

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO THE BOARD'S)
SPECIAL WASTE REGULATIONS) Docket No. R06-20
CONCERNING USED OIL, 35 ILL. ADM.)
CODE 808, 809)

Report of proceedings had at the hearing in
the above-entitled cause commencing at 1:00 p.m. on the
29th day of June, A.D., 2006.

1 BOARD MEMBERS:

2 Mr. Timothy J. Fox, Hearing Officer
3 Ms. Andrea S. Moore
4 Mr. Nicholas J. Melas
5 Ms. Alisa Liu
6 Mr. Anand Rao

7 APPEARANCES:

8 Ms. Stephanie Flowers
9 (Illinois Environmental Protection Agency)
10 1021 North Grand Avenue East
11 PO Box 19276
12 Springfield, Illinois 62794
13 Phone: (217) 782-6494

14 On behalf of the IEPA;

15 Ms. Claire A. Manning
16 (Brown, Hay & Stephens, LLP)
17 205 South Fifth Street
18 Suite 700
19 Springfield, Illinois 62705
20 Phone: (217) 544-8491

21 On behalf of the NORA companies.

22 ALSO PRESENT:

23 Mr. Theodore J. Dragovich
24 (Illinois Environmental Protection Agency)

Mr. Christopher N. Cahnovsky
(Illinois Environmental Protection Agency)

Ms. Catherine A. McCord
(Heritage-Crystal Clean, LLC)

Mr. Dan R. Appelt
(Safety-Kleen)

Mr. Mike Lenz
(Future Environmental, Inc.)

Ms. Victoria Custer
(Southwest Oil Service)

1 HEARING OFFICER FOX: Good afternoon and
2 welcome to this Illinois Pollution Control Board
3 hearing.

4 My name is Tim fox, and I am the
5 hearing officer assigned to this rule-making proposal
6 entitled Proposed Amendments to the Board's Special
7 Waste Regulations Concerning Used Oil at 35 Ill. Adm.
8 Code 808, 809. The Board docket number for this ruling
9 is R06-20.

10 The Board received this rule-making
11 proposal in December 2005 from NORA which seeks amend
12 the Board's rules on regulations concerning used oil,
13 and the Board accepted this proposal for hearing on
14 January 5th of 2006.

15 Also present here today from the
16 Board with me are, to my immediate left, Board Member
17 Andrea S. Moore, who is the lead Board member assigned
18 to this rule-making; and at the end of the table to my
19 right is Board Member Nicholas J. Melas. In addition,
20 at the end of the table to my left, from the Board's
21 technical unit, is Anand Rao and at my immediate right,
22 his technical colleague, Alisa Liu.

23 Member Moore, would you like to
24 make any introductory comments at this point?

1 MEMBER MOORE: Only just to welcome
2 everybody, and I appreciate the hard work you're doing.

3 HEARING OFFICER FOX: Very good.

4 Today, we are, of course, holding
5 the second hearing in this rule-making. The first took
6 place five weeks ago on Thursday, May 25th, in
7 Springfield.

8 The proceeding is governed by the
9 Board's procedural rules. Under those, all information
10 that is relevant and that is not repetitious or
11 privileged will be admitted into the record.

12 Please note that any questions
13 posed today by the Board or the Board staff are
14 intended solely to develop a clear and complete record
15 for the Board's decision and do not reflect any
16 prejudgment or bias regarding the proposal or
17 testimony.

18 The Board has received, on
19 May 15th, two weeks ago from the Agency additional
20 testimony by Ted Dragovich and the testimony, also, of
21 Christopher Cahnovsky.

22 Have I pronounced that correctly?

23 MR. CAHNOVSKY: Cahnovsky.

24 HEARING OFFICER FOX: Cahnovsky. Very

1 well. I'm sorry for the mistake.

2 After speaking both with Stephanie
3 Flowers from the Agency and with Claire Manning as a
4 representative of NORA, we will begin this hearing by
5 addressing the Agency's supplemental testimony and the
6 testimony of Mr. Cahnovsky.

7 I understand from Ms. Flowers that
8 the Agency would prefer not to offer a summary of the
9 testimony --

10 MS. FLOWERS: Yeah, we have summaries.

11 HEARING OFFICER FOX: My mistake. I did
12 recall that incorrectly.

13 They will begin with the summary
14 and then make themselves available for questions both
15 from NORA and the Board and the staff as well.

16 Following the completion of that,
17 it's my understanding from Ms. Manning that NORA would
18 like to offer some testimony of its own and would, I
19 believe, also be willing to make themselves available
20 for questions.

21 MS. MANNING: That's correct. We have
22 some responsive testimony to the Agency's testimony
23 that we anticipate may be necessary after the
24 questioning.

1 HEARING OFFICER FOX: And we can
2 certainly deal with motions to admit exhibits as those
3 arise, and it sounds like we have an understanding
4 about how to proceed.

5 Once that has concluded, anyone
6 else may testify, although I don't see anyone here
7 other than the participants. There is a sheet at the
8 far end of this table where anyone who has not
9 previously prefiled testimony may indicate that they
10 would like to testify in this proceeding.

11 Again, I know that many of you are
12 veterans of proceedings like this, but for the benefit
13 of our court reporter, if you would please speak as
14 clearly and loudly as possible and avoid speaking at
15 the same time as any other party. I know that will
16 simplify her task in developing a clear transcript.

17 Any questions before we proceed at
18 all?

19 Seeing none, Ms. Flowers, if you'd
20 like to begin, please.

21 MS. FLOWERS: Okay. Good afternoon.
22 I'm Stephanie Flowers, and I am assistant counsel with
23 the Illinois EPA. And I have here with me on the panel
24 today Ted Dragovich, who is the manager of the

1 alternatives disposal unit, and Chris Cahnovsky, who is
2 the manager of the Collinsville operations.

3 We do have a copy of the prefiled
4 testimony that I would like to enter as an exhibit.

5 HEARING OFFICER FOX: If you've got
6 copies of that, I'm certainly happy to take that.

7 Would you like to move that into
8 the record as Hearing Exhibit No. 11?

9 MS. FLOWERS: Yes, I would.

10 HEARING OFFICER FOX: Very well.

11 Is there any objection to that
12 admission from NORA or any other party?

13 MS. MANNING: No.

14 HEARING OFFICER FOX: Very well. This
15 additional testimony of Theodore J. Dragovich and
16 testimony of Christopher N. Cahnovsky is entered into
17 the record as Hearing Exhibit No. 11.

18 MS. FLOWERS: And I'd just like to make
19 a quick statement about some confusion in this
20 rule-making, and then I'll let these guys do their
21 summaries.

22 The Agency, prior to the last
23 rule-making, was under the impression that NORA and the
24 Agency were closer than we were under -- you know,

1 under the same understanding about what this exemption
2 was going to apply to. There was a lot of talk about
3 the language that we needed to get in the exemption,
4 but I think we all thought we were on the same page.
5 And there could have been some -- You know, we were all
6 using the term "used oil" conversationally, and I think
7 that we were really not under the same agreement. It
8 means different things to different people depending on
9 who you're talking to. And I don't know if it was just
10 because a lot of the discussions were between the two
11 attorneys or because we didn't really have a meeting
12 with the technical staff from the EPA and the technical
13 staff from NORA. I'm not sure.

14 But I do want to make it clear that
15 this is not just a language issue about the exemption.
16 This is not just what language we want to use to
17 accomplish this exemption. There is an actual
18 fundamental difference between the Agency and NORA
19 about who and what this exemption applies to.

20 And I'm saying "exemption," but
21 there's actually two exemptions. The first is -- which
22 the Agency doesn't believe will apply too broadly, is
23 the permit hauling exemption, and that applies to
24 transporters. If a transporter is hauling used oil, as

1 defined by management in the course of 739, then they
2 are exempt from having a hauling permit. And the
3 second one -- And we're under the assumption that
4 usually these transporters have more than just used oil
5 on their truck, so this is not probably going to apply
6 to too many people. The second exemption is the
7 manifest exemption, and we do think that this will
8 apply to the greater number of people. And this is
9 actually a generator exemption because if a generator
10 transfers used oil, as defined by management in the
11 course of 739, to a registered transporter, they do not
12 have to manifest the used oil.

13 And so the Agency's position is the
14 term "used oil" should be the more narrow definition
15 that is in 739.100. It should be limited to used oil
16 and not the materials that are -- any material that can
17 be regulated under 739 simply because it has used oil
18 or has been contaminated with used oil.

19 And I'll let Ted and Chris give
20 their summaries --

21 MS. MANNING: Before you do that,
22 though, Mr. Hearing Officer, if I might just add some
23 rebuttal comments because she offered some -- a factual
24 scenario as to the discussions between the Agency

1 and ...

2 Just to reiterate, NORA's position
3 is simply that anything subject to Part 739 -- anything
4 subject to Part 739 is required to be tracked, and that
5 tracking requirement is redundant to the manifesting
6 requirement that's found in 808 or 809. And so we're
7 not trying to create a separate -- Why we're here --
8 And there's a specific difference of opinion. I think
9 when you use the word "used oil," as defined in 739,
10 it's ecumenic, at least from our perspective, that
11 that's the universe under Part 739. So I just want to
12 make that comment before they begin.

13 HEARING OFFICER FOX: Very well. Why
14 don't we proceed in swearing in the Agency's witnesses,
15 and we can begin with any testimony they would like to
16 offer and any questions that are sent their way.

17 (Witnesses sworn.)

18 MR. DRAGOVICH: Good afternoon. My name
19 is Ted Dragovich, and I'd like to give a brief summary
20 of our responses to the questions that were raised by
21 the Board at the last hearing regarding this issue.

22 The Board asked if the Agency
23 believes the manifest exemption should apply to used
24 oil or materials regulated as used oil. The Agency

1 believes that only used oil and not materials subject
2 to regulation of used oil should be exempt from a
3 manifest.

4 There are two main reasons for this
5 decision: to encourage proper recycling and to ensure
6 proper management of wastes that are added to the used
7 oil.

8 It's the generator's -- It's the
9 waste generator's obligation to complete the manifest
10 and to provide it to the transporter, and it's the
11 generator's responsibility to determine the type and
12 quantity of the waste. Therefore, the Agency does not
13 see that limiting the manifest exemption to used oil,
14 as defined in Part 739, is burdensome to the
15 transporter.

16 Prior to the used oil regulations
17 in Part 739, all non-hazardous pollution control waste
18 and industrial process waste, including used oil, was
19 regulated as special waste. The Federal used oil
20 requirements subjected non-hazardous materials
21 contaminated with used oil to Federal regulations for
22 the first time. To exempt all materials regulated
23 under 739 from special waste, manifest, and permitting
24 requirements would reduce the regulatory requirements

1 for all special wastes that have been mixed with used
2 oil. The Agency has not evaluated the impact of
3 regulating non-hazardous waste that has been mixed with
4 used oil solely under the used oil regulations.

5 We ask the Board to clarify that
6 other non-hazardous waste mixed with used oil after
7 generation are subject to both the used oil standards
8 and that appropriate waste management standards apply
9 to the waste before the mixing occurred. These
10 materials may not behave like used oil, and therefore,
11 the use of the manifest that accompanies the load would
12 be beneficial to emergency response personnel and the
13 receiver of the materials since the used oil tracking
14 system does not require that the shipping paper
15 accompany the load.

16 The Board also asked the Agency to
17 estimate the number of manifested shipments of used oil
18 that would be exempt under this proposal. It's
19 estimated that the number of used -- shipments of used
20 oil that are exempt from manifesting is about 67,460 a
21 year but could be more than 210,330 manifests per year.

22 Finally, we support the exemption
23 from manifesting and hauling permits for used oil as
24 defined and managed in accordance with Part 739 not

1 because it will make the regulations consistent with
2 other states but because the used oil tracking and
3 transportation requirements in Part 739 are adequate
4 for tracking and transportation of used oil as defined
5 and managed in accordance with Part 739.

6 Thank you.

7 HEARING OFFICER FOX: Thank you,
8 Mr. Dragovich.

9 Mr. Cahnovsky, if you'd like to go
10 ahead.

11 MR. CAHNOVSKY: My name is Chris
12 Cahnovsky, and I'd like to give a summary of my -- the
13 testimony, written testimony.

14 I have conducted several
15 inspections at waste generators, waste transporters,
16 and waste management facilities in the East St. Louis
17 (Metro-east) area. During those inspections, I have
18 found evidence that generators are offering
19 non-hazardous special wastes that does not meet the
20 definition of used oil pursuant to 35 Ill. Adm.
21 Code 739 to a permitted special waste transporter.

22 The transporter then mixes the
23 non-hazardous special waste with used oil either in the
24 transportation vehicle at the generator's facility or

1 at the receiving facility and managed the subsequent
2 mixture as a used oil. The mixture of non-hazardous
3 special wastes and used oil is then re-manifested to a
4 receiving facility as used oil. Some of the
5 non-hazardous special waste I have found mixed with
6 used oil include waste fixer containing silver from
7 photo processings, sludge and waste water containing
8 nitrobenzene from the cleaning of tanker trucks that
9 contain chlorobenzene and international shipping
10 containers that contain paranitrochlorobenzene, and
11 waste water -- waste-based paint containing barium and
12 methyl ethyl ketone from the closure of a rail car
13 painting system.

14 All of the above-mentioned wastes
15 were off-loaded from a transportation vehicle into rail
16 cars at the facility. The facility where it was
17 unloaded claims they are only regulated by 35 Ill. Adm.
18 Code 739 as a used oil transfer facility.

19 During inspections and meetings
20 with the used oil transfer facility, the Agency found
21 that this facility regularly accepts mixtures of
22 non-hazardous special waste, non-used oil, mixed with
23 used oil. These mixtures are manifested as used oil.

24 Thank you.

1 HEARING OFFICER FOX: Thank you,
2 Mr. Cahnovsky.

3 Are you prepared to proceed to
4 questions from NORA and from the Board, in the event
5 that they have any?

6 MS. FLOWERS: Yes.

7 HEARING OFFICER FOX: Very well.
8 Ms. Manning, if you or any of your witnesses have any
9 questions, please feel free to proceed.

10 MS. MANNING: I do. Thank you.

11 Starting with Mr. Cahnovsky, the
12 examples that you gave, all of the -- you gave them
13 generally in your summary, but I understand that each
14 of them that you just testified to are those that are
15 specifically laid out in your prefiled testimony.

16 Is that correct?

17 MR. CAHNOVSKY: Yes.

18 MS. MANNING: Okay. So we're really
19 talking about what you have here listed in your
20 testimony as Attachment 1 from 1999 -- these all
21 involve Safety-Kleen by the way -- Attachment 2 from
22 1998, Attachment 3 from 2001, Attachment 4, a summary
23 of a meeting that was held with Kevin Farmer of
24 Safety-Kleen in 2001, Attachment 5, another document

1 from 2001, and Attachment 6, a document from between
2 1999 and 2002.

3 Is that correct?

4 MR. CAHNOVSKY: That's correct.

5 MS. MANNING: Okay. So those are the
6 only situations that you're talking about in your
7 summary testimony?

8 MR. CAHNOVSKY: Yes.

9 MS. MANNING: And in any of these
10 situations, were any notices of violation issued or any
11 enforcement pursued as a result of any of these
12 attachments?

13 MR. CAHNOVSKY: Yes.

14 MS. MANNING: Which one?

15 MR. CAHNOVSKY: The shipment of waste
16 water and paint that was shipped to Safety-Kleen, there
17 was a notice of violation sent to Canadian National and
18 Illinois Central Railroad.

19 MS. MANNING: Okay. Then what happened?

20 MR. CAHNOVSKY: There was more to this
21 inspection than just this violation. During this
22 inspection, the Agency found that they were discharging
23 chlorinated solvents and oil into a roundhouse pit, and
24 there's still ongoing enforcement and clean-up actions

1 with that release to the roundhouse. So that case has
2 not been finalized yet.

3 MS. MANNING: And --

4 HEARING OFFICER FOX: May I interrupt.
5 I'm sorry. May I interrupt very quickly.

6 You're referring to the matters in
7 your Attachment 3 -- is that correct, Mr. Cahnovsky? --
8 just for the sake of the record. I thought I heard you
9 refer to the Canadian National and Illinois Central
10 Rail, but maybe I'm mistaken.

