

ILLINOIS POLLUTION CONTROL BOARD

WRB REFINING, LLC)	PCB 2012-065	PCB 2012-078
(multiple applications))	2012-066	2012-080
)	2012-067	2012-081
)	2012-068	2012-082
)	2012-069	2012-083
)	2012-070	2012-084
)	2012-071	2012-086
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PROPERTY IDENTIFICATION NUMBERS)	2012-077	
19-1-08-35-00-000-001,)		
19-1-08-34-00-000-008.004, and)		
19-1-08-34-00-000-006; or portions thereof)		

(Tax Certification – Air)

To: See Attached Service List

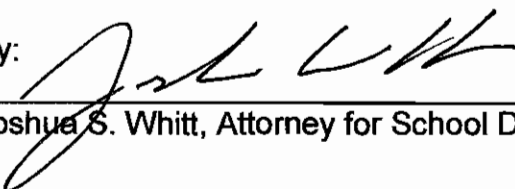
NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board in the above-captioned proceedings the Appearance and Petition For Leave To Intervene of Roxanna Community Unit School District No. 1, copies of which are herewith served upon you.

DATED this 9th day of December, 2011.

ROXANA COMMUNITY UNIT SCHOOL
DISTRICT NO. 1

By:



Joshua S. Whitt, Attorney for School District

WHITT LAW LLC
Joshua S. Whitt, Esq.
70 S. Constitution Drive
Aurora, Illinois 60506
(630) 897-8875

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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Roxana Community Unit School District No. 1.

DATED this 9th day of December, 2011.

ROXANA COMMUNITY UNIT SCHOOL
DISTRICT NO. 1

By:


Joshua S. Whitt, Attorney for School District

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PROPERTY IDENTIFICATION NUMBERS)	2012-074	2012-089
19-1-08-35-00-000-001,)	2012-075	2012-090
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)		
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PETITION FOR LEAVE TO INTERVENE

NOW COMES the Board of Education of Roxana Community Unit School District No. 1 (hereinafter "School District"), by its attorneys, WHITT LAW LLC, and, for its Petition for Leave to Intervene in the above-captioned proceedings¹ before the State of Illinois Pollution Control Board, states as follows:

1. Certification of these properties as pollution control facilities will materially prejudice and adversely affect the School District by the potential loss of as much as \$8.9 million in annual property tax revenue. They consist of over \$708 million worth of real property that would be locally assessed and taxed for the benefit of the School District and other taxing bodies. In light of the substantial value of these properties and the overwhelming number of applications to be considered at this time, intervention by

¹ The School District acknowledges that the above-captioned applications for tax certification have not been consolidated. Given the sheer volume of applications and the fact that these properties are intricately related and connected, the School District has prepared a single petition for the Board's convenience.

the School District would provide this Board with an additional level of review and information to aid in its decisions.

FACTUAL BACKGROUND

2. WRB Refining, LLC (herein "WRB Refining") owns and operates the Wood River petroleum refinery in Madison County, Illinois. The Wood River petroleum refinery is within the boundaries of the School District and the School District receives property tax revenues from it.

3. The School District has previously petitioned the Board for leave to intervene in two other applications filed by WRB Refining, PCB 2012-039 and -040. Those matters respectively involve a Tier II Gasoline SZorb Unit Project worth approximately \$100 million and an Ultralow Sulfur Diesel Hydrotreater Project worth approximately \$200 million. The Board denied those petitions as moot and the School District filed motions for reconsideration which remain pending at the time of this filing.²

4. On November 28, 2011, the Illinois Environmental Protection Agency (herein "the Illinois EPA") filed recommendations for tax certification in the twenty-five docket numbers at issue here. These properties have a total value of at least \$708,543,732. According to WRB Refining, twelve of these properties were completed between 1997 and 2009, another was slated for completion on December 30, 2010, ten more were scheduled to be completed in 2011 (two of them on December 31), and the last two are scheduled for completion in 2012. According to the Illinois EPA, WRB Refining filed all of these applications with the agency on October 14, 2010. The Illinois

² For brevity, the School District will not repeat all of the factual history and arguments made in its Motions For Reconsideration filed in PCB 2012-039 and -040, but incorporates those motions and the exhibits attached thereto as if fully set forth herein.

