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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JAN - 7 2004

CONSUMERS ILLINOIS WATER COMPANY)
(VERMILLION COUNTY))
(Property Identification Number)
23-06-100-001-0060))

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
PCB 00-03-124
(Tax Certification)

NOTICE

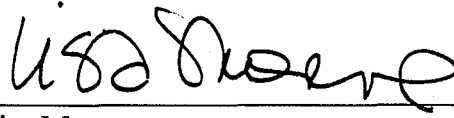
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite. 11-500
Chicago, Illinois 60601

Craig Cummings
Consumers Illinois Water Company
322 North Gilbert Street
PO Box 1130
Danville Illinois 61832

Steve Santarelli
Illinois Department of Revenue
101 West Jefferson
Post Office Box 19033
Springfield, Illinois 62794

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board THE AMENDED RECOMMENDATION of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Lisa Moreno
Assistant Counsel
Division of Legal Counsel

DATED: December 19, 2003

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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JAN - 7 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE POLLUTION CONTROL BOARD

CONSUMERS ILLINOIS WATER COMPANY)
(VERMILLION COUNTY)) PCB 03-124
(Property Identification Number) (Tax Certification)
23-06-100-001-0060)

AMENDED RECOMMENDATION

The Illinois Environmental Protection Agency ("Illinois EPA") hereby files its Amended Recommendation regarding the tax certification of water pollution control facilities pursuant to Section 125.204 of the regulations of the Illinois Pollution Control Board, 35 Ill. Adm. Code 125.204.

1. On November 7, 2002, the Illinois EPA received a request from Consumers Illinois Water Company ("Consumers") (log number TC 08-02, Exhibit A) for a recommendation regarding the tax certification of water pollution control facilities, pursuant to 35 Ill. Adm. Code 125.204.
2. On February 11, 2003, the Illinois EPA mailed for filing with the Board its Recommendation, in which it recommended that the Board deny in totality Consumers' request for tax certification. On March 14, 2003 Consumers filed with the Board a Petition for Administrative Review contesting the Illinois EPA's recommendation. On March 20, 2003, the Board accepted for hearing Consumers' petition for review. The Illinois EPA mailed for filing the Record on May 5, 2003. Since that time Consumers and Illinois EPA have engaged in discussions, during which Consumers provided additional clarifying information on the equipment and facilities for which it seeks tax certification. On December 4, 2003, the parties filed a Joint Statement of Stipulated

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Facts. Based on information set out in the Joint Stipulation, the Illinois EPA is amending its Recommendation as set out below.

2. The applicant's address is: Craig Cummings
Consumers Illinois Water Company
322 North Gilbert Street
PO Box 1130
Danville Illinois 61832

3. The proposed water pollution control facilities in this request are located at 1301 West Fairchild Street, Danville, Illinois, and consist of the following public water supply treatment facilities:

- Four upflow clarifiers;
- Six rapid-rate gravity dual media filters;
- An ionic ion exchange column;
- A powdered activated carbon unit;
- Three 3-million gallon sludge lagoons;
- One 4-million gallon settling basin;
- A wet well/storage basin for ion exchange backwash; and
- Various pipes, fittings, and appurtenances

These facilities, which are used to treat raw water withdrawn from the North Fork River for use as a public (drinking) water supply, are further described in the Illinois EPA's Record (Exhibit A)¹ and the Joint Stipulation of Facts filed on December 4, 2003.

¹ As described in the "Addenda to Application for Certification (Property Tax Treatment) Pollution Control Facility" included in Appendix A and the Joint Stipulation of Facts, water is drawn into the Consumer's Illinois facility through a "raw" water intake located in the North Fork and pumped into clarifiers, where sediment, hardness, synthetic organic and volatile chemicals, total inorganic carbon, fecal and total coliform, protozoans and other organic contaminants are removed or reduced. After primary and secondary clarification, the water is subjected to pH adjustment and filtered through the dual-media rapid rate gravity filters before being pumped into the

4. Section 11-10 of the Property Tax Code, 35 ILCS 200/11-10 (2000), defines “pollution control facilities” as:

“any system, method, construction, device or appliance appurtenant thereto or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of: (a) eliminating, preventing, or reducing air or water pollution ...or (b) treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without treatment, pretreatment modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property.”