11 MR. CAHNOVSKY: Yes.

12 HEARING OFFICER FOX: Okay. Great.

13 MS. MANNING: And you understand, in
14 this rule-making, NORA is not seeking to do anything
15 unlawful; it is only seeking to eliminate manifesting
16 where product is subject to Part 739 and is tracked in
17 accordance with Part 739? Do you understand that to be
18 NORA's position?

19 MR. CAHNOVSKY: Correct.

20 MS. MANNING: Okay. You understand that
21 also -- Well, let me just ask it this way.

22 These situations that you have
23 presented to the Board as these problematic situations,
24 the Agency would have had all of this information that

1 it has and that it is presenting to the Board even if
2 it was treated as used oil and tracked in accordance
3 with 739. So all the information you have here that
4 you can use to enforce against a company if they're
5 doing something wrong, you have it through tracking
6 under 739.

7 Is that not correct?

8 I mean, if somebody's obligated to
9 track under 739 for whatever the product is, the Agency
10 should be able to find out if something -- somebody's
11 doing something wrong.

12 MR. CAHNOVSKY: Well, 739 wouldn't
13 regulate fixer, and 739 would not regulate water-based
14 paint --

15 MS. MANNING: But if someone's treating
16 fixer as used oil -- and I'm not suggesting they are,
17 but if someone contemplates that being subject to the
18 applicability section of 739, they're going to track
19 it, correct? They're obligated to track it under 739.

20 MR. CAHNOVSKY: Under Illinois law, it
21 requires a manifest.

22 MS. MANNING: No. I'm asking whether
23 they're obligated, under 739, to track it.

24 MR. CAHNOVSKY: No, they're not

1 obligated under 739 --

2 MS. MANNING: If they're treating it as
3 used oil, they are.

4 MR. CAHNOVSKY: Well, they would be in
5 violation if they're treating photo fixer as a used oil
6 under 739 when it's not used oil.

7 MS. MANNING: Then you can enforce
8 against them for treating it wrongly, but the question
9 is: Whether it's manifested or tracked is a separate
10 question, is it not?

11 MS. FLOWERS: I mean, I think one thing
12 that he testified to is they re-manifest it as just
13 used oil. There is no further indication that it
14 contains anything other than used oil. I think that's
15 one of the issues here, is that it is not tracked to
16 its destination as something other than used oil.

17 UNIDENTIFIED SPEAKER: Chris, could you
18 tell me, what was the violation --

19 MS. MANNING: You need to identify
20 yourself.

21 MS. McCORD: I'm sorry. Catherine
22 McCord.

23 Chris, what was the violation in
24 this case with the mixing of the non-haz waste with the

1 used oil?

2 MR. CAHNOVSKY: You're stretching -- I'm
3 going to have to go by memory.

4 I believe that I cited that this
5 company sent it to a receiving facility that was not
6 permitted to accept special waste, and the facility
7 that received it was also sent a violation notice for
8 accepting special waste without a permit to accept it.

9 MS. McCORD: That was the ultimate
10 treatment facility?

11 MR. CAHNOVSKY: No. It was the transfer
12 facility -- the -- It went to a rail car, and the
13 manifest was terminated. And it was mixed with many
14 other generators' waste from all over Illinois and
15 Missouri. And this commingling of all the waste,
16 different types of waste that are in my attachments,
17 including Attachments 4 and 5 and 6, all were then
18 manifested as used oil. Plastic beads, sand, and other
19 things that clearly were not used oil were manifested
20 as used oil.

21 MS. McCORD: So non-hazardous waste was
22 mixed with used oil?

23 MR. CAHNOVSKY: Right.

24 MS. McCORD: Okay. And then where do

1 you believe this proper shipping description should
2 have been for that under DOT?

3 MR. CAHNOVSKY: Well, it should have
4 retained all the separate manifests, each of the
5 manifests. They all should have been manifested
6 separately. Like, the photo fixer should have stayed
7 photo fixer all the way to the receiving facility
8 because that's what it was.

9 MS. McCORD: But do you believe that the
10 resulting DOT shipping description should have been
11 different?

12 MR. CAHNOVSKY: I don't regulate DOT.

13 MS. McCORD: Okay. But DOT is the
14 system that really dictates, you know, how these
15 materials are described. It is the national system
16 that we have to abide by everywhere. That dictates how
17 these are described and what is put on the shipping
18 paper, whether or not that's just a straight bill of
19 lading or a manifest.

20 MR. CAHNOVSKY: I do not believe DOT
21 requires Illinois manifests.

22 MS. McCORD: It --

23 MS. MANNING: In other words -- If I
24 could interrupt.

1 The information that the Agency has
2 is the same regardless of whether it's tracked or
3 whether it's manifested.

4 MR. CAHNOVSKY: I believe if it was
5 just -- The tracking document in 739 -- I don't have
6 739 in front of me, but it doesn't really go into
7 specifically, you know, what the material would be.
8 It's just a tracking document with the name, address,
9 and --

10 MR. DRAGOVICH: It doesn't have to
11 accompany the shipment either.

12 MR. CAHNOVSKY: Yeah, it doesn't have to
13 accompany the shipment.

14 MS. MANNING: We'll talk about tracking
15 when we get into our testimony and explain how
16 comprehensively our people actually track --

17 UNIDENTIFIED SPEAKER: I've got a
18 comment along these lines --

19 MS. MANNING: You need to identify
20 yourself.

21 MR. LENZ: Mike Lenz, Future
22 Environmental.

23 HEARING OFFICER FOX: And, Mr. Lenz, if
24 you want to offer comment, which I believe was your

1 word, why don't we have the court reporter swear you in
2 so that you can offer substantive testimony.

3 (Witness sworn.)

4 MR. LENZ: The only thing I wanted to
5 comment on -- and I think there's a lot of confusion
6 along these lines with the generators especially -- is
7 that if you look at 739.110, it talks about these
8 mixtures, whether they're hazardous or non-hazardous,
9 and it tells you right there in the regulations that
10 they are to be treated as used oil. So obviously the
11 generator's going to be very confused if the regs are
12 telling them this and the Agency's telling them
13 something different.

14 MS. MANNING: And, in fact, if I might
15 add to that, Ted, you don't regularly work with
16 Part 739; is that correct?

17 MR. DRAGOVICH: Yes, I do work with it.

18 MS. MANNING: Okay. Okay. And your
19 idea of the -- There were several statements you made
20 in your prefiled testimony as to the Federal backdrop,
21 if you will, for used oil.

22 Wouldn't you agree that the
23 creation of Part 739 was Federally forced through --
24 It's an identical-in-substance rule that follows from

1 the Federal used oil rules; is that correct?

2 MR. DRAGOVICH: I agree that it's a
3 Federally based rule.

4 MS. MANNING: Okay. So the intention of
5 the Federal government in establishing the used oil
6 program is the very same underlying intention in the
7 State adopting its Part 739, correct?

8 I mean, if the State is obligated
9 to --

10 MR. DRAGOVICH: I'm not sure I
11 understand your question.

12 MS. MANNING: Okay. If the State is
13 obligated to adopt, identically and substantively, a
14 Federal program, the intention that the Federal
15 government made when it created that program is
16 relevant to the State's program as well.

17 MR. DRAGOVICH: Well, the Federal
18 government stated up-front that the states could be
19 more stringent with requirements, and the State of
20 Illinois already had special --

21 MS. MANNING: But --

22 MR. DRAGOVICH: -- waste requirements in
23 place. So I mean, this is --

24 MS. MANNING: But the State is

1 obligated --

2 MR. DRAGOVICH: -- an add-on.

3 HEARING OFFICER FOX: We need to have
4 you speak one at a time for the benefit of the court
5 reporter.

6 MR. DRAGOVICH: Well, I just wanted to
7 say that this was added on top of the already-existing
8 Illinois requirements.

9 MS. MANNING: That's -- While the Agency
10 may have that position, I would argue that it's a
11 separate program that has to be read independently of
12 Part 808 and 809 because of what it does, especially
13 when you're talking about the applicability language
14 and what is used oil and what the industry out there is
15 doing in terms of regulating itself under Part 739.

16 HEARING OFFICER FOX: Is that a
17 question, Ms. Manning?

18 MS. MANNING: No. Let me ask a
19 question.

20 You would agree, would you not,
21 that the whole idea of the Federal rule is to encourage
22 recycling and reuse of used oil?

23 MR. DRAGOVICH: The idea behind the
24 Federal regulations was to regulate used oil in a

1 manner that encouraged recycling, yeah, to list it and
2 make it part of the hazardous waste --

3 MS. MANNING: And you would agree, would
4 you not, that the applicability language found in both
5 those sets of rules, the Federal rule and the State
6 rule, is designed to identify what product can be
7 treated as used oil and accordingly sold and processed
8 and produced in the marketplace as used oil?

9 MR. DRAGOVICH: No. The applicability
10 section, alls it did was identify what waste would be
11 regulated under the used oil regulations once they
12 become mixed with used oil. That's all it is.

13 Before the used oil regulations
14 came into play, there was no hazardous waste -- Federal
15 hazardous -- or non-hazardous waste regulations that
16 applied to non-hazardous waste until it went to the
17 landfill, Subtitle D. So this is the first time, under
18 Federal regulations, they're actually applying Federal
19 regulations to a non-hazardous waste, and that's when
20 it becomes mixed with used oil.

21 MS. MANNING: And what they actually did
22 was eliminate the restrictive requirements and said
23 product that can be treated as used oil is subject to
24 tracking requirements, and that's it.

1 MR. DRAGOVICH: You have to define what
2 you mean by "product."

3 MS. MANNING: Anything that's subject to
4 the application of 739.

5 MR. DRAGOVICH: See, 739 applies to
6 waste.

7 MS. MANNING: And where do you get that
8 perspective?

9 739 takes -- as the Federal
10 government did, takes certain product out of the realm
11 of waste and allows it to be treated separately as
12 recycled product.

13 HEARING OFFICER FOX: Is that a
14 question, or is that offered as testimony?

15 MS. MANNING: It's a question.

16 MR. DRAGOVICH: Well, yeah. These --
17 Well, this is the first time that they regulated some
18 of these materials, you know. They brought them under
19 the regulations for the first time, under the used oil
20 regulations.

21 MS. McCORD: But, Ted, if there was a
22 used oil -- Prior to the used oil management standards
23 in the mid '80s, before coming into effect, if the used
24 oil failed (inaudible), it was regulated as a hazardous

1 waste.

2 MR. DRAGOVICH: I couldn't tell you
3 exactly what the exemptions were at that time. There
4 were some mixture exemptions. I don't know. I know
5 some used oil would be regulated as hazardous waste,
6 and I also know that before they enacted these rules,
7 they talked about listing used oil as a hazardous
8 waste.

9 MS. McCORD: But then the government
10 went forward based on the HAZWA amendments, and the
11 statute was modified to issue relations that gave an
12 alternate management scheme, not that it's non-haz but
13 rather that it's managed under a scheme that promotes
14 recycling. So, you know, used oil is not
15 non-hazardous. It's just managed as an alternate under
16 Subtitle C.

17 MR. DRAGOVICH: And the applicability
18 section, what it did was added in other materials that
19 were mixed with used oil under the regulations for the
20 first time. They tried to give you a road map of when
21 these materials would be regulated under Federal rules
22 and when they wouldn't. And prior to that, they
23 weren't regulated at all.

24 MS. McCORD: Ted, what's your thought on

1 why the government did that.

2 MR. DRAGOVICH: I don't know. I wasn't
3 there.

4 MS. MANNING: Might it be to encourage
5 recycling of these products and anything that falls
6 into the applicability section of Part 739?

7 MR. DRAGOVICH: What I can glean from
8 the rules themselves is they want to regulate anything
9 that had used oil in it until the used oil was removed.

10 MS. MANNING: Okay. And it requires
11 tracking?

12 MR. DRAGOVICH: That's correct.

13 MS. MANNING: Okay. And you recognize
14 that all of the businesses that have been here on
15 behalf of NORA operate pursuant to Part 739 and are in
16 the very business of recycling used oil and anything
17 that fits under Part 739 because it's a valuable
18 commodity to be sold, and of course they track it. And
19 they're required to track it under 739.

20 Would you agree with that?

21 MR. DRAGOVICH: I don't know that much
22 about their business.

23 MS. MANNING: Okay. On page 3, you
24 testified that limiting the manifest waste exemption

1 would not be burdensome to transporters.

2 You were here at the last hearing
3 where everybody talked about the cost of the
4 manifesting and how it's a burdensome requirement since
5 they have to track anyway.

6 How do you come to the conclusion
7 that you don't think it's burdensome?

8 MR. DRAGOVICH: The obligation to fill
9 OUT the manifest is on the generator themselves, not
10 the transporter.

11 MS. McCORD: Okay. Ted, do you know who
12 the largest purchasers of manifests are in the State of
13 Illinois?

14 MR. DRAGOVICH: I don't know.

15 MS. McCORD: I'd say that they're
16 transporters, and it's very typical for companies --
17 NORA companies to purchase those manifests from the
18 State and provide them to our customers as a service to
19 them.

20 MS. FLOWERS: Is this testimony, your
21 Honor?

22 HEARING OFFICER FOX: Yes. After
23 offering your testimony, if the court reporter would
24 briefly swear -- It's Ms. McCloud; am I correct?

1 MS. McCORD: McCord.

2 HEARING OFFICER FOX: McCord. My
3 apologies.

4 MS. MANNING: Why don't you go ahead and
5 swear them all in.

6 HEARING OFFICER FOX: If the other two
7 of you also --

8 MS. MANNING: I completely told them not
9 to do that.

10 HEARING OFFICER FOX: If the other two
11 of you would please just briefly identify yourselves to
12 the court reporter and spell any difficult last names,
13 and she'll swear you in in just a moment.

14 MR. APPELT: I'm Dan Appelt,
15 A-P-P-E-L-T, with Safety-Kleen.

16 MS. CUSTER: Victoria Custer, like the
17 general, C-U-S-T-E-R, with Southwest Oil.

18 MS. McCORD: And Catherine McCord,
19 Catherine with a C and M-C-C-O-R-D.

20 (Witnesses sworn.)

21 HEARING OFFICER FOX: My apologies for
22 the interruption, Ms. Manning. All set.

23 MS. MANNING: It's all right.

24 On page 4, Ted, you testified that

1 you -- the EPA takes this position because it doesn't
2 want to encourage mixing other special waste into used
3 oil destined for recycling.

4 Isn't it true, though, that
5 Part 739 allows CESQGs to do actually that, to mix
6 small quantities of hazardous waste into used oil?

7 MR. DRAGOVICH: That's correct --

8 MS. MANNING: So I mean, mixing is
9 allowed, is it not?

10 MR. DRAGOVICH: That was something that
11 was long thought out, that particular instance, as to
12 how to approach that. But, I mean, we haven't got into
13 what to do about all these other non-hazardous wastes
14 when you mix them in there. Is it appropriate, or is
15 it inappropriate? I mean, that hasn't been discussed.

16 MS. MANNING: So how are you
17 suggesting -- Are you suggesting that with that mixing,
18 manifesting is only exempt -- manifesting under 808 and
19 809 is only exempt for the used oil part of that? And
20 even though Part 39 allows for the mixing, there has to
21 be manifesting for the portion that's mixed as well
22 tracking for the whole product?

23 MR. DRAGOVICH: What I'm suggesting is
24 if a generator generates two waste streams, the normal

1 thing to do would be to keep them separate so they
2 could be recycled better and to get them in two
3 separate containers with two separate manifests.

4 Now, if they were going to mix them
5 together, then the manifest should reflect what's in
6 there.

7 The problem with the proposal is
8 that you can take a cup of oil and put it into another
9 waste and call that all used oil and say it's exempt,
10 and now you've got something that doesn't behave at all
11 like used oil but the entire description from there on
12 forward is going to say this is used oil. And
13 everybody's going to treat it like used oil.

14 MS. MANNING: The proposal only allows
15 you exemption for manifesting for that which is
16 appropriately treated as used oil under 279.

17 MR. DRAGOVICH: But everything that's
18 mixed with used oil is subject to exemption under 739
19 according to applicability.

