

ILLINOIS POLLUTION CONTROL BOARD  
September 2, 2010

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

Proposed Rule. Second Notice.

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

The Board today adopts for second notice a proposal adding one definition to its used oil management standards and three definitions to its special waste regulations. NORA, An Association of Responsible Recyclers, formerly known as the National Oil Recycling Association (NORA), initiated this proceeding by filing a rulemaking proposal in the earlier proceeding now designated as subdocket A. *See* 34 Ill. Reg. 3296, 3310, 3317 (Mar. 12, 2010) (adopted rules effective Feb. 25, 2010). On December 17, 2009, the Board adopted its first-notice proposal in this subdocket B. *See* 34 Ill. Reg. 1257, 1267, 1275 (Jan. 22, 2010).

In the opinion below, the Board first provides the procedural history of this subdocket before summarizing its first-notice opinion and order. The Board then reviews comments filed since publication of the Board's first-notice proposal. The Board then discusses the issues raised in those comments and reaches its conclusion on them. Finally, the Board's order directs the Clerk to file proposed amendments with the Joint Committee on Administrative Rules for second-notice review under the Illinois Administrative Procedure Act (APA) (*see* 5 ILCS 100/5-40(c) (2008)).

**PROCEDURAL HISTORY**

On December 17, 2009, the Board adopted a first-notice opinion and order, which proposed to add a definition of the term "classification" to Section 739.100 of the Board's used oil management standards and definitions of the terms "Btu" and "wastewater" to Sections 808.110 and 809.103 of the Board's special waste regulations. *See* 35 Ill. Adm. Code 739.100, 808.110, 809.103. First notice of the proposal appeared in the *Illinois Register* on January 22, 2010. *See* 34 Ill. Reg. 1257, 1267, 1275 (Jan. 22, 2010).

On March 3, 2010, the Agency filed its first-notice comments (PC 113). On March 19, 2010, NORA filed its first-notice comments (PC 114). On April 14, 2010, the Agency filed its response to comments by NORA (PC 115). On April 30, 2010, the Board received comments from Sue Rodenbeck Brauer, Region 5 Resource Conservation and Recovery Act (RCRA) Used Oil Expert, RCRA Branch, Land and Chemicals Division of the United States Environmental Protection Agency (USEPA) (PC 116). On May 17, 2010, the Board received comments from

NORA addressing the Agency's April 14, 2010 response (PC 117). On July 12, 2010, the Board received comments from NORA addressing USEPA comments (PC 118).

### **SUMMARY OF FIRST-NOTICE OPINION AND ORDER**

On December 17, 2009, the Board in subdocket A adopted for second notice review a proposal amending its used oil management standards and special waste regulations. Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(A) (Dec. 17, 2009). The Board's opinion noted that, during the APA first-notice comment period, the Agency and NORA had suggested adding definitions to the Board's proposal in Sections 739.100, 808.110, and 809.103. *Id.*, slip op. at 17-18; *see* 35 Ill. Adm. Code 739.100, 808.110, 809.103. Because the Board's first notice opinion and order on August 20, 2009 had not included those three sections, the Board opened this subdocket B in order to provide first notice publication of the proposed definitions. Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 3-4 (Dec. 17, 2009); *see* Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20 (Aug. 20, 2009); 33 Ill. Reg. 12426-58 (Sept. 11, 2009).

In subdocket B, the Board's first-notice opinion and order noted the Agency's claim that the first-notice proposal in subdocket A included undefined terms, making it necessary to define "Btu," "classification," and "wastewater." Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 1-2 (Dec. 17, 2009). The Agency first proposed amending Sections 808.110 and 809.103 by defining "Btu" or "British thermal unit" as "the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit." *Id.*, slip op. at 2. The Agency also proposed to amend Section 739.100 by defining "classification" as "short description of the waste generating activity and designation as either hazardous waste with the appropriate hazardous waste code, nonhazardous used oil, nonhazardous used oil mixture, or nonhazardous other special waste." *Id.* The Board noted that NORA did not object to these two proposed definitions. *Id.*

The first-notice opinion and order also noted the Agency's proposal that Sections 808.100 and 809.103 define "wastewater" as "waste that contains less than one percent by weight total organic carbon (TOC) and less than one percent by weight total suspended solids (TSS)". Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 2 (Dec. 17, 2009); *see* 35 Ill. Adm. Code 728.102 (definitions applicable to land disposal restrictions). NORA's comment responded that the petroleum content in most wastewater would exceed this one percent TOC content threshold and claimed that all wastewater regardless of TOC content would be treated in regulated waste treatment units. Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 2 (Dec. 17, 2009). NORA argued that the Agency provided no rationale for its definition and claimed that the definition provided no environmental benefit. *Id.*

The Board's first-notice opinion and order in subdocket B agreed that defining these three terms would clarify the rules proposed in subdocket A. Proposed Amendments to the

Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 2 (Dec. 17, 2009). The Board accepted the Agency's proposed definition of "Btu" in Sections 808.110 and 809.103 and its proposed definition of "classification" in Section 739.100.

With regard to the Agency's third proposed definition, however, the Board found that "defining wastewater on the basis of TOC and TSS content for the purposes of managing mixtures of used oil and wastewater is not appropriate." Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 3 (Dec. 17, 2009). The Board therefore declined to adopt the definition proposed by the Agency. *Id.* The Board concluded instead to define "wastewater" in a manner consistent with the definition found in the Board's water quality standards. *Id.* Those standards define wastewater as "sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff." *Id.*, see 35 Ill. Adm. Code 301.425 (defining "wastewater").

Although the Board concurred in defining the three terms identified by the Agency and agreed that the Agency had identified the proper sections in which to add those definitions, the Board's first-notice opinion and order noted that the Board had not submitted those three sections to APA first-notice review and comment in subdocket A. See Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20 (Aug. 20, 2009); see also 33 Ill. Reg. 12426-58 (Sept. 11, 2009). Accordingly, the Board opened this subdocket B to provide first notice of the definitions in Sections 739.100, 808.110, and 809.103. Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 3-4 (Dec. 17, 2009), citing Steel and Foundry Industry Amendments to the Landfill Regulations (Parts 810 through 815 and 817), R90-26 (A, B), slip op. at 3 (Mar. 31, 1994); see 34 Ill. Reg. 1257, 1267, 1275 (Jan. 22, 2010).

## **SUMMARY OF FIRST-NOTICE COMMENTS**

### **Agency (PC 113)**

#### **Definitions**

The Agency notes that the Board's first-notice proposal accepted the definition of "Btu" and "classification" offered by the Agency. PC 113 at 1; see Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 2 (Dec. 17, 2009). The Agency states that it "does not have further comments on the Board's proposed definitions of these terms." PC 113 at 1.

The Agency also notes that the Board's first-notice proposal did not accept the definition of "wastewater" offered by the Agency. PC 113 at 1; see Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 2-3 (Dec. 17, 2009). The Agency states that Board instead relied upon its water quality standards to define wastewater that may be mixed with used oil without becoming subject

to manifesting requirements. PC 113 at 1. Specifically, Section 301.425 of the Board's water pollution regulations defines "wastewater" as "sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff." PC 113 at 1-2, citing 35 Ill. Adm. Code 301.425; *see* Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 3 (Dec. 17, 2009).

