

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NORA's POST-HEARING BRIEF

NOW COMES, NORA, the Association of Responsible Recyclers ("NORA"), by and through its attorney, Claire A. Manning, Brown Hay & Stephens LLP, and respectfully submit this post-hearing brief in support of its regulatory proposal to amend 35 Ill. Adm. Code, 808 and 809 ("Part 808"; "Part 809") to eliminate manifesting for used oil that is defined and managed pursuant to 35 Ill. Adm. Code, 739 ("Part 739").¹

BACKGROUND

NORA filed the Rule Proposal that is the subject of this proceeding on December 13, 2005. Prior thereto, NORA engaged in discussions with the Illinois Environmental Protection Agency ("Agency"). Representatives of the Agency agreed that it was appropriate to eliminate used oil from the special waste manifesting requirements since used oil was regulated, and subject to tracking, under Part 739. ("The Illinois EPA agrees that an exemption from the manifesting requirement of 35 Ill. Adm. Code 809 ("Part 809") is proper for used oil that is defined by and managed in accordance with Part 739. Currently, Part 739 requires tracking of used oil shipments. Since Part 739 requires used oil to be tracked, the additional requirement of manifesting under Part 809 is unnecessary. Agency Comments May 1, 2006, page 2.) Additionally, used oil is already

¹ Part 739 mirrors 40 CFR Part 279. References herein shall be to the state regulation, although various references in the record are to the identical federal rules.

subject to U.S. Department of Transportation (DOT) bill of lading requirements. DOT shipping papers, rather than a prescribed manifest form, is the approach that the U.S. Environmental Protection Agency (U.S. EPA), and almost all states have taken for transportation of used oil and used oil mixtures.

While Parts 808 and 809 are derived from the Board's general rulemaking authority pursuant to Sections 27 and 28 of the Illinois Environmental Protection Act ("Act"), Section 739 was derived from the Board's more limited authority to develop rules which are Identical-In-Substance to certain federal programs. The identical federal used oil rules, derived from the Resource Conservation and Recover Act ("RCRA"), are found at 40 CFR 279. The Board's special waste rules pre-existed the federal used oil program. Importantly, the entire premise of the federal used oil program, and Illinois identical regulatory scheme adopted by the Board, was to encourage the recycling of used oil by taking materials that were recycled as used oil out of the realm of more rigorously regulated "waste." See Testimony of Chris Harris, May 25, 2006 pp 10-11. Materials subject to regulation as "used oil" include not only material specifically under Section 739.100², but also those materials which, through the applicability section of those rules, are entitled to be managed as used oil under the used oil program, as follows:

Section 739.110 Applicability

This Section identifies those materials that are subject to regulation as used oil under this Part. This Section also identifies some materials that are not subject to regulation as used oil under this Part, and indicates whether these materials may be subject to regulation as hazardous waste under 35 Ill. Adm. Code 702, 702, 720 through 26, and 728.

² See 739.100: *Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.* (See also 40 CFR 279.100)

a) *Used Oil.* Used oil is presumed to be recycled, unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in Section 739.111, the regulations of this Part apply to used oil and to materials identified in this Section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721.

b) *Mixtures of used oil and hazardous waste.*

1) *Listed hazardous waste.*

A) *A mixture of used oil and hazardous waste that is listed in Subpart D of 35 Ill. Adm. Code 721 is subject to regulation as hazardous waste under 35 Ill. Adm. Code 703, 720 through 726, and 728, rather than as used oil under this Part.*

B) *Rebuttable presumption for used oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of 35 Ill. Adm. Code 721. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix H of 35 Ill. Adm. Code 721).

i) *This rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 739.124(c), to reclaim metalworking oils or fluids. This presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.*

ii) *This rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. This rebuttable presumption does*

apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

2) *Characteristic hazardous waste. A mixture of used oil and hazardous waste that exhibits a hazardous waste characteristic identified in Subpart C of 35 Ill. Adm. Code 721 and a mixture of used oil and hazardous waste that is listed in Subpart D of this Part solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721 is subject to the following:*

A) *Except as provided in subsection (b)(2)(C) of this Section, regulation as hazardous waste under 35 Ill. Adm. Code 703, 720 through 726, and 728 rather than as used oil under this Part, if the resultant mixture exhibits any characteristics of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721; or*

B) *Except as provided in subsection (b)(2)(C) of this Section, regulation as used oil under this Part, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Subpart C of 35 Ill. Adm. Code 721.*

