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8 The following is the transcript of a hearing
9 held in the above-entitled matter, taken
10 stenographically by GEANNA M. IAQUINTA, CSR, a
11 notary public within and for the County of Cook and
12 State of Illinois, before John C. Knittle, Hearing
13 Officer, 100 West Randolph Street, Chicago,
14 Illinois, on the 31st day of July, 1998, A.D.,
15 commencing at 10:00 o'clock a.m.

24

1 A P P E A R A N C E S:

2 HEARING TAKEN BEFORE:

3 ILLINOIS POLLUTION CONTROL BOARD,
100 West Randolph Street
4 Suite 11-500
Chicago, Illinois 60601
5 (312) 814-6923
BY: MR. JOHN C. KNITTLE

6

7 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

8 Mr. Joseph Yi

9 Mr. Anand Rao

10 Mr. Joel Sternstein

11

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
12 PRESENT:

13 Ms. Kimberly Robinson

14 Mr. Edwin Bakowski

15 Mr. David Walters

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1 THE HEARING OFFICER: Good morning. My name is
2 John Knittle. I have been appointed by the Board to
3 serve as hearing officer in this proceeding which is
4 entitled, In The Matter Of, Nonhazardous Special
5 Waste Hauling and the Uniform Program, 35 Illinois
6 Administrative Code 809.
7 With me today is Joseph Yi, the Board member
8 assigned to this matter. Also present is Anand Rao,
9 the Board's technical expert. Nobody else is
10 present here today from the Board or from the
11 public. This is the second hearing in this
12 proceeding which was filed on May 8th, 1998, by the
13 Illinois Environmental Protection Agency.
14 On May 21st, 1998, the Board accepted Parts
15 729.808, 809, and 811 of the proposal for hearing.
16 As I said, we had a hearing on July 21st, 1998, and
17 the transcript to that hearing along with the
18 exhibit, which is entered, are out in front for
19 anyone who needs one.
20 Also up front are sign-up sheets for notice and a
21 service list. Please sign up if you wish to be
22 included on either list. Everyone here is on both
23 lists. So I'm not going to explain what they mean.
24 As I stated before, we received prefiled

1 testimony from the Agency in this matter which was
2 entered into the record as Exhibit No. 1 at the
3 first hearing. Copies are present for anyone who
4 needs it.

5 I'm not going to have the two witnesses read
6 their testimony again, especially as there is nobody
7 present to hear it who hasn't heard it before, but
8 if Anand would like a summary or if anybody shows up
9 who would like a summary, perhaps you guys would
10 summarize the testimony for us.

11 That's pretty much all I have initially. Mr. Yi,
12 is there anything you wish to say?

13 MR. YI: On behalf of the Board, I welcome you
14 to this public hearing and to the city of Chicago
15 this morning. I am looking forward to a continued
16 fair and efficient hearing -- rulemaking.

17 THE HEARING OFFICER: Thank you, Mr. Yi.
18 Kim, if you'd like to give an opening statement for
19 the record, you'd be more than welcome to.

20 MS. ROBINSON: I'm not going to go ahead and
21 give an opening statement since there's nobody here
22 from the public, but I would like to ask you if you
23 want to reswear the witnesses or continue as if
24 they're already sworn?

1 THE HEARING OFFICER: We're going to reswear
2 them again --

3 MS. ROBINSON: Okay.

4 THE HEARING OFFICER: -- if that's okay with
5 you two witnesses. Can you swear the witnesses,
6 please?

7 (Witnesses sworn.)

8 WHEREUPON:

9 EDWIN C. BAKOWSKI,

10 DAVID WALTERS,

11 called as a witnesses herein, having been first
12 duly sworn, testified and saith as follows:

13 THE HEARING OFFICER: Well, the witnesses are
14 now available for questions, Mr. Rao.

15 MR. RAO: Do you want me to start?

16 MS. ROBINSON: May I add one more thing? Just
17 for the record, there is a copy -- one copy of the
18 proposal from the Agency and several copies of the
19 testimony if anybody happens to show up. I have one
20 extra copy here of the proposal as well.

21 THE HEARING OFFICER: And for the record, we
22 have received one public comment in this matter from
23 Cynthia Hilton, and I have copies of that available
24 if anyone would like a copy.

