

**ILLINOIS POLLUTION CONTROL BOARD**

WRB REFINING, LLC	)	PCB 2012-106
(multiple applications)	)	2012-107
	)	2012-108
	)	2012-109
	)	2012-110
	)	2012-111
	)	2012-113
	)	2012-114
	)	2012-115
PROPERTY IDENTIFICATION	)	2012-116
NUMBERS	)	2012-117
19-1-08-35-00-000-001,	)	
19-1-08-34-00-000-008.004, and	)	(Tax Certification - Water)
19-1-08-34-00-000-006,	)	
19-1-08-33-00-000-002, or portions thereof	)	

To: See Attached Service List

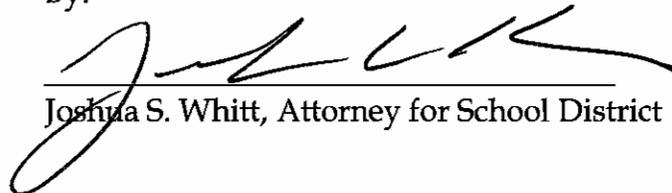
**NOTICE OF FILING**

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 Motion For Leave to Intervene of Roxana Community Unit School District No. 1, copies of which are herewith served upon you.

DATED this 28th day of February, 2012.

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  
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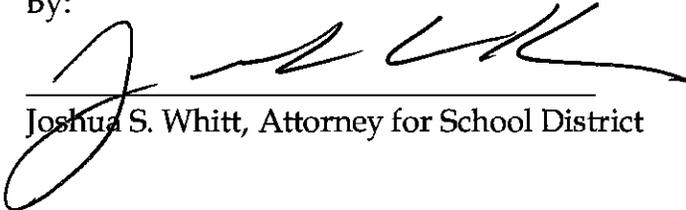
**APPEARANCE**

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

DATED this 28th day of February, 2012.

ROXANA COMMUNITY UNIT SCHOOL  
DISTRICT NO. 1

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Joshua S. Whitt, Attorney for School District

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19-1-08-34-00-000-006,	)	
19-1-08-33-00-000-002, or portions thereof	)	

**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 proceedings<sup>1</sup> 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 \$2.3 million in annual property tax revenue. They consist of over \$183 million worth of real property construction costs that would be locally assessed and taxed for the benefit of the School District and other taxing bodies. In light of the substantial

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<sup>1</sup> 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.

value of these properties and the number of applications to be considered at this time, intervention by 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 numerous other applications filed by WRB Refining, Docket Nos. PCB 2012-039, 2012 -040, 2012-65 through 2012-84, and 2012-86 through 2012-91. The Board denied those petitions. The School District has filed Petitions for Review of those denials with the Illinois Appellate Court for the Fourth Judicial District.

4. On February 15, 2012, the Illinois Environmental Protection Agency (herein "the Illinois EPA") filed recommendations for tax certification in the six of the eleven docket numbers at issue here. On February 22, 2012, the Illinois EPA filed recommendations for tax certification in the other five docket numbers at issue here. The claimed value of these properties is \$183,699,018. According to WRB Refining, construction of these projects was completed between 2002 and 2011. According to the Illinois EPA, WRB Refining filed all of these applications on June 29, 2011. The Illinois EPA completed technical review of all of these applications on July 12, 2011, and

submitted technical memoranda for each one on November 21, 2011. 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 apparently filed approximately seventy applications with the Illinois EPA for pollution control facility tax certifications. The applications at issue here are eleven of the seventy filed by WRB Refining.

6. As noted in the previous cases, a number of taxing bodies, including the School District, are currently litigating the fair market value of the refinery for property tax purposes.<sup>2</sup> 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. Twenty-seven properties, totaling over \$1 billion, have recently been certified. It is reasonable to anticipate that another \$2 billion worth of tax certification

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<sup>2</sup> 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.

applications will be filed with the Board by the Illinois EPA on behalf of WRB Refining. The properties at issue here represent installed costs that total over \$183 million.

**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 participation is allowed to challenge tax certifications that have been granted 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 over \$61 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 \$2.3 million in property tax revenue that 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 that 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. 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.

17. In addition, WRB Refining has failed to properly complete these applications and has inexplicably modified the form required 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 these applications, WRB Refining listed the percentage to the whole facility value as "To Be Determined", 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.

