

A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD:

Ms. Timothy Fox, Hearing Officer
Ms. Alisa Liu, P.E., Environmental Scientist
Mr. Anand Rao, Senior Environmental Scientist
Mr. Tanner Girard, Acting Chairman
Ms. Andrea Moore, Attending Board Member
Mr. Thomas Johnson

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Ms. Stephanie Flowers
Mr. Theodore Dragovich

CRYSTAL CLEAN

Mr. Greg Ray

SAFETY CLEAN

Mr. Dan Appelt

FUTURE ENVIRONMENTAL, INC.

Mr. Mike Lenz

MR. CHRISTOPHER HARRIS,
1511 West Babcock
Bozeman, Montana 59715
(406) 586-9902
BY: MR. CHRISTOPHER HARRIS

Appeared on behalf of NORA.

1 MR. FOX: Good morning everyone, and
2 welcome to this Illinois Pollution Control Board
3 hearing. The posted time of 10:30 having come, I
4 want to call this hearing to order. As a
5 preliminary housekeeping detail, we have sought to
6 reach the Illinois Environmental Protection Agency,
7 who is, of course, not now present in this room, to
8 determine whether and when they may be arriving.
9 But certainly our posted time has come, and we will
10 proceed with the hearing.

11 My name is Tim Fox, and I am the
12 hearing officer for this rulemaking, which is
13 entitled Proposed Amendments to the Board's Special
14 Waste Regulations Concerning Used Oil, 35 Illinois
15 administrative code 808 and 809. The board docket
16 number for this rulemaking is R06-20. Also present
17 today from the Board are to my immediate right
18 Andrea S. Moore, who is the lead board member for
19 this rulemaking. To her right is Dr. G. Tanner
20 Girard, who is the acting chairman of the Pollution
21 Control Board. At my far left is board member
22 Thomas E. Johnson, and at my immediate left are
23 Anand Rao and Alisa Liu of the Board's technical
24 staff.

1 I want very briefly -- I'll stress
2 very briefly -- to summarize the most recent
3 activity in this proceeding. As you probably know,
4 on May 1st of this year, 2008, the Board issued an
5 opinion and order proposing amendment of its
6 regulations for first noticed publication. I have a
7 small number of copies of that opinion and order
8 available here this morning, and those proposed
9 amendments were published in the Illinois register
10 on May 30th of 2008. On June 4th, 2008, NORA filed
11 a motion requesting a hearing following the first
12 noticed publication, and the Board granted that
13 motion on July 10th of 2008, and this hearing ensues
14 from the Board order on that date.

15 We did have one prehearing issue,
16 a motion by NORA for an extension of time to
17 pre-file its testimony for hearing. The motion
18 indicated that the Agency did not object to the
19 proposed extension, and I have issued a hearing
20 officer order granting that motion, which has been
21 posted to the Board's website, and there are copies
22 of it available on the table just over the wall here
23 to my right. This proceeding is, as always,
24 governed by the Board's procedural rules. All

1 information that is relevant and that is not
2 repetitious or privileged will be admitted into the
3 record. Please note that any questions by the Board
4 members or by the Board's staff are intended solely
5 to develop a clear and complete record for the
6 Board's decision, and do not reflect any
7 prejudgement or bias regarding the proposal.

8 The Board has received, on
9 September 22nd, from NORA pre-filed testimony by
10 Mr. Christopher Harris, Ms. Victoria Custer
11 (phonetic) and Mr. Michael Lenz, and a number of
12 comments from other members or persons associated
13 with NORA that have been docketed into the Board's
14 record in this proceeding as public comments with
15 individual numbers, I believe, running from 47 to
16 69 -- 46 to 69, my mistake. We will begin this
17 hearing with NORA's pre-filed testimony, and under
18 the Board's procedural rules, that is, entered it
19 into the record as if read, as it is already part of
20 the Board's written record in this proceedings.
21 However, if the witnesses would like, they may begin
22 with a brief summary of that testimony if they wish
23 to provide one. This will be followed by questions
24 that others present may have. And in that regard, I

1 note that the agency did pre-file questions for NORA
2 witnesses on September 15th of 2008, and by their
3 terms were filed with regard to each of the
4 witnesses that NORA had testifying in this
5 proceeding.

6 We will then proceed in the same
7 manner if the Agency wishes to offer testimony and
8 accept any questions on that basis. After that,
9 anyone else may testify as time permits, and if any
10 participant other than the Agency or the three NORA
11 witnesses that I have mentioned would like to
12 testify, there is a sign-in sheet on the same table
13 that I referred to earlier. Like other witnesses,
14 they will be sworn in and available for questions on
15 the basis of the testimony that they offer.

16 Then, finally, in our order of
17 proceedings, once we have dealt with all of the
18 sworn testimony and all of the questions based upon
19 it, anyone who wishes to offer a public comment will
20 be allowed to do so at the close of the testimony,
21 as time allows. I would ask one thing for the
22 benefit of our court reporter, although I suspect
23 many of you are veterans of proceedings of this
24 nature. We have pretty good acoustics, but please

1 speak as loudly and clearly as you can, and avoid
2 talking at the same time as another person so that
3 our record can be as clear as possible. Do we have
4 any questions about our procedures at all?

5 With that, why don't we turn to
6 NORA. Mr. Harris, I had mentioned that you had --
7 pardon me one second. And let me interrupt myself,
8 Mr. Harris. I'm sorry to go out of order. I should
9 have the record reflect -- and Ms. Flowers forgive
10 me for speaking right over you -- the Agency is
11 present and represented by Ms. Stephanie Flowers and
12 Mr. Dragovich as well.

13 MS. FLOWERS: Correct.

14 MR. FOX: And I can offer you an
15 opportunity to ask any questions about the procedure
16 that you have.

17 MS. FLOWERS: I don't have any
18 questions.

19 MR. FOX: Very good. Mr. Harris,
20 thank you for letting me interrupt myself. You had
21 indicated that you wanted, I believe, to begin with
22 the pre-filed testimony of your own, and with Ms.
23 Custer, and with Mr. Lenz then. Is that accurate?

24 MR. HARRIS: I don't think Ms. Custer

1 wants to add to what she's already pre-filed.

2 Mr. Lenz is here, and we definitely want to be as
3 responsive as we can to the Board's questions and
4 carry on a dialogue including with the -- with the
5 Agency.

6 MR. FOX: Very good. Why don't we
7 begin. If Ms. Custer would not like to be sworn in
8 and testify on the basis of the comments that she
9 has filed, why don't we have the court reporter
10 swear in both you and Mr. Lenz, and we can proceed,
11 as I mentioned, with a brief summary if you would,
12 please, if you wish to offer one.

13 MR. HARRIS: Yes.

14 MR. FOX: Or we could proceed
15 immediately to the questions on what the Agency and
16 any that the Board has.

17 MR. HARRIS: I would like to
18 summarize, but I'll be as brief as possible.

19 MR. FOX: Very good. If the court
20 reporter would swear in Mr. Harris and Mr. Lenz,
21 please.

22 (Witness sworn.)

23 MR. HARRIS: Mr. Fox --

24 MS. FLOWERS: Can I ask a question?

1 Does that mean that Ms. Custer's not going to be
2 available for our pre-filed questions?

3 MR. FOX: My expectation is that NORA
4 does not wish to offer her as a witness offering
5 substantive testimony, and what the Board would
6 propose to do is characterize what she had filed as
7 a public comment that was not subject to sworn
8 testimony and cross examination.

9 MS. FLOWERS: Okay.

10 MR. HARRIS: Okay. Thank you.

11 Mr. Fox, members of the Board, my name is
12 Christopher Harris. I have the privilege of
13 representing NORA, an association of responsible
14 recyclers, formally the National Oil Recyclers
15 Association. I am its general counsel and have been
16 since 1985. With me at the table are Greg Ray from
17 Heritage Crystal Clean, Mike Lenz from Future
18 Environmental, and Scott Parker, who's the executive
19 director of NORA. And I will not try the Board's
20 patience by reading my entire pre-filed testimony.
21 I think that would not be advantageous. I certainly
22 do want to get into a dialogue with the Board and
23 SAF and with IEPA so that we might resolve this
24 issue and come to a -- come to a conclusion that

1 everyone would be -- would be happy with.

2 In your -- in the Board's May 1st
3 order and opinion at the -- and it was a very
4 well-written and carefully documented opinion. At
5 the very end, you invited proposals for working out
6 the issues before us, and if I can summarize what
7 that issue is. Part 279 of the national oil
8 standards, the use of oil management standards, does
9 not require a manifest. Illinois and just a couple
10 of states, including California, require manifest
11 for used oil. NORA's petition basically says a
12 manifest for used oil and materials regulated as
13 used oil as recognized under Part 279 is
14 unnecessary. It's unnecessary, and it's burdensome.
15 The Board, in its opinion, said -- proposed that we
16 dispense with the manifest for used oil as defined,
17 and as defined means, for lack of -- for shorthand,
18 it means pure used oil, not commingled with any
19 other material.

20 And we consider that to be very
21 worthwhile and a bit of serious progress, but it
22 also adds complications, because if we left the
23 regulatory system as the Board has proposed, we
24 would have defined used oil and materials regulated

1 to used oil, and the materials regulated of used oil
2 would still be subject to the manifest. Now our
3 original proposal, as you know, essentially says
4 used oil and materials regulated to used oil ought
5 to be in the same category. And we're talking about
6 the manifest. We are not -- our proposal does not
7 attempt to rewrite the special waste regulations or
8 permit regulations or permit requirements or
9 anything of the kind. What we're talking about are
10 the paperwork requirements dealing with the
11 manifest.

12 So again, our original proposal,
13 treat the fine-used oil and materials regulated to
14 used oil in the same -- in the same category. But
15 we recognize that IEPA has a number of concerns, and
16 so we wanted to propose a compromise, which is set
17 forth in my pre-filed testimony, and if you'll look
18 on Page 5, you'll see that we have narrowed the
19 categories of materials regulated as used oil that
20 we believe are appropriate for an exemption from the
21 manifest. Again, we're not proposing that they be
22 exempt from permit requirements or other special
23 waste requirements, just exempt from the manifest.
24 And let me cover those, because I'd like to be very

1 clear that that's our proposal, and a number of --
2 and I think this proposal addresses most, if not
3 all, of IEPA's previous concerns. We'll see whether
4 they still have concerns, but that was the intent,
5 was to address IEPA's concerns.

6 So the four categories that would
7 be exempt from the manifest requirements would be
8 used oil that's generated by a conditionally exempt
9 small quantity generator containing the exempt
10 hazardous waste from such generator. So we're
11 talking about that generator, provided the mixture
12 contains more than 50 percent of used oil by volume
13 or weight. So this cannot be one drop of used oil
14 mixed with conditionally exempt hazardous waste.
15 That is not what we're talking about. We're talking
16 about material where there's a mixture of the
17 continually exempt materials and used oil.

18 And in my pre-filed testimony, I
19 pointed out that this is not something that NORA has
20 advocated. We don't care for materials that are
21 mixed with used oil, particularly hazardous waste.
22 This is a regulatory feature from Part 279, which
23 exists in Illinois regulations as well, and the
24 reason for it is that when EPA was promulgating its

1 regulations in 1985 and '92, it basically said we
2 need -- we don't have the resources -- EPA and the
3 state was saying "We don't have the resources to
4 deal with all of these generators out there who
5 might throw in some hazardous waste, like cleaning
6 solvent, into their used oil." And so this
7 exemption was created, and it exists in the --
8 actually it exists also in the basic RCRA
9 regulations and carried forth in the used oil
10 regulations.

11 So this is the regulatory
12 framework that we're dealing with. If EPA or IEPA
13 and the Board were to say "We want to get rid of
14 this exemption," NORA would applaud you. So we are
15 not in favor of this exemption, but because it
16 exists, we need to recognize it, and that's why --
17 that's why it's in our proposed -- to exempt to from
18 the manifest requirement. But if you want to take a
19 further step and eliminate this exemption for
20 conditionally exempt small-quantity generators,
21 you'd have NORA members on Board. So it's not
22 something we want, but it's something since we have
23 to live with it, that's why it's in our proposal.

24 And in a similar thing, the second

1 category of used oil containing characteristic
2 waste, where the BTU per pound content is greater
3 than 5,000, where the characteristic, such as
4 ignitability, has been extinguished, and both the
5 used oil and the characteristic hazardous waste has
6 been generated and mixed by the same generator. So
7 we're not creating an exemption here where we mix
8 it. This would be to be done by the generator. And
9 again, this tracks existing EPA regulations, both in
10 RCRA and the used oil regulations under part 279.

11 The third category, mixtures of
12 used oil and fuels. This is typically the diesel or
13 normal components of fuels or other fuel products.
14 Now this is not a regular practice, because if you
15 have nice diesel oil you wouldn't be necessarily
16 mixing it with used oil. But occasionally it does
17 happen, and there's absolutely no reason why that
18 shouldn't be handled as used oil on the manifest.

19 And finally, used oil containing
20 wastewater -- non-hazardous wastewater provided
21 there is a recoverable -- that is a me minimis
22 quantity of used oil. And again, we're talking only
23 about an exemption from the manifest requirement,
24 not any permit requirements. So this -- this

1 material will be handled precisely in the same way,
2 which means it would go to a facility which handles
3 wastewater, separates the used oil out, discharges
4 the wastewater in accordance with a permit and Clean
5 Water Act requirements, and recovers the used oil.
6 So no change in the actual system. We are simply
7 asking for a -- some relief from the paperwork
8 requirements.

9 Now the second component of our
10 proposal, it's already been previously proposed by
11 Claire Manning, who is the attorney who's worked on
12 this previously, is to say that the requirements
13 that you -- that IEPA is interested in, the
14 information requirements, would still be retained.
15 What we are proposing is that the either the --
16 either the bill of lighting or tracking document,
17 whatever you want to call it, would reflect three
18 components.

19 One is the department of
20 transportation requirements, which are already in
21 existence and which we already do. The business
22 items that a company is interested in, like how
23 the -- how the generator of the customer is going to
24 pay, whether it's by check or credit card or those

1 kind of things, all of the contact information, and
2 then to respond to IEPA, all of the information that
3 they say they want out of Part 739 and Part 809 in
4 terms of the requirements. That deals with special
5 waste, and they want to know, for example, who the
6 receiving facility is and the signature of the
7 person at the receiving facility, and we say fine,
8 no problem. Let's put that into the tracking
9 document or the bill of lading, whatever you want to
10 call it.

11 And I have an example, and this is
12 just an example of what one would look like. And
13 perhaps you can -- so this is a component -- this is
14 a -- simply an example, a generic example of the
15 three elements that would go into the tracking
16 document and provide IEPA with all of the
17 information they say they need. Now let me take a
18 step back and mention that the manifest that is
19 currently required doesn't go to Illinois EPA. They
20 don't want it. They don't want to store it, they
21 don't want to look at it, they just want it around
22 in the -- either the generator's facility or the
23 transporter's facility so that in case something
24 comes up they can look at it, which is fine. You

1 know, if that's how they chose to enforce the
2 program, that's fine with us.

3 But don't make us have two sets of
4 documents, one a manifest and the other the bill of
5 lading and the DOT requirements. That doesn't --
6 that just doesn't make sense. Let us put this on
7 what amounts to one sheet, front and back, and
8 you'll have the advantage of having the company want
9 to retain that. Why? Because it's DOT required,
10 and it's their business information, and we're happy
11 to provide the information that IEPA says they want
12 in terms of the special waste requirements. Now on
13 this document, you'll see on the second page the
14 additional special waste materials. If you agree
15 with our proposal, that we're only talking about
16 four of these categories -- or maybe you'll
17 determine it's three or two, but hopefully it's at
18 least four -- then those would be -- those would be
19 laid out there.

20 Now I do understand IEPA's
21 concerns that these bills of lading -- let me call
22 them, or tracking documents, or whatever you wish to
23 call them -- might vary from company to company.
24 Yes, that's true. That's true with respect to the

1 business information that they are interested in.
2 And so they'll develop their own format, but there
3 will be an identical format with respect, of course,
4 to the DOT, because that's all we require, the DOT
5 requirements, and -- and this is your job -- the
6 additional information regarding special waste that
7 are exempt from the manifest but would be required
8 in this tracking document, you, the Board, would
9 specify exactly what would be covered there. And
10 that proposal, in its generic form, has already been
11 made by NORA. All we're suggesting is whatever IEPA
12 wants in that respect and that the Board wants, we
13 are agreeing to. So you're not finding any
14 resistance from NORA on that central issue, none
15 whatsoever. But I think you were about to ask a
16 question.

17 MR. FOX: I did have a quick question.
18 The sample document, for lack of a better term, that
19 you have shown to the Board, it's an unusual format
20 and size. Did you have a copy of that that you wish
21 to move into the record as an exhibit?

22 MR. HARRIS: I should have anticipated
23 that, and we can certainly make a copy during a
24 break, or you can have that. Whatever you wish. I

1 will be glad to -- I'm trying to be as helpful as
2 possible. I'm not trying to complicate the Board's
3 --

4 MR. FOX: What we need to do to move
5 it into an exhibit is certainly give the Agency a
6 chance to review it, and if we take a break at any
7 time what we can do is produce a copy of that and
8 then go through the process of seeing if there's any
9 objection on the part of anyone here --

10 MR. HARRIS: That would be helpful.

11 MR. FOX: -- in admitting it into the
12 record.

13 MR. HARRIS: Thank you, Mr. Fox.

14 MR. FOX: But thank you for letting me
15 interrupt you.

16 MR. HARRIS: Thank you, Mr. Fox. So
17 that's our -- that's our basic proposal. Let me
18 give you some reasons, and our members can give
19 additional reasons and some reasons why this makes
20 sense. Again, we would eliminate the duplication,
21 which is a considerable amount of effort when you
22 start multiplying the number of manifests that are
23 involved here. I believe the representative from
24 Safety Clean will be able to testify and offer

1 information about a recent study that they conducted
2 for themselves. They were doing it in the context
3 of evaluating the cost of paper, paper manifest
4 versus electronic tracking, and in the course of
5 that concluded that their costs, which are actually
6 pretty efficient because they are a large company
7 and they have the economy -- but their cost, when
8 you add them all up, are about \$18 per manifest, and
9 I think that would be a greater amount if you're
10 talking about a smaller company.

11 So even though the \$3 charge has
12 been eliminated, nevertheless you're dealing with
13 various costs associated with the manifest. So if
14 you allow a regulated community to consolidate into
15 one document, the DOT, the business information, and
16 the IEPA special waste information, you then allow
17 us not to have to duplicate all of the paperwork,
18 and it is -- there's a cost associated with it. We
19 understand that. We're willing to absorb it. But
20 don't multiply it by two. And when we multiply it
21 by two, remember that these are required to be
22 stored for three years. We will comply with that of
23 course. And there's -- as I mentioned before,
24 there's an incentive to do that, because having --

1 because it also contains the DOT and the business
2 information. So it's an important cost savings to
3 be able to consolidate this information.

4 The -- and the -- if I can go back
5 to the original concept here of eliminating the
6 manifest requirement for used oil in these
7 categories, remember what the choice is to a
8 collector. If they go around now, they have to
9 either have special compartments for all this
10 material, or -- in their truck -- or they have to do
11 this collection run for a second or third time. And
12 in my pre-filed testimony I gave the analogy of the
13 honey bee. The honey bee efficiently goes around
14 and collects all the nectar from the flowers, as if
15 they were generators of nectar and brings it to a
16 central processing facility. Well, if you require
17 the honey bee to collect the nectar from the red
18 flowers on Tuesday and the yellow flowers on
19 Thursday, it adds to these costs, and we're dealing
20 in an economic environment now where fuel oil is
21 going through the roof. The fuel is very expensive,
22 labor costs are very expensive, and then you add the
23 current economic uncertainty regarding credit, and
24 small businesses, such as NORA members, are hurting.

1 Even the larger members, such as Safety Clean, are
2 not doing that great in this current environment.

3 And I know that economic
4 feasibility is an important consideration for the
5 Board. We were not asking for any diminution of
6 environmental protection. We're asking for some
7 relief for paperwork. And again, I want to
8 emphasize that we are not trying to do an end run
9 around the special waste rules. That is not our
10 purpose. We don't mind engaging in a dialog on that
11 as to what would be more efficient, but that is not
12 our purpose in today's hearing and this rulemaking.
13 So I'd be happy to answer any questions, and I think
14 our members would also be able to, and I think it
15 might be -- unless you want to ask questions of me
16 right now, Mike Lenz is prepared.

17 MR. FOX: Very good. Why don't we,
18 before introducing the testimony of any other
19 witnesses, proceed to any questions specifically for
20 you, Mr. Harris, that either the Agency --

21 MR. HARRIS: Of course.

22 MR. FOX: -- or any other participant
23 may have. Miss Flowers, you had, on behalf of the
24 Agency, filed on September 15th a set of pre-filed

1 questions for NORA's witnesses, which as I think I
2 mentioned by their terms were requested to be
3 posted, any witness called by NORA. At this point,
4 did you have questions for Mr. Harris on the basis
5 of his pre-filed testimony or his comments this
6 morning?

7 MS. FLOWERS: Well, I mean, what we
8 had initially thought when we had initially filed
9 the pre-filed questions, there was some indication
10 that there might be 12 to 15 witnesses up here
11 discussing a -- some language that they would like
12 for Part 739, and the pre-filed questions were just
13 to see why 12 to 15 people, how they were involved
14 in the industry, whether they were representatives
15 of the industry, and just kind of why -- why the
16 first notice before the Board was not sufficient --
17 a sufficient exemption for them, and as now we only
18 have two witnesses that we're going to be able to
19 ask questions of, and obviously Mr. Harris is not in
20 the industry, he's an attorney, is what I'm -- is
21 what I'm assuming, he does not have a used oil
22 industry or company. Is that correct?

23 MR. HARRIS: That is correct. I do
24 not represent a particular company. I don't have

1 any ownership interest in a company. I'm NORA's
2 general counsel, but we're not -- we're prepared to
3 answer a number of those questions. Mr. Ray here
4 and Mr. Lenz are -- been before this Board before,
5 and I think they are -- if anyone is qualified to
6 consider themselves a representative of the
7 industry, they would as well as others. So we're
8 happy to answer your questions.

9 MS. FLOWERS: And we do have questions
10 of the people that are in the used oil industry and
11 would have a business. As far as Mr. Harris'
12 testimony, we would -- we would have to ask
13 questions about his actual proposal, and I didn't
14 know how you wanted procedurally to go with that,
15 since we had -- we're not going to ask the pre-filed
16 questions to Mr. Harris.

17 MR. FOX: And I'm certain -- and
18 forgive me for taking liberties, Mr. Harris -- that
19 he'd be willing to entertain questions now on the
20 basis of his pre-filed testimony in the proposal.

21 MS. FLOWERS: Okay.

22 MR. FOX: But if you wish -- and
23 certainly I can leave this to your decision, Ms.
24 Flowers. If you wish to hear answers to some of the

1 questions relating, in effect, to the operation of
2 the existing and current rules, I suspect that
3 Mr. Harris would be willing to entertain those
4 questions after you've had an opportunity to pose
5 some questions of your own.

6 MS. FLOWERS: I'm sorry. I didn't
7 follow you.

8 MR. FOX: I perhaps didn't make myself
9 very clear. If you would like to pose questions to
10 Mr. Harris now based on his pre-filed testimony and
11 his comments this morning, it appears that he's
12 willing to entertain those right now.

13 MS. FLOWERS: Right.

14 MR. FOX: If you wish to pose the
15 pre-filed questions to some of the other witnesses
16 of NORA's --

17 MS. FLOWERS: Right.

18 MR. FOX: -- I believe he is also
19 willing to wait until you have done that to pose any
20 questions.

21 MS. FLOWERS: Well, we do have
22 questions of Mr. Harris, it's just not based upon
23 the pre-filed -- pre-filed questions.

24 MR. HARRIS: I'm happy to --

1 MR. FOX: Mr. Harris, if you're
2 willing, why don't we proceed with those?

3 MR. HARRIS: Certainly.

4 MS. FLOWERS: Okay. Well, I would
5 just like to state that we -- we got this proposal
6 less than a week ago before this hearing, and we've
7 had a little bit of time to go over it. We have not
8 at all studied it in depth, and we mainly focused on
9 the actual language that was presented to be -- that
10 was asking to be added to Part 739, so it would be
11 the very -- I guess the -- I guess it'd be, like,
12 Page 13 and after that shows the language as being
13 requested to be added to Part 739.

14 We have some language here
15 regarding -- the very first part under the Board
16 note, there is some language there that says that
17 used oil and the following post-used mixtures are
18 regulated under this part and are exempt from 35
19 Illinois administrative code 808 and 809. And so I
20 would -- I mean, that is a question we're asking
21 you. You said you did not intend to exempt used oil
22 mixtures from -- and used oil from 808 and 809, but
23 it is stated there that that is your intention.

24 MR. HARRIS: Mr. Fox, Ms. Flowers, our

1 intent is to exempt this from the manifest
2 requirements, which I believe are also under 808 and
3 809.

4 MS. FLOWERS: That's not the only
5 requirements that are listed under 808 and 809.

6 MR. HARRIS: Okay.

7 MS. FLOWERS: There are reporting
8 requirements and such other that we wouldn't --
9 there's never been anything proposed to be exempt
10 from until now.

11 MR. HARRIS: Well, that would be a
12 drafting error on my part in that case. I mean, our
13 -- let me be quite clear about our intent, which is
14 to exempt it from the manifest requirements, not
15 from the balance of the special waste requirements.

16 MS. FLOWERS: So would I assume that
17 you would be revising this?

18 MR. HARRIS: I'd be -- I'd be happy to
19 advice it to reflect that basic point, yes.

20 MR. RAO: May I ask a followup-related
21 question? Mr. Harris, in your pre-filed testimony,
22 your summary changed -- proposed changes to
23 Part 739, and I just wanted to clarify whether these
24 changes should be considered in conjunction with

1 NORA's earlier proposal to amend parts 808 and 809.

2 MR. HARRIS: I'm not sure -- I
3 understand your question. I'm not sure I can give
4 you a complete answer. The -- what NORA wants to do
5 is -- let me be extremely clear about this. We want
6 to take -- we want to go along with your proposal to
7 take used oil as defined, and exempt that from the
8 manifest requirements. So I think we're all on
9 agreement on that component. In addition to that,
10 these four categories of materials which are
11 regulated as used oil that are not defined as used
12 oil would similarly be exempt from the manifest
13 requirements. That's all we want.

