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APPEARANCES

BOARD MEMBERS PRESENT:

Chairman G. Tanner Girard
Board Member Andrea Moore

BOARD STAFF MEMBERS PRESENT:

Anand Rao, Senior Environmental Scientist

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PROCEEDINGS

(May 25, 2006; 1:00 p.m.)

HEARING OFFICER FOX: Good afternoon, everyone. Welcome to this Illinois Pollution Control Board hearing. My name is Tim Fox, and I'm the hearing officer for this rulemaking entitled "Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil," 35 Illinois Administrative Code Sections 808 and 809. Now, the board docket number for this rulemaking is R06-20. The Board received this rulemaking proposal in December of 2005 from NORA, the National Oil Recyclers Association, if I remember the acronym correctly. This seeks to amend --

MS. MANNING: It's the National Association of Responsible --

MR. HARRIS: Recyclers, but it --

MS. MANNING: -- Recyclers.

MR. HARRIS: -- it used to be called the National Oil Recyclers Association.

HEARING OFFICER FOX: I stand corrected. Thank you.

That -- Their proposal seeks to amend the Board's rule on regulations concerning used oil, and the Board accepted this proposal for hearing on January 5 of 2006.

1 Also present from the Board are, to my immediate left,
2 Board Member Andrea Moore, who is assigned as the lead
3 board member for this rulemaking, and to her left, Dr. G.
4 Tanner Girard, who is the acting chairman of the Illinois
5 Pollution Control Board. On my right is Anand Rao from
6 the Board's technical staff. I want to give Member Moore
7 the opportunity if she would like to make any remarks
8 before we begin.

9 BOARD MEMBER MOORE: I just want to welcome
10 everybody today and thank both the Agency and the group
11 from NORA for your cooperation that we've received so far
12 and hope that things will continue.

13 HEARING OFFICER FOX: Very good. Today of
14 course we're holding the first hearing in this
15 rulemaking, and the second is now scheduled to take place
16 on Thursday, June 29, in Chicago. This proceeding is
17 governed by the Board's procedural rules. All
18 information that is relevant and that is not repetitious
19 or privileged will be admitted into the record. Please
20 note that any questions posed today by the Board, its
21 members or its staff are merely intended to develop a
22 clear record and a complete record in this proceeding for
23 the Board's decision and do not reflect any bias
24 regarding the proposal.

1 The Board in this docket received prefiled
2 testimony both from NORA and from the Illinois
3 Environmental Protection Agency, and we will begin this
4 hearing with the prefiled testimony. Discussing
5 procedural matters with the Agency and with NORA, it was
6 determined that it made sense to proceed with NORA
7 appearing as a panel. I believe they would like to make
8 a summary of their prefiled testimony before proceeding
9 to accept questions.

10 MS. MANNING: Correct.

11 HEARING OFFICER FOX: Very good.

12 MS. MANNING: Thank you.

13 HEARING OFFICER FOX: And we'll proceed,
14 then, with the Agency, who I believe wishes not to make
15 any summary and to proceed directly to accepting
16 questions as a panel.

17 MS. FLOWERS: True.

18 HEARING OFFICER FOX: Very good. Once we
19 have finished with the questions of the witnesses, the
20 two witnesses who have prefiled testimony, anyone else
21 may testify as time permits. I want to point out next to
22 the fan in the rear of the room there is a sign-up sheet
23 located there. Like all witnesses, those who did not
24 prefile will be sworn in to offer their testimony and

1 will -- may be asked questions about the testimony that
2 they offer.

3 I realize that many of you are veteran
4 participants in this proceeding, but let me remind you
5 that the court reporter who's transcribing this hearing
6 would appreciate your efforts to speak clearly and to
7 wait before other persons have stopped speaking before
8 beginning yourself so that her task is as easy as it may
9 possibly be.

10 Any questions before we get underway? Seeing
11 none, why don't we have the court reporter swear in
12 NORA's -- collectively swear in NORA's witnesses, and
13 then they may begin with their summary and with the
14 responses to questions.

15 (Witnesses sworn.)

16 MS. MANNING: Okay. I think we're going to
17 begin in this order, with Christopher Harris first, who
18 is the general counsel for NORA, followed by Victoria
19 Custer, who's led the Illinois Workgroup for Custer --
20 for NORA, Mike Lenz after that, and following with Greg
21 Ray. Chris, if you would.

22 MR. HARRIS: Thank you. Good afternoon. My
23 name is Christopher Harris. I appreciate the opportunity
24 to be here. I have the privilege of serving as the

1 general counsel of NORA, the Association of Responsible
2 Recyclers. The former name of that trade association is
3 the National Oil Recyclers Association. The purpose of
4 my testimony today is to demonstrate that manifesting
5 shipments of used oil and materials regulated as used oil
6 is not necessary for the protection of human health and
7 the environment, and therefore, we ask that the Pollution
8 Control Board discard the manifest requirements. Why is
9 it not necessary? Because the tracking requirements
10 provide all of the information that IEPA would need to
11 determine the quantity, location, delivery, shipment of
12 used oil. It's a duplicative system and one that imposes
13 an unnecessary burden on the generators and transporters
14 from Illinois.

15 If I could give some background of the federal
16 rule, which NORA helped develop, I think you'll
17 understand exactly why our proposal comes into play.
18 Back in 1980, congress passed the Used Oil Recycling Act
19 of 1980, and that was the first legislative effort on the
20 federal level to address the unique challenge of used
21 oil, and in the congressional findings that serve as the
22 predicate of that 1980 law, congress determined that used
23 oil is a valuable resource of increasingly scarce energy,
24 that technology exists to reprocess and recycle used oil

1 and that used oil constitutes a threat to public health
2 and the environment when disposed of improperly, and
3 those predicate findings not only are true today, but
4 they're true in this context as well.

5 Now, the EPA didn't issue any regulations as a
6 result of the 1980 act, so in 1984 congress in the
7 context of reauthorizing RCRA, the Resource Conservation
8 Recovery Act, had a couple of provisions in that massive
9 reauthorization package that said, EPA, pay attention, we
10 really want you to develop used oil, and again, the same
11 predicate findings were repeated; in other words, used
12 oil is valuable as an energy resource, it can be recycled
13 properly, but it needs some level of regulation in order
14 to make sure that they're -- that human health and the
15 environment are protected, but EPA in its legislative
16 history also made clear that where protection of human
17 health and the environment is assured -- so that's the
18 requirement, the underlying requirement -- the EPA
19 administrator should make every effort not to discourage
20 the recycling of used oil, and they went on -- congress
21 went on to say, for example, if there are several
22 alternative controls that would be environmentally
23 acceptable, the Agency, EPA, should allow those which
24 would be least likely to discourage used oil recycling.

1 That's in the legislative history. So the -- unlike
2 hazardous waste, where it has no value and needs to be
3 extremely carefully monitored at every turn because
4 there's an incentive to dispose of it, used oil being a
5 valuable commodity, the market forces can serve a role to
6 channel it properly, so the level of regulation needs to
7 be balanced with the market incentives for proper
8 recycling.

9 Now, EPA in November of 1985, taking the
10 legislative history as its mandate, produced the first
11 round of the used oil recycling regulations, or sometimes
12 referred to as the used oil management standards, and
13 they're now codified in Part 279; 40 CFR, Part 279. The
14 counterpart of course is 35 Illinois Administrative Code
15 Part 739. And what happened as a result of the 1985
16 regulations as well as the follow-up requirements
17 promulgated in 1992 is a set of used oil management
18 standards that virtually all states have adopted, most of
19 them without any change, and of course Illinois has a few
20 differences, but for the most part, every state in the
21 union has followed the federal used oil requirements, and
22 today the component that we're concerned about is the
23 tracking of used oil.

24 Under the federal and the corresponding state

1 requirements, transporters are required to maintain
2 records for at least three years documenting the
3 acceptance and the delivery of each shipment of used oil,
4 and the records for each shipment must include the date
5 of shipment, the name, address and EPA identification
6 number, if applicable, of the entity that provided the
7 used oil for shipment, the quantity and type of used oil
8 accepted and the dated signature of the party providing
9 the used oil. Now, that's for the -- essentially for the
10 transporters. The transporters also have an additional
11 requirement for each shipment that is delivered, so they
12 have the receipt document, then the delivery
13 documentation, and it's required to provide the date of
14 delivery, the name, address and EPA identification of the
15 receiving facility or transporter, the quantity of used
16 oil delivered and the dated signature of the
17 representative receiving the -- of the receiving facility
18 or the transporter.

