

ILLINOIS POLLUTION CONTROL BOARD
May 1, 2008

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO THE) R06-20
BOARD'S SPECIAL WASTE) (Rulemaking - Land)
REGULATIONS CONCERNING)
USED OIL, 35 ILL. ADM. CODE 808, 809)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by A.S. Moore)

Today the Board proposes amendments to the special waste regulations (35 Ill. Adm. Code 808, 809) for first-notice publication in the *Illinois Register*. NORA, An Association of Responsible Recyclers (NORA), formerly known as the National Oil Recycling Association, initiated this rulemaking by filing a proposal with the Board. After conducting two public hearings and considering the entire record, the Board adopts for first notice the amendments described below in this opinion and order. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period.

In this opinion, the Board first provides a summary of today's actions, followed by the procedural history of this rulemaking. Next, the Board summarizes NORA's proposal and subsequent filings by the participants in this proceeding before discussing the issues raised in them. The order following this opinion then sets forth the amendments for first-notice publication.

SUMMARY OF BOARD ACTIONS

First, the Board adopts first-notice amendments intended to exempt from the manifesting requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809) used oil that is defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739).

Second, the Board adopts first-notice amendments intended to exempt from the special waste hauling permit requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809) shipments that contain no special waste other than used oil that is defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739).

Third, the Board specifically seeks from the participants comment on whether to amend Part 739 to require in used oil tracking documents, information that would allow those documents to satisfy other informational requirements such as manifests under Parts 808 and 809. Additionally, in the event that a participant wishes to amend Part 739 in this manner, the Board seeks comment in the form of regulatory language that might be proposed to effect such an amendment. Specifically, the Board seeks to determine whether the record in this proceeding may be developed in a way that supports adoption of a proposal similar to that sought by NORA

while addressing the concerns of the Illinois Environmental Protection Agency (Agency or IEPA).

PROCEDURAL MATTERS

Procedural History

NORA filed its proposed rule and statement of reasons (Statement) on December 13, 2005. Also on December 13, 2005, NORA filed a motion to waive signature requirements. *See* 415 ILCS 5/28(a) (2006); 35 Ill. Adm. Code 102.202(g) (requiring petition signed by at least 200 persons). In an order dated January 5, 2006, the Board accepted NORA's proposal for hearing and granted NORA's motion to waive the signature requirement. Also in that order, the Board directed NORA to address in writing three identified informational deficiencies in its proposed rule and statement of reasons. On May 1, 2006, the Board received the comments of the Agency (PC #1). Pursuant to a hearing officer order, NORA on May 16, 2006 filed its supplemental statement of reasons (Supp. Statement) and *errata* sheet #1 (*Errata* 1).

The Board held two public hearings in this rulemaking. The first hearing took place in Springfield on May 25, 2006 (Tr.1). On May 16, 2006, four persons prefiled testimony on behalf of NORA for the first hearing: (1) Christopher Harris (Harris Prefiled Test.), General Counsel to NORA; (2) Victoria Custer (Custer Prefiled Test.), Vice President of Southwest Oil, a director on NORA's board, and Chair of NORA's Illinois Working Group; (3) Mike Lenz (Lenz Prefiled Test.), an Environmental Compliance Specialist for Future Environmental; and (4) Greg Ray (Ray Prefiled Test.), Vice President of Business Management for Heritage-Crystal Clean, LLC. Also on May 16, 2006, for the first hearing, Theodore J. Dragovich, manager of the Disposal Alternatives Unit in the Agency's Bureau of Land Permit Section, prefiled testimony (Dragovich Prefiled Test.) on behalf of the Agency. Mr. Harris, Ms. Custer, Mr. Lenz, Mr. Ray, and Mr. Dragovich each testified at the first hearing.

In an order dated June 1, 2006, the hearing officer noted that the Agency sought to respond to questions raised at the first hearing by preparing a response for the second hearing. In that order, the hearing officer directed the Agency to file that response with the Board in the form of a public comment by June 15, 2006. On that date, the Agency filed Additional Testimony of Theodore J. Dragovich (Dragovich Addl. Test.) and the testimony of Christopher N. Cahnovsky, Regional Manager of the Collinsville office of the Agency's Bureau of Land (Cahnovsky Prefiled Test.).

The second hearing took place on Chicago on June 29, 2006 (Tr.2). Four persons testified on behalf of NORA at the second hearing: (1) Catherine A. McCord, Vice President of Environment, Health, and Safety for Crystal Clean; (2) Dan R. Appelt of Safety-Kleen; (3) Ms. Custer; and (4) Mr. Lenz. In addition, Mr. Dragovich and Mr. Cahnovsky testified on behalf of the Agency.

The hearing officer entered the following 18 hearing exhibits into the record:

- Exhibit 1: Electronic Code of Federal Regulations 40 C.F.R. 279.1 – 279.82 (Standards for the Management of Used Oil)
- Exhibit 2: 35 Ill. Adm. Code 739.100 – 739.182 (Standards for the Management of Used Oil)
- Exhibit 3: 35 Ill. Adm. Code 808.100 – 808.600 (Special Waste Classifications)
- Exhibit 4: 35 Ill. Adm. Code 809.101 – 809.921 (Nonhazardous Special Waste Hauling and the Uniform Program)
- Exhibit 5: Testimony of Christopher Harris
- Exhibit 6: Testimony of Victoria Custer
- Exhibit 7: Testimony of Mike Lenz
- Exhibit 8: Testimony of Gregory Ray
- Exhibit 9: Supplemental Statement of Reasons and *Errata* Sheet #1
- Exhibit 10: Testimony of Theodore J. Dragovich
- Exhibit 11: Additional Testimony of Theodore J. Dragovich and Christopher N. Cahnovsky
- Exhibit 12: Safety-Kleen Oil Recovery Service/Sales Acknowledgement
- Exhibit 13: Crystal Clean Work Order (dated January 18, 2004)
- Exhibit 14: Future Environmental, Inc. Straight Bill of Lading
- Exhibit 15: Testimony of Catherine McCord on Behalf of NORA
- Exhibit 16: Additional Testimony of Dan Appelt, Safety-Kleen Systems, Inc.
- Exhibit 17: Safety-Kleen Tracking Document (dated May 22, 2006)
- Exhibit 18: Safety-Kleen Tracking Document (dated May 23, 2006)

At the second hearing, the participants agreed to a deadline of August 9, 2006 for filing post-hearing comments. On July 18, 2006, the hearing officer issued an order directing the participants to file post-hearing comments by that date. On August 7, 2006, the Agency filed a motion for extension of time in which to file comments. Also on August 7, 2006, the hearing officer issued an order granted the Agency's motion and extended the deadline for filing post-hearing comments to August 16, 2006. On August 11, 2006, NORA filed an oral motion to extend the deadline for filing post-hearing comments. Also on August 11, 2006, the hearing

officer issued an order granting NORA's motion and extending the deadline for filing post-hearing comments to September 1, 2006. On September 1, 2006, the Agency filed its post-hearing comments (PC #33) and NORA filed its post-hearing brief (PC #34).

In an e-mail on September 6, 2006 (PC #35), the Agency sought to correct two technical errors in citations to the Federal Register in its post-hearing comments. Responding by e-mail on September 7, 2006 (PC #36), NORA indicated that it did not object to those corrections but stated that it wished to respond to arguments that it believed the Agency made for the first time in its post-hearing comments. In an order dated September 8, 2006, the hearing officer directed the Agency to file correction of its post-hearing comments by September 21, 2006. On September 18, 2006, the Agency filed its corrections to its post hearing comments (PC #38). Also in the order dated September 8, 2006, the hearing officer allowed any participant to file a response to the post-hearing comments filed either by the Agency or by NORA on or before Monday, October 9, 2006. On October 10, 2006, NORA timely filed its response to the Agency's post-hearing comments (PC #39), and the Agency timely filed its comments in response to NORA's post-hearing brief (PC #40). The Agency's response elicited two additional comments specifically addressing the Agency's arguments: one from Mr. Lenz (PC #41) and one from Mr. Ray (PC #42).

On November 5, 2007, NORA filed a "Rule Proposal Amendment" (Prop). NORA's filing included an *Errata* Sheet #2, which proposed an amendment to 35 Ill. Adm. Code 809.101. Prop. at 5. NORA sought to withdraw its original proposal and to offer in its place the language contained in *Errata* Sheet #2. *Id.* On November 19, 2007, the Agency filed a motion for extension to December 3, 2007, of the time in which to file a response to the rule proposal amendment (Mot. Ext.). On December 3, 2007, the Agency filed its response to the rule proposal amendment (Resp.).

In addition to those comments noted above, the Board received public comments in this proceeding from the following 31 persons:

- PC #2 Shaunti Stalluth, Industrial Water Services
- PC #3 Lee J. Plankis; Senior Vice President of Operations, RS Used Oil Services, Inc.
- PC #4 Rick Shipley; National Sales Manager, RS Used Oil Services, Inc.
- PC #5 Ronald A. Winkle; President, RS Used Oil Services
- PC #6 Dave Brown; President, United Waste Water Services, USI
- PC #7 Ronald J. Plankis; Vice President, Consulting Services, Profit Consultants, Ltd.
- PC # 8 Ken Petruck; Vice President, Operations, Excel Environmental, Inc.
- PC # 9 Catherine A. McCord; Vice-President, Environment, Health, and Safety, Crystal Clean

<u>PC #10</u>	Michael Lenz; Environmental Compliance Specialist, Future Environmental
<u>PC #11</u>	Lin Longshore; Senior Vice-President, Environment, Health, and Safety, Safety-Kleen
<u>PC #12</u>	Jeffrey M. Posick, Waste Alternatives and Consulting, LLC
<u>PC #13</u>	John A. Oxford; Vice President of Compliance, Fuel Processors, Inc.
<u>PC #14</u>	John A. Oxford; Vice President of Compliance, Energy & Material Recovery, Inc.
<u>PC #15</u>	John A. Oxford; Vice President of Compliance, Industrial Oil, Inc.
<u>PC #16</u>	David Osbourne; Manager of Sales and Customer Service, Consolidated Recycling Co., Inc.
<u>PC #17</u>	Ken Reif, Valley Environmental Service
<u>PC #18</u>	Gary L. Gunderson; President, Recycle Technologies, Inc.
<u>PC #19</u>	Donald R. Kleine; Owner, Vortex Recycling
<u>PC #20</u>	Garry R. Allen
<u>PC #21</u>	Matthew Usher, Usher Oil Company
<u>PC #22</u>	Richard A. Kalin; Vice President, Noble Oil Services, Inc.
<u>PC #23</u>	Deanne Hartman; President/CEO, Approved Remediation and Recycling of Oil Waste, Inc.
<u>PC #24</u>	Victoria M. Custer; Vice President, Southwest Oil, Inc.
<u>PC #25</u>	Steve Rundell; President, Solvent Systems International, Inc.
<u>PC #26</u>	W.L. Briggs; President, Oil Re-Refining Company, Inc.
<u>PC #27</u>	Benjamin P. Cowart; President of General Partner, Vortex Energy, L.P.
<u>PC #28</u>	Scott D. Parker; Executive Director, NORA
<u>PC #29</u>	Laura M. Krist; Territory Manager, Jacobus Environmental Services
<u>PC #30</u>	Brett Morton; Senior Environmental Engineer/Product Stewardship, Shell Lubricants

<u>PC #31</u>	Chris McNeil; Compliance Officer, Aaron Oil Company, Inc.
<u>PC #32</u>	John H. Datka; General Manager, Moore Oil Environmental Services, LLC
<u>PC #41</u>	Michael Lenz, Environmental Compliance Specialist, Future Environmental
<u>PC #42</u>	Gregory Ray, Vice President of Business Management, Heritage-Crystal Clean, LLC

Many of these comments claim “that the current manifesting requirements in Illinois for used oil and items regulated as used oil are unnecessary and burdensome.” *E.g.*, PC #2. As an example, Catherine A. McCord of Crystal Clean filed PC #9, which states that “[t]he use of hazardous waste manifests for used oil does not promote additional recycling and does not provide additional environmental protection or integrity of the regulatory framework.” Michael Lenz of Future Environmental filed PC #10, which claims that the Agency’s position is “unnecessary, goes against the intent of the used oil regulations, would strongly discourage Illinois-based recyclers from recycling certain used oil waste streams, and would be very burdensome and put the Illinois-based recyclers at a severe disadvantage compared to their out-of-state competitors.” Each of these public comments supports the proposal filed by NORA and requests that the Board adopt the proposed language. *E.g.*, PC #2.

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2006)), the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study (EcIS) of this rulemaking proposal. In a letter dated February 22, 2006, the Board requested that DCEO determine whether it would conduct an EcIS concerning this rulemaking proposal. DCEO did not respond to the Board’s request. At the second hearing, the hearing officer noted the Board’s request to DCEO for an EcIS and the lack of a response. Tr.2 at 125-26. Although the hearing officer afforded those present the opportunity to testify regarding the Board’s request and the lack of a response, no participant offered testimony with regard to that issue. *See* Tr.2 at 126.

Filing Public Comments

First-notice publication in the *Illinois Register* of these proposed rule changes will start a period of at least 45 days during which anyone may file a public comment with the Board, regardless of whether the person has already filed a public comment. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R06-20, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address:

Pollution Control Board
 John T. Therriault, Assistant Clerk
 James R. Thompson Center

100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

In addition, public comments may be filed electronically through COOL at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Please note that all filings with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Before filing any document with the Clerk, please check with the hearing officer or the Clerk's Office to verify the most recent version of the Service List.

PRELIMINARY MATTER

On November 19, 2007, the Agency filed a motion for extension of time in which to file a response to NORA's November 5, 2007, proposed rule amendment. In that motion, the Agency stated that NORA's Rule Proposal Amendment "was not styled as a motion." Mot. Ext. at 1. Noting that motions trigger a 14-day response deadline, the Agency stated that it had only recently learned that the Board intended to construe NORA's filing as a motion. *Id.* Because that 14-day deadline fell during the week of a holiday, the Agency indicated that staff time off and vacation prevented it from having sufficient time to respond adequately. *Id.* The Agency requested a two-week extension to December 3, 2007, for filing its response.

The Board's procedural rules provide that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). In the absence of a response from NORA or any other participant in this proceeding, the Board grants the Agency's motion for extension of the time in which to file its response to NORA's proposed rule amendment to December 3, 2007.

The Board notes that, on December 3, 2007, the Agency timely filed its response. In its response, the Agency requests that the Board "deny NORA's motion to file its Rule Proposal Amendment," apparently construing NORA's filing as a motion for leave. Resp. at 5. While the Board accepts NORA's Rule Proposal Amendment, the Board also accepts the Agency's arguments in response and separately summarizes them below at pages 48-51.

SUMMARY OF ORIGINAL NORA PROPOSAL

In the original filing of its proposed rules on December 13, 2005, NORA states that "[u]sed oil occupies a special place in state and federal statutes and regulations, largely because government environmental policies have sought to encourage recycling of used oil as a prudent alternative to disposal." Statement at 1. NORA argues that "[m]ost states have adopted the federal used oil recycling rules as the sole regulatory requirements governing the management of used oil." Statement at 2, citing 40 C.F.R. 279 (Standards for the Management of Used Oil). NORA further argues that, because the Board adopted Illinois' used oil rules through an exercise

of its identical in substance rulemaking authority, the Board's regulations at 35 Ill. Adm. Code 739 "should mirror 40 C.F.R. 279." Statement at 2, *see* RCRA Update, USEPA Regulations, (July 1, 1992 through December 31, 1992), R 93-4 (Sept. 23, 1993) (codifying new Part 739). NORA notes, however, that the Board had adopted special waste rules applicable to activities including used oil recycling before promulgating Part 739. Statement at 2; *see* 35 Ill. Adm. Code 808, 809. NORA argues that these pre-existing special waste rules include requirements such as manifesting used oil during transportation that are not contained in the federal used oil rules. Statement at 2.

Specifically, NORA believes "that Illinois' additional regulatory treatment of used oil as a special waste, with the corresponding manifesting and special waste hauling requirements, is not consistent with that goal of making Illinois' program identical to the federally designed program." Statement at 2. NORA claims that "[s]uch requirements make it unduly burdensome to do business in Illinois." *Id.* NORA states that it has expressed these views to the Agency with the hope that discussions would lead to harmonizing the federal and state used oil requirements. *Id.* Following those discussions, NORA filed this proposal "to decouple the special waste requirements (particularly manifesting and hauling permitting) from the used oil requirements found at Part 739." Statement at 3. "While NORA maintains that the current regulator scheme can be interpreted so that these special waste requirements do not apply to used oil," NORA states that it seeks to amend the Board's regulations in order to provide a stronger basis for this interpretation. Statement at 3. Specifically, NORA seeks to amend five sections of the Board's special waste regulations, each of which is separately discussed below.

Section 808.121: Generator Obligations

Section 808.121(a) requires persons generating waste to determine whether it is a special waste. 35 Ill. Adm. Code 808.121(a); *see* 415 ILCS 5/3.475 (definition of "special waste"), 35 Ill. Adm. Code 808.110 (definition of "special waste"). A Board Note attached to that subsection cross-references the Board's hazardous waste regulations by stating that "35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste." 35 Ill. Adm. Code 808.121.

Section 808.121(b) provides that "[n]o person shall deliver special waste to a transporter unless the waste is accompanied by a manifest as specified in Section 808.122, and the transporter has a special waste hauling permit issued pursuant to 35 Ill. Adm. Code 809." 35 Ill. Adm. Code 808.121(b). Section 808.121(b) also provides four exceptions to this prohibition. 35 Ill. Adm. Code 808.121 (b)(1-4). NORA proposes in its original filing to add a fifth exception to subsection (b) for "[u]sed oil as defined by or managed pursuant to 35 Ill. Adm. Code 739." Statement at 4.

Section 809.211: Exemptions for Nonhazardous Special Waste Transporters

Section 809.211 provides that eleven categories of persons "need not obtain a nonhazardous special waste hauling permit nor carry a manifest if they haul only the waste indicated." 35 Ill. Adm. Code 809.211(a-k).

NORA proposes in its original filing to add a twelfth exemption for “[a]ny person who hauls used oil subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739.” Statement at 5 (proposing new subsection 809.211(l)).

Section 809.301: Requirements for Delivery of Nonhazardous Special Waste to Transporters

Section 809.301 provides that

[n]o person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency.” 35 Ill. Adm. Code 809.301.

NORA proposes in its original filing to add to this subsection language providing that “[a] manifest is not required to be delivered to a transporter who hauls used oil subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739 and who has registered as a used oil transporter and obtained an Illinois Special Waste identification number.”

Section 809.302: Requirements for Acceptance of Nonhazardous Special or Hazardous Waste from Transporters

Section 809.302 provides that

[n]o person may accept any special waste for disposal, storage or treatment within Illinois from a special waste transporter unless the special waste transporter has a valid nonhazardous special waste hauling permit or Uniform Program Registration and Permit . . . and concurrently present to the receiver of the special waste, or the receiver’s agent, a completed, signed manifest . . . , which manifest designates the receiver’s facility as the destination for the special waste. 35 Ill. Adm. Code 809.302.

NORA proposes in its original filing to add language providing that “[a] manifest is not required to be presented by a transporter who hauls used oil subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739, and who has registered as a used oil transporter and obtained an Illinois Special Waste identification number.” Statement at 6.

Section 809.501: Manifests, Records, Access to Records, Reporting Requirements and Forms

Section 809.501 provides that “[a]ny person who delivers special waste to a permitted nonhazardous special or hazardous waste transporter shall complete a uniform hazardous waste manifest to accompany the special waste from delivery to the destination of the special waste. The manifest will be provided or prescribed by the Agency.” 35 Ill. Adm. Code 809.501.

NORA proposes in its original filing to add language providing that “[a] manifest is not required to accompany deliveries of used oil by a transporter who hauls used oil subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739, and who has registered as a used oil transporter and obtained an Illinois Special Waste identification number.” Statement at 6.

AGENCY COMMENTS ON ORIGINAL NORA PROPOSAL

On May 1, 2006, the Agency submitted comments responding to NORA’s original proposal. *See* PC #1. The Agency commented separately on each section NORA proposes to amend, and the Board below summarizes those comments on a section-by-section basis.

Generally, the Agency states that it has several discussions with NORA on various requirements pertaining to used oil but that “[t]hese discussions were limited to the elimination of manifests for used oil that is defined by and managed in accordance with the used oil regulations at 35 Ill. Adm. Code 739 and elimination of hauling permits for transporters that are transporting no special waste other than used oil that is defined by and managed in accordance with Part 739.” PC #1 at 1. The Agency further states that it did not discuss other aspects of special waste regulation with NORA and that it “believes NORA does not intend to exclude used oil from the definition of special waste, special waste reporting, or any other requirements that applies to special waste.” *Id.*

The Agency notes that Part 739 requires tracking of used oil shipments, making unnecessary the additional manifesting requirement under Part 809. PC #1. The Agency states that it agrees that used oil defined by and managed in accordance with Part 739 can properly be exempted from the manifesting requirement of Part 809. PC #1 at 2, 5-6; *see* 35 Ill. Adm. Code 739, 809. The Agency adds, however, that “a manifest exemption in Part 809 should clarify that it only applies to used oil that is defined by and managed in accordance with Part 739 and would not apply to other wastes transported on the same load.” PC #1 at 2.