C) *Regulation as used oil under this Part, if the mixture is of used oil and a waste that is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under 35 Ill. Adm. Code 721.121.*

3) *Conditionally exempt small quantity generator hazardous waste. A mixture of used oil and conditionally exempt small quantity generator hazardous waste regulated under 35 Ill. Adm. Code 721.105 is subject to regulation as used oil under this Part.*

c) *Materials containing or otherwise contaminated with used oil.*

1) *Except as provided in subsection (c)(2) of this Section, the following is true of a material containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible so that no visible signs of free-flowing oil remain in or on the material:*

- A) *The material is not used oil, so it is not subject to this Part, and*
 - B) *If applicable, the material is subject to the hazardous waste regulations of 35 Ill. Adm. Code 703, 705, 720 through 726, and 728.*
- 2) *A material containing or otherwise contaminated with used oil that is burned for energy recovery is subject to regulation as used oil under this Part.*
 - 3) *Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this Part.*
- d) *Mixtures of used oil with products.*
 - 1) *Except as provided in subsection (d)(2) of this Section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this Part.*
 - 2) *Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this Part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Subpart C of this Part.*
- e) *Materials derived from used oil.*
 - 1) *The following is true of materials that are reclaimed from used oil, which are used beneficially, and which are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants):*
 - A) *The materials are not used oil and thus are not subject to this Part, and*
 - B) *The materials are not solid wastes and are thus not subject to the hazardous waste regulations of 35 Ill. Adm. Code 703, 720 through 726, and 728, as provided in 35 Ill. Adm. Code 721.103(e)(1).*
 - 2) *Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this Part.*

3) *Except as provided in subsection (e)(4) of this Section, the following is true of materials derived from used oil that are disposed of or used in a manner constituting disposal:*

A) *The materials are not used oil and thus are not subject to this Part, and*

B) *The materials are sold wastes and thus are subject to the hazardous waste regulations of 35 Ill. Adm. Code 703, 720 through 726, and 728 if the materials are listed or identified as hazardous waste.*

4) *Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this Part.*

f) *Wastewater. Wastewater, the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the federal Clean Water Act (including wastewaters at facilities that have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this Part. For purposes of this subsection, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.*

g) *Used oil introduced into crude oil pipelines or a petroleum refining facility.*

1) *Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this Part. The used oil is subject to the requirements of this Part prior to the mixing of used oil with crude oil or natural gas liquids.*

2) *Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this Part.*

3) *Used oil that is inserted into the petroleum refining process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this Part, provided that the used oil contains less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion in to the petroleum refining process, the used oil is subject to the requirements of this Part.*

4) *Except as provided in subsection (g)(5) of this Section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this Part only if the used oil meets the specification of Section 739.111. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this Part.*

5) *Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this Part. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the wastewater treatment system).*

h) *Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this Part until it is transported ashore.*

i) *Used oil contained PCBs. Used oil containing PCBs, as defined as 40 CFR 761.3, incorporated by reference at 35 Ill. Adm. Code 720.111(b), at any concentration less than 50 ppm is subject to the requirements of this Part unless, because of dilution, it is regulated under federal 40 CFR 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements of 40 CFR 761, including 40 CFR 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Part, but is subject to regulation under federal 40 CFR 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Part or federal 40 CFR 761. (See also 40 CFR 279.110)*

The key is not the limited definition of used oil, as set forth in Section 739.100 (footnote 1), but materials that are destined for recycling as used oil, and allowed for such pursuant to the above-referenced applicability section. For further and detailed information concerning what materials are subject to regulation as used oil, NORA respectfully refers the Board to a comprehensive summary found at Chapter 12 of *McCoy's RCRA Unraveled*, attached hereto as Attachment A. NORA's proposed revisions would accomplish the result desired: eliminate from special waste manifesting used oil as it is defined by and managed and regulated pursuant to Part 739. See Attachment B.

On May 1, 2006, the Agency proposed language of its own because of the following stated concern:

“The Illinois EPA agrees that an exemption from the manifesting requirement of 35 Ill. Adm. Code 809 (“Part 809”) is proper for used oil that is defined by and managed in accordance with Part 739. Currently, Part 739 requires tracking of used oil shipments. Since Part 739 requires used oil to be tracked, the additional requirement of manifesting under part 809 is unnecessary. However, a manifest exemption in Part 809 should clarify that it only applies to used oil when it is defined by and managed in accordance with Part 739 and would not apply to other waste transported in the same load.