The Agency states that it had understood "that the manifest exemption was extended to mixtures of used oil and other special waste that would not significantly influence the management requirements for the used oil when it unintentionally contaminates used oil or is unintentionally mixed with used oil." PC 113 at 1-2. The Agency argues that the Board's proposed definition and the terms employed in it expand that exemption too broadly. *See id.* at 2.

Specifically, the Agency notes that the Board's proposed definition includes the term "sewage," which the Board's regulations define as "water-carried human and related waste from any source." PC 113 at 2, citing 35 Ill. Adm. Code 301.385. The Agency further notes that the proposed definition also includes the term "industrial waste," which is defined as "any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business or from the development, processing, or recovery, except for agricultural crop raising, of any natural resource." PC 113 at 2, citing 35 Ill. Adm. Code 301.285. The Agency also notes that the proposed definition encompasses "other wastes," which is defined as "garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye stuffs, acids, chemicals and all other substances not sewage or industrial waste whose discharge would cause water pollution or a violation of the effluent or water quality standards." PC 113 at 2, citing 35 Ill. Adm. Code 301.330.

The Agency argues that adoption of the Board's proposed definition

would allow all human and related wastes meeting the definition of sewage, and any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business that meets the definition of industrial waste, and all garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye stuffs, acids, chemicals and all other substances whose discharge would cause water pollution or a violation of the effluent or water quality standards to be transported without a manifest provided it contains some quantity of used oil. PC 113 at 2-3.

The Agency claims that the Board's proposed definition would allow any quantity of used oil found in another wastestream to "qualify that wastestream as a mixture of used oil and wastewater." *Id.* at 3. The Agency argues that a mixture of any of the wastes listed above with a small amount of used oil "will clearly not behave the same as used oil and would require different management standards." *Id.* The Agency emphasizes that, throughout these proceedings, it has voiced the concern that other wastes that do not behave like used oil will be transported under this exemption "and that this will cause environmental problems when managed as used oil." *Id.*

Accordingly, the Agency proposes two alternative definitions and requests that the Board consider them instead of the definition of “wastewater” based upon 35 Ill. Adm. Code 301.425. PC 113 at 3. The Agency first seeks to define “wastewater” to mean “stormwater, surface water, groundwater, or nonhazardous washwater that has been contaminated with used oil but has not been mixed with sewage, industrial waste or any other waste.” *Id.* Second, the Agency seeks to define “washwater” to mean “a mixture of water, nonhazardous cleaning compounds, and residue that results from cleaning surfaces and equipment and which is collected separately from sewage.” *Id.* The Agency expresses the belief that “these two definitions would allow the type of wastewater described in testimony by NORA members and would allow stormwater and washwater to be collected in the same tank.” *Id.* (citing transcript of hearing in docket R06-20(A)).

### **Generator Certification**

The Agency notes that, in subdocket (A), it had proposed that Section 809.501(a)(2) of the special waste regulations include a generator certification similar that required by Section 22.48 of the Environmental Protection Act (Act). PC 113 at 3-4; *see* 415 ILCS 5/22.48 (2008); 35 Ill. Adm. Code 809.501(a)(2). The Agency notes that the Board’s second-notice opinion and order in subdocket (A) discussed the proposed certification requirement but declined to adopt it. PC 113 at 4; citing Proposed Amendments to the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(A), slip op. at 15-16 (Dec. 17, 2009).

Although the Board in this subdocket (B) did not submit Section 809.501 for APA first-notice publication, the Agency seeks to clarify its position on the issue of generator certification. PC 113 at 4. The Agency states that its “intention was not to have used oil generators certify that the used oil mixture is no longer a special waste, but to have them follow the same type of format to certify that the used oil mixture meets the requirements for a manifest exemption.” *Id.* The Agency also states that its proposed frequency of certification may have been misunderstood. *Id.* The Agency indicates that “[t]he intention was not to require specific information be developed for each shipment, but to develop a one-time record of the information used to determine that the used oil mixture qualifies for the exemption.” *Id.* The Agency argues that its proposed language only requires a new certification “if the waste stream or generating process changed.” *Id.* Although the Agency acknowledges that a generator would be required to maintain a copy of the certification, it argues that “the generator would probably have only one used oil mixture waste stream and probably only one certification.” *Id.* The Agency claims that its proposed certification requirement would not pose a paperwork burden. *Id.*

In addition, the Agency states that it intended its proposed certification language “to identify the type of information that used oil generators may be required to provide in case of enforcement.” PC 113 at 4. Stressing that, “at the point of inspection by the Illinois EPA the used oil mixtures will most likely have been consolidated from many generators, having a certified record of the waste stream and generating process to refer to would allow the Illinois EPA to identify which generator may have caused the contamination.” *Id.* The Agency argues that testimony by NORA indicates that “the information needed for certification would already be compiled.” *Id.* (citing transcript of hearing in docket R06-20(A)).

The Agency concludes by urging the Board to reconsider the certification language it proposed in its comments filed in subdocket (A). PC 113 at 4-5; *see* Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(A) (Oct. 20, 2009) (Public Comment 111).

### **NORA (PC 114)**

NORA notes the Agency's continued concern that other waste that will not behave like used oil will be transported under the exemptions adopted by the Board and that managing this mixture as used oil will result in environmental problems. PC 114 at 1. NORA responds by arguing that "the Agency fails to provide a single example of any such 'environmental problem.'" *Id.* NORA claims that the Agency cannot do so because "by eliminating the requirements for manifesting for used oil and certain categories of materials regulated as used oil the Board did not did not create any loopholes that would allow mishandling of these materials." *Id.* NORA further claims that "the Agency has never been able to point to either an actual or hypothetical example of a mismanagement event in which the use of a manifest would prevent the mismanagement event but the tracking document would not." *Id.* NORA argues that the regulations adopted by the Board in subdocket (A) do "not alter any substantive requirement imposed by any environmental law." *Id.* NORA claims that the effect of the adopted regulations is to simplify the paperwork burden for generators without eliminating information that may be required by the Agency or other entities. *Id.*

### **Definitions**

NORA argues that the Board logically and appropriately adopted a broad definition of the term "wastewater." PC 114 at 2. NORA claims that "[a] narrow definition would create an infeasible system where some wastewaters containing used oil would be subject to a manifest and others would not." *Id.* NORA suggests that, rather than complete different paperwork from shipment-to-shipment, "many generators would simply use manifests for all waste water containing oil." *Id.* NORA argues that this practice would be inconsistent with the Board's goal of reducing the paperwork burden. *Id.* NORA also emphasizes that the regulations adopted by the Board already require that a used oil tracking document include the information that must be recorded on a manifest. *Id.*

NORA also discounts the Agency's argument that the definition of "wastewater" proposed by the Board would allow a mixture of human waste and used oil to be managed as used oil. *See* PC 114 at 1. NORA argues that regulations adopted by the Board in subdocket (A) require that a tracking document under Part 739 must include the same information as a manifest. *Id.* at 1-2. NORA restates its position that the Agency has not described how an expanded tracking document would foster mismanagement or how a manifest would prevent it. *Id.* at 2. NORA recommends that the Board "not revise its proposal in Docket B with respect to the definition of wastewater." *Id.*

### **Generator Certification**

NORA argues that the Agency’s proposal for generator certification is obviously “intended to *increase* the regulatory burden on generators.” PC 114 at 2 (emphasis in original). NORA emphasizes “that under either federal or Illinois law such generator certifications are not required for hazardous waste generators -- nor for any exemptions from classification as a hazardous waste.” *Id.* NORA claims that generators would be likely to avoid having to obtain certification by continuing to use manifests, resulting in “a dual paperwork system for generators, transporters, and processors.” *Id.*

NORA supports its position by stating that, in any enforcement action,

the generator has the burden of proving that the material is not a hazardous waste. The same situation should apply in this context: a generator should not have to formally certify that a manifest is not required for its material. However, if challenged in an enforcement action, the generator would have the burden of proving that a manifest is not required. PC 114 at 2-3.