1 So that being said, do you have anything else,

2 Kim, before we ask some questions?

3 MS. ROBINSON: I have nothing further.

4 MR. RAO: I'm going to start. I have a few

5 questions for Mr. Bakowski concerning his

6 testimony. Basically, my questions are directed to

7 the proposed amendment to Section 809.402(b). As

8 proposed now, you know, the change would exempt used

9 oil handling facilities from obtaining an operating

10 permit, and I realize that the Agency is proposing

11 this change to cure some inconsistencies in the

12 Board regulations under part 807, but I'd still like

13 to, you know, get some clarifications as to the

14 implications of this change.

15 Specifically, I'd like the Agency to clarify

16 whether used oil management facilities, which are

17 regulated under Part 739, are they required to have

18 any kind of permits under Part 739?

19 MR. BAKOWSKI: Okay. I guess in looking at

20 402(b) it's not that we're proposing to exempt them

21 from getting a permit, it's just proposing to exempt

22 that if they -- exempt them from the requirement of

23 having -- of having a permit to receive that type of

24 waste.

1 The current rule requires them to have a permit
2 to receive it, and this would exempt them from that
3 requirement to have a permit to receive it because
4 809 is not a permitting requirement, it's the
5 transportation requirement, and as I said in my
6 testimony, it's the current understanding of the
7 Agency that based on the language in 807 that
8 currently facilities regulated under 739 are exempt
9 from having permits.

10 MR. RAO: So --

11 MR. BAKOWSKI: But the exemption is in 807, not
12 in 809.

13 MR. RAO: Let me understand what you're
14 saying. Are you saying that now the amendment you
15 have proposed under 809.402(b) that says except any
16 person who is operating as a used oil aggregate end
17 point, used oil burner, used oil collection center,
18 used oil marketer, used oil processor, or used oil
19 concert facility as defined by 739 need not have a
20 permit pursuant to 807?

21 MR. BAKOWSKI: No, because at the beginning of
22 (b) it says no person may deliver a special waste in
23 Illinois unless the person who accepts the waste has
24 a permit.

1 MR. RAO: Yeah.

2 MR. BAKOWSKI: And what we're -- and what we're
3 doing in this edition is making this consistent with
4 807 which says that they don't need a permit. So
5 we're saying that if they don't need a permit, but
6 they're operating in accordance with 739 they may
7 accept this special waste without a permit because
8 809 says you can't accept special waste unless you
9 have a permit, and if 807 doesn't require them to
10 get a permit, but 809 says you can't receive special
11 waste without a permit, there's a conflict.

12 MR. RAO: Yeah. I realize that there's a
13 conflict. Now, what I was saying -- asking was
14 essentially what you mean is if a facility is just
15 accepting used oil --

16 MR. BAKOWSKI: Correct.

17 MR. RAO: -- as defined in 739, they don't have
18 to have a permit pursuant to 807?

19 MR. BAKOWSKI: 807 exempts them from the permit
20 requirements is our current understanding.

21 MR. RAO: Yeah. So my question was are there
22 any permitting requirements under 739?

23 MR. BAKOWSKI: There are no permitting
24 requirements under 739. They just have a

1 registration requirement.

2 MR. RAO: That was my question.

3 If there are no permit requirements, you know,
4 what kind of oversight does the Agency have when
5 regulating these facilities under 739?

6 MR. BAKOWSKI: What kind of oversight --

7 MR. RAO: What kind of oversight does the
8 Agency have on these facilities --

9 MR. BAKOWSKI: Oh, the current --

10 MR. RAO: -- under 739?

11 MR. BAKOWSKI: I would say that under current
12 staffing levels, facilities that have permits are
13 routinely scheduled for inspections. Facilities
14 that are exempt from permits are either randomly
15 inspected or inspected due to complaints.

16 MR. RAO: So the Agency will not go on its own
17 and inspect these facilities if there are no
18 complaints from anybody?

19 MR. BAKOWSKI: Generally speaking, there may be
20 a random inspection once in a while. They say we
21 ought to go look at one of these to see how they're
22 doing or if there's a problem at a facility we go,
23 but I don't think they would be routinely scheduled
24 for inspections.

1 MR. RAO: In proposing this change under
2 809.402, did the Agency consider the alternative of
3 proposing an amendment to 807.105 to require these
4 facilities to have permits?