Additionally, the Illinois EPA agrees that an exemption from the hauling permit requirement of Part 809 is proper for loads that contain no special loads other than used oil that is defined by and managed in accordance with Part 739. The Illinois EPA would require the transporter to register with the Illinois EPA as the used oil transporter in the same manner of notification as stated in Section 739.142. Also, the exemption must clarify that it applies only to the load that a vehicle is carrying and does not apply to an individual vehicle or all vehicles operated by the transporter.” See Agency Comments, May 1, 2006, page 2.

The Agency's proposed language (and articulated position) attempts to create a distinction between material that is specifically included within the definition of "used oil" as set forth in Section 739.110 and that material which is subject to regulation as "used oil" pursuant to Section 739.100. Apparently, the former would be exempt from special waste manifesting requirements and the latter would not. As there is no such distinction in the industry, the bifurcation proposed by the Agency would create an untenable position for the used oil industry. Furthermore, the Agency's proposed language contradicts definitions provided by the U.S. EPA regulatory framework and is inconsistent with the policy behind the used oil program: to encourage the recycling of used oil and used oil mixtures.

Two hearings have been held by the Board concerning NORA's proposal to eliminate manifesting for used oil. The first was held in Springfield, Illinois on May 25, 2006. Testifying for NORA were: Christopher Harris, General Counsel for NORA; Victoria Custer from Southwest Oil; and Chairperson for Illinois working group: Mike Lenz (Future Environmental, Inc.) and Greg Ray (Heritage-Crystal Clean, LLC). Testifying for the Agency was Ted Dragovich. The second hearing was held on June 29, 2006 in Chicago, Illinois. Testifying for the Agency were Ted Dragovich and Christopher Cahnovsky. Testifying for NORA were Catherine McCord (Heritage-Crystal Clean, LLC); Dan Appelt (Safety-Kleen); Mike Lenz and Victoria Custer.

Various public comments have been filed in this proceeding; all have urged the Board to adopt NORA's proposal:

8/4/06 Public Comments of John H. Datka, General Manager, Moore Oil
 Environmental Services, LLC

8/2/06 Public Comments of Chris McNeil, Compliance Officer, Aaron Oil Company

8/2/06 Public Comment of Brett Morton, Sr. Environmental Engineer/Product Stewardship, Shell Lubricants

8/1/06 Public Comments of Laura M. Krist, Territory Manager, Jacobus Environmental Services

8/1/06 Public Comments of Scott D. Parker, Executive Direction, Association of NORA Responsible Recyclers

8/1/06 Public Comments of Benjamin P. Cowart, President of General Partner Vertex Energy

7/31/06 Public Comments of W.L. Briggs, President Oil Re-refining Company, Inc.

7/31/06 Public Comments of Steve Rundell, President, Solvent Systems International

7/31/06 Public Comments of Victoria M. Custer, Vice President Southwest Oil, Inc.

7/31/06 Public Comments of Deanne Hartman, President/CEO, Approved Remediation & Recycling of Oil Waste, Inc.

7/31/06 Public Comments of Richard H. Kalin, Vice President, Noble Oil Services

7/31/06 Public Comments of Matthew Usher of Usher Oil Company

7/31/06 Public Comments of Garry R. Allen

7/31/06 Public Comments of Donald R. Kleine, Owner, Vortex Recycling

7/31/06 Public Comments of Gary L. Gunderson, President, MaxSafe Antifreeze

7/31/06 Public Comments of Ken Reif of Valley Environmental Service

7/31/06 Public Comments of David Osbourne, Manager Sales & Customer Service, Consolidated Recycling Co., Inc.

7/31/06 Public Comments of John A. Oxford, VP, Compliance, Industrial Oil, Inc.

- 7/31/06 Public Comments of John A. Oxford, VP, Compliance, Energy & Material Recovery, Inc.
- 7/31/06 Public Comments of John A. Oxford, VP, Compliance, Fuel Processors, Inc.
- 7/31/06 Public Comments of Jeffrey M. Pocisk of Waste Alternatives and Consulting, LLC
- 7/31/06 Public Comments of Lin Longshore, Sr. Vice President of Environmental Health and Safety of Safety Kleen
- 7/31/06 Public Comments of Michael Lenz of Future Environmental
- 7/31/06 Public Comments of Catherine A. McCord, Vice President, Environment, Health & Safety, Crystal Clean
- 7/28/06 Public Comments of Ken Petruck, VP Operations, Excel Environmental, Inc.
- 7/28/06 Public Comments of Ronald J. Plankis, Vice President, Consulting Services, Profit Consultants, Ltd.
- 7/28/06 Public Comments of Dave Brown, President, United Waste Water Services
- 7/28/06 Public Comments of RS Used Oil Services, Inc.: Lee J. Plankis, Senior VP Operations, Rick Shipley, National Sales Manager, and Ronald A. Winkle, President
- 7/28/06 Public Comments of Shaunti Stalluth