NORA also discounts the Agency’s proposal by noting that it does not require certification to be filed with the Agency. *Id.* at 3. NORA recommends that the Board “not adopt IEPA’s proposal to impose an additional and unnecessary paperwork burden on Illinois businesses by requiring ‘generator certifications.’” *Id.*

### **Agency Response to NORA (PC 115)**

#### **Definition of “Wastewater”**

The Agency notes NORA’s comment that “[a] narrow definition [of “wastewater”] would create an unfeasible system where some wastewaters containing used oil would be subject to manifest and others would not.” PC 115 at 2, citing PC 114 at 2. The Agency argues that the Board’s proposed definition “was developed for the Clean Water Act and designed to identify any material that would be subject to regulation under the Clean Water Act.” PC 115 at 2. The Agency further argues that this proposed definition is broader than necessary to describe the materials NORA wishes to transport without a manifest. *See id.*

The Agency claims that “it is not appropriate to exempt all materials from manifesting so long as they contain used oil.” PC 115 at 2. The Agency further claims that used oil generators “may always generate some other waste that is subject to manifesting including some materials that contain used oil.” *Id.* The Agency argues that “[t]he purpose of the manifest exemption was to simplify paperwork for the management of used oil and used oil mixtures that can be safely managed as used oil.” *Id.* The Agency suggests that the Board’s proposed definition of “wastewater” would go beyond that purpose by exempting “used oil generators from all manifesting and used oil recyclers from collecting manifests for those wastes that do not behave like used oil.” *Id.*

#### **Generator Certification**

The Agency notes NORA's comment that "[i]t is worth emphasizing that under either federal or Illinois law such generator certifications are not required for hazardous waste generators - nor for any exemptions from classification as hazardous waste." PC 115 at 2; *see* PC 114 at 2. The Agency indicates that state and corresponding federal regulations require that "a generator must keep records of any test results, waste analysis, or other determinations made in accordance with Section 722.111." PC 115 at 2-3, citing 35 Ill. Adm. Code 722.140(c) (Recordkeeping). The Agency argues that "Section 722.111 would require a hazardous waste determination with respect to any waste mixed with used oil." PC 115 at 3; *see* 35 Ill. Adm. Code 722.111 (Hazardous Waste Determination). The Agency further argues that "a certification that special waste is identified accurately is currently required by 35 Ill. Adm. Code 809.501(i)(7) and is included on the manifest." PC 115 at 3; *see* 35 Ill. Adm. Code 809.501(i)(7) (annual report by generator for special waste going out-of-state).

### **Summary**

The Agency states that the Board's first-notice proposal relies upon the Clean Water Act definition of "wastewater" and lacks the "one-time generator certification" proposed by the Agency. PC 115 at 1. The Agency argues that this proposal would allow generators "to mix almost any waste with used oil." *Id.* The Agency further argues that mixtures "would then be picked up and co-mingled with other oil containing waste where it will lose its original characteristics." *Id.* The Agency claims that this "will make it difficult to track waste streams that have been combined with used oil." *Id.* The Agency further claims that "[a]t this point it would be impossible to tell which co-mingled waste stream did not meet the requirements of the manifest exemption." *Id.* The Agency concludes that "[t]he keys to insuring this does not happen is to limit the definition of wastewater as proposed by the Illinois EPA and to require a one-time generator certification as proposed by the Illinois EPA that would demonstrate the generator met the manifest exemption and would include information such as an explanation of the source of any wastewater." *Id.* at 1-2. The Agency suggests that its proposed provisions will ensure "that the used oil manifest exemption does not become a loophole for managing other waste." *Id.* at 3.

### **USEPA Correspondence (PC 116)**

As noted above, the Board on April 30, 2010 received a comment from Sue Rodenbeck Brauer of the USEPA. *See* PC 116. Ms. Rodenbeck Brauer indicates that Part 739 of the Board's waste disposal regulations, which provides standards for the management of used oil, "is a federally authorized rule pursuant to Section 3006(h) of the Resource Conservation and Recovery Act, as amended (RCRA)." *Id.* at 1. She states that she has since 1992 been the RCRA used oil expert for USEPA in a six-state region of the Midwest. *Id.*

Ms. Rodenbeck Brauer indicates that, in her experience, "there is widespread misunderstanding of how RCRA regulates 'used oil' and wastewater." PC 116 at 1. She states that "[w]astewater is subject to applicable RCRA Subtitle C waste regulations for solid and hazardous waste before it is discharged pursuant to a Clean Water Act permit." *Id.* She further states that "[u]sed oil that is recycled is subject to 40 CFR Part 279 Used Oil Management Standards." *Id.* She recommends that, "[w]hen wastewater that is being managed for disposal is

intentionally mixed with used oil, regulators should consider whether the used oil is being managed as a valuable resource or commodity for recycling” through processes such as burning for energy recovery or re-refining. *Id.*

Ms. Rodenbeck Brauer states that “[a]llowing used oil and nonhazardous waste mixtures (e.g., wastewater) to be regulated as used oil under 40 CFR 279 potentially poses threats to human health and the environment.” PC 116 at 1. She argues that, “[a]lthough the wastewater as generated may not exhibit a characteristic of hazardous waste, the oily waste that is generated during wastewater treatment may exhibit a characteristic due to concentration of the contaminant by treatment.” *Id.* While she notes that “used oil” as defined in 40 CFR 279.1 and 40 CFR 260.10 is exempt from the toxicity characteristic rule at 40 CFR 261.24, she states that “[u]sed oil continues to be an attractive media for toxic contaminants not typically picked up through lubricant use but which may be contained in wastewaters.” *Id.* She states that USEPA has enforced hazardous waste identification rules at 40 CFR 261.2 and 40 CFR 279.10(b) “at facilities subject to 40 CFR 437 Clean Water Act regulations for Centralized Waste Treatment Point Source Category standards, and which are also regulated as RCRA used oil processor facilities, and required compliance with the standards for owners and operator of hazardous waste treatment, storage, and disposal facilities in 40 CFR Parts 264/265.” *Id.* at 1-2.

