



Public Remarks
by Joshua Whitt
December 19, 2013 Board Meeting

My name is Joshua Whitt. As the Board knows we represent a number of the taxing bodies that have an interest in the taxation of the Wood River Refinery in Madison County Illinois.

The Board has before it today ten applications for pollution control certifications filed by WRB Refining. These ten applications have a reported installed cost of \$252 million. If these ten items are certified by the Board, it will bring the total installed cost of items certified at the Wood River Refinery since July 21, 2011, to just under \$2 billion.

While this Board's primary task may be determining whether or not to grant a request for pollution control certification, the Board should not undertake this responsibility in a vacuum. If the Board certifies the ten items it has before it today, WRB will go directly to the assessment official in Madison County, certifications in hand, and say the Pollution Control Board just granted \$252 million of pollution control certifications, reduce the assessment of the Refinery by the same amount.

By allowing WRB to modify the pollution control facility application and withhold certain information the Board is allowing WRB to abuse the tax certification process.

In every one of the applications granted by this Board since July 21, 2011, and the ten before the Board today, WRB has modified the application and withheld critical information. While this information may not be important to the Board in determining whether or not to certify the item, it plays an important role in the process; you required it on your application for a reason.

The Pollution Control Certification application specifically requires the applicant to identify the fair cash value of the pollution control facility if it's considered real property. WRB refuses to provide this information. Instead, WRB changes the form to read, total installed cost, not the fair cash value if considered real property. Similarly, the application requires that the applicant provide the percentage the control facility bears to the whole facility value; however, WRB does not provide a response but simply states "to be determined". WRB modifies the form and places the words "to be determined" on the application in hopes that the Board certifies the facility without ever requiring WRB to report the fair cash value of the facility or what percentage of the facility bears to the whole value of the refinery. That way WRB can simply take its self-reported total installed cost dollars from the application, not the fair cash value dollars, but total installed cost dollars in the application to the Madison County assessment officials and say the Pollution Control Board granted \$250 million of pollution control certifications to reduce the value of the refinery.

The distinction between cost and value is important. WRB just spent \$3.8 billion on the refinery as we all know what the coke oven refinery spent on the core project. However, down in Madison County they're arguing cost doesn't equal value. Just because we spend \$3.8 billion on a refinery doesn't mean it's worth anywhere near \$3.8 billion. But the numbers that you are certifying here are cost dollars not value dollars. So at one hand they are arguing cost doesn't

equal value here, they're replacing the requested value with cost information. Undoubtedly if WRB was required to properly complete the application referring the actual fair cash value of the pollution control facility and the percentage it bears to the whole value of the facility, very different numbers would be reported.

Not only has WRB been allowed to abuse the certification process by modifying the form to withhold necessary information, there is no verification of the dollars being reported. For example, PCB 14-067, Ultralow sulfur, ultralow NOx Burners for Heaters H-4 & H-5 of Catalytic Reformer No. 3, total install cost of \$28 million. In its recommendation, the EPA states "in keeping with prior recommendations in similar matters the Illinois EPA would expect any preferential tax treatment as determined by the Department of Revenue in separate proceedings to address only the incremental cost associated with the Ultralow sulfur, ultralow NOx Burners in relation to conventional burner systems." Meaning the value of the pollution control facility is the incremental cost of the low NOx burners versus conventional burners. For example, if a low NOx burner costs \$500k and a conventional burner costs \$475k – the incremental difference is the \$25k difference. However, the total reported installed cost of these low NOx burners is \$28 million.

We've consulted with experts, and they said they can't imagine that the difference between conventional burners and low NOx burners is anywhere near \$28 million. They question whether or not the burners alone would cost, low NOx burner would cost, \$28 million and are questioning whether the \$28 million is the cost of completely reconstructing the heaters and if you certify the \$28 million to go to the Department of Revenue are you about economic productivity, but what happens is if you certify at \$28 million, WRB takes the \$28 million certified to the local assessment officials, the \$28 million has not been verified and that says take that off the rolls.

This is why, this is exactly why you are seeing WRB file applications for repairs to already existing pollution control facilities. WRB is simply banking dollars in the pollution control column. For example, docket number 14-089, is the cost of repairs to the sewer master box cover that resulted, damage resulted, from excessive rain water that apparently resulted from the remnants of a hurricane. WRB has applied to have these repairs to an already existing certified pollution control facility also certified as a pollution control facility. They're repairing an already certified PCF, [pollution control facility] certify that. They want the dollar certified so they can go to the local assessment officials and say take the cost of these repairs off the value of the facility. The same can be seen with docket number 14-084, these are storage tank upgrades to abate air pollution from the storage tanks. A total install cost of \$17 million. However, there are no specific facilities identified in the application anywhere. Instead WRB states that it spent \$17 million fixing up its storage tanks, certified those dollars as pollution control facilities, but doesn't identify what improvements they are asking to be certified; they just said we spent \$17 million, certify that capital project as a pollution control facility. How do we handle that at the Department of Revenue, one of the manuals at the Department of Revenue, how do we argue over the economic productivity of something that we can't even identify?

Lastly, the statute requires that in order for an improvement to be certified as a pollution control facility its primary purpose must be pollution control. It's no secret that the taxing bodies don't believe the EPA and Pollution Control Board are applying the statute properly or are applying

the right primary purpose test. However, the applications before the Board today and the recommendations from the EPA, if granted, would completely eviscerate the words primary purpose from the statute. For example, PCB docket 14-065, Sulfur removal from coker LPG total installed cost \$105 million. Sulfur removal from coker LPG is not like sulfur removal from gasoline or diesel fuel. This is not a situation where WRB was required to install facilities to comply with an EPA mandate. This is a situation where WRB made the conscious economic decision to switch the type of crude oil that it was processing. It made the decision to process cheaper higher sulfur crude oil. In doing so the LPG screen coming off the coker inevitably contained more sulfur, sulfur that would have to be removed. Removed not to comply with any environmental protection regulation sulfur that had to be removed so that they can sell the product to meet market demand. There are no environmental regulations requiring how much sulfur can or cannot be in LPG. The need for additional sulfur removal is the direct result of WRBs strategic objective to increase profits by processing cheaper higher sulfur crude oil from the Canadian tar sands.

WRBs purpose, primary or otherwise, from installing this equipment was to profit from lower cost crude oils, not environmental protection. If this Board finds that this equipment qualifies as a pollution control facility it will have removed the primary purpose requirement from the statute altogether. To further demonstrate this point, consider again, the storage tank upgrades project 14-084. The storage tank upgrades project includes and I quote "...the installation of new foam fire protection systems to fight tank fires." The primary purpose of this equipment is pollution control and not fighting tank fires? If pollution control equipment is fire suppression equipment, then the Board should be prepared cause I assume that every owner of a building in Chicago will be looking for certification of the sprinkler systems in the building.

We would simply ask that the Board, before it grants the \$252 million, require WRB to fully complete the application that application as drafted and approved by the Board not modified. Require that the specific installed facilities be identified and itemized in the application and not simply certified gross capital project dollars. Third, require that there be some documentation verifying the cost of what is being certified. The cost of what's being certified includes only the pollution control facility and not additional costs associated with the project. And evaluate the actual primary purpose, because I guarantee you, I assure you that what is being reported on in the application is not the whole story; a number of these things were being done for economic reasons and not simply for the primary purpose of abating pollution.

Thank you.

Transcribed by:

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