

ILLINOIS POLLUTION CONTROL BOARD

August 20, 2009

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO THE) R06-20
BOARD'S SPECIAL WASTE) (Rulemaking - Land)
REGULATIONS CONCERNING)
USED OIL, 35 ILL. ADM. CODE 739, 808,)
809)

Proposed Rule. Second First Notice.

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

For first-notice publication in the *Illinois Register*, the Board today proposes amendments to its special waste regulations and corresponding amendments to its used oil management standards. *See* 35 Ill. Adm. Code 739, 808, 809. NORA, An Association of Responsible Recyclers, formerly known as the National Oil Recycling Association (NORA), initiated this proceeding by filing a rulemaking proposal. On May 1, 2008, the Board adopted for first notice a proposal amending its special waste regulations. *See* 32 Ill. Reg. 8085-8102 (May 30, 2008). After conducting a third public hearing in this matter at NORA's request and considering the entire record, the Board adopts for second first notice the amendments to its special waste and used oil regulations described below.

The proposed amendments are intended to exempt from the manifesting requirements of Parts 808 and 809 specific mixtures of used oil and other materials. With regard to those specific mixtures, the Board proposes to amend the Part 739 tracking requirements to include information required by a manifest under Parts 808 and 809. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period. *See* 5 ILCS 100/5-40(b) (2008) (Illinois Administrative Procedure Act). The Board does not presently intend to hold any additional hearings.

In the opinion below, the Board first provides the procedural history of this rulemaking. This history includes a brief summary of the Board's original May 1, 2008, first-notice opinion and order, which requested comment on whether to amend the used oil management standards at Part 739. Next, the Board summarizes a comment from the Illinois Environmental Protection Agency (Agency or Illinois EPA or IEPA) responding to that request. The Board then addresses NORA's September 22, 2008, proposal, which also responds to that request for comment. Next, the Board reviews post-hearing comments filed by NORA and the Agency, NORA's response to the Agency's comment, and the Agency's response to NORA's comment. After discussing the issues raised in the record of this proceeding, the Board reaches its conclusions on them. The order following this opinion then sets forth the proposed amendments for a second first-notice publication in the *Illinois Register*.

PROCEDURAL HISTORY

Procedural History Prior to Board's Original May 1, 2008, First Notice Opinion and Order

On December 13, 2005, NORA filed both proposed amendments to the Board's special waste regulations and a statement of reasons (Statement) supporting the proposal. Also on December 13, 2005, NORA filed a motion to waive signature requirements. *See* 415 ILCS 5/28(a) (2008); 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 signature requirements. In the same order, the Board directed NORA to address in writing three identified informational deficiencies in the proposed rule and statement of reasons.

In an order dated April 5, 2006, the hearing officer scheduled the first hearing for May 25, 2006, in Springfield and set a deadline of May 11, 2006, to pre-file testimony for it. The order set the same deadline for NORA to address the informational deficiencies identified by the Board's January 5, 2006, order. The order also scheduled a second hearing for June 29, 2006, in Chicago.

On May 1, 2006, the Board received the Agency's comments on NORA's proposal (PC 1).

On May 10, 2006, Theodore J. Dragovich, manager of the Disposal Alternatives Unit in the Agency's Bureau of Land Permit Section, pre-filed testimony for the first hearing on behalf of the Agency.

On May 11, 2006, NORA orally requested an extension of the May 11, 2006, deadline for pre-filing testimony and the supplemental statement of reasons requested in the Board's January 5, 2006, order. Specifically, NORA requested an extension of that deadline to May 16, 2006. In an order dated May 11, 2006, the hearing officer granted the motion and extended to May 16, 2006, the deadline to file pre-filed testimony and the supplemental statement of reasons.

On May 16, 2006, four persons pre-filed testimony on behalf of NORA: Christopher Harris, General Counsel to NORA; Victoria Custer, Vice President of Southwest Oil, a director on NORA's board, and Chair of NORA's Illinois Working Group; Mike Lenz, an Environmental Compliance Specialist for Future Environmental; and Greg Ray, Vice President of Business Management for Heritage-Crystal Clean, LLC. Also on May 16, 2006, NORA filed its supplemental statement of reasons and its first *errata* sheet.

The Board held the first hearing as scheduled on May 25, 2006, in Springfield. Mr. Harris, Ms. Custer, Mr. Lenz, Mr. Ray, and Mr. Dragovich each testified at the first hearing. On June 5, 2006, the Board received the transcript of 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 those responses for the second

hearing. In that order, the hearing officer directed the Agency to file responses with the Board in the form of a public comment by June 15, 2006. On June 15, 2006, the Agency filed Additional Testimony of Theodore J. Dragovich and the testimony of Christopher N. Cahnovsky, Regional Manager of the Collinsville office of the Agency's Bureau of Land.

The Board held the second hearing as scheduled on June 29, 2006 in Chicago. Mr. Dragovich and Mr. Cahnovsky testified on behalf of the Agency. Four persons testified on behalf of NORA: Catherine A. McCord, Vice President of Environment, Health, and Safety for Crystal Clean; Dan R. Appelt of Safety-Kleen; Ms. Custer; and Mr. Lenz. On July 14, 2006, the Board received the transcript of the second hearing (Tr.2).

During the first and second hearings, the hearing officer entered into the record the following 18 hearing exhibits:

- 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)

During the second hearing, the participants agreed to a deadline of August 9, 2006, for filing post-hearing comments. Tr.2 at 127. On July 18, 2006, the hearing officer issued an order directing the participants to file post-hearing comments by August 9, 2006. On August 7, 2006, the Agency filed a motion for extension of time in which to file post-hearing comments. On the same date, the hearing officer issued an order granting the Agency's motion and extending the deadline for filing post-hearing comments to August 16, 2006.

On August 11, 2006, NORA orally moved to extend the deadline for filing post-hearing comments. On the same date, the hearing officer issued an order granting NORA's motion and extending the deadline for filing post-hearing comments to September 1, 2006.

Before the original deadline of August 9, 2006, the Board received post-hearing comments from the following persons on the dates specified:

- PC 2 Shaunti Stalluth, Industrial Water Services (July 28, 2006);
- PC 3 Lee J. Plankis; Senior Vice President of Operations, RS Used Oil Services, Inc. (July 28, 2006);
- PC 4 Rick Shipley; National Sales Manager, RS Used Oil Services, Inc. (July 28, 2006);
- PC 5 Ronald A. Winkle; President, RS Used Oil Services (July 28, 2006);
- PC 6 Dave Brown; President, United Waste Water Services, USI (July 28, 2006);
- PC 7 Ronald J. Plankis; Vice President, Consulting Services, Profit Consultants, Ltd. (July 28, 2006);
- PC 8 Ken Petruck; Vice President, Operations, Excel Environmental, Inc. (July 28, 2006);
- PC 9 Catherine A. McCord; Vice-President, Environment, Health, and Safety, Crystal Clean (July 31, 2006);
- PC 10 Michael Lenz; Environmental Compliance Specialist, Future Environmental (July 31, 2006)

- PC 11 Lin Longshore; Senior Vice-President, Environment, Health, and Safety, Safety-Kleen (July 31, 2006);
- PC 12 Jeffrey M. Posick, Waste Alternatives and Consulting, LLC (July 31, 2006);
- PC 13 John A. Oxford; Vice President of Compliance, Fuel Processors, Inc. (July 31, 2006);
- PC 14 John A. Oxford; Vice President of Compliance, Energy & Material Recovery, Inc. (July 31, 2006);
- PC 15 John A. Oxford; Vice President of Compliance, Industrial Oil, Inc. (July 31, 2006);
- PC 16 David Osbourne; Manager of Sales and Customer Service, Consolidated Recycling Co., Inc. (July 31, 2006);
- PC 17 Ken Reif, Valley Environmental Service (July 31, 2006);
- PC 18 Gary L. Gunderson; President, Recycle Technologies, Inc. (July 31, 2006);
- PC 19 Donald R. Kleine; Owner, Vortex Recycling (July 31, 2006);
- PC 20 Garry R. Allen (July 31, 2006);
- PC 21 Matthew Usher, Usher Oil Company (July 31, 2006);
- PC 22 Richard A. Kalin; Vice President, Noble Oil Services, Inc. (July 31, 2006);
- PC 23 Deanne Hartman; President/CEO, Approved Remediation and Recycling of Oil Waste, Inc. (July 31, 2006);
- PC 24 Victoria M. Custer; Vice President, Southwest Oil, Inc. (July 31, 2006);
- PC 25 Steve Rundell; President, Solvent Systems International, Inc. (July 31, 2006);
- PC 26 W.L. Briggs; President, Oil Re-Refining Company, Inc. (July 31, 2006);
- PC 27 Benjamin P. Cowart; President of General Partner, Vortex Energy, L.P. (August 1, 2006);
- PC 28 Scott D. Parker; Executive Director, NORA (August 1, 2006);
- PC 29 Laura M. Krist; Territory Manager, Jacobus Environmental Services (August 1, 2006);

- PC 30 Brett Morton; Senior Environmental Engineer/Product Stewardship, Shell Lubricants (August 2, 2006);
- PC 31 Chris McNeil; Compliance Officer, Aaron Oil Company, Inc. (August 2, 2006); and
- PC 32 John H. Datka; General Manager, Moore Oil Environmental Services, LLC (August 4, 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 had made for the first time in its post-hearing comments. Replying by e-mail, the Agency indicated that it objected to additional substantive comment (PC 37). 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 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 comments in response elicited two additional comments specifically addressing the Agency's arguments: one from Mr. Lenz on October 11, 2006, (PC 41) and one from Mr. Ray on October 23, 2006 (PC 42).

On November 5, 2007, NORA filed a "Rule Proposal Amendment." NORA's filing included a second *errata* sheet. NORA sought to withdraw its original proposal and to offer in its place the language contained in the second *errata* sheet. 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. On December 3, 2007, the Agency filed its response to the rule proposal amendment.

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2008)), the Board requested in a letter dated February 22, 2006, that the Department of Commerce and Economic Opportunity (DCEO) determine whether it would conduct an economic impact study (EcIS) of 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.

On May 1, 2008, the Board issued its original first notice opinion and order proposing amendments to the Board's special waste regulations. The proposed amendments appeared in the *Illinois Register* on May 30, 2008. 32 Ill. Reg. 8085-8102 (May 30, 2008).

Summary of Board May 1, 2008, First Notice Opinion and Order

In its original first notice opinion and order on May 1, 2008, the Board first proposed amendments intended to exempt from the manifesting requirements of the Board's special waste regulations (35 Ill. Adm. Code 808, 809) used oil that is defined by and managed in accordance with the Board's used oil management standards (35 Ill. Adm. Code 739). Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1, 56 (May 1, 2008).

Second, the Board proposed amendments intended to exempt from the Board's special waste hauling permit requirements (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 the Board's used oil management standards (35 Ill. Adm. Code 739). Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1, 56 (May 1, 2008).

Third, the Board specifically sought from the participants comment on whether to amend Part 739 to require that used oil tracking documents include information that would allow those tracking documents to satisfy requirements such as manifests under Parts 808 and 809. Additionally, in the event that a participant wished to amend Part 739 in this manner, the Board sought comment in the form of draft regulatory language that might enact such an amendment. Specifically, the Board sought to determine whether the record in this proceeding may be developed to support adoption of a proposal similar to that sought by NORA while addressing the concerns of the Agency. Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1-2, 55-56 (May 1, 2008).

Procedural History Since the Board's May 1, 2008, Opinion and Order

On June 4, 2008, NORA filed a motion requesting a hearing following first notice.

On June 13, 2008, the Agency filed its comments on the Board's first notice proposal (PC 44).

In an order dated July 10, 2008, the Board granted NORA's motion for a hearing following first notice. In an order dated August 7, 2008, the hearing officer scheduled the third hearing for October 1, 2008, in Chicago. In the same order, the hearing officer set a deadline of September 17, 2008 for filing pre-filed testimony.

On September 15, 2008, the Agency filed its pre-filed questions for NORA's witnesses at the third hearing. On September 19, 2008, NORA filed a motion to extend to September 22, 2008, the deadline to pre-file testimony for the third hearing. In an order dated September 29, 2008, the hearing officer granted NORA's motion to extend the deadline as requested. On

September 22, 2008, the Board received pre-filed testimony from Mr. Harris (Harris Test.) on behalf of NORA and Mr. Lenz on behalf of Future Environmental in support of NORA (Lenz Test.).

The Board held the third hearing as scheduled on October 1, 2008, in Chicago. Four persons testified on behalf of NORA: Mr. Harris, Mr. Lenz, Mr. Ray, and Mr. Appelt. During the third hearing, the hearing officer entered into the record a single exhibit, a draft sample tracking document (Exh. 19). On October 14, 2008, the Board received the transcript of the third hearing (Tr.3).

In an order dated October 15, 2008, the hearing officer set a deadline of December 15, 2008, for filing post-hearing comments and a deadline of January 14, 2009, for filing responses to those post-hearing comments. On December 15, 2008, the Agency filed its post-hearing comments (PC 70), and NORA filed its post-hearing comments and proposed regulatory language (PC 71). On January 14, 2009, the Agency filed its response to NORA's post-hearing comments (PC 74, and NORA filed its response to the Agency's post-hearing comments (PC 75).

