ICR element does not impose incremental burden because the exact wording of the information to be provided in the regulations.]

(e) Tracking

Pursuant to section 279.65, used oil burners must keep a record of each used oil shipment accepted for burning.

(i) Data items:

- Records for each shipment must include the following:
    - The name, address, and EPA identification number (if applicable) of the transporter who delivered th to the burner;
    - The name, address, and EPA identification number (if applicable) of the generator or processor/re-r whom the used oil was sent to the burner;
    - The quantity of used oil accepted; and
    - The date of acceptance.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities:

- Maintain a record for at least three years of each used oil shipment accepted for burning, as required by §2

(f) Notices

Pursuant to section 279.66, before a burner accepts the first shipment of off-specification used oil fuel from a gen transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a written and signed notice.

(i) Data item:

- A one-time written and signed notice certifying that:
    - The burner has notified EPA of his or her location and has provided a general description of his or h management activities; and
    - The burner will burn the used oil only in an industrial furnace or boiler identified in §279.61.

(ii) Respondent activities:

In order to provide the data item listed above, respondents must perform the following activities, as required in se 279.66:

- Provide a one-time notice to each generator, transporter, or processor/refiner who ships used oil to the bur required by §279.66(a);
- Maintain the certification for three years after the date the burner last receives a used oil shipment from tha transporter, or processor/re-refiner, as required by §279.66(b).

USED OIL FUEL MARKETERS

(a) Reading and Understanding the Regulations

(i) Data items:

- Used oil marketers must read and understand the applicable regulations.

(ii) Respondent activities:

- Read and understand the appropriate regulations for transporting used oil.

(b) Analysis of on-specification used oil fuel

Pursuant to §279.72(a), used oil marketers that demonstrate that used oil meets the specifications of §279.11 are to further regulation. These persons may determine that used oil meets the specifications of §279.11 by performin or by obtaining analyses or other information.

(i) Data items:

- Records of analyses performed, copies of analyses or other information documenting that the used oil fuel specifications under §279.11.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities:

- Perform used oil analyses or obtain copies of analyses or other information documenting that the used oil f specifications, as required by §279.72(a); and

- Retain copies of analyses or other information used to make the determination for three years, as required (b).

[EPA assumes that all processors/refiners (249) and one-half of all transporters (192) operate as marketers and w subject to these requirements.]

(c) Notification

Section 279.73 requires used oil marketers who have not previously complied with the notification requirements o §3010 to obtain an EPA identification number. An EPA identification number can be obtained by completing EPA 12 or submitting a letter to EPA requesting an EPA identification number.

(i) Data items:

- Marketers must complete and submit to EPA Form 8700-12 or write and submit a letter requesting an ident number. The letter must include the following information:
    - Marketer company name;
    - Owner of the marketing company;
    - Mailing address for the marketer;
    - Name and telephone number for the marketer point of contact; and
    - Type of used oil activity.

(ii) Respondent activities

To provide EPA with the required information, marketers must perform the following activities:

- Complete and submit EPA Form 8700-12 or a letter requesting an identification number, as required by §2

[Note: The section 279.73 notification requirement is not burdened in this ICR because it is already included in the Notification ICR, No. 261.]

(d) Tracking

Pursuant to section 279.74, used oil marketers must keep a record of each used on-specification and off-specifica oil shipment that is shipped to a burner.

(i) Data items:

- Records of each shipment of off-specification used oil shipped to a burner must include the following inform
    - The name, address, and EPA identification number (if applicable) of the transporter who delivers the the burner;
    - The name, address, and EPA identification number (if applicable) of the burner who will receive the
    - The quantity of used oil shipped; and
    - The date of shipment.
- Records of each shipment of on-specification used oil shipped to a burner must include the following inform
    - The name and address of the facility receiving the shipment;
    - The quantity of used oil fuel delivered;
    - The date of the shipment or delivery; and
    - A cross-reference to the record of used oil analysis (or other information used to make the determin the oil meets the specification required under §279.11).

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities:

- Maintain a record for at least three years of each shipment of off-specification used oil fuel shipped to a bu required by §279.74(a) and (c); and
- Maintain a record for at least three years of each shipment of on-specification used oil fuel shipped to a bu required by §279.74(b) and (c).

[EPA has assumed no incremental burden for this requirement since transporters and processors are already sub similar record keeping requirements.]

(e) Notices

Pursuant to section 279.75, before a used oil generator, transporter, or processor/re-refiner directs the first shipm specification used oil fuel to a burner, he must obtain a one-time written and signed notice.

(i) Data item:

- A one-time written and signed notice certifying that:
  - The burner has notified EPA of its location and has provided a general description of its used oil ma activities; and
  - The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in §

(ii) Respondent activities:

In order to provide the data item listed above, respondents must perform the following activities:

- Obtain a one-time notice from each burner who receives off-specification used oil fuel from the generator, a by §279.75(a); and
- Maintain the certification for three years after the date the last shipment of off-specification used oil is shipp burner, as required by §279.75(b)

[EPA assumes that all processors/rerefiners (249) and one-half of transporters (192) would operate as marketers be subject to these requirements, as with 279.72.]

STATE PETITIONS

Pursuant to section 279.82, a State may petition EPA (e.g., as part of its authorization petition submitted to EPA u §271.5) to allow the use of used oil as a dust suppressant. The State must demonstrate that it has a program in p prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability a suppressant. In addition, such programs must minimize the impacts of road oiling on the environment.