EPA completed technical review of nine of these applications on November 18, 2011, seven more on November 23, and eight more on November 28 – the same day that the Illinois EPA filed all twenty-five recommendations with the Board. The School District has prepared a table summarizing the above information, attached hereto as Exhibit 1.

5. The Wood River petroleum refinery was previously the subject of a 2004 property tax settlement agreement between then-owner ConocoPhillips and a number of local taxing bodies. Through the 2010 tax year, the assessed value of the refinery was pre-determined under that agreement. This effectively excluded all of these properties from taxation. With the agreement ending in the 2010 tax year, WRB Refining filed these twenty-five applications for pollution control facility tax certifications with the Illinois EPA.

6. As noted in the motions for reconsideration, a number of taxing bodies, including the School District, are currently litigating the fair market value of the refinery with WRB Refining before the Madison County Board of Review.³ WRB Refining has represented that it has over \$3 billion worth of property in applications for pollution control facility certification pending with the Illinois EPA. The twenty-five properties at issue here and the two properties at issue in the 2012-039 and -040 cases total just over \$1 billion. It is reasonable to anticipate that another \$2 billion worth of tax certification applications will be filed with the Board by the Illinois EPA on behalf of WRB

³ The taxing bodies involved in that litigation are: Madison County, Lewis & Clark College, the St. Louis Regional Airport District, the Wood River Township Hospital District, the Village of Roxana, Roxana Community Unit School District No. 1, Hartford-Wood River School District No. 15, East Alton-Wood River Community High School District No. 14, Chouteau Township, Chouteau Township Road & Bridge District, Roxana Public Library District, Roxana Park District, and South Roxana Fire Protection District. All are represented by Whitt Law LLC in that litigation.

Refining, and there may be substantial litigation over the qualification of all of these improvements as pollution control facilities.

APPLICABLE LAW AND REGULATIONS

7. The Board's regulations allow a party to intervene in any adjudicatory proceeding when the party "may be materially prejudiced absent intervention" or "may be adversely affected by a final Board order." 35 Ill. Admin. Code § 101.402(d) (2011).

8. The Board "encourages public participation in all of its proceedings." 35 Ill. Admin. Code § 101.110(a) (2011).

9. The Board has previously held that third-party intervention is allowed in tax certifications and should be encouraged due to the Board's limited ability to uncover possible fraud and misrepresentation. *Reed-Custer Community Unit School District No. 255 v. Pollution Control Board*, 232 Ill. App. 3d 571, 576 (1st Dist. 1992).

10. After it has granted certification of a pollution control facility, the Board may revoke a pollution control certificate if "[t]he certificate was obtained by fraud or misrepresentation." 35 ILCS 200/11-30 (2011); *see also* 35 Ill. Admin. Code § 101.216(c)(1) (2011). However, the review for fraud or misrepresentation, under current Illinois case law, may not actually include the essential question of whether the property at issue "is in fact a 'pollution control facility'" as defined by the Property Tax Code. *Reed-Custer*, 232 Ill. App. 3d at 577-78. Thus, it is crucial for the Board to fully consider the qualifications of the property before granting certification.

EFFECT ON THE SCHOOL DISTRICT

11. These properties will contribute an assessed value of \$236 million to the School District's property tax base if assessed by the local board of review. They do not

meet the statutory definition of pollution control facilities. Removing them from the locally assessed tax rolls and thus giving them preferential tax treatment will materially prejudice and adversely affect the School District by depriving it of property tax revenue. This petition for leave to intervene is timely filed and should be granted.

12. Under the Property Tax Code, real property in Illinois is generally valued for property tax purposes at one-third of its "fair cash value." 35 ILCS 200/9-145 (2011). These assessments are performed by local assessment authorities.

13. Property certified as a pollution control facility is entitled to preferential property tax treatment. 35 ILCS 200/11-5 (2011). Pollution control facilities are valued at one-third "of the fair cash value of their economic productivity to their owners." *Id.* Assessments of pollution control facilities are performed by the Illinois Department of Revenue. 35 ILCS 200/11-20 (2011).