Since granting NORA's request for a third hearing, the Board has received comments from the following persons on the dates indicated:

- PC 45 Lisa Frede, Director of Regulatory Affairs, Chemical Industry Council of Illinois (September 22, 2008);
- PC 46 Mark Denzler, Vice President – Government Affairs, Illinois Manufacturers' Association (September 26, 2008);
- PC 47 Maria E. Leon, President, E.M.C. Oil Corp. (September 26, 2008);
- PC 48 Ronald A. Winkle, President, RS Used Oil Services, Inc. (September 26, 2008);
- PC 49 Roger L. Wilson, Operations Manager, Holston Environmental Services, Inc. (September 26, 2008);
- PC 50 James J. Noble, President, Noble Oil Services, Inc. (September 26, 2008);
- PC 51 Troy Hacker, Corporate Environmental, Health & Safety, Thermo Fluids, Inc. (September 26, 2008);
- PC 52 Chris Ricci, President, Ricky's Oil Service, Inc. (September 26, 2008);
- PC 53 Bill Briggs, President, ORRCO Oil Re-Refining Company (September 26, 2008);
- PC 54 Celeste M. Powers, CAE, Executive Director, Independent Lubricant Manufacturers Association (September 26, 2008);

- PC 55 Mark Howard, VP of Sales, Gencor Industries (September 26, 2008);
- PC 56 Kenneth B. Petruck, President, Excel Environmental, Inc. (September 26, 2008);
- PC 57 Maureen McGovern, President, The Chicago Petroleum Club (September 26, 2008);
- PC 58 David E. Carson, CEO, Consolidated Recycling Co., Inc. (September 26, 2008);
- PC 59 Lyle Salsbury, General Manager, Usher Oil Company (September 26, 2008);
- PC 60 William E. Darling, President, Mosner Energy Alternative, Inc. (September 26, 2008);
- PC 61 Roland A. Odenwald, Jr., Vice President, Gateway Petroleum Co., Inc. (September 26, 2008);
- PC 62 Patrick Kotter, Compliance Manager, ESI Environmental (September 26, 2008);
- PC 63 John Simon, Curran (September 26, 2008);
- PC 64 Ron Smith, Environmental Compliance Manager, Universal Lubricants, LLC (September 26, 2008);
- PC 65 Ken Reif, President, Valley Environmental Services (September 26, 2008);
- PC 66 Howard Miller, Sales Consultant, Solvent Systems International, Inc. (September 26, 2008);
- PC 67 John W. Van Hoesen, President, Van Hoesen Industries, Inc. d/b/a North Branch Environmental (September 26, 2008);
- PC 68 Keith Dunkelbarger, President, Modal Marketing, Inc. (September 26, 2008);
- PC 69 Thomas Rubasky, Director Oil Operations – West Group, Safety-Kleen (September 30, 2008);
- PC 72 Randall J. Boisvert, Environmental Manager, Hanson Heidelberg Cement Group (December 15, 2008);
- PC 73 Mark Whitmore, General Manager, Moore Oil Environmental (December 15, 2008);
- PC 76 Gregory Ray, CFO and Vice President of Business Management, Heritage – Crystal Clean, LLC (January 14, 2009); and

PC 77 Michael Lenz, Environmental Compliance Specialist for Future Environmental (January 14, 2009).

Filing Public Comments

First-notice publication of these proposed amendments in the *Illinois Register* will start, for the second time, a period of at least 45 days during which any person may file a public comment with the Board, regardless of whether the person has already filed a public comment. *See* 5 ILCS 100/5-40(b) (2008) (Illinois Administrative Procedure Act). 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 the Board's Clerk's Office On-Line, or 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.

AGENCY'S FIRST NOTICE COMMENT (PC 44)

On June 13, 2008, the Agency filed comments "in response to the Board's request for comments on amending the tracking requirements of 35 Ill. Adm. Code 739." PC 44 at 1; *see Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1-2, 55-56 (May 1, 2008)*. The Agency first states that it "objects to any change in the language of Part 739 that would make Part 739 less stringent than the federal regulations." PC 44 at 1; *see* 40 C.F.R. 279. Second, the Agency states that it also "objects to any change in the manifesting procedures that would allow other non-hazardous special wastes to be added to used oil with the resulting mixture labeled and tracked as only used oil." PC 44 at 1; *see* 35 Ill. Adm. Code 739.146, 739.156, 739.165, 739.174 (Tracking).

Third, the Agency argues that special wastes other than used oil must be managed at a facility permitted under Part 807, while used oil may be managed at a non-permitted used oil facility under Part 739. PC 44 at 2. The Agency states that it "objects to any change in the language of Part 739 that would allow special waste other than used oil, including a mixture

of used oil and other special waste, the receipt of which is subject to permitting under Part 807[,] to be managed at an un-permitted facility operating solely under the used oil regulations at Part 739.” *Id.*

Fourth, the Agency suggests that it doubts any reason offered in support of amending the used oil tracking requirements. PC 44 at 2, citing 35 Ill. Adm. Code 739. The Agency first argues that it would be “irrelevant” to do so because mixtures of used oil and other special waste are subject to regulations other than Part 739. PC 44 at 2. Second, the Agency argues that, if the intent is to exempt such mixtures from having to obtain a manifest, it cannot be effectuated by amending Part 739. *Id.*, citing 35 Ill. Adm. Code 808, 809. The Agency restates its position that these mixtures should not be exempt from manifesting. PC 44 at 2. Finally, the Agency argues that, “[i]f the intent is to exempt all special waste from manifests[,] then that issue must be addressed in Parts 808 and 809 and not in Part 739.” *Id.*

The Agency concludes by requesting “that the Board find that no amendments are needed to Part 739 and no additional amendments are need to Parts 808 and 809.” PC 4 at 2-3. The Agency states that it “supports the rules proposed by the Board in its First Notice Proposal dated May 1, 2008 and requests that the Board proceed with adopting the rules.” *Id.* at 3.

NORA’S PROPOSAL

On September 22, 2008, NORA also responded to the Board’s request for comments on amending the tracking requirements of 35 Ill. Adm. Code 739. Harris Test. at 1; *see Proposed Amendment of the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1-2, 55-56 (May 1, 2008)*. NORA proposed specific amendments to Part 739. Harris Test. at 14-17. Also on September 22, 2008, the Board received testimony on behalf of NORA’s proposal from Mr. Lenz. *See generally* Lenz Test. The Board in the following subsections summarizes NORA’s proposal and the arguments mustered in support of it.

Proposed Exemptions

NORA argues that USEPA distinguishes used oil intended for recycling from hazardous waste because such used oil is a “valuable commodity.” Harris Test. at 3; *see generally* 40 C.F.R. 279. NORA further argues that USEPA regulations seek to encourage market forces that foster used oil recycling. Harris Test. at 3. NORA characterizes manifests as an integral part of hazardous waste management but claims that they “were considered unnecessary for properly regulating used oil.” *Id.*; *see* Tr.3 at 10. NORA stresses that USEPA’s used oil regulations require tracking, documentation, and reports to regulators. Harris Test. at 3, citing 40 C.F.R. 279. NORA describes these used oil requirements as “necessary, useful, but not unduly burdensome.” Harris Test. at 3; *see* Tr.3 at 10. NORA argues that requiring manifests for shipments of used oil is unnecessary, burdensome, and costly. *See* Harris Test. at 4.

At the third hearing, Mr. Harris testified that NORA’s proposal addresses the paperwork requirements involved in manifests and “does not attempt to rewrite the special waste regulations or permit regulations or permit requirements or anything of the kind.” Tr.3 at 11. Mr. Harris

emphasized that NORA offers specific exemptions from the manifest requirements and “not from the balance of the special waste requirements.” Tr.3 at 27, 28. In response to a Board question, he agreed that the proposed exemption from the manifest requirements was not conceived as a way to remove used oil and materials regulated as used oil from the category of special waste. *Id.* at 121-22. He noted that NORA’s proposed tracking document includes “additional special waste information.” *Id.* He concurred that any special waste handling and disposal requirements would continue to apply. *Id.* at 122.

NORA notes that the Board’s May 1, 2008, first-notice proposal provided relief from manifesting and permitting requirements for used oil “defined by and managed in accordance with Part 739.” *See In the Matter of: Proposed Amendment of the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1, 56 (May 1, 2008); Harris Test. at 4.* NORA summarizes a continuing disagreement with the Agency over the appropriate scope of this relief: “NORA proposes that materials regulated as used oil be exempt from the manifesting and special waste hauling permit requirements; Illinois EPA wants to continue to impose the manifest requirement on such materials.” *Harris Test. at 5.*

In addition to used oil defined by and managed according to Part 739, NORA proposes that four specific categories of material regulated as used oil should also be exempt from the special waste manifesting and special waste hauling permit requirements. *Harris Test. at 5.* NORA stated that it did not propose to exempt these categories from various special waste requirements and seeks only a manifest exemption. Tr.3 at 11.

Conditionally Exempt Small Quantity Generator Waste

First, NORA proposes to exempt from these requirements “[u]sed oil generated by a conditionally exempt small quantity generator [(CESQG)] containing the exempt hazardous waste from such generator, provided that mixture contains more than fifty percent used oil by volume or weight.” *Id.* at 5, 14, citing 35 Ill. Adm. Code 739.110(b)(3); *see* Tr.3 at 12. Although NORA expresses some misgivings about such hazardous waste mixtures, it argues that this exemption is consistent with federal regulations that Illinois has adopted and that its members apply. Tr.3 at 12, 13; citing 40 C.F.R. 279; *see* Tr. 3 at 47 (characterizing mixtures as regulatory and economic issues). NORA suggests that this exemption stems from the administrative difficulty in applying hazardous waste regulations to a large number of small generators. *See* Tr.3 at 12-13.

At the third hearing, counsel for the Agency asked why NORA’s proposal set this threshold at 50 percent. *See* Tr.3 at 30. NORA responded that the Agency was concerned that, under the original proposal, mixing a small quantity of use oil with other material such as CESQG waste would allow the mixture to be managed as used oil. *Id.* NORA stated that it sought to address this concern by requiring that the mixture “have a significant used oil component if it’s going to be handled under the used oil recycling system.” *Id.* NORA proposed the 50 percent threshold as a compromise figure addressing that concern. *Id.* at 30-32.

Counsel for the Agency also asked how these mixtures of used oil and CESQG waste would undergo recycling. Tr.3 at 30. Mr. Ray first indicated that generators do not typically

mix used oil with these materials, which are most often chlorinated hydrocarbons, non-chlorinated hydrocarbons, and small quantities of paint wastes. *Id.* at 34-35. He argued that USEPA allows such mixtures “to make it particularly easy for the smallest generators to manage their waste without giving them incentive to dump things out back behind the shop.” *Id.* Mr. Ray stated that recyclers manage such mixtures by picking them up with other used oil, aggregating larger quantities. *Id.* at 35. He argues that this practice effectively dilutes the CESQG waste, ultimately placing it into the supply of used oil fuel with concentrations below levels considered safe. *Id.*

In response to a question from the Board, Mr. Ray agreed that current regulations allow this management of mixtures obtained from separate generators as long as each load has a manifest. Tr.3 at 50. Both used oil and mixtures of used oil with other materials require a manifest and, with a proper manifest, can be managed under the Board’s Part 739 regulations. *Id.*; see 35 Ill. Adm. Code 739. Mr. Harris suggested that NORA proposes no change to those used oil management standards but seeks to exempt four specific categories of mixtures “from the manifest requirements and only the manifest requirements.” Tr.3 at 51.

Characteristic Hazardous Waste

Second, NORA suggests an exemption from these requirements for “[u]sed oil containing characteristic hazardous waste, with a BTU [British thermal units] per pound content greater than 5000, where the characteristic (*e.g.*, ignitability) has been extinguished, and both the used oil and the characteristic hazardous waste has been generated and mixed by the same generator.” Harris Test. at 5, 14, citing 35 Ill. Adm. Code 739.110(b)(2), 739.100(b)(3); see Tr.3 at 14. NORA argues that this proposed exemption is also consistent with current federal regulations. Tr.3 at 14, citing 40 C.F.R. 279.

At the third hearing, counsel for the Agency asked NORA to explain this threshold of 5,000 BTU per pound content. Tr.3 at 56. NORA indicated that it is a level established by USEPA above which material is considered to have value as fuel. *Id.* NORA also addressed the enforceability of this threshold. Mr. Harris notes that RCRA and the proposed regulations require generators to characterize their wastes properly. *Id.* at 58-60; see Harris Test. at 15 (proposed Section 739.124). He argues that, in the absence of any information contradicting a generator’s certification that waste has a BTU content per pound greater than 5,000, recyclers are entitled to rely on the certification. Tr.3 at 57, 62-63, 112-15. He also stresses recyclers’ familiarity with the generators they serve. *See id.*

Mr. Ray also addressed these mixtures of used oil and characteristic hazardous waste, material he states he does not frequently see. *See* Tr.3 at 33. Mr. Ray stressed that such a mixture had to meet specifications for a variety of contaminants before it can be sold as used oil fuel. *Id.* at 34. He stated that his firm would test the mixture before shipping it to a third party, which would then burn it according to its own permits. *Id.* Generally, he argues that, if the characteristic hazardous waste is diluted as allowed by the federal and state regulations, then it is burnable material sold according to used oil fuel specification. *Id.* at 33

Fuel

Third, NORA proposes to exempt from these requirements “[m]ixtures of used oil and fuels, normal components of fuels, or other fuel products.” Harris Test. at 5, citing 35 Ill. Adm. Code 739.110(d). NORA states that this exemption would typically apply to a mixture with diesel fuel or a similar fuel product. Tr.3 at 13. NORA indicates that such a mixture “is not a regular practice” but does occur and can be handled as used oil. *Id.*

At the third hearing, counsel for the Agency noted that NORA’s proposed language regarding “normal components of fuels” appears to expand upon the language of Part 739 and the federal RCRA rule. Tr.3 at 128-29; *see* Harris Test. at 5. Mr. Harris indicated that NORA intends its language to clarify the application of the proposed manifest exemption. Tr.3 at 129-30 (considering xylene and natural gas condensate).