20 MS. McCORD: So non-hazardous waste then
21 becomes subject to more stringent used oil management
22 standards?

23 MR. DRAGOVICH: I don't know about more
24 stringent, but they become subject to used oil

1 standards in addition to the standards --

2 MS. McCORD: Is there anything that,
3 Ted, you believe is a problem with the used oil
4 management standards in that it does not provide
5 protection for the environment for those mixtures?

6 MR. DRAGOVICH: I think that we haven't
7 even thought that through. I think you're talking
8 about two completely different things. You're talking
9 about used oil and any possibility of non-hazardous
10 special waste, and whether it's appropriate for that to
11 be managed as used oil, I would say there's going to be
12 instances where it's not.

13 MS. MANNING: And you understand, from
14 the industry's perspective, used oil and the management
15 of used oil is anything that's subject to Part 739.

16 MR. DRAGOVICH: My comment --

17 MS. MANNING: That's -- That's how they
18 operate.

19 MR. DRAGOVICH: My comments are based on
20 the way that the rule is proposed, and the proposal
21 that NORA's come up with seems to allow anything to be
22 exempted from manifesting and from hauling permits once
23 there's some used oil added to it.

24 MS. McCORD: Ted, what is missing from a

1 shipping paper that is not a hazardous waste manifest
2 that you believe -- What's the gap between the -- our
3 proposal of using DOT shipping papers that we can also
4 use as business paperwork versus a prescribed form?
5 What are the data elements that we're missing?

6 MR. DRAGOVICH: Currently, all these
7 non-hazardous special wastes are subject to
8 non-hazardous special waste managements. Under used
9 oil, there is no manifesting -- Under your proposal,
10 there's no requirement for a manifest to accompany
11 the --

12 MS. MANNING: But you didn't answer the
13 question.

14 What's the difference between a
15 tracking document and a requirement to track under 739
16 and a special waste manifest?

17 MR. DRAGOVICH: I don't know what your
18 tracking documents require.

19 MR. CAHNOVSKY: The special waste
20 manifest has several parts on it. It has all the ID
21 numbers, all the telephone -- associated telephone
22 numbers, emergency contact numbers. It has the
23 generator's name, transporter's name, the second
24 transporter's name, the third, fourth, however many

1 continuation sheets you need on the manifest. And it
2 has the receiving facility names, where it is, its ID
3 number, its Illinois ID number, its facility number.
4 It has the DOT description, types of containers, type
5 of vehicle that it was picked up in, quantities. And
6 it has the generator's signature, the transporter's
7 signature, and the receiving facility's signature. And
8 the generator keeps a copy. The transporter keeps a
9 copy. The receiving facility keeps a copy. And the
10 receiving facility sends the generator back a copy.

11 HEARING OFFICER FOX: If I may
12 interrupt.

13 Mr. Cahnovsky, for the record, can
14 you identify by title, number, or other designations
15 the precise document that's open in front of you there?

16 MR. CAHNOVSKY: I'm referring to the
17 manifest that's included in Attachment --

18 HEARING OFFICER FOX: The attachment to
19 your testimony; is that what you're referring to?

20 MR. CAHNOVSKY: It's an attachment to my
21 testimony, and that would be Attachment 3.

22 The last tracking document I saw
23 for used oil being picked up was yesterday, and alls it
24 had was the name of the oil company -- that's it -- a

1 phone number, a gallon. It didn't say where it went.
2 It didn't say who transported it. It didn't say quite
3 a bit. It was just a handwritten receipt.

4 MS. McCORD: Was that in violation of
5 the used oil management standards?

6 MS. MANNING: In fact, I would point you
7 to look at 739.146, this tracking for used oil
8 transporters and transportation facilities. There's a
9 tracking section, Subpart F, 739.156. There's a
10 tracking section 739.165. There's a tracking section
11 739.174 --

12 MR. CAHNOVSKY: Right, but I thought you
13 asked what the difference was between those tracking
14 requirements of 739 and the tracking requirements in,
15 like, 478, 55, 104 for the special waste, and that's --
16 I'm just trying to point out the differences. I'm not
17 trying to argue with you.

18 MS. MANNING: I understand. But I guess
19 my point is, if the tracking that you just -- the
20 example you just gave, if it wasn't sufficient under
21 Part 739, the Agency could enforce against somebody and
22 say they're in violation because they're not
23 appropriately tracking under 739 as contemplated for
24 anything treated as used oil.

1 MR. CAHNOVSKY: Well, I would assume,
2 when I go out and do an inspection, if I see a used oil
3 tracking document, that there's just going to be used
4 oil: the black stuff that comes out of a car or comes
5 out of a machine or some type of lubricating oil. I
6 don't expect to see that when I look at a used oil
7 tracking document, I'm going to see something that
8 contains silver, nitrobenzene, other hazardous
9 constituents, and other wastes such as paint, sand,
10 molasses, and other things that would be -- I wouldn't
11 expect.

12 MS. MANNING: And, again, you're
13 referring to those situations that you have in your
14 testimony?

15 MR. CAHNOVSKY: Yes.

16 MS. MANNING: That haven't occurred or
17 you haven't seen since, I think -- 2001, maybe, was the
18 last one that was indicated.

19 MR. CAHNOVSKY: Well, I believe that
20 this particular company's special waste reports that
21 were submitted say -- show that they're still taking
22 some of those types of materials. I don't remember
23 what --

24 MS. MANNING: But you're not testifying

1 to any specific examples, again, other than those
2 specific examples you set forward in your testimony?

3 MR. CAHNOVSKY: No. I thought it would
4 be easier just to show this one, the last exhibit --
5 Exhibit 6, I believe it was -- instead of including an
6 umpteen number of annual reports.

7 MR. LENZ: I've got a quick comment just
8 to maybe clarify for the Board what the tracking
9 requirements are.

10 Basically all those things you
11 listed that are on the manifest are a requirement under
12 the used oil tracking, but they're not all on one
13 document. There's requirements that are on the pick-up
14 ticket, which is basically all you're seeing. There's
15 requirements that are on the load tracking that are in
16 the load tracking requirements that have a lot of those
17 other requirements that are --

18 MS. FLOWERS: Claire, can I request that
19 he point us specifically to all the things -- You're
20 testifying that all those things are required. I would
21 just like to know where they are required under 739.

22 MS. MANNING: That's his interpretation
23 of his obligation under those tracking requirements I
24 just pointed to.

1 MR. LENZ: I brought tracking -- the
2 tracking paperwork that we use. I think the Board
3 requested it. So we've actually got some copies of
4 that here to where we can take a look at it.

5 MS. FLOWERS: Okay. But this is your
6 tracking document, and this not necessarily what's
7 required under 739?

8 MR. LENZ: It is what's required under
9 739. It's our --

10 MS. FLOWERS: I wish you could point me
11 to that --

12 MR. LENZ: -- version of it.

13 MS. FLOWERS: -- because I don't see it
14 there. I don't see it under our regulations.

15 MR. LENZ: I don't have those
16 regulations in front of me.

17 MS. FLOWERS: There's not very much
18 required under the tracking regulations. They're not
19 to the extent that Mr. Cahnovsky testified is on the
20 manifest.

21 MS. MANNING: The Board can read 739 for
22 itself and look at the tracking requirements that are
23 spelled out in each of those sections.

24 HEARING OFFICER FOX: And, Ms. Manning,

1 just for the record, you're referring to Part 739.146
2 designated as tracking, or am I mistaking --

3 MS. MANNING: Well, actually, there's
4 several of them Mr. Hearing Officer. There's 739.146
5 which is applicable to used oil transporters and
6 transfer facilities; 739.156, standards for used oil
7 processors; 739.165, standards for used oil burners
8 that burn off specification used oil for energy
9 recovery; 739.174, tracking standards for used oil fuel
10 marketers. So there's -- And I don't know that it's
11 useful for us to debate those requirements. They're --

12 MS. FLOWERS: Right --

13 MS. MANNING: And we will put into
14 evidence from the business perspective how it is that
15 each of these four companies, at least -- and they're
16 typical of all of the NORA companies and they'll
17 testify to that -- how they actually track under these
18 rules.

19 MS. FLOWERS: The Agency has no -- We
20 understand that maybe these people are just the best
21 and they do have a really great tracking system, but
22 the State has to be concerned with those people who do
23 not. And there are simple requirements there. That's
24 all anyone has to give us by law, and we cannot go on

1 how wonderful these people keep track of them. We have
2 to go off of what is required by law.

3 MS. MANNING: Actually, actually, we
4 would argue that special waste manifests, once 739 was
5 put into place, anyway, are still required by law.

6 But leaving that to the side,
7 please explain for us, if you will, even with a special
8 waste manifest, it doesn't go to the Agency. You guys
9 never see it; am I -- I'm right about that, right?

10 MR. CAHNOVSKY: There's requirement for
11 the generator to submit the special waste --
12 non-hazardous special waste manifests.

13 MS. MANNING: In fact, they're doing all
14 this paperwork out there, and it just stays in an
15 office just like tracking. The Agency doesn't even see
16 it.

17 MR. CAHNOVSKY: That's not true. I see
18 it every inspection that I go to in a facility, yes.

19 MS. MANNING: And if you ask for their
20 tracking documents pursuant to 739, you would have an
21 expectation that you would see those, too, correct?

22 MR. CAHNOVSKY: Not necessarily, because
23 the tracking documents in 739.146 only state the
24 quantity of used oil accepted. It doesn't state that

1 there's other things mixed with it, such as the
2 examples I have given in this -- in my testimony. The
3 tracking documents just say "used oil."

4 As I said before, when I go and I
5 look at that piece of paper -- I've looked at several
6 of your members' tracking documents, and there's a lot
7 out there that's deficient and there's a lot out there
8 that's good. And I look at it and it just says "used
9 oil," but it doesn't say anything else that it's mixed
10 with. So I would not know -- When I go to that
11 generator, "Well, what do you do with that paint
12 waste?"

13 "Well, I can mix it. Such-and-such
14 comes and picks it up, and here's the tracking
15 document." And I look at it, and it says "used oil and
16 water." Well, that's not really used oil --

17 MS. McCORD: What regulatory program is
18 driving that shipping description on that commingled
19 used oil with other non-hazardous waste? What dictates
20 how that mixture is described on a shipping paper,
21 whether or not it's a manifest or a straight bill of
22 lading?

23 MR. CAHNOVSKY: I believe it would be
24 probably, possibly, the correct DOT shipping name. I

1 don't know, for water and paint, the correct DOT
2 shipping name would be used oil. If there was -- If
3 there was a truck accident like the -- In Troy, there
4 was a large train derailment. And if they went up
5 there and they saw the tracking thing and they saw,
6 okay, this tanker truck -- this rail car tipped over
7 and you've got the manifest or tracking document that
8 says used oil and the responders go up to it and it's
9 orange because it's 95 percent paint and 5 percent used
10 oil, they're like, well, that's not really used oil.
11 That's all kinds of different things. That could be an
12 improper U.S. DOT shipping.

13 Now, I'm not a DOT expert --

14 MS. McCORD: Well, the way that system
15 works is what words have to appear in the shipping
16 description is relative to the components of it, and
17 you have to outline those components when they present
18 certain hazards, whether it's changing its shipping
19 description, if it's changing the packing group, if
20 it's changing its hazard class. So you don't have to
21 change the shipping description every time a small
22 component is added, but if it's making a significant
23 change in the physical characteristics of the material,
24 then the shipping description has to reflect that

1 change.

2 And the whole purpose of these
3 shipping descriptions is to give first responders the
4 words and the information they need to make quick
5 decisions, whether or not they're going to need air
6 tanks, whether or not they back off, whether or not
7 they put foam on it. All of that information is
8 triggered by the keys in the shipping description.

9 So no matter what the Federal or
10 State used oil rules say or even, you know, hazardous
11 waste regs say, we're -- those shipments and the
12 description of that material is dictated by DOT. So
13 whether or not it's on a manifest or, you know, a
14 business's shipping paper, it doesn't change those. We
15 have those obligations no matter what happens.

16 UNIDENTIFIED SPEAKER: I'd like to just
17 clarify a situation. I mean, this reference to 1999 --
18 I think it's Attachment 3. Is that from '99?

19 MS. MANNING: Yeah.

20 UNIDENTIFIED SPEAKER: I mean, I don't
21 know what's in --

22 MS. MANNING: You need to identify
23 yourself for the record. We were going to this
24 separately in testimony, but it's fine to jump right

1 now, Dan.

2 MR. APPELT: Dan Appelt with
3 Safety-Kleen.

4 I don't know what our procedures
5 were with respect to our vac waste program back in '99
6 because I'm sure that whatever that manifest was from,
7 it was more than likely a vac customer as opposed to --
8 We've got SK, Safety-Kleen, oil services, trucks that
9 just pick up oil, used oil; and then we've got the vac
10 program that picks up -- The vac program is basically
11 split into automotive and non-automotive. So
12 automotive-type generators, like a mechanic or, you
13 know, Jiffy Lube, someplace that would have an oil/grit
14 separator, those customers, we pick up their material
15 generally out of the grit traps under 279, or 739 in
16 Illinois. Non-automotive customers, before we pick up
17 anything from them, we take a sample, and that's
18 analyzed to determine whether it's hazardous or not.
19 If it's hazardous, it's handled as drummed waste, you
20 know, containerized waste. And if it's non-haz, then
21 we will pick it up, but it's not treated as 279 or 739
22 material.

23 So that's our current procedures,
24 and they've been in place for at least a number of

1 years now, since -- I mean, after 1999. So again, I
2 don't know specifically -- You know, this might have
3 been a mistake. The operator at the time may have made
4 a mistake or -- I'm not sure of the specifics on that.

5 MR. CAHNOVSKY: Well, I agree with you.
6 But at this particular -- All the scenarios that I put
7 here, even though this was manifested as paint and
8 water from the railroad, it went to a facility that
9 Safety-Kleen claimed was only regulated by 739, and it
10 was mixed in a rail car and then re-manifested as used
11 oil. And I think that's where our problem came in
12 because this material should have went to a facility,
13 you know, that was permitted to be able to accept it.

14 MS. McCORD: Well, remember, the DOT
15 shipping description would have dictated what that's
16 called on that shipping paper. Again, whether or not
17 it's a manifest or a regular bill of lading --

18 MR. CAHNOVSKY: That's not what I'm
19 getting at. I'm getting at that this is used oil --
20 this is not used oil. And in Illinois, if you're going
21 to take this waste to a facility and off-load it, that
22 becomes a solid waste transfer station, and that's
23 subject to a State -- operating State development
24 permit.

1 MS. McCORD: How would that issue be
2 affected by whether or not that inbound shipment came
3 on a shipping paper versus a waste manifest?

4 MR. CAHNOVSKY: If this material came on
5 a shipping paper, they would be in violation of 808 and
6 809 because it's not used oil because this was solely
7 2800 gallons, one truck, of only paint. And a truck of
8 only paint was mixed in a 28,000-gallon rail car and
9 then became used oil. It was transferred at a facility
10 that the State is claiming needed a permit to do the
11 transfer --

12 MS. McCORD: But your issue isn't really
13 the mixing. It's where it was sent. So really, it's
14 not related to the shipping paper. It's really -- And
15 that scenario could have occurred whether or not the
16 material is being transported under a manifest versus a
17 straight shipping paper.

18 MS. MANNING: In other words, the Agency
19 could have found out that very information from all of
20 the tracking that's required under 739 because IDOT
21 identification and all of that is required as well.

22 So really, I guess we don't
23 understand why the discussion that you just had is even
24 relevant to NORA's proposal.

