

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

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

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13 RECORD OF PROCEEDINGS before JOEL J.

14 STERNSTEIN, Hearing Officer for the Illinois

15 Pollution Control Board, at 100 West Randolph

16 Street, Room 9-031, Chicago, Illinois, scheduled

17 to commence at 10:00 o'clock a.m. on the 23rd day

18 of August, A.D., 1999.

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1 A P P E A R A N C E S:

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3 HEARING TAKEN BEFORE
4 ILLINOIS POLLUTION CONTROL BOARD
5 100 West Randolph Street
6 Chicago, Illinois 60601
7 HEARING OFFICER: MR. JOEL J. STERNSTEIN

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9 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

10

11 Ms. Marili McFawn

12

13 Mr. Anand Rao

14

15 HARRIS, TARLOW & STONECIPHER, P.L.L.C.,
16 1439 West Babcock
17 Bozeman, Montana 59715
18 (406) 586-9714

19

20 BY: MR. CHRISTOPHER HARRIS

21

22 Appeared on behalf of the National Oil
23 Recyclers Association,

24

25 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
26 1021 North Grand Avenue East
27 P.O. Box 19276
28 Springfield, Illinois 62794
29 (217) 782-5544

30

31 BY: MS. KIMBERLY A. GEVING

32

33 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
34 PRESENT:

35 Mr. Daniel P. Merriman Mr. Gregory W. Dunn
36 Mr. Lawrence W. Eastep Mr. Leslie D. Morrow
37 Mr. Theodore J. Dragovich

38 ALSO PRESENT:

22 Mr. Ray Vintika Mr. Mike Lenz
Mr. Roland Odenwald Ms. Victoria Custer
23 Mr. Gary Custer Mr. Steve Lempera
Mr. Ron Winkel Mr. Steve Rundell
24 Mr. Gary Keller Mr. Thomas Klein

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1 HEARING OFFICER STERNSTEIN: Good
2 morning. My name is Joel Sternstein. I've been
3 appointed by the Board to serve as the hearing
4 officer in this proceeding which is entitled In
5 The Matter of: Amendments To Permitting For Used
6 Oil Management And Used Oil Transport, 35 Illinois
7 Administrative Code, Sections 807 and 809 zero,
8 which we've commonly referred to as docket number
9 R99-18.

10 Sitting next to me is Board Member
11 Marili McFawn which is graciously sitting in on
12 this hearing today for Nicholas Melas, the board
13 member assigned to this matter who could not be
14 here today. Also present is than Anand Rao, a
15 member of the Board's technical unit.

16 This is a rulemaking subject to the

17 Board's procedural rules, and, therefore, all
18 relevant, nonrepetitious, and nonprivileged
19 testimony will be heard at this, the third hearing
20 in this matter. The first hearing in this matter
21 was held on February 25th, 1999, in Chicago, and
22 the second hearing in this matter was held on
23 March 1st, 1999, in Springfield.

24 Transcripts for those two hearings

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1 are available from the clerk of the board and are
2 also available on the Board's web site. In the
3 interest of compiling a more complete record, the
4 Board has schedule this third hearing for docket
5 R99-18 pursuant to its authority at 35 Illinois
6 Administrative Code 102.161(e). If the testimony
7 and the questions here -- excuse me.

8 If the testimony and questions before
9 the Board in this hearing today are not completed
10 by approximately 4:30 p.m. this afternoon, I will
11 continue this hearing starting tomorrow, August
12 24th, at 10:00 a.m., and most likely the hearing
13 will continue up in the Board's offices on the
14 11th floor.

15 If the testimony and questions are
16 completed before 5:00 o'clock today, I will cancel
17 the continuation of the hearing for tomorrow.
18 This matter was filed on November 2nd, 1998, by
19 the Illinois Environmental Protection Agency, and
20 on December 17th, 1998, the Board accepted this
21 matter for hearing.

22 At the side of the room over here are
23 copies of the current notice and service lists.
24 If you notice that your name does not appear on

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1 the list, there are also sign-up sheets for the
2 notice and service lists located right next to
3 them. Please sign up if you wish to be included
4 on either list. Individuals on the notice list
5 receive only Board and hearing officer orders,
6 while individuals on the service list receive all
7 prefilled testimony and questions, motions, and
8 appearances, as well as Board orders.

9 Anyone who intends to file final
10 comments in this proceeding should be sure to pick
11 those up. If you have any questions about the

12 list, please see me after the hearing or during
13 one of the breaks, and just as an aside here
14 because we have a few more people than I expected
15 today, I may need to make some additional copies.
16 Please see me at the lunch break, which should
17 probably be between around 12:00 and 1:00, and I
18 will be sure to make more copies and have those
19 ready when we proceed after lunch today.

20 In addition, at the back of the room
21 you will find copies of the Board's first notice
22 opinion and order in this matter, which is dated
23 January 21st, 1999, and copies of the hearing
24 Officer order of June 18th, 1999, and the

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1 attachments to that order.

2 There are also copies of the most
3 recent public comment in this matter, public
4 comment number 16, from state representative David
5 Leitch. Rest rooms and vending machines are
6 located at the end of the hallway and take an
7 immediate right and you'll see the vending
8 machines, and the bathrooms are back behind the
9 vending machines.

10 At today's hearing, we will hear the
11 testimony of the Illinois Environmental Protection
12 Agency and the National Oil Recyclers Association
13 also known as NORA. The Board received prefiled
14 testimony from the Agency and from NORA. Copies
15 of the prefiled testimony are, again, over at the
16 back of the room with the rest of the copies.

17 If no one objects, we'll allow
18 representatives from the Agency and NORA to
19 summarize their respective prefiled testimonies
20 and then we'll admit the prefiled testimony as
21 exhibits. Time permitting, after we finish with
22 the testimony from the Agency and from NORA, we
23 will allow other participants to state their
24 positions regarding R99-18.

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1 A few items about the decorum, anyone
2 who testifies will be sworn in by the court
3 reporter. Anyone may ask a question of anyone who
4 testifies. However, I ask that you raise your
5 hand, wait for me to acknowledge you, and after
6 I've acknowledged you, please state your name and

7 who you represent before asking questions.

8 Please speak one at a time. If you

9 are speaking over each other, the court reporter

10 will not be able to get your questions on the

11 record, and also when answering questions, please

12 be sure to say yes or no instead of nodding or

13 shaking your head.

14 Please note that any questions asked

15 by a Board member or a member of the Board staff

16 are intended to help build a complete record for

17 the Board's decision and are not meant to express

18 any preconceived notion or bias.

19 Is there anyone else here today who

20 anticipates that they would like to testify after

21 the Agency and NORA have completed their

22 respective testimonies? Okay.

23 At this time, I'd just like to ask if

24 Board Member McFawn would like to say anything.

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1 BOARD MEMBER McFAWN: No. I'd just add

2 that I welcome you as Joel has already extended to

3 you, and I look forward to today's proceeding.

4 HEARING OFFICER STERNSTEIN: Thank you,

5 Member McFawn.

6 At this time, we would ask the
7 parties to make opening statements. We will
8 proceed first with the Agency. They are the
9 proponent in this matter and were also the first
10 to prefile testimony. One question I had for you,
11 Kim, I believe you had told me that a couple of
12 the members of the Agency staff would not be
13 available tomorrow. I think we should probably go
14 with them first.

15 MS. GEVING: I don't think that's the
16 case.

17 HEARING OFFICER STERNSTEIN: That's not
18 the case?

19 MS. GEVING: I think everybody is prepared
20 to go through tomorrow if necessary.

21 HEARING OFFICER STERNSTEIN: That's
22 great. Well, then, we'll go with the Agency
23 first, and, Kim, if you'd just like to identify
24 the first witness, and we'll have the court

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2 MS. GEVING: Sure. My name is Kimberly
3 Geving. I'm assistant counsel for the Illinois
4 Environmental Protection Agency. To my far left
5 is Greg Dunn, who is the manager of the voluntary
6 site remediation unit. To my immediate left is
7 Larry Eastep, manager of the remedial project
8 management section. To my immediate right is
9 Daniel Merriman, assistant counsel for the
10 Illinois Environmental Protection Agency.

11 To his right is Ted Dragovich,
12 manager of the disposal alternatives unit, and to
13 the far right on the end is Les Morrow, an
14 environmental toxicologist with our office of
15 chemical safety.

16 I would request today that our
17 witnesses be sworn in and allowed to answer in
18 panel format after their summaries are finished if
19 that's okay.

20 HEARING OFFICER STERNSTEIN: That's fine.

21 MS. GEVING: There are a couple of people
22 on here who didn't actually have prefiled written
23 testimony, but they would also like to be a part
24 of the panel, and that would be Greg Dunn and Dan

1 Merriman.

2 HEARING OFFICER STERNSTEIN: That's fine.

3 MS. GEVING: As far as an opening
4 statement goes, I don't really have a formal
5 opening statement prepared. I would like to
6 express that our testimony today is trying to
7 address the concerns of NORA in their comments,
8 which I also believe were the same thing that you
9 prefled for testimony for this proceeding. So we
10 attempted to answer the questions and comments and
11 concerns that they had in those comments, and from
12 there, if we would like to open with summaries, I
13 would turn it over first to Ted Dragovich.

14 HEARING OFFICER STERNSTEIN: Do you want
15 to go ahead and swear Ted in?

16 (Witness sworn.)

17 MR. DRAGOVICH: I'd like to point out
18 there's a typographical error on page 13 of my
19 testimony. On line ten, it starts with oil,
20 comma, and allows industry standards to be used to
21 determine when on-specification used oil is a
22 waste. That should have read off-specification
23 used oil. I'll go ahead with my summary now.

24 My name is Theodore Dragovich, and

1 I've been a permit reviewer and manager in the
2 permit section of the Illinois Environmental
3 Protection Agency for over ten years. My
4 testimony today will mainly consist of responses
5 to questions raised by Mr. Harris on behalf of the
6 National oil Recyclers Association and Mr. Lenz on
7 behalf Lenz Oil and their May 6th, 1999, comments
8 filed in this matter.

9 The Illinois EPA believes that these
10 proposed regulatory changes will provide the
11 appropriate amount of oversight to protect human
12 health and the environment without unduly
13 restricting the recycler of used oil. The
14 proposal minimizes the requirements for the
15 collection of used oils from households and small
16 quantity generators for recycling. Subject
17 facilities that manage large quantities of used
18 oil to the same standards they were subject to in
19 the past does not regulate the burning of
20 on-specification used oil and allows industry
21 standards to be used to determine when
22 off-specification used oil is a waste and when
23 it's a commodity.

24 According to USEPA, using Office of

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1 Solid Waste Data compiled by Clayton Environmental
2 Engineering Consultants in 1992, in 1989 60
3 percent of the nation's automotive oil was changed
4 by consumers themselves, and 13.4 percent of the
5 used oil was dumped illegally, an estimate
6 200,000,000 gallons of used motor oil is
7 improperly disposed of each year in the U.S. by
8 being dumped on the ground, tossed in the trash,
9 and poured down storm sewers and drains. These
10 statistics are included in attachment three of my
11 testimony.

12 We believe that the statistics
13 support our regulatory approach to the management
14 of used oil. The proposed requirements for
15 certain used oil management facilities to obtain a
16 Part 807 permit would be in addition to the
17 requirements in Part 739. Federal regulations
18 allow the states to be more stringent and impose
19 states regulations and permitting requirements.
20 The Part 807 regulations not specific to used oil
21 facilities, but are the permitting regulations for

22 all nonhazardous waste management facilities. A
23 review of the facilities that have know notified
24 USEPA or Illinois EPA of their used oil activity

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1 indicates that most facilities, which would be
2 required under this proposal to obtain a Part 807
3 permit, previously operated under a Part 807
4 permit. Facilities that previously operated under
5 a Part 807 permit and those facilities that are
6 designed and operated according to appropriate
7 industry standards could comply with the Part 807
8 regulations.

9 The requirement to obtain a Part 807
10 permit would not be unduly burdensome to a
11 well-run facility which is currently operating
12 under Part 739. The proposed amendments would
13 make the special waste hauling permit and
14 manifesting requirements consistent. All
15 permitted facilities would be subject to the
16 hauling permit and manifesting requirements, while
17 used oil shipped to the permit-exempt used oil
18 collection and aggregation facilities would not.

19 Permit-exempt facilities would have to ship the
20 used oil to a permitted facility under manifest
21 using a licensed special waste hauler in the same
22 manner as a large quantity generator.

23 We believe that it is still
24 appropriate to require a used oil transfer

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1 facility, a used oil processor, a used oil
2 marketer who markets used oil other than that
3 generated by its own activities from the site
4 where it is generated, and a petroleum refining
5 facility, as defined in part 739, Section 100, to
6 comply with the same special waste hauling permit
7 and manifest requirements as other permitted
8 special waste management facilities.

9 That concludes my summary, and I'll
10 be available for questions.

11 HEARING OFFICER STERNSTEIN: I'd like to
12 have everybody else give their opening
13 statements. Just, I guess, to make this easier,
14 why don't we swear in the rest of the witnesses
15 all at once.

16 (Witnesses sworn.)

17 HEARING OFFICER STERNSTEIN: Go ahead with
18 the next witness, Kim.

19 MS. GEVING: We'll move on to Mr. Eastep
20 with his summary then.

21 MR. EASTEP: Good morning. My name is
22 Larry Eastep, and I'm manager of the remedial
23 project management section with the Bureau of
24 Land, Illinois EPA. I've been employed by IEPA

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1 for 27 years. I've been in the Division of Water
2 Pollution Control permit section and I've also
3 been manager of the Division of Land Pollution
4 control permit section for approximately 11
5 years.

6 In my current position, I'm
7 responsible for the voluntary site remediation
8 programs and the State's response action program.
9 All the above programs or the programs I'm
10 managing now are dedicated to and responsible for
11 the clean up of environmentally contaminated
12 sites.

13 In my testimony today, I've presented

14 information for eight sites. Brief descriptions
15 for each of the sites are attached to the
16 testimony as Exhibits 1 through 8 and a table
17 summarizing remedial activities, and each of them
18 is presented in an attachment as well. The sites
19 typically operated in the 1970s, '80s, and
20 occasionally the '90s, and from my perspective are
21 representative of typical used oil management
22 facilities. I'd like to offer some general
23 comments about their operations and highlight
24 environmental problems. Evidence shows that

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1 releases were caused at many of the facilities in
2 the handling of used oil as they entered a
3 facility, for example, transfers from tanker
4 trucks to tanks or drums that fell off trucks, et
5 cetera, when they exited the site or when they
6 were moved through the facility, for example,
7 through pump leaks and such as that.

8 Storage in tanks and containers,
9 releases have occurred due to leaking containers
10 or tanks, spills from overfilling, and leaking
11 valves. Equipment and piping, releases have

12 occurred from both buried and above ground
13 pipelines and other equipment such as columns,
14 vessels, heat exchangers, et cetera.

15 Generally, these facilities were not
16 RCRA or Resource Conservation Recovery Act Part B
17 permitted sites nor did they widely accept
18 hazardous waste per se, but they obviously did
19 accept some hazardous waste in varying amounts.
20 Regardless of the, quote, unquote, regulatory
21 classification, of the wastes management, the oils
22 they accepted were often contaminated with things
23 like polychlorinated biphenyls, acids, solvents,
24 and heavy metals. As recently as two years ago,

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1 there was an incident in Bureau County, Illinois,
2 where PCB contaminated oils were used for road
3 oiling. This oil was from a used oil facility
4 that had marketed the oil as uncontaminated and
5 suitable for its intended purpose.

6 Environmental problems include
7 contaminated runoffs to waters of the State,
8 contaminated groundwater, and contaminated soils.

9 Remediation has been complicated by the widely
10 varying nature of the oil and the contaminant
11 contained therein. For example, at many of the
12 sites, we find that soils are obviously
13 contaminated with oils and they frequently contain
14 PCBs. PCBs are not particularly mobile by
15 themselves, but if there are solvents in the oils,
16 then they move rapidly to the underlying strata,
17 including groundwater.

18 In some circumstances, either dense
19 non aqueous phase liquids, or DNAPLs, which
20 float -- excuse me, which sink in the groundwater
21 zone, or light non aqueous phase liquids which
22 float on the groundwater surface, may be present.
23 Technology to deal with DNAPLs is quite different
24 than that required to deal with LNAPLs. In

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1 general, remedial technologies are not
2 particularly effective for dealing were either.
3 The point here is that remediation is
4 frequently very complicated at used oil sites, and
5 the best environmental protection is prospective,
6 i.e., release prevention through ensuring sound

7 used oil management practices. From a
8 remediator's standpoint, it may be preferable that
9 facilities managing used oil be required to clean
10 up existing sites as a prerequisite to
11 permitting. That way they would know that when it
12 came time to close, there would be much less, if
13 anything, to remediate at that time.

14 Facility owners and operators have
15 frequently failed to voluntarily clean up their
16 own messes. They did not clean up spills when
17 they occurred, and they have always claimed not to
18 have financial resources to remediate sites
19 later. This means that either the State or the
20 federal government must take responsibility and
21 either use public funds or go after potentially
22 responsible parties. Having some form of
23 financial assurance to that required for landfills
24 and under RCRA may be beneficial for site

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1 operators. This would not only protect public
2 funds from being spent, but it would protect
3 liable party funds as well.

4 Costs to remediate these sites have
5 been significant, and a lot of the costs are
6 attached to that summary. The owners and
7 operators have paid essentially nothing for these
8 cleanups. Again, I'm not going to go through all
9 the costs because they're included in the
10 attachment.

11 Many of these sites -- excuse me.
12 All of these sites operated well after many
13 regulations were promulgated. For example, Wastex
14 operated until 1988; Pierce Oil until 1989;
15 Dunavan until '89; Triple A until '91; and Ortek,
16 formerly MORECO, still operates. Thank you. That
17 concludes my summary.

18 HEARING OFFICER STERNSTEIN: Thanks,
19 Mr. Eastep.

20 MS. GEVING: I believe that Mr. Dragovich
21 has one correction to his correction, and he'd
22 like to go back on the record and clarify that.

23 MR. DRAGOVICH: I'm sorry. I erred when I
24 said there was a typographical error on page 13,

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2 says allows industry standards to be used to
3 determine when on-specification used oil is a
4 waste and when it's a commodity. If I could
5 clarify just a little bit. The regulations do not
6 regulate the burning of on-specification used oil
7 at all. On-specification used oil may be a
8 special waste or it may be a commodity, and the
9 proposal says that when it meets the definition of
10 re-refined oil, it would not be covered under the
11 special waste rules. It would be exempt from the
12 permitting requirement. In other instances, it
13 would be a special waste and subject to the
14 permitting requirements.

15 MS. GEVING: At this time, we'd like to
16 move on to Les Morrow with his summary.

17 MR. MORROW: Good morning. I have a
18 couple of corrections also. Page three, last
19 paragraph, second sentence should read heavy
20 distillation fraction rather than middle. Page
21 five, last paragraph, fourth line, overland
22 run-off through grills rather than hills. On page
23 seven, second paragraph, last line, Mackinaw River
24 instead of Des Plaines.

1 I'd like to summarize my testimony.
2 My name is Leslie Morrow. I have worked in the
3 capacity of a human health and ecological risk
4 assessor in the Toxicity Assessment Unit of the
5 Illinois Environmental Protection Agency for over
6 11 years. Through my testimony today, I hope to
7 show that there are human health and ecological
8 health justifications for attempting to prevent
9 the release of off-specification waste oil into
10 the environment by permitting certain used oil
11 facilities. The ill effects of the release of
12 chemical contaminants into the environment has
13 been well documented. Experience shows that the
14 uncontrolled release of certain materials into
15 segments of the environment can lead to
16 predictable and unforeseen and immediate or
17 delayed ill health effects. Many of these impacts
18 could have been predicted using the tools of
19 environmental risk assessment.

20 Environmental risk assessment was
21 designed to evaluate the potential hazards
22 resulting from the presence of chemical
23 contaminants into the environment. Environmental
24 risk assessment integrates the disciplines of

1 mathematics, chemistry, physics, biology, and
2 toxicology. Environmental risk assessment can be
3 split into three major components; the toxicity
4 assessment, the exposure assessment, and the risk
5 characterization.

6 Used oil is primarily comprised of
7 petroleum-related constituents that normally exist
8 in the heavy distillation fraction of crude oil
9 base stocks. Typical used automobile crankcase
10 oil contains hundreds of individual
11 petroleum-related chemical constituents. Of these
12 intrinsic constituents, only a few are of concern
13 based upon their relative toxicity and
14 concentration. Other constituents identified in
15 the 1989 USEPA sampling project include cadmium,
16 lead, benzene, and three polycyclic aromatic
17 hydrocarbons, benzo(a)pyrene, benzo(b)
18 fluoranthene, and benzo(k)fluoranthene.

19 All of these chemicals are known to
20 have carcinogenic or other toxic effects. Used
21 oils contain quantities of extraneous
22 constituents. The USEPA sampling project detected
23 quantities of chlorinated solvents including

24 trichloroethane, trichlorethylene, and

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1 perchloroethylene. They also detected polycyclic
2 -- excuse me, polychlorinated biphenyls or PCBs.
3 Many of the hazardous constituents of
4 concern are very water soluble and are considered
5 to be highly mobile in the environment. Should
6 these constituents be released to the environment,
7 they can be expected to migrate to surface water
8 or groundwater. Several of these constituents are
9 also very volatile and evaporate readily into the
10 air. Dusts generated from soils contaminated with
11 used oil are expected to also contain these
12 hazardous constituents of concern.

13 Overland run-off of used oil through
14 grills, gullies, and ditches can rapidly introduce
15 liquid used oil into permanent surface water
16 bodies. Oil itself produces harmful effects on
17 aquatic organisms not only by physically coating
18 them, but also through uptake. Catastrophic
19 spills, such as the failure of an above ground
20 storage tank, can result in contamination of

21 shallow groundwater within hours in sandy soil and
22 within weeks in silty soil.

23 In the toxicity assessment, it has
24 been shown that several hazardous constituents

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1 exist intrinsically in used oil. Additionally, a
2 number of hazardous constituents commonly
3 adulterate used oil. The exposure assessment
4 illustrates how the constituents can move directly
5 into contact with ecological receptors or human
6 receptors and how they can slowly infiltrate
7 others at levels potentially exceeding human
8 health-based standards. In fact, when the maximum
9 lead concentration in the USEPA sampling project
10 of 10,500 parts per million in waste aircraft
11 engine oil is compared to the Illinois groundwater
12 standards of .0075 parts per million, we can
13 estimate that one gallon of this used oil could
14 contaminate 1,400,000 gallons of groundwater.

15 A search of the logs of the Illinois
16 EPA Emergency Response Unit for occurrences of
17 releases of used oil to surface water bodies
18 between 1990 and today yielded 20 incidences of

19 the ten fixed facility releases included in this
20 -- included a recent release of up to 250 gallons
21 of used oil to a tributary of the Mackinaw River
22 from a ruptured used oil storage tank.

23 In conclusion, used oil is a complex
24 mixture of intrinsic and extraneous chemical

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1 constituents. Intrinsic constituents include
2 cadmium, lead, benzene, polycyclic aromatic
3 hydrocarbons, which pose a hazard to humans and
4 the environment. Additionally, the potential for
5 adulteration from extraneous hazardous
6 constituents is high, thus increasing the
7 potential risks.

8 Finally, used oil possesses physical
9 properties such that it poses a direct hazard to
10 ecological receptors. The regular inspections of
11 used oil storage facilities to assure the citizens
12 of Illinois that the existing storage and handling
13 regulations are being followed is a prudent public
14 health policy. This concludes my summary of my
15 testimony.

16 HEARING OFFICER STERNSTEIN: Go ahead with
17 the next witness.

18 MS. GEVING: That's all of our summaries.

19 So I believe we're available for questions at this
20 time.

21 HEARING OFFICER STERNSTEIN: Do you want
22 to admit the testimony as an exhibit, Kim?

23 MS. GEVING: Yes, we would.

24 HEARING OFFICER STERNSTEIN: Do you have a

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1 copy for me and for the court reporter?