19 And then there's another set of records --
20 parallel records required of the processor, and of course
21 these are identical -- at the present time identical in
22 the federal rule and the Illinois rule, and the parallel
23 set of records to be maintained by the processor includes
24 any used oil subject to the rebuttable presumption, the

1 analysis demonstrating -- that meets the on-specification
2 standards, and this information must be included in a
3 biannual report. So you have transporters and processors
4 having identical requirements, parallel requirements, I
5 should say, and then the processors have additional
6 requirements regarding the rebuttable presumption and the
7 on-spec, off-spec analysis. And then of course in
8 addition to that, all generators are subject to all
9 transportation requirements and the U.S. Department of
10 Transportation requirements involving haz mat rules,
11 placarding, labeling, packaging and so forth, and
12 reporting of all spill incidents.

13 Now, EPA when it was developing its rule
14 basically said that all of this information that is
15 required by the tracking requirements is currently
16 required in the standard EPA hazardous waste manifest.
17 In other words, EPA when it promulgated the rule
18 basically said, we don't need a manifest. Why? Because
19 the information gathered in all of the requirements I've
20 just recited is also present in the manifest, so why is
21 it necessary, as Illinois requires, for there to be the
22 tracking requirements and on top of that virtually
23 identical requirements in the manifest? It serves no
24 useful purpose.

1 I might point out that for used oil, IEPA has
2 made clear that they do not want to receive a copy of the
3 manifest. Now, that would -- that's required, of course,
4 for hazardous waste, but for used oil, they don't want to
5 get it. Why is that? Well, it's burdensome for the
6 Agency to have to receive and maintain that, but at the
7 same time, they don't need it, because any time they want
8 to figure out where a particular used oil shipment has
9 gone or where it came from or quantity and so forth, it's
10 all in the tracking requirements, so there's no need for
11 additional information that would be imposed by the
12 manifest.

13 And finally, I just would like to point out that
14 the -- probably the real issue at today's hearing has to
15 do with the set of materials that are regulated as used
16 oil but may not be strictly defined as used oil under a
17 narrow definition of used oil. I'm thinking, for
18 example, of used oil that has been blended with a
19 product. Could be a virgin petroleum oil. That is not
20 strictly speaking defined as used oil, but it is
21 regulated as used oil, and the position of NORA is that
22 all of the information that is needed to track this set
23 of materials is available with the tracking requirements
24 and no manifest is required for the same reason. You

1 don't get any more additional information as a result of
2 the manifest than you do from the tracking requirements.

3 So accordingly, for the reasons I've set forth,
4 we respectfully suggest that the Illinois Pollution
5 Control Board amend Parts 808 and 809 to end the
6 manifesting requirements for used oil and materials
7 regulated as used oil. Thank you very much.

8 MS. MANNING: Mr. Hearing Officer, before we
9 turn to the other three witnesses from the Illinois
10 companies, if I could just make a couple of introductory
11 sort of remarks about segueing from Mr. Harris' testimony
12 into Illinois law. He's correct that 35 Illinois
13 Administrative Code 739 of course was adopted by the
14 Board in an identical-in-substance fashion, and that is
15 the counterpart for the federal regulations that he was
16 speaking of. In addition to that Illinois, I would point
17 the Board to 815 ILCS 440/4 and 440/9, both of which
18 encourage the recycling of used oil in the state of
19 Illinois. The legislature has declared that, you know,
20 we should do nothing that doesn't encourage used oil to
21 be recycled and reused as opposed to disposed of.

22 Also, I wanted to on behalf of NORA thank the
23 Board for the opportunity to appear before it. It's a
24 unique system where actually the proponent of the rule

1 can be industry itself as opposed to government, and
2 we've been working with the EPA for some time, you know,
3 on this rule, and they've made it clear that they
4 preferred for NORA to be the proponent in this rule, and
5 we're happy to do so. To the extent to -- whether we
6 have disagreements or not, you know, remains to be seen.
7 Certainly I think it's very clear from the EPA's filing
8 and from our filings that conceptually we're in agreement
9 that the manifesting of used oil as their language
10 defined by and managed pursuant to 739 ought not to be
11 subject to manifesting and special waste hauling
12 requirements any longer under 808 and 809, so I think
13 we're agreed on that. There may be some disagreement as
14 to what exactly is covered under 739, and if we have such
15 agreements, that's probably what we're going to flesh
16 out.

17 So with that kind of segue into -- and us being
18 the proponent as well, NORA being the proponent, we feel
19 sort of incumbent upon ourselves to make sure that the
20 Board has a great understanding, even though we may agree
21 with the Agency on these concepts, that the record needs
22 to sort of reflect that we've met our burden, if you
23 will, of showing the necessity for this rule, so if we're
24 being a bit redundant because the Agency is already

1 there, please bear with us, because we feel like we need
2 to do that, okay?

3 So with that -- And I would also ask all of the
4 four individuals -- I didn't offer the -- formally the
5 testimony. I would like to do so now, if I could just --

6 Mr. Harris, that was your testimony that you
7 prepared --

8 MR. HARRIS: Yes.

9 MS. MANNING: -- and presented? I'd like to
10 offer that, then, as an exhibit. I've numbered it.

11 Mike Lenz, you've had an opportunity to look at
12 your testimony. Is that in fact your testimony that --

13 MR. LENZ: Yeah, but I don't have a copy. I
14 made notes on it.

15 MS. MANNING: We're not going to -- I've
16 already given it to the Hearing Officer. That's fine.

17 MR. LENZ: Okay. Yes.

18 HEARING OFFICER FOX: And Greg Ray, you have
19 a copy of your testimony, which I've labeled as well as a
20 numbered exhibit?

21 MR. RAY: Yes, that's my testimony.

22 MS. MANNING: And Victoria Custer, you have
23 your testimony?

24 MS. CUSTER: Yes.

1 MS. MANNING: Good. And it's been labeled,
2 and I would enter all of those in as exhibits, as well as
3 for the convenience of the Board, I've labeled as
4 exhibits 35 Illinois Administrative Code 808, 35 Illinois
5 Administrative Code 809 and 35 Illinois Administrative
6 Code 739 as well as the federal rule.

7 HEARING OFFICER FOX: And Ms. Manning has
8 asked to introduce a list of eight exhibits into the
9 record, and I know, Ms. Flowers, she has offered a copy
10 of those as well to the Agency, and at the risk of being
11 tedious but in the interest --

12 MS. MANNING: Go ahead.

13 HEARING OFFICER FOX: -- of completion,
14 those are Exhibit No. 1, 40 CFR, Part 279, standards for
15 the management of used oil; Exhibit No. 2, 35 Illinois
16 Administrative Code, Part 739, standards for the
17 management of used oil; Exhibit No. 3, 35 Illinois
18 Administrative Code, Part 808, special waste
19 classifications; Exhibit No. 4, 35 Illinois
20 Administrative Code, Part 809, non-hazardous special
21 waste hauling and the uniform program; Exhibit No. 5, the
22 testimony of Christopher Harris; Exhibit No. 6, the
23 testimony of Victoria Custer; Exhibit No. 7, testimony of
24 Mike Lenz; and Exhibit No. 8, the testimony of Greg Ray.

1 Is there any objection to admitting those eight
2 exhibits as Hearing Exhibits No. 1 through 8? Hearing no
3 objection from the Agency or otherwise, they are admitted
4 and will be marked as such. Thank you for bearing with
5 me while I ran through those.

6 MS. MANNING: Victoria, would you like to go
7 ahead and offer your testimony to the Board either in
8 summarized fashion or whatever you feel comfortable with?

9 MS. CUSTER: Okay. Good afternoon. My name
10 is Victoria Custer, and I'd like to thank the Board for
11 allowing NORA to present this rulemaking proposal today,
12 and I am the chairperson for NORA's Illinois Working
13 Group, and I'd like to admit my testimony as read, adding
14 in addition that in Illinois alone there's an estimated
15 42 million gallons of used oil generated annually from an
16 estimated 34,000 generators. Thank you.