14 And then -- and then the third
15 component of this is that the tracking document, or
16 bill of lading, would reflect the information as we
17 had suggested that IEPA says they need. So those
18 are the three components, and that's it. If our
19 language is not precise enough, I'll be happy to
20 submit language which meets IEPA's requirements on
21 that point.

22 MR. RAO: Okay. My question goes to
23 your response that we did not receive any language
24 changes to reflect your intent for parts 808 and

1 809. I'm assuming that you -- you know, you're
2 expecting the Board to make those language changes,
3 or would you be willing to provide some language?

4 MR. HARRIS: Yes. To the extent that
5 we -- I though we did. But if we didn't, I'll be
6 happy to provide the precise language changes that
7 reflect our proposal.

8 MR. RAO: Were those changes for
9 Part 739, the changes attached to your pre-filed
10 testimony?

11 MR. HARRIS: Yes.

12 MR. RAO: I am asking about
13 corresponding changes to part 808 and 809 because
14 the exemptions are going to be set up, if the Board
15 decides to do it, in parts 808 and 809.

16 MR. HARRIS: And it -- it's my -- it's
17 my belief that we had attempted to do that. But if
18 there's some drafting mechanics that need to be done
19 to reflect our proposal, we'll be happy to do that.

20 MS. FLOWERS: Okay. The other
21 question we have is shortly thereafter, within that
22 first paragraph there, bolded paragraph that shows
23 some changes to Part 739 under the Board note, there
24 is -- let's see -- exemptions for mixtures

1 containing more than 50 percent used oil by either
2 volume or weight, and I think we're trying to figure
3 out where you came up with 50 percent used oil, and
4 also where -- what happens to the other half of this
5 mixture? What -- where is the recycling coming in
6 on the other 50 percent of this mixture?

7 MR. HARRIS: Let me address the first
8 part, and then perhaps Mr. Ray or Mr. Lenz could
9 address the second part, if that's acceptable. The
10 50 percent is simply compromised language, and it's
11 meant to address the concern of IEPA that if you had
12 one drop of used oil and you mix it with this other
13 material, such as conditionally exempt small
14 quantity generator wastes, you then turn the whole
15 thing into used oil.

16 Now EPA, when they looked at this
17 issue, basically said "Look, we want everything to
18 be in the used oil recycling system, so that's not a
19 concern of ours." Okay. But it's a concern of
20 IEPA. So we are trying to address that concern by
21 saying this has to have a significant used oil
22 component if it's going to be handled under the used
23 oil recycling system. So 50 percent seemed to be a
24 very plausible number, percentage, that would

1 convince the Board and IEPA that we are serious,
2 that we're talking about materials regulated as used
3 oil. Now how this is handled, I'd be glad to ask
4 Mr. Lenz and Mr. Ray how their companies would
5 handle this.

6 MR. LENZ: Which --

7 MR. FOX: If I may interrupt, Mr. Lenz
8 and Mr. Ray, forgive me for forgetting this detail.
9 I don't believe either of you have been sworn in.
10 Is that correct?

11 MR. LENZ: I was.

12 MR. RAY: I was not.

13 MR. FOX: Mr. Ray, if we could have
14 the court reporter so that you could offer
15 testimony, please.

16 (Witness sworn.)

17 MR. FOX: Thank you very much. And
18 Mr. Harris, I apologize for the interruption.

19 MR. HARRIS: Mr. Ray, could you
20 address Ms. Flowers' question about how you handled
21 this material?

22 MR. RAY: Yes, I will. But first I
23 would like to make a further responsive to the other
24 point about the 50 percent threshold. Because there

1 only characteristic waste, to understand that you
2 have to recognize that virtually all of the used oil
3 managed by our company and by most of NORA's member
4 companies is recycled ultimately for uses of fuel.
5 It's burned for energy recovery, and in that context
6 text, a material which has energy value and is
7 burnable doesn't do anything to diminish the quality
8 of that fuel.

9 There are certain tests that are
10 common to our industry and specific to our company.
11 So for ignitable-only material, we would typically
12 -- if it's a hazardous waste, we would either be
13 testing or relying on generator knowledge to
14 establish that that's indeed what it was, that it
15 only had the characteristic ignitability, which was
16 subsequently diluted down in the used oil as allowed
17 by federal and state regulations, and then we see no
18 reason that that wouldn't make an acceptable fuel.
19 It does. Our customers know that it's a burnable
20 material, and it ends up being sold according to the
21 used oil fuel specs.

22 The same thing is true of mixtures
23 containing BTU characteristic hazardous wastes. We
24 don't see much of that type of material, but it is

1 possible to put that into used oil. The resulting
2 material, the mixture of used oil and other waste
3 need to meet the used oil fuel specs for a variety
4 of contaminants before it's suitable to sell as a
5 fuel, and so we would be testing the material before
6 we ship it to a third party fuel burner, who would
7 burn it in accordance with their permits.

8 The first category in the list,
9 mixture of used oil and hazardous waste for CESQGs,
10 really the same logic -- as Mr. Harris articulated
11 before, we don't look for or seek that type of
12 material. What's -- our view about the exemption
13 for CESQG hazardous waste is not that customers or
14 generators typically are seeking to mix hazardous
15 waste into the used oil. We think that it was
16 really a regulation, a framework that was designed
17 and implemented by federal EPA to make it
18 particularly easy for the smallest generators to
19 manage their waste without giving them incentive to
20 dump things out back behind the shop.

21 And in doing that, Federal EPA
22 said to generators, "If you have some small quantity
23 of hazardous waste and you put that into your used
24 oil, it seems to Federal EPA to be suitable to still

1 manage that as fuel. Most of these hazardous wastes
2 are typically chlorinated hydrocarbons,
3 non-chlorinated hydrocarbons, paint wastes in small
4 quantities, and it's not practical for a small
5 generator to test and manage and ship that material
6 off site. I think that's generally recognized,
7 which is why this exemption exists.

8 Again, we're able to manage that
9 by picking it up at the same time as other used oil
10 through a system where we're aggregating large
11 quantities. Dilution is effectively how that
12 material ends up entering the fuel supply, and below
13 the thresholds that are considered safe for burnable
14 fuel. It's saleable and marketable in that fashion.
15 That's what happens to it.

16 MS. FLOWERS: Okay. Can I just make a
17 clarification? Because our prior testimony we had
18 Chris Kosnoski (phonetic), one of our inspectors,
19 testify that there was ink found in with the used
20 oil, and I -- under which category would ink fall?
21 I mean, why would you even be picking up ink with
22 used oil? I mean, how is the ink recycled?

23 MR. RAY: Well, I can't speak to
24 Chris' example. I can tell you that our company

1 wouldn't typically think of waste ink as being
2 something that we would tell generators could or
3 should be mixed into used oil. We can go through
4 the --

5 MS. FLOWERS: What would happen, then,
6 if it was?

7 MR. RAY: Okay. Let's dissect that a
8 little bit further. If a generator put waste ink
9 into their used oil, one scenario is that they would
10 do that intentionally seeking to violate the
11 regulations around it. First of all, I guess we
12 have to ask is the ink exhibiting characteristics of
13 a hazardous waste. I'm sorry this is complex, but
14 there's a lot of different variables. So if a
15 generator had released ink that contained heavy
16 metals, which sometimes it does, and was otherwise a
17 hazardous waste, then they would presumably be
18 trying to fool their used oil transporter by mixing
19 it into the used oil. In my company's case, we're
20 testing our generators' material before we pick it
21 up, and we are also having them sign a certification
22 that they haven't mixed hazardous waste into their
23 used oil.

24 So if they sought to fool us,

1 whether it's under the proposed scenario or the
2 scenario that's in place in the state today without
3 any change to the rules, they could potentially fool
4 us, get that on to our truck, and create a problem
5 for us. We probably wouldn't recognize that problem
6 until we got the consolidated load to a destination
7 used oil facility which would test it and discover
8 the presence of a contaminant and let us know. Now
9 our practice -- and this is not a regulatory
10 requirement, it's just how we operate our business
11 -- is that we're routinely taking samples from each
12 generator at the time of pickup, so that presumably
13 if we had a contamination problem downstream, we
14 would make an effort to test all the samples of all
15 the customers we thought had contributed to that
16 load, and go back and find out who had slipped us a
17 mickey or given us hazardous waste without properly
18 disclosing it. Then we'd make them responsible for
19 the cost associated with our re-managing the waste,
20 and possibly filing manifested waste reports as
21 necessary.

22 MR. HARRIS: And if I can add to that,
23 it is under current law, well-established that it is
24 the generator who has the principal obligation of

1 properly characterizing the waste material, and our
2 proposal does not in any way try to get ink into
3 this exemption. If it's going to be a special waste
4 or a hazardous waste, that's not part of or --
5 that's not part of our proposal. Our proposal is
6 limited to the four categories that we've outlined.
7 So if there's a current problem with generators
8 slipping ink into the used oil, it's probably
9 improper and probably illegal now and would be
10 under -- after our proposal is amended.

11 MR. DRAGOVICH: I think our question
12 is a little bit more general. It could be ink, it
13 could be wastewater, it could be any material
14 doesn't really have a fuel value itself. If it's in
15 the oil after you receive it, how do you manage that
16 material?

17 MR. RAY: I need to have a specific
18 case. Maybe I can try and --

19 MR. LENZ: Water. You mentioned
20 water, right?

21 MR. DRAGOVICH: Yeah. Water was one
22 of them.

23 MR. RAY: Okay. If a generator --
24 let's talk about a particular generating process,

1 and some of my prior letters and testimony both to
2 the Board and to the Agency, discuss this. You
3 know, perhaps a very real world example, as
4 complicated and as messy as it is, would be a small
5 manufacturing plant, which has multiple sources of
6 used oil bearing waste that they, on their own
7 property, comingle into one tank. They may have
8 used oil that we would think of as a pretty pure,
9 dry used oil coming out a machine where they're
10 changing lubricant. They may have a cutting oil or
11 coolant material that's part of a machining process.
12 It could be a synthetic oil, which has a lot of high
13 concentration of water by intent, in terms of the
14 way they use it.

15 They could even have oil spills on
16 the floor that they mop up, get a bucket of muppy
17 wash water that has oil in it, and a shop will
18 probably, in many cases, comingle and combine those
19 different related -- all oil-related oil-bearing
20 streams into one tank. We see that commonly. We
21 don't think that shops, like our customers, have
22 been told that each of those are waste streams that
23 must be kept segregated and tested separately and
24 managed separately. We think that they view those

1 as used oil contaminated materials that should be
2 comingled.

3 Our business practice would be
4 that we would show up at that facility, we would
5 look at what their generating process was and learn
6 a little bit about how they produced the used oil,
7 and then we'd take a sample of their used oil
8 material, and we'd sent it to a lab for rough
9 analytical work. Rough analytical work might
10 include a scan for volatile organics, looking to see
11 if they had any halogenated solvents present there.
12 We'd be checking the flash point to make sure that
13 this was not a low flash point material that was
14 ignitable, and therefore would bear a hazardous
15 characteristic.

16 And we've been looking at the
17 water concentration to try and understand as much as
18 anything commercially how we would best manage this
19 material, what the right destination facility would
20 be, and what the economics would be. We'd make that
21 evaluation, we would revisit the customer. This
22 is -- all this analytical work is typically prior to
23 our picking up the first load from that account.
24 Then we would visit them with the analytical results

1 in hand, and we would typically say "Your material
2 appears to have 20 percent water in it." We will
3 quote you a price for that, we will manage it as
4 used oil, we will take it to a used oil recycling
5 facility that will recover the used oil and treat
6 the wastewater prior to discharge.

7 We would ask the generator to sign
8 on every pickup the certification that their
9 generating process had not changed, and that they
10 had mixed hazardous waste or regulated waste into
11 their used oil, and we would periodically, then, be
12 testing -- we'd regularly be testing the finished
13 collected material on a consolidated basis to
14 validate that we weren't getting new contaminants
15 into the stream of used oil we were picking up.
16 That customer's a great example of why we struggle
17 with the proposal that we treat used oil differently
18 for materials subject to management as used oil.

19 If we were to go down this path
20 that's been proposed of treated used oil differently
21 from materials subject to management, we would be
22 asking that customer to do a much more intensive
23 effort to decide for each of the individual
24 oil/water mixtures, whether they want to choose to

1 call that used oil or special waste, and they'd have
2 to be kept segregated, and they might have to be
3 picked up separately with different paperwork.

4 I believe you've noted that the
5 Illinois Manufacture's Association has filed
6 pre-filed testimony in support of the NORA position,
7 and this is one of the arguments that they
8 understand well, which is that separating or
9 differentiating used oil from the other materials
10 that the federal and state system has historically
11 allowed to be managed as used oil creates a new
12 burden on the companies that generate these mix
13 waste streams and they seek to avoid that. Did that
14 answer your question?

15 MR. DRAGOVICH: Yeah. You said that
16 you would treat the water and discharge it?

17 MR. RAY: We would not -- our company
18 would pick up the material and deliver it to a
19 third-party processor, who he is an oil recycler,
20 who recovers the used oil for reuse as typically an
21 industrial fuel. In certain cases they would be
22 treating the used oil as a feedstock for a refinery
23 making lubricants, and then they would be treating
24 the wastewater and discharging it according to their

1 permits and relevant standards.

2 MR. DRAGOVICH: Now would their
3 preference be to not have that wastewater in there?
4 I mean, there's not benefit to their process, right?

5 MR. RAY: Well, I guess I would tell
6 you it would vary depending on the facility we take
7 the material to. Our company operates in a number
8 of states, and we have a number of different
9 destination or outlet facilities. Some of those
10 facilities focus their business on recovering the
11 maximum amount of used oil that's marketable. They
12 would have effectively, from their point of view,
13 accost in treating the wastewater, and they'd prefer
14 to see the most dry or dewatered oil that they could
15 arrive at their facility.

16 Other facilities have made it a
17 business of treating oil-water mixtures, have the
18 technology and the permits in place to handle those
19 materials, and the reason they would then be
20 comfortable receiving it is because they would be
21 paying less for that feedstock, or in certain cases
22 charging to receive that feedstock, and their
23 business model allows them to operate profitably by
24 paying less for higher water material and then

1 recovering the used oil from that.

2 MR. DRAGOVICH: Do you ever -- when
3 you do these visits to the facilities, do you ever
4 recommend to the customers that if there's -- if
5 their waste is already pre-segregated the low -- the
6 high concentrated fused oil and the low
7 concentrated, or no used oil in it, that perhaps
8 they -- it could impact the price if they kept the
9 materials separate?

10 MR. RAY: Absolutely. That's a
11 correct statement. We do -- if customers have a
12 particular generating process where they're mixing
13 things together that would be more efficient or
14 economically handled separately, we'll encourage
15 them to do that and point out the economics. You
16 can imagine that a customer who had 1,000 gallons
17 each of two commodities or products that had
18 different water content might see a bigger benefit
19 or more reason to do that than our typical really
20 small customers in the automotive segment who might
21 have a 200-gallon tank of oil and a 5-gallon bucket
22 of mop water.

23 And for them, the motivation to
24 keep that segregated, five gallons, how to test it

1 separately, how somebody considered treated it a
2 special waste to save 10 or 20 cents a gallon makes
3 no sense to them, versus dumping that five gallons
4 of water into a used oil tank. And that is the way
5 that people are used to doing business in this state
6 and in other states, the generators are. Their view
7 is that by taking that oily water stream and putting
8 it into their used oil tank and maybe getting a
9 little bit less value for their used oil, they're
10 doing something that is not more protective of the
11 environment, and in their view, more compliant with
12 the spirit of environmental regulations than to take
13 the mop water and dump it down the drain and hope
14 with an oil sheen and hope that it's not creating a
15 problem for a wastewater treatment plant downstream.

16 MR. DRAGOVICH: If the generator was
17 to keep the two waste streams separate, would --
18 potentially through your business, would you elect
19 to send those to different treatment facilities, or
20 would they always go to the same one?

21 MR. RAY: It could be either way.
22 Potentially we would send them to different
23 facilities. It would depend a lot in particular
24 with just the -- serving a specific area. It's very

1 location sensitive.

2 MR. DRAGOVICH: And these -- these
3 small generators that you're talking about, do you
4 think they would be ones that generate less than 100
5 kilograms of hazardous waste a month and less than
6 100 kilograms of special waste a month, which is
7 about 30 gallons, roughly. Is that --

8 MR. RAY: I'm going to tell you that
9 with respect to that, it varies. We're going to
10 have some that will be CESQG, or small generators,
11 very small generators, and we're going to have some
12 that will still generate a significant amount of
13 hazardous waste from other processes. It depends --
14 there we need to talk quite a bit about whether
15 we're talking -- discussing the segment of our
16 business, which are automotive accounts, or
17 industrial and manufacturing accounts.

18 On the automotive side, which
19 represents roughly half of our business, those
20 customers are more likely to be the CESQGs. They
21 don't produce or use as much -- use as much chemical
22 and produce as much hazardous waste. On the
23 manufacturing side, it's quite normal that a small
24 manufacturer may generate small quantities of used

1 oil but produce large quantities of other hazardous
2 waste that needs to be managed and creates --
3 elevates them on a generator status.

4 And I guess I'd also mention,
5 because it seems relevant to me at this time, when
6 you're talking about our encouraging customers and
7 generators to segregate wastes, we've talked about
8 oil and water, but I'd take it a step further and
9 point out that our company is also engaged in the
10 hazardous waste business. So not only do we have
11 the regulations regarding segregation and testing to
12 deal with, but economically if you were my customer
13 and you had a container of hazardous waste and you
14 were thinking about mixing it into your used oil,
15 would you say don't do that? It's going to be a
16 regulatory prolem, but also economically I'd prefer
17 to take that material out as hazardous waste. I've
18 got a service program to do that, and I charge money
19 and make money doing that business as well. So I'm
20 not in the habit of encouraging customers to mix
21 different things into used oil to get --

22 MS. FLOWERS: Can I just follow that
23 up? Because wouldn't -- now what you're proposing,
24 that would be now taken of the table. You're just

1 saying "I would encourage them not to put it in
2 there." But now if you -- if this goes into effect,
3 why would you not? Now it's not going to be an
4 economic detriment right, right? And now it's not
5 going to be illegal.

6 MR. RAY: Are you asking -- well, let
7 me see if I can rephrase the question if I
8 understand it, Ms. Flowers. Are you saying under
9 the proposed rules, the NORA proposal, why wouldn't
10 I tell a customer to mix their hazardous waste into
11 their used oil?

12 MS. FLOWERS: Correct.

13 MR. RAY: Okay. A number of reasons.
14 First, it has the potential -- you know, we'd have
15 to look carefully at the rules to see if under the
16 regulations particular scenario was allowed, and
17 certainly only some kinds of hazardous waste mixing
18 used oil are allowed. A typical --

19 MS. FLOWERS: Right. But you are --
20 you are saying that that should be allowed. That's
21 the language here.

22 MR. RAY: Well, the language here is
23 intended. And Mr. Harris already commented -- it's
24 intended to preserve the way that state rules work

1 today. It may not be drafted property, but it's
2 intended to preserve the exemptions that are on the
3 books today, not to add new mixing capabilities,
4 simply to extend a manifest exemption to the type of
5 operational logistical behavior that the state rules
6 currently allow. So are you shaking your head you
7 don't agree with that?

8 MS. FLOWERS: Yeah. I'm confused then
9 why are we here. If there are existing rules, then
10 why are you proposing new ones?

11 MR. HARRIS: I think what he meant
12 when he said state rules, he means the -- all of the
13 other states and the federal rules. Our proposal
14 simply would track the Federal Part 279 requirements
15 and the surrounding states surrounding Illinois.
16 Obviously we need a rule change with respect to
17 Illinois' requirements.

18 MR. RAY: We're not looking to
19 create -- and correct me if you think I'm saying
20 this wrong -- but we're not looking to create an
21 opportunity to begin to mix something into used oil
22 post adoption that is not --

23 MS. FLOWERS: How does your language,
24 though, prevent that? How does your language -- if

1 you had an incident -- with you -- with the ink with
2 used oil, how does the language that you're
3 proposing prevent those source of mixtures? It
4 seems to encourage them.

5 MR. RAY: Well, I may not be answering
6 your question.

7 MR. RAO: May I ask -- interject and
8 ask a question. Hopefully it might help. Under the
9 current rules, as long as you manifest your pickups
10 of used oil from different generators, you can do
11 whatever that you have proposed here. Am I right?

12 MR. RAY: That's my understanding,
13 yes. That's the position.

14 MR. RAO: Because 739 Section 110 has
15 these provisions in the rules. The only thing
16 that's different in Illinois is you need to manifest
17 your -- you know, your waste collection whether it's
18 used oil or if it has anything else in it, but you
19 can still manage what you collect in accordance with
20 our Part 379 rules.

21 MR. RAY: Yes. That's my
22 understanding.

23 MR. HARRIS: Yes.

24 MR. RAY: I think that's --

1 MR. RAO: Okay. And you're not
2 proposing more than what's already in the rules, but
3 you're proposing some limitations on them?

4 MR. RAY: That's my view, yes.

5 MR. HARRIS: We are proposing that
6 these four categories of materials which are
7 regulated as used oil under Part 279 be exempt from
8 the manifest requirements and only the manifest
9 requirements.

10 MR. RAO: Thank you.

11 MR. DRAGOVICH: Can you -- are you
12 done, Stephanie? Can I go back to my previous
13 question? I think you answered my question on small
14 quantity generated waste for hazardous waste, but
15 I'd like a better understanding of whether you
16 think -- and I think it was mainly your automotive
17 customers you're saying, would they be small
18 quantity generators of non-special ways, which means
19 do they generate less than 30 gallons a month? Do
20 you think that's a big part of your business, or do
21 you think most of your customers can rate more than
22 that quantity?

23 MR. RAY: I don't have great
24 statistics on that, sir. I think that in the

1 automotive segment, which is about half our
2 business, I would guess that by number of customers,
3 the number that we think are conditionally exempt
4 small quantity generators that might be in the
5 neighborhood of 50 percent, and I'm assuming that
6 you're trying with your quantity figures to get to
7 the exemptions --

8 MR. DRAGOVICH: No. Well, underneath
9 the special waste regulations, there's an exemption
10 from manifesting for generators that generate less
11 than 100 kilograms of special waste per month.

12 MR. RAY: Okay.

13 MR. DRAGOVICH: And I'm trying to
14 figure out really how big of an impact this has,
15 because if a lot of these generators are already
16 exempt from manifest, I'm not sure what I'm doing
17 here today.

18 MR. RAY: Well, I --

19 MR. LENZ: Let me interject something.
20 The used oil normally throws most generators -- if
21 you count the used oil as a special waste.

22 MR. DRAGOVICH: Right.

23 MR. LENZ: That will throw almost all
24 generators over that -- over that exemption

1 threshold.

2 MR. DRAGOVICH: For your company?

3 MR. LENZ: No, over the exemption
4 threshold, the 100 -- is it 200 pounds a month?

5 MR. DRAGOVICH: It's -- yeah. It's
6 220 I think.

7 MR. LENZ: Yeah.

8 MR. DRAGOVICH: It's about roughly
9 30 gallons.

10 MR. LENZ: Because if they -- if they
11 generate used oil, they're normally generating more
12 than that amount.

13 MR. DRAGOVICH: Do you -- how often --
14 how often do you pick up and how many gallons? Just
15 on an average. I'm just trying to get an idea how
16 big these generators are.

17 MR. RAY: And do you want to give -- I
18 can give you averages if you'd like.

19 MR. LENZ: 55 gallons to
20 6,500 gallons.

21 MR. RAY: An average number, I think,
22 from what I've seen of the industry would suggest
23 that across all types of generators, auto and
24 manufacturing, large and small, that the average

1 generator might be generating 2,000 gallons a year,
2 probably between 1,000 and 2,000 gallons a year of
3 used oil. And as Mr. Lenz says, we definitely have
4 customers at the small end of that who generate
5 50 gallons a year, and we've got customers who
6 generate 1,000 gallons a week.

7 MR. LENZ: We try to get the real
8 small generators to store up more than one drum of
9 oil before they call for a pickup, just for economic
10 reasons. In fact, those small generators at that
11 level are actually normally charged a little bit for
12 pickup because your transportation costs are so high
13 compared to the value you're getting.

14 MR. DRAGOVICH: How big a quantity do
15 you recommend that they hold?

16 MR. LENZ: Well, I think it's probably
17 different for every company, but if they get up
18 around three or four drums of oil, which would be
19 150, 200 gallons, then it -- the point gets to where
20 you don't have to charge and can possibly pay a
21 little bit for the material.

22 MR. DRAGOVICH: Do you think most of
23 these generators you're picking up once a month
24 then?

1 MR. LENZ: Oh, that varies all over
2 the board. There's once a years, there's once every
3 three months.

4 MR. RAY: Again, speaking in terms
5 from my own self, based on what I think industry
6 averages have been, I think if you talk about that
7 1,000 to 2,000 gallon mean number that customer is
8 probably having their used oil picked up, on
9 average, four or five times a year.

10 MR. DRAGOVICH: Okay. Go ahead.
11 Become to your questions.

12 MS. FLOWERS: Well, I mean, who are we
13 with now? Are we back to Mr. Harris' testimony?
14 Are we --

15 MR. FOX: If I can add my observation,
16 you had questions for Mr. Harris based on his
17 testimony and the proposal by NORA that he had some
18 assistance in answering on the technical aspects of
19 which if you wanted to return to Mr. Harris, he
20 appears to be willing to entertain further
21 questions.