1 MR. LENZ: I'm confused. Was it
2 manifested as used oil or paint waste?

3 MR. CAHNOVSKY: It was subsequently
4 manifested as used oil.

5 MR. LENZ: When it was -- I mean at the
6 generator.

7 MR. CAHNOVSKY: At the receiver
8 facility.

9 MR. LENZ: At the generator site, how
10 was it manifested?

11 MR. CAHNOVSKY: At the generator site,
12 it was manifested as special waste.

13 MR. LENZ: Paint waste?

14 MR. CAHNOVSKY: Paint waste.

15 MR. LENZ: So I mean -- Well, then
16 they -- It seems to me there might be an NOV there.

17 MR. CAHNOVSKY: Yeah, there was.

18 MR. APPELT: If this is all accurate,
19 based on what you've described, that would sound like
20 it may have been a mistake on somebody's part, but it
21 still would have been easily identified since it was
22 manifested from the original generator as paint and it
23 went to a rail site where it was mixed with oil. So
24 you still would have had that first manifest. The

1 second manifest, where it went from the rail car --
2 rail site to, you know, wherever it went, that's
3 immaterial. But the fact is the paint got mixed in
4 with oil, and it --

5 MS. McCORD: Or -- But the
6 regulations -- If this is -- You know, I'm looking at
7 the manifest. It says "water and paint, not U.S. DOT
8 or EPA hazardous material." So, you know, the waste --
9 the oil rules very clearly allow non-hazardous mixtures
10 with used oil. So -- And this document shows where it
11 was picked up, where it was delivered. So your issue
12 really was downstream with this receiving facility. It
13 shouldn't have taken that mixture somehow, but that
14 material -- you know, this shipping paper is right.
15 You know, it reflects what it is.

16 MR. CAHNOVSKY: Except it went to a
17 facility not permitted to accept it.

18 MS. McCORD: That's your issue.

19 MS. MANNING: But that is your issue,
20 and that's not an issue that NORA brings before the
21 Board.

22 MR. CAHNOVSKY: Let me -- Let me back up
23 and clarify that. They just asked me to come in and
24 present testimony of things that I have found mixed

1 with used oil.

2 MS. FLOWERS: And let me say a few
3 things. That is the relevancy of this because that is
4 what's going to happen as a consequence of this, is
5 that that was re-manifested as used oil, and it is
6 going to be able to go to a non-permitted facility as
7 used oil when it clearly has special waste in it. And
8 there -- And so that -- what's going -- The consequence
9 of the --

10 MR. APPELT: Why do you say that?

11 MS. FLOWERS: -- of what -- This
12 exemption will apply. If you can just mix used oil in
13 with special waste and call it used oil, now you no
14 longer have special waste rules.

15 MS. MANNING: And I'm going to actually
16 have to ask Ms. Flowers to explain the basis factually
17 of that kind of position because my folks would dispute
18 it wholeheartedly.

19 MS. McCORD: I'd like to make an
20 observation.

21 You know, again, our proposal is to
22 ask to replace a prescribed form with another shipping
23 paper. That's how DOT functions. They don't prescribe
24 forms. They tell you what needs to be on the shipping

1 paper. We're sure willing to accept what has to be on
2 the shipping paper because right now what we have to
3 have is this manifest, and then we have to have our
4 business paperwork behind it.

5 What DOT allows all these
6 businesses that are moving wastes or, you know, the
7 hazardous materials to do is not to use a form but use
8 their business information along with the required
9 information for tracking. We don't want to hide
10 anything. We'd love to have you, very clearly, tell us
11 what has to be on the tracking document. We just don't
12 want two pieces of paper.

13 I don't believe that -- If the
14 Agency believes that certain materials should not be
15 appropriately mixed together, that's a whole different
16 issue. We're not here to define what used oil is.
17 That's -- There's 20 years of history of what that is.
18 These aren't new regulations. If somebody wants to do
19 something illegal, whether or not it's being
20 transported on a manifest or business paperwork or
21 shipping papers, it doesn't change it. There's the
22 same vulnerability for mismanagement or proper
23 management.

24 I -- You know, I don't understand

1 how we've gotten off the mark in focusing on the
2 definition of used oil. That's not what we're asking
3 for. We're asking to substitute for a piece of paper
4 with information. And if the Department feels there's
5 elements that are missing or you need to have
6 standardized, you know, pieces of information on those
7 shipments, lay them out. We will abide by that and put
8 it in the regulations.

9 HEARING OFFICER FOX: Ms. Flowers, you
10 had a word.

11 MS. FLOWERS: The problem is is that 739
12 does not require that. And therefore, the only thing
13 that 739 is good for is to -- is for shipments of used
14 oil. That is why we have a manifest --

15 MS. McCORD: Tell us what data elements
16 you want.

17 MS. FLOWERS: We can't. It's not in the
18 law.

19 MS. MANNING: Excuse me? I don't
20 understand that.

21 MS. FLOWERS: The 739 tracking
22 requirements do not have specificity to require what
23 you're asking, "Just tell us what we want." As it is
24 now, it is not going to require those elements that we

1 require in the manifest.

2 MEMBER RAO: Ms. Flowers, can I ask a
3 question?

4 In terms of how this used oil
5 mixture is managed, ultimately, after it's transported,
6 would that change under your interpretation as compared
7 to what NORA is proposing? You know, like, if they mix
8 paint with used oil at the generator site and it is
9 considered used oil under 739, how, you know, would
10 that be managed under 739? Under your interpretation,
11 if paint is mixed with used oil, will it be managed
12 differently?

13 MS. FLOWERS: It still must be managed
14 under 808 and 809. I mean, the point is is that we
15 need to keep these two separately. I mean, why are
16 they putting used oil and special waste together? I
17 mean, they can both be recycled.

18 So what we're saying is that, you
19 know, if we allow any part of used -- of the special
20 waste to be commingled with used oil and all of sudden
21 now it doesn't need a manifest, the economic
22 consequences of that is everyone will now put used oil
23 and their special waste together because now they no
24 longer have to have a manifest or comply with 808 or

1 809. And so now you've effectively gotten rid of the
2 special waste regulation, and you also now have
3 transported it to a non-permitted facility, whereas a
4 special waste has to be permitted inside a facility.

5 MR. LENZ: I can answer why we would do
6 that. I mean, if 739 supposes that it's going to be
7 burned for energy recovery. What we would like to
8 allow are wastes that are compatible with the used oil,
9 that have a similar BTU value as used oil, that will
10 pass the used oil EPA specification test, that will
11 pass the ASTM used oil performance test. If they're
12 generated by the same generator and they can be
13 recycled in the same manner along those lines, yes, we
14 would like to treat those materials as used oil.

15 MS. McCORD: And the reason for that is
16 you've got to look at the logistics associated with the
17 collection of material. I think we all agree that the
18 collection of these materials from as many generators
19 at the most cost-effective way is the best thing. It's
20 really a business decision on what to commingle. And
21 if the regulations provide for, you know, mixtures of
22 non-hazardous waste with used oil, that's a business
23 decision that all our companies make every day.

24 We -- Right now, because of the

1 costs accrued, we are always trying to keep as much oil
2 separate. But, remember, this universe of used oil
3 includes oily waters, okay. So the guy that has the
4 auto dealer that has the trench drain in front and has
5 oil and water separated in there, we're coming in with
6 our vac truck pulling grit, oil, and water out of
7 there. That has to go to a certain kind of treatment
8 location facility that's different than that 55-gallon
9 drum of used oil from Jiffy Lube. That oil looks
10 different. We're probably selling that 55-gallon drum
11 of oil from -- that we're getting from Jiffy Lube even
12 though we're -- and we are paying someone to take that
13 oily water.

14 Again, you know, the price of all
15 that and the transportation and the kind of service we
16 provide, they dictate about what our businesses are
17 doing for customers in Illinois.

18 So if it makes sense that while
19 we're out at that industrial location, that they've got
20 some other industrial waste water that is not
21 classified as used oil, we will make that business
22 decision. We have to make disposal arrangements,
23 treatment arrangements for that material with the end
24 facility. We know what the economics are.

1 And, generally, the oily waters --
2 or oily water mixtures are not coming into our
3 locations via containers. They do sometimes, sometimes
4 with 350-gallon totes; but, generally, it's a
5 bulk-volume truck. You know, it's about the size of a
6 diesel-fuel truck that would deliver diesel fuel to a
7 home that is vac'g out these, you know, units. Some
8 people have really big vac trucks.

9 But the logistics and costs
10 associated would change dramatically. You're not going
11 to be able to take those wastes out in 55-gallon drums.
12 You know, the customer needs help in getting that
13 material, you know, out of the oil/water separator, out
14 of a tank or a larger, you know, unit that they've got
15 in their location.

16 So to us, if the regulations allow
17 commingling of non-hazardous wastes with used oil, that
18 is a business decision. It affects what we charge our
19 customers. It affects what we take. And, you know,
20 the system that Dan Appelt from Safety-Kleen describes
21 where they prequalify these waste streams, my company
22 has an identical system where if it's not standard used
23 oil, we take a prequalification sample. We take a
24 profile that's completed by the customer on the

1 chemical analysis of, you know, what built that waste
2 stream; and, you know -- But the bottom line is, you
3 know, we get to choose that by the regulatory structure
4 that's out there.

5 MS. FLOWERS: And, again, I'd just like
6 to interject that what they do might be great and
7 wonderful, but there is no regulation of that. And
8 therefore, you know, you're going to have somebody
9 who's not maybe as diligent as her. I mean, I know the
10 best companies do show up at these hearings, and there
11 are a lot of companies that do not. You're opening the
12 door to allow them to do things, you know, that we do
13 not think are appropriate. There are things that are
14 considered used oil and they're not appropriate to be
15 burned.

16 MS. McCORD: But let's step back and
17 look at what we are asking for. We are not -- If you
18 believe that a different regulatory scheme needs to be
19 developed to properly manage these commingled
20 non-hazardous with used oil, you're definitely stepping
21 away from what the Federal program is under 40 CFR 279.
22 It is not an equivalent program.

23 Now, you know, if the State wants
24 to develop it, that's great. We're not asking for you

1 to redefine that process. We're just asking for a
2 change of a shipping paper. You know --

3 MEMBER RAO: That's where I was going
4 with my question.

5 Now, is it just the shipping papers
6 that are in question here --

7 MS. McCORD: Yeah.

8 MEMBER RAO: -- or how this mixture is
9 managed, ultimately? You know, from what Ms. Flowers
10 was saying, you know, if special waste is mixed with
11 used oil, then it seems like this whole special waste
12 regulations that we have pretty much becomes
13 meaningless. So it seems like there is bigger
14 implications --

15 MS. FLOWERS: Right. We're not just
16 talking about a piece of paper. We're talking about
17 what -- we are glad to say, "Yes, you can have" --
18 "You'd be out of the manifest regulations if you have
19 used oil," but we cannot say that about used oil and
20 special waste mixtures because it just isn't. It will
21 completely destroy the special waste regulations as
22 they are.

23 MS. MANNING: As to used oil and
24 anything pursuant to 739, we really need to consider

1 and the bulk, I think, that the Agency is missing here
2 is that 739 really took that which can be managed under
3 739 out of the realm of special waste for purposes of
4 tracking.

5 MS. FLOWERS: And we would disagree.
6 The states can be more stringent. That is what the
7 Federal government decided. And, also, the Federal
8 government was bringing something into regulation, not
9 taking it out of regulation. And by what we would be
10 doing here, we would be having something now less
11 strict, and that wasn't the Federal government's
12 thinking. They were bringing something in that had not
13 been regulated. They were saying, "Now, we are going
14 to regulate this because it has used oil in it."

15 MS. MANNING: And I would suggest that
16 the Board read the preamble in the Federal Register
17 because I would suggest to you that that's an
18 inaccurate statement of the Federal government's policy
19 in developing the used oil regulations. Those used oil
20 regulations were largely argued for by NORA and by
21 these very companies to take used oil and treat it
22 separately from any sort of waste for the very purpose
23 of making it economically viable and taking it out of
24 the waste stream and putting into a marketable

1 commodity --

2 MS. FLOWERS: We agree.

3 MS. MANNING: -- which is what these
4 companies do.

5 MS. FLOWERS: We agree with that, but
6 we're talking about the special waste.

7 HEARING OFFICER FOX: Let me interject
8 if I could --

9 MS. MANNING: We're talking about used
10 oil.

11 HEARING OFFICER FOX: -- in order to
12 proceed efficiently. The parties have been developing
13 this issue with these different positions very well,
14 and if I may oversimplify, to summarize, it's
15 generally, very generally, the Agency's position -- and
16 I'll certainly give attention to the contrary
17 position -- that the language that NORA has proposed
18 would, in effect, give an incentive to mix various
19 special wastes with used oil in order to avoid special
20 waste requirements that might apply to them.

21 MS. FLOWERS: Correct.

22 HEARING OFFICER FOX: And NORA's
23 position is that -- among other views, that there is a
24 strong, viable market for used oil for the use in

1 energy recovery and that the demands of that market
2 would not, in fact, provide that incentive because, as
3 you stated, it needs to be -- to have the energy
4 characteristics necessary for sale in that market.

5 What I'd like to propose --

6 MS. MANNING: If I could just add one
7 more thing to NORA's point, is that the commingling is
8 already allowed under 739.

9 HEARING OFFICER FOX: And what I want --

10 MS. FLOWERS: And I would add, there is
11 no commingling allowed. There's regulation of
12 materials that have been contaminated by used oil.

13 HEARING OFFICER FOX: And I didn't, by
14 any means, state your positions exhaustively. What I
15 wanted to do, frankly, to keep moving efficiently, is,
16 Ms. Manning, you were proceeding through
17 Mr. Dragovich's testimony and had some questions.
18 Certainly, we'll give all of your panel its opportunity
19 to make any statements or questions it would like, but
20 if I could redirect you to some of his statements and
21 to questions on that and move forward, I know that the
22 Board and staff would appreciate that.

23 But, again -- it's worth
24 restating -- I did not mean to cut you off or

1 otherwise --

2 MS. MANNING: No. That's good. I'm
3 glad you redirected us.

4 Could you just give us a few
5 minutes?

6 HEARING OFFICER FOX: Absolutely. Give
7 me a signal when you're ready, and we'll move ahead.

8 MS. MANNING: Okay. I just have a
9 couple more questions.

10 HEARING OFFICER FOX: Ms. Manning,
11 proceed as soon as you're ready.

12 MS. MANNING: Okay. Ted, you'd agree,
13 would you not -- I mean, 739 not only references U.S.
14 DOT tracking. So the U.S. DOT tracking that we're
15 talking about actually is required under Part 739?

16 MR. DRAGOVICH: DOT -- The requirements,
17 I know they vary for hazardous materials and materials
18 that do not meet the definition of hazardous materials,
19 and it seems like -- I'm not sure why we got on this.
20 But what we're talking about is whether it's necessary
21 to continue the use of a special waste manifest versus
22 whether the used oil tracking documents are the same --
23 or function in the same way. And our point in this
24 whole matter is that for materials that aren't used

1 oil, we don't think the used oil tracking system is
2 adequate to do that.

3 MS. MANNING: And our whole point is
4 simply that if it's used oil under 739 as applied,
5 tracking is the appropriate vehicle.

6 MS. McCORD: If you look in the used oil
7 management standards of 739, it references very
8 specific elements that need to be in that
9 transportation paperwork. It also references in each
10 of these sections the DOT requirements. So there's two
11 elements. There's not just a list of the things, but
12 it's the DOT's side together that, I believe, gives you
13 the information that you need for those shipments.
14 That is what happens in the rest of the nation except
15 for three other states.

16 MS. FLOWERS: Could you be specific
17 about where that's at?

18 MS. McCORD: Are you asking to see if
19 they're actually in the your regulation, the reference
20 to the DOT?

21 MS. MANNING: If you look at 739.143(b),
22 there's U.S. DOT requirements. Used oil transporter
23 must comply with all applicable requirements from the
24 U.S. Department of Transportation in 49 CFR 171 through

1 180.

2 MS. McCORD: And we, as businesses,
3 would have the obligation even if that reference wasn't
4 there. We have that program. It is the system for
5 movement of hazardous materials in the United States.

6 MS. MANNING: And it further goes on, a
7 person transporting used oil that meets the definition
8 of a hazardous material in 49 CFR 171.8 must comply
9 with all applicable U.S. Department of Transportation
10 hazardous material regulations in 49 CFR 171 through
11 180.

12 HEARING OFFICER FOX: Ms. Manning and
13 Ms. Flowers, I believe Member Moore had a question.

14 MEMBER MOORE: I'm trying to stay with
15 each of you here. You're doing a great job, and so now
16 I hear what you just read about the U.S. DOT
17 requirements (b), from section 39.143.