17 MS. MANNING: Mr. Lenz?

18 MR. LENZ: Yeah. My name is Mike Lenz.
19 Appreciate the opportunity. Skipping a lot of the
20 details, I've been involved in the used oil industry most
21 of my life and I've been involved in NORA most of its
22 life. I wanted to concentrate in my testimony on the
23 nuts and bolts problems that we've seen trying to fit the
24 two tracking systems together, and I think I've outlined

1 that pretty well in the testimony where we have
2 situations where we can't really follow the manifesting
3 law to the letter because the used oil industry works in
4 a different way than I think hazardous waste does, which
5 is what the manifesting was really designed for, and I'd
6 be happy to take any questions about those issues, but
7 that's the bulk of what my testimony was about, was to
8 show the problems that exist between the two systems.

9 MS. MANNING: Thank you. Mr. Ray?

10 MR. RAY: Thank you. I'm Greg Ray, vice
11 president of business management for Heritage-Crystal
12 Clean. I'd like to thank you for hearing my testimony
13 today. I'm going to skip over most of my personal
14 background, and let me just suggest that my 20 plus years
15 of industry experience managing both large and small
16 businesses in a variety of geographic areas is suitable
17 background for offering testimony.

18 During the late 1980s, the used oil industry was
19 vigorously debating the issue of whether used oil should
20 be classified as a hazardous waste. This debate was
21 decided by federal EPA's decision that used oil could
22 most effectively be regulated if managed without the
23 burdens associated with a hazardous waste designation
24 based on EPA's understanding that most used oil was

1 already being managed via recycling. Federal EPA
2 considered the arguments of used oil generators who were
3 eager to avoid the bureaucracy of manifesting and ID
4 numbers and concluded that these burdens were not
5 necessary to ensure the protection of human health and
6 the environment. While eschewing the hazardous waste
7 label, EPA did promulgate management standards for used
8 oil recyclers and marketers, standards which have come to
9 be viewed by the industry as reasonable and sufficient.

10 Subsequently, many states adopted used oil rules
11 and regulations that mirrored the EPA management
12 standards. Both NORA and the API actively encouraged
13 state governments to follow this path and adopt the
14 federal framework. Over several years, the vast majority
15 of states did so, creating a nearly uniform national
16 system for used oil recycling. Today generators and
17 collectors operating across state boundaries can
18 typically follow a simple and straightforward set of
19 rules to see that used oil is safely collected and
20 recycled while conserving a valuable resource and
21 protecting the environment.

22 Currently, my company, HCC, collects used oil
23 from generators in Illinois, Missouri, Indiana, Ohio,
24 Kansas, Wisconsin, Arkansas, Louisiana, Texas,

1 Mississippi, Alabama, Georgia, Tennessee, Kentucky, North
2 Carolina and South Carolina. To the best of my
3 knowledge, Illinois is the only state from this list that
4 classifies used oil as a special waste or requires
5 generators to manifest used oil.

6 NORA's statement of reasons provides some of the
7 history explaining why Illinois is one of the very few
8 states that have not yet adopted the uniform national
9 approach. The current situation is unfortunate and
10 undesirable. Illinois' unique used oil regulations make
11 this state a more difficult place to do business for
12 generators as well as used oil collectors and recyclers.
13 The most significant deviation from the federal system is
14 that Illinois continues to require generators to ship
15 used oil using special waste manifests, which is an
16 administrative burden with no benefit to human health or
17 the environment.

18 The issue of consistency across states is
19 important to many of our customers who have multiple
20 facilities. Such customers include, for example, chains
21 of auto service facilities, auto dealerships, trucking
22 companies and even manufacturers. These customers often
23 have one environmental manager with oversight for many
24 facilities in different states. Obviously these

1 customers find it much easier to follow regulations that
2 are nearly uniform throughout their operating area and
3 prefer this to regulations that are a patchwork of
4 different rules for different states.

5 Today, Heritage-Crystal Clean has approximately
6 1100 customers in Illinois who are subject to the special
7 waste manifesting provisions related to used oil. We
8 generate about 2,800 Illinois special waste manifests for
9 used oil annually, documents that we prepare for our
10 customers, ensuring that they are signed by multiple
11 parties and are promptly returned and properly filed.
12 HCC has several full-time employees engaged in the
13 printing and filing of manifests and another eight or ten
14 field personnel who need to deal with Illinois special
15 waste manifests for used oil as a significant fraction of
16 their daily work. We estimate that our company spends
17 \$100,000 per year on our Illinois manifesting activity,
18 and we are one of the smallest used oil collectors in the
19 state. It's my contention that all this paperwork does
20 nothing to enhance the protection of human health and the
21 environment. To the contrary, the exercise is a waste of
22 paper, time and energy. Most state environmental
23 agencies have apparently come to a similar conclusion as
24 evidenced by their adoption of the federal management

1 standards which do not require manifesting for used oil.

2 Next I'd like to address the specific language
3 that might be appropriate to implement our intended
4 exemption. With NORA's filing of December 2005, NORA
5 proposed to exempt from manifesting used oil as defined
6 by or managed pursuant to 35 Illinois Administrative Code
7 739. Subsequently, we have received and reviewed the
8 comments submitted in May by the Illinois EPA. With
9 these comments, Illinois EPA objects to the original
10 NORA-proposed wording. My understanding is that the
11 Illinois EPA believes that this original wording could be
12 construed to exempt from manifesting certain used oil
13 which is not subject to management pursuant to 35
14 Illinois Administrative Code 739. Certainly that was not
15 NORA's intent. We have therefore proposed different
16 language which we believe is fully responsive to the
17 concern voiced by Illinois EPA. We have amended our
18 proposal to suggest that the manifest exemption should
19 apply to materials subject to regulation as used oil
20 pursuant to 35 Illinois Administrative Code 739. Not
21 only does this directly address the concern expressed by
22 Illinois EPA, but it makes for a more clear and useful
23 regulation.

24 I'd like to elaborate on this. Federal used oil

1 regulations define used oil briefly and narrowly at 40
2 CFR 279.1. They say used oil means any oil that has been
3 refined from crude oil or any synthetic oil that has been
4 used and as a result of such use is contaminated by
5 physical or chemical impurities.

6 Additionally, when writing these regulations, the
7 federal regulators recognized that there were a variety
8 of common materials which occur in proximity to used oil
9 and are compatible with used oil and are safely and
10 properly recycled within the national used oil recycling
11 system. Some of these materials are mixtures that are
12 almost impossible to distinguish from normal used oil.
13 The federal regulators felt that it was beneficial that
14 these used-oil-like materials were also eligible to be
15 managed under the used oil regulations. Some examples of
16 these materials -- and I say these are materials which
17 are not used oil by definition but which are subject to
18 regulation as used oil -- can be found at 40 CFR 279.10,
19 including mixtures of used oil and conditionally exempt
20 small quantity generator hazardous waste; materials
21 containing or otherwise contaminated with used oil that
22 are burned for energy recovery; mixtures of used oil and
23 fuels or other fuel products; wastewater contaminated
24 with more than de minimis quantities of used oil.

1 The result is that in almost all states, the used
2 oil management system participants, including generators,
3 collectors, processors and marketers, have developed
4 programs to manage all of these materials, both used oil
5 as defined and also the used-oil-like mixtures, safely
6 and efficiently.

7 The existing Illinois used oil regulations follow
8 the form of these federal used oil regulations I've
9 mentioned very closely. Each of the used-oil-like
10 mixtures I've just described is also addressed in the
11 Illinois regulations and is deemed appropriate to manage
12 pursuant to the state's used oil regulations.

13 We think it is clear that if and when the
14 proposed manifest exemption for used oil is adopted by
15 Illinois, it should apply not only to used oil but also
16 to the used-oil-like mixtures which are already subject
17 to management as used oil pursuant to federal regulations
18 and also pursuant to 35 Illinois Administrative Code 739.
19 To do otherwise would create a variety of problems,
20 including inconsistency with other states just as we're
21 seeking to achieve national consistency at this time; it
22 would create an artificial distinction between some
23 materials which are virtually impossible to differentiate
24 in the real world; and it would erect an impediment to

1 the safe recovery of CESQG hazardous waste.

2 Allowing the manifest exemption for used oil and
3 used-oil-like mixtures provides consistency with other
4 state programs. It does nothing to change the current
5 management practices in Illinois, which already allow all
6 of these materials to be managed as used oil, except it
7 would eliminate the requirement for unnecessary
8 manifests. Our proposal will relieve the industry and
9 Illinois generators of a state-specific administrative
10 burden without comprising human health or the
11 environment.