14. The School District's total tax rate for its operating funds for the 2010 tax year was 3.81%, and these properties would have resulted in over \$8.9 million in property tax revenue last year if they had not been excluded from taxation under the 2004 settlement agreement. Multiplying this amount over the life of these assets gives WRB Refining a tremendous incentive to seek pollution control facility treatment for them and claim that they have no economic productivity value – even if they do not qualify for that status.

15. This adverse impact on the School District would be most inequitable if preferential treatment is given to properties which do not meet the strict definition of "pollution control facility" as set out by the Legislature in the Property Tax Code. It

would also have an adverse impact upon all the other taxpayers located in the boundaries of the School District.

16. The most egregious example of a property in these applications that does not meet that statutory definition is PCB 2012-075, the Ultralow Sulfur Diesel Expansion Project ("ULSD Expansion"). This single application covers property worth over \$406 million, and WRB Refining claims it produces absolutely no income whatsoever. However, WRB Refining states that the ULSD Expansion "directly reduces SOx pollution by removing sulfur from the diesel product" and "provides the diesel quality necessary for reduction emissions of oxides of nitrogen and particulate matter through the use of advanced emission control systems in diesel engines." (2012-075 Agency Recommendation, Ex. A, Section D).

17. That description may sound familiar because WRB Refining made the same statements regarding the Ultralow Sulfur Diesel Hydrotreater that is the subject of PCB 2012-040 and the School District's prior motions for reconsideration⁴, and which is also mentioned as part of the process described for the ULSD Expansion. Here, WRB Refining acknowledges that this sulfur removal allowed it to meet the requirements for the sulfur content of diesel fuel as set by the U.S. Environmental Protection Agency. Otherwise, its high-sulfur diesel "would be blended directly with other diesel components and sold as high valued diesel." *Id.* Both the Hydrotreater and the ULSD Expansion are economic facilities that generate revenue. Their primary purpose is the production of profitable low-sulfur diesel which can be sold in the U.S. without

⁴ The School District's discussion in paragraphs 35 through 44 of the Motions for Reconsideration of the U.S. EPA's regulation of diesel fuel and gasoline may be instructive here and is fully incorporated herein.

restriction, unlike the less-profitable high-sulfur diesel. These projects do not meet the statutory definition of a pollution control facility because the reduction of pollution is not their "primary purpose." 35 ILCS 200/11-10 (2011).

18. WRB Refining made similar admissions regarding the Gasoline Hydrotreater that is the subject of PCB 2012-070. Just like the Tier II Gasoline SZorb Unit Project that was the subject of PCB 2012-040 and the School District's prior motion for reconsideration, it "directly reduces SO_x pollution by removing sulfur from the gasoline product" and "provides the gasoline quality necessary for reduction emissions of oxides of nitrogen and particulate matter through the use of advanced emission control systems in gasoline engines." (2012-039 Agency Recommendation, Ex. A, Section D). The Gasoline Hydrotreater is a \$31.8 million project which WRB Refining claims produces absolutely no income whatsoever, despite it allowing WRB Refining to produce and sell gasoline in compliance with U.S. EPA regulations.

19. Furthermore, a number of these applications cover projects which may incidentally reduce air emissions but appear primarily oriented around the recovery of hydrocarbons or the modification of refinery operations, specifically, PCB 2012-068, -074, -078, -081, -088, and -090. Many of these relate to the operation of several flares on the property. WRB Refining has provided almost nothing in the way of details that would allow the Illinois EPA or this Board to evaluate the true primary purpose of these projects.

20. For example, in 2012-088, WRB Refining states only that "[t]his project installs piping tie ins and spools in the Aromatics South Flare headers which will allow for later installation of" a flow meter and emissions monitor. (2012-088 Agency

Recommendation, Ex. A, Section D). WRB Refining states that “[t]his will result in reduced SO_x, NO_x, and CO₂ emissions to air” but the only explanation provided is that “the Aromatics South Flare will be subjected to new and lower flaring limits and refinery operation will be revised to reduce air pollution.” *Id.* There is no description of how the refinery operations will be revised, what or how much piping will be installed, or how the future flow meter and emissions monitor will actually reduce emissions as opposed to simply monitoring them for reporting purposes. Furthermore, this project was completed in 2009 and no timeline is given for the installation of that meter and monitor.