The Agency also states its agreement that “an exemption from the hauling permit requirement of Part 809 is proper for loads that contain no special waste other than used oil that is defined by and managed in accordance with Part 739.” PC #1 at 2; *see also* PC #1 at 5-6. The Agency argues, however, that “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.” *Id.* The Agency adds that it would require registration of the transporter through an existing notification procedure. *Id.*, citing 35 Ill. Adm. Code 739.142.

Summarizing, the Agency stresses that, because Part 739 provides for the proper transportation and tracking of used oil, it “does not object to used oil as defined in Part 739 being exempt from hauling permits and manifests if managed in compliance with Part 739.” PC #1 at 5-6. Although the Agency states that it opposes the language proposed by NORA to enact these exemptions, it offered alternative language it could support and “that would accomplish the goal of NORA’s proposal.” PC #1 at 6.

Section 808.121: Generator Obligations

The Agency states that it cannot agree with NORA's proposed exemption from having to obtain a manifest and a special waste hauling permit. PC #1 at 2; *see* Statement at 4 (proposing new 35 Ill. Adm. Code 808.121(b)(5)). The Agency states that NORA's proposal "applies to either used oil as defined by or managed pursuant to 35 Ill. Adm. Code 739." PC #1 at 2 (emphasis in original). The Agency argues that used oil must be defined by and managed in accordance with Part 739 in order to be eligible for the exemption. *Id.* (emphasis added). The Agency further argues that the exemption from having to obtain a hauling permit should not apply to a vehicle that is also transporting special waste other than used oil that is defined by and managed in accordance with Part 739. PC #1 at 2-3.

Reflecting these arguments, the Agency first proposes to add the following language as subsection 808.121(b)(5): "[t]he generator is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739." PC #1 at 3. The Agency also proposed to add the following language as subsection 808.121(b)(6): "[a] transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter." PC #1 at 3.

Section 809.211: Exemptions for Nonhazardous Special Waste Transporters

The Agency states that it cannot agree with NORA's proposed exemption from having to obtain a special waste hauling permit for hauling used oil subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739. PC #1 at 3; *see* Statement at 4-5. The Agency notes that "used oil can be subject to regulation both under Part 739 and other regulations" and recommends instead an exemption based upon used oil "defined and managed in accordance with Part 739." PC #1 at 3.

The Agency further argues that "the transporter exemption from hauling permits should be clear that it would not apply to a vehicle that is also transporting other special waste that is not used oil that is defined by and managed in accordance with Part 739." PC #1 at 3. In place of NORA's proposed language, the Agency proposes a new subsection 809.211(l): "[a]ny person who hauls only used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739, and who has registered with the Agency as a used oil transporter." *Id.*

Section 809.301: Requirements for Delivery of Nonhazardous Special Waste to Transporters

The Agency argues that NORA's proposal to amend Section 809.301 could be interpreted to exempt all special wastes transported by a used oil hauler from having to obtain a manifest. PC #1 at 4. The Agency claims that, because the proposed exemption "could be applied to all hazardous and non-hazardous waste including used oil destined for disposal, the exemption would be less stringent than the federal RCRA [Resource Conservation and Recovery Act]

regulations.” *Id.* The Agency recommends adding language to Section 809.302(a), which the following paragraph addresses.

Section 809.302: Requirements for Acceptance of Nonhazardous Special or Hazardous Waste from Transporters

The Agency argues that NORA’s proposal to amend Section 809.302 would allow a facility to accept waste without a manifest from a transporter who does not have a permit if the transporter hauls used oil “at some point in time” and registers as a used oil transporter. PC #1 at 4. The Agency claims that the proposed exemption “could be interpreted to apply to all hauling vehicles that belong to the registered transporter” whether it hauls used oil or other waste. *Id.* In place of NORA’s proposed language, the Agency proposes adding to Section 809.302(a) the following language:

[t]he generator (or transporter) is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter. *Id.* at 4-5.

Section 809.501: Manifests, Records, Access to Records, Reporting Requirements and Forms

The Agency argues that NORA’s proposed exemption in this section does not require that a load of used oil comply with Part 739 but requires only “that the hauler hauls some used oil regulated under Part 739.” PC #1 at 5. The Agency claims that “[t]he wording ‘subject to regulation as used oil’ could be interpreted to mean that the used oil does not comply with the requirements of [Part] 739, but is a material that falls within the applicability section of 739.110.” *Id.* The Agency further argues that the definition of “person” in Part 809 includes both an individual and a company. *Id.*; see 35 Ill. Adm. Code 809.103; see also 415 ILCS 5/3.315 (2006) (defining “person”). The Agency thus claims that it is ambiguous whether the exemption must be met by an individual truck or by the company itself. PC #1 at 5. In place of NORA’s proposed language, the Agency proposes adding to Section 809.501(a) the following language:

[t]he generator (or transporter) is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter. *Id.*

AGENCY TESTIMONY ON ORIGINAL NORA PROPOSAL

On May 10, 2006, the Agency pre-filed for the first hearing in this proceeding the testimony of Theodore Dragovich. For eleven years, Mr. Dragovich has served as the manager of the Disposal Alternative Unit in the Agency's Bureau of Land Permit Section. Dragovich Prefiled Test. at 1; *see* Dragovich Prefiled Test, Exh. 1 (resumé).

Mr. Dragovich states that its discussions with NORA "were limited to the elimination of manifests for used oil that is defined by and managed in accordance with Part 739 and the elimination of hauling permits for transporters that are only transporting loads of used oil that is defined by and managed in accordance with Part 739." Dragovich Prefiled Test. at 2. Mr. Dragovich further states that tracking requirements in Part 739 provide necessary information for shipments of used oil. *Id.* at 3, citing 35 Ill. Adm. Code 739.146, 739.156, 739.165, 739.174. Mr. Dragovich states that the Agency "supports the concept of providing a manifest exemption for used oil, but is offering alternative language that will insure that the exemption can only be applied to used oil as defined by and managed in accordance with" Part 739. *Id.* at 1. Mr. Dragovich further states the belief that NORA did not intend to exempt other wastes or special wastes that are not intended to undergo recycling. *Id.* at 2.

Mr. Dragovich agrees with NORA that it is necessary to amend the Board's regulations in order to exempt used oil from manifesting and hauling permits. Dragovich Prefiled Test. at 2. In support of this conclusion, Mr. Dragovich notes the statement in adopting Part 739 that "[t]he Board agrees that the used oil should be subject to the special waste manifesting regulations. The Board believes that its existing manifesting regulations in Part 809 are more stringent than the Federal regulations and thus apply. Therefore, the Board will adopt the regulations to reflect that used oils are subject to special waste manifesting regulations. . . ." *Id.* at 2-3, citing RCRA Update, USEPA Regulations (July 1, 1992 through December 31, 1992), R93-4, slip op. at 65 (Sept. 23, 1993). Mr. Dragovich further notes that Part 739 identifies manifests as acceptable used oil tracking documents. Dragovich Prefiled Test. at 3, citing 35 Ill. Adm. Code 736.156, 739.174.

Mr. Dragovich continues by raising specific issues with NORA's proposal, which the Board summaries below on a point-by-point basis.

Special Waste Identification Number

Mr. Dragovich notes that NORA's proposal refers to a "special waste identification number," a term which the Board's regulations do not define. Dragovich Prefiled Test. at 4. Mr. Dragovich states that the Board has explained that the term means "'a generator ID number' for generators, 'a facility ID number' for TSDs [treatment, storage, or disposal facilities], and 'a waste hauling permit number' for transporters." *Id.*, citing RCRA Update, USEPA Regulations (January 1, 1993 through June 30, 1993), R93-16, slip op. at 22 (Mar. 17, 1994). Mr. Dragovich notes that the Agency would not assign an exempt hauler a special waste hauling permit number. Dragovich Prefiled Test. at 4. Consequently, the Agency "requests that the Board clarify that an 'Illinois special waste [identification] number' for a used oil transporter is the number assigned by the Illinois EPA to the address of the special waste hauling permit exempt used oil transporter's main place of business that designates the person as a used oil transporter." Dragovich Prefiled Test. at 4.

Mr. Dragovich also claims that NORA's proposal is ambiguous because a transporter may be an individual driver or a company, making it possible to apply the proposed exemption either to an individual load or to an entire company. Dragovich Prefiled Test. at 4. Mr. Dragovich states that the Agency currently issues one hauling permit number to a company, which must identify and pay a fee for each truck. *Id.* Consequently, the Agency seeks to have the Board clarify that the proposed hauling permit exemption applies by the load. *Id.* Mr. Dragovich supports this request by stating that "[i]t would not be appropriate for the company's entire fleet to have to be dedicated to hauling used oil before the exemption would apply or for the entire fleet to receive the exemption because one truck meets the requirements." *Id.* at 4-5.

Section 808.121(b)(5)

Responding to NORA's proposed exemption applying either to used oil as defined by or managed pursuant to 35 Ill. Adm. Code 739, Mr. Dragovich states that "[t]he used oil must satisfy both criteria rather than either one before the used oil should be exempt." Dragovich Prefiled Test. at 5. Mr. Dragovich argues that, as written, the proposed exemption applies to any waste managed according to Part 739 even if Part 739 does not apply to the waste in question. *Id.* Mr. Dragovich also argues that "the exemption should not apply to hauling permits if the transporter also transports other special waste at the same time." *Id.* Consequently, the Agency restates its proposed alternative language for Section 809.121. Dragovich Prefiled Test. at 6; *see supra* at 11; *see also* PC #1 at 3.

Section 809.211(l)

Mr. Dragovich states that NORA's proposal does not require a load of used oil to comply with Part 739, "only that the hauler hauls some used oil subject to regulation under [Part] 739." Dragovich Prefiled Test. at 6. Accordingly, the Agency restates its proposed alternative language for this section. *Id.*; *see supra* at 11; *see also* PC #1 at 3.

Section 809.301(a)

Mr. Dragovich states that NORA's proposal could be interpreted only to exempt used oil from manifesting and not to exempt the used oil from delivery to a permitted hauler. Dragovich Prefiled Test. at 6. The Agency restates its proposed alternative language for this provision. *Id.* at 6-7; *see supra* at 11-12; *see also* PC #1 at 4.

Mr. Dragovich states that separating the manifesting and transportation exemptions "will allow unmanifested loads of used oil to be transported on the same truck with other special waste that needs a manifest." Dragovich Prefiled Test. at 7. Mr. Dragovich further states that the Agency's proposal for a manifest exemption would not require transporting used oil in separate containers or compartments, although its proposed transportation exemption "would only exempt the truck from special waste hauling permits if the only special waste on that individual load is used oil." *Id.*

Section 809.302(a)

Mr. Dragovich states that NORA's proposal could be interpreted only to exempt used oil from manifesting and not to exempt the used oil from delivery to a permitted hauler. Dragovich Prefiled Test. at 7. Mr. Dragovich further states that NORA's proposal arguably "would allow a transporter to be exempt from all manifest and hauling permit requirements if they haul used oil at some point in time and register as a used oil transporter." *Id.* at 7-8. The Agency restates its proposed alternative language for this provision. *Id.* at 7; *see supra* at 12; *see also* PC #1 at 4-5.

Section 809.501(a)

Mr. Dragovich states that NORA's proposal does not require a load of used oil to comply with Part 739, "only that the hauler hauls some used oil subject to regulations under [Part] 739." The Agency restates its proposed alternative language for this provision. Dragovich Prefiled Test. at 8. Mr. Dragovich also states that NORA's proposal is unclear because a transporter may be an individual driver or a company, making it possible to apply the proposed exemption either to an individual load or to an entire company. *Id.* Mr. Dragovich further states that the Agency "does not want the entire fleet to have to be dedicated to hauling used oil before the exemption would apply, and the Illinois EPA does not want the entire fleet to receive the exemption because one truck meets the requirements." *Id.* The Agency restates its proposed alternative language for this provision. *Id.*; *see supra* at 12; *see also* PC #1 at 5.

In this regard, the Agency seeks clarification that "the transporter number is the number assigned to the address of the transporter's main place of business." Dragovich Prefiled Test. at 8. Mr. Dragovich states that the Agency now assigns one ten-digit address to each address so that various activities including generation, transportation, treatment, or disposal may be linked to that ten-digit tracking number. *Id.* at 8-9. Accordingly, since a company may already be assigned a number solely as a generator and not a hauler, the Agency requests that "the Board clarify that the used oil transporter must obtain a transporter number (or add the transporter status to their existing number). A transporter number may then be assigned when they register as a used oil transporter." *Id.* at 9.

NORA ERRATA SHEET

On May 16, 2006, NORA filed its *Errata* Sheet #1. On the basis of its discussions with the Agency and the Agency's filings, NORA states that the Agency

shares the sentiment that, where used oil is managed in accordance with Part 739, the requirements for manifesting used oil as 'special waste' and the requirement for obtaining a 'special waste hauling permit' for the transportation of used oil are requirements that should be eliminated from Part 808 and 809 of the Board's rules. *Errata* 1 at 4.

NORA further states that "its proposed language is not intended to eliminate the special waste tracking requirements (manifesting and hauling) for any material that is *not* subject to regulation as 'used oil' under the federal program (and, correspondingly, Part 739 of the Board's rules)." *Id.* at 5 (emphasis in original). NORA claims that it seeks only an exemption for used oil and

material like used oil that are managed according to Part 739. *Id.*; citing 35 Ill. Adm. Code 739.110 (applicability of used oil standards).

Seeking to clarify its position and to address the Agency's misgivings with its original proposal, NORA proposed alternate language. First, NORA proposed adding the following two new subsections regarding generator obligations to Section 808.121(b):

- (5) The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739.
- (6) A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter. *Errata* 1 at 6.

Second, NORA proposed amending its original proposal by inserting in Section 809.211 an exemption from hauling permits for “[a]ny person who hauls material subject to regulation pursuant to 35 Ill. Adm. Code Part 739 and who has registered with the Agency as a used oil transporter.” *Id.* Third, NORA proposed amending its original proposal by inserting the following language in Section 809.301(a) and in Section 809.302(a):

The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter. *Id.*

Fourth, NORA proposed amending its original proposal by inserting the following language in Section 809.501(a):

The generator (or transporter) is not required to complete a manifest for material that is subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material that is subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter. *Id.*

NORA TESTIMONY

Christopher Harris

Christopher Harris serves as General Counsel of NORA. Harris Prefiled Test. at 1; Tr.1 at 8-9. His prefiled testimony described “the origins of the used oil regulatory system in the United States.” Harris Prefiled Test. at 1. Mr. Harris states that the U.S. Congress first addressed this issue in the enactment of the Used Oil Recycling Act of 1980, which included findings that “(1) used oil is a valuable source of increasingly scarce energy; (2) technology exists to reprocess and recycle used oil; and (3) that used oil constitutes a threat to public health and the environment when disposed of improperly.” *Id.* at 2, citing 42 U.S.C. 6901a, H.R. REP. NO. 96-1415, at 10 (1980); S. REP. NO. 96-879, at 1 (1980); *see* Tr.1 at 9-10. Mr. Harris further

states that, after the United States Environmental Protection Agency (USEPA) failed to promulgate regulations to implement that statute, Congress in 1984 directed it to establish a used oil program. Harris Prefiled Test. at 2, citing 42 U.S.C. 6935(c)(2)(A); *see* Tr.1 at 10. Mr. Harris argues that this 1984 enactment demonstrates an intent to encourage used oil recycling consistent with the protection of human health and the environment. Harris Prefiled Test. at 2, citing H.R. REP. NO. 98-114 (1984); *see* Tr.1 at 10-11. Mr. Harris states that USEPA adopted used oil regulations in 1985 and again in 1992, the latter of which the Board adopted under its identical-in-substance rulemaking authority. Harris Prefiled Test. at 2, citing 40 C.F.R. 279, 35 Ill. Adm. Code 739; *see* Tr.1 at 11.

Mr. Harris states that NORA's proposal addresses the requirement to keep records of used oil shipments. Harris Prefiled Test. at 2. Mr. Harris states that, under both the federal and state regulations, used oil transporters must create and maintain for at least three years records "documenting the acceptance and delivery of each used oil shipment." *Id.* at 3; *see* Tr.1 at 12. Mr. Harris further states that transporters must create and maintain for at least three years records "of each shipment of used oil that is delivered to another transporter, fuel marketer, or processor." Harris Prefiled Test. at 3, citing 40 C.F.R. 279.46; *see* 35 Ill. Adm. Code 739.146 (Tracking), Tr.1 at 12. Mr. Harris also states that used oil processors must maintain similar records and also maintain an analysis plan. Harris Prefiled Test. at 3, citing 40 C.F.R. 279.57; *see* 35 Ill. Adm. Code 739.156 (Tracking), Tr.1 at 12. Mr. Harris further states that used oil generators must comply with applicable United State Department of Transportation (USDOT) regulations, which include requirements for used oil transporters. Harris Prefiled Test. at 3, citing 40 C.F.R. 279.43(b); *see* Tr.1 at 13, 30-35.

Mr. Harris argues that USEPA has stated that the all of the information required by the standard hazardous waste manifest is required by the tracking and record-keeping regulations and "has determined that these tracking and record-keeping requirements adequately protect human health and the environment." Harris Prefiled Test. at 4, citing 50 Fed. Reg. 49196 (Nov. 29, 1985); *see* Tr.1 at 9, 12. Mr. Harris argues that USEPA reasonably concluded that "manifesting used oil shipments was not necessary," particularly since used oils shipments generally include more steps than hazardous waste shipments. Harris Prefiled Test. at 4 n.1; *see* Tr.1 at 13.

Mr. Harris argues that Illinois' manifest requirement for shipments of used oil "imposes a significant burden on generators and transporters of used oil." Harris Prefiled Test. at 4, citing Ray Prefiled Test. He further argues that no state adjoining Illinois and very few other states require manifests for transporting used oil. Harris Prefiled Test. at 4. He claims that the documents required by the federal regulations are sufficient to answer "[a]ny question regarding the origination, transportation, destination, quantity, and timeline of any used oil shipment." *Id.*, citing 40 C.F.R. 279.

Mr. Harris concludes by arguing that the Board should adopt an exemption from manifesting for "all materials regulated as used oil under 40 C.F.R. Part 279 and 35 Ill. Adm. Code Part 739." Harris Prefiled Test. at 4-5; *see* Tr.1 at 14, 55-57. He argues that the tracking system established by those regulations effectively monitors shipments of both used oil and materials regulated as used oil. Harris Prefiled Test. at 5; *see* Tr.1 at 14. He suggests that any

person who would require manifests for shipments of materials regulated as used oil should indicate how the used oil tracking system would fail to provide all relevant information and how a manifest would provide it. *See Harris Prefiled Test. at 5.*

Victoria Custer

Victoria Custer states that she has been employed by Southwest Oil for 31 years. Custer Prefiled Test. at 1. She further states that she is a director on NORA's board and serves as chair of NORA's Illinois Working Group, a part of its Used Oil Recycling Council, which was created to advocate changes in Illinois' special waste regulations. *Id.* at 1-2; *see Tr.1 at 14.* Specifically, the Group seeks to eliminate special waste hauling permit and manifesting requirements for shipments of used oil. Custer Prefiled Test. at 2-3. Ms. Custer states that these requirements are inconsistent with the federal program and that they make it more onerous for NORA members to do business in Illinois than in adjoining states. *Id.* In this regard, Ms. Custer testified that Illinois is estimated annually to generate 42 million gallons of used oil from 34,000 generators. Tr.1 at 19.

Ms. Custer notes that Indiana in 1988 repealed its Liquid Industrial Waste Hauler Rule. Custer Prefiled Test. at 3, citing Exh. A (Final Notice from Indiana Department of Environmental Management). Ms. Custer notes that this repeal "ended the requirements to have a permit to haul liquid industrial waste in the State of Indiana and the associated monthly reporting requirement." Custer Prefiled Test. at 3, citing Exh. A. She further notes that the repeal explicitly did not affect hazardous waste transportation requirements. Custer Prefiled Test. at 3, citing Exh. A.