(i) Data items:

- A petition demonstrating the following:
  - The State has a program in place to prevent the use of used oil/hazardous waste mixtures or used c a characteristic other than ignitability as a dust suppressant; and
  - The program would minimize the impacts of road oiling on the environment.

(ii) Respondent activities:

In order to provide the data items listed above, respondents must perform the following activities, as required by §

- Petition EPA (e.g., as part of its authorization petition submitted to EPA under §271.5), as required by §27

[EPA has not received any applications to use used oil as a dust suppressant since the implementation of the rule Therefore, the element is considered to be non-burdensome.]

5. THE INFORMATION COLLECTED -- AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORM MANAGEMENT

The following subsections discuss how EPA will collect the information, what activities EPA will perform once the has been received, and how EPA will manage the information it collects. The subsections also include a discussic the information collection requirements affect small entities.

5(a) Agency Activities

Agency activities associated with the used oil requirements include the review and recordkeeping of RCRA sectio notification materials submitted by used oil transporters, used oil processors and re-refiners, off-specification usec burners, and used oil fuel marketers. The Agency will provide these respondents with an EPA identification numb

The Agency must also review and keep records of:

- Letters submitted on a biennial basis by used oil processors and re-refiners describing their used oil activiti required by section 279.57(b); and
- Petitions submitted by States requesting the use of used oil as a dust suppressant, as required by section 2

In addition, after a release, fire, or explosion at a used oil processor or re-refiner, EPA must be notified by the faci owner/operator that the facility is in compliance with paragraph (h) of this section before operations are resumed i affected areas of the facility, as required by section 279.52(b)(6)(viii). The Agency will review and keep records of the incident submitted by the facility owner/operator, as required by section 279.52(b)(6)(ix).

5(b) Collection Methodology and Management

In collecting and analyzing the information required under the Part 279 requirements, EPA uses state-of-the-art el equipment such as personal computers and applicable data base software, when appropriate.

5(c) Small Entity Flexibility

Under Part 279, all used oil generators are regulated under one set of minimum management standards. The regu exempt one class of generators based on a generation rate. Farmers, who generate an average of 25 gallons or l oil from vehicles or machinery used on the farm in a calendar year, are not subject to the used oil generator stand September 1991 Supplemental Notice, EPA proposed to eliminate the regulatory distinction between small quanti quantity generators as proposed in the November 1985 proposed rulemaking. The majority of commenters who re the September 1991 Supplemental Notice on this issue supported the proposed elimination of the regulatory distir generators.

The rule does, however, contain provisions that encourage recycling of used oil by private individuals and small e Subpart C of the rule exempts from its generator requirements household "do-it-yourselfers." Many individuals an entities also receive regulatory relief through the section 279.20(a)(3) exemption. The section exempts from the P requirements mixtures of used oil and diesel fuel mixed together by generators for use in their own vehicles. In ad generators may transport, without an EPA identification number, used oil that is generated at the generator's site collected from household do-it-yourselfers to a used oil collection center if certain conditions are met. Finally, purs section 279.20(c), service station owner/operators that collect used oil from do-it- yourselfers and that are in comp Subpart C may be eligible for an exclusion from the cost recovery authorities of CERCLA section 107(a)(3) and (a provided by Section 114(c) of CERCLA.

5(d) Collection Schedule

Part 279 places few information collection requirements on used oil handlers. Section 279.57(b) requires that use processors and re-refiners submit a biennial letter (by March 1 of each even numbered year) to EPA describing th activities. In the event that a release, fire, or explosion occurs, the owner/operator must inform EPA and appropria and local authorities that the facility is in compliance with paragraph (h) of the section before operations are resun 15 days after the incident, the owner/operator must submit a written report on the incident to EPA, as required by 279.52(b)(6)(ix).

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

The following results section is segregated into seven major parts, beginning with section 6(a) and ending with se The first four sections include estimates of: respondent burdens, respondent costs, Agency burden and cost, and respondent universe and the total burden and costs. The last three sections identify the total burden hours and co reasons for changes in burden, and a burden statement. Within section 6(b) "Estimating Respondent Costs," ther detailed used oil respondent categories: transporters and transport facilities, processors/re-refiners, burners who l specification used oil, and fuel marketers. Note that some totals in the exhibits and the text may not add due to ro

6(a) Estimating Respondent Burden

This revision of the renewal ICR 1286 calculates and presents the incremental burden on used oil handlers as a r Recycled Used Oil Management Standards (40 CFR Part 279) rule promulgated in September, 1992. The increm burden in this ICR is in addition to that accounted for under the Notification ICR, No. 261, as noted throughout this Exhibits 1 though 4 present EPA's estimated respondent burden and costs associated with the information collect requirements covered in this ICR. All exhibits display both the number of hours required to conduct each informati collection activity and the cost associated with that activity. EPA consulted with fewer than nine respondents from regulated community to obtain burden hour and labor and materials cost estimates for each type of facility.

6(b) Estimating Respondent Costs

Based on the information provided by the regulated community, the average hourly labor cost (hourly wage plus c and fringe benefits) was determined for used oil transporters and transfer facilities, processors/re-refiners, burners specification used oil, and marketers. For transporters, it is estimated to be $34.35 for managerial staff, $25.55 fo staff, and $17.18 for clerical staff. For processors, it is estimated to be $34.35 for managerial staff, $27.05 for tech and $17.98 for clerical staff. For burners, it is estimated to be $38.83 for managerial staff, $29.75 for technical sta $13.50 for clerical staff. Finally, for marketers it is estimated to be $34.35 for managerial staff, $26.66 for technica $17.18 for clerical staff.