Ms. Rodenbeck Bauer concludes her comment by asking whether, “[b]y allowing mixtures of used oil with nonhazardous solid wastes (wastewater) to benefit from the exemption to special waste manifest requirements, does the current rulemaking encourage mixture of used oil with wastewater containing toxic contaminants that are not controlled by the used oil fuel specifications for arsenic, cadmium, chromium, lead, total halogens, and flashpoint?” PC 116 at 2. She indicates that, if the Board intends to encourage such mixtures, then she opposes the Board’s proposal. *Id.* She adds that the Agency “is commended for trying to discourage such mixtures.” *Id.*

### **NORA’s Response to IEPA (PC 117)**

NORA notes the Agency’s statements that the definition of “wastewater” proposed by the Board “will make it difficult to track waste streams that have been combined with used oil” and that, without a certification by a generator, “any waste mixed with used oil and sent to a used oil recycler will be ‘untraceable.’” PC 117 at 1, citing PC 115 at 1. NORA argues that the Agency “appears to intentionally overlook the basic premise of the rule that the Board has already adopted, namely, that the same information that formerly was to be set forth in a manifest will be presented in a tracking document. . . .” PC 117 at 1. NORA further argues that the Agency has not explained how a waste stream would be traceable if described in a manifest but untraceable if described in the same terms in a tracking document. *See id.*

NORA also notes the Agency’s statement that, “[a]s currently proposed by the Board, a generator would be able to mix almost any waste with used oil. The mixture would then be picked up and co-mingled with other oil containing waste where it will lose its original characteristics. At this point it would be impossible to tell which co-mingled waste stream did not meet the requirements of the manifest exemption.” PC 117 at 1, citing PC 115 at 1. NORA first emphasizes that its members process used oil collected from generators into fuel products

that compete with virgin petroleum products. PC 117 at 1. NORA argues that “used oil collectors and processors have absolutely no motivation whatsoever to mix (or encourage generators to mix) used oil with any material where the resulting mixture would lose the ‘original characteristics’ of oil.” *Id.* NORA also argues that, in comparison with a manifest, “there is nothing about a tracking document that would inspire such behavior.” *Id.* NORA claims that, “if information about a ‘co-mingled waste stream’ is required to be documented in a manifest it will also be required to be documented in a tracking document.” *Id.* NORA further claims that “because there is no ‘loop-hole’ being created by the Board’s proposed definitions, including the definition of wastewater, there is no reason to change the Board’s proposal.” *Id.* at 2.

With regard to the Agency’s comment regarding generator certification, NORA argues that “nothing in the Board’s rule (or its proposed definitions) would modify substantive generator obligations.” PC 117 at 1, citing 35 Ill. Adm. Code 722.111, 722.140(c). NORA further argues that the Agency is free to propose an expansion of obligations imposed on generators. PC 117 at 1-2. NORA concludes by claiming that “the instant rule-making concerning definitions is not the appropriate venue for any such proposal.” *Id.* at 2.

### **NORA’s Response to USEPA (PC 118)**

NORA’s most recent comment explicitly addresses correspondence from Ms. Rodenbeck Brauer of USEPA received by the Board on April 30, 2010 (PC 116). PC 118 at 1. NORA notes her statement that “[a]llowing used oil and nonhazardous waste mixtures (*e.g.* wastewater) to be regulated as used oil under 40 CFR Part 279 potentially poses threats to human health and the environment.” *Id.*

NORA first responds that the Board’s rulemaking proposes “no explicit or implied changes to 40 CFR 279 or any other substantive provisions of either federal or state law.” *Id.* NORA claims that regulations recently adopted by the Board merely allow the substitution of a tracking document in the place of a manifest for used oil and for specified categories of materials regulated as used oil. *Id.* NORA emphasizes that “[n]othing in the completed rulemaking for this docket nor the proposed definitions has anything to do with what is allowed to be regulated under 40 CFR Part 279.” *Id.*

Second, NORA claims that federal used oil management standards have since 1985 both contemplated and allowed mixture of used oil with nonhazardous solid waste. PC 118 at 1, citing 40 C.F.R. 279. NORA further claims that, “[l]ike all other regulations promulgated pursuant to the Resource Conservation and Recovery Act, the used oil management standards (40 CFR Part 279) were drafted for the purpose of protecting human health and the environment.” PC 118 at 1.

Third, NORA notes that Illinois is the only state in USEPA’s Region V to require special waste manifests for shipments of used oil. PC 118 at 1. NORA suggests that, if USEPA believes that “[a]llowing used oil and nonhazardous waste mixtures (*e.g.* wastewater) to be regulated as used oil under 40 CFR Part 279 potentially poses threats to human health and the

environment” (*Id.*, citing PC 116), then USEPA should cause other states in the region to conform to Illinois regulations. *See* PC 118 at 1.

Finally, NORA notes USEPA’s question: “[b]y allowing mixtures of used oil with nonhazardous solid waste to benefit from the exemption to special waste requirements, does the current rulemaking encourage mixture of used oil with wastewater containing toxic contaminants that are not controlled by the used oil fuel specifications for arsenic, cadmium, chromium, lead, total halogens and flashpoint?” PC 118 at 1, citing PC 116 at 2. NORA responds that “nothing in this rulemaking either encourages or discourages mixtures of ant materials with used oil.” PC 118 at 2. NORA notes that USEPA “*does not require manifests* for used oil or materials regulated as used oil.” *Id.* (emphasis in original). NORA suggests that making state paperwork requirements more similar to federal requirements cannot be said to encourage mixtures of used oil with other materials. *See id.*

## **DISCUSSION**

As noted above, the Agency’s comment raises concern regarding the proposed definition of “wastewater”. The Agency also urges the Board to reconsider its decision regarding generator certification in subdocket (A) of this proceeding. In the following sections, the Board will first respond to correspondence from USEPA before briefly summarizing Agency’s concerns and NORA’s responses. The Board then provides its discussion of and findings on those issues.

### **USEPA Correspondence (PC 116)**

As noted above under “Procedural History,” the Board on April 30, 2010, received comments from Sue Rodenbeck Brauer, Region 5 RCRA Used Oil Expert, RCRA Branch, Land and Chemicals Division of the United States Environmental Protection Agency (USEPA) (PC 116). The Board notes that Ms. Rodenbeck Brauer posed a specific question: “[b]y allowing mixtures of used oil with nonhazardous solid wastes (wastewater) to benefit from the exemption to special waste manifest requirements, does the current rulemaking encourage mixture of used oil with wastewater containing toxic contaminants that are not controlled by the used oil fuel specifications for arsenic, cadmium, chromium, lead, total halogens, and flashpoint?” PC 116 at 2.

The Board respectfully responds that it did not intend to provide the encouragement referred to by USEPA in its questions. *See* PC 116 at 2. The Board notes that, in adopting the underlying regulations in docket R06-20(A), the Board stated that “it proposed exemptions from manifest requirements for used oil and certain used oil mixtures for the limited purpose of streamlining informational requirements and reducing paperwork.” Proposed Amendments to the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(A), slip op. at 16 (Feb. 18, 2010). In the same opinion, the Board addressed the issue of mixing used oil with other materials, emphasizing

that it proposed only to replace the manifest required under Parts 808 and 809 with a tracking document for used oil and certain used oil mixtures regulated under Part 739. The Board also emphasized that the proposed rules require all the necessary information in the manifest to be included in the tracking document.

Thus, used oil and used oil mixtures would still be subject to all applicable requirements of Parts 808 and 809 other than manifesting. *Id.* at 15.

The Board further notes that, as adopted, the manifest exemption applies to a generator who complies with informational requirements and to “[u]sed oil as defined by and managed in accordance with 35 Ill. Adm. Code 739 contaminated by or mixed with nonhazardous wastewater, when the used oil and the nonhazardous wastewater are generated by the same generator, and when the mixture results from use or unintentional contamination.” 35 Ill. Adm. Code 808.121(b)(6)(D); *see also* 35 Ill. Adm. Code 809.301(b)(4), 809.302(a)(2)(D), 809.501(a)(2)(D).