2 MS. GEVING: Yes.

3 HEARING OFFICER STERNSTEIN: I'm going to
4 admit this testimony and mark it as Agency Exhibit
5 No. 1. It is the testimony of Theodore Dragovich,
6 Larry Eastep, and Leslie Morrow. I'm sorry. It
7 will be Exhibit No. 3 as the first two exhibits
8 were presented at the first two hearings, and the
9 Agency's exhibit includes several attachments.
10 Ted Dragovich's testimony includes attachments.
11 Larry Eastep's testimony includes attachments. I
12 believe that's it. Am I correct?

13 MS. GEVING: That's correct, except there

14 is CV attached to Mr. Morrow's as well.

15 (Exhibit No. 3 marked

16 for identification,

17 8-23-99.)

18 HEARING OFFICER STERNSTEIN: That's

19 right. Okay. At this point, we'll allow

20 questions of the Agency's testimony and Agency

21 Exhibit No. 3. All I ask is that whoever wants to

22 ask questions, just please be sure to identify

23 yourself and the name of the company or the

24 organization that you represent. So, Chris, I

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1 guess we'll start with you.

2 MR. HARRIS: Well, I was thinking of

3 providing my testimony, and then it might be more

4 useful that way.

5 HEARING OFFICER STERNSTEIN: Is that the

6 way you'd like to do it?

7 MR. HARRIS: Yes.

8 HEARING OFFICER STERNSTEIN: Well, why

9 don't we present NORA's testimony at this point,

10 and then once we're finished with that, then we'll

11 have questioning of the Agency testimony and then

12 questioning of NORA's testimony.

13 MS. GEVING: We have no objection.

14 HEARING OFFICER STERNSTEIN: Go ahead,

15 Chris.

16 MR. HARRIS: Do I have to be sworn in?

17 HEARING OFFICER STERNSTEIN: Yeah. That

18 actually would be a good idea. Actually, anybody

19 else who -- is there anybody else who might

20 testify on behalf of NORA today?

21 MR. HARRIS: Possibly Mike Lenz.

22 MR. LENZ: Possibly.

23 HEARING OFFICER STERNSTEIN: Anybody else

24 who might possibly testify? Why don't we just

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1 swear everybody in here on behalf of NORA?

2 (Witnesses sworn.)

3 HEARING OFFICER STERNSTEIN: Go ahead when

4 you're ready, Chris.

5 MR. HARRIS: Thank you very much for the

6 opportunity to be here today. We have a prefiled

7 set of testimony which, without objection, I think

8 will be entered as an exhibit.

9 HEARING OFFICER STERNSTEIN: We'll do that
10 at the end after you summarize.

11 MR. HARRIS: My name is Christopher
12 Harris. I'm the general counsel of the National
13 Oil Recyclers Association, which is a national
14 trade association with many Illinois members. We
15 have been operating as a trade association since
16 1994 and have been working real closely with the
17 Federal EPA to help promulgate the used oil
18 management standards, which were promulgated in
19 1992, and which have been adopted as Part 739 by
20 the Illinois Environmental Protection Agency.

21 What I would like to do principally
22 here is to respond to some of the Agency testimony
23 and some of the points being made. As I was
24 listening to the discussion, it occurred to me it

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1 was as if the points being made by EPA were
2 without any reference or without any understanding
3 that Part 739 had been promulgated. The
4 requirements that are in Part 739 are extensive.
5 They cover management standards that affect every

6 aspect of oil recyclers' activities ranging from
7 testing, collagen content, stringent restrictions
8 on mixing. They require a facility management
9 plan. They oppose -- impose storage requirements
10 of secondary containment that, in fact, are more
11 stringent than for storage of virgin fuel. They
12 require spill prevention plans under 40 CFR.112,
13 and they require the management of residents.
14 They impose the Department of Transportation
15 regulations on the transportation of used oil.
16 They encompass the underground
17 storage tank regulations for storage of used oil
18 in underground tanks and associated piping. They
19 impose cleanup requirements whenever there is a
20 leak or a spill. They impose fuel standards.
21 Those are the specification -- all specification
22 requirements.
23 There is extensive tracking and
24 paperwork requirements. Any discharges of

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1 wastewater into POTWs are regulated by the Clean
2 Water Act as well as the local POTW and the local
3 municipal requirements. They, of course, also

4 incorporate the Toxic Substance Control Act
5 requirements which, as you know, regulate PCBs,
6 and so when I looked at the list as set forth in
7 attachment two on page 19 of Mr. Dragovich's
8 testimony, the obvious question that comes to mind
9 is what is it about these incidents that would not
10 have been regulated by the used oil management
11 standard as Part 279. For example, the first item
12 on the list in Rockford dealing with a leaking
13 underground storage tank, of course that is
14 regulated by the underground storage tank
15 regulations which are incorporated by reference
16 into Part 279.

17 The several references to PCB
18 contaminated oil would, of course, be regulated
19 under the Toxic Substance Control Act, which those
20 regulations are clear, they're fairly stringent,
21 and I don't think that there's anything that IEPA
22 could do that would go beyond what is already
23 required in the federal regulations.

24 Leaking drums and tanks would, of

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1 course, be regulated under Part 279. There's a
2 requirement to have drums and tanks, containers
3 that do not leak. If they do leak, they must be
4 cleaned up. There's nothing ambiguous about that,
5 and there are no loopholes in those standards.
6 Accepting hazardous waste, which is another item
7 that's mentioned, I happen to know a little bit
8 about that incident, and it is far less of an
9 egregious problem that might be indicated, but in
10 any case, any acceptance of hazardous wastes
11 beyond what's required and what's allowed under
12 the mixing rules is, of course, prohibited and can
13 and should be addressed by enforcement of the
14 existing facility management standards and the
15 used oil management standards.

16 If there are explosions, of course,
17 the state fire marshal and the state and the local
18 fire departments would become involved. So I
19 failed to see anything in this list of examples,
20 and I assume that the worst examples were taken,
21 and they go back, of course, to 1987 and we have,
22 I don't know, maybe 15 or so examples, and 15 or
23 so examples over a 12-year period for all of the
24 recyclers existing in Illinois is not an

1 overwhelming list of problems.

2 Now, it may be stated that there have
3 been relatively few inspections or inspections are
4 less frequent at unpermitted facilities. I think
5 I read that in Mr. Dragovich's testimony. Well,
6 there's nothing in either federal or state law
7 that precludes inspections, nothing whatsoever,
8 and this would be a policy choice entirely by the
9 agency.

10 It's indicate that inspections at
11 unpermitted facilities occur only if there's a
12 complaint. Well, that's interesting. If there
13 are so few complaints and, therefore, so few
14 inspections, what is the problem here? I think
15 that my members in Illinois as well as across the
16 country are open to inspections. I don't think
17 they're necessarily particularly fun, but at the
18 same time we recognize that they're an important
19 component of the used oil management standards.
20 Inspections are necessary in order to enforce the
21 standards that do exist in which my members
22 attempt to comply with.

23 I think if we had inspections, they
24 could have addressed all of the concerns listed

1 here. So I see nothing wrong with the combination
2 of using the 739 regulations in combination with
3 inspections to address these issues. As far as
4 the cleanup is concerned, it is true that many
5 sites across the country, including Illinois, have
6 been problems and they've been problems primarily
7 because of re-refining facilities that have left
8 either contaminated wastewater or acid sludge on
9 the sites, and they have required things, but
10 recycling in the 1990s simply does not involve
11 those processes anymore. Re-refining is a thing
12 of the past. It was never really economical and
13 certainly is not economical today. It makes a lot
14 more sense to look at the facilities as they
15 operate today and to see whether if there's any
16 problems with the existing facility management
17 plans and the existing used oil management
18 regulations.

19 Again, nothing in Mr. Dragovich's
20 testimony strikes me as supporting that
21 proposition, and turning to his referral to the
22 disposal of used oil on page 13 of his testimony,

23 he indicates that 13.4 of used oil was dumped
24 illegally. I would suggest that virtually all of

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1 that was from do-it-yourself oil changers, not
2 from recyclers.
3 There's absolutely no advantage
4 whatsoever as an oil recycler to dump used oil
5 illegally, and, in fact, I would use the statistic
6 to support NORA's position rather than the
7 Agency's position because the more expensive you
8 make used oil recycling, and keep in mind the used
9 oil recycling has to compete with virgin products,
10 so the more you're in competition with virgin
11 products the less profitable it will be and the
12 more oil recyclers will drop out which really
13 undermines the ability of the oil recycling system
14 to collect all of this DIY generated used oil, and
15 if it isn't convenient, and this has been proven
16 study after study, if it isn't convenient for DIY
17 used oil changers to have a place to bring their
18 used oil, they will take the approach of least
19 resistance, which is dumping it out in the sewer,
20 dumping it out in the backyard, and putting it in

21 the trash. Those are the kinds of improper
22 disposal activities that oil recycling and the oil
23 recycling system can address.

24 It is not addressed by making --

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1 creating more and more stringent provisions which
2 go beyond the Part 739 requirements so that it
3 makes oil recycling unprofitable. I hear all of
4 the testimony presented that used oil is bad.
5 Well, you know, it has benzene. Well, gasoline
6 has benzene in it too. We're dealing with a
7 product that is recreated and has a new life that
8 comes from lubricating oil, primarily automotive
9 oil, and is used primarily for burning as
10 industrial fuel.

11 Of course, it's going to have some
12 benzene in it. So does gasoline. So it doesn't
13 make a whole lot of sense to throw out a parade of
14 horrors of all of the chemicals that happen to
15 be in used oil. I would mention, however, that
16 the 10,000 parts per million of lead which was
17 cited earlier is a bit of a red herring. The

18 automotive oil, the lead as a result of the phase
19 out of lead in gasoline, is 30 to 40 parts per
20 million at most. This 10,000 parts per million
21 would, of course, have to come from automotive --
22 come from jet fuel, excuse me, and that is a very,
23 very small portion of the amount of used oil that
24 is generated.

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1 As far as PCBs are concerned, there
2 are in effect now TSCA requirements -- stringent
3 TSCA restrictions on PCBs. They certainly are not
4 to be blended, and certainly all of these
5 chlorinated solvents there are prohibitions on the
6 blending of any of those materials into used oil.
7 I think if IEPA conducted a study on used oil, how
8 it's generated in Illinois, how it's processed,
9 how it's recycled where it's sold, I think you'd
10 find that the industry is a lot cleaner than as
11 described in the testimony by IEPA earlier today.

12 I'd like to make just a few other
13 points. Under Section 9 of the Illinois Waste Oil
14 Recovery Act, all state officials, and that would
15 include IEPA as well as this commission, have a

16 statutory obligation to encourage the use of
17 recycled oil and to prohibit any discriminatory
18 action that would discourage the use of recycled
19 oil. That's a direct quote from Section 9 of the
20 statute, and in addition, it has an obligation to
21 promote the use of recycled oil. That means that
22 this commission is certainly going beyond what the
23 proposal is from IEPA. This commission certainly
24 has an obligation to look at the impact of this

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1 proposed regulation on the actual business and
2 recycling of used oil.
3 If the regulatory burden from this
4 proposal is enacted, it's so great that it will
5 end up discouraging the recycling of used oil. I
6 submit that that is a violation of Section 9 of
7 the Act, and I would also assert that that is just
8 not good public policy because of the effect on --
9 the adverse effect on the ability of the recycling
10 system to collect and properly manage all of the
11 do-it-yourself used oil that is generated. The
12 economic situation today in the petroleum business

13 is that despite the increase of gasoline prices in
14 general, used oil prices are still declining, and
15 used oil competes with their counterparts in the
16 virgin petroleum product market. It's very easy
17 today with depressed oil prices for burners to
18 switch from used oil, and that's what they're
19 currently burning, to some other source of energy
20 such as natural gas or virgin petroleum, and the
21 moment that either they feel like they're about to
22 be regulated or there isn't a significant price
23 difference between virgin and used oil, they'll
24 say fine, we have no obligation to used oil, we

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1 have no particular reason to burn it, and we'll
2 switch to something else, and that's a very easy
3 decision for these burners to make.
4 When that happens, the more burners
5 go out of the used oil market, the less there is
6 opportunity for proper recycling. Keep in mind
7 that re-refining is not an option. It hasn't been
8 economical for 30 years. It's not economical
9 today. So if there are no burners or few burners,
10 there's a lot more used oil chasing too few

11 markets, too small a market, and that's a
12 situation that is ripe for improper disposal
13 because if Mike Lenz doesn't pick up used oil,
14 where are his generators going to take it, and if
15 that becomes a very expensive proposition for the
16 generators, we'll find exactly what we found in
17 the earlier years which is it goes -- it
18 disappears, and it turns up later, of course, in
19 sewers and in backyards and in the landfills
20 across the state.

21 I urge the commission to consider
22 that result as being far worse, far worse than
23 enforcing the existing management standards, which
24 I think would actually be a very positive

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1 development. I would like to raise one
2 possibility of compromise here, and that is I know
3 the Agency is interested in promoting greater
4 regulatory authority over used oil, and they've
5 consistently cited what they consider to be a
6 problem that some used oil doesn't have economic
7 value, and, therefore, is less likely to be

8 properly stored and managed.

9 Taking that proposition as valid, I
10 would suggest a category of special waste under
11 Section 809 that says used oil that contains more
12 than ten percent of the bottom sediment and water,
13 also known as BS & W, be regulated as special
14 waste. Also, any used oil that is either untested
15 or uncertified as meeting specifications would be
16 in this category as well. So all of the
17 regulations essentially that IEPA have already
18 proposed could be adopted, but they would be for a
19 category of used oil which we think does have some
20 potential problems in the sense that if it's far
21 less valuable than, perhaps, all of these
22 requirements should be imposed, but I'd like to
23 contrast that with specification used oil. The
24 EPA says -- the federal EPA says it's perfectly

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1 appropriate that it competes with virgin oil and
2 should not be regulated.

3 Now, when recyclers, marketers, and
4 processors want to store that used oil, they often
5 use that -- often use storage facilities,

6 commercial storage facilities, such as the virgin
7 petroleum marketers do, and I'm afraid that IEPA's
8 proposal as it currently stands would be a very
9 serious impediment because no commercial storage
10 operation is going to be -- going to willingly
11 undergo the permit requirements that IEPA has
12 proposed. So, again, it's a major
13 discouragement. That part of IEPA's proposal is a
14 major discouragement for used oil, and, again, I
15 think it violates Section 9 of the Illinois Waste
16 Oil Recovery Act.

17 So I would hope that IEPA would give
18 our proposal some consideration. We'll be glad to
19 talk about that in greater detail, but I think
20 that that would alleviate their principal concern
21 which is that there's a category of used oil out
22 there that because of its lower economic value
23 needs special regulation. We're happy to offer
24 that proposal. I have no further comments at this

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1 time.

2 HEARING OFFICER STERNSTEIN: Thank you,

3 Mr. Harris. Do you wish to admit your testimony,
4 your prefiled testimony, as an exhibit?

5 MR. HARRIS: Yes, please.

6 HEARING OFFICER STERNSTEIN: Okay. We'll
7 mark this as Exhibit No. 4.

8 (Exhibit No. 4 marked
9 for identification,
10 8-23-99.)

11 HEARING OFFICER STERNSTEIN: And the title
12 of Exhibit No. 4 is statement of Christopher
13 Harris, general counsel, National Oil Recyclers
14 Association before the Illinois Pollution Control
15 Board concerning used oil regulations docket
16 R98-29, comma, docket R99-18 August 23rd, 1999.

17 Before we start in with the
18 questioning of the Illinois Environmental
19 Protection Agency, we will take a ten-minute break
20 and go off the record. It is now 11:03. We'll
21 reconvene at 11:15.

22 (Break taken.)

23 HEARING OFFICER STERNSTEIN: We had a
24 request from the Agency right at the beginning of

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1 break that all the people here on behalf the NORA
2 identify themselves and the company or the
3 organization that they represent. So I'll just
4 ask that we go down the line and everybody
5 identify themselves, and then we'll start in with
6 the questioning of the Agency, and just remember
7 that -- I know that we're already asking you to
8 identify yourself, but for each question that you
9 ask or series of questions that you ask, can you
10 just reidentify yourself? It will just make the
11 record easier to follow. So we'll start down
12 here.

13 MR. VINTIKA: Ray Vintika with Beaver Oil
14 Company.

15 HEARING OFFICER STERNSTEIN: And could you
16 spell the last name?

17 MR. VINTIKA: V-i-n-t-i-k-a.

18 MR. LENZ: Mike Lenz with Lenz Oil,
19 Peoria.

20 MR. ODENWALD: Roland Odenwald,
21 O-d-e-n-w-a-l-d, Gateway Petroleum Company,
22 Incorporated.

23 MS. CUSTER: Victoria Custer, like the
24 general, C-u-s-t-e-r, Southwest Oil,

1 Incorporated.

2 MR. CUSTER: I'm also Gary Custer,
3 Southwest Oil, the president, C-u-s-t-e-r.

4 MR. LEMPERA: Steve Lempera. That's
5 L-e-m-p-e-r-a, Future Environmental.

6 MR. WINKEL: Ron Winkel, RS Used Oil
7 Services.

8 MR. RUNDELL: Steve Rundell with Solvent
9 Systems.

10 MR. KLEIN: Thomas Klein, K-l-e-i-n,
11 Illinois Recovery Systems.

12 MR. KELLER: Duke's Oil, Gary E. Keller.

13 HEARING OFFICER STERNSTEIN: Okay. Chris,
14 go ahead and start or if somebody else on your
15 side has something to say, go ahead and ask them
16 to go ahead and start.

17 MR. HARRIS: Thank you.

18 My first question is whether IEPA
19 believes that it is subject to obligating to
20 implement Section 9 of the Illinois Waste Oil
21 Recovery Act.

22 MR. MERRIMAN: If we are a state agency,
23 which we are, and the Act applies, then we are
24 subject to implementing it. I have a question in

1 response to that, and I'm not sure if this is out
2 of order, but this goes to that issue that you
3 raised, and I think we need to do a lot more --
4 and maybe it will come out in this question and
5 answer period between us, a lot of more discussing
6 of and explaining of the issues of our proposal
7 because when I was listening to your comments, I
8 found myself agreeing to an awful lot of them. I
9 didn't find that I felt that we were discussing
10 the same kinds of issues. I mean, it almost
11 sounded to me like you were suggesting that we
12 were imposing additional management standards or
13 that we were proposing sort of an enhancement to
14 the federal management standards that we passed
15 through by the Board in Part 739 as opposed to a
16 permitting procedural standard whereby certain
17 facilities would obtain permits, and through the
18 process of applying for and obtaining their
19 permitted status would explain to the agency how
20 and flesh out issues related to the manner in
21 which they propose and intend to comply with the
22 existing standards, that is, the standards in Part

23 739.

24 It's quite true that board passed 739

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1 management standards and, you know, because of
2 what we -- we attempted to limit the proposal to
3 807 facilities in our final comments, which
4 probably won't be our final comments. We'll
5 eventually, I assume, after this hearing do our
6 final final comments, but we responded that we
7 felt in a way that we would not be discouraging
8 the practice of used management either by
9 obviously not requiring permits of the
10 do-it-yourselfers or the aggregation points, but
11 for processors and so forth, those who would be
12 subject to a permit requirement we believe that
13 there are a number of existing facilities that
14 already have either some form of solid waste
15 management permit that this process would require
16 under Part 807, a modification, a current mod, or
17 if they are in compliance with existing federal
18 management standards would have no difficulty
19 obtaining a permit from us.

20 So that's why it's kind of a
21 roundabout response. I mean, I understand from
22 the tenor of your question that you believe that
23 our proposal today is an effort to or at least an
24 attempt to increase the regulatory burden on the

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1 recycling industry such that it might be in
2 violation of that Act, and we don't see it that
3 way at all, and we suspect that, perhaps, NORA is
4 seeing our proposal as something far broader in
5 scope than it really is.

6 MR. HARRIS: That actually leads to my
7 second question which in some respects you've,
8 which is do you have any concern that the proposed
9 regulation will impose regulatory burdens that
10 will undermine an oil recycler's ability to
11 compete, and by compete I mean compete in the
12 market with virgin petroleum products?

13 MR. MERRIMAN: If I could respond to
14 that. In a regulatory sense, under Part 807, the
15 permitting provisions, we cannot impose conditions
16 and 807 -- the existing provision 807, I think
17 it's 206, tells what our ability is to condition a

18 permit, and we can condition a permit only as
19 necessary to avoid a violation of the Act or
20 existing board regulations, and it cannot be
21 inconsistent with a existing board regulations.

22 So our permit condition authority is
23 going to be and -- well, let me take as an example
24 the requirement under Part 279 or 739 for units to

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1 be maintained in good working condition or in good
2 order. It would, we feel, be beneficial for an
3 operator to propose to us and also beneficial both
4 to the operator and to us as regulators steps and
5 methods on how they intend to implement that
6 particular provision, how they intend to ensure
7 that it's in good order, or what they intend to do
8 once they find that it is no longer in good order.

9 A mere regulatory requirement that it
10 must be in good order leaves some gaps in terms of
11 what do you do when you find suddenly that it's
12 not in good order? Do you wait until it ruptures
13 from rust and corrosion? Do you inspect it from
14 your own -- I mean, everybody here probably who is

15 actually operating has some form of internal
16 management operating standards for how they are
17 going to do this, how they're going to -- what
18 they're actually doing to operate their facility.

19 We might find in the context of a
20 permit application that we have absolutely no
21 problems with those methods of operating in
22 accordance with the existing standards. We may
23 find that there are -- quite frankly, we may find
24 that there are operational practices that we would

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1 like to see modified for safety purposes or
2 protection of the environment to avoid these. I
3 mean, the list that Mr. Dragovich included in his
4 testimony and the facilities that Mr. Eastep spoke
5 about in the remediation, quite frankly, most of
6 those come as a result of poor operational
7 practices, not necessarily -- I mean, the
8 existence or nonexistence of a specific legal
9 requirement didn't prevent or wouldn't prevent the
10 release. It's the operational practice. A
11 permitting procedure for facilities that manage
12 large enough quantities gives the Agency the

13 opportunity to review the permit application. It
14 gives the permit applicant the opportunity to
15 propose in the application process doing something
16 if we have problems with it. It gives us the
17 opportunity to initiate discussions for
18 modifications, or ultimately it gives us the
19 ability to deny what we would think would be a
20 fully completely deficient permit or to condition
21 it subject to the limitations that our conditions
22 can only be necessary to avoid a violation of the
23 Act, but not inconsistent with existing provisions
24 of the Act or board regulations, and if there was

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1 a disagreement between the facility operator and
2 us in the final analysis, of course, the Pollution
3 Control Board is the final arbiter of whether or
4 not we have made a correct assumption that it's
5 necessary to impose this condition or this permit
6 was insufficient as an application, but those
7 existing facilities would just require a permit
8 application to go through the normal 807 review
9 processing, and I believe if you look back at the

10 January 1999 order putting this matter out to
11 first notice that you'll see there's a reference
12 to some of the history as to how we got here.

13 In the past, these kind of facilities
14 were permitted. They were subject to Part 807.
15 Part 807 came along and it really is sort of an
16 anomaly based on the numbering system here in
17 Illinois and existing Part 807 provision that
18 really wasn't intended to apply to this
19 circumstance at all.

20 It's my understanding that when the
21 landfill -- the new landfill regulations came out
22 there was an attempt to make it clear that it
23 wasn't going to apply to the RCRA related
24 provisions of the regulations. So they said

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1 basically if you fall within Part 700 through 749
2 you're not subject to 807, and then it came to be
3 that you, NORA, and others work so hard under
4 federal regulations Part 279 and the Board's pass
5 through that it became Part 739 without at the
6 time I think anyone giving a great deal of thought
7 to the fact that it would impact on existing

8 permitted facilities, and then that's essentially

9 what did, in fact, happen, however.

10 It's also pretty clear that the --

11 that at least from the Agency's position that

12 USEPA did not intend to restrict or limit or

13 prohibit existing permit programs. We did that on

14 our own. It was not the attempt -- and I might

15 say we did it inadvertently, but it was not the

16 intent of the feds if you look at 40 CFR

17 279.31(b)(2), for example, they still require used

18 oil management facilities to be either licensed or

19 permitted or subject to some local state or county

20 regulatory control, and we're not -- we don't

21 believe that we're being -- attempting to and we

22 don't want anyone to misconstrue the proposal to

23 feel that we are attempting to impose additional

24 substantive management standards because that's

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1 not what we're about.