NORA'S PROPOSAL MEETS ALL REQUIREMENTS OF THE ACT AND SHOULD
BE ADOPTED BY THE BOARD

The Board's authority to establish environmental regulations is well-established and broad. Importantly, it is also independent of the Agency's authority under the Act. See 415 ILCS 5/5, 27 and 28 and *Rulemaking Under the Illinois Pollution Law*, 42 U. Chi L. Rev., David Currie (1975). The Act allows for any person to file a proposed rule and requires that the Board consider "economic reasonableness" in adopting rules. 415

ILCS 5/27. NORA's rule proposal promotes economic reasonableness of Illinois regulations and provides the consistency with the federal program which the Agency's language and interpretation does not.

As Christopher Harris, general counsel to NORA, testified before the Board, the federal rules were developed to encourage recycling. NORA was instrumental in the development of those federal rules:

“If I could give some background of the federal rule, which NORA helped develop, I think you'll understand exactly why our proposal comes into play. Back in 1980, congress passed the Used Oil Recycling Act of 1980, and that was the first legislative effort on the federal level to address the unique challenge of used oil, and in the congressional findings that serve as the predicate of that 1980 law, congress determined that used oil is a valuable resource of increasingly scarce energy, that technology exists to reprocess and recycle used oil and that used oil constitutes a threat to public health and the environment when disposed of improperly, and those predicate findings not only are true today, but they're true in this context as well.

Now, the EPA didn't issue any regulations as a result of the 1980 act, so in 1984 congress in the context of reauthorizing RCRA, the Resource Conservation Recovery Act, had a couple of provisions in that massive reauthorization package that said, EPA, pay attention, we really want you to develop used oil, and again, the same predicate findings were repeated; in other words, used oil is valuable as an energy resource, it can be recycled properly, but it needs some level of regulation in order to make sure that they're - - that human health and the environment are protected, but EPA in its legislative history also made clear that were protection of human health and the environment is assured - - so that's the requirement, the underlying requirement - - the EPA administrator should make every effort not to discourage the recycling of used oil, and they went on - - congress went on to say, for example, if there are several alternative controls that would be environmentally acceptable, the Agency, EPA, should allow those which would be least likely to discourage used oil recycling. That's in the legislative history. So the - - unlike hazardous waste, where it has no value and needs to be extremely carefully monitored at every turn because there's an incentive to dispose of it, used oil being a valuable commodity, the market forces can serve a role to channel it properly, so the level of regulation needs to be balanced with the market incentives for proper recycling.

Now, the EPA in November of 1985, taking the legislative history as its mandate, produced the first round of the used oil recycling regulations, or sometimes referred to as the used oil management standards, and they're now codified in Part 279; 40 CFR, Part 279. The counterpart of course is 35 Illinois Administrative Code Part 739. And what happened as a result of the 1985 regulations as well as the follow-up requirements promulgated in 1992 is a set of used oil management standards that virtually all states have adopted, most of them without any change, and of course Illinois has a few differences, but for the most part, every state in the union has followed the federal used oil requirements, and today the component that we're concerned about is the tracking of used oil." (Harris testimony, May 25, 2006, pp 10-11)

NORA witnesses who testified at hearing discussed generally what occurs in the used oil industry. NORA is a national trade association comprised of more than 200 companies that promote proper recycling through education and development of legislation at the federal, state and local levels. As Victoria Custer from Southwest Oil and Chair of NORA's Illinois Working Group testified, NORA members each year commit to the following guiding principles in the management of sound environmental policy, a high standard of integrity, continual improvement and the implementation of six principals in conducting business activities.

1. Make health, safety and environmental considerations a top priority in planning for all existing and new facilities, processes, products and services.
2. Commitment to comply with all applicable environmental laws and regulations.
3. Identify and implement, where practicable, pollution prevention measures, source reduction and waste minimization that are appropriate to the nature, scale and environmental impacts of our activities and service.
4. Participate with government and others in creating responsible laws, regulations and standards to safeguard our community, workplace and environment.
5. Communicate this commitment to responsible recycling and these guiding principles to employees, customers and community.