Wastewater

Fourth, NORA also recommends an exemption for “[u]sed oil containing nonhazardous wastewater provided there is a recoverable (*i.e., de minimus*) quantity of used oil.” Harris Test. at 5, 7, 15, citing 35 Ill. Adm. Code 739.110(f). NORA emphasizes that it proposes only an exemption from the manifest requirement and not from permit requirements. Tr.3 at 14-15. NORA states that the material still “would go to a facility which handles wastewater, separates the used oil out, discharges the wastewater in accordance with a permit and Clean Water Act requirements, and recovers the used oil.” *Id.*; *see also id.* at 42-45 (Ray testimony on recycling oil-water mixtures).

At the third hearing, the Agency asked NORA to be more specific about what it meant by “*de minimus* or recoverable quantities of used oil.” Tr.3 at 85. Mr. Harris responded that such mixtures are handled by facilities capable of separating the elements of the mixture from one another, cleaning the water, and then discharging it under the requirements of the federal Clean Water Act. *Id.* at 86, 98. He further indicated that the recovered used oil, whether in a large or small quantity, is processed into a re-refined or fuel product. *Id.* Mr. Ray suggested that this proposed exemption would commonly address “mop water or a low-quality water” and suggested that it is better managed through the used oil program than if the generator simply disposed of it. *See id.* at 87-88. He also described an oil/water separator as a typical source of this type of mixture. *See id.* at 99-101, 103-04. Mr. Ray also summarized NORA’s position on this specific proposed exemption:

[w]e’re not seeking to have our generators get new permissions that they don’t already have to mix materials together. . . . We’re saying that the materials that we pick up, if they are the types of things that exist in state law as used oil, which in our judgment includes mixtures of oil and water with recoverable used oil, we should be able to simplify the paperwork associated with that. *Id.* at 105.

Mr. Ray agreed that NORA proposed no change in collection techniques, processing, or treatment. *Id.* at 106.

Summary of Proposed Exemptions

NORA claims that these four proposed exemptions satisfy specific criteria. Harris Test. at 5. First, NORA argues that “they are recognized in Part 279 as being regulated as used oil.” *Id.* at 6, citing 40 C.F.R. 279. Second, NORA claims that the materials included in these four proposed categories will still be subject to the used oil management standards and other applicable regulations. Harris Test. at 6. Third, NORA argues that these materials “are and will continue to be properly recycled.” *Id.* Fourth, NORA states that its proposed limits address the Agency’s concern that exemptions might apply to mixtures containing only a small quantity of used oil. *Id.* In addition, NORA lists several materials that are not included in its proposed exemptions and that would continue to require a special waste manifest and hauling permit:

mixtures of used oil and hazardous waste where the mixture exhibits a hazardous waste [characteristic]; mixtures of used oil and any listed waste; mixtures of used oil [and] any special waste that does not have a minimum BTU per pound content of more than 5000; used oil containing over 1000 parts per million of halogenated solvents (unless the presumption has been successfully rebutted); wastewater that does not contain recoverable quantities of used oil; and post use mixtures of used antifreeze and used oil. Harris Test. at 6.

NORA argues that it would be “confusing, inefficient, time-consuming and burdensome” to manage materials defined as used oil in one manner and materials regulated as used oil in another. Harris Test. at 7. NORA states that, while some trucks collecting used oil have separate compartments for the different materials, “most do not.” *Id.* NORA further states that “[t]hose that do have segregated compartments will not have enough compartments to segregate each of the ‘regulated as used oil’ categories that would normally be collected in a day’s collection activities.” *Id.* NORA also argues that such a bifurcated collection system would be unique to Illinois. *Id.* at 8. In addition, NORA emphasizes the cost of manifesting materials regulated as used oil. NORA expresses unease that a transporter may conclude that a small amount of such material does not warrant the burden of segregating, manifesting, and managing it under the special waste regulations. NORA opines that “the generator is likely either to ‘hide’ such waste in a larger quantity of ‘defined’ used oil or find another method of getting rid of it.” Harris Test. at 8. NORA argues that these options do nothing to further the Agency’s professed goals. *Id.*

Proposed Tracking Document

Although NORA opposes special waste manifest and permit requirements for certain materials regulated as used oil, it acknowledges the need to track used oil. Harris Test. at 9, citing 40 C.F.R. 279. NORA states that existing regulations are sufficient to perform this tracking, but it offers a proposal expanding those regulations and satisfying the Agency’s objectives. For shipments of materials regulated as used oil and falling under its four proposed exemptions, NORA proposes what is effectively an enhanced tracking document. Harris Test. at 9, 15-16. NORA states that, “[o]n this tracking document, the transporter can comply with all U.S. Department of Transportation (USDOT) tracking requirements, all of the customer (generator) or other business information needed by the transporter, and *all additional relevant information that would be set forth in a manifest.*” *Id.* at 9 (emphasis in original); *see* Tr.3 at 15-

17, 69, 78-80; Exh. 19 (draft sample tracking document). NORA proposes that a transporter retain these documents for not less than three years and make them available to the Agency for inspection. *Id.* at 15, 77. NORA argues that this approach eliminates duplicate paperwork, promotes efficiency, and “creates a level playing field with generators and transporters in adjacent states.” *Id.* at 9. NORA further argues that consolidating this information into a single documents results in “important cost savings.” Tr.3 at 21.

In his testimony at the third hearing, Mr. Appelt stated that Safety-Kleen’s analysis shows that each manifest costs approximately \$18, including acquisition, distribution, separation, storage, and labor. Tr.3 at 176. He noted that Safety-Kleen conducted this analysis to determine any advantages of electronic manifesting. *Id.* Mr. Appelt stated that, in the preceding 12 months, his company completed approximately 30,000 manifests for automotive customers and approximately 2,700 for industrial customers. *Id.* at 187. He concluded that, if the Board adopted NORA’s proposal, those 30,000 automotive customers would no longer require manifests. *Id.* at 187, 189.

In response to a Board question at the third hearing, Mr. Harris stated that, since this document applies only to the four categories of mixtures described above and proposed for a manifest exemption, the regulations should require that the proposed document describe these four categories. Tr.3 at 83. In addition, he agreed that the regulations should require that the document include all of the information now on the manifest from which it seeks the exemption. *Id.* at 84-85; *see* Harris Test. at 16 (proposed Section 739.146(a)(6)). In his testimony at the third hearing, Mr. Appelt indicated that he did not wish to have the Board prescribe a new tracking document and would prefer simply to have the Board specify the data it seeks. Tr.3 at 174. He elaborated that “we’d like the regulations to identify what data elements are you looking for, and then each company would develop its own form to include that.” *Id.* at 175.

NORA’s Response to Agency Objections

Noting that the Agency has expressed various objections to NORA’s position and that the Board has quoted those objections, NORA seeks to address them. First, NORA cites the view that its proposal “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.” Harris Test. at 9-10, citing Proposed Amendment of the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 29 (May 1, 2008). NORA argues that its proposal follows USEPA regulations adopted in 46 other states to regulate mixtures. Harris Test. at 10, citing 40 C.F.R. 279. NORA further argues that USEPA “carefully evaluated what materials were normally mixed with used oil by generators and which did not interfere with legitimate recycling.” Harris Test. at 10. NORA claims that it is only materials satisfying this careful evaluation that are regulated as used oil. *Id.*

NORA also notes the Agency’s view that an enhanced tracking document would vary from company to company and that the contents of such a document are not required by regulation. Harris Test. at 10. NORA responds that its proposal seeks to amend the used oil tracking regulations specifically to provide that a tracking document encompass all of the

relevant information under both Part 739 and Part 809. *Id.* at 10, 15, 16; citing 35 Ill. Adm. Code 739, 809. Also, NORA suggests that the Agency is disingenuous in claiming that the Agency's position requires no additional paperwork. Harris Test. at 10. NORA acknowledges that the information required by the current regulations overlaps to some extent but stresses that those regulations require completion of three separate forms. *Id.*

NORA discounts the Agency's view that NORA's position allows a mixture of "defined" used oil and material regulated as used oil to be "received by used oil facilities that have less stringent permitting and siting requirements than special waste facilities." Harris Test. at 11, citing Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 31 (May 1, 2008). NORA argues that a particular mixture either is or is not acceptable under the permit of a particular facility. NORA suggests that facilities will not accept mixtures that they are not capable of processing. *See* Harris Test. at 11. NORA states that if "has never had any intention of circumventing any facility's permit requirements." *Id.*

NORA addresses the Agency's view that "many facilities also profit by collecting generator fees and disposing of the mixtures as low grade used oil fuel." Harris Test. at 11, citing Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 32 (May 1, 2008). NORA argues that, if a transporter lawfully sells such fuel to a buyer with an appropriate burner, then the transaction is acceptable and does not support the Agency's view. Harris Test. at 11-12. NORA further argues that, if the used oil sale is not lawful, then "there is nothing in NORA's proposal on replacing the manifest with a tracking document that would make it lawful." *Id.* at 12. NORA states that, if the Agency is aware of such unlawful activities, "it has an obligation to proceed with the appropriate enforcement actions." *Id.*

Finally, NORA discounts the Agency's argument that mixtures of used oil and the constituents of materials regulated as used oil "could reduce viscosity or BTU content or increase ash content of emissions from burning the oil." Harris Test. at 12, citing Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 33 (May 1, 2008). NORA argues that, in the industrial fuel market, both buyers and sellers know specifications relating to these factors because the price of the used oil fuel and the transaction itself depend upon that information. Harris Test. at 12. NORA further argues that buyers and sellers will know this data before a transaction takes place regardless of whether the mixture requires a manifest. *See id.* Finally, NORA also argues that "ash emission from burning is less a function of ash content of the fuel than the proper operation of air pollution control such as baghouses." *Id.*

Summary of NORA Proposal

NORA concludes that the Agency's position results in a bifurcated used oil management system marked by unnecessary cost and inefficiency without any compensating environmental benefit. Harris Test. at 12. NORA argues that, under its own proposal, "all of the information that IEPA asserts that it needs will be available to it on a tracking document that will

simultaneously serve the information needs of IEPA, U.S. DOT, the generator and the transporter.” *Id.* at 12-13.

Lenz Testimony in Support of NORA Proposal

Through testimony filed by Mr. Lenz, Future Environmental states that it “fully supports and endorses NORA’s proposed regulatory language.” Lenz Test. at 1. Future Environmental argues that the proposal appropriately regulates mixtures of used oil and other special wastes without requiring used oil recyclers to obtain and operate under Part 807 permits. *Id.* at 3; *see* 35 Ill. Adm. Code 807.

Future Environmental acknowledges that the Board’s original first-notice proposal may encourage out-of-state entities to recycle some quantity of used oil in Illinois because used oil defined by and managed according to Part 739 would be exempt from special waste manifest and hauling permit requirements. *Id.* at 3; *see* 35 Ill. Adm. Code 739.100. However, Future Environmental argues that Illinois recyclers “would be at a severe competitive disadvantage” in recycling mixtures of used oil and other special wastes. Lenz Test. at 3. Future Environmental claims that, if these mixtures can no longer be managed as used oil, then “all used oil recyclers will be forced to adopt Part 807 permits because post use mixture of water is virtually in all used oil.” *Id.* at 3-4. “Out of state competitors would not face the burdens or expense of managing used oil and other wastes commonly found mixed with used oil, such as water, at facilities requiring any of the time, energy and expense that Illinois Part 807 permits will require.” *Id.*, *see* 35 Ill. Adm. Code 807 (solid waste permits and landfills).

Future Environmental argues that the Board has already considered an Agency proposal to require used oil facilities to obtain Part 807 permits. Lenz Test. at 3; *see* Amendments to Permitting for Used Oil Management and Used Oil Transport 35 Ill. Adm. Code 807 and 809, R99-18, slip op. at 10 (Dec. 16, 1999). Future Environmental claims that the Board dismissed this proposal in 1999 in part because of “the competitive disadvantage it would impose on in state recyclers.” Lenz Test. at 5. Future Environmental also claims that the Board’s dismissal relied upon existing State and federal used oil regulations. *Id.* Future Environmental states that these regulations have been expanded and strengthened. *Id.*

AGENCY’S POST-HEARING COMMENTS (PC 70)

In post- hearing comments filed on December 15, 2008, the Agency argues that the definition of “used oil” is limited to oil that has been contaminated through use. PC 70 at 1; *see* 35 Ill. Adm. Code 739.100. The Agency further argues that “[o]ther special wastes that are added to used oil after it has been generated, that are not themselves used oil, do not become used oil, but become regulated as used oil because they contain used oil.” PC 70 at 1. The Agency claims that, because these other special wastes may have different characteristics, they may require different management after they are separated from used oil. *Id.*

The Agency notes that NORA has proposed expanding the exemption from special waste manifesting and permitting requirements to four categories of post-use mixtures of used oil and other special waste. PC 70 at 2; *see* Harris Test. at 5, 14-15. The Agency argues that “these

other wastes, unless otherwise exempt, must be subject to the manifesting and permitting requirements of Parts 808 and 809.” PC 70 at 1; *see* 35 Ill. Adm. Code 808, 809. The Agency also argues that facilities treating these other wastes should not be exempt from obtaining site approval and permits under Part 807. PC 70 at 2; *see* 35 Ill. Adm. Code 807. The Agency claims that its position fosters proper recycling and the proper management of wastes added to used oil by encouraging separation of waste streams. PC 70 at 2. The Agency suggests that NORA’s position will result in burning that other waste with used oil or treating it in a wastewater treatment plant, both of which would thwart recycling. *Id.* The Agency “objects to NORA’s proposed four broad categories of mixtures being included in the manifest and hauling permit exemption set forth in the Board’s first notice proposal.” *Id.*

In the following subsections, the Board summarizes the arguments made by the Agency in its post-hearing comment.