18 Okay. Now, show me where it will
19 address their issues. This is hazardous. They're
20 talking about special waste that they have concerns
21 about. Where is -- Where do you provide that
22 information already existing that we can find here
23 that's already written? I want the special waste
24 section.

1 MS. MANNING: It wasn't in the special
2 waste section. It's in the tracking of any used oil.

3 MEMBER MOORE: Okay. So where --

4 MS. MANNING: So 739.1- -- I think it
5 was 146 I read doesn't just apply to hazardous waste.
6 Just the second sentence talks about hazardous waste.
7 So that requirement is as to any product that's managed
8 under 739.

9 A used oil transporter must comply
10 with all applicable requirements. So that first
11 sentence means that they have to comply with the U.S.
12 DOT requirements. And then the second sentence talks
13 about hazardous material. So in other words, the
14 identification of whatever it is on the truck and where
15 it comes from --

16 MEMBER MOORE: We're not with you here.
17 I we went to 739.146, tracking.

18 MS. MANNING: I'm sorry. 739.143(b).
19 sorry.

20 MEMBER MOORE: Okay. So all the U.S.
21 DOT requirements -- So that's what you're referring to
22 back to 739?

23 MS. MANNING: Yes, correct.

24 MEMBER MOORE: Okay. So that's what

1 what's on the --

2 MS. MANNING: Correct, correct, correct.

3 MEMBER MOORE: So the section that
4 they're specific about relates to the special waste.
5 Is that -- that's the 808 and -- Right? Those are the
6 manifests in 808 and 809 or whatever?

7 MS. MANNING: If I might, I think the
8 problem here is that the Agency's issue appears to be
9 not so much about manifesting but about management.
10 And our point is 739 of the Federal rules prescribe how
11 industry is supposed to manage used oil, and if they're
12 managing used oil in accordance with 739 -- and used
13 oil, just used oil -- query whether any part of that
14 808 and 809 manifesting is applicable.

15 Where they're coming from is they
16 want to hook back into 808 because 808 preexisted 739.
17 And our point is when 739 came into being, that is the
18 way someone manages used oil.

19 MEMBER MOORE: And you are going to give
20 us the DOT papers that are going to --

21 MS. MANNING: Yes, all of the tracking
22 information from all four companies, you'll have their
23 tracking information that they do on a daily basis
24 every time they pick up a load. Two of them, you'll

1 get today; and two of them, you'll get --

2 HEARING OFFICER FOX: And that issue has
3 arisen at the first hearing, and in speaking about
4 procedures before, you let us know that those would be
5 coming -- at least two of them coming in as exhibits
6 today.

7 MS. MANNING: Yes.

8 HEARING OFFICER FOX: Great.

9 MEMBER MOORE: Do you have a blank one?

10 MS. McCORD: I think Safety-Kleen has
11 blanks, and we've got mock-ups of fake customers just
12 so you could see what it would like.

13 HEARING OFFICER FOX: And at the risk of
14 reading your mind, I suspect that those actual tracking
15 forms that you are prepared to admit may illustrate
16 some of the questions posed --

17 MEMBER MOORE: Or may not, whichever --

18 HEARING OFFICER FOX: But --

19 MS. FLOWERS: And I would just like to
20 restate that no matter what's on those tracking
21 documents, it is only what's required in 739 that
22 anyone has to comply with.

23 MS. MANNING: Which, as I reiterate, are
24 the U.S. DOT documents which are all --

1 MEMBER MOORE: Which everyone has to
2 comply with?

3 MS. MANNING: Correct.

4 HEARING OFFICER FOX: So noted,
5 Ms. Flowers.

6 Ms. Manning, is this perhaps a good
7 time to offer those into evidence while we're on the
8 subject?

9 MS. MANNING: Yes, and I'll offer their
10 testimony as well and subject them to any questions.

11 HEARING OFFICER FOX: And if it's best
12 to do that at once, that's fine.

13 MS. MANNING: Mr. Lenz had a question,
14 though.

15 HEARING OFFICER FOX: Yes, Mr. Lenz.

16 MR. LENZ: For the Agency.

17 When you look under here at
18 739.110, which basically deals with the mixtures, we'll
19 take an example of one: 739.110(b)(3), conventionally
20 exempt small-quantity generators hazardous waste.
21 Mixture of used oil --

22 MEMBER MOORE: Excuse me. Does anybody
23 have an extra copy? I'm embarrassed to say that I
24 didn't bring that with me.

1 MS. McCORD: You can have my copy.

2 MS. MANNING: Mine's marked. You'd
3 better take hers.

4 MR. LENZ: A mixture of used oil and
5 conventionally exempt small-quantity generator
6 hazardous waste regulated under 35 Ill. Adm. Code
7 721.105 is subject to regulations as used oil under
8 this part.

9 Is the Agency stating that they
10 don't think that subject in this regulation is used
11 oil?

12 MR. DRAGOVICH: No. We believe that it
13 is.

14 MR. LENZ: So I guess, what -- In this
15 instance, then, if it's -- if the Agency agrees that it
16 can be regulated and managed as used oil, why is the
17 manifest -- no-manifest issue pertinent in that
18 instance? It seems to me like we're looking more --
19 that you're concerned about management more than
20 manifesting. But if you're saying it can be managed as
21 used oil and regulated as used oil, then why is a
22 special waste manifest required on a stream of that
23 type?

24 MR. DRAGOVICH: For one thing, you're

1 talking about small-quantity exempt waste, and I think
2 there was a presumption on the U.S. EPA's part that
3 that would be a small part of used oil.

4 MR. LENZ: In this particular instance,
5 yeah.

6 MR. DRAGOVICH: The way this proposal
7 goes now, you could put a small amount of used oil with
8 a large amount of non-hazardous special waste.

9 MR. LENZ: Well, I'm trying to stick to
10 this particular instance because there's all other
11 kinds in here they've outlined in the mixtures.

12 But in this particular instance,
13 where you've got a generator mixing conventionally
14 exempt hazardous waste in with the used oil, why do we
15 need to regulate that mixture as a special waste when
16 it says here it's supposed to be regulated as used oil?

17 MS. FLOWERS: I'm not sure I understand
18 your question because I don't think --

19 MR. LENZ: Aren't you saying that that
20 should be manifested -- the amount of hazardous waste
21 in there should be manifested as not a special waste
22 but a hazardous waste?

23 MR. DRAGOVICH: No. And there's nothing
24 in this proposal, the way I understand it, that says

1 something is no longer special waste. You said it
2 wouldn't be a special waste.

3 MR. LENZ: No. It says it's subject to
4 regulation as used oil. Are you saying that it is or
5 isn't? It is subject to regulation as a special waste
6 or hazardous waste, if it's hazardous, and used oil or
7 one or the other or both?

8 MS. McCORD: Clarify, Ted. I think
9 you've talked -- the Agency's talked about these
10 mixtures of things that aren't used oil but could be
11 viewed as special waste and used oil. But in the case
12 of Mike's citing, he's actually talking about
13 conventionally exempt hazardous waste, and so it
14 doesn't seem that the Agency's worried about that
15 mixture. But, you know, if we're reading --

16 MR. LENZ: Well, we could go up -- They
17 also list the same thing with non-hazardous waste or
18 ignitable-only hazardous waste that's not ignitable
19 once it's mixed. So I mean, you can take a lot of
20 these different things, but you're coming back to the
21 same issue.

22 MS. McCORD: I'm confused why --

23 MR. LENZ: How do you want to regulate
24 it?

1 MS. McCORD: -- the shift to a shipping
2 paper instead of a prescribed form that satisfies both
3 regulatory and business needs would drive a change in
4 behavior because, today, those mixtures can occur and
5 they do occur. And if the Agency feels they're
6 inappropriate, it should be taking an enforcement
7 action against those individuals who are involved in
8 that. The shipping papers will not change people want
9 to do things wrong. But we're saying it is an
10 unnecessary expenditure of resources in the state of
11 Illinois that is not done in most other states, and
12 this program has been running for 20 years. There
13 haven't been great things happening in these other
14 states that allow shipping papers to be used for used
15 oil.

16 MS. FLOWERS: Is there a question?

17 MR. DRAGOVICH: Yeah. I'm not sure if
18 there is one.

19 MS. MANNING: No --

20 MS. McCORD: My question is: What's the
21 fear that we're going to be become like Indiana and
22 Ohio?

23 MS. MANNING: And I would further ask a
24 question. Does the Agency understand of its position

1 drawing a bright line that industry has never drawn
2 between the definition of used oil as found at 739.100,
3 which, Ted, I think you think anything that fits that
4 definition can be exempt from manifesting -- a
5 distinction between that and what is -- has been
6 treated as used oil by this industry for umpteen years
7 under 739.110? By taking the position the Agency is
8 taking, do you understand that you're drawing a line
9 that industry is not going to understand when they need
10 manifesting and when they don't need manifesting
11 anymore?

12 HEARING OFFICER FOX: Why don't we have
13 you answer that question as well as you can. Then we
14 might have an opportune moment to deal with the
15 admission of the exhibits that you referred to. We've
16 been at it for about 90 minutes. Then maybe we can
17 take a brief five- to ten-minute break after taking
18 those two steps.

19 MR. CAHNOVSKY: May I ask one question
20 just for clarification?

21 HEARING OFFICER FOX: Yes.

22 MR. CAHNOVSKY: If one of your members
23 goes to a shop and picks up used oil and puts it in a
24 vac -- a tanker truck, how -- under your proposal, how

1 would the tracking paper be?

2 MS. McCORD: It would follow the
3 regulations.

4 MR. CAHNOVSKY: Under 739?

5 MS. McCORD: In addition with the DOT
6 piece on top of that.

7 MR. CAHNOVSKY: Then he goes down the
8 street to another service and picks up that used oil.

9 MS. McCORD: Yes.

10 MR. CAHNOVSKY: That's another tracking
11 record?

12 MS. McCORD: Right.

13 MR. CAHNOVSKY: Then he goes across the
14 street and picks up 500 gallons of antifreeze in the
15 same truck.

16 MS. McCORD: Right.

17 MR. CAHNOVSKY: How would you regulate
18 that?

19 MS. McCORD: That's still regulated the
20 same way, as used oil, if the antifreeze was
21 non-hazardous. And the shipping description would
22 depend on the quantity relative to each of those
23 additions into the truck.

24 So at some point what happens when

1 you have multiple loads -- or multiple components of a
2 load like that into a bulk truck, you carry the
3 individual shipping papers, slash, manifests. And at
4 some point you can also then put a cover document on
5 that if you believe that the collective shipping
6 description has changed.

7 MR. LENZ: Are we doing that? Are any
8 of the companies mixing antifreeze with used oil?

9 MR. CAHNOVSKY: Some are. I've seen
10 some, yes. So you're saying that antifreeze --

11 MR. DRAGOVICH: You're losing the value
12 of both of them.

13 MR. CAHNOVSKY: It doesn't have to be
14 manifested anymore? It doesn't need a manifest?

15 MS. MANNING: I think what we're saying
16 is -- the question is whether that's appropriate under
17 739. It's not a question of manifesting.

18 MS. McCORD: Well, load would be -- The
19 shipping description on that load would be dictated by
20 the proper shipping description for the result, you
21 know.

22 MR. CAHNOVSKY: So you would pick that
23 up on a manifest, say a special waste manifest --

24 MS. McCORD: It's come into the truck in

1 a manifest.

2 MR. CAHNOVSKY: Okay. It's got Illinois
3 special waste.

4 MS. McCORD: Right.

5 MR. CAHNOVSKY: You've got three
6 tracking records and one Illinois manifest on that one
7 truck.

8 MS. McCORD: That's right.

9 MR. CAHNOVSKY: And I'm not sure I've
10 got a problem with any of this so far.

11 Then it goes to the lot.

12 MS. McCORD: It could go two places. It
13 could go --

14 MR. CAHNOVSKY: Please, let me give you
15 my example because I've seen this.

16 It goes to a lot, and then it's
17 off-loaded into another vehicle thus you have a
18 transfer of a special waste and other things --

19 MS. McCORD: It could go to a rail car,
20 or it could go to the treatment facility.

21 MR. CAHNOVSKY: Those types of
22 facilities, to me, requires a permit, and I've seen a
23 lot of this stuff being transferred to facilities that
24 don't have permits.

1 MS. McCORD: So how does the shipping
2 paper change, then?

3 MR. CAHNOVSKY: I'm just trying to get a
4 clarification.

5 MS. McCORD: Okay.

6 MS. MANNING: Well, we would -- You
7 know, that's not the issue before the Board. That's
8 not the issue before the Board, and, you know, it's not
9 a debate that I think we need to have. I don't think
10 we need to have a debate over what ought to be
11 permitted and what ought to not be permitted --

12 HEARING OFFICER FOX: Let me redirect
13 you --

14 MS. FLOWERS: It's a logical
15 consequence.

16 MR. CAHNOVSKY: To me, it would make
17 things very clear and for the better.

18 HEARING OFFICER FOX: Ms. Manning had
19 one question before we were going to deal with some
20 documents and take a break. Did you want to restate
21 that or rephrase it or ask the court reporter to repeat
22 it? I think it was directed chiefly to Mr. Dragovich;
23 is that correct? Or have the two of you, in effect,
24 posed and had answered the question.

1 MS. MANNING: I think we've pretty much
2 posed and answered the question.

3 I think -- Just give me a second.

4 MS. FLOWERS: Can I just say one thing?
5 In what was testified to earlier, again, 739 tracking
6 requirements do not require that much to be tracked.
7 So there's no requirement to show that there's any
8 special waste entered in there. All it requires is the
9 quantity of used oil accepted.

10 MEMBER MOORE: Is that true of the DOT
11 tracking requirements as well, the ones that are
12 listed --

13 MS. FLOWERS: I don't know the DOT
14 requirements, but DOT could change their requirements
15 tomorrow. I mean, I --

16 MEMBER MOORE: I mean, I don't know them
17 either. I just know that they are listed throughout.

18 MS. McCORD: You have to have the
19 volume. You have to have what it was put -- the type
20 of container. If it was a tanker truck, it would be
21 TT. If it's a container -- you know, a drum, it's a
22 DR -- I mean, it's -- There's a prescribed system for,
23 you know, volume, you know, who picked it up, who's the
24 transporter.

1 So the list of things that you're
2 looking at in 739 says only a component of it. You
3 have to put it together with what the DOT requires to
4 understand what these shipping papers are that we
5 billed, and that's why we brought some of the examples
6 in.

7 HEARING OFFICER FOX: Go ahead and
8 finish that thought.

9 MS. McCORD: If you don't feel it's
10 complete, let's modify the list, you know.

11 MEMBER MOORE: Can I just ask one
12 question? Because I'm not the lawyer in the group, so
13 I sometimes have practical questions.

14 Do I understand that all of these
15 references to the DOT tracking materials are something
16 that are required for everything and they are
17 throughout the statute, so they are always available to
18 you all when you get the product? There will be a DOT
19 tracking paper with the product?

20 MR. CAHNOVSKY: No --

21 MS. MANNING: That is correct.

22 MR. CAHNOVSKY: No. When I go do an
23 inspection and I see whatever was given -- that the oil
24 company -- or the transporter is given to the

1 generator, it's just a receipt. The one I saw
2 yesterday was --

3 MR. LENZ: No, no. The transporter is
4 required to have it, not the generator.

5 MS. McCORD: Right. You're looking in
6 the wrong place for the wrong thing. I mean, it's
7 there, but you'll find that in the inspection of the
8 transporter.

9 MR. CAHNOVSKY: So he fills that out
10 each time he picks it up? He updates that?

11 MS. MANNING: Yes. And if he doesn't
12 you can find him in violation of 739.

13 MR. LENZ: It's a DOT requirement,
14 really, more than --

15 MEMBER MOORE: It is a DOT requirement.
16 I understand that. But I was -- Because I'm not the
17 lawyer, I want to understand, since I'm seeing all of
18 these DOT references in there, that they should be able
19 at all times to you because they are integrated into
20 our statute, right?