22 MS. FLOWERS: Okay. So, I mean, I
23 think we were left off talking about where you got
24 the 50 percent, and then what happens to the

1 other -- the other non-used oil portion of that
2 where -- how's that recycled? So now, I mean, can
3 you explain your 5000 BTU? That seems like another
4 arbitrary limit and just how -- and how would that
5 be enforceable? How would you see that being an
6 enforceable limit?

7 MR. HARRIS: The 5000 BTUs per pound
8 is not something NORA invented. That's basically an
9 EPA standard in which it's recognized to be fuel
10 value if you're at that level. Below that level EPA
11 has in the past considered it to be non -- non-fuel
12 material. Above 5000 BTUs per pound is considered
13 to be valuable fuel quality. So that's our -- we
14 didn't invent the 5,000. We adopted it simply
15 because it's a recognized level that EPA has used
16 repeatedly in the past.

17 How would it be enforceable? It's
18 enforceable by every -- every other aspect of used
19 oil or hazardous waste regulations when there's a
20 dividing line. It's obligatory on the part of the
21 generators and the transporters and the collectors
22 and the recyclers to observe it that. There are BTU
23 tasks that can be used. There's a fair amount of
24 the regulations, which depend on generator

1 certification, but that's -- again, that's nothing
2 that NORA invented. That's something that EPA, when
3 it first came up with RCRA regulations, says. The
4 generator -- thou shalt properly characterize
5 your -- your waste materials. And so if the
6 generator in this case is saying "Okay. Well I'm
7 dealing with a 5,000 BTU per pound component of this
8 material," then I think collections are entitled to
9 rely on that provided they don't have contrary
10 information, and in many cases our members have
11 profiles. They visit facilities, they check out the
12 types of generation that is occurring, because it
13 doesn't do our members any good to somehow get in
14 trouble or to have this cozy relationship with a
15 generator where there's a wink, wink, nudge, nudge
16 and they're flying under the radar and trying to
17 evade EPA or IEPA rules. That's not our -- that's
18 not our purpose.

19 So is there a certain component of
20 self-enforcement and generator reliance on the
21 generator characterization? That's true, provided
22 there isn't contrary information that suggests that
23 the generator is trying to -- as Mr. Ray said --
24 slip us a mickey.

1 MS. FLOWERS: Well, where is your --
2 where is your requirement for generator
3 specification?

4 MR. HARRIS: Well, it's on the -- it's
5 on virtually every bill of lading that exists, but
6 it's also a requirement in RCRA and the used oil
7 rules that the generator must properly characterize
8 his waste. That's a standard, basic, embedded
9 component of RCRA that the generator must properly
10 characterize its waste materials.

11 MS. FLOWERS: Let me --

12 MR. LENZ: It's also outlined in
13 language.

14 MS. FLOWERS: Yeah. Where is it
15 outlined? Because I don't see in your language that
16 there's any generator certification to this -- in
17 this at all.

18 MR. LENZ: 739.124, it says the
19 generator must provide the client with the
20 classification and description of the non-used oil
21 streams. It's basically --

22 MS. FLOWERS: Where is that?

23 MR. LENZ: 739.124, in our proposed
24 language.

1 MR. HARRIS: It's on Page 15.

2 MS. FLOWERS: Oh.

3 MR. LENZ: There isn't that
4 requirement right now.

5 MS. FLOWERS: So you're talking about
6 the language that you -- not in the 739.124 that's
7 already established. You're talking about your
8 language?

9 MR. LENZ: Mm-hmm, our proposal.

10 MS. FLOWERS: Can you show me where it
11 says that?

12 MR. LENZ: 739.124. It says -- do you
13 want me to read the whole paragraph?

14 MS. FLOWERS: Yeah, please.

15 MR. LENZ: Okay.

16 MS. FLOWERS: Where it says
17 "certification" or anything that --

18 MR. LENZ: It starts out "if the
19 generator." Do you see where that starts?

20 MS. FLOWERS: Mm-hmm.

21 MR. LENZ: "If the generator mixes
22 another special hazardous waste stream in the used
23 oil after use or presents another special hazardous
24 waste to the used oil transporter along with the

1 used oil in the same shipment without the use of
2 part 809 special waste manifest, as outlined in a
3 line under Part 739.110, applicability, the Board
4 notes the generator must provide the quantity,
5 classification, and description of the non-used oil
6 streams, and provide such information to the
7 transporter at the time of acceptance by the
8 transporter."

9 MR. HARRIS: And if you would prefer
10 the verb certify as opposed to provide, we'll be
11 happy to change that.

12 MS. FLOWERS: Where are the penalties
13 for noncompliance?

14 MR. LENZ: It would be similar to,
15 let's say, they put ignitability -- or ignitable
16 only oil in the -- or ignitable only waste in the
17 oil and didn't tell us about it.

18 MS. FLOWERS: But what -- but there
19 are penalties to not filling out a manifest.
20 There -- if you're just talking about this
21 particular must provide, there is no penalties.
22 Where is the penalties associated with this
23 requirement?

24 MR. LENZ: I don't -- I don't really

1 have an answer for that.

2 MR. HARRIS: Well, I think that's an
3 excellent suggestion. So we can provide some
4 penalties that would track identically the
5 existing --

6 MR. LENZ: The penalties aren't
7 normally in the regulatory language, are they?
8 They're not normally spelled out in the regulatory
9 language.

10 MR. HARRIS: But if the Board or the
11 Agency wants a cross reference to -- or make it
12 clear that a false certification has penalties, we'd
13 be happy to do that. That's not a -- that's not a
14 problem. I mean, I would think that anything under
15 the RCRA system, and this would be, there are false
16 reporting requirements under the existing RCRA
17 language, and those would come into play. But if
18 you want even more explicit standards, I'm happy to
19 draft those for you.

20 MR. LENZ: What -- isn't there
21 standards if you don't -- I mean, there's penalties
22 if you don't follow part 739, right?

23 MR. HARRIS: Right.

24 MR. LENZ: Well, it would be the same

1 penalty. Wouldn't the same penalties apply if
2 you're breaking part of existing Part 739
3 regulation? Right now there's penalties, right?
4 Those same penalties would apply because this is
5 Part 739, wouldn't they?

6 MS. FLOWERS: I'm not sure. And is --
7 would the generator require to do some sort of
8 testing? I mean, I know we've talked a lot about
9 testing this material and this is how we'd figure
10 out the 5,000 BTU and the 50 percent and the
11 limitations you put on there, but is there a
12 requirement to do so?

13 MR. RAY: The --

14 MR. HARRIS: As you are well aware,
15 the Board is well aware, the generator, whether it's
16 in a hazardous waste context or used oil is allowed
17 to test, or based on generator knowledge be able to
18 say here's what this material is.

19 For example, if you are at Jiffy
20 Lube, and all you did all day long, all week long,
21 all year long is generate used oil, then you know,
22 based on generator knowledge, that's the material
23 that you are generating, and that's -- that's a well
24 established component of EPA regulations as well as

1 IEPA regulations. If testing is required, for
2 example, if you had a generator who's waste varied
3 considerably, testing would be called for because
4 the generator knowledge wouldn't be reliable in that
5 context.

6 But is generator knowledge
7 allowed? Yes, and it's well established. We didn't
8 invent that rule, it's well established. It seems
9 to me it still can be applicable here, and so you
10 would know -- a generator may well know that the
11 material that they put in is so far above 5,000 BTUs
12 per pound that they don't need to do the testing,
13 because they know precisely what that material is.

14 MS. FLOWERS: Okay. Well --

15 MR. LENZ: Can I interject something
16 real quick that may clear it up a little more?
17 Oftentimes they get information like that. I'm not
18 sure about BTU value, but maybe so. They can get a
19 lot of information off their -- the MSDS sheets for
20 the products that become the waste that we're
21 getting. That's where the generator gets a lot of
22 its knowledge from.

23 MS. FLOWERS: Okay. Because I guess
24 where I'm confused is -- I mean, you're talking

1 about processes and you go out to these places and
2 they have a well-established process, but how about
3 somebody that doesn't have a well-established
4 process? I mean, where -- where are your
5 requirements for that person and what they're mixing
6 with used oil?

7 MR. HARRIS: Can I --

8 MS. FLOWERS: In other words, there
9 needs to be some sort of testing --

10 MR. HARRIS: That's a decent question,
11 but remember that we're only suggesting a modest
12 paperwork change. So if you want a system in which
13 there is perfect information and elaborate testing,
14 if that's what you want then you need to propose
15 that, because that isn't in the existing system even
16 with a manifest. It just doesn't exist. We're
17 simply saying let's transfer that information on to
18 a bill of lading in tracking that document. So it's
19 interesting and perhaps useful to discuss what a
20 perfect system would be, but EPA didn't invent that
21 system back when they originally created the RCRA
22 regulations in 1978 and 1980, and they didn't do it
23 in 1985 and '92 with the EPA -- with the used oil
24 regulations.

1 They didn't do it because there
2 are a number of compromises involved in that,
3 because a perfect system is too burdensome and too
4 expensive as EPA has recognized, and what
5 we're suggesting -- and so if there isn't a testing
6 requirement right now, we're not suggesting that one
7 be created, we're suggesting that the generator who
8 wants to certify that his material contains more
9 than 5,000 BTUs per pound can do so, and can do so
10 based on generator knowledge.

11 When I give lectures on this in
12 different formats, I say you can -- the -- my guys
13 can rely on it unless they find out differently,
14 unless they -- there's information that suggests
15 differently. We're not going to have a situation
16 where the transporters say "Okay. Well, we know
17 that it's below 5,000, but we'll go along with it
18 anyway because the generators certified it." That's
19 an unacceptable practice. We are entitled to rely
20 on the generator certification, but my advice to my
21 members is if you have contrary information, don't
22 accept that material.

23 MS. FLOWERS: So can you -- can you
24 please describe what you mean by classification and

1 description that the generator must provide?

2 MR. HARRIS: Well, can you -- sure.

3 MS. FLOWERS: Yeah. It's in that same
4 paragraph you were looking at.

5 MR. HARRIS: Yes.

6 MS. FLOWERS: It says the generator
7 must provide the quantity, classification and
8 description.

9 MR. HARRIS: Well, let's say that
10 we're -- let's say that we're talking about the
11 mixture of fuel -- I'm sorry. We're dealing with
12 this provision. This would be the small
13 conditionally exempt small quantity generator, so
14 there would be a basic description of the waste
15 material, the hazardous waste material components.
16 So if it was parts cleaning solvent, that would be
17 described. If it was specifically mineral spirits,
18 that would be described.

19 MR. RAO: And just -- this
20 classification is described on your tracking form?

21 MR. HARRIS: Yes, correct.

22 MR. DRAGOVICH: It seems like you
23 addressed description but not classification.

24 What's -- what do you mean by classification then?

1 Are you talking about hazardous waste classification
2 then?

3 MR. HARRIS: Well, there might -- yes.
4 There might be --

5 MR. DRAGOVICH: I just want to
6 understand what the term means.

7 MR. HARRIS: Yes. There might be an
8 F002 classification or F005.

9 MR. DRAGOVICH: So should that have
10 been -- should that wording be in hazardous
11 classification then as opposed to just -- I'm just
12 trying to understand why that wording -- why you
13 selected that wording.

14 MR. HARRIS: Well, if you want to get
15 into the improvements on the wordsmithing, I'd be
16 happy to do it. So if you'd prefer hazardous waste
17 classification, I'd be happy to add --

18 MR. LENZ: Well, that applies -- I
19 don't want to interrupt, but that applies to
20 nonhazardous too, right? So that's -- that's
21 applying to all 4 of our categories, not just the
22 hazardous waste category.

23 MR. DRAGOVICH: So, I mean, what --
24 could you give me an example of what the

1 classification would be then?

2 MR. LENZ: Well, let's say for
3 wastewater it would be wastewater nonhazardous.

4 MR. DRAGOVICH: Okay.

5 MR. LENZ: Wastewater is a
6 description, nonhazardous is a classification.
7 Basically the same as manifesting.

8 MR. DRAGOVICH: Is that a DOT
9 classification, then, that you're talking about?

10 MR. LENZ: It's basically when we --

11 MR. DRAGOVICH: Just a generic --

12 MR. LENZ: -- put this together we
13 were going off of similar -- I believe on the
14 manifest it asks for description and classification.

15 MR. DRAGOVICH: Okay. So you're
16 parallel in --

17 MR. LENZ: Yeah, parallel in the
18 manifest.

19 MR. DRAGOVICH: I think that -- yeah.

20 MS. FLOWERS: Why are we getting rid
21 of the manifest then if you're willing to provide --

22 MR. HARRIS: Let me -- as I tried to
23 explain before, we would like to have one document.

24 MS. FLOWERS: Why isn't there one

1 document?

2 MR. HARRIS: Because you're requiring
3 a manifest.

4 MS. FLOWERS: But the manifest would
5 cover all the used oil regulations. Why would you
6 have two?

7 MR. HARRIS: Well, we're suggesting --

8 MS. FLOWERS: There only needs to be
9 one, and it only needs to be the manifest.

10 MR. HARRIS: We're suggesting that
11 there be one document. It'd be essentially this for
12 the four categories of materials we're talking about
13 that would be a combination of the DOT requirements,
14 the business requirements of the company, and the
15 requirements that you're asking for in terms of the
16 manifest information, all combined in one document,
17 a front and a back sheet.

18 MS. FLOWERS: So what part doesn't the
19 manifest do? It doesn't supply the DOT records, it
20 doesn't supply your business records. Which part
21 doesn't the manifest --

22 MR. HARRIS: It certainly doesn't
23 provide the business records nor all of the tracking
24 information.

1 MR. LENZ: Used oil tracking
2 information.

3 MR. JOHNSON: Which is replicated on
4 this form that you have proposed that you used to
5 satisfy all three of those requirements, right?

6 MR. LENZ: 739 requirements.

7 MR. HARRIS: That's correct.

8 MR. FOX: And let me interject, if I
9 may. Ms. Liu was kind enough to produce copies of
10 this document --

11 MR. HARRIS: Yes.

12 MR. FOX: -- Mr. Harris that you had
13 provided, and have you had a chance to look it over
14 and verify it is the document you, yourself,
15 prepared in a different format?

16 MR. HARRIS: Yes, Mr. Fox, and I
17 appreciate your indulgence and assistance
18 on --

19 MR. FOX: Would you wish to move that
20 into the record at this hearing as Exhibit
21 Number 19?

22 MR. HARRIS: Yes. I move that this be
23 entered into evidence as Exhibit 19.

24 MR. FOX: Very well. I know that Ms.

1 Liu had distributed copies to the people in our
2 audience and the Agency as well. Is there any
3 objection on any grounds to admitting this as
4 Exhibit Number 19?

5 MS. FLOWERS: No.

6 MR. FOX: It will be marked and
7 admitted as Exhibit Number 19, and thank you,
8 Mr. Harris, for letting me interrupt you.

9 MR. HARRIS: Thank you, Mr. Fox.

10 MS. FLOWERS: Okay. But there is no
11 requirement that will look anything like this,
12 right? I mean, it could just be a blank sheet of
13 paper, all I got to do is quantity, classification,
14 description?

15 MR. HARRIS: Ms. --

16 MS. FLOWERS: I mean, really. I mean,
17 there's people who have wrote it on napkins. So I
18 mean, what are we talking about here?

19 MR. HARRIS: Ms. Flowers, in your
20 comments, which I've paid very close attention to
21 that are recorded in the -- in the Board's opinion
22 and order of May 1st, I think it's on Page 31, you
23 said the information that would be on the --
24 wouldn't be complete, you know, if we didn't -- if

1 we adopted NORA's proposal, the information that the
2 Agency could eventually look at if it wanted to
3 wouldn't be complete. You wanted all of the
4 information on Part 830 -- Part 839 -- or Part 7 --
5 sorry.

6 MR. LENZ: 739.

7 MR. HARRIS: -- 739 and part 809, and
8 so we said okay, fine. Let's provide that. So
9 that's the purpose of having the -- on the second
10 half the additional special waste application if
11 applicable. You wanted the dates generated, you
12 wanted the additional description --

13 MS. FLOWERS: I understand all that,
14 but there's no requirement that this -- there's no
15 requirement that this form be the thing that's
16 filled out.

17 MR. HARRIS: Yes. We -- when Claire
18 Manning put her proposal together for the changed --
19 for the tracking document, we would -- we would say
20 all of the applicable information that you're asking
21 for be put in there. So that's already proposed
22 before the Board.

23 MR. RAY: And if it's not included in
24 the form, again, I think that our intent here was to

1 concentrate on what we thought were the substantive
2 issues and differences, and if in terms of form you
3 think that it would be more appropriate for us to
4 describe what's included here and include that as
5 part of the regulatory change, which I think Mr.
6 Harris --

7 MS. FLOWERS: If you don't, no one has
8 to provide it.

9 MS. MOORE: I'm sorry. I couldn't
10 hear you.

11 MS. FLOWERS: If you do not
12 specifically state in the regulations, then no one
13 is obliged to provide it.

14 MR. RAY: You know, what I was saying,
15 I believe I understood Mr. Harris to have said
16 earlier this morning that we would be prepared to
17 amend our filing and to include specific language in
18 the proposal that would identify the relevant
19 fields, and that we wanted do that in a way that
20 would be cooperative with the Agency. We're happy
21 to do that. Did I misstate any of that?

22 MR. HARRIS: No you haven't misstated,
23 and we already have a basic generic proposal
24 suggesting that all the information that you now

1 have, all of the relevant information that you now
2 require my a manifest, would be placed in the
3 tracking document. That's already a proposal that
4 NORA has made. If you want to get even more
5 specific, and --

6 MS. FLOWERS: Can you -- can you
7 specifically say where that's included? Because
8 I --

9 MR. JOHNSON: I can't hear you,
10 Stephanie. What?

11 MS. FLOWERS: Can he specifically show
12 where that is stated in the language that's already
13 been provided?

14 MR. HARRIS: I'd have to look it up,
15 but it definitely is in the record, because Claire
16 Manning made that proposal on NORA's behalf. It's a
17 short proposal, and it basically says that the
18 manifest information will be included in the
19 tracking document.

20 MR. RAY: But to get past the history
21 for a minute, we've said we will include that in
22 proposed regulations. I think that the substantive
23 issue we wanted to try and resolve, you know, and
24 the thing that we thought was the point of

1 difference in dispute that we needed to get beyond
2 is this issue about including in the exemption for
3 manifesting not only used oil as defined, but the
4 materials that are regulated as used oil. I think
5 if we get past that issue and can agree to that,
6 then I think that the next step, the other things
7 that you're looking for in the actual language, the
8 cleanup that needs to occur can all be done readily
9 and cooperatively with the Agency providing input.

10 The stumbling block here has been
11 just making sure that we agree with what we're
12 defining the exemption to apply to. And beyond
13 that, we'd welcome your help on the various issues
14 we've talking about with that, defining the form
15 about if you wish to find a generator certification
16 that would need to exist. These are things we've
17 tried to put, and I just apologize we're not experts
18 in the matter of writing regulations, but we thought
19 that we needed to get clear this issue about the
20 other materials defined and managed as used oil and
21 getting past that.

22 MR. RAO: Mr. Harris, you had proposed
23 some language changes to Section 739.146, which
24 deals with tracking, and if you -- can you please

1 take a look at that and tell us if that's your
2 attempt to enter this information in the document?

3 MR. HARRIS: If you're referring to
4 the proposal made by -- on NORA's behalf by Claire
5 Manning where it talking about --

6 MR. RAO: No I'm talking about --

7 MR. HARRIS: -- what uses are we going
8 to --

9 MR. RAO: It's on Page 16,
10 Section 739.146, Subsection 86.

11 MR. HARRIS: Yes, I see it. Well,
12 this was meant to go hand in hand with the previous
13 proposal, which is that because we are -- this is a
14 little bit frustrating, because we're responding to
15 IEPA's concerns that are reflected in the Board's
16 opinion, I think, on Page 31 that it wanted more
17 information, it wanted the manifest information. So
18 what we're saying is fine, you want to information,
19 we have no problem with that. Let's put that in the
20 tracking document, and now we're being subjected to
21 questions of well, it isn't sufficiently spelled
22 out.

23 Okay. We've been trying to sit
24 down with the Agency to work out a compromise that

1 we would present jointly. They haven't been
2 interested in that, so the dialogue is occurring
3 here and now instead of previously. If the dialogue
4 had occurred before, we could probably present
5 language that we both have worked out and it would
6 meet your concerns. NORA's only effort here is to
7 try to meet -- on this point try to meet IEPA's
8 concerns about the information it needs. And again,
9 this is not information that it wants to receive,
10 because they don't want a copy of this. They don't
11 want a copy of the manifest, but they want our
12 members to have it stored and readily available for
13 its inspection, which is fine. So let's -- let's
14 agree on the language that we'll make sure that the
15 information that would otherwise be in the manifest
16 is in the tracking document, and of course would be
17 stored for three years and available for IEPA
18 inspection.

19 MS. FLOWERS: So we're going to have a
20 manifest exemption, but we're going to require the
21 same exact words, the same exact form.

22 MR. HARRIS: That's exactly what you
23 asked for. By virtue of your concern about our
24 proposal, you said we're missing this information.

1 MS. FLOWERS: What does that get you
2 if you -- if you just take the manifest exemption,
3 if you give your manifest exemption out of 808 and
4 809 and then require the exact same form in 739,
5 what are you gaining?

6 MR. HARRIS: Well, it's the same
7 information, but it's not the same form.

8 MR. JOHNSON: What did you say --

9 MR. GIRARD: Can I ask a --

10 MR. JOHNSON: -- that for each of
11 these manifests you estimated cost at least \$18 a
12 piece to produce? So that's what they're saving.
13 They're saving doing multiple tracking and multiple
14 manifests.

15 MR. GIRARD: Can I ask a dumb
16 question, though? Instead of calling this a
17 tracking document, what if we just call it a
18 manifest and put the information on there? Why does
19 it have to be called a tracking document?

20 MS. MOORE: Because it's part of the
21 IDOT thing.

22 MR. LENZ: We got that language from
23 739. That's what it's called. You have to have a
24 tracking document under there. So that's where that

1 came from.

2 MR. GIRARD: But what I'm trying to
3 understand is if all the information that used to be
4 in the manifest is now in the tracking document, we
5 call it the tracking document/manifest, what's wrong
6 with that? You're still putting the information in
7 there.

8 MR. HARRIS: Well, speaking, then, I
9 guess, only for myself, because I haven't consulted
10 with my colleagues here, but if the -- if the
11 tracking document shipping paper, if you wanted to
12 label it as a manifest, that would be fine. Our
13 interest is pretty simple, which is on one piece of
14 paper, a front and back, there would be the three
15 components, the information that IEPA says that they
16 need from the manifest. Okay, you got it. The
17 business information, which is very important
18 because that allows the businesses to operate with
19 one piece of paper, and remember we're dealing with
20 drivers here. We're not dealing -- we're not
21 dealing with Harvard educated accountants. We're
22 dealing with drivers who have got to fill this out.
23 And the third component is the required department
24 of transportation materials. So on one document --

1 MR. LENZ: Well there's actually a
2 fourth requirement.

3 MR. HARRIS: A fourth requirement.

4 MR. LENZ: A 739 requirement.

5 MR. HARRIS: And 739 requirement. So
6 in one document, we'd have these four components of
7 information much more manageable, and then we don't
8 have to have another \$18 per piece of paper.

9 MR. FOX: In other words, the 739.146
10 tracking document, or whatever name might ultimately
11 be given to it, is the vehicle for collecting the
12 information that satisfies all of the four
13 requirements you've described without the cost and
14 other issues involved in duplicating the four
15 documents?

16 MR. HARRIS: Correct.

17 MS. FLOWERS: So actually this form
18 would be actually even more information than a
19 manifest?

20 MR. HARRIS: That is correct. That is
21 correct. And we're responding, again, to your
22 concerns.

23 MR. RAY: Traditionally -- and this
24 may be our -- I want to respond about the -- whether

1 the semantics of the form matter. It may be our
2 narrow vision, but I think traditionally, because of
3 the industry we operate in, we think of the manifest
4 as being highly prescribed multipart, inflexible
5 form. And as we want to have the ability for
6 companies to add their own business information, my
7 company might want to collect information that his
8 company doesn't require in terms of business
9 statistics. If we think about that, it doesn't
10 naturally flow that we would say that we have
11 designed a manifest and we get concurrence to use a
12 universal manifest that would meet the flexibility,
13 and of course the state has in the past had their
14 own forms or manifest that are preprinted and we
15 have rendered the cure.

16 That's changed. We potentially
17 could follow your suggestion, you know, where we
18 could define a manifest to be flexible. I think we
19 were approaching it from the other angle and saying
20 really the manifest usually means this rigid state
21 prescribed form, and we might want the flexibility
22 to do something different and call it something
23 different. There also is, while probably no
24 confusion on the part of our company, likely to be

1 some small confusion on the part of our customer
2 generators. They know what a manifest looks like,
3 they know what it means to have a manifest, and we
4 would be bringing in something that presumably would
5 look a little different, and then saying this is
6 also a manifest, and I think that they might be a
7 little bit confused or bothered by the distinction
8 there between what they've traditionally seen as
9 federal hazardous manifest forms, uniform hazardous
10 waste manifest forms, state special waste forms, and
11 now a new document that was customizable that we
12 also called a manifest.

13 MR. RAO: Along the same lines, you
14 know, in terms of what information needs to be on
15 this tracking document --

16 MR. RAY: Yes.

17 MR. RAO: -- do you believe that
18 minimum information that the IEPA wants or what
19 you'd like to see should be specified clearly in the
20 rules?

21 MR. HARRIS: Let me respond to that.
22 The answer is yes, and it much depends on whether
23 you are going along with our proposal for these four
24 categories. If you did, then I think the rules

1 should say these four categories need to be
2 described, that is the tracking document only works
3 for these four categories of special waste. And so
4 those would be on the form, so you'd have -- on this
5 portion, this would be a little bit lodger and would
6 specify those four categories, assuming you went
7 along with the four categories.

8 MR. RAO: At least those pertaining to
9 waste -- you know, related information pertaining to
10 the Part 739 and special waste?