2 When you want to talk about

3 competitive and your question went to the issue of

4 competitive advantage disadvantage, those

5 facilities that would be permitted that would be
6 under our proposal required to be permitted those
7 facilities that have permits would be then
8 operating in accordance with Illinois law which
9 includes the federal operational management
10 standards that have been incorporated in our
11 regs. Those other facilities that aren't doing
12 this in Illinois would be, in fact, operating
13 outside of compliance illegally and would be
14 subject then, when and if we knew about it, to
15 enforcement actions. So I hope that answers your
16 question somehow.

17 MR. HARRIS: Well, I think you may have
18 been confused because I was referring in terms of
19 competition to the places that market virgin
20 petroleum products because businesses such as the
21 oil recyclers who market recycled oil products
22 compete with their counterparts in the petroleum
23 industry such as number four, number six oil so
24 that was my question that relates to the

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1 competitors in the petroleum industry as a whole,
2 which is actually how the market works.

3 MR. EASTEP: Could you repeat your
4 question?

5 MR. HARRIS: Sure. The question was do
6 you have any concern that the proposed regulations
7 will impose regulatory burdens that will undermine
8 an oil recycler's ability to compete, and by
9 compete I mean compete with virgin oil products?

10 MR. EASTEP: Can you clarify that a little
11 for me? What are the factors that are relevant in
12 determining whether you're economically
13 competitive with the virgin oil market?

14 MR. HARRIS: Well, in general used oil
15 products have the same BTU value as their virgin
16 counterparts, but because they're used oil
17 products even if the quality were identical, they
18 still need to sell at a discounted price because
19 the ordinary burner given a choice between virgin
20 oil and used oil products is going to
21 automatically choose the virgin oil. So there has
22 to be a price incentive for the oil recycler to be
23 in business.

24 Of course, if the regulatory burden

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1 on the virgin oil marketer is virtually
2 nonexistent and certainly not subject to the
3 controls we're talking about today and we have a
4 burden -- a regulatory burden on oil recyclers in
5 marketing similar products, there has to be some
6 balance there. If the burden is excessive, the
7 oil recyclers simply cannot compete. It's not any
8 more complicated than that, and, therefore, when
9 EPA promulgated its used oil management standards,
10 it has very much in front of it a concern that oil
11 recycling has to be allowed to compete in the
12 marketplace, and I think that's at the heart of
13 Section 9 of the state act that certainly very
14 much incorporated into the legislative history of
15 the Used Oil Recycling Act, the federal act passed
16 in 1980 as well as the 1984 amendments to RCRA,
17 there's plenty of legislative history that says
18 yes, we need to protect human health and the
19 environment, but one way of doing that is making
20 sure that the oil recycling industry can survive,
21 and so if this Agency doesn't have in front of it
22 a concern about the ability of oil recyclers to
23 compete in the marketplace and it's simply
24 concerned about all of the problems that you're

1 discussing, yes, we can regulate it to the point
2 where there are no environmental problems in the
3 oil industry. That would be -- that's a
4 possibility, but the result of that is they're
5 wiped out economically, and then I submit to you
6 you will have a much, much, much greater problem
7 on your hands because there's no place for used
8 oil to go.

9 MR. EASTEP: Going back when you mentioned
10 some of these factors, you mentioned that one of
11 the factors on this economic competition had to do
12 with the regulatory burden.

13 MR. HARRIS: Yes, sir.

14 MR. EASTEP: Generally, what aspects of
15 the regulatory burden are involved in this
16 economic competition?

17 MR. HARRIS: Beyond what we have in the
18 used oil management standards?

19 MR. EASTEP: Or including those.

20 MR. HARRIS: Well, those imposed -- the
21 used oil management standards, that is Part 739,
22 impose quite a number of regulatory burdens. We
23 are not suggesting that those are out of place or
24 too much, but they are a portion of the cost that

1 an oil recycler has to pay in order to be in
2 business, but if you add on that quite a number of
3 other components, such as regulatory or testing,
4 for example, let's say that in your operational
5 plan that you were discussing that you thought it
6 was a good idea for every batch of used oil coming
7 in to a facility to be tested by TCLP,
8 toxic characteristic leaching procedure, let's
9 just that someone thought that was a good idea
10 without thinking about what the cost would be.

11 Well, that cost, I can guarantee you,
12 would drive every one of these people out of
13 business if every generator had to be tested for
14 that. So that would be one example. The testing
15 protocol that you might have in mind for all the
16 incoming material would be one cost.

17 MS. GEVING: I have a question. This is
18 Kim Geving.

19 Before the renumbering and the
20 adoption of 739 took effect and inadvertently
21 exempt these people from the permitting

22 requirements, apparently all these people were in
23 business then. So how can you argue it would put
24 them out of business now?

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1 MR. HARRIS: I would have to refer --
2 that's a good question. I'd have to refer it to
3 the people who are in the business, but before we
4 do that, I wondered what our format is at this
5 point because did you want me to continue my set
6 of questions, or is it going to be back
7 and forth? Either way is fine.

8 HEARING OFFICER STERNSTEIN: I think we
9 just, like, pretty much continue with your
10 questioning of the Agency. If the Agency needs to
11 ask a follow-up question to clarify, which I think
12 they've been doing, we'll handle it that way, but,
13 yeah, we're still primarily doing NORA's
14 questioning of the Agency.

15 MR. HARRIS: Following on my series of
16 questions regarding regulatory burdens, if it's a
17 concern about the regulatory burden undermining
18 the recyclers' ability to compete, has the Agency
19 done any study on the economics of oil recycling

20 in Illinois specifically with reference to the
21 regulatory burdens involved.

22 MR. DRAGOVICH: We're not aware of any
23 formal study that is being conducted.

24 MR. HARRIS: I take it from your answer

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1 that there might be an informal study or is there
2 no formal or informal study?

3 MR. MERRIMAN: This is Dan Merriman
4 responding. I don't think we're aware of any
5 studies, formal or informal, but the reference to
6 the formal study had to do with the way the
7 question was posed, firstly. Secondly, I think
8 that there are some opinions with respect to the
9 economics of the industry that may be entirely
10 independent of any studies formal or otherwise.

11 MR. HARRIS: Would you agree that there
12 are no regulatory restrictions on Agency
13 inspections of used oil facilities in Illinois.

14 MR. MERRIMAN: I'm not sure how -- when
15 you say regulatory restrictions, are you referring
16 to regulatory prohibitions of facilities of a

17 certain type?

18 MR. HARRIS: Let me ask the question in a
19 different way.

20 If the Agency wanted to conduct a
21 whole bunch of inspections on oil processors in
22 Illinois, could it do so if it wanted to?

23 MR. MERRIMAN: Legally, we're subject, of
24 course, to constitutional limitations. So we

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1 might be required if there were access issues and
2 questions to go to court and get a court order to
3 do an administrative -- and get an administrative
4 warrant essentially to do an inspection, and then
5 we would, of course, have to establish our right
6 and authority to do that to the court in order
7 obtain the appropriate warrant, but practically I
8 think there are a lot of practical problems with
9 us doing as you suggest.

10 One of which is the one that's always
11 present and that is how to administer a very
12 limited amount of resources over a large area of
13 responsibility. Another problem, too, and this
14 was brought up earlier on and if you recall having

15 read Mr. Dragovich's testimony from either the
16 February or March hearing, there is an issue with
17 having people out there operating and we don't
18 necessarily know where they are or who they are,
19 and the fact of the matter is without them being
20 subject to permit requirements, until or unless we
21 know -- I mean, they're required to notify us.
22 They're required to notify USEPA or us. They're
23 required to notify, but if they don't, and we
24 don't know where they are and we don't know who

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1 they are, and obviously we can't do that.
2 If a permitted facility -- if this
3 proposal went through, if a permitted facility
4 became aware or any citizen became aware of
5 someone out there operating not in compliance with
6 Part 739 or with any permit requirements that are
7 in existence, we would certainly welcome that
8 information. That would go a long way to helping
9 direct our limited resources in the right spot,
10 but, again, not to avoid the point you're trying
11 to make, legally, no, we're not -- there's nothing

12 that would keep our field operation people from
13 showing up at one of your constituents facilities
14 and conducting an inspection.

15 MR. HARRIS: And you wouldn't need an
16 administered warrant for that unless permission
17 was refused or --

18 MR. MERRIMAN: Correct.

19 MR. HARRIS: -- barred at the door?

20 MR. MERRIMAN: Right.

21 MR. HARRIS: And, in fact, you don't know
22 of any oil recycler that has refused permission
23 for an inspection in recent years, have you?

24 MR. MERRIMAN: Well, that's not my area of

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1 responsibility. So I don't know one way or the
2 other. The answer is I don't think anybody here
3 deals with that. Has anyone?

4 HEARING OFFICER STERNSTEIN: Can you state
5 that for the record?

6 MR. EASTEP: I was just --

7 HEARING OFFICER STERNSTEIN: Yeah. Is
8 that -- the answer to the question was -- just if
9 you could just say if for the record.

10 MR. EASTEP: I don't know.

11 HEARING OFFICER STERNSTEIN: You don't
12 know. Okay.

13 MR. HARRIS: If it's fair to say that
14 there's no legal restriction on inspections and
15 oil recyclers are not refusing inspections, but at
16 the same time you haven't been doing inspections,
17 how do you know that there's a big problem with
18 oil recyclers in the state of Illinois?

19 MR. EASTEP: A lot of my day-to-day
20 activities over the last several years have dealt
21 with remediation of a number of facilities that
22 were in the oil recycling business, and that's
23 what I've tried to document in my testimony.

24 MR. HARRIS: I'd like to get into the

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1 remediation aspects in a little bit, but let me
2 ask Mr. Dragovich if IEPA would be willing to
3 identify current or recent problems at Illinois
4 oil processing facilities that are not covered by
5 existing regulatory authorities, and by existing
6 regulatory authorities I mean the used oil

7 management standards, Part 739, and all of the
8 other provisions that are applicable such as TSCA,
9 Federal oil Pollution Act, the SPCC standards, and
10 so forth.

11 So the question is would you be
12 willing to identify problems at oil recycling
13 facilities in Illinois that are not covered by
14 those regulations?

15 MR. DRAGOVICH: Yeah. Our issue is how to
16 comply with those requirements. We think that
17 they're all covered through different regulations,
18 but people have difficulty interpreting those
19 regulations and applying them properly. That's we
20 hope to gain through the permitting program.

21 MR. HARRIS: Well, that's interesting.
22 Would you be willing to identify a list of
23 interpretation problems that you have with those
24 existing regulations? I mean, if it's only a

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1 question of a recycler has one interpretation and
2 the Agency has another, maybe we have a
3 communication problem that can be more easily
4 addressed than through a whole new set of

5 regulations.

6 MR. MERRIMAN: If I can respond to that.

7 This is Dan Merriman. We're not proposing a whole

8 new of set regulations. The regulations exist.

9 They have existed for sometime as Part 739.

10 That's the management standards. All we're

11 proposing is that certain large quantity

12 operators, managers of used oil in the recycling

13 industry or otherwise be subject to permit

14 requirements, and, again, to reiterate as Mr.

15 Dragovich pointed out it isn't the issue of trying

16 to find areas that aren't subject to existing

17 regulations. It's the whole concept of a

18 permitted facility.

19 I mean, we have general provisions in

20 our Environmental Protection Act that make it

21 unlawful for anyone to allow or cause a release of

22 a contaminant into the environment, whether it be

23 the water or the air or to dispose of it

24 unlawfully on the land. We need to say okay,

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1 there it is. That's all we need, to make it

2 against the law to have a release into the
3 environment. Why do we need any further
4 regulation beyond that because once a release
5 occurs, you've got the mechanism to go after and
6 either punish and, perhaps, in the process of
7 enforcement require the person who's the guilty
8 party to clean it up, but that's not the purpose
9 of permitting, and that's not what we're trying to
10 do.

11 The purpose of permitting is to look
12 at operations prospectively. If we look at the
13 list of facilities that have had problems
14 historically in Illinois and we find that there's
15 -- the types of facilities that have problems
16 historically in Illinois are the types of
17 facilities that we're hoping to bring under this
18 proposal to be permitted. Permits have a great
19 advantage not just to us. I mean, it has an
20 advantage to us. Don't get me wrong. I mean, we
21 allow through that ourselves the opportunity to
22 look at in a bit more detail than the regulations
23 under Part 739 how an individual operator is going
24 to be or does a particular activity that are

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1 required not by us in the permit, but required by
2 the existing regulations. At the same time,
3 there's an advantage to the facility operator to
4 have some idea that they know that if we do this
5 this way because our permit says we've worked this
6 out with the Agency, we're not going to have
7 somebody here suddenly sending us violation
8 notices and so forth because we have an
9 interpretation problem. Those are --

10 MR. HARRIS: I've got two --

11 MR. MERRIMAN: Let me strike that. Let me
12 strike that. I just want to say that that's why I
13 said at the outset of first question I answered is
14 that it seems as though we're talking about two
15 separate things. Now, maybe you don't --

16 MR. HARRIS: Well, I heard Mr. Eastep say
17 earlier that he would like it if before you can
18 get an operating permit that you'd have to clean
19 up the facility, and that certainly is an
20 expensive proposition possibly and something that
21 goes way beyond 739.

22 MR. MERRIMAN: Well, that is not --
23 Mr. Eastep, I believe, prefaced those remarks with
24 his statement from there his perspective as a

1 remediator and his perspective as someone who is
2 in charge of having the taxpayer and then in some
3 instances federal government cleanups through
4 superfund of these facilities. That would be an
5 ideal thing, but if you look at what we've got
6 before the Board here today, this is just the
7 proposal to require permits to go back to the
8 status quo, and it isn't even completely the
9 status quo because we've left out some and because
10 we'll be implementing through that permit Part
11 739, in many respects these permits today will be
12 less, to borrow your word, and I don't admit that
13 they are in any way onerous, but would be less so
14 than the early, you know, 1980's style permits
15 because of certain things that 739 has done and to
16 clarify obligations and to limit testing and some
17 other kinds of things.

18 MR. HARRIS: In your response, you
19 indicated there needed to be some, and I'm
20 paraphrasing here, some translation between the
21 requirement of 739 and what you would actually see
22 at the facility, and I'm wondering whether that
23 means in your mind that some of these performance

24 standards, such as oil tank thou shall not leak,

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1 turns into a design standard saying oil tank you
2 must have an eighth of an inch thickness.

3 Do you have in mind translating
4 performance standards that exist in section --
5 Part 739 into design standards?

6 MR. MERRIMAN: Well, I'd like to refer the
7 answer to that to Mr. Dragovich because he's the
8 one from the permit section who would be dealing
9 with that, but before I do, I think to understand
10 the procedure, the process from a procedural sense
11 the applicant sends us a proposal. If the
12 regulation says, you know, thou shall not leak,
13 then the applicant sends us a proposal that says
14 this is how I propose to ensure my operation so
15 that I will not violate the prohibition on
16 leaking, and we have an obligation to review that,
17 and we don't, from the permitting point of view,
18 unless there's some already promulgated very
19 specific standards in some of the RCRA areas, and
20 you're familiar with that, we don't have the
21 opportunity or the ability to tell someone if send

22 us in a proposal and say this is not the best way

23 to do it.

24 You know, if this is what the

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1 applicant wants to do and it will accomplish the

2 goal and it won't violate the Act or the

3 regulations and it might be far, far more

4 expensive and there are a lot easier ways to do it

5 that we're aware of from our review of other

6 people's permits, we don't have -- I mean,

7 regulate how things are done to that degree. All

8 we do is look at it and say will this accomplish

9 the regulatory requirement, the regulatory

10 requirement as set out in the Environmental

11 Protection Act and in the existing Board

12 regulations. If it will accomplish that goal,

13 then there's a permit that's issued.

14 If we think it needs to be tweaked in

15 one respect or another and through the discussions

16 there may be a condition. Yeah. That's right.

17 I'm reminded that if that ultimately results in a

18 disagreement, of course the Pollution Control

19 Board has the final oversight of that, but that's
20 how the process works. So it isn't that we sit
21 and propose. Now, there is a procedure under --
22 and I guess I better mention this just for the
23 record. There is a procedure under Part 807 that
24 already exists where the Agency could promulgate

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1 proposed design standards for specific issues. If
2 that's done, that has to be done pursuant to
3 public notice, comment, et cetera, et cetera, et
4 cetera, and it would be a whole -- it would be
5 very similar to a rulemaking, and there's a stay
6 provision that stays the effectiveness of that
7 until all other interested parties are notified
8 and have an opportunity to have comments and so
9 forth, and that's a procedure. In my knowledge,
10 I'm not sure that that procedure has ever been
11 invoked under Part 807. It exists, but I don't
12 think we've ever used it. So now I'd like Ted to
13 answer your question.

14 MR. DRAGOVICH: A performance standard
15 offers a lot of flexibility, but ultimately the
16 facility operator is going to have their own

17 design standards and operating procedures that
18 they've developed over time that they're going to
19 show demonstrate will meet the performance
20 standard. So it does involve performance -- I
21 mean, it does involve operating standards and
22 design standards, but not one selected by the
23 Agency. So we're not going to establish design
24 operating standards.

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1 MR. HARRIS: One aspect of your proposal
2 which is quite troubling has to do with
3 specification used oil which under current
4 regulations is not regulated once the oil
5 processor says this is specification used oil
6 fuel. It meets all of those standards. Your
7 proposal would say it does include its exempt
8 standards unless it also meets the definition of
9 re-refined oil, and if you look up the definition
10 of re-refined oil, it means any oil which has been
11 refined from used oil meeting substantially the
12 same standards as new oil.

13 Would you agree that the purpose of

14 that definition was to come up with a standard for
15 oil that meets lubricating standards as opposed to
16 fuel standards?

17 MR. DRAGOVICH: We don't know the original
18 definition.

19 MR. HARRIS: Well, let me submit to you
20 that in the oil business re-refined oil means oil
21 designed to create a new lubricating oil. It's
22 something that Safety Clean has been involved in
23 and a few other companies that have not
24 necessarily found it profitable, and re-refined is

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1 a special definition of a lubricating oil product
2 sense rather than fuel oil which really is
3 referred to as reprocessed or recycled fuel.

4 Do you have any light you can shed on
5 that issue?

6 MR. DRAGOVICH: Well, our intention was to
7 try to work out with the permit applicant what
8 specifications the oil would meet when it was no
9 longer subject to regulations. We believe that
10 some oils right now, or what you would call oils,
11 are some waste that would meet the definition of

12 on-specification oil are still now a special waste
13 under these rules. I think this would give us the
14 opportunity to sit down with the marketers and
15 processors and come to some agreement as to what
16 would no longer be regulated.

17 MR. HARRIS: All right. And that's where
18 our proposal, which I'll be glad to submit for the
19 record, may come into play, and we certainly are
20 open to further discussions on that, but I'm
21 concerned that the definition of re-refined oil
22 having to meet the same standards as new oil is
23 misplaced in the sense that it's for lubricating
24 oil and further is unnecessary. Let me give you

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1 the example of used oil fuel that is perfectly
2 acceptable to a blast furnace. It could take
3 water content two or three times what you can use
4 in other boilers or furnaces, and the blast
5 furnace has absolutely no problem with it.
6 There's no environmental problem. There's no
7 quality control problem. There's no product
8 problems in terms of producing steel, and so the

9 blast furnace enjoys a nice discount in terms of
10 price, but it doesn't suffer any problem in terms
11 of lack of -- lack of product quality that it has
12 substantially similar BTUs and so forth, and
13 that's essentially a matter that has to be
14 addressed between the supplier and the burner, and
15 I am concerned that if IEPA wants to intervene in
16 product specification categories, it is getting
17 into an area that it's not equipped to do and
18 serves no environmental protection function.

19 I well appreciate that your Agency is
20 worried about product in tanks which has so little
21 economic value or no value, marginal value, that
22 it becomes a liability as opposed to an asset. I
23 think that's a valid concern, and that's why we
24 proposed our ten percent compromise, but if you

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1 get into the area of virgin oil has only half a
2 percent water and used oil has two percent water
3 and, therefore, it is not re-refined as you
4 proposed, then you're creating all kinds of
5 discriminatory distinctions that the market
6 doesn't pay attention to in the regulatory sense,

7 but will make a huge difference because under your
8 proposal, specification used oil fuel is still
9 regulated, which is a very big concern for
10 burners.

11 So the question actually that I posed
12 earlier is I suppose whether you're willing to
13 discuss this matter further?

14 MR. MERRIMAN: And in response to that, I
15 just want to point out, I think that our actual
16 proposal just really is a proposal that the
17 facilities be subject to the permit requirements
18 in Part 807. The discussion that you and
19 Mr. Dragovich have just been having resulted from
20 Mr. Dragovich's testimony, his written comments
21 in --

22 MR. HARRIS: Yes.

23 MR. MERRIMAN: -- support of the proposal,
24 but he did point out an area of concern to the

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1 Agency, and you provided additional information
2 that -- and have additional information about
3 existing industry practices and existing industry

4 standards, and I think there are also existing
5 standards for fuel oil to be burned and so forth.
6 There are a lot of these things. This is the
7 exact type of interchange of information that I've
8 been referring to in the permit application
9 process where the applicant who has far more
10 knowledge about his business and his facility than
11 we do tells us what he proposes.

12 If we say well, this is an area of
13 concern, they provide us with information. The
14 only exception to that is when an applicant
15 submits to us an application that's completely
16 devoid of any information or very little
17 information and we ask for it and continue to ask
18 for information, and this has happened to us in
19 the past at at least one facility that I can think
20 of where we've asked for information and never got
21 cooperation or a response and ultimately were
22 forced to try to write a permit that covered every
23 conceivable alternative, every conceivable thing
24 that we could think of which is not the way we

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1 currently write permits and not certainly

2 essentially what we intended --

3 MR. HARRIS: Let me ask this question
4 then. I understand that you work -- as a preface,
5 I understand that you are concerned about storage
6 of on-specification fuel that might be considered
7 far less valuable or having to value, on storage
8 -- on-site storage of that material.

9 What is your concern, though, if a
10 recycler certifies that the fuel he or she is
11 producing meets specification? What is your
12 concern about that fuel being shipped off to be
13 burned by burners?

14 MR. DRAGOVICH: Well, first of all, the
15 proposal doesn't include the burning of
16 on-specification used oil because the definition
17 of burner in 739 only includes off-specification
18 burners.

19 MR. HARRIS: I understand. But your
20 proposal, at least in your testimony, was to link
21 that on-specification that had to meet the
22 definition of re-refined used oil as well, which
23 is potentially far more burdensome because that
24 definition, as I explained earlier, deals with

1 lubricants, and, therefore, you need to create a
2 product -- you need to meet a production
3 specification which is far more stringent than
4 fuel oil.

5 MR. DRAGOVICH: Well, there are
6 specifications out there for fuel oil, and that
7 definition isn't directly linked to the definition
8 of re-refined as you said it. There's two
9 possibilities when the oil is no longer is
10 regulated under these rules. One is when the
11 burner accepts it and they burn it, and the second
12 possibility is when it leads to the definition of
13 re-refined, whatever that may be. It may be --
14 re-refined I think the definition says that it
15 meets an industry standard. Well, there are
16 industry standards for fuel oils. There's also
17 the possibility that through the permitting
18 process that we will agree that it meets an
19 industry standard, whatever that is, based upon
20 who they're sending it to, the contracts they have
21 and everything and work something out there.
22 There's a lot of flexibility in there.

23 MR. HARRIS: It does strike me that you
24 are getting into an area, despite early

1 assurances, you're getting into an area that 739
2 doesn't get into, and it raises our concerns. For
3 example, if I'm an oil recycler and I've got
4 contracts with steel mills across the country and
5 I ship them oil that has a five percent water
6 content, which is admittedly high, but they're
7 perfectly happy with it, they are in compliance
8 with their permits, and so forth, why should IEPA
9 care about that?

10 MR. DRAGOVICH: Well, the definition of
11 used oil is not excluded from the definition of
12 special waste. So we're already faced with having
13 to decide what's regulated under 807 or what's
14 regulated under the special waste rules and what
15 isn't. Even the possibility that a permit isn't
16 required to manage it doesn't exempt it from the
17 rest of the requirements, and that's what we're
18 trying to sort out.