5. Pollution control facilities are entitled to preferential tax treatment, 35 ILCS 200/11-5.
6. Based on the information in the application for tax certification and the Joint Stipulation of Facts and the purpose of the facilities, it is the Illinois EPA’s engineering judgment that the three 3-million gallon sludge lagoons and the single 4-million gallon settling basin may be considered “pollution control facilities,” pursuant to 35 Ill. Adm. Code 125.200(a) and are eligible for tax certification from the Board. As described in the “Residuals Treatment Equipment” provisions of the Joint Stipulation (pp. 5-6), the sludge lagoon and settling basin provide treatment--in the form of settling of solids that are later removed and land-applied—for wastewater from the drinking water treatment process and are therefore “pollution control facilities” within Section 11-10 of the Property Tax Code.
7. Based on the information in the application for tax certification and the Joint Stipulation of Facts and the purpose of the facilities and equipment, it is the Illinois EPA’s engineering judgment that the remaining described facilities may not be considered “pollution control facilities,” pursuant to 35 Ill. Adm. Code 125.200(a) and are not

distribution system. Water that has a high nitrate concentration (greater than 8 mg/l) is also passed through an ion exchange unit. The contaminants that are removed during the water treatment process are land applied—in the form

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eligible for tax certification from the Board. As discussed in the Joint Stipulation of Facts, the function of these other facilities is to provide (1) nitrate removal from public water supply to meet the National Primary Drinking Water regulations for nitrates (i.e., the upflow clarifiers, dual media filters, the ionic ion exchange column, and pipes, fittings and appurtenances); (2) removal of agricultural chemicals from the raw water supply (i.e., the powered activation carbon unit) and (3) to provide storage and equalization for the liquid waste from the nitrate removal process, which is pumped to the Danville Sanitary District (i.e., the wet well/storage basin for ion exchange backwash).

8. It is evident from the Joint Stipulation of Facts that the primary purpose of the listed facilities and equipment other than the sludge lagoon and settling basin is to produce potable water for distribution and sale to the public that meets the relevant Maximum Contaminant Level required under the National Primary Drinking Water regulations. While the raw water undergoes treatment, the primary purpose of that treatment is not the reduction of “water pollution” as defined in the Environmental Protection Act,² but rather the removal of contaminants from and processing of the raw water to make a product for sale, i.e., potable water, that meets the required standards for human consumption. Furthermore, Consumer’s Illinois is not proposing to control an alteration of or a discharge to the waters of the State but is merely withdrawing from the waters of the State.

of sludge—to agricultural lands.

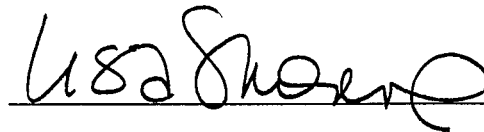
²“...such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.540

9. In its pleadings Consumers' has emphasized the fact that the nitrate and chemical-removal equipment for which it seeks tax certification was installed pursuant to a Consent Order and direction from the Illinois EPA. This fact in and of itself is not relevant to whether the equipment qualifies for relief under the Property Tax Code. See, for example, Cereal Mills v. Department of Revenue, 346 N.E.2d 69 (4th Dist., 1976).

WHEREFORE, the Illinois EPA amends its previous recommendation and now recommends that the Board **grant** the requested tax certification for the three 3-million gallon sludge lagoons and the 4-million gallon settling basin **and deny** the requested tax certification for the remainder of the equipment.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: _____



Lisa Moreno
Assistant Counsel

DATED: December 19, 2003

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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STATE OF ILLINOIS

COUNTY OF SANGAMON

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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **AMENDED RECOMMENDATION**, upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(First Class)

Craig Cummings
Consumers Illinois Water Company
322 North Gilbert Street
PO Box 1130
Danville Illinois 61832
(First Class)

Steve Santarelli
Illinois Department of Revenue
101 West Jefferson
Post Office Box 19033
Springfield, Illinois 62794
(First Class)

Charles T. Wehland
Laura M. Earl
Jones Day
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601-1692
(Overnight Mail)

and mailing it from Springfield, Illinois on January 5, 2004 with sufficient postage affixed for mailing as indicated.

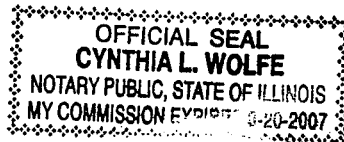
Meredith Kelly

SUBSCRIBED AND SWORN TO BEFORE ME

this 5th day of January, 2004.

Cynthia L. Wolfe

Notary Public



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