Ms. Custer indicates that adoption of NORA's proposal would eliminate the expense of manifests while maintaining used oil tracking under the federal program adopted in Illinois. Custer Prefiled Test. at 3. She states that this change will ease her employer's paperwork burden and increase the number of its customers. *Id.*; *see Tr.1 at 45.*

Mike Lenz

Mike Lenz states that Future Environmental, a used oil transporting and marketing company, employs him as a consultant responsible for compliance. Lenz Prefiled Test. at 1. He estimates that Future Environmental serves 10,000 used oil generators in Illinois, including such entities as service stations, automobile dealers, and factories. *Id.* He also estimates that Future Environmental serves 15 Illinois entities using used oil. *Id.* Mr. Lenz has been involved with NORA since 1985, including time as a member of its Board of Directors and as Co-Chair of its Government Affairs Committee. *Id.*

Mr. Lenz states that manifesting involves the direct cost of the manifest itself and of mailing it. Lenz Prefiled Test. at 2. He indicates that, because used oil generators are not generally prepared to supply and complete a manifest, recyclers have assumed those responsibilities. *Id.* He further states that purchasing manifests costs Future Environmental approximately \$600 per day of operation, as the Agency charges three dollars per manifest and

the company has twenty Illinois drivers daily picking up as many as 20 loads of used oil from generators in the state. *Id.*

Mr. Lenz states that manifests also involve the cost of time. Lenz Prefiled Test. at 2. He estimates that a Future Environmental employee requires two minutes to complete a manifest, amounting daily to six hours of its employees' time. *Id.* He further states that office personnel handle manifests and mail copies to generators. *Id.*; *see* Tr.1 at 45.

Mr. Lenz suggests that these manifests duplicate the tracking requirements in Part 739 of the Board's regulations. Lenz Prefiled Test. at 2-3; *see* 35 Ill. Adm. Code 739. Using his own employer as an example of these tracking requirements, Mr. Lenz states that Future Environmental receives from each source generating used oil a ticket reflecting the name and address of the source, the date of the pick-up, and the generator's signature. Lenz Prefiled Test. at 3. In addition, its drivers maintain a log on which they note each load of used oil picked up from a generator. *Id.* Also, each truck has a load form, including the pick-up tickets described above and the destination of the used oil. *Id.* Future Environmental retains all of these tracking documents in its offices. *Id.* Mr. Lenz argues that these requirements under Part 739 are "completely protective" and may be even more protective than special waste manifest by tracking used oil from the generator to the end user. *Id.* He further argues that, in the case of a bad actor, the information gathered under Part 739 "allows the regulators to 'track' the problem." *Id.* at 6.

Mr. Lenz also argues that, "[f]or similar reasons, the used [oil] hauling permit requirements are also redundant." Lenz Prefiled Test. at 4. He states that, although Future Environmental expects to obtain a used oil identifying number, "there is absolutely no reason to have hauling permits for each separate vehicle." *Id.* For Future Environmental, he states that special waste hauling permits costs exceed \$1,400 per year. *Id.*; *see* Tr.1 at 39-42.

Mr. Lenz also argues that manifests conflict with used oil tracking regulations by citing examples. *See* Tr.1 at 19-20. First, he states that special waste manifests require a generator number or identification number. He claims that, because recyclers cannot legally pick up used oil without such a number, manifesting encourages improper storage or disposal of used oil, contrary to federal policy. Lenz Prefiled Test. at 4. Second, he states that the Agency issues site-specific generator numbers, making it difficult to prepare manifest at larger sites for construction and road-building. *Id.* at 4-5. Third, he argues that reliance on used oil transfer facilities makes it difficult to list the end user of used oil, which manifests require. *Id.* at 5. Fourth, he claims that the Agency had allowed "multi-stop" manifesting for each load of used oil and not for each generator, in effect listing the used oil recycler as the generator. *Id.* at 5-6. Citing "major problems with this procedure," Mr. Lenz states that the Agency stopped allowing its use. *Id.* at 6.

Mr. Lenz also argues that Illinois' manifesting requirement is not consistent with surrounding states. He indicates that "[t]he neighboring states of Iowa and Indiana simply require adherence to the federal rules. While Michigan requires manifesting, the manifest requirement is per load, not per generator." Lenz Prefiled Test. at 6. He claims that this inconsistency burdens Illinois used oil recycling businesses. *Id.*

Gregory Ray

Mr. Ray states that he has twenty year of experience in the used oil recycling industry with participation in trade associations including NORA and that he serves as Vice President of Business Management for Heritage Crystal Clean, LLC (HCC). Ray Prefiled Test. at 1; *see* Tr.1 at 20. Mr. Ray states that, having recognized that most used oil was managed through recycling, USEPA determined that “used oil could be most effectively regulated if managed without the burdens associated with a hazardous waste designation.” Ray Prefiled Test. at 1-2; Tr.1 at 20-21. He further states that USEPA then promulgated used oil management standards adopted by the vast majority of states. Ray Prefiled Test. at 2; *see* Tr.1 at 21-22. Mr. Ray argues that Illinois significantly deviates from these standards by requiring generators to ship used oil with special waste manifests. Ray Prefiled Test.; *see* Tr.1 at 21-22.

Mr. Ray states that the Agency once authorized used oil firms to use a multi-stop manifest for a single truckload instead of collecting manifests from each used oil generator. Ray Prefiled Test. at 2. He further states that, when HCC five year ago sought this authorization, the Agency denied it on the basis that it could no longer issue multi-stop permits. Mr. Ray argues that that Agency thus requires each of HCC’s customers to use special waste manifest. *Id.* Because Mr. Ray believes that firms that had been authorized to use a multi-stop manifest continue to do so, he claims that HCC has been placed at a competitive disadvantage. *Id.* Mr. Ray states that HCC annually generates approximately 2,800 special waste manifests. *Id.* at 3; *see* Tr.1 at 23. He further states that these manifests require “several full-time employees” and that eight to ten field personnel have these manifests as “a significant fraction of their daily work.” Ray Prefiled Test. at 3. Even as one of the smallest used oil collectors in the state, Mr. Ray claims that the manifesting requirements annually cost it \$100,000. *Id.*; *see* Tr.1 at 23, 43-46. Mr. Ray contends that the exercise of completing this paperwork “is a waste of paper, time, and energy” and that it “does nothing to enhance the protection of human health and the environment.” Tr.1 at 23.

Mr. Ray notes that NORA’s original proposal sought to exempt from manifesting “used oil defined by or managed pursuant to 35 Ill. Adm. Code 739.” Ray Prefiled Test. at 3; *see* Statement at 3-6, Tr.1 at 24. He further notes the Agency’s belief that NORA’s original proposal “could be construed to exempt from manifesting certain used oil which is NOT subject to management pursuant to 35 Ill. Adm. Code 739.” Ray Prefiled Test. at 3; *see* Tr.1 at 24. Stating that NORA did not intend this construction, he claims that NORA’s amended proposal responds fully to the Agency’s position. Ray Prefiled Test. at 3; *see* Tr.1 at 24. Specifically, he states that NORA proposes to apply a manifest exemption to “materials subject to regulation as used oil pursuant to 35 Ill. Adm. Code 739.” Ray Prefiled Test.; *see* Tr.1 at 24.

Mr. Ray characterizes the definition of “used oil” in the federal regulations as brief and narrow: “[u]sed 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.” Ray Prefiled Test. at 3, citing 40 C.F.R. 279.1; *see* Tr.1 at 24-25. Mr. Ray argues that USEPA “recognized that there were a variety of common materials which occur in proximity to used oil and are compatible with used oil, and are safely and properly recycled within the national used

oil recycling system.” Ray Prefiled Test. at 3; *see* Tr.1 at 25. Stating that mixtures of some of these materials with used oil are virtually indistinguishable from “normal used oil,” Mr. Ray argues that USEPA “felt that it was beneficial that these used-oil-like materials were also eligible to be managed under the used oil regulations.” Ray Prefiled Test. at 3; *see* Tr.1 at 25. He further argues that the federal regulations list examples of materials that are not used oil but are subject to regulation as used oil. *Id.* at 3-4, citing 40 C.F.R. 279.10; *see* Tr.1 at 25. Mr. Ray states that Illinois’ used oil regulations closely follow the federal regulations and also list used-oil-like mixtures appropriate for management as used oil. *Id.* at 4; *see* 35 Ill. Adm. Code 739.110(b), Tr.1 at 26.

Mr. Ray states that NORA favors a manifest exemption both for used oil and mixtures subject to regulation as used oil. Ray Prefiled Test. at 4; *see* Tr.1 at 26. He argues that failure to adopt NORA’s amended proposal would generate a number of problems. First, he claims that that it would make Illinois’ used oil regulations inconsistent with the federal system and other states. Ray Prefiled Test. at 4; *see* Tr.1 at 26. Second, he argues that it would distinguish used oil from used-oil-like mixtures, a distinction that is “virtually impossible” to make in the course of the used oil business. Ray Prefiled Test. at 4; *see* Tr.1 at 26, 36-37. Third, he claims that it would discourage safe recovery of conditionally exempt small quantity generator hazardous waste. Ray Prefiled Test. at 4; *see* Tr.1 at 26-27, 37-38.

Catherine McCord

Ms. McCord states that she has worked in the field of waste for more than 25 years, including tenure with USEPA and the Ohio Environmental Protection Agency. Exh. 15 at 1. She currently serves as Vice-President of Environment, Health, and Safety for Heritage-Crystal Clean and once served as a NORA board member. *Id.* at 2.

Ms. McCord states that NORA’s proposal would allow used oil tracking documents, “essentially shipping paper, to substitute for a special waste manifest for shipments of used oil in Illinois.” Exh. 15 at 2. She argues that these shipping papers or bills of lading are anticipated by federal regulations and used by most other states. *Id.*; *see generally* Tr.2 at 51-52, 107.

Ms. McCord argues that shipping papers would contain the same information as hazardous waste manifest for used oil. Exh. 15 at 3; *see* Tr.2 at 21. She states that shipping papers contain information such as the shipper, transporter, and emergency information, although she acknowledges that they are not prescribed forms and may also contain additional business information. Exh. 15 at 3. She further states that, because a hazardous waste manifest cannot contain this business information, shipments of used oil must have manifest and a second business-related document. *Id.* at 3-4. She argues that “[t]here is no information that is on the prescribed manifest that is not included on a shipping paper.” *Id.* at 4. Characterizing NORA’s proposal as “paperwork relief,” she claims that “[t]he definition of used oil is not relevant to our proposal” and that NORA does not understand why the Agency has raised the issue of that definition. *Id.*

Ms. McCord states NORA’s goal of exempting from special waste manifesting requirements “materials that the state of Illinois has already deemed suitable to manage pursuant

to the state's used oil regulations – namely, used oil (as defined) and certain limited mixtures containing used oil.” Exh. 15 at 5. Stating that the state's current used oil regulations allow certain used-oil-like mixtures to be managed as used oil, she claims that the Agency's position is contrary to those regulations and fails to recognize the distinction between the issues of waste manifesting and waste management. *Id.* at 6; *see* Tr.2 at 50. Ms. McCord expresses the view that Illinois' system for managing used oil is not a problem. *Id.* She claims that this proceeding has revealed that “[t]he Agency opposes the existing Illinois used oil regulations” and that it seeks to “arrive at a more restrictive regulatory framework.” Exh. 15 at 6-7.

Ms. McCord expresses strong disagreement with the Agency's position that limiting a manifest exemption to used oil as defined in Part 739 would not be burdensome to transporters. Exh. 15 at 7; *see* Tr.2 at 30. She suggests that, in addition to having to explain Illinois' regulations and prepare manifests, transporters would also have the burden of characterizing shipments. Exh. 15 at 7. She further argues that generators under the Agency's proposal would also experience the burden of managing a category of waste she describes as “material subject to regulation as used oil, but not meeting the definition of used oil, and therefore subject to special waste manifesting requirements.” *Id.* at 8 n.3.

Ms. McCord argues that adoption of the Agency's proposal would make Illinois' regulations inconsistent with other states and with the federal system, would artificially distinguish from one another materials that are virtually impossible to distinguish in the course of business operations, and would frustrate safe recovery of CESQG hazardous waste. Exh. 15 at 8. She concludes by claiming that NORA's proposal “does nothing to change the current management practices in Illinois,” which allow used oil and used-oil-like mixtures to be managed as used oil.” *Id.* at 8-9.

Dan Appelt

Mr. Appelt states that he has worked for Safety-Kleen Systems, Inc. (Safety-Kleen) in environmental compliance roles for the past 17 years and now acts as its Director of Compliance Administration. Exh. 16 at 1. He further states that Safety-Kleen primarily engages in “recycling of industrial fluids and oils throughout North America.” *Id.* Mr. Appelt states the position that “Safety-Kleen opposes continuing to require a manifest for transporting used oil as defined by 40 CFR 279.” *Id.* at 2. He also states that the company's own documents provide identical information. *Id.*; *see generally* Tr.2 at 98-100, Exhs. 17, 18.

Mr. Appelt cites his company's collection of oily water to illustrate its position. He states that Safety-Kleen ordinarily ships oily water to wastewater treatment plants under company shipping documents. Exh. 16. at 2. He further states that, at the treatment facility, the oil and non-oil fractions are separated from one another. *Id.* He states that, if the used oil is of a certain quality, “it is sent for reclamation or fuel blending.” *Id.* He argues that “[t]his material as initially collected from the customer qualifies under the authority of 40 CFR 279.” *Id.* He claims that “the Company's service documents for this material are identical to those for shipments with low water content (dry oil), which Safety-Kleen re-refines for reuse as lubricating oils.” *Id.* Mr. Appelt concludes that, whether for used oil or oily water, no manifest should be necessary for shipments of either material. *Id.*

ADDITIONAL AGENCY TESTIMONY

Additional Dragovich Testimony

Scope of Exemption

Mr. Dragovich states that the Board enacted Part 739 by exercising its identical-in-substance rulemaking authority to adopt Part 279 of USEPA's regulations. Dragovich Addl. Test. at 2; *see* 40 C.F.R. 279, 35 Ill. Adm. Code 739. Mr. Dragovich claims that USEPA promulgated Part 279 "to regulate as used oil materials that contain used oil or are contaminated with used oil until the free flowing oil is removed." Dragovich Addl. Test. at 2. He further claims that, because federal regulations do not address non-hazardous waste management prior to disposal, "USEPA considered this approach more restrictive." *Id.*; *see* Tr.2 at 26. He also states that Illinois regulated materials including used oil as special waste before the adoption of federal and state used oil programs. Dragovich Addl. Test. at 2. He argues that exempting "all materials regulated under Part 739 from special waste manifest and permitting requirements would reduce the regulatory requirements for special waste that has been mixed with used oil." *Id.*; *see* Tr.2. at 11-12. Mr. Dragovich further argues that such an exemption would encourage more wastes to be mixed with used oil after generation. Dragovich Addl. Test. at 2. Because the Agency has not fully evaluated the effect of managing these wastes as used oil, Mr. Dragovich claims that "other non-hazardous wastes mixed with used oil after generation must be subject to both the used oil standards and the appropriate waste management standards that applied to the waste before the mixture occurred." *Id.* at 2-3; *see* Tr.2 at 12, 32. He argues that materials added to used oil after generation should be exempt from manifest and hauling permit requirements only pursuant to existing exemptions. *Id.* at 5, citing 35 Ill. Adm. Code 809.210, 809.211; *see* Tr.2 at 11, 32.

Mr. Dragovich claims that the Agency's position encourages proper recycling. Dragovich Addl. Test. at 1, 4; *see* Tr.2 at 11. He argues that USEPA encourages separation of wastes in order to make them more suitable for recycling and, in effect, discourages mixtures of other wastes into recyclable used oil. Dragovich Addl. Test. at 4, citing 57 Fed. Reg. 41574, 41581 (Sept. 10, 1992); *see* Tr.2 at 32-33. He states the Agency's position that "it is likely that other waste added into the mixtures (*e.g.*, inks, solvents, and coolants) will not be recycled, but will be burned with the used oil or treated in a wastewater treatment plant." Dragovich Addl. Test. at 4. Mr. Dragovich claims that, because those other wastes may not have suitable fuel value, separating the wastes makes appropriate recycling more likely. *Id.*; *see* Attachment 2 (USEPA letter).

Mr. Dragovich responds to NORA's view that used oil fuel undergoes stringent testing to find concentration of unsuitable materials. He argues that the used oil specification "only establishes limits for arsenic, cadmium, chromium, lead, flash point, and total halogens." Dragovich Addl. Test. at 4. He claims that, because a mixture could contain other materials that may reduce viscosity or increase ash content or emissions, it could meet the specification without being marketable as used oil fuel. *Id.* He cites examples of waste managed under Part 739 after mixture with used oil: "plastic pellets, carbon filter media, surfactants, waster based paint, water

based ink, emulsion solutions, grain/water/oil mixture, cleaning compound, sludge, wash water, super abrasive, sand tank sludge, water based coolants and barge bilge water.” *Id.* at 4-5. Mr. Dragovich claims that, because these materials may not behave like used oil, “the use of a manifest that accompanies the load would be beneficial to emergency response personnel and the end receiver of the materials.” *Id.* at 5. Accordingly, the Agency objects to NORA’s amended proposal. *Id.* at 5-6.

In addition, Mr. Dragovich responds to NORA’s claim that used oil generators may sometimes add diesel fuel to used oil. He notes that USEPA has concluded that, because diesel is a fuel and will be used as fuel after mixture with used oil, it is not a waste. Dragovich Addl. Test. at 3; *see* Attachment A (USEPA letter). He states that the diesel fuel would not then become subject to manifesting or other waste management requirements. *Id.* Specifically, he states the Agency’s conclusion that “the used oil and diesel fuel mixture is regulated under Section 739.110(d) and not 35 Ill. Adm. Code 807.” *Id.*

Mr. Dragovich also responds to NORA’s claim “that it would be burdensome for the used oil transporter to determine if the used oil had been adulterated with other wastes.” Dragovich Addl. Test. at 3. He argues that a generator mixing used oil with other special waste has the obligation to determine the type and quantity of that waste and complete a manifest. *Id.* He further argues that, other than the rebuttable presumption for used oil, neither Part 739 nor Part 809 requires a transporter to determine whether used oil has been mixed with other waste. *Id.* He states the Agency’s view that “limiting the manifest exemption to used oil as defined in Part 739” is not burdensome for transporters. *Id.*; *see* Tr.2 at 11, 30.

Proposed Additional Language in Sections 809.301, 809.302, and 809.501

Mr. Dragovich states that transporters may transport other special wastes in separate containers, separate compartments, or in the same compartment on the same load. Dragovich Addl. Test. at 6. He further states that transporters may employ a single truck to transport only used oil on one load and other special wastes that are not regulated by Part 739 on other loads. *Id.* He argues that the additional language proposed for these three sections “is necessary to specify two separate exemptions, a manifest exemption and a hauling permit exemption.” *Id.* Specifically, he states that a generator is exempt from preparing a manifest if he or she provides only used oil as defined and managed in accordance with Part 739 to a transporter. *Id.* Similarly, the transporter would be exempt from the hauling permit requirements if all of the load on a truck consist of used oil as defined and managed in accordance with Part 739 to a transporter. *Id.*

Mr. Dragovich suggests that this proposed additional language would not generate doubt about whether exemptions in Section 809.211 still apply to these three sections. Dragovich Addl. Test. at 6. Specifically, he states that “[t]he Agency does not believe that adding this language will impact the other exemptions found in Part 809.” *Id.*

Manifest Quantities

Mr. Dragovich states that the Agency determined the number of manifests purchased by facilities providing notification of the used oil activity. Dragovich Addl. Test. at 7. He states two reasons why this number may be inaccurate: “the used oil notifiers may have used some of these manifests for the transportation of non-hazardous special waste that is not used oil; and the count does not include used oil generators that purchased their own manifest, but are not registered used oil facilities.” *Id.* Mr. Dragovich claims that used oil facilities purchased 524,824 manifests from the Agency in a two and one-half year period, or 210,330 manifests annually. *Id.* Of those manifests, the Agency estimates that facilities purchased 168,650 manifests for the transportation of used oil in a two and one-half year period, or 67,460 manifests annually. *Id.* Because it included no growth factor in these figures, “the Agency estimates that the number of shipments of used oil that would be exempt from manifesting is about 67,460, but could be more than 210,330 shipments per year.” *Id.*; *see* Tr.2. at 12.

Reporting Requirements

While Mr. Dragovich states that “Section 739.157 requires processors to send a biennial report to USEPA concerning their used oil activities, the Agency relies on the annual non-hazardous special waste report in Section 809.501 to collect information on used oil.” Dragovich Addl. Test. at 8. He further states that that report requires separate designation of used oil and other special waste. *Id.*, *see* 35 Ill. Adm. Code 809.501. The Agency claims that “any used oil exempt from manifesting as a result of this rule is still subject to the annual reporting requirements of Section 809.501. Dragovich Addl. Test. at 8.

Mr. Dragovich also states that, if the Board adopts NORA’s amended proposal, “there will be confusion as to the annual non-hazardous waste reporting requirements of Section 809.501 because it will be unclear whether the quantity of used oil that is reported is used oil as defined in part 739 or the total quantity of special waste regulated as used oil.” Dragovich Addl. Test. at 8. He notes that the “regulations do not specify a minimum amount of used oil that must be mixed with non-hazardous special waste” in order for that waste to be regulated as used oil. *Id.* He argues that adopting the Agency’s proposal establishes “a bright line” on one side of which used oil as defined in Part 739 is reported as such and all other non-hazardous special wastes would be reported together. *Id.* at 8-9.