21. Similarly, in 2012-078, a \$32 million project, WRB Refining includes a network of piping, two liquid knock out vessels, and flare gas recovery compressors, intended to recover flare gas and hydrocarbons for reprocessing, but WRB Refining gives no information on how much is recovered, its value, the cost to operate, or the purpose for which it is reprocessed. (2012-078 Agency Recommendation, Ex. A, Sections C & D). WRB Refining admits that it generates revenue but claims that the costs to operate the entire structure are greater – without giving any actual numbers or costs. *Id.* No information is given on what happens to the flare gas recovered other than that it is “routed to the refinery fuel gas treatment system.” *Id.* In addition, the continuous emissions monitoring system included is used solely to “analyze[] the flow and composition” of combusted flare gas and “is the source of data for reporting to the IEPA.” *Id.* Again, there is no description of how this monitor actually reduces emissions.

22. 2012-081, a \$16 million project, also involves extensive piping, flare gas recovery compressors, and flow meters. (2012-081 Agency Recommendation, Ex. A,

Sections C & D). It also involves numerous unspecified revisions to refinery operations affecting four flares. 2012-082, a \$45 million project, involves extensive equipment to recover hydrocarbons, hydrogen, and sulfur, which WRB Refining admits generates revenue. Again, no specific costs or revenue amounts are given.

23. In all, these twenty-five applications represent properties worth over \$700 million. Despite having had them on file for over a year, the Illinois EPA appears to have conducted its technical review of them on three days within a ten-day period, approving eight of them on the same day they were filed with this Board. Clearly, no significant technical review has been conducted. Intervention by the School District would allow this Board the opportunity to adequately review all of these properties and their true primary purposes before granting them preferred treatment as pollution control facilities. Following intervention and the opportunity to fully review these twenty-five properties, the School District will demonstrate that some or all of them are not pollution control facilities because: (1) their "primary purpose" is the production of a final product for sale and not the elimination, prevention, or reduction of air pollution or water pollution; (2) they do not eliminate, prevent or reduce air pollution at the Wood River petroleum refinery; and (3) several actually increase the amount of air pollution at the Wood River petroleum refinery and its surrounding neighborhoods.

24. In addition, WRB Refining has failed to properly complete these applications and, in all but one instance, has inexplicably modified the form prepared by the Illinois EPA. Section E on the second page of the form requires the applicant to submit certain accounting information about the property that is being claimed for certification. Item 5(a) requests the fair cash value of the facility if it were considered

real property. Item 5(e) requests the percentage that the facility bears to the value of the whole facility. The instructions at the bottom of that page state that:

This information is essential to the certification and assessment actions. This accounting data must be completed to activate project review prior to certification by this Agency.

Despite this being essential information required to activate the review by the Illinois EPA, WRB Refining has not submitted it. In all twenty-five of these applications and the two which are subject to the School District's motions for reconsideration, WRB Refining listed the percentage to the whole facility value as "To Be Determined". In all of the applications except PCB 2012-065, WRB Refining has removed the text labeling 5(a) as "Fair Cash Value If Considered Real Property" and replaced it with its own text stating "Total Installed Cost". The Illinois EPA itself has characterized this as essential information to both the certification process and the ultimate assessment process. However, WRB Refining has failed to submit it and the Illinois EPA appears to have missed or ignored this failure. This Board should not ignore it, but should instead allow intervention and require WRB Refining to submit the proper data on all counts.

25. The School District recognizes that the Board must consider the timeliness of its petitions for leave to intervene. 35 Ill. Admin. Code § 101.402(b) (2011). These petitions are timely. Intervention will not "unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding." *Id.*

26. The Illinois EPA's recommendations were filed on November 28, 2011 – a mere three days before the Board's December 1 meeting. The Board took no action on them at that time.

27. The Board's regulations provide that motions may be filed at any time unless otherwise specifically provided. 35 Ill. Admin. Code § 101.500(c) (2011).

Motions that a party desires the Board to rule on before hearing should be filed twenty-one days prior to the regularly scheduled Board meeting that precedes the noticed hearing date, although motions filed after that may be considered if time permits. 35 Ill. Admin. Code § 101.508 (2011). An applicant may petition for review of an Illinois EPA recommendation against tax certification within thirty-five days after service. 35 Ill. Admin. Code § 125.204(b) (2011).