21 MS. FLOWERS: The DOT requirements were
22 in effect when the manifesting was adopted. So I mean,
23 obviously, that did not take into consideration -- I
24 mean, it obviously was not the concern -- I mean, I

1 don't know the DOT, so --

2 MEMBER MOORE: That's for sure. We need
3 those documents.

4 HEARING OFFICER FOX: And this would be
5 the best time to propose your admission.

6 MS. FLOWERS: I do think we need to see
7 them since it's a relevant part all of a sudden of this
8 rule-making, although --

9 MS. MANNING: Well, what I'm going to
10 put into evidence are the actual tracking documents for
11 the various companies.

12 MS. McCORD: Shipping papers.

13 MS. MANNING: The shipping papers.

14 MS. FLOWERS: Which, again, I just have
15 to emphasize is an example of their business practice
16 but not everyone's.

17 MEMBER MOORE: Well, the DOT are
18 everyone's.

19 MS. FLOWERS: But this is obviously not
20 the DOT.

21 MEMBER MOORE: You are submitting DOT
22 papers, right, official DOT papers?

23 MS. McCORD: These comply with the DOT
24 requirements. We have to do that for our business. We

1 can't move these materials without complying with DOT
2 requirements.

3 MEMBER MOORE: And that's true of small
4 operators, large operators --

5 MS. McCORD: There's no exemption for
6 small operators. It's driven by the type of vehicles,
7 the conveyance, and there's requirements for drivers.
8 I mean, there's containers --

9 MS. FLOWERS: Go ahead. We'd like to
10 have a comment here.

11 HEARING OFFICER FOX: Why don't -- Do
12 you have a copy that you can supply to the Agency,
13 Ms. Manning?

14 MS. MANNING: Yeah. I'm just going to
15 mark them as Exhibits. We're on 12?

16 HEARING OFFICER FOX: I can do that if
17 it will save you a moment.

18 MS. MANNING: This is what Safety-Kleen
19 uses.

20 MS. FLOWERS: If we can direct your
21 attention to Attachment 3 of Chris's testimony, there
22 is a manifest in there that says this is not U.S. DOT
23 or U.S. EPA hazardous material. So it would not be
24 required.

1 MS. MANNING: Excuse me. I missed that.

2 MR. LENZ: Well, to comment on that
3 comment, there's certain -- DOT requirements apply to
4 anything that's shipped regardless of what its
5 classification is. What that's referring to is that
6 it's not -- it may not be regarded as a hazardous
7 material, but it still falls under DOT jurisdiction.

8 MEMBER MOORE: So it's still listed; is
9 that what you're saying?

10 MS. McCORD: There's another layer of
11 requirements if it's an additional -- if it's also
12 classified as a DOT hazardous material.

13 HEARING OFFICER FOX: What you're
14 suggesting is there's a classification issue and then
15 there's a separate shipping issue?

16 MS. McCORD: Correct.

17 MEMBER MOORE: And that's explained on
18 the bottom under the review comments.

19 MEMBER RAO: I had one question about
20 these DOT requirements.

21 In Section 739.143 where it says
22 that the transporter must comply with all applicable
23 DOT requirements, when you go to the tracking section
24 under 739.146, it doesn't say that you also have to

1 maintain that DOT records as part of the tracking.

2 MS. McCORD: It doesn't say it there,
3 but it is one of the requirements for DOT. There is a
4 record-retention obligation associated with those
5 shipping papers. We have to retain those documents,
6 you know, prescribed by their regulations.

7 MEMBER RAO: But not as part of our used
8 oil regulations, right?

9 MS. MANNING: Well, they reference the
10 Federal regulations. It's found in -- I think if you
11 look at 49 CFR 179 through 180, which is written into
12 739 --

13 MEMBER RAO: It says you must comply
14 with it.

15 MS. MANNING: Right.

16 MEMBER RAO: I was just talking about
17 our own tracking requirements under 739.146 which
18 doesn't say that you have to maintain the DOT records
19 as part of our rules. Would that cause a problem --

20 MS. MANNING: I don't think so.
21 Remember, 739 was created identically and substantively
22 from the Federal rule. So it's exactly the Federal
23 rule.

24 MEMBER RAO: What I'm getting at is, you

1 made this assertion that the tracking under used oil is
2 pretty much comparable to our manifest requirements.

3 MS. MANNING: Yeah. Basically most of
4 the information that you could --

5 MEMBER RAO: Yeah. And it was also
6 stated that some of the requirements under the manifest
7 were covered by the DOT rules. And when I look at the
8 tracking requirements that our used oil rule says the
9 information you need to maintain doesn't include the
10 DOT rules -- I mean, the information collected under
11 DOT regulations.

12 Would that cause any kind of
13 problems if terms of Agency reviewing that information
14 if it wants to, is what my concern is.

15 MS. MANNING: Oh, I wouldn't think so at
16 all.

17 MS. McCORD: We typically have
18 inspectors walking in our operations and asking for DOT
19 records. That's very common. And we produce those.
20 We have a record-retention obligation under DOT in
21 addition to the record-retention obligations associated
22 with the Federal regs --

23 MEMBER MOORE: But that's at your end.
24 That's at the collector and the transporter, but then

1 there's the facility --

2 MS. McCORD: That's right.

3 MEMBER MOORE: -- where they are trying
4 to discern what's there.

5 Will the DOT records be with the
6 product right till the end? When do they leave?

7 MS. McCORD: The receiving facility will
8 have their own record-retention obligations. It could
9 be driven -- Do you know what your obligations are
10 for -- I don't have permitted facilities in Illinois,
11 so --

12 MEMBER MOORE: So we have to find out if
13 they'd be available for them at an inspection at a
14 site.

15 MR. APPELT: At a terminating facility
16 or a generator?

17 MEMBER RAO: Generator or terminator.

18 MR. CAHNOVSKY: Well, at the generator
19 facility, when I go there, sometimes I see used oil and
20 I see a manifest. Sometimes I see this sheet right
21 here. And then sometimes I see almost a handwritten
22 piece of paper for used oil. I see the gamut.

23 And with the one I saw yesterday,
24 it was just the address and handwritten 180 gallons,

1 \$90, and that's all it had on it. It was a receipt,
2 and that was all the information that was left with the
3 generator. I didn't know where it went.

4 MS. McCORD: But whether or not -- A
5 manifest requirement versus a shipping paper
6 requirement wouldn't have changed that. If it's not
7 complete, it's not complete.

8 MR. CAHNOVSKY: Right. But I'm just
9 saying, that's what they're out there doing.

10 MS. McCORD: And that's why we need
11 inspections because there are people who don't do
12 things right.

13 MR. CAHNOVSKY: And the tracking
14 document for used oil -- I know it was 180 gallons of
15 used oil. I saw the tanker. I know it was used oil.
16 I think that 739 tracking document would be a fine
17 document for that.

18 HEARING OFFICER FOX: Why don't we deal
19 with the paper that we've got in front of us, if I may
20 interject. The first I've got is, in the upper
21 left-hand corner, labeled "Safety-Kleen"; and in the
22 lower right-hand corner on a vertical axis, it's
23 labeled "Oil Recovery Service," slash, "Sales
24 Acknowledgement."

1 I believe I saw Ms. Manning supply
2 at least one copy of that to the Agency; is that
3 correct?

4 MS. FLOWERS: Yes.

5 HEARING OFFICER FOX: Did you intend to
6 move to admit this as an exhibit?

7 MS. MANNING: I'll move that as
8 Exhibit -- I think we're at Exhibit 12?

9 HEARING OFFICER FOX: That's correct.
10 Is there any objection from the
11 Agency?

12 MS. FLOWERS: No.

13 HEARING OFFICER FOX: None heard, the
14 oil recovery service/sales acknowledgement labeled
15 "Safety-Kleen" is as admitted as Hearing Exhibit
16 No. 12.

17 MS. MANNING: And I don't know whether
18 you want to do this or not, but Mr. Appelt is willing
19 to speak to the document and explain it and answer any
20 questions about it.

21 Do you want to wait till they're
22 all --

23 MEMBER MOORE: Would you like that?

24 MS. FLOWERS: I don't see where any of

1 this is required. I mean, we have the requirements
2 under 739. It's fine that this document was prepared.
3 But, I mean, unless I saw somewhere where they're
4 complying with somebody and this -- you know, some
5 regulations of Illinois that says this is what you have
6 to have on your tracking document, I don't see how this
7 relevant. This is just -- This is just a company who
8 is obviously a good business who's prepared this form
9 for their records, but this is not what all companies
10 would prepare.

11 MS. MANNING: I would point out that
12 this is the very company that Agency testimony brought
13 before the Board with the only examples of violations
14 or misuse or mismanagement, if you will, of used oil
15 regulations which is why Safety-Kleen is here, is
16 because the Agency presented all these examples about
17 allegedly bad things Safety-Kleen did back in the '90s.
18 So I think it's absolutely relevant for Safety-Kleen to
19 be able to explain to the Board how it tracks used oil.

20 HEARING OFFICER FOX: And while I didn't
21 hear that as a motion to exclude, I think one of the
22 key elements of NORA's proposal is the duplication of
23 various requirements; and perhaps the witness can help
24 explain how and to what extent that does occur, which I

1 think the Board will be very interested in hearing as
2 it evaluates the proposal.

3 I've got two other exhibits
4 provided by Ms. Manning. This is an approximately
5 15-page document labeled, in the upper left-hand corner
6 "Crystal Clean Work Order."

7 And, again, I believe that at least
8 one copy of this was supplied to the Agency for its
9 review? Have you received a copy of the --

10 MS. FLOWERS: I'm sorry. Yes, we have.

11 HEARING OFFICER FOX: Is there a motion
12 from NORA to admit that as a hearing exhibit?

13 MS. MANNING: I'm sorry. Yes,
14 Exhibit 13.

15 HEARING OFFICER FOX: Very well. Is
16 there any objection to admitting that Safety-Kleen work
17 order as hearing Exhibit No. 13?

18 MR. LENZ: It's Crystal Clean.

19 HEARING OFFICER FOX: Crystal Clean.
20 That's my mistake. I apologize.

21 MS. FLOWERS: No.

22 HEARING OFFICER FOX: Hearing no
23 objection, that work order is admitted as Exhibit
24 No. 13.

1 And, Ms. Manning, you had given me
2 one other item; in the upper left-hand corner, straight
3 bill of lading. It's clearly Future Environmental --

4 MS. MANNING: That's correct.

5 HEARING OFFICER FOX: -- although we've
6 lost a couple of letters on the margin.

7 MS. MANNING: That's correct.

8 HEARING OFFICER FOX: I, again, believe
9 that you have supplied a copy of that to the Agency.
10 Is there a motion to admit that as Exhibit No. 14?

11 MS. MANNING: Correct. I would move
12 that we put that in as Exhibit No. 14.

13 HEARING OFFICER FOX: Is there any
14 objection from the Agency on this straight bill of
15 lading, Future Environmental, Inc., admitted as Exhibit
16 No. 14?

17 MS. FLOWERS: No.

18 HEARING OFFICER FOX: Okay. And it will
19 be entered as No. 14.

20 MS. MANNING: And we have
21 representatives from all three of these companies able
22 to answer any questions and/or explain how this is used
23 in practice, whatever is the Board's pleasure.

24 HEARING OFFICER FOX: I proposed a short

1 break about a half an hour ago. Can we break and
2 reconvene in five minutes and we can turn to that if
3 you wish?

4 MS. MANNING: Thank you.

5 HEARING OFFICER FOX: Very good.

6 (A short break was had.)

7 HEARING OFFICER FOX: Thank you for your
8 punctuality returning from a quick break.

9 I've got a couple of procedural
10 questions for the participants. I've received from
11 Ms. Manning the additional testimony both for
12 Ms. McCord and for Mr. Appelt -- Did I pronounce your
13 name correctly?

14 MR. APPELT: Appelt.

15 HEARING OFFICER FOX: Appelt.

16 I have observed Ms. Manning supply
17 a copy of that to the Agency. I'm certain that she
18 would make a motion to admit those as Hearing Exhibit
19 Nos. 15 and 16; is that correct, Ms. Manning?

20 MS. MANNING: So moved.

21 HEARING OFFICER FOX: Would there be any
22 objection from the Agency on admitting those two?

23 MS. FLOWERS: No.

24 HEARING OFFICER FOX: I will grant the

1 motion and admit as Exhibit 15 the testimony of
2 Catherine McCord and introduce as Hearing Exhibit
3 No. 16 the additional testimony of Dan Appelt.

4 Secondly, there have been a number
5 of questions and some discussion about the various
6 requirements, Federal and otherwise, that are placed
7 either on generators, transporters, or other
8 facilities. And I believe it was Ms. Manning's
9 intention to offer Mr. Appelt's testimony specifically
10 on Exhibit No. 12, the oil recovery service and sales
11 acknowledgement.

12 Would there be any objection from
13 the Agency in proceeding at this time with his
14 testimony and any questions that you may have for him
15 then?

16 MS. FLOWERS: We don't object.

17 HEARING OFFICER FOX: No objections
18 noted.

19 And, Ms. Manning, if you'd like him
20 to proceed, that would be great.

21 MS. MANNING: Okay. Before we do that,
22 I just wanted to point out one small sort of response
23 to a question raised by Mr. Rao in exchange with a
24 conversation with Ms. Flowers, and it goes to this

1 whole area that we're going to testify to.

2 The question was when Board rules
3 refer to U.S. DOT rules. You know, is there a problem
4 with that?

5 Two things. One, certainly,
6 anybody can enforce against someone for a violation of
7 these rules and that they've written in other rules,
8 that would be part and parcel of that violation. So an
9 individual company is obligated by that rule as set
10 forth by U.S. DOT. In terms of the U.S. DOT
11 obligations, it's written right into these rules.

12 The second point I wanted to make
13 is Ms. Flowers made the point that, "Well, we don't
14 know what these U.S. DOT rules are, and they may
15 change." I'd just like to point out to the Board, as I
16 know the Board is aware, that these are
17 identical-in-substance rules. And every six months the
18 U.S. EPA changes them, if warranted, by changes that
19 happen Federally and -- You know, I mean, they do it
20 when they need to; but then the Board, of course, every
21 six months, looks at the Federal program to see whether
22 they need to make any changes to correspond with that.
23 So that's really a non-issue. I mean, if they're going
24 to be changed, they're going to be changed, both from a

1 Federal perspective and a State perspective.

2 So out point is, there's a Federal
3 overlap to this that really usurps -- you know, that
4 covers the field, and that's kind of a precursor to the
5 testimony that --

6 MR. LENZ: Can I make one comment along
7 the same lines?

8 HEARING OFFICER FOX: Please go ahead,
9 Mr. Lenz.

10 MR. LENZ: If you read this preamble to
11 the 279 regulations from 1991 or '92 -- I don't
12 remember which one it was -- EPA was very careful to
13 intentionally not require things in the used oil
14 regulations that were required already under other
15 regulations. This was done purposely. They felt that
16 they -- that part of the problem with a lot of
17 regulations is doubling up on regulations and small
18 wording differences between the two that cause
19 problems. So instead of doubling up on anything in
20 that preamble, they basically refer to other
21 regulations that are out there that would cover that
22 issue, and they steered you to those regulations. And
23 that's why it's put together that way.

24 MS. MANNING: Which is why NORA actually

1 takes issue with Ted Dragovich's comment on page 4
2 where he very narrowly interprets these cites, the
3 Federal Register and the pre- -- but narrowly cites the
4 intention of the Federal rules as simply being designed
5 to address used oil contaminated through use.

6 You know, our point is the Federal
7 program was much bigger.

8 MS. McCORD: It is the September 10th,
9 1992 regulation where it modified the used oil
10 management standards, and in that preamble, there is
11 reference to the Hazardous Materials Transportation Act
12 as being interfaced with, you know, other statutes.
13 I've got copies of that preamble if anyone needs that.

14 MS. MANNING: I do as well.

15 And the specific citation is
16 57 Federal Register 41574.

17 MEMBER RAO: Yeah. We would be able to
18 access that.

19 MS. MANNING: Right. Thank you.

20 Dan Appelt is here from
21 Safety-Kleen to indicate how they use the document
22 that's been admitted into evidence as their tracking
23 document. As well, he has submitted prefiled testimony
24 today in response to the Agency's testimony that we

1 received.