Requirements of Other States

Mr. Dragovich responds to NORA’s claim “that Illinois is the only state that classifies used oil as a special waste or requires generators to manifest used oil.” Dragovich Addl. Test. at 9. He argues that requirements vary and that “some other states do have specific state hauling and record keeping requirements, even though they do not designate the used oil as special waste.” *Id.* (citations omitted). He states that the Agency supports its proposed amendment of the regulations “not because it will make the regulations consistent with other states, but because the used oil tracking and transportation requirements in Part 739 are adequate for tracking and transportation of used oil as defined and managed in accordance with Part 739.” *Id.* at 10; *see* Tr.2 at 12-13. He further states the Agency’s position that the Board should not exempt other non-hazardous special wastes from manifests and hauling permits after evaluating them

separately for those exemptions and not simply because the waste was mixed with used oil. Dragovich Addl. Test. at 10.

Board Notes

Mr. Dragovich states that existing Board Notes in Part 739 explain that “generators of small quantity used oil that transport their own used oil or gave a contractual hauler may still be subject to the hauling permit requirements in Part 809.” Dragovich Addl. Test. at 10. He notes that, while NORA expressed the view that the Board Note would become irrelevant, “the Agency believes this note is still necessary because the used oil may be transported along with other special waste that is not used oil.” *Id.*

Christopher Cahnovsky

Mr. Cahnovsky is Regional Manager in the Collinsville office for the Agency’s Bureau of Land. Cahnovsky Prefiled Test. at 1. He states that he is a Certified Hazardous Material Manager and had conducted more than 1,300 inspections of facilities generating solid waste. *Id.*; *see* Tr.2 at 13. He offered testimony on inspection of and documents from facilities mixing used oil with other special waste and managing the mixture as used oil. Cahnovsky Prefiled Test. at 1; *see* Tr.2 at 13-14. He claims that “[i]n some cases non-used oil special waste was transported directly to a used oil transfer facility and subsequently managed as used oil.” Cahnovsky Prefiled Test. at 1; *see* Tr.2 at 13-14. Specifically, he refers to six examples separately summarized below.

March 13, 1998 Manifest IL8154584

Mr. Cahnovsky states that, on March 13, 1998, Safety-Kleen picked up from Rogers Cartage Company and delivered to its own rail site 1,492 gallons of Used Oil and Water Mixture (Not USDOT Hazardous Material). Cahnovsky Prefiled Test. at 2; *see* Attachment 2. He further states that, through interviews and a review of records, he

discovered that the waste on Illinois Manifest IL8154584 contains sludge and water from a three tank wastewater treatment system used to treat wastewater from the cleaning of the residues from the insides of tanker trucks that contained chlorobenzene and international shipping containers that contained para-nitrochlorobenzene. The service bays where the used oil is generated are not connected to this wastewater treatment system. Cahnovsky Prefiled Test. at 2.

Mr. Cahnovsky further states that Safety-Kleen’s Oil Recovery Placement Form confirms this discovery. Cahnovsky Prefiled Test. at 2; *see* Attachment 2. He argues that this sludge and water do not meet the definition of used oil and that its previous shipment was managed as hazardous on the basis of ignitability. Cahnovsky Prefiled Test. at 2.

July 7, 1999 Manifests IL8642755 and IL8876533

Mr. Cahnovsky states that these two manifests show that, on July 7, 1999, Safety-Kleen's East St. Louis rail site accepted shipments of 2,800 gallons of water and 2,064 gallons of paint (Not USDOT or USEPA Hazardous Material). Cahnovsky Prefiled Test. at 2; *see* Attachment 3. He further states that these materials contained barium and methyl ethyl ketone and that they were mixed with used oil at the rail site. *Id.* He argues that, although this waste did not meet the definition of used oil, it was subsequently managed as used oil. *Id.*

September 3, 1999 Manifest IL8097851

Mr. Cahnovsky states that, in the course of an October 7, 1999, the Agency obtained Illinois Manifest IL8097851. Cahnovsky Prefiled Test.; *see* Attachment 1. He further states that this document shows that, on September 3, 1999, Safety-Kleen Systems, Inc. (Safety-Kleen) picked up 440 gallons of fixer (not USDOT or USEPA hazardous material) from Schwartkopf Printing, Inc in Alton, Illinois. Cahnovsky Prefiled Test. at 1; *see* Attachment 1. He states that the manifest also shows "that Tanker Truck SK55173 off loaded the fixer into rail car UTLX67980 at Safety-Kleen's East St. Louis Rail Site." Cahnovsky Prefiled Test. at 1; *see* Attachment 1. He further states that an October 29, 1999 inspection of that site showed that the rail car "was shipped to Safety-Kleen in Baton Rouge, Louisiana on September 16, 1999 as Used Oil and Water (not USDPT Hazardous Material)." Cahnovsky Prefiled Test. at 1; *see* Attachment 1. Mr. Cahnovsky argues that Safety-Kleen picked up and managed the fixer waste as used oil although it did not meet the definition of "used oil." Cahnovsky Prefiled Test. at 1; citing 35 Ill. Adm. Code 739.

January 26, 2001 Meeting Document

Mr. Cahnovsky states that he determined through inspections, meetings, and reviewing files that Safety-Kleen commonly mixed used oil with other wastes and managed those mixtures as used oil. Cahnovsky Prefiled Test. at 3. He further states that he obtained from Safety-Kleen a document listing "non-oil waste streams that Safety-Kleen intends to accept with used oil and manage as used oil once mixed." *Id.*; *see* Attachment 4. Those non-oil waste streams include such materials as plastic pellets, carbon filter media, surfactants, water-based paint, water-based ink, emulsion solution, grain/oil/water mixture, cleaning compound, sludge, wash water, super abrasive, sand, tank sludge, and water-based coolants. *Id.*

February 13, 2001 Meeting Document

Mr. Cahnovsky states that he obtained from Safety-Kleen a revision of the list "of the Non-Oil Waste Streams accepted by Safety-Kleen at their East St. Louis Used Oil Transfer Station." Cahnovsky Prefiled Test. at 3; *see* Attachment 5. Those non-oil waste streams include such materials as plastic pellets, carbon filter media, surfactants, water-based paint, water-based ink, emulsion solution, grain/oil/water mixture, cleaning compound, sludge, wash water, super abrasive, sand, tank sludge, water-based coolants, and barge bilge water. *Id.*

Safety-Kleen Waste Report

Mr. Cahnovsky states that a Safety-Kleen Facility Waste Report summarizes all waste received at its East St. Louis rail site from November 1, 1999 to December 31, 2002. Cahnovsky Prefiled Test. at 3; *see* Attachment 6. He further states that it “shows that the Safety-Kleen facility accepts combustible liquid, water, wash water, fixer, grease, soil, ink oily sludge, sludge, waste liquid, mineral oil, oil sludge, diesel, asphalt and combustible liquids.” *Id.* He argues that these other wastes are mixed with used oil and managed by Safety-Kleen under Part 739 of the Board’s regulations. *Id.*, citing 35 Ill. Adm. Code 739.

AGENCY POST-HEARING COMMENTS

The Agency states that, in its initial discussions with NORA on exempting used oil from manifest requirements, it appeared that they differed on specific language of an exemption. PC #33 at 1. The Agency argues that, over the course of this proceeding, it has concluded that it disagrees with NORA not about the specific language of an exemption but about its breadth. *Id.* The Agency states that it favors exempting used oil defined and managed in accordance with 35 Ill. Adm. Code 739 from the manifesting requirements at 35 Ill. Adm. Code 809. *Id.* The Agency states that it also favors an exemption for loads containing no special waste other than used oil defined and managed in accordance with 35 Ill. Adm. Code 739 from the hauling permit requirements of 35 Ill. Adm. Code 809. *Id.* at 1-2. The Agency states that it “believes the exemption cannot extend to all mixtures of used oil with other special wastes as requested by NORA” *Id.* at 2. The Agency seeks adoption of the language it proposed in its comments and testimony. *Id.*; *see* PC #1, Dragovich Prefiled Test. at 5-8. The Board below summarizes one-by-one the Agency’s arguments in support of that proposed language.

Scope of Exemption

The Agency states that it “does not want to prohibit the mixing of used oil and other waste.” PC #33 at 2. The Agency notes that, while manifests under Part 809 of the Board’s regulations require disclosure of individual waste streams in a mixture, tracking requirements under Part 739 do not. *Id.*, citing 35 Ill. Adm. Code 739, 809. Because the Agency wishes to convey information necessary for managing waste mixtures, it states that “each individual waste stream of a special waste mixture must be disclosed to the receiving facility.” PC #33 at 2. The Agency further states that “the tracking requirements of Part 739 are not sufficient for mixtures of used oil and other special waste.” PC #33 at 2, 14.

The Agency states that Part 739 defines “used oil” to include oil and the contaminants mixed with it during use. PC #33 at 2; *see* 35 Ill. Adm. Code 739.100 (definitions). The Agency further states that “[o]ther materials that are added to used oil after it has been generated do not become used oil, but become regulated by Part 739 because they are contaminated with used oil.” PC #33 at 2. The Agency argues that non-hazardous wastes mixed with used oil after generation should be regulated both by used oil standards in Part 739 and by the standards applicable to the other waste before mixture. *Id.* The Agency expresses the belief “that other non-hazardous special wastes should be evaluated separately to determine if they should be exempted from hauling permits and manifests, and should not be exempt merely because the waste was mixed with used oil.” *Id.* at 2; *see id.* at 15.

The Agency claims that mixing used oil with other wastes may cause the mixture to have different properties than those associated with used oil and cause it to behave differently than used oil. PC #33 at 3. The Agency argues that “[t]he use of a manifest for non-hazardous waste added to used oil will ensure that the transporter, emergency responder and receiving facility are made aware of any waste that has been added to the used oil.” *Id.* The Agency further argues that NORA’s proposed language does not ensure that these persons receive this information. *Id.* The Agency claims that,

[s]ince there is not minimum amount of used oil that must be added to the waste to make it subject to the used oil standards in Part 739, the language as proposed by NORA would allow waste streams that have chemical and physical properties completely different from used oil to be transported and managed like used oil even when those practices are not appropriate for that waste stream. *Id.* at 3, 15.

The Agency acknowledges that used oil transporters may wish to transport single loads including both used oil and other special wastes. PC #33 at 3. The Agency also acknowledges that used oil transporters may use the same truck at some times to transport loads consisting exclusively of used oil and at other times to transport special wastes other than those regulated by Part 739. *Id.* The Agency suggests that its proposal reflects these acknowledgments by including separate exemptions:

[t]he manifest exemption will work independently from the hauling permit exemption because a generator would not have to initiate a manifest if the waste given to the transporter is only used oil as defined and managed in accordance with Part 739 but the transporter would not be exempt from the hauling permit requirements unless all the loads that are picked up by that truck are used oil as defined and managed in accordance with Part 739. *Id.* at 4.

The Agency states that a used oil transporter may opt to pick up other loads of non-exempt waste, but those other loads would require the transporter to have a haulers permit and a manifest. *Id.* The Agency distinguishes NORA’s proposal from its own by stating that NORA’s “would apply the hauling permit exemption to all used oil transporters even when they are hauling special waste that is not used oil.” *Id.*

The Agency addresses NORA’s argument that transporters may not be able to determine in the field whether used oil contains added nonhazardous special waste. PC #33 at 4. The Agency claims that, “other than the rebuttable presumption at Section 739.144, nowhere in Part 739 or Part 809 does it require the transporter to determine if the used oil has been mixed with other waste.” *Id.* The Agency argues that it is the generator’s responsibility to prepare a manifest if, for example, the generator mixes used oil with other special waste that is not exempt from manifesting requirements. *Id.* The Agency thus argues that “[t]he transporter does not have to determine whether the used oil contains other special waste.” *Id.*

The Agency also addresses NORA’s argument “that business records already provide the information necessary to track and identify the special waste mixtures.” PC #33 at 4. The Agency acknowledges that NORA has submitted exhibits demonstrating the information

contained in its members' shipping papers. *Id.* The Agency states that these records exceed the minimum used oil tracking requirements of Part 739 but argues that they "vary according to company policy and are not required by the regulations." *Id.* The Agency provides a "simplified list" comparing used oil tracking to special waste manifesting:

Regulations	Who must keep records	Information required in shipping paper
Part 739	<ol style="list-style-type: none"> 1. Transporters 2. Receiving facilities: Processors, Burners, Marketers 	<ol style="list-style-type: none"> 1. Name and address of the generator, transporter, or processor; 2. USEPA ID number and Illinois Special waste number; 3. Quantity of used oil; 4. Signatures.
Part 809	<ol style="list-style-type: none"> 1. Generators 2. Haulers 3. Receiving facilities 	<ol style="list-style-type: none"> 1. Generator name, address, phone number and generator number; 2. Information stating when and where the special waste was generated; 3. Name of person who accepted delivery and name and address of site; 4. Name, phone number and permit number of the transporter; 5. Classification and quantity, US DOT Description, proper shipping name, hazard class, ID number, number of containers, quantity and additional description of special waste delivered to transporter; 6. Special handling instructions; 7. Date, name, and signature of generator, receiving facility and all transporters.

PC #33 at 5.

The Agency concludes that "the manifest requirements in Part 809 are more detailed than the tracking requirements in Part 739." *Id.* at 4-5.

The Agency also responds to NORA's claim regarding paperwork burdens. The Agency claims that its position involves "no additional paperwork because a mixture of used oil and other special waste does not have to be documented twice." PC #33 at 5. The Agency claims that, because the Part 809 manifests are more detailed than the Part 739 tracking, those manifests will satisfy requirements under both Parts of the Board's regulations. *Id.* The Agency states that it does not intend to require a particular manifest for shipments of used oil. *Id.* The Agency further states that it seeks to "limit the new special waste manifest exemption in Part 809 to used oil as defined by and managed in accordance with Part 739 and clarify that mixtures of used oil and other wastes will require an appropriate manifest for tracking." *Id.*

The Agency addresses NORA's argument that USDOT shipping papers make the manifests unnecessary. The Agency states that USDOT shipping papers "do not require disclosure of the separate waste streams that make up a non-hazardous mixture and would allow

the non-hazardous mixture to be described only as used oil.” PC #33 at 6. The Agency further states that USDOT does not require a generator to keep shipping papers. *Id.* While the Agency acknowledges that the shipping papers must accompany transported non-hazardous materials, the description of those materials as used oil would be misleading when the shipment consists of other wastes mixed with used oil. *Id.*

Responding to NORA’s argument that “it would be confusing to manage waste both under the used oil standards and the special waste regulations,” the Agency emphasizes that used oil is a special waste with specific management standards. PC #33 at 6. The Agency further argues that special waste manifesting and hauling regulations have applied to used oil since those regulations were adopted. *Id.* The Agency claims that it “is not seeking a new category of waste or new interpretation of Part 739.” *Id.* The Agency further argues that, even if this rulemaking exempts used oil from manifesting and hauling permits, it remains subject to other special waste requirements. *Id.*, citing 35 Ill. Adm. Code 809.501 (Manifests, Records, Access to Records, Reporting Requirements and Forms).

The Agency also responds to NORA’s claim that the Agency’s proposal will place Illinois used oil recyclers at a competitive disadvantage against out-of-state recyclers. The Agency argues that “used oil regulations vary from state to state” and that “Illinois is not the only state to require a manifest for mixtures of used oil and other nonhazardous waste.” PC #33 at 6, 14. The Agency further argues that all transporters must now obtain a hauling permit and use manifests in order to transport special wastes such as used oil in Illinois. *Id.* at 7. The Agency claims that its “proposal will allow haulers of used oil not containing other special waste to be exempt from the hauling permit and manifest requirement and therefore will encourage the out-of-state competitors to recycle used oil at Illinois facilities.” *Id.*

Although the Agency acknowledges that paperwork associated with waste handling requirements “is time consuming,” the Agency argues that NORA’s proposal would allow a generator, transporter, or receiving facility to mix special waste with used oil and have the mixture be subject only to used oil standards. PC #33 at 7, 15; *see* 35 Ill. Adm. Code 739. The Agency further argues that those standards may not be appropriate for the management of all non-hazardous special waste, particularly in the absence of an evaluation of the impact of managing mixtures of special waste and used oil solely under the used oil regulations. *Id.* The Agency concludes its argument on the scope of the proposed exemption by claiming that, “if all non-hazardous special waste is allowed to be regulated under Part 739, the Illinois EPA believes the rulemaking should not be disguised by its proponents as a manifest exemption.” *Id.* at 7-8.

Incentive to Mix Used Oil with Non-Hazardous Special Wastes

The Agency argues that, because NORA’s proposal does not require non-hazardous special waste to contain a minimum quantity of used oil before a mixture of the two may be designated as used oil, it would allow any mixture to be relabeled and managed as used oil. PC #33 at 8. The Agency further argues that, if it is relabeled as used oil, “the mixture may be received by used oil facilities that have less stringent permitting and siting requirements than special waste facilities.” *Id.* The Agency believes that these less stringent requirements provide an incentive to combine used oil with special waste and designate it as used oil. *Id.* The Agency

claims that adoption of NORA's proposal would jeopardize its regulatory control over non-hazardous special waste and would effectively eliminate special waste regulations. *Id.* at 8, 15-16; *see* 35 Ill. Adm. Code 808, 809.

The Agency addresses NORA's claim that the market for and value of used oil will ensure proper management of wastes. *See* PC #33 at 8. The Agency acknowledges that this incentive may apply to high-grade used oil products, but the Agency states that it "knows that many facilities also profit by collecting generator fees and disposing of the mixtures as low grade used oil fuel." *Id.* The Agency further states that it has experienced abuse of the used oil manifest exemption to receive special waste, which "must normally be managed at a facility that has siting and has been permitted to manage special waste." *Id.*

In addition, the Agency addressed the view of NORA members that special wastes are non-hazardous and that used oil should have no characteristics causing it to become hazardous waste. PC #33 at 9. The Agency notes that the definition of "special waste" includes both hazardous waste and non-hazardous waste such as pollution control waste and industrial process waste. *Id.*, citing 415 ILCS 5/3.475 (2006). The Agency argues that "[t]hese non-hazardous wastes are regulated as special waste not because they exhibit hazardous characteristics, but because they pose a present or potential threat to human health or the environment." PC #33 at 9.

Consequences of Proposal for Recycling

The Agency argues that, if mixtures of special waste and used oil are exempt from manifests and hauling permits, more waste will be mixed with used oil after generation. PC #33 at 9. The Agency further argues that, by providing an incentive for these mixtures, NORA's proposal would reduce the ability to recycle the separate waste streams. *Id.* Specifically, the Agency expresses the belief that wastes such as inks, solvents, and coolants added to used oil would be less likely to be recycled and more likely either to be burned or treated in a wastewater treatment unit. *Id.* at 9-10. The Agency also argues that, by encouraging mixtures, the proposal would result in the improper handling, managing, or burning of wastes. *Id.* at 10. Specifically, "[s]ome of the wastes added to used oil which will be blended for fuel do not have fuel value themselves and may contain constituents that are not appropriate to burn in that setting." *Id.* The Agency argues that its own proposal, limiting the manifest exemption to used oil as defined and managed in accordance with Part 739, "encourages the generator to keep waste streams separate for appropriate management and recycling" *Id.*, citing 35 Ill. Adm. Code 739.

The Agency further argues that its proposal also ensures that a generator "provides the type of information necessary to make the transporter and receiving facility aware of the source and type of waste." PC #33 at 10. The Agency emphasizes that "[t]his would not mean that the used oil mixtures that NORA said they are currently recycling would no longer be recycled. It would only mean that these mixtures still have to be transported under a special waste manifest." *Id.* The Agency claims that recycling used oil and used oil mixtures has continued through the years that special waste regulations have been in effect in Illinois. *Id.* at 11. Addressing NORA's argument that federal used oil regulations intend to promote recycling of used oil, the Agency states that review of federal authorities "makes it clear that protection of human health

and the environment was the prime concern even if it would discourage recycling.” *Id.*, citing 57 Fed. Reg. 41566 (Sept. 10, 1992), 50 Fed. Reg. 49213 (Nov. 29, 1989).