6. And continually seek opportunities to improve the principles and procedures of responsible recycling by sharing experiences with others and periodically reviewing overall environmental performance.

NORA's Illinois Working Groups' goal is to seek an Illinois program equivalent to the federal program and eliminate the burdens associated with manifesting of used oil. As Ms. Custer testified, the inconsistency adversely impacts NORA members since it is more onerous to do business in Illinois than in its neighboring states. (Custer Pre-filed Testimony.)

The testimony of other NORA members also established that the Illinois approach to used oil, which requires manifesting for materials subject to regulation under Part 739, is inequitable. Greg Ray, Vice President of Heritage-Crystal Clean, LLC testified:

“Currently, my company, HCC, collects used oil from generators in Illinois, Missouri, Indiana, Ohio, Kansas, Wisconsin, Arkansas, Louisiana, Texas, Mississippi, Alabama, Georgia, Tennessee, Kentucky, North Carolina and South Carolina. To the best of my knowledge, Illinois is the only state from this list that classifies used oil as a special waste or requires generators to manifest used oil.

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

The issue of consistency across states is important to many of our customers who have multiple facilities. Such customers include, for example, chains of auto service facilities, auto dealerships, trucking companies and even manufacturers. These customers often have one environmental manager with oversight for many facilities in different states. Obviously these customers find it much easier to follow regulations that are nearly uniform throughout their operating area and prefer this to regulations that are a patchwork of different rules for different states.

Today, Heritage-Crystal Clean has approximately 1100 customers in Illinois who are subject to the special waste manifesting provisions related to used oil. We generate about 2,800 Illinois special waste manifests for used oil annually, documents that we prepare for our customers, ensuring that they are signed by multiple parties and are promptly returned and properly filed. HCC has several full-time employees engaged in the printing and filing of manifests and another eight or ten field personnel who need to deal with Illinois special waste manifests for used oil as a significant fraction of their daily work. We estimate that our company spends \$100,000 per year on our Illinois manifesting activity, and we are one of the smallest used oil collectors in the state. It's my contention that all this paperwork does nothing to enhance the protection of human health and the environment. To the contrary, the exercise is a waste of paper, time and energy. Most state environmental agencies have apparently come to a similar conclusion as evidenced by their adoption of the federal management standards which do not require manifesting for used oil."

The used oil industry is comprised of generators, transporters and recyclers. There are an estimated 34,000 generators of used oil in Illinois, generating an estimated 42 million gallons of used oil annually. (Custer testimony, May 25, 2006, page 19) Generators give the used oil, and used oil like material as defined in 279.110, to collectors for recycling or reuse. In this industry, the reporting is generally done by the collector, not the generator. Collectors use tracking documents, pursuant to Part 739, to record each shipment and give copies to the generator. The collectors then deliver the used oil and used oil materials to recycling facilities where the oil is recovered and reused for fuel or lubricant or other legitimate reusable purposes.

In this process, generators, collectors and recyclers do not differentiate between used oil and used oil materials subject to regulation as used oil since all contain valuable recyclable oil, destined to be recycled. The key here is that material regulated under Part 739 is not regulated as waste, but as properly recyclable material. As such, waste

manifesting requirements are not necessary or appropriate. As determined already by the federal government, tracking pursuant to the tracking provisions is sufficient and encourages recycling.

Illinois situation is unusual in that it designates used oil as a special waste, which triggers a requirement for shipments to be manifested. Such requirement is redundant to the DOT shipping papers and other tracking already required pursuant to Part 739³. Additionally, manifesting is inconsistent with the federal program since the manifesting obligation is on the generator who, in the used oil context, does not conduct manifesting as a regular business practice. Nor is it desirable for the state to require a manifesting obligation on the 54,000 generators of used oil throughout the state. This is especially true since the Agency does not even receive a copy of any of the used oil manifest documents.

Testimony established that manifests do not add value for either regulators or the regulated community and manifesting requirements as they relate to used oil are a waste of time, paper and money. Moreover, they are redundant with federally required tracking documents.

Importantly, NORA's language does not change the way the used oil industry does business, nor does it seek to change what is or is not entitled to be treated as used oil pursuant to current regulations. It only seeks to eliminate special waste manifesting requirements for materials that are already tracked pursuant to Part 739 as used oil. This change, as Greg Ray from Heritage-Crystal Clean, LLC testified, would make Illinois more competitive with other states, and as it should be, identical with the federal program. Although NORA recognizes that Illinois is allowed to have stricter

³ See Sections 739.146, 739.156, 739.165 and 739.174

requirements than the federal program allows, NORA would argue that if the state desires to impose stricter conditions, such should be the subject of an Agency-proposed general rulemaking which *follows* the state's identical adoption of the federal rules. To do otherwise is to forego any public participation in the stricter state requirements as they relate to the newer federal rule.

