ILLINOIS POLLUTION CONTROL BOARD December 20, 2001

THE AMERICAN COAL COMPANY –)	
GALATIA (Perimeter Ditch) (Property)	
Identification Numbers 11-1-083-01, 1-1-0	88-)	
01, 1-1-088-03, 1-1-088-04, 11-1-093-01,	11-)	
1-093-02, 11-1-093-03, 11-1-093-05, 11-1-	-)	
093-06, 11-1-093-07, 11-1-095-01, 11-1-09	95-)	
02),)	
)	
Petitioner,)	
)	
v .)	PCB 02-76
)	(Tax Certification)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On December 12, 2001, the Illinois Environmental Protection Agency (Agency) filed a recommendation on whether the Board should certify certain facilities of The American Coal Company (American Coal) as "pollution control facilities" for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2000)). The Agency filed the recommendation under Part 125 of the Board's procedural rules (35 Ill. Adm. Code 125). The Agency recommended that the Board issue a tax certificate for the perimeter ditch of American Coal's new 472-acre coal cleaning refuse landfill (perimeter ditch), but deny a tax certificate for the 472-acre coal cleaning refuse landfill and addition of agricultural lime (landfill).

The Board is not ruling today on whether American Coal's landfill is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2000)). Instead, in a separate order, the Board is opening docket PCB 02-83 to address the Agency's recommendation on the landfill.

In this order, the Board first describes the legal framework for tax certifications, discusses the Agency's recommendation on the perimeter ditch, and certifies that the perimeter ditch is a pollution control facility.

LEGAL FRAMEWORK

Under the Property Tax Code, "[i]t is the policy of this State that pollution control facilities should be valued, at 33 1/3% of the fair cash value of their economic productivity to

their owners." 35 ILCS 200/11-5 (2000); *see also* 35 Ill. Adm. Code 125.200(a)(2). "For tax purposes, pollution control facilities shall be certified as such by the Pollution Control Board and shall be assessed by the Department [of Revenue]." 35 ILCS 200/11-20 (2000); *see also* 35 Ill. Adm. Code 125.200(a).

Under Section 125.202 of the Board's procedural rules, a person may submit an application for tax certification to the Agency. 35 Ill. Adm. Code 125.202. If the Agency receives a tax certification application, the Agency must file with the Board a recommendation on the application, unless the applicant withdraws the application. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency's filing must recommend that the Board issue or deny tax certification. 35 Ill. Adm. Code 125.204(a)(4). If the Board finds "that the claimed facility or relevant portion thereof is a pollution control facility . . ., the Pollution Control Board . . . shall enter a finding and issue a certificate to that effect." 35 ILCS 200/11-25 (2000); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from American Coal on January 31, 2001. Agency Recommendation (Agency Rec.) at 1. On December 12, 2001, the Agency filed a recommendation on the application with the Board. The Board attaches the Agency's recommendation and makes it part of this order. The Agency's recommendation identifies the facility at issue: "[t]he perimeter ditch of the new 472-acre coal cleaning refuse landfill." *Id.* at 2. The Agency's recommendation further describes the facility: the perimeter ditch "is conveying water back to a pond system" which "collects all water at the site and is used as slurry water." *Id.* at 2. The Agency's recommendation also identifies the location of the facility: "SW 1/4 of Section 17, E 1/2 of the NE 1/4 of Section 19 and NW 1/4 and the N 1/2 of the SW 1/4 of Section 20 Township 8 South-Range 6 East of the 3rd P.M." in Saline County. *Id.* at 1-2, Exhibit A.

The Agency recommends that the Board certify that the perimeter ditch is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2000)) because the primary purpose of the facility is "eliminating, preventing, or reducing water pollution." Agency Rec. at 2-3.