### **Definition of Wastewater**

#### **Agency Concerns**

In its first notice comments, the Agency expresses continued concern regarding the proposed definition of the term “wastewater,” which is based on the definition of “wastewater” in the Board’s water pollution regulations. PC 113 at 1-3; *see* 35 Ill. Adm. Code 301.425, PC 115 at 2. The Agency claims that the Board’s proposed definition allows the manifest exemption to be too broad because the definition at 35 Ill. Adm. Code 301.425 is intended to cover “anything subject to regulation under the Clean Water Act”. PC 113 at 2; *see* PC 115 at 2.

The Agency notes that the Board regulations under Part 301 define all three types of waste included in the proposed definition of “wastewater:” “sewage,” “industrial waste,” and “other wastes.” PC 113 at 2; *see* 35 Ill. Adm. Code 301.285, 301.330, 301.385. These three waste types by definition include the following: human and related wastes from any source; solid, liquid, or gaseous waste from any process of industry, manufacturing, trade, or business; and materials that are not either sewage or industrial waste, including garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye stuffs, acids and chemicals, whose discharge would cause water pollution or a violation of the effluent or water quality standard. PC 113 at 2; *see* 35 Ill. Adm. Code 301.285, 301.330, 301.385. Thus, the Agency argues that the proposed definition of “wastewater” would allow the manifest exemption to extend to wastes that will not behave as used oil. PC 113 at 3.

The Agency argues that any amount of used oil in material defined as “wastewater” would qualify that wastestream as a used oil mixture. Such mixtures, the Agency maintains, will not behave like used oil and should be subject to different management standards. PC 113 at 3. The Agency proposes definitions of the following two terms to replace the proposed definition of wastewater:

“Wastewater” means stormwater, surface water, groundwater or nonhazardous washwater that has been contaminated with used oil but has not been mixed with sewage, industrial waste or any other waste.

“Washwater” means a mixture of water, nonhazardous cleaning compounds and residue that results from cleaning surfaces and equipment and which is collected separately from sewage. *Id.*

The Agency claims that the above definitions “would allow the type of wastewater described in testimony by NORA members and would allow stormwater and washwater to be collected in the same tank.” *Id.* at 3, (citing transcript of hearing in docket R06-20(A)).

### **NORA’s Response**

NORA states that the Agency “continues to miscomprehend the scope of and purpose of the Board’s rulemaking.” PC 114 at 1. NORA maintains that the definition of “wastewater” proposed by the Board at first notice is “entirely appropriate and logical.” *Id.* NORA argues that a narrow definition of the term would defeat the purpose of the manifest exemption by subjecting generators to dual paperwork requirements.

### **Discussion and Finding**

At first notice, the Board proposed to define the term “wastewater” based on the definition contained in the Board’s water quality regulations instead of adopting the Agency’s recommended definition. The Board specifically declined to adopt the Agency’s definition based on the Board’s hazardous waste regulations, since that definition was too restrictive for the purposes of managing mixtures of used oil and wastewater. Proposed Amendments to the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B), slip op. at 3 (Dec. 17, 2009).

The Agency now expresses concern that the Board’s proposed definition of “wastewater” is too broad because it covers anything subject to regulation under the Clean Water Act. As noted above, the Agency recommends that the Board replace the proposed definition of “wastewater” with a revised definition of “wastewater” and a new definition of “washwater.” A review of the Agency’s definitions suggests that the Agency intends to define wastewater in a manner consistent with the types of wastewater that might mix with used oil through use or unintentional contamination. The definitions add clarity to the rules by specifying that mixtures of used oil and materials such as sewage, industrial waste, or other types of waste are not exempt from manifesting.

While the Board’s proposed definition of wastewater may be broad, the Board notes that the scope of the manifest exemption for mixtures of used oil and wastewater is strictly limited by the conditions adopted by the Board. First, the Board limited the manifest exemption to mixtures of used oil and nonhazardous wastewater, where both the used oil and the nonhazardous wastewater are generated by the same generator. Next, the Board provided that the exemption applies only if the mixture results from use or unintentional contamination. Finally, the exemption does not apply if wastewater is intentionally mixed with used oil, as initially proposed by NORA. *See* 35 Ill. Adm. Code 808.121(b)(6)(D); Proposed Amendment of the Board’s Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20, slip op. at 36 (August 20, 2009).

Although the manifest exemption for mixtures of used oil and wastewater is limited by these conditions, the Board agrees with the Agency that the broad definition of “wastewater” proposed at first notice may lead to ambiguity or confusion in implementation of the regulations. Therefore, the Board at second notice will modify the definition of “wastewater” and add the definition of “washwater,” as proposed by the Agency. In addition, the Board adds language confining the application of those two definitions to the Parts to which they have been added. In this regard, the Board notes that the Agency’s original proposed definition of “classification” included language of this nature. Proposed Amendments to the Board’s Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 739, 808, 809, R 06-20(A), slip op. at 6 (Oct. 22, 2009) (Public Comment 111). Although NORA argues against the inclusion of the Agency’s definitions, the Board finds that the inclusion of the definitions clarifies the rules and does not change the scope intended by the Board for the manifest exemption for mixtures of used oil and wastewater as originally intended by the Board. Further, as noted by the Agency, the definitions are consistent with the wastewater mixtures described by NORA members in their testimony at hearing.

In light of the above, the Board will modify the proposed definition of “wastewater” and define the term “washwater,” as recommended by the Agency.

### **Generator Certification**

#### **Agency Concerns**

The Agency states that it recommended in subdocket (A) that the Board include a generator certification similar that required by Section 22.48 of the Act in Section 809.501(a)(2). PC 113 at 3-4; *see* 415 ILCS 5/22.48 (2008); 35 Ill. Adm. Code 809.501(a)(2). The Agency correctly notes that the Board declined to adopt the Agency’s recommendation concerning certification. PC 113 at 4. Although the generator certification requirements under Section 809.501 are not a part of this subdocket (B), the Agency seeks to address what it describes as a misunderstanding of its proposal. *Id.*

The Agency seeks to clarify that its “intention was not to have used oil generators certify that the use oil mixture is no longer a special waste, but to have them follow the same type of format to certify that the used oil mixture meets the requirements for a manifest exemption.” PC 113 at 4. Further, the Agency also states that its proposed frequency of certification may have been misunderstood. *Id.* The Agency seeks to clarify that “[t]he intention was not to require specific information be developed for each shipment, but to develop a one-time record of the information used to determine that the used oil mixture qualifies for the exemption.” *Id.*

In addition, the Agency states that it intended its proposed certification language “to identify the type of information that used oil generators may be required to provide in case of enforcement.” PC 113 at 4. The Agency argues that, according to NORA’s testimony, the information needed for certification would already be compiled by the recycling facility. *Id.*, (citing transcript of hearing in docket R06-20(A)). The Agency urges the Board to reconsider the certification language it proposed in its comments filed in subdocket (A). PC 113 at 4-5; *see*

Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(A) (Oct. 20, 2009) (Public Comment 111).