11 MR. HARRIS: We're --

12 MR. RAO: Because I don't know whether
13 we specify what business information that you want
14 to have in the --

15 MR. HARRIS: That's correct. I'm
16 sorry if I -- I think I'm in complete agreement with
17 you, which is since we're asking for an exemption
18 from the manifest requirement for these four
19 categories of special waste, they would be reflected
20 here, and we would say -- we would list those, and
21 it only would apply to those categories.

22 MR. RAY: Can I interrupt? I think
23 what he's asking is really do we also agree, and I
24 do, that the regulations as promulgated would have

1 language which would say each tracking document will
2 have a field identifying the type of waste or
3 certification the customer signs that they haven't
4 mixed hazardous waste and such, and we'd really
5 write merit of description of what the mandatory
6 elements of an acceptable tracking form will
7 include.

8 MR. HARRIS: That's right. Now I'm in
9 complete agreement with what Mr. Ray has just said.
10 What our -- Claire Manning proposed before was a
11 little bit more generic, saying the information that
12 normally would be on the manifest. But if we get
13 more detail and direction from the Board and
14 consultation with IEPA on this, then we can be very
15 precise about exactly what you want on this tracking
16 document.

17 MR. JOHNSON: And each company -- I
18 mean, this is titled ABC recycling -- would have
19 their own form. The only thing in common would be
20 each of them would have each of the specific
21 requirements that we list in the rule that they need
22 to do that are currently on the manifest, but now
23 that they're exempt from the manifest we'll be on
24 this document?

1 MR. HARRIS: Yes, sir.

2 MR. JOHNSON: Okay.

3 MR. HARRIS: I know there's a little
4 moment of silence here. There has been some
5 discussion about the cost of the manifest, and I
6 just want to remind you that the gentleman from
7 Safety Clean is prepared to discuss that, because it
8 was a study not related to this rulemaking, but
9 related to the possibly of electronic manifest, in
10 which this information -- and so instead of it being
11 hearsay from me, I just would hope that the --
12 sometime during the hearing that you'll allow the
13 gentleman from Safety Clean to discuss that.

14 MR. FOX: Very good. We're not quite
15 to that point, but I appreciate your mentioning that
16 and making that available, Mr. Harris.

17 MR. DRAGOVICH: I guess our next
18 question has to do with the wastewater and the
19 nonhazardous wastewaters, and you indicated that as
20 long as it contains de minimis or recoverable
21 quantities of used oil, what -- can you be more
22 specific as to what that means? How would you
23 determine what's recoverable amounts of oil?

24 MR. HARRIS: That's an excellent

1 question, and it can be answered. It tends to be
2 technical in nature, but the -- let me just give a
3 little bit of background, which is that EPA is quite
4 interested in making sure that the materials of --
5 such as from a mixture of water and oil, used oil,
6 be handled probably, which they think it will be
7 under the used oil management process. And so when
8 there's a combination, it's basically handled so
9 that a company that has the facility to separate the
10 water and clean it up and discharge it according to
11 the Clean Water Act requirements, and then whatever
12 is recovered, whether it's a relatively small
13 quantity or a larger quantity, it goes into the --
14 into a fuel or re-refined product. So the
15 technology exists for that recovery, and I think
16 Mr. Ray and Mr. Lenz, who deal with this every day,
17 can address the practical aspects of it.

18 MR. RAY: I agree with what Mr. Harris
19 said. We certainly work with a variety of used oil
20 only water processing recycling facilities around
21 the country. We talk to them and understand what
22 their ability is. It's different for different
23 plants in terms of handling different oil water
24 mixtures, and we really establish with them what

1 their threshold is for being able to recover used
2 oil, but it's a very, I guess, good ability most of
3 these plants have to recover small amounts of oil
4 from water.

5 What I would also add to make sure
6 you understand, again I'm not speaking from a
7 regulatory perspective exactly, but from our
8 business point of view, you know, we're not trying
9 to pick up hazardous waste streams or give customers
10 an opportunity to take something that's otherwise
11 regulated under RCRA as hazardous waste and put a
12 little bit of oil in it and say it's used oil and we
13 can manage it under the less onerous used oil
14 regulations. What really is happening, I think
15 Mr. Harris alluded to, is more commonly we're
16 dealing with something that's like a mop water or a
17 low-quality water, which would otherwise be going
18 down the sewer and it's being upgraded in terms of
19 its management practice in order to handle it under
20 the used oil regime.

21 A customer's who's got illicit
22 hazardous waste, they've got characteristic -- it's
23 got characteristics, toxicity, or ignitability or
24 something else, isn't going to fit into our system

1 with a small amount of used oil. There already, as
2 we told you, in our business, and we could
3 standardize this certifying what they're giving us
4 is not a RCRA hazardous waste, and we're taking
5 samples and to analysis on the material to look for
6 chemical contaminants of concern. So we're really
7 typically talking about something, which is a
8 mixture of water and oil, and sending it to a
9 facility that's certified to us based on their
10 operating practice that they can recover the small
11 amounts of used oil for beneficial reuse.

12 MS. FLOWERS: How would a -- you said
13 that it'd be different between processing
14 facilities. I mean, how would a generator know,
15 because they're the ones that have certified that
16 this is recoverable oil. How would they know?

17 MR. RAY: They're not -- well, they're
18 certifying it's recoverable, they're certifying it's
19 used oil. But I guess that's a fine point, and
20 you're probably right. If they didn't know, they
21 wouldn't be able to certify. We're -- we really
22 have fundamentally two programs that work in
23 parallel for picking up customers' waste that's high
24 water content or low oil content, and if our people

1 are making the determination based on the analytical
2 work and observation that's got recoverable used
3 oil, they're managing it as used oil.

4 If it doesn't have recoverable
5 used oil, then we're typically looking at it and
6 saying we're going to have to do the full screening
7 appropriate to manage this as hazardous or
8 nonhazardous. And typically, it would be managing
9 it as nonhazardous material, but we're going to do
10 some additional testing to validate that, and then
11 pick it up as a nonhazardous waste on Illinois --
12 and excuse me, I operate in many states. But in
13 Illinois we'd be picking that material up as a
14 special waste if it didn't have recoverable used
15 oil.

16 MR. DRAGOVICH: It seems like the
17 generator is going to have to make the decision
18 early on whether to use a manifest or to apply this
19 exemption, and potentially before they mix the
20 materials together, because we're talking about
21 mixtures here. We're not talking about used oil as
22 it's generated. So they need to know before they
23 dump that in there whether they're going to have to
24 fill out a manifest, or whether it contains

1 recoverable amounts of used oil and could go into
2 the exemption. So I guess what we're asking is how
3 would you convey that to the generator so they could
4 make that decision?

5 MR. RAY: Well, it may sound -- I
6 don't mean to sound disrespectful, but I guess what
7 I want to point out is we would do it the same way
8 we do it today. The answer is that this is not a
9 new problem created by the proposed paperwork
10 changes. This is a real world issue. I talked
11 earlier about the example customer that has mixtures
12 of different oily water materials, and some of them
13 have more water and some of them have less water,
14 and we have that same problem with customers today.
15 We're not proposing to change anything under the
16 regulatory scheme.

17 What we typically would tell our
18 customer today and in the future is if you've got a
19 material that's got recoverable used oil in it, you
20 can put it in the used oil. For our company and for
21 our individual business, that would likely be
22 different than for Mr. Lenz's company. In my
23 company, I would probably tell them that, you know,
24 anything up to -- you know, in excess of 1 or

1 2 percent used oil is probably something that we can
2 recover in most markets based on the facilities that
3 we're using.

4 MR. DRAGOVICH: How would you envision
5 the Agency being able to go back and track back to
6 the generator and determine whether they're
7 complying with the manifest requirements or they're
8 applying the exemption correctly, the manifest
9 exemption correctly?

10 MR. RAY: I think that's a problem
11 that we have today. I don't think it changes
12 because of the proposal. I gave you the example of
13 customers that I've serviced in Illinois that have
14 mixtures of oil and water. I've told you what
15 they're doing. I've never heard of a customer who
16 said "I've got a compliance issue here where
17 Illinois EPA feels that, you know, we're mismanaging
18 these oily water streams because we haven't done
19 quantitative analysis on how much oil and how much
20 water is in each component."

21 MR. LENZ: I think in reality the
22 collectors make those decisions for the generator
23 usually, don't you? Based on the information --

24 MR. RAY: Well, we're not --

1 MR. LENZ: Because the generator
2 basically doesn't know. It calls us, says I'm
3 generating this, this, and this, can you take it,
4 and then we have to sort it out from there.

5 MR. DRAGOVICH: But aren't you looking
6 at it after it's mixed already?

7 MR. LENZ: No.

8 MR. RAY: Well, it works both ways.
9 That's what I was going to argue a little bit with
10 you, Mike, is that, you know, if a generator calls
11 us and says "I've a mixture and here's what I put
12 together. Can you take it," we will talk with him
13 about what he put in the mixture --

14 MR. LENZ: Right, break it down.

15 MR. RAY: We would say we would handle
16 that as used oil. If he said "I've got a really
17 clean water stream over here and there's no used oil
18 in it and I'm throwing that in there too," we'd say
19 you should stop that. That doesn't meet the
20 definition of used oil, and you need to manage that
21 separately and you need to do the analytical work.
22 You may be able to make a determination that it is
23 nonhazardous, you may then be allowed to mix it into
24 your used oil, but by knowing what it is, you're

1 putting it in with that knowledge, and you're
2 creating a mixture that's allowed, and that's
3 circumstantial and depends on the case.

4 There are other times, you're
5 right, when we do have the ability to advise
6 somebody who hasn't mixed materials together yet and
7 give them advice about whether things that are
8 appropriate to mix or segregate. But we probably --
9 because we're both the same on many small customers,
10 we probably most of the time find people that have
11 already done the comingling they're going to do, and
12 our role is after the fact educating them.

13 MR. LENZ: Both ways, yeah. And there
14 if it's afterwards that basically it's up to us to
15 say -- find out what went in that mixture, and then
16 either say yes, we can accept that as used oil, or
17 no we can't.

18 MR. RAY: But clearly it's a problem
19 that doesn't change --

20 MR. LENZ: No.

21 MR. RAY: -- because the proposal's on
22 the table.

23 MR. HARRIS: And it's also kind of a
24 nonissue, because if a generator was able to --

1 instead of putting it on the manifest in this
2 wastewater, which of course it would go to a
3 centralized wastewater treatment facility, and at
4 the end of the process they found out that there
5 wasn't -- I mean, there was a tiny -- there was just
6 a couple of molecules and that wasn't recoverable,
7 it's not like there's been a big insult to the
8 environment, because the water would've been --
9 still would've been treated property.

10 MR. LENZ: Yeah. A lot of collectors,
11 such as ourselves, we don't actually treat the
12 water. We'll take oil water mixtures and recover
13 what oil we can out of those mixtures, but that
14 material will then still go down the line as used
15 oil to a facility that can take the remaining amount
16 of oil out of the water and discharge the water.

17 MR. DRAGOVICH: In your proposal, in
18 your proposed language when you talk about the
19 nonhazardous wastewater contaminated by or mixed
20 with used oil, both generated by the same generator
21 and which contain more than a de minimis recoverable
22 quantity of used oil, are you talking about the
23 resulting mixture has recoverable used oil, or are
24 you saying the wastewater itself has recoverable

1 used oil before it's placed in there? It's just a
2 little bit confusing.

3 MR. LENZ: Which part is that again?

4 MR. HARRIS: I think we're --

5 MR. DRAGOVICH: It's under 739.110 F.

6 MR. HARRIS: I think we're saying --

7 I'm pretty sure we're saying that the mixture of the
8 water and the used oil contains a recoverable
9 quantity of used oil. In other words, that the
10 technology is such that you can extract that oil and
11 it goes off into management under the used oil
12 management standards. It's turned into a fuel or a
13 re-refined product.

14 MR. DRAGOVICH: So under the proposed
15 language, the water that you add into it afterwards
16 that you mix into the used oil wouldn't have to have
17 any recoverable oil in it?

18 MR. LENZ: Prior to mixture you mean?

19 MR. DRAGOVICH: Prior to mixture, yes.
20 I'm just trying to clarify what we're trying to --

21 MR. LENZ: Yeah. I think we're saying
22 that, don't you, in certain instances? I mean, he
23 brought up an instance where if they have a clear
24 water stream that can be handled in a better way,

1 we're going to tell them not to not put it in the
2 used oil if they talked to us about it. But if
3 there's a water stream -- let's say it would be a
4 water stream that would be classified as a special
5 waste, but not a hazardous waste and not a
6 non-special waste, in those instances, we're looking
7 at a way for the generator to dispose of that
8 nonhazardous special wastewater along with this used
9 oil.

10 MR. DRAGOVICH: And that nonhazardous
11 special wastewater has oil in it, or it doesn't have
12 oil in it before he mixes it?

13 MR. LENZ: It may not have oil in it.
14 It all depends on how you would define whether it
15 has oil in it or not. It may not have recoverable
16 quantities of oil in it, going back to his mop water
17 scenario.

18 MR. GIRARD: Can I ask a question?
19 Why can't you just end the language by saying used
20 oil containing nonhazardous wastewater, period?

21 MR. LENZ: Well, the used oil rigs
22 state that if it's -- if there's less than de
23 minimus amounts of used oil in the water, it's not
24 used oil.

1 MR. GIRARD: Well, you aren't going
2 out there with -- you know, with various kinds of
3 testing equipment and testing the water to see if
4 you have a certain level of oil. You're doing a
5 visual test. Is that correct?

6 MR. RAY: Generally, yes.

7 MR. GIRARD: If you have sheen on the
8 water, you consider it to be wastewater mixed with
9 oil. Is that correct?

10 MR. RAY: Yes, we can do that.

11 MR. GIRARD: Well, I mean, we could
12 probably put language in that there to that effect,
13 but I don't know if you want us saying you have to
14 do a visual test.

15 MR. LENZ: We just use the same
16 language that's in Part 739 right now.

17 MR. GIRARD: The hang up seems to be
18 how we define recoverable.

19 MR. LENZ: Yeah. Well, it's not very
20 clear in 739 either. It's been a cloudy issue for a
21 long time.

22 MR. HARRIS: But let's go back to the
23 basics here. You want this wastewater containing
24 oil to be channeled in to the used oil system.

1 That's exactly what you want. Why? Because when it
2 is, it's collected by our members, it is handled by
3 the wastewater treatment facility, and their job is
4 to comply with all the Clean Water Act requirements,
5 clean up the water phase, and hold on to the oil
6 phase. And when they hold on to the oil phase, then
7 that's channeled into making a fuel or a re-refined
8 product. So you want precisely what we're doing
9 now, and all we're asking for is some relief from
10 the paperwork requirement.

11 MS. FLOWERS: Okay. But I have a
12 question. I mean, I thought we were talking about
13 wastewater that had no oil in it. Why do we want
14 those two to mix?

15 MR. HARRIS: We're only talking about
16 water that has a recoverable amount of used oil.

17 MR. LENZ: After mixture.

18 MR. HARRIS: After mixture.

19 MS. FLOWERS: But if the water did not
20 have any oil before you mixed it, why --

21 MR. RAY: Who's mixing it is the key
22 thing. I mean, we're not mixing it, and we don't
23 want to mix those two things together. That's
24 probably the answer to your question.

1 MS. FLOWERS: Okay. So you would tell
2 them, the generator, don't mix those two --

3 MR. HARRIS: Well, the water might be
4 storm water runoff. It might be rain, okay? Pure
5 rain, and it collects at the facility, and it's
6 mixed with used oil, and now you have a water and
7 used oil mixture.

8 MR. RAO: So what you're saying is
9 this mixture is in Section 739.110 Subsection F that
10 deals with wastewater, it talks about wastewater
11 being contaminated with oil. So whatever mixing
12 that happens is incidental mixing, or is it
13 intentional mixing?

14 MR. RAY: It can being accidental or
15 intentional. Let me give you an example of
16 something that is a significant fraction of the
17 business we currently serve that relates to this.
18 It may be a helpful example. Many shops in
19 automotive and industry have a low-grade wastewater
20 pretreatment system, often a pit or vault.
21 Sometimes they're called on oil water separator, and
22 the purpose of that is that the shop drains in a
23 shop lead down to that pit before the water flows
24 out to the sewer district. That pit will often have

1 a series of chambers or leers or baffles, which
2 capture at the bottom sediment, and at the top used
3 oil, and relatively clean water, depending on the
4 residence, it flows to the middle down to the sewer
5 district.

6 The purpose is give the sewer
7 district clean water and accumulate the things they
8 don't want. Every six months or a year that device
9 needs to be pumped out. When it's pumped out, it
10 could have 1 percent oil, it could have 90 percent
11 oil, depending on whether they have a lot of spills
12 in the shop and on the floor, and how good their
13 housekeeping was. You could say they could, in
14 theory, be, you know, intentionally putting oil in
15 there, but it's not really intentional. It's a
16 system designed to capture oil.

17 And when we pump it out, we're
18 inevitably going to pump out the water and the
19 sediment with the oil. We have trucks to do that.
20 Our large competitor, Safety Clean, in the audience
21 has hundreds of trucks that do that kind of work and
22 manage it throughout many states under the used oil
23 regulations as used oil, taking the water mixtures
24 to facilities that recover the used oil treat, and

1 discharge the water and even the sediment. So
2 that's a segment of business that has been operating
3 effectively, and we don't want to see that that
4 can't be done under the used oil regs and requires
5 new permits for our sales or our customers.

6 MS. FLOWERS: But that would seem to
7 suggest that the oil has to be in the wastewater
8 before it's mixed, because otherwise what prevents
9 somebody from just having a totally different
10 process waste from maybe two different parts of the
11 facility and just dumping it in with the used oil to
12 be able to have the used oil carry this away?

13 MR. LENZ: Well, I think in certain
14 instances, the federal regs were looking at that
15 very idea, and basically wanting the water to be put
16 in the used oil in that situation if it's a
17 regulated water. If it's not a regulated water, no.
18 But if it's a regulated water -- the reason being is
19 it's much, much less likely if it can go out with
20 used oil to be handled that way than it is if it
21 can't go out with used oil going down the drain to
22 the POTW.

23 MR. RAY: I think we have to ask what
24 the characteristics are of the water that we're

1 talking about here.

2 MR. LENZ: I mean --

3 MR. RAY: And that will steer us
4 towards understanding whether it's even allowed
5 under the regulations. If it's hazardous waste --

6 MS. FLOWERS: Well, I mean let's just
7 say that nonhazardous is special waste. I mean,
8 what you're saying is that -- well, I mean, to me
9 what you're saying is well, we might as well just
10 have any special waste just to make sure that it
11 actually goes somewhere.

12 MR. LENZ: Well, a lot of --

13 MS. FLOWERS: I mean, that -- I mean,
14 you know --

15 MR. LENZ: A lot of nonhazardous
16 special wastewater goes to POTWs, and POTWs don't
17 necessarily like that. They would rather not have
18 that material.

19 MR. DRAGOVICH: In the example from
20 Safety Clean, he was talking about pumping out
21 basically an oil water separator, and you're not
22 collecting the oil separate from the wastewater,
23 you're collecting it all together?

24 MR. RAY: Well, I haven't worked with

1 Safety Clean for a number of years. So in that
2 respect, I'll just speak for our company doing the
3 same type of business.

4 MR. DRAGOVICH: Okay.

5 MR. RAY: And when we do that and we
6 have those types of fleet vehicles, we would pump
7 everything out of that separator device on to one
8 truck in one compartment. There's not a way that
9 we're aware of that is practical and efficient to
10 separate that into different components and phases
11 as part of the surface. Things just get mixed up
12 while you're pumping it out of an oil water device.

13 MR. LENZ: Yeah. A relatively small
14 pump pumps them out really fast, and you're -- it's
15 all coming out together.

16 MR. DRAGOVICH: Do these have a
17 discharge to the sewer?

18 MR. RAY: The ones that I was
19 describing typically do. There are rare examples
20 where they don't, but they almost always discharge
21 to a sewer district.

22 MR. DRAGOVICH: And do you feel that
23 this isn't within the definition -- you know, within
24 the definition of used oil, I think it -- I think

1 it's been clarified that oil collected from an oil
2 water separator is used oil. Do you think that the
3 material you're collecting goes beyond the material
4 that's defined as used oil?

5 MR. RAY: I'm not familiar with that
6 definition, that oil water separator material as a
7 defined regulatory concept is. By definition, we've
8 always approached -- we've always taken that to
9 understand that that is falling at the federal level
10 under the definition of wastewater contaminated with
11 more than de minimus quantities of used oil, and
12 based on that it's subject to regulation as used
13 oil, not based on specific language that talks about
14 a separator or a pretreatment device. Am I clear on
15 that point?

16 MR. DRAGOVICH: Yeah, you are. I
17 guess the question is whether this goes beyond what
18 they envisioned in the definition of used oil of
19 what's collected in an oil water separator or not.

20 MR. RAO: May I follow up on that?
21 Mr. Lenz, you mentioned that the federal intent was
22 maybe to go beyond what Mr. Ray mentioned in terms
23 of mixing used oil with wastewater so that the
24 wastewater can go to some treatment facility. Do

1 you have any, you know, information about any
2 federal guidance that states that if you do it will
3 be helpful for the Board to see that any federal
4 documentation or anything that --

5 MR. LENZ: I'm not sure. We can look
6 into that. I don't remember if that's -- I believe
7 I remember something like that mentioned in the
8 preambles to the used oil regs at one point or
9 another, but it would take some work to find it,
10 which we can try to do.

11 MR. RAY: We're not seeking to have
12 our generators get new permissions that they don't
13 already have to mix materials together, and I don't
14 think we've tried to do anything. Maybe -- again,
15 we apologize of our draft to be imperfect, but we're
16 not trying to get exemptions for generators to be
17 mixing. We're saying that the materials that we
18 pick up, if they are the types of things that exist
19 in state law as used oil, which in our judgment
20 includes mixtures of oil and water with recoverable
21 used oil, we should be able to simplify the
22 paperwork associated with that.

23 MR. JOHNSON: And that's exactly what
24 you're doing now. The rule as proposed will have no

1 effect whatsoever on that, whether it's oil and
2 water or oil and vinegar, it doesn't matter. It's
3 going to happen exactly like it happens now. The
4 only -- the only change is going to be assuming that
5 there's some form of the rule as proposed is there
6 will be a change in the recordkeeping requirements
7 for your customers, correct?

8 MR. RAY: That's our expectation,
9 that's our requirement.

10 MR. JOHNSON: No change in treatment,
11 no change in processing, no change in your
12 collection technique, nothing. Just the fact that
13 you now -- these four specific categories you want
14 exempted from the manifesting requirements, but
15 you're still intending to provide the exact same
16 information and more, if we want, just on a
17 different document -- or on the same document,
18 rather than a different document?

19 MR. RAY: You understand perfectly our
20 request.

21 MS. FLOWERS: Well, I mean, how about
22 do you want these to be considered used oil? I
23 mean, our position has been that some of these
24 categories are still special waste and they would

1 need to go to a special waste facility, and they may
2 need -- they may be subject to the special waste
3 regulation still.

4 MR. FOX: Ms. Flowers --

5 MS. FLOWERS: I mean, are we just
6 talking about used oil, or are we still talking
7 about what is used oil?

8 MR. FOX: And I don't mean to suggest
9 that we won't entertain a response to that question,
10 but we have been at it for two hours, and the time
11 for lunch has come and arguably gone. Why don't we
12 take a break now and resume here at 1:30, and we can
13 obviously make note of where we have left off and
14 start there, Ms. Flowers, for the Agency.

15 (Whereupon, a break was taken,
16 after which the following
17 proceedings were had.)

18 MR FOX: Thank you for returning
19 promptly from the lunch break. Ms. Flowers, you had
20 indicated that you had a question to resume your
21 questioning with -- for Mr. Harris specifically, I
22 believe, but please go ahead.

23 MS. FLOWERS: I think my question was
24 we had talked about this just being a manifest

1 exemption, but, I mean, just from reading the
2 testimony that was given, it does seem like you
3 would like for these mixtures to be able to be
4 processed at a used oil -- used oil facility that
5 does not have 807 permitting. Is that correct.

6 MR. HARRIS: It was --

7 MS. FLOWERS: Which is different than
8 how it would be now. Those -- now some of those
9 would be considered special waste, and we need to go
10 to a special waste facility permitted under 807.

11 MR. HARRIS: I think Mr. Lenz has a
12 particular concern about that. From my point of
13 view, we are simply trying to create an exemption
14 from the manifesting requirements.

15 MS. FLOWERS: Okay.

16 MR. HARRIS: I think there's a special
17 little problem that Mike Lenz is aware of that he
18 can address.

19 MS. FLOWERS: Well, our -- but are you
20 requesting that or not?

21 MR. HARRIS: If the language is not
22 clear, I want to make it clear, and we'll work with
23 the Agency and with the Board and anyone else that
24 our request is for the exemption from the manifest

1 requirement. So it's really paperwork relief that
2 we're asking for through the consolidation of the
3 information that you need on to the -- I think the
4 official term is shipping papers.

5 MS. FLOWERS: Okay.

6 MR. HARRIS: You can call it tracking
7 documents, shipping papers, or bill of lading, but I
8 think the official term would be shipping papers to
9 conform to the DOT requirements.

10 MS. FLOWERS: But these mixtures would
11 still be going to a special waste facility, and that
12 wouldn't cause a problem?

13 MR. HARRIS: Let me see if Mike has a
14 concern about that, but from my point of view,
15 nothing would change except the paperwork.

16 MS. FLOWERS: Okay. Is there any
17 concern about that?

18 MR. LENZ: Yeah. Yes, there is,
19 because we're not -- none of the recyclers that I'm
20 aware of today are operating under 807 permitting.
21 Is that -- I'm -- I believe I'm correct on that.
22 And to pick up, I think, you know, I tried to make
23 that issue -- what I tried to do in my comments is
24 first we tried to clarify what your concerns were,

1 and then we tried to address the operational issues
2 that manifesting and Part 807 permitting would
3 involve for us if we were under that scenario.