TAX CERTIFICATE

The Board finds and certifies that American Coal's perimeter ditch identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2000)). Under Section 11-25 of the Property Tax Code, the effective date of this certificate is "the date of application for the certificate or the date of the construction of the facility, which ever is later." 35 ILCS 200/11-25 (2000); *see also* 35 III. Adm. Code 125.216(a). Section 125.216(d) of the Board's procedural rules states that the Clerk "will provide the applicant and the Agency with a copy of the Board's order setting forth *the Board's findings and certificate*,

if any." 35 Ill. Adm. Code 125.216(d) (quoting in italics 35 ILCS 200/11-30 (2000)). The Clerk therefore will provide American Coal and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2001, by a vote of 7-0.

Donaly Mr. Hu

Dorothy M. Gunn, Clerk Illinois Pollution Control Board

RECEIVED CLERK'S OFFICE

DEC 1 2 2001

STATE OF ILLINOIS Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

The American Coal Company-Galatia (Property Identification Numbers 11-1-083, 1-1-088-01,1-1-088-03, 1-1-088-04, 11-1-093-01, 11-1-093-02, 11-1-093-03, 11-1-093-05, 11-1-093-06, 11-1-093-07, 11-1-095-01 and 11-1-095-02

PCB 02-*16* (Tax Certification)

RECOMMENDATION

Now Comes the Illinois Environmental Protection Agency ("Illinois EPA") by Connie L. Tonsor, one of its attorneys, and pursuant to Section 125.204 of the Illinois Pollution Control Board's (Board) regulations files the following Recommendation regarding the tax certification of water pollution control facilities pursuant to 35 Ill. Adm. Code 125.204.

- On January 31, 2001, the Illinois EPA received a request from The American Coal Company for an Illinois EPA recommendation regarding the tax certification of water pollution control facilities, pursuant to 35 Ill. Adm. Code 125.204, and noted the request as log number TC-06-01. (Exhibit A)
- 2. The applicant's address is:

Ms. Linda Carlton The American Coal Company Post Office Box 727 Harrisburg, Illinois 62946

3. The proposed water pollution control facilities in this request are located at: SW ¼ of Section 17, E ½ of the NE ¼ of Section 19 and NW ¼ and the N ½ of the SW ¼ of Section 20 Township 8 South-Range 6 East of the 3rd P.M. and consist of:

- A) The perimeter ditch of the new 472-acre coal cleaning refuse landfill.(This facility is further described in Exhibit A.)
- B) The 472-acre coal cleaning refuse landfill and addition of agricultural lime.(This facility is further described in Exhibit A.)
- 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."

Pollution control facilities are entitled to preferential tax treatment, 35 ILCS 200/11-5 (2000).

6. Based on the information in the application and the purpose of the facilities, the perimeter ditch, described in paragraph 3(A) is conveying water back to a pond system. The pond system collects all water at the site and is used as slurry water. The Illinois EPA's engineering judgment that the described facilities may

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be considered "pollution control facilities," pursuant to 35 III. Adm. Code 125.200(a), with the primary purpose of eliminating, preventing, or reducing water pollution, or as otherwise provided in 35 III. Adm. Code 125.200. Therefore, the perimeter ditch described in paragraph 3(A) is eligible for tax certification from the Board.

- 7. The 472-acre coal cleaning refuse landfill and the addition or agricultural lime described in paragraph 3(B) is a disposal facility for coal cleaning refuse, a byproduct of mining, and not a water pollution control device, 35 III. Adm. Code 125.200.
- 8. Therefore, pursuant to Section 125.204(a) the Illinois EPA recommends that the Board issue the requested tax certification for the perimeter ditch described in paragraph 3(A) and deny the requested tax certification for the 472-acre coal cleaning refuse landfill described in paragraph 3(B), 35 Ill. Adm. Code 125.204.
- 9. The applicant may file a petition with the Board to contest the Agency denial recommendation. The applicant has 35 days after the date of service of this recommendation to file its petition.