19 MR. HARRIS: Well, that's my -- despite
20 the assurances that no, we don't want to go beyond
21 739 and no, we don't want to undermine your
22 competitiveness, but I'm hearing a lot of but we
23 need to be assured that the product is not a

24 special waste and, in fact, meets industry

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1 standards and so forth, and that's an enormous
2 opportunity to get into the details of all
3 products on the marketing that recyclers currently
4 do without any restriction beyond certifying that
5 they meet the specifications established by EPA.

6 MR. DRAGOVICH: Well, I think one of the
7 comments you made in your testimony was that you'd
8 like the same consideration for this re-refined or
9 on-specification used oil fuel as virgin fuels,
10 and once it meets the industry specification, it
11 will get all those considerations, and, you know,
12 it would be outside the regulatory requirements.

13 MR. HARRIS: Well, it is true that there
14 are many used oil products that compete one on one
15 and they meet the same essential specifications as
16 used oil production. In fact, the American
17 Society for Testing and Materials, ASTM, has just
18 approved four categories of used oil fuel, and so
19 to that extent, I'm in agreement that there are
20 industry standards, and in many cases, that's the

21 kind of -- those are the kinds of products that
22 our industry creates, but there's also a set of
23 products, such as the fuel for blast furnaces just
24 to pick an obvious example, where you will not

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1 necessarily find a virgin oil counterpart because
2 you don't need one. The blast furnace can burn
3 higher quantities of water, higher concentrations
4 of water than, of course, they would get in virgin
5 oil. No one has ever suggested there's an
6 environmental problem with that, and yet there's
7 no virgin product specification for that
8 material.

9 So I worry on behalf of my members
10 that this is an opportunity for IEPA to say
11 uhn-uhn, it doesn't meet a virgin product
12 specification, it doesn't meet a used oil
13 production specification, and you're out of
14 business, pal.

15 MR. DRAGOVICH: Well, the blast furnace
16 would be burning on-specification used oil, and
17 that would be an activity outside this.

18 MR. HARRIS: Well, if you're saying that

19 we need on-spec used oil, on-spec used oil, that's
20 acceptable, and we have no problem.

21 MR. DRAGOVICH: Burning on-spec.

22 MR. HARRIS: Burning on-spec, that's
23 right, but if the recyclers are regulated further
24 because, that is, that oil does not lose its

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1 regulatory status as it currently does, that is a
2 problem for us.

3 BOARD MEMBER McFAWN: Am I understanding
4 this correctly? You're saying that, for instance,
5 his blast furnace, the oil he's describing, it can
6 be used if the blast oil furnace meets the
7 industry standard for on-specification oil; is
8 that right?

9 MR. DRAGOVICH: There's a regulatory
10 standard for on-specification used oil, and he was
11 indicating that it meets that definition in 739 of
12 on-specification.

13 BOARD MEMBER McFAWN: Is that right?

14 MR. HARRIS: Yes. Right now, virtually
15 all used oil fuel meets the specifications set

16 forth in 739 in large measure because the burners
17 don't want to have anything to do with a regulated
18 fuel, and if it's off-spec, it remains regulated.
19 So our members said, you know, virtually all, as
20 in 99.9 percent of used oil fuel meets
21 specifications. The proposal from IEPA suggests
22 that that's not good enough. They want it to meet
23 the definition of re-refined oil as well.

24 BOARD MEMBER McFAWN: That's what I was

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1 wondering, and I was going to ask the Agency is
2 this -- now, he's been talking that there's like a
3 second part to the definition of acceptable fuel
4 and that is that it must be comparable to
5 re-refined; is that right?

6 MR. DRAGOVICH: The way the proposal is
7 laid out, the burner of on-specification used oil
8 is not regulated. It's not part of the proposal
9 at all, but other management activities of
10 on-specification used oil would be subject to
11 permitting requirements unless they met the
12 definition of re-refined oil.

13 BOARD MEMBER McFAWN: And that would be

14 the handling and storage and transportation of

15 it?

16 MR. DRAGOVICH: Right.

17 BOARD MEMBER McFAWN: Thank you.

18 MR. HARRIS: Let me ask just a few more

19 questions about it maybe, and then I'll be

20 finished for now. When I talked earlier about the

21 competitive advantage or disadvantage between oil

22 -- used oil processors or for principally to the

23 competition with virgin oil marketers, I wanted to

24 know if you have undertaken any study or analysis

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1 of the competition between Illinois used oil

2 marketers and out-of-state used oil marketers or,

3 to put it another way, the impact of this proposal

4 on out-of-state versus in-state oil marketers?

5 MR. DRAGOVICH: I think our answer is the

6 same that we're not aware of any studies.

7 MR. HARRIS: Is that factor a concern for

8 the Agency as it attempts to promulgate this

9 regulation, its proposal?

10 MR. MERRIMAN: This is Dan Merriman for

11 the record. We have -- we did and have to some
12 extent considered that issue and even more so
13 after it was raised as a specific area of concern
14 by NORA and even the public comment by
15 Representative Leitch. However, our primary,
16 primary area of concern has always been
17 environmental impact. There is some inherent
18 territorial aspect of our proposal, but it doesn't
19 distinguish in the proposal our permitting
20 authority and so forth between people who have
21 in-state facilities or out-of-state facilities.
22 An out-of-state operator who picks up, for
23 example, used oil in Illinois from an aggregation,
24 if the Illinois facility operator would be

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1 required to manifest it, so would an out-of-state
2 facility operator. We just don't have the
3 ability, as I'm sure you understand, to impose
4 permit obligations or any other regulatory
5 obligations on out-of-state operators for
6 activities that are undertaken out of state.
7 We understand that other states,
8 neighboring states, may. It's my understanding,

9 and you might have more information on this than
10 we do, but it's my understanding that some version
11 or another of the federal used oil management
12 standards are applicable throughout all of the
13 Midwestern states and all of our neighbors. We
14 have no knowledge of whether those states have the
15 kind of history that we have had with problems
16 with facilities that have cost taxpayers millions
17 of dollars. So we don't know whether they have
18 proposed or are proposing or are considering or
19 have implemented registration for permitting
20 programs. We know of other states that do, and
21 I'm sure NORA is aware of other states that do as
22 well. Some states I think that have permitting
23 programs that look and sound like permitting
24 programs, but they call it something else, but all

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1 essentially impose the federal standards.

2 So in terms of the substantive
3 standards found at 40 CFR 279, we think that
4 Indiana operators, Missouri operators, Kentucky
5 operators, Iowa operators, and so forth are all

6 pretty much subject to the same types of
7 restrictions and standards with respect to their
8 handling and transportation of used oil.

9 MR. HARRIS: Let me give you two examples
10 and see how the Agency reacts to these examples,
11 and I think they're in the context of your
12 proposal. One has to do with fuel specification.
13 The proposal, as I understand it, is that in order
14 to be exempt, the fuel would have to both meet
15 on-specification requirements under Part 739 and
16 it would have to a meet a fuel specification of
17 some kind, either meet the definition of
18 re-refined or as Mr. Dragovich discussed a fuel
19 specification.

20 Isn't it true that that requirement,
21 that is that second portion of the requirement,
22 meaning the fuel specification would not be
23 imposed on an out-of-state recycler and any
24 testing requirements that had to be done to verify

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1 to IEPA that the fuel met this second requirement
2 would be imposed only on Illinois processors and
3 not on out-of-state processors?

4 MR. MERRIMAN: Before we get a response to
5 this specific question, I think I have to bounce
6 on back to the impact. This whole issue that
7 we're discussing about the on-spec, off-spec
8 burners, whether they're regulated or at what
9 point they become not regulated didn't arise out
10 of anything that we have proposed in terms of this
11 rulemaking proposal, but rather came as a result
12 of the Agency's response to comments and concerns
13 raised by you; is that correct?

14 MR. HARRIS: That's my understanding.

15 MR. MERRIMAN: So you made comment or you
16 made comments or raised a concern about the
17 regulatory status of on-spec fuel used for
18 burning, and in our response back, we attempted to
19 explain what we felt what our position was on this
20 thinking that it would alleviate or somehow
21 address your concerns, and I take it that it
22 hasn't gone far enough.

23 MR. HARRIS: Let me explain it in the
24 simplest possible way. Currently, under both

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1 federal and current IEPA regulations, Part 739,
2 once a processor certifies that the used oil meets
3 specification requirements, it's no longer
4 regulated. EPA, in fact, has a famous line that
5 says it's equivalent of virgin fuel from their
6 point of view, and, therefore, it competes nicely
7 with virgin fuel products. As I understand
8 Mr. Dragovich's suggestion, you can still meet
9 on-spec requirements, but still be a special waste
10 and, therefore, all of those requirements that
11 Illinois chooses to impose under Section 809 or
12 Section 807 would apply. Therefore, it does not
13 shed its regulatory burden even though it meets
14 on-specification requirements.

15 MR. MERRIMAN: You're saying that's the
16 way things are today?

17 MR. HARRIS: Well, perhaps, it's -- I
18 think the proposal is to clarify that just because
19 you meet specification doesn't shed the regulatory
20 burden. In fact, if you don't meet re-refined
21 standards, you're still subject to that set of
22 requirements.

23 MR. DRAGOVICH: I think we're looking at
24 it from a different viewpoint. I mean, some of

1 this material is special waste now. What we're
2 trying to do is clarify that some of it really
3 doesn't belong in the category of special waste.
4 MR. HARRIS: And that's my point about
5 out-of-state recyclers because if there are
6 testing requirements or other burdens imposed on
7 Illinois recyclers that are not imposed on
8 out-of-state recyclers, the facility in Gary,
9 Indiana, doesn't have those testing requirements
10 or other requirements, and yet the facility
11 operating in Springfield, in fact, does have those
12 requirements. So that's my point about the
13 discrimination between these two types of
14 facilities, one out of state that doesn't have
15 those burdens, one in state that does, and I asked
16 you if you had done any studies and no, there are
17 no studies, and whether you were concerned, well,
18 maybe, but your principal concern is for the
19 environment. I would submit that there is just
20 not enough analysis of the discriminatory effect
21 of these proposed regulations.

22 MR. DRAGOVICH: I think your example was
23 waste analysis requirements. There is no specific
24 waste analysis requirement in this proposal.

1 MR. HARRIS: No, but in the operating
2 permit, which we don't know what those will look
3 like because the devil is in the details, but in
4 those requirements presumably as an agency you'd
5 want to know gee, does it meet the definition of
6 re-refined oil, and what other fuel product
7 specifications does this meet, and if my guys
8 don't have data, testing data, to show you, you're
9 going to say I don't think so.

10 MR. DRAGOVICH: Well, I would think that
11 if they're under contract to provide oil under a
12 specific specification already that they have
13 would have data that shows it meets the contract
14 requirements.

15 MR. HARRIS: Well, they might be under a
16 requirement to say from the Gary, Indiana, blast
17 furnace just to meet specification, 739
18 specification.

19 MR. DRAGOVICH: That's the type of
20 information we're going to have to look at in the
21 permit.

22 MR. MERRIMAN: If I understand

23 correctly -- excuse me. This is Dan Merriman.
24 739.172(a) already requires some form of analysis

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1 or an alternative methodology to determining
2 whether it's on or off-spec.

3 MR. HARRIS: I have no trouble with that
4 analysis. That's under -- under current federal
5 regulations, you have to meet that across the
6 country, but if you're imposing an additional
7 requirement on sulfur and BS & W content and so
8 forth, that's an additional set of requirements
9 that require an additional set of tests, and I
10 submit that those tests are not free.

11 MR. MERRIMAN: I apologize for taking so
12 much time in sort of discussing this, but we keep
13 coming back to the same response. Yes, there is a
14 statutory definition of re-refined oil. There's
15 nothing in that statutory definition that
16 necessarily applies it in a situation that we have
17 been discussing. That essentially was not part of
18 our -- is not a part of our regulatory proposal.
19 That, however, is something that Mr. Dragovich,
20 based on his experience, felt was a reasonable

21 definition where we had an existing statutory
22 definition to use as a defining cutoff point
23 essentially, and that's a permitting issue that's
24 illustrative of the same thing that we're talking

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1 about where the applicant -- if the applicant
2 based on data and information made available to
3 the applicant, for example, by some national
4 organization that it may be a member of would
5 provide in the permitting -- permit application or
6 in the discussions with the permit reviewer
7 information that there's some other appropriate or
8 more appropriate approach or standard. We don't
9 have the authority by way of a permit to grant a
10 variance.

11 We cannot eliminate the existing
12 739.111 standards, but all these others are
13 subject to discussion, to resolution through give
14 and take, providing further information, and,
15 again, going back to what I said the purpose of
16 our permit is to ensure that prospective future
17 activities at the facilities will meet the

18 appropriate regulatory and statutory requirements,
19 and like the 807 -- I alluded to this before, but
20 807.206 of the existing regulations essentially
21 says that the Agency may impose such conditions in
22 the permit as may be necessary to accomplish the
23 purposes of the Act and as are not inconsistent
24 with regulations promulgated by Board thereunder,

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1 including periodic reports, full access to
2 adequate records, and inspection of facilities as
3 may be necessary to ensure compliance with this
4 Act and the regulations and standards adopted.
5 So if we all agree that 739 is the
6 existing standard and any other standards that the
7 Act or existing regulation may impose on a
8 particular activity of that facility, what we can
9 do by way of conditions are only those as may be
10 necessary to ensure and accomplish those things,
11 and, again, we don't initiate the permitting
12 process. We don't say okay, here's the standards
13 that you have -- here's the way in which you have
14 to reach these standards. The applicant comes to
15 us and says here's my application, this is what we

16 do, and this is what we're proposing to do, and
17 that's how it all starts.

18 However, we've had these kinds of
19 conversations that we're having this morning quite
20 frequently in the context of a pending permit
21 application, and then those issues get resolved
22 either by us through agreement or, you know,
23 ultimately they're appealed by the Board, but
24 those issues do get resolved.

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1 MR. HARRIS: That's helpful certainly in
2 helping us to understand -- at least me to
3 understand the process better, but my series of
4 questions had to do with the impact on Illinois
5 recyclers in contrast to the out of state ones,
6 and, perhaps, this example will highlight our
7 concern a little bit more vividly.

8 The proposal, as I understand it,
9 would say if you're going to store used oil in any
10 quantity, you're going to have to get an 807
11 permit, a special waste handling permit. Now, a
12 lot of our members when they have a great deal of

13 oil lease commercial facilities. These are virgin
14 oil fuel facilities that lease for the storage of
15 used oil temporarily. So I understand that your
16 proposal would require those facilities to obtain
17 a permit. Now, contrast that situation which,
18 let's say, that occurs in Chicago where the
19 commercial facility is going to lease its facility
20 to an oil recycler and they have to get a permit
21 with East Chicago, Indiana, where the commercial
22 facility does not have to get any kind of a
23 permit, and let's say that the commercial facility
24 in Chicago says forget it, I ain't going to be

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1 regulated by IEPA, and I don't want to have
2 anything to do with IEPA regulations.
3 So it means that the recycler can't
4 use that commercial facility probably and any
5 other one, but an out-of-state recycler, in fact,
6 can use the East Chicago facility. Is there not a
7 discriminatory effect as a result of this
8 proposed regulation?

9 MR. MERRIMAN: Not necessarily. I mean, I
10 think the response to that is that 739 is in

11 existence here, and even if our proposal weren't
12 there, if there were no permitting requirement,
13 they are still -- it's still a regulated activity,
14 and so the Chicago facility, the bulk storage
15 facility, is still regulated. I mean, they're
16 regulated today and they are subject to the
17 regulations now. So it's entirely possible that
18 another state may enforce to a different degree or
19 hold an out-of-state operator to a higher standard
20 than we do.

21 It's entirely possible that in the
22 context of the permit application based upon,
23 we'll say, the intended use of the recycled oil
24 contracts, and maybe there's only one supplier for

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1 a particular use, and I can't think of specifics,
2 but I'm trying to come up with something that the
3 ultimate permit might impose less restrictions
4 than a facility because we know where it's going
5 and the intended use and because we would have
6 some kind of a track record that it may impose
7 less restrictions that would be available for an

8 inspector to look and say okay, here's the permit,
9 here's what they're supposed to do, here's what
10 they're doing, unless that inspector just came out
11 without a permit and just looking at the checklist
12 of the used oil checklist, for example, prepared
13 by USEPA for inspecting those facilities.

14 I mean, a lot of these -- a lot of
15 the issues that ultimately are back end issues
16 that arise in the context of enforcement disputes
17 can get resolved and smoothed over at the front
18 end with a permit application and properly drafted
19 permit, and it gives the operator a better comfort
20 level, and it gives them some guidance on what it
21 is and how it is that we view their need to meet
22 the standards, and, you know, if it were strictly
23 -- I understand it's a big issue for your
24 constituents, the competitive advantage and the

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1 competitive issues between Illinois facilities
2 versus Indiana facilities, but it's a -- that's an
3 issue of any business, any business that does
4 business in one state and not in another, and I'm
5 not sure that your constituents do business in

6 only one state. There may be facilities here that
7 operate facilities in Illinois that also operate
8 facilities in other locations. I guess my point
9 is we are concerned with it to a point, but that
10 is not our major concern.

11 If you ask Mr. Eastep what his major
12 concern is, his major concern would be that these
13 people don't have enough money to clean up their
14 own messes or that they -- and these people, I'm
15 talking about the people that he previously
16 testified as the facilities where the state and
17 the federal government have been involved in the
18 cleanups, or that there aren't sufficient
19 financial assurance requirements and, again, our
20 proposal doesn't go to that. 807 would not impose
21 financial assurance requirements for these
22 facilities.

23 MR. DRAGOVICH: If I can add to that, in
24 the example you cited, you indicated that the

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1 Illinois facilities would be at a disadvantage.
2 In reality, there may be some advantage there

3 because if you were a permitted facility in
4 Illinois and through the permitting process we
5 came to some agreement that the on-specification
6 oil is no longer a waste subject to regulation,
7 you would be able to store that used oil,
8 re-refined oil, whatever you want to call it in
9 unpermitted tanks at a different facility, where
10 the out-of-state people don't have a permit with
11 us, don't have this agreement, and wouldn't have
12 the same opportunity to do that.

13 MR. HARRIS: Well, I suppose that is a
14 possibility, but that's not a scenario that I
15 think is likely to occur. I think the more likely
16 scenario is if your proposal holds true, these
17 commercial storage facilities located in Illinois
18 are, in fact, going to have to get permits which I
19 think if you were to do a survey of those facility
20 owners, they'd say there is no way that we are
21 ever going to get an IEPA permit because we have
22 plenty of other customers in the virgin fuel
23 category, and we're just not interested, and that
24 I submit will leave oil recyclers in Illinois

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1 without that important storage capacity that they
2 frequently needed once a year.

3 MS. GEVING: Well, that would take me back
4 to the question I asked you before that never got
5 answered, and that's that this is a system that
6 was in place before it inadvertently got omitted
7 when the numbering system changed and Part 739 was
8 adopted, and I would pose to you the same question
9 I did before, and that's what did all of the
10 members NORA do when they were permitted? They
11 obviously weren't out of business at that time.
12 How does this differ?

13 MR. HARRIS: I heard the question --

14 MS. GEVING: Mr. Merriman has testified
15 that this is actually less burdensome than the
16 requirements were before.

17 MR. HARRIS: We're happy to answer that
18 question. I just was following the procedure.

19 BOARD MEMBER McFAWN: Before you do that,
20 and we can just, you know, reserve that question,
21 I just wanted to clarify something. You said,
22 Mr. Dragovich, that through the permitting process
23 a used oil might be deemed not a waste.

24 Did I hear that correctly?

1 MR. DRAGOVICH: Yes.

2 BOARD MEMBER McFAWN: And therefore would
3 not be subject to the permitting requirements?

4 MR. DRAGOVICH: After it's been
5 processed. See, there would be some point in time
6 where it would move from being a special waste to
7 a commodity.

8 BOARD MEMBER McFAWN: And would that
9 actually take a refining or some other kind of
10 process or just changing the definition?

11 MR. DRAGOVICH: I think it's going to
12 depend on the circumstances, but it's really the
13 quality of the oil that's going to make it a
14 commodity as opposed to what process it's been
15 through. It make take a total refining process.

16 BOARD MEMBER McFAWN: But could it take
17 something less?

18 MR. DRAGOVICH: Right.

19 BOARD MEMBER McFAWN: Could it take just
20 for instance the collection of the oil and a
21 certification that it's always of this standard
22 because of the process that generates it?

23 MR. DRAGOVICH: I really couldn't answer
24 that right now.

1 BOARD MEMBER McFAWN: I just was trying to
2 understand what you were saying how would it
3 become a nonwaste.

4 MR. DRAGOVICH: I really envision the fact
5 that they were filtering it, that they were doing
6 gravity separation, and the steps that they
7 normally do and make it something that's fairly
8 close to a virgin oil.

9 BOARD MEMBER McFAWN: So you would see
10 some kind of processing?

11 MR. DRAGOVICH: Yes.

12 MR. HARRIS: Can I respond to some extent
13 to your question?

14 BOARD MEMBER McFAWN: Sure.

15 MR. HARRIS: The ASTM that's been looking
16 at this issue for the last three years, that is
17 quality of used oil fuel products, and ASTM is in
18 no way dominated by anybody, certainly not oil
19 recyclers, and has a lot of big oil members who
20 are looking at competitors in used oil, and the
21 result is that four grades of used oil fuel were
22 certified as meeting ASTM standards, that is, the

23 standards that were created, and essentially
24 differences have to do with ash and BS & W and

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1 viscosity. Now, if IEPA has a view that used oil
2 has to be real close to virgin, I think that that
3 may be a higher standard if it's not true because
4 remember the definition of re-refined oil says
5 essentially new oil, and we're saying that in the
6 category of used oil fuel, there are differences
7 on ash, BS & W, and viscosity and should be
8 recognized. There are differences.

9 MR. MERRIMAN: And I guess I'd just like
10 to reply on the record that at this point on this
11 question because it's not -- it was not a specific
12 part of the regulatory procedure and because this
13 regulatory proposal is really a procedural issue
14 and not a substantive issue. So we have not done
15 a lot of research on these issues in terms of in
16 the same kind of context that USEPA did when they
17 adopted Part 279. We haven't done extensive
18 scientific testing or that sort of thing, but the
19 ASTM standards are often, as well as other

20 industry standards, are often very convincing and
21 persuasive because we pick -- Mr. Dragovich picked
22 the definition because at this point for purposes
23 of an illustration in his comments that's the
24 standard that we had that was to immediately -- I

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1 mean, but, again, it comes back to the applicant
2 says well, here's an industry standard that's been
3 set by ASTM, and it says that there are absolutely
4 no environmental risks involved in burning this
5 particular form of used oil in this particular
6 type of burner or at these temperatures or however
7 it actually comes down as a standard, and if
8 that's the case, then we go back to what our
9 conditioning authority is, and if we were to
10 condition beyond that scope, we would have
11 exceeded the scope of our conditioning authority
12 and conditioned something that was more than
13 necessary to accomplish the purposes of the Act.

14 We're arguing about an issue that
15 really hasn't -- I mean, it's a hypothetical issue
16 at this stage. It doesn't really have anything to
17 do with the proposal because your response to that

18 would be, I presume, based on the previously filed
19 comments, would be just forget the permit, throw
20 out the whole concept of permitting because we
21 have this area here that may come up or may not
22 based on what the activities of a particular
23 facility involve down the road during the
24 permitting process that may adversely affect

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1 Illinois operators versus some other state's
2 operator.
3 MR. HARRIS: Well, it is my obligation to
4 worry about this because when permits and permit
5 conditions are imposed, we kind of want to know
6 what the ground rules are, and if you're saying
7 right now well, don't worry about that because
8 that's not the current issue, well, I do worry
9 about that because that's where the substantive
10 regulations and the regulatory burdens come into
11 play, and then our only recourse is the individual
12 permit conditions, and then appealing those to the
13 Board if we find those to be too onerous.