### **NORA's Response**

NORA argues that the Agency's proposal for generator certification is obviously "intended to *increase* the regulatory burden on generators." PC 114 at 2 (emphasis in original). NORA asserts that the type of generator certification proposed by the Agency is not required even for hazardous generators under either federal or Illinois law. *Id.* NORA claims that generators would likely continue to use special waste manifests, rather than comply with the Agency's generator certification. Further, NORA states that in any enforcement action the generator has the burden of proving that a manifest is not required for the used oil mixture. *Id.* at 2-3. NORA recommends that the Board "not adopt IEPA's proposal to impose an additional and unnecessary paperwork burden on Illinois businesses by requiring 'generator certifications.'" *Id.* at 3; *see* PC 117 at 1-2.

### **Discussion and Finding**

As an initial matter, the Board notes that it adopted language regarding generator certification requirements on February 18, 2010. Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808, 809, R06-20(A) (Feb. 18, 2010); see 34 Ill. Reg. 3296, 3310, 3317 (Mar. 12, 2010). Further, the Board has not submitted Section 809.501, which the Agency seeks to amend, for first notice publication in this subdocket (B). Any changes addressing generator certification under Section 809.501 must be proposed as a new rulemaking proposal.

Regarding the Agency's specific request, the Board is not convinced that manifest exemptions warrant additional certification requirements. As explained in the second-notice opinion in subdocket (A), the Board's proposed exemptions from the manifest requirements for used oil and certain used oil mixtures for the limited purpose of streamlining informational requirements and reducing paperwork. To this end, the Board adopted tracking requirements under Part 739 that ensure that all necessary information required on a manifest, including the generator certification, would still be available to the Agency and the entities involved in the handling and management of used oil and used oil mixtures. Further, the Board notes that the proposed generator certification under Part 739 mirrors the certification required in a manifest. The Board believes that the Agency's proposal expands the scope of the certification requirements beyond what is required in the manifest. Therefore, the Board finds that the generator certification requirement adopted in subdocket (A) is adequate for purposes of managing used oil and specified used oil mixtures exempt from manifest requirements.

### **Economic Reasonableness and Technical Feasibility**

In its first-notice opinion and order on December 17, 2009, the Board noted that, while both the Agency and NORA have generally addressed the issue of these definitions, neither had specifically discussed their economic reasonableness or technical feasibility. *See Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code*

739, 808, 809, R06-20(B), slip op. at 4 (Dec. 17, 2009). Although the Board invited comment on these issues from the participants, neither NORA nor the Agency has specifically addressed the economic reasonableness or the technical feasibility of the definitions proposed by the Board for first notice, and the Agency did not address these issues with regard to its own proposed definitions. The proposed definitions do not themselves impose substantive requirements, and the underlying amendments adopted in R06-20 (A) provide an exemption from manifesting requirements. In the absence of contrary evidence or arguments in the record, the Board concludes that its second-notice proposal is technically feasible and economically reasonable.

### **CONCLUSION**

In the separate docket R06-20(A), the Board has adopted amendments exempting from the manifest requirements of Parts 808 and 809 both used oil defined by and managed in accordance with Part 739 and specific mixtures of used oil and other materials. 34 Ill. Reg. 3310, 3317 (Mar. 12, 2010). With regard to those specific mixtures, the Board adopted amendments to the Part 739 tracking requirements to include information required by a manifest. 34 Ill. Reg. 3296 (Mar. 12, 2010).

In its first-notice opinion and order in this docket R06-20(B) on December 17, 2009, the Board proposed the addition of one definition to its used oil management standards and two definitions to its special waste regulations. 34 Ill. Reg. 1257, 1267, 1275 (Jan. 22, 2010). Above, the Board has addressed first-notice comments and found that the record supports amendment of the proposed definition of the term “wastewater” and the addition of a definition of the term “washwater.” In its order below, the Board directs the Clerk to file the proposed amendments with the Joint Committee on Administrative Rules for second-notice review

### **ORDER**

The Board directs the Clerk to file the following proposed amendments with the Joint Committee on Administrative Rules for second-notice review. Proposed additions appear 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
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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**

<b>Section</b>	
739.160	Applicability
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739.165	Tracking
739.166	Notices
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**SUBPART H: STANDARDS FOR USED OIL FUEL MARKETERS**

<b>Section</b>	
739.170	Applicability
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739.172	On-Specification Used Oil Fuel
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**SUBPART I: DISPOSAL OF USED OIL**

<b>Section</b>	
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 (A) at 34 Ill. Reg. 3296, effective Feb. 25, 2010; amended in R06-20 (B) at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: DEFINITIONS

### **Section 739.100 Definitions**

Terms that are defined in 35 Ill. Adm. Code 720.110, 721.101, and 731.112 have the same meanings when used in this Part.

“Aboveground tank” means a tank used to store or process used oil that is not an underground storage tank, as defined in 35 Ill. Adm. Code 280.12.

BOARD NOTE: This definition is different from the definition for “aboveground tank” given in 35 Ill. Adm. Code 720.110. Although the meanings are similar, the main distinction is that the definition for this Part limits the tanks to those used to store or process used oil, whereas the 720.110 definition contemplates tanks that contain hazardous wastes. This definition of aboveground tank is limited to this Part only.

“Classification”, as used in this Part, means a short description of the waste generating activity and designation as either hazardous waste with the appropriate hazardous waste code, nonhazardous used oil, nonhazardous used oil mixture, or nonhazardous other special waste.

“Container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

“Do-it-yourselfer used oil collection center” means any site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers.

“Existing tank” means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation had commenced on or prior to October 4, 1996. Installation will be considered to have commenced if the owner or operator had obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either of the following had occurred:

A continuous on-site installation program had begun, or

The owner or operator had entered into contractual obligations that cannot be canceled or modified without substantial loss for installation of the tank to be completed within a reasonable time.

BOARD NOTE: This definition is similar to the definition for “Existing tank system” in 35 Ill. Adm. Code 720.110. Although the meanings are similar, the definition given above for “existing tank” in this Part limits the tanks to those used

to store or process used oil, whereas the 720.110 definition contemplates tanks systems that contain hazardous wastes. This definition of existing tank is limited to this Part only.

“Household ‘do-it-yourselfer’ used oil” means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

BOARD NOTE: Household “do-it-yourselfer” used oil is not subject to the State’s special waste hauling permit requirements under Part 809.

“Household ‘do-it-yourselfer’ used oil generator” means an individual who generates household “do-it-yourselfer” used oil.

“New tank” means a tank that will be used to store or process used oil and for which installation had commenced after October 4, 1996.

BOARD NOTE: This definition is similar to the definition given for “New tank system” given in 35 Ill. Adm. Code 720.110. Although the meanings are similar, the definition given above for “new tank” in this Part limits the tanks to those used to store or process used oil, whereas the 720.110 definition contemplates new tanks systems that contain hazardous wastes. This definition of new tank is limited to this Part only.

“Petroleum refining facility” means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes (i.e., facilities classified as SIC 2911).

“Processing” means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to the following: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining.

“Re-refining distillation bottoms” means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

“Tank” means any stationary device, designed to contain an accumulation of used oil that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

“Used oil” means any oil that has been refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or

chemical impurities.

“Used oil aggregation point” means any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

“Used oil burner” means a facility where used oil not meeting the specification requirements in Section 739.111 is burned for energy recovery in devices identified in Section 739.161(a).