Proposed Exemptions

The Agency states that NORA may be somewhat confused about the Board’s original first-notice proposal and the mixtures that proposal would exempt from manifest requirements. PC 70 at 3. The Agency first argues that used oil defined by and managed in accordance with Part 739 is exempt “regardless of water content.” *Id.* The Agency also argues that “small quantity wastes that are exempt from manifesting before mixture with used oil would remain exempt. . . .” *Id.*, citing 35 Ill. Adm. Code 809.210 (General Exemption from Nonhazardous Special Waste Hauling Permit Requirements). The Agency further argues that USEPA has clarified that “used oil collected from waste water treatment units would be exempt under the Board’s first notice proposal.” PC 70 at 3, citing *id.*, Att. A.

Generally, the Agency notes that “[t]here are currently manifest exemptions in place for both hazardous and non-hazardous special waste.” *Id.* at 3. The Agency claims that, if used oil as defined by Part 739 is mixed with a waste that is exempt from manifesting, then the mixture of the two exempt wastes would not require a manifest. *Id.*

Conditionally Exempt Small Quantity Generator Hazardous Waste

The Agency states that used oil mixed with conditionally exempt small quantity generator (CESQG) hazardous waste might be cutting oil or other oils contaminated by use but containing mostly water and only trace amounts of oil. PC 70 at 3-4. The Agency argues that the mixture will behave like the CESQG hazardous waste or water and not like oil. *Id.* at 4.

The Agency states that CESQG hazardous waste is now exempt from manifests and that it would continue to be exempt when mixed with used oil as defined by and managed in accordance with Part 739. PC 70 at 4, citing 35 Ill. Adm. Code 721.105 (Special Requirements for Hazardous Waste Generated by Small Quantity Generators). The Agency argues that, if the CESQG hazardous waste is mixed with waste other than used oil as defined by and managed in accordance with Part 739, the mixture may need to be manifested and managed at a permitted special waste facility. PC 70 at 4, citing 35 Ill. Adm. Code 809.

The Agency notes the possibility that an entity that is a small quantity generator of both hazardous waste and non-hazardous special waste could mix the two wastes and become a large quantity generator. PC 70 at 4. The Agency argues that “[r]egulations are already in place to address this issue and the Illinois EPA does not believe it is appropriate to modify the hazardous waste and special waste determination regulations or large quantity generator status regulations through a used oil manifest exemption.” *Id.*

Characteristic Hazardous Waste

The Agency states that used oil mixed with characteristic hazardous waste might be cutting oil or other oils contaminated by use but containing mostly water and only trace amounts of oil. PC 70 at 3-4. The Agency argues that the mixture will behave like the characteristic hazardous waste or water and not like oil. PC 70 at 4-5.

The Agency states that, when characteristic hazardous waste is mixed with used oil as defined by Part 739, then the mixture is exempt from RCRA and managed under the used oil standards to the extent that the characteristic is extinguished. PC 70 at 5. The Agency argues that, because the characteristic hazardous waste requires a manifest before it is mixed, the mixture remains exempt under RCRA but becomes subject to requirements for manifests, hauling permits, and facility permits. *Id.*, citing 35 Ill. Adm. Code 807, 808, 809.

The Agency responds to NORA’s claim that federal regulations “allow some quantity of hazardous waste when mixed with used oil to be regulated as used oil.” PC 70 at 5. The Agency stresses that USEPA allows states to adopt more stringent standards. *Id.* The Agency states that “[t]he State of Illinois has chosen to implement a special waste program to ensure that these wastes are managed properly at a permitted facility that is subject to local siting.” *Id.*

Fuels

The Agency states that unused fuels in used oil include off-specification fuel such as that removed during aircraft maintenance or fuel contaminated with water. PC 70 at 5. The Agency claims that unused fuel contained in used oil is not a special waste because it is not intended for disposal. *Id.* The Agency instead presumes that the unused fuel will be burned, the original intended use. *Id.* The Agency argues that “[f]uels would not be subject to special waste manifesting but would be subject to Part 739 when mixed with used oil.” *Id.*

The Agency claims that NORA’s proposal expands the exemption to cover normal fuel components. PC 70 at 6. The Agency further claims that these components could have been used as a solvent and then added at high concentrations to used oil. *Id.* The Agency argues that such a mixture “may contain used oil as defined in Part 739 but will be mostly water combined with spent solvent or some other contaminated chemical.” *Id.* The Agency further argues that such a mixture differs from a normal used oil stream and should be managed only at a permitted special waste facility. *Id.*

The Agency argues that USEPA “has already explained that even petroleum based wastes are not used oil if they were not used as a lubricant.” PC 70 at 6, citing PC 70, Att. 2 (“The

Agency continues to view spent petroleum-based solvents as wastes separate and distinct from used oil, because the source of contamination in used petroleum-based solvents is difficult to determine.”). The Agency claims that use as a solvent may generate contaminants that are not normally associated with used oil. *Id.* at 6. The Agency also questions NORA’s proposed exemption by stating that the proposal does not define the term “normal component of fuel.” *Id.*

Wastewater

The Agency takes the position that wastewater “mixed with used oil through use or unintentional contamination during collection or storage by the generator is subject to Part 739 and should be allowed a special waste manifesting exemption.” PC 70 at 6. The Agency nonetheless believes that such mixtures would result only from a limited number of circumstances: “[o]ne is cutting fluids that contain a lot of water, the second is used oil that contains waster due to storage contamination, and the third is recovery of used oil spills.” *Id.* at 6-7.

The Agency argues that NORA’s proposal exempting mixtures containing *de minimus* amounts of used oil fails to “identify the amount of oil that must be in the waste water to allow the waste stream to be manifest exempt.” PC 70 at 7. The Agency notes NORA’s testimony that the “recoverable amount of oil is different for different receiving facilities.” *Id.*, citing Tr.3 at 85-87 (Harris and Ray testimony). The Agency argues that this requires a generator to know a receiving facility’s abilities in order to determine whether an exemption applies to a particular mixture. PC 70 at 7. The Agency also argues that NORA’s proposal does not require the wastewater to be present as a result of the use of the oil. *Id.* The Agency claims that “the source of the wastewater is limitless and the receiving facility would have no idea of what chemical constituents would be in the waste water.” *Id.*

Post-Use Mixtures Generally

The Agency argues that NORA’s proposal may encourage the mismanagement of waste because its language “fails to exclude other waste from the exemption if added to the recyclable oil for the sole purpose of disposing of the other waste.” PC 70 at 7. Specifically, the Agency claims that the proposal will cause the other wastes either to “be discharged through a wastewater treatment system or burned with used oil,” regardless of whether those are the appropriate disposal. *Id.*, citing Tr.3 at 32-33, 41-42. The Agency states that NORA’s proposal does not further the Agency’s goals of discouraging mixing other wastes with used oil and encouraging the separate recycling of different waste streams. PC 70 at 7-8.

The Agency claims that USEPA does not encourage mixture of used oil with other wastes. PC 70 at 8. The Agency further claims that “USEPA has also developed guidance that clearly encourages used oil generators to keep their used oil separate from other wastes.” *Id.*; *see id.*, Atts. 3, 4. The Agency also argues that Part 739 requires used oil tanks, containers, and fill pipes to be marked “used oil” in order “to prevent the accidental dumping of other wastes into the used oil.” *Id.* at 8. The Agency claims that, because mixing used oil with other wastes is disfavored, those mixtures “should not be encouraged by providing a manifest exemption as an incentive to mix these wastes.” *Id.*

The Agency argues that mixing used oil with other special waste may alter the characteristics of the used oil. PC 70 at 8. The Agency states the position that, before each instance of mixing another waste stream with used oil, “the generator should determine if each waste stream is subject to manifesting.” *Id.* The Agency claims that, “[i]f any of the waste streams are subject to manifesting before mixing, the resulting mixture is subject to manifesting.” *Id.* The Agency further claims that “[i]f mixing the waste streams together changes the characteristics of the waste, the mixing activity is treatment and the generator must re-evaluate the resulting waste stream and manage it in accordance with the applicable regulations.” *Id.*

The Agency argues that, under the Board’s first-notice proposal, wastes that are not defined as used oil and not otherwise exempt from manifesting would not become exempt from manifesting if they are intentionally added to used oil after the used oil is generated. PC 70 at 9. The Agency states that it remains opposed to the exemption of such mixtures from manifesting and hauling permits. *Id.* Suggesting that NORA’s proposal would exempt an unreasonable number of such mixtures, the Agency claims that “the current available manifest exemptions and the manifest exemption for used oil included in the Board’s first notice proposal, the Illinois EPA believes that most used oil and appropriate used oil mixtures will be exempt from manifests if the language in the Board’s first notice proposal is adopted.” *Id.*

Costs of Manifest Exemption

The Agency notes that NORA has proposed to amend “the Part 739 tracking requirements to include all the information the Illinois EPA or Board deems necessary to track the shipments to the used oil recycler and to require the tracking and recordkeeping for the generators, transporters, and receiving facilities.” PC 70 at 10. The Agency characterizes this proposed document as a “free form manifest that would contain all of the information and be subject to all of the recordkeeping requirements of a manifest, without the prescribed form of a uniform hazardous waste manifest.” *Id.* Although the Agency notes NORA’s intent to eliminate duplicative paperwork from the used oil management system, the Agency expresses the belief that NORA’s proposal “would actually create additional paperwork and burdensome testing for the generators of used oil.” PC 70 at 10.

The Agency argues that used oil generators could avail themselves of a manifest exemption only after determining the water percentage, BTU value, and amount of recoverable oil in mixtures. PC 70 at 10. The Agency also argues that generators would be required to maintain records of this testing in order to provide support for these determinations. *Id.* The Agency also claims that NORA’s proposal necessitates specific testing methods for determining water and BTU content, without which “it will be difficult for the Illinois EPA to determine compliance with the manifest exemptions.” *Id.* The Agency discounts Mr. Lenz’s testimony that a generator could obtain some of this information from a Material Safety Data Sheet (MSDS). PC 70 at 10, citing Tr.2 at 63. The Agency states that the MSDS only identifies the contents of a product before its use. PC 70 at 10. The Agency further states that none of the information on an MSDS is required by law to be reported there. *Id.*, citing 29 C.F.R.

1910.1200(g). The Agency adds that “there is no governing body that routinely polices the accuracy of MSDS.” PC 70 at 10.

The Agency also argues that NORA’s proposal would require generators to maintain copies of NORA’s proposed manifest document. PC 70 at 11. The Agency claims that, “in the Board’s first notice proposal, generators that were eligible for the used oil manifest exemption would only be subject to the current used oil tracking requirements which do not require generators to keep records.” *Id.*; see 35 Ill. Adm. Code Subpart C (Standards for Used Oil Generators). In addition, the Agency also notes that only used oil transporters, transfer facilities and marketers testified on behalf of NORA’s proposal at the hearing on October 1, 2008. PC 70 at 11. The Agency suggests that other participants in the market for used oil may not support NORA’s proposed changes. *Id.*

The Agency notes NORA’s estimate that preparing, storing, and processing each manifest cost \$18. PC 70 at 11, citing Tr.3 at 176. The Agency argues that the additional informational and recordkeeping requirements imposed by NORA’s proposal would reduce the proposal’s cost savings to less than \$18 per manifest. PC 70 at 11.

Summary of Agency’s Post-Hearing Comment

The Agency states that it “objects to any other wastes besides used oil as defined in and managed in accordance with Part 739 being included in the manifest and hauling permit exemptions set forth in the Board’s first notice proposal, objects to amending the tracking requirements of Part 739, and recommends that the Board adopt the language in its first notice proposal.” PC 70 at 12.

NORA’S POST-HEARING COMMENTS (PC 71)

In its post-hearing comment filed on December 15, 2008, NORA states that, since the hearing on October 1, 2008, it has revised its proposal to amend Part 739 in order to clarify it but has not made any substantive changes. PC 71 at 1. NORA also submits “proposed amendments to Parts 808 and 809 to clarify the relationship between the special waste and used oil provisions if NORA’s proposal is adopted.” *Id.*

NORA emphasizes that, for materials specified in its proposal, it seeks to replace a special waste manifest with a shipping document containing all information requested by the Agency, all information required by applicable USDOT regulations, and “any business information deemed relevant by the transporter and/or receiving facility.” PC 71 at 1-2. NORA further emphasizes that the Agency “does not want to receive copies of the manifest.” *Id.*; see Harris Test. at 4. NORA states that, under its proposal, the Agency effectively determines the substantive content of the shipping paper while the “transporter would design the form to accommodate its transaction information.” *Id.* at 2. NORA argues that USDOT has for more than 20 years followed a similar practice, which “allows business transaction information to be included in the shipping paper but without any loss of regulatory information or enforceability.” *Id.* NORA further states that it provided an example of such a document to the Board at the third hearing. *Id.*; see Exh. 19.

NORA argues that its proposal “does *not* affect any substantive requirements, such as storage, testing, and clean-up, that will, of course, remain the obligation of the regulated community.” PC 71 at 2 (emphasis in original). NORA claims, however, that its proposal “will dramatically reduce the unnecessary paperwork burden currently imposed on generators and transporters.” *Id.*

NORA claims that it proposed amendments to Part 739 with the intention of reaching a compromise with the Agency. *See* PC 71 at 2. NORA further claims, however, that “the Agency has not indicated any interest in supporting a compromise proposal to the Board.” *Id.* Specifically, NORA states that the Agency has not responded to NORA’s counsel “and has not approached NORA at any time since the October 1, 2008 hearing.” *Id.*

NORA notes that it originally proposed “to replace the manifest for used oil (as defined) and all categories of materials regulated as used oil with a shipping document.” *Id.* at 3. NORA argues that its “*original* proposal is more logical, straightforward, and efficient.” *Id.* (emphasis in original). NORA further argues that its original proposal is consistent with regulations adopted in virtually every other state. *Id.* NORA concludes by claiming that the proposal it presented for the third hearing as a potential compromise with the Agency “merits the Board’s approval.” *Id.* Nonetheless, NORA suggests that, because the Agency has apparently dismissed this specific proposal and has generally shown no interest in reaching a compromise, the Board should consider adopting NORA’s original proposal. *Id.* at 2-3.