12 In conclusion, thank you for considering our
13 proposal and my testimony. I believe that this proposal
14 is in the best interest of the citizens of the state of
15 Illinois and will be pleased to respond to your
16 questions. Thank you.

17 MS. MANNING: Thank you. Thank you.
18 They're ready for questions.

19 HEARING OFFICER FOX: If I may raise a
20 housekeeping issue first of all, you had filed the errata
21 sheet number one --

22 MS. MANNING: That's correct. That's
23 correct.

24 HEARING OFFICER FOX: -- which Mr. Ray had

1 at least obliquely referred to.

2 MS. MANNING: That's correct.

3 HEARING OFFICER FOX: Would it be your wish
4 to introduce that -- although it has been filed with the
5 Board's clerk earlier this month, introduce that today as
6 a hearing exhibit?

7 MS. MANNING: That's all right. We can do
8 that. I thought as long as it was filed, the Board
9 already had notice of it, but I'd be happy to introduce
10 it as a hearing exhibit as well.

11 HEARING OFFICER FOX: It is -- And as I
12 mentioned, it has been filed with the clerk --

13 MS. MANNING: Right.

14 HEARING OFFICER FOX: -- and that's entirely
15 as you wish, Ms. Manning, so I'll leave that up to you.

16 MS. MANNING: Well, let's go ahead and file
17 it as an exhibit as well.

18 HEARING OFFICER FOX: Is there --

19 MS. MANNING: I don't have a copy of it,
20 obviously, but it's in my filing.

21 HEARING OFFICER FOX: And maybe we can get a
22 copy of that, I'm certain. Let me --

23 MS. MANNING: Certainly I can do that and
24 have copies sent to you as a hearing exhibit. I wasn't

1 presuming it was necessary to have as a hearing exhibit
2 as long as it was filed with the Board.

3 HEARING OFFICER FOX: Let me ask first of
4 all, is there any objection on the part of the Agency or
5 any other -- anyone else who is present to admitting the
6 errata sheet as a Hearing Exhibit No. 9?

7 MS. FLOWERS: No.

8 HEARING OFFICER FOX: None from the Agency.

9 MS. MANNING: Here you go. Hearing Exhibit
10 No. 9.

11 HEARING OFFICER FOX: And hearing no
12 objection, that will be admitted, the errata sheet, as
13 Hearing Exhibit No. 9. Thank you very much.

14 MS. MANNING: That's correct. You're
15 welcome.

16 HEARING OFFICER FOX: And I believe I
17 interrupted you, Ms. Manning, as you were about to
18 indicate --

19 MS. MANNING: That's okay. Obviously the
20 substance of the disagreement is simply the difference in
21 language between the two entities, and I think NORA
22 members would be happy to accept any questions from the
23 Board or anyone else if they have any, unless you were
24 going to go to the Agency first, and however you want to

1 do it.

2 HEARING OFFICER FOX: No, as we discussed, I
3 think we'll go to questions first, and if you are a
4 member of the audience who would like to be recognized
5 for a question, please give me a signal by raising your
6 hand, and when I call upon you, if you would provide your
7 name and any organization or association that you might
8 represent, that would be helpful for the record. But why
9 don't we turn to questions of the four witnesses that
10 NORA has made available this afternoon.

11 MS. FLOWERS: We don't have any questions.

12 MS. MANNING: No questions?

13 HEARING OFFICER FOX: All right. Is there
14 anyone else -- Other than the Agency, before the Board
15 turns to any questions it may have, is there anyone else
16 who has questions for the witnesses from NORA this
17 afternoon? Very well. We can certainly return to those
18 if you would like. Mr. Rao?

19 MR. RAO: Yeah. We have some questions,
20 mostly clarification type questions. I'll start with
21 Mr. Harris. Okay. On page 3 of your prefiled testimony,
22 you note that all used oil generators must comply with
23 the applicable USDOT hazardous material requirements that
24 include identification, classification, packaging,

1 marking, labeling and manifesting used oil destined for
2 disposal. Could you please clarify whether this USDOT
3 requirements apply only to used oil that is being sent
4 for disposal or also to used oil being managed under Part
5 739? It's on page 3. It was not page numbered, but --

6 MR. HARRIS: I'm sorry. The -- Let me be
7 clear about that. The manifesting under the DOT regs,
8 the manifest portion is for used oil destined for
9 disposal. For used oil that is going for recycling, all
10 of the identification, classification, packaging,
11 marking, labeling and so forth apply. I mean, if --

12 MR. RAO: Okay.

13 MR. HARRIS: -- if they apply, if the
14 requirements apply, then DOT requirements must be adhered
15 to.

16 MR. RAO: Okay.

17 MR. HARRIS: And that is made clear, by the
18 way -- I'm not just making this up. This --

19 MR. RAO: No, I -- we weren't -- just want
20 this information to be clarified for the record.

21 MR. HARRIS: This is -- And this comes
22 directly from the EPA preamble language in November 29,
23 1985, which I've cited. Now, I'm not saying that at all
24 times for all used oil DOT requirements apply, but when

1 they do apply, the generators have to comply with those
2 requirements.

3 MR. RAO: Okay. And you also follow that
4 statement by saying that transporters of used oil have to
5 comply with DOT requirements governing placarding,
6 record-keeping, insurance and reporting spill incidents?

7 MR. HARRIS: That's correct.

8 MR. RAO: And you cite to 40 CFR 279.43. Is
9 that DOT regulations or is it EPA?

10 MR. HARRIS: These are EPA regulations which
11 reference the DOT requirements, so you will see when you
12 look that provision up that there's a direct
13 cross-reference to the DOT requirements. In other words,
14 when EPA promulgated these regulations, they said, and
15 don't forget, transporters need to comply with the
16 applicable DOT requirements.

17 MR. RAO: Okay. And regarding the reporting
18 requirements required by the Department of
19 Transportation, are those very similar to the tracking
20 requirements pursuant to Part 739?

21 MR. HARRIS: I know that they have --
22 they're not -- they're far from identical. What DOT is
23 interested in is the certain record-keeping of how much
24 and where it is going, but it is not necessarily

1 interested in the generators, for example. They are more
2 concerned in reporting spill incidents, so in other
3 words, if you have a truck of used oil and it turns over
4 and spills, that's where the Department of Transportation
5 is most concerned, and so they'll be meticulous about
6 when the accident happened, how much was spilled, where
7 it went, who the responders were and so forth. That's
8 their principal interest.

9 MR. RAO: So a transporter will be complying
10 with these dual requirements, and will they be using
11 different, you know, forms for this, how they comply with
12 these rules or --

13 MR. HARRIS: Yes. I think Mr. Ray might
14 have a better -- I'm not saying you have ever had a spill
15 incident, but I think that DOT has its own spill
16 reporting requirements and they have their own DOT forms
17 for that.

18 MR. RAO: We were just curious as to, you
19 know, what kind of information to what agencies these
20 transporters will have to comply with, because you
21 were -- one of the reasons for getting rid of the state
22 manifesting requirements was to simplify it for the
23 transporters, so we were wondering if there's one form
24 they can use to meet all, you know, requirements; that's

1 DOT and EPA.

2 MS. MANNING: I would point out for you,
3 Mr. Rao, that those DOT requirements that are found in
4 the federal rules are identically, as you know, found in
5 the Illinois rules.

6 MR. LENZ: Yeah. I have the number if
7 you --

8 MR. RAO: Yeah.

9 MS. MANNING: Yeah, the numbers are all --
10 I'm sure you know what those numbers are.

11 MR. RAO: Yeah. Yeah, I looked at it, and,
12 yeah, the reason I asked was since NORA is trying to
13 simplify things, were there any efforts made to have one
14 form to --

15 MS. MANNING: Obviously that effort in terms
16 of reversing the DOT requirement would have to be made
17 federally because it's a federal rule that flows to
18 Illinois, so that's not the subject really of what we're
19 here before the Board for now, and maybe your question is
20 did you ever try to undo those DOT rules, Mr. Harris.