“Used oil collection center” means any site or facility that is registered by the Agency to manage used oil and accepts or aggregates and stores used oil collected from used oil generators regulated under Subpart C of this Part that bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Section 739.124. Used oil collection centers may also accept used oil from household do-it-yourselfers.

“Used oil fuel marketer” means any person that conducts either of the following activities:

Directs a shipment of off-specification used oil from their facility to a used oil burner; or

First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 739.111.

“Used oil generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

“Used oil processor” means a facility that processes used oil.

“Used oil transfer facility” means any transportation-related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to Section 739.120(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under Subpart F of this Part.

“Used oil transporter” means any person that transports used oil, any person that collects used oil from more than one generator and that transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g.,

settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

(Source: Amended at 34 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

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SUBPART C: CRITERIA AND DATA REQUIREMENTS

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SUBPART D: REQUEST FOR WASTE CLASSIFICATION

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Section	
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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 (A) at 34 Ill. Reg. 3310, effective Feb. 25, 2010; amended in R06-20 (B) at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### Section 808.110 Definitions

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1001 et seq.).

"Agency" means the Illinois Environmental Protection Agency.

"Btu" or "British thermal unit" means the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

"Board" means the Illinois Pollution Control Board.

"Carcinogen" means a chemical, or complex mixture of closely related chemicals, which has been determined in accordance with USEPA Guidelines for Carcinogenic Risk Assessment, incorporated by reference at Section 808.111, to have either sufficient or limited human evidence or sufficient animal evidence supporting a causal association between exposure to the chemical and an increase in incidence of benign or malignant neoplasms or substantial decrease in the latency period between exposure and onset of neoplasms.

"Declassified waste" means a waste which has been determined pursuant to Section 808.245 to not be a special waste.

"Degree of hazard" is determined pursuant to Section 808.245.

"Hazardous waste" or "RCRA hazardous waste" is as defined in 35 Ill. Adm. Code 721.

"LC<sub>50</sub>" means that concentration of a substance administered to test organisms that is lethal to 50 percent of a population of exposed organisms in a given time period. "Inhalation rat" means that the substance is administered by inhalation and the test organisms are laboratory rats. "Aquatic toxicity" means that the substance is administered in water to specified free-swimming test organisms.

"LD<sub>50</sub>" means that dose of a substance administered to test organisms that is lethal to 50 percent of a population of exposed organisms in a given time period. "LD<sub>50</sub>-oral rat" or "oral rat" means that dose of a substance, administered orally, that is lethal to 50 percent of a population of exposed

rats in a given time period.

"Mutagen" means a chemical, or complex mixture of closely related chemicals or ionizing radiation which has been determined, in accordance with USEPA Guidelines for Mutagenic Risk Assessment, incorporated by reference at Section 808.111, to have sufficient evidence supporting a causal association between exposure to the chemical and point mutations (i.e., submicroscopic changes in the base sequence of DNA) or structural or numerical chromosome aberrations. Structural aberrations include deficiencies, duplications, insertions, inversions, and translocations, whereas numerical aberrations are gains or losses of whole chromosomes (e.g., trisomy, monosomy) or sets of chromosomes (haploidy, polyploidy).

"Special handling waste" is a declassified waste which, due to its form and mode of containment in transport or storage, presents a danger to a person handling the waste such that the person needs information about the waste to safely transport or store the waste. "Special handling waste" includes any such waste which would pose a danger if handled in a manner similar to household waste. "Dangers" include, but are not limited to, the following: fire, explosion, and emission of toxic or carcinogenic gas or dust. "Special handling waste" also includes any special waste which, because of appearance or packaging, resembles waste which would be a special handling waste. Such waste includes, but is not limited to, any special waste contained in a sealed drum. Irrespective of its degree of hazard ranking under Section 808.245, a special handling waste is a special waste.

BOARD NOTE: Section 808.245(d) provides that special handling waste which would otherwise be declassified is at least a Type B special waste

"Special (non-RCRA) waste" is any special waste that is not hazardous waste as defined in this Section.

*"Special waste" means any hazardous waste, and any industrial process waste or pollution control waste which has not been declassified pursuant to Section 808.245. (Section 3.45 of the Act.)*

Board Note: The definition of "hazardous waste" at Section 3.15 of the Act differs from the definition of the same term as used in this Part. The Board intends that the Section 3.15 definition apply to this Part only for the purposes of this definition of special waste. The Board intends that the definition given in this Section apply to all other appearances for the term "hazardous waste" throughout this Part.

"TC<sub>50</sub>" means that dose of a substance administered to test organisms that produces toxic effects in 50 percent of a population of exposed organisms

in a given time period. "TD<sub>50</sub>-oral rat" means that the test organisms are laboratory rats.

“Washwater”, as used in this Subpart, means a mixture of water, nonhazardous cleaning compounds, and residue that results from cleaning surfaces and equipment and which is collected separately from sewage.

“Wastewater”, as used in this Subpart, means ~~sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff~~ stormwater, surface water, groundwater or nonhazardous washwater that has been contaminated with used oil but has not been mixed with sewage, industrial waste or any other waste.

(Source: Amended at 34 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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809.102	Severability
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#### SUBPART F: DURATION OF PERMITS AND TANK NUMBERS

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

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- Section
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#### SUBPART H: EFFECTIVE DATES

- Section
- 809.801 Compliance Date
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#### SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

- Section
- 809.901 Definitions (Repealed)
- 809.902 Disposal Methods (Repealed)

- 809.903 Rendering Innocuous by Sterilization (Repealed)
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- 809.905 Recordkeeping Requirements for Generators (Repealed)
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##### Section

- 809.910 Uniform State Hazardous Waste Transportation Registration and Permit Program
- 809.911 Application for a Uniform Permit
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- 809.913 Payment of Processing and Audit Fees
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- 809.916 Previously Permitted Transporters
- 809.917 Uniform Registration and Uniform Permit Conditions
- 809.918 Uniform Registration and Uniform Permit Revision
- 809.919 Transfer of Uniform Registration and Uniform Permits
- 809.920 Audits and Uniform Registration and Uniform Permit Revocation
- 809.921 Permit No Defense

#### 809.APPENDIX A                      Old Rule Numbers Referenced (Repealed)

AUTHORITY: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 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 (A) at 34 Ill. Reg. 3317, effective Feb. 25, 2010; amended in R06-20 (B), at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART A: GENERAL PROVISIONS

##### **Section 809.103            Definitions**

"Act" means the Illinois Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Base state" means the state in which a hazardous waste transporter must obtain a uniform registration, if required by the base state, and uniform permit.

"Board" means the Illinois Pollution Control Board.

"Btu" or "British thermal unit" means the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit

*"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste or special waste into or on any land or water so that such waste or special waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. [415 ILCS 5/3.08](See "Waste", "Special Waste.")*

*"Garbage" means the waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage and sale of produce. [415 ILCS 5/3.11](See "Waste.")*

*"Hazardous waste" means a waste, or combination of wastes, which because of quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential threat to human health or to the environment when improperly treated, stored, transported or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) or pursuant to agency guidelines consistent with the requirements of the Act and Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. [415 ILCS 5/3.15]*

"Hazardous waste transporter" means any person who transports hazardous waste as defined in Section 3.15 of the Act.