AGENCY’S RESPONSE TO NORA’S POST-HEARING COMMENTS (PC 74)

On January 14, 2009, the Agency filed its response to NORA’s post-hearing comments. In the following subsections, the Board summarizes the arguments made in the Agency’s response.

Responses to NORA’s General Comments

The Agency first responds to NORA’s claim that the Agency has not responded to NORA’s counsel and has not approached NORA since the third hearing on October 1, 2008. PC 74 at 1; *see* PC 71 at 2. The Agency states that, on April 23, 2008, it responded in writing to an April 2, 2008 letter from NORA’s counsel. PC 74 at 1; citing *id.* at Attachment 1 (April 23, 2008 letter). The Agency further states that, while NORA and the Agency have not approached or contacted one another since the third hearing, neither participant was required to do so. *Id.*

Second, the Agency responds to NORA’s claim that the Agency does not wish to receive copies of manifests and to NORA’s claim that “the use of a hazardous waste manifest for shipments of non-hazardous material misrepresents the material to those who come in contact with the shipments.” PC 74 at 1-2; *see* PC 71 at 2, 3. The Agency states that the Act provides that “generators are not required to submit copies of non-hazardous special waste manifests to the Illinois EPA.” PC 74 at 2, citing 415 ILCS 5/22.01 (2008). The Agency further states that the Act requires manifests for shipments of non-hazardous special waste to be identical to

manifests required for shipments of hazardous waste. PC 74 at 2, citing 415 ILCS 5/22.01 (2008).

Third, the Agency responds to NORA's claim that Illinois' regulations should be more consistent with the regulations adopted by USEPA and other states. PC 74 at 2; *see* PC 71 at 3. The Agency argues that "Illinois is allowed to and has chosen to regulate special waste in a more stringent manner than the federal government." PC 74 at 2. The Agency suggests that, if NORA wishes to repeal special waste regulations as they apply to used oil, then NORA should not couch that proposal as a manifest exemption. *See id.*

Fourth, the Agency responds to NORA's claim that its proposed shipping paper would encompass information required by the Agency, information required by USDOT, and business information useful to the transporter. PC 74 at 2; *see* PC 71 at 1-2. The Agency claims that a special waste manifest includes the information required both by the Agency and USDOT. PC 74 at 2. The Agency argues that it is only the business information that requires NORA to propose an enhanced shipping paper. *Id.* The Agency further argues that NORA's proposed shipping paper and a special waste manifest show "very little difference." *Id.* at 2-3; *see* Exh. 19. The Agency claims that "[m]uch of the additional information included on NORA's form may fit on the uniform non-hazardous waste manifest." PC 74 at 3.

Fifth, the Agency responds to NORA's claim that "its proposal does not affect any substantive requirements and that its proposal would be protective of human health and the environment because generators and transporters would not have to focus on duplicative and expensive paperwork." PC 74 at 3; *see* PC 71 at 2. The Agency argues that, because there is little difference between a special waste manifest and NORA's proposed shipping paper, the two documents require "the same paperwork." PC 74 at 3. The Agency further argues that NORA's proposal would actually increase the amount of paperwork for the used oil industry because generators would have to document that mixtures contain 50% used oil by volume, or 5,000 btu, or recoverable quantities of used oil. *Id.* The Agency claims that NORA's proposal does not intend to reduce paperwork but actually seeks to relax special waste regulations. *Id.* The Agency characterizes this as "a substantive request." *Id.*

Sixth, the Agency responds to NORA's claim that its proposal is a compromise. PC 74 at 4; *see* PC 71 at 2-3. The Agency stresses that it "has supported a manifest and hauling permit exemption for used as oil as defined in Part 739." PC 74 at 4. The Agency argues that, if a shipment of used oil contains other special waste, then a manifest prepared by the generator of the mixture is necessary "to alert the transporter and receiving facility that other special waste has been mixed with the used oil." *Id.* The Agency states that it "cannot support a manifest exemption for mixtures of used oil and other special waste that should be received only at a properly permitted special waste facility." *Id.*

Response to NORA's Proposed Language

The Agency notes that NORA proposes an exemption providing that "[u]sed oil and the following post use mixtures are subject to regulations as used oil under this Part, and are exempt from 35 Ill. Adm. Code 808 and 809." PC 74 at 4; *see* Harris Test. at 14. The Agency claims

that this language “would exempt used oil and material subject to regulation under Part 739 from the definition of special waste and the special waste management requirements including the reporting requirements.” PC 74 at 4. The Agency argues that USEPA characterizes these reporting requirements as “essential.” *Id.* at 4-5 (citing USEPA Web site). The Agency also claims that such an exemption would require a new reporting system in order to meet the requirements of Part 739.157(b), which is now met through the reporting requirements of Part 809. *Id.* at 5, citing 35 Ill. Adm. Code 739.157(b). Claiming that this proposed language “goes beyond the original manifest exemption,” the Agency argues “that used oil and other wastes subject to regulation under Part 739 should remain special wastes subject to the reporting requirements and should not be exempt from Parts 808 and 809.” PC 74 at 5.

The Agency also expresses doubt about NORA’s proposed exemption for *de minimus* or recoverable amounts of used oil in wastewater. PC 74 at 5. The Agency states that “[t]he amount of oil that would be considered recoverable varies from facility to facility depending on the types of processes and efficiency of each component of the treatment system.” *Id.*, citing Tr.3 at 85-87, 164. The Agency states that generators may send used oil mixtures to different treatment facilities “depending on characteristics of the oil mixture and price of treatment.” PC 74 at 5. The Agency further states that these facilities may include not only used oil treatment units but also “wastewater treatment units that use chemical and biological methods to treat the water to meet discharge standards.” *Id.* The Agency expressed the view that, “since the generator may not know the end facility that receives the used oil and wastewater mixture, the generator would not be able to determine if the wastewater had recoverable amounts if used oil and therefore the generator could not determine if the waste was exempt from manifesting requirements under the manifest exemption proposed by NORA.” *Id.* at 5-6.

The Agency expressed additional reservations with NORA’s proposal. First, the Agency notes that NORA does not define the terms “description” and “classification” in its proposed tracking requirements. PC 74 at 6; *see Harris Test.* at 15, 16. Second, the Agency states that NORA proposes language “requiring the use of a Part 809 special waste manifest for hazardous waste when hazardous waste is subject to the uniform hazardous waste manifest requirements.” PC 74 at 6; *see Harris Test.* at 16. Third, the Agency also notes that NORA’s proposal refers to “an ASTM specification but does not fully identify or incorporate a specific ASTM specification.” PC 74 at 6; *see Harris Test.* at 16.

Concluding, the Agency “recommends that the Board proceed to adopt its first notice proposal.” PC 74 at 6.

NORA’S RESPONSE TO AGENCY’S POST-HEARING COMMENTS (PC 75)

On January 14, 2009, NORA filed its response to the Agency’s post-hearing comments filed on December 15, 2008. NORA argues that the Agency has misread its proposal, the professed intent of which is “to substitute a tracking document (usually referred to as a shipping paper or bill of lading) for the hazardous waste manifest that is currently required for the shipment of used oil and materials regulated as used oil.” PC 75 at 1. NORA further argues that the Agency has transformed its proposal “into a devious attempt to subvert existing hazardous waste regulations and foster sham recycling.” *Id.*

In the following subsections, the Board summarizes the arguments made in NORA's response.

NORA notes the Agency's statement that "[t]here are two main reasons for this decision [to oppose NORA's proposal]: to encourage proper recycling and to insure proper management of wastes that are added to used oil. The Illinois EPA believes it is likely that other waste added into the used oil will not be recycled but will be burned with the used oil or treated in a wastewater treatment unit." PC 75 at 2, citing PC 70 at 2. NORA first responds by arguing that its proposal only replaces the manifest with a tracking document containing all of the information that the Agency claims to need to conduct proper oversight. PC 75 at 2. NORA further argues that its proposal does nothing to change methods for managing and recycling used oil. *Id.* Second, NORA argues that USEPA has concluded that burning used oil for energy recovery is a "legitimate form of recycling under Part 739." *Id.*, citing PC 70, Att. 3 (USEPA materials attached to Agency post-hearing comments). Third, NORA claims that the high cost of wastewater treatment provides a strong disincentive to mix other materials into loads of wastewater. PC 75 at 2. NORA further argues that, even if a mixture of used oil and wastewater undergoes wastewater treatment, that treatment still allows for proper recycling of the non-water materials. *Id.* at 2-3. Fourth, NORA claims that the Agency has presented no evidence "that there is or has been any abuse of burning [used oil] for energy recovery or wastewater treatment, thereby precluding 'proper recycling or proper management.'" *Id.* at 3. Finally, NORA argues that the Agency "has completely failed to demonstrate that substituting a tracking document for a manifest would lead to any improper recycling or management." *Id.* (emphasis in original).

NORA also notes the Agency's statement that "[t]he Board's proposed language in the first notice exempts all used oil as defined in and managed in accordance with Part 739 regardless of water content." PC 75 at 3, citing PC 70 at 3. NORA first responds by concurring "enthusiastically" and agreeing that the Agency's position applies both to mixtures resulting from use and from post-use mixtures. PC 75 at 3. NORA states that it defers to the Agency's position and "withdraws the component of its proposal that would require an oil/water mixture contain a minimum of 50 percent used oil in order to be eligible for the manifest exemption." *Id.* Second, NORA claims that the Agency, based on its comment on this issue, appears to believe that it is not necessary to manifest this category of materials. *Id.* Third, NORA argues that this comment negates "contradictory" statements in the Agency's post-hearing comment. *Id.*, citing PC 70 at 7, 10.

NORA also notes the Agency's statement that "it is Illinois EPA's position that small quantity generators that are exempt from manifesting before mixture with used oil would remain exempt under the Board first notice proposal. . . ." PC 75 at 3, citing PC 70 at 3. NORA first responds by concurring "enthusiastically" with this position. PC 75 at 3. Second, NORA claims that the Agency, based on its comment on this issue, appears to believe that it is not necessary to manifest this category of materials. *Id.*

NORA also notes the Agency's statement that "Illinois EPA points out the USEPA acknowledged that individual states may impose more stringent standards than the federal requirements." PC 75 at 4, citing PC 70 at 4. NORA first responds by stating that the Agency

refers to authority that it has never questioned. PC 75 at 4. NORA argues that Illinois' more stringent approach is more burdensome without providing greater environmental protection. *Id.* Second, NORA argues that Illinois' more stringent requirements place the state's generator and transporters at a competitive disadvantage to generator and transporters in other states. *Id.* Third, NORA argues that its proposal is consistent with used oil regulations adopted in 47 other states. *Id.* Fourth, NORA argues that the Board in 1999 agreed with NORA's position that additional used oil regulation was unnecessary and excessively stringent. *Id.*, see In the Matter of: Amendments to Permitting for Used Oil Management and Used Oil Transport 35 Ill. Adm. Code 807 and 809, R99-18.

NORA also notes the Agency's statement that "the latest proposed language by NORA expands the exemption beyond fuels to include normal components of fuel. Fuel components include the same chemicals that are used as fuel additives, in small amounts, but could be placed in the used oil in high concentrations and could have been used as a solvent before they were mixed with used oil." PC 75 at 4, citing PC 70 at 6. NORA first responds that the Agency provides no example or other support for its apparent view "that NORA's proposed language would amend Illinois' hazardous waste regulations to create a new giant loophole whereby generators could dump hazardous waste (spent solvents) into their used oil." PC 75 at 4. Second, NORA offers to amend its proposal by replacing "'fuels or normal components of fuels' with 'fuels or other fuel products' which would track existing regulatory language and presumably resolve IEPA's concern." *Id.*

NORA also notes the Agency's statement that "NORA's proposed exemption does not require the wastewater to be in the used oil as a result of the use of the used oil. Therefore the source of the wastewater is limitless and the receiving facility would have no idea of what the chemical constituents would be in the wastewater." PC 75 at 4, citing PC 70 at 7. NORA first responds that the time at which water and oil are combined does not affect recyclability of the combination and does not affect the ability of generators or transporters to describe it accurately. PC 75 at 5. Second, NORA dismisses the Agency's view that sources of wastewater are limitless. *Id.* NORA again notes that the high cost of treating wastewater provides a strong disincentive to mix used oil with water. *Id.* Third, NORA suggests that facilities receiving wastewater will require a great deal of information from their customers in order to comply with the requirements of Clean Water Act regulations and their permits. *Id.* Fourth, NORA dismisses as "pure nonsense" the Agency's argument that "substituting a tracking document for a manifest will create incentives for dumping chemicals into oily wastewater and slipping the load into an unsuspecting treatment facility." *Id.* NORA argues that its proposed tracking document would contain all of the information now provided on a manifest. *Id.* Finally, NORA argues that the Agency's point is moot, as the Agency has concluded that "[t]he Board's proposed language in the first notice [opinion and order] exempts all used oil as defined in and managed in accordance with Part 739 regardless of water content." *Id.*