The Agency attempts to support its argument with an example drawn from NORA’s testimony. The Agency states that Safety Kleen in 2005 collected approximately 180 million gallons of used oil and 14 millions gallons on oily water, from which it produced approximately 140 million gallons of high-quality lubricating oil. PC #33 at 10. The Agency concludes that this production resulted in 54 million gallons of waste. *Id.* The Agency argues that, because of quality control applicable to lubricating oils, “Safety Kleen would be more selective about the waste that they accept as used oil as opposed to used oil fuel marketers who only have to meet individual customers’ standards to satisfy their contract with a used oil burner.” *Id.* at 10-11. The Agency further argues that these used oil fuel marketers could allow a higher proportion than Safety Kleen’s 54 million gallons of non-used oil wastes to be included in used oil. *Id.* at 11. The Agency concludes that “continued use of a special waste manifest would alert burners that the used oil contains other waste and would provide the record necessary to determine” whether it is appropriate to burn the special waste that may be mixed with used oil. *Id.*

The Agency also addresses NORA’s argument that mixtures of used oil and special wastes “are subject to stringent testing and examination in order to be sold as fuel.” PC #33 at 11. The Agency claims that regulations require testing only for a limited number of constituents and do not require testing for many others that may be present if non-hazardous special waste is burned with used oil as fuel. *Id.* The Agency argues that these additional constituents “could reduce viscosity or BTU content or increase ash content of emissions from burning the oil.” *Id.* at 12. The Agency further argues that receiving facilities can only test for these additional constituents if they receive notice of the waste streams in the mixture. *Id.* at 11-12. The Agency claims that “[n]o one from NORA testified that they evaluate BTU and toxic constituent concentration values of the waste prior to commingling the waste or testified that they consider the impact of these constituents when burned as used oil.” *Id.* at 12.

Federal and State Regulations

The Agency states that Illinois adopted federal used oil requirements as Part 739 of the Board’s regulations. PC #33 at 12; *see RCRA Update, USEPA Regulations, (July 1, 1992 through December 31, 1992)*, R 93-4 (Sept. 23, 1993) (codifying new Part 739). The Agency further states that, before adoption of Part 739, “the special waste regulations at Part 808 and Part 809 already applied to used oil.” PC #33 at 12. The Agency stresses its interpretation that, while federal regulations require non-hazardous waste mixed with used oil to meet Part 739 standards, those federal regulations do not preempt more stringent state regulations. *Id.* In support of this interpretation, the Agency states that other states impose mores stringent used oil requirements. *Id.* at 14, citing N.H. CODE ADMIN. R. ANN. ENV. - WM 80-7.07, N.J. ADMIN. CODE 7:26A, § 6.6(g), S.C. CODE ANN. REGS. 61-107.279. The Agency also cites a USEPA statement that the federal regulations “are protective but not complete or sufficient to protect human health and the environment from potential mismanagement of used oils that are recycled.” *Id.* at 12-13, citing 57 Fed. Reg. 41569 (Sept. 10, 1992). The Agency characterizes NORA’s position as one that would allow “all non-hazardous wastes contaminated with some used oil” effectively to be exempt from special waste requirements and subject only to Part 739. PC #33 at 12.

The Agency argues that, while federal used oil regulations intend to provide standards for management and recycling of used oil and materials contaminated with it, those regulations “do not intend to preempt more stringent state regulations of these non-hazardous wastes.” PC #33 at 13. In support of this argument, the Agency cites USEPA’s recognition “that several states regulate used oil as a hazardous waste, and some states regulate it as a special waste A used oil handler must comply with all state requirements applicable to used oil in his/her states, in addition to any federal requirements that apply.” *Id.*, citing 57 Fed. Reg. 21526 (May 21, 1992).

The Agency further argues that federal regulations provide an incentive not to mix wastes. PC #33 at 13. The Agency claims that USEPA did not contemplate mixing used oil with other non-hazardous wastes because unregulated non-hazardous wastes would then for the first time become subject to federal regulation. *Id.* The Agency argues that NORA’s proposal would reverse this incentive because it “would encourage mixtures of used oil and other special wastes to take advantage of the reduced siting, operating and permitting requirements of used oil facilities compared to special waste facilities.” *Id.* The Agency claims that this would relax Illinois’ special waste requirements by allowing non-hazardous wastes contaminated with some used oil to be exempt from the system of special waste manifests and hauling permits. *Id.* at 13-14.

Responding to NORA’s argument that the its proposal would deter safe recovery of CESQG [conditionally exempt small quantity generator] hazardous waste, the Agency states that it “does not propose any changes to the management of conditionally exempt small quantity hazardous waste.” PC #33 at 14. The Agency further states that “[t]he current regulations at Part 739 already address which hazardous wastes much be managed under traditional RCRA [Resource Conservation and Recovery Act] regulations and which hazardous wastes may be managed under Part 739.” *Id.*

NORA POST-HEARING BRIEF

NORA states that the Board enacted Parts 808 and 809 of its regulations under its general rulemaking authority and that those regulations predate the federal used oil program. PC #34 at 2, citing 415 ILCS 5/27, 28 (2006); *see* 35 Ill. Adm. Code 808, 809. NORA further states that the Board enacted Illinois’ used oil regulations under more limited authority to adopt rules identical in substance to federal statutes such as RCRA. PC #34 at 2, citing 40 C.F.R. 270, 35 Ill. Adm. Code 739; *see* 415 ILCS 5/7.2, 22.4(a) (2006). NORA argues that the federal used oil program adopted by the Board intends to promote used oil recycling. PC #34 at 2, citing Tr.1 at 10-11 (Christopher Harris testimony).

NORA claims that materials subject to regulation as used oil include those defined as used oil by the Board’s regulations: “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.” PC #34 at 2, citing 40 C.F.R. 279.100, 35 Ill. Adm. Code 739.100. NORA further claims that materials subject to regulation as used oil also include “those materials which, through the applicability section of those rules, are entitled to be managed as used oil under the used oil program.” PC #34 at 2, citing 35 Ill. Adm. Code 739.110 (Applicability).

NORA argues that Part 739 applies not only to materials defined as used oil but also to “materials that are destined for recycling as used oil.” PC #34 at 8, citing PC #34, Attachment A (McCoy’s RCRA Unraveled); *see* 35 Ill. Adm. Code 739.100, 739.110. NORA further argues that its amended rulemaking proposal would achieve the goal of excluding “from special waste manifesting used oil as it is defined by and managed and regulated pursuant to Part 739. PC #34 at 8, citing *Errata* 1.

NORA notes that the Agency has proposed language of its own to revise the manifest requirements. PC #34 at 8, citing PC #1 at 2. NORA argues that the Agency’s proposal appears to distinguish between materials defined as used oil, which would be exempt from special waste manifests, and material subject to regulation as used oil, which would not be exempt. PC #34 at 9, citing 35 Ill. Adm. Code 739.100, 739.110. NORA states three objections to the Agency’s proposal. First, NORA argues that the Agency’s distinction is not reflected in the used oil industry and “would create an untenable positions” for it. PC #34 at 9. Second, NORA argues that the Agency’s position is inconsistent with definitions contained in the federal regulations. Third, NORA claims that the Agency’s proposal is also inconsistent with the used oil program’s goal of encouraging recycling. *Id.*

Noting that the Act requires the Board to consider the economic reasonableness of rules proposed to it, NORA argues that its proposal would make Illinois’ used oil program more economically reasonable and more consistent with the federal program. PC #34 at 11-12, citing 415 ILCS 5/27 (2006), Tr.1 at 10-11 (Christopher Harris testimony). NORA further argues that the Agency’s position and proposal do not promote either of these goals. PC #34 at 12. In this regard, NORA refers to business principles to which its members are committed. *Id.* at 12; *see also* Custer Prefiled Test. at 2.

NORA states that, in its industry, generators provide used oil and material subject to regulation as used oil to collectors. PC #34 at 15, citing 35 Ill. Adm. Code 739.110. NORA further states that collectors record and report each shipment by using tracking documents under Part 739 and provide copies of those documents to generators. PC #34 at 15. NORA argues that these tracking documents have been admitted into the record as exhibits and are similar, if not identical to manifests. *Id.* at 17. NORA indicates that “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.” *Id.* at 15. NORA claims that generators, collectors, and recyclers do not distinguish between used oil and materials subject to regulations as used oil because Part 739 does not regulate either as waste and because both are recyclable material. *Id.* NORA argues that, under these circumstances, manifests are unnecessary and that “tracking pursuant to the tracking provisions is sufficient and encourages recycling.” *Id.* at 15-16. NORA further argues special waste manifests for these materials waste time and other resources. *Id.* at 14-16; citing Tr.1 at 23-24 (Gregory Ray testimony).

NORA characterizes Illinois’ used oil regulation as “unusual in that it designates used oil as a special waste, which triggers a requirement for shipments to be manifested.” PC #34 at 16. NORA argues that these manifests duplicate information contained in DOT shipping papers or gathered under the requirements of Part 739. *Id.*, citing 35 Ill. Adm. Code 739.146, 739.156, 739.165, 739.174. NORA further argues that it is not “desirable” to place the burden of these

manifests on Illinois' 34,000 generators of used oil, who do not customarily prepare manifests. PC #34 at 16; *see* Tr.1 at 19 (Victoria Custer testimony). NORA claims that this burden on generators is not consistent with the federal program and states that "the Agency does not even receive a copy of any of the used oil manifest documents." PC #34 at 16.

NORA acknowledges "that Illinois is allowed to have stricter requirements than the federal [used oil] program allows." PC #34 at 161-17. NORA argues, however, that Illinois should first adopt federal standards through identical in substance rulemaking and that the Agency should then propose stricter regulations through the Board's general rulemaking authority. *Id.* at 17; *see* 415 ILCS 5/27, 28 (2006). NORA further argues that, "[t]o do otherwise is to forego any public participation in the stricter state requirements as they relate to the newer federal rule." *Id.*

NORA emphasizes that "[i]t only seeks to eliminate special waste manifesting requirements for materials that are already tracked pursuant to Part 739 as used oil." PC #34 at 16. NORA further emphasizes that its proposal "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 regulation." *Id.* NORA professes that it fails to understand the Agency's position and its distinction between used oil and materials treated and recycled as used oil. *Id.* at 17. NORA concludes by arguing that, if materials are properly recycled as used oil, they are regulated and tracked under the provisions of Part 739, making special waste manifests unnecessary and undesirable. *Id.* at 18. NORA argues that the Agency's position is not supported by "real evidence" of any danger resulting from the current used oil program and "virtually negates the intended positive impact of NORA's proposal." *Id.* at 17-18.

AGENCY RESPONSE TO NORA POST-HEARING BRIEF

Federal and State Regulations

The Agency disputes NORA's argument that federal used oil regulations intend chiefly to promote recycling of used oil. *See* PC #34 at 2, 12. The Agency argues that the Federal Register clarifies the goal of those regulations: "to provide management standards for used oil and for materials contaminated with used oil and that protection of human health and the environment from the hazards of used oil is the prime concern even if it discourages recycling of this material." PC #40 at 1, citing 50 Fed. Reg. 49213 (Nov. 29, 1985), 57 Fed. Reg. 41566 (Sept. 10, 1992).

The Agency also disputes NORA's argument that federal regulations removed used oil from the "realm of more rigorously regulated 'waste.'" PC #40 at 1, citing 40 C.F.R. 279; *see* PC #34 at 2, citing Tr.1 at 10-11 (Christopher Harris testimony). The Agency argues that RCRA regulations, which the Board also adopted through its identical in substance rulemaking authority, "clarifies that used oil still meets the definition of solid waste, but has its own management standards as a recyclable material." PC #40 at 1-2. Specifically, the Agency cites the provisions that "[u]sed oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of 435 Ill. Adm. Code 720

through 728, but it is regulated under 35 Ill. Adm. Code 739.” PC #40 at 2, citing 35 Ill. Adm. Code 721.106(a)(4) (Requirements for Recyclable Materials).

The Agency also addresses NORA’s argument that “the federal regulations ‘entitle’ all non-hazardous wastes contaminated with some used oil to be effectively exempt from Illinois’ special waste requirements and only regulated by Part 739.” PC #40 at 2, *see* PC #34 at 2, citing 35 Ill. Adm. Code 739.110. The Agency argues that federal regulations, which the Agency interprets to require non-hazardous waste mixed with used oil to meet used oil management standards, does not preempt more stringent state regulations. PC 40 at 2. In support of this conclusion, the Agency cites USEPA’s recognition “that several states regulate used oil as a hazardous waste, and some states regulate it as a special waste. . . . A used oil handler must comply with all state requirements applicable to used oil in his/her state, in addition to any federal requirements that apply.” *Id.*, citing 57 Fed. Reg. 21528 (May 20, 1992). The Agency also cites USEPA’s decision “that these current regulation are protective but not complete or sufficient to protect human health and the environment from potential mismanagement of the used oils that are recycled.” PC #40 at 2, citing 57 Fed. Reg. 41569 (Sept. 10, 1992).

The Agency claims that the federal program now regulates materials that had not been regulated if they are contaminated with used oil. PC #40 at 2. The Agency argues that this is incentive not to mix unregulated non-hazardous waste with regulated used oil. *Id.* The Agency claims that NORA’s proposal would effectively reverse this incentive by encouraging “mixtures of used oil and other special wastes to take advantage of the reduced siting, operating, and permitting requirements of used oil facilities compared to other special waste facilities.” PC #40 at 2-3. The Agency argues that “[m]aterial contaminated with used oil is not ‘entitled’ to be managed under less stringent regulation” and that NORA’s proposal would relax Illinois special waste regulations. *Id.*

Consequences of Proposal for Recycling

The Agency addresses NORA’s argument “that there is no distinction between used oil as defined at Section 739.100 and materials regulated as used oil at Section 739.110.” PC #40 at 3; *see* 35 Ill. Adm. Code 739.100, 739.110. The Agency argues that USEPA defined used oil to discourage adulteration of that oil after its use. PC #40 at 3. Specifically, the Agency cites federal authority stating that “[u]sed oils that become adulterated after use should be subject to management standards that discourage this practice.” *Id.*, citing 57 Fed. Reg. 41574 (Sept. 10, 1992). The Agency expresses the belief that NORA’s proposal would encourage this adulteration after use by providing an exemption from manifests for mixtures of used oil and other wastes. PC #40 at 3.

The Agency argues that, because its proposal limits this exemption from manifests to used oil as defined and managed in accordance with Part 739.100, it “encourages the generator to keep waste streams separate for appropriate management and recycling.” PC #40 at 3. The Agency considers it probable that other wastes such as inks, solvents, and coolants that may be added to used oil would not be recycled but will instead “be burned with the used oil or treated in a wastewater treatment unit.” *Id.* The Agency argues that some of the other wastes “do not have

fuel value themselves and may contain constituents that are not appropriate to burn in that setting.” *Id.*

The Agency argues that these other non-hazardous special wastes that may be mixed with used oil should not be exempt from hauling permits and manifests merely because they have been mixed with used oil. PC #40 at 4. The Agency further argues that these other wastes should be evaluated and should be exempt from hauling and manifest requirements only if they meet specified criteria in the Board’s special waste hauling regulations. *Id.*, citing 35 Ill. Adm. Code 808.121, 809.210, 809.211.

The Agency argues that it is not the purpose of Section 739.110 to classify as used oil other materials that may be mixed with used oil. PC #40 at 4. The Agency claims that that provision is intended “to encourage separation of used oil and other wastes and to allow less federal regulation of non-hazardous solid waste once it was separated from used oil.” *Id.* In support of this claim the Agency cites the statements that USEPA “encourages the separation of used oils from used oil/solid waste mixtures and from used oil-contaminated materials prior to management of the mixture. Used oils separated from mixtures containing other solid wastes should be recycled in accordance with [40 CFR 279].” *Id.*, citing 57 Fed. Reg. 41581 (Sept. 10, 1992).

The Agency responds to NORA’s argument that “the Agency’s position is . . . inconsistent with . . . federal laws that allow specific mixtures to be managed as used oil.” PC #40 at 4; *see* PC #34 at 18. Although the Agency acknowledges that “mixtures of used oil and other non-hazardous special waste are subject to the used oil management standards at Part 739,” the Agency states that these other wastes are no longer subject to those standards once free-flowing oil is removed from them. PC #40 at 4. The Agency takes the position that these mixtures should require a special waste manifest so they do not become unregulated. The Agency states that

Illinois has chosen to regulate non-hazardous special waste and therefore the continued use of a special waste manifest is necessary to adequately track the special waste, to alert burners that used oil contains other special waste, and to provide the record necessary to determine whether the other special waste was handled, managed, or burned inappropriately. PC #40 at 4.

Scope of Exemption

Responding to NORA’s stated intent to “eliminate the burdens associated with manifesting of used oil,” the Agency acknowledges that “appropriate paperwork is time-consuming.” PC #40 at 5; *see* PC #34 at 14. The Agency argues that, if wastes do not meet the definition of used oil, a manifest is necessary because “the used oil tracking system will only identify the waste as used oil and will not require the generator to have a record of the transportation and disposal of the non-hazardous special waste mixed with the used oil.” PC #40 at 5. The Agency suggests that USDOT shipping papers would not supply this record and states that NORA members testified that they “do not rely solely on the USDOT shipping paper for their own records.” *Id.* at 6.

The Agency also addresses NORA's argument that Illinois has embraced an unusual and inequitable approach to managing used oil by designating it as a special waste. PC #40 at 6. The Agency responds that used oil regulations vary, with some states requiring only compliance with federal regulations while "others require hauling permits, manifest, and other tracking papers for mixtures of used oil and other non-hazardous special waste." *Id.* at 7. The Agency further responds that "Illinois is not the only state that designates used oil as a special waste and is not the only state that uses a manifest for mixtures of used oil and other special waste." *Id.* Finally, the Agency claims that the Board in this proceeding is not determining whether to exclude used oil from the definition of special waste. *Id.*

The Agency also addresses NORA's argument that the Agency's proposal would not encourage used oil recycling. The Agency argues that facilities in Illinois have recycled used oil and used oil mixtures for years since special waste regulations became effective. PC #40 at 7. The Agency further argues that used oil transporters, whether from Illinois or other states, must obtain a hauling permit and use a manifest in order to transport special wastes such as used oil in Illinois. *Id.* The Agency claims that its proposal "will allow haulers of used oil not containing other special waste to be exempt from the hauling permit and manifest requirement and therefore will encourage the out-of-state competitors to recycle used oil at Illinois facilities." *Id.* The Agency states that, if this is not a result intended by NORA, then the Agency "must question the true intent of NORA's proposal." *Id.*

The Agency responds to NORA's argument that manifests are redundant and wasteful by stating that mixtures of used oil and other special waste should not require separate documents: "[t]he Part 809 manifest will also satisfy the Part 739 tracking requirements." PC #40 at 6; *see* 35 Ill. Adm. Code 739, 809. The Agency appears to accept NORA's argument that "company tracking documents were put in evidence in this proceeding and bear similar, if not identical, resemblance to Illinois manifesting documents." PC #40 at 6; *see* PC #34 at 17. The Agency responds that such company records are not required and that not all businesses will be so thorough in the absence of a regulatory requirement. PC #40 at 6. Noting that information contained in the business records in evidence exceeds the requirements of Part 739, the Agency argues that, "if NORA members keep manifest-like records for their business, it should not be burdensome for the company to fill out a Part 809 manifest." *Id.* The Agency expresses the belief that NORA proposes to exempt mixtures of used oil and other special waste from manifesting requirements "so that the other special waste that usually must go to a permitted and sited special waste facility may be hidden in the used oil and sent to an unpermitted, unsited used oil facility to be processed." *Id.* at 6-7.

Incentive to Mix Used Oil with Non-hazardous Special Wastes

The Agency argues that NORA's proposal does not require a specified minimum amount of used oil that must be added to non-hazardous special waste before a mixture may be relabeled as used oil. PC #40 at 8. The Agency further argues that NORA's proposal "will allow all non-hazardous special waste to be relabeled 'used oil' and be managed solely under the Part 739 regulations." *Id.* The Agency claims that, once the mixture is relabeled as used oil, "the mixture may be received by used oil facilities that have less stringent permitting and siting requirements

than special waste facilities.” *Id.* The Agency expresses the belief that those less stringent requirements provide an incentive to mixed used oil with other special waste and relabel the mixture as used oil. *Id.* The Agency concludes that adoption of NORA’s proposal would cause it to lose regulatory control of non-hazardous special waste and would effectively gut the Board’s special waste regulations. *Id.*; *see* 35 Ill. Adm. Code 808, 809.