14 MR. MERRIMAN: But you're saying that NORA

15 and its members have information about various
16 classes of used oil or re-refined oil that may
17 meet the standard 739.111 that fall short of the
18 Illinois statutory definition of re-refined oil,
19 and so am I right that's what you're saying?

20 MR. HARRIS: I don't know what the
21 definition of re-refined oil is. I can read it,
22 and it says it has to be substantially the
23 equivalent of new oil --

24 MR. MERRIMAN: Right.

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1 MR. HARRIS: -- which leaves -- there's
2 flexibility there.

3 MR. MERRIMAN: Flexibility in the word
4 substantially I would assume.

5 MR. HARRIS: Yes, but we don't know -- the
6 devil is in the details, and I don't know what
7 those details are, but putting that aside, the
8 answer to your question is yes, not only the ASTM
9 standards, but, of course, as you talked about
10 earlier or Mr. Dragovich talked about earlier the
11 individual contracts that many of our members have
12 with burners get into intricate detail about what

13 is an acceptable product and what isn't, and those
14 are contracts and specifications of
15 long-standing.

16 MR. MERRIMAN: Again, that's the very type
17 of information that we would envision coming in a
18 permit application, and historically the way we
19 operate on issues dealing with particular waste
20 streams is that's the kind of information that
21 affects on what and how the ultimate permit looks
22 on a site-by-site or facility-by-facility basis.

23 MR. HARRIS: Sure. I understand exactly
24 where you're coming from, and my response is

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1 twofold. What's wrong with the current Part 739
2 specifications? That's part one. The other
3 concern is if we have a willing buyer that is a
4 burner who is meeting all of their environmental
5 responsibilities, including the Clean Air Act, and
6 we have a willing seller meeting those
7 specifications from the buyer, why should IEPA
8 care about regulating that process?

9 MR. MERRIMAN: I guess I would respond

10 that I don't know if I don't have any information
11 about the particular quality of that product. I
12 mean, I say product because you said you had a
13 willing buyer, and I use that product in quotes
14 because obviously if it's a product, it's not
15 going to be within the scope -- at some stage,
16 it's not going to be within the scope of the
17 regulation, but you asked why we would care, and
18 we might care depending on I think, and I don't
19 want to speak -- I guess I am doing a lot of
20 speaking, but I don't want to speak for
21 Mr. Dragovich, but I think that we would want to
22 know what the quality of that oil is before we
23 could answer whether we care or not.
24 MR. HARRIS: Okay. The premise of our --

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1 MR. MERRIMAN: I'm going back to a
2 case-by-case basis.
3 MR. HARRIS: I understand. The premise of
4 this discussion, and I promise not to belabor this
5 any further, is that we have specification used
6 oil fuel meeting all those requirements, and this
7 is not a question of on-site storage, this is

8 after it leaves the facility, why do you care?

9 MR. DRAGOVICH: I think as I said before
10 it doesn't exempt it from the definition of
11 special waste.

12 MR. HARRIS: I understand the regulatory
13 answer to that because we've gone over that. The
14 question is a substantive one. Why do you care in
15 terms of substance whether Mr. Lenz is selling
16 fuel that has a four percent water content to a
17 steel mill or a zero percent water content to a
18 steel mill?

19 MR. MERRIMAN: I guess one answer to that
20 question would be, based on the assumptions that
21 you've said, is that it doesn't necessarily meet
22 the definition of re-refined oil in the Illinois
23 Environmental Protection Act.

24 MR. HARRIS: Correct.

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1 MR. MERRIMAN: And if we use the
2 re-refined oil definition as part of the
3 determination or as a supplement to 739.111 and it
4 doesn't meet the definition of used oil, then it's

5 still a special waste, and if it's still a special
6 waste in Illinois today, it is subject to permit
7 requirements, manifesting requirements, and
8 everything else. So the whole point is to -- I
9 mean, I assume your whole point is to get it out
10 of regulation, not just establish that it's not
11 regulated under 739 because then it would be
12 regulated as something else other than used oil.

13 MR. HARRIS: I may have missed something
14 there. Let me see if I can paraphrase what you've
15 just said.

16 We're talking about used oil that
17 meets specification, but does not meet the
18 definition of re-refined oil, and, therefore, is
19 it my understanding that that would be labeled as
20 special waste and, therefore, not used oil?

21 MR. MERRIMAN: Yeah. The issue is whether
22 it meets the definition of used oil, and used oil
23 in -- and that's where this -- because if it's not
24 used oil under 739, it's special waste. It's

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1 regulated. It's regulated today. It was
2 regulated yesterday.

3 MR. HARRIS: And why would it not meet the
4 definition of used oil? It already meets the
5 specification of used oil. Is it because it
6 doesn't meet some additional criteria?

7 MR. DRAGOVICH: I think part of the issue
8 all along, in my experience, has been how much oil
9 has to be in the waste for it to be considered
10 used oil? Is it one percent oil and 99 percent
11 water? Would you manage that under the definition
12 of used oil?

13 MR. HARRIS: Well, I go by the EPA
14 definition actually which is in part 739 anyway,
15 and there are actually no quantification limits on
16 it in part because there is lots of oily
17 materials, which although they don't meet the
18 definition of used oil, nevertheless are regulated
19 as used oil because that's the best way to handle
20 it, and that's the reason EPA didn't create a
21 bright line between used oil and oily materials
22 that are regulated as used oil.

23 MR. DRAGOVICH: So in theory, if it had a
24 few parts per million used oil, you would manage

1 it as used oil?

2 MR. HARRIS: This is a large and
3 interesting issue, and I'll be glad to discuss
4 this at length, but I refer really only to EPA's
5 regulations and their definitions which have
6 created these two categories of used oil which has
7 a statutory and regulatory definition, and then
8 another set of materials, which are like used oil,
9 not used oil, but are regulated as used oil
10 because that's the way they are best managed.
11 Oily wastewater would occasionally fall into that
12 category, for example.

13 MR. DRAGOVICH: I thought the definition
14 specifically excluded oily wastewater?

15 MR. HARRIS: The definition does, but
16 there are a lot of materials that are recycled.
17 If I had the regulations, I could point that out
18 to you fairly explicitly. Maybe over lunch I can
19 do that.

20 MR. MERRIMAN: When you mentioned earlier
21 ten percent bottom sediment and water --

22 MR. HARRIS: Yes.

23 MR. MERRIMAN: -- is that NORA's position
24 as to where the line between de minimus and

1 nondeminimus quantities of water?

2 MR. HARRIS: That dividing line and that
3 proposal is essentially based on what i understand
4 to be Mr. Dragovich's concern and, perhaps, others
5 of your agency that there are certain categories
6 of oily materials that some people might call
7 fuels that, perhaps, Mr. Eastep has found at
8 facilities that just don't have enough value and,
9 therefore, because they don't have value are
10 improperly managed, and we can agree with that as
11 a basic concept that if the material doesn't have
12 value, then it's not likely to be managed properly
13 and would probably be called a special waste, and
14 so this is our attempt to find some common ground
15 where, okay, this material clearly needs to be
16 subject to more stringent regulations because of
17 its inherent propensity to be mismanaged because
18 of its lack of value. Now, ten percent is our
19 suggestion for a dividing line, but maybe there's
20 others that you folks could come up with, but it's
21 our attempt to say we're not just saying no, no,
22 no, if you want to create some regulatory
23 authority for special waste, let's have a clear
24 area where it is no longer a product, it is, in

1 fact, a waste material, and in this case a special
2 waste.

3 BOARD MEMBER McFAWN: This distinction
4 would only apply as far as permitting?

5 MR. HARRIS: That's correct.

6 HEARING OFFICER STERNSTEIN: Is this
7 something that the Agency might want to think
8 about over lunch before getting back to NORA on?

9 MR. MERRIMAN: Yeah. I think we're not
10 prepared to respond in terms of it being set forth
11 as some kind of counterproposal or a proposal of
12 something. We're certainly not at this juncture
13 prepared to respond. Maybe after some discussion
14 at a lunch break will be enough to have an initial
15 response.

16 HEARING OFFICER STERNSTEIN: Well, why
17 don't we --

18 MR. HARRIS: I have just one final
19 question which would then complete, at least, my
20 questions.

21 HEARING OFFICER STERNSTEIN: Okay. Then

22 we can get back to the ten percent issue after

23 lunch.

24 MR. HARRIS: There is a reference to a 250

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1 gallon used oil spill that got into the Mackinaw

2 River. Do you know whether that was from a used

3 oil processing facility or from a generator or

4 some other source?

5 MR. MORROW: This is Mr. Morrow. I took

6 that information from an emergency response

7 report, and I know the name of the facility, but I

8 don't know their activities.

9 MR. HARRIS: Okay. Can you fill us in on

10 the name of the facility?

11 MR. MORROW: The facility was -- the

12 facility name is Tara Industry, Incorporated, in

13 Saybrook, Illinois.

14 MS. CUSTER: It's not a processor. It

15 must be a generator.

16 MR. HARRIS: We believe that that is not a

17 processor, but a generator.

18 MR. MORROW: Okay. I included it in my

19 testimony. I thought it was relevant because it

20 was a used oil tank that had collapsed at the
21 foundation.

22 MR. MERRIMAN: It may not be a processor,
23 but we don't have enough information at this stage
24 to eliminate the possibility that it might be a

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1 leased tank also being used by a processor. I
2 think we mentioned that that was a practice in the
3 industry as well. We just don't know.

4 MR. HARRIS: Okay. I'm finished with my
5 questions. It's possible that --

6 HEARING OFFICER STERNSTEIN: Your members
7 might have --

8 MR. HARRIS: -- they may have questions,
9 but the procedure, of course, is up to you.

10 HEARING OFFICER STERNSTEIN: Well, why
11 don't we -- we'll let the Agency address the ten
12 percent BS & W proposal after lunch, even if it's
13 just summarily. They may want to further address
14 it in their final comments, but we'll allow that
15 after lunch, and then we'll continue with the
16 questioning of the Agency from the members of NORA

17 and then also with us. So right now, it's a
18 little after one. We'll break for lunch until
19 2:30. How about 2:15? We'll come back at 2:15.
20 Off the record.
21 (Whereupon, further proceedings
22 were adjourned pursuant to the
23 lunch break and reconvened
24 as follows.)

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1 HEARING OFFICER STERNSTEIN: I believe
2 when we left off, we were going to give the Agency
3 a chance to respond to NORA's as ten percent BS &
4 W standard proposal, and once the Agency does
5 that, then we'll let any of the members of NORA
6 who are present today ask any questions of the
7 Agency. So I'll turn it over to you, Kim. Is
8 there any response on the proposal from NORA?
9 MR. HARRIS: Kim, before you respond --
10 I'm sorry. If it makes it easier for this to be
11 understood as a bright line criteria, BTU value
12 would work just as well as a percentage of water.
13 The idea is to create a bright line that anyone
14 can say yes, this is a special waste or no, this

15 is not special waste.

16 MS. GEVING: Mr. Dragovich is going to try
17 to address this question.

18 MR. DRAGOVICH: I guess we would like to
19 see where these numbers came from. We don't have
20 any idea at this point in time where the ten
21 percent came from or any other numbers that you
22 want to propose. We didn't really think of this
23 regulatory change as -- you know, the concept
24 wasn't to define what's special waste and what

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1 isn't. It was originally to reduce the
2 manifesting requirements in certain instances and
3 determine what types of facilities needed a
4 permit. So we kind of saw it as outside the scope
5 of what we were trying to accomplish here, but
6 even outside of what we're doing here, we'd
7 certainly like to look at that proposal and study
8 it a little further, but we'd like some background
9 information to.

10 MR. HARRIS: Fair enough.

11 HEARING OFFICER STERNSTEIN: I guess at

12 this point we'll open it up to any questions that
13 the members of NORA may have. I just ask that,
14 again, both for the people on both sides of the
15 room that when you ask a question please identify
16 yourself and also when you answer the question,
17 please identify yourself. It just makes it easier
18 on the court reporter. So I guess just raise your
19 hand if you've got a question, and I'll recognize
20 you. Yes, sir.

21 MR. LENZ: I've got a couple. Mike Lenz,
22 Lenz Oil, Peoria. Just the first one is -- I'm a
23 little confused. Is on-specification used oil in
24 Illinois a special waste still after it's

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1 certified or tested as on-specification? Is it
2 still considered a special waste in Illinois right
3 now?

4 MR. DRAGOVICH: The definition of special
5 waste doesn't make any distinction as to whether
6 used oil is on-spec or off-spec. It's kind of a
7 separate definition. On-spec used oil could be a
8 special waste, but not necessarily always is a
9 special waste.

10 MR. LENZ: Could you give an example of
11 when it -- just an example of when it is and when
12 it isn't maybe?

13 MR. DRAGOVICH: I would say that it's
14 possible that if you had a used oil that meets the
15 specification that has a very high water content
16 we would still consider it to be a special
17 waste because it's not a marketable commodity.

18 BOARD MEMBER McFAWN: So your criteria
19 then is the water content or the marketability?

20 MR. DRAGOVICH: It's not necessarily our
21 only criteria. It's whether something is a
22 commodity as opposed to a waste. That's what
23 we're trying to -- we're trying to cross over that
24 line.

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1 MR. LENZ: And just to follow that up a
2 little more, if it went into -- let's say it met
3 the definition of a commodity and it went into
4 commercial nonpermitted storage, would that
5 storage under the proposal be required to be
6 permitted?

7 MR. DRAGOVICH: If the material didn't
8 meet the definition of a waste, we couldn't
9 regulate it. That's what it comes down to. So,
10 yeah, if it's a commodity and it does not meet the
11 definition of a waste, we wouldn't require a
12 permit for it.

13 MR. LENZ: Another question I had was --
14 and, again, it's a clarification. I got out of
15 some of the testimony that you're not intending to
16 propose any permit conditions that are more
17 stringent in Part 739 requirements; is that
18 correct?

19 MR. DRAGOVICH: Well, I would say that in
20 addition to 739, it's whatever regulations apply
21 to it or the act itself. So if you propose
22 something that seemed to be consistent with 739,
23 but would be a violation of the Environmental
24 Protection Act, we would enforce the Environmental

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1 Protection Act.

2 MR. LENZ: Because some of our concerns
3 about permit conditions are from past proposed
4 permits, and there was a lot of conditions in

5 there that went well beyond 739 or any other
6 applicable regulation.

7 MR. DRAGOVICH: I think, first of all, you
8 have to take into consideration whether it was a
9 final permit and whether it stood an appeal, the
10 conditions that you're talking about, and the
11 other thing is that the conditions themselves are
12 based upon the amount of information that we
13 received. The more information that we receive
14 during the review process, the better we could
15 evaluate it and work things out. So it's kind of
16 a two-way process. We ask for your help really in
17 kind of developing the permit.

18 MR. MERRIMAN: Just to elaborate on that a
19 little bit -- this is Dan Merriman. I think I
20 mentioned earlier before the lunch break in the
21 past there have been examples where having gotten
22 less than the desired amount of information from
23 the permit applicant the Agency was in a situation
24 where they felt that in the absence of getting

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1 more specific detailed information that can be

2 tailor-made or site specific to what's actually
3 going on at a particular facility, in order to try
4 to make this fit all conceivable circumstances,
5 this is the best we can do, and that was issued as
6 a draft permit primarily with the idea of evoking
7 a response from the applicant like well, here's
8 more information and maybe we can modify some of
9 these or eliminate some of these. That was not
10 the final permit action and that is not a model
11 and not by any means is that to be a considered a
12 model for agency permit operating permits for this
13 type of facility. It's certainly not a model.

14 MR. LENZ: That's about it for me.

15 HEARING OFFICER STERNSTEIN: Yes, you,
16 sir. Could you identify yourself?

17 MR. RUNDELL: Steve Rundell with Solvent
18 Systems.

19 Do you know how many automobiles
20 there are in the state of Illinois? Does anybody
21 have that information?

22 MR. MERRIMAN: We do not have that
23 information. I don't think anyone has that
24 information if you're talking about automobiles

1 located in the state of Illinois. There are
2 figures and studies done as to how many
3 automobiles are licensed by the state of
4 Illinois. The Secretary of state's office would
5 probably have a statistic. The American Petroleum
6 Institute has made estimates in various states how
7 many automobiles there are at a given time, motor
8 vehicles. The University of Illinois has
9 conducted studies in the past. That's the kind
10 information we could get, but we don't have that
11 at any given time because we have open borders in
12 the state, and we don't know precisely the answer
13 to your question, but we would agree there are a
14 lot.

15 MR. RUNDELL: You know, a number of, like,
16 12 million cars seems to be a number that I've
17 read. I want to just tell you an interesting
18 thing as we're looking to look at some regulations
19 on used oil. One of the things I believe that
20 there's a release of somewhere close to a million
21 gallons a year of oil filters that are not
22 regulated. There
23 are -- we recover three to four ounces of oil from
24 every oil filter produced. I think there's 40

1 million oil filters produced in the state. That
2 comes out to about a million gallons. There's
3 also 20 million pounds of scrap steel lost, and,
4 you know, when you selectively look at certain
5 aspects to create regulations, sometimes in your
6 positive thought of trying to do the right thing,
7 you discourage the opportunity for recovery, your
8 opportunity for reuse, and you disfavor certain
9 industries.

10 You know, as a parent, before you
11 would give your child a second scoop of ice cream,
12 you'd make them finish the first scoop of ice
13 cream if you chose to give them a second scoop.
14 Yet, there's no encouragement for burners to burn
15 used oil. As a matter of fact, there's actually
16 encouragement to go the other way, to burn new
17 oil, because they have less regulatory
18 interference. So the people that are here are
19 plagued with regulations that make it very
20 difficult for them to compete because they have
21 different standards.

22 What can -- in taking a look at this
23 regulation is that I -- how do we propose

24 regulations that really consider a little bit

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1 larger scope as to what are we dealing with, how
2 do we reuse it, how could we create regulations
3 that encourage that? I think it was mandated by
4 the Clinton administration to encourage recycled
5 materials, but it should be recycle first, not be
6 the last choice because it's keep cheaper. It
7 should be recycle first or an obligation to get
8 an air permit or whatever else that you can assist
9 versus interference.

10 MR. MERRIMAN: We appreciate -- I want you
11 to understand we do appreciate your perspective
12 and your point of view. In large part, the Agency
13 had devoted a lot of resources to the issue of
14 recycling and pollution prevention. I know that
15 the issue of oil filters is a hot topic, not just
16 locally, but it's being discussed at various
17 levels, and there are lots of issues with that
18 because of the nature of the process and so on.
19 We think -- again, we are concerned with
20 recycling, and that's a state issue. The United
21 States EPA in adopting Part 279 of 40 CFR said

22 that they had to draw a balance between
23 environmental protection and other interests, and
24 that's what they felt that these regulations did,

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1 and that's what we feel our regulations do.

2 What we're doing here, as I said just
3 to keep reiterating the same point, what we're
4 doing here in this proposal is first to restore
5 the status quo, but we're now able, because of
6 Part 739, to carve certain areas out that may have
7 been subject to our permit regulations in the past
8 because it is a special waste used oil by
9 definition under Illinois law, but certain things
10 like do-it-yourselfers and accumulation
11 aggregation points, those kind of things can be
12 safely eliminated which should encourage that.

13 Again, this procedure for obtaining
14 an operating permit -- may I ask you, sir, if you
15 have -- have you got and are operating a facility
16 that would be a processor?

17 MR. RUNDELL: No, I'm not. I'm not a
18 processor.

19 MR. MERRIMAN: What kind of facility are
20 you representing?

21 MR. RUNDELL: A storage facility.

22 MR. MERRIMAN: Storage?

23 MR. RUNDELL: Uh-huh.

24 MR. MERRIMAN: Have you ever had a permit

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1 from the Illinois EPA?

2 MR. RUNDELL: My facility is in Wisconsin,
3 quite frankly, and Wisconsin has a series of --
4 well, they've written some regulations that affect
5 recycling, and their approach was to impose
6 under the 590 rule, but they want to just make
7 sure that is that goes to recycling. So they --
8 we do move everything from Illinois to the
9 facility by manifest, and we move the material out
10 in the same way, and they're more concerned about
11 the utilization that it goes to a burner or
12 processor and they track it in that way. How
13 exactly the tracking system is, I'm not too
14 confident on, but that was essentially what they
15 tried to do with what they would think is
16 nonhazardous, but recyclable material. They

17 wanted to set up a stage of regulations to make it
18 easier to operate as a recycler of anything than
19 it would be to operate as anything other than a
20 recycler. That was their rule.

21 MR. MERRIMAN: Do you understand the very
22 difficulties that you touched on as to why the
23 federal government came down with the concept or
24 the presumption that it would meet certain

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1 standards that it's presumed to be recycled or
2 tested for recycling I guess I should say.

3 Well, like I said, we appreciate your
4 concerns. You realize that under current law as
5 it exists today to a facility, those shipments are
6 subject to Illinois' manifesting requirements and
7 anything we do or don't do with respect to this
8 today wouldn't affect that. I don't know how
9 further to answer your question other than to say
10 those issues that you raised are of concern to the
11 state of Illinois. I'm sure they're of equal
12 concern to the Board as well as the EPA.

13 HEARING OFFICER STERNSTEIN: Does anyone

14 else have anything to ask of the Agency? Since
15 no one from the NORA side of the table has any
16 more questions, I know that myself and the other
17 people from the Board here have some questions.
18 So Board Member McFawn, why don't we start with
19 you?

20 BOARD MEMBER McFAWN: Okay. Thank you.

21 Mr. Rundell, actually I wanted to ask you a
22 question.

23 MR. RUNDELL: Okay.

24 BOARD MEMBER McFAWN: You were saying that

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1 you want -- that you are looking to encourage
2 recycling is what I gathered from your question
3 and your testimony, and that you sense there's a
4 discouragement in the opportunity for recycling or
5 reusing.

6 What -- if you can, because this
7 really seems to be the crux, one, and a concern of
8 mine, what do you find discouraging?

9 MR. RUNDELL: You know, in taking
10 leftovers out of the refrigerator, people would
11 prefer not to take leftovers out of the

12 refrigerator. So, therefore, it almost requires
13 to make recycling a stand-alone type of business
14 some kind of regulatory encouragement, whether it
15 be more flexibility in air permits or before you
16 get an air permit you have to agree also to take a
17 material because we're dealing with leftovers,
18 quite frankly, and there's always a stigma from
19 whoever buying it that it has less value and it's
20 not as good and that's the up hill battle that
21 marketers have to deal with. So where we support
22 that by -- just by the presence of a proposed
23 regulation when there's more and more companies,
24 steel mills have gotten out of taking used oil,

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1 there's lots of people that are looking at
2 hearings like this and saying why would I want to
3 subject my company to the potential of that
4 because some people perceive that to be a waste,
5 and I don't want it to be a waste, and I want to
6 be a steel company, and so they needed -- you
7 know, how does an industry market that? So what
8 are the options? What's a better option than

9 recycling? I don't think you can come up with
10 one.

11 BOARD MEMBER McFAWN: No. I tend to agree
12 with you on that. In fact, I like to think along
13 the same lines as yourself, but this proceeding,
14 as I understand the question, is should certain
15 operators, handlers like yourself if you were in
16 Illinois should you be permitted. Do you think
17 the presence of a permit and holding a permit
18 would somehow make those potential customers that
19 much less inclined?

20 MR. RUNDELL: I think the stigma of a
21 material being a waste at one time and the
22 potential of that liability carrying forward makes
23 it difficult to market.

24 BOARD MEMBER McFAWN: Even though they

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1 know they're going to burn that waste?

2 MR. RUNDELL: Then the encouragement would
3 be why don't I burn -- why should I burn the
4 leftover, even though the leftover is just as
5 good, why don't I make something brand new and not
6 have any stigma that I could deal with and not

7 open up the door for any potential liability? So
8 there's a presumed liability because at one point
9 it was a waste, and that is an up hill battle
10 fighting to market.

11 MR. LENZ: I can kind of give an example
12 of something along those lines. We market a lot
13 of fuel to asphalt plants. They use it to dry the
14 gravel when they blacktop, so they burn the fuel.
15 There's a misconception even among some of the
16 regulators that they're supposed to have
17 documentation that the oil that we're selling them
18 is on-specification. So they've got regulators
19 asking them about do you have proof that this oil
20 is on-specification. Well, that makes them
21 awfully nervous. Whereas, in actuality in the
22 regulations, we're supposed to be the ones that
23 have the burden of that requirement, not the
24 burner. So blacktop plants hear this going on

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1 that the regulators are asking these questions and
2 they think wait a minute, maybe I should just stay
3 away from that stuff. So it's things like that,

4 misconceptions, misunderstandings, and as you
5 mentioned, you know, it is a used product.