NORA also notes the Agency's statements that "it is not Illinois EPA's desire or the intent of the used oil regulations to encourage the mixing of other wastes with the used oil, but to recycle each waste separately" and that the "Illinois EPA believes the mixing of used oil with other special waste should not be encouraged by providing a manifest exemption as an incentive to mix these wastes." PC 75 at 5, citing PC 70 at 7. NORA first responds that both state and

federal regulations “allow such mixing under certain circumstances.” PC 75 at 5. NORA further stresses that, when such mixing interferes with recycling, its members “will charge the generators more money to handle these materials.” *Id.* Second, NORA argues that “nothing in the current manifest system nor NORA’s proposal will affect generators’ practices with respect to mixing.” *Id.* at 6. Third, NORA states that, “if IEPA wants to engage in constructive discussions with generators, transporters and processors about policies designed to ‘recycle each waste separately’ NORA would welcome such an opportunity following the completion of the present rulemaking.” *Id.* NORA argues, however, that the current system and its own proposal have no impact on this goal. *Id.*

NORA also notes the Agency’s statement that “a DOT document does not have to be a separate piece of paper in addition to a manifest.” PC 75 at 6, citing PC 70 at 9. NORA responds that, “if DOT did require a separate piece of paper[,] NORA would not be offering its proposal.” PC 75 at 6 (emphasis in original). NORA states that it proposes only to combine necessary business information with the information sought by DOT and the Agency. *Id.* NORA argues that “[t]he combination of these three categories of information cannot be accomplished on a manifest.” *Id.*

Finally, NORA notes the Agency’s statement that “the generators . . . were not represented and may not be aware of the changes NORA’s proposal would require of them if adopted.” PC 75 at 6, citing PC 70 at 11. NORA first responds that its proposal “does not require any changes. PC 75 at 6 (emphasis in original). NORA states that, if the Board adopts its proposal, generators remain free to use a manifest. *Id.* NORA also argues that “numerous generators (including generators represented by trade associations), transporters and processors submitted comments in support of NORA’s proposal.” *Id.*

DISCUSSION

The Board is proceeding to a second first notice with NORA’s amended proposal with changes discussed below. Specifically, the Board today proposes first-notice amendments designed to exempt from manifesting requirements of Parts 808 and 809 the following: (1) used oil, defined by and managed in accordance with Part 739; (2) mixtures of used oil and hazardous waste, both mixed and generated by a conditionally exempt small quantity generator (CESQG), provided that mixture contains more than fifty percent used oil by volume or weight; (3) used oil containing characteristic hazardous waste, with a BTU per pound content greater than 5000, where the characteristic (*e.g.*, ignitability) has been extinguished, and both the used oil and the characteristic hazardous waste has been generated and mixed by the same generator, and which contain more than 50 percent of used oil by weight or volume; (4) mixtures of used oil and fuels or other fuel products; and (5) used oil contaminated by or mixed with nonhazardous wastewater, both generated by the same generator and where the mixture results from use or unintentional contamination.

In the following sections of the opinion, the Board first provides a brief discussion of the scope of NORA’s proposal. Then the Board will discuss the specific amendments proposed by NORA to exempt used oil as defined by and managed in accordance with Part 739, and four additional categories of “materials regulated as used oil.” Then the Board will discuss the

changes proposed by NORA to the Part 739 tracking requirements. After making findings on NORA's proposal, the Board will discuss the actual language changes to Parts 739, 808 and 809. The Board then makes findings with regard to the technical feasibility and economic reasonableness of its proposal.

Scope of NORA's Proposal

On May 1, 2008, the Board adopted its original first-notice amendments in this proceeding that exempted used oil that is defined by and managed in accordance with Part 739 from requirements of Parts 808 and 809 relating to manifesting and waste hauling permits. In addition, the Board specifically sought comments from the participants on whether to amend Part 739 to require used oil tracking documents to include information that would satisfy other informational requirements such as manifests under Parts 808 and 809. On September 22, 2008, NORA responded to the Board's request for comments by proposing specific amendments to Part 739. Harris Test. at 1 and 14-17; *see In the Matter of: Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1-2, 55-56 (May 1, 2008)*. These amendments extend the relief provided by the Board's May 1, 2008, first-notice proposal from manifesting and permitting requirements for used oil "defined by and managed in accordance with Part 739" to include specific "materials regulated as used oil." *See In the Matter of: Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 1, 56 (May 1, 2008)*; Harris Test. at 4-5.

NORA proposes to exempt four specific categories of material "regulated as used oil" from the special waste manifesting and permitting requirements. Harris Test. at 5. These categories include: used oil generated by a conditionally exempt small quantity generator (CESQG) containing the exempt hazardous waste from such generator, provided that mixture contains more than fifty percent used oil by volume or weight ; used oil containing characteristic hazardous waste, with a BTU per pound content greater than 5000, where the characteristic (*e.g.*, ignitability) has been extinguished, and both the used oil and the characteristic hazardous waste has been generated and mixed by the same generator; mixtures of used oil and fuels, normal components of fuels, or other fuel products; and used oil containing nonhazardous wastewater provided there is a recoverable quantity of used oil. Harris Test. at 5, 7, 14, 15; citing 35 Ill. Adm. Code 739.110(b)(2), (b)(3), (d), (f). At the third hearing on October 1, 2008, NORA stated that it did not propose to exempt these categories from various special waste requirements, but seeks only a manifest exemption. Tr.3 at 11.

While NORA maintains that existing regulations under Part 739 are sufficient for tracking used oil in lieu of manifesting, NORA proposes enhanced tracking requirements for shipments of materials regulated as used oil and falling under its four proposed exemptions. Harris Test. at 9, 15-16. NORA states that the enhanced tracking addresses all USDOT tracking requirements, all of the customer (generator) or other business information needed by the transporter, and all additional relevant information that would be set forth in a manifest. *Id.* at 9. NORA reiterates that under the proposed amendments, the special waste manifest would be replaced by a shipping document containing all necessary information for used oil and material regulated as used oil under Part 739.

As noted earlier, the Agency objects to NORA's proposal to extend the relief from manifesting and permitting requirements to the proposed four categories of used oil mixtures. The Agency asserts that "only used oil as defined by and managed in accordance with Part 739 and not materials subject to regulation as used oil by Part 739 should be exempt from the requirements of Parts 808 and 809 regarding manifests, hauling permits and facility permits requiring local siting under 35 Ill. Adm. Code 807." PC 70 at 2. The Agency argues that limiting the exemptions from Parts 808 and 809 to used oil as defined by and managed in accordance with Part 739 would encourage proper recycling and insure proper management of waste added to used oil. *Id.* NORA responds by stating "the Agency's comments and testimony constitute a very substantial misreading of NORA's simple proposal to substitute a tracking document (usually referred to as a shipping paper or bill of lading) for the hazardous waste manifest that is currently required for the shipment of used oil and material regulated as used oil." PC 75 at 1. NORA maintains that its proposal has one basic purpose, i.e. to reduce the unnecessary paper work burden imposed by the manifest system. NORA contends that its proposal is intended to simply combine the information required by the USDOT and the hazardous waste manifest with the business information needed by the generator, transporter, and /or the receiving facility. *Id.* Other than being exempted from the manifest requirements, NORA states that the proposed used oil mixtures would be subject to all other applicable provisions of Parts 808 and 809. Tr. 3 at 11-12, 122.

The Board's intent for seeking comments on whether to amend used oil tracking requirements under Part 739 was for the limited purpose of streamlining the informational requirements and reducing paperwork. While the Agency has raised a number of concerns regarding NORA's proposal, most of those concerns pertain to the handling and management of mixtures of used oil and certain materials regulated as used oil under the special waste regulations in Parts 808 and 809. Since the Board is only considering a narrow exemption from manifest requirements and not a general exemption from Parts 808 and 809, used oil mixtures would still be subject to all applicable requirements of those parts other than manifesting if the Board adopts NORA's amended proposal. As noted by NORA, the only change being proposed is the replacement of the manifest required under Parts 808 and 809 with a tracking document with all necessary information for certain used oil and used oil mixtures regulated under Part 739. In light of this, the Board will consider the merits of NORA's proposal within the limited scope of exempting used oil and used oil mixtures solely from the manifest requirements of Parts 808 and 809.

Used Oil Defined and Managed in Accordance with Part 739

On May 1, 2008, the Board proposed for first notice an exemption for used oil defined by and managed in accordance with Part 739 from manifesting and permitting requirements of Parts 808 and 809. In today's proposal, the Board will retain the used oil exemption proposed in the Board's first First Notice with a minor change. Instead of exempting used oil defined by and managed in accordance with Part 739 from manifesting and permitting requirements of Parts 808 and 809, the Board proposes to exempt used oil defined by and managed in accordance with Part 739 from only the manifesting requirements of Parts 808 and 809. While the Board finds that the record in this rulemaking continues to support the exemption proposed in the Board's order of

May 1, 2008, in this second first notice, the Board limits the proposed exemption to only manifesting requirements in order to be consistent with NORA's amended proposal, which seeks only limited exemption for used oil mixtures from only manifesting requirements.

Conditionally Exempt Small Quantity Generator Hazardous Waste

NORA proposes to exempt from manifest requirements mixtures of used oil and hazardous waste, both mixed and generated by a CESQG, provided that the mixture contains more than fifty percent used oil by volume or weight. Harris Test. at 5, 14; PC 71. NORA notes that exemption is based on the USEPA regulations under 40 CFR 279 and the Board's rules at 35 Ill. Adm. Code 739.110(b)(3). Tr. 3 at 12. NORA states that the manifest exemption for mixtures of used oil and CESQG waste is intended to facilitate the management of such waste. *Id.* at 13.

The Agency states that used oil mixed with CESQG hazardous waste might be cutting oil or other oils contaminated by use but containing mostly water and only trace amounts of oil. PC 70 at 3-4. The Agency argues that the mixture will behave like the CESQG hazardous waste or water and not like oil. *Id.* at 4. The Agency states that CESQG hazardous waste is now exempt from manifests pursuant to 35 Ill. Adm. Code 721.105 and that it would continue to be exempt when mixed with used oil as defined by and managed in accordance with Part 739 under the proposed first notice manifest exemption. PC 70 at 4, citing 35 Ill. Adm. Code 721.105 (Special Requirements for Hazardous Waste Generated by Small Quantity Generators). However, the Agency argues that, if the CESQG hazardous waste is mixed with waste other than used oil as defined by and managed in accordance with Part 739, the mixture may need to be manifested and managed at a permitted special waste facility. PC 70 at 4, citing 35 Ill. Adm. Code 809. The Agency notes the possibility that an entity that is a small quantity generator of both hazardous waste and non-hazardous special waste could mix the two wastes and become a large quantity generator. PC 70 at 4. The Agency argues that "[r]egulations are already in place to address this issue and the Illinois EPA does not believe it is appropriate to modify the hazardous waste and special waste determination regulations or large quantity generator status regulations through a used oil manifest exemption." *Id.*

NORA responds by concurring "enthusiastically" with the Agency's position that manifesting is not necessary for a mixture of used oil and CESQG waste. PC 75 at 3. However, NORA maintains that it may be prudent to require tracking of such mixtures as proposed by NORA. Since the Board has already found at first notice that the record supports the exemption of used oil defined by and managed in accordance with Part 739 from manifest and permit requirements of Parts 808 and 809, the Board agrees with the Agency that mixture of such used oil and CESQG waste is also exempt from manifesting pursuant to Section 721.105. Further, since NORA is proposing to exempt mixtures of only used oil and CESQG waste, the Board believes that some of concerns raised by the Agency regarding mixtures of CESQG waste with wastes other than used oil are not pertinent. Also, the Board notes that any concerns regarding the mixing of nonexempt wastes with used oil and CESQG waste are addressed by the tracking requirements of Part 739. Since mixtures of used oil and CESQG wastes are regulated under Part 739, such mixtures will be subject to the proposed enhanced tracking requirements under that Part. Additionally, the Board notes that the limitation proposed by NORA that the mixture

contain more than fifty percent used oil by either volume or weight addresses the Agency's concerns that the mixture will behave as CESQG characteristic waste and not like oil.

In light of the above, the Board finds that mixtures of used oil as defined by and managed in accordance with Part 739 and hazardous waste, both generated and mixed by a CESQG, would be exempt from manifest requirements under the provisions of Section 721.105 and the proposed used oil exemption discussed above. However, the Board finds that the addition of the specific exemption as proposed by NORA adds to the clarity of the rules and also subjects mixtures of used oil and CESQG waste to the proposed enhanced tracking requirements. Therefore, the Board proposes to exempt mixtures of used oil (as defined by and managed in accordance with Part 739) and CESQG waste from the manifest requirements of Parts 808 and 809.

Characteristic Hazardous Waste

NORA proposes to exempt used oil containing characteristic hazardous waste, with a BTU per pound content greater than 5000, where the characteristic (*e.g.*, ignitability) has been extinguished, and both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator, and which contain more than 50 percent of used oil by weight or volume. Harris Test. at 5, 14, citing 35 Ill. Adm. Code 739.110(b)(2), 739.100(b)(3). NORA notes that the threshold of 5,000 BTU per pound content is a level established by USEPA, above which material is considered to have value as fuel. Tr.3 at 56. NORA argues that this proposed exemption is also consistent with current federal regulations. Tr.3 at 14, citing 40 C.F.R. 279.

The Agency states that used oil mixed with characteristic hazardous waste might be cutting oil or other oils contaminated by use but containing mostly water and only trace amounts of oil. PC 70 at 3-4. The Agency argues that the mixture will behave like the characteristic hazardous waste or water and not like oil. PC 70 at 4-5. Further, the Agency states that, when characteristic hazardous waste is mixed with used oil as defined by Part 739, then the mixture is exempt from RCRA and managed under the used oil standards to the extent that the characteristic is extinguished. PC 70 at 5. The Agency argues that, because the characteristic hazardous waste requires a manifest before it is mixed, the mixture remains exempt under RCRA but becomes subject to requirements for manifests, hauling permits, and facility permits. *Id.*, citing 35 Ill. Adm. Code 807, 808, 809.