4 MS. FLOWERS: Right.

5 MR. LENZ: So I think I made myself
6 pretty clear in those -- in that testimony about the
7 issues and the problems that it would cause. I
8 don't know whether we want to go over that again.

9 MS. FLOWERS: But you are -- I mean, I
10 understand that you already said that it would be a
11 hardship, but are you requesting that these
12 things -- that these mixtures then be also exempt
13 from special waste designation and be able to be --

14 MR. LENZ: I guess that was my
15 presumption.

16 MS. FLOWERS: Okay.

17 MR. LENZ: Because --

18 MS. FLOWERS: Presumption that if
19 they're out of the manifesting, then they're also
20 allowed to be going to a used oil facility for
21 processing?

22 MR. LENZ: Mm-hmm.

23 MS. FLOWERS: Okay. So then -- okay.

24 So then -- because I still have this ink issue. I

1 still don't see how the ink would be able to go,
2 then, to a special -- to a used oil processing
3 facility, unless you're saying that this BTU value
4 and this de minimis determination are before they're
5 mixed. Because obviously at any time you mix it
6 with the used oil, it's going to have a BTU value.

7 MR. LENZ: No. The BTU value, I
8 think, we were all in consensus that that was before
9 mixture requirement.

10 MS. FLOWERS: Okay. So then that
11 falls on the generator to make that test of which
12 there's no standard test you are requiring, right?
13 I mean --

14 MR. LENZ: It's very similar to, like,
15 the labs that do ignitability testing, like the
16 generator would be possibly aware of ignitability
17 issues.

18 MS. FLOWERS: Okay.

19 MR. LENZ: Any lab that does
20 ignitability testing can do BTU testing. It's a
21 relatively simple test, such as ignitability.

22 MS. FLOWERS: Should we put it in the
23 regs then and say --

24 MR. LENZ: Which procedure to use?

1 MS. FLOWERS: Yeah. I mean, is there
2 a standard procedure that we could follow that we
3 could actually name?

4 MR. LENZ: There's a -- I'm sure
5 there's standard procedures that are set up by the
6 laboratory associations, or ASTM, that they follow.

7 MR. HARRIS: But going back to my
8 earlier testimony on this, it's typically the --
9 first of all, the generator has to properly
10 characterize it, and we will agree on certification,
11 we will put in certification as a requirement
12 instead of a provide, so we'll have a certification.
13 But I don't think that the Board or IEPA is trying
14 to undermine the basic principal of the generator
15 knowledge is acceptable. And that's not -- that's
16 beyond the scope of our rulemaking here, and I don't
17 think you want to insert a -- insert another
18 requirement that everything else generator knowledge
19 is okay, but on BTU's it's not and you have to have
20 a specific test. When you -- when a generator looks
21 at his solid waste and says this is not hazardous or
22 it is hazardous, we're relying on that
23 certification. That's well-established to occur
24 rulemaking. What you're suggesting, Ms. Flowers, is

1 that for BTUs we have to have a special test.

2 MS. FLOWERS: But, I mean, there's a
3 whole body of RCRA regulations that help them make
4 that determination, am I not correct, between
5 hazardous and nonhazardous where there isn't between
6 the special waste designation and whether it's now
7 going to be able to be in a used oil facility?

8 MR. HARRIS: I -- well, I disagree. I
9 think if you look at the basic RCRA rules, it will
10 say that the generator has the obligation to
11 properly and accurately characterize that waste.
12 And so if it's a hazardous waste, either because
13 it's listed or because it meets one of the four
14 characteristics, it has to be properly
15 characterized. That can be done through generator
16 knowledge.

17 MS. FLOWERS: Yeah. I mean, I
18 would -- the characteristics are based on specific
19 tests.

20 MR. HARRIS: If you happen to know
21 that your waste does not have any possibility of
22 being -- of being toxic or ignitable or reactive,
23 then you don't need to go through a special test.
24 If, on the other hand, through your MSDS sheet you

1 happen to know that it is toxic, then you list it as
2 such. You do not have to go through a special test,
3 and there's nothing in the RCRA regulations that
4 requires you to do that.

5 MR. LENZ: The MSDS sheets normally
6 have disposal information on them, and what you need
7 to do to determine -- basically they'll tell you
8 whether it is or isn't a hazardous waste upon
9 disposal, or that it could be and you need to do
10 testing. That's normally on the MSDS sheet.

11 MS. FLOWERS: Okay. So what -- I
12 mean, all I'm getting -- I mean, as far as the
13 language goes is that you do not want to have any
14 sort of standard test or requirements for the
15 generator to have any testing done?

16 MR. HARRIS: I'm suggesting that
17 the --

18 MS. FLOWERS: They're just going to
19 certify --

20 MR. HARRIS: -- that the rules do not
21 need to change here.

22 MS. FLOWERS: Okay.

23 MR. HARRIS: The generator knowledge,
24 which is okay for the RCRA system, both for EPA and

1 for Illinois, can still apply with respect to BTU
2 contact.

3 MS. FLOWERS: Okay. And
4 percentage-wise, too, there's no test, it's just --
5 you just want the generator to be able to just
6 certify?

7 MR. HARRIS: Yes. I think that that's
8 perfectly acceptable. And if it's not acceptable,
9 why is it not acceptable for water/oil ratio, but it
10 is for toxicity or corrosivity or ignitability?

11 MR. DRAGOVICH: I think -- if I can
12 add to that question, under the RCRA rules, if
13 you're trying to determine whether you have a
14 hazardous waste or not and you don't have enough
15 knowledge, or, for instance, maybe you think it's
16 borderline, then you're obligated to do a test.
17 Well, in this instance, what happens if you think
18 it's borderline or you couldn't have enough
19 knowledge? What -- I think, I guess, the question
20 we're asking is should there be some standardized
21 test that they should have to do to prove that they
22 met the requirements?

23 MR. HARRIS: Well, I think what the --
24 that's a fair question, and I think what the RCRA

1 rules in general say is you can do it through
2 testing or through generator knowledge. So
3 obviously if you cannot do it through generator
4 knowledge, then you need to do it through testing.
5 The same rule would apply here. If you didn't know
6 -- I mean, if you knew that your content was more
7 than 5,000 BTUs per pound, if you knew it because of
8 the MSDS sheet or whatever your source of
9 information was, if you knew it, then that's fine.
10 It doesn't require testing. If you don't know it
11 and you want to say that it's greater than 5,000
12 parts -- 5,000 BTUs per pound, of course you have to
13 do some testing. Now do we want to say -- and look
14 up at the ASTM method for BTU testing? Sure, we can
15 do that. But it's not -- what I'm suggesting is
16 let's stick with the basic RCRA rules here.

17 MR. DRAGOVICH: Okay. I guess that
18 leads us to -- well, first of all, I don't think any
19 of you here are generators, right? I mean,
20 basically you're the -- you're the transporters,
21 processors, marketers are represented?

22 MR. LENZ: Well, we generate waste.
23 But we're not --

24 MR. DRAGOVICH: There's nobody here

1 that represents the types of customers that you're
2 serving?

3 MR. LENZ: I don't know.

4 MR. RAY: I know a representative from
5 the Illinois Manufacturing Association was
6 attempting to be here. I don't know that they made
7 it to the meeting though.

8 MR. DRAGOVICH: I guess a concern is
9 that this possibly could put extra obligations on
10 the generator. If they want to use this exemption,
11 then they are going to have to figure out whether
12 they have 5,000 BTUs in their waste, where it wasn't
13 an issue before, and they're going to have to figure
14 out whether they got 49 percent water or 51 percent
15 water. I mean, because it's -- it proposes a bright
16 light here. So what -- how do you feel if the
17 generator decides well, rather than take all that
18 on, I'm just going to use a manifest because it's
19 simpler to me to fill out a manifest than to deal
20 with this exemption. Are your companies going to be
21 willing to just accept it under a manifest, or will
22 they --

23 MR. RAY: I can speak to that on
24 behalf of my company, which is certainly we would.

1 We're currently managing all these streams under
2 special waste manifests. We're seeking to
3 substantially reduce the amount of waste streams
4 that have to have that expensive handling. But I've
5 talked already with our people about how there will
6 be exceptional materials that we will continue to
7 handle as special waste and special waste manifest.
8 So yes, a customer said -- and I think it's unlikely
9 that a customer would choose to do that for the
10 reasons you articulated. I don't see very many
11 customers saying we can't make a determination on
12 BTU values, so we're just going to be entering it as
13 special waste.

14 But there may be other reasons
15 where they do feel it's appropriate, and if their
16 company would manage it as special waste and a
17 special waste manifest. We would -- we would
18 probably be doing that as a -- as a dedicated
19 transportation activity as well. To understand our
20 business, much of the work we do using water is done
21 by -- with Mr. Harrison's bee analogy of going out
22 and visiting multiple customers in the course of the
23 day. But for that customer who wanted us to manage
24 special waste it would be on a dedicated basis. It

1 would be unlikely we would have different customers
2 that all wanted to handle it that way where we'd
3 want to come in and deliver material on a single
4 truck.

5 MR. HARRIS: If I can add to that,
6 the -- if there's an opportunity for paperwork
7 reduction, what is likely to happen in the real
8 world is that you will have the transporter and the
9 generator get together, and they'll talk about the
10 waste material in question, and if the generator's
11 producing a waste stream that is consistent in
12 nature, doesn't vary over time, will there be a BTU
13 test? Sure, because either the transporter will
14 arrange to have that happen or the generator will,
15 and then they'll have a BTU test on that constant
16 waste stream in order to verify that yes, it's above
17 5,000. If a waste -- test is necessary. If they
18 know in advance, however, that the material is never
19 less than 15,000 BTUs per pound, you don't need to
20 do a test because the MSDS or other information will
21 demonstrate that.

22 MR. DRAGOVICH: Do you currently pick
23 up loads and comingle manifest and un-manifested
24 loads together on the same shipment? Is that common

1 practice?

2 MR. RAY: When you speak to me and you
3 talk about un-manifested loads --

4 MR. DRAGOVICH: Manifest exempt loads.

5 MR. RAY: Well, for the types of
6 materials that we're talking about, used oil and
7 materials regulated as used oil, to the best of my
8 knowledge the car companies are managing all of
9 those on special waste manifests at this time.

10 MR. DRAGOVICH: Okay. I guess my
11 question is: Would you make multiple stops and put
12 the waste in the same tank from different manifested
13 locations and potentially from un-manifested --
14 manifest exempt locations?

15 MR. RAY: Under proposed future
16 regulations?

17 MR. DRAGOVICH: No under today's
18 current practices.

19 MR. RAY: Well, as I just said,
20 everything we're picking up is essentially
21 manifested. So I don't know what the --

22 MR. DRAGOVICH: Small quantity
23 generator rays?

24 MR. RAY: Okay. I think of that as

1 being manifested. I'm trying to think of where -- I
2 need to refer to -- so we're manifesting everything
3 basically on special waste manifests.

4 MR. DRAGOVICH: Okay.

5 MR. RAO: Can I ask a followup
6 question? Under the proposed rule, if used oil is
7 defined and material regulated and used oil is
8 exempt from manifested requirements, will that, you
9 know, used oil and, material regulated as used oil
10 no longer be considered a special waste?

11 MR. HARRIS: That is not how I
12 conceive the -- our proposal. Now remember we're
13 talking about two proposals, our original one, which
14 dealt with all materials regulated as used oil, and
15 then our proposal that we made on September 22nd,
16 which basically singled out these four categories.
17 But all we were trying to do -- all I was trying to
18 do in this proposal was to say that they no longer
19 had to use the manifest for the shipping papers, but
20 that same information would be put on a single
21 document, which you can call either a shipping
22 document or a tracking document, shipping papers,
23 tracking document, or bill of lading.

24 MR. RAO: But if that is special waste

1 being mixed, that designation will still remain?

2 MR. HARRIS: That's why on the back of
3 our -- see the additional special waste information?

4 MR. LENZ: Well, it's used oil -- used
5 oil itself without any mixture is a special waste,
6 isn't it? So yeah, the mixtures would still be
7 special waste also.

8 MR. RAO: Okay.

9 MR. LENZ: Because you'd be mixing
10 used oil in with nothing else, even if it was
11 unregulated water.

12 MR. RAO: So if there's any other
13 requirements that apply to special waste handling
14 disposal of -- everything still applies?

15 MR. HARRIS: That's my understanding,
16 yes.

17 MR. RAO: Okay.

18 MR. DRAGOVICH: Do you know of any
19 regulatory prohibition or requirement that wouldn't
20 allow you to mix two manifested shipments together,
21 both of them together?

22 MR. LENZ: I think if the -- if the
23 materials are the same thing, there's no
24 prohibition. So if you get used oil over here, used

1 oil over here is defined by -- I'd say the way you
2 define it on a manifest today, I'm almost sure that
3 there's no prohibition against mixing those two. I
4 don't know about the others.

5 MR. RAY: I think I stated in our
6 testimony we are operating on that basis as a
7 company today. We are out actively picking up used
8 oil as special waste on a special waste manifest
9 from company A, and then from company B, and mixing
10 that used oil together in a single compartment of a
11 truck and shipping it commingled.

12 MR. DRAGOVICH: I know the hazardous
13 waste regulations, I think, they clarify that in
14 some of their letters saying that it's okay to mix
15 different shipments of hazardous waste as long as
16 the intention is not to change the characteristics
17 of it. So I just -- it seemed like earlier
18 testimony was saying that you thought you would have
19 to separate these materials if they were used oil
20 and used oil mixtures, and manage them separately.

21 MR. LENZ: Well, if -- I can maybe
22 address that. You asked him a question whether they
23 would take manifested used oil. They -- he said he
24 will. I'm not sure our company would. I don't

1 think our business model is set up to where we could
2 do that. We've -- we transport -- we use transfer
3 facilities that are leased that would -- the
4 facilities would, I'm sure if confronted with having
5 to be subject to 807 part permitting, probably just
6 declined to lease us tank storage anymore. So
7 that's one of the issues that are in my comments
8 that we'd face under that -- that scenario, if that
9 helps at all.

10 MR. DRAGOVICH: Okay. But I guess
11 this goes back to your analogy with the bees.

12 MR. HARRIS: Yes.

13 MR. DRAGOVICH: And were you
14 envisioning -- when you made that analogy, were you
15 envisioning that because some waste would be
16 manifested and some wouldn't be manifested that you
17 wouldn't be able to pick it up on the same -- or
18 commingle it on the same load? Is that --

19 MR. HARRIS: Yes, that was my
20 assumption, is that the manifest needs to track the
21 shipment.

22 MR. DRAGOVICH: But I believe the
23 regulations now would allow manifest and manifest
24 exempt waste to be transported on the same load, you

1 would just have to have records that showed where
2 the un-manifested portion came from.

3 MR. HARRIS: Okay. That may well be
4 the case, but it just doesn't go to this issue
5 whatsoever, because maybe it's a problem that
6 doesn't exist. I'll be glad to conceive that. But
7 what we're trying to do is get rid of the manifest
8 for these four categories of special waste in any
9 case.

10 MR. DRAGOVICH: Okay.

11 MS. FLOWERS: Okay. I have just a few
12 more questions, and this might have been -- you said
13 sometimes you have an oversight on what language you
14 used, but as far as the tracking goes, we had some
15 tracking for the generator, tracking for the
16 transporter, but we didn't have anything where a
17 receiving facility was keeping records. And I
18 didn't -- is that intentional, or was that an
19 oversight again? I mean, I know you said you didn't
20 mind the manifest, as long as it was a document that
21 you could also add to. So, I mean, you don't have
22 any reason to not have the receiving facility
23 keeping record, right?

24 MR. HARRIS: Well, in your -- in your

1 previous concerns about our rule, you basically said
2 under Section 809 you wouldn't have -- under our
3 original proposals you wouldn't have sufficient
4 information. So on this document, one of which
5 would go to the receiving facilities, you have the
6 receiving facility, and you'd have the name and
7 signature of the person accepting delivery at the
8 receiving facility. And so those documents would be
9 kept by the generator, the transporter, and the
10 receiving facility.

11 MS. FLOWERS: Okay. So it's just -- I
12 mean, I didn't see any language in it that said that
13 the receiving facility does need to keep a copy and
14 all that like it did for the transporter and
15 generator. And I'm just --

16 MR. HARRIS: I'm happy to --

17 MS. FLOWERS: You'd have to change
18 that --

19 MR. HARRIS: If you'd been willing to
20 work with us before, we could've, you know, crossed
21 all these Ts and dotted all the Is, and if you're
22 willing to work with us now, we can make sure that
23 all of those concerns that you have will be taken
24 care of. Our interest is very simple. Let's

1 consolidate the paperwork so that it's simple and a
2 little less expensive, and if you want to be sure
3 that the receiving facility gets a copy, we will
4 make sure that that occurs.

5 MS. FLOWERS: Okay. I mean, I'm just
6 asking. I need to ask, because I don't know if it
7 was intentional or unintentional that you included
8 that or didn't include it.

9 MR. HARRIS: We're not trying to
10 create any loopholes.

11 MS. FLOWERS: Okay. And I mean, I
12 don't know what you mean by if you would've worked
13 with us, and we did work with you for a long period
14 of time. I think this round of language is
15 completely different than anything I've ever seen.
16 So, I mean, I think it just keeps evolving what
17 we're asking for here, and I think we're just -- if
18 we were trying to communicate, I think it's been a
19 very big miscommunication, because I've never --
20 I've never been presented with this language.

21 MR. HARRIS: Well, I don't -- I don't
22 want to take up the Board's time on this, but when
23 Claire Manning was representing us, there were many,
24 many, many, many attempts to sit down and talk with

1 the Agency --

2 MS. FLOWERS: And we did.

3 MR. HARRIS: -- over every possible
4 compromise that might find acceptability with the
5 Agency, and our proposal is not -- it's always been
6 the same goal here.

7 MS. FLOWERS: Right, but this is
8 different.

9 MR. LENZ: Well, the Board actually --
10 we're actually answering -- the Board, in their
11 ruling, asked for Part 739 language.

12 MS. FLOWERS: Right. And the other
13 thing is -- and this would go back to -- this is not
14 the language that was proposed, but it is going back
15 to those four categories. I think it's on Page 5 of
16 Mr. Harris's testimony. And then --

17 MR. LENZ: Page 5?

18 MS. FLOWERS: If you go down, there's
19 four there, and if you go down to the third one, I
20 just noticed that it says "mixtures of used oils and
21 fuels, normal components of fuels or other fuel
22 products," and that's an expansion on the language
23 that was in 739 and that RCRA uses. In other words,
24 this normal components of fuels was inserted into

1 that language, and, I mean, that does expand what --
2 you know, the meaning, and I'm wondering if that's
3 intentional, or if that's just a misstatement of the
4 language and whether you intend to include that
5 language.

6 MR. HARRIS: Well, I drafted this, and
7 the concept I wanted to advance here was that if
8 it's a fuel or a normal component of a fuel, such
9 as, say, xylene. I mean, if xylene got into the
10 used oil, that we weren't going to get into a
11 "gotcha" situation.

12 MS. FLOWERS: Okay.

13 MR. HARRIS: There's no attempt here
14 to create a loophole. There's no attempt to create
15 a loophole. We're simply saying if this is normally
16 on a manifest, this information is then provided in
17 the shipping papers. But if xylene -- for example,
18 we don't want to have any argument that xylene,
19 which is a normal component of a fuel, if it appears
20 in used oil, that that's a "gotcha" situation where
21 "Well, it isn't -- it wasn't --

22 MS. FLOWERS: A fuel product.

23 MR. HARRIS: You know, it wasn't a
24 fuel product. Well, but it's normally used as a

1 fuel. You know, we didn't want to get into that
2 back and forth, which is a very, you know, absurd
3 argument, frankly. So that's why if the language is
4 somewhat expanded, it's so there's total clarity on
5 it.

6 MR. LENZ: If I can add something
7 there. For some stupid reason, I remember that in
8 the preamble to used oil regs what they were dealing
9 with is when used oil companies would come and suck
10 out waste, but surplus product at pipeline
11 facilities, oftentimes they'll ship things that are
12 components of fuels to a facility that's making
13 fuel, and so they may have some xylene or something
14 like that in a pipeline that the waste oil company
15 would come in there and pipe that out, and in the
16 preamble to the used oil regs -- I don't know if it
17 was '85 or '92 -- they used pretty much that exact
18 wording. They parted down in the actual regulation,
19 but in the preamble they made it clear that that's
20 what they were after was fuel and other fuel
21 products and components of fuel if that type of
22 instance.

23 MR. HARRIS: I can give you a good
24 example of that. Natural gas condensate, which is

1 the material that occurs at various points in a gas
2 pipeline, it's sort of like a slightly lower octane
3 gasoline. It burns perfectly well. You could
4 actually put it in your pickup truck and use it as
5 gasoline, but it's called natural gas condensate.
6 So for some reason, the pipeline company happened to
7 mix that for whatever reason into used oil, then
8 that would be okay under this provision. Would it
9 be described and characterized, yes. So the
10 information that the Agency wants will be there, but
11 it could be handled on the shipping document as
12 opposed to the manifest.

13 MR. DRAGOVICH: I think our concern is
14 the original term was fuel products under 739, and
15 we're concerned whether this is an expansion that
16 would make -- seem to make these rules less
17 stringent in the current RCRA rules or used oil
18 rules. Would you be planning on relying on the RCRA
19 rules to determine where it fell under the
20 definition of hazardous waste or nonhazardous waste?

21 MR. HARRIS: Mr. Dragovich, what I'm
22 -- what we're trying to do is trying to make clear
23 is that we're not trying to change the substantive
24 rules of RCRA or the used oil regulations. What

1 we're trying to do is allow for this same
2 information to be placed on a shipping paper or bill
3 of lading, as opposed to on the manifest.

4 MR. DRAGOVICH: Okay. Would you have
5 any concerns about going back to the original
6 language of fuel products, then?

7 MR. HARRIS: Well, I happen -- if the
8 Board desires we go there, then that's fine. I
9 think that the language that we have -- the current
10 language, as Mr. Lenz pointed out, are mixtures of
11 used oil and fuels or other fuel products.

12 MR. DRAGOVICH: Right.

13 MR. HARRIS: And if that were the
14 language that the Board prefers, so be it. But I
15 added the normal components of fuels mostly because
16 of my experience with natural gas condensate and
17 xylene being a better clarification. Perhaps you
18 could say there's no difference whatsoever. If
19 there's no difference, then let's not worry about
20 it. If there is a difference, I think it's worthy
21 of a discussion, because I think natural gas
22 condensate, which would be a normal component of a
23 fuel, ought to be included.

24 MR. DRAGOVICH: Well, I think the

1 language that you proposed could include spent
2 xylene solvents, which, I mean, may or may not
3 belong in the used oil. It depends on whether the
4 used oil still exhibits a characteristic, right? I
5 mean, you have to look at it from that standpoint as
6 opposed to whether it's a normal component of fuel
7 in that case.

8 MR. LENZ: We wouldn't consider spent
9 xylene if it was for solvent purposes or something
10 like that to be -- to fall under that or used oil.

11 MR. DRAGOVICH: I'm just stating that
12 I think the language is loose enough to allow that.

13 MR. HARRIS: Okay. I see your
14 concern, and I agree with it, and I agree with
15 Mr. Lenz. I mean, we've -- this is not an attempt
16 to create a loophole where a spent solvent gets into
17 the used oil as a result of this provision. But if
18 it were non-spent xylene or natural gas condensate,
19 I think it ought to be included. So I'm happy to
20 work with you on this language.

21 MS. FLOWERS: Gee. That was my next
22 question. I mean, what do you envision that we
23 would do, sit down hammer out this language again?
24 I mean, is that -- is that your intention?

1 MR. HARRIS: Well, I think we can
2 submit a revised version. It's not going to be
3 drastically revised, because I think we've got it
4 pretty much right, but always happy to have the
5 Agency support when we've been asking for a joint
6 proposal for quite some time. So if you're now
7 willing to sit down and work out precise language
8 that we would jointly submit to the Board, I'd be
9 glad to do it.

10 MS. FLOWERS: Okay.

11 MS. MOORE: Do you think that is
12 possible?

13 MS. FLOWERS: I don't know.

14 MS. MOORE: I mean, they've stated
15 what their intent is.

16 MS. FLOWERS: Right.

17 MS. MOORE: And you have many
18 questions. Do you think it might be possible to sit
19 down with them and --

20 MS. FLOWERS: You know, I'm not --
21 I --

22 MS. MOORE: Otherwise doing it on the
23 record is -- I mean, we can continue doing that
24 also.

1 MS. FLOWERS: Right. I mean, I'm just
2 not sure that we are on board with everything they
3 say. So I just -- I don't know whether we actually
4 can agree on language or not.

5 MS. MOORE: Okay.

6 MS. FLOWERS: And I would just have to
7 review where we are based upon what was said. I
8 mean, if we're all in agreement, I don't see why
9 not, but I just still seem to think that there is
10 some point that we're not in agreement on and that
11 prevents us from actually coming up with language
12 that we both agree on. This has been the problem
13 all along, I think.

14 MS. MOORE: It does seem to me,
15 though, as though we're getting closer here.

16 MS. FLOWERS: Yeah.

17 MS. MOORE: Does it seem that way to
18 you all?

19 MS. FLOWERS: I hope. I think we've
20 always hoped that, but it always seemed -- it always
21 seemed that since we were not talking about the same
22 thing or we actually had differencing of opinion on
23 just something that prevented us from both being
24 comfortable with a certain language. But certainly,

1 that would be what we were going to address in our
2 post-hearing comments, is whether or not -- how --
3 are we happy with this language, or how could it
4 change, or whether it would work for us, that sort
5 of stuff.

6 MR. HARRIS: From our point of view,
7 in our original proposal, we wanted the exemption
8 from the manifest requirements for used oil, or
9 define used oil and the materials to regulate it as
10 used oil. Based on your May 1st order, we took you
11 up on your suggestion that we come up with
12 additional language. That's exactly what we did.
13 If IEPA wants to work with us on that, that's fine.
14 But previously, their position is no way. So we're
15 happy to do it either working with them or proposing
16 new language that is based on your concerns and
17 comments and refinements that always can be made to
18 regulatory language.