6 MR. RUNDELL: Perceived liability I guess
7 might be a good term.

8 MR. RAO: May I ask a follow-up question?

9 BOARD MEMBER McFAWN: Sure.

10 MR. RAO: Whether or not we allow this
11 proposed regulations for permitting, you're still
12 subject to all the 739 requirements, right? So
13 this perception of, you know, recycling a waste is
14 still there. So do you think just by requiring
15 you to get a permit will increase, you know,
16 somehow the perception that whoever buys your
17 product, you know, may think well, I will be
18 liable for something more just because it's coming
19 from a permitted facility?

20 MR. LENZ: Well, if the buyer has to get a
21 permit, then that was -- we weren't really sure
22 about that aspect of the proposal. If the buyer
23 of the fuel had to get a permit, most definitely.
24 There's really two different issues here. The

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1 other issue that we were concerned about are the

2 permitting conditions that are going to be added
3 in to Illinois recyclers' facilities operating
4 permits going to still enable us to compete
5 competitively against virgin fuel and out-of-state
6 competitors. So there's two pretty much separate
7 issues that we're looking at here the way I see
8 it.

9 BOARD MEMBER McFAWN: But it's not the
10 fact of having the permit? If anything, the
11 permit might make you more legitimate.

12 MR. LENZ: As far as I --

13 BOARD MEMBER McFAWN: Someone may not
14 perceive their misperception that you questioned?

15 MR. LENZ: As far as us having the permit,
16 no. It's the permit conditions we're concerned
17 about. As far as the burner having a permit,
18 definitely, yes.

19 BOARD MEMBER McFAWN: Thank you.

20 MR. HARRIS: If I may add a comment to
21 that, though. You're absolutely right. The fact
22 of having a permit in and of itself doesn't create
23 any particular burden, but if the Agency wants to
24 get into gee, what kind of product do you have, is

1 it meeting specifications, and then they began
2 asking questions well, let me say see that
3 contract you have with your burner, what kind of
4 provisions, and then if there was a survey or a
5 series of questions asked of the burner community,
6 you can be sure that they would say uh-oh, this
7 regulatory approach is getting a little bit too
8 close to home and we're out of here. We're going
9 to just buy virgin fuel. Once those decisions are
10 made by the burners, it cuts off the market,
11 shrinks the market, and the question that the
12 Agency should be asking is where does that old
13 used oil go at that point because if it isn't
14 burned and if it isn't re-refined, and we know
15 it's not going to be re-refined, that's just
16 completely uneconomical, where does it go, and I
17 would submit that when we -- there's a historical
18 experience that you can look to when the EPA first
19 proposed a program for hazardous wastes back in
20 1985, all hell broke loose, and no one would burn
21 it, no one would touch it, and so there was this
22 massive buildup of storage, and when that was --
23 just when all the tanks were full and so forth,
24 there was no place for generators to take it. No

1 one would pick it up, and I would submit that if
2 we had a videotape of all of the generators'
3 activities we'd see a lot of illegal disposal.
4 It's a very real concern. We have bad economics
5 right now. You add on top of that some bad
6 regulations or even the stigma of regulations that
7 affect the burner community and you will see a
8 smaller and smaller market, which means no good
9 outlet for used oil.

10 MR. LENZ: To follow that up just a little
11 bit more, if I could. If you back that up to the
12 facilities and we get a bunch of expenses to
13 comply with operating conditions, we have to pass
14 that on somewhere. If it can't be passed on to --
15 if it can't be passed on to the burner, which it
16 can't be or he won't buy the product, it's got to
17 be passed on to the generator, and I feel that
18 more -- the higher you make the cost of recycling
19 used oil for the generator, the less voluntary
20 participation you're going to get out of the
21 generators, especially DIYs, you know,
22 do-it-yourselfers, because you have to charge
23 those people to take that oil from them that

24 they've changed out of their own car, and you're

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1 going to get a lot less participation than you
2 currently do getting it into the recycling
3 system. So costs are a real factor on the
4 processors because we can't go one direction. We
5 can only go to the generator.

6 BOARD MEMBER McFAWN: Thank you.

7 MS. GEVING: May I ask a follow-up
8 question to that also? This is Kim Geving. I'm
9 going to ask this, and it's almost same question
10 that I've asked before, and any of the members
11 feel free to answer this, but this is not
12 something new. You were under the permitting
13 scheme before. What was the impact at that time
14 on your activities?

15 MR. LENZ: Well, for us, we were under
16 807, and, I don't know, maybe we still are
17 theoretically. The problem arose when we got
18 issued the modified permit proposal in the mid
19 '90s that we felt was unworkable, and that's why
20 we're so concerned about what the permit

21 conditions are going to be at this point.

22 Prior to that, we had, you know, a
23 basic permit outline of what our facility did and
24 where it was and that was about it. The permit in

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1 the proposed form went from two pages in our
2 original permit to somewhere between 15 and 20
3 pages of the proposed permit, and we felt it was
4 unworkable.

5 BOARD MEMBER McFAWN: You know, perhaps,
6 you could, for the record, either you, Mr. Lenz,
7 or the Agency or maybe both put on the record what
8 this modified permit proposal was that you're
9 speaking of in the '90s because I'm not aware of
10 it, and I'm afraid that maybe some of the others
11 of the Board may not be as well.

12 MR. LENZ: Do you want a copy of it?

13 BOARD MEMBER McFAWN: Sure.

14 HEARING OFFICER STERNSTEIN: We'll copy --
15 do you want to submit that into evidence?

16 BOARD MEMBER McFAWN: Yeah. Could you at
17 least look at it?

18 HEARING OFFICER STERNSTEIN: Do you have

19 an extra -- do you have two extra copies of that?

20 MR. LENZ: No, I don't.

21 BOARD MEMBER McFAWN: We can make copies.

22 Let's get to submitting it as an exhibit shortly.

23 Maybe you want to take a look at it and figure out

24 how to best do that.

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1 MS. GEVING: We'd like to review it before

2 it gets entered into the record.

3 BOARD MEMBER McFAWN: You can take a break

4 after you review it?

5 MR. MERRIMAN: We think we know what we're

6 talking about. We mentioned it before a couple of

7 times from our perspective, and without having it

8 front of me to know the specifics, I think I

9 alluded before to a permit application where there

10 was a communication problem or there wasn't the

11 information included in the application that the

12 Agency was looking for. Ultimately, in order to

13 achieve a response sent not a final permit, but a

14 draft, as a proposal saying well, in the absence

15 of more specific information, here's the best we

16 can do essentially, and that was the intent of
17 mine.

18 MR. LENZ: Well, we were never asked for
19 any information. It was sent as a proposed
20 modification to an existing permit.

21 MR. MERRIMAN: It's my understanding, and
22 I wasn't personally involved in that, but it's my
23 understanding that there was a history of contact
24 between you and the permit reviewer or someone on

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1 behalf of your facility and the permit reviewer,
2 and the information in the permit section may have
3 been just a miscommunication, but it wasn't a
4 final permit nor was it intended to be a final
5 permit, and I think I mentioned earlier it was
6 certainly not intended to present a model of what
7 we were doing or proposing for all used oil
8 management facilities, but that does illustrate
9 the fact that obtaining a permit from the Agency
10 is a cooperative effort. I mean, it requires the
11 applicant and the Agency to work together to get
12 that permit. The applicant has to provide some
13 basic information, and basically here's our

14 proposal. This is what we do, this is how we do,
15 and this is how we propose to meet these
16 standards, and that starts it all, and in the
17 absence of all of that, I mean, in theory I
18 suppose we could do RCRA TSD permit just by trying
19 to draft a permit condition encompassing each of
20 the regs and the subparts and the subsections and
21 all of the possibilities, but it would be an
22 extremely unruly, unworkable document, and it is
23 not the kind of thing that either the Agency or an
24 operator would want to have to figure out what

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1 they were or were not supposed to do, but we
2 understand that that is the one that was sent to
3 you, and that -- but from our perspective and our
4 history it was not sent as a final issue. It was
5 sent as a proposal, as a draft, and it was sent
6 under the notion of hey, if we can't get any more
7 specific information, this is the best that we can
8 do because we will have to try and instead of
9 making it site specific tailor-made as we
10 attempted to do, we had to make it all

11 encompassing for every conceivable circumstance,
12 and under the circumstances, I guess if you took
13 that to be a proposal for what we were planning on
14 doing, I can certainly see how you might be a
15 little concerned about this regulatory proposal.

16 BOARD MEMBER McFAWN: Because this was a
17 modified permit proposal sent by the Agency to
18 you, Mr. Lenz, concerning only your facility?

19 MR. LENZ: Yeah. I believe other
20 facilities at the time got some of -- got a form
21 of this same thing.

22 HEARING OFFICER STERNSTEIN: Is that
23 true? Did other facilities receive a similar
24 request to what Mr. Lenz got?

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1 MR. DRAGOVICH: Similar -- what we did at
2 one time was we tried to update permits to comply
3 with new regulations, and in all honesty, it
4 looked like some of the original applications
5 didn't hardly contain any information about the
6 facility, and so we were trying to work with
7 facilities to develop some type of waste analysis,
8 waste screening plan, and inspections, and

9 everything we normally expect of them.

10 I think in this particular case, I
11 don't know the details of the conversations on the
12 phone because I wasn't the reviewer, but I was the
13 reviewer's supervisor, I know that he was directed
14 to talk to him and ask him more information, and
15 when we didn't get it, I said well, let's start
16 with a proposed permit, and we'll have a meeting
17 and we'll talk about it and we'll build from
18 there, but it was not the bottom line. I mean, in
19 reality, we never did issue the permit.

20 BOARD MEMBER McFAWN: Did this -- in the
21 sense that it took place in the mid '90s, was this
22 before Part 739 was adopted?

23 MR. DRAGOVICH: In reality, it was before
24 we -- I think 739 might have been in place, but we

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1 weren't sure of the relationship between that and
2 807.

3 BOARD MEMBER McFAWN: Has NORA reviewed
4 this?

5 MR. DRAGOVICH: No.

6 BOARD MEMBER McFAWN: Has this been part
7 of your process?

8 MR. HARRIS: This wasn't part of our
9 specific summation. We have no objection if this
10 used as an example.

11 MR. DRAGOVICH: The other thing that might
12 be clarified, too, is we weren't even sure what
13 types of wastes was taken, if it goes beyond what
14 we would consider used oil or not. We haven't
15 even gotten to that point yet, and so this is
16 pretty much all encompassing everything that's
17 nonhazardous special waste, and it's pretty much a
18 collection of all kinds of conditions that we've
19 used over the years.

20 HEARING OFFICER STERNSTEIN: You're
21 speaking, again, about what you sent to Lenz or
22 what you sent to a whole series of --

23 MR. DRAGOVICH: No, what we sent to Lenz.
24 We didn't do a mass mailing. This was all case by

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1 case.

2 MR. LENZ: So there weren't any other
3 recyclers that got similar modification drafts?

4 MR. DRAGOVICH: I'm sure there's other
5 recyclers that have similar conditions, but, I
6 mean, you have to look at each -- you have to look
7 at the application in addition to the permits
8 themselves really to figure out what's required of
9 anybody. You can't look just at the permit
10 itself. You have to look at the application to
11 get the whole picture.

12 BOARD MEMBER McFAWN: Today the Agency has
13 proposed some permits or they submitted to the
14 Board their series of permits that they currently
15 use and identify which portions of that they would
16 be interested in using if this requirement for a
17 permit was adopted.

18 Has NORA or you, Mr. Lenz, or any of
19 the others, have you reviewed that package from
20 the Agency?

21 MR. LENZ: I haven't.

22 BOARD MEMBER McFAWN: I see someone
23 shaking their head? Could you -- I'm reaching for
24 your name. Victoria, right?

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1 MS. CUSTER: Correct. Custer, like the
2 general.

3 BOARD MEMBER McFAWN: Have you --

4 MR. HARRIS: I haven't seen a package of
5 permit conditions.

6 BOARD MEMBER McFAWN: This would have
7 been --

8 MR. RAO: It's like a permit application.

9 BOARD MEMBER McFAWN: Yes.

10 MR. HARRIS: I'm sorry. I saw the draft
11 permit application.

12 BOARD MEMBER McFAWN: This would be what
13 was attached to Mr. Dragovich's testimony?

14 MR. HARRIS: Yes.

15 BOARD MEMBER McFAWN: Does NORA have any
16 comments about those, the propriety of them? Is
17 it too in-depth, not enough? Any feedback on
18 that?

19 MR. HARRIS: Well, our basic comment, as
20 you know from the testimony, is that it is
21 unnecessary because the Part 739 requirements in
22 existence are well understood and there's no
23 obstacles to enforcement or inspection, and that's
24 our basic testimony. Our follow-up comment is the

1 devil is in the details because once you get into,
2 for example, the requirement of proof that you are
3 meeting given 739 requirements it can be, for
4 example, fairly expensive if you required -- just
5 to pick an extreme example, if you required
6 testing of every single generator's used oil to
7 make sure that it wasn't contaminated with
8 hazardous waste. That's not a current
9 requirement. That could be enormously expensive,
10 particularly if it required TCLP. I'm only
11 illustrating the point the devil is in the
12 details, and so the actual permit application that
13 you see before you is I don't think overly
14 intrusive, but based on the information generated
15 from that or ideas that the Agency has, it could
16 be extraordinarily burdensome, and, as you can
17 appreciate, if you move from the basic kind of
18 regulatory process we're having now to an
19 individual permit by permit review, it will be not
20 the trade association or the members you see here,
21 but each individual facility owner dealing with
22 individual facility questions, and so there won't
23 be any kind of broad consensus necessarily because
24 most of these people are all competitors.

1 BOARD MEMBER McFAWN: Yes. Thank you.

2 That's an interesting comment.

3 I have reviewed these permit
4 applications that the Agency had suggested as part
5 of Mr. Dragovich's testimony, and if any of the
6 members of NORA or people here, members or not
7 members, were to ever review, especially the one
8 that they focus on, which is LPC-PA3, is that
9 correct, that would be, I think interesting,
10 feedback for the Board. I understand your initial
11 premise is that they should not be issued or --

12 MR. HARRIS: If it's helpful for the
13 Board, I will myself, as well as ask the
14 individual members, to give that detailed scrutiny
15 within the time frame that we have for submitting
16 follow-up comments we will provide those to you.

17 BOARD MEMBER McFAWN: All right.

18 MR. RAO: I have a follow-up question to
19 what Mr. Lenz was talking about about these
20 facilities which burn used oil. The example that
21 you gave about the problems that these facilities
22 may have, were you talking about facilities that

23 burn on-spec oil or off-spec oil?

24 MR. LENZ: On-spec.

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1 MR. RAO: Is it your understanding that
2 these proposals would required permits for
3 facilities that burn on-spec oil because by
4 looking at Mr. Dragovich's testimony and here in
5 response to NORA he says Part 739 does the not
6 apply to burners of on-spec oils, and, therefore,
7 the proposed permitting requirements do not apply
8 to those facilities.

9 MR. LENZ: The way I understood it, if
10 they also meet the definition of re-refined oil,
11 right?

12 MR. DRAGOVICH: No. My testimony is
13 accurate.

14 MR. RAO: Yeah. He doesn't talk about,
15 you know, whether the used oil needs to meet the
16 definition re-refined oil. All it says is, you
17 know, burners of on-spec used oil are not subject
18 to permit requirements. So if that's the case, I
19 just wanted to know what your response would be.

20 MR. LENZ: I guess I'd have to wonder why

21 re-refined was brought up then instead of just
22 using the on-spec -- the existing on-spec
23 requirement to release the oil from regulation for
24 a burner.

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1 MS. GEVING: May I just clarify
2 something? I think the distinction here that
3 Mr. Rao is talking about is for burners.

4 MR. RAO: Yes.

5 MS. GEVING: We're not talking for other
6 instances. That's where the definition of
7 re-refined comes into play.

8 MR. LENZ: For other instances such as --
9 give me one example.

10 MR. DRAGOVICH: Well, if you were going to
11 send it on for further processing from the
12 facility, that would be -- a second facility would
13 be regulated and can be regulated activity or to
14 an outside storage facility. What we were trying
15 to do -- what I was trying to do was illustrate
16 when it was still a waste and still subject to our
17 regulations as opposed to when it's a commodity

18 and no longer falls under our regulation. We had
19 a rather large discussion on that earlier.

20 MR. LENZ: You stated that if it was
21 on-spec going to a commercial storage facility and
22 viewed as a product at that point that they
23 wouldn't be required to have a permit.

24 MR. DRAGOVICH: That's correct.

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1 MR. LENZ: So you're just saying if it was
2 going off site for further process?

3 MR. DRAGOVICH: Well, I'm saying if it
4 goes off site and still meets the definition of
5 special waste and it's not going off to a burner
6 that's when the follow-up facilities would have to
7 have a permit.

8 MR. LENZ: The reason I had brought that
9 up, though, is just to give the Board an idea of
10 those small things that can discourage a burner to
11 burn recycled material and even just the rumor
12 that they have to be responsible for the oil being
13 on-specification or off-specification is enough to
14 discourage them from wanting to look into burning
15 the oil even though that's not the case. The case

16 is they're not -- under the regs, they're not
17 required to prove that we are, but if rumors like
18 that are flying around because questions aren't
19 answered, then it just makes it that much harder
20 to sell the material.

21 MR. RAO: Yeah. I got that part of the
22 response. I just wanted to make sure that you
23 understand that burners that burn on-spec oil are
24 not covered by these rules, you know, consistent

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1 with Part 739.

2 MR. LEMPERA: I just have a question.
3 This is Steve Lempera with Future. You know, not
4 all of us have our own facilities. Quite a few of
5 us depend on commercial storage, and I know the
6 facility that we use I think would be real
7 hesitant to become a licensed facility, which
8 could present quite a problem come especially
9 wintertime when oil is not moving quite as well,
10 and it would depend on a large -- you know, a
11 large volume of storage.

12 So I'd like to -- you know, if you

13 could possibly clarify if it is on-spec if it's
14 okay to store it at a nonpermitted facility or
15 exactly how that would work?

16 MR. DRAGOVICH: I think our answer is
17 still the same. If the used oil is on-spec and it
18 doesn't meet the definition of special waste, it
19 wouldn't be required to be stored at a permitted
20 facility.

21 MR. LEMPERA: So even if it was going to
22 another facility after that to possibly be
23 processed into something different, it still would
24 be --

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1 MS. CUSTER: Generally out of state?

2 MR. LEMPERA: Generally out of state,
3 correct.

4 MR. DRAGOVICH: It really comes down to
5 whatever meets the definition of special waste.

6 MR. LEMPERA: So it's going to be on-spec
7 or tested?

8 MR. DRAGOVICH: Yeah. That's one of the
9 criteria.

10 BOARD MEMBER McFAWN: How would it be --

11 how would you demonstrate that it's not special
12 waste?
13 MR. DRAGOVICH: I think in my testimony I
14 proposed that they show that it's similar to
15 virgin oils in the specification -- there is a
16 specification for a number two fuel oil. If they
17 could show that it's fairly close to that, that
18 would be one method of doing that. I think
19 through the permitting process you could discuss
20 it with the facility, and if they showed that they
21 have contracts for it, that somebody is going to
22 burn it, it's on-spec, and there may be some
23 requirements that they set up in there, and they
24 have quality control to make sure that it meets

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1 those requirements. I think we could also say
2 that that was a commodity, but, you know, some --
3 other than using specifications that are already
4 existing out there, everything else is going to
5 have to be on a case-by-case basis.
6 BOARD MEMBER McFAWN: So if I understand,
7 the essence is it is a commodity at the time that

8 it goes to be stored at this unpermitted

9 facility?

10 MR. DRAGOVICH: Yes.

11 BOARD MEMBER McFAWN: When you suggested

12 that it might be an interim storage prior to

13 processing, would that be a viable commodity even

14 though it can still undergo further processing?

15 MR. LEMPERA: Sure, sure. Unfortunately,

16 you never know for sure where your oil is going

17 depending on the market or the time of the year.

18 It could be going to get burned direct or it could

19 be going to another processing facility.

20 BOARD MEMBER McFAWN: Or it could be

21 unknown at the time?

22 MR. LEMPERA: Right.

23 MR. HARRIS: Can I, perhaps, shed some

24 light here? I think what Mr. Dragovich is

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1 suggesting is that it's controlled by the permit

2 is precisely an example of the kind of

3 straightjacket that the oil processors would be

4 in. Let us assume that we follow the permitting

5 process the way you suggested back and forth and

6 certain types of products are explained and you
7 showed them contracts and so forth, and then two
8 years down the road a new market opportunity opens
9 up for a different kind of product, not written
10 in, and there is a short time frame to do -- put
11 in the bid and so forth. Well, it's not viewed as
12 a special waste until proven otherwise, and unless
13 we have immediate turnaround from the Agency
14 approving of that, we're locked into the permit
15 straightjacket, one that does not exist now, and
16 almost no other state has that kind of
17 straightjacket, and yet Illinois would impose that
18 kind of straightjacket on Illinois recyclers
19 because if it isn't covered by the permit, it's a
20 special waste, and if it's a special waste, then a
21 whole set of requirements are imposed that, again,
22 are not imposed on the virgin community or not
23 imposed on out-of-state recyclers. Nope, they're
24 only imposed on the Illinois recyclers.

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1 MR. MERRIMAN: Dan Merriman. If I can
2 just make a brief reply here. If, in the

3 circumstance that you just mentioned, the
4 marketing opportunity that suddenly arises and the
5 sale of that is the sale of a product and not a
6 transfer from one facility to another of a waste
7 for continuing processing or treatment or
8 disposal, then you've got -- although the permit
9 may say under these circumstances -- I mean, the
10 permit is not going to say this is the only thing
11 you can do. I mean, you're always I think -- and,
12 again, this will be negotiated between the parties
13 on a case-by-case basis, but I think you're always
14 going to have the freedom to obtain and deal with
15 on-spec oil the way the existing regulations would
16 allow you to do as long as it's handled in
17 accordance with 739 management requirements and
18 whatever permit.

19 MR. HARRIS: Let me take my example and
20 see if it works here. The permit with recycler X
21 covers five different products, which are normal,
22 standard used oil products.

23 Let's say Mr. Dragovich agrees that
24 those are not special wastes because they are more

1 commodity-like than anything else and, therefore,
2 they're not special waste and so everything is
3 fine. So we can move those products into leased
4 storage facilities which do not require a permit.
5 So far so good.

6 An opportunity comes up for product
7 Z, which doesn't meet the criteria, and then the
8 question is gee, can I move this into the
9 commercial storage facility? No, you can't
10 because it's not covered by the permit, and unless
11 you get a quick waiver from the Agency, your
12 opportunity to market that product is finished,
13 and so you've lost out.

14 HEARING OFFICER STERNSTEIN: Sir, we'll
15 get to you in a minute. I just want to let the
16 Agency answer that hypothetical.

17 MR. DRAGOVICH: Well, in reality, if the
18 final product that goes out of your facility
19 wasn't a waste, we wouldn't have the ability to
20 regulate it. I think that would be something that
21 would come up in an enforcement situation.
22 Initially, our inspector would make a call, and
23 there would be further negotiations there, and
24 ultimately it may result in --

1 MR. HARRIS: But the enforcement action
2 may be against the commercial facility.

3 MR. DRAGOVICH: The receiving facility?

4 MR. HARRIS: Certainly. The commercial
5 facility that a recycler contracts with if he's
6 taking the risk that maybe this is going to be
7 handled in an enforcement action, whether it's a
8 special waste or not, he's going to say forget it,
9 I'm not going to deal with that kind oil.