21 MR. HARRIS: No, we have never tried to undo
22 the DOT rules. The purpose of this point in my testimony
23 is that this is an area already pretty heavily regulated
24 in terms of the information that is required, so not only

1 do you have the tracking requirements -- and here the
2 Illinois rule and the EPA rule are identical -- but you
3 also have another layer of federal paperwork requirements
4 imposed by the Department of Transportation principally
5 interested in spill reporting, and we're not trying to
6 get rid of them. We're just saying there's a lot of
7 information about each and every used oil shipment.

8 MR. RAO: Okay. And at pages 3 and 4 of
9 your testimony, you say that the proposed exemption
10 should encompass all materials regulated under the used
11 oil regulations in Part 739 and not just used oil as
12 defined as proposed by the Agency. I know Miss Manning
13 briefly addressed this issue, so in your discussions with
14 the Agency, you know, has there been any movement in
15 terms of reaching an agreement or --

16 MR. HARRIS: I would defer that question to
17 Ms. Manning.

18 MR. RAO: Yeah. That's why -- I wanted to
19 ask this question to the Agency later, so we'll just pick
20 it up. Okay.

21 MS. MANNING: Suffice it to say, to answer
22 it in part -- and then I think we can have a longer
23 answer after we hear the Agency, and if the Agency has
24 any questions, which they obviously don't have any

1 questions. Our point, NORA's point, is Section 739.120
2 applicability has to be read as well as the specific
3 definition for used oil in order to cover who is -- who
4 would be exempt from manifesting and special waste
5 hauling under 808, 809.

6 MR. RAO: And regarding the same issue, you
7 also mentioned that, you know, practically it's almost
8 impossible to exclude those other materials that are
9 covered by Part 739, which is not defined as used oil.
10 Can you elaborate a little bit more as to why, you know,
11 practically it's not, you know, possible to separate that
12 other material from the --

13 MR. HARRIS: I think Greg Ray would have --

14 MR. RAY: I'd be happy to answer that from a
15 business point of view. Some of those things which are
16 used-oil-like and are included under the regulations --
17 let me pick up two examples -- one are mixtures of used
18 oil and fuel. Typical automotive shop, which is a
19 classical customer of our industry, is collecting used
20 oil out of crankcases, and even in your car's engine, if
21 you don't have seals that are good, you get de minimis
22 amounts of fuel in the oil. Now, for us to go in the
23 field and say to a customer, could there be any fuel in
24 that, or, did you put in a half gallon of diesel fuel

1 into a 100-gallon oil tank, I'm not aware of any tests
2 that would reveal that. I don't think that there's any
3 mechanical way that we can know for certain that that oil
4 doesn't have some amount of fuel in it, and given that
5 what we're picking up is all destined to be burned as
6 fuel and at the federal level there's a consensus that
7 it's okay to still manage those small amounts of fuel and
8 oil, we think that it's appropriate to look at that as
9 used oil.

10 Another example are CESQG hazardous wastes that
11 are included in used oil and are allowed to be managed as
12 used oil, and you probably recognize that the big reason
13 that that was done was to avoid creating an impediment to
14 the safe recycling of very small quantities of hazardous
15 waste that are distributed across a very large segment of
16 the population. People who might have a few ounces of
17 some sort of solvent of some kind, you know, we'd like
18 them to keep it segregated and not put it in their used
19 oil, but if they do, it's better that it goes in the oil
20 for recycling and burning than being dumped in a
21 wastewater stream out back, and I think that's why
22 federal EPA felt it was okay to consider those small
23 contaminants in used oil were okay provided that there
24 were checks in place that the used oil that was being

1 produced and sold as fuel still met some standards for
2 performance in terms of an acceptable fuel. For us as a
3 company to make a determination in the field if there's
4 trace amounts of hazardous waste in the used oil just
5 isn't practical. Again, there's not a good reliable
6 test. We're talking about very small, unsophisticated
7 generators who wouldn't know perhaps what they've got in
8 their used oil, so --

9 MR. RAO: So, I mean --

10 MR. HARRIS: Could I add to that just so
11 that -- There is the rebuttable presumption, of course,
12 in the used oil regulations, which means that if the used
13 oil contains more than 1,000 parts per million of total
14 halogens, it is presumed to be a hazardous waste, so the
15 quantity that we are talking about is less than 1,000,
16 and that's the regulatory cutoff that EPA has
17 established. Anything above that, it's presumed to be
18 hazardous waste unless it can be successfully rebutted by
19 the generator or the transporter.

20 MR. RAO: So ultimately, if you do pick up
21 materials other than used oil, like you were saying, when
22 it's recycled, that used oil has to meet the
23 specifications.

24 MR. RAY: Yes.

1 MR. RAO: That's the --

2 MR. RAY: As Mr. Harris said, of course we
3 do have some ability to do some field tests and screen
4 out some problem compounds, and that's done routinely in
5 the industry, but beyond that, the material that's
6 collected and is ultimately sold as a fuel is subject to
7 more stringent testing and examination, so we're able to
8 look for and find any concentrations of materials that
9 might be problematic.

10 MR. RAO: Thank you. Okay. I had a couple
11 of questions for Mr. Lenz, his prefiled testimony.
12 Mr. Lenz, in page 4 of your prefiled testimony you
13 mentioned that the estimated annual special waste hauling
14 permit costs for Future Environmental are over \$1400, and
15 you also mentioned that if this proposal is adopted, you
16 know, you would no longer be required to obtain a special
17 waste hauling permit but you'd have to still go through
18 the registration process, the IEPA's registration
19 process.

20 MR. LENZ: Well, I think I was mainly
21 pointing out the cost at that point.

22 MR. RAO: Yeah.

23 MR. LENZ: The mechanics of it, I'm not
24 exactly sure how it'll work once we're done. I know

1 we're still going to need a number.

2 MR. RAO: Okay.

3 MR. LENZ: What they call -- Whether they
4 call it a permit or an ID number --

5 MR. RAO: And this -- whatever that
6 alternative process would be, if this rule is adopted,
7 would there be a cost involved in getting that
8 registration number?

9 MS. MANNING: We understand that there is
10 not, but perhaps the Agency could speak to that.

11 MR. LENZ: Yeah, I think they'd have to
12 answer that.

13 MR. RAO: Okay.

14 MR. DRAGOVICH: Yeah, there's no cost to
15 obtain an ID number.

16 MR. RAO: Okay. And would it be -- do you
17 already have this registration process established or --

18 HEARING OFFICER FOX: Perhaps if we're going
19 to have Mr. Dragovich's testimony entered, it would be
20 time to swear him now.

21 (Witness sworn.)

22 MR. DRAGOVICH: Could you repeat your
23 question?

24 MR. RAO: Yeah. I was just asking you about

1 whether the Agency has already established a registration
2 process for getting ID numbers.

3 MR. DRAGOVICH: Yes, we do have.

4 MR. RAO: So if --

5 MR. DRAGOVICH: Except for -- I mean, we
6 understand how to do this process, but right now
7 everybody that transports the material is getting a
8 special waste hauler's permit, so it's going through that
9 process right now.

10 MS. MANNING: And our point, Mr. Rao, is --

11 MR. RAO: Yes.

12 MS. MANNING: -- NORA has no problem with
13 working with whatever the Agency determines is the
14 appropriate procedure to have a number.

15 MR. RAO: No, my point of asking --

16 MS. MANNING: Whether that number is a 739
17 number or an 808, but, you know --

18 MR. RAO: No, my point of asking this
19 question was to make sure what the economic benefits or
20 impacts are, because Mr. Lenz raised this issue of how
21 much it costs to get the permit and --

22 MS. MANNING: I was thinking -- And his
23 testimony is largely related -- correct me if I'm
24 wrong -- to the number of manifests and the cost of each

1 individual manifest.

2 MR. LENZ: Earlier, but this is about the
3 permit itself that he's referring to.

4 MS. MANNING: Okay.

5 MR. RAO: Yes.

6 MS. MANNING: Thank you.

7 MR. LENZ: But that would either be
8 substantially reduced or go away completely, from what I
9 understand.

10 MR. RAO: And, Mr. Lenz, also in your
11 testimony you mentioned, now, although the proposal will
12 eliminate the requirements to complete a manifest for
13 used oil, Part 739 still requires, you know, tracking
14 requirements, and you mentioned on page 3 that each
15 company develops their own system of tracking that best
16 fits their business, and you continued that NORA assists
17 members in developing these tracking programs. Would you
18 be willing to provide the tracking forms that your
19 company uses into the record so -- as an example for the
20 Board to see what kind of information is generally
21 tracked and --

22 MR. LENZ: Yeah, I think so.

23 MS. MANNING: We would be happy to do that.

24 MR. RAO: Yeah. And along the same lines,

1 if you have tracking forms used by Crystal Clean and
2 Southwest Oil, that would be helpful.