The Agency notes NORA’s claim that other wastes subject to regulation under Part 739 are “used oil like substances” and that those substances should not concern the Agency as long as used oil handlers manage them. PC #40 at 8; *see* PC #34 at 17-18. The Agency also notes NORA’s suggestion that “waste will always have valuable amounts of recyclable oil and therefore will be managed properly.” PC #40 at 8. The Agency acknowledges that that incentive may apply to high-grade used oil products. *Id.* The Agency responds to NORA by stating that it “knows that many facilities also profit by collecting generator fees and disposing of the mixtures as low grade used oil fuel.” *Id.* Referring to its experience with these practices, the Agency states its belief that “many of these facilities will abuse the used oil manifest exemption to receive special waste that must normally be managed at a facility that has siting and has been permitted to manage special waste.” *Id.*

Noting NORA’s reference to its member’s business principles, the Agency “commends NORA for its good business practices.” PC #40 at 9; *see* PC #34 at 12, Custer Prefiled Test. at 2. The Agency responds that it cannot enforce these principles and that not all used oil recyclers follow them. PC #40 at 9. Stressing that that NORA’s proposal does not require any minimum amount of used oil in a waste mixture before that mixture may be relabeled as used oil, the Agency argues that “[e]nforcement against facilities that accept waste containing small amounts of used oil would be difficult.” *Id.*

The Agency argues that testimony indicates that used oil handlers also manage waste including “plastic pellets, carbon filter media, surfactants, water-based paint, water-based ink, emulsion solutions, grain/water/oil mixture, cleaning compound, sludge, wash water, super abrasive, sand, tank sludge, water-based coolants, and barge bilge water.” PC #40 at 9. The Agency argues that NORA’s proposal does not distinguish between waste that is used oil that will be recycled and waste that is mainly non-hazardous special waste including a small amount of used oil. *Id.* The Agency claims that the mere addition of “a few drops of oil” should not exempt these waste from manifests or exempt the receiving facility from receiving siting and permitting.” *Id.*

The Agency addresses NORA’s view that the Agency’s position is “contrary to the status quo.” PC #40 at 9; *see* PC #34 at 18. The Agency states that “special waste manifesting and hauling regulations already exist and already apply to used oil.” PC #40 at 9. The Agency argues that its position seeks only to limit any new special waste manifest exemption to used oil as defined and managed in accordance with Part 739. *Id.* at 9-10. The Agency further argues that this new exemption would not discourage recycling of used oil mixtures: “[i]t only means that these mixtures would still have to be transported under a manifest.” *Id.* at 10. The Agency also claims that its proposal “would not change the regulatory status of waste currently exempt from manifesting under other regulations.” *Id.*

The Agency also responds to NORA's argument that the Agency has authority enforce the requirements of Part 739 against any entity that does not comply with it. PC #40 at 10; *see* PC #34 at 18. The Agency indicates that its objection to NORA's proposal is not based on failure to enforce those requirements. PC #40 at 10. The Agency argues that, under NORA's proposal, "the addition of small amounts of used oil to other waste would allow the other waste to go without a manifest or any identification to an unsited, unpermitted facility that it only registered to accept used oil." *Id.* Without that manifest and identification, the Agency argues that waste handlers, the receiving facility, emergency responders, and the Agency would all lack important information about the waste. *Id.* The Agency further argues that "this is inconsistent with the cradle-to-grave tracking of special waste required in the current special waste regulations." *Id.* The Agency concludes by claiming that, without requiring the addition of a minimum amount of used oil to a waste to make it subject to Part 739, "NORA's proposed exemption would result in abuse of the manifest system" and also of the Act's permitting and local siting approval requirements. *Id.*, citing 415 ILCS 5/21(d), 39.2 (2006).

NORA RESPONSE TO AGENCY POST-HEARING COMMENTS

NORA argues that the Agency's general position in this proceeding stems from an interpretation of Part 739 that is not legally appropriate and is not consistent with the plain language of those regulations. PC #39 at 1-2. Specifically, NORA claims that the Agency "fails to consider, and refuses to accept, that material that is collected, commingled and treated as used oil pursuant to Section 739.110 is also 'used oil' and subject to the provisions of that Part [739]." *Id.* at 2, citing 35 Ill. Adm. Code 739.110. NORA argues that this "commingled material allowed to be treated as 'used oil' under that section is no longer special *waste* because it is no longer part of the waste stream, but has become part of the valuable recycled used oil material." PC #39 at 2 (emphasis in original). NORA further argues that adoption of the Agency's position would unnaturally and unworkably distinguish between "used oil" as defined by Section 739.100 and as managed by industry. *Id.* at 2-3; *see* 35 Ill. Adm. Code 739.100. NORA further argues that the Agency has not persuasively claimed that adoption of NORA's proposal would result in inappropriate special waste disposal. *Id.* at 2.

NORA also states that there is no evidence that special waste manifests are more protective of the environment than used oil tracking. PC #39 at 3; *see* 35 Ill. Adm. Code 739, 808, 809. NORA claims to have established conclusively that the Agency does not review special waste manifests and that used oil tracking requirements are as protective as manifests. PC #39 at 3; *see* PC #39 at Attachment B ("Supporting Statement for Renewal of Information Collection Request Number 1286 'Used Oil Management Standards Recordkeeping and Reporting Requirements'"). NORA disputes the Agency's comparison of the recordkeeping requirements under Parts 739 and 809 by arguing that the Agency overlooked DOT requirements under Part 739. PC #39 at 3; *see* PC #33 at 4-5. NORA also disputes the Agency's claims that its members' business records are not required by the regulations as "wrong." PC #39 at 3. In addition, NORA challenges the Agency's claims that those records vary from company to company by stating that records demonstrate that members ensure compliance with used oil regulations.. PC #39 at 3-4; *see* Exh. 12-17.

NORA disagrees with the Agency's view that adoption of NORA's proposal would cause the Agency to lose regulatory control. PC #39 at 16; *see* PC #33 at 15-16. NORA emphasizes that Part 739 applies to a waste stream that is "destined for recycling." PC 39 at 16. NORA claims that "if it is subject to regulation pursuant to Part 739, it is recycled used oil, not special waste." *Id.* NORA claims that many special waste materials would compromise the value of used oil and that recyclers would therefore not collect, transport, or process those materials as used oil. *Id.* NORA acknowledges that special waste regulations would still apply to those materials. *Id.* NORA further argues that Part 739 is enforceable law and that the Agency can launch an investigation to ensure compliance with its provisions. *Id.*

NORA also claims that the Agency "has seriously misrepresented industry motives in this rulemaking." PC #39 at 17. NORA states its understanding that most individual generators "will and should attempt to keep used oil separate from special waste." *Id.* NORA further states that, because recyclers cannot always rely on that separation, they "will have to make appropriate inquiries, and manifest or track accordingly." *Id.* NORA argues that its proposed language is relevant only if the special waste in question is appropriately mixed with used oil. *Id.* In addition, NORA offers an example:

it "does not anticipate that its proposal will allow a recycler to go from one facility and collect pure used oil (which it will track pursuant to Part 739) and go to the next facility and collect special waste (e.g., antifreeze) and call that special waste 'used oil.' NORA recognizes an obligation to treat that second load (antifreeze) as special waste and manifest accordingly. PC #39 at 17.

NORA continues by claiming that, if a recycler picks up a load containing used oil already mixed as allowed by Part 739.110, "there is absolutely no reason to manifest that load because the material is destined to be recycled and Part 739 tracking applies." *Id.*

In addition to making the general arguments above, NORA responds "point-by-point" to individual arguments made by the Agency in its post-hearing comments. PC #39 at 4; *see* PC #33.

First, NORA disputes the Agency's belief that "each individual waste stream of a special waste mixture must be disclosed to the receiving facility." PC #39 at 4; *see* PC #33 at 2. NORA claims that this belief "ignores the fact that special waste appropriately mixed with used oil is no longer special waste; it is used oil, destined for recycling." PC #39 at 4, citing 35 Ill. Adm. Code 730.100.¹ NORA also claims that a manifest provides the Agency with no more information than tracking documents under Part 739. PC #39 at 4; *see* 35 Ill. Adm. Code 739.

Second, NORA characterizes as "incorrect" the Agency's argument that "only Part 809 manifesting requires the disclosure of individual waste streams and Part 739 does not." PC 39 at

¹ As Part 730 of the Board's regulations addresses underground injection control operating requirements and does not include a Section 730.100, the Board construes this as a citation to 35 Ill. Adm. Code 739.100, which provides definitions with regard to standards for the management of used oil.

4; *see* PC #33 at 2. NORA responds that manifests “do not require disclosure of the individual waste stream, particularly when such material is appropriate for commingling as used oil.” PC #39 at 4. NORA argues that “[m]aterial that is appropriately commingled with used oil, and managed as used oil, will be reported as ‘used oil,’ whether on the manifest or on the Part 739 tracking documents.” *Id.* NORA claims that the Agency actually seeks to require reporting as special waste any material intended for recycling as used oil. *Id.* NORA argues that this is not consistent with used oil regulations. *Id.*

Third, NORA addresses the Agency’s argument that “other non-hazardous waste mixed with used oil after generation must be subject to both the used oil standards at Part 739 and the appropriate waste management standards that applied to the waste before mixture occurred.” PC #39 at 4; *see* PC #33 at 3. NORA notes the Agency’s claim that this is necessary to provide notice that the mixture may have properties different from used oil, but NORA argues that a manifest provides no more information than a tracking document under Part 739. PC #39 at 5. NORA also responds that the Agency recognizes that Part 739 allows mixtures of used oil and hazardous wastes. *Id.* NORA notes the Agency’s statement that the Agency proposes no changes with regard to management of conditionally exempt small quantity hazardous waste. *Id.*; *see* PC #33 at 14. In light of the Agency’s position on these issues, NORA states that it “fails to understand how the IEPA accepts that hazardous waste can be appropriately mixed with used oil and effectively tracked pursuant to Part 739, but special waste (by its nature, non-hazardous) cannot.” PC #39 at 5.

Fourth, NORA challenges as “incorrect” the Agency’s argument that NORA’s proposal “would apply the hauling permit exemption to all used oil transporters even when they are hauling special waste that is not used oil.” PC #39 at 5; *see* PC #33 at 4. NORA clarifies that, [i]f a used oil transporter hauls special waste that is not regulated pursuant to Part 739, he or she most assuredly needs a special waste hauling permit to do so.” PC #39 at 5. NORA states that it has not taken a contrary position on this issue. *Id.*

Fifth, NORA disagrees with the Agency’s claim that, “[c]learly, the manifest requirements in part 809 are more detailed than the tracking requirements in Part 739.” PC #39 at 5, citing PC #33 at 5. NORA states that Parts 808 and 809 “do not themselves provide for individual listing of special waste streams.” PC #39 at 6. NORA claims that the manifests provide only for a shipping description similar to what is required by Part 739. *Id.* NORA further states that manifesting under Parts 808 and 809 is “virtually identical” to used oil tracking in Part 739. *Id.*

Sixth, NORA disputes the Agency’s claim that “the Part 809 manifest will also satisfy the Part 739 tracking requirements.” PC #39 at 6, citing PC #33 at 5. Noting that the Agency has compared the tracking and manifesting requirements in a table in its comments, NORA responds that “[t]his comment, and the accompanying table, simply demonstrate that the IEPA lacks a basic understanding as to how these documents actually apply in practice – at the point of pick-up and transport.” PC #39 at 6; *see supra* at 30 (Agency table comparing regulations). Notwithstanding its repeated claim that manifesting under Part 808 and 809 and special waste tracking under Part 739 are “virtually identical” to one another (PC #39 at 5-6), NORA states that it “would argue that Part 739 reporting is much more detailed and that the manifest does not

require the same business information as is necessary for adequate reporting and tracking of used oil.” PC #39 at 6, citing PC #39, Attachment B (“Supporting Statement for Renewal of Information Collection Request Number 1286 ‘Used Oil Management Standards Recordkeeping and Reporting Requirements’”); *see* 35 Ill. Adm. Code 739.146, 739.156, 739.165, 739.174 (tracking requirements). NORA further states that its members do not use a special waste manifest to meet their used oil tracking obligations. PC #39 at 6.

Seventh, NORA characterizes as “wrong” the Agency’s claim that “NORA has argued that Illinois is the only state that uses a manifest.” PC #39 at 6; *see* PC #33 at 6. NORA claims that “the vast majority of states” are consistent with one another in adopting used oil regulations identical to the federal program. PC #39 at 6. NORA further claims that no state “creates a distinction between (a) used oil as specifically defined in [35 Ill. Adm. Code] 739.100 and (b) used oil allowed to be treated as such under the applicability section of those same rules – as the IEPA language does.” PC #39 at 6; *see* 35 Ill. Adm. Code 739.110.

Eighth, NORA counters the Agency’s claims that “it is not seeking a new category of waste or new interpretation of Part 739” and that “used oil is a special waste.” PC #39 at 7; *see* PC #33 at 6. NORA acknowledges that, before Illinois’ adoption of the federal used oil program, used oil “may have been a special waste” under the pre-existing special waste regulations. *Id.* NORA further acknowledges that “discarded used oil is still classified as special waste.” *Id.* NORA argues that, if used oil and mixtures of used oil with appropriate materials are recycled products and are not special wastes “if they are managed pursuant to the used oil rules.” *Id.* NORA claims that the Agency’s position unrealistically creates separate regulatory requirements for recycled used oil. *Id.*

Ninth, NORA discounts the Agency’s comment that the Agency proposal would encourage haulers from other states to recycle used oil at Illinois facilities. PC #39 at 7; *see* PC #33 at 7. NORA states that other states do not treat used oil as special waste and do not apply manifesting and hauling permit requirements to used oil companies. PC #39 at 7. NORA further states that the Agency’s proposal with regard to mixtures of appropriate materials with used oil would confuse out-of-state companies. *Id.* at 7-8.

Tenth, NORA disparages as showing a “lack of understanding” the Agency’s comment that

[t]he proposed NORA language would allow special waste that is mixed with used oil by the generator, the transporter, or the receiving facility, to become subject to only the used oil standards of Part 739. The Illinois EPA’s concern is that since no one has conducted an evaluation of the impact of managing special waste mixed with used oil solely under the used oil regulations, the used oil regulations at Part 739 may not be the appropriate management standards for all non-hazardous special waste. PC #39 at 8, citing PC #33 at 7

NORA suggests that this comment is inconsistent with federal used oil regulations, which allow mixtures to be treated as used oil and which are intended to develop a market for used oil. PC #39 at 8. Also, NORA argues that USEPA has evaluated mixtures of used oil and non-hazardous

waste and suggests that USEPA relied upon the results of those evaluations in adopting the federal used oil regulations, including language now in effect at 35 Ill. Adm. Code 739.110 regarding the applicability of those regulations. *Id.*

Eleventh, NORA addresses the Agency's view that NORA's proposal would encourage mixing special waste with used oil. PC #39 at 9. NORA argues that the Agency is "wrong" to state that materials mixed with used oil "are waste and not recycled products." *Id.* NORA professes that it "fails to understand" the Agency's view when the federal rules allow such mixing to be performed "where technically appropriate and economically justified." *Id.* NORA argues that, in promulgating used oil regulations, USEPA sought to "encourage legitimate recycling and protect human health and [the] environment." *Id.*, citing Tr.1 at 9-11, Harris Prefiled Test. at 2. NORA claims that mixtures of used oil and certain non-hazardous wastes should be encouraged where it is allowed by law and provides the least expensive way to recycle wastes. PC #39 at 9. NORA states that such a mixture "takes other special wastes out of the waste stream and allows them to be recycled along with the used oil." *Id.*

Twelfth, NORA argues that the Agency "fails to grasp" the expertise acquired by used oil recyclers in the two decades since the enactment of the federal used oil program. PC #39 at 9. NORA claims that those recyclers have "become expert" in determining which mixtures of used oil and other materials are appropriate, meet applicable ASTM and used oil regulatory standards, and comply with customers' Clean Air Act permits. *Id.* NORA further claims that the market for used oil controls a recycler's determination whether material is a special waste or whether "it is capable of appropriately blending into a used oil commodity." *Id.* NORA argues that a recycler would not intentionally introduce into the stream of used oil for recycling any material that might prevent the mixture from meeting ASTM or regulatory standards, as this would reduce the value of the used oil as a marketable commodity. *Id.*, citing 35 Ill. Adm. Code 739.111 (Used Oil Specifications). Specifically, NORA states that recyclers must already ensure that used oil has not been mixed with hazardous waste or corrosive material, either of which could harm tanks or other equipment. PC #39 at 9-10. NORA claims that "[a]ny real problems in the field do not have to do with intentional mixing, but in ensuring that the generator has not mixed the material it seeks to have collected mixed with inappropriate materials. If it has, the material will not be collected as used oil." PC #39 at 10.

Thirteenth, NORA responds to the Agency's view that some used oil facilities accept mixtures of used oil and non-hazardous special wastes, profit by charging for that acceptance, and sell the mixture as low-grade used oil. PC #39 at 10; *see* PC #33 at 8. NORA states that it "does not regard this to be an inappropriate or deviant practice." PC #39 at 10. NORA further states that many steel mills and cement kilns can use low-grade used oil fuel while still complying with their air permits. *Id.* NORA argues, however, that the sale price of low-grade used oils does "not normally cover the costs associated with collection, and a charge is generally paid for recycling the material." *Id.* NORA claims that the Agency "fails to understand" that it does not make economic sense intentionally to degrade a stream of used oil in order to meet a lower standard. *Id.* NORA suggests, however, that recyclers do not generally dispose of these lower-grade materials. *Id.* at 10, 11 NORA claims that, faced with a lower-grade stream, a recycler can process it back into used oil and the material with which it was mixed or sell it at a lower price to an entity able to use it. *Id.* at 10.

Fourteenth, NORA disputes the Agency's argument "that non-hazardous special wastes need more regulation than used oil because "waste" poses a present of potential threat to human health or the environment." PC #39 at 11; *see* PC #33 at 9. NORA argues that these materials undergo recycling and pose no greater hazard than the used oil itself. PC #39 at 11. NORA claims that mixtures of special waste and used oil occur only when they are economical for entities in the recycling process. *Id.* NORA further claims that "[u]sed oil recyclers are very capable of handling used oil and non-hazardous waste streams that would fall under Part 739 regulations," which include record keeping requirements. *Id.* NORA argues that hazards result only when such streams are discarded or disposed of improperly. *Id.* NORA further argues that the Agency does not have evidence that these hazards occur. *Id.* NORA also argues that the Agency's "proposed language and arguments presuppose nefarious motives that are simply not supported by the record." *Id.*

Fifteenth, NORA dismisses as "not true" the argument that the Agency's proposal would make re-refiners more selective about the used oil streams they accept. PC #39 at 11; *see* PC #33 at 10-11. NORA claims that a re-refiner "can handle practically anything in the oil" because it separates used oil from various special wastes and charge accordingly for their service. PC #39 at 11. NORA argues that, if the Agency believes a facility is unlawfully disposing of special waste, it can inspect that facility. *Id.* NORA further argues that the Agency should address compliance issues through its enforcement authority and "not by narrowing an exemption from manifesting to the extent that such exemption makes no sense." *Id.* at 11-12, citing 415 ILCS 5/31 (2006) (Notice; complaint; hearing).

Sixteenth, NORA responds to the argument that the Agency's proposal "would not overly discourage used oil recycling in Illinois." PC #39 at 12; *see* PC #33 at 10. NORA claims that, when the Agency made this argument in 1999, the Board determined that it was wrong. PC #39 at 12, citing Amendments to Permitting for Used Oil Management and Used Oil Transport 35 Ill. Adm. Code 807 and 809, R99-18, slip op. at 1, 8 (Dec. 16, 1999). NORA further claims that it remains wrong. PC #39 at 12.

Seventeenth, NORA addresses the Agency's argument that, while used oil mixtures may be subject to testing for some constituents in order to be sold as fuel, "there are many other toxic constituents that should be evaluated if other if other non-hazardous special waste is burned as fuel." PC #39 at 12; *see* PC #33 at 11. NORA claims that "USEPA fully evaluated all such constituents in 1985 in determining what was to be required" by used oil fuel specifications. PC #39 at 12, citing 50 Fed. Reg. 49174-87 (Nov. 29, 1985). NORA further claims that USEPA has continued studying emissions from burning used oil fuel, "all with favorable results." PC #39 at 13. NORA continues by claiming that "there is no reason to suspect that the material collected from the oil recycler, or processed by the used oil processor, will be discarded," so the material is not waste subject to Parts 807-09. PC #39 at 12; *see* 35 Ill. Adm. Code 807-09. NORA argues that, if the material includes toxic constituents, it would be considered a hazardous waste subject to TCLP rules. PC #39 at 12. NORA further argues that, if the material is not toxic, then it "will hardly be more toxic than the used oil itself." *Id.*

Eighteenth, NORA addresses the claim that mixing special wastes with used oil would affect the viscosity, BTU value, or ash content of the oil. PC #39 at 12; *see* PC #33 at 12. NORA argues that this is the reason it “helped establish the ASTM specifications for recycled used oil fuel.” PC #39 at 12, citing PC #39 at Attachment D (Detailed Requirements for Industrial Burner Fuels from Used Lubricating Oils).

Nineteenth, NORA claims that the Agency has selectively quoted USEPA language to suggest that USEPA considers its used oil regulations to be incomplete. PC #39 at 13; *see* PC #33 at 12-13. Specifically, NORA notes the Agency’s citation to the preamble to 1992 regulations: “[t]he USEPA has decided that these current regulations [the original 1985 used oil rules] are protective but not complete or sufficient to protect human health or the environment from potential mismanagement of used oils that are recycled.” PC #39 at 13, citing PC #33 at 13; *see* 57 Fed. Reg. 41569 (Sept. 10, 1992). NORA argues that USEPA’s statement accompanied adoption of 1992 rules, “the very rules which created the record keeping standards that are relevant to this NORA rulemaking.” PC #39 at 13-14. NORA argues that that the language quoted by the Agency continues: “[t]herefore, in addition to the existing regulations [the original used oil rules], used oil handlers will have to comply with additional management standards that EPA is promulgating today, such as recordkeeping and analysis requirements, and a requirement for containment consisting of impervious floor and dikes/berms.” PC #39 at 13; *see* 57 Fed. Reg. 41569 (Sept. 10, 1992).