*"Industrial process waste" means any liquid, solid, semi-solid or gaseous waste, generated as a direct or indirect result of the manufacture of a product or the performance of a service, which poses a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Industrial process waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings,*

*paint sludges, incinerator ashes, core sands, metallic dust sweepings, asbestos dust, hospital pathological wastes and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris. [415 ILCS 5/3.17]*

"Manifest" means the form provided or prescribed by the Agency and used for identifying name, quantity, and the origin, routing, and destination of special waste during its transportation from the point of generation to the point of disposal, treatment, or storage, as required by this Part, 35 Ill. Adm. Code: Subtitle G, or by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) or regulations thereunder.

"Nonhazardous special waste" means any special waste, as defined in this Section, that has not been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) or pursuant to Board regulations.

"Nonhazardous special waste hauling vehicle" means any self-propelled motor vehicle, except a truck tractor without a trailer, used to transport nonhazardous special waste in bulk or packages, tanks, or other containers.

"Nonhazardous special waste transporter" means any person who transports nonhazardous special waste.

"Off-site" means any site that is not "on-site", as defined in this Section.

"On-site" means (for the purpose of transporting hazardous waste) on the same or geographically contiguous property under the control of the same person even if such contiguous property is divided by a public or private right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way that the person controls, and to which the public does not have access, is also considered on-site property.

"Participating state" means a state that has elected to participate in the uniform program and has entered into a reciprocal agreement.

"Permitted disposal site" means a sanitary landfill or other type of disposal site, including but not limited to a deep well, a pit, a pond, a lagoon or an impoundment that has a current, valid operating permit issued by the Agency and a supplemental permit issued by the Agency specifically permitting the site to accept a special waste tendered for disposal.

"Permitted storage site" means any site used for the interim containment of special waste prior to disposal or treatment that has a current, valid operating

permit issued by the Agency and a supplemental permit issued by the Agency specifically permitting the site to accept a special waste tendered for storage.

"Permitted treatment site" means any site used to change the physical, chemical or biological character or composition of any special waste, including but not limited to a processing center, a reclamation facility or a recycling center that has a current, valid operating permit issued by the Agency and a supplemental permit issued by the Agency specifically permitting the site to accept a special waste tendered for treatment.

*"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity or their legal representative, agent or assignee. [415 ILCS 5/3.26]*

*"Pollution control waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution control waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, scrubber sludges and chemical spill cleanings. [415 ILCS 5/3.27]*

"Principal place of business" means the state in which a person owning vehicles used for transporting hazardous waste maintains its central records or majority of its records relating to the transportation of hazardous materials; or the state in which the person owning vehicles used for transporting hazardous waste has the plurality of its mileage.

"Reciprocal agreement" means an agreement between Illinois and another state to participate in the Uniform Program.

"Reclamation" means the recovery of material or energy from waste for commercial or industrial use.

"Refuse" means any garbage or other discarded materials, with the exception of radioactive materials discarded in accordance with the provisions of the Radiation Protection Act [420 ILCS 40] and Radioactive Waste Storage Act [420 ILCS 35]. (See "Waste.")

"Septic tank pumpings" means the liquid portions and sludge residues removed from septic tanks.

*"Site" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation*

or control by this Act or regulations under the Act. [415 ILCS 5/3.43]

"Solid waste." (see "Waste.")

"Special waste" means *any of the following*:

*Potentially infectious medical waste;*

*Hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in 35 Ill. Adm. Code 722.111, including a residue from burning or processing hazardous waste in a boiler or industrial furnace unless the residue has been tested in accordance with 35 Ill. Adm. Code 726 and proven to be nonhazardous;*

*Industrial process waste or pollution control waste, except:*

*Any such waste certified by its generator, pursuant to Section 22.48 of the Act, not to be any of the following:*

*A liquid, as determined using the paint filter test set forth in 35 Ill. Adm. Code 811.107(m)(3)(a);*

*Regulated asbestos-containing waste materials, as defined under the National Emission Standards for Hazardous Air Pollutants in 40 CFR 61.141;*

*Polychlorinated biphenyls (PCBs) regulated pursuant to 40 CFR 761;*

*An industrial process waste or pollution control waste subject to the waste analysis and recordkeeping requirements of 35 Ill. Adm. Code 728.107 under the land disposal restrictions of 35 Ill. Adm. Code 728; and*

*A waste material generated by processing recyclable metals by shredding and required to be managed as a special waste under Section 22.29 of the Act;*

*Any empty portable device or container, including but not limited to a drum, in which a special waste has been stored, transported, treated, disposed of, or otherwise handled, provided that the generator has certified that the device or container is empty and does not contain a liquid, as determined using the paint filter test set forth in 35 Ill. Adm. Code 811.107 (m)(3)(a). "Empty portable device or container" means a device or container in which removal of special waste, except for a residue that shall not*

*exceed one inch in thickness, has been accomplished by a practice commonly employed to remove materials of that type. An inner liner used to prevent contact between the special waste and the container shall be removed and managed as a special waste; or*

*As may otherwise be determined under Section 22.9 of the Act.  
[415 ILCS 5/3.45]*

"Special waste transporter" means any person who transports special waste (as defined in Section 3.45 of the Act) from any location.

"Spill" means any accidental discharge of special waste.

"Storage" means the interim containment of special waste prior to disposal or treatment.

"Tank" means any bulk container placed on or carried by a vehicle to transport special waste, including wheel mounted tanks.

*"Treatment" means any method, technique or process, including neutralization designed to change the physical, chemical or biological character or composition of any special waste so as to neutralize that waste or so as to render that waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of special waste to render it less dangerous or nonhazardous. [415 ILCS 5/3.49]*  
Treatment also includes reclamation, re-use and recycling of special waste.

"Truck" means any unitary vehicle used to transport special waste.

"Truck tractor" means any motor vehicle used to transport special waste that is designed and used for drawing other devices and not so constructed as to carry a load other than a part of the weight of the device and load so drawn.

"Uniform application" means the uniform registration and uniform permit application form established under the Uniform Program and provided by the Agency.

"Uniform permit" means the permit issued by a base state under Part II of the uniform application.

"Uniform Program" means the program established pursuant to the directive of the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 USC 1 et seq.) and the Hazardous Materials Transportation Authorization Act of 1994 (49 USCS 5101 et seq.) and implemented pursuant to the Final Report: Uniform Program Pilot Project and the State Program Administrator's Manual, Uniform

Program, Alliance for Uniform HazMat Transportation Procedures, incorporated by reference in Section 809.104.

"Uniform registration" means the annual registration issued by a base state under Part I of the uniform application, if the base state has a registration requirement.

"Vehicle" means any *self-propelled motor vehicle, except a truck tractor without a trailer, designed or used for the transportation of hazardous waste.* [415 ILCS 5/22.2(1-5)(1)]

*"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.94 of the Act, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or byproduct materials as defined by the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.) or any solid or dissolved material from any facility subject to The Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.* [415 ILCS 5/3.53]

"Washwater", as used in this Part, means a mixture of water, nonhazardous cleaning compounds, and residue that results from cleaning surfaces and equipment and which is collected separately from sewage.

~~"Wastewater", as used in this Part, means sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff,~~ stormwater, surface water, groundwater or nonhazardous washwater that has been contaminated with used oil but has not been mixed with sewage, industrial waste or any other waste.

(Source: Amended at 34 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 September 2, 2010, by a vote of 4-0

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board