The Board notes that the used oil regulations under Part 739 allow mixtures of used oil and a characteristic hazardous waste to be regulated under Part 739, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Subpart C of 35 Ill. Adm Code 721. See 35 Ill. Adm Code 739.110(b)(2)(B). NORA's proposed exemption tracks the language of Section 739.110(b)(2)(B), but adds further limitations for exemption from manifesting. First, NORA limits the exemption to mixing of characteristic hazardous waste with a heating value of at least 5000 Btu per pound. Second, NORA requires that both used oil and the characteristic hazardous waste must be generated and mixed by the same generator. Third, NORA requires the mixture to contain more than 50 percent of used oil by weight or volume. Finally, NORA's proposal is not seeking exemption from any applicable provisions under Parts 807, 808 or 809 other than manifest requirements. Further, the information required under the

manifest provisions of Parts 808 and 809 would be set forth under the proposed enhanced tracking requirements of Part 739.

The Board believes that the proposed exemption of mixtures of used oil and characteristic hazardous waste allows the management of such mixtures without significant changes from the manner in which they are being managed under the existing regulations, while providing adequate safeguards against any mismanagement of such mixtures. Therefore, the Board proposes to exempt used oil containing characteristic hazardous waste, with a BTU per pound content greater than 5000, where the characteristic (*e.g.*, ignitability) has been extinguished, and both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator for first notice as long as the mixture contains more than 50 percent of used oil by weight or volume.

Fuels

NORA proposes to exempt from manifest requirements mixtures of used oil and fuels, normal components of fuels, or other fuel products. Harris Test. at 5, citing 35 Ill. Adm. Code 739.110(d). NORA states that this exemption would typically apply to a mixture of used oil with diesel fuel or a similar fuel product. Tr.3 at 13. NORA indicates that such a mixture “is not a regular practice” but does occur and can be handled as used oil. *Id.*

The Agency states that unused fuels in used oil include off-specification fuel such as that removed during aircraft maintenance or fuel contaminated with water. PC 70 at 5. The Agency claims that unused fuel contained in used oil is not a special waste because the unused fuel is not intended for disposal. *Id.* The Agency instead presumes that the unused fuel will be burned, the original intended use. *Id.* The Agency argues that “[f]uels would not be subject to special waste manifesting but would be subject to Part 739 when mixed with used oil.” *Id.* However, the Agency claims that NORA’s proposal expands the exemption to cover normal fuel components, which could have been used as a solvent and then added at high concentrations to used oil. PC 70 at 6. The Agency argues that such a mixture differs from a normal used oil stream and should be managed only at a permitted special waste facility. *Id.*

NORA responded to the Agency’s concerns by modifying the proposed exemption to apply only to “fuel or other fuel products” instead of “fuel or normal components of fuels”. PC 75 at 4. NORA claims that the proposed modification tracks the existing language under Part 739. The Board notes that, with the change proposed by NORA, the exemption is limited to mixtures of used oil and fuels or fuel products. Since fuels are not subject to manifesting and because the Board is proposing to exempt used oil defined by and managed in accordance with Part 739 from manifest requirements, the Board finds that the mixtures of used oil and fuel or fuel products regulated under Part 739 are exempt from manifest requirements. However, the Board finds that the addition of the specific exemption as proposed by NORA adds to the clarity of the rules and also subjects mixtures of used oil and fuel products to the proposed enhanced tracking requirements under Part 739. Therefore, the Board proposes to exempt mixtures of used oil, as defined by and managed in accordance with Part 739, and fuels or other fuel products from the manifest requirements of Parts 808 and 809.

Wastewater

NORA proposes to exempt used oil contaminated by or mixed with nonhazardous wastewater, both generated by the same generator and which contains more than a *de minimus* (recoverable) quantity of used oil from manifest requirements. Harris Test. at 5, 7, 15, citing 35 Ill. Adm. Code 739.110(f). NORA states that the mixture would still be sent to a facility which handles wastewater, separates the used oil out, discharges the wastewater in accordance with a permit and Clean Water Act requirements, and recovers the used oil. Tr. 3 at 14-15; *see also id.* at 42-45 (Ray testimony on recycling oil-water mixtures).

As noted earlier, the Agency takes the position that wastewater “mixed with used oil through use or unintentional contamination during collection or storage by the generator is subject to Part 739 and should be allowed a special waste manifesting exemption.” PC 70 at 6. The Agency nonetheless believes that such mixtures would result only from a limited number of circumstances: “[o]ne is cutting fluids that contain a lot of water, the second is used oil that contains waste due to storage contamination, and the third is recovery of used oil spills.” *Id.* at 6-7.

NORA first responds by concurring “enthusiastically” to the Agency’s position that the exemption adopted by the Board for first notice applies to used oil as defined by and managed in accordance with Part 739 regardless of the water content. PC 75 at 3. Further, NORA asserts that the Agency’s position applies both to mixtures resulting from use and from post-use mixtures. *Id.* NORA states that it defers to the Agency’s position and “withdraws the component of its proposal that would require an oil/water mixture contain a minimum of 50 percent used oil in order to be eligible for the manifest exemption.” *Id.* Second, NORA claims that the Agency, based on its comment on this issue, appears to believe that it is not necessary to manifest this category of materials. *Id.* Third, NORA argues that this comment negates “contradictory” statements in the Agency’s post-hearing comment. *Id.*, citing PC 70 at 7, 10.

The Board notes that the Agency’s comments specifically support an exemption of wastewater that is mixed with used oil through “use or unintentional contamination during collection or storage by the generator”. PC 70 at 6. However, the Agency objects to extending the exemption to include intentional mixing of wastewater with used oil. The Agency argues that NORA’s proposal exempting mixtures containing *de minimus* amounts of used oil fails to “identify the amount of oil that must be in the wastewater to allow the waste stream to be manifest exempt.” PC 70 at 7. The Agency notes NORA’s testimony that the “recoverable amount of oil is different for different receiving facilities.” *Id.*, citing Tr.3 at 85-87 (Harris and Ray testimony). The Agency argues that this requires a generator to know a receiving facility’s abilities in order to determine whether an exemption applies to a particular mixture. PC 70 at 7. The Agency also argues that NORA’s proposal does not require the wastewater to be present as a result of the use of the oil. *Id.* The Agency claims that “the source of the wastewater is limitless and the receiving facility would have no idea of what chemical constituents would be in the waste water.” *Id.* The Agency contends that NORA’s proposal may encourage mismanagement of other waste by allowing such wastes to be added to used oil for management as used oil.

NORA first responds that the time at which water and oil are combined does not affect recyclability of the combination and does not affect the ability of generators or transporters to describe it accurately. PC 75 at 5. Regarding intentional mixing, NORA notes that the high cost of treating wastewater provides a strong disincentive to mix used oil with water. *Id.* Additionally, NORA maintains that facilities receiving wastewater will require a great deal of information from their customers in order to comply with the requirements of Clean Water Act regulations and their permits. *Id.* Finally, NORA argues that the proposed tracking document addresses any concerns regarding exemption from manifest requirements creating incentives for dumping chemicals into oily wastewater, since the tracking document would contain all of the information now provided on a manifest.

The Board agrees with the Agency that the exemption for used oil defined by and managed in accordance with Part 739 from manifesting requirements does not place any limits on the water content of the used oil. The Board agrees with the Agency that wastewater mixed with used oil through use or unintentional contamination during collection or storage by the generator is subject to Part 739 and should be allowed a special waste manifesting exemption. However, the Board shares the Agency's concerns regarding an exemption for wastewater that may be intentionally mixed with used oil. In this regard, the Board notes NORA's suggestion that such intentional mixtures would not be common and that they do not make financial sense for generators. *See* PC 75 at 5. Accordingly, the Board finds that the record supports a manifest exemption limited to wastewater mixed with used oil through use or unintentional contamination. Therefore, the Board proposes to exempt used oil as defined by and managed in accordance with Part 739 contaminated by or mixed with nonhazardous wastewater, where the used oil and the nonhazardous wastewater are generated by the same generator, and where the mixture results from use or unintentional contamination from the manifest requirements of Parts 808 and 809.

Enhanced Tracking Requirements

NORA proposes what is effectively an enhanced tracking document for shipments of materials regulated as used oil and falling under its four proposed exemptions. Harris Test. at 9, 15-16. NORA states that a transporter can use the tracking document to comply with all USDOT tracking requirements, all of the customer (generator) or other business information needed by the transporter, and all additional relevant information that would be set forth in a manifest. *Id.* at 9; *see* Tr.3 at 15-17, 69, 78-80; Exh. 19 (draft sample tracking document). NORA proposes that a transporter retain these documents for not less than three years and make them available to the Agency for inspection. Tr.3 at 15, 77. NORA argues that this approach eliminates duplicate paperwork, promotes efficiency, and "creates a level playing field with generators and transporters in adjacent states." *Id.* at 9. NORA further argues that consolidating this information into a single document results in significant cost savings. Tr.3 at 21.

Further, NORA states that, since this document applies only to the four categories of mixtures described above and proposed for a manifest exemption, the regulations should require that the proposed document describe these four categories and include all of the information now on the manifest from which it seeks the exemption. *Id.* at 83-85; *see* Harris Test. at 16 (proposed Section 739.146(a)(6)). In his testimony at the third hearing, Mr. Appelt clarified that he did not

wish to have the Board prescribe a new tracking document and would prefer simply to have the Board specify the data it seeks. Tr.3 at 174. He elaborated that “we’d like the regulations to identify what data elements are you looking for, and then each company would develop its own form to include that.” *Id.* at 175. Mr. Appelt stated that Safety-Kleen’s analysis shows that each manifest costs approximately \$18, including acquisition, distribution, separation, storage, and labor. Tr.3 at 176. He noted that Safety-Kleen completed approximately 30,000 manifests for automotive customers and approximately 2,700 for industrial customers during a 12 month period. *Id.* at 187.

The Agency objects to amending the tracking requirements of Part 739, and recommends that the Board exempt only used oil as defined in and managed in accordance with Part 739 from manifest and hauling permit requirements. PC 70 at 12. The Agency claims that a special waste manifest includes the information required both by the Agency and USDOT. PC 74 at 2. The Agency argues that the proposed tracking document is very similar to a special waste manifest, except for the business information. *Id.* at 2-3; *see* Exh. 19. The Agency contends that the additional information included on NORA’s form may fit on the uniform non-hazardous waste manifest. PC 74 at 3. The Agency further argues that NORA’s proposal would actually increase the amount of paperwork for the used oil industry because generators would have to document that mixtures contain 50 percent used oil by volume, or 5,000 btu, or recoverable quantities of used oil. *Id.*

The Board notes that since the proposed exemptions from manifest requirements are based on ensuring that all necessary information would still be available to the Agency and the entities involved in the handling and management of used oil and used oil mixtures, the Board believes that it is appropriate to amend the Part 739 tracking requirements to include the additional information set forth in a manifest under Parts 808 and 809. While the Board agrees with the Agency that the proposed tracking document is similar to the manifest, the Board notes that the proposed tracking document allows a company to reduce paperwork by including all necessary regulatory information and business information in a single document. Further, as noted by Mr. Appelt, the use of the proposed tracking document will also result in significant cost savings for used oil recyclers.

Finally, the Board agrees with NORA that only the additional information that would be required in the tracking document must be specified in the rules. The actual tracking forms would be developed by the individual used oil recycling companies to meet the regulatory informational requirements. Therefore, the Board proposes amendments to the used oil tracking provisions under Part 739 to require additional information for certain used oil mixtures in lieu of manifests required under Parts 808 and 809.

Summary of Proposed Amendments to Parts 739, 808 & 809

The Board proposes to amend Section 808.121 to provide two additional exceptions to the requirement 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. . . .” 35 Ill. Adm. Code 808.121(b). The Board proposes one exception for used oil that is defined by and managed in accordance with Part 739. The Board proposes a second exception for four specified mixtures of used oil

and other materials, provided that the generator complies with the informational requirements of Section 739.146(a) and Section 809.501(b). The Board also proposes to amend Section 809.501, which addresses matters including manifests and forms, to reflect the addition of these exceptions. Finally, the Board proposes to amend the tracking provisions of Part 739 to provide that the used oil tracking document for a shipment of one of the four mixtures of used oil and other materials must also include specified information drawn from the special waste manifest.

Technical Feasibility and Economic Reasonableness

In the course of these proceedings, the Agency introduced testimony 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. The exemptions proposed today by the Board for second first-notice publication would eliminate the filing of manifests by used oil facilities and result in some savings to regulated entities. However, the Board notes that while the proposed amendments eliminate the filing of manifests by used oil facilities, such facilities would be still required provide the information required on the manifest but in a used oil tracking document.

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. At the third hearing, Mr. Appelt stated that Safety-Kleen's analysis shows that each manifest costs approximately \$18, including acquisition, distribution, separation, storage, and labor. He noted that over recent 12-month period his company completed approximately 30,000 manifests for automotive customers and approximately 2,700 for industrial customers. Mr. Appelt concluded that, if the Board adopted NORA's proposal, those 30,000 automotive customers would no longer require manifest.

The Board thus finds that NORA's amended proposal with the changes discussed above is economically reasonable. Also, as the record does not demonstrate than an exemption from filing a special waste manifest for shipments of used as oil and used oil mixtures discussed above presents any technical issues. Thus, the Board also finds that the NORA's proposal along with the changes discussed above is technically feasible. Accordingly, the Board adopts for second first-notice NORA's proposal with the changes discussed above.