Capital/start-up costs and operations and maintenance (O&M) costs were not among the items directly surveyed f revision of the renewal ICR 1286. EPA believes that only new transporters, processors/re-refiners, burners, and m would incur capital/start-up costs due to these regulations. With the trend toward consolidation, rather than expan industry participants, EPA expects no incremental costs from these requirements. O&M costs for items such as fil photocopying and postage are incorporated into the recordkeeping requirement estimates which are located at th each used oil respondent section.

USED OIL TRANSPORTER AND TRANSFER FACILITY REQUIREMENTS

Exhibit 1 presents annual burden and cost estimates for used oil transporters and transfer facilities. Included in th are burden and cost estimates for the following:

- Reading and understanding the regulations;
- Determination of halogen content;
- Tracking used oil shipments delivered and accepted;
- Recordkeeping for halogen content and tracking requirements.

EPA estimates that there are approximately 383 independent used oil transporters and transfer facilities currently operation.[1] The bottom line burden to each transporter and transfer facility is 884 hours per year, with an annual c approximately $20,543. This results in a total annual burden for all transporters and transfer facilities of 161,729 h

total cost of $5,093,575.

(a) Reading and understanding the regulations

All 383 used oil transporters read the regulations each year. EPA estimates that the total annual burden for a use transporter to read the regulations is four hours, at an annual cost of $107. The annual burden for all transporters requirement is 1,341 hours, at a cost of $40,994.

(b) Halogen testing of used oil

Of the 383 used oil transporters and transfer facilities, EPA estimates that one-eighth, or 48 did not already test th content of the used oil. This estimate is based on a National Oil Recyclers Association survey. The requirement d impose an incremental burden or cost on most used oil transporters because such determinations are already a w conducted industry practice in response to the used oil fuel specification established in 1985.

A transporter typically makes halogen content determinations 4,633 times per year at a materials cost of $5.36 pe estimates the total annual materials cost per transporter to be $24,827 and for the 48 transporters to be $1,191,6 annual burden hours per transporter is 463 hours, at a cost of $11,839. This translates to an annual burden of 22, at a cost of $568,272 for the 48 transporters and transfer facilities. The combined cost (labor plus materials) is $1,

(c) Tracking used oil shipments and deliveries

Every transporter and transfer facility keeps records of used oil shipments delivered to processors or other custon estimates that 530 shipments are delivered each year by a typical transporter. EPA believes that while many of th requirements (e.g., name and address of recipient, quantity shipped, date) are part of customary business practic incremental burden results from the regulations. The incremental tracking requirement associated with these ship results in an annual respondent burden of 42 hours per year, with an annual cost of $848. The annual burden for transporters and transfer facilities is 16,163 hours, at a cost of $324,669.

Furthermore, all 383 transporters and transfer facilities keep records of each shipment of used oil accepted at eac EPA estimates that 4,000 shipments are accepted each year by a typical transporter. The incremental tracking re for shipments accepted results in an annual respondent burden of 319 hours per year, at an annual cost of $6,39 Therefore, the annual burden for all transporters and transfer facilities is 121,986 hours at $2,450,331.

(d) Maintaining records

Every transporter and transfer facility must maintain the records of their halogen testing and tracking activities for years. This recordkeeping requirement imposes a respondent burden of 57 hours annually at a cost of $1,351. Th burden for all transporters and transfer facilities due to the recordkeeping burden is 21,703 hours, at a cost of $51

Exhibit 1

Estimated Transporter and Transfer Facility Burden and Cost

Used Oil Transporters	**Hours and Costs per Respondent**						**Total Hours and Co**		
Information Collection Activity	Manager	Technical	Clerical	Respondent Hours/Year	Labor Cost/Year	Materials Cost	Number of Respondents	Total Hours/Year	C
Labor Cost/Hour	$34.35	$25.55	$17.18						
Read and understand the regulations	2.00	1.50	0.00	3.50	$107.03	$0.00	383	1,340.50	
Perform a halogen test	0.00	463.33	0.00	463.33	$11,838.94	$24,826.94	48	22,240.00	$1,
Tracking									

used oil shipment information (delivered)	0.00	14.64	27.56	42.20	$847.70	$0.00	383	16,163.08	$
Tracking used oil shipment information (accepted)	0.00	110.50	208.00	318.50	$6,397.73	$0.00	383	121,985.50	$2,
File and maintain specified records	22.00	0.00	34.67	56.67	$1,351.49	$0.00	383	21,703.33	$
Total	24.00	589.97	270.23	884.20	$20,542.89	$24,826.94	383	161,729.08	$5,

USED OIL PROCESSORS AND RE-REFINERS

Exhibit 2 presents annual burden and cost estimates for used oil processors/re-refiners. Included in this exhibit ar and cost estimates for the following:

- Reading and understanding the regulations;
- Contingency plan and emergency procedures;
- Analysis plan;
- Tracking used oil shipments delivered and accepted;
- Operating record and reporting; and
- Recordkeeping for contingency plan/emergency procedures, analysis plan, and tracking requirements.

EPA estimates that there are between 211 and 286 used oil processors/re-refiners currently in operation.[2] For the of these burden and cost estimates, EPA chose the midpoint of this range (249) as its estimate for the number of processors/re-refiners. The total estimated annual burden for a processor/re-refiner is 530 hours, with an annual c $11,866. This results in a total annual burden for all used oil processors/re-refiners of 131,950 hours, at a cost of $2,416,412.