5 MR. BAKOWSKI: In proposing this change, I
6 wasn't personally involved in the rulemaking that
7 adopted that, and I'm not aware of the Agency's
8 position at that time, but I think we just accepted
9 that that's the current reading of the rule, and we
10 just thought that addressing the manifesting problem
11 was our intent in this rule. We didn't really
12 consider that in those discussions.

13 MR. RAO: From a policy perspective, you know,
14 does the Agency believe that used oil management
15 facilities should be subject to state permit
16 requirements that are applicable to other special
17 waste facilities?

18 MR. BAKOWSKI: I guess since that wasn't
19 considered in discussing how my testimony would go
20 together, I think that would be a question I think
21 we need to go back and deliberate at the Agency and
22 come back and address that in comments.

23 MR. RAO: Would it be possible for you to do
24 that in the comments?

1 MR. BAKOWSKI: I think we can.

2 MR. RAO: That's all I have on this issue, and

3 I have a couple of minor clarification questions

4 about the rule itself unless you have --

5 THE HEARING OFFICER: I just have a question,

6 and you'll have to forgive me because I'm not an

7 extremely technical person and may be confused here,

8 but there's going to be no permitting for facilities

9 receiving used oil, right? There's not going to be

10 a permitting program even though the Agency may at

11 times do a random inspection or if there's a

12 complaint?

13 MR. BAKOWSKI: Right. Under 739, there's

14 certain management standards they have to meet, and

15 there's certain registration requirements that they

16 have, but there's no formal necessary approval of

17 that process. It's more of a case of either random

18 inspection or due to an incident we would go out and

19 inspect and then we'd see if they're complying with

20 those management standards.

21 THE HEARING OFFICER: But after this proposed

22 regulation, if it goes through, there will not be a

23 permit required to receive used oil?

24 MR. BAKOWSKI: Right.

1 THE HEARING OFFICER: Because I think that's
2 kind of what we wanted you to address and see if --

3 MR. BAKOWSKI: Yeah. His question was does the
4 Agency really --

5 THE HEARING OFFICER: They want that --

6 MR. BAKOWSKI: Is that our position because --

7 THE HEARING OFFICER: Right, and then if it's
8 not, if it was something we could remedy later, we'd
9 like to know if you have any ideas on that or
10 whether or not you would propose something for us to
11 add in the rule to take care of that or at least to
12 consider that.

13 MR. RAO: Yeah.

14 MS. ROBINSON: This is something we're going to
15 have to address --

16 THE HEARING OFFICER: Right. No, I
17 understand. I just want to -- I was confused.

18 MR. RAO: Okay. Under Section 809.202 and 203
19 we deal with, you know, filing of application for a
20 uniform permit and uniform registration. There are
21 a couple of provisions where the Agency is required
22 to notify the transporter of, you know, whether the
23 applications are complete, and I think it also has
24 requirements about how the Agency is going to notify

1 them about approval of their applications, and in
2 the proposal, the Agency has not specified any time
3 frames as to, you know, the turnaround time for the
4 Agency's position.

5 I wanted to know if the Agency has any specific
6 time frame in mind that would work for you because
7 right now it's open-ended. You know, they file the
8 application and then the Agency can act on it.

9 MR. WALTERS: The uniform program, the program
10 administrators manual laid out by the uniform -- the
11 alliance that developed this program does set out
12 time frames for us to respond.

13 MR. RAO: Would it be possible for you to put
14 those time frames in the rule, or is there any
15 particular reason for not doing so?

16 MR. WALTERS: Certainly we can add those time
17 frames. We didn't do it because it would have added
18 to the bulk of the rules. It would have made them
19 much, much larger, but we can certainly add that if
20 you'd like.

21 MR. RAO: Okay. That's all I have.

22 THE HEARING OFFICER: That's all the questions
23 that the Board has at this point in time. Do you
24 have any other items in which to address at this

1 moment? I'm going to want to, you know, recess for
2 about 20, 30 minutes just to make sure no one comes
3 in.

4 MS. ROBINSON: I'd like to ask for the time
5 frames, would it be acceptable to do that in an
6 errata sheet? Is that how you would like to see
7 that happen?