3 MS. MANNING: We would be happy to do that.

4 MR. RAO: Thank you very much. Okay. Then
5 I have a question for Mr. Ray. Mr. Ray, on page 3 of
6 your prefiled testimony, you estimated that the cost of
7 Heritage-Crystal Clean to comply with the manifesting
8 requirements is about \$100,000, and is that -- that's an
9 annual cost, right?

10 MR. RAY: Yes.

11 MR. RAO: Okay. And if the manifesting
12 requirements were eliminated, would you save \$100,000 or
13 are some of those expenses shared with other
14 record-keeping requirements?

15 MR. RAY: No, that's my best estimate of the
16 costs solely related to the Illinois special waste
17 manifesting activity that we're doing. In terms of
18 detail, probably only about a tenth of that is what we
19 spend by the manifesting forms, the special waste
20 manifest, so maybe \$10,000 a year, but we have several
21 people in our operation who are involved with the
22 printing and filing and mailing of those forms out to our
23 branch locations, which is a substantial administrative
24 cost in the office, and then our field personnel -- this

1 is the hardest part to quantify -- our field personnel
2 are out in front of customers getting them to sign --
3 fill out and sign one more form, or when they get a new
4 customer to sign up, they have to do it manually and fill
5 out all the information on this form, and that work is
6 spread out a bunch -- across a bunch of individual route
7 service people, and so what we would probably find is
8 that for each of those eight or ten people, they would
9 suddenly have an extra half hour or an hour every day to
10 be used effectively for sales or other service work
11 instead of doing that unnecessary paperwork, and so
12 that's the bulk of those savings, is the improved
13 efficiency of the field personnel who are today doing a
14 lot of that paperwork.

15 MR. RAO: Okay. So there will be a
16 significant saving for your company.

17 MR. RAY: Yes, there will, and I think in my
18 footnote I said we expect to translate that savings into
19 increased productivity. I don't imagine that we're going
20 to eliminate any positions.

21 MR. RAO: Yeah, I was about to ask you that.
22 That was my next question.

23 MR. RAY: Our business -- Our overall
24 business is growing by about 25 percent a year, and so we

1 have constant need for experienced people. Even in the
2 office where we have people just doing the manifesting,
3 we'd be happy to redeploy them inside the office in other
4 administrative tasks.

5 MR. RAO: Okay. And would that be the same
6 situation --

7 MS. CUSTER: Oh, yeah.

8 MR. RAO: -- with your company, and Mr.
9 Lenz?

10 MS. CUSTER: Much more productivity from the
11 employees, oh, yeah.

12 MR. LENZ: Oh, yeah, even more so because we
13 have a lot more Illinois customers, Future Environmental,
14 than -- most of our customers are probably in Illinois.
15 I mean, that's where we started.

16 MR. RAY: And these benefits that we're
17 talking about, if I can clarify, are just the benefits
18 that we perceive on our side of the customer/vendor
19 relationship, and our customers will see economic
20 benefits too that I haven't attempted to quantify here,
21 but it's clear that the automotive service facilities
22 that we take care of and that have to sign these forms
23 and in theory are waiting to get them back and file them
24 will see some economic benefit from no longer having to

1 do that as well.

2 MR. RAO: I have just one more question I
3 saved last for you, Miss Manning. It's just that when we
4 were reviewing Part 739, we noticed that there were a
5 couple of board notes --

6 MS. MANNING: Yes.

7 MR. RAO: -- specifically in Section --

8 MS. MANNING: Yes.

9 MR. RAO: -- 739.124 --

10 MS. MANNING: Yes.

11 MR. RAO: -- and 739.140, which the notes,
12 I'll read it. It states that a generator that qualifies
13 for an exemption under Section 739.124 may still be
14 subject to state special waste hauling permit
15 requirements under Part 809. My question is, if this
16 proposed rulemaking is adopted, will this note still be
17 necessary?

18 MS. MANNING: My theory would be it would
19 not, Mr. Rao, and we would be happy if the Board would
20 like to eliminate those board notes.

21 MR. RAO: And my second question was should
22 Part 739 be open now to fix this or would it be all right
23 if we eliminated --

24 MS. MANNING: Well, recall that Part 739 is

1 an identical-in-substance --

2 MR. RAO: Yeah.

3 MS. MANNING: -- rule from the federal rule
4 and query whether the board notes really are in keeping
5 with that identical-in-substance authority anyway,
6 because those board notes obviously aren't --

7 MR. RAO: Yeah.

8 MS. MANNING: -- in the federal rule, nor is
9 the reference in the federal rule to special waste,
10 because that's just an Illinois system.

11 HEARING OFFICER FOX: And I'm sorry. Just
12 based on the testimony you're offering, if we may quickly
13 swear you in. I realize you may be complete by now.

14 (Witness sworn.)

15 MR. RAO: Yeah, I think the reason for
16 putting in those board notes was of the existing
17 connection --

18 MS. MANNING: Correct.

19 MR. RAO: -- between Part 809 and 808, so
20 it's up to you. You know, either we can deal with it if
21 that part is open in the future or --

22 MS. MANNING: I think the cleanest approach
23 is to get rid of the board notes, because I think there
24 would be less confusion. If you would like me to propose

1 that -- You know, if the Board is comfortable with NORA
2 proposing that, I'd be happy to do that. I was hesitant
3 to do that because it's an identical-in-substance
4 rulemaking. I think the Board could do it on its own.

5 MR. RAO: Okay.

6 HEARING OFFICER FOX: Any additional
7 questions, Mr. Rao?

8 MR. RAO: Not for NORA.

9 HEARING OFFICER FOX: Is there -- Before we
10 proceed, is there anyone else who has questions for the
11 witnesses from NORA this afternoon? Seeing none, thank
12 you, of course --

13 MS. MANNING: Thank you.

14 HEARING OFFICER FOX: -- for your time and
15 for your testimony, and we'll proceed at this part with
16 the Agency and with its witness, Mr. Dragovich. You have
17 been sworn in already. I'm sorry. I did skip ahead.
18 You -- I believe Miss Flowers had indicated you'd proceed
19 to have your prefiled testimony into the record as read,
20 which of course the Board's rules provide, and I believe
21 you also indicated that you would prefer not to provide a
22 summary. Why don't we proceed right to any questions
23 that the participants or the Board may have of
24 Mr. Dragovich, if this is the right time to do that.

1 MS. FLOWERS: That's fine.

2 HEARING OFFICER FOX: Excellent. Is
3 there -- If -- Once again, anyone who would like to pose
4 a question, if you'd give me a sign by raising your hand
5 and identifying the group you might be with. Is there
6 anyone who wishes to ask a question of the Agency's
7 witness, Mr. Dragovich? Before we proceed with any
8 questions the Board may have -- apparently not --
9 Mr. Rao, did you have any questions for the Agency?

10 MS. MANNING: May I reserve my question, if
11 I have one, till after the Board asks their question
12 or --

13 HEARING OFFICER FOX: Happy to do that.

14 MS. MANNING: I just may have a follow-up if
15 the Board has questions.

16 HEARING OFFICER FOX: We will not --

17 MS. MANNING: If the Board doesn't have
18 questions, I may have questions.

19 HEARING OFFICER FOX: I believe Mr. Rao does
20 have questions, but we'll be happy to return to you --

21 MS. MANNING: Thank you.

22 HEARING OFFICER FOX: -- as we get there.

23 MR. RAO: Okay. I have a few questions,
24 Mr. Dragovich, for you. First, does the Agency now keep

1 track of the amount of used oil generated, transported
2 and/or recycled in the state?

3 MR. DRAGOVICH: I think I would have to
4 check on that to make sure.

5 MS. FLOWERS: We can answer that in comments
6 after the --

7 MR. RAO: Okay. The other questions kind of
8 follow this question. Basically, if used oil manifesting
9 or -- is -- manifesting is eliminated and the records
10 under Part 739 are not submitted to the Agency but
11 maintain that in the transporter or generator sites, is
12 there some mechanism to which the Agency receives any
13 information about used oil management on a periodic
14 basis?