(a) Reading and understanding the regulations

Each of the 249 used oil processors/re-refiners is required to read the regulations. EPA estimates the annual burc used oil processor/re-refiner to be 14 hours, at an annual
cost of $414. This equates to an annual burden imposed upon all processors/re-refiners of 3,362 hours, at a cost $103,055.

(b) Contingency plan and emergency procedures

EPA believes that only new processors/re-refiners need to develop contingency and emergency plans. With the tr consolidation, rather than expansion, among industry participants, EPA expects no incremental burden from this r However, all 249 processors and re-refiners will revise the contingency plan once annually. Additionally, EPA esti percent of used oil processors/re-refiners will experience an emergency each year. Therefore, a total of two proce refiners would be subject to emergency procedural requirements and subsequent revisions of emergency plans.

The annual burden for a processor/re-refiner to revise a contingency plan is seven hours, at a cost of $188. For al processor/re-refiners, the contingency plan requirement imposes a burden of 1,619 hours at a cost of $46,930. It i that the emergency plan revision process and procedural requirements subject each processor/re-refiner to a burc hours, at an annual cost $619 . These requirements affect two facilities each year, so the annual burden for all prc refiners is 45 hours at a cost of $1,238.

(c) Analysis plan

EPA believes that only new processors/re-refiners need to develop analysis plans. With the trend toward consolid than expansion, among industry participants, EPA expects no incremental burden from this requirement. Howeve processors/re-refiners are affected by information collection requirements related to maintaining the written analys total analysis plan burden for each processor/re- refiner is six hours, at a cost of $154. The annual burden for all processors/re-refiners is 1,413 hours, at $38,254.

(d) Tracking used oil shipments and deliveries

All 249 processors/re-refiners must keep records of each shipment of used oil delivered to customers. EPA estim 530 shipments are delivered to a typical processor each year. EPA believes that many of the tracking requiremen name and address of recipient, quantity shipped, date) are customary business practice. Some incremental burde result from the regulations, however. The incremental tracking requirement associated with these shipments resul annual respondent burden of 48 hours per year, with an annual cost of $987. The annual burden for all processor due to this requirement is 11,828 hours and costs $245,769.

Furthermore, all processors/re-refiners keep records of each shipment of used oil accepted at each facility. An av 4,000 shipments are accepted each year per facility. The incremental tracking requirement associated with these results in an annual respondent burden of 359 hours, with an annual cost of $7,449. The annual burden for all pro refiners due to this requirement is 89,267 hours, at a cost of $1,856,861.

(e) Operating Record and Reporting

Each of the 249 processors/re-refiners submits a report biennially that contains company specific information. EP that this requirement imposes an annual burden of five hours, with an annual cost of $120 per facility. Therefore, t burden for the biennial reporting requirement for all processor and re-refiners is 1,251 hours at $29,980.

(f) Maintaining records

Every processor/re-refiner must maintain records of the contingency and emergency procedures, analysis plan, a activities for up to three years. EPA estimates that 80 percent of processors/re-refiners retain records as part of th operating practices in response to the burning regulations promulgated in 1985 (see note on page 4-13). The burc imposed upon the remaining 20 percent, or 50 processors/re-refiners is 3,532 hours annually, at a cost of $96,32

Exhibit 2

Estimated Processor/Re-refiner Burden and Cost

Used Oil Processors/Re-refiners	**Hours and Costs per Respondent**						**Total Hours and Co**		
Information Collection Activity	Manager	Technical	Clerical	Respondent Hours/Year	Labor Cost/Year	Materials Cost	Number of Respondents	Total Hours/Year	C
Labor Cost/Hour	$34.35	$27.05	$17.98						
Read and understand the regulations	6.67	6.83	0.00	13.50	$413.88	$0.00	249	3,361.50	$
Revise contingency plan	2.60	3.20	0.70	6.50	$188.47	$0.00	249	1,618.50	
Create emergency plan and report emergencies	8.75	8.25	5.30	22.30	$619.08	$0.00	2	44.60	
Maintain analysis plan	2.38	1.40	1.90	5.68	$153.63	$0.00	249	1,413.08	

Tracking used oil shipment information (delivered)	0.00	14.64	32.86	47.50	$987.02	$0.00	249	11,827.81	$
Tracking used oil shipment information (accepted)	0.00	110.50	248.00	358.50	$7,449.24	$0.00	249	89,266.50	$1,
Complete and submit Biennial Report	1.35	0.88	2.80	5.03	$120.40	$0.00	249	1,251.23	
File and maintain specified records	40.25	0.00	30.67	70.92	$1,934.23	$0.00	50	3,531.65	
Total	61.99	145.70	322.23	529.92	$11,865.96	$0.00	249	131,949.56	$2,

USED OIL BURNERS WHO BURN OFF-SPECIFICATION USED OIL

Exhibit 3 presents annual burden and cost estimates for used oil burners (e.g., cement kilns and utility boilers) wh specification used oil for energy recovery. Included in this exhibit are burden and cost estimates for the following requirements:

- Reading and understanding the regulations;
- Tracking of used oil shipments accepted;
- Providing notice that of EPA approval to the marketer of used oil; and
- Maintaining records of tracking and notice requirements;

EPA estimates that there are approximately 100 used oil burners that burn off-specification used oil for energy rec bottom line burden for each burner is estimated to be 16.5 hours, at an annual cost of $503. This translates into a burden for all burners of 1,473 hours, at a cost of $50,345.

(a) Reading and understanding the regulations

All 100 used oil burners are required to read the regulations. EPA estimates that the total annual burden for a burı hours, at an annual cost of $387. The burden for all burners is 1,300 hours, at a cost of $38,675.