8 MR. RAO: Yeah.

9 MS. ROBINSON: I think what we were trying to
10 express here is that the program administrators
11 manual sets out so many details that we didn't know
12 where to draw the line on adding things in because
13 it could have tripled the size of the rules. So we
14 just incorporated it by reference, but time frames
15 are really quite easy to add in. So I can do that
16 through an errata sheet if you'd like.

17 THE HEARING OFFICER: That would be perfectly
18 acceptable.

19 Well, then I'm going to --

20 MS. ROBINSON: I'm sorry.

21 THE HEARING OFFICER: No, no.

22 MS. ROBINSON: Go ahead.

23 THE HEARING OFFICER: I'm just going to recess
24 this for about 20 minutes. We'll stay convened.

1 It's now 10:18 according to my watch. We'll meet
 2 again at 10:45 and see if anyone decides from the
 3 public to attend this hearing. So I guess we stand
 4 in recess.

5 (Break taken.)

6 THE HEARING OFFICER: We are back on the
 7 record. It's 10:45 a.m. Nobody from the public has
 8 attended, but somebody from the Board has attended
 9 the hearing. Will you identify yourself for the
 10 record, please?

11 MR. STERNSTEIN: My name is Joel Sternstein,
 12 S-t-e-r-n-s-t-e-i-n, and I'm an attorney with the
 13 Pollution Control Board.

14 THE HEARING OFFICER: Thank you very much,
 15 Mr. Sternstein.

16 Other than that, nobody has seen fit to attend
 17 the hearing today. So we have no further
 18 substantive matters.

19 Does the Agency have anything they wish to speak
 20 to at this point in time?

21 MS. ROBINSON: We have nothing further. We
 22 tried to contact the Agency to discuss the issue
 23 that we stated we would address in comments. We
 24 were unable to contact anybody. So we will need to

1 address that in final comments.

2 THE HEARING OFFICER: All that remains then is

3 I want to talk about the EcIS hearing again. You

4 know, I talked to you last time. We still haven't

5 had an EcIS hearing in this matter as required -- as

6 is required by law. We're still trying to formalize

7 procedures here at the Board in the new fiscal year

8 on how to proceed with EcIS hearings, and when we

9 do, we will set one up. We discussed this last

10 time, and I will, of course, inform all interested

11 parties as to when that hearing will be.

12 No further hearings are scheduled except the EcIS

13 hearing, which will be scheduled later. There's

14 going to be a transcript in this matter in the near

15 future, which I'm sure if you'd like a copy you can

16 talk to the court reporter directly or you can

17 contact me or the clerk's office here in Chicago and

18 get one for free. Public comments in this matter is

19 something we should talk about.

20 Can we go off for just a second?

21 (Discussion had

22 off the record.)

23 THE HEARING OFFICER: Pursuant to a discussion

24 off the record, public comments in this matter must

1 be filed by September 1st, 1998, which is a

2 Tuesday.

3 The mailbox rule will apply, and anyone may file

4 public comments with the clerk of the Board.

5 If you're on the service list, of course, your

6 comments must be simultaneously delivered to all

7 persons on the service list, as you know.

8 Contact the clerk's office before you file them

9 just to make sure that nobody else has been added to

10 the service list if you would.

11 Please note that there will be additional time to

12 file public comments which will commence on the date

13 the first notice appears in the Illinois Register.

14 You'll have 45 days from publication of the

15 register. That's all I have.

16 Is there anyone present who would like to testify

17 here today?

18 Seeing nobody, this concludes today's hearing.

19 Thank you all very much for attending, and the

20 hearing is closed.

21 (Whereupon, these were all the

22 proceedings had in the

23 above-entitled matter.)

24

1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF C O O K)

3

4 I, GEANNA M. PIGNONE-IAQUINTA, do
 5 hereby state that I am a court reporter doing
 6 business in the City of Chicago, County of Cook, and
 7 State of Illinois; that I reported by means of
 8 machine shorthand the proceedings held in the
 9 foregoing cause, and that the foregoing is a true
 10 and correct transcript of my shorthand notes so
 11 taken as aforesaid.

12

13

 Geanna M. Pignone-Iaquinta
 Notary Public, Cook County, IL
 Illinois License No. 084-004096

16

SUBSCRIBED AND SWORN TO
 17 before me this____day
 of_____, A.D., 1998.

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 Notary Public

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