15 MR. DRAGOVICH: Currently there's a special
16 waste report that includes all the special waste, but
17 that's what I wanted to go back and check and see if
18 that's broken out into --

19 MR. RAO: Okay.

20 MS. MANNING: Go ahead.

21 MR. RAO: And when you mention this special
22 waste report, this amendment that NORA is proposing
23 doesn't change the requirements under the special waste
24 reporting, does it?

1 MR. DRAGOVICH: That's correct. Well,
2 that's our understanding, is that they're not proposing
3 to make used oil not a special waste, so it'd still be
4 subject to those reports.

5 MR. RAO: All the reporting requirements?
6 So does the Agency believe that eliminating the
7 manifesting requirements will not in any way frustrate
8 record-keeping efforts of the Agency under the special
9 waste rules?

10 MR. DRAGOVICH: The -- I'm not sure how to
11 answer that. The --

12 MS. FLOWERS: We can answer it in comments
13 if you want to think about it.

14 MR. DRAGOVICH: Okay. Yeah, let's -- let me
15 think about that, because I'm --

16 MR. RAO: Okay.

17 MS. MANNING: If I might, we would like an
18 opportunity to respond to what the Agency's responses are
19 so that if they're not able to respond today, certainly
20 if they were required to do so before our next hearing,
21 that would be helpful.

22 HEARING OFFICER FOX: We can go off the
23 record later to discuss procedural issues such as the
24 timing of filing of comments specifically for the second

1 hearing.

2 MS. MANNING: Fine. Thank you.

3 MR. RAO: In the supplemental statement of
4 reasons that NORA submitted, NORA characterizes the
5 economic impact and the universe of affected sources for
6 this rulemaking is too difficult to estimate. We were
7 wondering if the Agency has any information about the
8 affected entities in this rulemaking.

9 MR. DRAGOVICH: We could try to get an
10 estimate of the used oil facilities that receive
11 manifests.

12 MS. FLOWERS: Right.

13 MR. DRAGOVICH: We can try to do that.

14 MR. RAO: If so, would it be possible to
15 submit that into the record as part of your comments
16 before the second hearing?

17 MR. DRAGOVICH: Yes. The only thing is the
18 information will be by facility, so we wouldn't be able
19 to divide that. If they take other types of waste, we
20 wouldn't be able to divide that information out.

21 MR. RAO: So you will be able to provide
22 information about specifically with taking special waste
23 and not used oil? Is that what you're saying, or --

24 MR. DRAGOVICH: That's correct, and what we

1 would be able to give you would be the facilities that
2 registered as used oil facilities and have taken special
3 waste.

4 MR. RAO: Because we were wondering if that
5 information was with the Agency, maybe NORA could use
6 that to provide a better estimate of the cost benefits or
7 impact if possible. We're not holding you to it, but if
8 it helps.

9 MS. MANNING: Okay. Does -- Okay.

10 MR. RAO: Okay. My last question goes back
11 to the proposed language, and is the Agency in agreement
12 with the wording proposed by NORA in errata sheet one?

13 MS. FLOWERS: Yes, we do have a problem with
14 the language. We want the language that we proposed.

15 MR. RAO: Can you explain, you know, the
16 rationale for your position as not to include other
17 materials which are regulated pursuant to Part 739?

18 MS. MANNING: If that is their position,
19 Mr. Rao. I'm not sure that it is. I haven't gotten
20 clarification as to whether it is or not.

21 MR. RAO: Yeah. They said they are
22 committed to their language.

23 MS. FLOWERS: We're agreeing to an exemption
24 in 808/809 to -- for used oil that is defined by and

1 managed in accordance with 739.

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

5 MS. FLOWERS: We think 739 stands on its own
6 and we don't want to get -- we're talking about 808 and
7 809, and if 739 for some reason is inadequate by how
8 it's -- that would be an issue with 739. We're just
9 going to agree to an exemption for used oil that's in
10 compliance with and defined by 739.

11 MR. RAO: So --

12 MS. FLOWERS: We're not prepared to discuss
13 739 today.

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

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

24 MR. RAO: Okay.

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

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

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

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

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

1 would be regulated as used oil, and NORA's point of view
2 on this is that it makes a lot more sense to have the
3 manifesting and the tracking requirements uniform; that
4 is, the tracking requirements will cover the situation.
5 We don't need a separate set of manifesting requirements
6 for that category of materials where you've added the
7 diesel to the oil as opposed to the diesel being sort of
8 a natural component of the used oil.

9 MS. MANNING: To broaden that a bit, NORA's
10 point is that anything that's regulated pursuant to
11 739.110, the standards for management of used oil, ought
12 to be exempt from 808 and 809, and that's the clean way
13 of doing it and that's what we believe our proposal to
14 do, and we don't understand the Agency's proposal.

15 BOARD MEMBER GIRARD: Well, I just have a
16 real basic question. In looking at the definition of
17 used oil in 739, it appears that if it becomes
18 contaminated, you know, through use -- in other words,
19 it's in the engine and there's a diesel leak through a
20 gasket or something and it's contaminated -- it's covered
21 by the definition. Is that the way you read it?

22 MS. MANNING: Yes.

23 MR. HARRIS: Yes.

24 BOARD MEMBER GIRARD: Now, are there other

1 reasons that someone would physically put diesel into the
2 used oil?

3 MR. HARRIS: Yes.

4 BOARD MEMBER GIRARD: So you aren't sure
5 that that activity is covered by this definition.

6 MR. HARRIS: It's not covered by the
7 definition, but EPA and IEPA have already anticipated
8 that, and they say, well, here's another set of materials
9 which ought to be regulated identically with used oil
10 even though they are not defined identically with used
11 oil.

12 MS. MANNING: And those are set out at
13 739.110 and its federal counterpart in terms of the
14 applicability, these subjects -- these materials shall be
15 regulated as used oil and these shall not, and 739.110
16 tracks the federal rule in terms of what should be
17 considered used oil for purposes of tracking and those
18 requirements and what should not be considered as -- and
19 our point is that's the bar that should be used, not the
20 simple definition, the two-and-a-half-line definition, of
21 used oil.

22 BOARD MEMBER GIRARD: Well, which portion of
23 the applicability section there at 739.110 covers a
24 generator actually physically putting the diesel into the

1 used oil?

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

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

8 BOARD MEMBER GIRARD: So I'm trying to
9 understand what the Agency is trying to say here. So
10 you're saying that you need some specific language to
11 make sure there's a cross-reference here between this and
12 808 and 809 that we're dealing with today, or is it the
13 other way around, that the Agency wants that
14 cross-reference?

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

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

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

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

1 it has to be the subject of this discussion in this
2 regulatory proceeding.

3 MS. FLOWERS: Yeah. We thought that 739
4 stood on its own, but in light of the comments, we can go
5 back and see whether or not there's a disagreement here.
6 I'm not even sure there is. I will have to reread,
7 because, you know, I mean, there's just a -- I think
8 there's a problem with communication about what --
9 which -- what we both want on this, you know, with this
10 exemption, and so hearing that, we'll have to go back and
11 look at what it is they're actually proposing.

12 MR. HARRIS: Mr. Girard, if I can make a
13 farfetched metaphor, what NORA is proposing is the
14 exemption be Saturn and the moons of Saturn. What I
15 think the Agency is saying is just Saturn, not the moons
16 of Saturn, and we think that the moons of Saturn and
17 Saturn make a regulatory unit and it's very clear.

18 MS. MANNING: To be more specific, though --

19 BOARD MEMBER MOORE: He said that to the
20 right person.

21 MS. MANNING: And I need to be more
22 specific. If it's covered in 739, it ought not to be
23 subject to manifest in 808 and 809.

24 MR. RAY: And we think that that's already

1 something that IEPA at one level agrees with because
2 they've adopted the federal regulations and have said
3 that it was appropriate for these other things to be
4 managed like used oil, so we struggle with the question
5 of why -- if they are appropriate and have been for years
6 in this state to be managed as used oil why they would
7 suddenly be a different class of material which could not
8 be exempted from manifesting even though used oil can be
9 exempted from manifesting, and we don't think that it's
10 practical in the field to differentiate between those
11 things. There's a national infrastructure for collecting
12 used oil that doesn't require a company like ours to
13 determine whether a generator's two drops of diesel fuel
14 were mixed with the oil in the engine or by the generator
15 outside of the engine, but that's what this manifesting
16 proposal would require about -- if we don't get the
17 satisfaction we want.