Significant testimony was adduced concerning industry practice regarding materials which are treated as used oil pursuant to Part 739 and the tracking of all materials subject to Part 739. Specifically, company tracking documents were put in evidence in this proceeding and bear similar, if not identical, resemblance to Illinois manifesting documents. Moreover, testimony established that material regulated as used oil under Part 739 is recycled and accordingly is not waste.

NORA continues to fail to understand the focus of the Agency's position, as it is simply unworkable in practice to draw a distinction between those materials that are pure used oil and those materials which are being treated and recycled as used oil, under Part 739. As NORA general counsel Christopher Harris aptly testified, the Agency's position is like "drawing a distinction for purposes of regulation between Saturn and the moons of Saturn."⁴

At the June 29, 2006 hearing specific dialog was had between those individuals who work everyday in the used oil industry and Ted Dragovich and Christopher Kanowski from the Agency. While the Agency continued at that hearing to express concerns about drawing these real life distinctions, no real evidence was presented

⁴ In response to a question from Chairman Girard, Mr. Harris stated: "Mr. Girard, if I can make a farfetched metaphor, what NORA is proposing is that the exemption be Saturn and the moons of Saturn. What I think the Agency is saying is just Saturn, not the moons of Saturn, and we think that the moons of Saturn and Saturn make a regulatory unit and it's very clear."

regarding any danger with the current program. The Agency's concern is a bit like chasing ghosts. It is difficult for NORA to appreciate the Agency's position that an exemption for manifesting of used oil is appropriate but a manifesting for used oil like substances, recycled as used oil, is not.

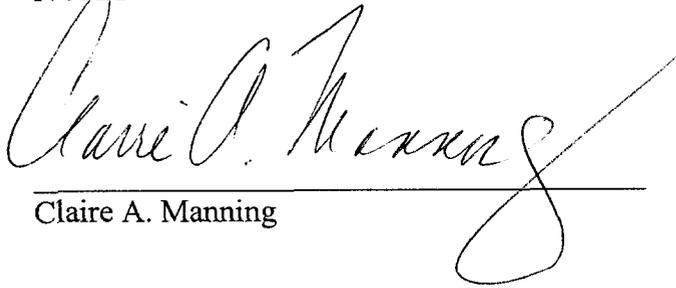
Testimony at the June 29, 2006 hearing established that the Agency's position is contrary to the status quo and inconsistent with current Illinois and federal laws that allow specific mixtures to be managed as used oil. The Agency's position appears to fatally confuse the issue that NORA has hoped to deal with effectively. The key is that if materials are properly recycled as used oil, they are regulated under Part 739, tracked pursuant to Part 739 and, accordingly, a special waste manifest obligation is neither necessary nor desirable, NORA's proposed rule change has merit and is economically reasonable and both economically and legally justified. The Agency has agreed that is appropriate to eliminate special waste manifesting as it relates to used oil. The attempted distinction between used oil and that appropriately managed as used oil under Part 739, however, creates a distinction that is unrealistic in industry practice. Thus, the Agency's position virtually negates the intended positive impact of NORA's proposal.

NORA hopes that the Board recognizes the merits of NORA's proposed rule change and agrees that it is appropriate to eliminate special waste manifesting from those materials which are legitimately managed as used oil pursuant to Part 739. The Agency has the ability to enforce against any of those companies who are not complying with Part 739. The Board should not forego NORA's meritorious proposal on the basis of the unfounded concerns expressed in this proceeding and also should not draw distinctions between used oil and materials managed as used oil under Part 739 as the Agency

suggests. NORA respectfully requests that the Board move forward with the language proposed in its ERRATA sheet to first notice and, as soon as possible, make those changes permanent in Illinois regulations so that Illinois' used oil industry is competitive with other states and so that Illinois' used oil program is, as it expected to be, consistent with the federal regulations.

Accordingly, NORA's rule proposal should be adopted by the Board.

RESPECTFULLY SUBMITTED,
NORA



Claire A. Manning

Claire A. Manning
Registration No. 3124724
Brown Hay & Stephens, LLP
205 S. Fifth Street
Suite 700
Springfield, IL 62705
Telephone (217) 544-8491
cmanning@bhslaw.com