2 So, Dan, if you'd like to go ahead
3 and explain --

4 MR. APPELT: The tracking document?

5 MS. MANNING: -- the tracking document
6 and then maybe summarize your testimony as well.

7 MR. APPELT: All right. Well, basically
8 all of our oil customers and vac customers either get
9 one of these documents or an equivalent electronic
10 receipt that -- We have a hand-held electronic device
11 that we service customers with, and basically the same
12 information prints out on that receipt as -- well, the
13 same as what's on here.

14 We identify whether or not it's a
15 customer of the CESQG or an SQG, and that's mainly to
16 do with whether or not a load turns out to have
17 halogens in it, PCBs. But, I mean, you can see that
18 there's a lot of the same information that's on this
19 document as what's on the manifest.

20 MS. MANNING: If I could interrupt, Dan,
21 for a second. I neglected to give the Board the
22 electronic version, so I'm doing that now.

23 He referenced the electronic
24 version of the tracking, and if we could mark that,

1 then, perhaps as Exhibit -- What's next?

2 HEARING OFFICER FOX: It will be No. 17.

3 MS. MANNING: 17. Thank you.

4 HEARING OFFICER FOX: And that's a
5 motion to admit, I'm assuming?

6 MS. MANNING: Right.

7 HEARING OFFICER FOX: Any objection to
8 admitting the Safety-Kleen electronic printout that I
9 understand you have just been handed, Ms. Flowers, as
10 hearing Exhibit No. 17?

11 MS. FLOWERS: No, there's no objection.

12 But what is this again? I'm not --

13 MS. MANNING: Well, he's testifying to
14 that.

15 MS. FLOWERS: -- sure I understand.

16 HEARING OFFICER FOX: And without simply
17 piggy-backing on Ms. Manning, it's my understanding
18 that Mr. Appelt is prepared to testify as to what it
19 contains --

20 MS. FLOWERS: I thought he already said
21 something about it.

22 MR. APPELT: The electronic version that
23 you're looking at is a printout of a receipt -- or a
24 copy of a receipt that the customer gets, and the

1 customer receives a copy of the green document, too,
2 Exhibit whatever.

3 MS. McCORD: 16.

4 MR. APPELT: So whether they get the
5 electronic or what we refer to as the manual document,
6 they receive all of the same information. And there's
7 a description of the material that we pick up, the
8 amount, and, you know, the date and where it was sent.
9 And in addition, you know, transporter ID, generator
10 ID, and signatures. I mean, this is a tracking
11 document. We use a similar form for tracking hazardous
12 waste from CESQGs as well.

13 So it's -- For our intents, I mean,
14 I think for IEPA's purposes, too, this document would
15 more than adequately track both the used oil and
16 special waste. And this is basically what we do all of
17 our annual reporting off of, too. All this information
18 is in our computer systems. And all the reporting that
19 we do for EPA, IEPA comes from the information that's
20 on this form.

21 MS. MANNING: And NORA's not proposing
22 to eliminate any of the annual reporting requirements,
23 by the way, at all.

24 MR. APPELT: No.

1 HEARING OFFICER FOX: Any questions from
2 the Agency with regard to Mr. Appelt's testimony
3 whether referring specifically to Exhibit 12 or
4 otherwise?

5 MS. FLOWERS: What was Exhibit 12? This
6 is this paper?

7 HEARING OFFICER FOX: Yes, that's
8 exactly right. It's the carbon form.

9 Ms. Manning, if I may ask in the
10 meantime, Exhibit 17 appears to include two different
11 electronic receipts, one in the upper right-hand corner
12 dated 5-22-05 at 9:39 and one on 5-23-06 at 12:52. Had
13 you intended those two to be a single document or to
14 be --

15 MR. APPELT: They're just two examples
16 of the same.

17 MS. MANNING: Correct. Do you have both
18 documents?

19 HEARING OFFICER FOX: I have both
20 documents. If --

21 MS. MANNING: 17A and 17B or 17 --

22 HEARING OFFICER FOX: 17 and 18 probably
23 would be the cleanest.

24 MS. MANNING: Okay. That's fine.

1 So 17 is the one dated 5-23-06; is
2 that correct?

3 HEARING OFFICER FOX: I had dated them
4 in chronological order. So 17 is the document 5-22 at
5 9:39 in the upper right-hand corner.

6 MS. MANNING: Okay.

7 HEARING OFFICER FOX: Actually I didn't
8 date them -- number them chronologically. It just
9 worked out that way.

10 MS. MANNING: Okay. If there's no
11 further questions on his testimony, should we move on
12 to the next tracking sheet?

13 MEMBER MOORE: They're thinking.

14 MS. MANNING: Okay.

15 HEARING OFFICER FOX: And, certainly, we
16 don't mean to cut short your discussions, but Ms. Liu
17 did have a question. If you don't object, I'd like to
18 go ahead and pose that.

19 MEMBER LIU: How do you identify the
20 generator's name and address on the electronic form?

21 MR. APPELT: How do we?

22 MEMBER LIU: Is that the customer?

23 MR. APPELT: Well, customer number, and
24 the name and address is on here as well. But, yeah,

1 within Safety-Kleen, the customer number is -- that's
2 how we track all of our customers.

3 MEMBER LIU: That's your generator?

4 MR. APPELT: Yes. I mean, we also have
5 generator numbers associated with the customer number.

6 MS. MANNING: It's a --

7 MEMBER MOORE: So one was --

8 MS. MANNING: -- generator status.

9 MEMBER MOORE: -- (inaudible) Service,
10 and the other was Covington Diesel?

11 MS. MANNING: Yes.

12 MS. McCORD: And because there could be
13 a large plant that has multiple, like, departments and
14 billed separately, so that's why there could be
15 multiple customer numbers.

16 And then also that kind of
17 information -- I know my company has something very
18 similar. We may link multiple billing areas, you know,
19 billing locations from different states to one number,
20 too, to sort of give it a tying-together number. So
21 it's really just a way to keep entities separate in the
22 computer system.

23 HEARING OFFICER FOX: Let me raise a
24 housekeeping issue, if I could, just to try to head off

1 any confusion.

2 Ms. Manning distributed, as it
3 turns out, two electronic copies of a Safety-Kleen
4 document, one of which is dated in the upper right-hand
5 corner 5-22-06, the second of which was dated in the
6 same position as 5-23-06. And I didn't realize that at
7 the time I received them, and that's my mistake.

8 What I heard a motion from
9 Ms. Manning to do was to admit the first dated 5-22 as
10 Exhibit No. 17 and it is already numbered and dated,
11 the second dated May 23rd is Exhibit 18 so that we have
12 a distinct exhibit numbers.

13 Is there any objection from the
14 Agency in labeling and admitting those on those terms?

15 MS. MANNING: Does the Agency have
16 those? Because I may have left too many copies with
17 the Board.

18 MR. APPELT: They're both essentially
19 the same.

20 Alisa, the U.S. EPA or state ID
21 number is about halfway down the document on the left
22 side, so it's on there.

23 MS. MANNING: And also on Exhibit 18, I
24 would point out --

1 HEARING OFFICER FOX: We've labeled them
2 but not admitted it.

3 Did you have any objection to its
4 admission as 18?

5 MS. FLOWERS: No.

6 HEARING OFFICER FOX: I didn't suspect
7 but wanted to check. So that is marked and will be
8 admitted, Ms. Manning, as Exhibit No. 18.

9 MS. MANNING: Okay. And I would point
10 out as well, at the bottom of Exhibit 18, just as an
11 example, there's a section called "Generator Status,"
12 and it's listed CESQG which, of course, means, as set
13 forth in used oil rules, conventionally exempt
14 small-quantity generator.

15 MEMBER RAO: I have a question on that
16 same form.

17 Around the midpoint of the form,
18 there's some comments that say "non-RECRA hazardous
19 waste liquid, non-U.S. DOT regulated."

20 Does that mean -- and specifically
21 with reference to "non-U.S. DOT regulated" -- they're
22 not subject to DOT requirements?

23 MR. APPELT: No. It means not subject
24 to the -- what we were referring to earlier, the

1 hazardous classification.

2 MEMBER RAO: Everything is subject to --

3 MR. APPELT: Technically subject to DOT.

4 MEMBER MOORE: So that's related in the
5 statute; it's referenced back?

6 MEMBER RAO: In the rules.

7 MS. MANNING: Yes.

8 MS. McCORD: And it is a convention that
9 when that particular material is not a hazardous
10 material to use those words just for clarification.
11 It's not prescribed in the regs. It's just become the
12 convention.

13 MEMBER RAO: Yeah, because I saw that
14 also in Exhibit 13 where it says "non-DOT" --

15 MS. McCORD: You could call it goo-goo.
16 I mean, the regulations, that's -- But it's just
17 something that means something to us and to a first
18 responder for emergency response.

19 MS. FLOWERS: Does anyone have a
20 reference to these DOT requirements?

21 MS. MANNING: Well, certainly, we can
22 put them into evidence, but they're in the rule.
23 They're referenced in Part 739, specifically written
24 in.

1 MS. FLOWERS: Okay.

2 HEARING OFFICER FOX: And the Board can
3 certainly take notice of those as Federal regulations.

4 MS. MANNING: Exactly.

5 HEARING OFFICER FOX: Would the Agency
6 have any further questions or points of clarification
7 with Mr. Appelt on his testimony or on the exhibits
8 that he has introduced?

9 MR. DRAGOVICH: I guess we're confused
10 as to whether they're saying that this is information
11 that they're tracking that's required under the used
12 oil regulations.

13 MS. MANNING: Yes, they are.

14 MR. DRAGOVICH: But it goes beyond that.

15 MS. McCORD: And DOT.

16 MR. DRAGOVICH: And it goes beyond DOT.

17 MS. McCORD: Because we're good people.

18 But, I mean, there are business
19 needs to have that information. It doesn't have to be
20 on a shipping paper sometimes. If you look, the
21 signature -- the customers are signing these documents.
22 There's certain certification, like all the backer
23 language. I know my company has some this similar
24 kinds of backer language on our con- -- It's really a

1 contract between the customer and the transporter
2 company.

3 MR. DRAGOVICH: But for what you call
4 the non-DOT waste, which is not a hazardous material,
5 that you're transporting, what's the minimum amount of
6 information that DOT is requiring?

7 MS. MANNING: That which is spelled out
8 in the Federal DOT regs.

9 MR. DRAGOVICH: I'm asking specifically,
10 if you could tell us.

11 MS. McCORD: It would be things like
12 shipping papers need to say where you're picking it up,
13 the consignee, who the shipper is, an emergency contact
14 number, the volume, the type of container that it's in
15 if it's in a container, if it's a bulk trailer, you
16 know.

17 MS. MANNING: There's a retention
18 requirement, is there not?

19 MS. McCORD: Yes. There's requirements
20 for drivers for certain size trucks, you know.

21 MR. DRAGOVICH: They wouldn't have to
22 tell you whether it was ink or whether it was used oil,
23 right? I mean, DOT doesn't require that, do they?

24 MS. McCORD: They do if it's a DOT

1 hazardous material --

2 MR. DRAGOVICH: But if it was
3 non-hazardous material, you still have to say --

4 MS. McCORD: If it's not a hazardous
5 material, you still have to say --

6 MR. DRAGOVICH: Don't you just have to
7 say six containers or 600 gallons?

8 MS. McCORD: You have to have volume,
9 and the container requirements still apply.

10 MR. DRAGOVICH: But, I mean, you don't
11 have to have a --

12 MR. LENZ: You have to have a
13 description.

14 MS. McCORD: Some kind of description
15 that's still a valid description.

16 MS. MANNING: And the source would be
17 there.

18 MR. DRAGOVICH: Does --

19 MS. FLOWERS: So it could just say "used
20 oil"?

21 MS. McCORD: It could say that. And
22 really for clarification for first responders, that's
23 why many of us often put "not DOT, NORA-regulated or
24 exempt" because it's, again, just a cue -- You know, if

1 there's a problem, we're all on the phone usually even
2 with first responders these days. So it helps the
3 people on the scene know what that material is.

4 MS. MANNING: And, again, if it says
5 "used oil," it has to be used oil as set forth here.

6 MS. McCORD: If it's not -- If the
7 mixture is not also DOT hazardous material, you're
8 right. It could just say "used oil." That would be
9 enough.

10 MR. DRAGOVICH: And how much used oil
11 would have to be in there for it to say that?

12 MS. MANNING: Well, how much -- Go
13 ahead.

14 MS. McCORD: How much? Well, you know,
15 I'm sure you know the regulations don't specify how
16 much oil has to be in a used oil mixture for it to be
17 deemed used oil. And the reason for that is --

18 MR. LENZ: More than de minimis amounts.

19 MS. McCORD: -- they're trying to
20 promote -- EPA never defined the volume of oil, and the
21 reason for that was they wanted it for recycling. And
22 it's really an economic decision of when people are
23 going to manage this as used oil and still put it in to
24 some kind of recovery treatment system.

1 MR. LENZ: Well, I kind of maybe
2 disagree. I think it's more than de minimis amounts.

3 MS. McCORD: No. It's whatever can be
4 recovered.

5 MR. LENZ: Okay. If there's recoverable
6 amounts --

7 MR. DRAGOVICH: The other thing is, as
8 far as I understand the regulations, there's nothing in
9 the regulations that's makes the generator -- that
10 requires that the generator keep this shipping document
11 that you're talking about.

12 MS. McCORD: Shippers have obligations.

13 MR. DRAGOVICH: But the generator --
14 Like, the special waste manifests, the generator has to
15 keep a copy of it, but there's nothing that would
16 require them to keep this document. So --

17 MS. McCORD: The used oil management
18 standards drive that --

19 MR. DRAGOVICH: The used oil management
20 standards require the transporter to keep the record.

21 MS. CUSTER: I think the generator is
22 required also --

23 MS. MANNING: There are --

24 HEARING OFFICER FOX: The discussion is

1 very helpful, but I'm sure that the court reporter has
2 been frustrated by some of you speaking over one
3 another. So --

4 MS. MANNING: There are generator
5 requirements and generator exceptions.

6 MS. McCORD: That's right.

7 MS. MANNING: Significant generator
8 exceptions.

9 HEARING OFFICER FOX: Any additional
10 questions for Mr. Appelt?

11 MR. DRAGOVICH: No.

12 HEARING OFFICER FOX: Does Member Moore
13 or either Mr. Rao or Ms. Liu have any further
14 questions?

15 MEMBER LIU: I hate to get into a legal
16 argument when I'm not a lawyer, but you said that the
17 generator is required to maintain the tracking records.
18 And I was looking through the sections on tracking in
19 739, and the records are required to be kept by the
20 transporter, the transfer facility, the processors, the
21 burners, and the marketers. But it doesn't mention the
22 generator.

23 MS. MANNING: That's correct, because if
24 it's -- Excuse me. If it's used oil, the U.S. EPA,

1 under the used oil program, has declared it sufficient,
2 if it's used oil or product managed as used oil, to be
3 tracked in accordance with these regulations, which is
4 why you're correct that the specific requirements on
5 the generator are much less because many of these
6 generators are Jiffy Lube. They're Sears Auto
7 Department.

8 MR. APPELT: Joe's Gas Station.

9 MS. MANNING: They're Joe's Gas Station.
10 These are their customers. I mean, they could go
11 through a litany of who these customers are, and I
12 would suggest to the Board, what, 95 percent fall in
13 those categories?

14 MR. APPELT: Yes.

15 MEMBER LIU: Thank you.

16 MS. MANNING: You're welcome. Thank you
17 for asking for the clarification.

18 MEMBER MOORE: I have a question about
19 insurance and liability insurance that you all must
20 have to have --

21 MS. CUSTER: U.S. DOT requires that
22 also.

23 MEMBER MOORE: And so is there something
24 that is related to the accuracy of your records and how

1 you conduct your business that relates to your
2 insurance? Do they put specific requirements on you?

3 MS. McCORD: We're audited by our
4 insurance companies. You know, they use that to sort
5 of judge what our premium should be in the future.
6 They're looking for -- Gosh, I'd say, to be honest with
7 you, the insurance audits are tougher than an
8 inspection. You know, they're looking at a lot of
9 detail, plans and training and that type of thing.