19 MS. FLOWERS: I don't know. I don't
20 know whether we are in agreement of things that are
21 going to be exempt from special waste designations.

22 MS. MOORE: Then you best ask your
23 questions, and we can go ahead and get those on the
24 record so that we can then go from there. The

1 purpose of the meeting -- or the purpose of all
2 these hearings is to get a good record to be able to
3 make a decision.

4 MS. FLOWERS: Well, I mean, I think
5 we're done with the questions for Mr. Harris.

6 MR. FOX: You think you're done, or is
7 that the end of the questions that you have for him?
8 We can certainly let you look that over for a second
9 or two if you need to.

10 MS. FLOWERS: I think I'm done. Are
11 you done?

12 MR. DRAGOVICH: Let me make sure we've
13 got everything covered. Yes.

14 MS. FLOWERS: Okay. We're done with
15 Mr. Harris, yeah.

16 MR. FOX: Very good. Thanks very
17 much. Mr. Harris, I have one question for you, kind
18 of a drafting issue, if you would. Most typically,
19 and I think in virtually every case, the Board uses
20 board notes in the regulations for non-substantive
21 reasons, to show the federal regulation that a state
22 regulation was derived from, to provide a cross
23 reference to a companion regulation that may or may
24 not be applicable, but to send a signal that it

1 could be, and I noted that you had phrased your
2 exemptions from the manifest requirement -- actually
3 phrased as an exemption from 809 or 809 as you
4 clarified -- solely in the format of a board note,
5 and those would be some substantive exemptions and
6 substantive language, and I wonder if you could
7 comment on your conclusion to place those
8 exemptions, those proposed exemptions, in a board
9 note, rather than in the substantive body of the
10 regulations.

11 MR. HARRIS: We can conform to
12 whatever the Board's preference is. I was trying to
13 attract the existing language as much as possible,
14 but if the Board reviews and the Board prefers that
15 we handle this as non-board note language, happy to
16 do it. There's no --

17 MR. LENZ: I think we were under the
18 impression, if I'm not mistaken, that if you look in
19 Part 739, everything that's in there under
20 regulation number is identical to the federal rates.
21 The Board notes are the changes that Illinois has
22 made. That's why we went in that direction.

23 MR. FOX: And that may touch upon
24 Mr. Rao's question regarding any companion changes

1 in 808 and 809 that may be necessary to track any of
2 the changes that you've proposed in 739. But it is
3 in matter of style, and frankly, in part
4 enforceability of the board notes are the
5 non-substantive language, such as I described.

6 MR. HARRIS: Yes. If you or the Board
7 would care to give us direction on our redraft,
8 we'll follow it explicitly. Our purpose is to do
9 the right thing in terms of the drafting. We
10 thought that following the existing format was the
11 best approach, but happy to do it either way.

12 MR. FOX: And I think the Board's
13 comfort would be with an amendment of the
14 substantive regulations themselves as opposed to
15 the --

16 MR. HARRIS: Fair enough. That's
17 fine.

18 MR. FOX: Thanks very much. Was there
19 any other question on the part of Board member Moore
20 or the Board staff, or the Agency at another chance
21 at a question for Mr. Harris? Mr. Harris, you had
22 also pre-filed testimony on behalf of Mr. Lenz, and
23 Mr. Ray had been testifying as well. Would it be
24 your preference at this point to turn to Mr. Lenz in

1 the proceeding?

2 MR. HARRIS: Yes. And then if Mr. Ray
3 wants to add anything, and then we have several
4 other people who have also filed comments, but we're
5 not trying to drag -- I mean, I think various points
6 have been made, but I think a number of our members
7 would like to say a few words about the proposal.

8 MR. FOX: And we can reach decisions
9 with you as to whether those would be sworn
10 testimony with followup questions, or whether they
11 would wish to make simply a public comment that
12 would not be sworn.

13 MR. HARRIS: Okay.

14 MR. FOX: And if some of them have
15 pre-filed, have already filed written comments and
16 would like to rest on those, that's certainly an
17 option that they could --

18 MR. HARRIS: Very good. Let me turn
19 to Mr. Lenz, and then if Mr. Ray wants to add
20 anymore.

21 MR. FOX: Mr. Lenz, I know I recall
22 that you've been sworn in and that you've been
23 responding to questions as well. As I said at the
24 beginning, if you'd like to offer any brief summary

1 of your testimony, you may do that. If you prefer
2 just to take questions from the Agency and the rest
3 of the participants, that's certainly fine as well.

4 MR. LENZ: Well, basically I -- a real
5 brief summary, I already outlined my -- in our
6 comments we tried to address two things. One is we
7 tried to get a handle on what their concerns were
8 and put it on paper, and secondly we tried to
9 outline real world operational issues that this
10 proposal brings up and would cause us to have to
11 deal with. So other than that, I think it's pretty
12 clear. If there's questions, they can ask, and
13 we'll just go from there.

14 MR. FOX: Very good. Ms. Flowers,
15 Mr. Lenz has indicated his willingness to respond to
16 questions, and certainly it's time for to you do
17 that.

18 MS. FLOWERS: Okay. And we did
19 pre-file some questions that we wanted to ask the
20 witnesses, and again this is to just, kind of, get a
21 feel for what's going on in the industry and whether
22 these -- you know, the witnesses are representative
23 of the oil industry, and we might have covered some
24 of these in our testimony, but if I could just go

1 through and you could provide an answer.

2 MR. LENZ: I'll answer what I can on
3 those, but I'm not prepared to answer them all.

4 MS. FLOWERS: Okay.

5 MR. LENZ: I didn't know about them
6 until Monday afternoon.

7 MS. FLOWERS: Okay. And if you could
8 -- could you just at least answer them maybe in
9 post-hearing comments or something like that?

10 MR. HARRIS: Well, why don't you --
11 why don't you ask the questions that you want, and
12 he'll do the best he can right now.

13 MS. FLOWERS: Okay.

14 MR. FOX: And we can deal with
15 post-hearing comments on a question-by-question
16 basis.

17 MS. FLOWERS: Right. Okay. What --
18 so what company do you work for, and how are they
19 involved in the management of used oil?

20 MR. LENZ: Future Environmental
21 Incorporated, and they are a used oil collector,
22 transporter, and marketer. They have facilities
23 both in Illinois and out of Illinois.

24 MR. DRAGOVICH: They're not a

1 processor, though?

2 MR. LENZ: No.

3 MS. FLOWERS: Okay. And how much used
4 oil do you collect per year?

5 MR. LENZ: That I don't know.

6 MS. FLOWERS: How many used oil
7 generators do you collect from?

8 MR. LENZ: Illinois, or all the areas
9 we cover? Really, I guess it --

10 MS. FLOWERS: In total, I guess.

11 MR. LENZ: I guess it doesn't matter,
12 because I don't know that question either. I mean,
13 it's in the thousands, but other than that I don't
14 know.

15 MS. FLOWERS: Okay. And regarding
16 used oil generators, can you list other information
17 that your facility keeps as a record, and we had
18 examples the name, the address, ID number.

19 MR. LENZ: Well, name and address
20 definitely. The ID numbers, both U.S. and Illinois,
21 I'm a little iffy on. I believe -- I don't remember
22 off the top of my head what's required for used oil
23 generation. I don't think the U.S. number is -- if
24 they have an Illinois ID generator number, we do

1 have that on file. Other than that, similar to what
2 Ray had mentioned, we do also keep track of
3 industrial generators as far as what other waste
4 that they are generating along with the used oil.

5 In many cases, even if they aren't
6 putting it in the used oil, we ask information on
7 our profile sheet about what they're generating, so
8 that if we would ever have an issue with a batch of
9 used oil that we had a problem with due to
10 ignitability or something of that matter that we
11 would have some records to go back through and see
12 where we could review those generators' profile
13 sheets and try to figure out maybe where that came
14 from. And of course you've got -- as we've
15 mentioned, you've got DOT information on those
16 pickup receipts. You've got 739 tracking
17 requirement information on another -- usually
18 another separate document, and there's four parts.
19 What am I missing? Yeah. And the business part,
20 and --

21 MS. FLOWERS: What is the business
22 part? What does that mean?

23 MR. LENZ: Well, that's basically what
24 I mentioned, is name, address, whether they're --

1 how much generation they're generating of used oil,
2 how that used oil is generated, are they generating
3 other wastes, and what those wastes are, and things
4 of that nature.

5 MS. FLOWERS: Okay. And --

6 MR. LENZ: That's pretty much about
7 it.

8 MS. FLOWERS: And do you know how much
9 waste that you send off site from your facility per
10 year?

11 MR. LENZ: Well, there's some waste we
12 pick up and transport that never even goes to our
13 facility, such as antifreeze. Antifreeze is picked
14 up and transported to an antifreeze recycler. Water
15 that separates out of oil would be -- we don't do
16 any water treatment, per se, and release the water.
17 So what separation we get of water in the form -- in
18 the process of transportation would be taken to an
19 industrial wastewater treatment facility. They
20 would get the remaining used oil out of the water
21 and then dispose of the water. So we generate --
22 that isn't -- you're asking how much waste do you
23 send off site.

24 Yeah, so basically those two

1 things, and then whenever you do tank cleaning, and
2 even in the -- even in the -- in the process of
3 normal operations, you're doing some screening when
4 you load and unload the oil for protection and
5 things of that nature, so you're generating -- we
6 also generate a certain amount of sludge, oily
7 sludge, and that's sent off site to -- I'm not sure
8 exactly how Futra (phonetic) is handling that
9 material, but typically it's either solidified and
10 land filled, or it's used as a BTU valuable slurry
11 fuel component at, let's say, a cement kiln that's
12 permitted to handle and burn that type of stuff.

13 MR. DRAGOVICH: Do you -- I mean, you
14 weren't able to come up with any numbers, but do you
15 got any feel for what percentage of what comes in,
16 goes out as waste? Is it a few percent, or ten
17 percent, or 50 percent?

18 MR. LENZ: Would you. That's -- I
19 mean, I could get those numbers. I think they're
20 available in the database, but they're not something
21 we normally really look at. But if I had to make a
22 guess -- and this is purely a guess -- I would say
23 we're probably looking at maybe 80 to 90 percent of
24 it being used oil, and the other 10 to 20 percent

1 being water and sludge with the vast majority of
2 that being water. That's off site from our
3 operations. Like I said, we collect other things.
4 We act strictly as a 100 percent transporter, but
5 those aren't really going from our facilities.
6 They're just going from the generator to the
7 treatment facility.

8 MS. FLOWERS: Okay. The next you
9 might have already answered. It says "Where
10 specifically is the waste from your facility sent
11 and what quantity is sent to each facility?"

12 MR. LENZ: Yeah. That really varies
13 by market price, but obviously we send it to
14 facilities that are permitted to properly handle
15 what we're generating. But yeah, it would either be
16 the three -- the two avenues I've outlined for
17 sludge, and then the water always -- the water's
18 going to, you know, a facility that's permitted to
19 handle oily water or used oil, and get the used oil
20 out of it, and then dispose of the water into a
21 sewer system.

22 MS. FLOWERS: Maybe you've answered
23 the next one. I don't know. It says "What used oil
24 activities does your company perform such as

1 transporter, processor, or marketer, and what are
2 the basic steps used by your company to handle the
3 oil?"

4 MR. LENZ: Yeah. I think I've pretty
5 much answered that, unless you have more questions
6 on it.

7 MR. DRAGOVICH: Did -- the steps that
8 you handled, it sounds like you're doing oil water
9 separation and some basic filtering. Is that --

10 MR. LENZ: Yeah. I mean, that's
11 required from the get-go. You have to do filtration
12 to protect your pumping equipment, otherwise you'll
13 ruin your pumping equipment, and that's when it
14 comes from the -- every step, it goes through a
15 filter before it goes into the pump. The pumps
16 aren't made to handle material that isn't -- that --
17 you have to get it down to a certain size for it to
18 be able to go through the pump. And if you want to
19 take that to an extreme, you have to get it down to
20 a certain size to get it to go through the hose
21 before that.

22 And also there's water separation
23 that goes on at every level. You get water
24 separation at the generator level, you'll get water

1 separation during transport, you'll get water
2 separation at 35-day transfer facilities. And
3 obviously when that happens, we -- we'll comingle
4 that water and handle it as oily water or used oil
5 and water, and that'll go to a different facility
6 than where it may be the oil that's settled out
7 of -- or the oil that's settled -- the water's
8 settled out of will go to a different facility than,
9 say, out of a transfer facility.

10 MR. DRAGOVICH: Do you use anything
11 beyond gravity separation? Do you heat the oil or
12 anything?

13 MR. LENZ: No. That would involve
14 processing.

15 MR. DRAGOVICH: Okay.

16 MS. FLOWERS: Okay. And then number
17 eight is "Where is the used oil from your facility
18 or company sent?"

19 MR. LENZ: That -- I mean, whoever
20 pays the -- wants to pay the most money for it.
21 Basically fuel -- fuel blenders, fuel burners,
22 refineries. Really I guess it would have to be one
23 of those three in that broad sense.

24 MR. DRAGOVICH: Does -- is -- are

1 you -- are you marketing all your oil as on spec
2 then, or are you sending some of it on to off spec
3 to a processor?

4 MR. LENZ: We only knowingly handle on
5 spec. We'll do testing at transporter and transfer
6 facilities, and if we find a batch of oil that is
7 off spec, let's say, due to a high lead level or
8 something like that, it still -- that'll go to
9 somebody that's permitted, notified to take off-spec
10 material. But we try to stay away from off-spec
11 material as much as we can. There's not a real lot
12 of off-spec material out there. Oftentimes when we
13 find a generator that's generating off-spec
14 material, we can work with that generator and make a
15 few changes and get that material on spec.

16 MS. FLOWERS: So maybe that answers
17 the next one, which is: Do you know if you
18 knowingly accept used oil mixed with or contaminated
19 with other waste, and how is it processed?

20 MR. LENZ: Yeah, I think that answers
21 that. I mean, obviously we know when water's in it,
22 and we know what's in it based on what the generator
23 has told us on either verbally or on the profile
24 sheet as far as what's in it. But pretty much if

1 it's in the oil and it's not water, it's going to be
2 something that's not hazardous and has got BTU
3 value.

4 MR. DRAGOVICH: So the -- any mixtures
5 that go in there, they're either going to -- you're
6 saying they're either going to fall out with the
7 water and be treated as wastewater, or they're going
8 to be contained in the oil that's burned?

9 MR. LENZ: Yeah, pretty much.

10 MR. DRAGOVICH: What about solids that
11 settle out and they would be in that sludge portion
12 that you talked about earlier?

13 MR. LENZ: Yeah. We don't handle a
14 lot of sludge at our own facilities, per se. If
15 we're going to deal with something that there's a
16 lot of sludge involved, we normally act as just a
17 transporter, and it'll go to a facility that's
18 designed to handle that type of material. You can
19 only handle -- basically used oil collection is done
20 normally with lightweight tank trucks with gear
21 pumps, and you can only handle a certain amount
22 of -- a low -- very low -- I don't know, 1 percent
23 or so solids with that type of equipment, and that's
24 the type of equipment we collect used oil with. You

1 get into streams that have higher contaminant or
2 solid levels than that, you have to use vac trucks,
3 and vac trucks are very heavy. You can't haul as
4 near as many gallons on a vac truck legally. So
5 those are, kind of, kept over in that specialty
6 area.

7 MR. DRAGOVICH: That -- you said the
8 water portion is going on to a wastewater treatment
9 facility from your facility. So I -- I'm assuming
10 that it impacts the value as far as the customer --
11 if the customer wants to give you something that's
12 mostly water they wouldn't have as much value to you
13 as the used oil.

14 MR. LENZ: We normally would do a test
15 and charge for the water.

16 MR. DRAGOVICH: Okay.

17 MR. LENZ: I believe that's how they
18 do it. I can't -- I think that's how they do it.
19 But yeah, it definitely impacts the value of the
20 oil. Or if you want to look at it differently, we
21 charge for the water, pay for the oil. But if it's
22 mixed, then they're not going to give you as much as
23 if it were all oil.

24 MS. FLOWERS: I think --

1 MR. DRAGOVICH: What -- I'm sorry.

2 MS. FLOWERS: I just think we're
3 getting to the other question, but go ahead.

4 MR. DRAGOVICH: Oh, okay. Well, I was
5 just -- I guess I'm going ahead of myself.

6 MS. FLOWERS: Yeah. I think we're
7 just -- go ahead.

8 MR. DRAGOVICH: I just -- if something
9 was mainly water, I guess how do you decide it's
10 going to have recoverable amounts of oil for you?

11 MR. LENZ: Well, even if it wasn't for
12 us, we would transport it for the customer to a
13 treatment facility that could recover the oil out of
14 it. So we can take the material either way. If
15 there's oil in it that we can recover, we'll do
16 that. If not, it will go straight to a facility
17 that can do that.

18 MR. DRAGOVICH: And for you to recover
19 it, it would have to be able to separate out into
20 your facility?

21 MR. LENZ: Mm-hmm.

22 MR. DRAGOVICH: Okay.

23 MS. FLOWERS: Okay. Number 10 was
24 "What procedures are used by your company to

1 determine if contaminants or other wastes are mixed
2 with the used oil, and if those contaminants impact
3 the safety, recyclability or handling of the used
4 oil?"

5 MR. LENZ: Wait. Which number is that
6 again?

7 MS. FLOWERS: Number 10.

8 MR. LENZ: Well, I think I pretty much
9 answered that already. A lot of that's done with a
10 new customer when you're profiling that customer.
11 That's an issue with industrial customers. It's not
12 so much an issue with automotive customers, and we
13 try to determine what we're getting, even what we're
14 not getting, that they generate. And obviously, as
15 far as the contaminants that are -- that may be in
16 the oil, we want the oil to pass EPA spec tests, and
17 we want the oil to pass ASTM spec tests, or at least
18 as many of those components of the ASTM tests as we
19 can. The more -- the more -- the more components of
20 the ASTM tests you pass, the more money you can get
21 for it. And it's obviously got to pass all the EPA
22 specs to be worth much.

23 MR. DRAGOVICH: Do you -- do you have
24 either a list of things that you tell them not to

1 put in oil or things that you feel are acceptable to
2 put in oil? I mean, is there some -- some guidance
3 that you have?

4 MR. LENZ: I mean, we do -- we do that
5 when we're signing up new customers. We'll go
6 through what they generate, and they'll normally be
7 asking us "Can I put that in the used oil," and so
8 we take that information as far as what they
9 generate, and we tell them, you know, whether that's
10 considered used oil, or when that's special waste
11 that isn't used oil, or whether that's hazardous
12 waste.

13 MS. FLOWERS: Yeah. I think this is
14 -- 11 is "How does the presence of contaminants or
15 other constituents in the used oil affect the price
16 you pay or charge the generator for the used oil?"

17 MR. LENZ: I think you're clear on
18 that now, are you pretty much?

19 MS. FLOWERS: Yes. Okay. Do you
20 ship, transport, or receive used oil under manifest,
21 and if so, do you require a manifest from each
22 generator, and could you readily provide the
23 Illinois EPA copies of the manifest for the last
24 year for used oil generated, transported, or

1 received by your facility if requested?

2 MR. LENZ: You know, that question I
3 don't really have an answer that I feel 100 percent
4 sure about. It's -- that's a little bit out of my
5 area of expertise in what I do for the company. I
6 know all the used oil is manifested, I just don't
7 know if it's individually or if there's still any
8 manifesting going on. I don't know.

9 MS. FLOWERS: Oh, and then 13 is:
10 Please identify any hazardous or solid waste permits
11 by site number and permit number for each of your
12 facilities that generate, transfer, or store
13 processed used oil.

14 MR. LENZ: Well, I don't have that
15 information with me here.

16 MR. HARRIS: Can I --

17 MS. FLOWERS: But do you have it as a
18 solid waste permit?

19 MR. LENZ: No. I think basically all
20 we have are -- most of our facilities are used USEPA
21 ID numbers, Illinois EPA ID numbers, and most of
22 them would have, like, a storm water permit number
23 probably. I think that's all -- that's for
24 transportation facilities and transfer facilities.

1 I think that's all that's required. Again, I'm
2 going off of memory here.

3 MS. FLOWERS: We're done with that
4 questioning.

5 MR. HARRIS: If I can intervene here
6 for just a second. We're trying to be helpful and
7 answer these questions, but, for example, if we were
8 dealing with Safety Clean on the issue of the
9 question about permits, I mean, they have -- they
10 have a huge number of permits. It doesn't really go
11 to this issue about whether they -- how many permits
12 they have for storm water runoff or PO2W discharges
13 and so forth. I mean, we have a very simple
14 straightforward proposal. We'll be glad to work
15 with the Agency on the language and the drafting and
16 so forth, but it sounds like you want to do a bunch
17 of discovery and interrogatories on our members,
18 and, you know, I don't think we're really here for
19 that. So we're trying to be helpful, but I don't
20 want to -- I think the Board's time is not usefully
21 spent listing all of the permits that our members
22 happen to have. It's all available to the Agency
23 and to the Board anyway.

24 MR. FOX: And I've checked with Board

1 member Moore and the Board staff, and we don't have
2 any further questions for Mr. Lenz. I think, Ms.
3 Flowers, the Agency has concluded its questions for
4 Mr. Lenz as well?

5 MS. FLOWERS: Right.

6 MR. FOX: And Mr. Harris, you had at
7 least one additional witness that you wanted him
8 sworn and testified. I don't recall if that was
9 Mr. Ray to continue, or whether you had another
10 person in mind.

11 MR. HARRIS: I definitely would like
12 Mr. Ray to provide any additional testimony that he
13 would like to provide, but then the gentlemen from
14 Safety Clean, I wanted him to be able to address the
15 issue of the cost of the manifest.

16 MR. FOX: And Ms. Custer had pre-filed
17 testimony, but as I think you indicated, she did not
18 wish to testify today.

19 MR. HARRIS: Yes.

20 MR. FOX: And we would recharacterize
21 her pre-filed testimony as a public comment.

22 MR. HARRIS: That's fine, yes.

23 MR. FOX: Mr. Ray, my best
24 recollection is that you've already been sworn in.

1 Am I correct?

2 MR. RAY: That's correct.

3 MR. FOX: I was sure that was the
4 case. As with the case with Mr. Lenz, if you want
5 to offer any brief summary at all, you can certainly
6 be responding to a number of questions with some
7 technical information, so if you wish to proceed
8 just to accepting questions, that would be fine.

9 MR. RAY: I'd just like to have a few
10 sentences, if I might, on the record that -- a
11 summary of past comments that I've made.

12 MR. FOX: Please go ahead.

13 MR. RAY: I've been involved in the
14 used oil industry now for about 25 years, and in
15 that period of time, the industry has evolved
16 towards having a fairly well-developed and
17 consistent set of practices across most of the
18 United States. This set of practices is largely
19 based on managing used oil and oil-like materials
20 that the EPA years ago determined could be managed
21 as used oil on a consistent basis. Our industry and
22 our company want to continue to operate that way,
23 and simply achieve a reduction in unnecessary
24 paperwork.

1 We've been asking Illinois EPA for
2 support with that concept that we would eliminate
3 this paperwork for both used oil and materials
4 deemed under federal and Illinois state regulations
5 as appropriate to manage as used oil for more than
6 four years, and I think if we can come to a
7 conclusion that that's a mutual satisfactory goal,
8 we'll be able to move forward quickly and resolve
9 our differences.

10 In terms of the questions that the
11 IEPA pre-filed, just -- I'm happy to answer any of
12 those that IEPA wants to direct to me by way of
13 background. I'll give you the substance of my
14 credentials. For the past nine years, I've been
15 working for Heritage Crystal Clean, an environmental
16 service company operating in about 30 states.
17 Heritage Crystal Clean collects used oil via three
18 distinct programs, one of them using small trucks
19 that pick up normal used oil from automotive and
20 manufacturing accounts. We also maintain a separate
21 fleet of trucks, referred to as vacuum trucks, that
22 are more targeted to services and customers that
23 generate mixtures of oil, water, and sludge, and we
24 also have a fully expansive hazardous waste and

1 nonhazardous waste program picking up containers,
2 drums, and other containers of waste, and including
3 in that program we sometimes pick up drums of used
4 oil for management.

5 My credentials prior to joining
6 Heritage Crystal Clean, I worked for Safety Clean
7 Corporation where I managed their used oil program.
8 During the five years that I was there, we picked up
9 more than one billion gallons of used oil, and were
10 by far the largest single used oil collector in
11 North America. Prior to that I spent ten years with
12 Evergreen Oil in California, which was the first
13 modern used oil re-refiner, producing lubricants
14 from used oil in the United States. And if there
15 are questions you'd like me to answer from your
16 list, please feel free.

17 MR. FOX: Ms. Flowers, please go
18 ahead, if you'd like.

19 MS. FLOWERS: Yeah. If we could just
20 go down the list, I think that'd be the quickest.
21 The first --

22 MR. RAY: I have the list in front of
23 me if you want me to just read from that and answer
24 your questions.

1 MS. FLOWERS: Okay.

2 MR. RAY: Okay. I work for Heritage
3 Crystal Clean, as I mentioned. We pick up used oil
4 with three distinct programs, the oil trucks, the
5 vacuum trucks, and picking up used oil in drums or
6 other containers. My approximate estimate is that
7 combined from those three different programs, we
8 probably, in the U.S., pick up about ten million
9 gallons a year of used oil.

10 I don't have a good count of the
11 number of used oil generators that we serve. I do
12 know that for all of our programs, which include
13 used oil as well as other hazardous waste that we
14 pick up, we serve approximately 36,000 individual
15 customer locations. We are not prepared to disclose
16 at this time a list of all of our customers, for
17 both practical reasons and because if we were we
18 providing that information we would first want to
19 establish that it was protected as confidential
20 business information.