10 MR. MERRIMAN: Refresh my recollection.
11 Did you say this was on-spec oil?

12 MR. HARRIS: On-spec oil. We're only
13 talking about on-spec.

14 MR. MERRIMAN: But not included is one of
15 these five wastes being --

16 MR. HARRIS: Right. We've had a permit
17 negotiation occur in which we have approved
18 products. No question about that. Product six
19 comes along, it's not on the list, it's on-spec,
20 but the question is can it be stored in the
21 commercial facility and the commercial facility
22 says you know, I don't think so. It's not in your
23 permit. I'm not going to handle that.

24 MR. MERRIMAN: If the permit applicant

1 foresaw that as a potential future event and
2 proposed in the application that I want these five
3 waste streams and they don't meet the spec
4 definition, but they are really close because of
5 this reason and these are the contracts and this
6 is the use and it's going to be put to exclusively
7 and this is how it's treated and handled and so
8 forth, these five, and then oh, by the way, of
9 course, I plan on -- I may at some point in this
10 operation deal with on-spec oil and transfer it in
11 and out, then there would be a permit condition
12 that would cover that. It's not prohibited
13 certainly by the regulations, and then in your
14 circumstance they're free to move whenever the
15 opportunity arises on-spec used oil as that would
16 be now, and, again, the same question of the
17 uncertainty whether it is or isn't and whether
18 someone believes us or can prove that it is or may
19 think it's not and then start some kind of
20 enforcement action that we would then be forced to
21 demonstrate that it is.

22 I mean, that exists today. This

23 regulatory proposal to affecting the 807 issue
24 really doesn't change that factor. I mean, these

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1 are all legitimate concerns I'm sure of your
2 industry, but a lot of them are not changed
3 necessarily much one way or the other by the
4 existence or nonexistence of our permit.

5 MR. HARRIS: Well, I applaud your Agency's
6 flexibility, but what you're describing, unless I
7 misunderstand, is that there's this catchall
8 provision that allows the marketing of on-spec
9 used oil without any permit requirements, and if
10 you're going to have a catchall provision for
11 on-spec oil, that's perfectly okay, why are we
12 going through this entire proceeding? All we're
13 asking for is that if it means on-spec, but by
14 definition isn't a special waste and, therefore,
15 for example, a commercial storage facility
16 shouldn't have to be permitted to handle on-spec
17 oil.

18 MR. DRAGOVICH: There's just -- everything
19 we've done so far, we haven't addressed the

20 definition of special waste. We're kind of
21 getting sidetracked on this issue. Right now if a
22 facility was accepting special waste, even though
23 they weren't required to have a permit, they'd
24 have to accept it under manifest. So somebody is

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1 out there making decisions as to whether to send
2 it under manifest or not send it under manifest.
3 So the same issues exist today, and this proposal
4 doesn't change those.

5 MR. HARRIS: Maybe we're having a
6 communication problem, but I think the premise of
7 your argument is this, that just because the oil
8 is on-spec doesn't mean it's not a special waste,
9 and if it is a special waste, it means that it's
10 subject to permit conditions, the storage of
11 permit conditions, and so forth, and that's how I
12 thought we started all of this, and then I hear
13 Mr. Merriman say but it would be fairly easy to
14 have this catchall provision for on-spec oil, and
15 we wouldn't have to go through -- a storage
16 facility wouldn't have to meet all permit
17 requirements, which is refreshing to hear that,

18 but it raises a question of if on-spec oil is
19 on-spec oil which is a commodity which is not a
20 special waste, why do we have this proceeding?

21 MR. MERRIMAN: I realize we've been going
22 back and forth and around and around on this same
23 issue, which, again, isn't part of this -- isn't
24 expressly part of this regulatory proceeding. It

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1 may well be and obviously is a matter of great
2 concern to NORA as to how the Agency would
3 interpret this particular provision and what
4 affect it might have on it, but in large respects,
5 what we're talking about is a situation where most
6 recycling processes or facilities, something comes
7 in the door as not specification, it's off-spec
8 oil, and something is done with it filtered, oil
9 water separation, refined, whatever, something is
10 done with it, and at some point it goes out the
11 other end if the recycling has been successful as
12 on-spec and as a commodity, and given that it
13 would be a commodity would not meet the definition
14 of special waste and, therefore, not subject to

15 the manifested requirements and not subject to the
16 requirement that the receiving facility obtain a
17 permit.

18 We've already carved out of this
19 proposal by definition a burner of on-spec oil.
20 So now we're looking apparently at storage
21 facilities and, perhaps, interim storage
22 facilities. It's a great question, and it's
23 something that, you know, we would perceive being
24 worked out, as I think Mr. Dragovich has already

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1 said, in the application -- permit application
2 process or -- I don't know. I mean, it certainly
3 -- I suppose it's certainly within the right of
4 NORA to propose a specific rule. That would be in
5 the Board's arena as a standard a determination of
6 when something is, and there are other
7 procedures. There are adjusted standard
8 procedures that are procedural devices that the
9 Board has where they can -- someone can file a
10 petition for an adjusted standard before the Board
11 and present evidence that when a particular rule
12 was enacted, a substantive rule was enacted, it

13 contemplated a certain set of circumstances that
14 doesn't quite apply in this set of circumstances,
15 and, therefore, you should adjust the standard for
16 this set of circumstances. I mean, these are
17 available things, the RCRA, and it's a little more
18 complex when you're talking about a RCRA adjusted
19 standard, but at least these avenues are
20 available, and certainly working with the agency
21 to try to provide enough concrete information on
22 these issues so we can arrive at sort of a
23 mutually acceptable I guess approach, but it's
24 not, again, to reiterate, the crux of this

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1 rulemaking here before the Board.
2 It's just as to whether or not it's
3 the prior status quo of solid waste permits,
4 nonhazardous solid waste permits, would apply to
5 certain facilities, and it always -- that was the
6 case, it became not the case, and we're trying to
7 get it back to the point where it is the case
8 again, and keep in mind our interest and
9 everybody's interest in further recycling would be

10 carved out, some of the smaller operations, the
11 do-it-yourselfers, out of this proposal. So we
12 got it back in.

13 If you look at Part 807, as I'm sure
14 you have, you see that there are provisions that
15 apply only to sanitary landfills. So it's really
16 the procedural provisions in the early part of the
17 rulemaking that would apply, and part of the
18 proposal uses standard permit application forms
19 that already exist with the notations as to which
20 ones we think might -- would be applicable to used
21 oil facilities. The specific issue here of when
22 in that process something not destined for burning
23 becomes something other than off-spec or something
24 other than a waste isn't a part of this

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1 rulemaking, and so we didn't come armed and
2 prepared with a lot of technical data and that
3 sort of thing in order to try to flesh that out
4 here they.

5 We think it certainly, as
6 Mr. Dragovich just said, is something that we are
7 open to lots of further discussion.

8 MR. HARRIS: We're happy to engage in
9 further discussion. As I'm listening to you and
10 everything you're saying and everything else that
11 you're all saying is all in good faith I assure.
12 We have no thoughts that it's anything other than
13 your job carry out your mission, but what I see
14 going on is that you're saying let us engage in a
15 permit writing process, and when we get to permit
16 writing process, we will be able to tell what's a
17 special waste and so forth. So special waste is
18 almost determined on kind of a case-by-case
19 permitting routine, and I think NORA would like
20 there to be some guidelines as to what a special
21 waste is. I can think of lots of ways of defining
22 special waste. I don't know what's already in the
23 definition, gee, if it's under contract to be
24 burned as a fuel, that would make it exempt from

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1 the special waste status. If it's on-spec, it
2 ought to be exempt, and if it meets ASTM criteria,
3 it ought to be exempt from the special waste
4 status.

5 So we're looking for more certainty,
6 and I think you're saying trust us, we can handle
7 this in the permit negotiation process, and that's
8 where some of the -- some of tension comes in.

9 HEARING OFFICER STERNSTEIN: I ask that we
10 take a break. The court reporter needs a break,
11 and let's just -- it's 3:20 right now, and we'll
12 reconvene at 3:30.

13 (Break taken.)

14 HEARING OFFICER STERNSTEIN: Did the
15 Agency want to finish responding to
16 Mr. Harris' question. I'm not sure exactly sure
17 if it was more of a question or an observation.
18 You had asked -- Mr. Harris, you had asked
19 something right before we went off record, and I
20 seem to remember it being more of an observation
21 than a question.

22 MR. HARRIS: Being in many depositions, I
23 will sometimes ask reporter to read the question
24 back. I'm kind of drawing a blank.

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1 HEARING OFFICER STERNSTEIN: Could you
2 read that question back?

3 THE REPORTER: That's the reason we went
4 off the record is because I was out of paper. It
5 was out.

6 HEARING OFFICER STERNSTEIN: It was out.

7 THE REPORTER: Sorry.

8 HEARING OFFICER STERNSTEIN: Could you
9 make your point again, Mr. Harris? Do you want to
10 go off the record for a minute?

11 MR. HARRIS: Let me try to be as brief as
12 possible. The observation I made was essentially
13 there is tension between the regulated community
14 that would like some guidance and certainty in
15 what special waste means and what these permit
16 conditions would translate into versus what I
17 think the Agency desires which is to handle a lot
18 of these questions on a case-by-case,
19 permit-by-permit basis. That's what the Board is
20 hearing I think is some of that tension, and I
21 don't have a resolution to it, but I think that's
22 what's going on, certainty needed by the regulated
23 community and flexibility to handle permit
24 specifications on the Agency's behalf.

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1 HEARING OFFICER STERNSTEIN: Does the
2 Agency want to respond?

3 MR. MERRIMAN: I'll try to be even more
4 brief. We understand that. I guess the bottom
5 line is there's statutory definitions of waste and
6 special waste that apply regardless of what we do
7 regulatorily. We have through our proposal
8 eliminated on-spec oil that's burned for energy
9 recovery, which is really what the federal
10 regulations go to, particularly the sub 49.111
11 specification. What we've been discussing here is
12 we think inherently a case and site specific issue
13 where in the process do other things other than
14 the on-spec destined for burning for energy
15 recovery when is it no longer a waste and when are
16 you done with the recycling process is it what it
17 boils down to, and there so many different
18 things. I mean, there are a lot of facilities
19 that are just processing this for burning, and
20 there are facilities, at least one that I'm aware
21 of, that processes it for lubrication, and it's a
22 different process, and so we think it inherently
23 is a case-by-case issue, and, you know, we're just
24 unable to come out with a bright line at this

1 point here in this context when what we were doing
2 in this regulatory proceeding was the procedural
3 permitting aspect, and that's what we were
4 prepared to address, and that's what our comments
5 and our regulatory proposal was.

6 We have said this other issue is a
7 good issue, an interesting issue, and one we don't
8 take lightly, but it's an issue that I think has
9 inherent site specific, case specific
10 ramifications which make it almost impossible for
11 us in this kind of context to say okay, here's the
12 number or here's -- this is an all inclusive
13 answer to when it is or when it isn't.

14 MR. HARRIS: Well, actually, you've
15 clarified something that I guess at least my mind
16 wasn't clarified on, and that is that if on-spec
17 used oil destined for recovery is not a special
18 waste, then that is a very helpful clarification.

19 MR. DRAGOVICH: I'm not sure that we agree
20 that on-spec destined for burning, which to me
21 means that sometime in the future it's going for
22 burning, is not a special waste. I think it's
23 clear that when the burner receives it and intends
24 to burn it it's not special waste.

1 MR. HARRIS: Well, I heard Mr. Merriman
2 say --

3 MR. MERRIMAN: I said that, and I may have
4 misspoken. The concept of destined for burning,
5 that's the very thing USEPA struggled with is what
6 was the intent, particularly in light of the fact
7 that oil could be accumulated -- used oil could be
8 accumulated with one intent, and then things
9 happen in the market and actually happen to be
10 used for some other intent, and that is
11 relatively, I think, lengthy discussion of that
12 issue and USEPA's determinations and thoughts and
13 ultimate decision with regard to that in the
14 federal register for March 4th of '94, and I can
15 provide the site. I think I don't have the site
16 -- but it's the March 4th '94 federal register,
17 and you're probably well familiar with that. So I
18 didn't -- I apologize for misspeaking saying the
19 word destined.

20 Looking back, you can determine that
21 it was destined when, in fact, it's been burned,

22 but if today something came in to the facility and
23 you just were beginning the process and say I
24 think this is going to go get burned, that may not

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1 be -- this is not an issue that, again, is
2 addressed by this rulemaking, and whatever we say
3 here, I mean, this isn't going to be the final
4 pronouncement of the Agency on this issue, what
5 comes out of it ultimately in a permit that's been
6 worked between the parties.

7 HEARING OFFICER STERNSTEIN: I believe 6
8 Mr. Rao had some questions for both NORA and the
9 Agency. So I'll let him go ahead right now and
10 ask those.

11 MR. RAO: Yeah. Let me start with
12 Mr. Harris. My question is mainly with regards to
13 your proposal that you, you know, stated earlier
14 about using some kind of a threshold, a numerical
15 threshold, to, you know, decide what would be
16 regulated in a permitted facility and what not be,
17 and you proposed a number ten percent for, you
18 know, water content and bottom sediment.

19 Can you tell us a little bit more on

20 how you came up with that number or, you know, if
21 it would be possible if not now to address it in
22 your final comments as to, you know, if you have
23 any justification for coming up with that number?
24 MR. HARRIS: We'll be happy to address it

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1 in our final comments. Let me very briefly say
2 that this is a number, possibly an arbitrary
3 number, where we know that that -- that used oil
4 having a BS & W content of ten percent in and of
5 itself wouldn't have a great deal of value in the
6 market. It would have to be further processed in
7 order to be marketable, and the idea here was
8 simply to agree with the Agency and find some
9 common ground to say okay, if there is material
10 that has little value, find that material is
11 probably not going to be or there's less incentive
12 to manage it and properly, therefore, yes, let's
13 call that a special waste, and we can be sure that
14 ten percent BS & W is of that marginal category.
15 Now, some processors will probably
16 say we think it's valuable because it doesn't take

17 very much processing to turn that ten percent BS &
18 W material into something that I can sell, but in
19 and of itself without further processing maybe we
20 should call that a special waste.

21 MR. RAO: And one more thing is you
22 mentioned ASTM standards with regards to used
23 oil. Could you elaborate a little bit more on
24 those standards, if you have specification

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1 numbers, and what those standards address?

2 MR. HARRIS: We will provide those for the
3 record, but Mr. Lenz on my right was actually a
4 member of the ASTM committee that worked on those
5 standards, and he could fill you in on a brief
6 overview.

7 MR. LENZ: Well, NORA actually went to
8 ASTM in the beginning and asked them whether
9 they'd be interested in looking into a used oil
10 fuel specification that covered a large section of
11 the industrial market that we marketed, and
12 basically a specification was developed off of
13 that with the basic premise that we're going to
14 come up with a spec that's going to guarantee

15 these types of industrial burners, the material
16 that's going to work well for them from a
17 performance standpoint.

18 MR. RAO: So it's basically a standard
19 that is applicable for burners?

20 MR. LENZ: A certain type of industrial
21 burner. It covers a certain type of industrial
22 burners primarily made in mind for asphalt plants
23 because I would say that probably the majority of
24 NORA's oil goes to asphalt plants or NORA's

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1 members' oil. As Chris brought up, there are
2 places like steel mills or virgin blenders down it
3 the Gulf that can take material with a higher BS &
4 W figure than that, but it was primarily
5 formulated for I think with asphalt plant people
6 in mind.

7 MR. RAO: Would it be possible for you to
8 send me those standards?

9 MR. HARRIS: Yeah. They have been
10 approved by ASTM and so in final form they're
11 done, and as soon as I get back to the office, I

12 will send them to you.

13 MR. RAO: Thank you.

14 MS. GEVING: Would you please send us a
15 copy too?

16 MR. HARRIS: Certainly.

17 BOARD MEMBER McFAWN: I just have a couple
18 questions for you. These kind of go back a ways
19 into your -- when you first started testifying,
20 but I wondered you have 150 members you said, and
21 many of those being from Illinois. Do you have an
22 approximate of how many are from Illinois?

23 MR. LENZ: Well, facilities in Illinois or
24 do business in Illinois?

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1 BOARD MEMBER McFAWN: Members of NORA in
2 Illinois or that do business. Well, can you break
3 it down?

4 MR. LENZ: Well, I know we did mailings to
5 22 people which were NORA members that either were
6 in Illinois or did business in Illinois. Then the
7 ones in Illinois are, I'm guessing, probably half
8 that number.

9 BOARD MEMBER McFAWN: Thank you. I was

10 wondering this question about possibly defining
11 on-spec oil or used oil. One of the big stumbling
12 blocks seem to be being able to send this used oil
13 to bulk storage.

14 Is there a cutoff value for when you
15 send it to bulk storage or when it becomes like --
16 because they can't combine it, can they, if it's
17 one with a high BTU value versus one with a BTU
18 value?

19 MR. HARRIS: You wouldn't be blending at a
20 storage facility, certainly not a commercial
21 storage facility. You wouldn't do any blending
22 there. I suppose you could store off-spec oil
23 there, but almost no one deals in off-spec oil
24 anymore.

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1 BOARD MEMBER McFAWN: So if it's on-spec,
2 it would be any kind of on-spec? It wouldn't
3 matter if it was ten percent or less than ten
4 percent? The possibility would be that you might
5 send it for an interim storage time at one of
6 these facilities, the least facility to --

7 MR. HARRIS: It's a good question. Since
8 I don't do oil recycling personally, I would have
9 to turn that question over to someone else on the
10 panel.

11 MR. LENZ: Me? It's become a real leg of
12 the transportation of the product, the end user.
13 It's become an integral part of that because you
14 have to go to these -- if you're going to move
15 material by barge, you have to go to these
16 commercial storage facilities that have
17 barge-loading capabilities to able to move the
18 material by barge. So it's part of the
19 transportation to get the product to the ultimate
20 end user.

21 BOARD MEMBER McFAWN: But you don't do any
22 combining there? You would deliver like a full
23 load for their storage capacity or would you,
24 like, say well, I'm bringing X amount of gallons

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1 and tomorrow I'll be bringing in X amount to put
2 into the same tank?

3 MR. LENZ: Well, I would think you keep
4 your options open as much as possible. You'd want

5 to be to able use it for any oil that you had to
6 move from your facility or possibly even from
7 generators that is on-spec what is considered the
8 finished product to go to your customer that's
9 usable by your customer.

10 MR. HARRIS: But the key word to use is
11 on-spec.

12 BOARD MEMBER McFAWN: Yes. I just
13 wondered how much the variety of that on-spec
14 could be because as I understand it, you were
15 describing, like, well, there's on-spec, which is
16 ten percent.

17 MR. HARRIS: Well, that's what the Agency
18 was describing as on-spec that's ten percent.
19 That's not really marketable fuel in its current
20 condition. I don't think --

21 BOARD MEMBER McFAWN: Would you store
22 something like that, though, to be sent?

23 MR. LENZ: Well, there's markets for up to
24 ten percent BS & W material in the Gulf, right?

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1 MR. VINTIKA: That's correct. I think it

2 wouldn't be that high normally.

3 MR. LENZ: Well, seven, close.

4 MR. VINTIKA: You don't want to use your

5 storage for something that's not a valuable

6 product anyway. If it's water, you're going to

7 move it.

8 MR. LENZ: So the product you store in

9 there --

10 MS. CUSTER: You have to pay for that

11 storage. So you're not going to store anything

12 you can't sell.

13 MR. VINTIKA: It's dictated by the buy,

14 the quality. During lulls in the market, you need

15 large quantity storage to be able to continue

16 operating in the meantime.

17 BOARD MEMBER McFAWN: Because you will

18 keep adding to that storage?

19 MR. VINTIKA: Yeah, and then if you're

20 going to ship out by barge, you need a larger

21 quantity, and, of course, the terminal length is

22 not going to want to hear about the permitting

23 process.

24 BOARD MEMBER McFAWN: No. I understand

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1 that. That's what I wanted to find out, what

2 happens at the terminal.

3 MR. HARRIS: Let me reassure you there's
4 no blending that occurs there. There's no mixing
5 of, okay, we need to get this kind of end product,
6 so we're going to mix this material with another
7 material. What Mike is describing here is this
8 interim storage prior to being put on the barge to
9 be shipped off.

10 BOARD MEMBER McFAWN: Thank you.

11 MS. GEVING: Excuse me. The
12 qualifications -- do you have qualifications
13 because what I'm hearing is you're not blending
14 per se, but you might mix seven percent with an
15 eight percent until the barrel is full?

16 MR. LENZ: Your buyer that's going to be
17 receiving that oil basically dictates what you
18 need to have in there as far as quality goes.
19 Very rarely you'll ever see a buyer that's going
20 to want something that's ten percent.

21 MR. LEMPERA: Generally, the lower the
22 water percentage the more the oil is worth. So
23 you're always going to try to keep the oil just as
24 dry as possible.

1 MR. HARRIS: Nor would you use this
2 facility for blending purposes. I mean, it's not
3 -- it's only a storage facility. It's not a
4 processing facility. If you did do that, the
5 Agency could well say okay, that's a processing
6 step and, therefore, you need permits, and that's
7 all subject to the 739 requirements. So it's not
8 an activity you would engage in.

9 MS. GEVING: Would there be an opportunity
10 for different processors to share the same barrel
11 or drum? Excuse my ignorance. I don't know how
12 this all works, but take would there be an
13 opportunity for more than one processor to put
14 used oil in the tank?

15 MR. LENZ: Well, yeah, that's happened
16 just because of the huge volume. If you want to
17 economically, you've almost got to move by barge
18 the huge volume that it requires. You know,
19 medium-sized barge loads these days only holds
20 800,000 gallons.

21 MS. GEVING: And how do you assure quality
22 control of what's going in there if you're not the
23 only one putting used oil in that tank?

24 MR. LENZ: That would be an agreement with

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1 whoever was doing that together would have to come
2 to. I'm not involved in something like that.

3 MR. HARRIS: If I can jump in there, it
4 would be ludicrous for one oil recycler not to
5 insist on quality controls with the other because
6 to potentially ruin your half of the product would
7 be a disaster, and so I would advise Mike or
8 anyone else to take a lot of samples to make sure
9 that the other guy's oil didn't in any way
10 interfere with the quality of your oil.

11 MS. GEVING: Okay. Thank you.

12 MR. RAO: I have a question for the Agency
13 regarding the permit application that's been
14 submitted with Ted Dragovich's testimony.

15 Does the Agency have any idea what
16 would be the economic impact in terms of, you
17 know, completing an application package?

18 MR. DRAGOVICH: I thought I addressed that
19 in the previous testimony. I don't remember the
20 numbers right off.

21 MS. GEVING: I believe Mr. Dragovich

22 testified before the last set of hearings that it
23 could vary depending on the consultant's fees on
24 filling out an application form.

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1 MR. RAO: Yeah. I looked at the previous
2 testimony. There were, you know, range of numbers
3 or anything like that in there, and I know the
4 Board has to provide some hard figures when they
5 submit the rules if they do go ahead with these
6 rules.

7 So, you know, from your experience,
8 do you have any idea of what the range would be,
9 you know, if somebody wants to apply for a
10 permit?

11 MR. DRAGOVICH: Can I have a minute to
12 look at this? It looks like there was a range,
13 and it's going to be depending on the complexity
14 of the facility and the permit application, but it
15 sounds like about three to \$5,000 for the small
16 existing facilities that just have to fill out the
17 application, send it in if they already previously
18 had the permit, but more likely most facilities

19 it's going to be 15 to \$25,000 in consulting
20 fees. That was for transfer storage-type
21 operations.
22 MR. RAO: So what you're saying is these
23 application forms need some kind of a, you know,
24 special assistance to these operators to complete

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1 and submit to the Agency?
2 MR. DRAGOVICH: There's a requirement that
3 an engineer certifies the engineering portions of
4 the application.
5 HEARING OFFICER STERNSTEIN: That's an
6 engineer licensed in the state of Illinois needs
7 to sign one of these?
8 MR. DRAGOVICH: Yes, an Illinois Licensed
9 Professional Engineer.
10 MR. RAO: Okay.
11 BOARD MEMBER McFAWN: Along the permits
12 questions, we were wondering that the instructions
13 for public notice for permit applications, which
14 is labeled I believe PA 16, is that applicable to
15 these types of facilities?
16 MR. DRAGOVICH: Yes.