Illinois Environmental Protection Agency,

mil mon

Connie L. Tonsor Associate Counsel

December 10, 2001 1021 North Grand Ave. E. P.O. Box 19276 Springfield, Illinois 62794-9276 217/782-5544

A PPLICATION FOR CERTIFICATION (PROPERTY TAX TREATMENT) POLLUTION CONTROL FACILITY WATER X]]

¥.=	PLICATION FOR CERTIFICATION (PROPERTY TAX TRI	EATMENT) This Agency is authorized to request this				
~	POLLUTION CONTROL FACILITY	information under Illinois Revised Statues 1979				
		DECEPTION Stratter, 130, Section 502a 5. Disclosure of this information is folluttary. However, failure to comply could present your application from				
	ILLINOIS ENVIRONMENTAL PROTECTION AGEN	1 1 Information is follutary. However, failure to				
	P. O. Box 19276, Springfield, IL 62794-9276	being processed of could result in denial of your				
		application for certification.				
	FOR AGENCY USE					
File No.	Dete Devel 1	ILLINOIS ENVIRONMENTAL				
		No. PROTECTION AGENCYPate				
Sec. A	Company Name	BOW/WPC/PERMIT SECTION				
	The American Coal Company Person Authorized to Receive Certification	Person to Contact for Additional Details				
	Ms. Linda Carlton					
	Street Address	Ms. Linda Carlton				
		Street Address				
	P 0 Box 727	P 0 Box 727				
L N	Municipality, State & Zip Code	Municipality, State & Zip Code				
APPLICANT	Harrisburg, IL 62946 Telephone Number	Harrisburg, IL 62946 Telephone Number				
₹	618/268-6535	618/268-6535				
	Location of Facility Quarter Section Township Range	Municipality Township				
	Pt. Sec 17, 19, 20 8S 6E	and the second				
	Street Address	Galatia, IL Raleigh County Book Number				
	9085 Hwy 34 N, Galatia, IL	Saline				
	Property Identification Number	Parcel Number				
		<u>-093-01,02, 03, 05,06, 07; 11-1-095-01,02</u>				
Sec. B	Nature of Operations Conducted at the Above Location	-093-01,02, 03, 05,06, 07; 11-1-095-01,02				
		proved for normanent containment of and				
	waste materials to meet surface runof	proved for permanent containment of coal				
	compliance.	i and groundwater environmental				
Ċ	IDNR-Land Reclamation Div. Permit No.	206 Jacuard 11/20/1007				
NS	Water Pollution Control Construction Permit No.	Date Issued				
MANUFACTURING OPERATIONS	Water Pollution Control Construction Permit No.	Dale issued				
FAC	NPDES PERMIT No.	Date Issued Expiration Date				
- NN	IL0061727-Sediemtn Pond #002	8/15/96 (current) 8/15/2001				
Ŵ	Air Pollution Control Construction Permit No.	Date Issued				
	All Pollution Control Construction Permit No.					
	Al Dull (Inc. Operated Operation Departicular	Date Issued				
	Air Pollution Control Operating Permit No.	Date issued				
Sec. C	Describe Unit Process	aning is placed on the prepared site and				
	compacted to ensure stability for per	manent containment. Fine refuse is placed				
U	inside the coarse refuse and dewatered	d for permanent containment				
Ž.	instact the course refuse and dematered	a sor permanent contarmment.				
MANUFACTURING PROCESS	Materials Used in Process					
P C C C C	Self propelled compactor, bulldozers,	roadgraders and baultrucks				
N	Agricultural grade limestone and calc	jum hydroxide are used as needed to ensure				
W	Agricultural grade limestone and calcium hydroxide are used as needed to ensure proper pH control for surface runoff prior to final reclamation.					
Sec. D	Describe Pollution Abatement Control Facility					
Sec. D	Coarse refuse is compacted to stablize	e the containment structure which encloses				
55	fine refuse to prevent pollution of surface water and groundwater. Topsoil removed from affected area, stored and protected on site for use in f site reclamation. Surface site drainage control is established to capture all site runoff and directed to an NPDES sediment pond-NPDES Permit No. IL0061727.					
PTIK						
NON SON						
DES						
ŚÈ	directed to an NPDES sediment pond-N	PDFS Permit No. 110061727				
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<u>v</u> >		1				