Twentieth, NORA acknowledges as generally true the Agency’s claim that “any state can regulate used oil in a more stringent manner than federal regulations.” PC #39 at 14; *see* PC #33 at 13. NORA responds, however, that the Agency seeks in this docket to apply that authority inappropriately. PC #39 at 14. NORA states that programs derived from RCRA, including used oil, are required by the Environmental Protection Act to “be adopted in Illinois in a manner that is identical to the federal program.” *Id.*; *see* 415 ILCS 5/7.2, 22.4(a) (2006). Specifically, NORA claims that Agency relies on pre-existing language to define as special waste materials that are able to be recycled as used oil under subsequent regulations. PC #39 at 15. NORA argues that, if Illinois requires more stringent regulations, it is necessary to hold a subsequent rulemaking in order to obtain public comment on the reasonableness of the proposed rules. *Id.* at 14; *see* 415 ILCS 5/27, 28 (2006). NORA further argues that, after adoption of used oil rules, the Agency recognized that it had to initiate a formal rulemaking in order to regulate used oil under Part 807 solid waste provisions. PC #39 at 15; *see* PC 39 at Attachment E (Amendments to Permitting for Used Oil Management and Used Oil Transport 35 Ill. Adm. Code 807 and 809, R99-18) (Dec. 16, 1999)).

Twenty-first, NORA argues that the Agency is not correct in the case of used oil to argue that the “federal regulations do not encourage mixtures.” PC #39 at 15; *see* PC #33 at 13. NORA acknowledges that USEPA encourages separation of used oil from solid wastes. PC #39 at 15. NORA argues, however, that USEPA endorses mixtures of liquids. *Id.*, citing 35 Ill. Adm. Code 739.110.

Twenty-second and finally, NORA notes the Agency’s view that NORA’s proposal “does not include limits on the percentage of oil that would be present in the waste.” PC #39 at 15-16; *see* PC #33 at 15. NORA argues that it “has established that the Part 739 tracking and record

keeping requirements are substantial and enforceable.” PC #39 at 16, citing 35 Ill. Adm. Code 739. NORA further argues that the Board’s regulations describe the materials that can be mixed with used oil for purposes of recycling. PC #39 at 16, citing 35 Ill. Adm. Code 739.110. NORA claims that it “has no reason to offer a percentage of mixture which is or is not appropriate for recycling,” as the applicability language exempts those mixtures from special waste manifesting. PC #39 at 16; *see* 35 Ill. Adm. Code 739.110.

NORA concludes by noting that the Agency has agreed to discontinue manifesting of used oil under Parts 808 and 809, as Part 739 addresses used oil. PC #39 at 17. NORA argues, however, that the Agency’s proposal “is a half measure that would, without justification and based purely on lack of familiarity with Part 739, as well as suspicion and speculation, dissect Part 739 in a way that is not workable in this [used oil] industry and not contemplated by Federal or state law.” *Id.* at 17-18. NORA urges adoption of a proposal that would exempt from special waste manifest and hauling permits “materials *regulated as used oil* on the basis that it is sufficiently regulated by Part 739.” *Id.* at 18 (emphasis added).

NORA’S AMENDED RULE PROPOSAL AND SECOND ERRATA SHEET

In filing its proposed amendment on November 5, 2007, NORA expressed the suspicion “that the Board has not yet acted on this rule proposal since the IEPA and NORA have not been in agreement as to the specific language of the rule.” Prop. at 2. NORA suggests that its amended proposal is based upon a reconsideration of its original proposal and the Agency’s position. *Id.* NORA summarizes that position: “since Part 739 tracking is not as prescriptive as Part 809 manifesting, the IEPA will not be in a position to effectively regulate special waste that is being inappropriately managed as used oil since tracking under Part 739 is not as extensive as manifesting under Part 809.” Prop. at 2; *see* 35 Ill. Adm. Code 739, 809.

NORA states that its amended proposal offers “a manifest exemption for used oil” that is intended to be “more simple” and to meet the objectives of both NORA and the Agency. Prop. at 2. Specifically, NORA proposes language “which would eliminate manifesting for used oil that is tracked in accordance with Part 739, provided that such tracking contains information relevant and necessary for the IEPA to ascertain that the material is used oil regulated under Part 739.” *Id.*; *see* 35 Ill. Am. Code 739.

NORA suggest that this language meets its objectives in this proceeding: “members of NORA who have tracking procedures which are relevant and necessary to identifying the material as used oil under Part 739 will not be required to utilize two separate and duplicative tracking mechanisms.” Prop. at 3. NORA also suggests that its amended proposal addresses the Agency’s view: “IEPA will be able to oversee and regulate the transportation of used oil in the very same manner it does now, so that it may continue to be aware of individual waste streams and pursue any perceived violations.” *Id.* at 2-3. Specifically, NORA argues that its amended proposal requires used oil recyclers to identify waste streams as they do with manifesting. *Id.* at 3. NORA further argues that this gives responsible recyclers with appropriate tracking mechanisms the benefit of reduced paperwork. *Id.* In addition, NORA claims that “irresponsible recyclers will not be in a position to utilize the new language toward an inappropriate purpose.” *Id.*

NORA seeks to have its amended proposal, attached to its filing as Exhibit A and offered as *Errata* Sheet #2, supersede its earlier proposal. The amended proposal would add the following second paragraph to 35 Ill. Adm. Code 809.101:

[u]sed oil which is regulated under 35 Ill. Adm. Code 739 is not subject to the manifesting and permit hauling requirements of this Part, including Sections 809.210(b); 809.211; 809.301; 809.302(a); 809.501(a), provided that the tracking documents which are utilized pursuant to 35 Ill. Adm. Code Part 739 contain information relevant and necessary to identify and track the material as used oil regulated under that Part. Prop. at 5 (Exhibit A consisting of *Errata* Sheet #2).

NORA argues that this amended proposal “would achieve the intended result of all parties” and “urges the Board to accept and adopt this language in a First Notice Order as soon as possible.” *Id.* at 3.

AGENCY RESPONSE TO AMENDED RULE PROPOSAL

The Agency first argues that NORA’s proposed amendment mischaracterizes the current regulations as requiring unnecessary and duplicative paperwork. Resp. at 1, citing Prop. at 1. The Agency claims that the information contained in a special waste manifest also satisfies used oil tracking requirements. Resp. at 1 n.2. The Agency argues that, “if a transporter carries any special waste, including used oil, they need only one special waste manifest for each load received from each generator.” Resp. at 1.

The Agency states that its proposed language would modify the Board’s regulations by eliminating special waste manifests for used oil. Resp. at 1, citing Dragovich Pre-Field Test. The Agency supports its own language by noting that, even though used oil would no longer require a special waste manifest, it remains subject to used oil tracking regulations. Resp. at 1; *see* 35 Ill. Adm. Code 739, 809. The Agency states that cannot support exempting any other special waste from manifesting requirements because “[t]here is no second regulatory framework to pick up other special waste tracking as there is for used oil in Part 739.” Resp. at 2.

The Agency acknowledges that NORA accurately states its concern that it “will not be in a position to effectively regulate special waste that’s being inappropriately managed as used oil since tracking under Part 739 is not as extensive as manifesting under Part 809.” Resp. at 2, citing Prop. at 2. However, the Agency claims that NORA’s amended proposal fails to address this concern.

The Agency notes that NORA’s amended proposal incorporates that phrase “used oil regulated under Part 739” and claims that this language would exempt mixtures of used oil and special waste from manifesting. Resp. at 2. The Agency distinguishes mixtures resulting from original use of the oil from intentional mixtures of used oil after its generation with other special wastes. *Id.* n.6. The Agency further claims that used oil mixed after its generation with other special waste is subject to both used oil and special waste regulations. *Id.* The Agency argues that, since mixtures are “technically ‘regulated under Part 739,’” it cannot support a proposal

allowing mixtures to be regulated only as used oil. Resp. at 2. The Agency restates its view that NORA's language would encourage generators and transporters to mix other special waste into used oil in order to take advantage of an exemption from manifests and hauling permits. *Id.* at 2-3. The Agency also claims that NORA's language would also encourage mixing by receiving facilities, as no documents would identify waste as anything other than used oil and they could then receive special wastes without having to obtain permits or local siting approval under Part 807. *Id.* at 3; see 35 Ill. Adm. Code 807.

The Agency disputes as "not true" NORA's claim that NORA's own proposal "puts the burden on a used oil recycler to identify the waste stream, just as it would do with manifesting" Resp. at 3, citing Prop. at 3. The Agency argues that NORA's amended proposal "requires no more than that the material be tracked as used oil regulated under Part 739." Resp. at 3, citing Prop. at 5 (Exhibit A). The Agency further argues that, because mixtures of used oil and other special waste are regulated under both Part 739 and Part 809, a transporter reporting that a mixture is regulated by Part 739 "would not be incorrect but would be misleading as it fails to identify the other special waste in the mixture." Resp. at 3. The Agency claims that, because

Part 739 does not require the generator to keep copies of shipping records indicating where the other special waste was sent for storage, treatment, recycling or disposal and since the receiving facility would not be notified that the waste contained anything other than used oil, the identification of the other special waste in the mixture would be lost. *Id.* at 3-4.

The Agency concludes by claiming that NORA's amended proposal makes it easy to hide the presence of other special wastes added to used oil at facilities that are not permitted to accept those other special wastes. *Id.* at 4.

The Agency argues that it has consistently opposed any exemption from manifesting that applies to materials "regulated under Part 739." Resp. at 4, citing PC #1. The Agency states that most materials contaminated with used oil are regulated by Part 739 but often are also regulated by stricter standards such as the special waste regulations. Resp. at 4. The Agency argues that "[m]aterials that should be regulated under stricter standards cannot be allowed out of these standards simply because they contain used oil because this would encourage the contamination of these materials with used oil." *Id.*

The Agency states that it has proposed language exempting from manifests only recycled used oil by limiting that exemption to "used oil as defined by and managed in accordance with Part 739." Resp. at 4. The Agency claims that NORA'S first *errata* sheet changed that quoted phrase in order to expand its scope. *Id.* The Agency claims that, [s]ince NORA's members transport used oil mixed with special waste[,] they want a release from manifesting these loads also." *Id.* at 4-5. Although the Agency members of NORA "may make a good faith effort to track the other special waste, their proposed exemption would leave no regulations in place that would require them to do so." *Id.* at 5. The Agency restates its view that "NORA's exemption would create a significant loophole for bad actors and others to circumvent the special waste rules[,] including the requirements of permitting and siting of special waste facilities." *Id.*, citing

PC #33 at 8, PC #40 at 8. The Agency argues that NORA's *Errata* Sheet #2 does nothing to address its repeated objection to the scope of NORA's proposal. Resp. at 5.

The Agency concludes by requesting that the Board deny NORA's motion to file its Rule Proposal Amendment. Resp. at 5.

DISCUSSION

For the reasons below, the Board is proceeding to first notice with NORA's proposal, as amended by the Agency. Specifically, the Board today proposes first-notice amendments designed to (1) exempt used oil, defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739), from the manifesting requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809); and (2) exempts shipments containing no special waste other than used oil, defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739), from the special waste hauling permit requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809).

In this section of the opinion, the Board first briefly addresses the background of Illinois' used oil regulations before addressing the scope of its proposed exemption from the special waste manifesting and hauling permit requirements. The Board then makes findings with regard to the technical feasibility and economic reasonableness of its proposal before seeking public comment on specific issues related to used oil tracking documents.

Background of Used Oil Rules

Both NORA and the Agency have noted that, before promulgating standards for the management of used oil (*see* 35 Ill. Adm. Code 739), the Board had established special waste regulations applicable in part to used oil. Statement at 2; PC #33 at 12; *see* Special Waste Hauling Regulations, R76-10 (Mar. 15, 1979) (final adoption of special waste hauling regulations); IDENR Special Waste Categorization, R89-13A (Aug. 9, 1990) (creating Part 808). These regulations now require that, with specified exceptions, "[n]o person shall deliver special waste to a transporter unless the waste is accompanied by a manifest . . . and the transporter has a special waste hauling permit. . . ." 35 Ill. Adm. Code 808.121(b).

Part 809 of the Board's regulations provides various exemptions from the requirement of obtaining a special waste hauling permit. 35 Ill. Adm. Code 809.211. The same part requires a manifest for delivery or acceptance of special waste for disposal, storage, or treatment, and it places requirements on special waste transporters. 35 Ill. Adm. Code 809.301, 809.302. Section 809.501 provides in pertinent that "[a]ny person who delivers special waste to a permitted nonhazardous special or hazardous waste transporter shall complete a uniform hazardous waste manifest to accompany the special waste from delivery to the destination of the special waste" and establishes other requirements. 35 Ill. Adm. Code 809.501(a).

In 1992, USEPA promulgated standards for the management of used oil. 57 Fed. Reg. 41612 (Sept. 10, 1992); *see* 40 C.F.R. 279. Exercising its authority to adopt rules that are identical-in-substance to those adopted by USEPA under specified federal programs (415 ILCS 5/7.2, 22.4(a) (2006)), the Board adopted those used oil management standards as a new Part 739

of its regulations. RCRA Update, USEPA Regulations (7/1/92 – 12/31/92), R93-4 (Sept. 23, 1993). Among its other provisions, Part 739 addresses tracking on the part of used oil generators (35 Ill. Adm. Code 739.120(b)), used oil transporters (35 Ill. Adm. Code 739.146), used oil processors, (35 Ill. Adm. Code 739.156), and used oil burners (35 Ill. Adm. Code 739.165). Tracking records requires specified information. *E.g.*, 35 Ill. Adm. Code 739.146(a) (addressing acceptance of shipment for transport).

In its opinion adopting used oil management standards, the Board noted a comment from Safety-Kleen Corporation that the tracking provisions did not correspond to existing regulations that may classify used oil as special waste. Specifically, Safety-Kleen Corporation stated that

[a]s such, these used oils will be subject to the manifesting requirements of 35 IAC Section 809.501, as well as the new proposed used oil management regulations. In accordance with the “special waste” regulations, used oil generators are required to obtain an Illinois generator Id number and are required to manifest their used oil off-site. Transporters are required to obtain a permit and manifest the used oils to a permitted special waste facility. Transfer facilities and processing facilities are required to obtain a Special Waste operating Permit and Waste Stream authorization numbers for each type of oil received. None of these provisions are included or referenced in the used oil regulations. In fact, Section 739.156 states that processors records “may take the form of a log, invoice, manifest, bill of lading or other shipping documents.” Using an invoice or a bill of lading may not be in compliance with the special waste requirements. The IPCB must make clear which tracking requirements apply to used oil shipments. RCRA Update, USEPA Regulations (7/1/92 – 12/31/92), R93-4, slip op. at 64-65 (Sept. 23, 1993).

The Board addressed Safety-Kleen Corporation’s comment by stating that the Board

agrees that the used oil should be subject to the special waste manifesting regulations. The Board believes that its existing manifest regulations in Part 809 are more stringent than the Federal regulations and thus apply. Therefore, the Board will adopt the regulations to reflect that used oils are subject to special waste manifesting regulations” *Id.*

Scope of Proposed Exemption

In filing its original proposal and statement of reasons, NORA stated that discussed the used oil program with the Agency and had “reached substantial agreement on the specific changes” necessary to amend Illinois’ special waste hauling and manifesting requirements for used oil. Statement at 3. In his comments and testimony, Mr. Dragovich agreed that the Agency had discussed used oil requirements with NORA before NORA filed its proposal in this proceeding. PC #1 at 1. However, in recommending revisions to NORA’s original proposal, he stated that these discussions

were limited to the elimination of manifests for used oil that is defined by and managed in accordance with Part 739 and the elimination of hauling permits for transporters that are only transporting loads of used oil that is defined by and managed in accordance with Part 739. No other aspects of the special waste regulations were discussed with NORA, and it is the Illinois EPA's belief that NORA does not intend to exclude used oil from the definition of special waste or any other requirements such as reporting that may still apply. The Illinois EPA also believes that it was not NORA's intention to propose an exemption that includes other wastes that are not used oil that is defined by and managed in compliance with Part 739 or special wastes that are clearly not destined for recycling. *Id.*, Dragovich Test. at 2.

Addressing the participants' positions, counsel for the Agency at the second hearing indicated that NORA and the Agency had misunderstood the extent to which they had reached agreement because their discussions referred "conversationally" to the term "used oil" outside the presence of their respective technical staffs. Tr.2 at 7-8.

NORA takes the position that its proposed manifest exemption should apply not only to what is defined as "used oil" but "also to all of the used-oil-like mixtures which are already subject to management as used oil pursuant to federal regulations and also pursuant to 35 Ill. Adm. Code 739." Ray Prefiled Test. at 4. Mr. Harris echoes this general position and claims that used oil tracking documents monitor shipments of materials regulated as used oil just as effectively as they monitor shipments of used oil. Harris Prefiled Test. at 4-5. Mr. Ray specifically identifies "material containing or otherwise contaminated with used oil that is burned for energy recovery" as one material that does not meet the definition of "used oil" but which is subject to regulation as used oil. Ray Prefiled Test. at 3-4; *see* 35 Ill. Adm. Code 739.110(c)(2).

The Agency takes the position that an exemption from the special waste hauling permit and manifesting requirements "should be clear that it only applies to used oil as defined by Part 739 and would not apply to other wastes transported on the same load, or other vehicles operated by the transporter that are not carrying exempt loads of used oil." Dragovich Prefiled Test. at 3. The Agency believes that NORA's proposal "would give generators of non-hazardous special waste the opportunity to mix their non-hazardous special waste with used oil and would relieve them of any responsibility to convey this to the transporter or receiving facility, effectively hiding the waste in used oil." PC #33 at 7. In his testimony at the second hearing, Mr. Dragovich elaborated on the Agency's belief in this regard.

The problem with the proposal is that you can take a cup of oil and put it into another waste and call all that used oil and say it's exempt, and now you've got something that doesn't behave at all like used oil but the entire description from there on forward is going to say this is used oil. And everybody's going to treat it like used oil. Tr.2 at 33.

The Board notes that Section 739.100 defines used oil as "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." 35 Ill. Adm. Code 739.100. The Board further notes that

used oil mixed after generation with special waste would not meet this definition. However, the mixture may become “subject to regulation as used oil” in the course of recycling. *See* 35 Ill. Adm. Code 739.110. If a manifest exemption applied to such a mixture on the basis that it is “subject to regulation as used oil,” it would be tracked as used oil without identifying the special waste. Because the mixture could ease the burden of managing special waste, the Board can only conclude that such a manifest exemption would encourage more special waste to be mixed with used oil after generation. The Board notes that the Agency offered evidence that various special wastes had been mixed with used oil and managed as used oil under the requirements of Part 739. Cahnovsky Prefiled Test. at 1, Attachments 1-6; Tr.2 at 13-14.

Although the Board’s first-notice proposal below does nothing to prohibit such mixtures, tracking mixtures solely as used oil without a special waste manifest raises a number of issues. For example, reliance solely on a used oil tracking document for those mixtures may not reveal to transporters, emergency responders, and various receiving facilities that special waste has been mixed with used oil. The special waste may have properties significantly different from used oil, which may thwart recycling.

In addition, NORA’s proposal would not require that a special waste mixture contain some minimum amount of used oil in order to qualify for an exemption from the manifest requirements. Members of NORA offered some testimony that the market for used oil and the nature of their business may limit the application of a manifest exemption. Mr. Lenz noted that Part 739 presumes used oil recycling, and he appeared to suggest that NORA would like to allow a manifest exemption for “wastes that are compatible with the used oil, that will pass the used oil EPA specification test, that will pass the ASTM used oil performance test.” Tr.2 at 55. When asked by Mr. Dragovich how much used oil a mixture would have to contain in order to be deemed used oil, Mr. Lenz opined “more than *de minimis* amounts,” and Ms. McCord suggested a recoverable amount of used oil in the mixture. Tr.2 at 110-11. The Board need not determine today whether this testimony provides a basis to extend an exemption from special waste requirements beyond used oil as defined in Section 739.100. No participant has formally proposed language of this nature, and the record is not sufficiently clear for the Board to propose it for first notice.

Technical Feasibility and Economic Reasonableness

In the course of these proceedings, the Agency introduced testimony that that used oil facilities purchased 524,824 manifests from it during a two and one-half year period at a rate of 210,330 manifests annually. The Agency estimated that facilities purchased 168,650 manifests for the transportation of used oil in that two and one-half year period at a rate of 67,460 manifests annually. The Agency did not include a growth factor in those figures. It concluded that the number of shipments of used oil that would be exempt from manifesting is approximately 67,460 but could be more than 210,330 shipments per year. Even though it is limited to used oil as defined by and managed in accordance with Part 739, the exemption proposed today by the Board for first-notice publication would eliminate the filing of some manifests and result in some savings to regulated entities.