(b) Tracking of off-specification used oil shipments accepted

Every burner keeps records of each off-specification used oil shipment accepted at its facility. An average of 18 sl are accepted each year. The tracking requirement results in a burner burden of 1.7 hours per year, with an annua $49. The annual tracking requirement burden for all burners is 173 hours, at a cost of $4,886.

(c) Notify marketers that the facility is EPA approved to accept off-specification used oil fuel

All 100 used oil burners notify each generator, transporter, and processor/re-refiner that ships off-specification us facility that it is approved for that purpose. EPA estimates that the notices requirement causes a respondent burd minutes per year, with an annual cost of $4. The annual notices requirement for all burners is 10 hours, at a cost

(d) Maintaining records

All burners must maintain the records of the tracking and notice activities for up to three years. EPA estimates tha recordkeeping requirement results in a burden for each burner of 1.7 hours annually at a cost of $64. The annual recordkeeping requirement for all burners is 166 hours at $6,396.

Exhibit 3

Estimated Burner Burden and Cost

Used Oil Burners	Hours and Costs per Respondent						Total Hours and Co	
Information Collection Activity	Manager	Technical	Clerical	Respondent Hours/Year	Labor Cost/Year	Materials Cost	Number of Respondents	Total Hours/Year
Labor Cost/Hour	$38.83	$29.75	$13.50					
Read and understand the regulations	0.00	13.00	0.00	13.00	$386.75	$0.00	100	1,300.00
Tracking used oil shipment information (received)	0.00	1.57	0.17	1.73	$48.86	$0.00	100	173.33
Notify marketers that the burner facility is EPA approved for off-specification	0.10	0.00	0.00	0.10	$3.88	$0.00	100	10.00
File and maintain specified records	1.64	0.00	0.02	1.66	$63.96	$0.00	100	166.00
Total	1.74	14.57	0.19	16.49	$503.45	$0.00	100	1,473.33

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USED OIL FUEL MARKETERS

Exhibit 4 presents annual burden and cost estimates for used oil marketers all of whom are assumed to be either or transporters. Since most regulations affecting marketers are already captured by the burden on transporters an processors, only additional burdens are considered. Included in this exhibit are burden and cost estimates for the requirements:

- Determining that used oil meets the specification; and
- Obtaining notice of EPA approval of the off-specification used oil burner.

EPA estimates that there are 192 used oil transporter- marketers, and 249 processor-marketers. These estimates arrived at by assuming that half of the transporters are marketers and that all of the processors/re-refiners are ma EPA estimates the total annual burden for each used oil marketer to be 160 hours, at an annual cost of $3,629. Tl an annual burden for all 441 used oil marketers of 68,333 hours, at a cost of $1,563,500.

(a) Determining that used oil is on-specification (processors)

Processors that are marketers must have an analysis plan outlining when, how, and by whom the used oil will be specification. This requirement imposes a burden of 155 hours per facility, with an annual cost of $3,462. The anr for all 249 processor-marketers is 38,583 hours and $861,945.

(b) Determining that used oil is on- specification (transporters)

Every transporter that is a marketer also obtains copies of analyses documenting that the used oil fuel meets the specifications, or it performs the analysis itself. EPA estimates that this determination requirement results in the s and economic burden per transporter as the processors. The annual burden for the 192 transporter- marketers du requirement is 29,750 hours and $664,632.

(c) Obtaining notice of EPA approval of off- specification used oil burners (processors)

All 249 processor-marketers must obtain a notice which verifies that the burner facility to which they deliver the of specification used oil is EPA approved for that purpose. The requirement that used oil marketers must obtain a nc imposes a burden for each marketer of five hours per year, at an annual cost of $84. The annual burden associat notices requirement for processor-marketers is 1,180 hours, at a cost of $20,848.

(d) Obtaining notice of EPA approval of off- specification used oil burners (transporters)

The 192 transporter-marketers must also obtain an EPA certification from the burner to which they deliver their of specification used oil. EPA estimates that this requirement imposes the same burden for each transporter-market processor- marketer. For all transporter-marketers, the annual burden associated with notices is 910 hours, at a c $16,076.

Exhibit 4

Estimated Marketer Burden and Cost

Used Oil Marketers	Hours and Costs per Respondent						Total Hours and Cos		
Information Collection Activity	Manager	Technical	Clerical	Respondent Hours/Year	Labor Cost/Year	Materials Cost	Number of Respondents	Total Hours/Year	C
Labor Cost/Hour	$34.35	$26.66	$17.18						
Perform on-specification demonstration or obtain analysis for proof (processors)	3.20	78.50	73.25	154.95	$3,461.63	$0.00	249	38,582.55	$
Perform on-specification demonstration or obtain analysis for proof (transporters)	3.20	78.50	73.25	154.95	$3,461.63	$0.00	192	29,750.40	$
Obtain certification from burner (processors)	0.00	0.24	4.50	4.74	$83.73	$0.00	249	1,180.26	
Obtain certification from burner (transporters)	0.00	0.24	4.50	4.74	$83.73	$0.00	192	910.08	
Total	3.20	78.98	82.25	159.69	$3,629.08	$0.00	441	68,332.95	$1,

6(c) Estimating Agency Burden and Cost

EPA estimates annual Agency burden hours and costs associated with all of the requirements covered in this ICR 5. EPA believes that the Regional Offices will be involved in these activities. EPA estimates an average Regional of $40.14 for managerial staff, $28.16 for technical staff, and $17.12 for clerical staff, factoring in overhead costs. these estimates, EPA used Federal Pay Schedule salary figures to estimate annual compensation of Regional sta purposes of this ICR, EPA assigned staff the following government service levels and annual salaries:

- Managerial staff GS-13, Step 1 $52,176
- Technical staff GS-11, Step 1 $36,609
- Clerical staff GS-6, Step 1 $22,258

To derive hourly estimates, EPA divided annual compensation estimates by 2,080, which is the number of hours i Federal work-year. EPA then multiplied hourly rates by the standard government overhead factor of 1.6.