10 MEMBER MOORE: And are all business
11 people that are in your business required to carry this
12 insurance --

13 MS. McCORD: If you're a transporter.

14 MEMBER MOORE: Only the transporters.

15 MS. McCORD: Transporters are. You
16 know, certain types of treatment facilities have to
17 have, you know, some financial insurance. It depends
18 on what else they're doing. Gosh, it's very common for
19 us to provide -- routinely provide documentation of
20 insurance or provide for our bigger customers that
21 they're an additionally insured on our policy. We
22 issue those --

23 MEMBER MOORE: So that's why you test
24 when you take product, to establish what you're taking?

1 MS. McCORD: That's for a couple
2 reasons. There's the regulatory piece of that. It's
3 also to establish proper pricing so we know what it is
4 and to make sure we don't contaminate our collective
5 material to make it much more expensive to treat or
6 capable -- You know, if you taint oil loads with PCBs,
7 you know, the whole thing is going somewhere else,
8 depending on the concentrations and how it got there.

9 So there's -- It's a protection of
10 our operation, you know, sort of preserved
11 profitability in that sense but also to meet regulatory
12 requirements. You know, what we have to do is not
13 specifically prescribed. How we get it done in the
14 used oil management standards, it's -- You know, we
15 test certain kinds of customers in advance of pick-ups.
16 We also do some field-testing to check for halogens.
17 So those things are ways for us to validate what we
18 believe is going on, and, you know, it's a way to
19 catch, you know, bad actors.

20 And so that could be -- The result
21 could mean that you change -- you have to change things
22 because of regulatory requirements, or it could mean
23 just that there's pricing changes, that it's not what
24 the deal is that you cut with the customer.

1 MR. APPELT: And, also, we keep retained
2 samples. I don't know if you guys do, too --

3 MS. McCORD: We do, too.

4 MR. APPELT: -- but that's standard.
5 You always take a sample from the customer before you
6 pick up their oil or their vac, and that stays in our
7 facilities for I think it's at least 90 days until that
8 material's been processed so that we know if there's a
9 problem, we can trace it back to, you know, the source.

10 MS. McCORD: That's every shipment.
11 That's not just one time. It's our prequalification.
12 It's a way to go back and -- It's part of our internal
13 collection procedures, you know, again, best management
14 but also good business.

15 MS. FLOWERS: And, again, I have to ask,
16 what is required in the law and what is just your doing
17 business as a good business?

18 MS. MANNING: I would point out as an
19 answer to that question, Ms. Flowers, that that was the
20 very reason for the Federal establishment of the
21 program to develop companies like this to allow them to
22 utilize good business practices, and the requirements
23 that are found in Part 279 that are identical in
24 substance to the Federal program are the requirements

1 that guide them legally.

2 MS. McCORD: Some NORA members only are
3 involved with used oil or non-hazardous, but some are
4 also involved in other lines of businesses with
5 hazardous waste. So, you know, we have the obligation
6 to make sure that these are properly characterized
7 under DOT and under the environmental regulations. We
8 have to know whether or not it falls under the non-has
9 programs. Does it fall under the used programs, or
10 does it fall under the haz waste?

11 So the specifics of how we get
12 there is really determined by ourselves, but our
13 obligations are all the same. But we have to know what
14 that material is.

15 MS. MANNING: And I would add to that
16 because the Agency -- if they're doing something wrong,
17 the EPA has every responsibility, obligation, and right
18 to enforce against them as being violation of Part 739.

19 HEARING OFFICER FOX: Ms. Manning, you
20 had moved for admission and it has been admitted as
21 Exhibit No. 15, Ms. McCord's testimony here today.

22 Did you wish to give her an
23 opportunity to summarize that or to make any kind of
24 statement, in the interest of moving us along?

1 MS. MANNING: Sure. I had, as well,
2 from Mr. Appelt. So if either one of them, starting
3 with -- Dan, is there anything else you'd like to say
4 in conclusion in terms of your testimony?

5 MR. APPELT: Well, do you need me to
6 read this?

7 HEARING OFFICER FOX: No. It certainly
8 has been entered as an exhibit, so it's part of the
9 board's record in this. But if you wish --

10 MS. MANNING: And the Board will read
11 it.

12 Is there anything that you want to
13 add in addition to what you've presented?

14 MR. APPELT: Besides what we've
15 presented, nothing else.

16 HEARING OFFICER FOX: Very good. Thank
17 you.

18 MS. MANNING: Thank you.

19 And then, Ms. McCord, if you -- is
20 there anything in your testimony that you would like to
21 reiterate that you haven't yet said?

22 MS. McCORD: Yes.

23 MS. MANNING: Go ahead.

24 MS. McCORD: Some of this is repetitive

1 because we have sort of moved around in different areas
2 today, but I'll try to make this fast.

3 My name's Catherine McCord. I'm a
4 20-year resident of Lake County, Illinois and a member
5 of NORA. I'm here today to present additional
6 testimony on behalf of NORA on the issue of no longer
7 using an Illinois special waste or a hazardous waste
8 manifest for shipments of used oil within the state of
9 Illinois.

10 As far as my credentials, I have a
11 bachelor's degree in zoology and a master's in
12 environmental science from Miami University. I've
13 worked in the waste field for over 25 years, the first
14 half of my career in the public sector. I've worked
15 for the U.S. EPA in Washington, D.C., developing the
16 initial hazardous waste regulations under the Resource
17 Conservation Recovery Act. I was also employed by the
18 Ohio Environmental Protection Agency as an inspector
19 and a permit writer. I later worked in the U.S. EPA
20 Region 5 office here in Chicago in the record
21 enforcement program. I have provided testimony as a
22 regulatory expert for EPA in regulatory enforcement
23 proceedings.

24 Since that time I've been in a

1 regulatory or policy position within the private
2 sector. I'm currently the vice president in
3 environment, health, and safety for Heritage-Crystal
4 Clean, a NORA member. I'm also a former board member
5 of NORA. I've participated in several joint
6 public-private sector regulatory initiatives and have
7 experience in working towards solutions that fit
8 various stakeholders' interests.

9 I'm here today to present
10 additional testimony on behalf of NORA and its member
11 companies.

12 (WHEREUPON, Exhibit 13 was read
13 into the record by Ms. McCord.)

14 HEARING OFFICER FOX: Ms. McCord, thank
15 you. As we have noted, that is in the Board's record
16 as Exhibit 13. And as Ms. Manning had stressed, it
17 will certainly be part of the Board's considerations.

18 Does the Agency have any questions,
19 Ms. Flowers, that they'd like to pose to Ms. McCord on
20 the basis of the testimony that she has just provided?

21 MS. FLOWERS: No. We'll have to review
22 it.

23 HEARING OFFICER FOX: Very well.

24 MS. MCCORD: Could I supplement one

1 statement, for clarification, on what's happened in
2 other states?

3 You know, as IEPA has referenced
4 earlier, the rules that are in effect, 739, you know,
5 they came into effect prior to RECRA and the Federal
6 program. I mean, Illinois is one of those states that
7 was aggressive in establishing their own waste
8 management programs because of, you know, the industry
9 here and because of the need to protect the citizens of
10 Illinois. And, you know, as those hazardous waste
11 programs came into play, you know, both the full
12 Subtitle C, hazardous wastes, and then, you know, these
13 modified programs, things like universal wastes and
14 used oil, there's sometimes administrative conflicts in
15 the sense with the old pre-RECRA programs. You saw
16 that in New Jersey. You know, it used to be very
17 difficult to know what you're supposed to do in New
18 Jersey. And, you know, eventually what they did is
19 there was a statutory change, and they aligned with --
20 The portions of the program that are Federally
21 regulated wastes, they aligned by reference with the
22 Federal regulations.

23 In the state of Michigan, they
24 still have an industrial liquid hazardous waste program

1 that is very similar to the special waste program. You
2 know, ever since the early '90s when Illinois dropped
3 solids from the special waste programs, you know, their
4 programs are very similar to Michigan. In the case of
5 Michigan, when they've got this interface between the
6 two programs, the used oil rule, you know, that is how
7 they have -- they have dealt with this issue. They are
8 with -- If a mixture is deemed to be used oil, it's
9 regulated under the used oil management standards.

10 So, you know, from my view, you
11 know, I'm hoping that we can come to some resolution
12 here. I think that there's some ways to get there.
13 Again, we're willing to concede if there are elements
14 in a shipping paper that people want to see
15 universally, we're very willing to accept that. But,
16 you know, paper is a huge thing for us; and, you know,
17 my company is not as big as some companies like
18 Safety-Kleen. But those transactional costs are big
19 deals. When we generate this kind of regulatory paper,
20 we keep this forever. You know, we scan and index
21 those documents. We have files, you know, until the
22 point -- We always have to have them accessible for
23 inspections. If we can consolidate that and drop one
24 piece of paper for each of these transactions, that's a

1 big win for us. And we'd like to see the same level
2 playing field that we've got in other states. It's --
3 I think history that you see with the used oil
4 management standards in other states proves that it
5 works. There's ways to check on the bad actors. It's
6 to our business's advantage to have the bad actors
7 squeezed, you know, because they'll hopefully do
8 business with one of us.

9 So, you know, we're not afraid of
10 inspections. We're not afraid of accountability. You
11 know, we just want a make-sense solution.

12 Thank you very much.

13 HEARING OFFICER FOX: Thank you,
14 Ms. McCord.

15 Ms. Manning, before the break, we
16 noted that you had been working your way through
17 questions with regard to Mr. Dragovich's testimony --

18 MS. MANNING: I think everything
19 Mr. Dragovich has testified to, we've gone over.

20 The rest of the NORA people are
21 here if anybody has any further questions of what we
22 put into evidence. Certainly, we'll have an
23 opportunity to do a public comment if there are any
24 issues youse that need to do addressed.

1 HEARING OFFICER FOX: We can go off the
2 record to discuss that in due time, but I cut you off.
3 I'm sorry.

4 MS. MANNING: Does anybody else feel
5 that we need to say anything further?

6 MR. LENZ: I'm too confused.

7 HEARING OFFICER FOX: If you've got no
8 questions at this point --

9 MS. MANNING: I have no further
10 questions. Thank you.

11 HEARING OFFICER FOX: -- then certainly
12 you may ask them.

13 Did the Agency wish at this point,
14 returning to them, to ask any follow-up to NORA and its
15 witnesses at this point in the hearing?

16 MS. FLOWERS: No, we don't have any
17 questions at this time.

18 HEARING OFFICER FOX: Very good.
19 Thanks.

20 Let me turn to some procedural
21 issues at this point.

22 For the record, I would note that
23 there is no one here present in the room that hasn't
24 been participating in the hearing either as a proponent

1 or as an Agency staff member. And I can see the sheet
2 provided for sign-up by persons who wish to testify is
3 blank so that we do have no additional witnesses other
4 than those who have testified here this afternoon.

5 Moving on to the Economic Impact
6 Study issues -- and forgive me for reading a little bit
7 mechanically -- since 1998, Section 27(b) of the
8 Environmental Protection Act has required that the
9 Board request that the department now known as the
10 Department of Commerce and Economic Opportunity conduct
11 an Economic Impact Study on proposed rules before the
12 Board adopts those rules.

13 The Board then must make available
14 either the Economic Impact Study itself or the
15 Department's explanation for not conducting one
16 available to the public.

17 In a letter dated February 22nd,
18 2006 -- and I have a copy of that printed from the
19 Board's web page if anyone would care to review it --
20 the Board, through its acting chairman, Dr. G. Tanner
21 Gerard (phonetic), specifically requested to department
22 director, Jack Lavin (phonetic), that DCEO conduct an
23 Economic Impact Study on this rule-making proposal,
24 R06-20. The Board has not, to date, received a

1 response from DCEO.

2 Is there anyone present who would
3 like to testify regarding the request by the Board's
4 acting chairman to the Department?

5 Seeing no questions --

6 MS. MANNING: I would just like to ask a
7 question. Was there a suggested date for a response.

8 HEARING OFFICER FOX: I didn't
9 specifically recall one, but --

10 MS. McCORD: I'd like to add, if it
11 would assist the Board, we could provide some
12 information about additional costs that -- you know,
13 the burden to our specific -- It wouldn't be the whole
14 state, but it should be a representative sample of what
15 maybe on a transaction basis of what the cost of that
16 additional document is; the management of it, storage
17 of it, handling, prepping --

18 MEMBER MOORE: Some information was
19 submitted originally.

20 MS. MANNING: There was in testimony,
21 but if the Board feels that they want anything more for
22 the economic issue, we'd be happy to provide that.

23 HEARING OFFICER FOX: And we can perhaps
24 deal with that in discussing posthearing comments in

1 what I suspect will be in just a moment or two.

2 Ms. Manning, in response to your
3 specific question and for the benefit of the Agency as
4 well, Acting Chairman Gerard's specific request was,
5 quote, I am writing to request that you determine
6 whether your Department will conduct an Economic Impact
7 Study concerning this proposal, end quote. He does go
8 on to cite the specific statutory language in
9 Section 27(b)(2) that, in effect, requires them to
10 respond at least 20 days before the hearing. But his
11 own request did not specify a date.

12 MS. MANNING: Okay. Thank you.

13 HEARING OFFICER FOX: In fact, if we may
14 go off the record now to discuss a procedural issue.

15 (Discussion off the record.)

16 HEARING OFFICER FOX: For the record,
17 the participants, both NORA and the Agency, discussed
18 procedural issues, and the participants had agreed to
19 file posthearing comments with the Board with the
20 deadline for filing those on August 9th of 2006. And,
21 again, the mailbox rule will not apply so that they
22 will need to be filed by the close of business at 4:30
23 on August 9th. And, of course, electronic filing,
24 which I believe both the Agency and NORA have used,

1 will be available to help meet that deadline.

2 Copies of the transcript, again,
3 are expected to be available on or about Monday,
4 July 10th of 2006. And very soon after that date, when
5 they are filed with the Board, they will be available
6 on the Board's website, with which I suspect you are
7 all familiar.

8 In addition, anyone may file
9 written public comments in this rule-making with the
10 clerk of the Board. Those may also be filed
11 electronically. And questions about electronic filing
12 can be directed to our clerk's office, the mailing
13 address and phone number of which are on the Board's
14 website.

15 If there are any other questions
16 procedurally about the process of this rule-making, you
17 may always reach the hearing officer, again, whose
18 e-mail address and phone number are available through
19 the Board's website.

20 At this point no other hearings are
21 scheduled in this matter.

22 And, Ms. Manning, it looks like you
23 have a question.

24 MS. MANNING: Mr. Hearing Officer, just

1 for purposes of clarification for NORA's member
2 companies, public comments are not due on August 9th
3 but are capable of being received by the Board at any
4 time; is that correct?

5 HEARING OFFICER FOX: Exactly. What's
6 due on August 9th would be a set of comments
7 specifically summarizing --

8 MS. MANNING: From myself on behalf of
9 NORA and from Ms. Flowers on behalf of the EPA?

10 HEARING OFFICER FOX: Precisely. For
11 members of the general public who would wish to comment
12 more generally, the deadline is not even set since the
13 Board hasn't adopted a proposal for first notice. So
14 if that distinction is a clarification, excellent.

15 Any other matters that need to be
16 addressed or procedural questions that you'd like to
17 raise?

18 MS. MANNING: Thank you for your time.

19 HEARING OFFICER FOX: Seeing none, I'm
20 sure I speak for Member Moore and the other members of
21 the Board in thanking you for your testimony, your
22 information. And your comments have been very helpful,
23 and we look forward to hearing from you on August 9th.

24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3 Martina Manzo, being first duly sworn, on
4 oath says that she is a Certified Shorthand Reporter
5 doing business in the City of Chicago, County of Cook
6 and the State of Illinois;

7 That she reported in shorthand the
8 proceedings had at the foregoing hearing;

9 And that the foregoing is a true and correct
10 transcript of her shorthand notes so taken as aforesaid
11 and contains all the proceedings had at the said
12 hearing.

13

14

15

MARTINA MANZO, CSR

16

17

CSR No. 084-004341

18

19

SUBSCRIBED AND SWORN TO
before me this 13th day of
July, A.D., 2006.

21

22

NOTARY PUBLIC

23

24