21 There are a number of questions in
22 the list that refer to the term "facility," and when
23 I first read this, I interpreted facility as you use
24 this to mean the way that that term generally is

1 used in our industry, which refers to someone
2 operating a RCRA or permanent treatment facility.
3 I'm not sure if that was your intent, or if you
4 meant it as more generally as any site that we
5 operate in, but if you'll bear with me, I think I
6 can still answer most of your questions. I just
7 wanted to point out that I probably am not, you
8 know, using facility the same way you are, or I
9 might not be.

10 The question number four talks
11 about the information that our facility keeps. And
12 again, if we're talking more generally about any of
13 the sites or locations that we operate out of, we do
14 keep our used oil shipping papers that contain name,
15 address, and relevant EPA ID numbers, and that sort
16 of information is readily available to the Illinois
17 EPA upon request.

18 How much waste we send off site
19 from our facility, well, we operate out of 54
20 individual branch locations, four centralized hubs
21 where material's accumulated, and it's reshipped
22 from those locations to third-party processors who
23 buy used oil from us or charge us for taking it,
24 depending on the quality. So it might be over

1 simplifying, but I think the best answer to your
2 question is all of the used oil that we pick up is
3 ultimately sent off site to third-party processors.

4 Where specifically is the
5 wastewater facility sent and what quantity is sent
6 to each facility? We have -- I think Mr. Lenz
7 commented before, we have a network of facilities.
8 We go through a process of auditing and approving
9 those, but the amount that we sent to any facility
10 in any given year is highly variable depending on
11 the price that they offer. We have send used oil
12 really all across the country. We ship a lot of it
13 by rail car, and our current network of outlets,
14 it's probably four or five different buyers who,
15 kind of, bid for our used oil an a regular basis.

16 What used oil activities -- we're
17 a transporter. We're not really a processor. The
18 extent of the, sort of, processing we might do is
19 attempting to separate on rail cars high water oil
20 from low water oil. Earlier there was a discussion
21 about gravity separation, and that's really the
22 extent of the treatment and technology that we
23 employ at this point. If we're able to separate the
24 oil that rises to the top of a tank, which is dryer

1 oil, we may be able to market that for a higher
2 price or to a different customer set with material
3 that has more water in it.

4 The basic steps used by our
5 company to handle the oil, from the point which we put
6 it on our truck at a generator location, we're
7 collecting it and transporting that oil to a branch
8 location. We may be shipping it by truck or rail to
9 a couple locations. We may be storing it for a
10 short period of time in rail cars or in fixed tanks.
11 We're testing the used oil, and then we're making a
12 determination on the best outlet or destination for
13 the used oil and shipping it to those outlets for
14 sale. On rare occasions, we may find, based on our
15 testing or based on the end customer testing, that
16 something doesn't meet our specs, that we have a
17 contamination problem, or something that's not
18 readily marketable. I mentioned earlier that our
19 program includes taking what we refer to as retained
20 samples. These are small samples that we take from
21 our truck or our customer at different points in the
22 process that allow us to go back upstream and seek
23 to identify a generator who gave us inappropriate or
24 nonconforming materials.

1 That is not a perfect system.

2 There are times when we have a contamination
3 incident and are unable to track it back to the
4 generator because of a failure in our collection of
5 retained samples, the samples were not
6 representative, because the customer had a very
7 small process -- problem in the process that we
8 didn't pick up with our retains. When that happens,
9 we manage the waste appropriately, sometimes as
10 hazardous waste, and if we can't find the generator
11 then we're going to absorb the cost. But typically
12 we do find the responsible generator, we seek to
13 have them pay for the proper management of the
14 material, and we work with them to correct their
15 generating process so that we don't have a
16 recurrence of the problem.

17 Where is the used oil from our
18 facility sent? Our customer set includes direct
19 fuel burners who use the oil in their heating
20 activities, re-refiners who use the oils of
21 feedstock in producing lubricants, and other
22 processors who had capability to further purify the
23 oil of contaminants before they resell is to one of
24 those two markets.

1 Do we accept oil mixed with or
2 contaminated with other ways? Well, in some sense
3 the answer to this question focuses on what we
4 mean -- what you mean in the first occurrence of the
5 phrase "used oil." If we use that narrowly as
6 materials defined as used oil, then I would say the
7 answer is yes, we do accept from customers used oil
8 which is mixed with oily water, used oil which is
9 mixed CESQG waste, used oil which is mixed with
10 fuel. If you take the broader definition of used
11 oil and materials subject to management as used oil,
12 then it's not our practice to accept mixtures with
13 other things in it besides things that are allowed
14 to be managed as used oil.

15 Contaminant testing, typically
16 when we sign up a new customer, this is a -- I'm
17 going to give you a model for an industrial account.
18 It would be different for an automotive account, but
19 with an industrial account we're going to take a
20 sample of their used oil, send it to a laboratory,
21 work with a customer to fill out a profile that is
22 -- the profile is the customer's best description of
23 the generating process that contributed to the
24 creation of the used oil. The laboratory test

1 validates whether there's any contaminants there.
2 We get a generator certification not only as to the
3 quality of their used oil and if it meets the used
4 oil standards, but we also, at the same time, get a
5 generator certification regarding their generator
6 status, that is their size in the hierarchy, so that
7 we understand were there any special management
8 practices apply to their used oil.

9 When we pick up their used oil for
10 the first time, we're also taking the retained
11 sample I mentioned, we're putting their oil on a
12 truck, we're servicing other customers on the same
13 day typically, so we're putting other customers oil
14 together and commingling it. At the end of the day,
15 we'll take a sample of the composite of the whole
16 truck, and set that aside and retain that for the
17 90 days. The truck can then be shipped on via --
18 moved onto a rail car or directly shipped to one of
19 our hub operations where it will be consolidated and
20 a further sample is taken and testing is done, and
21 then the material is shipped off typically to a fuel
22 fire secondary processor.

23 Presence of contaminants, well,
24 the contaminant that most readily affects the price,

1 as we would talk about this, would be water, because
2 that's the contaminant we most often find in large
3 concentration in some of the used oil that we pick
4 up, and the more water there is, as I think you
5 already understand, the less valuable that stream is
6 for fuel value because we're going to be extracting
7 only the oil out of that for it's energy value.

8 MS. FLOWERS: Can I ask a question?
9 Is that -- when you say water is that, like, water
10 that's in there from storage or is this, like,
11 wastewater mixed in?

12 MR. RAY: It could be a variety of
13 sources. I mentioned our vacuum truck program,
14 which primarily services those oil/water separators
15 I spoke about this morning. So there it's a
16 wastewater pretreatment device that we're servicing.
17 If I transfer -- to another example, if we call on a
18 car dealer and we're pumping out their used oil, if
19 it has water in it, it could well be mop water from
20 their floors that they've decided to put into the
21 used oil tank as opposed to finding another way to
22 manage and discharge the water. Does that answer
23 your question?

24 MS. FLOWERS: Yes.

1 MR. RAY: Okay. So that was to
2 address the pricing issue. There are other
3 contaminants that get into used oil that, in theory,
4 affect the price, but they generally are, sort of,
5 game-changing contaminants. And what I mean by that
6 is if we end up picking up somebody's used oil and
7 is the most extreme case, they say "Our used oil has
8 PCBs in it," well, we're not managing that in the
9 same way anymore, and that's much more expensive to
10 deal with. So there are other things that get this
11 if there, but in the normal course of the used oil
12 business, the only thing that our pricing typically
13 depends on is water, and to some extent, sludge or
14 solids contamination from those separator devices.

15 Regarding our use of manifests,
16 I've already testified that we are shipping used oil
17 and material subject to management as used oil in
18 Illinois. Under Illinois Special Waste Manifests,
19 we require separate manifests from each generator.
20 We could provide Illinois EPA with copies of those
21 manifests, not only for the past year, but I believe
22 the past three years that would be overjoyed to send
23 those to Illinois EPA, because we think that that
24 would help you increase your appreciation of the

1 problem we face with excessive paperwork.

2 Regarding the permits that we
3 hold, of course I already mentioned we've got -- we
4 have a fairly extensive list of facilities, I think,
5 that we're already on file with Illinois EPA for our
6 multiple branch locations. We have transportation
7 permits, and rather than my trying to list those, if
8 you do need that information, if you let us know we
9 can provide additional information about our
10 permits.

11 MR. DRAGOVICH: That question, really
12 went to solid waste and RCRA permits.

13 MR. RAY: I believe -- I don't know if
14 it's considered a RCRA permit. We have
15 transportation permits for RCRA. I don't know about
16 the rest of our permit status. I'm sorry. I can't
17 tell you. Our operation is just too complex for me
18 to keep track of all that, and I wasn't prepared
19 coming in today to address that.

20 MS. FLOWERS: That's the last
21 question.

22 MR. FOX: Any further questions, Ms.
23 Flowers, on the part of the Agency?

24 MR. DRAGOVICH: I just wanted to

1 clarify. So you're a transporter and a marketer as
2 far as used oil, right?

3 MR. RAY: That's right.

4 MR. DRAGOVICH: Those are the only --
5 okay.

6 MR. RAY: Well, you know, it depends
7 how you -- what categories -- we're probably --

8 MR. LENZ: The way you're --

9 MR. RAY: -- a short-term storer as
10 well. At certain of our facilities, we accumulate
11 and hold used oil for up to 35 days.

12 MR. DRAGOVICH: Okay.

13 MS. FLOWERS: That's all the questions
14 we have.

15 MR. FOX: Thanks, Ms. Flowers. I
16 verify that neither Board member Moore nor the Board
17 staff have any further questions for you, Mr. Ray,
18 and I appreciate your time. In the event that no
19 one else has any questions specifically posed to
20 Mr. Harris, it appears that there is no one who
21 wishes to pose any of those questions. We could
22 proceed -- you had mentioned a witness from Safety
23 Clean --

24 MR. HARRIS: Yes.

1 MR. FOX: -- that you did wish to have
2 sworn in to provide testimony --

3 MR. HARRIS: Yes.

4 MR. FOX: -- and answer questions?

5 MR. HARRIS: Yes, and his name is Dan
6 Appelt, and he's the director of environmental
7 health and safety data management, so I think it
8 would be very useful on the question -- you can ask
9 him any questions you want, but I think his purpose
10 is to talk about the cost of the manifest.

11 MR. FOX: Mr. Appelt, maybe it would
12 make sense if you wouldn't mind pulling a chair up
13 either behind or between some of the other NORA
14 representatives. I think the court reporter would
15 find it a lot easier to hear you. And if the court
16 reporter would swear you in, we could proceed.

17 (Witness sworn.)

18 MR. FOX: Mr. Appelt, you hadn't any
19 pre-filed testimony. If you want to give a brief
20 summary before accepting questions from the Agency
21 before the Board, please feel free to do that. If
22 you're ready to answer questions right away, feel
23 free to do that as well.

24 MR. APPELT: Well, I believe Tom

1 Rebaski (phonetic) pre-filed a document on behalf of
2 Safety Clean.

3 MR. FOX: Give me one second to run
4 through some documents here. Thomas Rebaski, a
5 letter dated September 24th, 2008, from Safety
6 Clean.

7 MR. APPELT: Correct.

8 MR. FOX: That has been entered into
9 the Board's record as public comment number 69.

10 MR. APPELT: Okay. The only thing I
11 would add, and I don't want to reiterate everything
12 that Mr. Ray has already said, because Safety Clean
13 and Crystal Clean have very similar business
14 practices. We do read things, we have similar lines
15 of business as far as the oil is concerned. So I
16 don't want to go into all that again. But I just
17 wanted to make sure that for the record, Safety
18 Clean's position is that we'd like to see the
19 manifest go away, and we don't want to replace it
20 with a new form that's prescribed by the Board, but
21 we want to be able to develop our own form, with
22 just the data elements that the Board is looking
23 for. So I just want to make sure that was clear,
24 and I've been listening to this, you know, all day,

1 and I haven't heard it very clearly stated, at least
2 for my own mind.

3 MS. FLOWERS: And can I ask a question
4 about that? You mean you don't want to have a form
5 attached, like please fill out form on appendix A,
6 right? I mean, you just want it to be listed in
7 the --

8 MR. APPELT: Well, we'd like to see
9 what the regulation state, and I believe NORA
10 members feel the same way, is that we'd like the
11 regulations to identify what data elements are you
12 looking for, and then each company would develop its
13 own form to include that.

14 MS. FLOWERS: Okay.

15 MR. APPELT: All right. The only
16 other thing that, I guess, I was going to comment
17 on, we were talking earlier about the number of
18 gallons per manifest, and for Safety Clean, in the
19 last 12 months, we averaged approximately
20 600 gallons per manifest load of used oil, and also
21 in the last 12 months Safety Clean used -- well, you
22 know, all the different oil lines of business, which
23 include automotive, which is the majority of our
24 business, but automotive, industrial, and vac, we

1 used around 33 thousand manifests last year in the
2 last 12 months. And as Mr. Harris mentioned that
3 Safety Clean did an analysis -- cost analysis on the
4 manifest and cost Safety Clean approximately \$18 per
5 manifest. That includes the acquisition of the
6 manifests, distribution, separation, storage, all
7 that.

8 MR. RAO: Does that also include any
9 labor cost involved?

10 MR. APPELT: It includes the labor,
11 yes.

12 MR. RAO: Okay.

13 MR. HARRIS: If I can point out, I
14 think that when Dan and I spoke before the hearing,
15 the -- that calculation was done internally, and so
16 it wasn't done for the Board's benefit. It was done
17 internally, and so I think it's going to be
18 incredibly objective, because their mission here in
19 terms of that data collection and their study was to
20 see what the advantages would be of an electronic
21 manifest versus a paper manifest. So I think the
22 Board can have pretty good confidence that the \$18
23 is a good solid number because it's being used by
24 Safety Clean to make some business decisions.

1 MR. APPELT: Correct.

2 MR. FOX: Ms. Flowers, did you have a
3 question you wish to ask to Mr. -- or I just -- I
4 jumped ahead, Mr. Appelt. Did you have any other
5 preliminary summary?

6 MR. APPELT: No.

7 MR. FOX: Terrific.

8 MS. FLOWERS: Okay. Can we go through
9 our pre-filed questions for --

10 MR. FOX: Yes. This would be a good
11 time for that.

12 MR. APPELT: I can answer some of
13 them.

14 MS. FLOWERS: Okay. Well, the first
15 one is what company do you work for, and how are
16 they involved in the management of used oil?

17 MR. APPELT: Safety Clean Corporation,
18 and we are a used oil transporter, storer, processor
19 marketer. Is there anything else?

20 MR. RAY: Re-refiner.

21 MR. APPELT: Re-refiner.

22 MS. FLOWERS: And the second question
23 is: How much used oil do you collect per year?

24 MR. APPELT: Well --

1 MS. FLOWERS: Did you --

2 MR. APPELT: In Illinois, automotive
3 used oil is about 18 million gallons.

4 MS. FLOWERS: And how many used oil
5 generators do you collect from, and from each of
6 these used oil generators can you list the quantity
7 accepted and date accepted?

8 MR. APPELT: You want me to list that
9 now?

10 MR. HARRIS: You know, if I can
11 intervene for just a second again. I mean, you're
12 really --

13 MS. FLOWERS: I guess can you do that?
14 Are you able to?

15 MR. APPELT: If we have to I could
16 provide that. I don't really know why that would be
17 necessary, but we could.

18 MR. HARRIS: Whenever you get into
19 questions about the identity of the customers and
20 how much they generate and so forth, that's
21 confidential business information, and could you
22 subpoena it or require it, yes, probably. But
23 again, I don't think that's terribly necessary for
24 the Board's deliberations.

1 MS. FLOWERS: I mean, I'm sure you
2 know what you're talking about, but when we hear
3 that it's several thousands or however many, I mean,
4 that does make a difference about who you are, how
5 big you are, you know what representative you are of
6 this industry. So I mean, do you have a ballpark
7 figure about how many generators you're collecting
8 from?

9 MR. APPELT: Not in Illinois alone,
10 no.

11 MS. FLOWERS: Okay. Question number 4
12 is: Regarding used oil generators, do you have
13 other information that your facility keeps as a
14 record?

15 MR. APPELT: Well, all of our
16 facilities -- the branches at least -- are also
17 RCRA -- either permitted or ten-day, and I'm not
18 sure if we have any ten-day sites in Illinois. So
19 we keep a complete record of, you know, manifests
20 bills of lading, you know, all the other
21 customer-related records in their files
22 indefinitely, really.

23 MS. FLOWERS: Okay. Number five is:
24 How much waste do you send off site from your

1 facility per year?

2 MR. APPELT: No idea.

3 MS. FLOWERS: Number six is: Where
4 specifically is the waste from your facility sent
5 and what quantity is sent to each facility?

6 MR. APPELT: By waste you mean oil?

7 MR. DRAGOVICH: We were looking at --

8 MS. FLOWERS: Not necessarily, but go
9 ahead.

10 MR. DRAGOVICH: Okay. What we were
11 trying to accomplish with these questions was to
12 determine if -- I mean -- and this was targeted at
13 used oil facilities, and I understand that Safety
14 Clean's market is a lot bigger than that, but we
15 were trying to figure out about what percent of the
16 material that comes in as used oil is going to have
17 to go out as waste to another facility.

18 MR. APPELT: Well, for the Illinois
19 facilities, the branches, I would say all of it gets
20 shipped to East Chicago where it gets processed as
21 used oil and converted into lube oil for the most
22 part. So it all gets sent to East Chicago from
23 Illinois.

24 MR. DRAGOVICH: You don't have any

1 idea what percentage of re-refined oil they get out
2 of what they bring in, do you? Is it 90 percent?

3 MR. APPELT: No, I don't. It's very
4 high, because the company's making a concerted
5 effort to send more dry oil to Chicago than we did
6 historically, so there's less water going to East
7 Chicago because the branches are picking up less
8 water with the oil. So the branches are doing more
9 selective oil collection up front at the customer
10 side and not sucking out all the water at the same
11 time. They'll send a vac truck later if the
12 customer wants that thing completely cleaned out,
13 but we try to skim off just the oil.

14 MR. DRAGOVICH: I would assume the
15 initial step would be water separation at East
16 Chicago?

17 MR. APPELT: Probably.

18 MR. DRAGOVICH: Okay.

19 MS. FLOWERS: Question number seven
20 is: What used oil activities does your company
21 perform, such as transporter, processor, or
22 marketer -- which I think you already answered --
23 and what are the basic steps used by your company to
24 handle the oil?

1 MR. APPELT: The basic steps. Well,
2 depending on the type of customer -- I guess it
3 follows very similarly to what Crystal Clean does,
4 but we first determine is the customer a primarily
5 automotive customer or are they industrial. If
6 they're automotive, we don't require a profile, but
7 we do take a retain of all of our customers, a
8 retain sample. And if the customer is an industrial
9 customer, then we make sure that it has to be
10 profiled before we can service them. So then the
11 oil comes back to the branch or it goes directly to
12 a rail car where it's off-loaded. There's no
13 oil/water separation that we -- we don't try and
14 separate the oil and water, I guess, at those
15 branches typically that I'm aware of, and then it
16 gets shipped off to East Chicago either by truck or
17 rail depending on the distance.

18 MS. FLOWERS: So then eight is
19 answered. Where is the used oil from your facility
20 or company sent to your re-refinery in East Chicago?

21 MR. APPELT: I mean, there's a --
22 there's probably some times when the oil does not go
23 to East Chicago. Like if East Chicago -- you know,
24 I mean, they're running at capacity, and let's say

1 they don't have room for more, which I don't know
2 that that's been the case recently, but we might
3 sometimes have to send it somewhere else. But
4 typically it goes to East Chicago.

5 MS. FLOWERS: Okay. So nine is: Do
6 you knowingly accept used oil mixed or contaminated
7 with other waste, and if so how is it processed?

8 MR. APPELT: I would say our -- again,
9 our business model is very similar to Crystal
10 Clean's. We wouldn't knowingly accept
11 contamination, other than, you know, water, to some
12 degree. PCBs, again, we typically don't try and
13 even pick those up as containerized or draw them to
14 waste. So we try to avoid those kind of
15 contaminants. But again, we -- you know, sometimes
16 it happens where it does come through, and then the
17 East Chicago -- the lab will identify that the oil
18 is contaminated, and then we go back to try to
19 determine which customer it came from, and then we
20 go back to the customer.

21 MS. FLOWERS: Okay. Number ten, "What
22 procedures are used by your company to determine if
23 the contaminants or other waste are mixed with the
24 used oil and if those contaminants impact safety,

1 recyclability or handling of used oil?

2 MR. APPELT: I'm not familiar enough
3 with the procedures that the sales reps have to do
4 up front, but I would say we try and screen the
5 customer based on the type of customer that it is.
6 So if it's automotive, you're typically not going to
7 get anything in the used oil that's contaminated
8 that we wouldn't normally expect in used oil.
9 Industrial customers, as I mentioned, we would
10 profile.

11 MS. FLOWERS: Okay. So how does the
12 presence of contaminants or other constituents in
13 the used oil affect the price you pay or charge the
14 generator for used oil?

15 MR. APPELT: Well, just like everybody
16 else, the more water, the less the customer gets
17 paid for their used oil, and then depending on where
18 we're sending the oil -- again, if it's going to
19 East Chicago, you know, they want cleaner oil at
20 that facility, or dryer, I should say. Otherwise if
21 you have to ship the oil to some other third party,
22 you get less for more -- you know, with more water
23 in the oil, and if it's truly contaminated with
24 something hazardous, then you have to pay to dispose

1 of it.

2 MS. FLOWERS: Okay. So we're at
3 number 12, "Do you ship, transport, or receive used
4 oil under manifest, and if so, do you require a
5 manifest from each generator, and could you provide
6 the Illinois EPA copies of the manifest for last
7 year for used oil generated, transported, or
8 received by your facility if requested?"

9 MR. APPELT: Yeah, we manifest every
10 shipment. And again, providing the state copy of
11 the manifest would be possible. If you want 30,000
12 copies, we can have the branches dig them out.

13 MR. DRAGOVICH: You indicated each
14 shipment, but the question was each generator. Do
15 you know if it's by generator?

16 MR. APPELT: By generator, we don't do
17 truck data anymore.

18 MS. FLOWERS: Okay. And then please
19 identify hazardous or solid waste permits that you
20 have.

21 MR. APPELT: We've got lots.

22 MR. DRAGOVICH: They've got five
23 facilities in Illinois that I know of.

24 MS. FLOWERS: Okay. Just in Illinois?

1 I mean --

2 MR. APPELT: I don't have them. It
3 could be provided.

4 MS. FLOWERS: I mean, how many
5 facilities -- permanent facilities do you have?

6 MR. APPELT: Hold on. I guess -- is
7 it five? I don't know for sure.

8 MR. DRAGOVICH: I think so.
9 Caseyville, Urbana, Chicago, Dolton.

10 MR. APPELT: We don't have Chicago
11 anymore. Elgin.

12 MR. DRAGOVICH: Elgin. That's it.

13 MR. APPELT: Didn't we close Pekin?

14 MR. DRAGOVICH: Yeah. Yes, you closed
15 Pekin.

16 MR. FOX: Ms. Flowers, any additional
17 questions for Mr. Appelt?

18 MS. FLOWERS: Yes. Go ahead.

19 MR. DRAGOVICH: Considering the
20 exemption that was in the first notice in the
21 current exemptions that are out there now, really
22 materials that wouldn't be exempt from manifesting
23 would be large quantity mixtures of used oil. Do
24 you have any idea what percentage of your market is

1 that? How much is that going to impact you?

2 MR. APPELT: Well, like I said, in the
3 last 12 months, of all the manifest for all the
4 customers we picked up waste from, we did 30,000
5 automotive manifests, industrial were only 2,700.
6 So I would think that 30,000 of our customers would
7 no longer require manifests.

8 MR. DRAGOVICH: So it's the 2,700
9 industrial customers that it's basically up in the
10 air?

11 MR. APPELT: I would guess they might
12 still be manifested. I'm not sure -- some of that
13 might be hazardous used oil, and some just might be
14 nonhazardous.

15 MR. DRAGOVICH: Okay. That's all I've
16 got.

17 MS. FLOWERS: That's all we have.

18 MR. FOX: All set. I know I've spoken
19 with Board Member Moore and Mr. Rao, and the Board
20 of staff doesn't have any questions for you, Mr.
21 Appelt. I have one question for you, however.
22 We accept generally hearing Ms. Flowers and Mr.
23 Harris talk about post hearing comments. If,
24 Mr. Harris, you're planning, as I expect you are, to

1 file some post-hearing comments, you would refer to
2 a study or an analysis that led you to determine the
3 cost of the manifesting program, and can I ask you
4 to include any summary or report or any other data
5 that might be available to include so that we have
6 some specific data on the cost now that was
7 obtained?

8 MR. APPELT: Okay.

9 MR. FOX: Thank you very much. That
10 would be helpful.

11 MR. APPELT: Sure.

12 MR. HARRIS: Just one comment on
13 Mr. Appelt's testimony. If you -- just for last
14 year, just for Safety Clean, the savings would be
15 30,000 times \$18, just right there for one year. So
16 we're not talking about small change. It's -- this
17 is real. And while Safety Clean is a larger
18 corporation, our smaller companies, although they
19 would have fewer manifests to deal with, nonetheless
20 are smaller companies, and so it's a considerable
21 cost, as you can appreciate.

22 MS. FLOWERS: And I just have a
23 question, because I thought we just said -- I
24 thought there was just testimony to the fact that as

1 the Board's first notice proposal stands now those
2 30,000 would already -- would already no longer be
3 included, they would be included in what is already
4 exempt as manifested.

5 MR. APPELT: That's not how I meant
6 it.

7 MS. FLOWERS: Oh.

8 MR. APPELT: I don't know how many of
9 those would be exempted under the current proposal.
10 I'm not sure.

11 MR. FOX: And by current proposal, you
12 mean the Board's first noticed proposal issued back
13 in May?

14 MR. APPELT: Yes.

15 MR. FOX: Okay.

16 MR. APPELT: I'm not -- I've been out
17 of this loop for about two years, so I'm not even
18 familiar with what that proposal is.

19 MR. FOX: But to attempt to clarify,
20 if the NORA proposal that we've been discussing
21 today was adopted, then your stipulation is that
22 those 30,000 automotive manifests would virtually
23 all disappear, in fact?