Exhibit 5 presents annual burden and cost estimates for the Agency. Included in this exhibit are burden and cost e the following:

- Receiving notification of accidents;
- Maintaining records of reported accidents;

EPA estimates that there are approximately 2 accidents reported every year. The bottom line burden for each acc hours with an annual cost of $37. For all the accidents in a year, the burden is 2.8 hours, with a cost of $75.

(a) Receiving notice of accidents

EPA estimates that the annual burden for receiving and processing a notification imposes a burden of a half hour accident, with a cost of $15. To receive and process notifications of both accidents, it takes the agency one hour f $31.

(b) Maintaining records of reported accidents

To review and maintain records of an accident, it takes the agency a total of 0.9 hours per year and costs $22. To records of both accident in a year it imposes a burden of 1.8 hours and cost $44.

Exhibit 5

Estimated EPA Burden and Cost

EPA	Hours and Costs per Respondent						Total Hours and Co	
Information Collection Activity	Manager	Technical	Clerical	Respondent Hours/Year	Labor Cost/Year	Materials Cost	Number of Respondents	Total Hours/Year
Labor Cost/Hour	$40.14	$28.16	$17.12					
Receive notification of accidents from processors	0.10	0.40	0.00	0.50	$15.28	$0.00	2	1.00
Review and maintain records of accidents	0.10	0.40	0.40	0.90	$22.13	$0.00	2	1.80
Total	0.20	0.80	0.40	1.40	$37.40	$0.00	2	2.80

6(d) Estimating the Respondent Universe and the Total Burden and Costs

Exhibits 6 presents the aggregate annual burden and costs associated with Part 279 used oil management inform collection requirements. The annual burden for all transporters and transfer facilities, processor/re-refiners, burnei marketers, and the Agency is approximately 363,485 hours, with an annual cost of $9,123,907.

6(e) Bottom Line Burden Hours and Cost Table

Exhibit 6

Estimated Burden and Cost for all Respondents Regulated by Part 279

All Respondents	Hours and Costs per Respondent			Total Hours and Co		
Information Collection Activity	Respondent Hours/Year	Labor Cost/Year	Materials Cost	Total Entities	Total Hours/Year	C
Used Oil Transporters and Transfer Facilities	884.20	$20,542.89	$24,826.94	383	161,729.08	$5,
Used Oil Processors/Re-refiners	529.92	$11,865.96	$0.00	249	131,949.56	$2,
Burners of Off-Specification Used Oil for Energy Recovery	16.49	$503.45	$0.00	100	1,473.33	
Used Oil Marketers	159.69	$3,629.08	$0.00	441	68,332.95	$1,
EPA	1.40	$37.40	$0.00	2	2.80	
Total	1,590.30	$36,541.38	$24,826.94	732	363,484.92	$9,

6(f) Reasons For Change in Burden

In this revision of the renewal Used Oil ICR (ICR 1286), EPA executed a variety of changes. Each estimate for us burdens and costs identified in the 1996 renewal of the Used Oil ICR was updated. Also, new estimates for a nurr burdens related to burners and marketers of used oil were obtained. These burdens were mistakenly removed fro Specific Units ICR (ICR 1572) in 1993 and are now being accounted for in this renewal of the Used Oil ICR. The requirements for tracking used oil shipments, on-specification used oil determinations, and notices for off-specific oil were also mistakenly removed from the Specific Units ICR and are now being accounted for in this ICR.

The estimate of the number of off-specification used oil burner facilities decreased from 1,155 to 100. This decrea respondent size occurred because 1,155 represents the number of off-specification burner notifiers, not the numb burners of off-specification used oil. Many notifiers do not actually burn off-specification used oil due to the air em limitations defined in their State permits. The new facilities number, 100 is an estimate of the total number of activ kilns that burn hazardous waste and an estimate from the utility industry of the number of utilities that burn off-spe used oil.

New estimates were needed for all the respondents regulated by Part 279 with regard to the tracking requirement Therefore, the addition of these estimates increased the overall burden and cost for this revised renewal ICR. Adc the marketer requirements for on-specification used oil determinations and obtaining notices of certification from t to whom off-specification used oil was sent, represented new estimates which added to the cumulative burden an

The updated estimates presented in this document were generated by sampling the used oil industry. These estin the current burdens and costs imposed on the regulated used oil community. In no cases was the same question more than nine people.

6(g) Burden Statement

For used oil transporters and transfer facilities, the burden related to reading the regulations is four hours each ye number of hours required to perform halogen tests on an annual basis is 463. The total tracking burden for both si delivered and accepted is 361 hours. Also, filing and maintaining records requires 57 hours per year. This results 884 hours per respondent per year.

For used oil processors/re-refiners, reading the regulations requires 14 hours per year, while the contingency and plan requirements impose a burden of 29 hours. The analysis plan represents a burden of six hours, and the total burden for both shipments delivered and accepted is 407 hours. The biennial report takes five hours per year to c submit, and recordkeeping requires 71 hours per respondent. All these burdens together total to 530 hours per re per year.