28. This petition has been filed well within the timeframes described above for other filings before the Board and as soon as possible after these recommendations were made publicly available. In fact, although the dockets reflect that these recommendations were filed on November 28, the School District continually monitored the Board's website for such filings, and these did not appear on the website until December 2 – the day after the first meeting at which they were presented.

29. The School District has attempted to obtain copies of WRB Refining's applications from the Illinois EPA in advance of these recommendations being filed by the agency. As noted in the motions for reconsideration, the School District submitted a Freedom of Information Act request seeking them on November 7. The Illinois EPA failed to respond to this request within the statutory timeframe and was not even able to provide a timeline for its response when asked on November 22. However, it was capable of completing the technical review of all twenty-five of these applications between November 18 and 28. To date, it has still failed to respond to this request.

30. The Board has taken no action on these twenty-five applications. The Illinois EPA waited thirteen months to review them. WRB Refining waited several years to submit applications following completion of some of these projects – thirteen years for

PCB 2012-070. Thirteen of these twenty-five projects were submitted with estimated dates of completion that have now passed or will soon approach.

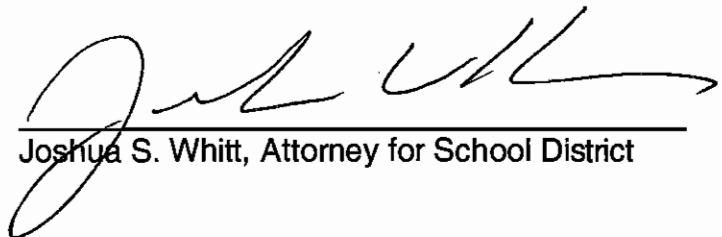
31. In addition, the Board's staff has informed the School District that the Illinois EPA may be filing another fifteen to twenty recommendations on behalf of WRB Refining before the Board's December 15, 2011, meeting. As of the filing of this petition, no such recommendations appear on the Board's website. Should the Illinois EPA file any such recommendations, given the late notice and the fact that they will likely cover properties with similarly questionable qualifications and be worth several hundred million dollars, the School District respectfully requests that the Board grant it leave to intervene on the basis of the arguments presented here without the filing of any additional petition.

32. Intervention by the School District will allow this Board the opportunity to receive additional review and further information on these projects that may be available now and which was not available at the time WRB Refining submitted its applications over one year ago. The School District's intervention will not delay, prejudice, or interfere with these proceedings. Instead, it will allow this Board to carefully review and consider whether or not these \$708 million worth of properties do, in fact, qualify as pollution control facilities before it grants that preferential and essentially irrevocable status upon them.

For these reasons, the Roxana Community Unit School District No. 1, respectfully requests that the State of Illinois Pollution Control Board:

- (1) grant the School District leave to intervene in the above captioned proceedings;
- (2) grant the School District leave to intervene in any additional tax certification proceedings filed by WRB Refining, LLC without an additional petition by the School District, and grant the School District all the rights of an original party to such proceedings;
- (3) set a discovery schedule in the above captioned proceedings;
- (4) schedule a hearing on WRB Refining, LLC's applications;
- (5) upon conclusion of the hearing, enter its orders denying certification of those projects that do not meet the statutory definition of pollution control facilities; and
- (6) grant the Board of Education such other and further relief as the Pollution Control Board deems just and equitable.

ROXANA COMMUNITY UNIT SCHOOL
DISTRICT NO. 1



Joshua S. Whitt, Attorney for School District

Stuart L. Whitt
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Electronic Filing - Received, Clerk's Office, 12/09/2011