18 BOARD MEMBER MOORE: I just have a question
19 for the Agency, or at least I would like you to clarify.
20 What I heard you say is that in light of the testimony
21 that's been given today, reviewing all parts, including
22 739, that you want to go back and review it and establish
23 whether or not there is a disagreement on language.

24 MS. FLOWERS: Right. There's always just

1 been a trading of language here, and I don't think we've
2 ever had an agreement about what it is that they think
3 our language is talking about or what -- you know, what
4 the problems are. We've just submitted the language that
5 we think that the Agency can live with as far as
6 enforceability and clearness and purpose, and now that
7 they've explained what their problems are, we can go back
8 and see if we can explain our language a little better if
9 that helps with them.

10 HEARING OFFICER FOX: Any further questions,
11 Dr. Girard, or anyone from the Board? Mr. Rao?

12 MR. RAO: No. We look forward to the
13 Agency's comments.

14 HEARING OFFICER FOX: I had one question,
15 and certainly we can return to any that NORA has. Under
16 Section 809, Mr. Dragovich, the current Section 809.211
17 already lists I believe 11 exemptions for non-hazardous
18 special waste transporters, including issues like
19 potentially infectious medical waste and used tires and
20 so forth. The proposal in -- The proposed language for
21 Sections 809.301, 302 and 501 each adds language
22 specifically relating to used oil but not to any of the
23 existing 11 exemptions for these categories; again, such
24 as used tires, although that may not be the best example.

1 Is there any concern on the part of the Agency that
2 failing to carry those 11 existing exemptions forward
3 into the proposal creates any confusion about the
4 implementation of those programs that are already exempt
5 from the requirements? In other words, is there -- does
6 it create the risk of any doubt about whether they're
7 exempt from those requirements any longer?

8 MR. DRAGOVICH: One difference between used
9 oil and some of the other examples is that, for instance,
10 tires aren't special waste by definition and used oil
11 would remain special waste, but I would like to look at
12 the language.

13 HEARING OFFICER FOX: If this is -- and I'm
14 sorry. If this is a subject that also is appropriate to
15 take up in comments, that may be the right forum to do
16 that.

17 MR. DRAGOVICH: Okay. I think we want to do
18 that.

19 MS. FLOWERS: Okay.

20 HEARING OFFICER FOX: And I'm sorry to
21 interject myself. Were there additional questions from
22 NORA for the Agency?

23 MS. MANNING: I don't think so, but two
24 points that I know Mr. Harris wanted to be made on behalf

1 of NORA. One is that the language that NORA has proposed
2 does not -- we're not necessarily wedded to the subject
3 to regulation pursuant to Part 39 -- 739. In fact, if
4 the Agency were willing to change the "and" to "or," you
5 know, used oil, you know, not -- or managed pursuant to
6 739. There's various ways of doing that. Our concern
7 with the Agency's language is the used oil standing alone
8 with the "and" after it.

9 BOARD MEMBER MOORE: Well, there might be an
10 opportunity for you to talk --

11 MS. MANNING: Correct.

12 BOARD MEMBER MOORE: -- back and forth a
13 little bit before the next hearing.

14 MS. MANNING: Thank you.

15 BOARD MEMBER MOORE: Because it's
16 complicated.

17 MS. MANNING: And the other point we wanted
18 to make is -- and I think the NORA witnesses have made
19 that, particularly Mr. Harris -- is the question here --
20 and you've asked a lot of questions about economic impact
21 and burden. The fact of the matter is, because of the
22 significance of the tracking issue, there is no real
23 environmental risk that we're worried about here, and
24 that really this is just paperwork that we're talking

1 about, and everything the Agency would ever need to know
2 in an enforcement context, they can find out and hold the
3 company liable if they didn't do tracking pursuant to
4 739.

5 HEARING OFFICER FOX: Any additional
6 questions from the audience or from NORA for the Agency?
7 And a last opportunity for the Board or for Mr. Rao from
8 the Board's staff? Ms. Flowers, I --

9 MS. MANNING: Did you want -- Mr. Harris
10 would --

11 HEARING OFFICER FOX: Oh, I'm sorry. I
12 overlooked you. My apologies.

13 MR. HARRIS: I just had a question for the
14 Agency. Is there any example of where an incident of any
15 kind, an enforcement example, where information that
16 would have been provided to the Agency under a manifest
17 wasn't provided that could easily have been provided by
18 the shipping documents? In other words, any example
19 where you have to have a manifest and the tracking
20 information is not adequate?

21 MR. DRAGOVICH: The main difference I see
22 between the used oil tracking system and the manifest
23 system is that the manifest is carried along with the
24 shipment, so if there was something that -- and I can't

1 answer his question as far as if anything ever occurred
2 because I'm not familiar with all situations, but the
3 obvious answer is that if something occurred during
4 shipment, the manifest is available as a piece of
5 information, whereas the used oil tracking document is
6 not.

7 MR. LENZ: Well, DOT requires that anyway,
8 so you have that. Whether you're using just the tracking
9 or the manifesting or both, you've got -- under DOT
10 you've got to have information with the truck about
11 what's in there.

12 MS. MANNING: Thank you.

13 HEARING OFFICER FOX: Anything further?
14 Ms. Flowers, I had one quick question. You of course had
15 your prefiled testimony admitted into the record as read,
16 but I wanted to extend the same opportunity. Would you
17 wish to also file that today, move to admit that today
18 specifically as a hearing exhibit, or simply rest on its
19 filing with the clerk?

20 MS. FLOWERS: I can if that makes it more
21 simple.

22 HEARING OFFICER FOX: And there has been a
23 motion to admit the prefiled testimony from the Agency
24 from --

1 MS. FLOWERS: Yes.

2 HEARING OFFICER FOX: -- Mr. Dragovich --

3 MS. FLOWERS: Right.

4 HEARING OFFICER FOX: -- as Hearing Exhibit
5 No. 10. Is there any objection from NORA or from anyone
6 else?

7 MS. MANNING: No.

8 HEARING OFFICER FOX: The motion is granted
9 and the prefiled testimony of Mr. Dragovich is admitted
10 into the record as Hearing Exhibit No. 10. I believe I
11 see over on the counter that there is a sheet on which no
12 one has signed in to testify.

13 MR. KNITTLE: That is correct.

14 HEARING OFFICER FOX: That is correct. No
15 one who did not prefile testimony has appeared to testify
16 today, and why don't we go off the record just for a
17 moment or two to address procedural --

18 MS. MANNING: Sure.

19 HEARING OFFICER FOX: -- issues relating to
20 the timing of filing comments and having opportunities to
21 do that, if we may go off the record, please.

22 (Discussion held off the record.)

23 HEARING OFFICER FOX: In going off the
24 record, we did address a procedural issue relating to the

1 filing of public comment. Public comment on issues that
2 have been identified in the record today will be due from
3 the Agency, the Illinois Environmental Protection Agency,
4 on Thursday, June 15, and the mailbox rule will not apply
5 so that the Board's clerk will need to receive those
6 before the end of business at 4:30 p.m. on that day, and
7 the hearing -- second hearing now scheduled for Thursday,
8 June 29, at 1 p.m. will proceed as scheduled. Seeing no
9 further questions --

10 BOARD MEMBER MOORE: Just -- Did I
11 understand you to say public comment from the Agency?

12 HEARING OFFICER FOX: The comment from the
13 Agency will be due. I'm sorry.

14 MS. MANNING: Actually, it's just a response
15 to the questions that were asked today. Just so that I
16 make it clear, they were asked today and they were not
17 ready to answer questions as to 739, which they're just
18 answering questions that they weren't ready to answer
19 today.

20 BOARD MEMBER MOORE: Correct.

21 HEARING OFFICER FOX: So noted. Any
22 further -- Seeing no further issues at this point, I will
23 go ahead and thank everyone for participating and adjourn
24 the hearing.

1 (Hearing adjourned.)
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2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at
7 Illinois Pollution Control Board, Springfield, Illinois,
8 on May 25, 2006, and did record the aforesaid Hearing;
9 that same was taken down in shorthand by me and
10 afterwards transcribed, and that the above and foregoing
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 3rd day of June, 2006.

14

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Notary Public--CSR

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#084-003688

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