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IL 532-0222 APC 151 (Rev. 8/00)

Sec. E	(<u>1</u>) Nat	(1) Nature of Contaminants or Pollutants					
. SI	Contar	ninant or Pollutant	DESCRIPTION	Material Retained, Captured or Recovered DESCRIPTION DISPOSAL OR USE			
r – CONTAMINANTS		barse refuse	rock, shale, sulfa				
LAMI	`		iron pyrite, clays	of described materials			
I NO							
Σ	E	ine refuse		Permanent_disposal			
ACI	(2) Doir	the of Maste Mater Discharge	pyrite, clays	of described materials			
or	(2) PUI	(2) Point(s) of Waste Water Discharge					
NTR		······································	Plans and Specifications	Attached Yes y No			
001	(3) A	re contaminants (or residues) collect		Yes x No			
NOL	(4) C	(4) Date installation completed <u>1998</u> status of installation on date of application <u>operating</u>					
LTP.	(5) a						
0 G G	b	NET SALVAGE VALUE IF CONSIDE	ERED REAL PROPERTY:	\$ 283,200.00			
TIN	c	PRODUCTIVE GROSS ANNUAL IN	COME OF CONTROL FACILITY:	\$ N/A			
Nno.		·		\$			
ACC	N/A						
	e						
Sec. F				Code, as amended, and to the best of my facilities" as defined in Section 11-10 of the			
RE		roperty Tax Code.					
ATU		\mathbf{A} , (\mathbf{N})	General Manager				
SIGNATURE	<u> </u>	upulpul -		_			
	Signat	re / / / /'	Title				
Sec. G	INSTRUCTIONS FOR COMPILING AND FILING APPLICATION						
	General:	Separate applications must be completed f	ted for each control facility claimed. Do not mix types (water and air). Where both air and				
	water operations are related, file two applications. If attachments are needed, record them consecutively on an index sheet.						
	Sec. A Information refers to applicant as listed in the tax records and the person to be contacted for further details or for inspection of facilities. Define facility location by street address or legal description. A plat map location is required for facilities located						
		outside of municipal boundaries. The property identification number is required.					
	Sec. B	³ Self-explanatory. Submit copies of all permits issued by local pollution control agencies. (e.g. MSD Construction Permit)					
	Sec. C	Refers to manufacturing processes or materials on which pollution control facility is used.					
	Sec. D	D Narrative description of the pollution control facility, indicating that its primary purpose is to eliminate, prevent or reduce pollution.					
		State the type of control facility. State permit number, date, and agency issuing permit. A narrative description and a process flow diagram describing the <u>pollution control facility</u> . Include a listing of each major piece of equipment included in the claimed					
		fair cash value for real property. Include an <u>average</u> analysis of the influent and effluent of the control facility stating the collection efficiency.					
(A)	Sec. E	Sec. E List air contaminants, or water pollution substances released as effluents to the manufacturing processes. List also the final					
INSTRUCTIONS	-	disposal of any contaminants removed from the manufacturing processes. Item (1) – Refers to pollutants and contaminants removed from the process by the pollution control facility.					
UCT				by to water-carried wastes from air pollution control facilities. Submit drawings,			
STR			e to receiving stream, and (b) Sewers	and process piping to and from the control			
ž	facility. Item (3) – If the collected contaminants are disposed of other than as wastes, state the disposition of the materials, and the v						
		in dollars reclaimed by sale or reuse of the collected substances. State the cost of reclamation and related expense.					
	Item (4) – State the date which the pollution control facility was first placed in service and operated. If not, explain. Item (5) – 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.						
	Sec. F Self-explanatory. Signature must be a corporate authorized signature.						
		Submit to: Att	ention:	Attention:			
			omas McSwiggin rmit Section	Donald E. Sutton Permit Section			
			vision of Water Pollution Control	Division of Air Pollution Control			
	L	1					

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