18. WRB Refining, in multiple instances, provided inconsistent information within their applications and attached descriptions. No mention or explanation of these inconsistencies is made in the technical review, technical memoranda, or legal memoranda to the Board. For example, for docket numbers 12-107, 12-108, and 12-110, WRB represents that the projects were only 70-, 75-, and 80-percent complete when the application was submitted on June 29, 2011. Yet on the same line of the application WRB Refining says the projects were all complete on April 1, 2011. The actual status of the projects appears to be unknown to WRB Refining, the Illinois EPA, and thus, the Board.

19. Additionally, WRB Refining was inconsistent in reporting the amount of income generated by each facility. Comparing the gross income reported by WRB Refining to the descriptions of the projects in the application form and in the attached descriptions, WRB is recovering and selling products as a result of many of these projects. Specifically, on line 5(c) of Section E of the application in docket number 12-106, WRB Refining reported zero gross income from the facility. However, in both Subsection 1 of Section E and the attached descriptions, WRB Refining admitted the

recovered compounds are converted to product and sold. Rather than reporting the gross annual income from these sold products in the application, WRB Refining inexplicably reports zero income. Similar inconsistencies appear in docket numbers PCB 12-110, PCB 12-114, and PCB 12-117, to name only a few.

20. 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.*

21. 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).

22. 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.

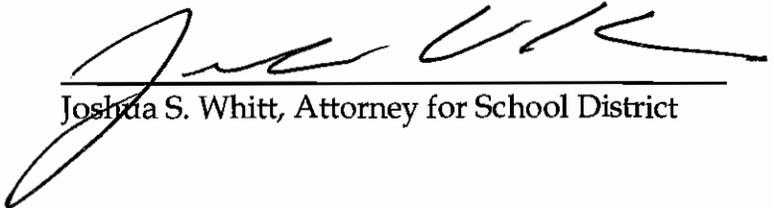
23. The Board has taken no action on these eleven applications. WRB Refining waited several years to submit applications following completion of at least eight of these projects.

24. Intervention by the School District will allow this Board the opportunity to receive additional review and further information on these projects. 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 \$183,699,018 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, 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

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PCB Docket	Description	Cost	Install Complete	Application Date	EPA Tech Review	EPA Tech Memo	EPA Filed with PCB
PCB 12-106	Waste Water Treatment Plant Upgrade Project	\$89,052,797.000	11/15/2008	6/29/2011	7/12/2011	11/21/2011	2/15/2012
PCB 12-107	New Units Condensate Recovery Project	\$2,995,965.000	4/1/2011*	6/29/2011	7/12/2011	11/21/2011	2/15/2012
PCB 12-108	New Units Water Recycle Project	\$3,600,815.000	4/1/2011**	6/29/2011	7/12/2011	11/21/2011	2/15/2012
PCB 12-109	WWTP CPI Header Upgrade Project	\$773,000.000	7/1/2003	6/29/2011	7/12/2011	11/21/2011	2/15/2012
PCB 12-110	New Sour Water Stripper	\$75,619,441.000	4/1/2011***	6/29/2011	7/12/2011	11/21/2011	2/15/2012
PCB 12-111	Wood Stave Sewer Repair Project	\$2,500,000.000	8/30/2002	6/29/2011	7/12/2011	11/21/2011	2/15/2012
PCB 12-113	WWTP CPI Header Bypass Project	\$2,071,000.000	12/31/2008	6/29/2011	7/12/2011	11/21/2011	2/22/2012
PCB 12-114	SPCC Spill Containment Upgrades and SPCC Dike Restoration	\$745,000.000	12/31/2009	6/29/2011	7/12/2011	11/21/2011	2/22/2012
PCB 12-115	Waste Water Flow Meter	\$370,000.000	12/31/2008	6/29/2011	7/12/2011	11/21/2011	2/22/2012
PCB 12-116	Hartford Docks Spill Mitigation	\$202,000.000	12/31/2002	6/29/2011	7/12/2011	11/21/2011	2/22/2012
PCB 12-117	Hartford Integration Water Pollution Prevention Project	\$5,769,000.000	7/31/2004	6/29/2011	7/12/2011	11/21/2011	2/22/2012

\*Application reported date installation complete is 4/1/2011 but that as of date of application it was 70% complete

\*\*Application reported date installation complete is 4/1/2011 but that as of date of application it was 75% complete

\*\*\*Application reported date installation complete is 4/1/2011 but that as of date of application it was 80% complete