PCB Docket	Description	Value	Install Completed	Application to EPA	EPA Tech Memo	EPA Filed w/ PCB
PCB 12-065	Coker Switch Valve Interlock Project	\$7,200,000	4/30/2009	10/14/2010	11/18/2011	11/28/2011
PCB 12-066	VOC Flare Line Heat Trace Project	\$218,000	12/31/2004	10/14/2010	11/18/2011	11/28/2011
PCB 12-067	Refinery-Wide Leak Detection and Repair Program	\$6,165,885	12/30/2010	10/14/2010	11/18/2011	11/28/2011
PCB 12-068	Distilling West Flare Gas Recovery Project	\$46,100,000	12/31/2011	10/14/2010	none	11/28/2011
PCB 12-069	Aromatics West Heater Stack Nox Reduction Project	\$75,000,000	10/15/2012	10/14/2010	11/18/2011	11/28/2011
PCB 12-070	Gasoline Hydrotreater	\$31,800,000	10/4/1997	10/14/2010	11/18/2011	11/28/2011
PCB 12-071	Blow-Off Pit Elimination Project	\$2,400,000	10/30/2006	10/14/2010	11/28/2011	11/28/2011
PCB 12-072	Aromatics South Flare Stack Upgrade	\$983,000	12/31/2005	10/14/2010	11/28/2011	11/28/2011
PCB 12-073	New Units' Continuous Emissions Monitoring Systems for Furnaces	\$2,938,200	4/1/2011	10/14/2010	11/28/2011	11/28/2011
PCB 12-074	New Units' Maintenance Drop-Out System	\$1,792,350	4/1/2011	10/14/2010	11/28/2011	11/28/2011
PCB 12-075	Ultralow Sulfur Diesel Expansion Project	\$406,948,781	4/1/2012	10/14/2010	11/28/2011	11/28/2011
PCB 12-076	Coker Blowdown System Off-Gas Recovery	\$22,971,186	4/1/2011	10/14/2010	11/28/2011	11/28/2011
PCB 12-077	Coker Truck Washing for Particulates	\$530,769	4/1/2011	10/14/2010	11/23/2011	11/28/2011
PCB 12-078	New Units' Flare System	\$32,465,700	4/1/2011	10/14/2010	11/23/2011	11/28/2011
PCB 12-080	Ultralow Nox Burners	\$2,148,726	4/1/2011	10/14/2010	11/23/2011	11/28/2011
PCB 12-081	Subpart Ja Revisions to Flares	\$16,472,680	12/1/2011	10/14/2010	11/23/2011	11/28/2011
PCB 12-082	Aromatics North Flare Gas Recovery Project	\$45,000,000	12/31/2011	10/14/2010	11/18/2011	11/28/2011
PCB 12-083	MACT II Compliance Project for Fluid Catalytic Cracking Unit No. 2	\$1,456,000	5/31/2005	10/14/2010	11/28/2011	11/28/2011
PCB 12-084	New Units' Emissions-Free Sample Stations	\$246,455	4/1/2011	10/14/2010	11/28/2011	11/28/2011
PCB 12-086	Sampling Station Upgrade Project for Fluid Catalytic Cracking Units and Cat Feed Hydrotreater	\$299,000	12/31/2005	10/14/2010	11/23/2011	11/28/2011
PCB 12-087	LDAR Sampling Station Upgrade Project	\$1,515,000	12/30/2008	10/14/2010	11/18/2011	11/28/2011
PCB 12-088	Aromatics South Flare Subpart Ja Tie-Ins Project	\$1,024,000	11/30/2009	10/14/2010	11/18/2011	11/28/2011
PCB 12-089	B and C Sulfur Pits Environmental Risk Reduction Project	\$1,264,000	4/25/2003	10/14/2010	11/18/2011	11/28/2011
PCB 12-090	Continuous Emissions Monitoring System and Consent Decree Improvements for Flares	\$1,454,000	12/31/2007	10/14/2010	11/23/2011	11/28/2011
PCB 12-091	Pump LDAR Phase II Project	\$150,000	12/31/2007	10/14/2010	11/23/2011	11/28/2011
	TOTAL:	\$708,543,732				

EXHIBIT 1

CERTIFICATE OF SERVICE

I, Joshua S. Whitt, the undersigned attorney, hereby certify that I have served the attached Appearance and Petition For Leave To Intervene on all parties of record, by certified mail - return receipt requested at the following addresses:

IEPA
Robb H. Layman-Assistant Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Illinois Department of Revenue
Steve Santarelli
101 West Jefferson
P.O. Box 19033
Springfield, IL 62794

WRB Refining, LLC
Michael Kemp
404 Phillips Building
Bartlesville, OK 74004

DATED this 9th day of December, 2011.

ROXANA COMMUNITY UNIT SCHOOL
DISTRICT NO. 1

By:



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SERVICE LIST

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