For burners of off-specification used oil, reading the regulations imposes a burden of 13 hours each year. The bur tracking the off-specification used oil to be burned for energy recovery is 1.7 hours, and it takes six minutes to not marketers that the facility is EPA approved for that purpose. Adding that recordkeeping requires 1.7 hours each y comes to 16.5 hours per year.

For used oil marketers, the burden related to performing demonstrations or obtaining proof that used oil is on-spe requires 155 hours for both processor- and transporter-marketers. Obtaining certification from EPA approved burr five hours each year. The total burden for a marketer averages 160 per year.

For EPA, the burden of receiving notices of accidents is one hour per year, and the burden of reviewing and main accident records is 1.8 hours per year. These total to 2.8 hours per year for the Agency.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and ar suggested methods for minimizing respondent burden, including the use of automated collection techniques to:

Director
OPPE Regulatory Information Division
U.S. Environmental Protection Agency (2137)
401 M Street
S.W., Washington, D.C. 20460

and to:

Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street
NW, Washington, D.C. 20503
Attention: Desk Officer for EPA

Include the EPA ICR number and OMB control number in any correspondence.

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[1]An independent facility is one not affiliated with a processing/re-refining facilities. Number of facilities taken from and Economic Impact of 1992 Used Oil Management Standards," Office of Solid Waste, August 4, 1992.

[2]Number of facilities taken from the "Cost and Economic Impact of 1992 Used Oil Management Standards," Office Waste, August 4, 1992.

ATTACHMENT C

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of	)	
PROPOSED AMENDMENTS TO SPECIAL WASTE REGULATIONS CONCERNING USED OIL, 35. Ill. Adm. Code, 808, 809	)))))	R06-20

NOTICE OF FILING

To: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on May 16, 2006 we filed the attached **PRE-FILED TESTIMONY OF CHRISTOPHER HARRIS** with Dorothy Gunn, Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

NORA, AN ASSOCIATION OF RESPONSIBLE RECYCLERS

By: //Claire A. Manning
Claire A. Manning, one of its attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PRE-FILED **TESTIMONY OF CHRISTOPHER HARRIS** was filed, electronically, with the Clerk of the Illinois Pollution Control Board, and with copies of such rule proposal being placed in the U.S. mail on May 16, 2006 and addressed to:

DOROTHY GUNN
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

TIM FOX
Hearing Officer
Illinois Pollution Control Board
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Springfield, Illinois 62703

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of	)	
	)	
SPECIAL WASTE REGULATIONS	)	R06-20
CONCERNING USED OIL,	)	
35. Ill. Adm. Code, 808, 809	)	
	)	

PRE-FILED TESTIMONY OF CHRISTOPHER HARRIS

My name is Christopher Harris. I have the privilege of serving as General Counsel to NORA, An Association of Responsible Recyclers. On behalf of NORA, I would like to express our appreciation for the opportunity to offer additional views of the rule proposal in this matter. The purpose of my testimony today is to demonstrate that manifesting shipments of used oil (and materials regulated as used oil) is not necessary for the protection of human health and the environment. Therefore, NORA respectfully requests that Illinois discard the used oil manifest requirement and thereby remove an unnecessary and expensive paperwork burden on the used oil generators and transporters in this state.

NORA is a national trade association whose members provide recycling services throughout the entire United States including Illinois. In addition to collecting and recycling used oil, NORA members collect and recycle oil filters, wastewater, antifreeze and parts cleaning solvents. NORA was founded in December 1984 and has participated in all of EPA's rule-making activities concerning used oil conducted by the United States Environmental Protection Agency ("US EPA"), beginning with the first set of used oil management standards that were promulgated in November 1985.

To provide some background to NORA's position, I would like to briefly review the origins of the used oil regulatory system in the United States. The enactment by Congress of the

Used Oil Recycling Act of 1980 marked the first legislative effort to address the unique challenge of used oil. In the Congressional "findings" that serve as the predicate for this law, Congress determined that (I) used oil is a valuable source of increasingly scarce energy; (2) technology exists to reprocess and recycle used oil; and (3) that used oil constitutes a threat to public health and the environment when disposed of improperly. 42 U.S.C. 6901; See *also* H.R. Rep. No 1415, 96th Cong., 2d Sess., 10 (1980); S. Rep. No. 879, 96th Cong., 2d Sess. 1 (1980). Because the U.S. Environmental Protection Agency failed to issue any regulations to implement the 1980 statute, Congress, as part of the 1984 RCRA reauthorization, specifically directed the EPA to establish a used oil regnlatory program governing the generation, marketing, transportation and recycling of used oil. 42 U.S.C. 6935.

The legislative history of the 1984 Congressional mandate makes clear that "where protection of human health and the environment can be assured....the [EPA] Administrator should make every effort not to discourage recycling of used oil. For example, if there are several alternative controls that would be environmentally acceptable, the Agency should allow those which would be least likely to discourage used oil recycling." H.R. Rep. 1133, 98'" Cong., 2d Sess., 114 (1984). Responding to this directive, EPA promulgated the basic regulations governing used oil management in November 1985 and followed up with a more comprehensive set of regulations in September 1992. These regulations, codified at 40 CFR Part 279, are usually referred to as "the used oil management standards" or as the "Part 279 regulations." The regulations have been adopted in Illinois pursuant to this Board's identical-in-substance rulemaking authority, and are found at 35 Ill. Adm. Code Part 739.