17 BOARD MEMBER McFAWN: Is that part of the
18 package?

19 MR. DRAGOVICH: Yes, it would be.

20 BOARD MEMBER McFAWN: Has the Agency given
21 any thought to if the permits were to be required
22 as to devising a permit package that would address
23 these facilities specifically?

24 MR. DRAGOVICH: Our initial thought was

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1 that most of these facilities probably do more
2 activities than just the used oil, and so it would
3 be better to just use the standard application.

4 HEARING OFFICER STERNSTEIN: In other
5 words, if I can follow up, most of the facilities
6 that you think you're going to be dealing with are
7 already permitted. So what you're thinking is
8 that most of the new work that would come in, if
9 these rules were promulgated, would be under the
10 guise of permit modifications?

11 MR. DRAGOVICH: Yes. The existing
12 permits -- for instance, some of the facilities, I
13 think, would probably handle some wastewaters.

14 That wouldn't be covered under the definition of
15 used oil, and so they would follow the existing
16 permit on that, and they would have to modify
17 their permit to include operations that were not
18 conducted under 739.

19 BOARD MEMBER McFAWN: Well, you also spoke
20 in your testimony about manifests, and you said
21 that there would be no new manifesting required.
22 In fact, this regulation would reduce these
23 manifesting requirements, not increase them. That
24 was at page five of your testimony. I just

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1 wondered what did you mean by that?

2 MR. DRAGOVICH: Well, the proposal exempts
3 facilities that aren't required to have a permit
4 from a manifesting requirement also. So it would
5 be the collection centers and the aggregation
6 points. The oil would not have to be brought to
7 those facilities under the manifest.

8 BOARD MEMBER McFAWN: They wouldn't need
9 the multistop manifest?

10 MR. DRAGOVICH: The multistop is actually
11 a supplemental permit because we don't have the

12 ability to issue supplemental permits to the 739
13 facilities because they don't have their permits
14 right now, we don't even have a mechanism to issue
15 multistops except to possibly these facilities
16 that have a permit for some other reason.

17 BOARD MEMBER McFAWN: So what do they do
18 now? Do they do any type of manifesting?

19 MR. MERRIMAN: They're supposed to be
20 manifesting now by law.

21 BOARD MEMBER McFAWN: But individually,
22 not in --

23 MR. MERRIMAN: Individually, not multistop
24 because there is no ability to do multistop

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1 anymore.

2 MR. LENZ: Including automotive
3 generators?

4 MR. DRAGOVICH: Everybody. So this would
5 give us that opportunity to use the multistops
6 again.

7 BOARD MEMBER McFAWN: Because that has to
8 be part and parcel with permitting?

9 MR. DRAGOVICH: With permitting, yes.

10 BOARD MEMBER McFAWN: I have been trying
11 to come up to speed on this, and I was informed
12 that there's a 55 gallon limit and anything below
13 that is exempt; is that correct?

14 MR. DRAGOVICH: We used the definitions in
15 739 for the cutoff point in the used oil
16 collection facility, and aggregation points could
17 only receive shipments in 55 gallons or less, and
18 so in reality, the cutoff line is a volume of the
19 shipment, the 55 gallon shipment, as opposed to
20 the amount that's generated in a month.

21 BOARD MEMBER McFAWN: You had said at the
22 hearing on March 1st, 1999, Mr. Dragovich, you
23 talked about an exemption for on-site generators
24 who do their own analysis and not meant to be a

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1 marketer, and even if they do take it to market,
2 then they don't require a permit, and at that time
3 I think the consensus was this March that this
4 might require a language change. I didn't see
5 that in the changes proposed for today's hearing.
6 Is it there and I missed it?

7 MR. MERRIMAN: Well, we certainly intended
8 it to be. I guess we'll have to look back to be
9 sure.

10 MR. DRAGOVICH: I think it's in the
11 definition section.

12 MR. RAO: I think you were supposed to
13 propose some language in its place on Section
14 21(b).

15 MR. MERRIMAN: Right. We were trying to
16 make it similar to Section 21(b) so that we
17 wouldn't find marketers who merely did analysis --
18 generators that merely did analysis. We ended up
19 adopting a slightly different approach in that we
20 defined -- the proposal used definitions in
21 807.104. We proposed adding two definitions to
22 807, the existing used oil management facility,
23 and that would address the citing of the phase and
24 issues, and the used management facility which

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1 after drafting several different internal
2 proposals trying to come up with something that
3 would cover just the facilities we wanted, we

4 found it was easier to leave the permitting
5 language alone or substantially alone and just
6 create a definition that included what we wanted.

7 MS. GEVING: I just want to point out here
8 that that was in our filing, which is dated May
9 6th, 1999. That was part of our final comments
10 and proposed amendments of issues raised at
11 hearing, and it's found on page five of that
12 filing.

13 MR. MERRIMAN: I'm sorry. Thank you. So
14 in the definition of a used oil management
15 facility that we have proposed, it says that a
16 used oil management facility means a used oil
17 transfer facility, used oil processor, or used oil
18 marketer who markets used oil other than that
19 generated by its own activities from the site
20 where it's generated the used oil burner at a
21 petroleum refining facility as defined in 35
22 Illinois Administrative Code 739.100. So that
23 language about a marketer, used oil marketer who
24 markets used oil other than that generated by its

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2 that 21(b) issue.

3 BOARD MEMBER McFAWN: Thank you. I didn't
4 put that together.

5 Mr. Dragovich, you have an attachment
6 three to your -- to today's testimony which has a
7 number of oil statistics in it or use of oil
8 statistics.

9 Could you tell me a little bit more
10 about the source of that attachment three?

11 MR. DRAGOVICH: It's from USEPA, the
12 Office of Solid Waste, and a contractor gathered
13 this information, and as far as I know, it's the
14 most up-to-date information that we have. It's
15 available over the Internet.

16 BOARD MEMBER McFAWN: Oh, okay. It's part
17 of this source name there?

18 MR. DRAGOVICH: Yes.

19 BOARD MEMBER McFAWN: That's the title of
20 this -- what they had that contractor do?

21 MR. DRAGOVICH: That's the report that
22 came out of.

23 BOARD MEMBER McFAWN: Is it just the one
24 page? Is it just a one-page report?

1 MR. DRAGOVICH: I believe it's a longer
2 than that. I've just seen this attachment, and it
3 may be a page or two summary of it.

4 BOARD MEMBER McFAWN: So if I -- maybe you
5 could send me a way of locating the entire
6 report.

7 MR. DRAGOVICH: Yes. We could do that.

8 BOARD MEMBER McFAWN: You could even send
9 me the Internet site.

10 MR. DRAGOVICH: Okay.

11 BOARD MEMBER McFAWN: Thank you. If you
12 could briefly, and I think you've probably
13 addressed this throughout the course of the day,
14 but there is a notification scheme as I understand
15 it, is that correct, for those regulated under
16 739?

17 MR. DRAGOVICH: If there's a notification
18 requirement?

19 BOARD MEMBER McFAWN: Yes, that these
20 facilities were to notify you of their existence?

21 MR. DRAGOVICH: Yes.

22 BOARD MEMBER McFAWN: And in reading over
23 the past record, I got a sense that that was not
24 done?

1 MR. DRAGOVICH: There were some people
2 that notified USEPA, and there were a few people,
3 less than ten, that notified Illinois EPA.

4 BOARD MEMBER McFAWN: Is that the effected
5 community in Illinois, or was there just no
6 response to the requirement for notification or a
7 limited response, I should say?

8 MR. MERRIMAN: We're not entirely certain
9 because if there are people out there who were
10 supposed to notify us and/or USEPA and who did not
11 whose existence we are unaware, then, I mean, we
12 can't know what we don't know. I guess that's --
13 I don't mean to be simplistic, but we think
14 largely, however, from what we do know that that's
15 -- that the total of those two groups of
16 notifications as far as the transporters and the
17 marketers --

18 MR. DRAGOVICH: There was processors.

19 MR. MERRIMAN: We think possibly -- yeah.
20 We think that is probably the extent of the
21 regulated community.

22 BOARD MEMBER McFAWN: I'm gathering from
23 the record that you've made that it's not that

24 these did not trigger inspections or curiosity on

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1 the Agency's part, but that it was a financial
2 decision, is that correct, to not go and inspect
3 these facilities that gave you notification of
4 their existence?

5 MR. MERRIMAN: It's hard to speak for our
6 field operation sections, but we think that that's
7 certainly part of the reason. They have limited
8 resources. Permitted facilities generally take
9 priority in the setting of the inspection
10 schedule. Certain things, for example, agreements
11 with the USEPA related to our funding and stuff
12 require certain mandatory inspections of
13 facilities on a periodic basis, and so there are a
14 lot of other things that are -- that take a higher
15 priority. So I hope that's somewhat responsive to
16 your question.

17 BOARD MEMBER McFAWN: It is.

18 MR. MERRIMAN: Okay.

19 MR. RAO: May I ask a follow up?

20 BOARD MEMBER McFAWN: Sure.

21 MR. RAO: Other than this notification
22 that was supposed to be, you know, sent by these
23 operators, were there any other ongoing reports
24 that the Agency is supposed to receive under Part

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1 739 from used oil management facilities like, you
2 know, how much used oil they're processing and,
3 you know, basically what's going on in the
4 facility or do you not get any kind of information
5 from these facilities?

6 MR. HARRIS: Mr. Rao, I believe a partial
7 answer to that is every year every processor in
8 Illinois has to send in an annual summarizing
9 their activities.

10 MR. MERRIMAN: What we're uncertain of at
11 this point is whether a processor that was also
12 involved in managing other forms of waste are
13 required or subject to the annual report
14 requirements sent a separate report or if it's one
15 report of all their activities combined. We think
16 it's the latter, which means we have less than --
17 it makes the data less useful to us that way, and,
18 of course, they are required to track -- there's

19 certain tracking requirements under Part 739, but
20 they're required to maintain those records in
21 certain circumstances, but not necessarily to
22 provide us with copies of that.

23 MR. RAO: Thank you.

24 BOARD MEMBER McFAWN: Well, this will be a

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1 question I would have for either side of the
2 room. I think both kind of alluded to it. Are
3 there other states that have permitting schemes
4 for these types of facilities?

5 MR. MERRIMAN: I know that the state of
6 Utah requires permits, and I believe California
7 has a registration procedure that is called
8 registration, but it looks suspiciously like a
9 permit requirement. I don't know. Perhaps, South
10 Carolina, I think. There are some that do. I
11 guess I want it to just -- Louisiana has proposed
12 it we believe. There are a handful that we're
13 aware of who do this, certainly not every state.
14 In fact, it would be fair to say the majority of
15 the states do not appear to require it.

16 Again, had the numbering been -- I
17 guess I wanted to point out had the numbering
18 thing been a little different or 107 read --
19 807.105(a) read slightly differently, this would
20 never have been an issue when 739 came into
21 effect. It would have just rolled right into our
22 then existing permitting program, and had USEPA in
23 its rule contemplated that they had no intent to
24 effect or impact existing states and local

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1 permitting requirements.

2 MR. HARRIS: My estimate to your question
3 is if you take the District of Columbia and Puerto
4 Rico as two additional jurisdictions that are also
5 subject to these standards, I would say that more
6 than seven would have anything close to what is
7 being described as a permit system. All of the
8 others have notification, registration, but
9 operate under detailed management standards
10 without any additional requirement.

11 BOARD MEMBER McFAWN: Thank you. You
12 added those two because they have something of a
13 permit?

14 MR. HARRIS: Well, they're subject to EPA
15 regulations. The District of Columbia is not a
16 separate foreign country --

17 BOARD MEMBER McFAWN: No, no.

18 MR. HARRIS: -- and nor is Puerto Rico.
19 So if you add those two additional jurisdictions,
20 it's probably about seven with some sort of permit
21 system and all of the rest operating under the
22 detailed management standards.

23 BOARD MEMBER McFAWN: I just wondered if
24 those were two of the seven or something?

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1 MR. HARRIS: No, they're not.
2 BOARD MEMBER McFAWN: I was wondering if
3 NORA or some of your members, Mr. Lenz, could look
4 at the Agency's permit package as it's proposed
5 and give us an estimate of what it would cost,
6 what you would estimate that it would cost to fill
7 the forms out, and if you would also like to
8 estimate the cost of negotiating the permit and
9 explaining what you think that would entail maybe
10 in man-hours or that type of thing. That would be

11 helpful. The Agency has given us their estimate.

12 It's always nice to hear from possibly the

13 regulating community.

14 MR. HARRIS: We'll be happy to do that.

15 BOARD MEMBER McFAWN: Thank you. Can you

16 give me a few minutes to look it over, and maybe

17 you want to talk to them about procedural stuff?

18 HEARING OFFICER STERNSTEIN: Sure.

19 Actually, just one more question for the Agency.

20 This goes to Mr. Dragovich. For your -- I believe

21 it have the instructions for the permit LPC-PA3.

22 You had included it looks like there are

23 handwritten hash marks there on the side of the

24 permit, and I'm just assuming here -- I just want

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1 to clarify it for the record. Would that be --

2 the information listed by the hash marks, is that

3 what a used oil facility would be required to fill

4 out, and then the information that's not

5 delineated by the hash marks I would assume that

6 that is information that a used oil facility would

7 not have to fill out; is that correct?

8 MR. DRAGOVICH: I think for the most part,

9 that's correct. I was just trying to highlight
10 the type of information that I was looking for for
11 used oil.

12 HEARING OFFICER STERNSTEIN: And when
13 you're sending these applications out to used oil
14 facilities, will you, I guess, tailor it or --
15 with respect to the instructions, will you tailor
16 the instructions so that the used oil facilities
17 or each used oil facility knows what -- knows what
18 information they're supposed to fill out in the
19 LPC-PA3 permit and what information they don't
20 have to fill out?

21 MR. DRAGOVICH: If they wanted to meet for
22 like a pre-application meeting, we'd be willing to
23 do that then, but I wouldn't be sure that they
24 weren't doing the other activities that I would

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1 require this additional information. So I
2 wouldn't -- at this time, I wasn't planning on
3 making a separate set of instructions for used oil
4 facilities.

5 HEARING OFFICER STERNSTEIN: So basically

6 you're saying that you'd send it out without the
7 hash marks, and if the used oil facility in
8 question wanted to know exactly what they were
9 responsible for, you'd want to sit down with them
10 in a pre-permit conference and go over the details
11 with them?

12 MR. DRAGOVICH: I think that would be most
13 productive because then they could explain exactly
14 what their operations are.

15 MR. MERRIMAN: And I think it's implied --
16 it's implicit that not every question -- some of
17 them are headed sections such as municipal
18 incinerators and so forth. I mean, not every
19 section applies to every applicant. I think that
20 we would prefer the applicant to tell us the scope
21 of their activities rather than send out just a
22 used oil, one that we tailor made to that, and
23 hope that that's the only thing that they were
24 doing that might be subject to permitting. We'd

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1 rather have them tell us.

2 HEARING OFFICER STERNSTEIN: Another
3 question on the instructions for LPC-PA4 on the

4 first line it says this form is to be used when
5 requesting permission to operate under a
6 previously approved permit.

7 Would this have to be filled out by
8 someone who had been permitted under 807 prior to
9 the passage of Part 739?

10 MR. DRAGOVICH: If they have an existing
11 effective permit, then in reality all they have to
12 fill out is LPC-PA3 -- I'm sorry, PA1 because this
13 would just be a supplemental permit.

14 HEARING OFFICER STERNSTEIN: So if they're
15 already permitted, all they have to fill out is
16 PA1, and they don't have to deal with PA3 or PA4?

17 MR. DRAGOVICH: That's correct. PA3 and
18 PA4 could be used for guidance in filling out the
19 application. I guess, actually, I haven't really
20 formally given the Agency an opportunity to ask
21 questions of NORA. I know that you have asked
22 some in the course of the give and take today.
23 Are there a series of questions that you want to
24 ask NORA? Let's go off the record for a minute.

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1 (Discussion had
2 off the record.)

3 HEARING OFFICER STERNSTEIN: As you were
4 saying off the record, Mr. Merriman, with respect
5 to the draft permit -- excuse me, the draft permit
6 modification, you have no objections to this?

7 MR. MERRIMAN: Other than what we
8 previously said before about its materiality and
9 relevance to this proceeding, yes, we have no
10 objection.

11 BOARD MEMBER McFAWN: And that this is the
12 draft letter document that was being referred to
13 during the course of our hearing?

14 MR. MERRIMAN: Yes, referred by both
15 sides.

16 HEARING OFFICER STERNSTEIN: And then with
17 respect to the response from Lenz Oil?

18 MR. MERRIMAN: It's addressed to are Scott
19 Hacke, a former member of the permit section. It
20 looks like a copy of a fax. Without our files or
21 records here, we have no ability -- it's not
22 signed. I don't really know. We're not saying
23 that it's not an authentic document that was
24 received by the Agency, but we just can't say one

1 way or the other because it's just an unsigned
2 facsimile copy, and we don't have a record.

3 So I suppose subject to the objection
4 on authentication and objection to its relevance
5 or materiality, if those issues are met, that it
6 can be in the record.

7 HEARING OFFICER STERNSTEIN: Mr. Lenz, did
8 you submit the March 28th, 1996, fax letter that I
9 have here? Did you submit that to the Agency or
10 was that never submitted?

11 MR. LENZ: I believe you submitted it
12 directly, didn't you? This was a while ago.

13 MR. MERRIMAN: It purports to be signed,
14 not by Mr. Lenz, but by counsel.

15 HEARING OFFICER STERNSTEIN: I guess I
16 should show this to Mr. Harris and just ask if you
17 ever --

18 BOARD MEMBER McFAWN: Let's mark it as
19 Exhibit 6.

20 (Exhibit Nos. 5 and 6 marked
21 for identification,
22 8-23-99.)

23 MR. HARRIS: I'm sure there's a final
24 version in the Agency's records. This is either

1 the final draft or an actual draft of the unsigned
2 letter that went to the Agency.

3 HEARING OFFICER STERNSTEIN: Would you
4 have a final draft of this, Mr. Harris?

5 MR. HARRIS: I may well have one.

6 MR. LENZ: I may too.

7 HEARING OFFICER STERNSTEIN: I note that
8 the Agency has some problems with the relevance of
9 these two documents, but in light of the fact that
10 they were discussed quite extensively here at the
11 hearing today, I am going to allow them both in.
12 So Exhibit No. 5 is the draft permit modification
13 cover letter plus instructions that were sent to
14 Lenz Oil in it looks like December of 1995. I'll
15 accept that as Exhibit No. 5, and I'll also accept
16 the response letter to Mr. Scott Hacke, H-a-c-k-e,
17 which was sent by Mr. Christopher Harris, counsel
18 to Lenz Oil Service, Incorporated, on March 28th,
19 1996, with the understanding that Mr. Harris will
20 send a copy of the signed letter to the Board and
21 to the other persons on the service list.

22 MR. HARRIS: That will be fine.

23 HEARING OFFICER STERNSTEIN: Let's go off
24 the record one more time.

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1 (Discussion had
2 off the record.)
3 HEARING OFFICER STERNSTEIN: There's been
4 a brief discussion off the record about the I
5 guess what we'll call the ten percent BS & W
6 standard and the potential BTU standard. There's
7 also been some discussion about the relevance of
8 that to this proceeding. Under the guise of
9 getting as much information into the record as
10 possible, even if it's not 100 percent relevant, I
11 would ask that NORA in its final comments submit
12 that as a part of this rulemaking. It may end up
13 being determined that that would be appropriate
14 for another rulemaking, and that will be a
15 decision for the Board to make at the time many.
16 So I would just ask that NORA include that with
17 its final comments.
18 BOARD MEMBER McFAWN: If you so choose.
19 HEARING OFFICER STERNSTEIN: If you so
20 choose, and, again, we'll decide whether that

21 belongs within docket R99-18 or potentially under
22 another docket.

23 BOARD MEMBER McFAWN: Can I just ask -- I
24 don't know if we are looking to convene today's

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1 hearing forthwith, but I wonder if we don't want
2 to cut it short and not everyone has had an
3 opportunity to say what they'd like to say, ask
4 the questions they'd like to ask, or possibly
5 pursue this what you first termed as a
6 compromise? Would you -- I'll address NORA first
7 on that question. Is this something you want to
8 do by public comment or do as part of the public
9 hearing or where do we stand?

10 MR. HARRIS: Well, if our compromise
11 proposal is a guarantee that we meet a brick wall
12 and dead end, there would be no point in pursuing
13 it. As long as there was some point in using that
14 proposal as a way of bridging the differences
15 between the Agency and the NORA members, I don't
16 think that there's any harm in making it a
17 proposal, and then the Agency can handle it as it

18 sees fit, and the Board can take it into account
19 in its rulemaking decisions. So we don't mind
20 proposing it. What its state is is up to the
21 Agency and not the Board.

22 BOARD MEMBER McFAWN: And so you don't
23 feel that you should maybe reconvene tomorrow and
24 discuss this on the record?

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1 MR. HARRIS: That would not be necessary.

2 BOARD MEMBER McFAWN: I would just caution
3 you that public comments are not given the same
4 weight as sworn testimony. They are considered by
5 the Board, and the more information the Board has
6 from either side, the better off the Board is in
7 its decision-making. I assume because you're here
8 that you know a lot about the Pollution Control
9 Board. There are seven members, currently six
10 members sitting. We have one vacancy. They will
11 have to come to a decision on the proper
12 regulation to be adopted in the state of Illinois,
13 and we do write an opinion, and we have to base
14 our decisions on the facts presented to us at
15 hearing and through the public comments. So just

16 so you know that that's how we do it.

17 MR. HARRIS: Well, our proposal is simple
18 enough so that it can be understood as we have
19 described it. Obviously, it would require some
20 dialogue with the Agency for them to say this is a
21 good way of describing what special waste is, and
22 if that were to occur, then our differences on the
23 proposal clearly before the Board today could be
24 narrowed, but it takes more than a proposal. It

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1 takes the consideration and acceptance of the
2 proposal or variation of it.

3 HEARING OFFICER STERNSTEIN: Okay. Well,
4 then, I think that takes care of all the
5 outstanding issues in front of us. I'll ask right
6 now does anyone have any further comments on this
7 rulemaking docket R99-18?

8 Seeing that no one has any other
9 comments or questions in this third hearing for
10 docket R99-18, I am cancelling the continuation of
11 this hearing that was scheduled for 10:00 a.m.
12 tomorrow, August 24th, 1999. Requests for

13 additional hearings will be accepted pursuant to
14 the Board's procedural rules at 35 Illinois
15 Administrative Code Section 102.161 which requires
16 the proponent or any other participant to
17 demonstrate in a motion to the Board that failing
18 to hold an additional hearing will result in
19 material prejudice to the movant. Off the record
20 for one second.

21 (Discussion had
22 off the record.)

23 HEARING OFFICER STERNSTEIN: The
24 transcript for this hearing should be available

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1 before September 7th, 1999. If anyone would like
2 a copy, they can speak to the court reporter
3 directly or you can get a copy by contacting the
4 clerk's office in Chicago or call me.

5 In addition, the transcripts for the
6 hearings are generally available on the Board's
7 web site within two to three days after being
8 received by the Board. Again, if anybody has any
9 questions about the transcript of this hearing,
10 please contact me.

11 Public comments in this matter must
12 be filed by Friday, September 24th, 1999. The
13 mailbox rule will apply. Anyone may file public
14 comments with the clerk of the Board.

15 Your comment must be simultaneously
16 delivered to all persons on the service list and
17 include an attached notice sheet, proof of
18 service, and a copy of the current service list.

19 You should contact the clerk's office
20 to make sure you have an updated service list.
21 Seeing that no one else would like to testify
22 today, that concludes this hearing, the third
23 hearing in docket R99-18. Thank you all very much
24 for your time and attention. This hearing is

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1 adjourned.

2 (Whereupon, these were all
3 the proceedings held in
4 the above-entitled matter.)

5

6

7

6 business in the City of Chicago, County of Cook,
7 and State of Illinois; that I reported by means of
8 machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a true
10 and correct transcript of my shorthand notes so
11 taken as aforesaid.

12

13

14 _____
Geanna M. Iaquina, CSR
15 Notary Public, Cook County,
Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO

before me this _____ day
18 of _____, A.D., 1999.

19 _____
Notary Public

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22

23

24