24 MR. APPELT: Correct.

1 MR. HARRIS: So we're -- NORA is
2 underscoring, you know, your proposal in the first
3 notice, but for simplicity and for ease of the
4 management, data management, of course we're
5 proposing what we proposed in response to your May
6 1st opinion and order. So I just want to emphasize
7 that we're talking about quite a number of
8 manifests, the used oil being the bulk of them, but
9 for those companies that handle used oil and water
10 mixtures, it's a very important component of their
11 operations.

12 MR. FOX: Ms. Flowers, did the Agency
13 have any further questions based on our most recent
14 exchanges?

15 MS. FLOWERS: No.

16 MR. FOX: I'm sure that the Board
17 doesn't either. Mr. Appelt, thank you for your time
18 and your testimony. Mr. Harris, my recollection is
19 that you -- this reaches the end of the witnesses
20 you wish to have sworn --

21 MR. HARRIS: That is correct.

22 MR. FOX: -- and offering testimony in
23 answering the Agency's questions. Is that correct?

24 MR. HARRIS: That is correct. And so

1 anyone else -- if I understand the Board's
2 procedures, anyone else would offer public comments
3 and not necessarily be subject to these
4 interrogatory questions from the Agency, but we're
5 still trying to be helpful. So if there is a
6 question that the Board has or the Agency has that
7 can readily be answered, we'd be glad to do that.

8 MR. FOX: So noted. Let me turn away
9 from that just for a moment. Ms. Flowers, the
10 Agency did not pro-file testimony, and I'm assuming
11 I'm correct that the Agency did not have a witness
12 or any testimony to offer today?

13 MS. FLOWERS: No, we do not.

14 MR. FOX: Very good. Thanks very much
15 for clarifying that. Mr. Harris, as I mentioned, I
16 think, at the top of the hearing, you and the most
17 recent filing on behalf of Safety Clean represent
18 about 25 public comments that have already been
19 filed, and if there are individuals who are present
20 here today that had hoped to offer a comment, it
21 appears that we will have time to do that, but I
22 wanted to assure you, as I suspect you know, that
23 those written comments in their entirety are on file
24 in the Board's record in this case with distinct

1 comment numbers --

2 MR. HARRIS: Yes.

3 MR. FOX: -- so that they can be
4 referred to very easily. If that helps avoid anyone
5 repeating comments that are already in the Board's
6 record --

7 MR. HARRIS: You bet.

8 MR. FOX: -- I wanted to highlight
9 that for you.

10 MR. HARRIS: You bet. And we're not
11 trying to repeat the comments, but we are trying to
12 answer the Board's questions. So I'll let
13 individual NORA members or anyone else who wants to
14 offer their public comment. And the purpose is,
15 again, not to repeat what has already been
16 submitted, but simply to answer your questions.

17 MR. FOX: So noted. And we've
18 established that NORA is complete with their
19 testimony, that the Agency doesn't have any witness.
20 And just in terms of planning and timing,
21 Mr. Harris, do you have a number or an estimate of a
22 number of folks who would like to offer a comment?

23 MR. HARRIS: We could probably get a
24 raise of hands, which would be more accurate.

1 MR. FOX: And I'll simply throw that
2 question open. If any of you would like to offer a
3 comment, and this is, again, strictly so that we
4 could manage the timing, would you please raise your
5 hand so that we can know precisely how much time we
6 would need for all of you who wish to do so to
7 provide a comment? It looks like we have one
8 person, and I recall that your name is Ms. McCord.
9 Is that correct?

10 MS. MCCORD: It is. Thank you.

11 MR. FOX: Why don't we have you do,
12 just as Mr. Appelt did, come up to the table where
13 the court reporter, I think, will have an easier
14 time seeing and hearing you. And if you have any
15 comments that you would like to make on this
16 proceeding on the proposal that NORA has offered,
17 please feel free to do that.

18 MS. MCCORD: And I pre-submitted
19 comments on behalf of the company prior to today's
20 hearing.

21 MR. FOX: Very good. And for the
22 court reporter's benefit, would you please give her
23 your full name and spellings of any last names to
24 simplify that?

1 MS. MCCORD: Katherine Anne McCord,
2 M-c-C-o-r-d. Mr. Fox?

3 MR. FOX: Yes, ma'am.

4 MS. MCCORD: The comments I have today
5 is really just summarized the written comments I've
6 already submitted on behalf of Crystal Clean. But I
7 thought it might be helpful if -- I put together
8 bullet points in a Power Point handout. Would that
9 be helpful if I give that to the members of the
10 Board, or should I speak it verbally?

11 MR. FOX: I would suggest in the
12 format of comments that you simply speak to it very
13 candidly.

14 MS. MCCORD: Okay. Okay then. I
15 guess the main theme I'd like to, sort of, talk to
16 you today was that this has been a multiple-year
17 process for us. You know, and many companies, you
18 know, we're competitors here, but we came together
19 because this is an important issue for us. The -- I
20 don't believe that what we're asking the Board to do
21 is a risky decision. It is something that has been
22 tested in most of the states in our country. In
23 many of us that deal with other states and have
24 businesses elsewhere, and have operations elsewhere

1 have experience with how this works. We have been
2 sidetracked over this multiple-year process in side
3 issues with definitions of oil and things.

4 But because in Illinois the
5 regulations have been adopted by reference, you
6 know, to us that's very clear what that means, and
7 we, every day, are making judgements about what is
8 proper and what's not proper. It's not worth it to
9 us not to make the best efforts in making those
10 decisions. They protect our people. You know, they
11 protect our customers in that sense, but it's the
12 right thing to do too. But that is the commitment
13 in my company and the other companies that have been
14 participating in this.

15 There's been no intention to try
16 to create loopholes, but rather we've gotten
17 sidetracked with details that were not part of our
18 original proposal, and they've been -- in fact, I
19 hope we'd step back and get back to the core of what
20 that is. It was to substitute a shipping paper, a
21 manifest in this case, with another shipping paper,
22 and there are materials moved all over the United
23 States every day under DOT shipping papers. It is
24 not -- it is something that -- there's conventions

1 and regulations that have been laid out by the
2 Department of Transportation on how materials are
3 described. In fact, DOT trumps all with respect to
4 how the shipping descriptions are laid out. They
5 are the ones that prescribe what those mean.

6 And the reason for that is because
7 they want hazardous materials responders,
8 firefighters, police officers everywhere to
9 understand the standard system, and that -- so we
10 don't -- we, as companies who collect waste, live
11 with many layers of regulations. That's our
12 obligation, and DOT is one piece that we know as
13 well as the EPA regulations. So what has befuddled
14 me is all along we've never been -- the department
15 has failed to identify for us the gaps that our
16 proposal of substituting one shipping paper for
17 another would provide. And in previous hearings,
18 I've provided a chart that compared the elements of
19 a hazardous waste manifest -- in fact, we'd we
20 willing to resubmit that if you'd like that -- with
21 what we see today on DOT shipping papers.

22 It -- I know that the expertise
23 that we generally have found in the state's
24 environmental agencies are really focusing on the

1 environmental regulations, and it's not the DOT
2 piece. As a former state employee and a former --
3 not in Illinois but in another state -- and a former
4 EPA regulator, I know that very little effort was
5 put into educating the inspectors on what the DOT
6 requirements were. I learned them when I came to a
7 waste company, to be honest with you. And so -- but
8 we -- I want to assure you that there's no gaps
9 here.

10 But if we -- the issues that have
11 been brought up by the department are ones that are
12 not addressed by the manifest system today. The
13 manifest does not provide information on these oily
14 water mixtures. You put the proper shipping
15 description down, it's either oil or oily water, but
16 the components and the percentages are not
17 prescribed by DOT. So the manifest does not provide
18 the information today that the department would
19 like.

20 There had been previous proposals
21 that some of the members were willing to even report
22 additional information about, you know, these
23 shipments in lieu of having to use a hazardous waste
24 manifest. The manifest in the form itself is very

1 inefficient. I mean, the hazardous waste manifest
2 was developed back in 80 -- 1982. You know, and
3 there was a major regulation change two years ago
4 when the feds took back the authority to regulate
5 that document. They created one manifest not the
6 nation. But, you know, that document does not
7 provide the information that you're looking for.

8 And the -- I'm hoping we've come
9 to a conclusion we understand that, that we're not
10 -- by substituting a different shipping paper, one
11 that is in compliance with all the DOT requirements,
12 it satisfies the needs, as far as materials,
13 movement, emergency response, but it doesn't get at
14 the nuances of the composition of used oil, and
15 you're really -- at some point, you know, we're
16 running businesses that have intensified, in some
17 ways, to manage materials in a way that makes sense,
18 because we are either selling or paying someone to
19 process the material we collect in this case. We
20 don't have that in-house treatment capabilities.

21 But I think we need to, sort of,
22 you know, step back, take the sunglasses off, and
23 just really focus on what that one issue is, is we
24 would like to -- in Illinois -- have the same system

1 that we have in -- top of my head -- I think -- I
2 believe in 48 other states, that we are using the
3 national transportation system for shipping papers
4 to move used oil. In fact, sometimes hazardous
5 waste manifest is confusing to people because they
6 don't understand why it's being used for used oil.

7 I have -- I have personally been
8 on the phone with responders in situations where --
9 in vehicle accidents where they don't understand why
10 that's not a hazardous waste manifest, and that's
11 because it's not used elsewhere. It's not the most
12 effective tool in communicating to responders. And
13 really, that's what the shipping paper's all about.
14 That's what that's about. It's to make the
15 transportation of these materials safe. It's not
16 about finding out what the oily water mixture was
17 when someone is, you know, shamming something behind
18 the scene and hiding some hazardous waste.

19 The other enforcement programs
20 that have been -- you know, that have a long history
21 in Illinois, an honorable history -- you know, in
22 fact, the reason we're, sort of, in this situation
23 is because Illinois was ahead of other states in the
24 record game. They had -- some of these regulations

1 were out there ahead of the feds providing that, you
2 know, drive back in 1980. So I think this is a
3 disconnect still with pieces of the special waste
4 rules, and what has happened in the authorization of
5 the state in implementing RCRA here. It's a
6 disconnect, and I want to assure you that you're not
7 taking a risk from an environmental protection
8 perspective in evaluating, fairly, our proposal. It
9 is something we will deal with everywhere else.

10 If anything, we have trouble
11 because we often come into Illinois from out of
12 state and then leave, and who's allowed to sign off
13 on that manifest? You know, and what really happens
14 to that manifest when it leaves the state is that it
15 acts as a DOT bill of lading, and you don't have to
16 be a permitted facility to sign off on it. But
17 that's very confusing when people are trying to do
18 their annual reports to their home states, to their
19 -- to an office, a DOT officer in Indiana that
20 didn't know why a load from Illinois is manifested.
21 We spend energy in explaining to people why there is
22 this disconnect with our services in Illinois. So
23 that's -- I'm -- thank you for the opportunity to
24 talk to you.

1 MR. FOX: Thank you, Ms. McCord. I
2 have, I believe, all of the comments, the public
3 comments that have been filed with the Board in
4 approximately the last two to three weeks. I do not
5 have one in my paper file that was filed by you, and
6 if you placed that in the mail very recently, it may
7 be arriving today in our clerk's office, but I only
8 alert that to you -- alert you to that so that after
9 the conclusion of the hearing I can follow through
10 with any procedural steps that would put that --

11 MS. MCCORD: I'll have to talk with
12 Mr. Harris, but I also have a copy with me today. I
13 believe that was submitted on our behalf, but I'll
14 have to check.

15 MR. FOX: And I'll readily admit that
16 I could be mistaken.

17 MS. MCCORD: Okay.

18 MR. FOX: But I didn't have it with
19 me, but rest assured the comment you've offered
20 today, of course, has been transcribed by the court
21 reporter.

22 MS. MCCORD: Okay. Thank you very
23 much.

24 MR. FOX: Thank you for your comment,

1 Ms. McCord.

2 MR. HARRIS: And can we submit this --
3 whatever the comment was, if it's missing, and it
4 may not be missing, but it was inadvertent that it's
5 missing if it is missing.

6 MR. FOX: Just submitted as a hearing
7 exhibit?

8 MR. HARRIS: Yes.

9 MR. FOX: Certainly. That would
10 duplicate what's in the transcript, but if you have
11 multiple copies, Ms. McCord --

12 MS. MCCORD: I have one copy of that
13 letter, of our letter with me. I can get copies
14 made if you need it.

15 MR. FOX: Actually, perhaps if you've
16 got two copies, you could show one to the Agency,
17 simply so that they could have the opportunity to
18 review it before it's admitted as an exhibit.

19 MS. MCCORD: I have one copy, or I can
20 email it to you right now, or give you the one copy.

21 MR. FOX: We --

22 MR. RAY: Can we get a copy made right
23 now?

24 MS. MCCORD: Is there a place nearby

1 here that I could run down the hall and get a copy
2 made?

3 MR. FOX: The alternative, Ms. McCord,
4 is there -- our clerk's office is upstairs and you
5 can simply file it in person there.

6 MS. MOORE: And give it to the clerk
7 and then it'll go right online.

8 MS. MCCORD: I'll do that.

9 MR. FOX: Mr. Harris, if you have -- I
10 think you had indicated that Ms. McCord was the only
11 person that wished to offer --

12 MR. HARRIS: Unless there's anyone
13 else in the -- I think Mr. Kennedy.

14 MS. FLOWERS: Can I ask a question?

15 MS. MCCORD: Of?

16 MR. FOX: Ms. McCord merely offered a
17 public comment.

18 MS. FLOWERS: Okay.

19 MR. FOX: And it was not sworn in and
20 would not be subject to cross examination on that
21 basis, and the Board will regard those
22 appropriately.

23 MS. FLOWERS: Can I ask a question of
24 the panel then? Because, I mean, I just want to

1 make clear what we're talking about here. I mean,
2 we want to work together, but I think we're still
3 not talking about the same things, because they're
4 still talking about a manifest exemption for used
5 oil, which the Board's first unless already allows,
6 and yet we're back here for a hearing. And to me,
7 there's -- I thought we were back here to talk about
8 what is used oil, and now we're saying no, we're not
9 talking about what is used oil. And so I'm -- I get
10 confused. I think I know what we're talking about,
11 and then I have a misunderstanding from them that
12 no, they don't want to change our definition of used
13 oil, which is only used oil as defined in 739.

14 MR. FOX: And my recommendation
15 candidly, Ms. Flowers, is that we have a specific
16 rulemaking proposal before us that was filed by NORA
17 with very concrete language, and they've offered,
18 through four sworn witnesses now, I believe, very
19 specific testimony, almost exclusively in response
20 to your questions, and if a comment is something
21 you'd like to respond to, the post-hearing comment
22 on the part of the participants would be the most
23 appropriate way to do that.

24 MS. FLOWERS: Right. Okay. I mean, I

1 just -- I just want to make sure that if we're going
2 to call it what it is, if we're going to do it,
3 instead of calling it a manifest exemption, it is
4 more than that, is what my understanding is, and I
5 just don't want to be mistaken about that.

6 MR. FOX: So noted. And Mr. Harris,
7 you had one other -- one gentlemen --

8 MR. HARRIS: Mr. Kennedy, Bill Kennedy
9 from RS Oil.

10 MR. KENNEDY: Hi. Good afternoon. My
11 name's Bill Kennedy. I'm the safety and compliance
12 director for RS Oil, and we're based in Monee,
13 Illinois. We've been dealing with the manifest
14 issue now for many, many, many years, and we, too,
15 collect a lot of used oil. We have to generate a
16 manifest at each collection that we do, whether it's
17 50 gallons or 500 gallons, and that -- the
18 burdensome of the manifest and the information that
19 we have to provide on the manifest is almost
20 identical in form and matter to what we put on our
21 standard bill of lading, which we have to have for
22 our business operations also. It just -- it's the
23 same information that we have to provide to other
24 states to meet the requirements of the used oil

1 regulations under 279.

2 I just want to say that it is
3 burdensome to us. We, too, have just massive
4 amounts of manifest sitting in storage, and we, too,
5 would be very happy to provide them to the state and
6 let them see what we have to do to keep them, and
7 the storage units that we have to have and
8 everything else. I didn't want to spend a lot of
9 time. I just wanted to say that, you know, we would
10 like to cooperate, have the same information, but
11 just a separate form, or use our form with the same
12 data fields completed.

13 MS. FLOWERS: Again, I'm just going to
14 ask if I could please ask a question. I mean,
15 there's already before -- the Board has already
16 proposed a first noticed proposal that requires it
17 to be completely exempt from having a manifest and
18 just using -- and all you have to do is use the used
19 oil tracking requirements if you're carrying used
20 oil.

21 MR. FOX: And Ms. Flowers, I'll just
22 interject again. There are now 69 written public
23 comments in this docket, and two additional oral
24 spoken comments, and in post-hearing comments of

1 your own -- and certainly we'll discuss a schedule
2 for those -- you may be free to address any of the
3 pre-filed testimony, spoken testimony, in the
4 transcript and any comment that you wish to address.
5 But this was not sworn, although we appreciate your
6 time, Mr. Kennedy, and we certainly will not leave
7 you without any opportunity to respond to that.

8 MS. FLOWERS: Right. Mr. Harris had
9 just said that he would -- they were willing to
10 answer questions.

11 MR. HARRIS: We're still willing to --
12 if there are any questions. I don't want to go
13 through the lengthy interrogatories, but anything
14 that relates to our proposal, of course we're
15 interested in answering questions.

16 MR. FOX: Mr. Harris, in that spirit
17 if Mr. Kennedy's willing to answer a question, Ms.
18 Flowers, please go ahead.

19 MS. MOORE: No, not to Mr. Kennedy. I
20 don't think Mr. Kennedy should have to answer a
21 question.

22 MR. FOX: You're right. I'm sorry. I
23 misspoke.

24 MS. MOORE: Mr. Harris said he would.

1 MR. FOX: That's correct, member
2 Moore. I did have that misstated. If you wish to
3 ask a question to Mr. Harris, he's indicated that
4 he'd be willing to address it.

5 MS. FLOWERS: Okay. You've had --
6 there's been two comments now that the manifest is a
7 burden, but we've already resolved that in that the
8 Board's first notice proposal gives the manifest
9 exemption to used oil, and so why are we still here?

10 MR. HARRIS: Because our original
11 proposal asked for that manifest exemption to extend
12 to materials regulated as used oil.

13 MS. FLOWERS: Okay.

14 MR. HARRIS: And in attempting to
15 address the Agency's concerns, we narrowed it down
16 to the four categories, which are set forth in my
17 pre-filed testimony, and that includes the
18 regulatory language that we'd submitted, which will
19 be improved upon and resubmitted.

20 MS. FLOWERS: Okay.

21 MR. HARRIS: But if it's a burden for
22 used oil as defined, it is also a burden for these
23 categories, and so we are asking for -- if it's a
24 good thing to get rid of the manifest for used oil,

1 it's just as good to get rid of it for, we think,
2 originally all materials regulated as used oil. But
3 in our spirit of compromise, we'll narrow it down to
4 the most important categories, which are the four
5 identified in my testimony.

6 MS. FLOWERS: Thank you for that
7 clarification.

8 MR. RAY: Can I add something?

9 MR. FOX: Mr. Ray, please go ahead.

10 MR. RAY: I'll be very brief. The
11 current proposal that only used oil as defined and
12 not used oil as managed as allowed to be managed
13 would be exempt from manifesting may seem like it
14 gives us half of what we're asking for. It doesn't,
15 from my point of view, speaking for our company.
16 It's worse than not changing the regulations at all,
17 because it would pose new ambiguity and confusion in
18 our customers' minds, and it would make it harder
19 for them to operate than the current manifesting
20 system does. So if I was solely voting on this or
21 had the ability to voice an opinion, I would not
22 choose to exempt form manifesting only used oil as
23 defined, and I think that's why when other people
24 are speaking about this, they're saying that maybe

1 implicitly that that's not a good solution unless we
2 also include used oil managed -- or materials
3 allowed to be managed as used oil. Thank you.

4 MR. HARRIS: And I should add that
5 Mr. Ray's been quite vocal in our discussions about
6 this, because he has to deal with it, and he's
7 obviously right. If we -- and in my testimony, I
8 said if we just create this bifurcated system where
9 used oil as defined gets exempt but the other
10 materials that we handle on a day-to-day basis, week
11 after week, generated often by the same customers,
12 it's a huge headache, and that's what Mr. Ray has
13 been talking about, I think, very articulately, and
14 our other members as well.

15 So to answer your question, we're
16 not even taking half a step with just used oil as
17 defined. We want to go to these other four
18 categories, and if in the Board's wisdom it says no,
19 you're right, you know, your original proposal was
20 right, let's deal with all of the materials managed
21 and regulated as used oil, we'd be delighted. But
22 in the spirit of compromise, we came down to these
23 four areas, which we think are the most important.
24 There is one more public comment I should not have

1 neglected, my boss, the executive director of NORA,
2 who would like to add a few words with the Board's
3 permission.

4 MR. FOX: Very good.

5 MR. PARKER: I know time is tight, so
6 I'm going to make this very short. My name is Scott
7 Parker. I'm the executive director for NORA, the
8 National Oil Recyclers Association, and all the
9 companies here in this room are members of ours, and
10 I can validate that they are companies in good
11 standing in the industry. I also wanted to take a
12 moment to also promote Chris Harris. He's been with
13 our association for over 20 years. He's considered
14 one of the leading national experts on used oil and
15 regulatory compliance and issues surrounding that,
16 so I think that that's important for you to know. I
17 did want to thank the Board for hearing from our
18 members and having this hearing today. I also
19 wanted to thank IEPA for participating in this.

20 I can tell you that this issue is
21 important. I can tell you how important it is.
22 It's not very often that we can get eight or nine
23 members from the same state to compete with each
24 other to work together on something, so we've

1 accomplished something here in that. But this is a
2 big issue. I've been with NORA for over six years
3 now, and it's been going on for most of those years,
4 and one of the things that's, sort of, interesting
5 to me is this issue is actually -- we have a lot of
6 members in every single state, and very few times
7 does an issue pop up in a state that becomes of
8 issue to our entire organization, and this one -- we
9 have a committee now within our national
10 organization looking specifically at this, and it is
11 of concern to many of our members across the
12 country.

13 I can also let you know many other
14 trade associations are also interested in this. We
15 have had conversations with the Independent
16 Manufacturers Association, the Manufacturers
17 Association here also, and also the National
18 Association of Manufacturers back in DC. So this is
19 something that is generating interest because of
20 this. I would like to respectfully call on the
21 Pollution Control Board to help us reduce this
22 unnecessary expense. I think you can see just in
23 one instance, you know, \$600,000 per year on
24 managing those. You multiply that out by the

1 companies here, you're talking millions of dollars,
2 and in my opinion not helping the environment at
3 all. I think that's really the key here. I don't
4 think that correlation has been made at all.

5 Again, I think the other point
6 that was brought up that I want to mention briefly
7 was the other thing, too, is as NORA we have members
8 nationwide that do business all the time. They're
9 constantly working together, have customers, they
10 have burners, they have people outside of the
11 states. I think it would be in the best interest of
12 Illinois and the companies of Illinois and the
13 environment in Illinois for these companies to be
14 easily able to trade among the states.

15 Based on that, I just want to say
16 thank you again, and I think you have some experts
17 here, but I'm also willing to assist with questions
18 if necessary.

19 MR. FOX: Mr. Harris, did you have any
20 other persons that wish to offer any comments at
21 this time?

22 MR. HARRIS: I don't think so.

23 MR. FOX: Very well. And I think
24 we've come to the end of the testimony, of course,

1 earlier and the comments now. Why don't we go off
2 the record just for a moment or two and we can
3 discuss the procedural issues surrounding the final
4 post-hearing comments.

5 (Whereupon, a discussion was had
6 off the record.)

7 MR. FOX: I want to make clear that in
8 going off the record, the participants discussed
9 procedural issues related to the filing of
10 post-hearing comments. Before taking any action on
11 this proposed regulatory amendment, the Board will
12 hold to open a post-hearing comment period. The
13 deadline for filing those comments will fall 60 days
14 after the Board receives the transcript of this
15 hearing, and to set the specific deadlines as
16 clearly as possible, I'll issue a hearing officer
17 order when that transcript is filed with the Board.
18 Any response to those post-hearing comments will be
19 due 30 days from that -- from the end of that 60-day
20 period, an issue, again, that I will clarify in that
21 hearing officer order, and again, copies of the
22 transcripts are expected to be available
23 approximately Wednesday, the 8th of October of 2008,
24 and I stress that those, as soon as they are

1 available, will be posted to the Board's website, so
2 that you may download those and print them free of
3 charge at any time once they are available.

4 If anyone has questions about the
5 procedural aspects of the rulemaking, my telephone
6 number and my email address are listed on the
7 Board's website. There are, of course, no other
8 hearings now scheduled in this rulemaking. Are
9 there any other matters that need to be addressed at
10 this time?

11 MS. MOORE: As we are getting to the
12 end, I just wanted to thank everyone for their great
13 efforts. I know it's very difficult to go through a
14 process change like this. Obviously there's great
15 incentive to do it, but it is up to the Agency to do
16 their job, and they've been very diligent as well.
17 The Board appreciates the input from all of you for
18 a very good and complete record.

19 MR. FOX: And having seen no other
20 procedural issues or questions, I'll merely echo
21 Board Member Moore's thanks for your time, your
22 effort, your filings, and we are for today
23 adjourned. Thank you all very much.

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1 STATE OF ILLINOIS)
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2 COUNTY OF COOK)

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REBECCA A. GRAZIANO, being first
duly sworn on oath says that she is a court reporter
doing business in the City of Chicago; that she
reported in shorthand the proceedings given at the
taking of said hearing and that the foregoing is a
true and correct transcript of her shorthand notes
so taken as aforesaid and contains all the
proceedings given at said hearing.

Rebecca Graziano

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SUBSCRIBED AND SWORN TO
before me this 1st day
of October, A.D., 2008.

Diana Lverso

Notary Public



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