NORA also offered testimony regarding the costs of manifesting shipments of used oil. Mr. Lenz testified that, for Future Environmental, purchasing manifests costs \$600 per day of operation and involves the cost of additional time on the part of its field and office personnel. Also, Mr. Ray testified that, even as one of the smaller used oil collectors in the State, manifesting annually costs Heritage Crystal Clean \$100,000. Nothing in the record suggests that the manifesting costs for other used oil entities differ significantly from these figures.

The Board thus finds that NORA's proposal, as amended by the Agency, is economically reasonable. Also, as the record does not demonstrate that an exemption from filing a special waste manifest for shipments of used oil as defined by 35 Ill. Adm. Code 739.100 itself presents any technical issues, the Board also finds that NORA's proposal, as amended by the Agency, is technically feasible.

Accordingly, the Board adopts for first-notice NORA's proposal, as amended by the Agency. The Board notes that, in doing so, it is not amending the definition of "used oil" at Section 739.100 or the applicability of the used oil regulations under Section 739.110. Likewise, the Board is not today in any way amending the used oil management standards of Part 739. Furthermore, the Board is providing an exemption from an existing requirement and is not imposing a new requirement.

Request for Public Comment

During the second hearing, Ms. McCord expressed frustration that NORA's proposal had been misinterpreted:

I don't understand how we've gotten off the mark in focusing on the definition of used oil. That's not what we're asking for. We're asking to substitute for a piece of paper with information. And if the Department feels there's elements that are missing or you need to have standardized, you know, pieces of information on those shipments, lay them out. Tr.2 at 52-53.

In response, counsel for the Agency argues that the tracking requirements in Part 739 only allow the Agency to require information relevant to shipments of used oil. *Id.* at 53. She suggested that it is only through a special waste manifest that the Agency has the authority to require information pertinent to special wastes mixed with used oil after generation. *See id.* at 53-54.

The Agency has noted that NORA introduced as hearing exhibits a number of the shipping papers used by its members in the course of transporting used oil. While the Agency has acknowledged that these shipping papers appear to resemble a special waste manifest, the Agency notes that the information in these shipping papers exceeds what is required under Part 739 and that the Agency lacks authority under Part 739 to require the filing of such documents.

The Board seeks comment from the participants on whether the Part 739 tracking document requirements should be amended to require information necessary to satisfy other informational requirements such as those for manifesting under Parts 808 and 809. If a participant seeks to revise Part 739, the Board requests that the comment include regulatory

language that might be proposed to effect such a revision and that may support a manifest exemption for materials regulated as used oil. Specifically, the Board seeks to determine whether the record in this proceeding may be developed in a way that supports adoption of a proposal similar to that sought by NORA while addressing the Agency's concerns.

CONCLUSION

The Board proposes for first-notice publication in the *Illinois Register* language that would exempt from the manifesting requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809) used oil that is defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739) and that would exempt from the special waste hauling permit requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809) shipments that contain no special waste other than used oil that is defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739).

In addition, the Board specifically seeks comment on whether to amend the tracking requirements in Part 739 so that those regulations would require in a single document, information sufficient to satisfy the various informational requirements that may apply to shipments of used oil. Additionally, in the event that a participant wishes to amend Part 739 in this manner, the Board seeks comment in the form of regulatory language that might be proposed to effect such an amendment. Specifically, the Board seeks to determine whether the record in this proceeding may be developed in a way that supports adoption of a proposal similar to that sought by NORA while addressing the Agency's concerns.

ORDER

The Board directs the Clerk to cause first-notice publication of the following proposed amendments to the Board's special waste regulations concerning used oil in the *Illinois Register*. Proposed additions to Parts 808 and 809 are underlined; proposed deletions appear stricken.

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING**

**PART 808
SPECIAL WASTE CLASSIFICATIONS**

SUBPART A: GENERAL PROVISIONS

Section

808.100	Purpose, Scope and Applicability
808.101	Transitional Rule
808.110	Definitions
808.111	Incorporations by Reference

808.121	Generator Obligations
808.122	Manifests
808.123	Small Quantity Generators

SUBPART B: CLASSES OF SPECIAL WASTE

Section

808.240	Special Waste Classes
808.241	Default Classification of Special Wastes
808.242	Special Handling Waste
808.243	Wastes Categorized by Source
808.244	Wastes Categorized by Characteristics
808.245	Classification of Wastes

SUBPART C: CRITERIA AND DATA REQUIREMENTS

Section

808.300	Introduction
808.301	Degree of Hazard Determination by Computer
808.302	Data Base and Bioassay Procedures

SUBPART D: REQUEST FOR WASTE CLASSIFICATION

Section

808.400	Introduction
808.401	Application Forms
808.402	Application for Waste Classification
808.410	Physical and Chemical Analysis
808.411	Significant Trace Constituents
808.412	Common Names
808.413	Wastestream Description
808.420	Quality Assurance Plan
808.430	Degree of Hazard Data
808.431	Toxicological Testing

SUBPART E: REVIEW OF CLASSIFICATION REQUESTS

Section

808.501	Order of Requesting Information
808.502	Completeness
808.503	Standard for Classification

SUBPART F: WASTESTREAM CLASSIFICATION DETERMINATIONS

Section

808.520	Time for Agency Action
808.521	Conditions of Wastestream Classification
808.522	Final Agency Action

SUBPART G: MODIFICATION, APPEAL AND ENFORCEMENT

Section

808.541	Request for Modification
808.542	Appeal
808.543	Effect of Classification
808.544	Enforcement
808.545	Modification

SUBPART H: CATEGORICAL AND CHARACTERISTIC WASTES

Section

808.600	Introduction
<u>808</u> .APPENDIX A	Assignment Of Special Waste To Classes
<u>808</u> .APPENDIX B	Toxicity Hazard

AUTHORITY: Implementing Sections 21, 22, 22.01 and 22.9, and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/21, 22, 22.01, 22.9].

SOURCE: Adopted in R89-13A at 14 Ill. Reg. 14043, effective August 15, 1990; amended in R98-29 at 23 Ill. Reg. 6875, effective July 1, 1999; amended in R06-20 at 32 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 808.121 Generator Obligations

- a) Each person who generates waste shall determine whether the waste is a special waste.

BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.

- b) No person shall deliver special waste to a transporter unless the waste is accompanied by a manifest as specified in Section 808.122, and the transporter

has a special waste hauling permit issued pursuant to 35 Ill. Adm. Code 809. The following are exceptions to this prohibition:

- 1) The person is subject to the small quantity generator exemption of Section 808.123.
 - 2) The transporter and waste are subject to a transporter exemption under 35 Ill. Adm. Code 809.211.
 - 3) The Agency has determined pursuant to this Part that the waste is not a special waste.
 - 4) The waste consists of municipal water or wastewater treatment plant sludge regulated under a sludge management plan approved by the Agency pursuant to 35 Ill. Adm. Code 309.208.
 - 5) The generator is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739.
 - 6) A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter.
- c) *No person shall cause, threaten or allow the treatment, storage or disposal of special waste in Illinois except:*
- 1) *At a facility permitted or otherwise authorized to manage the special waste pursuant to 35 Ill. Adm. Code 703 or 807 [415 ILCS 5/21(d) and (e)] ~~(Sections 21(d) and (e) of the Act)~~; or*
 - 2) *At a facility owned and operated by such person and subject to the on-site disposal exemption of Section 21(d) of the Act [415 ILCS 5/21(d)] ~~(Section 21(d) of the Act).~~*
- d) No person shall deliver special waste to a transporter or a permitted facility without a supplemental wastestream permit.
- e) No person shall deliver to a transporter or permitted facility special waste with a wastestream identification number unless the waste conforms with the wastestream description in the wastestream classification determination.

(Source: Amended at 32 Ill. Reg. _____, effective _____)

SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING
PART 809
 NONHAZARDOUS SPECIAL WASTE HAULING AND THE UNIFORM PROGRAM

SUBPART A: GENERAL PROVISIONS

Section	
809.101	Authority, Policy and Purposes
809.102	Severability
809.103	Definitions
809.104	Incorporations by Reference
809.105	Public Records

SUBPART B: NONHAZARDOUS SPECIAL WASTE HAULING PERMITS

Section	
809.201	Nonhazardous Special Waste Hauling Permits-General
809.202	Applications for Nonhazardous Special Waste Hauling Permit-Contents
809.203	Applications for Nonhazardous Special Waste Hauling Permit-Signatures and Authorization
809.204	Applications for Nonhazardous Special Waste Hauling Permit-Filing and Final Action by the Agency
809.205	Nonhazardous Special Waste Hauling Permit Conditions
809.206	Nonhazardous Special Waste Hauling Permit Revision
809.207	Transfer of Nonhazardous Special Waste Hauling Permits
809.208	Nonhazardous Special Waste Hauling Permit Revocation
809.209	Permit No Defense
809.210	General Exemption from Nonhazardous Special Waste Hauling Permit Requirements
809.211	Exemptions for Nonhazardous Special Waste Transporters
809.212	Duration of Nonhazardous Special Waste Hauling Permits

SUBPART C: DELIVERY AND ACCEPTANCE

Section	
809.301	Requirements for Delivery of Nonhazardous Special Waste to Transporters
809.302	Requirements for Acceptance of Nonhazardous Special or Hazardous Waste from Transporters

SUBPART D: PERMIT AVAILABILITY AND SYMBOLS

Section

- 809.401 Permit Availability
- 809.402 Nonhazardous Special Waste Symbols

SUBPART E: MANIFESTS, RECORDS AND REPORTING

- Section
809.501 Manifests, Records, Access to Records, Reporting Requirements and Forms

SUBPART F: DURATION OF PERMITS AND TANK NUMBERS

- Section
809.601 Duration of Special Waste Hauler Permits and Tank Numbers (Repealed)

SUBPART G: EMERGENCY CONTINGENCIES FOR SPILLS

- Section
809.701 General Provision

SUBPART H: EFFECTIVE DATES

- Section
809.801 Compliance Date
- 809.802 Exceptions (Repealed)

SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

- Section
809.901 Definitions (Repealed)
- 809.902 Disposal Methods (Repealed)
- 809.903 Rendering Innocuous by Sterilization (Repealed)
- 809.904 Rendering Innocuous by Incineration (Repealed)
- 809.905 Recordkeeping Requirements for Generators (Repealed)
- 809.906 Defense to Enforcement Action (Repealed)

SUBPART J: UNIFORM PROGRAM

- Section
809.910 Uniform State Hazardous Waste Transportation Registration and Permit Program
- 809.911 Application for a Uniform Permit
- 809.912 Application for Uniform Registration

809.913	Payment of Processing and Audit Fees
809.914	Payment of Apportioned Mile Fees
809.915	Submittal of Fees
809.916	Previously Permitted Transporters
809.917	Uniform Registration and Uniform Permit Conditions
809.918	Uniform Registration and Uniform Permit Revision
809.919	Transfer of Uniform Registration and Uniform Permits
809.920	Audits and Uniform Registration and Uniform Permit Revocation
809.921	Permit No Defense

809.APPENDIX A Old Rule Numbers Referenced (Repealed)

AUTHORITY: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, and 22.2 and 27] (see P.A. 90-219).

SOURCE: Adopted in R76-10, 33 PCB 131, at 3 Ill. Reg. 13, p. 155, effective March 31, 1979; emergency amendment in R76-10, 39 PCB 175, at 4 Ill. Reg. 34, p. 214, effective August 7, 1980, for a maximum of 150 days; emergency amendment in R80-19, 40 PCB 159, at 5 Ill. Reg. 270, effective January 1, 1981, for a maximum of 150 days; amended in R77-12(B), 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R80-19, 41 PCB 459, at 5 Ill. Reg. 6378, effective May 31, 1981; codified in R81-9, 53 PCB 269, at 7 Ill. Reg. 13640; effective September 30, 1983; recodified in R84-5, 58 PCB 267, from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; amended in R89-13A at 14 Ill. Reg. 14076, effective August 15, 1990; amended in R91-18 at 16 Ill. Reg. 130, effective January 1, 1992; amended in R95-11 at 20 Ill. Reg. 5635, effective March 27, 1996; amended in R98-29 at 23 Ill. Reg. 6842, effective July 1, 1999; amended in R00-18 at 24 Ill. Reg. 14747, effective September 25, 2000; amended in R06-20 at 32 Ill. Reg. _____, effective _____.

SUBPART B: NONHAZARDOUS SPECIAL WASTE HAULING PERMITS

Section 809.211 Exemptions for Nonhazardous Special Waste Transporters

The following persons need not obtain a nonhazardous special waste hauling permit nor carry a manifest if they haul only the waste indicated:

- a) Any person licensed in accordance with the Private Sewage Disposal Licensing Act [225 ILCS 225] and who hauls only septic tank pumpings.
- b) Any person who hauls only livestock waste intended for land application pursuant to 35 Ill. Adm. Code 560.
- c) Transporters of municipal water or wastewater treatment plant sludge that is to be applied to land and that is regulated under a sludge management scheme approved by the Agency pursuant to 35 Ill. Adm. Code 309.208.

- d) Any person licensed in accordance with the Illinois Dead Animal Disposal Act [225 ILCS 610] and who hauls only grease, meat packing scraps, dead animals and parts of animals for delivery to a renderer.
- e) Any person operating under rules and regulations adopted pursuant to the Illinois Oil and Gas Act [225 ILCS 725] and who hauls only oil and gas extraction wastes as defined in that Act.
- f) Any person who hauls only radioactive wastes as defined by the Radiation Protection Act [420 ILCS 40].
- g) Any person who hauls only coal combustion fly ash.
- h) Any person who hauls only declassified waste or refuse.
- i) Any person who hauls only special waste exempted by 35 Ill. Adm. Code 808.123 (small quantity generators of 220 pounds or less per month of special waste).
- j) Any person who hauls potentially infectious medical waste that is regulated under 35 Ill. Adm. Code Subtitle M.
- k) Any person who hauls used tires regulated under 35 Ill. Adm. Code 848.
- l) Any person who hauls only used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739, and who has registered with the Agency as a used oil transporter.

(Source: Amended at 32 Ill. Reg. _____, effective _____)

SUBPART C: DELIVERY AND ACCEPTANCE

Section 809.301 Requirements for Delivery of Nonhazardous Special Waste to Transporters

No person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency under Subpart B or C of this Part. The generator or transporter is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter.

(Source: Amended at 32 Ill. Reg. _____, effective _____)

Section 809.302 Requirements for Acceptance of Nonhazardous Special or Hazardous Waste from Transporters

- a) No person may accept any special waste for disposal, storage or treatment within Illinois from a special waste transporter unless the special waste transporter has a valid nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency under Subpart B or J of this Part and concurrently presents to the receiver of the special waste, or the receiver's agent, a completed, signed manifest as required by Subpart E of this Part, which manifest designates the receiver's facility as the destination for the special waste. The generator or transporter is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter.
- b) No person may deliver special waste in Illinois for disposal, storage or treatment unless the person who accepts the special waste has a current, valid operating permit issued by the Agency and the necessary supplemental permits required by 35 Ill. Adm. Code 807, as well as all other applicable permits as required by the Act and Board regulations.

(Source: Amended at 32 Ill. Reg. _____, effective _____)

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section 809.501 Manifests, Records, Access to Records, Reporting Requirements and Forms

- a) Any person who delivers special waste to a permitted nonhazardous special or hazardous waste transporter shall complete a uniform hazardous waste manifest to accompany the special waste from delivery to the destination of the special waste. The manifest form will be provided or prescribed by the Agency. The generator or transporter is not required to complete a manifest for used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739. A transporter is not required to have a special waste hauling permit to transport a load that contains no special waste other than used oil that is defined by and managed in accordance with 35 Ill. Adm. Code 739 if the transporter has registered with the Agency as a used oil transporter.

- b) The transporter shall include in the manifest the following:
- 1) The name of the generator of the special waste and generator number;
 - 2) Information stating when and where the special waste was generated;
 - 3) The name of the person from whom delivery is accepted and the name of the site from which delivered;
 - 4) The name and permit number of the transporter;
 - 5) The date of delivery; and
 - 6) The classification and quantity of the special waste delivered to the transporter.
- c) Manifest copies to be sent to the Agency:
- 1) Every person who delivers RCRA hazardous waste or polychlorinated biphenyl (PCB) wastes to a transporter shall submit a copy of the Illinois manifest to the Agency within two days after the shipment. Every person who accepts RCRA hazardous waste or PCB waste from a transporter shall submit a copy of the Illinois manifest to the Agency within 30 days after receipt.
 - 2) A person who delivers RCRA hazardous waste or PCB wastes to a transporter on another state's manifest, such as where the destination state requires use of its manifest, does not have to submit manifest copies to the Agency.
 - 3) A person who delivers non-RCRA hazardous wastes or non-PCB wastes to a transporter does not have to send a copy of the manifest to the Agency. A person who accepts non-RCRA hazardous waste or non-PCB wastes from a transporter does not have to send a copy of the manifest to the Agency.
- d) The manifest will consist of at least four parts, in contrasting colors, such that an entry or signature on one part will be directly reproduced upon all underlying parts. The top part of the manifest shall be signed by the person who delivers special waste to a special waste transporter, acknowledging the delivery. The top part of the manifest shall also be signed by the special waste transporter, acknowledging receipt of the special waste. The person who delivers special waste to a special waste transporter shall retain the designated parts of the manifest as a record. The remaining parts of the manifest shall accompany the special waste shipment. At the destination, the manifest shall be signed by the

person who accepts special waste from a special waste transporter, acknowledging receipt of the special waste.

- e) A permitted site that receives special waste for disposal, storage or treatment of special waste must be designated on the manifest as the final destination point. Any subsequent delivery of the special waste or any portion or product thereof to a special waste transporter shall be conducted under a manifest initiated by the permitted disposal, storage or treatment site.
- f) In all cases, the special waste transporter shall deliver the designated parts of the complete, signed manifest to the person who accepts delivery of special waste from the transporter. The special waste transporter shall retain the designated part of the complete, signed manifest as a record of delivery to a permitted disposal, storage or treatment site. In addition, at the end of each month, or longer if approved by the Agency, the owner and the operator of the permitted disposal, storage or treatment site who accepts special waste from a special waste transporter shall send the designated part of the completed manifest to the person who delivered the special waste to the special waste transporter.
- g) Every generator who delivers special waste to a special waste transporter, every person who accepts special waste from a special waste transporter and every special waste transporter shall retain their respective parts of the special waste manifest as a record of all special waste transactions. These parts shall be retained for three years and will be made available at reasonable times for inspection and photocopying by the Agency.

BOARD NOTE: The manifest requirements of 35 Ill. Adm. Code 722, 724 and 725 relative to RCRA hazardous wastes are not affected by this subsection. Generators and receiving facilities subject to those Parts shall continue to supply designated copies of all manifests to the Agency.

- h) Every generator who delivers nonhazardous special waste via a transporter to a facility located outside Illinois shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding calendar year. Such reports shall, at a minimum, include the information specified in subsection (i) of this Section and should be received by the Agency no later than February 1.
- i) Every annual report required to be filed with the Agency by a generator for waste going out of state pursuant to subsection (h) of this Section shall include the following:
 - 1) The IEPA identification number, name and address of the generator;
 - 2) The period (calendar year) covered by the report;

- 3) The IEPA identification number, name and address for each off-site treatment, storage or disposal facility to which waste was shipped during the period;
 - 4) The name and IEPA special waste hauling number of each transporter used during the period for shipments to a treatment, storage or disposal facility;
 - 5) A description and the total quantity of each nonhazardous special waste shipped out of state, listed by IEPA identification number of each receiving site;
 - 6) The method of treatment, storage or disposal for each nonhazardous special waste; and
 - 7) A certification signed by the generator or the generator's authorized representative.
- j) Every in-State facility that accepts nonhazardous special waste from a nonhazardous special waste transporter shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding calendar year. Such reports should, at a minimum, include the information specified in subsection (k) of this Section and be received by the Agency no later than February 1. This subsection is applicable to all nonhazardous special wastes that are delivered to a nonhazardous special waste transporter on or after January 1, 1991.
- k) Every annual report required to be filed with the Agency by a person accepting nonhazardous special waste from a nonhazardous special waste transporter pursuant to subsection (j) of this Section shall include the following information:
- 1) The IEPA identification number, name and address of the facility;
 - 2) The period (calendar year) covered by the report;
 - 3) The IEPA identification number, name and address of each nonhazardous special waste generator from which the facility received a nonhazardous special waste during the period;
 - 4) A description and the total quantity of each nonhazardous special waste the facility received from off-site during the period. This information shall be listed by IEPA identification number of each generator;
 - 5) The method of treatment, storage or disposal for each nonhazardous special waste; and

- 6) A certification signed by the owner or operator of the facility or the owner's or operator's authorized representative.

(Source: Amended at 32 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 1, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board