CONCLUSION

The Board proposes for second 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): (1) used oil, defined by and managed in accordance with Part 739; (2) mixtures of used oil and hazardous waste, both mixed and generated by a conditionally exempt small quantity generator (CESQG), provided that mixture contains more than fifty percent used oil by volume or weight; (3) used oil containing characteristic hazardous waste, with a BTU per pound content greater than 5000, where the characteristic (*e.g.*, ignitability) has been extinguished, and both the used oil and the characteristic hazardous waste has been generated and mixed by the same generator, and which contain more than 50 percent of used oil by weight or volume; (4) mixtures of used oil and fuels or other fuel products; and (5) used oil contaminated by or mixed with nonhazardous wastewater, both generated by the same generator and where the mixture results from use or unintentional contamination.

ORDER

The Board directs the Clerk to cause a second first-notice publication of the following proposed amendments to the Board's regulations in the *Illinois Register*. Proposed additions are underlined, and proposed deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 739
 STANDARDS FOR THE MANAGEMENT OF USED OIL

SUBPART A: DEFINITIONS

Section
 739.100 Definitions

SUBPART B: APPLICABILITY

Section
 739.110 Applicability
 739.111 Used Oil Specifications
 739.112 Prohibitions
 739.113 Electronic Reporting

SUBPART C: STANDARDS FOR USED OIL GENERATORS

Section
 739.120 Applicability
 739.121 Hazardous Waste Mixing
 739.122 Used Oil Storage
 739.123 On-Site Burning in Space Heaters
 739.124 Off-Site Shipments

**SUBPART D: STANDARDS FOR USED OIL COLLECTION CENTERS AND
AGGREGATION POINTS**

Section	
739.130	Do-It-Yourselfer Used Oil Collection Centers
739.131	Used Oil Collection Centers
739.132	Used Oil Aggregate Points Owned by the Generator

**SUBPART E: STANDARDS FOR USED OIL TRANSPORTER AND
TRANSFER FACILITIES**

Section	
739.140	Applicability
739.141	Restrictions on Transporters that Are Not Also Processors
739.142	Notification
739.143	Used Oil Transportation
739.144	Rebuttable Presumption for Used Oil
739.145	Used Oil Storage at Transfer Facilities
739.146	Tracking
739.147	Management of Residues

SUBPART F: STANDARDS FOR USED OIL PROCESSORS

Section	
739.150	Applicability
739.151	Notification
739.152	General Facility Standards
739.153	Rebuttable Presumption for Used Oil
739.154	Used Oil Management
739.155	Analysis Plan
739.156	Tracking
739.157	Operating Record and Reporting
739.158	Off-Site Shipments of Used Oil
739.159	Management of Residues

**SUBPART G: STANDARDS FOR USED OIL BURNERS THAT BURN OFF-
SPECIFICATION USED OIL FOR ENERGY RECOVERY**

Section	
739.160	Applicability
739.161	Restriction on Burning
739.162	Notification
739.163	Rebuttable Presumption for Used Oil
739.164	Used Oil Storage
739.165	Tracking
739.166	Notices
739.167	Management of Residues

SUBPART H: STANDARDS FOR USED OIL FUEL MARKETERS

Section	
739.170	Applicability
739.171	Prohibitions
739.172	On-Specification Used Oil Fuel
739.173	Notification
739.174	Tracking
739.175	Notices

SUBPART I: DISPOSAL OF USED OIL

Section	
739.180	Applicability
739.181	Disposal
739.182	Use As a Dust Suppressant

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R93-4 at 17 Ill. Reg. 20954, effective November 22, 1993; amended in R93-16 at 18 Ill. Reg. 6931, effective April 26, 1994; amended in R94-17 at 18 Ill. Reg. 17616, effective November 23, 1994; amended in R95-6 at 19 Ill. Reg. 10036, effective June 27, 1995; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 767, effective December 16, 1997; amended in R98-21/R99-2/R99-7 at 23 Ill. Reg. 2274, effective January 19, 1999; amended in R04-16 at 28 Ill. Reg. 10706, effective July 19, 2004; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 4094, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1413, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 13047, effective July 14, 2008; amended in R06-20 at 33 Ill. Reg. _____, effective _____.

SUBPART E: STANDARDS FOR USED OIL TRANSPORTER AND TRANSFER FACILITIES

Section 739.146 Tracking

- a) Acceptance. A used oil transporter must keep a record of each used oil shipment accepted for transport. Records for each shipment must include the following:
 - 1) The name and address of the generator, transporter, or processor that provided the used oil for transport;
 - 2) The USEPA identification number and Illinois special waste identification number (if applicable) of the generator, transporter, or processor that provided the used oil for transport;
 - 3) The quantity of used oil accepted;

- 4) The date of acceptance; and
 - 5) The signature.
 - A) Except as provided in subsection (a)(5)(B) of this Section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor or re-refiner that provided the used oil for transport.
 - B) An intermediate rail transporter is not required to sign the record of acceptance.
 - 6) If the transporter has accepted any shipment of mixtures of used oil and materials identified in 35 Ill. Adm. Code 808.121(b)(6), the transporter must also keep a record including the following:
 - A) Information stating when and where the special waste was generated;
 - B) The classification and quantity of the special waste delivered to the transporter;
 - C) Any special handling instructions pertinent to emergency personnel in the event of an accident; and
 - D) A generator's certification as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgement of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true."
- b) Deliveries. A used oil transporter must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor, or disposal facility. Records of each delivery must include the following:
- 1) The name and address of the receiving facility or transporter;
 - 2) The USEPA identification number and Illinois special waste identification number of the receiving facility or transporter;
 - 3) The quantity of used oil delivered;

- 4) The date of delivery;
- 5) The signature.
 - A) Except as provided in subsection (b)(5)(B) of this Section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.
 - B) An intermediate rail transporter is not required to sign the record of acceptance.
- c) Exports of used oil. A used oil transporter must maintain the records described in subsections (b)(1) through (b)(4) of this Section for each shipment of used oil exported to any foreign country.
- d) Record retention. The records described in subsections (a), (b), and (c) of this Section must be maintained for at least three years.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART F: STANDARDS FOR USED OIL PROCESSORS

Section 739.156 Tracking

- a) Acceptance. A used oil processor must keep a record of each used oil shipment accepted for processing. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:
 - 1) The name and address of the transporter that delivered the used oil to the processor;
 - 2) The name and address of the generator or processor from whom the used oil was sent for processing;
 - 3) The USEPA identification number and Illinois special waste identification number of the transporter that delivered the used oil to the processor;
 - 4) The USEPA identification number and Illinois special waste identification number (if applicable) of the generator or processor from whom the used oil was sent for processing;
 - 5) The quantity of used oil accepted; and
 - 6) The date of acceptance.

7) If the transporter has accepted any shipment of mixtures of used oil and materials identified in 35 Ill. Adm. Code 808.121(b)(6), the transporter must also keep a record including the following:

A) Information stating when and where the special waste was generated;

B) The classification and quantity of the special waste delivered to the transporter;

C) Any special handling instructions pertinent to emergency personnel in the event of an accident; and

D) A generator's certification as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgement of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true."

b) Deliveries. A used oil processor must keep a record of each shipment of used oil that is delivered to another used oil burner, processor, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records of each delivery must include the following information:

1) The name and address of the transporter that delivers the used oil to the burner, processor, or disposal facility;

2) The name and address of the burner, processor, or disposal facility that will receive the used oil;

3) The USEPA identification number and Illinois special waste identification number of the transporter that delivers the used oil to the burner, processor or disposal facility;

4) The USEPA identification number and Illinois special waste identification number of the burner, processor, or disposal facility that will receive the used oil;

5) The quantity of used oil shipped;

- 6) The date of shipment.
- 7) If the transporter has accepted any shipment of mixtures of used oil and materials identified in 35 Ill. Adm. Code 808.121(b)(6), the transporter must also keep a record including the following:
- A) Information stating when and where the special waste was generated;
- B) The classification and quantity of the special waste delivered to the transporter;
- C) Any special handling instructions pertinent to emergency personnel in the event of an accident; and
- D) A generator's certification as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgement of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true."
- c) Record retention. The records described in subsections (a) and (b) of this Section must be maintained for at least three years.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART G: STANDARDS FOR USED OIL BURNERS THAT BURN OFF-SPECIFICATION USED OIL FOR ENERGY RECOVERY

Section 739.165 Tracking

- a) Acceptance. A used oil burner must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:
- 1) The name and address of the transporter that delivered the used oil to the burner;
- 2) The name and address of the generator or processor from whom the used oil

was sent to the burner;

- 3) The USEPA identification number and Illinois special waste identification number of the transporter that delivered the used oil to the burner;
 - 4) The USEPA identification number and Illinois special waste identification number of the generator or processor from whom the used oil was sent to the burner;
 - 5) The quantity of used oil accepted; and
 - 6) The date of acceptance.
 - 7) If the transporter has accepted any shipment of mixtures of used oil and materials identified in 35 Ill. Adm. Code 808.121(b)(5) or (b)(6), the transporter must also keep a record including the following:
 - A) Information stating when and where the special waste was generated;
 - B) The classification and quantity of the special waste delivered to the transporter;
 - C) Any special handling instructions pertinent to emergency personnel in the event of an accident; and
 - D) A generator's certification as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgement of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true."
- b) Record retention. The records described in subsection (a) of this Section must be maintained for at least three years.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART H: STANDARDS FOR USED OIL FUEL MARKETERS

Section 739.174 Tracking

- a) Off-specification used oil delivery. Any used oil fuel marketer that directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:
- 1) The name and address of the transporter that delivers the used oil to the burner;
 - 2) The name and address of the burner that will receive the used oil;
 - 3) The USEPA identification number and Illinois special waste identification number of the transporter that delivers the used oil to the burner;
 - 4) The USEPA identification number and Illinois special waste identification number of the burner;
 - 5) The quantity of used oil shipped; and
 - 6) The date of shipment.
 - 7) If the transporter has accepted any shipment of mixtures of used oil and materials identified in 35 Ill. Adm. Code 808.121(b)(5) or (b)(6), the transporter must also keep a record including the following:
 - A) Information stating when and where the special waste was generated;
 - B) The classification and quantity of the special waste delivered to the transporter;
 - C) Any special handling instructions pertinent to emergency personnel in the event of an accident; and
 - D) A generator's certification as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgement of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true."

- b) On-specification used oil delivery. A generator, transporter, processor or re-refiner, or burner that first claims that used oil that is to be burned for energy recovery meets the fuel specifications under Section 739.111 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:
- 1) The name and address of the facility receiving the shipment;
 - 2) The quantity of used oil fuel delivered;
 - 3) The date of shipment or delivery; and
 - 4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under Section 739.172(a).
- c) Record retention. The records described in subsections (a) and (b) of this Section must be maintained for at least three years.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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

808.APPENDIX A	Assignment Of Special Waste To Classes
808.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, 27].

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 33 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) The generator is not required to complete a manifest for the following materials, provided that the generator complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
- (A) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by conditionally exempt small quantity generator of hazardous waste, provided that such mixture contains more than fifty percent used oil by either volume or weight;
- (B) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000, where:
- i) the characteristic has been extinguished;
- ii) both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator; and
- iii) the mixture contains more than fifty percent used oil by either volume or weight.
- C) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and
- D) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, where the used oil and the nonhazardous wastewater are generated by the same generator, and where the mixture results from use or unintentional contamination.
- 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 33 Ill. Reg. ____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
 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

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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 33 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 following are exceptions to this requirement:

- a) 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.
- b) The generator or transporter is not required to complete a manifest for the following materials, provided that the generator complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
 - 1) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by conditionally exempt small quantity generator of hazardous waste, provided that such mixture contains more than fifty percent used oil by either volume or weight;
 - 2) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000, where:
 - i) the characteristic has been extinguished;
 - ii) where both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator; and
 - iii) where the mixture contains more than fifty percent used oil by either volume or weight.
 - 3) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and
 - 4) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, where the used oil and the nonhazardous wastewater are generated by the same generator, and where the mixture results from use or unintentional contamination.

(Source: Amended at 33 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 following are exceptions to this requirement:

- 1) 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.
- 2) The generator or transporter is not required to complete a manifest for the following materials, provided that the generator or transporter complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
 - A) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by conditionally exempt small quantity generator of hazardous waste, provided that such mixture contains more than fifty percent used oil by either volume or weight;
 - B) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000, where:
 - i) the characteristic has been extinguished;
 - ii) where both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator; and
 - iii) where the mixture contains more than fifty percent used oil by either volume or weight;
 - C) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and
 - D) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, where the used oil and the nonhazardous wastewater are generated by the same generator, and where the mixture results from use or unintentional contamination.
- 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 33 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 following are exceptions to this requirement:

- 1) 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.
- 2) The generator or transporter is not required to complete a manifest for the following materials, provided that the generator or transporter complies with the informational requirements of 35 Ill. Adm. Code 739.146(a) and 35 Ill. Adm. Code 809.501(b):
 - A) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and hazardous waste, both generated and mixed by conditionally exempt small quantity generator of hazardous waste, provided that such mixture contains more than fifty percent used oil by either volume or weight;
 - B) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and characteristic hazardous waste, with a Btu per pound content greater than 5,000, where:
 - i) the characteristic has been extinguished;
 - ii) where both the used oil and the characteristic hazardous waste have been generated and mixed by the same generator, and;
 - iii) where the mixture contains more than fifty percent used oil by either volume or weight.
 - C) Mixtures of used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 and fuel or other fuel products; and
 - D) Used oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, where the used oil and the nonhazardous wastewater are generated by the same generator, and where the mixture results from use or unintentional contamination.

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 33 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 August 20, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board