The component of the used oil management standards we are concerned about today is the record-keeping requirement for shipments of used oil. Under the federal and corresponding

state requirements, transporters are required to maintain records (for at least three years) documenting the acceptance and delivery of each used oil shipment. Records for each shipment must include: (1) the date of shipment; (2) the name, address and EPA Identification Number (if applicable) of the entity who provided the used oil for shipment; (3) the quantity and type of used oil accepted; and (4) the dated signature of the party providing the used oil.

In addition, transporters must also create and maintain records (for at least three years) of each shipment of used oil that is delivered to another transporter, fuel marketer, or processor. Records of each delivery must include: (1) the date of delivery; (2) the name, address and EPA identification of the receiving facility or transporter; (3) the quantity of used oil delivered; and (4) the dated signature of a representative of the receiving facility or transporter. 40 CFR 279.46.

A parallel set of records must be maintained by processors. 40 CFR 279.56; *35* Ill.Adm. Code. Moreover, processors must also maintain an analysis plan which requires comprehensive records regarding (1) any used oil subject to the rebuttable presumption; and (2) analysis demonstrating meeting the on-specification standards. This information must be included, together with reports on any incidents requiring implementation of the contingency plan, in the operating record and all biennial reports. 40 CFR 279.57.

Finally, all used oil generators must comply with applicable U.S. Department of Transportation hazardous material requirements that include identification and classification, packaging, marking, labeling and manifesting used oil destined for disposal. Transporters of used oil have to comply with DOT requirements governing placarding, record-keeping, insurance, and reporting spill incidents. 40 CFR 279.43(b).

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US EPA has determined that these tracking and record-keeping requirements adequately protects human health and the environment and pointed out that "[a]ll of this information [required by the tracking requirements] is currently required in the standard EPA hazardous waste manifest." 50 Federal Register 49196, November 29, 1985. In other words, all of the relevant information concerning used oil shipments is collected, recorded, and available to regulators; but it was not necessary to impose the burden of a requiring manifest to accompany each shipment. Given that used oil shipments generally involve more transactions[1] than hazardous waste shipments (and each segment of the transportation journey requires a separate manifest) it was reasonable for EPA to conclude that manifesting used oil shipments was not necessary. In this way, EPA fulfilled the Congressional mandate to choose the regulatory option that "would be least likely to discourage used oil recycling." In contrast, the Illinois manifest requirement for shipment of used oil imposes a significant burden on generators and transporters of used oil as the testimony of Gregory Ray, Vice President of Crystal Clean, clearly establishes.

As the Board is aware, very few states require manifests for transporting used oil. (Nearly all of the states have adopted the federal used oil management standards with respect to tracking requirement.) None of the states bordering Illinois imposes any manifest requirement on used oil generators or transporters. It is apparent to NORA that the Part 279 tracking system (without any manifest requirement) works well. It does not have any "loopholes" and has not been subject to abuse. Any question regarding the origination, transportation. destination, quantity, and timeline of any used oil shipment can be answered by the required documents.

Finally, NORA strongly believes that the proposed regulatory change ending the manifest requirement for used oil should encompass all materials regulated as used oil under 40 CFR Part

[1] A shipment of used oil commences with the generator and may be collected from one transporter before being transferred to another. It may be subsequently stored at a transfer facility before being sent to a processor. In contrast, hazardous waste is typically sent from the generator directly to the TSD facility.

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239 and 35 Ill.Adm. Code Part 739. The tracking system works effectively to monitor used oil shipments and does so with equal effectiveness for materials regulated as used oil (such as oil/water mixtures). Any advocate of requiring manifests for materials regulated as used oil should be asked to cite either an actual or theoretical example of how the Part 279/ Part 739 tracking system would NOT function to provide all relevant information and why the manifest requirement would provide such information.

Accordingly, for the reasons stated above, NORA respectfully requests that the Illinois Pollution Control Board amend Parts 808 and 809 of its rules and end the manifest requirement for used oil and materials regulated as used oil.

Respectfully submitted,

/s/Christopher Harris
Christopher Harris
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NORA, An Association of Responsible Recyclers

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ATTACHMENT D

Table 1 -- Detailed Requirements for Industrial Burner Fuels From Used Lubricating Oils

PROPERTIES	Method[E]	LIMITS[G]			
		RFO4	RFO5L	RFO5H	RFO6
PHYSICAL:					
Viscosity @ 100 °C mm2/sec [A]	D445				
minimum	---	---	5.0	9.0	15.0
maximum	---	<5.0	8.9	14.9	50.0
Flash Point, °C (°F), min.	D93	38 (100)	55 (130)	55 (130)	60 (140)
Water & Sediment[B], % vol. max.	D95 & D473	2.0	3.0	3.0	3.0
Pour Point, °C (°F), max.	D97	-6 (21)	NA	NA	NA
Density, Kg/m^3 @ 15°C [C]	D1298	Report	NA	NA	NA
CHEMICAL:					
Ash, % mass, max.	D482	0.7	0.8	0.8	Report
Sulphur, % mass [F]	D129	Report	Report	Report	Report
Extracted pH, min.	D4980	4.0	4.0	4.0	4.0
PERFORMANCE:					
Gross Heating Value, Mj/kg (BTU/US gal[D]), min.	D240	40.0 (130,000)	41.5 (135,000)	41.5 (135,000)	43.0 (140,000)

ATTACHMENT E

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.

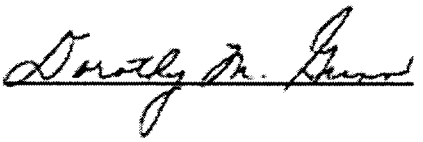
ORDER

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